



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HYACINTH N. GRAGEDA,
Petitioner,

G.R. No. 244042

Present:

- versus -

PERALTA, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

**FACT-FINDING INVESTIGATION
BUREAU, OFFICE OF THE
DEPUTY OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES**

Respondents.

X-----X

IGMEDIO U. BONDOC, JR.
Petitioner,

G.R. No. 244043

- versus -

**FACT-FINDING INVESTIGATION
BUREAU, OFFICE OF THE
DEPUTY OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES**

Respondents.

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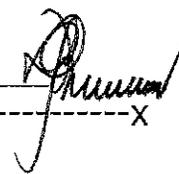
FCINSP. JOSEPH REYLITO S. G.R. No. 243644
ESPIRITU, FINSP. ALLAN L.
MAGAYANES, SFO2 JANETTE A.
ALCANTARA and SFO1 MARIA A.
GONGONA a.k.a. SFO1 MARIA
LUISA R. GONGONA,
 Petitioners,

- versus -

OFFICE OF THE OMBUDSMAN
 Respondent.

Promulgated:

MAR 18 2021



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DECISION

CARANDANG, J.:

Before this Court are three consolidated Petitions for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules), assailing the Decision² dated July 25, 2018 and Resolution³ dated December 14, 2018 of the Court of Appeals (CA) in CA-G.R. SP Nos. 153321 and 153361 filed by petitioners FCInsp. Hyacinth N. Grageda (Grageda), Chairman of the Bids and Awards Committee (BAC); FSSupt. Igmedio U. Bondoc (Bondoc), Regional Director and Head of the Procuring Entity (HoPE); FCInsp. Joseph Reylito S. Espiritu (Espiritu), Vice-Chairman of the BAC; and FInsp. Allan L. Magayanes (Magayanes), SFO2 Jannette A. Alcantara (Alcantara), and SFO1 Maria Luisa R. Gongona (Gongona), members of the BAC of the Bureau of Fire Protection, Regional Office 5 (BFP-RO5).

¹ *Rollo* (G.R. No. 244042), pp. 3-56; *rollo* (G.R. No. 244043), pp. 3-37.

² Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi; *rollo* (G.R. No. 244043), pp. 44-65.

³ *Id.* at 68-69.



Antecedents

The consolidated petitions stemmed from an Affidavit-Complaint⁴ filed by the Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (FFIB-MOLEO) regarding alleged irregularities in the procurement of firefighting hoses committed by petitioners as officers of the BFP-RO5.⁵

In the pre-procurement conference for the purchase of firefighting hoses, the BFP provincial officers informed Bondoc and Grageda that the firefighting hoses measuring 1 ½ inches (") are preferred over those measuring 2 ½" since the latter are seldom used in firefighting.⁶ Nonetheless, the Invitation to Bid (ITB)⁷ for the hoses still stated the following specifications:

| Lot | Item | Quantity | Size | Approved Budget for Contract |
|-----|-------------------|----------|------|------------------------------|
| A | Firefighting Hose | 190 pcs | 1 ½" | ₱2,094,750.00 |
| B | Firefighting Hose | 154 pcs | 2 ½" | ₱2,447,060.00 ⁸ |

A Pre-Bid Conference was held on March 8, 2011 which was attended by the members of the BAC, representatives of the bidders, and representatives of the procuring entity.⁹ During the Pre-Bid Conference, the parties agreed that the bidders should maximize the quantity of the items for bidding based on the approved budget of the contract in determining the lowest bid and shall be based on the price per unit/set.¹⁰ On March 13, 2011, Grageda issued Addendum No. 01¹¹ to amend the items in the bid documents in line with the terms agreed upon during the Pre-Bid Conference.¹²

Addendum No. 01 outlined the requirements to be complied with by the bidders and the procedure to be observed during the bidding. A checklist on the technical component of the procurement enumerated the legal, technical, and financial documents that the participating bidders had to submit.¹³ Addendum No. 01 also reiterated the instruction of the BAC during the Pre-Bid Conference that:

10. Bidders have to maximize the quantity of the items to be bid based on the approved budget of the contract in determining the lowest bid the same shall be based on the price per unit set.¹⁴

⁴ Id. at 225-232.

⁵ Id.

⁶ Id. at 244.

⁷ Id. at 245-246.

⁸ Id. at 227.

⁹ Id. at 251-255.

¹⁰ Id. at 252.

¹¹ Id. at 256-260.

¹² Id.

¹³ Id. at 258-259.

¹⁴ Id. at 257.

911 Alarm, Inc. (911 Alarm) and Den-Tronix Internationale Trading (Den-Tronix) participated in the bidding. The bid of Den-Tronix for Lot A (1 ½" size) failed to include the Project Reference Number (PR No. 10-12-0110) of the project in the Bid Security. As such, the BAC voted "FAILED" on the bidding documents of Den-Tronix. The same ruling was made on the bid of Den-Tronix for Lot B. Meanwhile, the bids submitted by 911 Alarm were declared responsive by the BAC.¹⁵ The details¹⁶ of 911 Alarm's bid for Lot A and B are listed below:

| Lot | Item | Quantity | Excess Quantity from ITB | Size | Approved Budget for Contract |
|-----|-------------------|----------|--------------------------|------|------------------------------|
| A | Firefighting Hose | 232 pcs | 42 pcs | 1 ½" | ₱2,088,000.00 ¹⁷ |
| B | Firefighting Hose | 188 pcs | 34 pcs | 2 ½" | ₱2,444,000.00 ¹⁸ |

Den-Tronix filed a Motion for Reconsideration assailing the ruling of the BAC which was denied in Resolution No. 2011-009¹⁹ dated March 28, 2011 for lack of merit.²⁰

BFP-RO5 BAC issued Resolution Numbers 2011-012 and 013 dated April 11, 2011, declaring 911 Alarm as the Lowest Calculated and Responsive Bidder (LCRB) for the procurement of hoses but without specifying therein the corresponding quantity for Lot A and Lot B.²¹ The Notices of Award were issued in favor of 911 Alarm.²² Thereafter, Contracts of Agreement²³ were entered into between Bondoc and 911 Alarm wherein the latter undertook to deliver the items within 60 days from receipt of the Notices to Proceed. The first Contract of Agreement,²⁴ pertained to the award of Lot A in favor of 911 Alarm with the following details:

| Lot | Item | Quantity | Size | Approved Budget for Contract |
|-----|-------------------|----------|------|------------------------------|
| A | Firefighting Hose | 232 pcs | 1 ½" | ₱2,088,000.00 ²⁵ |

Noticeably, the government purchased 42 more pcs of 1 ½" firefighting

¹⁵ Id. at 228.
¹⁶ Id. at 229, 231, 264-267.
¹⁷ Id. at 264-265.
¹⁸ Id. at 266-267.
¹⁹ *Rollo* (G.R. No. 244042), pp. 509-512.
²⁰ Id. at 512.
²¹ *Rollo* (G.R. No. 240043), pp. 268-271.
²² Id. at 273.
²³ Id. at 274-279.
²⁴ Id. at 274-276.
²⁵ Id.

hoses compared to the quantity in the ITB of the approved budget for the contract.

Meanwhile, in the second Contract of Agreement²⁶ entered into with 911 Alarm, Lot B was modified because the 2 ½” hose is seldom used in firefighting. Hence, Lot B was modified as follows:

| Lot | Item | Quantity | Size | Approved Budget for Contract |
|-----|----------------------|----------|------|------------------------------|
| B | Firefighting Hose | 222 pcs | 1 ½” | ₱2,444,000.00 ²⁷ |
| | | 34 pcs | 2 ½” | |

The items were delivered and found to be in good condition as to quality and specifications prescribed in the bid documents.²⁸ Payments were made to 911 Alarm amounting to ₱1,976,142.86 for Lot A, and ₱2,309,285.71 for Lot B.²⁹

On June 20, 2013, the Affidavit-Complaint³⁰ was filed citing irregularities in the bidding process. It was alleged that *first*, the BAC failed to publish Addendum No. 01. According to the FFIB-MOLEO, the addendum should have been published because it was in the nature of a Supplemental Bid. The failure to publish violates the provisions of Republic Act No. (R.A.) 9184, otherwise known as the “Government Procurement Reform Act.” Moreover, the addendum vaguely modified the quantity of goods when it required suppliers to “maximize the quantity of the items to be procured.”³¹ *Second*, the FFIB-MOLEO claimed that the omission of the Project Reference Number is not a material violation insofar as bid security requirements are concerned as to consider the bid of Den-Tronix non-responsive.³² *Third*, the FFIB-MOLEO faulted the BAC in still proceeding with the procurement of 2 ½” hoses despite being informed that they are less preferred by the BFP provincial officers. It was also alleged that the government could have saved ₱820,000.00 had the BAC and HoPE properly performed their duties in the procurement process.³³

In their Counter-Affidavit,³⁴ petitioners stated that copies of Addendum No. 01 were sent to the participating bidders through mail within the period prescribed. They insisted that the service by mail is already a publication.³⁵ They also maintained that it is the sole responsibility of the bidders to inquire

²⁶ Id. at 277.

²⁷ Id.

²⁸ Id. at 282-285.

²⁹ *Rollo* (G.R. No. 243644), p. 52

³⁰ *Rollo* (G.R. No. 244043), pp. 225-232.

³¹ Id. at 227

³² Id. at 228.

³³ Id. at 230.

³⁴ Id. at 292-299.

³⁵ Id. at 294.

and secure supplemental/ bid bulletins that may be issued by BAC.³⁶ While BAC is in-charge of posting the ITB, its duty ends when communications are forwarded to the BAC Secretariat.³⁷ Petitioners insist that they have not caused any undue injury to any party or the government, or had given a private party unwarranted benefit.³⁸

Ruling of the Office of the Ombudsman

On May 11, 2017, the Office of the Ombudsman (OMB) rendered its Joint Resolution,³⁹ the dispositive portion of which states:

WHEREFORE, this Office finds as follows:

1. There is probable cause to indict respondents **FSSUPT. IGMEDIO U. BONDOC, JR., FCINSP. HYACINTH N. GRAGEDA, FCINSP. JOSEPH REYLITO S. ESPIRITU, FINSP. ALLAN L. MAGAYANES, SFO2 JANNETTE A. ALCANTARA, SFO1 MARIA LUSIA R. GONGONA** and **MARCIAL P. LICHAURCO, JR.** with violation of Section 3 (e) of R.A. No. 3019, thus, let the corresponding Information be **FILED** in court;

2. Respondents **FSSUPT. IGMEDIO U. BONDOC, JR., FCINSP. HYACINTH N. GRAGEDA, FCINSP. JOSEPH REYLITO S. ESPIRITU, FINSP. ALLAN L. MAGAYANES, SFO2 JANNETTE A. ALCANTARA** and **SFO1 MARIA LUISA R. GONGONA** are **GUILTY OF GRAVE MISCONDUCT**. They are meted the penalty of **DISMISSAL** from the service including cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification to hold public office. **PROVIDED**, that in case said respondents are already separated from the government service, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary shall be imposed, payable to the Office of the Ombudsman, with the same accessory penalties of forfeiture of benefits and privileges and perpetual disqualification to hold public office.

Let a copy of this Joint Resolution be furnished [*sic*] the Secretary of the Department of Interior and Local Government and the Chief of the Bureau of Fire Protection for implementation.

SO ORDERED.⁴⁰ (Emphasis in the original)

In concluding that petitioners colluded in rigging the bidding process to favor 911 Alarm, the OMB held that the posting of Supplemental/Bid Bulletin on the website of the procuring entity concerned, if available, and on the Philippine Government E-Procurement System (PhilGEPS) website had

³⁶ Id. at 295.

³⁷ Id.

³⁸ Id. at 298.

³⁹ Penned by Acting Director Yvette Marie S. Evaristo and approved by Deputy Ombudsman for the Military and Other Law Enforcement Offices Cyril E. Ramos; id. at 202-216.

⁴⁰ Id. at 215-216.

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to be complied with. The OMB found that the alleged service of Addendum No. 01 through mail to the participating bidders does not constitute substantial compliance since what the law requires is posting of the bid supplement. The OMB pointed out that, except for the photocopy of the Overseas Courier Service (OCS) pick-up slip, there was no other convincing proof that a copy of Addendum No. 01 was served to Den-Tronix.⁴¹ For the OMB, it was incumbent upon the BAC to issue the corresponding bid supplement and ensure due notice to all participating bidders.⁴²

The OMB also found arbitrary the declaration of the BAC that Den-Tronix's bid offer was non-responsive for failure to include the Project Reference Number of the project in its Bid Security. The provision on Bid Security under Rule VII Section 27 of the Implementing Rules and Regulations (IRR) of R.A. 9184 does not require the inclusion of the Project Reference Number nor does it mention that it is to be treated as a material violation.⁴³

The OMB highlighted that the irregularity in the subject procurement became even more glaring when the quantity and specifications of the firefighting hoses in Lot B of the Contract Agreement were changed.⁴⁴ The OMB explained that once the contract has been awarded based on the LCRB, there can be no substantial or material change to the specifications because this will defeat the purpose of public bidding.⁴⁵

Ruling of the Court of Appeals

On July 25, 2018, the CA rendered its Decision,⁴⁶ the dispositive portion of which states:

WHEREFORE, premises considered, the instant consolidated Petitions for Review are hereby **DENIED**. The Joint Resolution dated May 11, 2017 and Joint Order dated July 24, 2017 of the Office of the Ombudsman are **AFFIRMED**.

SO ORDERED.⁴⁷ (Emphasis in the original)

In affirming the Joint Resolution and Joint Order⁴⁸ of the OMB, the CA ruled that the evidence established petitioners' grave misconduct and gross neglect in their duties, thus warranting their dismissal.⁴⁹ For the CA, there was no lawful compliance with the requirement of posting and publication of Addendum No. 01. The alleged service by mail to the participating bidders of

⁴¹ Id. at 210-211.

⁴² Id. at 212.

⁴³ Id. at 211-212.

⁴⁴ Id.

⁴⁵ Id. at 213.

⁴⁶ Supra note 2.

⁴⁷ *Rollo* (G.R. No. 244043), p. 65.

⁴⁸ Id. at 218-224.

⁴⁹ Id. at 61-62.

Addendum No. 01 cannot be considered substantial compliance with the posting requirement. There was no convincing evidence on record to show that the mail was actually received by the same bidders. Bid rigging to favor 911 Alarm became even more apparent when petitioners rejected the bid of Den-Tronix for failure to indicate the Reference Number for the specific project as stated in the Bid Data Sheet. The CA considered this a minor detail not required for the validity of the Bid Security and should not have made its omission material in rendering the bid non-responsive. They could have easily directed subsequent compliance if truly required and necessary for the validity of the bid.⁵⁰

The CA found to be irregular, BAC's decision to consider 911 Alarm's bid offer responsive despite the variation in the number of goods to be procured. It was noted that 911 Alarm's bid offer was for 232 pieces of 1 ½" size for Lot A and 188 pieces for the 2 ½" size for Lot B, which does not comply with the requirement in the ITB. Moreover, in the Contract of Agreement between BFP-RO5 and 911 Alarm, the quantity for 2 ½" size hose was reduced to only 34 pieces from the 154 pieces in the Invitation to Bid and 188 pieces in 911 Alarm's bid. The Contract of Agreement also provided that 911 Alarm will supply additional 222 pieces of 1½" size hose, which is not included in the items to be procured under Lot B, a deviation from the terms specified in the bidding process. Petitioners still proceeded with the procurement of 2 ½" size hoses despite being informed during the pre-procurement conference that they are less preferred by the BFP provincial officers.⁵¹

Petitioners' separate Motions for Reconsideration⁵² were denied in a Resolution dated December 14, 2018.⁵³ Hence, petitioners elevated the case to the Court through their separate Petitions for Review on *Certiorari*.

In their respective petitions, Grageda and Bondoc argued that, in awarding the contracts in favor of 911 Alarm, they were not motivated by corruption, clear intent to violate the law or to disregard existing and established rules on procurement.⁵⁴ They presented print-outs of the supposed PhilGEPS website screenshots to substantiate their claim that the bid documents were duly published.⁵⁵ They posited that, even assuming *arguendo* that there was failure to post Addendum No. 01 in the PhilGEPS, they should not be unduly found remiss because the duty to post is incumbent on the BAC Secretariat pursuant to Section 14(f) of the 2009 IRR of R.A. 9184.⁵⁶

⁵⁰ Id. at 59-61.

⁵¹ Id. at 61.

⁵² Id. at 70-109; *rollo* (G.R. No. 244042), pp. 91-129.

⁵³ *Supra* note 3.

⁵⁴ *Rollo* (G.R. No. 244042), pp. 24, 45-48.

⁵⁵ Id. at 32-33.

⁵⁶ Section 14. BAC Secretariat / Procurement Unit

14.1. x x x The Secretariat shall have the following functions and responsibilities:

x x x

f) Advertise and/or post bidding opportunities, including Bidding Documents, and notices of awards;

In his petition, Bondoc added that he should not be unduly punished as he, as the HoPE, and the BAC, all complied reasonably with the rules and regulations, considering his position and the gravity of his duties and responsibilities as head of BFP-RO5.⁵⁷

Grageda, likewise, questioned the validity of the Joint Resolution and Joint Order of the OMB which allegedly contravened the requirement in Section 6, Rule III of the Ombudsman Rules of prior conformity by then Ombudsman Conchita Carpio-Morales (OMB Carpio-Morales).⁵⁸ Grageda also raised that her right to speedy disposition of cases was violated due to the inordinate delay caused by the OMB in resolving the complaint.⁵⁹

On the other hand, in their petition,⁶⁰ Espiritu, Magayanes, Alcantara, and Gongona agree that the bid documents were properly published in the PhilGEPS website.⁶¹ Additionally, they allege that Addendum No. 1 was sent to Den-Tronix through mail. Hence, Den-Tronix cannot claim ignorance about the existence of the addendum.⁶² Petitioners insist that their decision to disqualify Den-Tronix from the bidding process is based on its failure to submit the required documents which are technical components of the bidding process and not because the bidding was rigged.⁶³ Anent the alleged irregularity in the Contract of Agreement which changed the quantity and specifications of the firefighting hoses, they assert that they did not have a hand on the matter as the contract was entered into by the HoPE and the winning bidder. The alleged non-compliance with the preference of the BFP provincial officers was also subject to the judgment call of the HoPE and the Chairman of the BAC.⁶⁴ They posit that, as BAC members, their decisions are merely recommendatory.⁶⁵ Lastly, they assert that their right to speedy disposition of cases was violated.⁶⁶

In the Consolidated Comment⁶⁷ the OMB filed through its Office of Legal Affairs, the OMB argues that: (1) only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court;⁶⁸ (2) a Commission on Audit (COA) report, or the lack thereof, is immaterial to the exercise of the power of the OMB to investigate;⁶⁹ (3) petitioners' right to speedy disposition of cases was not violated;⁷⁰ (4) the approval by OMB Carpio-Morales of the Joint Resolution and the Joint Order are not

⁵⁷ *Rollo* (G.R. No. 244043), p. 23; *rollo* (G.R. No. 244042), pp. 27-29.

⁵⁸ *Rollo* (G.R. No. 244042), pp. 48-51.

⁵⁹ *Id.* at 51-53.

⁶⁰ *Rollo* (G.R. No. 243644), pp. 3-45

⁶¹ *Id.* at 9-11.

⁶² *Id.* at 13.

⁶³ *Id.* at 19.

⁶⁴ *Id.* at 29-30.

⁶⁵ *Id.* at 31.

⁶⁶ *Id.* at 39.

⁶⁷ *Rollo* (G.R. No. 244043), pp. 940-970.

⁶⁸ *Id.* at 947-951.

⁶⁹ *Id.* at 952-954.

⁷⁰ *Id.* at 955-958.

necessary;⁷¹ (5) the CA correctly affirmed the findings of the OMB;⁷² (6) as regards the Bondoc petition, reliance on his subordinates cannot be sustained;⁷³ (7) substantial evidence exists to hold petitioners liable for grave misconduct;⁷⁴ and (8) the imposition of the penalty of dismissal from the service is in accord with law.⁷⁵

On the other hand, in its Comment⁷⁶ in the petition of Espiritu, Magayanes, Alcantara, and Gongona, the OMB maintains that as BAC members, their disqualification of Den-Tronix' bid offer because it did not state the Reference Number on the project was arbitrary. According to the Ombudsman, R.A. 9184 does not require that the Reference Number should be stated on the bid security. Also, despite the glaring deviations in the quantity and specifications contained in the Contract of Agreement for Lot B and the Notice of Award, they failed to object, in clear disregard of their responsibility as BAC Vice-Chairman and members.⁷⁷

Issue

The sole issue in this case is whether petitioners may be held administratively liable for grave misconduct.

Ruling of the Court

The petitions are meritorious. Before delving into the substance of this case, We will first address the preliminary matters raised by petitioners.

Despite the questions of fact raised in the petitions for review on certiorari, the Court may give due course to these petitions.

As a rule, issues dealing with the sufficiency of evidence and the relative weight accorded to it by the lower court cannot be raised in a petition for review on certiorari under Rule 45 which is confined to questions of law. We do not review factual questions raised under Rule 45 as it is not Our function to analyze nor weigh all over again evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In *Microsoft Corp. v. Farajallah*,⁷⁸ the Court declared that a review of the factual findings of the CA is proper in the following instances:

X X X X

⁷¹ Id. at 958-959.

⁷² Id. at 959-961.

⁷³ Id. at 961-962.

⁷⁴ Id. at 962-967.

⁷⁵ Id. at 967-970.

⁷⁶ *Rollo* (G.R. No. 243644), pp. 319-344.

⁷⁷ Id. at 340.

⁷⁸ 742 Phil. 775 (2014).

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

x x x x

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;⁷⁹

x x x x

In this case, a careful re-examination of the evidence on record is necessary to determine whether the CA and OMB failed to notice and properly appreciate certain relevant facts which, if properly considered, would justify a different conclusion. There is a need to review the records to confirm whether grave misconduct on the part of Grageda and Bondoc had been duly proven.

A COA report is not a prerequisite in investigations undertaken by the OMB.

While a COA report may aid the OMB, it is not a prerequisite in investigations it initiates. In *Dimayuga v. Office of the Ombudsman*,⁸⁰ the Court declared that:

Although the Commission on Audit (COA) report may aid the Office of the Ombudsman in conducting its preliminary investigation, such report is not a prerequisite. Both the Constitution and the Ombudsman Act of 1989 state that the Office of the Ombudsman may undertake an investigation on complaint or on its own initiative. Therefore, **with or without the report from COA, the Ombudsman can conduct a preliminary investigation.** This Court has declared that the findings in a COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of the Ombudsman in its determination of probable cause.⁸¹ (Emphasis supplied)

Therefore, an investigation conducted by the OMB on the alleged transgressions of the BAC and the HoPE allegedly committed may proceed regardless of the existence of a COA report supporting it.

⁷⁹ Id. at 785.

⁸⁰ 528 Phil. 42 (2006)

⁸¹ Id. at 49.

Prior conformity of OMB Carpio-Morales is not necessary in the issuance of the assailed Joint Resolution and Joint Order finding Grageda and Bondoc administratively liable.

The positions held by Bondoc and Grageda are not considered high ranking which require OMB Carpio-Morales' approval. The procedure of the OMB in releasing decisions states:

Section 6. Rendition of decision. – Not later than thirty (30) days after the case is declared submitted for resolution, the Hearing Officer shall submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. **With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority.** x x x⁸² (Emphasis supplied)

In determining who are considered high ranking public officials, the above-cited provision should be read with Section 4(A)(1) (a) to (g), which state:

Section 4. Section 4 of the same decree is hereby further amended to read as follows:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

- (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

⁸²

Section 6, Rule III of the Rules of Procedure of the Office of the Ombudsman.

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations;

x x x x⁸³

High ranking officials that fall within the original jurisdiction of the Sandiganbayan are: (1) officials of the executive branch with Salary Grade 27 or higher, and (2) officials specifically enumerated in Section 4(A)(1) (a) to (g), regardless of their salary grades. While the first part of Section 4 (A) covers only officials of the executive branch with Salary Grade 27 and higher, its second part specifically includes other executive officials not holding positions with Salary Grade 27 or higher but are, by express provision of law, placed under the jurisdiction of the Sandiganbayan.⁸⁴ Even assuming *arguendo* that they are of equal rank with their counterparts in Philippine National Police, they are not considered high ranking officials because the salary grade for a Fire Senior Superintendent (Bondoc) is 26 while the salary grade for a Fire Chief Inspector (Grageda) is 24.⁸⁵

The OMB did not violate the right to speedy disposition of Grageda, Espiritu, Magayanes, Alcantara, and Gongona.

In their respective petitions, Grageda, Espiritu, Magayanes, Alcantara, and Gongona argued that their constitutional right to speedy disposition of cases was violated due to the inordinate delay of the OMB in resolving the complaint against them. They pointed out that it took the OMB six (6) long years from the termination of the bid process until the OMB promulgated its Joint Resolution on March 17, 2017.⁸⁶

We disagree.

The Court recognized in *Cagang v. Sandiganbayan*⁸⁷ that:

⁸³ Section 4(A)(1) (a) to (g) of the Rules of Procedure of the Office of the Ombudsman.

⁸⁴ *Duncan v. Sandiganbayan*, 764 Phil. 67, 76 (2015).

⁸⁵ Republic Act No. 9263, Section 12.

⁸⁶ *Rollo* (G.R. No. 244042), p. 51.

⁸⁷ G.R. Nos. 206438 & 206458, July 31, 2018.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.⁸⁸ (Emphasis supplied)

In this case, although it took almost four years to resolve the case from the time it was docketed for preliminary investigation and administrative adjudication, there is no proof to show that the period was characterized by vexatious, capricious or oppressive delays amounting to a violation of Grageda, Espiritu, Magayanes, Alcantara, and Gongona's right to speedy disposition of cases. It must be highlighted that the administrative and criminal aspects of the cases involved seven respondents and the last pleading filed was a Supplemental Counter-Affidavit by Magayanes on February 20, 2017. The submissions of each party had to be thoroughly reviewed by the OMB. Thus, the cases are not as simple as what petitioners insist and a mere mathematical computation is not enough to conclude that their right to speedy disposition of cases was violated.

Petitioners are not liable for grave misconduct.

Going into the substantive aspect of the case, We hold that petitioners are not liable for grave misconduct.

In administrative proceedings, the complainant carries the burden of proving the allegations with substantial evidence or "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."⁸⁹ Here, the Ombudsman and the CA found substantial evidence to hold Grageda, Bondoc, Espiritu, Magayanes, Alcantara, and Gongona administratively liable for grave misconduct.

After a careful review of the records of this case, We find that there is no substantial evidence to hold all petitioners administratively liable for grave misconduct.

Misconduct refers to:

[A] transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the *additional* elements of corruption,

⁸⁸ Id.

⁸⁹ RULES OF COURT, Rule 133, Section 5.

willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple.⁹⁰ (Citations omitted; italics in the original)

In *Yamson v. Castro*,⁹¹ the Court described the additional elements to constitute a Grave Misconduct as follows:

Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." Moreover, like other grave offenses classified under the Civil Service laws, bad faith must attend the act complained of. **Bad faith** connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.⁹² (Emphasis in the original; citations omitted)

Taking into consideration the foregoing definitions, We find sufficient justification to reverse the ruling of the CA in its Decision dated July 25, 2018 and Resolution dated December 14, 2018.

The CA based its finding that petitioners conspired with each other to rig the bidding and award the contract in favor of 911 Alarm on the following grounds: (1) there is no lawful compliance with the requirement of posting and publication of Addendum 01; (2) the rejection of Den-Tronix's bid just because its Bid Security failed to indicate the Reference Number is improper; and (3) 911 Alarm's bid offer was considered responsive although the offer was more than the number of units to be procured.

These alleged irregularities in the conduct of bidding do not automatically qualify as transgressions tantamount to grave misconduct.

The alleged improper publication of Addendum No. 01 was rebutted by the evidence of petitioners.

The Government Procurement Reform Act⁹³ is governed by the principles of transparency, accountability, equity, efficiency, and economy in its procurement process.⁹⁴ Pursuant to the government's mandate to streamline the procurement process, the PhilGEPS was introduced with the objective of promoting "transparency and efficiency, information and

⁹⁰ *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005).

⁹¹ 790 Phil. 667 (2016)

⁹² Id.

⁹³ Republic Act No. 9184.

⁹⁴ Section 2, Rule I, Revised Implementing Rules and Regulations of Republic Act No. 9184.

communications technology.” Thus, the PhilGEPS was created to “serve as the primary source of information on all government procurement.”⁹⁵

In the present case, Den-Tronix alleged that petitioners failed to comply with the required posting of Addendum No. 01. However, this alleged irregularity in the posting of Addendum No. 01 was not supported by competent proof. On the other hand, Grageda and Bondoc rebutted the claim of Den-Tronix by presenting certified screenshots of the PHILGEPS website⁹⁶ showing that pertinent bid documents were uploaded, albeit incomplete, and that notices were served to the participants during the conferences. These certified screenshots cannot just be altered or modified. Moreover, the contents of Addendum No. 01 pertain to discussions and other guidelines deliberated on by the BAC and the participating bidders, including Den-Tronix, during the Pre-Bid Conference held on March 8, 2011. This constitutes actual notice that substitutes the requirement of publication. Thus, it cannot be concluded that petitioners willfully and intentionally deviated from established rules on procurement to hold them administratively liable.

Failure to specify the Project Reference Number is a material error on the part of Den-Tronix that justified the rejection of its bid documents.

The BAC was justified in rejecting the bid documents of Den-Tronix for Lots A and B because failure to specify the Project Reference Number is not a simple inadvertence. This information is essential in determining the project Den-Tronix is bidding for since there are other procurement projects that the BAC handles. The BAC cannot simply infer or guess the project which Den-Tronix intends to bid on. Indicating the Project Reference Number is essential as it is a unique number assigned to each project for purposes of identification throughout the bidding process. Mere allegation that petitioners, as BAC officials and the HoPE, had accorded preferential treatment in favor of 911 Alarm for rejecting its bid documents on this ground would not suffice to prove that they are guilty of grave misconduct.

Adjustments in the quantity of firefighting hoses for Lot B are not prejudicial to the government and do not constitute gross misconduct.

With respect to the issue on the modification of the quantity of firefighting hoses procured from the specifications under the ITB and 911 Alarm’s bid, it must be clarified that the changes did not cause any undue injury to the government. In fact, the number of firefighting hoses ultimately delivered to BFP-RO5 were more than those required under the ITB.

⁹⁵ Section 8.1.1, Rule III, Revised Implementing Rules and Regulations of Republic Act No. 9184.

⁹⁶ Rollo (G.R. No. 244042), pp. 432-445.

To illustrate, the ITB specified the following number of hoses to be procured and the corresponding approved budget:

| Lot | Item | Quantity | Size | Approved Budget for Contract | Price per unit |
|-----|-------------------|----------|------|------------------------------|----------------|
| A | Firefighting Hose | 190 pcs | 1 ½" | ₱2,094,750.00 | ₱11,025.00 |
| B | Firefighting Hose | 154 pcs | 2 ½" | ₱ 2,447,060.00 | ₱15,890.00 |

Based on the approved budget as well as the number of units required to be delivered, the price per unit of the 1 ½" firefighting hose is ₱11,025.00 while the price per unit of the 2 ½" firefighting hose is ₱15,890.00.

Taking into consideration the instruction of the BAC during the pre-bid conference that the bidders should maximize the quantity of the items for bidding based on the approved budget of the contract, 911 Alarm submitted the following bids for Lots A and B:

| Lot | Item | Quantity | Excess Quantity from ITB | Size | Approved Budget for Contract | Price per unit |
|-----------------|-------------------|----------|--------------------------|------|------------------------------|----------------|
| A ⁹⁷ | Firefighting Hose | 232 pcs | 42 pcs | 1 ½" | ₱2,088,000.00 | ₱9,000.00 |
| B ⁹⁸ | Firefighting Hose | 188 pcs | 34 pcs | 2 ½" | ₱2,444,000.00 | ₱13,000.00 |

In 911 Alarm's bid, the price per unit of the 1 ½" hose is ₱9,000.00 while the price per unit of the 2 ½" hose is ₱13,000.00. These prices per unit are even lower than those indicated in the ITB.

The firefighting hoses under Lot A were delivered in accordance with the first Contract of Agreement. The BAC modified the second Contract of Agreement, which pertained to the firefighting hoses in Lot B, in response to the observation of BFP-RO5 that the 2 ½" hose is seldom used in firefighting. To address the actual needs of BFP-RO5, 911 Alarm ultimately delivered the following for Lot B:

⁹⁷ Id. at 264-265.

⁹⁸ Id. at 266-267.

| Lot | Item | Quantity | Size | Price Per Unit | Total Cost | Approved Budget for Contract |
|--------------|-------------------|----------|------|----------------|----------------------|------------------------------|
| B | Firefighting Hose | 222 pcs | 1 ½" | ₱9,000.00 | ₱1,998,000.00 | ₱2,444,000.00 |
| | | 34 pcs | 2 ½" | ₱13,000.00 | ₱442,000.00 | |
| Total | | | | | ₱2,440,000.00 | |

This reflects again that the price per unit of the 1 ½" hose is PhP9,000.00 while the price per unit of the 2 ½" hose is ₱13,000.00. These prices are relatively lower than those indicated in the ITB.

The change in the quantity of the firefighting hoses in Lot B was merely intended to adhere to the recommendation of the BFP-RO5. The objective was to make the procurement more consistent and responsive to the demand for 1 ½" firefighting hoses in the six provinces under BFP-RO5. No bad faith nor dishonest motive may be imputed to petitioners.

While the recommendation of BFP-RO5 had been made known to the BAC as early as the pre-procurement conference phase, the fact that the BAC only reflected the recommendation when the Contract of Agreement was executed during the post-bid phase does not make the BAC members nor the HoPE administratively liable. The deviation in the quantity of fire hoses was not intended to cause injury to the government nor any of the participating bidders. In fact, it was more beneficial to the government that the deviations were made during the post-bid phase as the changes reflected were more responsive to the actual needs of BFP-RO5. Petitioners should not be faulted for this.

In instructing the participating bidders to "maximize the quantity of the items to be bid based on the approved budget of the contract" during the Pre-Bid Conference and in Addendum No. 01, the BAC merely stressed that it will accept the bid with the greatest number of fire hoses, within the approved budget contract, at the lowest cost per unit. This instruction is inherent in government procurement projects and is one of the primary considerations of participating bidders. Thus, Den-Tronix ought to have known about this.

There is no hint of corruption nor willful intent to violate the law or to disregard established rules that can be attributed to the conduct of petitioners to hold them accountable for grave misconduct.

The Court has held that:

To be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. **There must be evidence, independent of the petitioners' failure to comply with the rules, which will lead to the foregone**

conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.⁹⁹ (Citation omitted; emphasis supplied)

Similarly, in *Office of the Ombudsman v. De Guzman*,¹⁰⁰ the Court ruled that:

While there was a transgression of the established rules on public bidding, **there must be evidence, independent from this transgression, which would show that respondent or some other person on his behalf benefited from the x x x contract.**¹⁰¹ (Emphasis supplied)

In this case, there was no overpricing nor failure to deliver the fire hoses procured. In fact, the government and BFP-RO5 even benefitted from 911 Alarm's delivery of firefighting hoses at lesser prices per unit.

It must be emphasized that in the conduct of public bidding, it is natural for a losing bidder to be consumed by bitterness and challenge the outcome of the bidding process that did not decide in his favor. While compliance with prevailing laws on procurement in the government should be observed at all times, the losing bidder should not be permitted to nitpick on every unsubstantial and negligible deviation in the procurement process. Allowing the losing bidder to initiate frivolous complaints will only lead to wasting the valuable resources of the court and the parties.

WHEREFORE, premises considered, the Decision dated July 25, 2018 and the Resolution dated December 14, 2018 of the Court of Appeals in CA-G.R. SP Nos. 153321 and 153361 are **SET ASIDE**. The administrative complaint against Hyacinth N. Grageda, Igmedio U. Bondoc, Jr., Joseph Reylito S. Espiritu, Allan L. Magayanes, Jannette A. Alcantara, and Maria Luisa R. Gongona is **DISMISSED**.

SO ORDERED.


ROSARI D. CARANDANG
Associate Justice

⁹⁹ Supra note 91.
¹⁰⁰ 89 Phil. 282 (2017).
¹⁰¹ Id.

WE CONCUR:



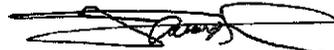
DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



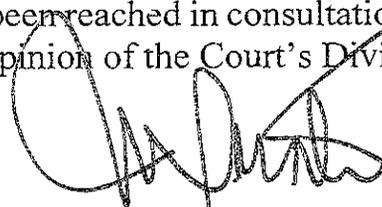
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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