



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-13-CRM-0907

For: Violation of Sec. 3(e) of  
R.A. 3019

- versus -

HARRY C. ANGPING, ET AL.,  
Accused.

Present:

FERNANDEZ, SJ, J.  
Chairperson  
MIRANDA, J. and  
VIVERO, J.

Promulgated:

*December 3, 2018*

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**DECISION**

**VIVERO, J.**

For decision is the charge for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019)<sup>1</sup> or the Anti-Graft and Corrupt Practices Act, as amended, against Harry Cosiquien Angping (Angping), then Chairman of Philippine Sports Commission (PSC), and Edmundo C. Montanes (Montanes), President and General Manager of Philcare Manpower Services (Philcare), for allegedly procuring additional eighty (80) janitorial personnel through the Addendum to the Contract of

<sup>1</sup> Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

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

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Service dated 05 March 2009<sup>2</sup> (Addendum), without authority from the Board of PSC and without conducting the required competitive public bidding.

**The Facts**

From the testimonial and documentary evidence on record, as well as the stipulations of the parties, the Court finds the relevant facts set forth below:

On 27 October 2008, the PSC, represented by then Chairman William I. Ramirez (Chairman Ramirez), and Philcare, represented by its President and Manager accused Montanes executed a Contract of Service dated 27 October 2008 (Original Contract)<sup>3</sup> providing the Commission with eighty-two (82) janitorial personnel for the contract price of Twenty Seven Million Three Hundred Seventeen Thousand and Seven Hundred Twenty Four Pesos (PhP27,317,724.00). The Contract was effective for two (2) years and was set to expire on 31 October 2010.

In February 2009, accused Angping assumed as Chairman of PSC. A month after his assumption, the PSC, represented by accused Angping, and Philcare, represented by accused Montanes, entered into an Addendum to the Contract of Service dated 05 March 2009<sup>4</sup> for the procurement of additional eighty (80) additional janitorial personnel for the amount of Fifteen Thousand Three Hundred Twenty Four and 42/100 Pesos (PhP15,324.42) per janitor/month. The Addendum took effect on 01 March 2009 and was set to expire on 31 January 2011.

When accused Angping's tenure ended in July 2010, he was replaced by Chairman Ricardo R. Garcia (Chairman Garcia). Upon his assumption to office, Chairman Garcia ordered the review of the previous contracts entered into by PSC with various suppliers. During the process, Chairman Garcia found irregularities in the manner the Addendum was procured considering that no public bidding was conducted and it exceeds the twenty-five (25%) threshold mandated under Section 51<sup>5</sup> of R.A. No. 9184 or the Government Procurement

<sup>2</sup> Exhibit "C" for the prosecution; Exhibit "97" for accused Angping; and Exhibit "2" for accused Montanes.

<sup>3</sup> Exhibit "B" for the prosecution; Exhibit "96" for accused Angping; and Exhibit "1" for accused Montanes.

<sup>4</sup> See *supra* note 2.

<sup>5</sup> Section 51. Repeat Order. – When provided for in the Annual Procurement Plan, Repeat Order may be allowed wherein the Procuring Entity directly procures Goods from the previous winning bidder whenever there arises a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to post-qualification process prescribed in the Bidding Documents and provided all the following conditions are present:

(a) The unit price must be equal to or lower than that provided in the original contract;

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Reform Act for a repeat order to be valid without the requisite public bidding.

Chairman Garcia then wrote accused Montanes a Letter dated 04 August 2010<sup>6</sup> directing the latter to submit a Position Paper stating why the Addendum should not be terminated. With respect to the Original Contract, Philcare was directed to submit a report on the actual deployment of janitorial personnel assigned to all PSC venues.

In its Letter dated 10 August 2010<sup>7</sup> with attached Position Paper dated 10 August 2010<sup>8</sup>, Philcare through accused Montanes explained that the Addendum is based on paragraph 30 of the Original Contract, which reads:

“30. However, such number may be increased at anytime at the option of the COMMISSION depending on its operational needs, upon execution of an addendum to the foregoing contract.”

Notwithstanding the Position Paper submitted by Philcare, the Addendum was terminated on 17 August 2010. The Original Contract, on the other hand, remained effective and valid until its expiration.

On 09 December 2011, a Complaint-Affidavit was filed before the Office of the Ombudsman by Commissioner Salvador H. Andrada (Commissioner Andrada) against accused Angping and Montanes.

In its Resolution dated 04 June 2013,<sup>9</sup> the Office of the Ombudsman found probable cause to indict accused Angping and Montanes for violation of Section 3(e) of R.A. No. 3019.

**Information**

The Information dated 04 June 2013<sup>10</sup> filed with this Court on 02 September 2013 reads:

- (b) The repeat order does not result in splitting of requisitions or purchase orders;
- (c) Except in special circumstances defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract; and,
- (d) The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item of the original contract.

<sup>6</sup> Exhibit "F" for the prosecution.

<sup>7</sup> Exhibit "G" for the prosecution.

<sup>8</sup> Exhibit "G-1" for the prosecution.

<sup>9</sup> *Rollo*, Vol. I, pp. 5-15.

<sup>10</sup> *Id.* at pp.1-3.

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"That on **March 01, 2009**, or sometime prior or, subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of the Honorable Court, the above named accused, **HARRY COSIQUIEN ANGPING**, then public officer, being then Chairman of Philippine Sports Commission (SG30), taking advantage of his public office, committing the crime in relation to his official duties, conspiring and confederating with the above-named accused **EDMUNDO C. MONTANES**, then President and General Manager of Philcare Manpower Services, a domestic entity engage in *janitorial services*, acting with evident bad faith, manifest partiality and gross inexcusable negligence, did then and there, wilfully, unlawfully, criminally give unwarranted benefits, advantage and preference to Philcare Manpower Services and/or accused **EDMUNDO C. MONTANES**, by procuring from Philcare Manpower Services through an *Addendum To The Contract Of Service* dated March 05, 2009, without authority from the Board of the Philippine Sports Commission and without conducting a competitive public bidding in violation of Republic Act No. 9184 and its Implementing Rules and Regulations, **EIGHTY (80) personnel**, consisting of **SEVENTY-ONE (71) janitorial personnel** and **NINE (9) gardeners**, which accused **EDMUNDO C. MONTANES**, knowing fully well that the said procurement was without authority from the Board of the Philippine Sports Commission and without the benefit of a competitive public bidding, wilfully provide, for a consideration of Fifteen Thousand Three Hundred Twenty Four Pesos and Forty Two Centavos (P15,324.42) per personnel/ per month for the period March 01, 2009 to January 31, 2011, payments of which were made by Philippine Sports Commission to Philcare Manpower Services, thereby depriving the Philippine Sports Commission of the opportunity to obtain the Lowest Calculated Responsive Bid or the most advantageous and beneficial contract, to the damage and prejudice of the Government.

CONTRARY TO LAW."

**Proceedings before the Sandiganbayan**

In its 09 September 2013 Minute Resolution<sup>11</sup>, this Court found the existence of probable cause and consequently ordered the issuance of warrants of arrest against accused Angping and Montanes. On 12 September 2013, a Hold Departure Order<sup>12</sup> was also issued against them.


Accused Angping voluntarily surrendered and posted cash bail bond for his provisional liberty on 19 September 2013.<sup>13</sup> Upon his arraignment on 25 September 2013, accused Angping pleaded not guilty to the charge.<sup>14</sup>

<sup>11</sup> *Id.* at p. 66.

<sup>12</sup> *Id.* at p. 67.

<sup>13</sup> *Id.* at p. 76.

<sup>14</sup> *Id.* at p. 88.



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Accused Montanes, on the other hand, filed an Urgent Motion for Leave of Court<sup>15</sup> seeking the deferment of the proceedings on account of the pendency of his motion for reconsideration before the Ombudsman, with a prayer for the stay of the implementation of the warrant of arrest issued against him. In its Resolution dated 05 March 2014<sup>16</sup>, this Court granted the motion insofar as it seeks the deferment of the proceedings with respect to accused Montanes, but denied the prayer for the stay of the implementation of the warrant of arrest. Accused Montanes voluntarily surrendered and posted cash bail bond for his provisional liberty on 25 March 2014.<sup>17</sup>

It its Order dated 10 March 2014<sup>18</sup>, the Office of the Ombudsman denied the motion for reconsideration filed by accused Montanes. Upon his arraignment on 30 April 2014, accused Montanes pleaded not guilty to the charge.<sup>19</sup>

At the preliminary conference held on 12 November 2013, 19 March 2014, 04 June 2014, and 27 June 2014, the parties stipulated on the following:<sup>20</sup>

1. Accused Angping served as Chairman of PSC from February 2009 to July 2010;<sup>21</sup>
2. PSC is a collegial body and as such, would act only through its Board of Directors;<sup>22</sup>
3. All payments made to suppliers and contractors should have the proper Board Resolution;<sup>23</sup>
4. Judicial Notice of Wage Order No. NCR-14 effective 14 June 2008;<sup>24</sup>
5. The existence and authenticity of the Contract of Service dated 27 October 2008;<sup>25</sup>
6. The existence and authenticity of the Addendum to the Contract of Service dated 05 March 2009;<sup>26</sup>
7. The consideration in the Addendum in the amount of Fifteen Thousand Three Hundred Twenty Four and Forty Centavos (P15,324.40) per janitor is the same consideration as that of

<sup>15</sup> *Id.* at pp. 98-176.

<sup>16</sup> *Id.* at pp. 298-303.

<sup>17</sup> *Id.* at p. 417.

<sup>18</sup> *Rollo*, Vol. II, at pp.189-195.

<sup>19</sup> *Rollo*, Vol. I, at p. 451.

<sup>20</sup> *Rollo*, Vol. II pp. 253-306 (Pre-Trial Order dated 17 July 2014)

<sup>21</sup> *Id.* at p. 300.

<sup>22</sup> *Id.* at p. 301.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*



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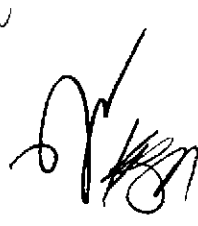
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the Contract of Services dated 27 October 2008 from where the Addendum came from;<sup>27</sup>

8. The existence of a Contract of Service between PSC and CBII for the period 2013 to 2015;<sup>28</sup> and
9. The payments made by PSC to Philcare Manpower Services for the services rendered by the additional 80 janitors for the period covering 01 March 2009 to 17 August 2010 passed the scrutiny of the Accounting and Pre-Audit of the Resident Auditor of the PSC.<sup>29</sup>

During the preliminary conference and in the course of the trial, the parties stipulated on the existence and due execution of the following documents:

1. Original copy of the Complaint Affidavit of Mr. Salvador Andrada dated 09 December 2011;<sup>30</sup>
2. Photocopy of the Board Secretary Certificate, Resolution No. 969-2011 signed by Julia Llanta, Board Secretary IV;<sup>31</sup>
3. Photocopy of the Contract of Services dated 27 October 2008;<sup>32</sup>
4. Photocopy of the Addendum to the Contract of Service effective 01 March 2009;<sup>33</sup>
5. Service Record of accused Angping from the PSC;<sup>34</sup>
6. Board Secretary Certification issued on 21 May 2014 signed by Atty. Mary Ellen Ruth Chan, Acting Board Secretary of the PSC;<sup>35</sup>
7. Letter dated 04 August 2010 from PSC Chairman Garcia addressed to accused Montanes;<sup>36</sup>
8. Letter from accused Montanes addressed to Chairman Garcia dated 10 August 2010;<sup>37</sup>



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<sup>27</sup> *Ibid.*

<sup>28</sup> *Id.* at p. 302.

<sup>29</sup> *Id.* at p. 302 (Admitted by the prosecution in so far as the Accounting Division of the PSC, but in so far as the auditor is concerned, no personal knowledge).

<sup>30</sup> *Rollo*, Vol. II, p. 302 (Exhibit "A" for the prosecution).

<sup>31</sup> *Ibid.* (Exhibit "A-1" for the prosecution)

<sup>32</sup> *Id.* at p. 303 (Exhibit "B" for the prosecution; Exhibit "96" for accused Angping; and Exhibit "1" for accused Montanes)

<sup>33</sup> *Ibid.* (Exhibit "C" for the prosecution; Exhibit "97" for accused Angping; and Exhibit "2" for accused Montanes).

<sup>34</sup> *Ibid.* (Exhibit "D" for the prosecution).

<sup>35</sup> *Ibid.* (Exhibit "E" for the prosecution). See also Order dated 20 November 2013 (*Rollo*, Vol. II, p. 393).

<sup>36</sup> *Ibid.* (Exhibit "F" for the prosecution). See also Order dated 05 March 2015 (*Rollo*, Vol. III, p. 64).

<sup>37</sup> *Ibid.* (Exhibit "G" for the prosecution). See also Order dated 05 March 2015 (*Rollo*, Vol. III, p. 64).

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9. Position Paper dated 10 August 2010 submitted to Chairman Garcia from Philcare;<sup>38</sup>
10. Letter from Chairman Garcia addressed to accused Montanes dated 17 August 2010;<sup>39</sup>
11. Letter addressed to Chairman Garcia from accused Montanes dated 18 August 2010;<sup>40</sup>
12. Certification from the Chief Accountant of the PSC and Philcare Summary of Payments;<sup>41</sup>
13. Board Secretary Certification issued on 21 May 2010;<sup>42</sup> and
14. Warrant Registry Receipts.<sup>43</sup>

The parties proposed several issues for resolution by the court, which, however, may be deemed subsumed under the basic issue of whether or not the accused are guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019.

Thereafter, trial on the merits ensued.

**Evidence for the Prosecution**

The prosecution presented the following witnesses: (a) Commissioner Salvador H. Andrada; (b) Atty. Mary Ellen Ruth Chan; (c) Chairman Ricardo R. Garcia; (d) Lerina Baleña Braga; (e) Julia Gutierrez Llanto; (f) Merlita R. Ibay; and (g) Atty. Paul S. Vega.

*a) Commissioner Salvador H. Andrada*

Commissioner Andrada of the PSC filed the Complaint-Affidavit dated 09 December 2011<sup>44</sup> charging accused Angping and Montanes for violation of R.A. No. 3019 in relation to R.A. No. 9184 before the Office of the Ombudsman.

During his direct examination,<sup>45</sup> Commissioner Andrada testified that there was no bidding conducted for the Addendum and that accused Angping was not authorized by the PSC to execute the

<sup>38</sup> *Ibid.* (Exhibit "G-1" for the prosecution). See also Order dated 05 March 2015 (*Rollo*, Vol. III, p. 64).

<sup>39</sup> *Ibid.* (Exhibit "H" for the prosecution). See also Order dated 05 March 2015 (*Rollo*, Vol. III, p. 64).

<sup>40</sup> *Ibid.* (Exhibit "I" for the prosecution).

<sup>41</sup> *Id.* at p. 304 (Exhibits "J" and "J-1", respectively, for the prosecution). See also Order dated 23 July 2015 (*Rollo*, Vol. III, p. 104).

<sup>42</sup> Order dated 20 November 2014, *Rollo*, Vol. II, p. 393 (Exhibit "E" for the prosecution).

<sup>43</sup> Order dated 20 November 2017, *Rollo*, Vol. IV, p. 235 (Exhibits "K" to "QQ" for the prosecution and Exhibits "48" to "93" for accused Angping).

<sup>44</sup> Exhibit "A" for the prosecution.

<sup>45</sup> Transcript Stenographic Notes (TSN), dated 11 August 2014.

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same.<sup>46</sup> Commissioner Andrada said he could not see in their records that there is a certificate from the PSC Board authorizing accused Angping to enter into such Addendum.<sup>47</sup>

Commissioner Andrada stated that by procuring the additional 80 janitorial personnel without public bidding, which is more than 25% of the Original Contract, accused Angping violated Section 51, paragraph D of the Procurement Act.<sup>48</sup>

To show that accused Angping was not authorized by the PSC Board, Commissioner Andrada identified the PSC Board Secretary Certification issued on 21 May 2014<sup>49</sup> stating the following:<sup>50</sup>

“This is to certify that there is no Board Resolution or any other related files found or existing in the record of the Board granting authority to former Chairman Harry C. Angping for an Addendum to the Contract of Service with Philcare Manpower for additional janitorial manpower effective March 1, 2009 and valid for a period of two (2) years or until January 31, 2011.”

When asked about his basis in coming up with the conclusion that accused Angping and Montanes conspired with each other, Commissioner Andrada responded that this is because accused Montanes, being the President and Manager of Philcare, entered into the Addendum without the benefit of a public bidding.<sup>51</sup>

Commissioner Andrada also testified that due to the said violation of the Procurement Law, Chairman Garcia terminated the services of Philcare on 17 August 2010.<sup>52</sup>

During the cross-examination, Commissioner Andrada acknowledged that he was not connected with the PSC at the time the Addendum was entered into because he assumed his position only in July 2010.<sup>53</sup> He also has no personal knowledge whether accused Montanes was able to talk to accused Angping with respect to the Addendum.<sup>54</sup> Lastly, he testified that he did not find paragraph 30 of

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<sup>46</sup> *Id.* at p. 13.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Id.* at p. 17.

<sup>49</sup> Exhibit “E” for the prosecution. See also Order dated 20 November 2013 (*Rollo*, Vol. II, p.393).

<sup>50</sup> TSN, dated 11 August 2014.

<sup>51</sup> *Id.* at p. 18.

<sup>52</sup> *Id.* at pp. 19-32.

<sup>53</sup> *Id.* at pp. 32-33.

<sup>54</sup> *Id.* at pp. 55-56.



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the Original Contract, which was the basis of the Addendum, anomalous.<sup>55</sup>

During the re-direct examination,<sup>56</sup> Commissioner Andrada acknowledged that the Addendum passed the audit and no notice of disallowance was issued by Commission on Audit (COA).<sup>57</sup> The payment to Philcare did not also meet objections from the COA according to Commissioner Andrada.<sup>58</sup> He also testified that he did not find anything wrong in the Addendum but what he is questioning is the implementation – the procurement in excess of 25% without public bidding.<sup>59</sup>

Commissioner Andrada also confirmed that the additional personnel did, in fact, render the required services to PSC.<sup>60</sup> He also confirmed that payment was made to Philcare for the services thus rendered.<sup>61</sup>

On re-cross, the witness further testified that there are a lot of excess janitorial personnel during the previous administration considering that they have only sixty (60) at present compared to the one hundred sixty two (162) at the time of accused Angping.<sup>62</sup> However, the witness clarified that he did not know if there was really no need for the additional personnel at the time of accused Angping and he only based his statement on the 25% requirement under the law.<sup>63</sup> He also admitted that they did not review the events that took place during the time the additional personnel were contracted.<sup>64</sup>

Commissioner Andrada mentioned that notwithstanding the termination of the Addendum, the PSC still allowed Philcare to participate in the subsequent bidding because there was no case filed against them at that time.<sup>65</sup> Philcare eventually won and the company was awarded a new contract.<sup>66</sup>

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<sup>55</sup> *Id.* at p. 66.

<sup>56</sup> TSN, dated 17 September 2014.

<sup>57</sup> *Id.* at p. 17.

<sup>58</sup> *Id.* at p. 18.

<sup>59</sup> *Id.* at p. 22.

<sup>60</sup> *Id.* at p. 23.

<sup>61</sup> *Id.* at p. 24.

<sup>62</sup> *Id.* at p. 31.

<sup>63</sup> *Id.* at p. 32.

<sup>64</sup> *Id.* at p. 34.

<sup>65</sup> *Id.* at p. 38.

<sup>66</sup> TSN, 19 November 2014, p. 7.

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Clarifying his earlier statements, Commissioner Andrada stated that he has no personal knowledge whether the COA allowed or disallowed the Addendum.<sup>67</sup>

*b) Mary Ellen Ruth K. Chan*

The parties stipulated on the existence and due execution of Board Secretary Certification issued on 21 May 2014 signed by witness Atty. Chan, the Acting Board Secretary of the PSC.<sup>68</sup>

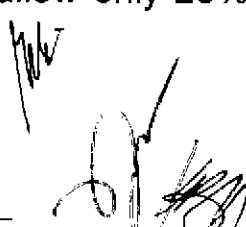
*c) Chairman Ricardo R. Garcia*

Chairman Garcia is the successor of accused Angping in the PSC. He assumed his position in July 2010. He was not a member of the PSC Board at the time the Addendum was entered into.

During the direct examination of Chairman Garcia,<sup>69</sup> the parties stipulated on the existence and due existence of the following documents:

- a) Letter dated 04 August 2010 from Chairman Garcia addressed to accused Montanes;<sup>70</sup>
- b) Philcare's Position Paper dated 10 August 2010 submitted to Chairman Garcia;<sup>71</sup> and
- c) Letter from Chairman Garcia addressed to accused Montanes dated 17 August 2010;<sup>72</sup>

Chairman Garcia testified that after he was appointed to the office, they reviewed all the existing contracts of the commission and, in the process, they found out that the Addendum increased the number of janitors to almost 100%.<sup>73</sup> Chairman Garcia found the same irregular as the rules allow only 25% increase without going through the bidding process.<sup>74</sup>



<sup>67</sup> *Id.* at p. 13.

<sup>68</sup> TSN, dated 20 November 2014; See also Order dated 20 November 2013, *Rollo*, Vol. II, p.393 (Exhibit "E" for the prosecution).

<sup>69</sup> TSN, dated 05 March 2015.

<sup>70</sup> *Id.* at p. 15. See also Order dated 05 March 2015, *Rollo*, Vol. III, p. 64 (Exhibit "F" for the prosecution).

<sup>71</sup> *Id.* at p. 15. See also Order dated 05 March 2015, *Rollo*, Vol. III, p. 64 (Exhibit "G-1" for the prosecution).

<sup>72</sup> *Id.* at p. 16. See also Order dated 05 March 2015, *Rollo*, Vol. III, p. 64 (Exhibit "H" for the prosecution).

<sup>73</sup> *Id.* at pp. 18-19.

<sup>74</sup> *Ibid.*

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Chairman Garcia testified that when he informed accused Montanes about the termination of the Addendum, they had a dialogue and the latter agreed to the termination.<sup>75</sup>

Chairman Garcia also testified that he believed that there was no need to increase the number of personnel since during his time they employed only 45 janitors in the whole of PSC.<sup>76</sup> Chairman Garcia also stated that upon checking the records, they could not find any Board Resolution authorizing the increase of the number of janitors from eighty (80) to one hundred sixty two (162).<sup>77</sup>

During the cross-examination, Chairman Garcia acknowledged that there were indeed requests for additional manpower services during the time of accused Angping.<sup>78</sup> Chairman Garcia clarified though that he sees no urgency in the said requests.<sup>79</sup> Chairman Garcia added that they are not questioning the increase or decrease, but rather it was the procedure that they are questioning – the increase of more than 25% without going through the proper bidding.<sup>80</sup>

Chairman Garcia said that despite the perceived irregularity in the Addendum, they still paid Philcare because the service was rendered and they have to pay as part of the agreement and upon the advice of the Legal Office of PSC.<sup>81</sup>

Upon inquiry from the defense, Chairman Garcia admitted that he is not familiar with and he cannot recall the actual number of PSC's facilities where these janitorial personnel are designated.<sup>82</sup> He was also not part of the Board of PSC at the time the Addendum was entered into and was not aware of the activities, changes and policies at that time.<sup>83</sup> However, Chairman Garcia maintained that there was no need for additional janitors since during his time they were able to maintain the facilities with only forty five (45) janitors.<sup>84</sup>

During the continuation of the cross-examination, Chairman Garcia testified that there are certain situations, depending on the

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<sup>75</sup> *Id.* at pp. 19-20, p. 22.

<sup>76</sup> *Id.* at p. 20.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Id.* at p. 23.

<sup>79</sup> *Id.* at p. 25.

<sup>80</sup> *Id.* at p. 23.

<sup>81</sup> *Id.* at pp. 26-27.

<sup>82</sup> *Id.* at pp. 29-30.

<sup>83</sup> *Id.* at pp. 35-36.

<sup>84</sup> *Id.* at pp. 36-37.

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amount, that the Chairman is authorized to approve or enter into a contract even without a specific board resolution.<sup>85</sup>

Chairman Garcia also admitted that after the termination of the Addendum, PSC ended up contracting Philcare again as its janitorial service.<sup>86</sup> Chairman Garcia explained that they found no reason not to qualify Philcare as a bidder since no case has been filed yet.<sup>87</sup>

*d) Lerina Baleña Braga*

The witness is the former Chief Accountant of the PSC from 01 June 2012 to 31 May 2014.

During the direct examination,<sup>88</sup> the parties stipulated on the existence and due execution of the following: (a) Certification dated 26 May 2014<sup>89</sup> issued by witness Braga attesting to the fact that payments were indeed received by Philicare for the services rendered in relation to the Addendum; and (b) Summary of Payments<sup>90</sup> covering the period 31 March 2009 up to 15 July 2010.

Braga testified that all payments approved by the Head of the agency is recorded in the warrant registry and all payments which were released and registered in the Warrant Registry are approved by the Board of PSC.<sup>91</sup>

*e) Julia Gutierrez Llanto*

Llanto was the Corporate Secretary of the PSC at the time the Addendum was entered into.

During the direct examination,<sup>92</sup> the parties stipulated on the existence of Board Secretary's Certification<sup>93</sup> authorizing Commissioner Andrada to file the instant case, and that witness Llanto's duties include attending Board meetings and certifying Board resolutions.

The witness testified that as far as the record of the PSC Board is concerned, the Addendum cannot be found in the records of the

<sup>85</sup> TSN, dated 23 April 2015, p. 8.

<sup>86</sup> *Id.* at pp. 19.

<sup>87</sup> *Ibid.*

<sup>88</sup> TSN, dated 23 July 2015.

<sup>89</sup> *Ibid.* See Order dated 23 July 2015, *Rollo*, Vol. III, p. 104 (Exhibit "J" for the prosecution).

<sup>90</sup> *Ibid.* See Order dated 23 July 2015, *Rollo*, Vol. III, p. 104 (Exhibit "J-1" for the prosecution).

<sup>91</sup> TSN, dated 23 July 2015, pp. 18-19.

<sup>92</sup> TSN, dated 01 October 2015.

<sup>93</sup> Exhibit "A-1" for the prosecution.

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Board, hence not among those discussed by the Board.<sup>94</sup> The witness identified Certification dated 25 August 2010.<sup>95</sup>

*f) Merlita R. Ibay*

Witness Ibay is the former Chief Accountant of PSC.

During the direct examination,<sup>96</sup> the parties stipulated that witness Ibay appears as one of the witnesses in the Addendum. Ibay testified that, as far as she can recall, no bidding was conducted with respect to the Addendum.<sup>97</sup>

*g) Atty. Paul S. Vega*

Atty. Vega was the Head of the Legal Affairs Office of PSC at the time of the execution of the Addendum. During the direct examination,<sup>98</sup> Atty. Vega testified that they were the ones who prepared the Addendum and that no public bidding was conducted.<sup>99</sup>

During the cross-examination, the following statements were elicited from Atty. Vega:

- a) They prepared the Addendum on the basis of the requests from various sports facilities of PSC necessitating additional personnel in their respective facilities;<sup>100</sup>
- b) They usually do not prepare contracts without any approval from PSC;<sup>101</sup>
- c) The Legal Affairs Office of PSC at that time did not think that a bidding was necessary.<sup>102</sup>
- d) In case of an addendum, they do not go through the process of bidding, if one was already conducted, like in this case.<sup>103</sup>
- e) What they took into consideration in preparing the Addendum is whether or not the price in the Addendum is the same with the original contract.<sup>104</sup>

<sup>94</sup> TSN, dated 01 October 2015, pp. 15-16.

<sup>95</sup> Exhibit "RR" for the prosecution.

<sup>96</sup> TSN, dated 29 October 2015.

<sup>97</sup> *Id.* at p. 23.

<sup>98</sup> TSN, dated 18 February 2016.

<sup>99</sup> *Id.* at pp. 9-10.

<sup>100</sup> *Id.* at p. 11.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Id.* at p. 17.

<sup>103</sup> *Id.* at p. 16.

<sup>104</sup> *Ibid.*

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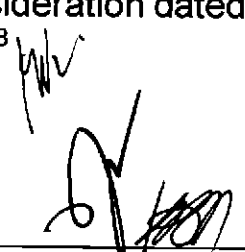
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- f) The basis for the Addendum is the provision in the Original Contract that provides for an increase in the number of personnel, if necessary.<sup>105</sup>
- g) They treated the Addendum as part of the Original Contract.<sup>106</sup>
- h) The price/rate in the Original Contract and the Addendum are the same, except for the variation because of the New Wage Order.<sup>107</sup>
- i) The Addendum is a binding and legitimate agreement.<sup>108</sup>
- j) The Addendum is in conformity with the Original Contract.<sup>109</sup>
- k) They did not take into consideration Section 48 of the Procurement Law on Repeat Order.<sup>110</sup>

The prosecution submitted its Formal Offer of Documentary Exhibits<sup>111</sup> on 06 February 2017. On 06 April 2017, the Court admitted the following exhibits offered by the prosecution as its evidence: Exhibits "A", "A-1" – "A-1-a", "A-2", "A-3", "B"<sup>112</sup>, "C" – "C-1", "E" – "E-2", "F" – "F-1", "G", "H", "I", "J", "J-1", "J-2" – "J-3", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR" – "RR-1", and as part of the testimonies of the witnesses who testified thereon, over the objection of the accused, for the purposes for which they were offered.<sup>113</sup>

Accused filed their separate Motions for Leave to File Demurrer to Evidence on 18 April 2017<sup>114</sup> and 24 April 2017<sup>115</sup>, respectively. In its Resolution dated 30 May 2017<sup>116</sup>, this Court denied the separate Motions for Leave to File Demurrer to Evidence of accused Angping and Montanes. The Court also denied accused Montanes' Motion for Reconsideration dated 19 June 2017<sup>117</sup> of the Resolution dated 30 May 2017.<sup>118</sup>



<sup>105</sup> *Ibid.*

<sup>106</sup> *Id.* at p. 25.

<sup>107</sup> *Id.* at p. 17.

<sup>108</sup> *Id.* at p. 19.

<sup>109</sup> *Id.* at p. 25.

<sup>110</sup> *Id.* at p. 30.

<sup>111</sup> *Rollo*, Vol. III pp. 443-472.

<sup>112</sup> The existence thereof being admitted and there being no objection to its admissibility

<sup>113</sup> *Rollo*, Vol. IV, pp. 57-58.

<sup>114</sup> *Id.* at pp. 64-67.

<sup>115</sup> *Id.* at pp. 72-73.

<sup>116</sup> *Id.* at pp. 139-141.

<sup>117</sup> *Id.* at pp. 163-165.

<sup>118</sup> *Id.* at pp. 197-198.

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**Evidence for Accused Angping**

Accused Angping presented himself, Juanito Smith and Charlie C. Esquivel as witnesses for the defense.

*(a) Accused Harry C. Angping*

Accused Angping served as Chairman of PSC from February 2009 to July 2010.<sup>119</sup>

During his direct examination,<sup>120</sup> the parties stipulated that payments were made to Philcare and that accused Angping's documents evidencing such payments are the same documents of the prosecution for the same purpose, i.e. to establish payment.<sup>121</sup>

Accused Angping testified that his duties as Chairman of PSC include: (a) looking after the welfare of the athletes; (b) looking after the facilities of PSC; (c) taking care of the medicinal center; and (d) taking care of promoting new athletes for coming competitions.<sup>122</sup>

Accused Angping stated that even before he assumed his position as PSC Chairman, he was the president of the Philippine Softball Association. He said that he has seen a lot of problems particularly in the sports facilities which were all dilapidated and which lack manpower.<sup>123</sup> Accused Angping added that, oftentimes, the athletes themselves have to get their water, fix things up, and were being made to do some errands for coaches and trainers.<sup>124</sup> According to accused Angping, these sports facilities are used both by athletes and also by walk-in clients.<sup>125</sup> Accused Angping also stated that in the period of 17 months, he was able to conduct around 10 major repairs and around 10 minor repairs.<sup>126</sup>

Accused Angping likewise testified that PSC does not have enough janitorial manpower to support the athletes who were then preparing for the Laos Sea Games.<sup>127</sup> Accused Angping conducted ocular inspection and advised the venue manager to write an official letter complaining about the lack of manpower.<sup>128</sup> Thereafter, accused

<sup>119</sup> *Rollo*, Vol. II, p. 300.

<sup>120</sup> TSN, dated 19 September 2017.

<sup>121</sup> See Order dated 19 September 2017 (*Rollo*, Vol. IV, p. 206).

<sup>122</sup> *Id.* at p. 8.

<sup>123</sup> *Id.* at pp. 8-19.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Id.* at p. 9.

<sup>126</sup> *Id.* at p. 10.

<sup>127</sup> *Id.* at p. 12.

<sup>128</sup> *Ibid.*

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Angping took it up with the Board and they all agreed to increase the manpower services.<sup>129</sup> According to accused Angping, the Board passed a board resolution allowing PSC to recruit new manpower janitorial services.<sup>130</sup>

Accused Angping testified that after it was approved, he gave it to his Executive Director and Commissioner Father Vicente Uy, SVD, and to Atty. Vega of the Legal Affairs Office, to implement the board resolution.<sup>131</sup> After several days or weeks, the two came back to accused Angping saying that they have reviewed it carefully and PSC can start recruiting the additional manpower.<sup>132</sup> Atty. Vega explained that it can be done through an addendum to the existing contract.<sup>133</sup>

Accused Angping testified that the basis for entering into an addendum is paragraph 30 of the Original Contract which states that they can have an addendum depending upon PSC's operational needs.<sup>134</sup> Accused Angping then instructed Father Uy and Atty. Vega to proceed with the recruitment of the janitorial manpower services.<sup>135</sup> Father Uy and Atty. Vega allegedly came back to accused Angping and asked him to sign the Addendum.<sup>136</sup> Accused Angping testified that he asked Father Uy and Atty. Vega the following: "Are you sure this is valid? This is okay?" to which Atty. Vega reiterated, "sir, this is okay".<sup>137</sup> Thereafter, accused proceeded with the signing of the contract.<sup>138</sup>

Accused Angping testified that Atty. Vega was the one who implemented the Addendum because of the time constraint of the Laos Sea Games which was scheduled for September of that year.<sup>139</sup> Accused Angping allegedly received good feedbacks from the stakeholders after the implementation of the Addendum.<sup>140</sup>

Accused Angping further testified that he does not know accused Montanes and he just met him when the case was filed in the

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<sup>129</sup> *Id.* at p. 13.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> *Id.* at pp. 13-14.

<sup>134</sup> *Id.* at p. 14.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Id.* at p. 15.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> *Id.* at p. 16.

<sup>140</sup> *Ibid.*

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Sandiganbayan.<sup>141</sup> He also testified that upon leaving his office, he did not receive any notice of disallowance from COA.<sup>142</sup>

On cross-examination, accused Angping reiterated that he presented the problem on lack of manpower to his executive director Fr. Uy and Atty Vega to make sure that there is a legal basis for him to add manpower services.<sup>143</sup>

He also reiterated that the PSC Board gave their approval on the Addendum through a board resolution.<sup>144</sup> As to the proof of the PSC Board's approval, accused Angping said that they tried their best to secure a copy of the resolution but the incumbent administration simply said that it cannot be found.<sup>145</sup> Accused Angping also stated that the PSC has a very strict accounting, and they will not pay unless there is a board resolution.<sup>146</sup>

*(b) Juanito Smith*

During his direct examination,<sup>147</sup> Smith testified that he is an employee of PSC since 1990.<sup>148</sup> In 2009, he was appointed as Officer-in-Charge of Baguio Training Center.<sup>149</sup>

Smith further testified that when accused Angping visited Baguio, the latter asked him what he needed in preparation for the 2009 Sea Games.<sup>150</sup> Smith then requested for additional four (4) housekeeping personnel.<sup>151</sup> The witness identified the Letter Request dated 17 February 2009.<sup>152</sup>

According to Smith, his request was granted by accused Angping and he was provided with additional four (4) personnel.<sup>153</sup> Smith stated that the additional personnel were a big help in preparation for the Sea Games because the athletes do not have to do their laundry anymore and could rest after their training.<sup>154</sup>

<sup>141</sup> *Id.* at pp. 16-17.

<sup>142</sup> *Id.* at p. 17.

<sup>143</sup> *Id.* at p. 20.

<sup>144</sup> *Id.* at pp. 20-21.

<sup>145</sup> *Id.* at p. 21.

<sup>146</sup> *Ibid.*

<sup>147</sup> TSN, dated 03 October 2017. See also Order dated 03 October 2017 (*Rollo*, Vol. IV, p. 214).

<sup>148</sup> *Id.* at pp. 8-9.

<sup>149</sup> *Id.* at p. 9.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Exhibit "106" for accused Angping.

<sup>153</sup> *Id.* at p. 11.

<sup>154</sup> *Ibid.*

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*(c) Charlie C. Esquivel*

During his direct examination,<sup>155</sup> Esquivel testified that he is the Senior Sports and Games Regulation Officer of Rizal Memorial Stadium.<sup>156</sup> He started working in PSC since 1999.<sup>157</sup>

During the time of accused Angping, Esquivel was designated as Acting Field Sports Administrator.<sup>158</sup> As such, he manages the whole Philippine Sports Complex with ten (10) sports venues, 45 dormitories, and 2 administrative units.<sup>159</sup>

Esquivel testified that whenever there are events, the number of janitors are lacking.<sup>160</sup> This prompted him to request for additional manpower, which were granted thereafter.<sup>161</sup>

During cross-examination, Esquivel admitted that he failed to bring with him a copy of the letter request for additional manpower.<sup>162</sup> He also testified that they usually request for additional janitors if ever there are events.<sup>163</sup>

**Evidence for Accused Montanes**

*Accused Edmundo C. Montanes*

Accused Montanes presented himself as a witness for the defense.<sup>164</sup> During his direct examination, accused Montanes identified his Judicial Affidavit executed on 22 November 2017.<sup>165</sup> He testified that after the Addendum was terminated, his company joined another bidding and eventually won as the lowest bidder.<sup>166</sup>

During the cross-examination, accused Montanes testified that when he was informed about the PSC's request for additional janitorial services, he consulted Atty. Manuel Capistrano, his lawyer, regarding

<sup>155</sup> TSN, dated 20 November 2017. See also Order dated 20 November 2017 (*Rollo*, Vol. IV, p. 235).

<sup>156</sup> *Id.* at p. 8.

<sup>157</sup> *Id.* at p. 9.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Id.* at p. 12.

<sup>161</sup> *Id.* at p. 13.

<sup>162</sup> *Id.* at p. 17.

<sup>163</sup> *Id.* at p. 23.

<sup>164</sup> TSN, dated 27 November 2017. See Order dated 27 November 2017 (*Rollo*, Vol. IV, p. 254-C).

<sup>165</sup> Exhibit "17" for accused Montanes. TSN, dated 27 November 2017, pp. 7-8. (No copy found on record)

<sup>166</sup> TSN, dated 27 November 2017, pp. 10-11.

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the matter.<sup>167</sup> Accused Montanes stated that upon consultation with Atty. Capistrano, the latter is of the same opinion as that of Atty. Vega that the Addendum will come from the Original Contract, which are of the same price.<sup>168</sup>

Accused Montanes also stated that they always follow the requirements as to public bidding.<sup>169</sup> In this particular case, accused Montanes was allegedly told by Atty. Vega that public bidding is not necessary since the Addendum is based on the Original Contract and the price is just the same.<sup>170</sup>

Accused Angping and Montanes filed their separate Formal Offer of Evidence on 28 November 2017<sup>171</sup> and 04 December 2017,<sup>172</sup> respectively. On 07 May 2018, the Court admitted the following exhibits offered by accused Angping: Exhibits "48" to "93", "96", "97", "97-A", "106".<sup>173</sup> The Court also admitted the following exhibits offered by accused Montanes: Exhibits "1" with submarkings, "2" with submarkings, "3", "4", "5", "6", "7", "8", "9", "10", "13", "14", and "15".<sup>174</sup> The Court denied the admission of Exhibit "16" as no such exhibit was attached to accused's Formal Offer of Exhibit.<sup>175</sup>

**Memoranda of the Parties**

*Memorandum for Accused Angping*<sup>176</sup>

In his Memorandum dated 28 June 2018<sup>177</sup>, accused Angping argued that the prosecution failed to establish that he acted with manifest partiality, evident bad faith or inexcusable negligence when he entered into, on behalf of PSC, the Addendum to the Contract of Service with Philcare.<sup>178</sup>

Anent the supposed lack of board approval, accused Angping argues that the same was not proven beyond reasonable doubt.<sup>179</sup> First, since the accounting and legal department of the PSC approved

<sup>167</sup> *Id.* at p. 15.

<sup>168</sup> *Id.* at p. 16.

<sup>169</sup> *Id.* at p. 19.

<sup>170</sup> *Id.* at pp. 24-25.

<sup>171</sup> *Rollo*, Vol. IV, pp. 267-322.

<sup>172</sup> *Id.* at pp. 326-401.

<sup>173</sup> *Id.* at pp. 501-502.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> *Rollo*, Vol. V, pp. 13-43.

<sup>177</sup> *Ibid.*

<sup>178</sup> *Id.* at p. 20.

<sup>179</sup> *Id.* at pp. 20-24.

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the payment to Philcare, the Addendum was entered into with authority from the Board of PSC.<sup>180</sup> Second, the decision of the current PSC Board to release payment is an implied ratification of the contract according to accused Angping.<sup>181</sup> Third, Atty. Vega, Head of the PSC's Legal Affairs Office, testified that they treated the Addendum as part of the Contract which was already allowed by the PSC Board and that they would not have prepared the Addendum without any approval.<sup>182</sup>

As regards the supposed lack of public bidding, accused Angping emphasized on the testimony of Atty. Vega that they did not see the need to conduct a bidding when the Addendum was entered into considering that the price of the Original Contract and the Addendum is the same, save for the difference due to the new Wage Order.<sup>183</sup> Accused Angping likewise explained that the absence of any bidding was not because of accused Angping's instruction but was due to the opinion of PSC's Legal Affairs Office.<sup>184</sup> In sum, accused Angping allegedly relied on Atty. Vega's representation that the hiring of additional janitorial manpower can be done through the execution of an Addendum without the need of any bidding.<sup>185</sup>

Accused Angping also points out that the execution of the Addendum was not the result of a clear inclination to favour one person but instead was an act of compliance with paragraph 30 of the Original Contract of Service, which reads: "30. However, such number may be increased at anytime at the option of the COMMISSION depending on its operational needs, upon execution of an addendum to the foregoing contract."<sup>186</sup> He added that the execution of the Addendum was based on the requests made by various sports facilities of the PSC.<sup>187</sup>

Accused Angping also negates the attendance of any gross inexcusable negligence on his part. He claims that the fact that he relied on the expertise of their legal department in preparing and making sure that the Addendum was legally in order cannot be interpreted as an act of indifference but rather an act of diligence in ensuring that the same was prepared in accordance with law.<sup>188</sup>

Accused Angping contends further that the prosecution failed to prove beyond reasonable doubt that the execution of the Addendum

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<sup>180</sup> *Id.* at p. 22.

<sup>181</sup> *Id.* at p. 23.

<sup>182</sup> *Ibid.*

<sup>183</sup> *Id.* at pp. 24-25.

<sup>184</sup> *Id.* at p. 27.

<sup>185</sup> *Ibid.*

<sup>186</sup> *Id.* at pp. 28-29.

<sup>187</sup> *Id.* at p. 41.

<sup>188</sup> *Id.* at pp. 30-32.

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caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference.<sup>189</sup> The prosecution allegedly failed to prove that the payment to Philcare was improper or irregular to the prejudice of the government.<sup>190</sup> Accused Angping pointed out that Commissioner Andrada and Chairman Garcia admitted that Philcare actually rendered the services as stated in the Addendum, that Philcare was paid because their Affairs Office advised them to do so, and that payments made passed through audit and were allowed by the COA.<sup>191</sup>

The argument that the government suffered undue injury because it was deprived of the opportunity to obtain the lowest calculated bid cannot be sustained according to accused Angping since this is merely speculative.<sup>192</sup> In contrast, the government was not deprived of the said opportunity as the price of the Addendum was based on the Original Contract, which was already a result of a public bidding, except for the increase due to the application of Wage Order No. 13.<sup>193</sup>

Citing *Arias vs. Sandiganbayan*,<sup>194</sup> accused Angping asserts that 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.<sup>195</sup> Thus, accused Angping claims that he is allowed to rely on the opinion of the PSC's Legal Affairs Office, the one that prepared the Addendum and opined that public bidding is not necessary.<sup>196</sup> Accused Angping added that detailed legal technicalities such as those provided in R.A. No. 9184 are not all too familiar to a layman.<sup>197</sup> The act of asking legal experts for advice prior to the signing of the subject Addendum allegedly shows the due diligence and care exercised by accused Angping.<sup>198</sup>

Lastly, accused Angping argues that no concrete proof was offered by the prosecution to prove conspiracy between him and accused Montanes, other than the fact that both of them are the signatories of the Addendum.<sup>199</sup> Accused Angping also testified that he did not know accused Montanes until the filing of the case.<sup>200</sup>

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<sup>189</sup> *Id.* at p. 32.

<sup>190</sup> *Id.* at p. 33.

<sup>191</sup> *Id.* at pp. 33-34.

<sup>192</sup> *Id.* at p. 33.

<sup>193</sup> *Id.* at p. pp. 34-35.

<sup>194</sup> G.R. No. 81563, 19 December 1989.

<sup>195</sup> *Rollo*, Vol. V, p. 36.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> *Id.* at p. 37.

<sup>200</sup> *Ibid.*



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*Memorandum for Accused Montanes*<sup>201</sup>

In his Memorandum dated 07 July 2018<sup>202</sup>, accused Montanes asserts that he and accused Angping are not guilty of violation of Section 3(e) of R.A. No. 3019.<sup>203</sup>

Accused Montanes argues that accused Angping could not have acted with manifest partiality in awarding the Addendum to Philcare because the said Addendum may only be entered into with the latter and no other, being the then incumbent janitorial service provider under the Original Contract.<sup>204</sup> Thus, Philcare was not given any preference or advantage when PSC through accused Angping signed the Addendum.<sup>205</sup>

According to accused Montanes, there is likewise no evident bad faith on the part of accused Angping because the Addendum is based on paragraph 30 of the Original Contract and upon the legal recommendation of PSC's Head of Legal Affairs Office.<sup>206</sup>

Accused Montanes further contends that accused Angping was not guilty of gross inexcusable negligence.<sup>207</sup> Accused Angping's act of consulting with the senior officials of the PSC including the Head of the PSC's Legal Office before approving the addendum contract negates gross inexcusable negligence.<sup>208</sup> Accused Angping's directive to the Legal Affairs Office to study the matter of procuring additional manpower, and his reliance on the assurance of Atty. Paul Vega on the validity, interpretation and application of paragraph 30 of the Original Contract completely negates bad faith and gross inexcusable negligence.<sup>209</sup> Paragraph 30 did not provide for the alleged limit of 25% and merely stated that the additional number of manpower personnel may be hired through an addendum depending upon PCS's needs.<sup>210</sup>

There is likewise no unwarranted benefit given to Philcare according to accused Montanes since the payment for the additional manpower under the Addendum was not found irregular and no notice

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<sup>201</sup> *Id.* at pp. 45-69.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Id.* at p. 51.

<sup>204</sup> *Id.* at p. 52.

<sup>205</sup> *Ibid.*


<sup>206</sup> *Id.* at p. 53.

<sup>207</sup> *Id.* at p. 54.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Id.* at p. 56.

<sup>210</sup> *Id.* at pp. 56-57.

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of disallowance was issued by COA.<sup>211</sup> He added that the Addendum cannot be said to have deprived the government of the benefit of a public bidding since the price and other terms were based on the Original Contract that has undergone public bidding.<sup>212</sup>

Accused Montanes also argues that the prosecution failed to prove conspiracy.<sup>213</sup> No evidence was adduced showing conspiracy according to accused Montanes.<sup>214</sup>

Anent the alleged lack of Board Resolution, accused Montanes contends that it is no longer for him to question or inquire whether accused Angping was authorized by the Board.<sup>215</sup> Besides, the prosecution allegedly failed to prove that a new board resolution was still necessary for the Addendum considering that a prior authorization was already issued for the Original Contract and the Addendum was merely an extension of the original contract.<sup>216</sup> Accused Montanes added that there is a presumption that accused Angping was authorized to execute the Addendum.<sup>217</sup>

*Memorandum for the Prosecution*

The prosecution failed to file its Memorandum within the period given by the Court in its Resolution dated 07 May 2018.<sup>218</sup>

**ISSUE**

As earlier stated, the issue for resolution by the Court is whether or not the accused are liable for violation of Section 3(e) of R.A. No. 3019, as amended.

**OUR RULING**

The accused are charged with violation of Section 3(e) of R.A. No. 3019. To be convicted under the said provision, the following elements must be established:

- (1) That the accused are public officers or private persons charged in conspiracy with them;

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<sup>211</sup> *Id.* at p. 59.  
<sup>212</sup> *Id.* at p. 60.  
<sup>213</sup> *Id.* at pp. 63-64.  
<sup>214</sup> *Id.* at pp. 63.  
<sup>215</sup> *Id.* at p. 66.  
<sup>216</sup> *Id.* at p. 67.  
<sup>217</sup> *Id.* at p. 68.  
<sup>218</sup> *Rollo*, Vol. IV, pp. 501-502.

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- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.<sup>219</sup>

Thus, we evaluate the case on the basis of the foregoing.

**(1) Accused Angping was a public officer discharging his administrative / official functions**

The Court finds it no longer necessary to discuss at length the first element as it was not disputed, having been stipulated by the parties during pre-trial that during the material time and date alleged in the Information, accused Angping was the Chairman of the PSC, and thus a public officer discharging his administrative/official functions. Accused Montanes, on the other hand, is a private person charged in conspiracy with accused Angping. There is, thus, no dispute that the first element of the offense is present.

**(2) Accused Angping committed a prohibited act during the performance of his official duties or in relation to his public position**

*No competitive public bidding was conducted*

The Government Procurement Reform Act explicitly enjoins that all procurement shall be done through competitive public bidding, except that, whenever justified by the conditions provided in R.A. No. 9184, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement: (a) limited source bidding; (b) direct contracting; (c) repeat order; (d) shopping; and (e) negotiated procurement.<sup>220</sup>

<sup>219</sup> *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.

<sup>220</sup> Section 10 in relation to Section 48 of R.A. No. 9184, which states:

SEC. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.



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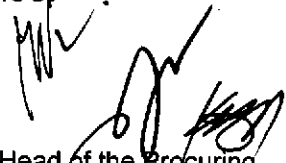
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The Supreme Court, in *Philippine Sports Commission vs. Dear John Services, Inc.*,<sup>221</sup> discussed the importance of a public bidding in government procurements, to wit:

“Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.”

The fact that the Addendum did not undergo the process of public bidding was never disputed. The testimony of Atty. Vega that no public bidding was conducted was never refuted by the defense.<sup>222</sup>



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SEC. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

(a) Limited Source Bidding, otherwise known as Selective Bidding – a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of preselected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

(b) Direct Contracting, otherwise known as Single Source Procurement – a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

(c) Repeat Order – a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) Shopping – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) Negotiated Procurement – a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

<sup>221</sup> G.R. No. 183260, 04 July 2012.

<sup>222</sup> TSN, dated 18 February 2016, at pp. 9-10.

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For the subject Addendum to be valid even without public bidding, the same should have complied with the requirements on repeat order, which is defined as a method of procurement that involves a direct procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through competitive bidding.<sup>223</sup> Section 51 of R.A. No. 9184 sets out the requirements for a valid repeat order, as follows:

“SEC. 51. Repeat Order. – When provided for in the Annual Procurement Plan, Repeat Order may be allowed wherein the Procuring Entity directly procures Goods from the previous winning bidder whenever there arises a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to post-qualification process prescribed in the Bidding Documents and provided all the following conditions are present:

(a) The unit price must be equal to or lower than that provided in the original contract;

(b) The repeat order does not result in splitting of requisitions or purchase orders;

(c) Except in special circumstances defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract; and,

(d) The repeat order **shall not exceed twenty-five percent (25%) of the quantity of each item of the original contract.**”(Emphasis supplied)

The Addendum in this case exceeded the 25% threshold requirement. From the original eighty-two (82) janitorial personnel under the Original Contract, an additional eighty (80) janitorial personnel were procured through the Addendum, which is equivalent to a 97% increase – a clear violation of the law. Accused Angping thus violated the Government Procurement Reform Act when he executed the subject Addendum for the procurement of the additional janitorial personnel without undergoing a competitive public bidding.

During his testimony, Atty. Vega explained that since the Addendum is but a mere part of the Original Contract that has already

<sup>223</sup> Section 48 (c), R.A. No. 9184.

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undergone public bidding, and considering that the price or rate are the same for both, the PSC's Legal Affairs Office honestly believed that a public bidding was no longer necessary. The authority to enter into an Addendum was allegedly derived from paragraph 30 of the Original Contract authorizing the PSC to increase the number of janitorial personnel depending on its operational needs, upon execution of an addendum to the contract.

Atty. Vega's recommendation to accused Angping that the Addendum can be executed without the need of any bidding is misplaced. The Original Contract and the Addendum having the same unit price is only one of the requirements for a valid repeat order. The increase shall also not exceed 25% of the quantity of each item of the original contract. The Addendum materially failed in this wise.

The argument that the Addendum did not undergo public bidding because the same is already authorized under paragraph 30 of the Original Contract likewise holds no water. There is nothing in paragraph 30 of the Original Contract that authorizes PSC to execute an addendum without conducting a competitive public bidding.

Basic is the doctrine that laws are deemed incorporated in each and every contract.<sup>224</sup> Thus, even if the Original Contract explicitly say so, the provisions of R.A. No. 9184 will still take precedence. The provision authorizing the PSC to increase the number of janitorial personnel upon execution of an addendum is subject to the requirement of a public bidding provided under R.A. No. 9184. Accused Angping clearly violated this requirement.

*The alleged lack of Board authorization was not proven beyond reasonable doubt*

The prosecution alleges that accused executed the subject Addendum without authority from the PSC Board. PSC is a body corporate created under R.A. No. 6847 or the Philippine Sports Commission Act. The power to enter into contracts is lodged to the Commission as a collegial body and not to the Chairman alone.<sup>225</sup>

To prove that no authorization was obtained from the PSC Board, the prosecution presented the PSC Board Secretary Certification issued on 21 May 2014<sup>226</sup> stating that "no board resolution or any other related files are found or existing in the record of the Board granting

<sup>224</sup> *Ulo sa Nayon, Inc. and/or Philippine Village Hotel, Inc. vs. Nayong Pilipino Foundation, G.R. No. 170923, 20 January 2009.*

<sup>225</sup> Section 11, R.A. No. 6847.

<sup>226</sup> Exhibit "E" for the prosecution.