

FAROUK B. ABUBAKAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 202408. June 27, 2018*

Ponente: LEONEN, J.

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The rules on competitive public bidding and those concerning the disbursement of public funds are imbued with public interest. Government officials whose work relates to these matters are expected to exercise greater responsibility in ensuring compliance with the pertinent rules and regulations. The doctrine allowing heads of offices to rely in good faith on the acts of their subordinates is inapplicable in a situation where there are circumstances that should have prompted the government officials to make further inquiries.

For this Court's resolution are three (3) consolidated Petitions for Review on Certiorari[1] concerning alleged anomalies in the implementation of infrastructure projects within the Autonomous Region of Muslim Mindanao (ARMM). The Petitions, separately docketed as G.R. Nos. 202408,[2] 202409,[3] and 202412,[4] question the Sandiganbayan's December 8, 2011 Decision[5] and June 19, 2012 Resolution[6] in Criminal Case Nos. 24963-24983. The assailed judgments declared Farouk B. Abubakar (Abubakar) guilty beyond reasonable doubt of 10 counts of violation of Section 3(e) of Republic Act No. 3019, and Ulama S. Baraguir (Baraguir) and Datukan M. Guiani (Guiani) guilty beyond reasonable doubt of 17 counts of violation of Section 3(e) of Republic Act No. 3019.[7]

Abubakar, Baraguir, and Guiani were public officials of the Department of Public Works and Highways in ARMM (DPWH-ARMM) when the offenses were allegedly committed. Abubakar held the position of Director III, Administrative, Finance Management Service. Baraguir was the Director of the Bureau of Construction, Materials and Equipment, and a member of the Pre-Qualification Bids and Awards Committee, while Guiani was the DPWH-ARMM Regional Secretary.[8]

Guiani v. Sandiganbayan[9] is the procedural antecedent of this case.

After the creation of ARMM, the national government earmarked P615,000,000.00 for the implementation of regional and provincial infrastructure projects. In 1991, the funds were transferred to the Office of the ARMM Regional Governor. Later, a portion of the funds was then transferred to DPWH-ARMM.[10]

During the incumbency of then President Fidel V. Ramos (President Ramos), the Office of the President received reports of irregularities attending the implementation of the DPWH-ARMM infrastructure projects. The Commission on Audit was directed to conduct an investigation.[11]

Acting upon then President Ramos' instruction, the Commission on Audit created a special audit team headed by Heidi L. Mendoza (Mendoza) to look into the implementation of four (4) road concreting projects, namely: (1) the Cotabato-Lanao Road, Sections 1-13; (2) the Awang-Nuro Road; (3) the Highway Linek-Kusiong Road; and (4) the Highway Simuay Seashore Road.[12] Physical inspections were conducted on October 15, 1992 to validate

the existence of the projects and the extent of their development.[13]

The audit team made the following findings:[14]

First, an overpayment amounting to P17,684,000.00 was incurred on nine (9) road sections. The audit team discovered the existence of bloated accomplishment reports that allowed contractors to prematurely claim on their progress billings.[15]

Second, advance payments totaling P14,400,000.00 were given to nine (9) contractors for the procurement of aggregate sub-base course in violation of Section 88(l) of Presidential Decree No. 1445.[16]

Third, public bidding for the Cotabato-Lanao Road Project was done without a detailed engineering survey.[17] The bidding was reportedly conducted on January 14, 1992. However, the engineering survey was only completed sometime in August 1992. The audit team also observed bidding irregularities in the Awang-Nuro Road Project and in six (6) road sections of the Cotabato-Lanao Road Project. Public bidding for the two (2) projects was reportedly conducted on January 14, 1992 but records disclose that the contractors already mobilized their equipment as early as January 4 to 7, 1992.[18]

Lastly, the engineering survey for the centerline relocation and profiling of the Cotabato-Lanao Road, which cost P200,000.00, appeared to be unnecessary due to the existence of a previous engineering survey. Furthermore, advance payment was given to the contractor in excess of the limit provided under the implementing rules and regulations of Presidential Decree No. 1594.[19]

Based on the report submitted by the Commission on Audit, the Office of the Ombudsman conducted a preliminary investigation and found probable cause to indict the regional officials of DPWH-ARMM for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. On July 31, 1998, 21 separate Informations were filed against Abubakar, Baraguir, Guiani, and other officials of DPWH-ARMM. The consolidated cases were docketed as Criminal Case Nos. 24963-24983.[20]

Charged in Criminal Case Nos. 24963 to 24969 were Guiani, Baraguir, and several other DPWH-ARMM officials for allegedly awarding projects to contractors without the required public bidding.[21]

Abubakar, Guiani, Baraguir, and two (2) employees of DPWH-ARMM were charged in Criminal Case No. 24970 for allegedly awarding excessive mobilization fees to Arce Engineering Services.[22]

Guiani was charged in Criminal Case No. 24971 for entering into an unnecessary contract with Arce Engineering Services for the conduct of another detailed engineering survey.[23]

Abubakar, Baraguir, Guiani, and two (2) other officials of DPWH--ARMM were charged in Criminal Case Nos. 24972, 24975 to 24980, and 24982 to 24983 for allegedly advancing P14,400,000.00 to several contractors for sub-base aggregates.[24]

Lastly, Abubakar, Baraguir, Guiani, and several other DPWH-ARMM officials were charged in Criminal Case Nos. 24973, 24974, and 24981 for allegedly causing overpayment on several projects due to bloated accomplishment reports.[25]

All the Informations charged the accused with conspiracy except for Criminal Case No. 24971.[26]

Upon arraignment, Abubakar, Baraguir, Guiani, and some of their co--accused entered a plea of not guilty. Seven (7) of their co--accused remained at large while one (1) died prior to the scheduled arraignment.[27]

During trial, the prosecution presented Leodivina A. De Leon (De Leon) and Mendoza to testify on the findings of the Commission on Audit.[28]

De Leon testified on the alleged irregularities attending the bidding procedure. She explained that some contractors were allowed to mobilize their equipment even before the conduct of the bidding and the perfection of the contracts for six (6) road sections of the Cotabato-Lanao Road and the Awang-Nuro Road Projects.[29]

Mendoza testified on the alleged irregular payment scheme for the procurement of sub-base aggregates. She stated that the concerned DPWH--ARMM officials made it appear that they were requesting for the pre-payment of cement. However, the disbursement vouchers indicate that the payment was made for the procurement of sub-base aggregates. The words "sub-base aggregates" were superimposed on the disbursement vouchers.[30]

After the prosecution rested its case, several of the accused filed their respective Motions for Leave to file Demurrer to Evidence. These Motions were denied by the Sandiganbayan in its March 18, 2008 Resolution. The defense then proceeded to the presentation of its evidence.[31]

Presented as witnesses for the defense were some of the accused: (1) Nelfa M. Suasin (Suasin), an accountant of DPWH-ARMM; (2) Guialoson A. Mamogkat (Mamogkat), the DPWH-ARMM Director for Operations; (3) Taungan S. Masadag (Masandag), the DPWH-ARMM Regional Assistant Secretary and the designated Chair of the Pre-Qualification Bids and Awards Committee; (4) Abubakar; and (5) Baraguir. Commission on Audit's Records Custodian Nenita V. Rama was also presented as a defense witness.[32]

Suasin testified that she consulted her superiors, particularly Abubakar, Baraguir, and Guiani, regarding the 30% mobilization fees awarded to Arce Engineering Services. They explained to her that the mobilization fee was increased as no other surveyor was willing to undertake the work due to the peace and order situation in the area. Suasin raised the same defense on the P14,400,000.00 advance payment. She claimed that she signed the disbursement vouchers after seeking approval from her superiors. She also testified that the item typewritten on the disbursement vouchers was "cement" and not "sub-base aggregates." [33]

Mamogkat testified that DPWH-ARMM had to re-survey some areas of the Cotabato-Lanao Road Project because they could no longer locate the reference points marked in the original survey. He denied the charge that some contractors were overpaid, and attributed the discrepancy between the audit team's report and DPWH-ARMM's report on several factors. He pointed out, among others, that the physical inspection conducted by the DPWH-ARMM team was more extensive compared to the audit team's one (1)-day inspection.[34]

Masandag insisted that the Pre-Qualification Bids and Awards Committee followed the bidding procedure laid down in Presidential Decree No. 1594. He denied knowledge and participation on the alleged early mobilization of contractors, and claimed that it was the Regional Secretary who authorized the issuance of the certificates of mobilization.[35]

Abubakar claimed that he was only implicated due to the presence of his signature in the disbursement vouchers. He asserted that he examined the supporting documents and the certifications made by the technical experts before affixing his signature.[36]

Last to testify for the defense was Baraguir. He claimed that some contractors took the risk of mobilizing their equipment before the conduct of public bidding on the expectation that the winning bidders would sub-lease their equipment. He also testified that construction immediately began on some projects after the engineering survey to fast track the implementation of the projects.[37]

On December 8, 2011, the Sandiganbayan rendered judgment[38] finding Guiani, Baraguir, and Masandag guilty beyond reasonable doubt of seven (7) counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 24963 to 24969.[39]

The Sandiganbayan held that Guiani, Baraguir, and Masandag conspired with each other and gave unwarranted benefits, preference, and advantage to seven (7) contractors by allowing them to deploy their equipment before the scheduled public bidding. Records show that the public bidding for the Cotabato-Lanao Road and Awang-Nuro Road Projects was conducted after the issuance of the certificates of mobilization:[40]

Project

Contractor

Date of Certification

Date of Bidding

Date of Contract

Awang-Nuro Road

HMB Construction and Supply

Jan. 7, 1992

Jan. 14, 1992

Jan. 16, 1992

Cotabato-Lanao Road Section 8

Kutawato Construction

Jan. 5, 1992

[Jan. 14, 1992]

[Jan. 16, 1992]

[Cotabato-Lanao Road] Section 7

Al Mohandiz Construction

Jan. 5, 1992

[Jan. 14, 1992]

[Jan. 16, 1992]

[Cotabato-Lanao Road] Section 2

JM Construction

Jan. 7, 1992

[Jan. 14, 1992]

[Jan. 16, 1992]

[Cotabato-Lanao Road] Section 5

PMA Construction

Jan. 6, 1992

[Jan. 14, 1992]

Jan. 20, 1992

[Cotabato-Lanao Road] Section 3

Al-Aziz-Engineering

Jan. 4, 1992

[Jan. 14, 1992]

Jan. 8, 1992

[Cotabato-Lanao Road] Section 1

MGL Construction

Jan. 5, 1992

[Jan. 14, 1992]

Jan. 15, 1992[41]

According to the Sandiganbayan, HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction were already identified as contractors for the abovementioned projects even before the scheduled public bidding. For instance, the certification issued to HMB Construction and Supply stated:

CERTIFICATION

THIS IS TO CERTIFY that HMB CONSTRUCTION AND SUPPLY, Contractor for the construction of AWANG-NURO, UPI ROAD, had already mobilized a minimum number of equipments (sic) necessary for the implementation of the said project.

This certification is being issued to HMB CONSTRUCTION AND SUPPLY in connection with his legal claim under P.D. 1594 as stated for the payment of fifteen (15) percent mobilization fee.

Issued this 7[th] day of January, 1992.[42] (Emphasis in the original)

Similar certifications were issued to Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz- Engineering, and MGL Construction.[43]

The Sandiganbayan rejected the defense's justification regarding the early mobilization of these contractors, and underscored that no contractor would risk mobilizing its equipment without any assurance that the projects would be awarded to it. Although a public bidding was actually conducted, the Sandiganbayan believed that it was done as a mere formality.[44]

Accused Guiani, Mamogkat, Abubakar, Baraguir, and Suasin were found guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 for causing the disbursement of 30% of the mobilization fees or advance payment to Arce Engineering Services.[45]

Accused Guiani was acquitted in Criminal Case No. 24971 for his alleged act of entering into a second detailed engineering survey. The Sandiganbayan held that the second survey was indispensable because the reference points in the original survey could no longer be found. The prosecution failed to prove that accused Guiani exhibited manifest partiality, evident bad faith, or gross inexcusable negligence in hiring Arce Engineering

Services.[46]

The Sandiganbayan convicted accused Guiani, Mamogkat, Abubakar, Baraguir, and Suasin of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019 for facilitating the advance payment for the procurement of sub-base aggregates.[47] It characterized the P14,400,000.00 disbursement as an advance payment and not as pre-payment for construction materials. First, the disbursement was given directly to the contractor and not to the suppliers. Second, there were no written requests from the contractors who wished to avail of the pre-payment facility. Third, under Department Order No. 42 of the Department of Public Works and Highways, only cement, reinforcing steel bars, and asphalt may be procured under a pre-payment scheme.[48] Thus, the P14,400,000.00 disbursement could not be considered as pre-payment for construction materials.

The Sandiganbayan concluded that the disbursement was an advance payment and declared it illegal because there were no documents to prove that the items were actually delivered. It cited Section 88(1) of Presidential Decree No. 1445 as legal basis.[49]

Guiani, Baraguir, Abubakar, and Mamogkat were acquitted in Criminal Case Nos. 24973, 24974, and 24981 for allegedly causing the overpayment on several projects due to bloated accomplishment reports. The Sandiganbayan gave more credence to DPWH-ARMM's accomplishment report over the audit team's report. First, the standards used by each team varied. Second, DPWH-ARMM's inspection was more extensive.[50]

The dispositive portion of the Sandiganbayan's December 8, 2011 Decision stated:

WHEREFORE, IN LIGHT OF ALL THE FOREGOING, the Court hereby renders judgment as follows:

1. In Criminal Cases No. 24963, No. 24964, No. 24965, No. 24966, No. 24967, No. 24968 and No. 24969, the Court finds accused DATUKAN M. GUIANI, TAUNGAN S. MASANDAG and ULAMA S. BARAGUIR GUILTY beyond reasonable doubt of seven (7) counts of violation of Sec. 3(e) of R.A. 3019, and pursuant to Section 9 thereof, are hereby sentenced to suffer for each count the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

2. In Criminal Case No. 24970, the Court finds accused DATUKAN M. GUIANI, GUIALOSON A. MAMOGKAT, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR AND NELFA M. SUASIN GUILTY beyond reasonable doubt of violating Sec. 3 (e) of RA 3019, and hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

3. In Criminal Case No. 24971, for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DATUKAN M. GUIANI is hereby ACQUITTED of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against him by reason of this case is hereby LIFTED and SET ASIDE, and his bond ordered RELEASED.

4. In Criminal Cases No. 24972, No. 24975, No. 24976, No. 24977, No. 24978, No. 24979, No. 24980, No. 24982 and No. 24983, the Court finds accused DATUKAN M. GUIANI, GUIALOSON A. MAMOGKAT, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR and NELFA M. SUASIN GUILTY beyond reasonable doubt of nine (9) counts of violation of Sec. 3 (e) of RA 3019 and, pursuant to Section 9 thereof, are hereby sentenced to suffer for each count the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

5. In Criminal Case No. 24973, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, ULAMA S. BARAGUIR, FAROUK B. ABUBAKAR, GUIALOSON A. MAMOGKAT, NASSER G. SINARIMBO, MANGONDA YA A. MADID and SALIK ALI are hereby ACQUITTED of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

6. In Criminal Case No. 24974, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, TAUNGAN S. MASANDAG, ULAMA S. BARAGUIR, FAROUK B. ABUBAKAR, GUIALOSON A. MAMOGKAT, MANGONDA YA A. MADID, SALIK ALI, NASSER G. SINARIMBO, EMRAN B. BUISAN, BEVERLY GRACE D. VILLAR and ROMMEL A. GALINDO are hereby ACQUITTED of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

7. In Criminal Case No. 24981, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR, GUIALOSON A. MAMOGKAT, BAHAMA A. ANDAR, PENDATUN JAUHALI, EMRAN B. BUISAN, NAZER P. EBUS and RONEL C. QUESADA are hereby ACQUITTED of the offense of violation of Sec. 3 (e) RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

....

SO ORDERED.[51] (Emphasis in the original)

Abubakar and Baraguir filed their respective motions for new trial and reconsideration on separate dates. They anchored their prayer for new trial on the alleged incompetence of their former counsel. Guiani, Suasin, and Mamogkat also moved for reconsideration.[52] In their motions, accused Guiani and Baraguir invoked the application of the *Arias*[53] doctrine.[54]

On June 19, 2012, the Sandiganbayan rendered a Resolution[55] denying the motions for new trial and reconsideration for lack of merit.[56]

Abubakar, Baraguir, and Guiani filed their respective Petitions for Review before this Court questioning the December 8, 2011 Decision and June 19, 2012 Resolution of the Sandiganbayan. The petitions were consolidated on January 21, 2013.[57]

Respondents the Honorable Sandiganbayan, the People of the Philippines, and the Office of the Special Prosecutor filed, through the Office of the Special Prosecutor, their consolidated Comment,[58] to which petitioners Abubakar and Baraguir filed their respective Replies.[59] Due to petitioner Guiani's repeated failure to submit the required reply, this Court dispensed with its filing.

Petitioners Abubakar and Baraguir maintain that they are entitled to a new trial due to their former counsel's incompetence and negligence. They claim that aside from simply adopting the evidence submitted by their co--accused, their former counsel also failed to present and to formally offer relevant evidence that would exonerate them from liability. Petitioners Abubakar and Baraguir believe that they were deprived of the opportunity to fully present their case^[60] and to claim that the following documents should have been presented before the Sandiganbayan:

(1)

Original copies of the assailed disbursement vouchers proving that the entries were for cement and not for sub-base aggregates;^[61]

(2)

The testimony of handwriting experts who would confirm their defense;^[62]

(3)

Written requests of contractors who wished to avail of the pre-payment scheme for the procurement of cement to prove compliance with DPWH Department Order No. 42;^[63]

(4)

Original copy of the February 17, 1992 DPWH Memorandum issued by the former DPWH Regional Secretary requiring petitioners Abubakar and Baraguir to sign Box 3 of the disbursement vouchers;^[64]

(5)

The Personnel Data Files of petitioners Abubakar and Baraguir, the Contract of Services of petitioner Abubakar, and the Appointment of petitioner Baraguir to prove that their employment was temporary or contractual in nature, and to prove that their duties did not require "the exercise of judgment or discretion";^[65] and

(6)

The Department of Trade and Industry Certification on the scarcity of cement to prove that pre-payment was necessary.^[66]

Petitioner Abubakar adds that copies of several disbursement vouchers should have been presented to prove that his signatures were unnecessary.^[67] These disbursement vouchers,^[68] which do not bear his name or signature, should have been formally offered in Criminal Case Nos. 24972, 24979, 24980, 24982, and 24983.^[69]

Petitioner Baraguir believes that other documents should have been formally offered, including:

[a] The invitation to bid to prove that the projects were published for public bidding;

[b] The actual bids to prove that an actual bidding took place;

[c] The Notices of Award issued by the Regional Secretary to prove that the projects were awarded to the lowest bidders;

[d] The Notices to Commence issued by the Regional Secretary to prove that the winning contractor cannot start the project yet until the latter has received the same.^[70]

On the other hand, respondents, through the Office of the Special Prosecutor, assert that petitioners Abubakar and Baraguir are not entitled to a new trial. As a rule, clients are bound by the acts of their counsel. Mistakes

committed due to a counsel's incompetence or inexperience cannot justify the grant of a new trial. Otherwise, there would be no end to litigation.[71]

Aside from this, petitioners Abubakar and Baraguir assert that their right to equal protection was violated due to "selective prosecution." Only a handful of DPWH-ARMM officials were charged of violation of Republic Act No. 3019. Several employees who allegedly participated in the preparation of project documents were not indicted.[72]

Respondents counter that petitioners' claim of selective prosecution will not prosper as there is no proof of "clear showing of intentional discrimination" against them.[73]

With regard to the alleged early mobilization of contractors prior to the scheduled public bidding, petitioner Baraguir asserts that he has neither favored nor given any unwarranted benefit to any contractor. He asserts that the risk-taking strategy of some contractors in choosing to mobilize their equipment ahead of public bidding is beyond the control of the Pre-Qualification Bids and Awards Committee. Furthermore, he did not prepare the certificates of mobilization.[74] Petitioner Guiani also denies giving unwarranted benefits to certain parties.[75] He claims that the certificates of mobilization, on which the prosecution heavily relies, prove nothing.[76]

Further, petitioner Abubakar argues that the Contract for Survey Work executed by petitioner Guiani and a certain Engineer Ricardo Arce served as the basis for the advance payment given to Arce Engineering Services. The Contract for Survey Work explicitly stated that Arce Engineering Services would immediately be entitled to 30% of the contract price upon the contract's execution. Thus, he had no other choice but to approve the disbursement. Furthermore, he claims that petitioner Guiani's acquittal in Criminal Case No. 24971 should be considered in his favor.[77] Petitioner Baraguir raises a similar defense. He argues that he relied in good faith on the contract entered into by petitioner Guiani with Arce Engineering Services.[78]

Petitioners Abubakar and Baraguir add that they are entitled to the justifying circumstance under Article 11(6) of the Revised Penal Code for relying on the Contract for Survey Work.[79]

As to the P14,400,000.00 disbursement for sub-base aggregates, petitioner Abubakar argues that his signatures on the disbursement vouchers have no bearing and were affixed on them as a formality pursuant to DPWH-ARMM Memorandum[80] dated February 17, 1992.[81] Petitioner Baraguir, on the other hand, insists that "cement" was indicated on the disbursement vouchers and that there were no traces of alterations or superimpositions at the time he affixed his signature.[82]

Throughout their pleadings, petitioners invoke good faith as a defense. They claim that they relied on the representations and assurances of their subordinates who were more versed on technical matters.[83] Petitioner Guiani, in particular, asserts that the Sandiganbayan should have applied the Arias doctrine in this case. He should not have been penalized for relying on the acts of his subordinates, which he presumed were done in accordance with law.[84]

Respondents disagree and claim that the Arias doctrine is inapplicable. They assert that petitioners cannot claim good faith as they were fully aware of the bidding irregularities. The evidence presented by the prosecution shows that certificates of mobilization were issued prior to the conduct of actual public bidding. Further, petitioners cannot claim good faith in allowing Arce Engineering Services to claim 30% as advance payment considering that they knew of the 15% limitation.[85]

Meanwhile, petitioners Abubakar and Baraguir assert that the government did not suffer undue injury considering that the projects in dispute have already been completed. They argue that undue injury, in the context of Republic Act No. 3019, has been equated by this Court with the civil law concept of actual damages. They believe that the

prosecution failed to substantiate the actual injury sustained by the government.[86]

Respondents, on the other hand, argue that a violation of Section 3(e) of Republic Act No. 3019 may be committed in two (2) ways, namely: by causing any undue injury to a party, or by giving unwarranted benefits, advantage, or preference to any party.[87]

This case presents the following issues for this Court's resolution:

First, whether or not petitioners Farouk B. Abubakar and Ulama S. Baraguir are entitled to a new trial for the alleged incompetence of their former counsel;

Second, whether or not the right of petitioners Farouk B. Abubakar and Ulama S. Baraguir to the equal protection of the laws was violated due to "selective prosecution";

Third, whether or not the prosecution was able to establish petitioners Farouk B. Abubakar, Ulama S. Baraguir, and Datukan M. Guiani 's guilt beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019; and

Finally, whether or not petitioners Farouk B. Abubakar, Ulama S. Baraguir, and Datukan M. Guiani should be exonerated from criminal liability based on the Arias doctrine.

I

Lawyers act on behalf of their clients with binding effect.[88] This is the necessary consequence of the fiduciary relationship created between a lawyer and a client. Once engaged, a counsel holds "the implied authority to do all acts which are necessary or, at least, incidental to the prosecution and management of the suit." [89] The acts of counsel are deemed acts of the client.

Thus, as a rule, parties are bound by the acts, omissions, and mistakes of their counsel.[90] To adopt a contrary principle may lead to unnecessary delays, indefinite court proceedings, and possibly no end to litigation for all that a defeated party would do is to claim .that his or her counsel acted negligently.[91] An exception to this is when the gross and inexcusable negligence of counsel deprives the latter's client of his or her day in court. The allegation of gross and inexcusable negligence, however, must be substantiated.[92] In determining whether the case falls under the exception, courts should always be guided by the principle that parties must be "given the fullest opportunity to establish the merits of [their] action or defense." [93]

The general rule on the binding effect of counsel's acts and omissions has been applied with respect to applications for a new trial. In *U.S. v. Umali*: [94]

In criminal as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience, or incompetence of counsel, does not furnish a ground for a new trial.

. . . .

So it has been held that mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy, materiality, or immateriality of certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial; and in general the client is bound by the action of his counsel in the conduct of his case, and can not be heard to complain that the result of the litigation might have been different had counsel proceeded differently.[95] (Emphasis supplied, citations omitted)

Liberality has been applied in criminal cases but under exceptional circumstances. Given that a person's liberty is at stake in a criminal case, Umali concedes that the strict application of the general rule may lead to a manifest

miscarriage of justice.[96] Thus, appropriate relief may be accorded to a defendant who has shown a meritorious defense and who has satisfied the court that acquittal would follow after the introduction of omitted evidence:

It must be admitted, however, that courts of last resort have occasionally relaxed the strict application of this rule in criminal cases, where the defendants, having otherwise a good case, were able to satisfy the court that acquittal would in all probability have followed the introduction of certain testimony, which was not submitted at the trial under improper or injudicious advice of incompetent counsel.[97]

In *De Guzman v. Sandiganbayan*,[98] the accused was convicted based solely on the testimony of the prosecution's witness. The accused was unable to present any evidence due to his counsel's insistence in filing a demurrer to evidence despite the Sandiganbayan's denial of the motion for leave to file it.[99] This was considered by this Court as gross negligence:

Petitioner's present dilemma is certainly not something reducible to pesos and centavos. No less than his liberty is at stake here. And he is just about to lose it simply because his former lawyers pursued a carelessly contrived procedural strategy of insisting on what has already become an imprudent remedy, as aforesaid, which thus forbade petitioner from offering his evidence all the while available for presentation before the Sandiganbayan. Under the circumstances, higher interests of justice and equity demand that petitioner be not penalized for the costly importunings of his previous lawyers based on the same principles why this Court had, on many occasions where it granted new trial, excused parties from the negligence or mistakes of counsel. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to petitioners whose only fault was to repose his faith and entrust his innocence to his previous lawyers. Consequently, the receipts and other documents constituting his evidence which he failed to present in the Sandiganbayan are entitled to be appreciated, however, by that forum and not this Court, for the general rule is that we are not triers of facts. Without prejudging the result of such appreciation, petitioner's documentary evidences *prima facie* appear strong when reckoned with the lone prosecution witness Angeles' testimony, indicating that official training programs were indeed actually conducted and that the P200,000.00 cash advance he received were spent entirely for those programs.[100] (Citation omitted)

Similarly, in *Callangan v. People of the Philippines*,[101] the accused was unable to present any evidence. This Court, in granting new trial, characterized the "chronic inaction of [the accused's] counsel on important incidents and stages of the criminal proceedings" as a denial of due process:[102]

The omissions of petitioner's counsel amounted to an abandonment or total disregard of her case. They show conscious indifference to or utter disregard of the possible repercussions to his client. Thus, the chronic inaction of petitioner's counsel on important incidents and stages of the criminal proceedings constituted gross negligence.

The RTC itself found that petitioner never had the chance to present her defense because of the nonfeasance (malfeasance, even) of her counsel. It also concluded that, effectively, she was without counsel. Considering these findings, to deprive petitioner of her liberty without affording her the right to be assisted by counsel is to deny her due process.[103]

In one occasion, this Court allowed the presentation of additional evidence even if the accused initially adduced evidence during trial. This level of liberality, however, is conditioned upon a finding that the introduction of omitted evidence would probably alter the result of the case.

In *Abrajano v. Court of Appeals*,[104] this Court remanded the case to the trial court for the conduct of new trial to allow the accused to present additional evidence. The same standard in *Umali* was applied:

Nevertheless, courts of last resort have occasionally relaxed the strict application of the rule that the acts of counsel bind the client in criminal cases, where the defendants, having otherwise a good case were able to

satisfy the Court that acquittal would in all probability have followed the introduction of certain testimonies, which were not submitted at the trial under improper or injudicious advi[c]e of incompetent counsel. While conceding that these cases are extremely rare, the Court, in *United States v. Umali*, allowed for the relaxation of the rule. Where there are very exceptional circumstances, and where a review of the whole record taken together with the evidence improvidently omitted would clearly justify the conclusion that the omission had resulted in the conviction of one innocent of the crime charged, a new trial may be granted.

. . . .

In the case at bar, the circumstance that petitioner allegedly used the name "Carmen" in her first marriage instead of Carmelita, together with the affidavits she submitted, particularly those of Mrs. Priscila Alimagno, supposedly a witness to Carmen's marriage to Mauro Espinosa, and petitioner's sister Jocelyn Gilbuena, who attested that Carmen is indeed their half-sister, would in our mind probably alter the result of this case. A new trial is therefore necessary if justice is to be served.[105] (Citations omitted)

Given this standard, this Court holds that petitioners Abubakar and Baraguir are not entitled to a new trial.

First, they failed to convince this Court that they have a meritorious defense and that the evidence they seek to introduce would probably lead to their acquittal.

The present case does not involve the same factual circumstances in *De Guzman* or in *Callangan* where the accused were absolutely denied the opportunity to present evidence due to the actuaciones of their counsels. In those cases, it was just and reasonable for this Court to take a much more liberal stance considering that there was a denial of due process. The same kind of liberality, however, cannot be applied here. Petitioners Abubakar and Baraguir, through counsel, presented their evidence and made out their case before the Sandiganbayan. Based on *Umali* and *Abrajano*, it is incumbent upon them to present a meritorious defense and to convince this Court that the evidence omitted by their former counsel would probably alter the results of the case. They cannot simply allege that they were deprived of due process or that their defense was not fully threshed out during trial.

Petitioners Abubakar and Baraguir failed to discharge this burden.

Petitioners seek to introduce as evidence their personnel data files, contracts of service, and appointment papers to prove that they were engaged in a temporary capacity. These documents would certainly not alter the results of the case. Regardless of the nature of their employment, petitioners are required to abide by the rules and regulations on public bidding and disbursement of public funds.

Testimony of handwriting experts, original copies of disbursement vouchers, and written requests of contractors who wished to avail of the pre-payment scheme under DPWH Department Order No. 42 would probably not change the finding on the irregularities pertaining to the P14,400,000.00 disbursement for sub-base aggregates.

The disbursement vouchers[106] that petitioner Abubakar seeks to introduce would not exonerate him from liability in Criminal Case Nos. 24972, 24979, 24980, 24982, and 24983, where the disbursement vouchers are not relevant. The disbursement vouchers relate to the payment of the balance of mobilization fees to contractors. The criminal cases cited by Abubakar, on the other hand, pertain to the alleged advance payment for sub-base aggregates.

Likewise, the evidence cited by petitioner Baraguir would not affect the result of the case against him. There is no reason to introduce pieces of evidence to prove the publication of the invitation to bid and the conduct of actual bidding. The occurrence of these events was not disputed by the parties. Meanwhile, the Notices of Award and Notices to Commence, even if admitted, would not change the finding that certain contractors deployed their equipment ahead of public bidding. The pieces of evidence that petitioner Baraguir ought to have presented are

those tending to prove that the contractors only mobilized after they won the bidding. This would have destroyed the prosecution's theory and the basis for the criminal charge.[107]

Second, petitioners Abubakar and Baraguir's former counsel was not grossly negligent. Their former counsel may have failed to present other pieces of evidence in addition to what their co-accused had presented. He may have also failed to incorporate other arguments in the record of the case. However, these cannot be considered as grossly negligent acts.

Assessments regarding the materiality or relevancy of evidence, competency of witnesses, and procedural technique generally fall within the expertise and control of counsel.[108] This Court has held that for a claim of gross negligence to prosper, "nothing short of clear abandonment of the client's cause must be shown." [109]

Litigants cannot always be assured that their expectations regarding their counsel's competence would be met. In *Ong Lay Hin v. Court of Appeals*: [110]

The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.[111]

Furthermore, in *Aguila v. Court of First Instance of Batangas*: [112]

Persons are allowed to practice law only after they shall have passed the bar examinations, which merely determine if they have the minimum requirements to engage in the exercise of the legal profession. This is no guaranty, of course, that they will discharge their duties with full fidelity to their clients or with unfailing mastery or at least appreciation of the law. The law, to be fair, is not really all that simple; there are parts that are rather complicated and may challenge the skills of many lawyers. By and large, however, the practice of the law should not present much difficulty unless by some unfortunate quirk of fate, the lawyer has been allowed to enter the bar despite his lack of preparation, or, while familiar with the intricacies of his calling, is nevertheless neglectful of his duties and does not pay proper attention to his work.[113]

II

The prosecution of offenses is generally addressed to the sound discretion of the fiscal. A claim of "selective prosecution" [114] may only prosper if there is extrinsic evidence of "clear showing of intentional discrimination." [115] The prosecution of one person to the exclusion of others who may be just as guilty does not automatically entail a violation of the equal protection clause.

Selective prosecution is a concept that is foreign to this jurisdiction. It originated from *United States v. Armstrong*, [116] a 1996 case decided by the United States Supreme Court. [117] A case for selective prosecution arises when a prosecutor charges defendants based on "constitutionally prohibited standards such as race, religion or other arbitrary classification." [118] Essentially, a selective prosecution claim rests upon an alleged violation of the equal protection clause. [119]

Although "selective prosecution" has not been formally adopted in this jurisdiction, there are cases that have been decided by this Court recognizing the possibility of defendants being unduly discriminated against through the prosecutorial process. The burden lies on the defendant to show discriminatory intent through extrinsic evidence.

In *People v. Dela Piedra*,^[120] the accused was charged and convicted of large-scale illegal recruitment.^[121] Among the arguments she raised in her appeal was the violation of the equal protection clause as she was the only person who was charged. She pointed out that a certain Jasmine Alejandro (Alejandro), the person who handed out application forms, was not indicted. She concluded that the prosecution discriminated against her based on "regional origins." She was a Cebuana while Alejandro was a Zamboangueña.^[122]

In rejecting the accused's argument, this Court held that the prosecution of one person to the exclusion of others who may be just as guilty does not automatically entail a violation of the equal protection clause.^[123] There must be a showing of discriminatory intent or "clear and intentional discrimination," which can only be established through extrinsic evidence. In *Dela Piedra*:

Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation. Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society . . . Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise,

[i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown.^[124] (Emphasis in the original, citations omitted)

The principle established in *Dela Piedra* was reiterated and applied in *People v. Dumlao*:^[125]

A discriminatory purpose is never presumed. It must be remembered that it was not solely respondent who was

charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.[126]

The reason for the requirement of "clear and intentional discrimination" lies in the discretion given to fiscals in the prosecution of offenses. In *People v. Pineda*,^[127] this Court held that the choice of who to prosecute is addressed to the sound discretion of the investigating prosecutor. He or she may not be compelled to charge persons when the evidence is insufficient to establish probable cause:

A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against his conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our court being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process - the sporting idea of fair play - may be transgressed.[128]

In *Alberto v. De la Cruz*,^[129] this Court said:

Although this power and prerogative of the Fiscal, to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense, is not absolute and subject to judicial review, it would be embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case. The better procedure would be to appeal the Fiscal's decision to the Ministry of Justice and/or ask for a special prosecutor.[130] (Citation omitted)

Petitioners failed to establish discriminatory intent on the part of the Ombudsman in choosing not to indict other alleged participants to the anomalous transactions. Their contention that several other public officials were not criminally charged, by itself, does not amount to a violation of petitioners Abubakar and Baraguir's right to equal protection of laws. The evidence against the others may have been insufficient to establish probable cause. There may have been no evidence at all. At this point, all this Court could do is speculate. In the absence of extrinsic evidence establishing discriminatory intent, a claim of selective prosecution cannot prosper.

III

Section 3(e) of Republic Act No. 3019 punishes a public officer who causes "any undue injury to any party, including the Government" or gives "any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

A conviction under this provision requires the concurrence of the following elements:

- The accused must be a public officer discharging administrative, judicial or official functions;
- He [or she] must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence;
- That his [or her] action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[131]

The second element provides the modalities by which a violation of Section 3(e) of Republic Act No. 3019 may

be committed. "Manifest partiality," "evident bad faith," or "gross inexcusable negligence" are not separate offenses,[132] and proof of the existence of any of these three (3) "in connection with the prohibited acts . . . is enough to convict." [133]

These terms were defined in *Uriarte v. People*: [134]

There is "manifest partiality" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. [135] (Emphasis in the original, citations omitted)

The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of Republic Act No. 3019. An accused may be charged with the commission of either or both.

An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. Thus, in a situation where the government could have been defrauded, the law would be inapplicable, there being no actual loss or damage sustained. [136]

In *Pecho v. Sandiganbayan*, [137] this Court was faced with the issue of whether the attempted or frustrated stages of the offense defined in Section 3(e) of Republic Act No. 3019 are punishable. The accused and his co-conspirators' plan to defraud the government was prevented through the timely intervention of customs officials. [138] In holding that Section 3(e) of Republic Act No. 3019 only covers consummated acts, this Court reasoned among others that:

[T]he third requisite of Section 3(e), viz., "causing undue injury to any party, including the government," could only mean actual injury or damage which must be established by evidence. [T]he word causing is the present participle of the word cause. As a verb, the latter means "to be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel." The word undue means "more than necessary; not proper; illegal." And the word injury means "any wrong or damage done to another, either in his person, rights, reputation or property. The invasion of any legally protected interest of another." Taken together, proof of actual injury or damage is required.

. . . .

No actual injury or damage having been caused to the Government due to the timely 100% examination of the shipment and the subsequent issuance of a hold order and a warrant of seizure and detention, the petitioner must, perforce, be acquitted of the violation of Section 3 (e) of R.A. No. 3019. [139] (Citations omitted)

The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." [140] Aside from this, the loss or damage must be substantial. [141] It must be "more than necessary, excessive, improper or illegal." [142]

The second punishable act under Section 3(e) of Republic Act No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another." [143]

The terms "unwarranted benefits, advantage or preference" were defined in *Uriarte*: [144]

[U]nwarranted means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. Advantage means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. Preference signifies priority or higher evaluation or desirability; choice or estimation above another.[145] (Emphasis in the original, citation omitted)

III.A

This Court finds that petitioners Baraguir and Guiani gave unwarranted benefits and advantage to several contractors by allowing them to deploy their equipment ahead of the scheduled public bidding.

As a matter of policy, public contracts are awarded through competitive public bidding. The purpose of this process is two (2)-fold.

First, it protects public interest by giving the public the "best possible advantages thru open competition." [146] Open and fair competition among bidders is seen as a mechanism by which the public may obtain the best terms on a given contract. Participating bidders offer competing proposals, which are evaluated by the appropriate authority "to determine the bid most favorable to the government." [147]

Second, competitive public bidding avoids "suspicion of favoritism and anomalies in the execution of public contracts." [148]

These important public policy considerations demand the strict observance of procedural rules relating to the bidding process. [149]

Under Presidential Decree No. 1594, a public contract shall be awarded to the lowest prequalified bidder. The bid must comply with the terms and conditions stated in the call to bid and must be the most advantageous to the government. [150] After the evaluation of the bids, the winning bidder shall be given a Notice of Award. The concerned government office or agency and the successful bidder will then execute the contract, which shall be forwarded to the head of the concerned government office or agency for approval. The contract's approval signifies its perfection and it is at this time when the successful bidder may be allowed to commence work upon receipt of a Notice to Proceed. [151]

Petitioners Baraguir and Guiani insist that the prosecution failed to establish their intent to favor some contractors in the bidding process. Petitioner Guiani claims that the certificates of mobilization, on which the prosecution heavily relies, prove nothing.

Their arguments are unmeritorious.

The certificates of mobilization, which were issued at least one (1) week before the date of public bidding, categorically identified HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction as contractors for some portions of the Awang-Nuro Road and Cotabato-Lanao Road Projects.

The acts of identifying certain contractors ahead of the scheduled public bidding and of allowing the advanced deployment of their equipment through the issuance of certificates of mobilization are glaring irregularities in the bidding procedure that engender suspicion of favoritism and partiality towards the seven (7) contractors. These irregularities create a reasonable, if not conclusive, presumption that the concerned public officials had no intention of complying with the rules on public bidding and that the results were already predetermined.

Although petitioner Baraguir concedes that contractors can only commence work after they receive a notice to proceed, he justifies the irregularity on an alleged "risk-taking strategy" employed by some contractors. [152]

This appears to be a flimsy excuse. There is no justifiable reason why contractors should be allowed to deploy their equipment in advance considering that it would defeat the very purpose of competitive public bidding. Benefits derived from this practice, if any, would certainly not redound to the government.

Aside from this, the alleged purpose of the contractors in mobilizing their equipment ahead of public bidding is speculative. Prospective contractors are required to possess the technical capability to execute the implementation of a given project. Section 3(b) of Presidential Decree No. 1594 lists as a condition for all bidders the "[a]vailability and commitment of the contractor's equipment to be used for the subject project." [153] The Pre-Qualification Bids and Awards Committee is mandated under the implementing rules and regulations to look into the "suitability of [the contractor's] available construction equipment" in assessing technical capability. [154]

The screening process ensures that bidders have the necessary equipment and personnel to carry out the implementation of a particular government project. In this regard, it may not even be possible for a winning bidder to lease equipment from another contractor after it has won because technical capability is evaluated before the submission of the bids. Assuming that prospective bidders would be permitted to sublease their equipment from other entities, the sublease agreement should already be finalized prior to the conduct of public bidding.

Clearly, petitioners Baraguir and Guiani gave seven (7) contractors unwarranted benefits and advantage through manifest partiality. Petitioner Baraguir also gave unwarranted benefits and advantage to the contractors through gross inexcusable negligence. Admittedly, he failed to check the dates on the certificates of mobilization when they were presented to him for his signature. [155]

III.B

Petitioners Abubakar and Baraguir assert that they should benefit from the judgment of acquittal in Criminal Case No. 24971. The judgment in Criminal Case No. 24971 should likewise apply in Criminal Case No. 24970. [156]

Concededly, Criminal Case Nos. 24970 and 24971 are similar in that they are founded upon the same contract, particularly the Contract for Survey Work. [157] However, the charges are different. Petitioner Guiani was charged in Criminal Case No. 24971 for allegedly entering into an unnecessary engineering survey contract with Arce Engineering Services. He was acquitted upon a finding that the engineering survey was indispensable for the project's implementation. On the other hand, in Criminal Case No. 24970, petitioners Abubakar, Baraguir, and Guiani were charged for causing the payment of excessive mobilization fees to Arce Engineering Services. Therefore, the acquittal of petitioner Guiani in Criminal Case No. 24971 would have no effect on Criminal Case No. 24970.

The implementing rules and regulations of Presidential Decree No. 1594 allow contractors to obtain advance payment from the government during the contract's implementation stage. Before a disbursement can be made, the contractor must submit a written request and furnish an irrevocable standby letter of credit or a guarantee payment bond. The rules limit the amount of advance payment to 15% of the total contract price. [158]

A provision in a contract stipulating for a higher percentage of advance payment is invalid. In *J.C. Lopez & Associates, Inc. v. Commission on Audit*, [159] this Court struck down a contractual provision authorizing the payment of P18,000,000.00 to a contractor as mobilization cost. The amount, which was 26% of the total contract price, exceeded the prescribed limitation for advance payment under the implementing rules and regulations of Presidential Decree No. 1594. This Court held that although parties may stipulate on such terms and conditions that they deem convenient, these stipulations should not be contrary to law. The justification given by the petitioner in that case for the stipulated mobilization cost was brushed aside. [160]

In this case, the Contract for Survey Work entered into by petitioner Guiani with Arce Engineering Services

stated, in part:

4. As compensation for the services to be rendered by the SURVEYOR to the CLIENT, the CLIENT hereby agrees to pay the SURVEYOR the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00), with the following as Mode of Payment;

4.1. Thirty percent of the Contract Cost or P60,000.00 upon signing of this CONTRACT, with the SURVEYOR posting a Surety Bond of equal amount[.][161]

Section 4 of the Contract for Survey Work gave Arce Engineering Services the right to secure 30% of the contract cost as advance payment or mobilization fee upon the contract's execution. This is clearly contrary to the implementing rules and regulations of Presidential Decree No. 1594 on advance payment.

Petitioner Guiani cannot shift the blame to his subordinates because he entered into the contract with Arce Engineering Services as Regional Secretary. In consenting to the 30% advance payment, petitioner Guiani, through evident bad faith, gave unwarranted benefits to Arce Engineering Services. Bad faith, as contemplated under Section 3(e) of Republic Act No. 3019, connotes "not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing." [162]

Petitioners impute the increased mobilization fee to the risks that Arce Engineering Services might encounter in the area to be surveyed.

As pointed out by the Commission on Audit, risks during the actual survey, if any, could have been covered by the total contract cost.[163] If Arce Engineering Services foresaw security and safety issues in the area, these could have been factored into the contract price. There is no justifiable reason for the government to award additional mobilization fees to Arce Engineering Services.

Petitioners Abubakar and Baraguir, in allowing the disbursement, gave unwarranted benefits to Arce Engineering Services through evident bad faith. They cannot seek refuge in the argument that they relied in good faith on what was stated in the Contract for Survey Work because the illegality was patent on the face of the contract. The disbursement should not have been allowed for being contrary to the provisions of Presidential Decree No. 1594. Furthermore, they are not entitled to the justifying circumstance of "any person who acts in obedience to an order issued by a superior" under Article 11(6) of the Revised Penal Code as the order issued by the superior must be for a lawful purpose.[164] In this case, the contractual provision allowing Arce Engineering Services to claim 30% of the contract price as mobilization fees is clearly unlawful.

III.C

Section 88(1) of Presidential Decree No. 1445[165] prohibits advance payments on undelivered supplies and on services that have not yet been rendered. It states:

CHAPTER 4

Application of Appropriated Funds

....

Section 88. Prohibition Against Advance Payment on Government Contracts. - (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

An exception to the prohibition on advance payment under Presidential Decree No. 1445 is Memorandum Order No. 341, which allows government agencies that implement government infrastructure projects to procure cement, reinforcing steel bars, and asphalt on a pre-payment basis.

The February 18, 1991 Guidelines^[166] issued by the Department of Public Works and Highways require contractors who wish to avail of the pre-payment facility to submit a written request addressed to the head of the implementing government agency with the following requirements:

- (a) the quantities of materials for which pre-payment is desired which should not exceed the project requirements per balance of work as of the filing date of the request;
- (b) the unit cost of the materials and the corresponding total cost of quantities applied for;
- (c) the name of the Supplier to which payment shall be made;
- (d) [the] Contract Agreement between Contractor and Supplier indicating the quantities of materials covered by the purchase agreement, their unit cost and corresponding cost, mode/timing of deliveries to the project site and terms of payment; [and]
- (e) the manner of recouping the amount prepaid, the recovery period of which shall not exceed the date when the project shall have been 80% complete^[167]

The contractor must also furnish a surety bond as guarantee.^[168]

The head of the implementing agency, on the other hand, is required to process the request and may make the necessary modifications based on the following:

- (a) [the] quantities requested for pre-payment are the actual requirements of the project per balance of work therein;
- (b) the total amounts pre-paid shall be fully recovered not later than the time when 80% of the project shall have been completed;
- (c) recouping the pre-paid amount during the scheduled recovery period will not strain the cash flow of the contractor which is detrimental to his operations and successful completion of the project. The cash flow shall consider remaining deductions due to retainage and recouplement of the 15% advance payment.^[169]

In the present case, petitioners insist that the P14,400,000.00 advance payment was lawful because it was actually pre-payment for cement under Memorandum Order No. 341. Petitioners posit that the disbursement vouchers might have been altered to reflect "sub-base aggregates."

The issue on the alleged forgery was never addressed by the Sandiganbayan in its December 8, 2011 Decision. There was also no express finding during the Commission on Audit's investigation as to who allegedly altered the disbursement vouchers. Nevertheless, the Sandiganbayan observed that the official receipts issued by the contractors indicated that the payment pertained to the purchase of sub-base aggregates.^[170] DPWH-ARMM issued numerous checks^[171] for which receipts were issued.^[172] If petitioners' claims were true, then they should have at least questioned what was stated in the official receipts and requested for the rectification of the discrepancy.

Thus, there is reason to believe that the P14,400,000.00 was paid in advance for the procurement of sub-base aggregates.

Considering that sub-base aggregates are excluded from the list of construction materials allowed to be procured under a pre-payment scheme, the rules on advance payment under Presidential Decree No. 1445 should apply. For

an advance payment to be lawful, the materials or supplies should have been delivered in accordance with the contract and should have been duly inspected and accepted. If there is no delivery, prior approval of the President is required.[173]

The Sandiganbayan found that the procurement of sub-base aggregates was not supported by any purchase orders. There were also no receipts to evidence delivery of the materials on-site.[174] Thus, the disbursement should not have been approved by petitioners due to the absence of appropriate supporting documents. Undue benefit was given to contractors when they were allowed to claim advance payments totaling P14,400,000.00 for undelivered materials. These contractors had no right to receive them under Section 88(1) of Presidential Decree No. 1445.

IV

This Court's ruling in *Arias v. Sandiganbayan*[175] cannot exonerate petitioners from criminal liability.

Arias laid down the doctrine that heads of offices may, in good faith, rely to a certain extent on the acts of their subordinates "who prepare bids, purchase supplies, or enter into negotiations." [176] This is based upon the recognition that heads of offices cannot be expected to examine every single document relative to government transactions:

We would be setting a bad precedent if a head of office plagued by all too common problems - dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence - is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

There appears to be no question from the records that [the] documents used in the negotiated sale were falsified. A key tax declaration had a typewritten number instead of being machine numbered. The registration stampmark was antedated and the land [was] reclassified as residential instead of ricefield. But were the petitioners guilty of conspiracy in the falsification and the subsequent charge of causing undue injury and damage to the Government?

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. 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.[177] (Emphasis supplied)

The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care.[178] In a number of cases, this Court refused to apply the Arias doctrine considering that there were circumstances that should have prompted the government official to inquire further.[179]

In the present case, the Arias doctrine cannot exonerate petitioners Abubakar, Baraguir, or Guiani from criminal liability. There were circumstances that should have prompted them to make further inquiries on the transactions

subject of this case.

In Criminal Case Nos. 24963-24969 on the early mobilization of contractors, the irregularity was already apparent on the face of the certificates of mobilization, which bore dates earlier than the scheduled public bidding. This should have already roused suspicion from petitioners Baraguir and Guiani, who were the last signatories and final approving authorities.

The same can be said for Criminal Case No. 24970. The Contract of Survey Work, which was used as the primary supporting document for the disbursement of the 30% mobilization fee to Arce Engineering Services, contained a patently illegal stipulation. Petitioner Guiani cannot blame his subordinates and claim that he acted in good faith considering that he entered into the contract with Arce Engineering Services.

Petitioners should have also made further inquiries regarding the P14,400,000.00 advance payment for sub-aggregates. There were no appropriate documents such as purchase orders and delivery receipts to support this disbursement.

The rules on public bidding and on public funds disbursement are imbued with public interest. The positions and functions of petitioners Abubakar, Baraguir, and Guiani impose upon them a greater responsibility in ensuring that rules on these matters are complied with. They are expected to exercise a greater degree of diligence.

WHEREFORE, the Consolidated Petitions are DENIED. The assailed December 8, 2011 Decision and June 19, 2012 Resolution of the Sandiganbayan in Criminal Case Nos. 24963 to 24969, Criminal Case No. 24970, and Criminal Case Nos. 24972 to 24983 are AFFIRMED. Petitioner Farouk B. Abubakar is found GUILTY beyond reasonable doubt of ten (10) counts of violation of Section 3(e) of Republic Act No. 3019. Petitioners Ulama S. Baraguir and Datukan M. Guiani are found GUILTY beyond reasonable doubt of seventeen (17) counts of violation of Section 3(e) of Republic Act No. 3019.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Del Castillo,[*] and Martires, JJ., concur.

[*] Designated additional member per Raffle dated June 20, 2018.

[1] The Petitions were filed under Rule 45 of the Rules of Court.

[2] Rollo (G.R. No. 202408), pp. 11-84.

[3] Rollo (G.R. No. 202409), pp. 11-84.

[4] Rollo (G.R. No. 202412), pp. 3-12.

[5] Rollo (G.R. No. 202408), pp. 85-146. The Decision was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Rodolfo R. Ponferrada and Rafael R. Lagos of the First Division, Sancliganbayan, Quezon City.

[6] Id. at 147-165. The Resolution was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos of the First Division, Sandiganbayan, Quezon City.

[7] Rollo (G.R. No. 202412) at 69-72.

[8] Id. at 28-29.

[9] 435 Phil. 467 (2002) [Per J. Ynares-Santiago, En Banc].

[10] Rollo (G.R. No. 202412), pp. 41-42.

[11] Id. at 42.

[12] Id. at 42-43.

[13] Rollo (G.R. No. 202408) p. 22.

[14] Id. at 241-267, Report of the COA-Special Audit Team.

[15] Id. at 248-254.

[16] Id. at 254-260.

[17] Pres. Decree No. 1594 (1978), sec. 2 provides:

Section 2. Detailed Engineering. - No bidding and/or award of contract for a construction project shall be made unless the detailed engineering investigations, surveys, and designs for the project have been sufficiently carried out in accordance with the standards and specifications to be established under the rules and regulations to be promulgated pursuant to Section 12 of this Decree so as to minimize quantity and cost overruns and underruns, change orders and extra work orders, and unless the detailed engineering documents have been approved by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

[18] Rollo (G.R. No. 202408), pp. 260-262.

[19] Id. at 262-266.

[20] Id. at 22-24.

[21] Rollo (G.R. No. 202412) pp. 14-18.

[22] Id. at 18.

[23] Id. at 19.

[24] Id. at 19-25.

[25] Id. at 25-27.

[26] Id. at 14-27.

[27] Id. at 27.

[28] Id. at 29.

[29] Id. at 31.

[30] Id. at 32-33.

[31] Id. at 34-35.

[32] Id. at 35-41.

[33] Id. at 35-36.

[34] Id. at 36-38.

[35] Id. at 38-39.

[36] Id. at 40.

[37] Id. at 40-41.

[38] Id. at 13-73.

[39] Id. at 45-52.

[40] Id. at 46-52.

[41] Id. at 47.

[42] Id.

[43] Id. In some parts of the Sandiganbayan Decision, Al Mohandiz Construction was also referred as "Al-Mohandis Construction," PMA Construction as "P.M.A. Engineering Construction," and MGL Construction as "M.G.L. Construction."

[44] Id. at 48-51.

[45] Id. at 52-55.

[46] Id. at 55-59.

[47] Id. at 70.

[48] Id. at 59-64.

[49] Id. Pres. Decree No. 1445 (1978), sec. 88(l) provides:

Section 88. Prohibition Against Advance Payment on Government Contracts. - (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

[50] Id. at 64-69.

[51] Id. at 69-72.

[52] Rollo (G.R. No. 202408) pp. 147-151.

[53] *Arias v. Sandiganbayan*, 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc].

[54] Rollo (G.R. No. 202408) pp. 150-152.

[55] Id. at 147-165.

[56] Id. at 164-165.

[57] Id. at 539-540.

[58] Id. at 559-587.

[59] Id. at 603-649; rollo (G.R. No. 202409) pp. 585-634.

[60] Rollo (G.R. No. 202408) pp. 34-49; rollo (G.R. No. 202409) pp. 29-45.

- [61] Rollo (G.R. No. 202408) p. 46; rollo (G.R. No. 202409) p. 40.
- [62] Id.
- [63] Id.
- [64] Id.
- [65] Rollo (G.R. No. 202408) p. 47; rollo (G.R. No. 202409) pp. 40-41.
- [66] Rollo (G.R. No. 202408) p. 47; rollo (G.R. No. 202409) p. 41.
- [67] Rollo (G.R. No. 202408) p. 46.
- [68] Id. at 472-476.
- [69] Id. at 43-44.
- [70] Rollo (G.R. No. 202409) pp. 31-32.
- [71] Rollo (G.R. No. 202412) pp. 144-147.
- [72] Rollo (G.R. No. 202408) pp. 49-52; rollo (G.R. No. 202409) pp. 45-48.
- [73] Rollo (G.R. No. 202408) pp. 148-150 and 153.
- [74] Rollo (G.R. No. 202409) pp. 58-64.
- [75] Rollo, (G.R. No. 202412) p. 6.
- [76] Id. at 93-96, Motion for Reconsideration with Formal Entry of Appearance dated December 22, 2011.
- [77] Rollo (G.R. No. 202408) pp. 68-70.
- [78] Rollo (G.R. No. 202409) pp. 66-69.
- [79] Rollo (G.R. No. 202408) pp. 63-67; rollo (G.R. No. 202409) pp. 69-72.
- [80] Rollo (G.R. No. 202408) pp. 524-525.
- [81] Id. at 52-63.
- [82] Rollo (G.R. No. 202409) pp. 48-57.
- [83] Rollo (G.R. No. 202408) pp. 52-63; rollo (G.R. No. 202409) pp. 48-57; rollo (G.R. No. 202412) pp. 6 and 99-101.
- [84] Rollo (G.R. No. 202412) pp. 6 and 96-101.
- [85] Id. at 152-159.
- [86] Rollo (G.R. No. 202408) pp. 72-74; rollo (G.R. No. 202409) pp. 72-74.
- [87] Rollo (G.R. No. 202412) pp. 150-151.
- [88] *Aguila v. Court of First Instance of Batangas*, 243 Phil. 505, 509 (1988) [Per J. Cruz, First Division].
- [89] *Juani v. Alarcon*, 532 Phil. 585, 603 (2006) [Per J. Chico-Nazario, First Division].
- [90] *Villa Rhecara Bus v. De la Cruz*, 241 Phil. 14, 18 (1988) [Per J. Gancayo, First Division].

- [91] Juani v. Alarcon, 532 Phil. 585, 603-604 (2006) [Per J. Chico-Nazario, First Division].
- [92] Legarda v. Court of Appeals, 272-A Phil. 394, 402-404 (1991) [Per J. Gancayo, First Division].
- [93] Dela Cruz v. Sison, 508 Phil. 36, 44 (2005) [Per J. Austria-Martinez, Second Division] citing Government Service Insurance System v. Bengson Commercial Buildings, Inc., 426 Phil. 111 (2002) [Per C.J. Davide, En Banc].
- [94] 15 Phil. 33 (1910) [Per J. Carson, En Banc].
- [95] Id. at 35.
- [96] Id. at 36.
- [97] Id.
- [98] 326 Phil. 182 (1996) [Per J. Francisco, En Banc].
- [99] Id. at 185.
- [100] Id. at 189-190.
- [101] 526 Phil. 239 (2006) [Per J. Corona, Second Division].
- [102] Id. at 245.
- [103] Id.
- [104] 397 Phil. 76 (2000) [Per J. Kapunan, First Division].
- [105] Id. at 92-96.
- [106] Rollo (G.R. No. 202408) pp. 472-476.
- [107] Rollo (G.R. No. 202412) p. 50.
- [108] See U.S. v. Umali, 15 Phil. 33, 36-37 (1910) [Per J. Carson, En Banc].
- [109] Estate of Macadangdang v. Gaviola, 599 Phil. 708, 715 (2009) [Per J. Carpio, First Division] citing Spouses Que v. Court of Appeals, 504 Phil. 616 (2005) [Per J. Carpio, First Division].
- [110] 752 Phil. 15 (2015) [Per J. Leonen, Second Division].
- [111] Id. at 24.
- [112] 243 Phil. 505 (1988) [Per J. Cruz, First Division].
- [113] Id. at 509.
- [114] Rollo (G.R. No. 202408), p. 49; rollo (G.R. No. 202409), p. 46.
- [115] Rollo (G.R. No. 202408), p. 153.

[116] 517 U.S. 456 (1996).

- [117] See J. Carpio Dissenting Opinion in Biraogo v. Philippine Truth Commission of 2010, 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].
- [118] Melissa L. Jampol, Goodbye to the Defense of Selective Prosecution, 87 J. Crim. L. & Criminology 932

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[119] Id.

[120] 403 Phil. 31 (2001) [Per J. Kapunan, First Division].

[121] Id. at 36.

[122] Id. at 53.

[123] Id. at 54.

[124] Id. at 54-56.

[125] 599 Phil. 565 (2009) [Per J. Chico-Nazario, Third Division].

[126] Id. at 587, citing *People v. Dela Piedra*, 403 Phil. 31 (2001) [Per J. Kapunan, First Division].

[127] 127 Phil. 150 (1967) [Per J. Sanchez, En Banc].

[128] Id. at 156-157.

[129] 187 Phil. 274 (1980) [Per J. Concepcion, Jr., Second Division].

[130] Id. at 278.

[131] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989) [Per J. Gancayo, En Banc].

[132] *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982) [Per J. Relova, En Banc].

[133] *Sison v. People*, 628 Phil. 573, 583 (2010) [Per J. Corona, Third Division].

[134] 540 Phil. 477 (2006) [Per J. Callejo, Sr., First Division].

[135] Id. at 494-495.

[136] *Pecho v. Sandiganbayan*, 308 Phil. 120 (1994) [Per J. Davide, Jr., En Banc].

[137] 308 Phil. 120 (1994) [Per J. Davide, Jr., En Banc].

[138] Id. at 131.

[139] Id. at 140-141.

[140] *Soriano v. Marcelo*, 597 Phil. 308, 319 (2009) [Per J. Austria-Martinez, Third Division].

[141] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 27 (1989) [Per J. Gancayo, En Banc]; *Fuentes v. People*, G.R. No. 186421, April 17, 2017 [Per J. Perlas-Bernabe, First Division].

[142] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 27 (1989) [Per J. Gancayo, En Banc].

[143] *Sison v. People*, 628 Phil. 573, 585 (2010) [Per J. Corona, Third Division].

[144] 540 Phil. 477 (2006) [Per J. Callejo, Sr., First Division].

[145] Id. at 497.

[146] *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989) [Per J. Gancayo, En Banc].

[147] *Agan, Jr., v. Philippine International Air Terminals Co., Inc.*, 465 Phil. 545, 569 (2004) [Per J. Puno, En Banc].

[148] *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989) [Per J. Gancayo, En Banc].

[149] *Republic v. Capulong*, 276 Phil. 136, 152-153 (1991) [Per J. Medialdea, En Banc].

[150] Pres. Decree No. 1594 (1978), sec. 5 provides:

Section 5. Award and Contract. - The contract may be awarded to the lowest prequalified bidder whose bid as evaluated complies with all the terms and conditions in the call for bid and is the most advantageous to the Government.

To guarantee the faithful performance of the contractor, he shall, prior to the award, post a performance bond, in an amount to be established in accordance with the rules and regulations to be promulgated under Section 12 of this Decree.

All awards and contracts duly executed in accordance with the provisions of this Decree shall be subject to the approval of the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

[151] Pres. Decree No. 1594 (1978), Implementing Rules and Regulations.

[152] Rollo (G.R. No. 202409) p. 60.

[153] Pres. Decree No. 1594 (1978), sec. 3(b) provides:

Section 3. Prequalification of Prospective Contractors. - A prospective contractor may be prequalified to offer his bid or tender for a construction project only if he meets the following requirements.

....

b. Technical Requirements. - The prospective contractor must meet the following technical requirements to be established in accordance with the rules and regulations to be promulgated pursuant to Section 12 of this Decree, to enable him to satisfactorily prosecute the subject project:

1. Competence and experience of the contractor in managing projects similar to the subject project.
2. Competence and experience of the contractor's key personnel to be assigned to the subject project.
3. Availability and commitment of the contractor's equipment to be used for the subject project.

[154] Pres. Decree No. 1594 (1978), Implementing Rules and Regulations.

[155] Rollo (G.R. No. 202409) p. 61.

[156] Rollo (G.R. No. 202408) p. 69; rollo (G.R. No. 202409) p. 68.

[157] Rollo (G.R. No. 202408) p. 68.

[158] Presidential Decree No. 1594 (1978), Implementing Rules and Regulations, sec. CI 4 provides, in part:

CI 4 ADVANCE PAYMENT

1. The Government shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total

contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

2. The advance payment shall be made only upon the submission to and acceptance by the Government of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.

[159] 416 Phil. 884 (2001) [Per J. Buena, En Banc].

[160] Id. at 900-901.

[161] Rollo (G.R. No. 202408) pp. 68-69.

[162] Uriarte v. People of the Philippines, 540 Phil. 477, 494 (2006) [Per J. Callejo, Sr., First Division].

[163] Rollo (G.R. No. 202408) p. 265.

[164] Ambit, Jr. v. Sandiganbayan, 669 Phil. 32 (2011) [Per J. Villarama, Jr., First Division].

[165] Pres. Decree No. 1445 (1978), Government Auditing Code of the Philippines.

[166] Rollo (G.R. No. 202408), p. 254.

[167] Rollo (G.R. No. 202412) pp. 60-61.

[168] Id. at 61.

[169] Id. at 60-61.

[170] Rollo (G.R. No. 202412) p. 62.

[171] Rollo (G.R. No. 202408) p. 256.

[172] Rollo (G.R. No. 202412) p. 62.

[173] Pres. Decree No. 1445 (1978), sec. 88(l).

[174] Rollo (G.R. No. 202412) p. 62.

[175] 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc].

[176] Id. at 801.

[177] Id. at 801-802.

[178] Id. at 801.

[179] Escara v. People, 501 Phil. 532 (2005) [Per J. Ynares-Santiago, First Division]; Alfonso v. Office of the President, 548 Phil. 615 (2007) [Per J. Carpio-Morales, Second Division]; Cesa v. Office of the Ombudsman, 576 Phil. 345 (2008) [Per J. Quisumbing, En Banc]; Office of the Ombudsman v. Espina, G.R. No. 213500, March 15, 2017 [Per Curiam, First Division].

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