



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 254552

Members:

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

-versus-

RICO P. VALDELLON, LORENZO L. JACINTO,¹ JACINTO M. ILAGAN, DON THED J. RAMIREZ AND RENATO R. VEHEMENTE,²
Accused,

DON THED J. RAMIREZ,
Accused-Appellant.

Promulgated:

JUL 20 2022

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DECISION

LAZARO-JAVIER, J.:

The Case

Don Thed J. Ramirez (Ramirez) appeals from the Decision³ dated May 31, 2019 and Resolution⁴ dated August 25, 2020 of the Sandiganbayan

¹ Name indicated in the *rollo* is Lorenzo Lozada Jacinto II.
² Also referred to as "Renato R. Vehenente" in some parts of the rollo.
³ Penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez; *Rollo*, pp. 4-60.
⁴ Penned by Presiding Justice Amparo M. Cabotaje-Tang; concurred in by Associate Justice Bernelito R. Fernandez and Associate Justice Sarah Jane T. Fernandez; dissented by Associate Justice Ronald B. Moreno and Associate Justice Oscar C. Herrera, Jr.

in Criminal Case No. SB-15-CRM-0079 entitled *People of the Philippines v. Rico P. Valdellon, Lorenzo L. Jacinto,⁵ Jacinto M. Ilagan, Don Thed J. Ramirez, and Renato R. Vehenente a.k.a. Vehemente*, finding him and his co-accused guilty of violation of Section 3(e) of Republic Act No. (RA) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and sentencing them to the indeterminate penalty of six years and one month, as minimum, to 10 years, as maximum, with perpetual disqualification from holding public office.

The Facts

Under RA 9136, otherwise known as the Electric Power Industry Reform Act of 2001, the Power Sector Assets and Liabilities Management Corporation (“**PSALM**”) is mandated to manage, among others, the orderly sale and disposition of the National Power Corporation (NAPOCOR) generation assets, real estate, and other disposable assets.⁶

Pursuant to this mandate, PSALM issued Memorandum Order No. 2011-015 dated August 9, 2011 which created a Bids and Awards Committee (BAC) for the sale/disposal of waste oil located at the Sucat Thermal Power Plant (“**STPP**”).⁷

On November 3, 2011, the BAC conducted a Pre-Bid Conference for the sale/disposal of waste oil in STPP. Seven companies submitted their respective bids,⁸ namely:

1. Genetron International Marketing, Atomillion Corporation, and Safeco Environmental Services, Inc. (Joint Venture);
2. Bensan Industries (Bensan);
3. Cleanway Technology Corporation (Cleanway);
4. Far East Fuel Corp. (Far East);
5. Gulf Oil Petroleum Products (Gulf Oil);
6. Hazchem Inc.; and
7. RMS Petroleum Tech.

After the submission of bids, the bidding process commenced. Under the BAC bidding procedure, the bids shall undergo two qualification

⁵ Name indicated in the *rollo* is Lorenzo Lozada Jacinto II.

⁶ *Rollo*, p. 76.

⁷ *Id.*

⁸ *Id.*

procedures: (1) the **pre-qualification** stage and (2) the **post-qualification** stage.⁹

During the pre-qualification stage, the qualification of the bidders is determined by a **non-discretionary pass or fail criteria**. In this stage, two envelopes are submitted by the bidders, namely: (a) the **Eligibility and Technical Component** Folder and (b) the **Financial Component** Folder,¹⁰ thus:

9. Documents Comprising the Bid: Eligibility and Technical Components

9.1 Unless otherwise indicated in the BDS, the first envelope shall contain the following eligibility and technical documents:

(a.) Eligibility Documents —

Class "A" Documents:

- (i) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration, as stated in the BDS;
- (ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located; and

Class "B" Document:

- (iii) If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partner stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

(b) Technical Documents —

- (i) Bid security in accordance with ITB Clause 14.

10. Documents Comprising the Bid: Financial Component

10.1 Unless otherwise stated in the BDS, the financial component of the bid shall contain the following:

- (a) Financial Bid Form, which includes bid price; and
- (b) Any other document required in the BDS.

The two envelopes should **also contain the additional documents** required in the Bid Data Sheet (BDS), *viz.*:

⁹ Id.

¹⁰ Id. at 77-78.

9.1 Other Eligibility Documents required of the Bidders:

1. EMB-DENR Registration Certificate;
2. Environmental Compliance Certificate (ECC);
3. Discharge Permit;
4. Permit to Operate.

During the **pre-qualification** stage, the two envelopes are opened and bidders are **deemed qualified provided all the documents** enumerated in the PSALM **Invitation to Bid (ITB)** are **contained** in these envelopes, respectively. Hence, where **any of the required documents are missing** from the bid envelopes of a bidder, that bidder shall be **automatically disqualified**. The BAC has **no discretion to qualify** a bidder under this circumstance.¹¹

On **November 17, 2011**, the BAC here conducted its **pre-qualification** process. Only five bidders were rated “PASSED,” following the evaluation of their Eligibility and Technical Component Folder and the Financial Component Folder. Thereafter, the bids were opened, compared, and ranked from highest to lowest, *viz.*¹²

Bidder	Bid Price (PhP)
Far East Fuel Corporation	55,500,000.00
Joint Venture of Atomillion Corporation, Genetron International Marketing, and Safeco Environmental Services, Inc. (Joint Venture)	35,008,888[.]80
Bensan Industries	30,000,888.80
Hazchem, Inc.	19,999,999.99
RMS Petroleum Tech	10,600,000.00

Based on these results, **Far East was declared the highest bidder and subjected to the post-qualification** process. During this **post-qualification** phase, the **strict non-discretionary pass-or-fail criterion no longer applies**. The **BAC members are vested with discretion to determine the qualifications** of the bidders, *i.e.*, to **accept all relevant information** necessary to determine the qualifications of the highest bidder.¹³ In this regard, the BAC shall comply with the following procedure,¹⁴ *viz.*:

- a. First, determine whether the declared highest bidder complies with and is responsive to all the requirements and conditions specified in ITB Clauses 5, 10, and 11 (Clause 24.1 of the Invitation to Bid).
- b. Second, allow the submission of the following documentary requirements within a non-extendible period of three (3) calendar

¹¹ Id. at 78-79.

¹² Id. at 79.

¹³ Id. at 80.

¹⁴ Id. at 82.

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days from receipt by the bidder of notice from the BAC that it submitted the Highest Bid, to wit:

1. Tax clearance per Executive Order 398, series of 2005;
2. Latest income and business tax returns in the form specified in the BDS; and
3. **Other appropriate licenses and permits required by law and stated in the BDS** (Clause 24.2 of the Invitation to Bid).

Note that submission of the above-mentioned documents is essential considering that Clause 24.2, the *"failure of the Highest Bidder to duly submit the requirements under this Clause or a finding against (the) veracity of such shall be ground for forfeiture of the bid security and disqualification of the Bidder for award."*

- c. Third, **examine the bidder's actual plant capacity** by conducting a site inspection to determine whether the declared Highest Bidder meets the requirements of the PSALM **and to determine whether the documents submitted at the time of bidding were authentic and actually reflect the data contained therein.**

Per subsequent inspection of the plant facility of Far East, the BAC members found out that the company's Treatment, Storage, Disposal (TSD) plant facility in Meycauayan, Bulacan did not meet the requirements of PSALM. This confirmed the prior recommendation made by the TWG itself. As a result, on November 28, 2011, a Notice of Disqualification was issued to Far East.¹⁵

In accordance with **Clause 24.5 of the ITB**, therefore, the **second highest bidder, Joint Venture, was considered the Highest Bidder** to advance to the **post-qualification** process.¹⁶

On **December 6, 2011, Joint Venture submitted its Amended ECC dated November 21, 2011 to the BAC.¹⁷ An on-site plant inspection and verification of the TSD facility of Joint Venture in Angat, Bulacan was conducted.**

Although the TWG itself found **Joint Venture's actual plant capacity to be at par with PSALM's requirements**, the TWG, nonetheless, recommended **Joint Venture's disqualification** based on the statements borne in its **original ECC.¹⁸**

3. Based on the ECC limit of 13,333 liters per day and Discharge Permit of 13,000 liters per day, Genetron has no proven track record to treat/processed [sic] waste oil and oily water on a large volume like the waste oil at Sucat Plant.

¹⁵ Id. at 82-83.

¹⁶ Id. at 83.

¹⁷ Id. at 240.

¹⁸ Id. at 84.

4. The capability to treat Tank 2 should be based on the old ECC considering the new ECC of 33,333.33 liters is an additional document submitted only during the post-qualification.

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Based (on) the foregoing, Genetron International Marketing Plant TSD facility has no capability to treat/process the waste oil per PSALM requirements and therefore, Genetron FAILED the Post Qualification.

RECOMMENDATION:

We recommend to the BAC that **the JV of Atomillion Genetron and SAFECO be DISQUALIFIED for failure to pass the Post Qualification Requirements under the Bidding Process for the Sale/Disposal of the Waste Oil Located at Sucat Thermal Plant.**

The BAC studied the TWG recommendation. It held deliberations for this purpose with the TWG.¹⁹

During the deliberations between the TWG and the BAC, the issue that was vetted and discussed was *whether the BAC should accept the Amended ECC submitted by Joint Venture.*²⁰

Some members of the BAC expressed the opinion that **the submission of additional information, such as Joint Venture's Amended ECC, was allowed under Clause 24.2(c) and 24.3 of Section II of the ITB.** PSALM Vice President Tolentino who was also invited to attend the deliberations to give his expert advice, opined that per Clause 24.2 of the ITB, it is the BAC's prerogative whether to accept or reject the Amended ECC.²¹

At the end of the well-studied deliberations between the TWG and the BAC,²² the BAC voted. Two out of three BAC members present voted to accept the Amended ECC.²³ The BAC resolved that Joint Venture's Amended ECC should be accepted, and thus, the TWG had erroneously measured the "output capacity" of Joint Venture based on its original ECC and not on its Amended ECC. The BAC then declared that Joint Venture was post-qualified and consequently recommended that the project be awarded to the latter. This disposition was contained in the *BAC-Disposal Resolution 2012-11 dated January 5, 2012 (BAC Disposal Resolution).*²⁴

¹⁹ Id. at 83-84.

²⁰ Id.

²¹ Id.

²² Id. at 21.

²³ Rico P. Valdellon, Lorenzo L. Jacinto II, Jacinto M. Ilagan, Don Thed J. Ramirez and Renato R. Vehemente a.k.a. Vehemente were designated as Chairperson, Vice-Chairperson and members, respectively, of the BAC for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets – which included the sale/disposal of the waste oil located at the STPP. Per defense testimony, Valdellon, Jacinto, Ilagan and Ramirez were present during the December 19, 2011 meeting wherein the BAC members present voted whether to accept the Amended ECC of the Joint Venture. Vehemente was absent. Jacinto and Ramirez voted to accept; while Ilagan voted not to accept. Valdellon did not vote because he acted as the arbiter during deliberations and as such would only be required to vote in case of a tie.

²⁴ *Rollo*, p. 84.

Notably, the TWG **admitted and rectified its error** per its March 23, 2012 Report.²⁵

On **January 12, 2012**, a **Notice of Award** was issued to Joint Venture. And on **January 18, 2012**, PSALM and Joint Venture **executed the corresponding Contract Agreement** for the sale/disposal of waste oil located at the STPP.²⁶

Joint Venture went on to **execute the project**. It was **sufficiently able to carry out** the project pursuant to PSALM's requirements. Hence, it was subsequently issued a **Certificate of Project Completion**.²⁷

The Sandiganbayan Proceedings

Upon the complaint of Bengan Industries, Inc. (Bengan), one of the disqualified bidders of the project, Rico P. Valdellon ("Valdellon"), Lorenzo L. Jacinto ("Jacinto"), Jacinto M. Ilagan ("Ilagan"), Ramirez, and Renato R. Vehemente a.k.a. Vehemente ("Vehemente") were charged before the Sandiganbayan with violation of Section 3(e) of RA 3019 or the *Anti-Graft and Corrupt Practices Act*, as amended:

That on 12 January 2012, or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RICO POBLETE VALDELLON and LORENZO LOZADA JACINTO II, both high-ranking public officers being Department Managers of the Power Sector Assets and Liabilities Management Corporation (PSALM), a government owned and controlled corporation, conspiring and confederating with one another and with the accused JACINTO MORATILLA ILAGAN, Division Manager of PSALM, DON THED JUAN RAMIREZ, then Division Manager of PSALM, and RENATO RAMIREZ VEHEMENTE, then Corporate Executive Officer of PSALM, committing the crime herein charged in relation to their office and taking advantage of their official positions as members of the PSALM Bids and Awards Committee on Disposal of waste Oil (PSALM-BAC Disposal), **acting with manifest partiality, evident bad faith and/or gross inexcusable negligence**, did then and there, willfully, unlawfully and criminally **give unwarranted benefit, advantage, or preference to the joint venture** of Genetron International Marketing, Atomillion Corporation, and Safeco Environmental Services Inc. (Joint Venture), **by accepting the Amended Environmental Compliance Certificate dated November 21, 2011, an eligibility document which was belatedly submitted by the Joint Venture during the post qualification stage** in place of or to remedy the deficient Environmental Compliance Certificate which it submitted during the opening of bids; and **thereafter, post-qualifying the Joint Venture and recommending that the contract for the sale and disposal of waste oil at Sucat Thermal Power Plant, Parañaque City be awarded to the Joint Venture at its bid price of THIRTY-FIVE MILLION EIGHT THOUSAND EIGHT HUNDRED EIGHTY-EIGHT AND 80/100 PESOS (Php35,008,888.80);**

²⁵ Id. at 84-85.

²⁶ Id. at 86.

²⁷ Id.

thereby **allowing the Joint Venture to be awarded with the above contract** in the aforesaid amount.

[CONTRARY TO LAW.]²⁸

On arraignment, Valdellon, Jacinto, and Ilagan entered their separate pleas of “NOT GUILTY.” As for Ramirez and Vehemente who refused to enter their respective pleas, the Sandiganbayan entered a plea of “NOT GUILTY” on their behalf.²⁹

On May 8, 2017, Ilagan's counsel filed a *Motion to Dismiss Case Against Accused Jacinto Ilagan* since his client died on April 25, 2017 due to multiple organ failure. On September 20, 2017, the Sandiganbayan dismissed the case against Ilagan pursuant to Article 89 of *The Revised Penal Code* after the prosecution was able to confirm to the court the fact of his death.³⁰

On May 31, 2017, the prosecution and the defense submitted a *Joint Stipulation of Facts*, as follows:

ADMITTED/PROPOSED STIPULATIONS

A. For Accused Rico P. Valdellon

1. His identity as one of the persons charged in the Information;
2. He was a public officer, being then a Manager at PSALM and Chairman of PSALM Bids and Awards Committee (“BAC”) on Disposal at the time of the alleged commission of the crime charged in this case; and
3. He is now retired.

B. For Accused Lorenzo L. Jacinto II

1. He was a public officer at the time relevant to the Information;
2. He was the Department Manager, Asset Valuation Department (AVD) and Vice-Chairman, [PSALM BAC] on Disposal; and
3. He is now retired.

C. For Accused Don Thed J. Ramirez

1. His identity as one of the persons charged in the Information; and
2. He was a public officer, being then a Division Manager at PSALM at the time of the alleged commission of the crime charged in this case.

D. For Accused Renato R. Vehemente

1. He is the lawyer-member of the BAC on Disposal;

²⁸ Id. at 5.

²⁹ Id. at 6.

³⁰ Id.

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2. At the opening of bids, the following submitted their bids:

Bidder	Bid Price	Remarks
Far East Fuel Corp.	P35M	Highest bidder but later on disqualified during post qualification
Joint Venture of Atomillion Corporation, Genetron International Marketing and Safeco Environmental Services (Joint Venture)	P35M	Declared winning bidder
Bensan Industries, Inc.	P30M	Complainant in this case
Hazchem, Inc.	P20M	
RMS Petroleum	P11M	

3. Far East Fuel Corporation (“Far East”) was disqualified by the BAC on Disposal upon the recommendation of the Technical Working Group (“TWG”). Its ECC permit did not meet the bidding requirements; and
4. Moving on to the next highest bidder, the TWG found out that the [ECC] permit of the Joint Venture submitted during the bidding did not meet the bidding requirements. [The] Joint Venture has in its possession an amended ECC permit that was submitted through the TWG. The TWG recommended to disqualify the Joint Venture and referred to BAC whether or not to accept the amended ECC of the Joint Venture.³¹

During the trial proper, Dr. Benjamin S. Santos, Dennis O. Celestial, Exequiel De Vera, Amando S. Yanga and Silvestre Santiago testified for the prosecution; while Valdellon, Jacinto, Ramirez, Vehemente, Atty. Geoffrey Masancay, Silvestre Santiago, and Atty. Conrad S. Tolentino testified for the defense.

Evidence for the Prosecution

On Bensan’s behalf, **Dr. Benjamin S. Santos** testified that from 1980 until 2014, he served as Bensan’s President, one of the companies which participated in the bidding for the STPP project. He filed a complaint with the Office of the Ombudsman (OMB) because the BAC violated the terms of reference of the bidding documents when the project was awarded to an allegedly disqualified bidder.³²

Dennis O. Celestial, then the Chief of Clearance and Permitting Division, Environmental Management Bureau (EMB), Region III, was previously the Chief of the Environmental Impact Assessment and Management Division (EIAM) of the EMB, Region III. As Chief of the EIAM Division, his primary duty was to supervise and recommend the applications for ECC and their amendments. He explained that **an ECC is a document which certifies that a proposed undertaking would not cause significant adverse environmental impacts** because of the environmental management measures stated in the environmental impacts study submitted by the project

³¹ Id. at 6-7.

³² Id. at 7-8.

proponent. The proposed project should not be implemented if an application for issuance of an ECC had not been approved.³³

He explained that **amendments to the ECC** were obtained usually for the **expansion of operation** either in terms of **increase in the output** or capacity or increase in land area.³⁴

He recalled that **he was the one who had evaluated the application for amendment of the ECC** of Genetron, one of the companies comprising the **Joint Venture** for the STPP project. In open court, he **validated** its supporting documents.³⁵ According to this witness, the **original ECC** of Genetron was **issued** on October 27, 2003, and was **amended** on February 26, 2004, April 8, 2011, and November 21, 2011. He **recommended the approval of this ECC's amendments**. He explained that the **amendments extended the validity** of the ECC in terms of **increasing the maximum allowable limit** of the rate of treatment for a certain hazardous waste.³⁶

The amended ECC granted to Genetron on April 8, 2011 was valid up until the second amendment was approved on November 21, 2011. Although it was the previous mindset of the Department of Environment and Natural Resources (DENR) that the ECC was a mere planning tool, **the DENR later deemed the ECC a regulatory tool** since it was mandatory and contained a penal provision.³⁷

He clarified that in the evaluation of an applicant's papers, the conditions contained in every previous ECC (prior to its amendments) should have been complied with. According to him, Genetron was **invariably compliant with the conditions of its original ECC** during each time the **amendments to the ECC were approved**.³⁸

Exequiel De Vera testified that he was the Vice-President for Finance or Treasurer of Far East, one of the companies that participated in the bidding. He described how the bidding on November 17, 2011 was conducted. The BAC declared the bid of Gulf Oil disqualified after it was discovered that its Omnibus Sworn Statement (OSS) was lacking. Per the representative of Gulf Oil, the OSS was enclosed in the second envelope for the financial component. Further, Cleanway was disqualified since it did not submit its OSS.³⁹

He confirmed that though Far East was initially declared the highest bidder, it received a Notice of Disqualification during the post-qualification stage. The BAC denied its request for reconsideration. He recounted that Far East was prompted to file a complaint for annulment of the award to Joint Venture, but this complaint was dismissed due to improper venue. Far East

³³ Id. at 9.

³⁴ Id. at 9-10.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id. at 10-11.

³⁹ Id. at 11-12.

filed another complaint before the OMB. This complaint was also dismissed. Far East wrote PSLAM's President for reconsideration. This too was denied. Finally, Far East sought the intervention of the Office of the President of then President Benigno Aquino III. Far East did not receive any reply from the Office of the President.⁴⁰

Amando S. Yanga testified that he is a retired Corporate Staff Officer (CSO) of PSLAM. He held the post since 2004 up to his retirement in March 2016 as CSO III. As a CSO, he was the head of the TWG for the sale or disposal of waste oil at the STPP.⁴¹

He expounded that during the post-qualification stage, the TWG looked into the **highest bidder's plant capability** and verified whether the **documents** submitted at the time of bidding were **authentic and original**. After the evaluation, the TWG submitted its report to the BAC for discussion.⁴²

He recalled that during the post-qualification of Joint Venture, a staff member of Genetron showed to him its **Amended ECC**. After going over the document, he **surmised** that **this document did not conform** to the **one submitted** at the **time of bidding**. Despite his initial reluctance, he received the document for him to show to the BAC.⁴³

He narrated that after the ocular inspection of Joint Venture's facility, the TWG submitted its report to the BAC. During the BAC presentation, the discussion focused on the ECC. After a lengthy discussion, BAC decided to vote on whether to qualify Joint Venture or not based on the ECC. Two of the BAC members, Ramirez and Jacinto, voted to qualify Joint Venture while Ilagan voted otherwise.⁴⁴

On cross examination, he verified that **the bidding process was transparent** from bottom up since it was a public bidding. Too, he confirmed that there was **nothing irregular if the BAC voted against** the TWG's recommendation since the BAC was authorized to reverse any of the TWG recommendations.⁴⁵

He testified that he became a member of the TWG through PSLAM Memorandum No. 2011-015 dated August 9, 2011. Further, he affirmed that the TWG report relating to the post-qualification of Joint Venture was signed by him, including one technical member, the Pollution Control Officer, and the COA representative. He confirmed that other than himself, none of those who signed the TWG report were designated as TWG members pursuant to PSLAM Memorandum No. 2011-015.⁴⁶

⁴⁰ Id.

⁴¹ Id. at 12.

⁴² Id.

⁴³ Id. at 13.

⁴⁴ Id.

⁴⁵ Id. at 13-14.

⁴⁶ Id.

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He clarified that the following persons were present during the post-qualification of the Joint Venture: Lauan (Task Team Member), Gerry T. Verin (Pollution Control Officer), Evelyn B. Dimaandal, accused Jacinto and Carlos D. Odfina. When asked whether these persons were also TWG members, he admitted that they were not part of the TWG's original composition. When he was asked, further, to clarify why Lauan and Verin signed on the TWG report when the latter were not authorized per Memorandum No. 2011-015, he expounded that it was accused Jacinto as his Department Manager, who authorized Lauan and Verin to sign, pursuant to their official functions: Lauan as member of the Task Team, while Verin as default Pollution Control Officer of PSALM.⁴⁷

Silvestre Santiago was a Power Management Specialist at PSALM. He was designated sometime in August 2011 as Head of the Secretariat of the BAC for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets **including the Waste Oil at the STPP**. He served as the custodian of all documents involving the Sale or Disposal of Waste Oil at the STPP. He also prepared the Minutes of the BAC Meetings. He identified the relevant exhibits as the same documents submitted to the OMB in compliance with the subpoena.⁴⁸

Evidence for the Defense

Valdellon testified that he worked with the NAPOCOR in various capacities from 1973 until 2003. From 2003 until his retirement in 2016, he moved to PSALM.⁴⁹ He was appointed Chair of the PSALM BAC – Disposal, whose mandate included the **sale and disposal of the waste oil located at the STPP**. After being appointed as Chair, he, together with the other BAC members, formulated the Bidding Documents, composed of: Invitation to Bid (ITB), Bid Data Sheet (BDS), General Conditions of Contract, Special Conditions of Contract, Schedule of Requirements, List of Assets and Bidding Forms.⁵⁰

He recalled that after the BAC had served a notice of post-disqualification to Far East, the **Joint Venture went through the post-qualification process pursuant to Clause 24.5 of the ITB**. Thus, the TWG **conducted an on-site plant inspection and verification of its TSD facility in Angat, Bulacan on December 6, 2011**. During the **post-qualification process**, the Joint Venture **handed a copy of the Amended ECC dated November 21, 2011 to the TWG**, which the TWG **in turn delivered to the BAC**. The TWG **recommended the post-disqualification of the Joint Venture on the ground that the latter had no capacity to meet the PSALM requirements under its original ECC**.⁵¹

⁴⁷ Id.

⁴⁸ Id. at 14-15.

⁴⁹ Id. at 19-23.

⁵⁰ Id. at 19.

⁵¹ Id. at 21.

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A **series of deliberations** between the TWG and the BAC and **consultation meetings with authorities** followed. During the deliberations, some members of the BAC expressed the view that the **submission of additional information such as the Amended ECC is allowed** under Clauses 24.2(c) and 24.3 of Section II of the ITB. Even **PSALM Vice-President Tolentino opined** that under Clause 24.2, it was the **BAC's prerogative to accept** the Amended ECC. In the end, BAC members Jacinto and Ramirez voted to accept the Amended ECC while BAC member Ilagan voted not to accept.⁵² He did not vote because as the BAC Chairperson, he acted as the arbiter during the BAC deliberations and was only required to cast his vote in case of a tie.⁵³ The **in-depth deliberations** of the BAC and the TWG were **documented** in various Minutes of the Meetings⁵⁴ held between December 2011 and January 2012.

According to Valdellon, he knew the present case against him as this was an offshoot of the complaint filed before the OMB by Bensan's Dr. Benjamin Santos against him, Jacinto, Magan, Ramirez, and Vehemente.⁵⁵

Valdellon claimed that the Joint Venture's Amended ECC had been approved by the EMB on November 21, 2011, **well before the post-qualification inspection**. He further posited that based on the actual inspection of the facilities and limitations set by the Amended ECC, the Joint Venture's plant capacity was compliant with PSALM's minimum requirements.⁵⁶

Valdellon maintained that he harbored no manifest partiality, evident bad faith, or gross inexcusable negligence in the conduct of the bidding process. He explained that the Joint Venture had faithfully complied with the requirements of the bidding documents and relevant laws. He stressed that he did not favor any of the bidders – he insisted that the project was awarded to the Joint Venture since it complied with all the requirements of PSALM and other qualifying rules.⁵⁷

On cross-examination, Valdellon averred that the BAC had conducted a public bidding for the sale and disposal of waste oil. To ensure a fair, honest, and competitive public bidding, the BAC engaged in extensive deliberations, formulated the policies, rules, and requirements in the conduct of the bidding. These were all **reflected** in the **Bid Documents** and **SBB No. 1**.⁵⁸ Since the BAC adopted a “non-discretionary pass/fail criteria” during the opening of bids, it meant either the bidder had or did not have an ECC. If an ECC was submitted, the bidder was rated “PASSED,” and without it, was rated “FAILED.” On clarificatory questions by the Sandiganbayan, he affirmed that during the pre-qualification, all the bidders submitted their respective ECCs

⁵² Id. at 19-23.

⁵³ Id. at 231.

⁵⁴ Id. at 19-23.

⁵⁵ Id. at 22.

⁵⁶ Id.

⁵⁷ Id. at 19-23.

⁵⁸ Id.

and that Joint Venture's Amended ECC was submitted at a later date. No one required Joint Venture to submit the Amended ECC. It was handed over during the post-qualification and inspection at Joint Venture facilities.⁵⁹

Atty. Cecilio B. Gellada, Jr. was the Department Manager of the Litigation and Internal Services Department of PSALM from 2012 until his retirement in August 2017. He testified that he came to know about the case when the then President of PSALM designated him to head the Task Force to investigate the sale or disposal of waste oil at the STPP. By virtue of Office Order No. 2012-034 dated March 14, 2012, the Task Force was formed consisting of a technical engineer and a lawyer from the Office of the President. The Task Force requested comments from the members of the BAC and the TWG. Each of the BAC members was interviewed in the process. An Investigation Report was subsequently submitted to the Office of the President.⁶⁰

Atty. Geoffrey D.L. Masancay was the Officer-in-Charge (OIC) and General Counsel of PSALM. His office had custody of the original copies of the documents marked as Exhibits for accused Valdellon, namely: Office Order No. 2012-034 dated March 14, 2012; and Investigation Report dated May 31, 2012.⁶¹

Silvestre Santiago, Chairperson of the PSALM Disposal Secretariat, was not able to attend the hearing. His custody of the original copies of the common exhibits for the prosecution and the defense was, nonetheless, offered for stipulation and admitted by the prosecution.⁶²

Jacinto testified that he was the Department Manager of the Asset Valuation Department (AVD) for PSALM in January 2012. He was also designated as Vice-Chairperson of the PSALM BAC for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets starting August 9, 2011.⁶³

He testified that the BAC prepared the Invitation to Bid, Bidding Documents, ITB, BDS, General Conditions of Contract, Special Conditions of Contract, Schedule of Requirements, List of Assets, and Bidding Forms. SBB No. 1 was issued on November 4, 2011.⁶⁴

He clarified that the ECC was an eligibility requirement, *i.e.*, if a bidder submitted an ECC, it is rated "PASSED" and eligible; otherwise, the bidder is rated "FAILED" and ineligible. The documents submitted by the bidders were only photocopies, as the originals were verified during the post-qualification stage.⁶⁵

⁵⁹ Id. at 23.

⁶⁰ Id. at 24.

⁶¹ Id.

⁶² Id. at 24-25.

⁶³ Id. at 25.

⁶⁴ Id.

⁶⁵ Id. at 26.

He averred that the **post-qualification** stage was a **process of verification** during which the TWG **inspected the facility** of the winning bidder and **verified the authenticity and validity** of its documents. The team at the treatment facility of the Joint Venture was shown and given a copy of the ECC amendment application dated October 24, 2011 for facility expansion. The **Amended ECC** was approved on November 21, 2011. Upon receipt of the **TWG post-qualification report**, the **BAC deliberated on whether to accept** the Amended ECC. In **due course**, the BAC decided to accept and consider the Amended ECC.⁶⁶

He differentiated between “admitting” and “considering” the Joint Venture’s **Amended ECC**. According to him, “**admitting**” was done during the opening of bids wherein the BAC determines whether the documents were complete. On the other hand, “**considering**” occurred during the **post-qualification stage** when the documents are examined and evaluated. Here, the Amended ECC was **accepted and considered** based on **Section 24.2** of the ITB as amended by SBB.⁶⁷

He further recalled that on March 14, 2012, the PSALM President and CEO issued PSALM Office Order No. 2012-034 creating a Task Force for the review of the sale or disposal of waste oil at the STPP. A lawyer headed the Task Force with two members. The creation of the Task Force was in response to a Memorandum issued by the Chief of Staff and Undersecretary of the DOE addressed to PSALM President and CEO Ledesma, requesting a thorough review of the bidding process on the project.⁶⁸

The Task Force directed the members of the BAC and the TWG to file their respective comments on the bidding process in question and the consequent award of the project to Joint Venture.⁶⁹

On May 31, 2012, the **Task Force submitted its Investigation Report** to the President and CEO of PSALM for transmittal to the DOE Secretary. In relation to the **post-qualification and contract award** to the Joint Venture, the **Task Force opined** that the **admission of the Amended ECC during the post-qualification stage was allowed** under ITB Clause 24.2 (c), Section III, BDS, as amended by Item 5 of SBB No. 1.⁷⁰

Jacinto pointed out that aside from the PSALM investigation, there was also a **complaint filed before the OMB by Far East** against the PSALM President, the BAC members, and the officers of the different companies comprising Joint Venture. As respondents in that case, they were accused of causing undue injury and giving unwarranted benefits, advantage, or preference to Joint Venture during the bidding process by acting with manifest

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id. at 27.

⁶⁹ Id.

⁷⁰ Id.

partiality, evident bad faith or gross inexcusable negligence. **This complaint was dismissed** on October 31, 2013.⁷¹

Jacinto added that on January 28, 2012, **Far East also filed a complaint with the Regional Trial Court - Malolos, Bulacan for Annulment of Notice of Award, Damages, and Injunction** with Prayer for a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order.⁷²

On March 25, 2012, **Far East filed a letter-complaint with the Office of the President.**⁷³

In both instances, Far East alleged irregularity in the bidding process and accused Ramirez and his co-accused of causing undue injury and giving unwarranted benefits, advantage, or preference, and acting with manifest partiality, evident bad faith, or gross inexcusable negligence in conducting the bidding process.⁷⁴

Both of these cases were dismissed for lack of merit.⁷⁵

When asked how the capacity of the Joint Venture's facility was determined, Jacinto replied that based on the Terms of Reference, the **standard** was the **actual processing capacity** of the facility, which was 6,000 liters of waste oil per day. This capacity was not determinable by examining the ECC or Amended ECC. He expounded that the **output stated in the ECCs** referred to the finished product or the **output after processing**. According to him, **PSALM's requirement** is to determine the **facility's processing capacity** based on the **input**. He opined though that the ECC capacity for the output was not the concern of the BAC. When asked **whether there was a change in the capacity of the facility** between the time the original ECC was issued and when the Amended ECC was approved, he replied that there was none.⁷⁶

Atty. Conrad S. Tolentino was the Vice-President for Asset Management at the time the bidding in question took place.⁷⁷

He testified that **Valdellon invited him to attend the BAC meeting** wherein the post-disqualification of Joint Venture would be discussed. He was asked to assist the BAC in resolving whether to accept Joint Venture's Amended ECC. The BAC sought his help since he had the experience and background as BAC Chairperson for PSALM's procurement activities. During the meeting, after in-depth deliberations on the acceptance of the Amended ECC in relation to Clause 24, Section II, ITB of SBB No. 1, he

⁷¹ Id. at 27-28.

⁷² Id. at 28.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id. at 29-31.

explained and confirmed that the **BAC had the prerogative to consider or reject the Amended ECC**. The Joint Venture was rated “PASSED” during the bid submission since it submitted the required documents for that particular stage.⁷⁸

He expounded that from his experience as BAC Chair for PSALM procurements, the **post-qualification** stage was the opportunity for the bidder to present authenticated documents and **submit its latest versions of permits and licenses**. He added that **Joint Venture’s Amended ECC** would qualify as a **permit or license** which would **fall under the requirement prescribed under Clause 24.2 (c)** of SBB No. 1. This meant that the **Amended ECC** could be submitted within three calendar days from receipt of notice that it was declared as the highest bidder. He emphasized that Joint Venture had an **obligation to submit its Amended ECC** to the BAC within three days from receipt of notice.⁷⁹

According to him, the purpose of the TWG under the *Procurement Law* and its *Implementing Rules and Regulations* was to assist the BAC. In the end, however, it would still be the BAC which decided the issues.⁸⁰

He recalled that Valdellon, Jacinto, Ilagan and Ramirez were present during the December 19, 2011 meeting on the casting votes. Vehemente was not present because he was in a separate meeting. Jacinto and Ramirez voted to accept, while Ilagan voted against its acceptance.⁸¹

Don Thed Ramirez was the Officer-in-Charge, Division Manager of the Financial Valuation and Tariff Division (FV-Tariff) of the Liability Management Department of PSALM when the questioned bidding took place. He was officially promoted to the position in March 2012.⁸²

He testified that when the Joint Venture’s bid documents were opened, it contained, among other documents, an ECC and a Letter dated October 24, 2011 stating that the **Joint Venture at that time had a pending request with the DENR for the amendment and expansion of its existing ECC**.⁸³

He further averred that the Joint Venture was verbally informed by the BAC that it had the highest bid on December 5, 2011. The next day, post-qualification of the Joint Venture was conducted by the technical person of the BAC, accused Jacinto and the TWG represented by Yanga. During the post-qualification stage, the Joint Venture submitted to the BAC its Amended ECC which included a Cover Letter dated November 21, 2011. The submission of the Amended ECC to the BAC **did not come as a surprise** to him since based on his interpretation of the **Bid Documents**, particularly **SBB**

⁷⁸ Id. at 30.

⁷⁹ Id. at 30-31.

⁸⁰ Id.

⁸¹ There was no mention of any reason why Valdellon did not cast his vote.

⁸² *Rollo*, pp. 32-34.

⁸³ Id. at 32.

No. 1, bidders were allowed to submit the necessary permits and licenses.⁸⁴

Further, he verified the name plate capacity of the Joint Venture's machines and later confirmed that it **had the capacity to meet PSALM's requirements**. He noted that the TWG stuck to Joint Venture's disqualification because its original ECC showed it had no capacity to meet PSALM's requirements. He recalled that the BAC had to decide whether to accept or reject the Amended ECC in light of Clause 24 on Post-Qualification and Section II of the TB as modified by SBB No. 1.⁸⁵

Vehemente confirmed that the Joint Venture was post-qualified based on a 2-1 vote of the BAC members. BAC Resolution No. 2012-01 was issued recommending the award of the project to Joint Venture. This BAC Resolution was routed to the BAC members for their signatures. He read all the documents attached to the BAC Resolution before signing it. He found nothing irregular with the documents. The Minutes of the Meeting on the deliberations proved that the BAC did its due diligence in post-qualifying Joint Venture and recommending the award of the project to it.⁸⁶

Ruling of the Sandiganbayan

By its assailed Decision dated May 31, 2019, the Sandiganbayan found all the accused guilty of violation of Section 3 (e) of RA 3019, as amended, *viz.*:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered finding accused Rico P. Valdellon, Lorenzo L. Jacinto, Don Thed J. Ramirez and Renato R. Vehemente a.k.a. Vehemente **GUILTY** beyond reasonable doubt of violation of Section 3 (e) of R.A. No. 3019, as amended, and are hereby **SENTENCED** to suffer the indeterminate penalty of [six] (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

SO ORDERED.⁸⁷

The Sandiganbayan held that the prosecution established beyond reasonable doubt all the elements of violation of Section 3 (e) of RA 3019: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.⁸⁸

⁸⁴ Id. at 33.

⁸⁵ Id.

⁸⁶ Id. at 35.

⁸⁷ Id. at 60.

⁸⁸ Id. at 42-44.

The court found all the accused gave unwarranted benefit, preference, and advantage to the Joint Venture when it allowed the submission of the Joint Venture's Amended ECC during the post-qualification stage.⁸⁹

As the Sandiganbayan found, there were five members of the BAC for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets – which included the sale/disposal of the waste oil located at the STPP. They were Valdellon, Jacinto, Ilagan, Ramirez and Vehemente. They were designated as Chairperson, Vice-Chairperson, and members, respectively. During the December 19, 2011 meeting, the BAC members present voted whether to accept or reject the Amended ECC of the Joint Venture during the post-qualification stage. At that time, Chairperson Valdellon, Vice Chairperson Jacinto, and members Ilagan and Ramirez were present. BAC member Vehemente was absent. Jacinto and Ramirez voted to accept the Amended ECC, while Ilagan voted against its acceptance.⁹⁰ Chairperson Valdellon who acted as the arbiter during the deliberations did not cast his vote.

The Sandiganbayan pointed out that pursuant to Clause 9 of the ITB on the "*Documents Comprising the Bid: Eligibility and Technical Components*" and the BDS,⁹¹ the Amended ECC should have been submitted during the pre-qualification stage. Under the BDS, in particular, the ECC was one of the required eligibility documents to be submitted by the bidders during the pre-qualification. As such, the Amended ECC should have been included in the first envelope of the respective bidders which were opened on November 17, 2011.⁹²

The Sandiganbayan ruled that by allowing the Joint Venture to belatedly submit an amended ECC, the BAC gave it an opportunity to enhance or improve its bid, enabling it to qualify.⁹³

⁸⁹ Id. at 44-47.

⁹⁰ Id. at 43-56.

⁹¹ 9.1 Unless otherwise indicated in the BDS, the first envelope shall contain the following eligibility and technical documents:

(a) Eligibility Documents

Class "A" Documents:

(i) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration as stated in the BDS:

(i) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located; and

Class "B" Document:

(ii) If applicable, the JVA, in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

x x x x

The Bid Data Sheet (BDS) enumerated the other Eligibility Documents required of the bidders, namely:

- (1) EMB-DENR Registration Certificate;
- (2) Environmental Compliance Certificate (ECC);
- (3) Discharge Permit; and
- (4) Permit to Operate.

⁹² *Rollo*, pp. 44-45.

⁹³ Id. at 44-46.

The Sandiganbayan further pronounced that the “*other appropriate licenses and permits required by law*”, as well as the *inspection/verification report under Clause 24(c)*, refers to licenses and permits, and inspection/verification report apart from those enumerated under the BDS as eligibility documents required of the bidders such as the ECC. A plain reading of Clause 9.1 of the ITB in relation to the BDS would show that the ECC is considered as one of the eligibility documents required of the bidders, hence, should be included in the first envelope. While it is true that the Joint Venture submitted an ECC during bid opening and was rated “PASSED” for the Eligibility and Technical component of pre-qualification, it cannot amend or modify its bid after the deadline of the submission of bids under Clauses 19.1 and 19.4 of the ITB.⁹⁴

The Sandiganbayan opined that the acceptance of the Amended ECC after the bid opening date and its consideration during the deliberations in the BAC, TWG, and BAC Secretariat meetings are acts which exhibit the partiality of the BAC in the interpretation of its own Bidding Documents in violation of the office orders and jurisprudence on the proper disposal of public assets. The Joint Venture cannot be allowed to belatedly submit an amended ECC to supplant the one it submitted during pre-qualification, even if it informed the BAC of its pending application for an amended ECC.⁹⁵

The Sandiganbayan held that all the accused violated the bidding rules by accepting an “enhancement to eligibility document” of the Joint Venture *post facto* or after the bids were already opened. The consideration of this belatedly submitted document was instrumental to the award of the contract to the Joint Venture, and as a result, gave unwarranted benefits, advantage, and preference to the Joint Venture over the other bidders.⁹⁶

The Sandiganbayan found that the element of conspiracy or unity of criminal design was present through the collective participation of all the accused in all stages of the bidding process.⁹⁷

The accused filed their respective Motions for Reconsideration, *viz.*:

1. Motion dated June 13, 2019 filed by Vehemente;
2. Motion for Reconsideration (of the Decision dated May 31, 2019 which was promulgated and received by the Accused Movant on even date) dated June 10, 2019 filed by Ramirez;

⁹⁴ 19.1 The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Seller prior to the deadline prescribed for submission and receipt of bids. x x x Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

x x x x

19.4 No bid may be modified after the deadline for submission of bids.

⁹⁵ *Rollo*, p. 47.

⁹⁶ *Id.* at 54.

⁹⁷ *Id.* at 57.

3. Motion for Reconsideration (of the Decision promulgated on May 31, 2019) dated June 14, 2019 filed by Jacinto;
4. Motion for Reconsideration (of the Decision dated May 31, 2019) dated June 13, 2019 filed by Valdellon;
5. Supplemental Motion for Reconsideration (with Motion for Leave) dated July 17, 2019 filed by Ramirez.

By Resolution dated August 25, 2020, the Sandiganbayan denied these motions for lack of merit.

The Present Appeal

Ramirez now seeks a verdict of acquittal via the present appeal. He faults the Sandiganbayan for ruling that: **first**, he exhibited manifest partiality and gave unwarranted benefits, preference, and advantage to the Joint Venture when he voted to accept and consider its Amended ECC, though its admission and consideration was sanctioned by the provisions of the Invitation to Bid (ITB) itself;⁹⁸ and **second**, he was liable as a co-conspirator because he signed the BAC Resolution and took part in the deliberations for the award of the contract to Joint Venture.⁹⁹

Our Ruling

We acquit.

Appellant and his co-accused were charged with violation of Section 3 (e) RA 3019, as amended, *viz.*:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

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

⁹⁸ Id. at 75.

⁹⁹ Id.

Violation of Section 3 (e) of RA 3019 requires the following elements: (1) the accused must be a public officer discharging administrative, judicial, or official functions or a private individual acting in conspiracy with such public officers; (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.¹⁰⁰

There is no question as to the presence of the first element here. Appellant was a Division Manager at PSALM, a government-owned and controlled corporation (GOCC) created under RA 9136, also known as the "Electric Power Industry Reform Act of 2001" (EPIRA).¹⁰¹

We now go to the second and third elements.

Second element

*Manifest partiality, evident bad faith,
or gross inexcusable negligence*

In *Quiogue v. Estacio, Jr.*,¹⁰² the Court emphasized anew that Section 3 (e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. These are the **mental elements** of the crime charged – its *mens rea*. They range from **recklessness** to an **intentional** mental framework.

“*Partiality*” is synonymous with “bias” which excites a disposition to see and report matters as they are wished for rather than as they are. “*Bad faith*”, on the other hand, does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. Lastly, “*gross negligence*” is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property.¹⁰³

The three (3) mental elements are distinct from one another. Hence, proof of the existence of *any* of these mental elements suffices to warrant a conviction for violation of Section 3 (e).¹⁰⁴

¹⁰⁰ *Ferrer, Jr. v. People*, G.R. No. 240209, June 10, 2019.

¹⁰¹ *Rollo*, p. 43

¹⁰² G.R. No. 218530 (Resolution), January 13, 2021, citing *Uriarte v. People*, 540 Phil 447 (2006).

¹⁰³ *People v. Naciongayo*, G.R. No. 243897, June 8, 2020.

¹⁰⁴ *Rivera v. People*, G.R. No. 228154, October 16, 2019.

Did appellant act with manifest partiality, evident bad faith, or inexcusable negligence when he voted to consider and accept the Amended ECC of the Joint Venture, as a result of which, the bid of the Joint Venture was allegedly amended, enhanced, and improved, and thereby it was given unwarranted benefits, advantage, or preference? **The Court finds they did not.**

First. We quote anew the relevant provisions of the ITB:

23. Detailed Evaluation and Comparison of Bids

23.1 The Seller will undertake the detailed evaluation and comparison of bids which have passed the opening and preliminary examination of bids, pursuant to IT Clause 20, in order to determine the Highest Bid.

23.2 The Highest Bid shall be determined in two steps:

- a. The detailed evaluation of the financial component of the bids; and*
- b. The ranking of the bid price from the highest to lowest. The bid with the highest price shall be identified as the Highest Bid.*

23.3 The Seller's BAC shall immediately conduct a detailed evaluation of all bids rated "passed", using non-discretionary pass/fail criteria.

23.4 Unless otherwise indicated in the BDS, Seller's evaluation of bids shall only be based on bid price quoted in the Financial Bid Form.

24. Post-Qualification

24.1 The Seller shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Highest Bid complies with and is responsive to all requirements and conditions specified in ITB Clauses 5, 10 and 11.

24.2 Within a non-extendible period of three (3) calendar days from receipt by the bidder of the notice from the BAC that it is the Highest Bid, the Bidder shall submit the following documentary requirements:

- a. Tax clearance per Executive Order 398, series of 2005;*
- b. Latest income and business tax returns in the form specified in the BDS; and*

c. Other appropriate licenses and permits required by law and stated in the BDS.

Failure of the Highest Bidder to duly submit the requirements under this Clause or a finding against veracity of such shall be ground for forfeiture of the bid security and disqualification of the Bidder for award.

24.3 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted pursuant

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to IT Clauses 9 and 10, as well as other information as the Seller deems necessary and appropriate, using a non-discretionary "pass/fail" criterion.

24.4 If the BAC determines that the Bidder with the Highest Bid passes all the criteria for post-qualification, it shall declare the said bid as the Highest Bid, and recommend to the PSALM President the award of contract to the said Bidder at its submitted bid price.

24.5 A negative determination shall result in the rejection of the Bidder's Bid, in which event the Seller shall proceed to the next Highest Bidder to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post qualification, the procedure for post-qualification shall be repeated for the Bidder with the next Highest Bid, and so on until the highest bid is determined for contract award.

24.6 Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC, the PSALM President shall approve or disapprove the said recommendation.

25. Reservation Clause

25.1 Notwithstanding the eligibility or post-qualification of a bidder, the Seller reserves the right to review its qualifications at any stage of the sale/disposal process if it has reasonable grounds to believe that a misrepresentation has been made by the said bidder, or that there has been a change in the Bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility and bidding requirements, statements or documents, or any changes in the situation of the Bidder which will affect its capability to undertake the project so that it fails the present eligibility or bid evaluation criteria, the Seller shall consider the said Bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.

X X X X

(Emphasis supplied)

In accepting the Amended ECC dated November 21, 2011 during the post-qualification stage on December 6, 2011, the BAC, with the aid of expert advice and extensive deliberations, made an interpretation of Clause 24, par 24.2(c) as one **allowing the submission of other appropriate licenses and permits** required by law and stated in the BDS **during the post-qualification stage**. The BAC construed the term "documents" as **necessarily including the Joint Venture's Amended ECC** since this ECC qualified as an **appropriate license or permit** required by law. The Joint Venture was therefore eventually **permitted by the BAC to submit its Amended ECC** within a non-extendible period of three days from receipt of notice declaring it as the highest bidder.¹⁰⁵

¹⁰⁵ Rollo, p. 21.

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Notably, the BAC's acceptance of the document based on its reading of the provision, among others, was pursuant to the expert advice of **Atty. Conrad S. Tolentino**, who was familiar with the procedures taken by the BAC as he received regular updates from the BAC through e-mail or verbal communication and was present during most of their meetings, especially on Joint Venture's post-disqualification evaluation. He had the necessary expertise or was at least believed to be so as a result of his experience, background, and reputation as the BAC Chair for PSALM's procurement activities.¹⁰⁶

When his opinion was asked whether to accept the Joint Venture's Amended ECC in relation to the proper interpretation of **Clause 24**, he explained that **the BAC had the prerogative to accept or reject the Amended ECC**. He elaborated that the Joint Venture was rated "PASSED" during the bid submission since it submitted the documents required for that stage. From his experience as Chairperson of the BAC for PSALM's procurements, **the post-qualification stage was the venue** for the bidder to present authenticated documents and **submit latest versions of permits and licenses**. He added that the Amended ECC may be considered a **permit or license** which would fall under the requirement prescribed under **Clause 24.2(c)**, that it should be submitted within three calendar days from receipt of notice of being the highest bidder.¹⁰⁷

The BAC, therefore, **reasonably relied in good faith** on Atty. Tolentino's considered opinion, among others, when it **accepted and considered the Amended ECC**. Indeed, the fact that **the BAC invited an expert** such as Atty. Tolentino, plus the **in-depth and heavy deliberations and discussions** it conducted in order to determine whether to accept or reject the Joint Venture's Amended ECC, **negates the existence of manifest partiality, evident bad faith, or gross inexcusable negligence** on the part of appellant or any member of the BAC for that matter. They **exercised due diligence** in resolving this contentious issue.¹⁰⁸

More, pursuant to the **Memorandum** from the DOE directing PSALM to conduct a thorough review of the bidding process of the STPP Waste Oil/Disposal project, a Task Force was created through PSALM Office Order No. 2012-034. In par. 4.5 of the **Investigation Report**, the Task Force concluded that **the acceptance of the Amended ECC was well within the provisions of the ITB, BDS and SBB**, as follows:

The BAC Resolution No. 2012-01, dated 5 January 2012, recommending to PSALM President and CEO to award the contract to JV of AC, GIM, and SES stand on the basis of its ruling to accept the amended ECC of Genetron, dated 21 November 2011 which was submitted on 6

¹⁰⁶ Id. at 29-31.

¹⁰⁷ Id.

¹⁰⁸ Id. at 235-238.

December 2011, or during the post-qualification of its TSD facility. **The acceptance of the amended ECC is allowed under ITB Clause 24.2 (c), Section III. Bid Data Sheet, as amended by Item 5 of Supplemental Bid Bulletin No. 1, dated 4 November 2011, thus, the award by the BAC to the Joint Venture of AC, GIM, and SES is legally permissible under the Bidding Documents.**¹⁰⁹

Even during the pre-qualification stage, **the BAC was already given notice that there was a pending amendment of the Joint Venture's existing ECC.** As stated by the Sandiganbayan:

*We are not unaware that the Joint Venture applied for an amendment of its ECC with the DENR before the submission of bids, and this pending application was brought to the attention of the BAC.*¹¹⁰

Appellant testified that when Joint Venture's bid documents were opened, it contained, among other documents, an ECC (Exhibit "8" to "8-A" for Ramirez) and a **Letter dated October 24, 2011** (Exhibit "8" for Ramirez) showing that Joint Venture at that time **had a pending request with the DENR for the amendment and expansion of its existing ECC.** Also, the Amended ECC itself showed that it was approved by DENR on November 21, 2011 – or **seven days before Far East was declared post-disqualified** on November 28, 2011.¹¹¹

Hence, it **cannot be said** that appellant or any member of the BAC acted with manifest partiality, evident bad faith, or gross inexcusable negligence when they voted to accept and consider Joint Venture's Amended ECC at the post-disqualification stage. For **it was precisely during that stage when the BAC was duty bound to make an in-depth evaluation of the qualifications** of the Joint Venture for the STPP Project. Consequently, it was but **proper that the BAC be duly apprised** of the Joint Venture's current or updated capacity to handle the project. This **certainly required the submission of its Amended ECC** which, for all intents and purposes, was the one that validly existed during the post-qualification stage; and no longer the superseded ECC earlier submitted.¹¹²

What happened was that appellant and his co-accused had to resolve a **legitimate question of law**, a question of law **that is not even about an elementary legal principle**, but of the type that **would have compelled a mental slugfest** among procurement lawyers and experts on how to resolve it. If the **resolution could reasonably go either way**, and the decision-makers **acted with transparency and due diligence**, as here, their **determination**

¹⁰⁹ Id. at 240.

¹¹⁰ Id. at 47.

¹¹¹ Id.

¹¹² Id. at 238-242.

cannot by any means be an instance of **manifest partiality, evident bad faith, or gross inexcusable negligence.**

True, under the ITB, each bidder was **required early on during the pre-qualification stage to submit its ECC**, among others, to be declared as pre-qualified during the first stage of the bidding. **But where in the meantime, the ECC that was submitted had already been superseded**, as in the Joint Venture's ECC, it was the Joint Venture's right and duty to promptly inform the BAC of this development; otherwise, the post-qualification process would be skewed since not all the relevant data would have been before the BAC. For then, documents which have otherwise become stale and outdated would remain in the records and consequently used to generate false results on the bidders' qualifications. This would seriously prejudice the government.

Another. Since the first stage of the bidding was only for the purpose of checking whether the required documents were submitted by the bidders, it meant the qualitative values of these documents and their actual compatibility with the PSALM requirements for the project had yet to be determined during the second stage.¹¹³ For this reason, the matters reserved to be scrutinized during the second stage may not be lumped together with the matter or matters earmarked exclusively for the first stage. To emphasize, it was only during the second stage wherein the BAC was duty bound to ascertain whether these documents were valid and truly reflective of the current capacity of the declared highest bidder, the Joint Venture.

Again, it was precisely for the purpose of complying with the mandated procedure for the second stage that the ITB provisions themselves allowed the submission of "*other appropriate licenses and permits required by law and stated in the BDS.*"¹¹⁴ These documents necessarily included the Amended ECC of the Joint Venture which took the place of its previously submitted ECC. To repeat, at that stage of the bidding process, it was a matter of right as much as a duty for the declared highest bidder, the Joint Venture, to update the BAC of its current actual capacity to handle the PSALM project. For this purpose, the Joint Venture properly submitted its Amended ECC to the BAC. In doing so, it cannot be said that the Joint Venture's submission of the Amended ECC was done surreptitiously or had otherwise come as an unwelcome or unanticipated development. As stated, the first envelope of the Joint Venture containing its then ECC also contained a letter informing the BAC that as of the opening of the first envelope, it had a pending application for amendment of its ECC with the DENR. Notably, its Amended ECC was approved and issued even before it was declared the highest bidder and thereafter informed of the second stage it to go through. Hence, we cannot infer from these circumstances that the Joint Venture and the BAC conspired to manipulate the bidding process to amend, enhance, or improve the bid of the Joint Venture.

¹¹³ Id. at 238-242.

¹¹⁴ Sec. 24.2 (c), ITB.

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In fine, in view of the meticulous procedures and strict scrutiny applied by appellant and the rest of the BAC members who voted to accept the Joint Venture's Amended ECC, there is **no way to conclude** that they did so with manifest partiality, evident bad faith, or gross inexcusable negligence.

Third element

Undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference

This is the criminal act aspect of the crime charged – the *actus reus*.

In the **absence of the requisite mental element** of manifest partiality, evident bad faith, or gross inexcusable negligence, there can be **no resulting undue injury** to any party, specifically to the government. **Nor can it be said that the Joint Venture was accorded some unwarranted benefit, advantage, or preference** by reason of the acceptance of its Amended ECC during the post-qualification stage. As earlier discussed, appellant and his co-accused did not **amend, enhance, or improve the** Joint Venture's bid **because the Joint Venture in fact was entitled** to the acceptance and consideration of its Amended ECC as a matter of right pursuant to the terms of the ITB, BDS and SBB.¹¹⁵

The **Investigation Report** of the Task Force itself concluded that the acceptance of the Amended ECC was well within the provisions of the ITB, BDS and SBB, thus, the **award by the BAC to Joint Venture could not have been but legal** under the Bidding Documents.¹¹⁶

Also, there was **really no serious challenge** to the Joint Venture's capacity to **handle and complete efficiently and effectively** the awarded project. The TWG was **itself satisfied with Joint Venture's ability to handle the project** after inspecting its facility. The TWG thus found the Joint Venture to **have had the requisite capacity** for the project. Specifically, its actual plant capacity, as borne by its Amended ECC, was on par with PSALM's requirements.¹¹⁷ This simply proves that there was **nothing** to amend, enhance or improve about its bid.

The "*other appropriate licenses and permits required by law*", as well as the *inspection/verification report under Clause 24(c)* should be interpreted to include the Amended ECC considering this interpretation was relied on by the BAC in its extensive deliberations including advice from experts. More

¹¹⁵ *Rollo*, pp. 239-240.

¹¹⁶ *Id.* at 240.

¹¹⁷ *Id.* at 22.

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so, it is a necessary duty on the part of Joint Venture to promptly inform the BAC of this development; otherwise, the post-qualification process would be skewed since not all the relevant data would have been present before the BAC.

Further, these interpretations are allowed because Clause 24.3 provides that the BAC may consider other information it shall deem necessary and appropriate to determine whether the bidder passed all the criteria for post-qualification. Indeed, if the Amended ECC were not covered under the “*other appropriate licenses and permits required by law*” under Clause 24.2(c), then no other appropriate licenses and permits may be submitted during post-qualification because it would be treated as an eligible document for pre-qualification.¹¹⁸

Acquittal of the Appellant

In view of the foregoing considerations, appellant is rightfully entitled to a verdict of acquittal. The issue of conspiracy thus becomes moot.

Favorable Judgment to Benefit All

While it is true that it was only appellant who appealed from the adverse dispositions of the Sandiganbayan, the favorable judgment here shall also benefit his co-accused who did not appeal. This is in accordance with Section 11 (a), Rule 122 of the *2000 Rules of Criminal Procedure* as amended:

Section. 11. Effect of appeal by any of several accused. -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated May 31, 2019 and Resolution dated August 25, 2020 of the Sandiganbayan in Criminal Case No. SB-15-CRM-0079 are **REVERSED**.

Appellant **DON THED J. RAMIREZ** and his co-accused, namely, **RICO P. VALDELLON, LORENZO L. JACINTO, and RENATO R.**

¹¹⁸ Id. at 192-193.


VEHEMENTE are **ACQUITTED** on reasonable doubt. Let entry of judgment be issued immediately.

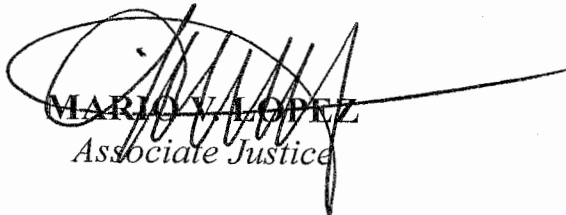
SO ORDERED.



AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson, Second Division


MARIO Y. LOPEZ
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

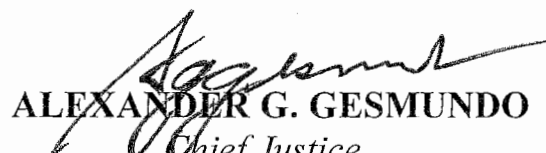
ATTESTATION

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 MARIO VICTOR F. LEONEN
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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

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