

CANDELARIO L. VERZOSA, JR. (IN HIS FORMER CAPACITY AS EXECUTIVE DIRECTOR OF THE COOPERATIVE DEVELOPMENT AUTHORITY), PETITIONER, VS. GUILLERMO N. CARAGUE (IN HIS OFFICIAL CAPACIT...

G.R. No. 157838. February 07, 2012

Ponente: VILLARAMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-157838/>

VILLARAMA, JR., J.:

This resolves the motion for reconsideration of our Decision[1] dated March 8, 2011 affirming COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively. We upheld the COA's ruling that petitioner is personally and solidarily liable for the amount of P881,819.00 under Notice of Disallowance No. 93-0016-101.

In compliance with our Resolution dated February 8, 2011, counsel for petitioner filed a Notice, Manifestation and Apology confirming the demise of petitioner on June 24, 2010 and explaining the reason for the delay in informing this Court.

The motion for reconsideration filed by petitioner's counsel, son of petitioner, is anchored on the following grounds:

1)

There is no finding of fact in this Court's decision which supports the serious finding that petitioner acted in bad faith when he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an irrelevant grading system intended to favor one of the bidders;

2)

Assuming without admitting there was an attempt to alter the results of the bidding, petitioner was not directly responsible for it since it was a certain Rey Evangelista whose act in itself did not constitute bad faith as to be interpreted as deliberately favoring TETRA;

3)

The mere fact that petitioner was the signatory in the vouchers and other documents for the processing of the purchase after the winning bidder had been chosen does not by itself constitute bad faith, malice or negligence. His participation as final recommending/approving authority in the said purchase was merely ministerial;

4)

Records of this case show that the COA decisions did not hold petitioner solely liable for the disallowed amount of P881,819.00; there were others adjudged solidarily liable with petitioner for the reimbursement of said amount;

5)

The decision in *Arriola v. Commission on Audit*[2] should have been applied in this case. The TSO canvass coupled with confirmatory telephone canvass should be re-examined given the admission made by the COA Auditor in her 1st Indorsement dated June 6, 1994 and as held in the Dissenting Opinion of Justice Ma. Lourdes P.A. Sereno; and

6)

The Court should consider the bases of comparison which is made against a clone generic brand (and its reference price values), in light of compliance with intellectual property laws on software piracy and hardware imitations.[3]

On September 15, 2011, the Office of the Solicitor General (OSG) filed its Comment reiterating its position that petitioner should not have been made liable for the disallowed amount since there was no substantial evidence of his direct responsibility. It contends that the decision should not have ordered petitioner to reimburse the disallowed amount on account of "overpricing of purchased equipment" because he did not have any participation in the bidding that was conducted by the PBAC, nor did he have any participation in influencing Mr. A. Quintos, Jr., the DAP-TEC evaluator, to change the evaluation results. As to the acts cited by the COA in holding petitioner liable for the disallowed amount, these cannot be the "clear showing of bad faith, malice or gross negligence" required by law to hold public officers liable for acts done in the performance of his official duties. There was no contrary evidence presented by the COA to overcome the presumption of regularity in the performance of official duty. The OSG also cites the discussion in the dissenting opinion of Justice Sereno that the standards set in *Arriola* should have been observed by the COA, i.e., it should have compared the same brand of equipment (with the same features and specifications) with the items CDA purchased to determine if there was indeed overpricing.

Respondents filed their Comment asserting that the arguments raised by the petitioner in his motion for reconsideration do not warrant reversal of the decision rendered by this Court. They point out that the bad faith of petitioner was satisfactorily established when he prevailed upon DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units. As to the contention that petitioner's act of signing the documents for the processing of the purchase was merely a ministerial function, respondents noted that the Certification in the Disbursement Voucher for the payment of the computer states that "Expenses necessary, lawful and incurred under my direct supervision." Such certification definitely involves the exercise of discretion and is not a ministerial act. Petitioner recommended to the Chairman of the Board of Administrators of CDA the award of the contract to TETRA upon evaluation by the PBAC which he reconstituted. He cannot therefore escape liability for the disallowed amount together with the other liable parties, namely: Mr. Edwin Canonizado, PBAC Chairman, Ms. Ma. Luz Aggabao, PBAC Vice-Chairman, and PBAC Members Ms. Sylvia Posadas, Ma. Erlinda Dailisan, Mr. Leonilo Cedicol, Ms. Amelia Torrente (IT Consultant) and CDA Board Chairman Ms. Edna E. Aberilla. As to the argument that the COA-TSO canvass was not accurate as it compared generic computers with the computers offered by TETRA, respondent pointed out that aside from having already been passed upon in the decision sought to be reconsidered, the report submitted by said office disclosed that certain specifications of the reference computers were either similar or better than those of the Trigem brand offered by TETRA at a much lower price. COA Auditor Rubico had allowed a 15% mark up on the prices of the items canvassed by COA-TSO, but still the actual purchase prices were way above the maximum allowable COA reference prices, hence, the disallowance was proper.

We find that the arguments raised in the motion have been adequately discussed and passed upon in our Decision dated March 8, 2011. There are, however, two significant issues that need to be clarified: first, whether the COA

violated its own rules and jurisprudence in the determination of overpricing; second, whether petitioner may be ordered to reimburse the disallowed amount in the purchase of the subject computers.

There was no violation of COA rules

In *Arriola v. COA*,^[4] this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence, as it was based on undocumented claims. The documents that were used as basis of the COA Decision were not shown to petitioners therein despite their repeated demands to see them; they were denied access to the actual canvass sheets or price quotations from accredited suppliers. Absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.

Reiterating the above declaration, *National Center for Mental Health Management v. COA*,^[5] likewise ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects.

The aforesaid jurisprudence became the basis of COA Memorandum No. 97-012 dated March 31, 1997 which contained guidelines on evidence to support audit findings of over-pricing. In the interest of fairness, transparency and due process, it was provided that copies of the documents establishing the audit findings of over-pricing are to be made available to the management of the audited agency.

The memorandum laid down the following specific guidelines:

3.1

When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in reference price lists referred to in pa[r]. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial audit finding to a reliable degree of certainty.

3.2

To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa[r]. 2.1 above have to be supported with canvass sheets and/or price quotations indicating:

a)

the identities/names of the suppliers or sellers;

b)

the availability of stock sufficient in quantity to meet the requirements of the procuring agency;

c)

the specifications of the items which should match those involved in the finding of over-pricing; and

d)

the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

x x x (Italics supplied.)

Contrary to the thrust of Justice Sereno's dissent, the lack of compliance with the above guidelines did not invalidate the audit report for violation of the CDA's right to due process. We categorically ruled in *Nava v. Palattao*^[6] that neither *Arriola* nor the COA Memorandum No. 97-012 can be given any retroactive effect. Thus, although *Arriola* was already promulgated at the time, it is not correct to say that the COA in this case violated the

afore-quoted guidelines which have not yet been issued at the time the audit was conducted in 1993.

As to COA Resolution No. 90-43 dated September 10, 1990, while indeed it authorized the disclosure or identification of the sources of data gathered by the Price Evaluation Division-TSO in the conduct of its data gathering and price monitoring activities, perusal of this resolution failed to indicate that the disclosure of the names and identities of suppliers who provided the data during price monitoring activities of the TSO formed part of the evidentiary process in audit findings of overpricing and not merely to guide the agencies on where to procure their supplies. COA Resolution No. 90-43 reads as follows:

WHEREAS, it inheres in its constitutional mandate for this Commission to assist in the development efforts of government by providing audit services with a view to avoiding loss and wastage of public funds and property;

WHEREAS, in pursuance of such mandate, the determination of the reasonableness of price is an essential aspect of the audit of procurement in goods and services;

WHEREAS, towards that end, the Price Evaluation Division (PED) of the Technical Services Office (TSO), this commission, provides the Auditors with reference values which are obtained thru a valid canvass in the open market;

WHEREAS, the price findings of the TSO that result from such audit determination of price reasonableness at times adversely affect auditees who would request TSO to disclose or identify the sources of these price quotations set by PED so that they can procure their supply needs from said sources;

WHEREAS, this Commission is cognizant of the national policy of transparency in government operations;

WHEREAS, this Commission perceives no legal impediment to the disclosure or identification of the sources of price data which will ensure economy, efficiency and effectiveness in government procurement;

NOW, THEREFORE, in keeping with the national policy of transparency, the commission Proper has resolved, as it does hereby resolve, to authorize the disclosure or identification of the sources of data gathered by the Price Evaluation Division, TSO in the conduct of its data gathering and monitoring activities;

Be it further resolved that in order to carry out such policy of disclosure, the Price Monitor Bulletin, a COA publication, contain not only specific items and prices of goods and services but also the names and identities of responsive suppliers who provided the data during the canvass conducted by the PED, TSO. (Emphasis and underscoring supplied.)

Accordingly, COA Memorandum No. 97-012 was issued on March 31, 1997 in view of the Commission's recognition that "[t]here is a need to clarify the role and status of a price reference data, such as those produced by the Technical Services Office, in the audit evidence process with respect to findings of overpricing." It is therefore improper to apply this regulation to the post-audit conducted in the year 1993 on the subject transaction.

Further, it must be noted that petitioner in requesting reconsideration of the audit disallowance, did not make a demand for the production of actual canvass sheets. Neither did he question the correctness of the reference values used by the TSO. Petitioner only pointed out that the date of canvass conducted by the TSO does not coincide with the date of purchase. To this the COA-TSO countered that "there was no showing that the foreign exchange rate changed during the latter part of 1992 that would have significantly increased the prices of computers." Petitioner nonetheless assailed the price comparison of the branded computers purchased by the CDA with non-branded computers, which the dissent now deems as a right of preference or an exercise of discretion on the part of CDA.

COA Upheld the Auditor's
Position that Brand is

Irrelevant on the Basis
of Findings of its
Technical Personnel

The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. [7] For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." [8] As such, CDA's decisions regarding procurement of equipment for its own use, including computers and its accessories, is subject to the COA's auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive and extravagant expenditures. Necessarily, CDA's preferences regarding brand of its equipment have to conform to the criteria set by the COA rules on what is reasonable price for the items purchased.

The dissent points out that COA Circular No. 85-55-A itself provides that in determining whether the price is excessive, the brand of products may be considered, thus:

D - Brand of Products

Products of recognized brands coming from countries known for producing such quality products are relatively expensive.

Ex. - Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

In this case, however, brand information was found by the COA's TSO Director, and also the Information Technology Center (ITC) Director Marieta SF. Acorda as irrelevant to the determination of the reasonableness of the price of the computers purchased by CDA from Tetra.

Director Jorge H.L. Perez of the TSO in his Memorandum dated April 24, 1995 addressed to the Legal Office Director of the COA explained their position as follows:

x x x x

1. On the allegation that Trigem and Genesis computers are not comparable since it is like comparing apples with oranges - As a general rule/procedure, verification by TSO of the price of an item requires comparison with the same/similar classification/group of items. The items would then have the same specifications unless stated otherwise in the price findings of the Office. In this case, the reference values are in accordance with the specifications but exclusive of the "branded" information, since this was not stated in the P.O./Invoice, which was used as basis of canvass. Since Trigem and Genesis are both computers of the same general characteristics/attributes, the branded and non-branded labels propounded by the supplier is of scant consideration.

As regards the UPS, the enumerated advantages of the delivered items are the same advantages that can be generated from a UPS of the same specifications and standard features. In this case, the reference value pertains to a UPS with the same capacity, input, output, battery packed and back-up time, except for the brand.

x x x x[9] (Underscoring supplied.)

On her part, COA Auditor Luzviminda V. Rubico maintained that what is important is that the specifications and functions of Genesis and Trigem computers are similar. She pointed out that "if the comparison of the prices for the disallowances issued was erroneous because what was compared was Genesis brand [versus] Trigem, then the

bidding conducted by CDA would not be acceptable since in the Abstract of Bids, prices were not based on similar brands."

Director Acorda of the COA ITC likewise expressed a similar view when asked for comment regarding the penalty points imposed by the CDA after the result of the DAP technical evaluation initially showed that Tetra was ranked lowest. Thus, she explained in her December 9, 1996 memorandum addressed to COA Legal Counsel Director Habitan:

1. On the first issue - we observed that no additional computer features were introduced in CDA's grading system, rather the bidders were penalized for non-compliance with technical specifications fixed by CDA.

On CDA's representation with the Development Academy of the Philippines - Technical Evaluation Committee (DAP Committee) and based on the grading system devised by the former, the DAP Committee agreed to impose penalties for non-compliance of the bids with the technical specifications. Hereunder are their reasons for the penalties and our comments thereto:

1.1 Columbia Computer Center (Columbia) and MicroCircuits Corporation (MCC) were penalized because the microprocessor of the computer hardware they delivered for evaluation were AMD and not Intel as required in the technical specification.

AMD and Intel are both microprocessor brands. It rarely malfunctions. Hence, the difference in brands, as in this case, will not affect the efficiency of the computer's performance. However, Intel microprocessors are more expensive and are manufactured by Intel Corporation which pioneered the production of microprocessors for personal computers.

1.2 Columbia was penalized because the ROM BIOSes of the computer hardware they delivered were AcerBios, a deviation from the technical specifications which required ROM BIOSes licensed by IBM, AMI, Phoenix or Awards.

This will not affect the efficiency of the computer's performance. What is important is that these ROM BIOSes are legal or licensed.

1.3 Columbia was again penalized because the casing of the computer they delivered for evaluation in the Tower 386DX category has a desktop casing and not tower casing as provided in the technical specifications.

Casings do not affect the efficiency of the computer's performance but may affect office furniture requirements such as the design of the computer tables.

1.4 Tetra Corporation (Tetra) was penalized because the RAM of the Notebook it delivered for evaluation was only 640K instead of 2M (expandable).

We agree that RAM capacity will affect the efficiency of the computer's performance.

2. On the second issue - the Benchmark testing conducted by the DAP Committee in which Tetra got the lowest score in terms of Technical Evaluation is not a sufficient basis for us to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

In Benchmark Testing, weights are allocated to the different technical features of a computer. The computers are then evaluated/appraised using diagnostic software and ranked in accordance with the results of such evaluation/appraisal. The resulting ranking merely suggests which computer best the appraisals. (Underscoring supplied.)

In the light of the foregoing consistent stand of its own technical personnel having expertise in computer technology, the COA upheld the auditor's finding that brand was irrelevant to determining the reasonableness of the price at which CDA purchased the subject computers. It is not for this Court, as the dissent attempts, to make

assertions to the contrary, i.e., that the brand preferred by CDA was superior to another brand or generic computer having similar specifications/functions and to which the price of the branded computer was compared by respondents. Whether a particular brand of computer or microprocessor is of superior quality is not subject to judicial notice. Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them. [10]

The dissent also asserted that it is "unfair to compare Tetra's proposed Trigem computers to a computer clone that was not even qualified to be bidden on or was not subjected to the same hardware benchmark testing." But as COA ITC Director Acorda had explained in her December 9, 1996 memorandum, such Benchmark Testing conducted by the DAP-TEC is not a sufficient basis for them to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

COA's observation that
CDA should have been
entitled to volume discount
was valid

Under COA Circular No. 85-55-A, the price is deemed excessive if the discounts allowed in bulk purchases is not reflected in the price offered or in the award or in the purchase/payment documents. This implies that bulk purchases are expected to be accompanied by discounts that should have resulted in lowering the price of items, which is contrary to the dissent's stance that the supplier TETRA was not legally obligated to give such discount to CDA. COA noted that CDA should have been entitled to volume discount from the supplying dealer considering the number of units it procured from them. Instead of explaining why there was no volume discount at all reflected in the bid or purchase/payment documents, petitioner claimed that other buyers even bought the same computers at higher prices from Tetra. However, when the sales invoices issued to other companies were examined by the COA, it was found that only one unit was procured by each. Hence, it was not pure conjecture on the part of COA to take into consideration the absence of volume discount. Whether or not the other bidders actually committed to give volume discount is beside the point, as the subject of post-audit was the reasonableness of the price already paid to Tetra by CDA.

No grave abuse of discretion
committed by COA in holding
petitioner personally and
solidarily liable for the
overpricing of the
computers procured by CDA

Pursuant to Section 103 of P.D. No. 1445 and Section 19 of the Manual on the Certificates of Settlement of Balances, petitioner was found liable for the audit disallowances totaling P881,819.00 representing the overprice of the computers purchased by CDA. Petitioner's participation in the transaction was not limited to his signature/approval of the purchase as recommended by the PBAC.

As pointed out in our Decision, records showed it was petitioner who ordered the reconstitution of the PBAC which nullified the previous bidding conducted in December 1991. He further secured the services of the DAP-TEC for technical evaluation and signed the agreement for the said technical assistance when it is already the duty of the PBAC Chairman. Notwithstanding petitioner's claim that it was part of his duties as Executive Director to "[sign] outgoing communications/letters except letters addressed to Heads of [Office], Congressmen, Senators and to the Office of the President," [11] the fact remains that the services of DAP-TEC for P15,000.00

fee were availed of at his instance. As it turned out, the DAP-TEC came out with two different technical evaluation reports, the second having been antedated but also signed by DAP-TEC Director Minerva Mecina who admitted it was her signature in both documents but claimed she was unaware that she had signed two different documents. The discrepancies in the two reports (in the first impartial result, Tetra got the lowest ranking but in the second result made after CDA ordered certain changes in the grading system, Tetra eventually won) was found by Auditor Rubico to be irregular and indicative of bad faith.

The dissent assails such "alleged" instances of manipulation mentioned by Auditor Rubico as belatedly raised and contends that the November 23, 1995 letter of the DAP-TEC technician failed to show that Mr. Rey Evangelista (staff of the PBAC Chairman) went to DAP-TEC on instructions by the petitioner. These circumstances surrounding the issuance of the DAP-TEC technical evaluation results were additionally mentioned by Auditor Rubico to the respondents so that the latter may be apprised that the members of the PBAC, including petitioner, could not have been unaware of efforts to influence the outcome of the technical evaluation, and not as ground per se of the disallowance. Hence, there was nothing anomalous in the fact that Auditor Rubico only disclosed these additional findings in the course of her audit to the Commission's Legal Counsel and other COA officials when she was asked to comment on the appeal/request for reconsideration made by CDA from the notice of disallowance.

It is to be noted that petitioner never denied there were two different results of DAP-TEC technical evaluation. To refute the imputation of irregularity, petitioner submitted a certification from the incumbent CDA Executive Director that as per inventory, only fourteen out of the subject forty-four Trigem computers have become unserviceable, which he said vindicated their choice of branded computers. Thus, the supposedly "fraudulent" imposition of penalties in the DAP-TEC second report during the physical testing of the computer hardware, construed as manipulative endeavor by the COA Auditor, is now moot and academic. But as already explained in our Decision, the continued serviceability of the purchased items did not justify the overpricing nor render moot the disallowances based on post-audit examination of the pertinent bid and purchase documents.

Finally, we find no merit in the assertion that in ordering the petitioner to reimburse the disallowed amount, this Court misapplied the solidary nature of the liability determined by the COA for petitioner and the other members of the PBAC. We have categorically stated that the Court upholds the COA's ruling that petitioner is personally and solidarily liable for the overpricing in the computers purchased by CDA. The directive for the payment of the amount of disallowance finally determined by the COA did not change the nature of the obligation as solidary because the demand thus made upon petitioner did not foreclose his right as solidary debtor to proceed against his co-debtors/obligors, in this case the members of the PBAC charged under Notice of Disallowance No. 93-0016-101, for their share in the total amount of disallowance.[12]

Petitioner is therefore liable to restitute the P881,819.00 to the Government without prejudice, however, to his right to recover it from persons who were solidarily liable with him.[13]

We stress anew that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. [14] Findings of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence, [15] and the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. [16]

There being no grave abuse of discretion in the findings and conclusions of the COA in this case, the Court finds

no cogent reason to deviate from these long-settled rules.

WHEREFORE, the motion for reconsideration is DENIED WITH FINALITY.

No further pleadings shall be entertained.

Let entry of judgment be made in due course.

SO ORDERED.

Corona, C.J.,J., no part.

Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin,Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., please see dissenting opinion.

Del Castillo, J., on leave.

Abad, J., I join the dissent in opinion of Justice M.L.P.A. Sereno.

Sereno, J., see dissenting opinion.

[1] G.R. No. 157838, March 8, 2011, 644 SCRA 679.

[2] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[3] Rollo, pp. 375-382.

[4] Id.

[5] G.R. No. 114864, December 6, 1996, 265 SCRA 390, 400.

[6] G.R. No. 160211, August 28, 2006, 499 SCRA 745, 763-764.

[7] Section 2(1), Article IX(D), 1987 Constitution.

[8] Section 2(2), id.

[9] COA records.

[10] People v. Tundag, G.R. Nos. 135695-96, October 12, 2000, 342 SCRA 704, 716, citing 31 C.J.S. 509.

[11] Rollo, pp. 277, 306.

[12] See Civil Code, Art. 1217. The article provides:

ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (Emphasis supplied.)

[13] Frias, Sr. v. People, G.R. No. 171437, October 4, 2007, 534 SCRA 654, 666.

[14] Sanchez v. Commission on Audit, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 489, citing Cuervo v. Commission on Audit, No. L-84592, October 27, 1988, 166 SCRA 657, 661 further citing Tagum Doctors

Enterprises v. Apsay, No. L-81188, August 30, 1988, 165 SCRA 154, 155-156.

[15] Laysa v. Commission on Audit, G.R. No. 128134, October 18, 2000, 343 SCRA 520, 526.

[16] Sanchez v. Commission on Audit, *supra* note 14.

DISSENTING OPINION

VELASCO, JR., J.:

The Court, by its Decision dated March 8, 2011, affirmed and upheld the Commission on Audit (COA) Decision Nos. 98-424[1] and 2003-061[2] dated October 21, 1998 and March 18, 2003, respectively. Said COA Decisions, in turn, affirmed Notice of Disallowance No. 93-0016-101[3] dated November 17, 1993, which disallowed in audit the amount of Eight Hundred Eighty-One Thousand Eight Hundred Nineteen Pesos (PhP 881,819), representing the purported overprice in the purchase by the Cooperative Development Authority (CDA) of a total of forty-six (46) units of computer equipment and peripherals in the total amount of Two Million Two Hundred Eighty-Five Thousand Two Hundred Seventy-Nine Pesos (PhP 2,285,279) from Tetra Corporation (Tetra).

The facts of the case, as stated in this Court's Decision dated March 8, 2011, are as follows:

On two separate occasions in December 1992, the [CDA] purchased from Tetra Corporation (Tetra) a total of forty-six (46) units of computer equipment and peripherals in the total amount of P2,285,279.00. Tetra was chosen from among three qualified bidders (Tetra, Microcircuits and Columbia). In the technical evaluation of the units to be supplied by the qualified bidders, CDA engaged the services of the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC). The bidding was conducted in accordance with the Approved Guidelines and Procedures of Public Bidding for Information Technology (IT) Resources and Memorandum Order No. 237 issued by the Office of the President. Petitioner who was then the Executive Director of the CDA approved the purchase.

On May 18, 1993, the Resident Auditor sought the assistance of the Technical Services Office (TSO), COA in the determination of the reasonableness of the prices of the purchased computers. In its reply-letter dated October 18, 1993, the TSO found that the purchased computers were overpriced/excessive by a total of P881,819.00. It was noted that (1) no volume discount was given by the supplier, considering the number of units sold; (2) as early as 1992, there were so much supply of computers in the market so that the prices of computers were relatively low already; and (3) when CDA first offered to buy computers, of the three qualified bidders, Microcircuits offered the lowest bid of P1,123,315.00 while Tetra offered the highest bid of P1,269,630.00. The Resident Auditor issued Notice of Disallowance No. 93-0016-101 dated November 17, 1993, for the amount of P881,819.00.

In a letter dated May 13, 1994, CDA Chairman Edna E. Aberilla appealed for reconsideration of the disallowance to COA Chairman Celso D. Gangan, submitting the following justifications:

[1.] The basis of comparison (Genesis vs. Trigem computers and ferro-resonant type UPS vs. ordinary UPS) is erroneous, as it is like comparing apples to oranges. x x x Genesis, a non-branded computer, is incomparable to Trigem, a branded computer in the same manner as the MAGTEK-UPS, a ferro-resonant type of UPS, should not be compared with APC-1000W, ADMATE 1000W and PK 1000W, which are all ordinary types of UPS.

x x x It would have been more appropriate, therefore, to compare the acquired computer equipment and peripherals with the same models of other branded computers.

[2.] The technical specifications and other added features were given due weight. x x x [T]he criteria for determining the winning bidder is as follows:

Cost/price 50%

Technical Specifications 30%

Support Services 20%

[3.] The same technical specifications and special features explained the advantages of the acquired computer equipment and peripherals with those that are being compared with. With regards to our branded computer, the advantages include the following:

[a.] Original and Licensed Copy of its Disk Operating System specifically MS-DOS Ver 5.0.

[b.] Original and Licensed Operating System Diskettes and its Manuals.

x x x x

[c.] User's Manual and Installation Guide x x x

[d.] Computers offered should run PROGRESS Application Development System as indicated in the Bid Document x x x because the developing system for the establishment of the agency's Management Information System (MIS) is based on PROGRESS Application Software.

[e.] Legal Bios/License Agreement for the particular brand of computers offered to CDA. x x x

With these features, the agency is assured that the computers were acquired through a legitimate process (not smuggled/"pirated"), thereby, upholding the agency's respect for Intellectual Property Law or P.D. No. 49.

With regard to the UPS, x x x it is a ferro-resonant type x x x [which has] advantages to ensure greater reliability and will enable users to operate without interruption.

[4.] [As declared in] COA Circular No. 85-55-A, "the price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award. As will be seen from the criteria adopted by the agency, both the warranty and special features were considered and given corresponding weights in the computation for the support services offered by the bidder.["]

[5.] x x x [T]here is no overpricing because in the process of comparing "apples vs. apples", the other buyers in effect procured their units at a higher price than those of the CDA. We x x x are still in the process of gathering additional data of other transactions to further support our stand. x x x

[6.] x x x The rapid changes due to research and development in Information Technology (I.T.) results in the significant reduction of prices of computer equipment. x x x [M]aking a comparison given two different periods (December 1992 vs. August 1993) may be invalid x x x.

[7.] The procedures of the public bidding as adopted by the [CDA] x x x demonstrate a very effective mechanism for avoiding any possible overpricing.

In compliance with the request of the Legal Office Director, the TSO submitted its comments on the justifications submitted by the CDA. On the non-comparability of Genesis and Trigem brands, it explained that the reference values were in accordance with the same specifications but exclusive of the "branded" information, since this was not stated in the P.O./Invoice, which was used as basis of the canvass. Since the said brands are both computers of the same general characteristics/attributes, the branded and non-branded labels propounded by the supplier is of scant consideration. As regards the UPS, it was pointed out that the enumerated advantages of the delivered items are the same advantages that can be generated from a UPS of the same specifications and standard features; in this case, the reference value pertains to a UPS with the same capacity, input, output, battery pack and back-up time,

except for the brand. As to the period of purchase by the CDA, the TSO noted that based on its monitoring from October 1993 to May 1994, prices of Star and Epson printers and hard disk (120 MB Model St-3144A) either remained the same or even increased by 2% to 5%. It is therefore valid that the price of an item is the same from one period to another, and that an item may be available unless it is out of stock, or phased out, with or without a replacement. In this case, the reference value cannot be considered as the reduced price as a result of rapid changes due to research since the said reference value is the price for the same model already existing in December 1992 when the purchase was made and still available in August 1993, and not an equivalent nor replacement of a phased out model.

On the other hand, the Resident Auditor maintained her stand on the disallowance and submitted to Assistant Commissioner Raul C. Flores her replies to the CDA's justifications, as follows: (1) on the allegedly erroneous comparison between Genesis and Trigem brands, if this will be the basis, then their bidding will not be acceptable because in the Abstract of Bids, the comparison of prices was not based on similar brands, i.e., Tetra offered Trigem-Korean for P1,269,620, Microcircuits offered Arche-US brand for P1,123,315, and Columbia offered Acer-Taiwan brand for P1,476,600; what is important is that, the specifications and functions are similar; (2) the 2nd, 3rd and 4th justifications are of no moment as all the offers of the three qualified bidders were of similar technical specifications, features and warranty as contained in the Proposal Bid Form; (3) on the 5th justification -- the companies referred to procured only one unit each and of much higher grade; (4) on the 6th justification -- while the date of the canvass conducted by the TSO does not coincide with the date of purchase, there is no showing that foreign exchange rate changed during the latter part of 1992 which will significantly increase the prices of computers; and (5) on the 7th justification -- while the COA witnessed the public bidding, the post-evaluation was left to the Pre-qualifications, Bids and Awards Committee (PBAC). The National Government Audit Office I concurred with the opinion of the Resident Auditor that CDA's request may not be given due course.

On October 21, 1998, respondent COA issued the assailed decision affirming the disallowance. It held that whether or not the product is branded is irrelevant in the determination of the reasonableness of the price since the brand was not stated in the Call for Bids nor in the Purchase Order. The bids of the three qualified bidders were based on similar technical specifications, features and warranty as contained in their proposals. It was also found that the performance of the competing computer equipment would not vary or change even if the attributes or characteristics of said computers cited by petitioner were to be factored in. The difference in brands, microprocessors, BIOSes, as well as casings will not affect the efficiency of the computer's performance.

Further, COA declared that CDA should not have awarded the contract to Tetra but to the other competing bidders, whose bid is more advantageous to the government. It noted that Microcircuits offered the lowest bid of P1,123,315.00 for the US brand said to be more durable than the Korean brand supplied by Tetra. CDA also should have been entitled to volume discount considering the number of units it procured from Tetra. Lastly, COA emphasized that the requirements and specifications of the end-user are of prime consideration and the other added features of the equipment, if not specified or needed by the end-user, should not be taken into account in determining the purchase price. The conduct of public bidding should be made objectively with the end in view of purchasing quality equipment as needed at the least cost to the government. The price for the equipment delivered having been paid, when such equipment could be acquired at a lower cost, the disallowance of the price difference was justified. (Citations omitted.)

As mentioned above, the Court, in its Decision dated March 8, 2011, affirmed COA's disallowance and held petitioner Candelario L. Verzosa, Jr. personally liable.

In this recourse, petitioner, now deceased, through his son and legal counsel, prays that the Court reconsider its

Decision, anchoring his arguments essentially on two (2) grounds: First, there is no finding of bad faith on his part as to render him personally liable for the disallowed amount.[4] Second, the Technical Services Office (TSO) canvass, coupled with the confirmatory telephone canvass, does not comply with the requirement of an actual canvass and/or price quotations from identified suppliers as a valid basis for outright disallowance, consistent with this Court's ruling in *Arriola v. COA*. [5]

The Office of the Solicitor General (OSG) urges reconsideration. In its Comment (Re: Petitioner's Motion for Reconsideration dated April 8, 2011) dated September 12, 2011, the OSG avers that there might have been a misappreciation of the facts in the case at bar which rendered petitioner personally liable.[6] In support of petitioner's cause, the OSG invites attention to the following: (1) petitioner had no actual participation in the purported offending transaction;[7] (2) a finding of liability despite the COA's failure to prove it with substantial evidence amounts to a violation of petitioner's right to administrative due process; and (3) the presumption of regularity in the performance of duty.[8]

For their part, respondents maintain that: (1) the bad faith of petitioner is satisfactorily shown by his having prevailed upon the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC) to modify the initial result of the technical evaluation of the bidders' computer units;[9] (2) petitioner's act of signing involves the exercise of discretion and is not a ministerial act;[10] (3) the TSO report, which was prepared by COA personnel having knowledge and expertise on computer equipment, supplied reliable data that firmed up the finding of overpricing;[11] and (4) even without considering the canvassed prices of COA, the overprice in the subject procurement by the CDA could still be sufficiently established based on the bid results.[12]

Essentially, the issues for Our resolution are: (1) whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing in audit the purported overprice in the purchase of the computer equipment and peripherals by the CDA; and (2) whether there is substantial evidence to hold petitioner personally liable for the disallowed amount.

The majority rules in favor of respondents. I am constrained to register my dissent.

Applicability of *Arriola*

In *Arriola*, this Court held that "COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims." We also held that petitioners therein were not accorded due process for not having allowed access to source documents. As stated:

We agree that petitioners [*Arriola, et al.*] were indeed not given due process in this case.

We note that while NCA had provided receipts and invoices to show the acquisition costs of materials found by COA to be overpriced, COA merely referred to "a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO," (p. 124, *Rollo*).

In fairness to petitioners, COA should have, with respect for instance to the submersible pump, produced a written price quotation specifically for "1 Unit Goulds Submersible Pump Model 25 EL 30432, 3 HP, 230 V., coupled to "Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz. 3450 RPM." The cost evaluation sheet, dated September 15, 1986, Item No. 12 (attached to the decision of Mr. Jose F. Mabanta, (Actg. Director, COA-TSO), merely refers to a "Goulds submersible pump." x x x

x x x x

This is not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

. . . As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like . . .

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

The second assigned error is tied in with the first.

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. Circular No. 85-55-A of the Commission on Audit lays down the following standards for "Excessive" Expenditures:

3.3 EXCESSIVE EXPENDITURES.

Definition: The term 'excessive expenditures' signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

Standard for 'Excessive' Expenditures

The term 'excessive expenditures' pertains to the variables of Price and Quantity.

1. Price -- The price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor.

Volume Discounts -- The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchase/payment document.

3. Factors to be Considered -- In determining whether or not the price is excessive, the following factors may be considered.

A -- Supply and demand forces in the market.

Ex. -- Where there is a supply shortage of a particular product, x x x prices of these products may vary within a day.

B -- Government Price Quotations

C -- Warranty of Products or Special Features.

The price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award.

D -- Brand of Products.

Products of recognized brand coming from countries known for producing such quality products are relatively expensive.

Ex. -- Solingen scissors x x x made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

It was incumbent upon the COA to prove that the foregoing standards were met in its audit disallowance. The records do not show that such was done in this case.

On the third issue, absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.[13] (Emphasis supplied.)

As correctly stated by the majority, the above-mentioned declaration in Arriola was reiterated in National Center for Mental Health Management v. COA, where the Court also ruled that "price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects." [14]

Both Arriola and National Center for Mental Health Management paved the way for the formulation of COA Memorandum No. 97-012 dated March 31, 1997, which imposed more stringent requirements on the process of evidence-gathering to support any audit finding of overpricing. Said COA Memorandum required that the initial findings be supported by canvass sheets and/or price quotations indicating: (1) the identities/names of the suppliers or sellers; (2) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; (3) the specifications of the items that should match those involved in the overpricing; and (4) the purchase/contract terms and conditions that should be the same as those of the questioned transaction.

In justifying that there was no violation of COA rules, the majority cited Nava v. Palattao,[15] where the Court held that neither Arriola nor COA Memorandum No. 97-012 can be given any retroactive effect. I respectfully except.

It is true that this Court in Nava held that neither Arriola nor the COA Memorandum that was issued pursuant to Arriola and National Center for Mental Health Management can be given any retroactive effect. The majority, however, failed to take into consideration that the very reason why Arriola was not applied in Nava is because both cases were cast under different circumstances. As this Court wrote in Nava:

Second and more important, the circumstances in Arriola are different from those in the present case. In the earlier case, the COA merely referred to a cost comparison made by the engineer of COA-Technical Services Office (TSO), based on unit costs furnished by the Price Monitoring Division of the COA-TSO. The COA even refused to show the canvass sheets to the petitioners, explaining that the source document was confidential.

In the present case, the audit team examined several documents before they arrived at their conclusion that the subject transactions were grossly disadvantageous to the government. These documents were included in the Formal Offer of Evidence submitted to the Sandiganbayan. Petitioner was likewise presented an opportunity to controvert the findings of the audit team during the exit conference held at the end of the audit, but he failed to do so.

Further, the fact that only three canvass sheets/price quotations were presented by the audit team does not bolster petitioner's claim that his right to due process was violated. To be sure, there is no rule stating that all price canvass sheets must be presented. It is enough that those that are made the basis of comparison be submitted for scrutiny to the parties being audited. Indubitably, these documents were properly submitted and testified to by the principal prosecution witness, Laura Soriano. Moreover, petitioner had ample opportunity to controvert them.[16] (Emphasis supplied.)

On the other hand, the circumstances in the instant case are similar to those in *Arriola*, where "COA merely referred to `a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO.'" In the case at bar, COA merely based its findings on overpricing on the TSO canvass and a telephone canvass which was confirmatory of the TSO canvass. Evidently, the TSO canvass and the confirmatory telephone canvass do not comply with the requirement of an actual canvass and/or price quotations from identified suppliers as a valid basis for outright disallowance, following *Arriola*.

The majority, however, is bent on disregarding the foregoing *Arriola* holding on the basis of the pronouncement in *Nava* that it cannot be applied retroactively. It is worth noting, however, that in *Buscaino v. COA*,^[17] a case involving an audit disallowance made in 1986, as in *Arriola*, the Court's ruling in *Arriola* was nonetheless applied retroactively therein. Specifically:

Going into the merits of the case, the Court finds that the [COA] acted with grave abuse of discretion in handing down its assailed decision. The various disbursements upon which petitioner's liability is based have not been indubitably established as patently invalid or irregular and the disallowances ordered by COA were not substantiated by sufficient evidence on record.

To begin with, as regards the items disallowed on the ground of overpricing, petitioner was adjudged liable therefor because he was a member of the Canvass and Award Committee which was tasked to certify that the prices submitted were the lowest and which recommended the award to the supplier. The disallowances were made on the basis of respondent's allegation or theory that the school and other office supplies may be bought from other suppliers at prices much lower than those of the supplier to whom the bid was awarded.

In order to find out how the COA reached such a conclusion, petitioner asked the COA to furnish him with the necessary information and/or documents that would indicate the large disparity in the prices such as the quotation of prices of every item re-canvassed by the resident auditor, reflecting the brand or quality of the items, the names and addresses of the suppliers where the items were re-canvassed and the date subject items were re-canvassed. Respondent COA, however, did not furnish the same x x x. Without the necessary information and/or documents, it baffles the Court how COA could have arrived at the conclusion that there were cases of overpricing. And without the needed information and/or documents, the petitioner was not afforded the opportunity to refute the disallowances, item by item, and to justify the legality of the purchases involved. As argued by the petitioner,

"How can the undersigned (petitioner) determine the difference in prices and per cent increases between the then procurement officer's canvassed prices and the then COA Auditor's re-canvassed prices and possibly justify item by item the legality of the purchase when as you said `no such document as you indicated above were turned-over to the undersigned (present PUP COA Auditor)'? The purchase orders contain several items and it is important that those items which were allegedly overpriced should be identified."

The requirements of due process of law mandate that every accused or respondent be apprised of the nature and cause of the charge against him, and the evidence in support thereof be shown or made available to him so that he can meet the charge x x x. COA's failure to furnish or show to the petitioner the inculpatory documents or records of purchases and price levels constituted a denial of due process which is a valid defense against the accusation. Absent any evidence documentary or testimonial to prove the same, the charge of COA against the herein petitioner must fail for want of any leg to stand on.

In the 1991 decision in the case of *Virgilio C. Arriola and Julian Fernandez vs. Commission on Audit and Board of Liquidators*, x x x which was reiterated in the case of *National Center for Mental Health Management vs. Commission on Audit* x x x, this Court succinctly held that mere allegations of overpricing are not,

"` . . . in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis

for outright disallowance of agency disbursements/cost estimates for government projects.'

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. x x x

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

xxx xxx xxx

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. . . .

xxx xxx xxx

It was incumbent upon the COA to prove that its standards were met in its audit disallowance. The records do not show that such was done in this case.

. . . absent due process and evidence to support COA's disallowance, COA's ruling on petitioner's liability has no basis."

Indeed, without the evidence upon which the charge of overpricing is anchored, apart from being a denial of due process, it would not be possible to attach liability to petitioner.[18]

Why COA Memorandum Circular No. 97-012 cannot be applied to the instant case is understandable. It was not yet in existence at the time the disallowance was made. The ratio underpinning Arriola, however, is squarely in point. There is, thus, no rhyme or reason why, taking into account Buscaino, the findings in Arriola cannot be made to apply in the case at bar. To reiterate, Arriola stated:

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

. . . As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like . . .

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit. (Emphasis supplied.)

As things stand, the COA failed to give mandatory access to the COA source documents/canvass sheets. Its findings on overpricing were based, without more, on the TSO canvass and a telephone canvass confirmatory of the TSO canvass. The steps COA thus took do not conform to the due process requirements. Likewise, this fails to satisfy petitioner that the COA guidelines on excessive expenditures had been observed. Concomitantly, it behooves upon the Court to apply its ruling in Arriola to the present case.

No valid comparison

By express constitutional provision, the COA is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis.[19] For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties." [20]

On the other hand, the Administrative Code vests the Pre-qualification, Bids and Awards Committee (PBAC) the responsibility "for the conduct of prequalification of contractors, biddings, evaluation of bids and recommending awards of contracts."

Between the COA, which can only perform post-audit functions, and the PBAC members of CDA, it is the latter that have the technical expertise to determine the offers that will best meet the needs and requirements of their office.[21] COA cannot, therefore, substitute or impose its own judgment on the PBAC members of CDA without any legal or factual basis. It can only audit purchases made; it cannot prescribe what should be purchased.

To uphold the COA's finding that brand was irrelevant in the determination of the reasonableness of the price at which CDA purchased the subject computers is to trod roughshod at the discretionary powers of the PBAC to set the criteria and approve the purchase of the equipment. It is settled jurisprudence that in assessing whether there was indeed an overpricing, a specific comparison with the same brand, features and specifications as those that were actually purchased should be made.[22]

Aside from the foregoing reasons, I differ with the view of the majority that COA's observation that the CDA should have been entitled to volume discount was valid. On the contrary, a perusal of COA Circular No. 85-55-A would show that there was neither any legal obligation on the part of Tetra to give a volume discount nor to demand for said discount on the part of CDA. Particularly:

2. Volume Discounts - The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document.

The above-quoted provision simply states that if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document, then the price is deemed excessive. Without such allowed discounts, said provision does not have any bearing for purposes of ascertaining whether a price should be deemed excessive or not. Discernibly, no legal obligation was imposed for the giving or demanding of volume discount can be inferred therefrom. When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms.[23] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[24]

When factual findings of administrative agencies are not binding upon the Court

Administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence. However, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court has not hesitated to reverse their factual findings.[25] As this Court held in *Litonjua v. Court of Appeals*: [26]

It is clear from the foregoing discussion that the factual findings of the SEC are not supported by substantial evidence. Hence, it is the exception, rather than the general rule that factual findings of administrative agencies are binding upon the courts, that should apply. The exceptions are well-stated in *Datu Tagoranao Benito v.*

SEC:

Well-settled is the rule that the findings of facts of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence. (*Gokongwei, Jr. vs. SEC*, 97 SCRA 78.) In a long string of cases, the Supreme Court has consistently adhered to the rule that decisions of administrative officers are not to be disturbed by the courts except when the former have acted without or in excess of their jurisdiction or with grave abuse of discretion x x x. (Emphasis supplied; citations omitted.)

Yap v. COA is of the same tenor, to wit:

We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65 of the Rules of Court.[27] (Emphasis supplied.)

In the case at bar, there is reason to set aside COA's decisions and the factual premises holding them together, for the said decisions are not supported by substantial evidence indicating petitioner's responsibility for the disallowance. Substantial evidence means such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

In upholding the finding by COA of the personal liability of petitioner for the overpricing of the computers procured by CDA, the majority found:

As pointed out in our Decision, records showed it was petitioner who ordered the reconstitution of the PBAC which nullified the previous bidding conducted in December 1991. He further secured the services of the DAP-TEC for technical evaluation and signed the agreement for the said technical assistance when it is already the duty of the PBAC Chairman. Notwithstanding petitioner's claim that it was part of his duties as Executive Director to "[sign] outgoing communications/letters except letters addressed to Heads of offices, Congressmen, Senators and to the Office of the President," the fact remains that the services of DAP-TEC for P15,000.00 fee were availed of at his instance. As it turned out, the DAP-TEC came out with two different technical evaluation reports, the second having been antedated but also signed by DAP-TEC Director Minerva Mecina who admitted it was her signature in both documents but claimed she was unaware that she had signed two different documents. The discrepancies in the two reports (in the first impartial result, Tetra got the lowest ranking but in the second result made after CDA ordered certain changes in the grading system, Tetra eventually won) [were] found by Auditor Rubico to be irregular and indicative of bad faith.

But as aptly observed by the OSG, "there might have been a misappreciation of the facts of the case." [29] Evidently, the only bases for a finding of bad faith on the part of petitioner so as to render him personally liable are: (1) the reconstitution of the PBAC by petitioner; and (2) petitioner's engagement of the services of the DAP-TEC. By themselves, there is nothing illegal from these actions. As mentioned above, the creation of the PBAC is even sanctioned by the Administrative Code, while the engagement of the services of the DAP-TEC, a third-party evaluator, by petitioner is even an indication that he "wanted transparency and independence in the bidding process." [30]

No bad faith can also be imputed upon petitioner, because, contrary to the assertion of respondents, the records do not support any finding that he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an allegedly irrelevant grading system that was intended to favor one of

the bidders. Assuming that there was, indeed, an alleged intent to alter the evaluation results of the bidding, no sufficient evidence can point to petitioner's direct participation or involvement in the said charge. It cannot be overemphasized that no connection was established between petitioner and a certain Rey Evangelista, a member of the staff of the PBAC Chairperson, who was said to have gone to DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units.

Moreover, the mere fact that petitioner signed the vouchers and other documents for the processing of the purchase after the winning bidder has been chosen does not per se constitute bad faith on his part. Notably, petitioner's signature was given as final recommending/approving authority only after the entire bidding process was conducted. He cannot, therefore, be faulted for relying and depending, to a reasonable extent, on the integrity and performance of duty by the PBAC, as well as the Board of Administrators, which acted on the documents. By analogy, this Court's ruling in *Arias v. Sandiganbayan*[31] is instructive:

x x x All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction. (Emphasis supplied.)

Absent any clear showing that petitioner had a hand in the alleged intent to alter the evaluation results of the bidding, the presumption of regularity in the performance of duty should apply. Mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against this presumption.[32]

Accordingly, I vote to grant the motion for reconsideration, recall and set aside the March 8, 2011 Decision of this Court, and reverse and set aside COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively, and Notice of Disallowance No. 93-0016-101 dated November 17, 1993.

[1] Rollo, pp. 50-52.

[2] *Id.* at 61-63.

[3] *Id.* at 68.

[4] *Id.* at 375.

[5] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[6] Rollo, p. 478.

[7] *Id.* at 486.

[8] *Id.* at 488.

[9] *Id.* at 507.

[10] *Id.*

- [11] Id. at 508.
- [12] Id. at 510.
- [13] Arriola v. COA, supra note 5, at 153-156.
- [14] G.R. No. 114864, December 6, 1996, 265 SCRA 390, 400.
- [15] G.R. No. 160211, August 28, 2006, 499 SCRA 745.
- [16] Id. at 764.
- [17] G.R. No. 110798, July 20, 1999, 310 SCRA 635.
- [18] Id. at 646-649. (Citations omitted.)
- [19] Villanueva v. COA, G.R. No. 151987, March 18, 2005, 453 SCRA 782, 791.
- [20] Id. at 791-792; citing Constitution, Art. IX(D), Sec. 2(2).
- [21] Id. at 796.
- [22] Arriola v. COA, supra note 5, at 154.
- [23] Commissioner of Internal Revenue v. Central Luzon Drug Corp., G.R. No. 148512, June 26, 2006, 492 SCRA 575, 581.
- [24] Philippine Amusement & Gaming Corp. v. Philippine Gaming Jurisdiction, Inc., G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665.
- [25] PAL, Inc. v. NLRC, G.R. No. 117038, September 25, 1997, 279 SCRA 445, 458.
- [26] G.R. No. 120294, February 10, 1998, 286 SCRA 136.
- [27] G.R. No. 158562, April 23, 2010, 619 SCRA 154, 174.
- [28] Ventis Maritime Corp. v. CA, G.R. No. 160338, October 6, 2008, 567 SCRA 474, 480; citing *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639.
- [29] Rollo, p. 478.
- [30] Id. at 489.
- [31] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309, 306.
- [32] Flores v. Montemayor, G.R. No. 170146, August 25, 2010, 629 SCRA 178, 195.

DISSENTING OPINION

SERENO, J.:

The Office of Solicitor General (OSG) is sworn to protect the interests of government as its principal law officer and legal defender. In a very rare occasion as in this case, the OSG has taken the side of private petitioner and against public respondents. When the OSG adopts a position contrary to that of a government agency, this Court should seriously pause and look at the facts and the law more closely. In *Gonzales v. Chavez*,^[1] we said:

Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government

officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve. (Emphasis supplied.)

Petitioner is before us, seeking a reconsideration of this Court's Decision promulgated on 8 March 2011. He maintains that public respondents failed to present any evidence supporting the allegation that the bidding for the computer equipment was rigged, or that he had any part in such manipulation if indeed there was any. He also claims that the dispositive portion of the Decision wrongly made him solely liable for the disallowed amount when it stated as follows:

WHEREFORE, the petition is DENIED. The COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively, are AFFIRMED and UPHELD. Petitioner Candelario L. Versoza, Jr. is hereby ordered to REIMBURSE the amount of P881,819.00 subject of Notice of Disallowance No. 93-0016-101 dated November 17, 1993 and the corresponding CSB No. 94-101 dated January 10, 1994.

We subsequently required the OSG and respondents to comment on the Motion for Reconsideration. The OSG noted that "there is no finding of fact in the Decision dated March 8, 2011 which supports this serious finding or determination that the late Petitioner acted in bad faith so as to make him personally liable for the said amount disallowed." The OSG's Comment further states:

Assuming without admitting that there was an alleged intent to alter the results of the bidding, the late Petitioner was NOT DIRECTLY RESPONSIBLE FOR THIS (and there is also no factual finding even of any indirect responsibility on the part of the late Petitioner) since it was a certain Rey Evangelista who was directly responsible. Even by itself, the actions by Mr. Rey Evangelista do not per se constitute such serious bad faith as to be interpreted as deliberately favouring Tetra computer bid...

xxx xxx xxx

To be certain, the CDA being a government agency/corporation, there is no single allegation or imputation much less any evidence of any act constituting bad faith, malice or negligence on the part of the petitioner (during his services as Executive Director of the CDA) in any of the issuances by the COA, whether it be COA Decision No. 98-424 dated October 21, 1998 (Annex "A") or COA Decision No. 2003-061 dated March 18, 2003 (Annex "C") or even the Notice of Disallowance 93-0016-101 dated November 17, 1993 (Annex "F"), let alone any supporting document thereof. (Emphasis supplied.)

Reviewing the case at hand, this Court's dependence on unsupported allegations is alarming. Even more alarming is the fact that its findings are contrary to what the evidence actually proves.

I reiterate the five reasons I enumerated in my Dissent to the Decision dated 8 March 2011 why this Court must grant the Petition.

First, the Commission on Audit (COA) cannot violate the same rules it imposes on all public offices regarding the manner of conducting canvasses. Second, the COA auditor cannot substitute her own discretion for that of the Cooperative Development Authority (CDA) by denying its right to prefer certain specifications for the computers it intended to purchase for

its own use. Third, the amount of disallowance has no basis in fact, is grossly disproportionate to the total purchase price, and is in the nature of punitive damages. Fourth, there is no clear and convincing evidence that there were instances of manipulation during the bidding process. Moreover, this allegation of manipulation was belatedly raised by public respondents, having been raised for the first time only in COA's Comment before this

Court, thus violating petitioner's right to due process. Finally, respondent miserably failed to show that petitioner was personally liable for the return of the disallowance.

In the Decision, the ponencia focuses on COA resident auditor Luzviminda V. Rubico's allegation of manipulation of the bidding process. A judicious review of the records and pleadings reveals, however, that the conspiracy theory of the so-called manipulation was a mere figment of the imagination of an overeager auditor.

It must be emphasized that there are two very serious flaws in the findings of fact in the Decision, which must thus be reconsidered.

First, respondents failed to refute the presumption of regularity in the exercise of official functions. Aside from the reports and bare allegations submitted by the resident auditor, there is nothing in the records that would speak of any hint of manipulation or illegality in any part of the bidding process.

Second, respondents also failed to show that petitioner was involved in the so-called manipulation of the bidding process, if ever there was one. To prove the alleged manipulation, they presented only three documents, two of which were letters from auditor Rubico herself, dated 17 November 1995 and 23 November 1995, addressed to COA Legal Counsel Director Raquel Habitan. The third document is the letter, also dated 23 November 1995, written by Antonio Quintos, Jr. of the Development Academy of the Philippines (DAP) upon the request of COA representative Abraham Rodriguez.

The first evidence that the majority relied on was the 17 November 1995 letter of auditor Rubico. Here she alleged that she "discovered" an irregularity in the bidding process. She also alleged that the results were manipulated to make it appear that Tetra Corporation bested the other bidders. In her narration of her so-called "discovery," she never mentioned the name of petitioner.

The second evidence that the majority considered was Rubico's 23 November 1995 letter, wherein she mentioned petitioner's name twice, but not in any manner as to indicate any suspicious behavior on petitioner's part. The first instance was in paragraph 1, where she mentioned that petitioner had reconstituted the Public Bidding and Awards Committee (PBAC). The second instance was in paragraph 5, where she merely confirmed that he had signed a Memorandum of Agreement between the CDA and the DAP. These two acts were neither illegal nor prohibited per se, and Rubico has not claimed so in any of her letters. Moreover, as the majority itself pointed out in its Decision promulgated on 8 March 2011, only paragraphs 6 to 12 of the 23 November 1995 letter were relevant to the discussion of the alleged manipulation. In these paragraphs, again, auditor Rubico made no mention at all of petitioner and his supposed participation in the alleged manipulation.

The third and final piece of evidence on which the majority based its findings on was Quintos' letter also dated 23 November 1995. Likewise, his letter neither mentioned petitioner nor proved manipulation in the technical evaluation of the computer equipment.

Looking very closely at these pieces of evidence, it is clear that the majority's Decision was unwarranted and was bereft of any basis.

More importantly, an indication that the COA officials themselves found the alleged manipulation to be improbable or, at the very least, unsupported by evidence was the inaction thereon by COA's legal counsel and its Commissioners Celso D. Gangan, Raul C. Flores and Sofronio B. Ursal in COA Decision No. 98-424; and again by Commissioners Guillermo N. Carague, Emmanuel Dalman and Raul C. Flores in COA Decision No. 2003-061.

To recall, CDA purchased the computer equipment in December 1992. Respondent COA issued the Notice of

Disallowance on 17 November 1993. Auditor Rubico issued her reports in November 1995, and these were duly received on 16 February 1996 by respondent's legal office through the assistant commissioner of the National Government Audit Office I. Attached to the reports were additional pieces of evidence showing that petitioner and the PBAC were liable for the disallowed amount. However, respondent's legal counsel did not act on the alleged manipulation or institute any administrative action against petitioner and the PBAC members. Furthermore, despite being additional evidence for the disallowance, respondent's Decision No. 98-424 dated 21 October 1998 and Decision No. 2003-061 dated 18 March 2003 were deafeningly silent on Rubico's reports.

The only conclusion to be reached is that the higher officials of COA did not find any merit in the auditor's allegations after conducting a "judicious evaluation of the facts and circumstances." [2] Hence, it would be unwarranted for this Court to hold otherwise. To reiterate, it was only in respondents' Comment dated 12 March 2004 filed before this Court that the allegation of illegal manipulation was first made. Prior to this Comment, there was no indication that petitioner was ever informed of the possible accusation of illicit behaviour, or that such allegations were duly considered by the Commissioners who issued the assailed rulings.

In contrast, despite being caught off guard by the belated allegation of manipulation in the bidding process, petitioner was able to present substantial evidence to show that his participation was only ministerial. He duly submitted additional documents [3] and attached them to his Reply, [4] thus showing that the acts referred to by the auditor were regular and within the lawful ambit of his authority as executive director.

Moreover, this Court blatantly ignores and disregards prevailing laws, administrative rules and established doctrines on issues of excessive expenditure. It fails to consider the prevailing doctrine first laid down in *Arriola v. COA* [5] on issues of overpricing. The majority fails to squarely explain why *Arriola* should not be applied to this case, when both cases clearly proscribe a finding of overpricing when due process has been violated.

To reiterate, the canvass sheets were not presented to the petitioner in *Arriola*. In the present case, aside from the non-presentation of the canvass sheets, no actual field canvass was made but, instead, a mere telephone canvass was conducted. The COA in *Arriola* likewise secured price quotations from three suppliers. In the present case, comparisons of only one or two suppliers were made. The Court in *Arriola* struck down the comparison made by the COA between the equipment purchased and an item of the same brand, but not the same model. Here, different pieces of equipment of different brands were compared. Finally, in both cases, the specifications of the items compared were not provided.

As emphasized, this Court's ruling contradicts what the evidence has actually proved. It bears emphasis that the ponencia has reproduced the findings of the Technical Services Office (TSO). These TSO findings were the only ones relied upon by the auditor in holding petitioner liable for an overpricing of P811,819. The same document clearly shows that no comparison was actually made. It notes the following express disclosures:

Other items were verified/evaluated but had no valid data for comparison.

*The only available valid price information.

**Lower price out of only two valid price information for want of a third valid price information as required.
(Emphasis supplied.)

Despite the TSO's findings, this Court still unreasonably upholds the auditor's findings on the overpricing and petitioner's personal liability.

It must also be equally emphasized that, contrary to what the ponente posits, the opinion of COA's information technology (IT) personnel could not be the basis of overturning the discretion of the CDA in determining the specifications for the computer equipment. Nowhere in the Constitution or any law is the IT department of COA

allowed to override the preference for equipment brands or specifications of an agency. To reiterate, what was at issue was not the necessity of these specifications or the equipment themselves, but only that it should not be overpriced. We are setting a very dangerous precedent if we are to insist that the COA's preference - or even that of its IT personnel - is far superior to and prevails over that of the agency that it is auditing.

Thus, the majority fails to satisfactorily address the following truths:

- The doctrine established in *Arriola* was already controlling at the time the issues arose in this case, and yet it was not applied to this case.
- No actual field canvass was made, and no canvass sheets were presented.
- Comparisons were made among different specifications and brands of equipment, or that the equipment was compared to those having no specifications at all.
- Comparisons of pieces of the same equipment coming from at least three (3) suppliers were not made.
- There was a contradiction in respondent's statement that, on the one hand, the winning bid should have been the lowest bidder, but that on the other hand, the amount of overprice was based on the price of the generic clone equipment.
- The generic equipment referred to for comparison was not even included or qualified in the bid process.
- Respondent COA itself did not act on Rubico's allegations of manipulation, and, in fact, did not raise them during the proceedings at the administrative level.

On that last point, the majority contradicts itself when it says that findings of fact of administrative authorities must be respected and yet insists that there was manipulation in the bidding, when it was never held to be so by the same administrative authorities. It cannot be denied that the majority considered the matter as a substantial element or context when it upheld the disallowance made by respondent, when the presence of manipulation was never an official finding, expressly or impliedly, by the COA Commissioners. The conclusions reached by the majority are mere conjectures and speculations that the records never bore out, or that petitioner never had the chance to controvert at the earliest possible time.

The dangers posed by the Decision in this case cannot be overemphasized. To say the least, there is nothing to prevent respondent COA from comparing all government purchases with generic equipment without even conducting a valid canvass of prices. Overpricing is not necessarily based on equipment that qualified for the bidding process; it may be based even on generic, unbranded equipment. There is no legal impediment for COA to recall the regulations on excessive purchases it had issued in the past and to issue new ones following the Court's interpretation of the matter. For the COA to be allowed to do so would further discourage industries from offering their equipment or services for government use. Finally, the bidding process will be rendered inutile.

Hence, following and applying the majority's theory, the branded pieces of computer equipment that this Court itself uses in issuing its decisions may also be found to be excessively overpriced by respondent when these are compared to generic non-branded computer equipment. There is no need to conduct an actual canvass; present the canvass sheets; require a comparison of at least three (3) suppliers; compare the items with the same brands or specifications; or even with those that did not qualify for the bidding or have no known specifications at all. Thereafter, the determination of the overpriced amount would be based on the price of the cheapest generic brand having more or less similar but not necessarily identical specifications. Finally, all those who have approved the purchases would be held solidarily liable for the excess amount based on the prices of the cheapest equipment of different specifications and brands available in the market.

Equally important, the Decision also allows allegations to be belatedly raised despite the absence of any extraordinary reason to do so and thus, contradicts the basic tenets of due process. The ponente has not even provided any legal basis why we should consider and allow these belatedly raised allegations that clearly prejudice the rights of petitioner.

Lastly, the majority should categorically state in the dispositive portion that petitioner cannot be solely liable for the disallowed price. The majority, while affirming the findings of the COA, actually aggravated the latter's baseless ruling when it apparently ordered petitioner singly to reimburse the full amount of disallowance in its original Decision, without mentioning the liability of his co-respondents in the original COA case. The difference between sole liability and solidary liability cannot be emphasized enough. Solidary obligations assume that the debt can be divided into as many equal shares as there are debtors. In addition, while the creditor may only demand payment from one debtor, that debtor nevertheless has the right of reimbursement from the other debtors. In the present case, there are eight (8) debtors.

Therefore, I maintain that the right of petitioner to due process was violated when respondents and the majority of this Court held him liable for the disallowed purchase price of the computer equipment.

Hence, I maintain my Dissent from the Decision dated 8 March 2011 and vote to grant petitioner's Motion for Reconsideration dated 8 April 2011.

[1] G.R. No. 97351, 4 February 1992, 205 SCRA 816.

[2] Rollo, p. 232.

[3] Letter dated 25 November 1992 from Dr. William Torres, Managing Director of the National Computer Center, consenting to the request for the additional purchase of computers and computer peripherals, *id.* at 299; Minutes of the board meeting of the CDA dated 8-10 January approving the recommendation of PBAC with regard to the awarding of the bid to Tetra, *id.* at 300-303; Minutes of the board meeting dated 24-25 August 1992, approving the Invitation to Pre-qualify to Bid, Instruction to Bidders and Bid Forms, *id.* at 304-305; Special Order No. 91-08 issued by the Office of the President delegating powers to petitioner as executive director of CDA, *id.* at 306; and Special Order No. 001, Series of 1995 on the Authority Specifications for the officers of CDA, *id.* at 307.

[4] *Id.* at 255-298.

[5] G.R. No. 90364, 30 September 1991, 202 SCRA 147.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.