

RICHARD T. MARTEL AND ABEL A. GUIÑARES, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN-MINDANAO, RESPONDENTS.

Ponente: PEREZ, J.

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PEREZ, J.:

Petitioners Richard T. Martel and Abel A. Guiñares filed before this Court this Petition for Review[1] under Rule 43 of the Rules of Court with a plea to reverse the 25 February 2011 Decision[2] and the 28 February 2013 Order[3] of the Office of the Ombudsman-Mindanao in Case No. OMB-M-A-05-450-L finding them guilty of Grave Misconduct and Gross Neglect of Duty and meting them the penalty of dismissal from service, with an alternative plea of downgrading the penalty of dismissal to suspension.

The Facts

Petitioners Richard Tan Martel (Martel) and Abel A. Guiñares (Guiñares) were the former Provincial Accountant and Provincial Treasurer of the Province of Davao del Sur respectively. By virtue of their respective positions, both served as ex officio members of the Bids and Awards Committee (BAC) of the provincial government of Davao del Sur. Victoria Givero Mier (Mier), Provincial Budget Officer, Edgar Cajiling Gan (Gan), Provincial Board Member, Allan Putong (Putong), Provincial General Services Officer completed the membership of the BAC.

In 2003, the Office of the Provincial Governor of Davao del Sur issued several Purchase Requests for the purchase of five service vehicles. In the Purchase Requests dated 24 January 2003,[4] the Governor's Office requested for the purchase of two (2) Toyota Hilux 4x4 SR5. In Purchase Request dated 18 February 2003,[5] the said office requested for the acquisition of one (1) Mitsubishi L300 Exceed DX for the use of the governor. In the Purchase Request dated 15 July 2003,[6] the same office requested for the purchase of two (2) Ford Ranger XLT 4x4 M/T for the use of the governor and the vice-governor.

The procurement of the five vehicles was not subjected to a public bidding and the mode of procurement used in the acquisition thereof was through direct purchase as stamped on the face of the Purchase Request.[7] It was so because of the recommendation made by Putong, the Provincial General Services Officer (PGSO).

The recommendation to use direct purchase as mode for acquisition was approved by the members of the BAC, which included petitioners.

Accordingly, the said vehicles were purchased and delivered to the Provincial Government on different dates.

Calling attention to the absence of a public bidding, a concerned citizen wrote to the Office of Ombudsman-Mindanao (OMB) reporting the apparent irregularity.[8] Prompted by the report, the OMB launched an investigation concerning the circumstances surrounding the acquisition of the five service vehicles particularly on the lack of public bidding.

After the investigation, the OMB, in its 14 June 2012 Decision,[9] found petitioners Martel and Guiñares and two other members of the BAC guilty of Grave Misconduct and Gross Neglect of Duty.[10] The complaint against

Provincial Board Member Gan was dismissed after he was elected anew to his post and following the doctrine of condonation, an administrative case against an elective official is deemed dismissed if he is subsequently re-elected to his post on theory that there alleged trespass was forgiven by the people he serves.[11] The dispositive portion of the said decision reads:

“WITH THE FOREGOING PREMISES, this Office finds substantial evidence to sanction respondents Richard Tan Martel, Allan Cudera Putong, Victoria Givero Mier and Abel Arquillano Guinares for Grave Misconduct and Gross Neglect of Duty. Pursuant to Administrative Order No. 17 this Office hereby orders said respondents DISMISSED from service together with all its accessory penalties. The incumbent Honorable Governor of the Province of Davao del Sur is hereby directed to implement this Office’s Decision and to submit a compliance report within ten (10) days from the implementation thereof. As for respondent Edgar Cajilig Gan the case is hereby rendered DISMISSED pursuant to the Doctrine of Condonation as declared in the case of Aguinaldo vs. Santos 212 SCRA 768.”

Aggrieved by the decision against them, petitioners, together with Putong and Mier, filed a Motion for Reconsideration[12] before the OMB asking the latter to reverse their dismissal.

The OMB, in its 28 February 2013 Order,[13] denied the said motion for reconsideration sustaining the dismissals of Martel, Guiñares and Mier but reduced Putong’s penalty to one year suspension without pay.

Undaunted, petitioners Martel and Guiñares filed this petition with prayer for temporary restraining order and preliminary injunction.

The prayer for injunctive relief was denied by this Court in a Resolution[14] dated 10 May 2013.

The Issues

Petitioners submitted the following arguments as grounds to grant this petition, to wit:

“I.

WITH ALL DUE RESPECT, THE HONORABLE OMBUDSMAN COMMITTED SERIOUS ERRORS OF FACT AND LAW WHEN IT HELD PETITIONERS MARTEL AND GUINARES PRIMARILY RESPONSIBLE FOR CHOICE OF DIRECT PURCHASE AS THE MODE FOR PROCUREMENT OF THE VEHICLES.

II.

WITH ALL DUE RESPECT, THE HONORABLE OMBUDSMAN COMMITTED SERIOUS ERRORS OF FACT AND LAW WHEN IT FOUND THAT PETITIONERS MARTEL AND GUINARES WERE GUILTY OF GROSS NEGLECT OF DUTY AND GRAVE MISCONDUCT.

III.

WITH ALL DUE RESPECT, THE HONORABLE OMBUDSMAN COMMITTED SERIOUS ERRORS OF FACT AND LAW WHEN METED OUT THE PENALTY OF DISMISSAL AGAINST PETITIONERS MARTEL AND GUINARES BUT ONLY SUSPENDED THE PROVINCIAL GENERAL SERVICES OFFICER, ALLAN PUTONG, DESPITE THE FACT THAT THE PGSO WAS ALSO A PARTICIPATING MEMBER OF THE COMMITTEE ON AWARDS AND WAS THE CHIEF PROPONENT OF THE DIRECT PURCHASE MODE OF PROCUREMENT.

IV.

WITH ALL DUE RESPECT, THE HONORABLE OMBUDSMAN WAS UNDULY HARSH IN METING OUT THE SUPREME PENALTY OF DISMISSAL, CONSIDERING THE LONG YEARS OF

GOVERNMENT SERVICE OF THE PETITIONERS.”

The core issue to be resolved in this case is whether or not the BAC may resort to direct purchase and dispense of the public bidding in the purchase of the vehicles for the provincial government.

The Court’s Ruling

To begin with, before addressing the substantial issue, it is essential that We first determine the applicable law in this case. Prior to the effectivity of R.A. No. 9184 or the Government Procurement Act, which took effect on 26 January 2003, the law governing the procurement activity of Local Government Units is R.A. No. 7160 or the Local Government Code of 1991.

Considering this, the law applicable when Purchase Request dated 24 January 2003 was issued is R.A. No. 7160. On the other hand the law applicable to Purchase Requests with dates 18 February 2003 and 15 July 2003 is R.A. No. 9184.

When R.A. No. 9184 took effect it amended Title Six, Book Two of the R.A. No. 7160.[15] As a result thereof, COA Circular No. 92-386 dated October 20, 1992, which prescribes rules and regulations on Supply and Property Management in LGUs, pursuant to Section 383 of R.A. No. 7160, is no longer applicable to the two Purchase Requests are concerned.[16]

Competitive bidding is vital in public accountability.

Under Republic Act No. 9184 or otherwise known as the Government Procurement Act, the State, as its declared policy, promotes the ideals of good governance in all its branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or -controlled corporations, and local government units by among others instituting procurement procedures that safeguard government interest. This has always been true even prior to the enactment of R.A. No. 9184, which is only a consolidation of different procurement laws and regulation of different government agencies.

In promoting the policy of good governance, the government shall adhere to the principle of transparency, accountability, equity, efficiency, and economy in its procurement process.[17]

In line with these principles R.A. 9184 declares that procurement of infrastructure projects, goods and other services shall, as a rule, go through public bidding, except as otherwise provided.[18]

Section 10 of the same Act particularly states:

“Section 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.”

On the other hand, Section 27 of COA Circular 92-386 provides:

“Section 27. Public Bidding as the Primary Mode of Procurement — Except as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive bidding.”

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.[19]

Government officials are made accountable to the people they serve in the procurement of goods, supplies and services the government requires in the provision of public wants and needs. In achieving this end, government

procurement should be transparent and competitive to make public officials truly accountable in the management of the people's money. Through competitive bidding, public interest is protected by giving the public the best possible advantage through open competition.[20]

PBAC is mandated to conduct public or competitive bidding.

Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.[21]

Under R.A. No. 9184, the body responsible for the conduct of competitive public bidding is the Bids and Awards Committee of the respective government agency or instrumentality, to wit:

Section 12. Functions of 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 of his duly authorized representative: Provided, That in the event the Head of the Procuring shall disapprove such recommendation, such disapproval shall be 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 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. (Emphasis and underscoring supplied)

In R.A. No. 7160, it mandates that there shall be in every province, city or municipality a committee on awards to decide the winning bids and questions of awards on procurement and disposal of property.[22]

Alternative modes under R.A. No. 9184 and R.A. No. 7160.

Nevertheless, there are other modes of procurement available for government agencies in case a justifiable need to resort to them arises.

R.A. No. 9184 permits a negotiated procurement as an alternative mode of procurement[23] as long as they meet the conditions laid down therein, which reads:

Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

- a. In case of two (2) failed bidding as provided in Section 35 hereof;
- 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;
- 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;

x x x x x x x x”

Under R.A. No. 7160, negotiated purchase may be resorted to under the following circumstances:

Section 369. Negotiated Purchase. -

(a) In cases where public biddings have failed for two (2) consecutive times and no suppliers have qualified to participate or win in the biddings, local government units may, through the local chief executive concerned, undertake the procurement of supplies by negotiated purchase, regardless of amount, without public bidding: x x

x x x x x x x x”

(b) In case of repeat orders for regular supplies, procurement may be made by negotiated purchase: Provided, That the repeat order is made within three (3) months from the last procurement of the same item: Provided, further, That the same terms and conditions of sale are obtained for the said repeat order.

In the case at bar, there is no dispute that the procurement of the five service vehicles by the Provincial Government did not go through public or competitive bidding as provided by law, and the mode used and approved by the PBAC was direct purchase or negotiated procurement from a specific dealer for a particular vehicle brand. Therefore, it is imperative for the resolution of this case to evaluate whether or not direct purchase of the subject service vehicles falls under the alternative mode of procurement, which justifies the non-conduct of the public or competitive bidding.

In trying to justify their approval of direct purchase as mode of procurement, petitioners basically anchored their argument on the theory that the PBAC, of which they are members, has no control over the selection and approval of the mode of procurement;^[24] that direct purchase was specified by the PGSO, since it is the PGSO’s function to make such recommendation;^[25] that they carefully studied the recommendation and found out that it was in accordance with Section 28 of COA Circular No. 92-386, hence, they merely stamped their approval.

On his part, Putong rationalized his decision to recommend direct purchase as the mode for procurement due to the recurring problem of the BAC during bidding wherein the suppliers of branded four-wheeled vehicles do not participate in the conduct of bidding; instead by their selling practices is that, they require the canvassers to submit a Purchase Order in their favor and require the preparation of the check payment of the vehicle;^[26] and, if they will participate in the bidding, its participation is limited to submission of price quotation with notation therein “cash on delivery” disregarding all bidding requirements and forms, which will only result to a failed bid and eventually lead to direct purchase.^[27] Putong also claims that the dealer of the branded vehicle will not participate in the bidding if their brand is not preferred by the requisitioner/ end-user.^[28] Thus, if bidding will be conducted the only bidder who will participate is the distributor of the preferred brand of vehicle because the other dealers/suppliers, not preferred by requisitioner, will lose its interest in bidding because the requisitioner will justify the award as to the preferred vehicle, which the Committee simply concurs.^[29]

Their justification fails to persuade Us.

PBAC responsible for its choice of mode of procurement.

Petitioners cannot gainsay that they are not liable for the non-conduct of public or competitive bidding. Section 12 of R.A. No. 9184 expressly mandates the PBAC to ensure that the procuring entity abides by the standard set by the said Act and its IRR. Nowhere in the law and its IRR that provides that the recommendation of the PSGO as binding and final on the PBAC.

Likewise, Section 364 of R.A. No. 7160 commands that the PBAC, as the case may be, shall decide the winning

bid. Awards in the procurement of supplies shall be given to the lowest complying and responsible bid which meets all the terms and conditions of the contract or undertaking.[30]

Both laws are very clear. The PBAC has the final decision to award the bid or approve the type of mode of procurement to be used in the acquisition activities of the provincial government. Before doing so, it must ensure that the requirements set by law are strictly followed, otherwise the award or the decision to use alternative mode of procurement will be illegal. It is not ministerial on the PBAC's part to approve the recommendation of the PSGO or other entity or the end-user because the law is very clear when it lodge the authority to recommend award of contracts to the procuring entity, which is a clear indication that in the exercise of the said authority, the PBAC is required to use its own judgment. Hence, when it approved an irregular recommendation, the irregularity became their own.

Aside from ensuring that the procuring entity abides with the standards, R.A. No. 9184 also provides that the PBAC can recommend other modes of procurement depending on a particular situation. While Section 99 of COA Circular No. 92-386 gives the PBAC the authority to recommend to the local chief executive, the authority to decide and award negotiated purchase still lies with the PBAC.

Obviously, in view of the foregoing, the PBAC has control over the approval of the mode of procurement to be resorted to and petitioners cannot wash their hands from liability thereof. Their role in choosing the mode of procurement is clearly active and not passive as petitioners wanted to show.

Petitioners failed to justify the approval of direct purchase.

Petitioners' reasons for approving the direct purchase of the service vehicles are evidently not justified. The conditions set forth by Section 48 particularly paragraph (e) on negotiated procurement, where direct purchase is permissible, were not met by the PBAC. In case of two failed bids, the procuring entity may resort to direct purchase or negotiated procurement as provided by Section 35,[31] to wit:

“Section 35. Failure of Bidding. - there shall be a failure of bidding if:

- a. No bids are received;
- b. No bid qualifies as the Lowest Calculated Responsive Bid; or,
- c. Whenever the bidder with the highest rated/lowest calculated responsive bid refuses, without justifiable cause to accept the award of contract, as the case may be.

Under any of the above instances, the contract shall be re-advertised and re-bid. The BAC shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the BAC may resort to negotiated procurement as provided for in Section 53 of this Act.” (Emphasis and underscoring supplied.)

As to the 24 January 2003 Purchase Request, petitioners also deviated from Section 369 of R.A. No. 7160 which specifically states that “in cases where public biddings have failed for two (2) consecutive times and no suppliers have qualified to participate or win in the biddings, local government units may, through the local chief executive concerned, undertake the procurement of supplies by negotiated purchase, regardless of amount, without public bidding.”

Actually, there is no failed bidding to speak of in the case at bar since in the first place, there was no invitation to bid that was called. The PBAC simply approved the recommendation of the PGSO without entertaining the thought of conducting a bid for a lame reason that it will eventually lead to a failed bidding. Neither law nor logic can allow such justification. Considering that they specified the brand name of the vehicles that they wanted to

procure, the suppliers of other brand of vehicles will expectedly no longer participate in the bidding process. The PBAC itself made the bidding impossible since it pre-determined the suppliers preferred. Such a justification is not only unwarranted but also illegal. Section 18 of R.A. 9184 prohibits the reference of brand names for purposes of procurement.[32] Likewise, Section 24 of COA Circular No. 92-386 provides that in the description of the property to be acquired only the technical specifications that will fit and satisfy the needs of the procuring entity should be included.[33]

In view that petitioners' reasons are not justified by law, the PBAC should have conducted public or competitive bidding as mandated by R.A. No. 9184 and R.A. No. 7610.

Incidentally, the purchase of the five service vehicles for the Provincial Governor is contrary to COA Circular No. 75-6 paragraph III, which mandates:

“III. Officials entitled to use of more than one Motor Vehicle- With the exception of the President, no government official and employee authorized to use any vehicle operated and maintained from the funds appropriated in the decree shall be allowed to use more than one motor vehicle; Provided, however that the Chief Justice of the Supreme Court may be allowed to use two motor vehicles.”

Petitioners failed to exercise their duty by blatantly violating the law on procurement and its related rules.

Reduced to its bare essentials, petitioners, as members of the PBAC, blatantly violated R.A. 9184, its IRR, R.A. No.7610, COA Circular No. 92-386, and COA Circular No. 75-6 by committing the following acts:

1. No public or competitive bidding was conducted as the mode of purchase;
2. Without any proper basis in law, the PBAC resorted to negotiated procurement in violation of Sections 35, 48, 50 and 53 of R.A. No. 9184, and Sections 356, 366 and 369 of R.A. No. 7160.
3. In the direct purchase of the vehicles the goods were described by brand name and not through relevant characteristics reflecting the performance requirements of the requisitioner in violation of COA Circular No. 92-386 and Section 18 of the IRR;
4. The purchase of more than one service vehicle for the use of the Provincial Governor in violation of COA Circular No. 75-6.

Public office is a public trust; thus, by failing to conduct public bidding, petitioners betrayed the trust bestowed upon them by the people as public officials. It must be pointed out again that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders.[34] In not conducting public or competitive bidding they deprived the public of the best possible advantage that they can take from the transaction.

The circumstances of the case provide enough equitable consideration for liberality.

In the alternative, granting that they are indeed at fault, petitioners contend that the penalty of dismissal meted by the OMB against them was too harsh. They averred that the OMB erred in finding them guilty of Gross Negligence and Grave Misconduct, since according to them their only fault was that they failed to overrule the recommendation of the PGSO, which is to use direct purchase as mode of procurement instead of public bidding.

In their defense, petitioners posit that they appear to be sanctioned as members of the PBAC and not as their official capacities as Provincial Accountant and Provincial Treasurer; that there was no proof of over-pricing; that there was no proof that public welfare was threatened by their decision; and, that there was no proof that they benefited from the transaction.

Petitioners prayed for the modification of the penalty of dismissal to suspension.

We grant the plea for liberality.

The circumstances forwarded by petitioners call for liberality. Not only that there was no proof of overpricing and actual damage on the government, this Court considers their length of government service as a cogent reason to mitigate the penalty of dismissal. In *Viel v. Malindog*,^[35] the Supreme Court mitigated the penalty of dismissal to one year suspension without pay after considering one's length of service, to wit:

“Be that as it may, we observed that respondent had been in the government service for more or less 20 years, during which he made a steady ascent from a lowly laborer at the National Irrigation Administration, Catbalogan, Samar, to a Civil Engineer II at the SED-DPWH.³⁹ Respondent also had no previous derogatory record as a government employee. Moreover, he returned the loyalty cash award of P1,500.00.⁴⁰ We can consider the foregoing as mitigating circumstances to lower the penalty imposable on respondent pursuant to Section 53 of the Civil Service Rules, viz:

Section 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. – In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

x x x x

g. habituality

x x x x

j. length of service in the government

x x x x

l. other analogous circumstances.

In *Apuyan, Jr. v. Sta. Isabel*, a government employee was charged with and found guilty of dishonesty. Nonetheless, instead of dismissing respondent, we imposed the penalty of one-year suspension without pay considering that his dishonesty was his first offense. In *Civil Service Commission v. Belagan*, a government employee was found guilty of grave misconduct, the penalty for which was dismissal from the service. However, we did not impose the penalty of dismissal upon respondent, considering the presence of the following mitigating circumstances: (1) his long years of service in the government; and (2) his unblemished record in the past. We likewise ruled therein that the appropriate penalty for respondent was one-year suspension from service without pay.”

Aside from the abovementioned circumstances, principles of fundamental justice and fairness dictate that petitioners should suffer the same penalty meted on Putong, who is a member of the PBAC that approved the subject mode of procurement. For petitioners to suffer a graver penalty than Putong violates their right to equal protection. Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.³⁶ Considering that Putong was only meted the penalty of one (1) year, petitioners should only suffer the same.

WHEREFORE, foregoing premises considered, the 25 February 2011 Decision of the Office of the Ombudsman is **AFFIRMED** with **MODIFICATION**. The penalty of dismissal meted upon petitioners **RICHARD T. MARTEL**

and ABEL A. GUIÑARES is hereby lowered to ONE YEAR SUSPENSION WITHOUT PAY.

SO ORDERED.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 22-26.

[2] Rollo, pp. 27-60.

[3] Rollo, pp. 64-72.

[4] Rollo, pp. 74.

[5] Rollo, pp. 75.

[6] Rollo, pp. 76.

[7] Rollo, pp. 74-76.

[8] Rollo, p. 28.

[9] Id. see note 2.

[10] Rollo, p. 59.

[11] Id.

[12] Rollo 64, mentioned only.

[13] Id. see note 3.

[14] Rollo, pp. 202-207.

[15] Section 76 of R.A. No. 9184.

[16] GPPB Non-Policy Opinion NPM 048-2004.

[17] Section 2, Implementing Rules and Regulation of R.A. 9184.

[18] Section 2, Implementing Rules and Regulation of R.A. 9184.

[19] Section 5 (e) of R.A. 9184.

[20] Public Estate Authority v. Bolinao Security and Investigation Services, Inc. G.R. No. 158812, 05 October 2005.

[21] Republic v. Capulong, G.R. No. 93359 , 12 July 1991.

[22] Section 364. The Committee on Awards. - There shall be in every province, city or municipality a committee on awards to decide the winning bids and questions of awards on procurement and disposal of property.

The Committee on Awards shall be composed of the local chief executive as chairman, the local treasurer, the local accountant, the local budget officer, the local general services officer, and the head of office or department for whose use the supplies are being procured, as members. In case a head of office or department would sit in a dual capacity, a member of the sanggunian elected from among its members shall sit as a member. The committee on awards at the barangay level shall be the sangguniang barangay. No national official shall sit as a member of

the committee on awards.

The results of the bidding shall be made public by conspicuously posting the same in the provincial capitol or city, municipal, or barangay hall.

[23] SEC. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

- a. Limited Source Bidding, otherwise known as Selective Bidding - a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;
- 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 invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;
- c. Repeat Order. - a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;
- d. Shopping - a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or
- e. Negotiated Procurement - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

[24] Rollo, p.10.

[25] Id.

[26] Rollo, p. 33.

[27] Id.

[28] Id.

[29] Id.

[30] Section 365 of R.A. No. 7610.

[31] Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

- a. In case of two (2) failed bidding as provided in Section 35 hereof;

x x x x x x x x

[32] Section 18. Reference to Brand Names.- Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

[33] Section 24. Specification of Supplies or Property.- the description and specification of the suppliers or property called for in the requisition shall include only technical specifications which will fit and satisfy the needs of the requisitioner.

x x x x x x x x

[34] Archbishop Capalla v. COMELEC, G.R. No. 201112, G.R. No. 201121, G.R. No. 201127 and G.R. No. 201413, 23 October 2012.

[35] G.R. No. 143538, 13 February 2009.

[36] PAGCOR v. BIR, et al., G.R. No. 172087, 15 March 2011.

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