

LEOPOLDO OANI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 139984. March 31, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

During the school year 1988-1989, the Panabo High School in Panabo, Davao del Norte, headed by its Principal, Leopoldo Oani, implemented the free secondary school program of the government. During the period of November 1, 1988 to December 31, 1989, the high school received the amount of P648,532.00 from the Department of Education, Culture and Sports (DECS) for Maintenance and Other Operating Expenses (MOOE).[1] Of the said amount, P551,439.13 was earmarked for the purchase of various supplies, materials and equipment.[2]

On March 1, 1990, the DECS Secretary received a letter[3] from the Parents Teachers Association of the Panabo High School regarding the investigation of Principal Oani and Bonifacio Roa, the Resident Auditor regarding, among other things, the alleged overpricing of 12 fire extinguishers for P15,000.00 each. The Regional Office of the COA then issued Assignment Order No. 90-137 dated March 2, 1990 to a team of auditors, composed of Jaime P. Naranjo, as Chairman, and Bienvenido Presilda and Carmencita Enriquez, as members. The team had the following tasks:

To determine whether the MOOE Funds of the Panabo High School, particularly for supplies, materials and equipment were utilized and/or expended in accordance with existing laws, rules and regulations.

Specific Objectives:

- To be able to identify losses of funds resulting from fraudulent transactions.
- To be able to determine the following:
 - a) Existence of fraud.
 - b) Extent of fraud committed.
 - c) Method or means by which fraud was committed.
 - d) Persons liable.[4]

The team gathered information based on interviews of the persons involved, including Oani and Roa, and other school personnel. They also secured documents from government agencies and private entities to verify the purchase and delivery of fire extinguishers, as well as office and school supplies to the high school which were charged against the MOOE. They, likewise, conducted ocular inspections of other business establishments in connection with the said purchases.

The team discovered that on June 23, 1989, Oani had approved a Requisition and Issue Voucher[5] for the

acquisition of 15 units of fire extinguishers for the use of the high school as mandated by Presidential Decree No. 1185, also known as the Fire Code of the Philippines. The supplies are described in the voucher as follows:

Quantity

Unit

Article

15

Units

10 lbs. capacity powerline fire extinguisher ABC Tri-Class dry chemical general purpose – BRAND NEW -

In compliance with PD 1185 known as Fire Code of the Philippines.

The amount of P55,000.00 was certified as available for the purpose. Instead of conducting a public bidding, Oani decided to purchase the fire extinguishers from the Powerline Manufacturing Industry (Powerline, for brevity) for P54,747.00. Powerline was owned by Francisco Cunanan and had its business address at Km. 5, Carnation St., Buhangin, Davao City. The enterprise was authorized by the Department of Trade and Industry to manufacture and refill stored pressure type (Light Pink only) mono-ammonium phosphate for ABC fires.[6]

On June 27, 1989, Oani approved Purchase Order No. 2[7] for nine units of fire extinguishers and requested Powerline to deliver the supplies. Upon delivery thereof, Oani approved a disbursement voucher[8] in favor of the supplier for the amount of P54,747.00. The supplier acknowledged receipt of the said amount through check.[9].

The members of the Audit Team that conducted a re-canvass for fire extinguishers of the same brand and features as those supplied by Cunanan discovered that each unit could be purchased for only P2,970.00, inclusive of 10% allowance. The purchase of the nine units of fire extinguishers was, thus, overpriced by P23,040.00.[10]

Oani had also approved a Requisition and Issue Voucher for a set of Stereo Amplifier and components described therein, thus:

Quantity Article

1 set Stereo Amplifier – Consisting of the [ff]:

1 unit Sound Research SR 100A 200 Watts 1 unit Sound Research 6 Mic. Mixer 1 set 12” 3-Way Speaker System

1 unit Radio Cassette – Portable 1 unit Phono – Magnetic x 2 units Microphone & Microphone Stand w/ Holder

3 pieces Electrical Bell 8-10 inches diameter[11]

Separate invitations to bid were sent to ASM Enterprise, Edwin Marketing and RS Marketing,[12] which submitted their bids to the Awards Committee composed of Oani, as Chairman, and Domingo Pintongan, Mercita Jayoma and Roa as members. The contract was awarded to ASM Marketing.[13]

On December 28, 1989, Oani approved a Purchase Order[14] for a complete set of amplifiers for the price of P35,650.00 and requested the ASM Marketing to deliver the merchandise. As per Oani’s request, Arlene Lomugdang, the accounting clerk of the school, issued a Certification that the amount of P35,650.00 was available for the said expense.[15]

Check No. 095751 was drawn against the MOOE for P35,650.00 in payment of the said supplies and was remitted to the ASM Marketing, after the disbursement voucher[16] for the said amount was approved by Oani.

Canvass forms were distributed to business enterprises, including Red Lion Marketing for the purchase of office supplies. The contract was awarded to Red Lion Marketing for the price of P61,912.35. The office supplies were delivered to the school, after which Oani approved the disbursement voucher for the said amount which was drawn against the MOOE.[17] The supplier thereafter received payment thereon.

In a separate transaction, Oani again approved the purchase of office supplies chargeable against the MOOE. The contract was awarded to the Red Lion Marketing for P111,912.35. The supplies were delivered by Red Lion Marketing to the high school per Sales Invoice Nos. 486, 487, 488 and 489 on March 10, 1989. Oani approved Disbursement Voucher No. 101-8903-017[18] in favor of Red Lion Marketing for the said amount. Payment for the merchandise was, likewise, received by the supplier.

The Auditing Team conducted a review of the prices of the stereo set and school and office supplies, and discovered that they could be purchased for only P144,621.51 instead of the P227,857.45 paid by the school. The Auditing Team recommended the filing of administrative and criminal complaints for violations of Rep. Act No. 3019 against Oani and Roa.

On March 30, 1993, Informations were filed against Oani and Roa in the Sandiganbayan for violation of Section 3(e) of Rep. Act No. 3019. The accusatory portion of the Information docketed as Criminal Case No. 18885 reads:

That on or about the month of December 1989, and sometime prior or subsequent thereto, in the Municipality of Panabo, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, LEOPOLDO OANI being then the Secondary School Principal and BONIFACIO ROA being then the Resident Auditor, both of the Panabo High School, Davao del Norte, while in the performance of their official functions, committing the offense in relation to their office and conspiring and confederating with each other, did then and there willfully, unlawfully, criminally and with evident bad faith cause undue injury to the Government in the following manner: in the purchase of nine (9) fire extinguishers for the Panabo High School, accused deliberately disregarded the requirements on public bidding by allowing the forms such as Request for Quotations and Canvass to be accomplished by the winning bidder notwithstanding the fact that no canvass was made at all, as [a] result of which the nine (9) fire extinguishers were purchased from Powerline Company at the total price of P54,747.00, although the real amount of such fire extinguishers and which was supposed to have been paid was only P2,560.00 per unit or P23,040.00 in all, thereby causing undue injury to the government in the amount of THIRTY-ONE THOUSAND SEVEN HUNDRED PESOS (P31,700.00), Philippine Currency.

CONTRARY TO LAW.[19]

The other Information, docketed as Criminal Case No. 18886, reads:

That on or about the month of December 1989, in the Municipality of Panabo, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, LEOPOLDO OANI being then the Secondary School Principal and BONIFACIO ROA being then the Resident Auditor, both of Panabo High School, Davao del Norte, while in the performance of their official functions, committing the offense in relation to their office, and conspiring and confederating with one another, did then and there willfully, unlawfully, criminally and through evident bad faith cause undue injury to the Government in the following manner: in the purchase of sound equipment, supplies and materials for the Panabo High School, accused deliberately disregarded the requirements on public bidding by allowing the forms such as Request for Quotations and Canvass to be accomplished by the winning bidders themselves notwithstanding the fact that no canvass was made at all, as a result of which the sound equipment, office forms and office supplies were purchased from ASM Marketing and Red Lion Marketing for a total price of P227,857.45, although the real amount supposed to have been paid was only P144,621.51, thus, causing undue injury to the Government in the amount of EIGHTY-THREE THOUSAND TWO HUNDRED THIRTY-FIVE

& 94/100 pesos (P83,235.94), Philippine Currency.

CONTRARY TO LAW.[20]

Oani admitted that no public bidding was conducted prior to the purchase and delivery of the fire extinguishers, but averred that he was authorized to purchase the same by negotiation because Francisco R. Cunanan, the proprietor of Powerline, submitted a Certification dated "January 1988" pursuant to COA Circular No. 91-368 and Article 7, Section 442 of the Government Auditing Rules and Regulations (GARR), stating that the company is the only authorized and duly-licensed manufacturer and exclusive distributor of Powerline fire extinguishers brand, and that no other dealer, sub-dealer or distributor was appointed or authorized to sell his major line products.[21] Oani averred that a canvass of prices was done for the purchase of the office and school supplies, and that the Bidding Committee awarded the contract to ASM Marketing based on the abstract of bids placed by the suppliers at the scheduled bidding. He then approved the purchase orders for the supplies to ASM Marketing which delivered the equipment. The same procedure was followed for the purchase of the office supplies. He asserted that the law and the COA procedures were followed in the bidding process and the purchase of school and office supplies.

Oani further averred that the trial court erred in relying solely on the Audit Report of the auditing team. He asserted that it was not his duty to check whether those participating in the bidding were bona fide dealers. As long as such bidder could purchase the supplies and materials indicated in the bidding request and the price is reasonable, there was sufficient basis to award the contracts. He admitted the possibility that he had made a wrong assessment of the bidding and canvass, but claimed that he acted in good faith.

After trial, the Sandiganbayan promulgated a decision acquitting Roa, but convicting Oani of the crimes charged. The fallo of the decision reads:

WHEREFORE, judgment is hereby rendered CONVICTING accused LEOPOLDO E. OANI of the crime[s] charged in both Criminal Cases Nos. 18885 and 18886, his guilt having been proven beyond reasonable doubt. Accordingly, in Criminal Case No. 18885, Leopoldo E. Oani is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) MONTH as minimum, to EIGHT (8) YEARS as maximum, and to suffer perpetual disqualification from public office. He is ordered to restitute to the treasurer of the Panabo National High School the amount of TWENTY-THREE THOUSAND FORTY PESOS (P23,040.00).

In Criminal Case No. 18886, Leopoldo E. Oani is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) MONTH, as minimum, to EIGHT (8) YEARS, as maximum, and to suffer perpetual disqualification from public office. Also, he is hereby ordered to restitute the amount of SEVENTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-EIGHT PESOS AND SEVENTY-NINE CENTAVOS (P73,878.79) to the treasurer of the Panabo National High School.

The actual period of accused LEOPOLDO E. OANI's preventive imprisonment, if any, shall be credited to the service of his sentence.

As to accused BONIFACIO ROA y GALINDO, he is hereby ACQUITTED of the crime charged in both Criminal Cases No. 18885 and 18886.

Accordingly, the cash bond of the said BONIFACIO ROA posted in both cases in the amount of FIFTEEN THOUSAND PESOS (P15,000.00) each, as evidenced by O.R. No. 2968083 and O.R. No. 2968084, is hereby ordered CANCELLED.

Considering that the facts from which civil liability against the said Bonifacio Roa might arise did not exist, no civil liability is imposed against him.

The Honorable Commissioner, CID, is hereby ordered to CANCEL the name of BONIFACIO ROA y GALINDO from his Commission's Hold Departure List, if any.

With costs against accused LEOPOLDO E. OANI.[22]

Oani, now the petitioner, filed the instant petition for review on certiorari with this Court and raised therein the following sole issue:

WHETHER OR NOT THE GUILT OF THE PETITIONER WAS PROVEN BEYOND REASONABLE DOUBT TO CONVICT HIM OF VIOLATION OF SEC. 3(e) OF RA 3019, AS AMENDED.[23]

We note that the issues raised by the petitioner are factual. Under Rule 45 of the Rules of Court, only questions of law may be raised that in a petition for review on certiorari. The Court is not a trier of facts; hence, it is not its duty to re-examine and reevaluate the evidence of the parties. Moreover, the findings of facts of the CA or the Sandiganbayan are, as a general rule, conclusive on the Court. And while the Court may entertain and resolve factual issues in exceptional circumstances,[24] the petitioner in this case was unable to establish any such exceptional circumstance.

Indeed, the Court assiduously reviewed the records and found no justification for the modification, much less the reversal of the decision of the trial court.

The petitioner avers that the trial court erred in finding him guilty of violating Section 3(e) of Rep. Act No. 3019 for the purchase of the fire extinguishers without any public bidding. He maintains that since Powerline was the exclusive manufacturer of the fire extinguishers and had not designated any dealer or subdealer of its products as evidenced by the Certification of Cunanan,[25] he was justified in dispensing with a public bidding and to purchase the fire extinguishers on a negotiated basis with Powerline.

The petitioner is wrong.

COA Circular No. 78-84 dated August 1, 1978, provides that negotiated contracts may be entered into where any of the following conditions exist:

- Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to life and/or property;
- Whenever the supplies to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;
- Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;
- Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance equipment, the purchase of nine (9) units fire extinguishers were exorbitant or non-confirming to specifications;
- In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government as determined by the head of agency;
- Whenever the purchase is made from an agency of the government;
- Whenever the purchase is made from a foreign government.[26]

None of the foregoing conditions existed when the petitioner purchased the fire extinguishers on a negotiated basis from Powerline.

The petitioner did not require Cunanan to submit any certification from the Department of Trade and Industry that he was the exclusive distributor or manufacturer of fire extinguishers. Neither did he require Cunanan to certify or execute an affidavit that no subdealer had been designated to sell the said product at a lower price. The petitioner failed to ascertain whether a suitable substitute could be obtained elsewhere, under terms more advantageous to the government. It turned out that as declared by the trial court, another business enterprise, Systems Products Industries, was selling the same brand and specifications at only P2,900.00 per unit.

Finally, accused Oani failed to present proof that “no suitable substitute can be obtained elsewhere at more advantageous terms to the government,” as thus, required by COA Circular 78-84, series of 1978.

Indeed, as it turned out, not only was there another manufacturer and refiller of similar type of fire extinguisher and dry chemical used in it in Davao City, but more importantly, Systems Products Industries, which was registered and accredited with the DTI, as evidenced by the said certification of Syvelyn J. Tan, Regional Director, Region XI, DTI, was selling identical items at P2,700.00 each, as shown by the re-canvass form dated March 13, 1990. Crediting to this the 10% allowance authorized under COA Circular No. 85-55, the total per unit cost is P2,970.00. Subtracting this figure from the unit cost stated in the Disbursement voucher, which is P5,530.00, we get a difference of P2,560.00, which could have been saved had accused Oani conducted bidding or canvass, and purchased the nine (9) units of fire extinguishers from Systems Products Industries. Consequently, in failing to observe the requirements in government purchase, or at least, the diligence which a similarly situated reasonable person would have taken, accused Oani caused the Panabo High School and the government to suffer a total amount of P23,040.00, in Criminal Case No. 18885.[27]

To extricate himself from administrative and criminal liabilities for his acts and omissions, the petitioner adduced in evidence a Certification purportedly dated “January 1988,” that Cunanan was the sole manufacturer/dealer of the fire extinguishers and had not designated a sub-dealer of his products. However, as declared by the trial court, this certification, which the petitioner adduced in evidence, exposed his travesty of foisting a falsified document as evidence, a felony under the last paragraph of Article 172 of the Revised Penal Code.[28] The Certification reads:

January 1988

CERTIFICATION

As Licensed Manufacturer and Exclusive Distributor

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that I, MR. FRANCISCO R. CUNANAN, of legal age, Filipino, Proprietor of Powerline Manufacturing Industry, with business address located at Km. 5, Carnation St., Buhangin, Davao City, is a duly-licensed Manufacturer and Exclusive Distributor of POWERLINE Fire Extinguishers, do hereby certify and attest:

1. THAT, I am the owner and chairman of Powerline Manufacturing Industry engaged in manufacturing POWERLINE brand fire extinguishers.
2. THAT, I have not appointed or authorized any dealer, subdealer and distributor to promote and sell our major line product, the POWERLINE fire extinguishers in Mindanao Area or any parts/ area in the Philippines.
3. THAT, I have in my possession all legal documents proving (sic) my Company is the only authorized and duly-licensed manufacturer and exclusive distributor of POWERLINE fire extinguishers brand.
4. THAT, I am executing this certification in (sic) pursuant to Article 7, Section 442 of the Government Auditing Rules & Regulations (GAAM Volume I) under COA Circular No. 91-368 governing the procurement from Duly-licensed Manufacturers and Exclusive Distributors.

5. FURTHERMORE, I am executing this certification for whatever legal purposes it may serve our firm and the undersigned.

Powerline Manufacturing Industry

By:

(Sgd.)

FRANCISCO R. CUNANAN

Manufacturer[29]

The Certification is dated “January 1988,” making it appear that it had been issued before the subject fire extinguishers were purchased on June 27, 1989. However, Cunanan could not have executed the Certification in January 1988 because paragraph 4 thereof indicates that it was issued pursuant to “COA Circular No. 91-368.” It bears stressing that COA Circular No. 91-368 was issued only on December 19, 1991, long after Cunanan signed the Certification. In fine, Cunanan could not possibly have issued a certification pursuant to an administrative circular which did not as yet exist. Hence, no such certification was issued on June 27, 1989, the most plausible explanation being that it was executed and signed by Cunanan only after December 19, 1991. Besides, the petitioner never submitted the certification when the auditing team conducted its investigation. If the certification was indeed issued as early as January 1988, the petitioner should have submitted the same to the auditing team. The trial court saw through the petitioner’s chicanery and declared in its decision:

Accused Oani submitted for the purpose a Certification dated 10 July 1988 issued by the Panabo Fire Station, Panabo, Davao and the Certification dated January 1988, issued by a certain Francisco R. Cunanan, proprietor of Powerline, that the latter is an exclusive distributor of the purchased fire extinguishers and that no subdealer was appointed to sell the same.

After a careful evaluation of the respective evidences submitted by the parties on this issue, the Court finds for the People and brushes aside as incredible the claims of the defense, particularly of the accused Oani. It appears that the theory of the accused that bidding and canvass may be dispensed with in view of the exclusiveness of Powerline in the manufacture and distribution of the purchased fire extinguishers, finds no leg to stand on, at the least, or a mere afterthought, at the most. The penultimate paragraph of the said certification of Powerline proprietor, Francisco R. Cunanan, states,

“THAT, I am executing this Certification pursuant to Article 7, section 442 of the Government Auditing Rules & Regulations (GAAM Volume I under COA Circular No. 91-368 governing the procurement from Duly Licensed Manufacturers and Exclusive Distributors).”

Indeed, the GAAM was implemented by COA Circular No. 91-368. The latter, which was issued on December 19, 1991, provided in the last paragraph thereof that the GAAM was to take effect on January 1, 1992. The glaring inconsistency in the said Certification is that at the time it was issued, i.e., on January 1988, the GAAM was not yet in existence. Hence, contrary to the testimony of accused Oani, the Certification of Mr. Cunanan must have been issued only after December 19, 1991, the date of issuance of COA Circular No. 91-368, and necessarily, after the publication of the special audit Report (Exhibit “B”).

...

Further, had the said certification been the basis of accused Oani in approving the negotiated purchase, he could have easily presented the same to the team in the course of their investigation. But quite to the contrary, it was not even mentioned in the “management comment” portion of the Report, which states:

“Management Comments:”

“When the Principal of the Panabo High School was made to comment on this particular finding, he submitted

a written justification that the purchase of the fire extinguishers was made due to the persuasion of the Resident Auditor assigned in that agency. As per his letter, he contended that the purchase of the said equipment was done only and after being recommended by the Resident Auditor.”

...

The records are bereft of even the slightest suggestion of any ill-motive on the part of the team, which would justify Us to suspect that the members of the team maliciously omitted to consider such an important document constituting the defense of the accused. Thus,

...

Otherwise stated, accused Oani cannot have Us believe that Exhibit “2,” which made reference to COA Circular No. 91-368 issued only on December 19, 1991, was already existing at the time the nine (9) fire extinguishers were bought way back in 1989. Now, in the absence of a certification of “exclusivity,” it would be grossly negligent, if not naive on the part of accused Oani, to rely on the verbal representations of the Powerline Manufacturer. Besides, this certification was an indispensable documentary support in the approval of the disbursement voucher considering that the transaction was a mere exception to the general requirement of bidding and canvass.[30]

On the purchase of the stereo component and school and office supplies, we agree with the trial court’s ruling that based on the evidence, the Bids and Awards Committee failed to conduct any canvass and public bidding as mandated by law:

On the matter before Us, accused Oani testified that the bidding committee was chaired by him and some instances co-chaired by Mr. Domingo Bugtungan, with Mrs. Sayoma and Mr. Campang as members. Further, during the opening of the bids, the suppliers were present. A cursory examination of the various Invitations to Bid, which were used as bid forms, the Canvass Forms, the existence of which were admitted by both accused Oani and Roa, reveals that indeed, the signatures of the bidding committee members, other than that of accused Oani, do not appear. As correctly observed by the team in their Report, this was “unusual.” The affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks [of] regularity. The absence of such signatures not only in some, but in ALL the Invitations to Bid and Canvass Forms indicate something more than mere honest and unintentional omissions. These uniform omissions collectively suggest a pattern of scheme tainted with ulterior motives, and altogether doubts the authenticity of the supposed bidding or canvass.

The significance of the testimony and affidavit of state witness Edilberto Lacdao regarding the purchase of the sound system, can hardly be ignored. As property custodian and teacher of Panabo High School before and during the purchase and delivery of the sound system, subject of the Sales Invoice dated December 29, 1989 in the amount of P35,690.00, his personal knowledge of the circumstances surrounding the acquisition cannot be doubted, there being no showing to the contrary. Thus, the portion of his Affidavit dated March 10, 1990, which was the basis of his testimony, states:

“That I and Mr. Paculangan, teacher, Panabo High School, Panabo, Davao prepared the RIV for the following:

- a. 1 unit amplifier 200 watts
- b. 2 units electric bell
- c. 1 unit trumpa-loudspeaker
- d. 2 units megaphone
- e. 1 unit tape deck”

“That I gave the filled-up RIV and canvass forms to Mr. Antonio Moraleda of ASM Enterprises who happened to be in school, thinking that he will give us the quotation of the items;”

“That the RIV was changed as what had been previously prepared and that the delivered items found in the revised RIV were the following:

- a. 1 unit sound research SR 100 A 200 Watts
- b. 1 unit sound research 6 mic mixer
- c. 2 units L 2” 3-way speaker system
- d. 1 unit Radio Cassette Recorder
- e. 1 unit Phono Magnetic
- f. 2 units microphone and microphone stand with holder
- g. 3 units electrical bell 10" in diameter” x x x

“That I personally signed the RIV accepting the equipment.” (Italics supplied)

Probative weight may be accorded to these declarations for its candidness and straightforwardness. In addition, there is no showing in the record that from the time of its execution, until he testified thereon, Edilberto Lacdao was harboring ill-feeling or ulterior motives against both or either of the accused. This explains the absence of the signatures of the other members of the committee on bids and strongly supports the findings of the special audit team that a simulated bidding and canvass took place, at least in the purchase of sound system. In this case, what appears to have transpired was that the RIVs containing the specific items to be purchased, were prepared by the property officer, who then [gave] them to the favored suppliers, together with blank canvass forms. The suppliers would then return the RIVs and the canvass forms to the property officer, which by then, have already been filled up with inflated quotations by other enterprises showing the favored suppliers as having quoted the lowest prices. What follows is a matter of clerical documentation to make it appear that bidding and canvass was validly conducted. In the case of the sound system, it was even the supplier, ASM Enterprises which modified the contents of the RIV. This very same inference may be made from the testimony of Edilberto Lacdao on cross-examination, that he could not remember Panabo High School having conducted bidding or canvass from 1984 to 1989.

In consciously allowing the suppliers to violate the requirements of bidding and canvass, accused Oani brazenly undermined the objective of the process, namely, “To protect the public interest by giving the public the best possible advantage thru open competition.” Hence, not only did he act in a “wantonly careless manner” but also in an unspeakable “breach of duty in a flagrant and palpable” way. In full contemplation of the law, his acts constitute gross inexcusable negligence.

As occasioned by the lack of bidding and canvass, unqualified and non-bona fide entities that only served as brokers, gained entry and participation to the transaction. Not only did this burden the government with additional costs, as a result, but also exposed it to unnecessary risks and disadvantages. Firsthand investigation and audit conducted by the COA auditors revealed the following:

“The overpricing of purchases was obviously the result of exaggerated or inflated price quotations made by non-bona fide dealers or ‘middlemen’ of equipment, supplies and materials of which the agency had contracted with. By using non-existing firms or establishment who were made to appear in the records as the competing bidders with higher quoted prices than those offered by the non-bona fide dealers, it had paved the way for those unscrupulous bidders to win the bidding. This is the plain and flagrant simulation and manipulation of canvass to the detriment of the government.”

“Thus, the participation of non-bona fide dealers in the transactions of the agency was allowed through the simulated canvass. This was further confirmed by personnel involved in the procurement system of the agency when they claimed during the exit Conference that usually they gave the Request and Issue Voucher (RIV) to a certain dealer and the same dealer should be the one to process the documents needed for the purchase. This procedure was facilitated with the influence of some officials of the agency who are clothed with the power to decide over and above the same involving the MOOE funds of the agency. These officials were definitely and particularly identified in the affidavits executed by the designated accountable personnel in the agency which

are made as appendices to this report.”

“Furthermore, per inquiry made by the team, two business establishments particularly the ASM Enterprises and the Red Lion Marketing in Davao City who were often made as the winning bidders of the rigged and/or simulated canvasses/biddings and had mostly supplied the agencies’ needs for office and sound equipment, supplies and materials, were not dealers of such line commodities. This was validated in one of our unexpected visits to their establishments where we had observed that there were no stocks and/or displays of such commodities or merchandise as what had been delivered to the agency.”

“Per observation, the general outside and inside appearance of these two establishments are: Red Lion Marketing portrays an ordinary office while ASM Enterprises appears as an ordinary residential house and yet these establishments were considered by management in the canvassing of prices for the procurement of equipment, supplies and materials. The team could not find any valid reason why management failed to consider in the canvassing of prices known establishments in the main streets of Davao City, and those who are distinctly identified to be dealing with the sound and office equipment, supplies and materials.”

“Likewise, certification issued by the Business Bureau, Davao City (See Appendix 2) showed that the ASM Enterprises and Red Lion Marketing declared capitalization of P20,000.00 and P40,000.00 in 1988, respectively, as against the contracts they entered into with the government which is invariably more than their capitalization. Red Lion could also be declared a non-bona fide dealer on the ground of non-payment of the business taxes for the year 1989, thereby disproving their license to operate for that year.” (Italics supplied)

Accused Oani and Roa did not dispute the foregoing findings of the team, much less present rebuttal evidence. Instead, they elicited the stipulation from the prosecution “that the purchased equipment, supplies and other materials were delivered to the Panabo High School,” which the prosecution readily admitted during the pre-trial. The fact that the subject inventories have been delivered would have been a potent defense of the accused in the instant case had the purchases not resulted into other forms of injuries to the government – which brings us into the matter of overpricing.[31]

As against the findings of the trial court supported by the evidence on record, the petitioner offered nothing but his barren testimony. The petitioner also failed to offer any evidence except his bare denial to the following findings of the trial court:

In the purchase of the sound system, covered by the purchase order dated December 28, 1989, signed by accused Oani, the unit price of a “microphone stand with holder” is P2,295.00. The same could have been bought from the suppliers participating in the re-canvass anywhere from P195.00 to P804.00, enabling the government to save by more than 50%. Similarly, a “10 in. diameter electronic bell” was bought from ASM Marketing for P525.00 per unit, compared to the selling prices of participating suppliers in the re-canvass, ranging from P185.00 to P245.00 only, showing more than 50% difference.

In the acquisition of various office supplies and equipment by Panabo High School from Red Lion Marketing in the total amount of P111,912.35, as shown in the undated purchase order issued by accused Oani and the corresponding Sales Invoice of Red Lion Marketing dated March 10, 1989 the price of one steel safe was P11,600.00. After the re-canvass, it was discovered that similar items may be bought from reputable suppliers in Davao City from P7,800.00 to P8,620.00 only. Likewise, a unit of “steel cabinet combination four drawers” purchased from Red Lion Marketing for P11,000.00 was sold by reputable suppliers anywhere from P5,000.00 to P6,000.00 only. Again, a “steel cabinet four drawers,” sold for P4,400.00 by Red Lion, was quoted by bona fide suppliers from P2,250.00 to P2,750.00. This rate of overpricing very well applies to other items in the said purchase order and sales invoice.

In the subsequent purchase of various school supplies in the total amount of P37,686.00 on or about December 26, 1989 again, from ASM Enterprises, enumerated in its Sales Invoice dated December 22, 1989, we find further inflated prices. Thus, while the 500 pieces of “long brown folder” were sold by ASM Enterprises at

P2.25 each, other reputable suppliers in Davao City were selling the same from P1.50 to P1.90 each, as of March 21, 1990. In the same vein, ASM Enterprises sold 300 boxes of “Venus Yellow Enamel Chalk” to Panabo High School for P28.50 per box. After the re-canvass, it was found out that the same item may be bought for P25.00 per box. Again, ASM Enterprises sold to Panabo High School 10 dozens of “Max Staple Wire No. 10” for P79.80 per dozen, while other suppliers were selling them at P37.00 to P39.00 per dozen, for a difference of more than 50%.[32]

In *Danville Maritime, Inc. v. Commission on Audit*,[33] the Court emphasized that –

... By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. Public bidding of government contracts and for disposition of government assets have the same purpose and objectives. Their only difference, if at all, is that in the public bidding for public contracts the award is generally given to the lowest bidder while in the disposition of government assets the award is to the highest bidder.[34]

In a public bidding, there must be competition that is legitimate, fair and honest. The three principles of a public bidding are the offer to the public; an opportunity for competition; and a basis for exact comparison of bids.[35] A contract granted without the competitive bidding required by law is void, and the party to whom it is awarded cannot benefit from it.[36]

In the present case, the petitioner purchased the fire extinguishers and office and school supplies without the benefit of a public bidding, in gross and evident bad faith, resulting in the considerable overpricing of the fire extinguishers and the supplies, to the gross prejudice of the government.

In sum then, the decision of the trial court is in accord with the law and the evidence.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. Cost against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Folder of Exhibit B, p. 6.

[2] Id. at 6-7.

[3] Id., Appendix 1.

[4] Id. at 1-2.

[5] Exhibit C-2. (Folder of Prosecution’s Exhibits)

[6] Exhibit D-1.

[7] Exhibit C-3.

[8] Exhibit C.

[9] Exhibit C-1.

[10] Exhibit D.

[11] Exhibit E-2.

[12] Exhibits E-3 to E-5.

[13] Exhibit E-7.

[14] Ibid.

[15] Exhibit E-1.

[16] Exhibit E.

[17] Exhibit G.

[18] Exhibit G-2.

[19] Records, pp. 351-352. (Vol. II)

[20] Id. at 1-2.

[21] Exhibit 2.

[22] Rollo, pp. 60-61.

[23] Id. at 14.

[24] (1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Commissioner of Internal Revenue v. Embroidery and Garments Industries [Phils.], Inc., G.R. No. 96262, March 22, 1999, 305 SCRA 70, citing Misa v. Court of Appeals, 212 SCRA 217 [1992]; Golangco v. Court of Appeals, 283 SCRA 493, 503 [1997]; Fule v. Court of Appeals, 286 SCRA 698, 710 [1998]; Halili v. Court of Appeals, 287 SCRA 465, 470 [1998]; Remalante v. Tibe, 158 SCRA 138 [1998]; Ayala Corporation v. Ray Burton Development Corporation, G.R. No. 126699, August 17, 1998, 294 SCRA 48 [1998]). Nokom v. National Labor Relations Commission, 336 SCRA 97 (2000).

[25] Exhibit 2.

[26] Rollo, pp. 14-15.

[27] Id. at 41-42.

[28] ART. 172. Falsification by private individuals and use of falsified documents. – The penalty of prision correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

...

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next – lower in degree.

[29] Exhibit 2.

[30] Rollo, pp. 39-41.

[31] Rollo, pp. 44-48.

[32] Id. at 49-51.

[33] 175 SCRA 701 (1989).

[34] Id. at 711.

[35] JG Summit Holdings, Inc. v. Court of Appeals, 345 SCRA 143 (2000).

[36] Malaga v. Penachos, Jr., 213 SCRA 516 (1992).

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