



Republic of the Philippines
Supreme Court
Manila

EN BANC

LIBRADO C. NAVARRO,
Petitioner,

G.R. No. 240632

-versus-

COMMISSION ON AUDIT,
DIRECTOR RONALD A. REY,
REGIONAL DIRECTOR,
COMMISSION ON AUDIT,
REGIONAL OFFICE NO. XIII,
CARAGA REGION, BUTUAN
CITY,

Respondents.

X-----X

CHARLITO R. LEROG,
APRODECIO A. ALBA,
ROBERTO V. VIDUYA, DAISY
A. RONQUILLO, LORNA S.
SALGADO, and BELMA K.
LOMANTAS,

Petitioners,

G.R. No. 240759

-versus-

COMMISSION ON AUDIT,
represented by CHAIRPERSON
MICHAEL G. AGUINALDO,
COMMISSIONER JOSE A.

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**FABIA, and COMMISSIONER
ISABEL D. AGITO,**

Respondents.

x-----x

**RACQUEL L. BAUTISTA,
ESTEFA R. MAATA, and
LAILA P. MANLUCOB,**

Petitioners,

G.R. No. 240803

-versus-

**COMMISSION ON AUDIT,
Represented by CHAIRPERSON
MICHAEL G. AGUINALDO,
COMMISSIONER JOSE A.
FABIA, and COMMISSIONER
ISABEL D. AGITO,**

Respondents.

x-----x

GILBERT P. ABUGAN,

Petitioner,

G.R. No. 241459

-versus-

**COMMISSION ON AUDIT
[COA] AND REGIONAL
DIRECTOR, COA REGIONAL
OFFICE NO. XIII,**

Respondents.

Present:

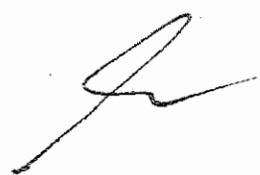
**GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING*,
ZALAMEDA,
LOPEZ, M.
GAERLAN,
ROSARIO,
LOPEZ, J.
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.**

Promulgated:

August 22, 2023

x-----x

* On leave.



DECISION**SINGH, J.:**

Before the Court are four consolidated Petitions for *Certiorari*¹ under Rule 64, in relation to Rule 65, of the Rules of Court, seeking the reversal of Decision No. 2015-186,² dated April 10, 2015, and the Resolution,³ dated January 29, 2018, of the Commission on Audit (COA) Commission Proper (COA Proper), which affirmed with modification RO-XIII-Decision No. 2014-005,⁴ dated March 17, 2014, of the COA Regional Office XIII (COA Regional Office), disallowing the variance of PHP 4,214,000.00 relative to the purchase of one Komatsu Hydraulic Excavator unit by the City Government of Bislig, Surigao del Sur (Bislig City Government).

The Facts

In September 2011, the Bislig City Government sought the procurement of a brand-new crawler type hydraulic excavator in order to fast-track the implementation of its infrastructure projects. With an approved budget of PHP 15,000,000.00, the Bislig City Government, through its Bids and Awards Committee (BAC), advertised an Invitation to Bid⁵ for the supply and delivery of one unit of brand-new crawler type hydraulic excavator, with the following specifications:

With engine of no less than 148hp at 2,000 rpm, six cylinder turbo charged diesel engine complying with Euro stage II and III; with an operating weight of no less than 19,000 kg; *bucket capacity of 1 to 1.5 cu.m*; with hydraulic piping arrangement and compatible hydraulic breaker attachment; 600 to 800mm triple grouse shoes; bucket digging force of no less than 17,500 kg at boosted power; with swing speed of no less than 12.4 rpm; all weather steel cab fully-airconditioned with all around visibility, safety glass window, wide screen wiper, lockable doors, fully adjustable reclining seat...⁶ (Emphasis supplied)

The Invitation to Bid was signed by petitioner Charlito R. Lerog (Lerog) as BAC Chairperson.⁷

In response to the Invitation to Bid, two prospective bidders submitted their bids, namely: (a) RDAK Transport Equipment, Inc. (RDAK); and, (b)

¹ *Rollo* (G.R. No. 240632), pp. 3-105; *rollo* (G.R. No. 240759), pp. 3-36; *rollo* (G.R. No. 240803), pp. 3-36; *rollo* (G.R. No. 241459), pp. 3-28.

² *Rollo* (G.R. No. 240632), pp. 106-109. Penned by Commissioners Heidi L. Mendoza and Jose A. Fabia.

³ *Id.* at 110-128.

⁴ *Id.* at 136-139. Penned by Director IV Roland A. Rey.

⁵ *Id.* at 261.

⁶ *Id.*

⁷ *Id.*



JVF Commercial (**JVF**). In their respective bids, RDAK offered the Komatsu Crawler Type Hydraulic Excavator PC200-8 (**Komatsu Hydraulic Excavator**), while JVF offered the Kobelco Crawler Type Hydraulic Excavator Model SK200-8 (**Kobleco Hydraulic Excavator**). Both bidders complied with the eligibility requirements, with JVF being declared as the bidder with the Lowest Calculated Bid.⁸

On October 11 to 19, 2011, the BAC, through its Technical Working Group (**TWG**), conducted a post-qualification evaluation of JVF. The TWG post-disqualified JVF after it found that JVF's bid was non-responsive to several required specifications as stated in the Invitation to Bid, particularly:⁹

Required Specifications	Specifications of Kobleco Hydraulic Excavator	Remarks
Six cylinder, turbo charged diesel engine complying with Euro stage II or III	Four cylinder, turbo charged diesel engine complying with Euro stage III	FAILED. Did not meet the required specifications.
Bucket digging force of no less than 17,500 kgs. at boosted power	Bucket digging force of no less than 16,000 kgs. at boosted power	FAILED. Did not meet the required specifications.

Consequently, the TWG proceeded with the post-qualification evaluation of RDAK since it was the bidder with the second Lowest Calculated Bid. The TWG found RDAK's bid to be responsive to the bid specifications. The TWG then recommended to the BAC that RDAK's bid be declared as the Lowest Calculated Responsive Bid. The Post-Qualification Evaluation Report¹⁰ (**PQER**) was signed by the members of the TWG, namely, petitioners Racquel L. Bautista (**Bautista**), Gilbert P. Abugan, Laila P. Manlucob, and Estefa R. Maata.¹¹

The BAC, composed of petitioners Bautista, Lerog, Roberto V. Viduya (**Viduya**), Lorna S. Salgado, Daisy A. Ronquillo, and Aprodicio A. Alba,^{*} adopted the findings of the TWG in its PQER and issued a Resolution¹² recommending to petitioner Mayor Librado C. Navarro (**Mayor Navarro**), in his capacity as the Head of the Procuring Entity, that the contract for the procurement of a brand-new hydraulic excavator be awarded to RDAK.¹³ Mayor Navarro approved the BAC Resolution.

* Also referred to as "Aprodicio A. Alba, Jr." in some parts of the *rollo*.

⁸ *Rollo* (G.R. No. 240632), pp. 12-13, Petition for *Certiorari*.

⁹ *Rollo* (G.R. No. 241459), pp. 75-77, Post-Qualification Evaluation Report.

¹⁰ *Id.*

¹¹ *Id.* at 77.

¹² *Rollo* (G.R. No. 240632), pp. 266-267.

¹³ *Id.*

On November 10, 2011, Mayor Navarro issued a Notice of Award¹⁴ informing RDAK that the Bislig City Government has accepted its bid. Thereafter, the Bislig City Government, through Mayor Navarro, executed a Purchase Order amounting to PHP 14,750,000.00 in favor of RDAK. In the said Purchase Order, RDAK was directed to deliver the Komatsu Hydraulic Excavator.¹⁵

On December 5, 2011, RDAK delivered the Komatsu Hydraulic Excavator. The Bislig City Government then paid RDAK the bid price of PHP 14,750,000.00 on December 5, 2011.¹⁶ On the same date, the unit was inspected and was declared compliant with respect to quantity and specifications.¹⁷

On February 10, 2012, the Bislig City General Services Office sent a letter request to COA State Auditor Cipriano C. Sumabat (**State Auditor Sumabat**) to inspect the newly-purchased Komatsu Hydraulic Excavator.¹⁸ State Auditor Sumabat then requested the COA Regional Technical Audit Team (**RTAT**) to conduct the inspection and verify if the specifications of the equipment conform with the description provided in the Purchase Order.¹⁹

State Auditor Santiago O. Burdeos (**State Auditor Burdeos**) inspected the Komatsu Hydraulic Excavator and issued an Inspection Report for Equipment and Facilities, dated March 7, 2012 (**2012 Inspection Report**),²⁰ stating that the Komatsu Hydraulic Excavator conformed with the specifications in the Purchase Order:

NARRATIVE FINDINGS AND OBSERVATIONS

Ocular inspection of the above mentioned [e]xcavator was conducted and the same was found to have conformed with the specifications as provided in the approved purchase order. Review as to compliance with Section 8 of Implementing Rules and Regulation of [Republic Act No.] 9184 is recommended.²¹

Thereafter, another evaluation was conducted on the Komatsu Hydraulic Excavator by the RTAT. In its Evaluation Report,²² dated June 28, 2012 (**Evaluation Report**), the RTAT stated that the Kobleco Hydraulic Excavator was a superior unit as compared to the Komatsu Hydraulic Excavator based on three basic specifications, *i.e.*, horsepower, bucket capacity, and operating weight. The RTAT noted that the Komatsu Hydraulic

¹⁴ *Rollo* (G.R. No. 240759), p. 109.

¹⁵ *Id.* at 110, Purchase Order.

¹⁶ *See id.* at 112, Delivery Receipt and Sales Invoice.

¹⁷ *Rollo* (G.R. No. 240632), p. 18, Petition for *Certiorari*.

¹⁸ *Rollo* (G.R. No. 240759), p. 116, Letter Request.

¹⁹ *Rollo* (G.R. No. 240632), pp. 115–116, Resolution.

²⁰ *Rollo* (G.R. No. 240759), pp. 118–119.

²¹ *Id.* at 119, Inspection Report for Equipment and Facilities.

²² *Rollo* (G.R. No. 241459), pp. 72–73.

Excavator failed to meet the specification for bucket capacity of 1.00 cubic meter to 1.50 cubic meters required by the Bislig City Government. The RTAT then concluded that both RDAK and JVF should have been declared non-responsive during the post-qualification.²³

On October 23, 2012, State Auditors Sumabat and Lucita R. Sabornido (**State Auditor Sabornido**) issued Notice of Disallowance No. 1012-001-100-(2011)²⁴ (**Notice of Disallowance**) addressed to Mayor Navarro, Baustista, Lerog, and Viduya, disallowing the amount of PHP 4,214,000.00, which was the price variance between the Komatsu Hydraulic Excavator and the Kobleco Hydraulic Excavator. The amount disallowed was based on the finding that the price of the Komatsu Hydraulic Excavator offered by RDAK was higher by 39.996% as compared to the price of the Kobleco Hydraulic Excavator offered by JVF despite the latter being of superior quality than the former.²⁵

Additionally, State Auditors Sumabat and Sabornido agreed with the finding of the RTAT that the bucket capacity of the Komatsu Hydraulic Excavator is only 0.80 cubic meter, which did not comply with the required specification of 1.00 cubic meter to 1.50 cubic meters.²⁶ They likewise made reference on the specifications of the Komatsu Hydraulic Excavator as indicated on page six of the Komatsu Hydraulic Excavator PC200-8 Manual (**Komatsu Manual**),²⁷ which states that:

Operating Weight (Approximate)

Operating weight including 5700 mm 18'8" one-piece boom, 2925 mm 9'7" arm, *SAE heaped 0.80 m³ 1.05yd³ backhoe bucket*, rated capacity of lubricants, coolant, full fuel tank, operator, and standard equipment.²⁸
(Emphasis supplied)

Aggrieved, the petitioners filed an appeal before the COA Regional Office on August 8, 2013, praying that the disallowance be lifted.

Ruling of the COA Regional Office

On March 17, 2014, the COA Regional Office rendered a Decision²⁹ denying the petitioners' appeal. The dispositive portion of the Decision reads:

²³ *Id.*

²⁴ *Rollo* (G.R. No. 240632), pp. 129–135.

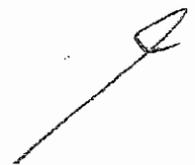
²⁵ *Id.* at 130–131, Notice of Disallowance.

²⁶ *Id.* at 130.

²⁷ *Id.*

²⁸ *Rollo* (G.R. No. 241459), p. 83, Komatsu Hydraulic Excavator PC200-8 Manual.

²⁹ *Rollo* (G.R. No. 240632), pp. 136–139.



Based on the foregoing discussion, this appeal is hereby denied for lack of merit and ND No. 1012-001-100-(2011)[,] dated October 23, 2012, disallowing the variance of [PHP] 4,214,000.00 relative to the purchase of one (1) Komatsu Hydraulic Excavator unit, is hereby affirmed.

Considering that the appeal was filed beyond the period allowed by the COA Rules of Procedures, the subject audit disallowance is deemed final.³⁰

The COA Regional Office affirmed the revised findings of the RTAT in its Evaluation Report that the Kobleco Hydraulic Excavator was superior as compared to the Komatsu Hydraulic Excavator, and that the latter's bucket capacity was only 0.80 cubic meter.³¹

The petitioners then filed a Petition for Review before the COA Proper, assailing the COA Regional Office Decision.

Ruling of the COA Proper

On April 10, 2015, the COA Proper denied the Petition for Review for having been filed out of time. Thus, it affirmed the Decision of the COA Regional Office:

WHEREFORE, premises considered, the petition for review is hereby **DISMISSED** for having been filed out of time, Accordingly, COA Regional Office No. XIII Decision No. 2014-005[,], dated March 17, 2014, which affirmed Notice of Disallowance No. 1012-001-100-(2011)[,], dated October 23, 2012, relative to the price variance on the purchase by the City of [one] unit of Komatsu PC200-8 Hydraulic Excavator amounting to [PHP] 4,214,000.00, is **FINAL AND EXECUTORY**.³² (Emphasis in the original)

On June 30, 2015, the petitioners filed a Motion for Reconsideration of the COA Proper Decision. The COA Proper gave due course to the Motion for Reconsideration and decided to resolve the case on its merits.

Due to the conflicting findings between the 2012 Inspection Report executed by State Auditor Burdeos and the Evaluation Report, the COA Proper issued an Order, dated May 16, 2017, directing the COA Regional Office to create a different RTAT to conduct a re-inspection to validate if the delivered Komatsu Hydraulic Excavator conforms with the specifications provided in the Purchase Order.³³ The reconstituted RTAT indicated its findings in its Inspection Report for Equipment and Facilities, dated June 7, 2017 (**2017 Inspection Report**), as follows:

³⁰ *Id.* at 139.

³¹ *Id.* at 137.

³² *Id.* at 108.

³³ *Id.* at 116-117.



Re-inspection of the hydraulic excavator disclosed that it has indeed conformed with the required specifications of the Local Government Unit as provided in the approved Purchase Order, except for the bucket which requires 1.0 to 1.5 cu.m. capacity and the actual is 0.80 cu.m. only.

Actual testing of the unit disclosed that its bucket with a capacity of 0.80 cu.m. can excavate/load an additional 30% of its capacity if the excavated materials will not be scraped to level the top edge of the bucket.³⁴

On January 29, 2018, the COA Proper issued a Resolution³⁵ denying the petitioners' Motion for Reconsideration. The COA Proper also modified the amount of disallowance to the full purchase price of the Komatsu Hydraulic Excavator, or PHP 14,750,000.00:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED**. Accordingly, Commission on Audit Decision No. 2015-186[,] dated [April 10, 2015,] which dismissed the Petition for Review of Mayor Librado C. Navarro, et al., City Government of Bislig, Surigao del Sur, is **AFFIRMED with MODIFICATION** such that the amount of Notice of Disallowance (ND) No. 1012-001-100-(2011)[,] dated October 23, 2012[,] is increased from [PHP] 4,214,000.00 to [PHP] 14,750,000.00, the latter amount being the total contract cost for the purchase by the City of one unit of Komatsu PC200-8 Hydraulic Excavator.

The Audit Team Leader is instructed to issue a Supplemental ND for the additional amount of [PHP] 10,536,000.00 representing the difference between the total cost of [PHP] 14,750,000.00 that should be disallowed and the amount of [PHP] 4,214,000.00 disallowed under ND No. 1012-001-100-(2011)[,] dated October 23, 2012.³⁶ (Emphasis in the original)

Although the COA Proper held that the Kobleco Hydraulic Excavator was not superior over the Komatsu Hydraulic Excavator,³⁷ it nevertheless affirmed the finding of the COA Regional Office and the reconstituted RTAT that the bucket capacity of the Komatsu Hydraulic Excavator is only 0.80 cubic meter.³⁸ As such, the COA Proper ruled that the BAC and TWG should have disqualified RDAK's bid offer, and a failure of bidding should have been declared.³⁹ Moreover, the COA Proper declared the purchase of the Komatsu Hydraulic Excavator as both illegal and irregular, and concluded that the entire contract cost of PHP 14,750,000.00 should be disallowed.⁴⁰

Undaunted, the petitioners filed their separate Petitions for *Certiorari* before the Court, assailing the COA Proper Decision and Resolution.

³⁴ *Id.* at 117.

³⁵ *Id.* at 110-128

³⁶ *Id.* at 126-127.

³⁷ *Id.* at 118.

³⁸ *Id.* at 119.

³⁹ *Id.*

⁴⁰ *Id.* at 126.

On March 8, 2022, the petitioners filed a Motion for Leave to Admit Attached Decision,⁴¹ which the Court noted in its Resolution,⁴² dated June 14, 2022. The petitioners asked the Court to consider the Decision,⁴³ dated February 21, 2022, rendered by the Sandiganbayan in Criminal Case No. SB-18-CRM-0239, in which they were acquitted from all charges for violation of Section 3 (e) of Republic Act No. 3019,⁴⁴ or the Anti-Graft and Corrupt Practices Act, in relation to the procurement of the Komatsu Hydraulic Excavator.⁴⁵

The Issue

Whether the COA Proper gravely abused its discretion amounting to lack or excess of its jurisdiction in affirming the disallowance in relation to the Bislig City Government's procurement of the Komatsu Hydraulic Excavator from RDAK, and ruling that RDAK should have been post-disqualified for failing to meet the required bucket capacity specification.

The Ruling of the Court

The Court recognizes the COA's constitutionally established role as the guardian of government funds.⁴⁶ It is an independent constitutional body which has the power to determine whether government entities comply with the law and the rules in disbursing public funds, and disallow illegal disbursements of these funds.⁴⁷ As such, the factual findings of the COA are generally accorded utmost respect not only on the basis of the doctrine of separation of powers,⁴⁸ but also because of the COA's special knowledge and expertise over matters falling under its jurisdiction.⁴⁹

However, the Court will only affirm the findings and conclusions of the COA to the extent that these are supported by substantial evidence.⁵⁰ When the COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the Court may entertain and grant a petition for *certiorari* brought to assail the COA's actions.⁵¹ In this regard, the COA commits grave abuse of discretion when it renders a

⁴¹ *Rollo* (G.R. No. 240759), pp. 405-413.

⁴² *Id.* at 469-470.

⁴³ *Id.* at 414-468.

⁴⁴ Approved on August 17, 1960.

⁴⁵ *Rollo* (G.R. No. 240759), pp. 466-467.

⁴⁶ *Theo-Pam Trading Corporation v. Bureau of Plant Industry and the Commission on Audit*, G.R. No. 242764, January 19, 2021 [Per J. Inting, *En Banc*].

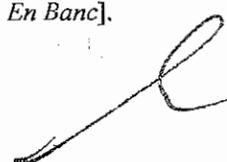
⁴⁷ *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 308 (2015) [Per J. Leonen, *En Banc*].

⁴⁸ *Id.*

⁴⁹ *Theo-Pam Trading Corporation v. Bureau of Plant Industry and the Commission on Audit*, G.R. No. 242764, January 19, 2021 [Per J. Inting, *En Banc*].

⁵⁰ *Id.*

⁵¹ *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 466 (2017) [Per J. Tijam, *En Banc*].



decision or resolution that is not based on law and the evidence but on caprice, whim, and despotism.⁵²

In *Fernandez v. Commission on Audit*,⁵³ the Court discussed the nature of grave abuse of discretion as follows:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.⁵⁴

In this case, the Court finds that the COA Proper committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the findings of the COA Regional Office that the Komatsu Hydraulic Excavator only has a bucket capacity of 0.80 cubic meter. As will be discussed below, the heaped bucket capacity of the Komatsu Hydraulic Excavator is approximately 1.04 cubic meters, which is compliant with the minimum requirement provided in the Bid Invitation and Purchase Order. Consequently, the COA Proper acted with grave abuse of discretion in upholding the Notice of Disallowance.

The process for the procurement of goods by the government under R.A. No. 9184

Republic Act No. 9184,⁵⁵ or the Government Procurement Reform Act, states that except in cases in which alternative methods of procurement are allowed, all government procurement shall be done through competitive bidding.⁵⁶ This method of procurement is initiated by the BAC, which advertises the Invitation to Bid for contracts under competitive bidding.⁵⁷ Thereafter, the BAC, or its duly designated organic office, determines the eligibility of prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid.⁵⁸ The BAC then

⁵² *Theo-Pam Trading Corporation v. Bureau of Plant Industry and the commission on Audit*, G.R. No. 242764, January 19, 2021 [Per J. Inting, *En Banc*].

⁵³ 866 Phil. 292 (2019) [Per J. Inting, *En Banc*].

⁵⁴ *Id.* at 305.

⁵⁵ Titled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES," approved on January 10, 2003.

⁵⁶ Republic Act No. 9184 (2003), sec. 10.

⁵⁷ Republic Act No. 9184 (2003), sec. 21.

⁵⁸ Republic Act No. 9184 (2003), sec. 23.

informs the eligible prospective bidders that they have been found eligible to participate in the bidding,⁵⁹ and are allowed to submit their respective bids.⁶⁰

Each bid has two components, namely, technical and financial components, which should be in separate sealed envelopes and which shall be submitted simultaneously.⁶¹ The first envelope, which contains the technical proposal, shall contain the technical specifications of the product being bid out, among others.⁶²

Prior to bid evaluation, the BAC shall examine first the technical components of the bid using “pass/fail” criteria to determine whether all required documents are present. Only bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial component.⁶³ For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the first bid envelope.⁶⁴

During the preliminary examination stage, the BAC checks whether all the required documents were submitted by the eligible bidders. Note should be taken of the fact that the technical specifications of the product bid out is among the documentary requirements evaluated by the BAC during the preliminary examination stage.⁶⁵ In this case, the technical specifications for the Komatsu Hydraulic Excavator are contained in the Komatsu Manual.

After the preliminary examination stage, the BAC opens, examines, evaluates, and ranks all bids and prepares the Abstract of Bids which contains, among others, the names of the bidders and their corresponding calculated bid prices arranged from lowest to highest. The objective of the bid evaluation is to identify the bid with the lowest calculated price or the Lowest Calculated Bid. The Lowest Calculated Bid shall then be subject to post-qualification to determine its responsiveness to the eligibility and bid requirements.⁶⁶

Section 34 of Republic Act No. 9184 lays down the post-qualification process as follows:

Sec. 34. Objective and Process of Post-qualification. – Post-qualification is the stage where the bidder with the Lowest Calculated Bid,

⁵⁹ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 557 (2009) [Per J. Tinga, *En Banc*].

⁶⁰ Republic Act No. 9184 (2003), sec. 24.

⁶¹ Republic Act No. 9184 (2003), sec. 25.

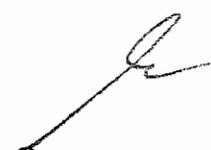
⁶² *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 557 (2009) [Per J. Tinga, *En Banc*].

⁶³ Republic Act No. 9184 (2003), sec. 30.

⁶⁴ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 558 (2009) [Per J. Tinga, *En Banc*].

⁶⁵ *Id.*

⁶⁶ *Id.* at 559.



in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the "Lowest Calculated Responsive Bid," in the case of Goods and Infrastructure or the "Highest Rated Responsive Bid," in the case of Consulting Services. *However, if a bidder fails to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculate Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined.*

In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. (Emphasis supplied)

In this case, the BAC declared JVF as the bidder with the Lowest Calculated Bid. However, JVF's bid failed to comply with several required technical specifications indicated in the Bid Invitation, specifically, the six cylinder turbo charged diesel engine, and the bucket digging force. As such, JVF was post disqualified. The TWG then conducted the post-qualification on RDAK, which was the bidder with the second Lowest Calculated Bid. The TWG found that RDAK was in compliance with the technical requirements, thus it recommended that RDAK be declared as the bidder with the Lowest Responsive Calculated Bid.⁶⁷

However, the COA ruled that RDAK should have also been post-disqualified because it failed to comply with the technical specifications required by the Bislig City Government for the hydraulic excavator, particularly the bucket capacity. Citing the Evaluation Report, as well as the specifications indicated on page six of the Komatsu Manual, the COA concluded that the bucket capacity of the Komatsu Hydraulic Excavator is only 0.80 cubic meter.⁶⁸

This is a palpable misapprehension of facts committed by the COA.

The records of the case evince that the COA disallowed the purchase price of the Komatsu Hydraulic Excavator based on the following: (1) page six of the Komatsu Manual, (2) the Evaluation Report executed by the RTAT, and (3) the Inspection Report issued by the reconstituted RTAT.

⁶⁷ Rollo (G.R. No. 241459), pp. 75-77, Post-Qualification Evaluation Report.

⁶⁸ Rollo (G.R. No. 240632), pp. 129-135, Notice of Disallowance No. 1012-001-100-(2011).

The Komatsu Manual shows that the bucket capacity of the Komatsu Hydraulic Excavator complies with the required specification of 1.00 cubic meter to 1.50 cubic meters

The Court notes that RDAK submitted the Komatsu Manual as part of its bid documents. Specifically, the Komatsu Manual contained the specifications of the Komatsu Hydraulic Excavator, and this was used by the TWG and the BAC in ascertaining whether RDAK's bid was responsive to the technical specifications required by the Bislig City Government for the hydraulic excavator that it was seeking to procure. In fact, other than the Evaluation Report and the 2017 Inspection Report, the Komatsu Manual was the sole documentary evidence, relied upon by the COA in concluding that the Komatsu Hydraulic Excavator failed to comply with the required technical specifications, particularly the bucket capacity.

However, a review of the Komatsu Manual reveals that it provides for bucket capacity specifications that comply with the requirements stated in the Invitation to Bid and the Purchase Order.

Admittedly, on page six of the Komatsu Manual, under the main header "Specifications" and the sub-header "Operating Weight (Approximate)," the indicated heaped bucket capacity of the Komatsu Hydraulic Excavator is 0.80 cubic meter.⁶⁹ However, on page seven of the same Komatsu Manual, still under the main header "Specifications" and under the sub-header "Backhoe Bucket, Arm, and Boom Combination," the following are the specifications for the Komatsu Hydraulic Excavator's bucket capacity:⁷⁰

Bucket Capacity (heaped)			
SAE, PCSA		CECE	
0.50 m³	0.65 yd³	0.45 m³	0.59 yd³
0.80 m³	1.05 yd³	0.70 m³	0.92 yd³
0.93 m³	1.22 yd³	0.80 m³	1.05 yd³
1.05 m³	1.37 yd³	0.90 m³	1.18 yd³
1.17 m³	1.53 yd³	1.00 m³	1.31 yd³

Based on the foregoing, it is clear that the Komatsu Manual provides for bucket capacity specifications that are responsive to the minimum specifications required under the Invitation to Bid advertised by the BAC and the Purchase Order. The Komatsu Hydraulic Excavator offered by RDAK can have a backhoe bucket with capacity of either 1.05 cubic meters or 1.17 cubic meters. These specifications are within the BAC's required 1.00 to 1.50

⁶⁹ *Rollo* (G.R. No. 241459), p. 83, Komatsu Hydraulic Excavator PC200-8 Manual.

⁷⁰ *Id.* at 84.

cubic meters of bucket capacity. Notably, the bucket capacity indicated on page six of the Komatsu Manual is only an estimated number as it is only used to illustrate the Komatsu Hydraulic Excavator's approximate operating weight. The accurate specifications of the Komatsu Hydraulic Excavator's bucket capacity are those which are enumerated on page seven of the Komatsu Manual as these specifically pertain to backhoe bucket capacity.

Thus, the TWG and the BAC correctly concluded that RDAK's bid was responsive to the technical specifications required by the Bislig City Government for the hydraulic excavator.

The third inspection confirms that the Komatsu Hydraulic Excavator is compliant with the bucket capacity requirement

In its Resolution, the COA Proper ruled that the findings contained in the Evaluation Report, with respect to the actual bucket capacity of the Komatsu Hydraulic Excavator, was affirmed by the reconstituted RTAT when it conducted a re-inspection of the Komatsu Hydraulic Excavator in 2017. The result of the said re-inspection was indicated in the 2017 Inspection Report, which states that an actual testing of the Komatsu Hydraulic Excavator revealed that its bucket capacity is only 0.80 cubic meter. Based on these Reports, the COA Proper held that RDAK should have been post-disqualified considering that its bid did not comply with the bucket capacity requirement.

These conclusions are patently erroneous.

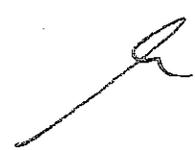
The bucket capacity of a hydraulic excavator is a measure of the maximum volume of the material that can be accommodated inside its bucket.⁷¹ There are two acceptable methods of measuring bucket capacity, namely, struck capacity and heaped capacity.⁷² The struck capacity is the volume of the bucket after it has been struck at the strike plane.⁷³ Simply put, struck capacity is the volume of the materials that can be accommodated by the bucket when its top edge is scraped. On the other hand, heaped capacity is "the sum of the struck capacity plus the volume of excess material heaped on the bucket."⁷⁴

⁷¹ Sharanagouda A. Biradar et al., *Design, Analysis and Optimization of heavy duty Excavator Bucket by using Finite Element Analysis*, Volume 3, INTERNATIONAL JOURNAL OF SCIENTIFIC DEVELOPMENT AND RESEARCH, 74, 75 (2018).

⁷² *Id.*

⁷³ Anthony Kpegele Le-ol & Charles B. Kpina, *Improved Design and Modelling of the Backhoe Arm of a Backhoe Loader*, INTERNATIONAL JOURNAL OF ADVANCED RESEARCH, 673, 676 (2019).

⁷⁴ *Id.*



Applying these definitions to the 2017 Inspection Report, the Komatsu Hydraulic Excavator has a struck capacity of 0.80 cubic meter. On the other hand, its heaped capacity is 0.80 cubic meter plus an additional 30% of excess material heaped on the bucket, or a total of 1.04 cubic meters. Again, this actual bucket capacity of the Komatsu Hydraulic Excavator is within the BAC's required technical specification of 1.00 to 1.50 cubic meters.

Notably, the Komatsu Manual, which contains the technical specifications of the Komatsu Hydraulic Excavator, expressly and consistently indicates that its bucket capacity is measured by heaped capacity,⁷⁵ and not by struck capacity. Additionally, the Invitation to Bid and the Purchase Order, as well as the other bid documents, do not require the bucket capacity to be computed based on struck capacity. Moreover, the term "capacity" is defined as "the maximum amount or number that can be contained or accommodated."⁷⁶ As such, the Court rules that heaped capacity is the proper method of measuring the bucket capacity of the Komatsu Hydraulic Excavator as it reflects the actual maximum amount that the hydraulic excavator's bucket can contain.

In this case, the Bislig City Government's purpose in procuring a hydraulic excavator was to fast-track the implementation of its infrastructure projects. In the Certification,⁷⁷ dated October 10, 2012, the City Engineer's Office of the Bislig City Government enumerated the priority projects in which the Komatsu Hydraulic Excavator was used. These projects include road completion, backfilling of the fishermen's village and the market, development of central public market anaerobic pond, and maintenance of roads and bridges.⁷⁸ By the nature of these projects, the Komatsu Hydraulic Excavator would have normally been used for digging and removal of soil or rocks. Normally, when a hydraulic excavator is used to dig and remove soil and rocks, the top edge of the hydraulic excavator's bucket is not anymore being scraped. Consequently, the maximum quantity that the Komatsu Hydraulic Excavator can contain or accommodate includes the excess material heaped on its bucket.

The Court is not unmindful of the rule that authorities cannot waive any substantial variance between the technical specifications required under the invitation to bid and the proposal submitted by the bidders. In *Republic v. Capulong*,⁷⁹ the Court ruled that:

Basically, the purpose of the statute requiring competitive bidding is that each bidder, actual or possible, shall be put upon the same footing. Therefore, authorities should not be permitted to waive any substantial

⁷⁵ *Rollo* (G.R. No. 241459), pp. 83-84, Komatsu Hydraulic Excavator PC200-8 Manual.

⁷⁶ Capacity, MERRIAM-WEBSTER WEBSITE <<https://www.merriam-webster.com/dictionary/capacity>> (visited June 23, 2023).

⁷⁷ *Rollo* (G.R. No. 241459), pp. 92-93.

⁷⁸ *Id.*

⁷⁹ 276 Phil. 136 (1991) [Per J. Medialdea, *En Banc*].



variance between the conditions under which bids are invited and the proposal submitted. If one bidder is relieved from conforming to the conditions which impose some duty upon him, or lay the ground for holding him to a strict performance of his contract, that bidder is not contracting in fair competition with those bidders who propose to be bound by all the conditions.⁸⁰

Moreover, the contract executed in favor of the winning bidder must not substantially vary from the conditions under invitation to bid. Otherwise, “[a]ny government action which permits any substantial variance between the conditions under which the bids are invited and the contract executed after the award thereof is a grave abuse of discretion amounting to lack or excess of jurisdiction which warrants proper judicial action.”⁸¹

However, in this case, there is simply no variance between the required technical specifications enumerated in the Invitation to Bid and the Purchase Order, on the one hand, and the bidding proposal submitted by RDAK, the contract executed after the award, or the actual hydraulic excavator unit delivered by RDAK, on the other. To emphasize, the COA found that the Komatsu Hydraulic Excavator conformed with all the required specifications of the Bislig City Government, except for the bucket capacity.⁸²

*The Decision of the Sandiganbayan in
Criminal Case No. SB-18-CRM-0239
is persuasive*

Aside from the disallowance of the contract price of the Komatsu Hydraulic Excavator, a criminal case for violation of Section 3(e) of Republic Act No. 3019 was also filed against the petitioners in relation to the alleged illegality of the procurement of the Komatsu Hydraulic Excavator. However, the Sandiganbayan acquitted the petitioners on the basis of reasonable doubt.⁸³ A portion of the Sandiganbayan Decision discussing in detail the correct bucket capacity of the Komatsu Hydraulic Excavator is reproduced below:

The prosecution charged the accused Bautista, Abugan, Manlucob, and Mata (TWG members) of manipulating the Post-Qualification Evaluation Report by indicating that the bucket capacity of the Komatsu unit is 1.0 cubic meters when the same is only 0.80 cubic meter. In supporting its conclusion, the prosecution heavily relied on the Evaluation Report dated 28 June 2012 ... submitted by witness Jabutay and Inspection Report for Equipment and Facilities dated 07 June 2017 ... of witness Burdeos, which found that the Komatsu excavator failed to meet the LGU’s specific requirement as the bucket capacity of the Komatsu unit is only 0.80. However, a perusal of the totality of evidence shows the contrary.

⁸⁰ *Id.* at 153.

⁸¹ *Capalla v. Commission on Elections*, 687 Phil. 617, 671 (2012) [Per J. Peralta, *En Banc*].

⁸² *Rollo* (G.R. No. 240632), p. 117, Resolution.

⁸³ *Rollo* (G.R. No. 240759), pp. 466–467, Decision, dated February 21, 2022.

It bears to note that the prosecution's reliance on the Evaluation Report of Jabutay is misplaced considering his admission during his presentation that his evaluation was limited only to the documents forwarded to him, and that he did not evaluate the actual performance of the unit. Based on the records, it was Burdeos of the TAS who conducted the actual inspection of the delivered excavator twice.

In the Inspection Report for Equipment and Facilities[,] dated [March 7, 2012], prosecution witness Burdeos found the subject unit to have conformed with the specifications provided in the Purchase Order which specified the bucket capacity requirement of 1.0 cubic meter. On cross-examination, Burdeos even affirmed that he did not indicate the bucket capacity of 0.80 cubic meter in his 07 March 2012 Inspection Report because he already verified the 1.0 cubic meter bucket capacity during actual inspection[.]

....

A scrutiny of the Inspection Report[,] dated [June 7, 2017] ... likewise being relied upon by the prosecution which supposedly showed a 0.80 bucket capacity even bolsters the fact that the same is equivalent to 1.0 cubic meter or more. The finding in the said Inspection Report states, among others, that "actual testing of the unit disclosed that its bucket with capacity of 0.80 cu. m. can excavate/load with an additional [30%] of its capacity if the excavated materials will not be scraped to level the top edge of the bucket." During the cross examination of prosecution witness Burdeos, who conducted the re-inspection and signed the said report, he explained that the computation of the bucket size of 0.80 cubic meter with additional [30%] of its capacity during actual excavation would result to 1.04 cubic meters.

....

Furthermore, Burdeos clarified during his examination that the 0.80 cubic meter as stated in his Report pertains to the bucket size and that the additional [30%] indicated in his report pertains to the capacity of the bucket to excavate.

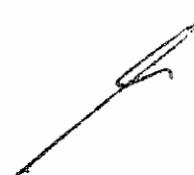
....

Based on the foregoing testimony and related documents, the bucket capacity including the heaped or additional capacity of the subject hydraulic excavator indeed conformed to the required specification of 1.0 cubic meter to 1.50 cubic meters. The prosecution thus failed to prove that the TWG manipulated the Post-Qualification Evaluation Report to favor RDAK considering that the delivered unit was compliant with all the required specifications. Such negated manifest partiality, evident bad faith, or gross inexcusable negligence.⁸⁴ (Emphasis supplied)

Admittedly, the Sandiganbayan Decision does not bind the Court. The principle of *stare decisis* applies only to final decisions of the Court because only the Court may create judicial precedents that other courts should follow.⁸⁵ As such, the decisions of lower courts have no binding effect to the

⁸⁴ *Id.* at 458-462.

⁸⁵ *Gotesco Properties, Inc. v. International Exchange Bank*, 879 Phil. 636, 647 (2020) [Per J. Leonen, Third Division].



Court,⁸⁶ even if their decisions are logically or legally sound.⁸⁷ Nevertheless, the decisions of lower courts can have persuasive effect to the Court.⁸⁸

In this case, the Court agrees with the findings of the Sandiganbayan to the effect that the actual bucket capacity of the Komatsu Hydraulic Excavator is approximately 1.04 cubic meters, and not 0.80 cubic meter. The 0.80 cubic meter only pertains to the bucket size and not the bucket capacity of the Komatsu Hydraulic Excavator. Therefore, given the Court's finding that the Komatsu Hydraulic Excavator likewise complied with the Bislig City Government's bucket capacity requirement, the petitioners cannot be faulted for declaring RDAK as the bidder with the Lowest Calculated Responsive Bid and awarding RDAK with the contract for the supply of the Komatsu Hydraulic Excavator. The petitioners performed their functions in accordance with law and regulations on government procurement. Consequently, the Notice of Disallowance issued by the COA against the petitioners must be lifted.

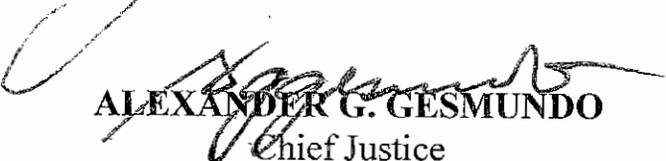
ACCORDINGLY, the consolidated Petitions for *Certiorari* are **GRANTED**, and the Decision No. 2015-186, dated April 10, 2015, and Resolution, dated January 29, 2018, of the Commission on Audit Commission Proper, are **REVERSED**.

The Notice of Disallowance No. 1012-001-100-(2011), dated October 23, 2012, issued against petitioners Librado C. Navarro, Charlito R. Lerog, Aprodicio A. Alba, Roberto V. Viduya, Daisy A. Ronquillo, Lorna S. Salgado, Belma K. Lomantas, Racquel L. Bautista, Estefa R. Maata, Laila P. Manlucob, and Gilbert P. Abugan, is **LIFTED**.

SO ORDERED.


MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

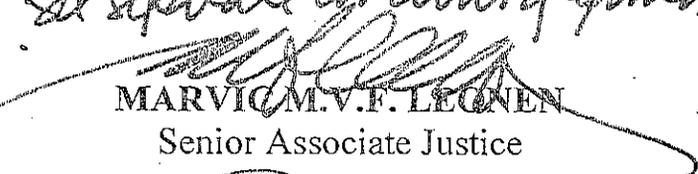

ALEXANDER G. GESMUNDO
Chief Justice

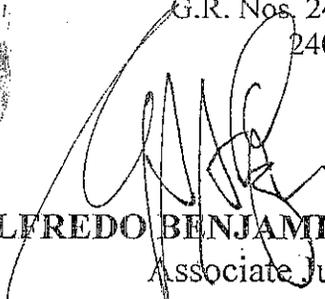
⁸⁶ *Id.* at 648.

⁸⁷ *United Coconut Planters Bank v. Spouses Uy*, 823 Phil. 284, 295 (2018) [Per J. Martires, Third Division].

⁸⁸ *Id.*

See separate concurring opinion

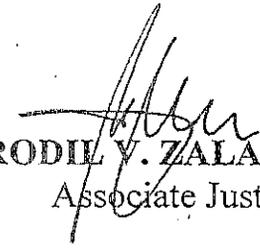

MARVIC M.V.F. LEGNEN
Senior Associate Justice

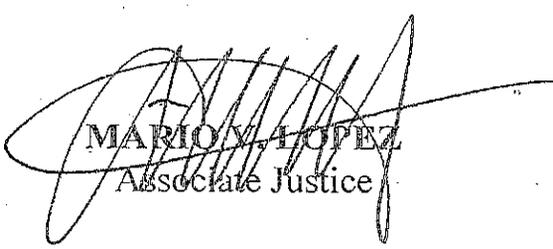

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

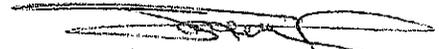

RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

(on leave)
HENRI JEAN PAUL B. INTING
Associate Justice

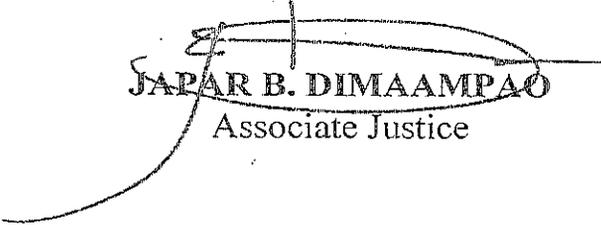

RODIL V. ZALAMEDA
Associate Justice

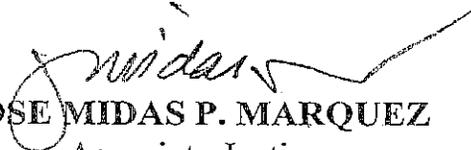

MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

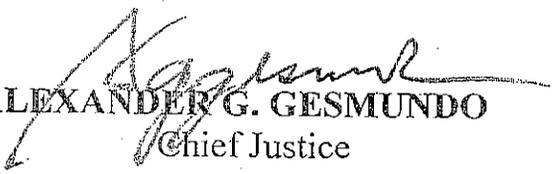

JAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice