THIRD DIVISION

[G.R. No. 216771; March 28, 2022]

HEROLD G. UBALDE, *Petitioner*, *v.* **HON. CONCHITA C. MORALES, in her capacity as the Ombudsman,** *Respondent*.

D E C I S I O N

LOPEZ, J., *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolutions dated July 24, 2014[2] and February 12, 2015[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 127743, which affirmed the Joint Resolution[4] dated May 30, 2012 and Order[5] dated November 5, 2012 of the Ombudsman in OMB-C-A-11-0758-L, finding petitioner Herold G. Ubalde (*Ubalde*) and several others administratively liable for serious dishonesty and conduct prejudicial to the best interest of the service.

The Facts

The present petition is an offshoot of the several cases arising from the so-called "*chopper scam*," which involved the procurement of second-hand light police helicopters (*LPOHs*) for use of the Philippine National Police (*PNP*). At the time material to the case, Ubalde was the Director of the PNP Legal Services. In such capacity, he became a regular member of the PNP National Headquarters Bids and Awards Committee (*NHQ-BAC*).[6]

---

[1] *Rollo*, Vol. I, pp. 13-55.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy, concurring; *id.* at 100-105.

[3] *Rollo*, Vol. I, pp. 70-71.

[4] *Id.* at 321-464.

[5] *Id.* at 198-242.

[6] *Id.* at 101.

Supreme Court E-Library

The PNP, in relation to the 1st phase of its modernization program, included in its 2008 Annual Procurement Plan the purchase of three (3) LPOHs with an approved budget of ₱105,000,000.00.[7] Subsequently, after several amendments, the National Police Commission (*NAPOLCOM*) issued Resolution No. 2008-260[8] dated May 5, 2008, which prescribed the minimum standard technical specifications of the LPOHs, to wit:

I. SPECIFICATIONS

Power Plant	:	Piston
Power Rating	:	200 hp (minimum)
Speed	:	100 Knots (minimum)
Range	:	300 miles (minimum)
Endurance	:	3 Hours (minimum)
Service Ceiling (Height Capability)	:	14,000 Feet (maximum)
T/O Gross Weight	:	2,600 lbs. (maximum)
Seating Capacity	:	1 Pilot + 3 pax (maximum)
Ventilating System	:	Air conditioned
II. AIRCRAFT INSTRUMENTS	:	Standard to include Directional Gyro Above Horizon with Slip Skid Indicator and Vertical Compass[9]

After two failed public biddings based on the prescribed specifications, the NHQ-BAC recommended that the procurement of the helicopters be made through negotiation pursuant to Section 53(a) of the Implementing Rules and Regulations-A (*IRR-A*) of Republic Act No. 9184[10] (*R.A. No. 9184*).

On May 8, 2009, the PNP Negotiation Committee met with Manila Aerospace Products Trading (*MAPTRA*) Sole Proprietorship, which proposed to deliver one (1) fully-equipped

---

[7] *Id.* at 365.

[8] *Rollo*, Vol. II, pp. 830-831.

[9] *Id.* at 830.

[10] Otherwise known as the "*Government Procurement Act*."

Supreme Court E-Library

and two (2) standard helicopters for ₱105,000,000.00, and BEELINE, which proposed the delivery of two (2) standard helicopters for ₱119,000,000.00. Considering that the proposals did not meet PNP's minimum requirement of three (3) equipped LPOHs, the negotiated procurement was declared a failure.[11]

The successive failure in the biddings prompted Special Action Force (*SAF*) Director Leocadio Santiago, Jr. (*Santiago, Jr.*) to issue a Memorandum[12] dated May 14, 2009, requesting the procurement of at least one (1) equipped LPOH and two (2) standard LPOHs, instead of the original three (3) equipped LPOHs. The request was favorably indorsed by Police Director Luizo Ticman (PDIR *Ticman*) to the NHQ-BAC, which in turn, issued BAC Resolution No. 2009-22[13] dated May 29, 2009, recommending the purchase of at least one (1) equipped and two (2) standard LPOH units through negotiated procurement under Section 53(b) of IRR-A of R.A. No. 9184.

Subsequently, PDIR Ticman issued a Request for Quotation for the negotiated procurement under Section 53 (b) of IRR-A of R.A. No. 9184 of one (1) fully-equipped and two (2) standard LPOHs from legally, technically, and financially competent and PhilGEPS-registered suppliers and manufacturers.[14]

Meanwhile, on June 20, 2009, the Securities and Exchange Commission issued a Certificate of Incorporation[15] to an entity that goes by the corporate name Manila Aerospace Products Trading Corporation (*MAPTRA Corporation*).

On June 15, 2009, a negotiation conference was held. MAPTRA Sole Proprietorship participated in the negotiations and proposed to deliver one (1) fully-equipped LPOH for ₱42,312,913.10 and two (2) standard LPOHs for ₱62,672,086.90, or a total of

---

[11] *Rollo*, Vol. I, p. 370.

[12] *Rollo*, Vol. II, p. 834.

[13] *Rollo*, Vol. I, pp. 370-371.

[14] *Id.* at 371.

[15] *Id.*

Supreme Court E-Library

₱104,985,000.00 for the three (3) helicopters.[16] The proposal was accepted by the Negotiation Committee, which stated in its Resolution No. 2009-04 that the LPOHs were consistent with the NAPOLCOM specifications; the total price was within the approved budget; and MAPTRA Sole Proprietorship was a legally, technically, and financially capable supplier of helicopters, having been engaged in the business for many years and with available and existing service facilities.[17] The Negotiation Committee then formally recommended the award of the contract to MAPTRA Sole Proprietorship.

On July 9, 2009, the NHQ-BAC issued Resolution No. 2009-36,[18] which affirmed the Negotiation Committee's recommendation to recommend to the PNP Chief the award of the supply contract to MAPTRA Sole Proprietorship. PNP Chief Jesus Verzosa (*Versoza*) subsequently approved the Resolution.[19]

As a result, the PNP, represented by PDIR Ticman, and MAPTRA Corporation entered into a Supply Contract[20] dated July 23, 2009 (*Supply Contract*). MAPTRA Corporation obligated itself to deliver to the PNP brand new units of one (1) fully-equipped and two (2) standard LPOHs, in exchange for the contract sum of ₱104,985,000.00. Under the supply contract, the parties agreed that full payment shall be made through a disbursement voucher after the final acceptance of the units, and that partial payment for partial delivery is not allowed.[21] On August 4, 2009, Hilario B. De Vera, President and Managing Head of MAPTRA Sole Proprietorship, executed a Certification under oath stating that the three (3) LPOHs subject of the Supply Contract are brand new, and

---

[16] *Id.* at 372.

[17] *Id.* at 374.

[18] *Rollo*, Vol. II, pp. 839-840.

[19] *Rollo*, Vol. I, p. 375.

[20] *Rollo*, Vol. II, pp. 867-871.

[21] *Rollo*, Vol. I, pp. 375-376.

that his statement is being made as part of the post-qualification requirements of MAPTRA Sole Proprietorship.[22]

Consequently, Versoza issued Purchase Order No. 0(M)220909-017, ordering MAPTRA Sole Proprietorship to deliver the three (3) LPOHs to the PNP.[23] On September 24, 2009, MAPTRA Sole Proprietorship delivered two (2) units of R44 Standard LPOHs to the PNP.[24]

After the delivery of the LPOHs, the Weapons Tactics and Communications Division (*WTCD*) of the Directorate for Research and Development of the PNP was tasked to inspect and examine the two (2) delivered units to see if they conformed to the PNP's specifications. Subsequently, the WTCD issued Report No. T-2009-04-A, which stated that the method used for the inspection of the two (2) R44 Raven 1 LPOHs was "Visual and Functional." The WTCD made a table comparing the required specifications *vis-à-vis* those of what was actually delivered, with remarks on whether the prescribed specifications were met. The table showed that the delivered LPOHs conformed with most of the required specifications. With respect to the three-hour endurance requirement, however, the WTCD stated that there was no available data to compare the specifications required with what was delivered. The WTCD also noted that the delivered units were not air-conditioned, contrary to what was prescribed by the NAPOLCOM. It remarked that the ventilating system of the delivered units were that of a standard helicopter.[25]

On November 9, 2009, the NHQ-BAC issued Resolution No. 2009-70,[26] recommending the amendment of the supply contract to allow partial payment to MAPTRA Sole Proprietorship for partial delivery. Versoza approved the resolution. Subsequently,

---

[22] *Id.* at 376.

[23] *Id.* at 377.

[24] *Id.* at 378.

[25] *Id.* at 378-383.

[26] *Id.* at 383-384.

Supreme Court E-Library

the PNP Inspection and Acceptance Committee (*PNP-IAC*) issued Resolution No. IAC-09-045 stating that the delivered units conformed with the NAPOLCOM specifications and passed the criteria indicated in WTCD Report No. T-2009-04-A.[27]

Consequently, the PNP paid MAPTRA Corporation the amount of ₱49,680,401.80. After the remaining one (1) equipped LPOH was delivered and accepted by the PNP-IAC, the PNP again paid MAPTRA Corporation the amount of ₱49,680,401.80.[28]

On November 5, 2011, the Field Investigation Office (*FIO*) of the Ombudsman filed criminal and administrative complaints against Ubalde and other high-ranking government officials for alleged anomaly and irregularities surrounding the sale of the LPOHs to the PNP. The complaint alleged that the sale caused undue injury to the government of around ₱34,000,000.00 and gave unwarranted benefits to certain individuals. According to the complaint, the irregularity attending the sale could not have been possible without the cooperation of and mutual help among NAPOLCOM and PNP personnel and officials, including Ubalde.[29]

In its Joint Resolution[30] dated May 30, 2012, the Ombudsman found Ubalde and several others guilty of serious dishonesty and conduct prejudicial to the best interest of the service, and imposed upon them the penalty of dismissal from service, with forfeiture of retirement benefits and perpetual disqualification to hold public office.[31] The Ombudsman held:

> Applying now the foregoing criteria to the present case, there exist[s] *substantial* evidence to show that respondents Santiago, Jr., Ubalde, Villafuerte, Loreto, Saligumba, Antonio, Piano, Gongona, Paatan, Lukban, Recometa, Gaspar, Padojinog, and Dy, while in the

---

[27] *Id.* at 384-385.

[28] *Id.* at 385-386.

[29] *Id.* at 326.

[30] *Id.* at 321-464.

[31] *Id.* at 463.

Supreme Court E-Library

exercise of their respective public duties and functions as participants to the questioned PNP procurement, conspired with each other to falsify documents, skirt procedures, circumvent rules, and defraud the government of millions of pesos in order to ultimately ensure the unwarranted benefit and pecuniary gain in favor of private respondents [D]e Vera, MAPTRA, and FG [Arroyo]. These unlawful acts, as exhaustively discussed earlier, certainly constitute *serious* dishonesty and conduct prejudicial to the best interest of the service in that it caused severe pecuniary damage and prejudice to the government. Its immense debilitating effect on the government service certainly deserves the curtailment of respondents' privilege to continue holding public office.[32]

Ubalde filed a Motion for Reconsideration, which the Ombudsman denied in its Order[33] dated November 5, 2012.

Aggrieved, Ubalde filed a petition for review before the CA. In its Resolution[34] dated July 24, 2014, the CA denied the appeal and affirmed the Ombudsman's ruling.

The CA found that the following factual findings of the Ombudsman were supported by substantial evidence: (1) MAPTRA Corporation was ineligible and not qualified to supply LPOHs because (a) its primary and secondary purposes were only to sell aircraft parts and spare parts and aircraft maintenance and repair, respectively, and not to directly sell new helicopters; (b) its only similar contract with the PNP was only worth ₱15,295,000.00, or below the law's requirement of at least 50% of the approved budget for the contract to be subject of bidding; (c) MAPTRA Corporation's net financial contracting capacity was negative; (d) it did not submit a commitment from a licensed bank extending to it a credit line and a cash deposit certificate in the amount of at least 10% of the approved budget for the contract; and (2) the LOPHs delivered by MAPTRA Corporation did not meet the standards prescribed by the NAPOLCOM.[35]

---

[32] *Id.* at 457-458. (Italics in the original)

[33] *Id.* at 198-242.

[34] *Id.* at 101-105.

[35] *Id.* at 102-103.

Supreme Court E-Library

The CA then affirmed the Ombudsman's holding that Ubalde, along with the other members of the NHQ-BAC, had the duty to ensure that MAPTRA Corporation is a legally, technically, and financially capable supplier of LPOHs.[36] With respect to Ubalde, for his failure to perform this duty, the CA found him guilty of serious dishonesty and conduct prejudicial to the best interest of the service.

The CA denied Ubalde's motion for reconsideration in its Resolution[37] dated February 12, 2015.

Hence, this Petition.

Ubalde argues that the mere signing of NHQ-BAC Resolution No. 2009-36, affirming the recommendation of the Negotiation Committee to award the contract to MAPTRA Sole Proprietorship, cannot amount to serious dishonesty and conduct prejudicial to the best interest of the service.[38]

Ubalde avers that he only relied on the determination made by the Negotiation Committee that MAPTRA Sole Proprietorship is a legally, technically, and financially capable supplier of helicopters. He refers to the affidavit executed by PDIR Ticman, in his capacity as the Chairman of the Negotiation Committee and Vice-Chairman of the NHQ-BAC, stating that the documents submitted by MAPTRA Sole Proprietorship were checked thoroughly by the BAC Legal and Technical Working Group (*BAC Legal-TWG*) which in turn, found the same to be in order and conforming with the requirements of the Negotiation Committee.[39] He insists that following the doctrine in *Arias v. Sandiganbayan*,[40] he had the right to rely on the evaluation of their subordinates or the members of the BAC Legal-TWG.[41]

---

[36] *Id.* at 104.

[37] *Id.* at 6-7.

[38] *Id.* at 29.

[39] *Id.* at 30-31.

[40] 259 Phil. 794 (1989).

[41] *Rollo*, Vol. I, p. 38.

Supreme Court E-Library

Ubalde further argues that contrary to the finding of the Ombudsman, the eligibility requirements under Sections 23.11.1(2) and 23.11.1(3) of the IRR-A of R.A. No. 9184 do not apply in negotiated procurement by reason of emergency.[42]

In its Comment[43] dated August 10, 2015, the Ombudsman, through the Office of the Solicitor General, counters that only substantial evidence is required to sustain a finding of administrative liability.[44] In the case of Ubalde, he did not faithfully comply with his duty as a member of the NHQ-BAC when he affirmed the recommendation of the Negotiation Committee to award the contract to MAPTRA Sole Proprietorship, an entity which was clearly ineligible and unqualified to supply the PNP with LPOHs.[45] Contrary to Ubalde's assertion, negotiated procurement does not dispense with the requirement that the supplier be technically, legally, and financially capable.[46]

Issue

The sole issue for this Court's resolution is whether the Court of Appeals erred in finding Ubalde administratively liable for serious dishonesty and conduct prejudicial to the best interest of service.

The Court's Ruling

The petition lacks merit.

It is well settled that only questions of law may be entertained in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court, not being a trier of facts, is not required to calibrate and weigh the evidence on record all over again.[47] Findings of fact of the Ombudsman, when affirmed by the CA,

---

[42] *Id.* at 31.

[43] *Rollo*, Vol. II, pp. 886-912.

[44] *Id.* at 904.

[45] *Id.* at 905.

[46] *Id.* at 910.

[47] See *Diaz v. Office of the Ombudsman*, 834 Phil. 735, 742 (2018).

Supreme Court E-Library

as in this case, are conclusive and binding on this Court.[48] While there are recognized exceptions[49] to this rule, none of them apply to the present case.

In administrative cases, the quantum of proof required to sustain a finding of guilt is only substantial evidence.[50] Substantial evidence has been defined as "such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently."[51] Indeed, "the standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."[52]

---

[48] *Fajardo v. Office of the Ombudsman*, 693 Phil. 269, 281 (2012).

[49] (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both appellants and appellees; (7) when the findings of fact of the CA are at variance with those of the trial court, in which case this Court has to review the evidence in order to arrive at the correct findings based on the record; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondents; (10) when the findings of fact of the CA are premised on the supposed absence of evidence and are contradicted by the evidence on record; and (11) when the trial court has overlooked certain material facts and circumstances which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt entitling the accused to acquittal. [*Napoles v. Office of the Ombudsman (Visayas)*, 620 Phil. 690, 695-696 (2009), citing *Nombrefia v. People*, 542 Phil. 355 (2007).]

[50] *Office of the Ombudsman v. Castro*, 759 Phil. 68, 77 (2015), citing *GSIS v. Mayordomo*, 665 Phil. 131 (2011).

[51] *Loreño v. Office of the Ombudsman*, G.R. No. 242901, September 14, 2020, citing *Fajardo v. Corral*, 813 Phil. 149 (2017).

[52] *Lim v. P/S Insp. Fuentes*, 820 Phil. 344, 359 (2017).

Supreme Court E-Library

In the present case, this Court is convinced that there is substantial evidence to hold Ubalde administratively liable for his acts relating to the purchase of the LPOHs by the PNP.

Both the Ombudsman and the CA found that Ubalde, as a member of the NHQ-BAC, approved the recommendation of the Negotiation Committee to award the contract to procure the LPOHs to MAPTRA Sole Proprietorship despite a clear showing that the latter is not a technically, legally, and financially capable supplier. Particularly, the Ombudsman found that MAPTRA Sole Proprietorship did not comply with the eligibility requirements under Sections 23.11.1(2) and 23.11.1(3) of IRR-A, which state:

> 23.11. *Eligibility Criteria*
>
> 23.11.1. For the procurement of goods:
>
> x x x x
>
> **2. The prospective bidder must have an experience of having completed within the period specified in the IAEB concerned a single contract that is similar to the contract to the bid, and whose value, adjusted to current prices using the wholesale consumer price index, must be at least fifty percent (50%) of the approved budget for the contract to be bid.**
>
> However, (a) when failure of bidding has resulted because no single bidder has complied with the said requirement; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public bidding, the procuring entity, in lieu of the above, may instead require the following:
>
> a) The prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid;
> b) The largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and
> c) The business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB.

Supreme Court E-Library

> For this purpose, the similar contracts mentioned under 2(a) and 2(b) above must have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding.
>
> Provided, further, that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest single similar contract is impracticable, the prospective bidder will only have to comply with requirement (c) above.[53]
>
> 3. **The prospective bidder must present a commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents**, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid; **or must have a NFCC at least equal to the approved budget for the contract to be bid**, calculated as follows: NFCC = [(Current assets minus current liabilities) (K)] minus the value of all outstanding projects under ongoing contracts, including awarded contracts yet to be started. Where: K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.[54]

The Ombudsman found that MAPTRA Sole Proprietorship's only similar contract with the PNP was for the delivery of one (1) unit of Rotary Wing Trainer Aircraft in 2007 worth ₱15,295,000.00, or below the minimum 50% value of the approved budget of ₱105,000,000.00 for the contract to be bid in the present case.[55] Moreover, MAPTRA Sole Proprietorship did not submit a commitment from a licensed bank extending to it a credit line and a cash deposit certificate in the amount of at least 10% of the approved budget for the contract. Finally, MAPTRA Sole

---

[53] As amended by Government Procurement and Policy Board Resolution No. 004-2006 published on September 9, 2006.

[54] Emphasis supplied.

[55] *Rollo*, Vol. I, p. 399.

Supreme Court E-Library

Proprietorship's net financial contracting capacity (*NFCC*) for 2008 was a negative ₱4,484,280.00.[56]

To recall, the successive failure in the biddings and negotiation for the procurement of the planned three (3) equipped LPOHs prompted SAF Director Santiago, Jr. to request the procurement of at least one (1) equipped LPOH and two (2) standard LPOHs instead. According to the Memorandum dated May 14, 2009 issued by SAF Director Santiago, Jr., the SAF urgently needs the LPOHs in the conduct of their police operations, especially by those troops stationed in Jolo, Sulu, who have been deployed for more than a year without the needed air support, posing danger to their lives. The request was indorsed by PDIR Ticman to the NHQ-BAC, which then issued BAC Resolution No. 2009-22 dated May 29, 2009, recommending the purchase of at least one (1) equipped and two (2) standard LPOH units through negotiated procurement under Section 53(b) of IRR-A of R.A. No. 9184.[57]

R.A. No. 9184 requires that all procurement be done through competitive bidding.[58] The rationale behind this requirement is to "ensure that the people get maximum benefits and quality services from the contracts" and to promote "transparency in government transactions and accountability of public officers."[59] By way of exception, and if only to promote economy and efficiency, the law allows the procuring entity to resort to alternative methods of procurement, such as limited source bidding, direct contracting, repeat order, shopping, and negotiated procurement.[60]

---

[56] *Id.*

[57] *Id.* at 370-371. IRR-A was approved by then President Gloria Macapagal-Arroyo through Memorandum Order No. 119 dated September 18, 2003 and was published on September 23, 2003 in two newspapers of general nationwide circulation. It took effect fifteen (15) days after its publication, or on October 8, 2003.

Considering that NHQ-BAC Resolution was issued on May 29, 2009, the provisions of IRR-A govern the procurement of the LPOHs in the present case.

[58] R.A. No. 9184, Art. IV, Sec. 10.

[59] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, 567 Phil. 255, 259 (2008).

[60] R.A. No. 9184, Art. XVI, Sec. 48.

Supreme Court E-Library

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[61] in highly exceptional cases.[62] Under Section 53(b) of IRR-A, negotiated procurement

---

[61] IRR-A, Sec. 53.

[62] a) Where there has been failure of public bidding for the second time as provided in Section 35 of the Act and this IRR-A;

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. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;

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 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 on-going infrastructure project: Provided, however, That (i) the original contract is the result of a Competitive Bidding; (ii) the subject contract to be negotiated has similar or related scopes of work; (iii) it is within the contracting capacity of the contractor; (iv) the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; (v) the amount involved does not exceed the amount of the ongoing project; and (vi) 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;

e) Procurement of infrastructure, consulting services and goods from another agency of the Government, such as the PS-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 1986. For purposes of this paragraph, the term agency shall exclude GOCCs incorporated under *Batas Pambansa Blg*. 168, otherwise known as the Corporation Code of the Philippines. In order to hasten project implementation, agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by the head of the procuring entity concerned, may request other agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. The GPPB shall issue guidelines to implement this provision;

Supreme Court E-Library

may be resorted to in cases where immediate action is necessary to prevent damage to or loss of life or property. The procurement of the LPOHs falls under this category since as explained by SAF Director Santiago, Jr., the lack of air support in their operations in Sulu are putting the lives of their troops at risk.

On this point, this Court finds that contrary to the finding of the Ombudsman, the eligibility requirements under Sections 23.11.1(2) and 23.11.1(3) are not applicable to negotiated procurement under Section 53(b) of the IRR-A.

First, Sections 23.11.1(2) and 23.11.1(3) on *Eligibility Criteria* are found under Rule VIII of the IRR-A entitled "Receipt

---

f) In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: *Provided*, however, That the term of the individual consultants shall, at the most, be on a six-month basis, renewable at the option of the appointing head of the procuring entity, but in no case shall exceed the term of the latter;

g) Upon prior approval by the President of the Philippines, and when the procurement for use by the AFP involves major defense equipment and/or defense-related consultancy services, when the expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations: *Provided*, however, That the performance by the supplier of its obligations under the procurement contract shall be covered by a foreign government guarantee of the source country covering one hundred percent (100%) of the contract price;

h) Where the amount involved is Fifty Thousand Pesos (₱50,000.00) and below; *Provided*, however, that the procurement does not result in splitting of contracts, as provided under Section 54.1 of this IRR-A: *Provided*, further, that the procurement does not fall under Shopping in Section 52 of this IRR-A. The above amount shall be subject to the periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect the changes in economic conditions and for other justifiable reasons; or

i) Lease of privately owned real estate for official use, subject to guidelines to be issued by the GPPB; and

j) When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB. (IRR-A, Sec. 53)

Supreme Court E-Library

and Opening of Bids." The opening provision of Rule VIII on the eligibility requirements for the procurement of goods and infrastructure projects provide:

> 23.1. **The eligibility requirements or statements shall be submitted to the BAC in the form prescribed in Section 23.6 of this IRR-A and in the Instructions to Bidders**, in a sealed eligibility envelope duly marked as such: Provided, however, That the minimum requirements provided for in this IRR-A shall be complied with. **The eligibility envelopes of prospective bidders for the procurement of goods** shall be submitted, together with the technical and financial envelopes, on or before the deadline specified in the Instructions to Bidders, and shall be **opened on the date of the bid opening to determine eligibility of each of the prospective bidders**. The eligibility envelopes of prospective bidders for the procurement of infrastructure projects shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid, and shall be opened before the dates of the pre-bid conference and opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the procuring entity.[63]

The succeeding provisions, Sections 23.2 to 23.11, lay down the procedure, as well as the requirements, for the evaluation of prospective bidders to be considered eligible to participate in the bidding. To emphasize, eligibility screening of prospective bidders and receipt and opening of bids are part of the process for competitive bidding.[64] In competitive bidding, several interested

---

[63] Emphasis supplied.

[64] R.A. No. 9184, Art. I, Sec. 5(e) provides:

SECTION 5. *Definition of Terms*. — For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

(e) *Competitive Bidding* — refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.

Supreme Court E-Library

parties are invited to participate and be subject to qualification. This is in contrast with negotiated procurement where the procuring entity is allowed to *directly negotiate* with prospective suppliers.

Clearly, the provisions under Section 23 of the IRR-A are intended to apply only to the procurement of goods and services through ***bidding process***, and not to the procurement of goods and services through negotiated procurement, which dispenses with the requirement of open, public, and competitive bidding.[65] Indeed, requiring a prospective supplier to comply with the extensive list of eligibility requirements under 23.11.1(2) and 23.11.1(3) will render nugatory the purpose for which the alternative modes of procurement is premised, that is to promote efficiency and economy. Applying the eligibility criteria to the negotiated procurement in this case will virtually eliminate the difference between a competitive or public bidding and an alternative mode of procurement — an incongruous situation which the law did not intend.

At any rate, the inapplicability of the eligibility requirements under Sections 23.11.1(2) and 23.11.1(3) of the IRR-A does not mean that in cases where the alternative modes of procurement are justified, the procuring entity is left without any standard or criteria provided by law. R.A. No. 9184 mandates that in all cases of alternative modes of procurement, the procuring entity shall ensure the most advantageous price for the government.[66] In *De Guzman v. Office of the Ombudsman*,[67] this Court also ruled that particular requirements are applicable to all types of procurement activity, including alternative modes of procurement, such as: (a) the conduct of a pre-procurement and pre-bid conferences; (b) the presence of observers during the entire bidding process; and (c) the publication of and/or posting of the Invitation to Apply for Eligibility and to Bid (IAEB).[68]

---

[65] *De Guzman v. Office of the Ombudsman*, 821 Phil. 681, 691 (2007).

[66] R.A. No. 9184, Art. XVI, Sec. 48.

[67] *Supra* note 65.

[68] *Id.* at 694.

Supreme Court E-Library

With respect to negotiated procurement particularly, the law requires that the procuring entity directly negotiate with a *technically, legally, and financially capable supplier*.[69] Under Section 54.2(d) of the IRR-A, which provides for additional terms and conditions for the use of negotiated procurement in cases of imminent danger to life or property under Section 53(b), it is also provided that the negotiation shall be made with *a previous supplier of good standing*, thus:

> 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 x
>
> d) For item (b) of Section 53 of the Act and this IRR-A, **the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned**, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred. The award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.[70]

In this regard, this Court finds that MAPTRA Sole Proprietorship/ Corporation is not a technically, legally, and financially capable supplier nor a previous supplier of good standing based on the following undisputed facts found by the Ombudsman:

First, the NHQ-BAC affirmed the Negotiation Committee's recommendation to recommend to the PNP Chief the award of the contract to MAPTRA Sole Proprietorship, the entity actively engaged during the negotiation conference on June 15, 2009. The party to the Supply Contract, however, was eventually MAPTRA Corporation, which was issued a Certificate of Incorporation only

---

[69] R.A. No. 9184, Art. XVI, Sec. 48(e).

[70] As amended by Government Procurement and Policy Board Resolution No. 004-2006 published on September 9, 2006. (Emphasis supplied.)

Supreme Court E-Library

on June 10, 2009. In the Articles of Incorporation of MAPTRA Corporation, it states that its primary purpose is for the "sale of aircraft parts and spare parts," while its secondary purpose is for "aircraft maintenance and repair of aircraft engine" only.[71] There is no evidence that MAPTRA Corporation is also authorized to engage in the sale of helicopters. In fact, the documents submitted by MAPTRA Sole Proprietorship disclose that it had so far supplied only one (1) unit of helicopter, while the rest of its transactions involved the sale of spare parts and maintenance, *viz.*:

Corporation/Company	Nature of Contract	Amount
DPWH	Sale of spare parts	Php3,068,963.66
Allied Banking Corporation	Sale of spare parts/maintenance	Php9,314,983.42
Philippine Navy	Sale of helicopter (one [1] unit Rotary Wing Trainer Aircraft in 2007)	PHP15,295,000.00
ABS-CBN	Maintenance	USD348,099.60
Tanduay Distilleries, Inc.	Sale of spare parts	Php2,742,604[72]

Second, as seen from its previous transactions, MAPTRA Sole Proprietorship's single largest contract similar to the purchase of the LPOHs is the sale of one (1) Rotary Wing Trainer Aircraft to the Philippine Navy worth only ₱15,295,000.00. To emphasize, the value of the Supply Contract for the purchase of the LPOHs in the present case is worth ₱104,985,000.00, or almost six times the value of MAPTRA Sole Proprietorship's single largest contract. There is also no showing that MAPTRA Sole Proprietorship had previously supplied helicopters to the PNP, which to be sure, is a separate and distinct entity from the Philippine Navy.

Third, as early as the negotiation stage, there were indications that MAPTRA Sole Proprietorship could not deliver the LPOHs compliant with the specifications required by the NAPOLCOM. MAPTRA Sole Proprietorship's formal proposal submitted during the meeting on June 15, 2009 consisted of reconditioned units with

---

[71] *Rollo*, Vol. I, p. 400.

[72] *Id.* at 374.

Supreme Court E-Library

expired engine warranties and high flying time records. While the minutes of the negotiation show that there were questions on whether the proposed units to be delivered are brand new, there was no thorough evaluation if they are really compliant with the NAPOLCOM's specifications. In fact, the proposal of MAPTRA Sole Proprietorship also contained a brochure stating that the R44 Raven I helicopters are not air-conditioned, contrary to the requirement of the NAPOLCOM.[73] As it is, the records do not indicate any real effort to thoroughly examine the capability of MAPTRA Sole Proprietorship to deliver the helicopters in accordance with the prescribed requirements of the NAPOLCOM.

Fourth, the financial documents submitted by MAPTRA Sole Proprietorship show that it had current assets in 2007 and 2008 in the amount of ₱14,180,600.00 and ₱11,594,832.00, respectively, and current liabilities in the amount of ₱13,803,844.00 and ₱12,043,260.00, respectively.[74] Thus, in the two years preceding the award of the contract, MAPTRA Sole Proprietorship had a negative net worth of ₱376,756.00 and ₱448,428.00, respectively.

In affirming the recommendation of the Negotiation Committee to award the contract to MAPTRA Sole Proprietorship despite a showing that it is not a technically, legally, and financially capable supplier, Ubalde reneged on his obligation as a member of the NHQ-BAC to ensure that standards and criteria laid down by law for negotiated procurement are complied with by the prospective supplier. Under Section 12 of R.A. No. 9184, the functions of the BAC in the procurement process are:

> SECTION 12. *Functions of the BAC*. — The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, **determine the eligibility of prospective bidders**, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, **recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative**: *Provided*, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be

---

[73] *Id.* at 400-401.

[74] *Id.* at 375.

based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and **perform such other related functions** as may be necessary, including the **creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process**.

In proper cases, the BAC shall also **recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement** as provided for in Article XVI hereof.

The BAC shall be **responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR**, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.[75]

Under the law, the responsibility to determine the eligibility and qualifications of a prospective bidder falls upon the BAC. This obligation holds true even if a procuring entity is justified to resort to alternative modes of procurement. Admittedly, in negotiated procurement, the procuring entity *directly negotiates* a contract with a technically, legally, and financially capable supplier. This cannot mean, however, that the BAC's role in negotiated procurement is altogether removed. On the contrary, the BAC's responsibility includes ensuring that the procuring entity abides by the standards set forth by R.A. No. 9184 and its IRR.

Ubalde cannot escape liability by insisting that he merely relied on the determination of the Negotiation Committee that MAPTRA Sole Proprietorship is a technically, legally, and financially capable supplier of helicopters based on the evaluation made by the BAC Legal-TWG. Under the Manual of Procedures for the Procurement of Goods and Services, Volume 2, the following steps are undertaken for negotiated procurement:

The following steps are undertaken in purchasing goods through the negotiated procurement method:

---

[75] Emphasis supplied.

Supreme Court E-Library

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. The BAC convenes the appropriate officials for the pre-procurement conference, if deemed necessary.
3. The BAC, through the Secretariat, posts for information purposes the procurement opportunity, for a period of seven (7) calendar days, in: a. The PhilGEPS; b. The website of the Procuring Entity and its electronic procurement service provider, if any; and c. Any conspicuous place in the premises of the Procuring Entity. For negotiated procurements in cases of imminent danger to life and property, the Procuring Entity may waive the period for posting. However, the award will be posted in the aforementioned sites. (IRR-A Section 54.2 [d])
4. **If the procurement is being negotiated** because of two previous failures of bidding or **in case of imminent danger to life or property**, the BAC, through the BAC Secretariat, issues invitations to at least three (3) suppliers of good standing for the latter to negotiate a contract. The Procuring Entity may draw these suppliers from its list of registered suppliers. **The procedures for the conduct of public bidding should be observed**. However, the minimum period for each bidding procedure may be reduced.
5. The suppliers submit their proposals in a sealed envelope duly marked.
6. **The BAC, with the assistance of the TWG, evaluates the price tenders of the bidders. The BAC shall issue a resolution recommending to the Head of the Procuring Entity of the award of the contract to the lowest calculated and responsive bidder for approval**.
7. The BAC Secretariat/Procurement Unit prepares the contract, Purchase Order or Job Order for approval of the appropriate authorities, and serves the same to the winning bidder.[76]

Indeed, the NHQ-BAC in this case was mandated to take an active role during the process of negotiated procurement as it was tasked with taking the lead in evaluating the offers of the

[76] Emphasis supplied.

Supreme Court E-Library

prospective bidders. The BAC Legal-TWG's function was only to assist.

Ubalde cannot take solace in the case of *Arias v. Sandiganbayan*,[77] which involved the head of an agency who pre-audited and approved the payment for the purchase of improvements by Pasig City, the supporting documents for which turned out to be falsified. In that case, this Court acquitted Arias for violation of Section 3(e)[78] of Republic Act No. 3019,[79] ruling that "heads of offices have to rely a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations."[80]

Here, Ubalde signed the resolution affirming the recommendation of the Negotiation Committee to award the contract to MAPTRA Sole Proprietorship not as a head of agency, but in his capacity as a member of the NHQ-BAC, the legally mandated body to vet the qualifications of prospective bidders and/or suppliers.[81] In any case, it is now recognized that the application of *Arias* is not absolute, such as in cases where exceptional circumstances exist

---

[77] *Supra* note 40.

[78] SEC. 3. *Corrupt Practices of Public Officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[79] Also known as the "*Anti-Graft and Corrupt Practices Act*."

[80] *Arias v. Sandiganbayan, supra* note 40, at 801.

[81] See *Duque v. Hon. Ombudsman*, G.R. Nos. 224648 and 224806-07, August 28, 2019, 915 SCRA 547.

Supreme Court E-Library

that should have prodded the head of agency to go beyond what his subordinates prepared or recommended.[82]

Yet, the Ombudsman and the CA incorrectly characterized Ubalde's offense as serious dishonesty. It is settled that "the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt."[83]

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; unworthiness, lack of integrity [x x x]."[84] It is the "concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties."[85] In the present case, there is no evidence that Ubalde lied, cheated, or deceived when he affirmed the recommendation to approve the award of the contract to MAPTRA Sole Proprietorship. Rather, the records show that he solely relied on the findings of the Negotiation Committee and the BAC Legal-TWG that MAPTRA Sole Proprietorship is supposedly a technically, legally, and financially capable supplier, thereby seriously violating his legal duties as a member of the NHQ-BAC.

Instead, this Court finds that Ubalde is guilty of grave misconduct.

Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer."[86] It is considered grave

---

[82] *Cruz v. Sandiganbayan*, 504 Phil. 321, 334 (2005).

[83] *Avenido v. Civil Service Commission*, 576 Phil. 654, 661 (2008), citing *Dabudo v. Civil Service Commission*, 295 Phil. 825, 832 (1993).

[84] *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014), citing *Office of the Ombudsman v. Torres*, 567 Phil. 46, 58 (2008).

[85] *Soliva v. Tangcol*, G.R. No. 223429, January 29, 2020.

[86] *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 662 (2017), citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

Supreme Court E-Library

when the elements of corruption, willful intent to violate the law or disregard established rules are also present.[87]

In the present case, Ubalde, as a member of the NHQ-BAC, disregarded the established rules on negotiated procurement when it failed to determine the true eligibility and qualification of MAPTRA Sole Proprietorship to supply the LPOHs to the PNP. He violated several provisions of R.A. No. 9184, its IRR-A, and the Manual of Procedures for the Procurement of Goods and Services, Volume 2 when he relegated his function as a mere approving authority of the findings of the Negotiation Committee and the BAC Legal-TWG and grossly failed to abide by his duty to ensure that the criteria and standards laid down by law were met.

As a result of his actions, Ubalde, along with the other members of the NHQ-BAC, gave unwarranted benefits and advantages to MAPTRA Sole Proprietorship, to the damage and prejudice of the government. To note, the award of the contract to MAPTRA Sole Proprietorship could not have been possible without the participation and recommendation of the NHQ-BAC. Thus, for blatant and willful disregard of procurement rules, Ubalde is liable for grave misconduct, punishable by dismissal from service.[88]

Finally, this Court agrees with the Ombudsman and the CA that Ubalde is also liable for conduct prejudicial to the best interest of service because his acts "tarnished the image and integrity of [his] public office."[89] His participation in the award of the contract to MAPTRA Sole Proprietorship in gross disregard of procurement rules, eventually causing damage to the government, diminished the faith of the people in the service.

---

[87] *Office of the Ombudsman v. Celiz*, G.R. No. 236383, June 26, 2019, 906 SCRA 426, 446, citing *Atty. Valera v. Office of the Ombudsman*, 570 Phil. 368, 385 (2008).

[88] Civil Service Commission Revised Rules on Administrative Cases, Rule 10, Sec. 46(A)(3).

[89] *Office of the Ombudsman v. Saligumba*, G.R. No. 212293, June 15, 2020, citing *Fajardo v. Corral, supra* note 51, at 158.

Supreme Court E-Library

WHEREFORE, premises considered, the petition is **DENIED**. The Resolutions dated July 24, 2014 and February 12, 2015 of the Court of Appeals in CA-G.R. SP No. 127743 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner Herold G. Ubalde is **GUILTY** of grave misconduct and conduct prejudicial to the best interest of the service. He is **DISMISSED** from the service, with all its accessory penalties.

SO ORDERED.

Leonen (Chairperson), Lazaro-Javier, M. Lopez, and *Kho, Jr., JJ.*, concur.

APPEARANCES OF COUNSEL

Ramon Carlos S. Caguioa for petitioner.
Office of the Solicitor General for respondent.