

THIRD DIVISION

[G.R. No. 229256, November 22, 2017]

MARIETTA MAGLAYA DE GUZMAN, PETITIONER, VS. THE OFFICE OF THE OMBUDSMAN AND BESTFORMS, INCORPORATED, RESPONDENTS.

DECISION

VELASCO JR., J.:

Nature of the Case

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the April 20, 2016 Decision^[1] and January 11, 2017 Resolution^[2] of the Court of Appeals (CA) in CA G.R. SP No. 129712, which affirmed the Decision of the Office of the Ombudsman (Ombudsman) in OMB-C-A-06-0427-H finding petitioner Marietta Maglaya De Guzman (De Guzman) guilty of grave misconduct and dismissing her from government service.

Factual Antecedents

The facts, as culled from the records, are as follows:

On March 30, 2006 and April 12, 2006, the National Printing Office Bids & Awards Committee (NPO-BAC) conducted competitive public biddings for, among others, the printing of accountable forms of the Land Transportation Office (LTO). Private respondent Bestforms, Inc. and Readyform, Inc. (RFI) secured the awards in the said public biddings.^[3] For the March 30, 2006 bidding, Bestforms, Inc. and RFI were accordingly issued their respective Notices of Award on April 17 and April 25, 2006. RFI was likewise issued a Notice of Award for the April 12, 2006 bidding.

However, prior to the issuance of a Notice of Award to Bestforms, Inc. for the April 12 bidding, the NPO discovered that the said corporation violated NPO rules on security printing based on an inspection conducted by the NPO Accreditation Committee and NPO-BAC at its printing facilities.^[4] In addition to the discovery of Bestforms, Inc.'s violations, the LTO called the attention of the NPO regarding the substandard paperstock used by Bestforms, Inc. for the printing of LTO Certificates of Registration.^[5] To verify this allegation, the NPO submitted samples of the materials used by Bestforms, Inc. to the Philippine National Police (PNP) Crime Laboratory. On May 17, 2006, the PNP Crime Laboratory issued Report No. 046-06 stating that the paper sample from Bestforms, Inc. was made of low-quality materials.^[6]

Consequently, the NPO issued two Show Cause Letters^[7] to Bestforms, Inc. to enable it to explain the findings of the NPO Accreditation Committee. Thereafter, the

Accreditation Committee revoked Bestforms, Inc.'s accreditation as a private security printer of NPO. Resultantly, Bestforms, Inc. was disqualified to participate in any bidding conducted by the NPO and its ongoing printing transactions were likewise cancelled.^[8] Bestforms, Inc. did not appeal the decision of the Accreditation Committee revoking its accreditation.

Resultantly, the contracts awarded to Bestforms, Inc. during the March 30, 2006 bidding were subjected to a re-bidding through Limited Source Bidding on June 13 to 14, 2006. RFI won in these biddings and subsequently secured two Notices of Award both dated June 16, 2006 for the contracts.^[9] Aside from these two awards, the NPO similarly awarded to RFI, this time through Negotiated Procurement, the supply of LTO forms since the contracts awarded to Bestforms, Inc. on April 17, 2006 was cancelled and considering further that RFI submitted the same bid price as that of private respondent.^[10]

Subsequently, Bestforms, Inc. instituted an administrative complaint against the NPO officer-in-charge, Felipe Evardone, and the members of the NPO-BAC before the Office of the Ombudsman, alleging that the NPO officers and RFI knowingly and willfully conspired, colluded, and connived with each other to manipulate the award of the printing contracts to the latter. De Guzman held the position of Sales & Promotion Supervisor V in the NPO and simultaneously served as the Chairperson of the NPO-BAC.

Ruling of the Office of the Ombudsman

In a Decision^[11] issued on June 17, 2011, the Ombudsman found De Guzman and her co-respondents guilty of grave misconduct and ordered them dismissed from service with forfeiture of benefits, except accrued leave credits, and with prejudice to re-employment in the government or any subdivision, instrumentality, or agency thereof, including government-owned or controlled corporations. The decretal portion of the Ombudsman's Decision reads:

WHEREFORE, premises considered, respondents Felipe Pagan Evardone, Marietta Maglaya De Guzman, Evelyn Ramos Perlado, Miguel Doyungan Arcadio, Vicente Monteros Lago, Jr. and Recto Salmo Tomas, Jr., are hereby found GUILTY of the administrative offense of GRAVE MISCONDUCT and ordered DISMISSED from the service with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in the Government or any subdivision, instrumentality or agency thereof, including government-owned or controlled corporations.

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Press Secretary is hereby directed to implement, this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Office of the Ombudsman Building, Agham Road, Diliman, Quezon City.

SO ORDERED.^[12]

The Ombudsman based its judgment on the failure of the NPO-BAC to observe the procedures laid down in Republic Act No. (RA) 9184, otherwise known as the "Government Procurement Reform Act," for the Limited Source Biddings that it conducted on June 13 and 14, 2006, and in entering into a Negotiated Procurement with RFI.

According to the Ombudsman, the NPO-BAC failed to show that it: a) conducted a pre-procurement conference prior to the biddings pursuant to Section 20 of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184; b) sent written invitations to the Commission on Audit (COA) and to two (2) observers to attend the biddings in accordance with Section 13.1 of the IRR-A; c) advertised the Invitation to Apply for Eligibility to Bid (IAEB) in a newspaper of general nationwide circulation for the period mandated by the law; d) posted the said IAEB at the website of the Government Electronic Procurement Services (GEPS) and at a conspicuous place reserved for the said purpose in the premises of the NPO; and e) included the mandated contents of the IAEB in the advertisement and periods of posting, specifically, the Approved Budget for the Contract (ABC) or Ceiling Rate, required specifications for the forms to be printed, as well as the pertinent dates that should have been provided or made available to prospective bidders.^[13]

Aggrieved, De Guzman questioned the Decision of the Ombudsman via a petition for review under Rule 43 with the CA.

Ruling of the Court of Appeals

On April 20, 2016, the CA rendered its Decision affirming the findings of the Office of the Ombudsman, thus:

WHEREFORE, premises considered, the instant Petition is DENIED. The decision of the Office of the Ombudsman in OMB Case No. OMB-C-A-06-0427-H finding petitioner Maricitta Maglaya De Guzman guilty of grave misconduct is AFFIRMED.

SO ORDERED.^[14]

Citing the Revised Implementing Rules and Regulations of RA 9184 that took effect on September 2, 2009 (Revised IRR), the appellate court noted that the procedures for competitive bidding laid down in the law should likewise be observed in Limited Source Bidding, specifically in Section 13 thereof. Echoing the Ombudsman's observation, the CA held that the NPO-BAC failed to invite the COA or its representatives, as well as observers from a duly recognized private group in a sector or discipline relevant to the procurement. In addition, the CA ruled that the NPO-BAC failed to sufficiently justify why it resorted to Negotiated Procurement with RFI instead of competitive public bidding.

De Guzman moved for reconsideration of the Decision, but the same was denied by the CA in its assailed January 11, 2017 Resolution. Hence, this petition with the following assignment of errors:

I.

Whether or not the [CA] violated the Constitution when it retroactively

applied a rule that was non-existent at the time [De Guzman] committed the acts or omissions complained of.

II.

Whether or not the [CA] seriously erred in finding that [De Guzman] and her co-respondents committed grave misconduct when they failed to strictly observe the two-failed bidding rule in negotiated procurement under RA 9184 for the award of the second set of LTO accountable forms.

III.

Whether or not the [CA] gravely erred in sustaining the assailed Decision of the Office of the Ombudsman finding [De Guzman] guilty of grave misconduct.

IV.

Whether or not dismissal from service is too harsh a penalty for the purported infraction committed by [De Guzman].^[15]

In the main, De Guzman argues that the NPO-BAC complied with all the requirements of the law when it resorted to alternative modes of procurement in the questioned procurements. In support, De Guzman cites Memorandum Order No. 38, ^[16] issued by then Executive Secretary Ronaldo B. Zamora on November 19, 1998, which prescribes the guidelines in contracting the services of private security printers for the printing of accountable forms with money value and other specialized accountable forms which the NPO has no capability to undertake. In accordance with the directive of memorandum Order No. 8, the NPO conducts annual accreditation of private security printers to ensure the security of government forms with money value.^[17] Considering the necessity of prior accreditation of private security printers, as well as the fact that government accountable forms are not ordinary printing materials, the NPO utilizes limited-source bidding^[18] in the procurement of printing services.

To De Guzman, the CA erred in holding that the NPO-BAC violated the law when it failed to comply with Sec. 49.4 of the Revised IRR respecting the sending out of direct invitations to all suppliers in the pre-selected list and the compliance with the procedure for competitive bidding. She points out that these requirements were not yet in existence when the said limited source biddings were conducted in 2006.^[19]

In addition, De Guzman asserts that the June 13 and 14, 2006 biddings were merely a re-bid of the March 30 and April 12, 2006 biddings; accordingly, a pre-bid conference was no longer necessary since all information about the projects had already been discussed with and made known to interested accredited bidders.^[20] Stated otherwise, De Guzman posits that the pre-bid conference for the March 30 and April 12 biddings served as the pre-bid conference for the June 2006 biddings. Insofar as why a re-bid was conducted instead of awarding the contract to the second lowest bidder, De Guzman explains that the second and third bidders submitted bid offers beyond the ABC, which in effect automatically disqualified them from being considered in a negotiated procurement according to Section 54.2 of the

IRR-A.^[21]

Anent the allegation of noncompliance by the NPO-BAC with the requirements for negotiated procurement, De Guzman argues that RA 9184 and the Rules clearly allow the BAC to resort to this type of procurement in case of a take-over of a previously awarded contract, contrary to the CA's conclusion that a prior two-failed biddings is a condition *sine qua non* before the BAC could resort to negotiated procurement. As proof thereof, the NPO-BAC issued a Resolution on June 2, 2006 explaining that the resort to negotiated procurement with RFI is based on a take-over of Bestforms, Inc.'s contract due to the revocation of the latter's accreditation.

Issue

The pertinent issue for the resolution of this Court is whether or not De Guzman is liable for grave misconduct for the failure of the NPO-BAC to comply with the requirements under RA 9184 for limited-source bidding and negotiated procurement.

The Court's Ruling

At the outset, De Guzman correctly points out, that it is the IRR-A, which took effect in October 2003, which is applicable to the extant case. It was clearly erroneous for the CA to have applied the Revised IRR considering that the questioned actions were committed in 2006.

Nevertheless, for the reasons that will be discussed below, the petition is denied for lack of merit.

Section 10,^[22] Article IV, in relation to Section 5, pars. (n) and (o), Article I, of RA 9184 mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. This principle is elucidated by this Court in *Lagoc v. Malaga*, thus:

[A] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.

^[23]

Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public and competitive bidding^[24] but only in highly exceptional cases and under the conditions set forth in Article XVI thereof. These alternative modes of procurement include Limited Source Bidding and Negotiated Procurement: