

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated **MARCH 1, 2022**, which reads as follows:*

“G.R. No. 247867 (Benedicto S. Guia, Jr., Philip Niño P. Topacio, Flaviano DC. Dazo III, and Reynaldo S. Marte vs. Commission on Audit). — In the award of government procurement contracts under Republic Act (R.A.) No. 9184¹ and its Implementing Rules and Regulations (IRR), the recommendatory function of the Technical Working Group (TWG) of the Bids and Awards Committee (BAC) is limited to the technical aspect of the award. It is not the duty or function of the TWG to ensure that the BAC or the BAC Secretariat performed its duties and functions under our procurement law and rules.

Benedicto S. Guia, Jr. (Guia), Philip Niño P. Topacio, Flaviano DC. Dazo III, and Reynaldo S. Marte (collectively, petitioners) assail on *certiorari*, under Rule 64 in relation to Rule 65 of the Rules of Court, respondent Commission on Audit’s (COA) Decision No. 2015-013² dated January 28, 2015, which dismissed their Petition for Review³ for being filed out of time. Likewise assailed is the COA’s Resolution No. 2019-012⁴ dated February 20, 2019, denying petitioners’ Motion for Reconsideration⁵ dated January 12, 2016.

I

The factual antecedents are as follows:

Sometime in November and December 2009, Representatives Fredenil H. Castro (Second District of Capiz), Rufus B. Rodriguez (Second District of Cagayan de Oro City), Darlene R. Antonino-Custodio (First District of South Cotabato), and Roberto V. Puno (First District of Antipolo City)

¹ An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes.

² *Rollo*, pp. 27-30.

³ *Id.* at 96-106.

⁴ *Id.* at 31-36.

⁵ *Id.* at 107-123.

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separately requested the Department of Transportation and Communications (DOTC) to procure various IT equipment and peripherals to be delivered and used in their respective congressional districts.⁶

Accordingly, the DOTC published Invitations to Bid (ITB) with Reference Nos. 1107002, 1107004, 1107007, and 1107008 on the Philippine Government Electronic Procurement System (PhilGEPS) website on January 21, 2010.⁷

Upon the recommendation of the TWG, composed of herein petitioners, to the BAC, the contract was awarded to James Adrian Marketing, the lone bidder, for the amount of Php 6,634,603.39.⁸

However, upon audit by the COA, the Audit Team Leader (ATL) and Supervising Auditor (SA) of the DOTC Office of the Secretary issued Notice of Disallowance (ND) No. 10-003101(10)⁹ dated July 19, 2010, disallowing said payment on the ground that: (a) there was a simulated public bidding; (b) there was a splitting of government contract; and (c) the delivery of the subject equipment was done prior to the perfection of the purchase orders.¹⁰

As regards the first ground, the COA discovered that while the ITB was posted on PhilGEPS on January 21, 2010, the public bidding was conducted on December 1, 2009 or prior to said posting. Consequently, the COA held the following persons liable:

Name	Position/Designation	Nature of Participation in the Transaction
Sec. Leandro R. Mendoza	Secretary of DOTC	Approved the BAC Resolution awarding the contract
Assec. Domingo A. Reyes, Jr.	BAC Chairman	[Signed the BAC Resolution recommending award of the contract x x x]
Dir. Guillermo L. Leonardo	BAC Member	[Signed the BAC Resolution recommending award of the contract]
Dir. John R. Castriciones	BAC Member	
Dir. Rebecca S. Cacatian	BAC Member	
Roel V. Alsisto	BAC Member	
Geronimo V. Quintos	BAC Member	
Benedicto S. Guia, Jr.	TWG Head	Signed the TWG Report recommending award of the contract
Rommel Lloyd P. Martinez ¹¹	TWG Asst. Head	
Philip Niñajo P. Topacio	TWG Member	
Flaviano DC. Dazo III	TWG Member	

⁶ Id. at 90.

⁷ Id. at 39.

⁸ Id. at 38.

⁹ Id. at 86-87.

¹⁰ Id. at 86.

¹¹ TWG Asst. Head Rommel Lloyd P. Martinez opted to file a separate petition for *certiorari* (*Martinez v. Commission on Audit*, G.R. No. 246302), which We denied in a Resolution dated June 4, 2019 for being the wrong remedy.

Reynaldo S. Marte	TWG Member	
Ma. Marissa P. Malabag	Chief, Budget Division	Earmarked the allotment on the ABC, x x x
Dir. Venancio G. Santidad	Director, PSPMS	Recommended approval of the ABC, Purchase Order x x x
Edna C. Tapar	Chief Accountant	Certified the availability of fund on the Purchase Order X X X
Dir. Lydia S. Malvar	Director, Comptroller-ship Service	Noted on the ALOBS and co-signed the check for payment
James Adrian Marketing	Supplier	Payee ¹² (Emphases supplied)

On appeal, the COA National Government Sector (NGS) – Cluster D issued Decision No. 2011-010¹³ dated May 25, 2011, received by petitioners on **May 30, 2011**, affirming the subject ND but finding that the ATL and the SA failed to establish the second ground, *i.e.*, splitting of government contract.

Undeterred, petitioners filed a Petition for Review¹⁴ before the COA Commission Proper (CP) on **November 15, 2011**,¹⁵ or **169 days** after their receipt of the COA NGS – Cluster D Decision, thereby using a total of 338 days to file their appeal to the COA CP. Consequently, the COA CP, in Decision No. 2015-013 dated January 28, 2015, dismissed the petition for being filed out of time. Their subsequent consolidated motions for reconsideration were denied for lack of merit in Resolution No. 2019-012 dated February 20, 2019.

Hence, this petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court.

II

It is undisputed that petitioners failed to timely file their petition for review before the COA CP, using a total of 338 days, or 158 days more than the allowable six-month period under the 2009 Revised Rules of Procedure of the COA. Petitioners do not proffer any excuse and merely invoke this Court's power to relax the rigid rule on immutability of final judgments in order to serve substantial justice as enunciated in *Estalilla v. Commission on Audit*,¹⁶ *viz.*:

The settled rule is that courts are bereft of jurisdiction to review decisions that have become final and executory. The rule safeguards the immutability of a final judgment, and is tenaciously applied and adhered to in order to preclude the modification of the final judgment, even if the modification is meant to correct erroneous findings of fact and conclusions

¹² Id. at 87.

¹³ *Rollo*, pp. 37-45. Signed by Director IV Winnie Rose H. Encallado.

¹⁴ Id. at 96-106.

¹⁵ Id. at 96.

¹⁶ G.R. No. 217448, September 10, 2019.

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of law, and whether the modification is made by the court that rendered the judgments or by the highest court of the land. The evident objective of the rule is to definitively end disputes. Although the COA correctly cited the rule, the Court holds that the rule bows to recognized exceptions, like: (1) the correction of clerical errors; (2) the making of so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) in case of void judgments. The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.¹⁷ (Citations omitted)

The fact that petitioners did not even bother to advance any plausible reason for their failure to strictly adhere to the procedural rules of the COA clearly indicates that they have none. It is worth reminding that the assertion of ‘the interest of substantial justice’ is not a magic wand that will automatically compel this Court to suspend procedural rules.¹⁸ Nonetheless, We find it appropriate to relax the rule on immutability of final judgment considering that this case will directly affect matters of property and, more importantly, the merits of the case which, as We will discuss, are favorable to petitioners.

To recall, petitioners allege that as mere members of the TWG, they are not responsible for the publication of the ITB on the PhilGEPS website — the same being a function of the BAC¹⁹ or the BAC Secretariat²⁰ — and that the only participation of the TWG in the procurement process is to assist the BAC in the following: (1) review of the technical specifications, scope of work, and terms of reference; (2) review of bidding documents; (3) shortlisting of consultants; (4) eligibility screening; (5) evaluation of bids; (6) post-qualification; and (7) resolution of request for reconsideration.²¹ They claim that they acted in good faith and expected that the ITB was duly posted by the Secretariat on PhilGEPS as the same was the latter’s duty.

Section 12.1 of the 2009 Revised IRR of R.A. No. 9184, the prevailing rules during the procurement process subject of this case, provides that the role of the TWG is ‘to assist in the procurement process, particularly in the eligibility screening, evaluation of bids, and post-qualification.’

Eligibility screening or *eligibility check* is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder’s eligibility, the BAC uses non-

¹⁷ Id.

¹⁸ *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 235832, November 3, 2020.

¹⁹ The 2016 Revised IRR of R.A. No. 9184, Section 12.1(a).

²⁰ The 2016 Revised IRR of R.A. No. 9184, Section 14.1(f).

²¹ The 2016 Revised IRR of R.A. No. 9184, Section 12.1(m).

discretionary 'pass/fail' criteria, as stated in the Invitation to Bid and the Instructions to Bidders. The absence, incompleteness, or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.²²

Bid evaluation is the process of determining the Lowest Calculated Bid (LCB), which is done by establishing the correct calculated prices of the bids, through a detailed evaluation of the financial component of the bids, and the ranking of the total bid prices as calculated from the lowest to the highest.²³

Last but certainly not the least, *post-qualification* is the process of verifying, validating, and ascertaining all the statements made and documents submitted by the bidder with the LCB, which includes ascertaining the said bidder's compliance with the legal, financial, and technical requirements of the bid, using non-discretionary criteria as stated in the bidding documents.²⁴

On the other hand, the same section of the IRR provides that among the BAC's functions is to 'advertise and/or post the invitation to bid/request for expressions of interest' and to 'recommend the award of contracts.' Section 14.1(f) thereof likewise makes it a function of the BAC Secretariat to '[a]dvertise and/or post bidding opportunities, including bidding documents, and notices of awards.'

Posting of the ITB on PhilGEPS is not an empty requirement. Pursuant to the government's mandate to streamline the procurement process, the PhilGEPS was introduced with the objective of promoting transparency and efficiency and was created to serve as the primary source of information on all government procurement.²⁵ The purpose therefor is to ensure the widest possible dissemination in keeping with the principles of transparency and competitiveness.²⁶ Section 21.2.1(b) of the 2016 Revised IRR further mandates that the ITB shall be posted continuously on the PhilGEPS website, among others, for seven (7) calendar days starting on the date of advertisement.

Absent justifiable reasons, the posting of the ITB in the procuring entity's premises and advertisement thereof in newspapers of general nationwide circulation cannot cure the absence of posting on the PhilGEPS website.²⁷ Non-observance of such requirement renders the proceeding to which it relates illegal and void because Article 5 of the Civil Code of the

²² Government Procurement Policy Board (GPPB) Generic Procurement Manual (GPM) Vol. 2: Manual of Procedures for the Procurement of Goods and Services, p. 43.

²³ Id. at 57-59.

²⁴ Id. at 64.

²⁵ *Grageda v. Fact-Finding Investigation Bureau*, G.R. Nos. 244042, 244043 & 243644, March 18, 2021.

²⁶ R.A. No. 9184, Art. VII, Section 21.

²⁷ GPPB NPM No. 020-2015 dated October 7, 2015.

Philippines provides that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. R.A. No. 9184, having been enacted for the advancement of public welfare and to enhance transparency, undoubtedly contains mandatory provisions, such as the aforementioned provision.²⁸

Regardless of the version of the IRR, it is clear that the function of advertising and posting the ITB belongs to the BAC and the BAC Secretariat. Even the COA acknowledges that it is the BAC which is responsible for ensuring that the Invitation to Apply for Eligibility and to Bid is advertised and posted in accordance with law.²⁹ The TWG acts merely in an assisting capacity throughout the procurement process, particularly in the eligibility screening, evaluation of bids, and post-qualification stages. The functions of the TWG as enumerated under the 2009 and 2016 Revised IRRs do not require it to ascertain whether the BAC or the BAC Secretariat has performed their respective roles in advertising and/or posting the ITB.

In fact, the Government Procurement Policy Board (GPPB), through its Technical Support Office, opined in Non-Policy Matter No. 020-2015 that although non-compliance by the BAC or the BAC Secretariat with the procurement law and rules, such as the advertising and posting requirements, may be discovered during the post-qualification stage, this process does not cover the verification, validation, and ascertainment of the BAC or the BAC Secretariat's compliance with said law and rules. The same holds true even prior to the post-qualification stage.³⁰ As the government body tasked to protect national interest in all matters affecting public procurement and to ensure proper implementation by procuring entities of R.A. No. 9184, its IRR, and all other relevant rules and regulations,³¹ the GPPB possesses technical knowledge, experience and expertise in the application of said law and rules.³² Accordingly, its opinions relative to public procurement, while not binding, are persuasive and entitled to respect by this Court.

In Resolution No. 2019-012, the only reason stated by the COA in making the TWG members liable is that 'the BAC Secretariat is acting on behalf of the BAC and TWG. The said omission committed by the BAC Secretariat renders the procurement process invalid, for which the BAC members and the TWG shall be held liable.'³³ This statement is inaccurate.

The TWG is independent of the BAC Secretariat as both entities perform distinct and separate functions. Neither one exercises oversight

²⁸ GPPB NPM No. 24-2016 dated March 21, 2016.

²⁹ <https://www.coa.gov.ph/phocadownload/userupload/ABC-Help/Various_Transaction/a65.htm> (visited February 23, 2022).

³⁰ GPPB NPM No. 020-2015 dated October 7, 2015.

³¹ R.A. No. 9184, Art. XX, Section 63; the 2016 Revised IRR of R.A. No. 9184, Rule XX, Section 63.1.

³² GPPB NPM No. 072-2017 dated December 21, 2017.

³³ *Rollo*, p. 34.

over the other. The only duty of the BAC Secretariat *vis-à-vis* the TWG is to provide administrative support to it. On the other hand, the primary function of the TWG is to submit its report and findings to the BAC for the latter's consideration.³⁴ As regards the recommendation of the award, the responsibility of the TWG is, at most, to assist the BAC in preparing the resolution recommending such award, **with regard to the technical aspect**, if necessary.³⁵ The TWG's recommendatory function being limited to the technical aspect, it could not, therefore, be faulted for failing to ensure that the BAC or BAC Secretariat performed their duties and functions under the procurement law and rules.

In *Office of the Ombudsman v. Chipoco (Chipoco)*,³⁶ We did not hesitate to sanction the TWG head for failure of the TWG to perform its function. We held that both the BAC and the TWG heads may be held administratively liable for failing to conduct post-qualification proceedings which resulted in the procurement of a vehicle which the winning bidder did not own. We reminded that '[t]he BAC and [the] BAC TWG x x x are duty bound to ensure that every government procurement abides by the standards and procedure set forth under R.A. No. 9184 and its implementing rules and regulations. They exist precisely to preserve the sanctity of the competitive bidding process and protect their mother agency or local government unit against the possibility of entering into anomalous or disadvantageous contracts or agreements.'³⁷ (Citation omitted)

Chipoco, however, should be contrasted with the present case. Here, the TWG did not fail to perform its function which is to assist in the technical aspect of the procurement process. It would be unfair to expect the TWG to ensure compliance even with the administrative requirements, such as advertising and posting, which are properly within the domain of the BAC and the BAC Secretariat. While all three entities are equally tasked with ensuring that government procurements abide by the procurement law and rules, they could only reasonably be expected to ensure compliance within the bounds of their separate and distinct functions.

Under Section 103 of Presidential Decree No. 1445, or the Government Auditing Code of the Philippines, '[e]xpenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be **directly responsible** therefor.'

Moreover, Section 16.1 of the 2009 Rules and Regulations on the Settlement of Accounts states that '[t]he Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; **(b) the duties and**

³⁴ GPPB NPM No. 058-2017 dated December 21, 2017.

³⁵ GPPB GPM Vol. 1: Guidelines on Establishing Procurement Systems and Organizations, p. 27.

³⁶ G.R. Nos. 231345 and 232406, August 19, 2019.

³⁷ Id.

responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government x x x.'

From the foregoing discussion, there can be no doubt that on the basis of their duties and responsibilities as TWG members as well as the extent of their participation in the disallowed transaction, petitioners are not directly responsible for the expenditure, which resulted from the simulated bidding. Considering Our finding, We need not delve into their argument on *quantum meruit*.

On a final note, We are well aware that TWG Assistant Head Rommel Lloyd P. Martinez (Martinez) opted to file a separate Petition for *Certiorari*,³⁸ which We denied in a Resolution dated June 4, 2019 for being the wrong remedy. He, thus, finds himself in a peculiar situation where his colleagues in the TWG, including his superior, petitioner Benedicto S. Guia, Jr., are declared not liable for the same transaction where he is involved, while COA Decision No. 2015-013 has become final and executory as to him. Since We have already relaxed the rule on immutability of final judgment in favor of herein petitioners, We find it just and equitable, *pro hac vice*, to extend the benefit of our ruling to Martinez and declare him likewise not liable for the disallowed transaction subject of this case.

While We declared in *Knights of Rizal v. DMCI Homes, Inc.*³⁹ that a *pro hac vice* decision violates the equal protection clause because by mandate of law every decision of the Court forms part of the legal system, there are occasions⁴⁰ when this Court has seen fit to limit the applicability of portions of its decisions, particularly as regards procedural defects, in order to prevent injustice or serve the ends of substantial justice while being careful not to encourage a similar situation or practice in the future, such as in this case where one of the persons involved chose to defend himself separately by filing a different albeit wrong remedy. Moreover, extending the benefit of Our ruling to Martinez would not violate the equal protection clause because Our pronouncements on the main issue in this case still form part of the law of the land and may be cited as precedent. On the contrary, by allowing Martinez to benefit from Our ruling, We are treating him in the same manner as herein petitioners who are his co-members in the TWG, and thus, similarly situated.

WHEREFORE, premises considered, Decision No. 2015-013 dated January 28, 2015 and Resolution No. 2019-012 dated February 20, 2019 of respondent Commission on Audit are **AFFIRMED with MODIFICATION**. Petitioners Benedicto S. Guia, Jr., Philip Niño P.

³⁸ Docketed as G.R. No. 246302, entitled *Martinez v. Commission on Audit*.

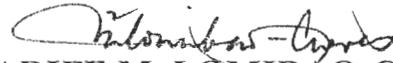
³⁹ 809 Phil. 453, 533 (2017).

⁴⁰ *Palao v. Florentino International, Inc.*, 803 Phil. 393, 404 (2017); *Philippine Public School Teachers Association v. Heirs of Iligan*, 528 Phil. 1197, 1212 (2006).

Topacio, Flaviano DC. Dazo III, and Reynaldo S. Marte are declared **NOT LIABLE** for the disallowed transaction.

In the interest of substantial justice, petitioner in G.R. No. 246302, Rommel Lloyd P. Martinez, is likewise declared **NOT LIABLE** for the same disallowed transaction.” (45)

By authority of the Court:



MARIFE M. LOMIBAO-CUEVAS

Clerk of Court MSM

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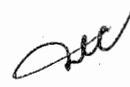
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