



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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BY: Jordan
TIME: 11:07

FIRST DIVISION

JESSIE L. JOMADIAO and
WILMA F. PASTOR,
Petitioners,

G.R. No. 230322

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

Promulgated:

MANUEL L. ARBOLEDA,
Respondent.

FEB 19 2020

X-----X

DECISION

PERALTA, C.J.:

On appeal is the July 21, 2016 Decision¹ and March 1, 2017 Resolution² of the Court of Appeals in CA-G.R. SP No. 142029, which affirmed the November 14, 2014 Decision³ of the Office of the Ombudsman in OMB-L-A-09-0513-I, finding Jessie L. Jomadio (*Jomadio*) and Wilma F. Pastor (*Pastor*) (collectively referred to as petitioners), guilty of grave misconduct for violation of certain provisions of Republic Act No. 9184⁴ (RA 9184), or otherwise known as the *Government Procurement Reform Act*.

¹ Penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justices Samuel H. Gaerlan (now a member of this Court) and Ma. Luisa C. Quijano-Padilla; *rollo*, pp. 25-36.

² *Id.* at 22-24.

³ Penned by Graft Investigation and Prosecution Officer I Cathy D. Cardino-Samson; CA *rollo*, pp. 30-41.

⁴ Republic Act No. 9184, "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes," January 10, 2003.

Factual Antecedents

The Bureau of Soils and Water Management (*BSWM*) of the Department of Agriculture (*DA*) implemented a Small Water Impounding Project (*SWIP*) which fully funded constructions or rehabilitations of water structures within certain provinces. The Municipality of Looc in Romblon was one of the grantees of SWIP, and Nine Million Pesos (₱9,000,000.00) were allotted for the rehabilitation of several of its canals and dams.

On September 24, 2007, the Bids and Awards Committee (*BAC*) of Looc Province - which comprised of Solomon Gregorio as Chairman, Renato Saludaga (*Saludaga*) as Vice-Chairman, and Rolando Gregorio, Virginia Morales, Pastor and Jomadio as provisional members – and then Mayor Juliet Ngo-Fiel (*Fiel*), as head of the procuring entity, convened in a regular meeting, the minutes⁵ of which is hereby reproduced, to wit:

BIDS AND AWARDS COMMITTEE

MINUTES OF THE REGULAR MEETING OF THE 2007 BIDS AND AWARDS COMMITTEE OF LOOC PROVINCE OF ROMBLON HELD AT THE MUNICIPAL SESSION HALL ON SEPTEMBER 24, 2007.

PRESENT:

Mr. Solomon Gregorio	-	MPDC – BAC Chairman
Engr. Renato Saludaga	-	Municipal Engineer – Vice Chairman
Mr. Rolando Gregorio	-	Municipal Assessor – Member
Mrs. Wilma Pastor	-	Municipal Registrar – Member
Mrs. Virginia Morales	-	Municipal Budget Officer – Member
Mrs. Jessie Jomadio	-	Municipal Agriculturist – Member
Jacinto Marcelo, II Supply Officer	-	Administrative Aide IV – Designated
Catherine Madrid Secretary	-	Administrative Aide IV – BAC

ABSENT:

NONE

Presided over by Mr. Solomon Gregorio the BAC Chairman, Bids and Awards Committee (BAC) convened at 1:30 p.m., purposely to deliberate the construction of Small Water Impounding Projects (SWIP) in six (6) barangays of Looc, Romblon (Brgy. Balatucan, Punta, Buenavista, Pili, Limon Norte, and Manhac). The Bureau of Soils & Water Management (BSWM) was the funding agency of these projects amounting to Nine Million Pesos (₱9,000,000.00).

⁵ CA rollo, p. 42.

To fastrack the development of its implementation, we need to publish the invitation to apply for eligibility and to bid in a newspaper of national circulation as the funding is above Five (5) Million. However, the amount of Nine (9) Million was subdivided into seven (7) projects located in six (6) barangays, namely:

1. Balatucan Diversion Dam Project	xxx	₱2,169,285.59
2. Torril Irrigation Canal Improvement Project	xxx	1,350,863.52
3. Punta Irrigation Project	xxx	493,527.96
4. Talaba Diversion Dam Project	xxx	2,553,510.07
5. Pili Irrigation Canal Improvement Project	xxx	793,358.06
6. Lumbia Falls Irrigation Canal Improvement Project	xxx	1,091,828.83
7. [Limon Norte and] Check Dam Project	xxx	<u>547,598.97</u>
	TOTAL	₱9,000,000.00

With the above details/breakdown per project, it is justifiable to publish in local newspaper.

After the public bidding, it is necessary to facilitate on time the required documents particularly the Program of Works and the contract so as the full amount of funding will be released to the LGU before the end of December 2007.

We need projects that would enhance, increase production of our farmers in countryside.

The body hereby agreed that these projects should undergo a public bidding, and recommend to the Head of the Procuring Entity, the Municipal Mayor.

Meeting adjourned at 2:30 p.m.

(SGD.)
CATHERINE E. MADRID
BAC Secretary

Recommending Approval:

(SGD.) SOLOMON T. GREGORIO Chairman
(SGD.) ENGR. RENATO S. SALUDAGA Vice Chairman
(SGD.) ROLANDO C. GREGORIO, SR. Member
(SGD.) MA. WILMA F. PASTOR Member
(SGD.) VIRGINIA C. MORALES Member
(SGD.) JESSIE L. JOMADIAO Member

Approved:

(SGD.)
JULIET NGO FIEL Municipal Mayor

Thereafter, an Invitation to Apply for Eligibility and to Bid (*IAEB*) was published twice in *Romblon Sun*,⁶ a local newspaper, on September 25 to October 1, 2007, and on October 2 to 8, 2007. Another *IAEB* was posted on Looc's Municipal Bulletin Board⁷ from October 15, 2007 to November 20, 2007.

⁶ *Id.* at 43.

⁷ *Id.* at 44.

The opening of bids was conducted on November 12, 2007 and R.G. Florentino Construction and Trading (*R.G. Florentino*) was the lone bidder with the bid amount of Eight Million Nine Hundred Ninety-Nine Thousand Five Hundred Pesos (₱8,999,500.00). The BAC accepted and recommended R.G. Florentino's bid after determining that it was compliant with the eligibility, technical and financial requirements.

On November 20, 2007, a Notice of Award⁸ was published in favor of R.G. Florentino, followed by the issuance of the SWIP contract⁹ on November 29, 2007, and a Notice to Proceed¹⁰ on December 4, 2007.

On September 2, 2008, a Certificate of Acceptance and Turn Over was issued by the Municipality of Looc in favor of R.G. Florentino, indicating therein that the SWIP was completed in accordance with the guidelines and specifications under the contract agreement.¹¹

On May 4, 2009, Regional Office No. IV of the Commission on Audit (COA) forwarded an Annual Audit¹² Report on the Municipality of Looc for the Year Ended December 31, 2008 to Fiel. The COA observed that pertinent provisions of RA 9184 and its Implementing Rules and Regulations – A¹³ (*IRR-A*) were violated when the BAC awarded the SWIP to R.G. Florentino, to the detriment of Looc.

On August 26, 2009, Manuel Arboleda (Respondent) filed a Complaint¹⁴ before the Office of the Ombudsman against Fiel and the BAC members for the following irregularities:

- (a) *Non-submission of pre-procurement conference, making it appear that the Bids and Awards Committee (BAC) did not convene to determine the readiness of the procuring entity in terms of legal, technical, and financial requirements, to ensure the availability of funds for the contract, and to review all relevant documents in relation to their adherence to the law, considering that the amount involved is more than P5 Million. This is a clear violation of Section 20 of RA 9184, Section 20.1 of its IRR-A.*
- (b) Violation of Sections 21.2.1 (a), 21.2.1(b), 21.2.1(c), 21.1.3, 21.1.5, 41, 13.1 of RA 9184 relative to the publication of the Invitation to Apply for Eligibility to Bid. Likewise, it is noteworthy that per the certification

⁸ CA rollo, p. 103.

⁹ *Id.* at 105-107.

¹⁰ *Id.* at 104.

¹¹ Rollo, p. 100.

¹² Records, Vol. I, pp. 9-44.

¹³ Dated September 23, 2003. This was amended on August 3, 2009 and Revised in 2016.

¹⁴ Records, Vol. I., pp. 1-8.

issued by the Local Newspaper, Romblon Sun, hereto appended as ANNEX "B", paragraph two (2) clearly says that: ***"That the said publication was paid by Engineer Romeo Florentino of RG Florentino Construction"***.

- (c) *The BAC appears to have shown negligence or bias in favor of the lone prospective bidder, R.G. Florentino and Trading, when it failed to determine that the said bidder was "ineligible", contrary to Sections 23.2, 23.6 and 23.11.2 of RA 9184 IRR-A, thus it was allowed to participate in the bidding.*
- (d) *The Bidding conducted on 12 November 2007 was prior to the receipt of funds on 13 and 27 December 2007.*
- (e) *The BAC was not able to rate the bid as "failed" due to the incompleteness and insufficiency of the bid security, contrary to Section 30.1 of RA 9184 IRR-A.*
- (f) *Excess advance payment of P126,525.00 was given to the contractor, contrary to Item 4.1 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects of RA 9184 IRR-A. The law only allows the payment of 15% advance payment.*

(Italicized items are direct quotations from the **REPORT**)¹⁵

Arboleda prayed that the following be imposed upon the BAC members and Fiel: dismissal from service, cancellation of eligibility, forfeiture of their retirement benefits and perpetual disqualification for reemployment in the government service.

On November 14, 2014, the Office of the Ombudsman rendered a Decision¹⁶ charging the BAC members and Fiel with grave misconduct on findings that they conspired in awarding the SWIP project to R.G. Florentino, and imposed the penalty of dismissal as punished under Section 46, Rule 10 of the Revised Rule on Administrative Cases in the Civil Service (*RRACCS*). The Ombudsman disposed, thus:

WHEREFORE, respondents JULIET NGO-FIEL, Municipal Mayor, SOLOMON R. GREGORIO Municipal Planning and Development Coordinator (MPDC), RENATO S. SALUDAGA, Municipal Engineer, JESSIE L. JOMADIAO, Municipal Agricultural Officer, VIRGINIA C. MORALES, Budget Officer, WILMA F. PASTOR, Municipal Civil Registrar, and ROLANDO C. GREGORIO, Municipal Assessor, all of the Municipal Local Government of Looc, Province of Romblon, are hereby found **GUILTY** of *Grave Misconduct* and are meted with the penalty of **DISMISSAL** from the service with the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public

¹⁵ *Id.* at 1-2.

¹⁶ *CA rollo*, pp. 30-41.

office, as well as in government-owned and -controlled corporations, pursuant to the Revised Rule on Administrative Cases in the Civil Service.

In the event that the penalty of Dismissal can no longer be enforced, the penalty shall be converted into a FINE in an amount equivalent to respondents' respective salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their respective retirement benefits, accrued leave credits, or any receivable from their respective office.

X X X X

SO ORDERED.

The Ombudsman found untoward bias towards R.G. Florentino when: (1) the BAC allowed Romeo Florentino of R.G. Florentino to pay for the publication of the IAEB in Romblon Sun; (2) the BAC declared R.G. Florentino's bid as "eligible" even if the bid security was not present at the opening of bids; and (3) the SWIP was not posted on the Philippine Government Electronic Procurement System (*PhilGeps*) website.

On April 28, 2015, herein petitioners, Jomadio and Pastor filed a Motion for Reconsideration,¹⁷ by themselves, and submitted therein that they never underwent any training and were never informed of the procedures, duties, and responsibilities of the BAC. Their participation, as BAC members, only included attending the public bidding on November 12, 2007 and they alleged that they were no longer privy to any transaction that occurred thereafter. They also averred that the publication of the IAEB in the Romblon Sun was made without their knowledge nor consensus and that the non-posting of the SWIP project on the PhilGeps website was not their direct duty. The Order¹⁸ dated May 15, 2015 of the Office of the Ombudsman however upheld the November 14, 2014 Decision.

Aggrieved, petitioners elevated the case to the Court of Appeals (CA) through a petition for review under Rule 43.

On July 21, 2016, the CA rendered the assailed Decision affirming the findings of the Ombudsman, and disposed:

WHEREFORE, the petition is **DENIED**. The assailed dispositions are **AFFIRMED**. No costs.

SO ORDERED.¹⁹



¹⁷ *Id.* at 121-128.

¹⁸ *Id.* at 21-29.

¹⁹ *Rollo*, p. 35.

The CA noted that the BAC must duly ensure faithful compliance to the provisions of R.A. 9184 and its IRR-A during the bidding process. Allowing R.G. Florentino to pay for the IAEB was, therefore, a blatant disregard of R.A. 9184, particularly Section 21 thereof.

Petitioners moved for a reconsideration of the Decision, but the same was denied in a Resolution dated March 1, 2017. Hence the present petition, with the following issues:

- I. WHETHER THE COURT OF APPEALS ERRED IN DENYING THE PETITION FOR REVIEW AND SUSTAINING THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN DESPITE THE FACT THAT SAID FINDINGS ARE GROUNDED ON MERE SPECULATIONS, SURMISES AND CONJECTURES, CONTRARY TO THE EVIDENCE ON RECORD[;]
- II. WHETHER THE COURT OF APPEALS ERRED IN APPLYING THE RULING OF THIS HONORABLE COURT IN *LAGOC V. MALAGA, ET AL.* TO THE CASE AT BAR[;][and]
- III. WHETHER PETITIONERS WILLFULLY VIOLATED OR DISREGARDED PROCUREMENT PROCESSES AND PROCEDURE IN ORDER TO GIVE UNWARRANTED ADVANTAGE AND PREFERENCE TO R.G. FLORENTINO CONSTRUCTION AND TRADING[.]²⁰

At the core of this case is whether or not petitioners colluded with Fiel and their co-members in the BAC in ensuring that the SWIP will be awarded to R.G. Florentino. The Court rules in the negative, but finds that petitioners are still wanting in the performance of their duties as BAC members.

Advertising of the IAEB

Section 21 of RA 9184 mandates that the procuring entity, in this case the Municipality of Looc, shall cause the advertisement of the invitation to bid, thus:

SEC. 21. *Advertising and Contents of the Invitation to Bid.* - In line with the principle of transparency and competitiveness, **all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity** in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible

²⁰ *Rollo*, pp. 8-9. (Citation omitted)



dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this ACT. x x x

The IRR-A then provides:

21.2. Advertising and Posting of the Invitation to Apply for Eligibility and to Bid

21.2.1. Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:


- a) Advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the G-EPS during the maximum period of fourteen (14) calendar days stated above; and
- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned.

RA 9184 intends to reach the broadest number of prospective participants to join the public bidding. This is in line with the law's policy of promoting transparency and competitiveness during the entire bidding process.²¹

It is undisputed that the IAEB was published in the Romblon Sun, a newspaper of general local circulation. The charge against petitioners, on the other hand, was centered on the seemingly partial action of the BAC in allowing R.G. Florentino to pay for the publication of the IAEB.

²¹

Marietta Maglaya De Guzman v. Office of the Ombudsman, G.R. No. 229256, November 22, 2017.



At the onset, the duty of publication falls upon the BAC Secretariat,²² and his or her certification as to the fact of posting refutes allegations to the contrary.²³

The petitioners, as provisional BAC members, are not responsible for the actual posting of the IAEB and the corresponding payment, if any, of the same. Be that as it may, the Court is of the view that allowing a prospective bidder to pay for any advertisement or publication will not give him or her a leverage in public bidding. Such act is actually against any bidder's interest because it publicizes the existence of a bidding and persuades competition.

On the issue of non-posting of the IAEB on the PhilGeps website, respondent did not show that the Municipality of Looc had an electronic registry with the PhilGeps nor that it had access to the internet. Posting on the PhilGeps website requires not only prior coordination with the Geps but also a stable network of the procuring entity.²⁴ Since the viability of posting on the PhilGeps website had not been duly proven during trial, the Court could not postulate on the assumption that the lack of posting on PhilGeps was deliberate.

Nonetheless, the BAC still fell short in the publication requirement when it failed to advertise the IAEB in a *newspaper of general nationwide circulation*, or a newspaper that is published nationally. The minutes of the September 24, 2007 meeting uncovers that the BAC acceded to forego publication in a newspaper of general nationwide circulation because the

²² Commission on Audit, "Updated Guidelines in the Audit of Procurement," <https://www.coa.gov.ph/phocadownload/userupload/ABC-Help/Updated_Guidelines_in_the_Audit_of_Procurement/Annex%207/section3%20part1-3.htm>

The following steps are followed in the advertising and posting of IAEBs:

1. For public bidding of contracts with an ABC costing more than Five Million Pesos (P 5 Million)
 - a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.
 - b. The BAC approves the contents of the IAEB during the pre-procurement conference.
 - c. The BAC Secretariat posts the IAEB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
 - d. The BAC Secretariat advertises the IAEB in a newspaper for the duration required, as described above. For priority programs and projects funded out of the annual GAA, which are intended for implementation within the province, the IAEB may also be advertised in a local newspaper for the same duration as above.
 - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IAEB in the following websites: the PhilGEPS, that of the Procuring Entity and the Procuring Entity's e-procurement service provider, if any, for the duration required.

²³ *Marietta Maglaya De Guzman v. Office of the Ombudsman*, G.R. No. 229256, November 22, 2017.

²⁴ Section 8, Rule III of RA 9184:

8.3. Use of the G-EPS

8.3.1. All procuring entities are mandated to fully use the G-EPS in accordance with the policies, rules, regulations and procedures adopted by the GPPB and embodied in this IRR-A. In this connection, all procuring entities shall register with the G-EPS and shall undertake measures to ensure their access to an on-line network to facilitate the open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents. The PS-DBM shall assist procuring entities to ensure their on-line connectivity and help in training their personnel responsible for the operation of the G-EPS from their terminals.

breakdown per project was below ₱5,000,000.00. This reveals that the BAC was still ascribing to the posting requirements of R.A. 1594, or otherwise known as *Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts*, the IRR²⁵ of which provides:

IB 3 — *Invitation to Prequalify/Apply for Eligibility and to Bid*

1. For locally funded contracts, contractors shall be invited to apply for eligibility and to bid through:

a. For contracts to be bid costing more than P5,000,000 the advertisement shall be made at least three (3) times within a reasonable period depending upon the size and complexity of the contract to be bid but in no case less than two (2) weeks in at least two (2) newspapers of general nationwide circulation which have been regularly published for at least two (2) years before the date of issue of the advertisement. During the same period that the advertisement is posted in the newspaper or for a longer period as determined by the head of the office/agency/corporation concerned, the same advertisement shall be posted in the website of the office/agency/corporation concerned and at the place reserved for this purpose in the premises of the office/agency/corporation concerned. However, for contracts to be bid costing P5,000,000 and below or for contracts authorized to be bid by the regional/district offices involving costs as may be delegated by the head of office/agency/corporation, the invitation to bid shall be advertised at least two (2) times within two (2) weeks in a newspaper of general local circulation in the region where the contract to be bid is located, which newspaper has been regularly published for at least six (6) months before the date of issue of the advertisement. Xxx (Emphasis supplied)

This has already been superseded by Section 21.2.3 and its IRR-A which states that:

21.2.3. For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of infrastructure projects, the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. x x x (Emphasis supplied)

Yet, the BAC gave an incorrect interpretation of the law because the easing of the posting requirement refers to contracts that are below

²⁵ Implementing Rules and Regulations of Presidential Decree No. 1594, as amended on August 12, 2000, IRR of PD 1594, August 12, 2000.

₱5,000,000.00. The SWIP contract was for the entire amount of ₱9,000,000.00 and it was without regard to the value of the infrastructure project per barangay.

Validity of the Bid Security

The basic rule in public bidding that bids should be evaluated on the basis of the required documents submitted *before* and not after the opening of bids must be strictly observed in order to safeguard a fair, honest and competitive public bidding.²⁶ A bid security is one of the documents that Section 25.3 and its IRR-A mandates to be included at the opening of bids.

The Ombudsman determined that R.G. Florentino did not submit a bid security at the time of bidding on November 12, 2007 because the *Acknowledgment* on the Bidder's Bond was dated 2008 and the Official Receipt of Eastern Assurance & Surety Company (*EASC*), the bonding company, was issued on March 8, 2008. Hence, the Ombudsman held that the BAC violated RA 9184 for declaring R.G. Florentino as eligible even in the absence of a Bid Security at the time of bidding.²⁷

On the other hand, attached on record is a Bidder's Bond²⁸ dated November 11, 2007, and valid until February 11, 2008, on which R.G. Florentino was named as the principal and EASC as the surety. It also provides that "THIS BOND IS CALLABLE ON DEMAND UNDER R.A. 9184" for the amount of Two Hundred Twenty-Five Thousand Pesos (₱225,000.00), the condition of which states:

NOW THEREFORE, the conditions of this obligation are such that if the above-bounded principal shall, in the event of his becoming successful bidder in the above proposal (1) fails to guarantee the true and faithful performance in case of the award; (2) shall refuse to accept the same or (3) shall not answer for any delay and/or default in the execution of the contract as provided in the proposal; then the MUNICIPALITY OF LOOC shall be entitled to be indemnified of any loss or damage it may suffer by reason thereof not to exceed the sum of TWO HUNDRED TWENTY-FIVE THOUSAND PESOS (₱225,000.00) PESOS (sic), Philippine Currency, otherwise this obligation shall be void and without effect.

²⁶ *Public Estates Authority v. Bolinao Security and Investigation Services, Inc.*, 509 Phil. 157, 173 (2005).

²⁷ *CA rollo*, p. 38.

²⁸ *Id.* at 48.

A reading of the Bidder's Bond would show that it satisfied the required form of a Bid Security as provided for in Sections 27.2,²⁹ 27.3³⁰ and 28³¹ and its IRR-A which must be: (a) Two and a half percent (2½%) of the approved budget for the contract to be bid; (b) callable upon demand issued by a reputable surety or insurance company; (c) in Philippine Peso; and (d) not valid for more than 120 days from the opening of the bid.

Furthermore, the Bidder's Bond was notarized on November 11, 2007 which contradicts the complaint and the finding of the Ombudsman.

Hence, the BAC did not err in accepting the bid offer of R.G. Florentino because the bid security shows that it had been issued regularly and for purposes only of securing R.G. Florentino's performance on the SWIP. The Court cannot contradict the BAC's finding on record that a Bid Security was included in the technical proposal during the opening of bids and, thus, upholds its presumption of regularity.

The Court has been consistent in holding that the functions of BAC members are not merely ceremonial.³² Theirs is the obligation to ensure the proper conduct of public bidding, because it is the policy and medium adhered

²⁹ SECTION. 27.2. The Bid Security shall be in an amount at least equal to, and not lower than, a percentage of the approved budget for the contract to be bid, as advertised by the concerned procuring entity, in any of the following forms:

- a) Cash, certified check, cashier's check/manager's check, bank draft/guarantee confirmed by a reputable local bank or in the case of a foreign bidder, bonded by a foreign bank;
- b) Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank;
- c) Surety bond callable upon demand issued by a reputable surety or insurance company;
- d) Any combination thereof; or
- e) Foreign government guarantee as provided in an executive, bilateral or multilateral agreement, as may be required by the head of the procuring entity concerned.

The required amount of the above forms of security shall be in accordance with the following schedule:

<i>Form of Security</i>	<i>Minimum Amount in % of Approved Budget for the Contract to be Bid</i>
1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit	One percent (1%)
2. Bank guarantee	One and a half percent (1½%)
<u>3. Surety bond</u>	<u>Two and a half percent (2½%)</u>
4. Foreign government guarantee	One hundred percent (100%)

³⁰ SECTION. 27.3. The required minimum bid security, based on the above schedule, shall be stated in Philippine Pesos in the bidding documents.

³¹ SECTION 28. *Bid Validity.* —

Bids and Bid Securities shall be valid for a reasonable period as determined by the head of the procuring entity concerned, and shall be indicated in the bidding documents, but in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids.

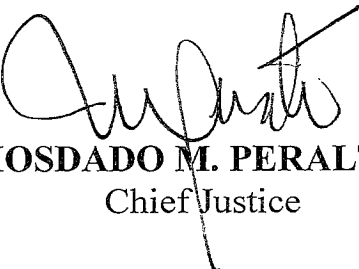
³² *Office of the Ombudsman v. Marilyn H. Celiz, et al.*, G.R. No. 236383, June 26, 2019.

to in Government procurement and construction contracts under existing laws and regulations.³³ It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized.³⁴

Petitioners are charged for the less grave offense of simple neglect of duty, which is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.³⁵ They are hereby penalized for six (6) months suspension,³⁶ considering that this is their first offense after several years in public service.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 21, 2016 and the Resolution dated March 1, 2017 of the Court of Appeals in CA-G.R. SP No. 142029 are hereby **SET ASIDE**. A new one is **ENTERED** finding petitioners Jessie L. Jomadiao and Wilma F. Pastor **GUILTY of SIMPLE NEGLIGENCE OF DUTY** and the penalty of six (6) months suspension is hereby imposed unto them.

SO ORDERED.


DIOSDADO M. PERALTA
Chief Justice

³³ *Tatad v. Garcia, Jr.*, Dissenting Opinion of then Associate Justice Hilario G. Davide, Jr., 313 Phil. 296, 351 (1995).

³⁴ *Id.*

³⁵ *CSC v. Clave*, 683 Phil. 527, 533 (2012).

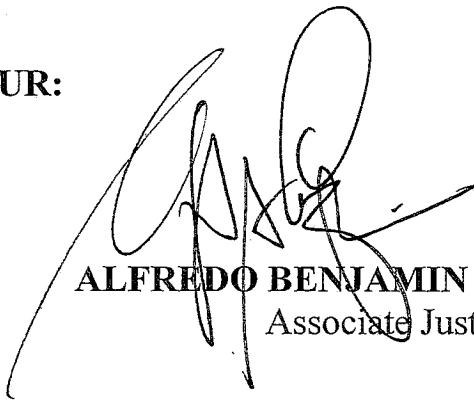
³⁶ Sec. 46, Rule 10 of RRACCS provides:
Section 46. *Classification of Offenses.* x x x
x x x x

D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

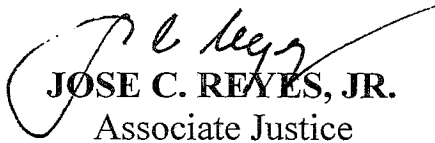
1. Simple Neglect of Duty;

x x x

WE CONCUR:



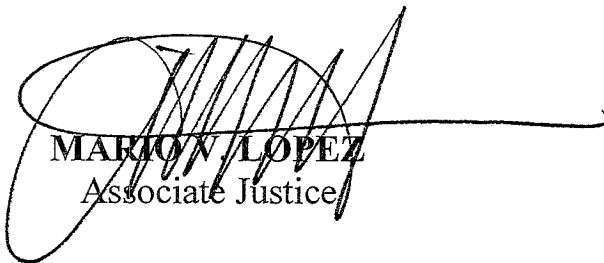
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



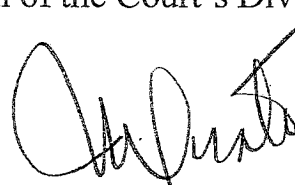
AMY C. LAZARO-JAVIER
Associate Justice



MARION LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice