

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos.
SB-11-CRM-0100 to 0113

For: *Violation of Section 3(e),
R.A. No. 3019, as amended*

-versus-

Present:

Herrera, Jr., J. *Chairperson*
Musngi, J. &
Malabaguio, J.
Caldona, J.*
Vivero, J.*

Carmencita O. Reyes et al.,
Accused.

Promulgated:

APRIL 28, 2023 

X-----X

RESOLUTION

HERRERA, JR., J.:


For resolution of the Court is a ***Motion for Reconsideration***¹ dated January 20, 2023 filed by accused Abelardo Delos Reyes Bragas (Bragas for short) and Ofelia Corralejo Montilla (Montilla for short), through counsel, praying for reconsideration of the ***Decision***² dated January 13, 2023 convicting them of ***Violation of Sec. 3(e) of Republic Act No. 3019***, or the ***Anti-Graft and Corrupt Practices Act, as amended***, as charged in the ***Information***³ dated March 18, 2011 in Criminal Case No. SB-11-CRM-0100. The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Objections to the Motion for Reconsideration filed by accused Abelardo D. Bragas and Ofelia C.***

*Sitting as Special Member per Administrative Order No. 7-C-2022 dated November 14, 2022

¹ Record, Vol. 8, pp. 3985-4019

² Id, pp. 3731-3798

³ Id, pp.



Montilla dated 20 January 2023⁴ dated February 2, 2023, praying that the **Motion for Reconsideration** be denied.

Criminal Case No. SB-11-CRM-0100 pertains to the issuance by the Bids and Awards Committee (BAC) of the Department of Agriculture Regional Field Unit IV (DA-RFU) of **Resolution No. 290** dated April 30, 2004 awarding the purchase from LCV Design and Fabrication Corporation (LCV) of equipment worth ₱5,000,000 charged against the Farm Input Fund for the *Ginintuang Masagana Program* of the Department of Agriculture, with the **Information** dated March 18, 2011 further alleging, *inter alia*, that the purchase :

“x x x has been awarded by accused BAC Members ABELARDO BRAGAS, FELIX RAMOS, OFELIA MONTILLA and GREGORIO SANGGALANG, without the conduct of a public bidding, thereby resorting to Direct Contracting, thus, giving said corporation unwarranted benefit, preference or advantage, knowing fully well that at the time of procurement, the patent application of said corporation for the equipment purchased has not yet been approved as evidenced by a notation “*Subject to the condition that the patent will be approved by the Bureau of Patent. Patent of the ff: 1) Shredding Machine 2) Hammermill 3) Pelletizer 4) Brush Chipper*” appearing on Disbursement Voucher Nos. 2004-07-2941 dated 30 July 2004, and 2004-12-6056 dated 08 December 2004, x x x. ”⁵

Stripped to the barest essential, movants Bragas and Montilla contend that the prosecution evidence failed to prove: 1) that the purchase of the equipment should be through competitive public bidding; and 2) that the resort by the BAC to direct contracting as the alternative mode of procurement was unjustified.

The movants’ argument is incorrect and the instant motion is bereft of merit.

The Court, in its **Decision** dated January 13, 2023, explained that both law⁶ and jurisprudence⁷ require that the mode of procurement of goods should be through public and competitive bidding. That is the general

⁴ Id, pp. 4020-4023

⁵ Id, p. 3646

⁶ Republic Act No. 9184, Article XVI, Section 48 (e) and 53

⁷ Cabrera, et al v. People, G.R. Nos. 191611-14, July 29, 2019

rule and there is no need to prove that. It is the party who invokes an exception and resorts to an alternative mode of procurement that is required to present proof that such alternative mode is justified, or that the requisites therefor have been fulfilled.

The lengthy discussion of the grounds relied upon by Bragas and Montilla in their instant motion are essentially the same points raised during the trial and in the memoranda which have been all thoroughly and assiduously passed upon by the Court in the **Decision** dated January 13, 2023.

In said **Decision**, the Court pointed out, among others, that :

“Government procurement activities are directed by **Republic Act No. 9184**, a reformative tool that was enacted to regulate, modernize and standardize the procurement process in all branches, instrumentalities and subdivisions of government.

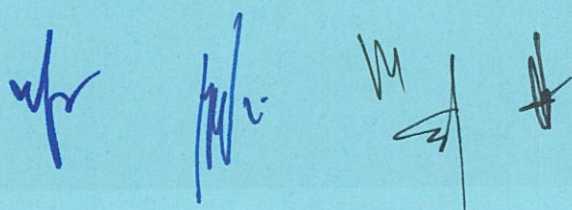
Anchored on the principles of: (1) Transparency; (2) Competitiveness; (3) Effectiveness and Efficiency; and (4) Accountability, the **Government Procurement Reform Act** mandates that **all procurement shall be done through Competitive Bidding**, except as provided for in Article XVI of the Act. [emphasis and underscoring supplied] The general rule, therefore, is the conduct of a **public and competitive bidding**, except when specific circumstances warrant otherwise.

The rationale for such open, competitive bidding is succinctly explained by the Supreme Court *En Banc* when it stated :

“By its very nature and characteristic, a competitive public bidding **aims to protect the public interest** by giving the public the best possible advantages through open competition.”
[emphasis supplied]

X X X
X X X

While accused Reyes had alluded to LCV Design and Fabrication Corporation as an example of a manufacturer/supplier of the said items (“inventor, manufacturer and exclusive distributor” of the machines), it remained incumbent upon the Bids and Awards Committee of Region IV to ascertain the veracity of such statement and to determine if indeed public bidding may be dispensed with in favor of another mode of procurement. Absent any compulsion or coercion discernible from the letter-request of Reyes, the BAC can seek refuge only in the actual existence of any of the three conditions



provided by law to justify a deviation from the general rule of the conduct of a public bidding in procuring the subject machinery.

Instead of making a sound, fact-based ascertainment, however, the BAC hastily and haphazardly concluded on the very same day of Reyes' letter-request that LCV ought to be awarded with the supply of all the equipment because the "Tornado" brand of equipment is manufactured and exclusively distributed by the LCV Design and Fabrication Corp. with patent application certificates from the Intellectual Property Office."

X X X.

The other half of its premise in deciding to procure the requested machinery solely from LCV, i.e., that LCV corporation manufactures and exclusively distributes the "Tornado" brand of equipment, deplorably also suffers from the same flaw of misrepresentation.

First, the Committee makes reference to the "Tornado" brand when nowhere was it ever mentioned in Reyes' letter that the equipment items requested for the Province pertained to the brand, "Tornado". In fact, even the belatedly-executed Purchase Request (**which should have preceded any BAC deliberation**) only attaches the "Tornado" brand to the brush chipper/shredder.

X X X

Secondly, an inference that the items may be only procured from LCV since the "Tornado" brand is manufactured and exclusively distributed by them is a non-sequitur in the triggering of Direct Contracting as a mode of purchase. In that alternative mode of acquisition, the essence is that purchase through public bidding is precluded by the uniqueness and restricted availability of an item, hence, its alternate nomenclature "Single Source Procurement".

X X X

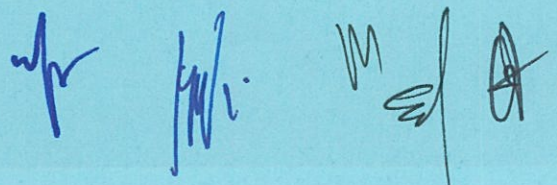
The persons who could have shed light on the matter, accused Montilla and Bragas, had not even been presented to testify, and accused BAC Co-Chair Sangalang continues to evade the Court process to this day. Only BAC member Ramos (who was not even a signatory to the Resolution) was presented, giving limited testimony as to the DA Memoranda pertaining to delegated signing authority within the Department.

In the Committee's undue haste to issue the Resolution on the same date as the letter-request of the requisitioning party (April 30), it failed to show as well how it could have judiciously arrived at the conclusion that no other suitable substitute to **all the four items** could be obtained at a price more advantageous to Government, which is a requirement under the law."

X X X

X X X

The Supreme Court has already underscored the rule on this matter when it clearly pronounced:



"Indeed it is incumbent upon a party who invokes coverage under the exception to a general rule to prove fulfillment of the requisites thereof." [emphasis supplied]

Without a proper showing that Direct Contracting was imperative, the delictual act of an irregular procurement is clearly established."⁸

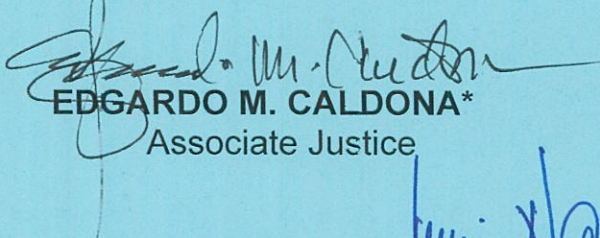
The Court rules that the findings and conclusion contained in the **Decision** dated January 13, 2023 stand.

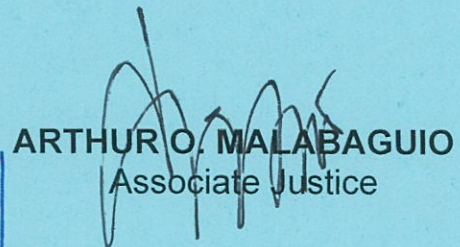
WHEREFORE, the **Motion for Reconsideration** dated January 20, 2023 filed by accused Abelardo delos Reyes Bragas and Ofelia Corralejo Montilla is hereby DENIED for lack of merit.

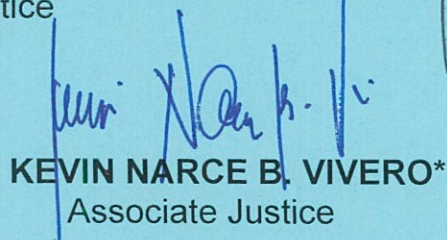
SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice

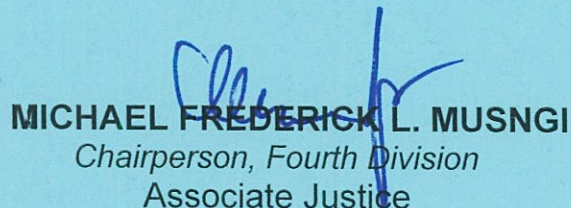
Concur:


EDGARDO M. CALDONA*
Associate Justice


ARTHUR O. MALABAGUIO
Associate Justice


KEVIN NARCE B. VIVERO*
Associate Justice

Dissent:


MICHAEL FREDERICK L. MUSNGI
Chairperson, Fourth Division
Associate Justice

⁸ Record, Vol. 8, pp. 3760, 3764. 3765 to 3769