

## EN BANC

[ G.R. No. 230566, January 22, 2019 ]

### SUBIC BAY METROPOLITAN AUTHORITY, ET AL., PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

#### DECISION

##### GESMUNDO, J.:

This is a petition for certiorari under Rule 64 of the Rules of Court seeking to annul and set aside the December 29, 2015 Decision<sup>[1]</sup> and the December 21, 2016 Resolution<sup>[2]</sup> of the Commission on Audit (COA) in Decision No. 2015-437. The COA affirmed the April 7, 2014 Decision<sup>[3]</sup> of the CO Regional Office No. III (*COA-Region III*) in COA RO3 Decision No. 2014-28. In turn, the COA-Region III affirmed the March 26, 2012 Notice of Disallowance<sup>[4]</sup> (*ND*) under Special Audit ND No. 2012-001(2011) regarding the payment in the amount of P2,420,603.99 for the procurement of special and field uniforms of the employees of the Subic Bay Metropolitan Authority (*SBMA*).

##### The Antecedents

In 2009, SBMA procured special and field uniforms for its employees through regular public bidding, and the winning bidder with the lowest price was Topnotch Apparel Corporation (*Topnotch Apparel*). However, SBMA claimed that the quality and craftsmanship of the uniforms of the employees were compromised due to the current procurement laws.<sup>[5]</sup>

Thus, in a memorandum dated December 10, 2009, Lolita S. Mallari, then Human Resource Management Officer of the SBMA, provided several recommendations to the SBMA Administrator and CEO regarding the acquisition of special and field uniforms for the SBMA employees under the supervision of a Uniform Committee, to wit:

##### II. Special Uniform/Field Uniform

Special Uniform refers to the uniform of employees performing special task, e.g. Nurses, medical technologies, law enforcers, [firefighters]. On the other hand, Field uniform refers to those worn by our ground and maintenance staff, and members of the green brigade.

After a series of meetings conducted by the Uniform Committee, it was agreed that departments/officer[s] with special or field uniforms will be allowed to procure their uniforms on their own following a set of guidelines or procedures, in the flowchart form, hereto attached as Annex A. For uniformity purposes, each department with special or field uniform will also be provided with a template contract.

To avoid a repeat of the problems that occurred in CY 2007, no uniform allowances shall be released to the department managers. The budget allocated for CY 2009 uniform shall, with the approval of the Administrator, be placed in a Trust Fund. Payment to the supplier will only be made upon delivery and acceptance of uniforms. Likewise, unlike in CY 2007, only department managers will be allowed to engage the services of, and execute agreements with [bona fide] suppliers.

III. Thus, in view of the foregoing, may we request for the Administrator's approval:

1. **To authorize, on exclusive basis, all managers of departments with special field uniforms, to handle and to be on top of the procurement of uniforms for their respective offices. This shall include the signing of contract.**
2. **To authorize the transfer of the budgeted funds for the uniform for CY 2009, to a Trust Fund Account.** Payment will be made directly to the suppliers after the special and field uniforms are delivered, certified completed and accepted in 2010 by the end-user's Department Head.<sup>[6]</sup> (emphases supplied)

Then SBMA Administrator and CEO Armand C. Arreza approved the recommendations and a Uniform Committee was constituted. Thereafter, the different department heads of SBMA solicited price quotations for special and field uniforms from SBMA's accredited suppliers. The said department heads then conducted negotiations and contracts for the special and field uniforms, which were awarded to the supplier with the lowest quotation and who met their specification requirements. It was the Uniform Committee that provided for the *pro-forma* contracts and process flowchart for the acquisition of the said uniforms. After the delivery and acceptance of the uniforms, the winning contractors were paid out of the trust fund created for the uniforms.

#### *Notice of Disallowance*

On March 26, 2012, the Special Audit Team of the SBMA issued Special Audit ND No. 2012-001-(2011) against several SBMA officers, department heads and suppliers regarding the procurement of special and field uniforms of the SBMA employees. The Special Audit Team stated that the total disallowed amount was P2,420,603.99 because several requirements of R.A. No. 9184<sup>[7]</sup> and its Implementing Rules and Regulations (*IRR*) were violated, to wit:

1. The uniform requirements of the departments were not included in the 2010 and 2011 Annual Procurement Plans (APP).
2. Management failed to post the procurement and the results of bidding and related information in the PhilGEPs bulletin board.
3. The procurement process in each department was not conducted by a duly created Bids and Awards Committee.

4. Uniforms were procured through negotiated procurement without adhering to the set criteria, terms and conditions for the use of Alternative Methods of Procurement.

Absence of the above requirements/documents constituted irregular transactions as defined under COA Circular No. 85-55A and Section 162 of GAAM Volume I. Pursuant to Section 10 of COA Circular No. 2009-006 dated September 15, 2009, irregular disbursement may be disallowed in audit.<sup>[8]</sup>

Thus, the following SBMA officers and department heads, and suppliers were held liable under the ND:

<b>Name</b>	<b>Position/Designation</b>	<b>Nature of Participation in the Transaction</b>
Ms. Lolita S. Mallari	Manager, HRM Department	Certified that expense/charges to budget were necessary, lawful and incurred under her direct supervision. Executed contract with supplier in the amount of P100,332.00.
Capt. Dante A. Romano	Manager, Construction and Maintenance Department	Executed contract with supplier in the amount of P1,215,543.00
Gen. Orlando M. Maddela[,] Jr.	Manager, Law Enforcement Department	Executed contract with supplier in the amount of P435,032.00
Mr. Perfecto C. Pascual	Manager, Seaport Department	Executed contract with supplier in the amount of P140,580.99
Mr. Zharrex R. Santos	OIC-Manager, Airport Department	Executed contract with supplier in the amount of P71,736.00
Mr. Ranny D. Magno	Manager, Fire Department	Executed contract with supplier in the amount of P427,000.00
Ms. Armila Llamas	Manager, Public Relations Department	Executed contract with supplier in the amount of P30,380.00
Ms. Paulita R. Yee	OIC-DA for Finance	Approved the obligation of the expenditures/approved the release of payment
Mr. Armand C. Arreza	Administrator	Approved payment
Mr. Gregg M. Macatuno	General Manager, Baxley Tailor Shop	Received payment in the amount of P862.032.00
Mr. Gregorio V. Daya	General Manager, Comercio Enterprise	Received payment in the amount of P1,427,859.99
Mr. Rolando D. Mangente	Representative, Topnotch Apparel Corp.	Received payment in the amount of P100,332.00
Essential	Supplier	Received payment in the

Tailor Shop	amount of P30,380.00 <sup>[9]</sup>
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Aggrieved, SBMA and its officers, collectively referred as petitioners, filed an appeal before the COA-Region III.

#### *The COA-Region III Ruling*

In its decision dated April 7, 2014, the COA-Region III denied the appeal. It held that petitioners neither considered public bidding as the mode for procurement nor secured the recommendation of the Bids and Awards Committee (BAC) in resorting to the alternative method of negotiated procurement. The COA-Region III highlighted that the procurement of the uniforms did not comply with the requirements set forth by R.A. No. 9184 and its IRR. It also stated that disallowing the total amount may be drastic and harsh but it has no other option but to apply the law. The COA-Region III further opined that even though the uniform allowances were pooled in trust fund, these are still public funds. The *fallo* of the decision states:

**WHEREFORE**, the foregoing premises considered, instant appeal is hereby **DENIED**. Accordingly, Special Audit Notice of Disallowance (ND) No. 2012-001-(2011) COA Regional Office No. 2011-133 dated March 26, 2012, disallowing P2,420,603.99 is hereby **AFFIRMED**.<sup>[10]</sup>

Undaunted, petitioners filed a petition for review before the COA.

#### *The COA Ruling*

In its decision dated December 29, 2015, the COA dismissed the petition because it was filed out of time. It observed that petitioners only had six (6) months or 180 days to file the petition before the COA. As the petition was filed beyond the 180-day period, the COA denied it outright. The dispositive portion of the COA decision reads:

**WHEREFORE**, premises considered, the petition for review of former Administrator Armand C. Arreza, et al., Subic Bay Metropolitan Authority, Subic [Bay] Freeport Zone, Zambales, is hereby **DISMISSED** for having been filed out of time. Accordingly, COA RO3 Decision No. 2014-28 dated April 7, 2014, affirming Special Audit Notice of Disallowance No. 2012-001-(2011), Commission on Audit Regional Office No. 2011-133 dated March 26, 2012, in the amount of P2,420,603.99, is **FINAL AND EXECUTORY**.<sup>[11]</sup>

Petitioners filed a motion for reconsideration but it was dismissed by the COA in its resolution dated December 21, 2016.

Hence, this petition stating the following grounds:

#### **I.**

**RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WHIMSICALLY AND CAPRISCIOUSLY SACRIFICED SUBSTANTIVE JUSTICE IN FAVOR OF PROCEDURAL TECHNICALITIES WITH ITS**

**DISMISSAL OF PETITIONERS['] PETITION FOR REVIEW WITHOUT CONSIDERING AT ALL WHETHER OR NOT PETITIONER[S] ARGUMENTS DESERVE FULL CONSIDERATION ON THE MERITS.**

**II.**

**IN THE INTEREST OF SUBSTANTIVE JUSTICE, PETITIONERS' PETITION FOR REVIEW SHOULD HAVE BEEN [ACCEPTED] BY RESPONDENT COA CONSIDERING THAT THE ERRORS OF ITS RESIDENT AUDITORS ARE EVIDENT ON ITS FACE AND MORE SO AFTER AN EXAMINATION OF THE DOCUMENTS ON RECORD.**

**III.**

**RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REQUIRING THE SUBJECT TRANSACTION TO FULLY COMPLY WITH R.A. 9184 WHEN THE FUNDS USED TO PROCURE THE UNIFORMS WERE PURELY PRIVATE FUNDS, SINCE THESE CONSTITUTED THE UNIFORM ALLOWANCES OF EACH OF THE SBMA'S FIELD EMPLOYEES.**

**IV.**

**RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN WILLFULLY IGNORING THAT NOT ONLY WAS THE [SUBJECT] TRANSACTION ENTERED INTO IN UTMOST GOOD FAITH, BUT THAT IT WAS PURSUED FOR THE PERSONAL BENEFIT OF SBMA'S EMPLOYEES SO THAT THEY COULD GET THE BEST QUALITY AND VALUE FROM THEIR UNIFORM ALLOWANCE.<sup>[12]</sup>**

Petitioners argue that the 180-day period to file the petition for review before the COA fell on May 31, 2014, a Saturday, hence, it timely filed the petition on the next working day or June 2, 2014; that COA did not even consider the weekends in its computation of time; that on the substantial aspect, their petition has merit; and that they properly complied with the alternative method of procurement because it was approved by the head of the procuring authority and the procurement of the uniforms was justified by the conditions provided by R.A. No. 9184 to promote economy and efficiency.

They also assert that they resorted to the alternative modes of procurement because SBMA experienced, from their previous supplier, that regular bidding procedure compromises the quality of the uniforms of the employees; that the department heads followed the process flow provided by the Uniform Committee and the negotiation with the accredited SBMA suppliers were further subjected to control measures; that the creation of the Uniform Committee is patterned from R.A. No. 9184; and that the funds used for the uniforms were not public funds because these were kept in a trust fund on behalf of the employees, hence, private in character.

Petitioners also argue that they exercised good faith and transparency in procuring