



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANTI-TRAPO MOVEMENT OF THE PHILIPPINES, represented by Leon E. Peralta,
Petitioner,

Present:

LEONEN, J., *Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

-versus-

LAND TRANSPORTATION OFFICE, represented by its Head of Agency, Edgar C. Galvante,
Respondent.

Promulgated:
JUN 27 2022

[Signature]

X-----X

DECISION

LEONEN, J.:

Prohibition, as a preventive remedy, does not lie against an action already accomplished.¹

This Court resolves a Petition for Prohibition² with prayer for a temporary restraining order, seeking that the Land Transportation Office be directed to permanently desist from continuing the contract with NEXTIX, Inc., Dermalog Identification Systems, and CFP Strategic Transaction Advisors Joint Venture (Dermalog) in procuring driver's license cards.

¹ *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, 757 Phil. 454, 470 (2015) [Per J. Leonen, En Banc].
² *Rollo*, pp. 3-19.

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On December 1, 2016, the Bids and Awards Committee of the Land Transportation Office published the Invitation to Bid for the procurement of driver's license cards with a five-year validity for calendar year 2017.³ The approved budget for the contract was ₱836,000,000.00.⁴

Pre-bid conferences were conducted on December 8, 2016⁵ and January 3, 2017.⁶ Banner Plasticard, Inc. (Banner), Kolonwel Trading and PT Pura Barutama Joint Venture (Kolonwel), and Dermalog were among those that submitted their bids.⁷

On January 31, 2017,⁸ the Bids and Awards Committee's Technical Working Group opened the sealed bids. As Kolonwel, Dermalog, and Banner passed the eligibility and technical requirements during the preliminary examination, the Technical Working Group proceeded to open their financial documents, revealing the following bid offers: ₱750,000,000.00 from Banner; ₱814,320,000.00 from Kolonwel; and ₱829,663,897.93 from Dermalog, which upon recomputation became ₱829,668,053.55.⁹

Bids and Awards Committee Chair Romeo G. Vera Cruz (Chair Vera Cruz) announced that Banner had the Lowest Calculated Bid. He added, though, that Banner must still submit post-qualification requirements.¹⁰

On February 3, 2017, the corresponding Notice of Lowest Calculated Bid was sent to Banner.¹¹

On February 9, 2017, the Bids and Awards Committee issued a Resolution¹² approving the Technical Working Group's recommendation¹³ to post-disqualify Banner for being non-responsive to the following bid requirements:

Requirements/Conditions	Findings
A. <i>Technical Specifications.</i> Item 4.3, (g) Able to match at least 10,000,000 driver's	Records matching of 99.9% accuracy is not specifically stated or defined in the submitted Manufacturer's sales literature of the Fingerprint

³ Id. at 162, Invitation to Bid. *See also* id. at 165, Certification of Posting.

⁴ Id. at 163, Bid Notice Abstract.

⁵ Id. at 171–178, Minutes and Attendance Sheets.

⁶ Id. at 179–189, Minutes and Attendance Sheets. *See also* id. at 191, Bid Bulletin No. 2.

⁷ Id. at 25, LTO BAC Minutes of the Meeting dated January 31, 2017. *See also* id. at 255, Abstract of Bids, and 281–282, BAC Resolution dated February 16, 2017.

⁸ Id. at 213, Bid Bulletin No. 4.

⁹ Id. at 255, Abstract of Bids. Dermalog's Amount of Bid (as read) was ₱829,663,897.93. As recomputed, the amount of bid was ₱829,668,053.55.

¹⁰ Id. at 24–27.

¹¹ Id. at 256, Notice.

¹² Id. at 28–30.

¹³ Id. at 257–259, LTO BAC TWG Report.

license records with 99.9% accuracy.	Scanning Device and AFIS. Thus, there is no way of verifying compliance [with] the required performance parameters of the equipment and fingerprint identification system.
B. <i>Bid Bulletin No. 4.</i> Required response time of within one (1) second per transaction for 1: N search.	The one (1) second response time for searches was not specifically stated or defined in the Manufacturer's sales literature submitted for the Fingerprint Scanning Device and AFIS. Thus, it cannot be verified if the equipment and fingerprint identification system offered complies with the required performance parameters.
C. <i>Section II, ITB Clause 8.3</i> specifies that if the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the eligibility documents of the sub-contractor as part of the technical component of the bid.	The Bidder submitted Manufacturer's authorization for the supply of the hardware and software components of the project which is tantamount to sub-contracting. As part of its proposal, the bidder submitted the Manufacturer's Authorization Form authorizing Banner Plasticard, Inc. to submit a bid and subsequently negotiate and sign a contract with the Manufacturers for the supply of the components namely: HD Camera and Signature Pad, Finger Print Scanner and Automated Fingerprint Identification System, and for the provision of Covert/Overt Security Features in the pre-printed cards. However, the eligibility documents submitted by the Bidder [do] not include the required eligibility documents of the Manufacturers of the aforementioned components. ¹⁴ (Emphasis supplied)

On the same day, Kolonwel was given a Notice of Second Lowest Calculated Bid.¹⁵

On February 13, 2017, Banner filed a Request for Reconsideration.¹⁶

On February 16, 2017, the Bids and Awards Committee post-disqualified Kolonwel.¹⁷ Following this, a Notice of Third Lowest Calculated Bid was issued to Dermalog.¹⁸

On February 20, 2017, the Bids and Awards Committee issued a Resolution¹⁹ denying Banner's Request for Reconsideration. It also sent

¹⁴ Id. at 28–29. *See also* id. at 266–267, Notice of Post Disqualification to Banner.

¹⁵ Id. at 275.

¹⁶ Id. at 35 and 309.

¹⁷ Id. at 278–280, LTO BAC TWG Recommendation, and 281–283, BAC Resolution. *See also* id. at 286–293 and 309. Kolonwel also moved for reconsideration on February 20, 2017, but this was denied on February 27, 2017.

¹⁸ Id. at 294.

¹⁹ Id. at 268, BAC Resolution.

Banner the grounds for the Request's denial.²⁰

Aggrieved, Banner filed a Protest on February 27, 2017 before the Land Transportation Office's Office of the Assistant Secretary.²¹ This was eventually denied in an undated Decision,²² the dispositive portion of which reads:

WHEREFORE, premises considered, the Protest filed by Banner Plasticard, Inc. is hereby **DENIED**. The Notice of Post-Disqualification dated 9 February 2017 and the Resolution on the Request for Reconsideration dated 20 February 2017 issued by the Bids and Awards Committee are hereby **AFFIRMED**.²³ (Emphasis in the original)

On March 29, 2017, as part of post-qualification, the Technical Working Group conducted the proof-of-concept demonstration with respect to Dermalog.²⁴ This process was witnessed by the Anti-Trapo Movement of the Philippines (Anti-Trapo Movement), an observer from a nongovernmental organization.²⁵

The Technical Working Group submitted its March 30, 2017 Report,²⁶ stating that after the proof-of-concept process, Dermalog was found compliant with the technical specification requirements of the project and was recommended to be the Lowest Calculated Responsive Bid, which was said to be "advantageous to the government[.]"²⁷

On March 31, 2017, the Bids and Awards Committee issued a Resolution²⁸ declaring Dermalog post-qualified. In another Resolution²⁹ issued on the same date, it recommended the award of contract to Dermalog. The dispositive portion of the Resolution reads:

NOW THEREFORE, in consideration of all the foregoing premises, the Bids and Awards Committee resolved, as it hereby resolves to recommend that the Contract for the Procurement of Six Million (6,000,000.00) Driver's License Cards with Five (5)-Year Validity for CY 2017 be awarded to DERMALOG, CFP, and NEXTIX JV with its bid price in the amount of Php 829,668,053.55 being the Lowest Calculated Responsive Bid (LCRB) which is advantageous to the government.³⁰

²⁰ Id. at 270-274, Letter.

²¹ Id. at 31-45.

²² Id. at 46-66.

²³ Id. at 66. The undated Decision was signed by Assistant Secretary Edgar C. Galvante of the Land Transportation Office.

²⁴ Id. at 295-297, Minutes of the Meeting.

²⁵ Id. at 9.

²⁶ Id. at 300-303, Report.

²⁷ Id. at 302.

²⁸ Id. at 304-306.

²⁹ Id. at 307-311.

³⁰ Id. at 310.

On April 3, 2017, a Notice of Award was issued to Dermalog.³¹

On April 4, 2017, the Anti-Trapo Movement submitted to Land Transportation Office the following observations on the proof-of-concept process:

- 2.12.1 During the course of the POC, there was no mention of the presence of any representative from the Commission [on] Audit (COA).
- 2.12.2 The absence of a checklist which contains the items that needs [sic] to be verified during the POC.
- 2.12.3 **DERMALOG** failed to answer the inquiries of VERA CRUZ and a member of the BAC about “hidden data/information on the photo.”
- 2.12.4 There was no other visible card security such as Hologram on the sample printed driver’s license card.
- 2.12.5 On processing time, the BAC asked **DERMALOG**’s technical expert and the latter responded in this manner –

Question: “May we shown [sic] on the timer to [sic] the last process how long will it take?”

Answer: “I would say, it would depend on the processing on your LTO business rules, but normally, actually, when it comes to backend, it is within a second to get it back to you. For example, by the time the record is submitted to the backend immediately you will have a real time response from the database, then you can do Printing.”³²

On April 7, 2017, the Contract Agreement³³ and Notice to Proceed³⁴ in favor of Dermalog were executed.

On April 10, 2017, Banner moved for reconsideration of the March 31, 2017 Resolution³⁵ recommending the award of contract of Dermalog.

On May 26, 2017, the Anti-Trapo Movement, represented by its Founding Chair Leon E. Peralta (Peralta), filed a Petition for Prohibition³⁶ against the Land Transportation Office to enjoin it from proceeding with the procurement contract with Dermalog.³⁷ It likewise prays that a temporary restraining order be issued over the procurement contract during the pendency

³¹ Id. at 69.

³² Id. at 10.

³³ Id. at 313–314. *See also* id. at 315–320, Special Conditions of Contract.

³⁴ Id. at 321.

³⁵ Id. at 70–79.

³⁶ Id. at 3–19.

³⁷ Id. at 4.

of the Petition.³⁸

Petitioner claims that respondent gravely abused its discretion when it awarded the contract to Dermalog.³⁹ It avers that Banner's April 10, 2017 Request for Reconsideration can be treated as a protest under Section 55 of Republic Act No. 9184, or the Government Procurement Reform Act. Thus, when respondent failed to resolve Banner's Request for Reconsideration before awarding the contract to Dermalog, it allegedly violated Section 57 of the same law.⁴⁰ Petitioner adds that respondent belatedly informed the other bidders of its recommendation to award the contract to Dermalog, in violation of Section 37.1.1 of the 2016 Revised Implementing Rules and Regulations.⁴¹ Moreover, it insists that respondent should have acted on its Observer's Report before issuing the Notice to Proceed to Dermalog.⁴²

Claiming that respondent's act is disadvantageous to the government,⁴³ petitioner calls this Court to set aside technicalities on legal standing and liberally give due course to its Petition, invoking transcendental importance.⁴⁴ The cost of a single driver's license card is ₱89.71 under Banner's bid, while the cost under Dermalog's bid is ₱99.16, which is higher by 10.53%. Since 8.36 million driver's license cards are required to be produced, the difference between the two costs would amount to ₱79,668,053.55. This overpricing would have to be shouldered by Filipino drivers, petitioner points out.⁴⁵

In its Comment,⁴⁶ respondent, through the Office of the Solicitor General, moves for the Petition's dismissal.

For one, petitioner allegedly failed to show facts relevant to its legal capacity to sue as required under Rule 8, Section 4 of the Rules of Court.⁴⁷ Respondent attacks petitioner's lack of allegation that it is an "association organized in accordance with Philippine law and vested with juridical

³⁸ Id. at 16.

³⁹ Id. at 15.

⁴⁰ Id. at 12-14.

⁴¹ Id. at 9 and 13. Republic Act No. 9184 (2003), sec. 37.1.1 states:

Section 37. Notice and Execution of Award. —

37.1. Contract Award

37.1.1. The BAC shall recommend to the HoPE [Head of the Procuring Entity] the award of contract to the bidder with the LCRB [Lowest Calculated Responsive Bid], HRRB [Highest Rated Responsive Bid], SCRB [Single Calculated and Responsive Bid], or SRRB [Single Rated and Responsive Bid] after the post-qualification process has been completed.

.....

Within three (3) calendar days from the issuance of the resolution recommending award of the contract, the BAC shall notify all other bidders, in writing, of its recommendation.

⁴² Id. at 14.

⁴³ Id. at 5.

⁴⁴ Id. at 4-5 and 15.

⁴⁵ Id. at 12-14.

⁴⁶ Id. at 96-161.

⁴⁷ Id. at 116-117. RULES OF COURT, Rule 8, sec. 4 states in part:

Section 4. Capacity. — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred.

personality.”⁴⁸ There was also allegedly no showing that Peralta, the only signatory to the Petition, was duly authorized to represent the entity or its members. Hence, following *Association of Flood Victims v. Commission on Elections*,⁴⁹ petitioner, as well as Peralta, allegedly lacks the legal personality to bring the Petition before this Court.⁵⁰

On petitioner’s insistence as an organization of concerned citizens advancing issues of transcendental importance, respondent argues that petitioner has no legal standing.⁵¹ Despite the large amount of public funds involved in the procurement, petitioner allegedly fell short of showing that respondent utterly disregarded any constitutional or statutory prohibition. Moreover, there are allegedly other parties who may have a more direct interest in the issues, such as the qualified bidders and the Commission on Audit, which has the authority to examine public funds and expenditures.⁵²

Respondent claims that the case is likewise dismissible for petitioner’s failure to adhere to the hierarchy of courts. Additionally, it argues that the writ of prohibition does not lie to enjoin an act already *fait accompli*. It notes how it has already issued Dermalog a Notice to Proceed, and how Dermalog has complied with its deliverables. Respondent, on its end, has started distributing the driver’s license cards with five-year validity.⁵³

Respondent maintains that it did not gravely abuse its discretion in awarding the contract to Dermalog, which offered the Lowest Calculated and Responsive Bid.⁵⁴ It says that petitioner’s allusion of anomalies during the bidding processes, premised on newspaper articles that petitioner attached to its pleading, cannot overturn the presumption of regularity in its favor.⁵⁵

Respondent also denies violating Section 57 of Republic Act No. 9184. It says that all pending protests were already decided by the Assistant Secretary at the time the Notice of Award was issued to Dermalog.⁵⁶ Banner moved to reconsider the March 31, 2017 Resolution on April 10, 2017—seven days after respondent had issued the Notice of Award to Dermalog on April 3, 2017.⁵⁷ Even assuming that Banner moved for reconsideration before Dermalog was awarded the contract, this Motion is allegedly not the protest contemplated under Section 57 that can stay the award.⁵⁸ Besides, respondent says that Banner is not the proper party to commence the protest mechanism under Article XVII of Republic Act No. 9184 and its Implementing Rules, as

⁴⁸ Id. at 118.

⁴⁹ 740 Phil. 472 (2014) [Per Acting C.J. Carpio, En Banc].

⁵⁰ *Rollo*, pp. 117–118.

⁵¹ Id. at 118.

⁵² Id. at 122.

⁵³ Id. at 126–128.

⁵⁴ Id. at 131.

⁵⁵ Id. at 138.

⁵⁶ Id. at 148.

⁵⁷ Id. at 151.

⁵⁸ Id. at 152.

Banner has already been post-disqualified with finality as early as March 6, 2017, when the Assistant Secretary denied its Protest.⁵⁹

Respondent adds that its failure to timely notify the other bidders of its recommendation to award the contract to Dermalog, as per the Implementing Rules, does not suffice to invalidate the award. Insofar as the March 31, 2017 Resolution is concerned, Banner is allegedly not a real party in interest. Respondent stresses that Banner had no chance for the award of the contract since its post-disqualified bid was no longer considered during the evaluation.⁶⁰

Finally, respondent asserts that it did not gravely abuse its discretion when it issued a Notice of Award before petitioner filed its Observer's Report and before Banner moved for reconsideration of the March 31, 2017 Resolution, since the issuance was made within the suggested timeframe under Republic Act No. 9184 and its Implementing Rules.⁶¹

In its Reply,⁶² petitioner insists on having the legal standing as an organization of concerned citizens "in cases involving paramount public interest and transcendental importance."⁶³ To rebut respondent's insistence that it has no legal personality, it attached a Certificate of Incorporation from the Securities and Exchange Commission and the Secretary's Certification authorizing Peralta to file the Petition.⁶⁴ It also argues that since it is raising pure questions of law on procurement protest mechanisms, it can directly come before this Court without violating the hierarchy of courts.⁶⁵

Petitioner lastly argues that even if the act in question were already *fait accompli*, prohibition still lies.⁶⁶ It notes that this Court may still decide cases despite being moot if they concern paramount public interest and the same infraction can be repeated. While generally, a writ of preliminary injunction cannot be directed against actions *fait accompli*, petitioner argues that "consummated acts which are continuing in nature may still be enjoined by the courts"⁶⁷—including the supply of driver's license cards.⁶⁸

This Court now resolves the following issues:

First, whether or not petitioner Anti-Trapo Movement of the Philippines has legal capacity to sue;

⁵⁹ Id. at 151.

⁶⁰ Id.

⁶¹ Id. at 152–153.

⁶² Id. at 322–337.

⁶³ Id. at 323.

⁶⁴ Id. at 327.

⁶⁵ Id. at 328–330.

⁶⁶ Id. at 332.

⁶⁷ Id.

⁶⁸ Id.

Second, whether or not petitioner Anti-Trapo Movement of the Philippines has legal standing to file this action before this Court;

Third, whether or not the act sought to be prohibited is *fait accompli*;

Fourth, whether or not respondent Land Transportation Office committed grave abuse of discretion when it awarded the contract to Dermalog without resolving Banner's Request for Reconsideration; and

Finally, whether or not respondent Land Transportation Office committed grave abuse of discretion when it did not act upon the Observer's Report of petitioner Anti-Trapo Movement of the Philippines before issuing the relevant Notice to Proceed.

The Petition must fail.

I

Preliminarily, we resolve the procedural issues raised by the parties. We rule that petitioner has legal capacity to sue.

Rule 3, Section 1 of the Rules of Civil Procedure provides that “[o]nly natural or juridical persons, or entities authorized by law may be parties in a civil action.”⁶⁹ Nonconformity with this requirement makes the action dismissible for lack of legal capacity to sue.

Lack of legal capacity to sue means the plaintiff's general disability to bring an action due to insanity, incompetence, minority, lack of juridical personality, and other general disqualifications.⁷⁰ As a corollary, a party's legal capacity to sue or to be sued must be shown in its initiatory and responsive pleadings.⁷¹ Rule 8, Section 4 of the Rules states:

SECTION 4. Capacity. — *Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred.* A party desiring to raise

⁶⁹ RULES OF COURT, Rule 3, sec. 1. The 1997 Rules of Civil Procedure prevail at the time of the incidents of this case. Nevertheless, Rule 3, Section 1 is similarly worded in the Revised Rules or A.M. No. 19-10-20-SC (2020).

⁷⁰ *Alliance of Quezon City Homeowners' Association Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64552>> [Per J. Perlas-Bernabe, En Banc].

⁷¹ *Aquino v. Commission on Audit*, G.R. No. 227715, November 3, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Nov/2020/1>> [Per J. Leonen, En Banc].

an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.⁷² (Emphasis supplied)

Although actions shall be brought and defended in the name of the real parties in interest, representatives may do so on their behalf.⁷³ Rule 3, Section 3 of the Rules provides:

SECTION 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.⁷⁴

In an action prosecuted or defended by a representative, the following elements are to be ascertained:

(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim.⁷⁵

Petitioner, represented by Founding Chair Peralta, claims that it is a “non-political, cause-oriented group which aims to promote a ‘Better Philippines’ by exposing corruption, inefficiency, mismanagement, and the like in the national and local levels of the government.”⁷⁶ It is allegedly an aggregate of individuals with a shared advocacy of opposing “the wrong and anomalous management by traditional politicians of the government bureaucracy.”⁷⁷

Respondent assails petitioner's declarations as insufficient to show that it is “an association organized in accordance with Philippine law and vested with juridical personality.”⁷⁸ There was also allegedly no evidence to show that Peralta was duly authorized to sue on petitioner's behalf. Therefore, respondent posits that neither petitioner nor Peralta possesses the legal

⁷² RULES OF COURT, Rule 8, sec. 4. The provision in the 1997 Rules is similarly worded in the present Revised Rules or A.M. No. 19-10-20-SC (2019).

⁷³ *Aquino v. Commission on Audit*, G.R. No. 227715, November 3, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67146>> [Per J. Leonen, En Banc].

⁷⁴ RULES OF COURT, Rule 3, sec. 3. The provision in the 1997 Rules is similarly worded in the present Revised Rules or A.M. No. 19-10-20-SC (2020).

⁷⁵ *Aquino v. Commission on Audit*, G.R. No. 227715, November 3, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67146>> [Per J. Leonen, En Banc].

⁷⁶ *Rollo*, p. 6, Petition.

⁷⁷ *Id.*

⁷⁸ *Id.* at 118, Comment.

personality to file the Petition, per this Court's ruling in *Association of Flood Victims v. Commission on Elections*.⁷⁹

A perusal of the records shows that petitioner was able to disprove respondent's claim when it attached to its Reply a copy of its Certificate of Incorporation⁸⁰ issued by the Securities and Exchange Commission. Peralta's authority to file the Petition on petitioner's behalf is also apparent in the Secretary's Certification,⁸¹ which referred to the April 1, 2017 Board Resolution No. 005-2017, empowering him to do so.

Association of Flood Victims is not on all fours here. Unlike petitioner in this case, the petitioner entity in that case explicitly declared that it was still in the process of formal incorporation, which constrained this Court to dismiss the action due to lack of legal capacity to sue.⁸²

Petitioner, clearly, has legal capacity to sue. But while that is true, petitioner's lack of standing to bring the action before this Court renders the case dismissible. Besides, the writ of prohibition does not lie to enjoin an act already *fait accompli*.

II

The Constitution confers original jurisdiction upon this Court over petitions for certiorari, prohibition, *quo warranto*, and *habeas corpus*.⁸³ Under Rule 65, Section 2 of the Rules of Civil Procedure, a petition for prohibition assails acts done in the exercise of judicial, quasi-judicial, or ministerial functions:

SECTION 2. Petition for Prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, *whether exercising judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. (Emphasis supplied)

⁷⁹ 740 Phil. 472 (2014) [Per Acting C.J. Carpio, En Banc].

⁸⁰ *Rollo*, p. 338, Certificate of Incorporation. *See also id.* at 339–343, Articles of Incorporation.

⁸¹ *Id.* at 337.

⁸² 740 Phil. 472 (2014) [Per Acting C.J. Carpio, En Banc].

⁸³ CONST., art. VIII, sec. 5(1) states:

Section 5. The Supreme Court shall have the following powers:

- (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

Even so, beyond the construct of Rule 65, the power of judicial review provided under Article VIII, Section 1 of the Constitution deems the correction, through certiorari or prohibition, of grave abuses of discretion committed by any governmental instrumentality regardless of the nature of the function exercised.⁸⁴ The constitutional provision states:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, *and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.* (Emphasis supplied)

Simply put, courts may correct, undo, or enjoin an act of a governmental instrumentality through certiorari or prohibition upon showing of grave abuse of discretion amounting to lack or excess of jurisdiction and when delineations of authority were exceeded.

But even if this Court is vested with judicial power, it does not mean that we should rule upon any question we have the authority to resolve.⁸⁵ Courts will not entertain questions on the validity or constitutionality of a statute or a governmental act unless the following requisites for judicial review are met:

*[T]hat the question must be raised by the proper party; that there must be an actual case or controversy; that the question must be raised at the earliest possible opportunity; and, that the decision on the constitutional or legal question must be necessary to the determination of the case itself.*⁸⁶ (Emphasis supplied, citation omitted)

II (A)

This Court will only exercise the power of judicial review if the action is brought “by a party who has legal standing to raise the constitutional or legal question.”⁸⁷ Legal standing relates to “a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.”⁸⁸

⁸⁴ *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, G.R. No. 200418, November 10, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/6702>> [Per J. Leonen, En Banc].

⁸⁵ *Id.*

⁸⁶ *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 602 (1993) [Per J. Bellosillo, En Banc].

⁸⁷ *Id.* at 603.

⁸⁸ *Id.*

However, there are exceptions to the rule on legal standing. As summarized in *Funa v. Villar*,⁸⁹ this Court takes cognizance of petitions from the following “non-traditional suitors”⁹⁰ despite the lack of direct injury from the questioned governmental action for raising constitutional issues with crucial significance:

1. For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
2. For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
3. For *concerned citizens*, there must be *a showing that the issues raised are of transcendental importance which must be settled early*; and
4. For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.⁹¹ (Emphasis supplied)

Here, petitioner, a nongovernmental organization which advocates governmental reforms, is allegedly composed of concerned citizens. It invokes the supposedly “transcendental public importance”⁹² of the issues raised, claiming that it filed the Petition “to protect the [g]overnment from an anomalous contract, which is manifestly and grossly disadvantageous to the Filipino people.”⁹³

Petitioner points to the ₱79,668,053.55 difference in the bids between Banner and Dermalog as an overpricing which would be shouldered by around 8.36 million Filipino motor vehicle drivers. “If this sheer number of affected Filipinos is not of transcendental importance,” petitioner says, “then transcendental importance would lose its meaning.”⁹⁴

Although bereft of any doctrinal definition on transcendental importance, the following are the bases for its determination:

There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.⁹⁵

Whether an issue is of transcendental importance is determined on a

⁸⁹ 686 Phil. 571 (2012) [Per J. Velasco, Jr., En Banc].

⁹⁰ Id. at 586.

⁹¹ Id.

⁹² *Rollo*, p. 5, Petition.

⁹³ Id. at 16.

⁹⁴ Id. at 327, Reply.

⁹⁵ *In Re Supreme Court Judicial Independence*, 751 Phil. 30, 43 (2015) [Per J. Leonen, En Banc].

case-to-case basis. A claim of transcendental importance must be backed by proper allegations. Its plain invocation does not suffice for this Court to brush aside procedural technicalities.⁹⁶

Here, petitioner's sheer assertion of transcendental importance does not warrant a relaxation of the rule on legal standing.

While a substantial amount of public funds was involved in the procurement of driver's license cards, petitioner fell short of establishing that respondent blatantly disregarded relevant constitutional and statutory prohibitions in awarding the contract to Dermalog. Banner's submission of the Lowest Calculated Bid does not automatically warrant an award of the contract in its favor, especially since it was found noncompliant during the mandatory post-qualification.⁹⁷ Petitioner similarly failed to show that no other party has a more direct interest on the matter in question.

II (B)

Filing the Petition for Prohibition to enjoin an act already done is another procedural error. Inescapably, this Court shall first delve into the competitive bidding process.

Save only in cases allowing alternative modes, all government procurements shall be through competitive bidding.⁹⁸ As a mode of government procurement, public bidding "is governed by the principles of transparency, competitiveness, simplicity and accountability."⁹⁹ Competitive public bidding, by its very nature, provides the best conceivable benefits to the public through open competition as a means to safeguard public interest. It also averts any "suspicion of favoritism and anomalies in the execution of public contracts."¹⁰⁰

As defined under Section 5(e) of Republic Act No. 9184, and reiterated in Section 5(h) of its 2016 Revised Implementing Rules and Regulations, competitive bidding includes the following processes:

SECTION 5. Definition of Terms. — . . .

. . . .

⁹⁶ Id. at 44.

⁹⁷ See *Datumanong v. Malaga*, 810 Phil. 88 (2017) [Per J. Del Castillo, First Division].

⁹⁸ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 556 (2009) [Per J. Tinga, En Banc]. See also Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), secs. 2 and 10.

⁹⁹ *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64928>> [Per J. Gesmundo, En Banc].

¹⁰⁰ Id.

(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*[.] (Emphasis supplied)

Competitive bidding is initiated by the Bids and Awards Committee, which advertises the invitations to bid in order to guarantee an expansive dissemination.¹⁰¹ The Committee also ascertains a prospective bidder's eligibility by checking if it conforms to the eligibility requirements in the invitation to bid, including if it presented the legal, financial, and technical documents¹⁰² required under Rule VIII (Receipt and Opening of Bids) of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.

Bidders shall prepare their bids in two separately sealed envelopes, both to be simultaneously submitted to the Bids and Awards Committee. The first envelope contains the technical component of the bid, including the eligibility requirements, while the second envelope contains the bid's financial component.¹⁰³ The bids shall be received by the Committee on the date, time, and place stated in the invitation to bid.¹⁰⁴

Under Section 30.1 of the 2016 Revised Implementing Rules and Regulations, the Bids and Awards Committee shall open the first bid envelope to determine the bidders' conformity with the eligibility and technical requirements using a nondiscretionary "*pass or fail*" criteria:

Rule IX – BID EVALUATION

SECTION 30. Preliminary Examination of Bids

30.1. The BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed." Otherwise, the BAC shall rate the said first bid envelope as "passed."

¹⁰¹ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 556 (2009) [Per J. Tinga, En Banc]. See also Republic Act No. 9184 (2002), sec. 21 and Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 12.1.

¹⁰² Id. at 556. See also Republic Act No. 9184 (2002), sec. 23.

¹⁰³ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 25.1. See also Republic Act No. 9184 (2002), sec. 25.

¹⁰⁴ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 25.5.

After ascertaining the bidders' conformity with the requirements in the first envelope, the Bids and Awards Committee shall open the second bid envelope of the standing eligible bidders whose first bid envelopes were regarded "passed."¹⁰⁵ "Only bids that are determined to contain all the bid requirements for both components shall be rated 'passed' and shall immediately be considered for evaluation and comparison."¹⁰⁶ Relevant to the procurement of goods, the Committee "shall evaluate the financial component of the bids to determine the Lowest Calculated Bid[.]"¹⁰⁷ After the bids have been opened, evaluated, and ranked, the Committee shall prepare an abstract of bids.¹⁰⁸

The Lowest Calculated Bid shall be subjected to post-qualification¹⁰⁹ to "verify, validate, and ascertain all statements made and documents submitted[.]"¹¹⁰ The Lowest Calculated Bid "undergoes verification and validation [as to] whether [it] has passed all the requirements and conditions as specified in the Bidding Documents."¹¹¹

If the Lowest Calculated Bid passes all the requirements for post-qualification, it shall be declared as the Lowest Calculated Responsive Bid. The Committee shall then recommend to the Head of the Procuring Entity to award the contract to the Lowest Calculated Responsive Bid.¹¹²

Conversely, the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 also outlines the processes in case a first bidder is post-disqualified:

- 34.5. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid¹¹³ fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.
- 34.6. Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the [Lowest Calculated Responsive Bid] or [Highest Rated Responsive Bid].

¹⁰⁵ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 30.2.

¹⁰⁶ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 30.2.

¹⁰⁷ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 32.2.

¹⁰⁸ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 32.3.

¹⁰⁹ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 34.1.

¹¹⁰ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 34.3.

¹¹¹ Republic Act No. 9184 (2002), sec. 34.

¹¹² Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 34.4.

¹¹³ See Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 33. The bid with the highest calculated rating in case of Procurement of Consulting Services is referred to as the Highest Rated Bid.

- 34.7. If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the [Lowest Calculated Responsive Bid] or [Highest Rated Responsive Bid], as the case may be, is determined for award, subject to Section 37¹¹⁴ of this IRR.

But in case the Head of the Procuring Entity approves the Committee's recommendation that the Lowest Calculated Responsive Bid be awarded the contract, the Head shall issue the Notice of Award in the bidder's favor.¹¹⁵ The winning bidder must then post a performance security and enter into a contract with the Procuring Entity, subject to compliance with documentary requirements.¹¹⁶ The Notice to Proceed shall follow after the contract is approved by the proper government approving authority.¹¹⁷

Here, petitioner filed the Petition for Prohibition to enjoin respondent from proceeding with the contract with Dermalog, claiming that it would be grossly disadvantageous to the government and the Filipinos.¹¹⁸ Petitioner sought to have respondent "permanently cease and desist from continuing the contract for the Procurement of Driver's License Cards with Five (5) Year Validity for [Calendar Year] 2017" with Dermalog.¹¹⁹

As a preventive remedy,¹²⁰ the writ of prohibition pursues a ruling that would command the other party "to desist from continuing with the commission of an act perceived to be illegal."¹²¹ Its purpose is to avert an act "about to be done."¹²²

That is not the case here. Even before the Petition was filed before this Court, a Notice to Proceed has already been issued in favor of Dermalog directing it to proceed with the project "within seven (7) calendar days upon issuance/receipt of [the] notice."¹²³ Thus, as far as respondent is concerned, the contract has been awarded, and there is nothing else to enjoin. Seen in this light, we cannot subscribe to petitioner's stance that the writ of prohibition still lies since the consummated act sought to be enjoined—the supply of driver's license cards—was allegedly continuing by nature.¹²⁴ Injunctive

¹¹⁴ Section 37 of the Revised Implementing Rules provides for the Notice and Execution of Award.

¹¹⁵ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 37.1.3.

¹¹⁶ See Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), secs. 37.2.1, 37.2.2, and 37.2.3. See also Republic Act No. 9184 (2002), sec. 39.

¹¹⁷ Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016), sec. 37.4.1.

¹¹⁸ *Rollo*, p. 4, Petition.

¹¹⁹ *Id.* at 16.

¹²⁰ *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, 757 Phil. 454, 470 (2015) [Per J. Leonen, En Banc].

¹²¹ *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas* (2013) 716 Phil. 132, 145 [Per J. Mendoza, Third Division].

¹²² *Id.*

¹²³ *Rollo*, p. 321, Notice to Proceed.

¹²⁴ *Id.* at 332, Reply.

remedies do not lie against “acts already accomplished.”¹²⁵

Similarly, without proof to establish the allegation, this Court is not persuaded by petitioner’s bare assertion that respondent “even recently directly contracted, albeit illegally again, another supplier to provide it with driver’s license with a three-year validity”¹²⁶ as basis to assume that the project with Dermalog has not yet been fully accomplished.

III

Even if we disregard procedural infirmities and rule on the merits, the Petition should still be dismissed. Respondent did not gravely abuse its discretion when it awarded the contract to Dermalog without resolving Banner’s Request for Reconsideration of the March 31, 2017 Resolution.

Article XVII of Republic Act No. 9184 outlines the mechanism to protest decisions of the Bids and Awards Committee in government procurement processes:

ARTICLE XVII PROTEST MECHANISM

SECTION 55. Protests on Decisions of the BAC. — Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. *Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee.* The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SECTION 56. Resolution of Protests. — The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

SECTION 57. Non-interruption of the Bidding Process. — In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. *Protests must first be resolved before any award is made.*

SECTION 58. Report to Regular Courts; Certiorari. — Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

¹²⁵ *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, 757 Phil. 454, 470 (2015) [Per J. Leonen, En Banc].

¹²⁶ *Rollo*, p. 333, Reply.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government. (Emphasis supplied)

As a corollary, the relevant provisions of the 2016 Revised Implementing Rules and Regulations state:

RULE XVII
PROTEST MECHANISM

SECTION 55. Protests on Decisions of the BAC

55.1. Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted.

If a failed bidder signifies his intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

55.2. In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the [Head of the Procuring Entity]: *Provided, however*, that a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved.

55.3. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest shall be made by filing a verified position paper with the [Head of the Procuring Entity] concerned, accompanied by the payment of a non-refundable protest fee, . . .

....

55.4. The verified position paper shall contain the following information:

- a) The name of bidder;
- b) The office address of the bidder;
- c) The name of project/contract;
- d) The implementing office/agency or Procuring Entity;
- e) A brief statement of facts;
- f) The issue to be resolved; and
- g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic

records. An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of the protest.

In addition, the bidder shall likewise certify under oath that:

- a) he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- b) if there is such other pending action or claim, he is including a complete statement of the present status thereof; and
- c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the [Head of the Procuring Entity] wherein his protest is filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the verified position paper.

SECTION 56. Resolution of Protests

The protests shall be resolved strictly on the basis of records of the BAC. The [Head of the Procuring Entity] shall resolve the protest within seven (7) calendar days from receipt thereof. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions, or instrumentalities of the [Government of the Philippines] to approve contracts, the decisions of the [Head of the Procuring Entity] concerned shall be final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive shall be final.

Petitioner argues that Banner's Request for Reconsideration is considered a protest under Section 55 of Republic Act No. 9184. Thus, it says that per Section 57, the Request should have first been acted upon by the Bids and Awards Committee before the contract was awarded to Dermalog.¹²⁷

Petitioner's contention has no merit.

This Court enumerated the requirements of a protest under Section 55 of Republic Act No. 9184 in *Department of Budget and Management Procurement Service v. Kolonwel Trading*:¹²⁸

Section 55 of R.A. No. 9184 sets three (3) requirements that must be met by the party desiring to protest the decision of the Bids and Awards Committee (BAC). These are: 1) the protest must be in writing, in the form of a verified position paper; 2) the protest must be submitted to the head of

¹²⁷ Id. at 12–14, Petition.

¹²⁸ 551 Phil. 1030 (2007) [Per J. Garcia, En Banc].

the procuring entity; and 3) the payment of a non-refundable protest fee.¹²⁹

In *Department of Budget and Management Procurement Service*, this Court ruled that the requirements under Section 55 should be complied with, or else the document filed cannot be considered as a protest:

Respondent's letters of May 18, 2006 and June 28, 2006 in which it requested reconsideration of its disqualification cannot plausibly be given the status of a protest in the context of the aforequoted provisions of R.A. No. 9184. For one, neither of the letter-request was addressed to the head of the procuring entity, in this case the DepEd Secretary or the head of the DBM Procurement Service, as required by law. For another, the same letters were unverified. And not to be overlooked of course is the fact that the third protest-completing requirement, *i.e.*, payment of protest fee, was not complied with.¹³⁰ (Citations omitted)

Similarly, in *Land Registration Authority v. Lanting Security and Watchman Agency*:¹³¹

Respondent's letter of November 19, 2004 to the BAC-PGSM Chairman cannot be considered as the protest required under Section 55 of R.A. No. 9184 as it was not verified and the protest fee was not paid.¹³² (Citation omitted)

The records show that Banner's Request for Reconsideration¹³³ fell short of the requirements under Section 55. Although it was submitted to Chair Vera Cruz,¹³⁴ it was not verified and the protest fee was not shown to have been paid. Since the Request cannot be considered a protest, the Bids and Awards Committee need not resolve it before awarding the contract to the winning bidder, Dermalog.

Furthermore, respondent did not commit grave abuse of discretion when it did not act on petitioner's Observer's Report before awarding the Notice to Proceed to Dermalog.

As a transparency measure, Republic Act No. 9184 directs the Bids and Awards Committee to invite observers in all stages of the procurement process:

SECTION 13. Observers. — To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private

¹²⁹ Id. at 1042.

¹³⁰ Id. at 1043.

¹³¹ 639 Phil. 172 (2010) [Per J. Carpio Morales, Third Division].

¹³² Id. at 177.

¹³³ *Rollo*, pp. 70–79.

¹³⁴ Id. at 70.

group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: *Provided, however,* That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

The corollary provisions of the 2016 Revised Implementing Rules and Regulations state:

RULE V – BIDS AND AWARDS COMMITTEE

.....

SECTION 13. Observers

13.1. To enhance the transparency of the process, the BAC shall, during the eligibility checking, shortlisting, pre-bid conference, preliminary examination of bids, bid evaluation, and post-qualification, invite, in addition to the representative of the COA, at least two (2) observers, who shall not have the right to vote, to sit in its proceedings where:

1. At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:

.....

b) *For Goods*, a specific relevant chamber-member of the Philippine Chamber of Commerce and Industry.

.....

2. The other observer shall come from a non-government organization (NGO).

13.2. The observers shall come from an organization duly registered with the Securities and Exchange Commission (SEC) or the Cooperative Development Authority (CDA), and should meet the following criteria:

a) Knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid;

b) Absence of actual or potential conflict of interest in the contract to be bid; and

c) Any other relevant criteria that may be determined by the BAC.

13.3. Observers shall be invited at least five (5) calendar days before the date of the procurement stage/activity. The absence of observers will not nullify the BAC proceedings: *Provided,* That they have been duly invited in writing. The Procuring Entities should ensure that the invitation is received at least five (5) calendar days before each procurement activity. In the event that a procurement activity has to

be postponed, the observers shall be notified immediately of the change in schedule.

The responsibilities of observers in the procurement process are laid down in Section 13.4 of the same Rules, which states:

- 13.4. The observers shall have the following responsibilities:
- a) To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. *The report shall assess the extent of the BAC's compliance with the provisions of this IRR and areas of improvement in the BAC's proceedings;*
 - b) *To submit their report to the Procuring Entity and furnish a copy to the GPPB and Office of the Ombudsman/Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, then it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and*
 - c) To immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid. (Emphasis supplied)

Nowhere in Republic Act No. 9184 or its Implementing Rules does it prohibit the Procuring Entity from granting the award unless it took cognizance of or acted upon the report submitted by observers. It can even be deduced that an observer's report is not mandatory, as its non-submission within the required period is a presumption that the procurement procedure was correctly followed.

Finally, we note that petitioner attached newspaper columns insinuating purported anomalies that attended the procurement of driver's license cards.¹³⁵ These, however, do not prove petitioner's allegations. Newspaper articles are hearsay. Not only are they inadmissible as evidence, but they also lack probative value except if offered for a reason other than establishing the truth of the matter stated.¹³⁶

¹³⁵ Id. at 67–68. A copy of each article was attached to the rollo. See Jarius Bondoc, *Driver's licenses: Bid rigging feared*, PHILSTAR.COM, February 22, 2017, available at <<https://www.philstar.com/opinion/2017/02/22/1673815/drivers-licenses-bid-rigging-feared>> (last accessed on June 13, 2022). See also Al S. Vitangcol III, *Unabating LTO incompetence in car plates, driver's license mess*, THE MANILA TIMES, February 25, 2017.

¹³⁶ See *Feria v. Court of Appeals*, 382 Phil. 412 (2000) [Per J. Quisumbing, Second Division].


ACCORDINGLY, the Petition is **DISMISSED**.

SO ORDERED.

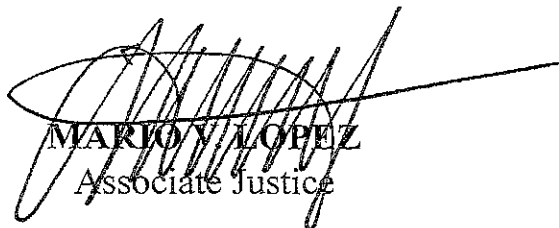


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



MARIO Y. LOPEZ
Associate Justice



JHOSEP Y. DOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

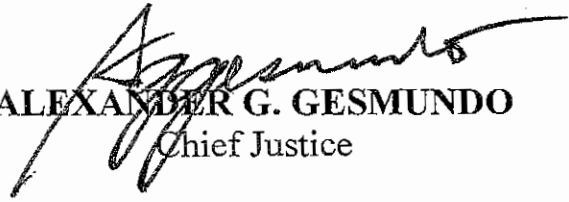
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice