

EN BANC

[A.M. No. 17-12-02-SC, July 16, 2019]

RE: CONSULTANCY SERVICES OF HELEN P. MACASAET

R E S O L U T I O N

CARPIO, J.:

The Case

This administrative matter involves the legality of the Contracts of Services between the Court and Ms. Helen P. Macasaet (Ms. Macasaet) for her rendition of consultancy services for the Enterprise Information Systems Plan (EISP) for the years 2010-2014.

The Facts

The EISP is intended to serve as the framework of the Information and Communications Technology (ICT) initiatives of the Judiciary. INDRA Sistemas S.A. (INDRA) was designated to provide Management and Consultancy Services for the development of the Judiciary's ICT Capability as part of the Judicial Reform Support Project financed by the World Bank. In the 23 June 2009 Resolution in A.M. No. 08-11 -09-SC,^[1] the Court approved the EISP submitted by INDRA. However, the 2009 Budget did not include a budget for the judiciary-wide technical infrastructure, nationwide connectivity, and network security, which are prerequisites to the nationwide implementation of the EISP and on-going ICT projects like the eCourts.^[2] Thus, there was a need to hire the services of an ICT consultant to review the status of the implementation of the EISP and related ICT and computerization projects.

In its 10 September 2013 Memorandum,^[3] the Bids and Awards Committee for Consultancy Services (BAC-CS) considered the procurement **as highly technical in nature** and primarily requires trust and confidence owing to the fact that the EISP is a priority program of the Court. In the same Memorandum, the BAC-CS recommended three (3) consultants who may be considered by the Supreme Court for the procurement of consultancy services. In a Joint Memorandum dated 12 September 2013^[4] to then Chief Justice Maria Lourdes P. A. Sereno, Atty. Michael B. Ocampo (Atty. Ocampo) of the Office of the Chief Justice (OCJ) and Mr. Edilberto A. Davis (Mr. Davis), then the Acting Chief of the Management Information Systems Office (MISO), stated that after reviewing and evaluating the three proposed consultants by the BAC-CS, they found Ms. Macasaet to be the most qualified. Their recommendation that Ms. Macasaet be hired for the procurement was approved by the then Chief Justice. The Supreme Court, ostensibly represented by its then Chief Administrative Officer Atty. Eden T. Candelaria (Atty. Candelaria), entered into a six-month Contract of Services with Ms. Macasaet on 1 October 2013.^[5] The

consultancy fee of Ms. Macasaet under the Contract of Services dated 1 October 2013 was P600,000.00, to be paid in six (6) equal monthly installments.

In a Memorandum to the Chief Justice dated 16 April 2014,^[6] Atty. Ocampo stated that there was a need for a technical and policy consultant for the implementation of the Updated EISP Work Plan. Atty. Ocampo proposed to directly negotiate a six-month contract with the consultant, who would be paid a fee of P250,000.00 a month, inclusive of all applicable taxes. Atty. Ocampo based his proposal on Section 53.7 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 (Government Procurement Reform Act),^[7] where a procuring entity can forego public bidding and directly negotiate a six-month contract with a consultant, who will perform work that is highly technical, proprietary, primarily confidential or policy determining. Atty. Ocampo stated that the proposed consultancy is clearly **highly technical** and policy determining, which would be subject to the confirmation of the BAC-CS.^[8] Again, in its 15 May 2014 Memorandum,^[9] the BAC-CS reiterated that the subject procurement can proceed without the Committee's involvement as it was "**highly technical in nature** and primarily requires trust and confidence, owing to the fact that it is a priority program of the Supreme Court." The BAC-CS stated, in the same Memorandum, that in addition to the consultant previously engaged, the other consultants named in their previous memorandum should also be considered for the procurement of the consultancy services.^[10] Acting on the Memorandum of the BAC-CS, Atty. Ocampo and Mr. Davis determined, in their Joint Memorandum dated 20 May 2014,^[11] that Ms. Macasaet was the most qualified among the three proposed consultants. This Joint Memorandum was approved by then Chief Justice Sereno.

However, the records are bereft of any explanation as to how the three (3) consultants were chosen by the BAC-CS for the purpose of recommending to the Supreme Court the procurement of consultancy services. As aptly pointed out by the report of the Office of the Chief Attorney (OCAAt) dated 6 November 2017 (OCAAt Report):

There are no documents from the BAC-CS that would show the following: (i) posting of opportunity in PhilGEPS website, SC website and SC bulletin boards or letter/s addressed to prospective individual consultant/s to submit his/her/their resume with respective financial proposal/s; (ii) that any or all three (3) prospective individual consultants named by the BAC-CS submitted his/her/their resume with respective financial proposal/s to the BAC-CS; (iii) the conduct of the negotiation; [iv] resolution recommending the award; [v] notice of award; [vi] proof that the notice of award was posted in the PhilGEPS website, SC website and in the SC bulletin boards; and [vii] notice to proceed.

If at all, the BAC-CS terminated its role after having "resolved to consider the subject procurement as **highly technical in nature** and primarily requires trust and confidence owing to the fact that it is the priority program of the Supreme Court." After holding "that there is no need for said procurement to pass through the regular process of engaging consultants being conducted by it", the procurement got off the hands of the BAC-CS through a disposition "that the Supreme Court, through the Office of the Chief Justice, can and should exercise its discretion to act on the subject procurement so as not to delay the same." The BAC-CS,

instead of proceeding as prescribed, merely submitted three (3) names of "consultants which can be considered by the Supreme Court for the subject procurement." Even the process through which the BAC-CS had this list of three (3) names, which includes Ms. Macasaet, is not on record.^[12] (Emphasis supplied)

On 23 May 2014, the Court, ostensibly represented by Atty. Candelaria as Chief Administrative Officer, entered into a second six-month Contract of Services with Ms. Macasaet.^[13]

In the meantime, the Court issued an *En Banc* Resolution dated 16 September 2014^[14] in A.M. No. 14-09-06-SC, approving the updated EISP work and its budget (2014-2019), which were supposedly the output of the 1 October 2013 Contract of Services with Ms. Macasaet.

In the Joint Memorandum dated 1 December 2014,^[15] Mr. Davis and Atty. Ocampo stated that there was a continuing need for the services of a consultant to provide **technical advice** and assistance in the first year implementation of the plan and in developing ICT policies to support it. Thus, they recommended the extension of Ms. Macasaet's contract for another six (6) months.^[16] Then Chief Justice Sereno approved the Joint Memorandum, and a Contract of Services was entered into on 10 December 2014^[17] between Ms. Macasaet and the Court, where Atty. Candelaria signed for and in behalf of the Court. Thereafter, the Contract of Services was extended five more times, for a total of six extensions of six months for every extension. In total, the Court entered into a Contract of Services with Ms. Macasaet for a total of eight times.

The Issue

The issue at hand is the legality of the eight Contracts of Services, entered into by the Court by negotiated procurement, ostensibly represented by Atty. Candelaria, with Ms. Macasaet. This issue was initially part of A.M. No. 17-08-05-SC entitled "Re: Letter-Request of Atty. Lorenzo G. Gadon for Certified True Copies of Certain Documents in Connection with the Filing of an Impeachment Complaint."

In a Resolution dated 19 September 2017,^[18] the question of the legality of the Contracts of Services was referred to the OCA and former Chief Justice Sereno was given the opportunity to comment on Atty. Gadon's request for documents in relation to the Contracts of Services with Ms. Macasaet. In compliance with the Court's Resolution dated 19 September 2017,^[19] the OCA submitted the OCA Report.^[20] Acting on the OCA Report, then Chief Justice Sereno submitted her Preliminary Comment on 20 November 2017 to the other members of the Court *En Banc*.^[21] The Court, in its Resolution dated 21 November 2017,^[22] required the BAC-CS and Ms. Macasaet to comment. The BAC-CS and Ms. Macasaet filed their respective Comments on 25 January 2018^[23] and 22 January 2018.^[24] The Court noted the Comment of Ms. Macasaet in its Resolution dated 23 January 2018.^[25] In its Resolution dated 30 January 2018,^[26] the Court noted the Comment of the BAC-CS. In the same Resolution, Attys. Candelaria and Ocampo were required by the Court to comment on the OCA Report, which comment they filed on 20 February 2018 and 25 April 2018, respectively.

The Ruling of the Court

Based on the facts and applicable laws and regulations, all the Contracts of Services should be declared void *ab initio*.

SIGNATORY HAD NO WRITTEN AUTHORITY

The signatory in all the eight (8) Contracts of Services with Ms. Macasaet was Atty. Candelaria in her capacity as Chief Administrative Officer and Deputy Clerk of Court.

[27] **However, the records fail to show that she was authorized in writing by the Supreme Court *En Banc* to act as signatory of the Court in entering into these Contracts of Services with Ms. Macasaet.** In fact, in her Comment dated 20 February 2018, [28] Atty. Candelaria herself **admitted** that she was not **given any express full written authority** by then Chief Justice Sereno to sign the Contracts of Services with Ms. Macasaet. In her Comment, Atty. Candelaria states:

In these particular Contracts of Services with Ms. Macasaet, since the Chief Justice as the Head of the Procuring Entity has already approved the award of the contract to the consultant and that the contract was already prepared by the Office of the Chief Justice (OCJ) indicating therein the Deputy Clerk of Court and Chief Administrative Officer as the Court's representative, **it was understood as an implied authority and designation for the undersigned to act as signatory for and in behalf of the Court.** [29] (Boldfacing and italicization supplied)

Atty. Candelaria stated that since the then Chief Justice had already approved the contract with Ms. Macasaet and the Office of the Chief Justice had already prepared the contract, she took it as an "**implied authority**" to sign on behalf of the Court.

[30] Even assuming for the sake of argument that there was an "implied authority," as in fact nothing of such authority can be implied from the contract, an "implied authority" is not the "**full authority**" in writing required under Sections 4 and 5 of Executive Order (EO) No. 423.

EO No. 423 dated 20 April 2005 [31] prescribed the rules and procedures on the review and approval of all government contracts to conform with the Government Procurement Reform Act. [32] EO No. 423 was issued in accordance with Section 75 of the Government Procurement Reform Act, which provides:

SEC. 75. *Implementing Rules and Regulations and Standard Forms.* — Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.

Specifically, Sections 4 and 5 of EO No. 423 provide:

Section 4. Approval of Government Contract Entered Into Through Alternative Methods of Procurement. -

b. For Government Contracts Involving An Amount Below Five Hundred Million Pesos (P500 Million). — Except for Government contracts required by law to be acted upon and/or approved by the President, **the Heads of the Procuring Entities shall likewise have full authority to give final approval and/or to enter into Government contracts of their respective agencies, entered into through alternative methods of procurement allowed by law.** Provided, that the Department Secretary certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations.

The Heads of the Procuring Entities may delegate in writing this full authority to give final approval and/or to enter into Government contracts involving an amount below Five Hundred Million Pesos (P500 Million) entered into through alternative methods of procurement allowed by law, as circumstances may warrant (i.e., decentralization of procurement in a Government Agency), subject to existing laws and such limitations imposed by the Head of the Procuring Entity concerned (Section 5(j), Republic Act No. 9184).

Section 5. Authority to Bind the Government. — **All Government contracts shall require the approval and signature of the respective Heads of the Procuring Entities or their respective duly authorized officials, as the case may be, as required by law, applicable rules and regulations, and by this Executive Order, before said Government contracts shall be considered approved in accordance with law and binding on the government, except as may be otherwise provided in Republic Act No. 9184.** For Government contracts required by law to be acted upon and/or approved by the President, Section 6 of this Executive Order governs the process by which such Government contracts shall be considered entered into with authority and binding on the Government.

The Heads of the Procuring Entities or their respective duly authorized officials, as the case may be, shall be responsible and accountable for ensuring that all Government contracts they approve and/or enter into are in accordance with existing laws, rules and regulations and are consistent with the spending and development priorities of Government.

All Government contracts entered into in violation of the provisions of law, rules and regulations, and of this Executive Order shall be considered contracts entered into without authority and are thus invalid and not binding on the Government. (Boldfacing and italicization supplied)

From the foregoing, it is clear that it is the Head of the Procuring Entity who is authorized to enter into binding government contracts, **when such contracts are entered into through alternative methods of procurement such as directly negotiated contracts like the Contracts of Services with Ms. Macasaet.** This authority may be delegated, but this must be done only "in writing" with "full authority" to give "final approval and/or to enter into" the contract delegated to such duly authorized official. **Since the alternative method of procurement is**