

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JULY 11, 2023**, which reads as follows:

“G.R. No. 249090 (Mark T. Lapid, Miguelita A. Mariano, Laura A. Garcia, Racquel A. Gaerlan, Guiller B. Asido, Ivy V. Asetre, and Teresita R. Co, Petitioners, v. Commission on Audit, Respondent). –

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RESOLUTION

This is a Petition for *Certiorari*¹ filed by petitioners Mark T. Lapid (**Lapid**), Miguelita A. Mariano (**Mariano**), Laura A. Garcia (**Garcia**), Racquel A. Gaerlan (**Gaerlan**), Guiller B. Asido (**Asido**), Ivy V. Asetre (**Asetre**), and Teresita R. Co (**Co**) (collectively, **the petitioners**) to assail the Commission on Audit’s (**COA**) Decision No. 2018-059,² dated January 23, 2018. The COA upheld the Notice of Disallowance (**ND**) No. 2013-02 (2011)³ dated January 3, 2013, disallowing the payments made by the Tourism Infrastructure and Enterprise Zone Authority (**TIEZA**) to Kabukiran Garden for the Conceptualization, Supply, and Installation of Materials and Labor for the 2011 Christmas Decorations and Lightings for the Department of Tourism Building, Club Intramuros, and their Environs (**Project**).

The Facts

On November 11, 2011, TIEZA issued Resolution No. R-11-11-11,⁴ authorizing the allocation of ₱2,500,000.00 for the Project.

¹ *Rollo*, pp. 3–48.

² *Id.* at 35–40; signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

³ *Id.* at 43–44.

⁴ *Id.* at 45–47.

Upon the recommendation of its Bids and Awards Committee, TIEZA awarded the contract for the Project to Kabukiran Garden through direct contracting.⁵ On December 6, 2011, TIEZA and Kabukiran Garden entered into a Memorandum of Agreement (MOA),⁶ under which Kabukiran Garden undertook to perform the following scope of work:

The successful implementation of this Project calls for the provision of the following:

1. Conceptualization and design of the Christmas decorations and lightings[;]
2. Supply and(*sic*) materials and labor for the implementation of the Installation of Christmas Decorations and Lightings;
3. Test, Commission[,] and Turn Over the completed installation of Christmas Decorations and Lightings; [and]
4. Decommission, dismantle[,] and deposit for storage the materials used for the project to a location to be identified by the GSD.⁷

TIEZA paid Kabukiran Garden a total of ₱2,339,958.19 for the Project.⁸

On January 3, 2013, the COA Audit Team issued the assailed ND, disallowing the payment of ₱2,339,958.19 to Kabukiran Garden on the ground of the unjustified resort to direct contracting. The ND pertinently states:

[T]he award of the Project under the Direct Contracting mode was not in accordance with Section 50(a) of the IRR of 9184 since the works to be done do not fall under any of the conditions enumerated therein. The scope of work was not patented as the same can be provided by other contractors.⁹

The COA Audit Team held Kabukiran Garden, as payee, and the petitioners, as officers of TIEZA, liable for the disallowed amount. At the time material to this case, Mariano, Garcia, and Lapid were the Officers-in-Charge of the Infrastructure Sector, the Officer-in-Charge of the Financial Services Department, and the Chief Operating Officer of TIEZA, respectively. Asido, Asetre, Gaerlan, and Co, together with Mariano, were

⁵ *Id.* at 191, Notice of Award.

⁶ *Id.* at 183–186.

⁷ *Id.* at 184.

⁸ *Id.* at 43, Notice of Disallowance No. 2013-02 (2011).

⁹ *Id.*

members of TIEZA's Bids and Awards Committee.¹⁰

The petitioners received a copy of the ND on March 1, 2013.¹¹

On August 30, 2013, the petitioners filed with the COA Corporate Government Sector-Cluster 4 (CGS) a Motion for Extension to File an Appeal, praying that they be given an additional period of 15 days within which to file their appeal.¹² On September 16, 2013, the petitioners filed their Appeal.¹³

The Ruling of the CGS

On August 11, 2015, the CGS rendered Decision No. 2015-18,¹⁴ dismissing the petitioners' appeal for being filed out of time considering that the petitioners filed their Motion for Extension to File an Appeal two days after the expiration of the six-month reglementary period to file an appeal. Moreover, the petitioners' Motion was not accompanied with payment of the requisite docket fees.¹⁵

On September 23, 2015, the petitioners elevated the case to the COA Proper through a Petition for Review.¹⁶

The Ruling of the COA

In its Decision No. 2018-059,¹⁷ dated January 23, 2018, the COA affirmed the Decision of the CGS. The dispositive portion of the COA Decision reads:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for having been filed out of time and for lack of merit. Accordingly, Commission on Audit Corporate Government Sector-Cluster 4 Decision No. 2015-18 dated August 18, 2015, sustaining Notice of Disallowance No. 2013-02 (2011) dated January 3, 2013, on the payment for the 2011 Christmas Decorations and Lightings Project in the amount of [P]2,339,958.19, is **AFFIRMED**.¹⁸ (Emphasis in the original)

¹⁰ *Id.* 43-44.

¹¹ *Id.* at 17, COA CGS Decision No. 2015-18.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 17-19; penned by Director IV Leila S. Paras.

¹⁵ *Id.* at 18-19.

¹⁶ *Id.* at 20-26.

¹⁷ *Id.* at 35-39.

¹⁸ *Id.* at 38-39.

Although it ruled that the CGS correctly dismissed the petitioners' appeal for having been filed out of time, the COA, nevertheless, decided the case on the merits. The COA rejected the petitioners' contention that the award of the Project to Kabukiran Garden through direct contracting was in accordance with Section 50(a) of Republic Act No. (RA No.) 9184,¹⁹ or the Government Procurement Reform Act. According to the COA, the petitioners failed to show that the procurement for the design, conceptualization, and supply of Christmas decorations are patented and offered exclusively by Kabukiran Garden. Thus, the COA found that the TIEZA's resort to direct contracting was unwarranted.²⁰

The Issue

Did the COA commit grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the ND?

The Ruling of the Court

The Court denies the Petition.

At the outset, it bears stressing that the general policy of the Court is to sustain the decisions of administrative authorities, not only on the basis of the doctrine of separation of powers, but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.²¹

The Court finds that the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the payments made to Kabukiran Garden for the Project.

*The ND has attained finality and thus
can no longer be disturbed*

The 2009 Revised Rules of Procedure of the COA²² provides that a notice of disallowance may be appealed to the Director having jurisdiction over the government agency audited within six months from receipt

¹⁹ Entitled "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.

²⁰ *Rollo*, p. 38.

²¹ *Menzon v. Commission on Audit*, G.R. No. 241394, December 9, 2020.

²² Approved on September 15, 2009.

thereof.²³ An appeal will toll the running of the six-month reglementary period.²⁴ Without a timely appeal, the disallowance shall lapse into finality. Thereafter, the aggrieved party may request the COA Proper to review the Director's ruling within the time remaining from the original six-month reglementary period.²⁵

Records reveal that the ND subject of this Petition had already attained finality in view of the petitioners' failure to timely file an appeal therefrom.

The petitioners received the ND on March 1, 2013. Thus, they only had until August 28, 2013, within which to file their appeal. On August 30, 2013, two days after the reglementary period, the petitioners filed a motion for extension, which was not acted upon by the CGS. Thereafter, on September 16, 2013, the petitioners filed their appeal.

Clearly, the petitioners' motion for extension was filed after the expiration of the time sought to be extended. Hence, there was no more period to extend. Moreover, the records are bereft of any explanation for the petitioners' belated filing of their motion for extension. Thus, the CGS cannot be faulted for dismissing the petitioners' appeal outright for being filed out of time.

Settled is the rule that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the assailed judgment final and executory.²⁶

As a result of the petitioners' failure to timely file an appeal, the ND had lapsed into finality. Time and again, the Court has held that:

“[A] decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact

²³ Rule IV, Sec. 8, which reads:

Section 8. Finality of the Auditor's Decision. - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof. Also, Rule V, Sec. 4 reads:

Section 4. *When Appeal Taken* - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

²⁴ Rule V, Sec. 5.

²⁵ Rule VII, Sec. 3, which reads:

Section 3. *Period of Appeal*. - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB. See *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222129, February 2, 2021.

²⁶ *DENR Employees Union v. Abad*, G.R. No. 204152, January 19, 2021.

and law, and whether it be made by the court that rendered it or by the Highest Court of the land.”²⁷

While there are exceptions to the application of this principle, none of which properly obtains in this case.

On this score alone, the Petition must be denied.

However, even if the Court were to evaluate the merits of the case, the Petition would still fail.

TIEZA’s resort to direct contracting was unwarranted

RA No. 9184 governs all government procurement. The law aims to ensure transparency, competitiveness, efficiency, and accountability in the procurement process. To eliminate any suspicion of favoritism or partiality in the execution of public contracts, as a general rule, the law requires that all government procurement must undergo competitive bidding.²⁸ However, recourse to alternative methods of procurement, such as direct contracting, is allowed subject to certain conditions.²⁹

It is undisputed that no competitive bidding was conducted in this case. Thus, it is incumbent upon the petitioners to establish that the conditions for the resort to direct contracting under the law were met. Settled is the rule that the party who invokes coverage under the exception to a general rule carries the burden to prove the fulfillment of the requisites thereof.³⁰

Direct contracting is defined as a method of procurement that does not require elaborate bidding documents because the supplier is simply asked to submit a price quotation or a *pro-forma* invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.³¹

Section 50 of RA No. 9184 and its Implementing Rules and Regulations (IRR) provide for the conditions under which a resort to direct

²⁷ *Antone v. People*, 820 Phil. 1154, 1161 (2017).

²⁸ Republic Act No. 9184 (2003), Sec. 10 provides that “[a]ll Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.”

²⁹ *Paita v. Task Force Abono Field Investigation Office*, G.R. No. 235595, December 7, 2022.

³⁰ *Id.*

³¹ RA No. 9184, Sec. 48(b), provides:

b. *Direct Contracting, otherwise known as Single Source Procurement* - a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a *pro-forma* voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

contracting may be made. In their Petition, the petitioners maintain that the award of the Project to Kabukiran Garden through direct contracting was justified under Section 50(a) of RA No. 9184 and its IRR.³²

The Court is not persuaded.

Section 50(a) of RA No. 9184 and its IRR pertinently provide:

SECTION 50. Direct Contracting. — Direct Contracting may be resorted to only in any of the following conditions:

- (a) **Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item; x x x.**

SECTION 50. Direct Contracting. —

Direct Contracting or single source procurement is a method of procurement of goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned procuring entities under any of the following conditions:

- (a) **Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item; x x x. (Emphasis supplied)**

To operationalize the parameters provided above, the Government Procurement Policy Board's Manual of Procedures for the Procurement of Goods and Services³³ requires the conduct of a survey of the industry involved:

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the Procuring Entity must justify the necessity for an item that may only be procured through

³² Rollo, p. 6, Petition for *Certiorari*.

³³ Manual of Procedures for the Procurement of Goods and Services, Volume 2 (2010), at <<http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf>> (last accessed on March 27, 2023).

Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms. (Emphasis supplied)

In *Task Force Abono-Field Investigation Office v. Durusan*,³⁴ the Court held that the Bids and Awards Committee of the procuring entity bears the burden of justifying its resort to direct contracting by conducting an industry survey and determining the supply source to confirm the exclusivity of the goods or services to be procured. It must likewise be able to prove that there is no suitable alternative that can be obtained at a lower cost.

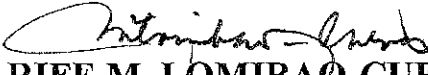
The petitioners miserably failed to show that Kabukiran Garden has an interest in the conceptualization, supply, and installation of Christmas decorations which is protected by intellectual property laws and thus cannot be offered by other entities. As aptly observed by the COA, providers of Christmas decorations are abundant in the Philippines. There is likewise no showing that a survey of the industry was conducted to ensure the exclusivity of the source of the procured services and that there is no suitable alternative that can be obtained at a lower cost.

It bears stressing that the resort to an alternative mode of procurement such as direct contracting instead of competitive bidding must be clearly justified.³⁵

Accordingly, the Court finds that the COA did not err, much less commit any grave abuse of discretion, when it disallowed the subject expenditures for failure to observe the proper procedure for procurement under RA No. 9184.

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The Decision No. 2018-059, dated January 23, 2018, of the Commission on Audit is **AFFIRMED**. (13)

By authority of the Court:


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

³⁴ G.R. Nos. 229026-31, April 27, 2022.

³⁵ *Id.*

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