

## **FIRST DIVISION**

**[ G.R. No. 244042, March 18, 2021 ]**

**HYACINTH N. GRAGEDA, PETITIONER, VS. FACT-FINDING INVESTIGATION BUREAU, OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES RESPONDENTS.**

**[G.R. No. 244043]**

**IGMEDIO U. BONDOC, JR. PETITIONER, VS. FACT-FINDING INVESTIGATION BUREAU, OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES RESPONDENTS.**

**[G.R. No. 243644]**

**FCINSP. JOSEPH REYLITO S. ESPIRITU, FINSP. ALLAN L. MAGAYANES, SPO2 JANETTE A. ALCANTARA AND SFO1 MARIA A. GONGONA A.K.A. SFO1 MARIA LUISA R. GONGONA, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN RESPONDENT.**

### **D E C I S I O N**

**CARANDANG, J.:**

Before this Court are three consolidated Petitions for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court (Rules), assailing the Decision<sup>[2]</sup> dated July 25, 2018 and Resolution<sup>[3]</sup> 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).

#### **Antecedents**

The consolidated petitions stemmed from an Affidavit-Complaint<sup>[4]</sup> 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.<sup>[5]</sup>

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 1/2 inches (") are preferred over those measuring 2 1/2" since the latter are seldom used in firefighting.<sup>[6]</sup> Nonetheless, the Invitation to Bid (ITB)<sup>[7]</sup> for the hoses still stated the following specifications:

<b>Lot</b>	<b>Item</b>	<b>Quantity</b>	<b>Size</b>	<b>Approved Budget for Contract</b>
A	Firefighting Hose	190 pcs	1 1/2"	P2,094,750.00
B	Firefighting Hose	154 pcs	2 1/2"	2,447,060.00 <sup>[8]</sup>

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.<sup>[9]</sup> 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.<sup>[10]</sup> On March 13, 2011, Grageda issued Addendum No. 01<sup>[11]</sup> to amend the items in the bid documents in line with the terms agreed upon during the Pre-Bid Conference.<sup>[12]</sup>

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.<sup>[13]</sup> 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.<sup>[14]</sup>

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 1/2" 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.<sup>[15]</sup> The details<sup>[16]</sup> of 911 Alarm's bid for Lot A and B are listed below:

<b>Lot</b>	<b>Item</b>	<b>Quantity</b>	<b>Excess Quantity from ITB</b>	<b>Size</b>	<b>Approved Budget for Contract</b>
A	Firefighting Hose	232 pcs	42 pcs	1 1/2"	P2,088,000.00 <sup>[17]</sup>
B	Firefighting Hose	188 pcs	34 pcs	2 1/2"	P2,444,000.00 <sup>[18]</sup>

Den-Tronix filed a Motion for Reconsideration assailing the ruling of the BAC which was denied in Resolution No. 2011-009<sup>[19]</sup> dated March 28, 2011 for lack of merit.<sup>[20]</sup>

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.<sup>[21]</sup> The Notices of Award were issued in favor of 911 Alarm.<sup>[22]</sup> Thereafter, Contracts of Agreement<sup>[23]</sup> 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,<sup>[24]</sup> 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 1/2"	P2,088,000.00 <sup>[25]</sup>

Noticeably, the government purchased 42 more pcs of 1 1/2" firefighting hoses compared to the quantity in the ITB of the approved budget for the contract.

Meanwhile, in the second Contract of Agreement<sup>[26]</sup> entered into with 911 Alarm, Lot B was modified because the 2 1/2" 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 1/2"	P2,444,000.00 <sup>[27]</sup>
		34 pcs	2 1/2"	

The items were delivered and found to be in good condition as to quality and specifications prescribed in the bid documents.<sup>[28]</sup> Payments were made to 911 Alarm amounting to P1,976,142.86 for Lot A, and P2,309,285.71 for Lot B.<sup>[29]</sup>

On June 20, 2013, the Affidavit-Complaint<sup>[30]</sup> 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."<sup>[31]</sup> *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.<sup>[32]</sup> *Third*, the FFIB-MOLEO faulted the BAC in still proceeding with the procurement of 2 1/2" hoses despite being informed that they are less preferred by the BFP provincial officers. It was also alleged that the government could have saved P820,000.00 had the BAC and HoPE properly performed their duties in the procurement process.<sup>[33]</sup>

In their Counter-Affidavit,<sup>[34]</sup> 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.<sup>[35]</sup> They also maintained that it is the sole responsibility of the bidders to inquire and secure supplemental/ bid bulletins that may be issued by BAC.<sup>[36]</sup> While BAC is in-charge of posting the ITB, its duty ends when communications are forwarded to the BAC Secretariat.<sup>[37]</sup> Petitioners insist that they have not caused any undue injury to any party or the government, or had given a private party unwarranted benefit.<sup>[38]</sup>

### **Ruling of the Office of the Ombudsman**

On May 11, 2017, the Office of the Ombudsman (OMB) rendered its Joint Resolution,<sup>[39]</sup> 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, SFOI 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. MAG AYANES, SFO2 JANNETTE A. ALCANTARA and SFOI 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.**<sup>[40]</sup> (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 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.<sup>[41]</sup> For the OMB, it was incumbent upon the BAC to issue the corresponding bid supplement and ensure due notice to all participating bidders.<sup>[42]</sup>

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.<sup>[43]</sup>

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.<sup>[44]</sup> 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.<sup>[45]</sup>

### **Ruling of the Court of Appeals**

On July 25, 2018, the CA rendered its Decision,<sup>[46]</sup> 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.**<sup>[47]</sup> (Emphasis in the original)

In affirming the Joint Resolution and Joint Order<sup>[48]</sup> of the OMB, the CA ruled that the evidence established petitioners' grave misconduct and gross neglect in their duties, thus warranting their dismissal.<sup>[49]</sup> 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 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.<sup>[50]</sup>

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 1/2" size for Lot A and 188 pieces for the 2 1/2" 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 1/2" 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 1 1/2" size hose, which is not included in the items to be procured under Lot B, a deviation