



Republic of the Philippines
SUPREME COURT
 Manila

CERTIFIED TRUE COPY

WILFREDO V. LATTIAN
 Division Clerk of Court
 Third Division

JAN 04 2018

THIRD DIVISION

**MARIETTA
 GUZMAN,**

MAGLAYA DE
 Petitioner,

G.R. No. 229256
 Present:

- versus -

**THE OFFICE OF THE
 OMBUDSMAN AND BESTFORMS,
 INCORPORATED,**
 Respondents.

VELASCO, JR., *J.*, Chairperson,
 BERSAMIN,
 LEONEN,
 JARDELEZA,* and
 MARTIRES, *JJ.*

Promulgated:
 November 22, 2017

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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 Decision¹ and January 11, 2017 Resolution² 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

* Designated Additional Member per Raffle dated November 20, 2017.

¹ *Rollo*, pp. 40-51. Penned by Associate Justice Jhosep Y. Lopez, with the concurrence of Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba.

² *Id.* at 63-64.



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 Letters⁷ 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

³ Id. at 41.

⁴ Id.

⁵ Id. at 13.

⁶ Id.

⁷ Id. at 108.

⁸ Id. at 41.

⁹ Id. at 184.

¹⁰ Id. at 40-41.

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 Decision¹¹ 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 Paganan 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

¹¹ Id. at 174-194.

¹² Id. at 193-194.



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 Marietta 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.

¹³ Id. at 185-186.

¹⁴ Id. at 50.

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. 38, 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 bidding¹⁸ 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

¹⁵ Id. at 16-17.

¹⁶ Id. at 80.

¹⁷ Id. at 18.

¹⁸ Id.

¹⁹ Id. at 21.

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

²⁰ Id. at 204.

²¹ Id. at 29.

²² Section 10. Competitive Bidding. - All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

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:

SEC. 49. Limited Source Bidding. – Limited Source Bidding may be resorted to only in any of the following conditions:

(a) **Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources; or**

(b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

x x x x

SEC. 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) **Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of**

²³ G.R. No. 184785, July 9, 2014, 729 SCRA 421, 427, citing *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989).

²⁴ *Capalla v. Commission on Elections*, G.R. No. 2011212, October 23, 2012, 684 SCRA 367, 389.

life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(d) Where the subject contract is adjacent or contiguous to an ongoing infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. (Emphasis supplied)

Corollary thereto, the IRR-A expounds on the definition of Limited Source Bidding and Negotiated Procurement in this wise:

Section 49. Limited Source Bidding

Limited Source Bidding, otherwise known as selective bidding, is a method of procurement of goods and consulting services that involves **direct invitation to bid by the concerned procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract.** The pre-selected suppliers or consultants shall be those appearing in a list maintained by the relevant Government authority that has expertise in the type of procurement concerned, which list should have been submitted to, and maintained updated with, the GPPB. The BAC of the concerned procuring entity shall directly send to the pre-selected bidders the invitation to bid, which shall already indicate the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of this IRR-A. **Limited source bidding may be employed by concerned procuring entities under any of the following conditions:**

a) **Procurement of highly specialized types of goods** (e.g. sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or x x x

x x x x

Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity **directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases: x x x** (Emphasis supplied)

The requirements of a pre-bid conference, written invitation to observers, and posting of the IAEB must still be followed in alternative modes of procurement

The foregoing provisions, however, should be read in relation to other provisions of RA 9184 pertinent to the conduct of any procurement activity. These include (1) the conduct of pre-procurement and pre-bid conferences; (2) the presence of observers throughout the whole bidding process; and (3) publication and/or posting of the IAEB, and other notices.

Section 13, Article V of RA 9184 and Section 13, Rule V of IRR-A underscore that **written invitations should be sent to a COA representative and to at least two (2) other observers to sit in its proceedings**. It should be emphasized that both the law and the IRR-A categorically state that these observers shall be invited to observe **in all stages of the procurement**:

SEC. 13. Observers. – To enhance the transparency of the process, the BAC shall, **in all stages of the procurement process**, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

x x x

Section 13. Observers

13.1. To enhance the transparency of the process, the BAC shall, **in all stages of the procurement process**, invite, in addition to the representative of the COA, at least two (2) observers to sit in its proceedings:

1. At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:

x x x

b) For goods –

A specific relevant chamber-member of the Philippine Chamber of Commerce and Industry (PCCI).

2. The other observer shall come from a non-government organization (NGO).

On the other hand, Sections 20 and 22 of Article VII of RA 9184 mandate the BAC to hold a pre-procurement and pre-bid conference **on each and every procurement**, without making any qualifications nor exceptions as to which mode of procurement these requirements are applicable to:

SEC. 20. Pre-Procurement Conference. – **Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement**, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional. x x x

SEC. 22. Pre-Bid Conference. – At least one pre-bid conference shall be conducted **for each procurement**, unless otherwise provided in the IRR.²⁵ Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

The pre-bid conference(s) shall be held within a reasonable period before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR. (Emphasis and underscoring supplied)

As regards the publication and posting requirements, the IRR-A instructs that the advertisement or publication of the IAEB in a newspaper of general circulation may be dispensed with for alternative modes of procurement. The Rules, however, explicitly states that the IAEB shall still be posted at a conspicuous place in the premises of the procuring entity concerned:

Section 21. Advertising and Contents of the Invitation to Bid x x x

21.2.4. **For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with:** Provided, however, That **posting shall be made** in the website of the procuring entity concerned, if available, the G-EPS, and posted **at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned**, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

The NPO-BAC failed to comply with the procedural requirements for

²⁵ Section 22. Pre-bid Conference.

22.1. For contracts to be bid with an approved budget of one million pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bidding documents. For contracts to be bid costing less than one million pesos (P1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon written request of any prospective bidder.

limited source bidding and negotiated procurement

Contrary to De Guzman's position, the language of the law and the IRR-A is clear: **such requirements must be followed in any and all types of procurement.** Not all procedures followed in competitive biddings are dispensed with when an agency or office resorts to any of the alternative modes of procurement. Regardless of whether the June biddings were just a re-bid of the March and April biddings, it was incumbent upon the NPO-BAC to observe the aforesaid procedural requirements for the latter biddings.

De Guzman could have easily refuted the allegations levelled against her by presenting a certification of the head of the BAC Secretariat attesting to the fact of posting of the IAEB, or a copy of the written invitations sent to the observers as required in Section 13.1, Rule V of the IRR-A. Yet, she opted to rebut the allegations without any concrete proof. Her bare claim that written invitations were in fact sent by the NPO-BAC to the COA and two other observers²⁶ remains unsubstantiated. Moreover, her allegation that representatives from the COA and National Printing Office Workers Association were regularly invited to attend to witness the bidding, without more, is insufficient proof of compliance.²⁷ Save from her general averments and denials, she failed to sufficiently prove that all the requirements of the law for the conduct of limited source bidding and negotiated procurement were met.

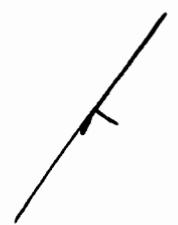
The Ombudsman and the CA similarly found that none of the conditions for negotiated procurement obtained that could have justified the resort thereto.

While De Guzman counters that the Rules allows the BAC to resort to Negotiated Procurement based on a take-over of a previously awarded contract, her own assertion that the transaction was not purely a Negotiated Procurement but an award to a bidder who offered the same lowest calculated bid during the same bidding held on March 30, 2006²⁸ all the more highlights the circumvention of RA 9184 by the NPO-BAC. There is nothing in the law that allows the procuring entity to directly award a contract to a participating bidder, even one who offered the best bid, whenever there is a failure of bidding. On the contrary, the IRR-A specifically directs that, for purposes of a negotiated procurement based on a take-over of contract, the procuring entity must negotiate first with the second and third lowest calculated bidders, and in the event that the negotiations fail, the procuring entity is still precluded from directly awarding the contract. It must still produce a list of three eligible contractors to negotiate with:

²⁶ *Rollo*, p. 57.

²⁷ *Id.* at 204-205.

²⁸ *Id.* at 28.



Section 54. Terms and Conditions for the use of Alternative Methods

x x x

54.2. In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply: x x x

- (e) For item (c) of Section 53 of the Act and this IRR-A, the contract may be negotiated starting with the second lowest calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the procuring entities concerned, within their respective limits of approving authority.

The records are bereft of any evidence showing compliance with the foregoing requirements.

Bestforms, Inc.'s allegation that there was non-compliance with the bidding procedures partakes of a negative allegation. Negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.²⁹

Under Section 5,³⁰ Rule 133 of the Rules of Court, a fact may be deemed established in cases filed before administrative or quasi-judicial bodies if it is supported by substantial evidence. Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.³¹ The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even

²⁹ *Philippine Savings Bank v. Geronimo*, G.R. No. 170241, April 19, 2010, 618 SCRA 368, 376, citing *Spouses Pulido v. Court of Appeals*, 321 Phil. 1064, 1069 (1995).

³⁰ Section 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

³¹ *Office of the Ombudsman v. Mallari*, G.R. No. 183161, December 3, 2014, 743 SCRA 587, 606.

preponderant.³² Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.³³

Based from the above disquisition, the Court finds no reason to overturn the findings of the Ombudsman, as affirmed by the CA, that De Guzman, along with the other members of the NPO-BAC, committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the other requirements for limited source bidding and negotiated procurement. The lack of official documents proving compliance with the bidding requirements constitutes the substantial evidence that sufficiently establishes De Guzman's liability for grave misconduct.

Misconduct is 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 additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. 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.³⁴ In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.³⁵

The foregoing discourse greatly tilts the balance towards the administrative liability of the members of the NPO-BAC for grave misconduct. De Guzman and the other members of the NPO-BAC grossly disregarded the law and were manifestly remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to RFI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts. This merits her dismissal from service under Section 46,³⁶ Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

³² *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 83, citing *Nacu v. Civil Service Commission*, G.R. No. 187752, November 23, 2010, 635 SCRA 766.

³³ *Gupilan-Aguilar v. Office of the Ombudsman*, G.R. No. 197307, February 26, 2014, 717 SCRA 503, 532, citing *Picardal v. Lladas*, No. L-21309, December 29, 1967, 21 SCRA 1483.

³⁴ *Office of the Ombudsman v. Mallari*, supra note 31, at 609, citing *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532, 172544-45, November 20, 2013, 710 SCRA 371, 397-398.

³⁵ *Office of the Ombudsman v. Agustino*, G.R. No. 204171, April 15, 2015, 755 SCRA 568, 585, citing *Seville v. Commission on Audit*, G.R. No. 177657, November 20, 2012, 686 SCRA 28, 32.

³⁶ Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service :

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct; x x x

It bears reiteration that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition among the bidders, and to change them without complying with the bidding requirement would be against public policy. What are prohibited are modifications or amendments which give the winning bidder an edge or advantage over the other bidders who took part in the bidding, or which make the signed contract unfavorable to the government.³⁷

WHEREFORE, the Petition for Review is **DENIED**. The April 20, 2016 Decision and January 11, 2017 Resolution of the Court of Appeals in CA G.R. SP No. 129712 are hereby **AFFIRMED**.

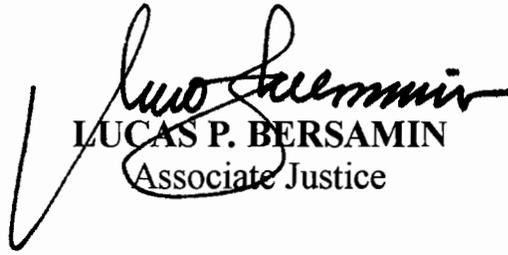
SO ORDERED.

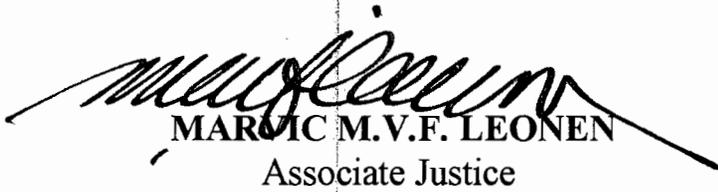


PRESBITERO J. VELASCO, JR.
Associate Justice

³⁷ *Capalla v. Commission on Elections*, G.R. No. 2011212, October 23, 2012, supra note 24, at 385, citing *San Diego v. The Municipality of Naujan, Province of Mindoro*, 107 Phil. 118 (1960) and *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 232.

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice

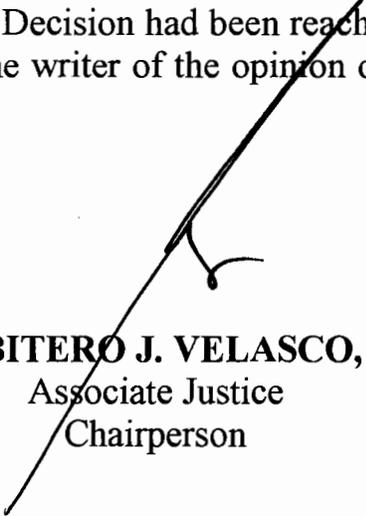

MARCIC M.V.F. LEONEN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice


SAMUEL R. MARTIRES
 Associate Justice

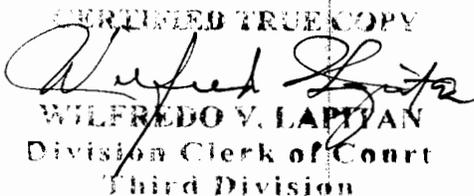
ATTESTATION

I attest 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.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

CERTIFIED TRUE COPY

WILFREDO V. LAPID
 Division Clerk of Court
 Third Division


MARIA LOURDES P. A. SERENO
 Chief Justice