



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-16-CRM-0266

For: Violation of Section 3(e) of
Republic Act (R.A.) No. 3019

-versus-

PRESENT:

**EVELYN V. GUERRERO,
LOURDES Z. SANTIAGO,
JULIETA M. LOZANO,
MERVIN IAN D.
TANQUINTIC, ALVIN JOHN
D. PERATER, MALONE B.
AGUDELO, and ANTHONY I.
HERNANDEZ,**

FERNANDEZ, SJ, J.,¹ Chairperson
MIRANDA, J, &
MUSNGI, J.²

Promulgated:

September 27, 2019 *[Signature]*

Accused,

X-----X

DECISION

MIRANDA, J.:

It is a sound principle of justice and public policy that persons shall have free resort to the courts for redress of wrong and vindication of their right. This is not to undermine our previous ruling that the right to institute criminal prosecutions has its metes and bounds and cannot be exercised maliciously and in bad faith to the detriment and harassment of a person who, without cause, is pestered, inconvenienced, and rendered cash-strapped inasmuch as such suits where liberty is at stake, compel an accused to hire a lawyer and incur other expenses for his defense.³

¹ J. Ponferrada, Chairperson of the 6th Division when the present incident was submitted for resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

² Special Member in view of the vacancy in the Sixth Division when the present incident was submitted for resolution (As per Administrative Order No. 124-2017 dated April 4, 2017).

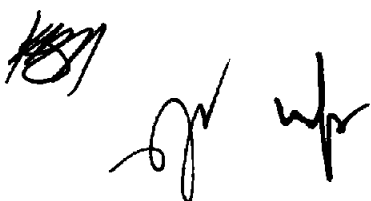
³ *Martires v. Cokieng and Cokieng*, G.R. No. 150192, February 17, 2005.

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While a losing bidder may seek redress before the courts to vindicate his rights, this Court will not allow the filing of baseless charges against the winning bidder and members of the Bids and Awards Committee and Technical Working Group, as in this case.

In an Information filed on March 31, 2016, the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), charged accused Department of Budget and Management (DBM) Undersecretary Evelyn Victorio Guerrero (Guerrero), Department of Finance (DOF) Director IV Lourdes Zabat Santiago (Santiago), Procurement Management Officer V Julieta Manuel Lozano (Lozano), Procurement Management Officer III Mervin Ian De Jesus Tanquintic (Tanquintic), Administrative Assistant III Alvin John Dykee Perater (Perater), Philippine Navy Lieutenant Malone Barilea Agudelo (Agudelo), and JOAVI Philippines Corporation (JOAVI) Managing Director Anthony Iya Hernandez (Hernandez) with violation of Section 3(e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The information states:

That on 25 August 2010, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers of the Department of Budget and Management – Procurement Service (DBM-PS), namely: EVELYN VICTORIO GUERRERO and LOURDES ZABAT SANTIAGO, being the Chairperson and Member, respectively, of the Inter-Agency Bids and Awards Committee (IABAC), MALONE BARILEA AGUDELO, JULIETA MANUEL LOZANO, MERVIN IAN DE JESUS TANQUINTIC, ALVIN JOHN DYKEE PERATER, being Members of the IABAC-Technical Working Group (TWG), committing the said offense in relation to their office and taking advantage thereof, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring with one another and with ANTHONY IYA HERNANDEZ, Managing Director of JOAVI Philippines Corporation (JOAVI), did then and there, willfully, unlawfully and criminally, give unwarranted benefits, advantage and preference to JOAVI by preparing and issuing a *Technical Evaluation Report* and *Post-Evaluation Report* in relation to the public bidding for the supply and delivery of seven inflatable rubber boats for the Philippine Navy, showing that *Aqua Sport Hypalon Rubber Boat 470* – the rubber boat offered by JOAVI – has complied with the technical specifications prescribed by the DBM-PS, when in fact, it has not, since *Aqua Sport Hypalon Rubber Boat 470* was not equipped with any intercommunication valves, over-pressure valves, and roll-up floor, which specifications were expressly required by DBM-PS; and JOAVI merely copied the technical specifications of *Zodiac FC470 Futura Commando Inflatable Rubber Boat*, manufactured by Zodiac International and exclusively distributed in the Philippines by Geneve S.A. Phils., Inc.; resulting in the award of the supply contract to JOAVI after it was declared the Lowest Calculated Responsive Bidder,



thereby causing undue injury to the Government and Zodiac International in the amount of PhP3,465,000.00.

CONTRARY TO LAW.⁴

On May 10, 2016, the Court found probable cause for the issuance of a warrant of arrest against all of the accused.⁵

Perater, Lozano, Tanquintic, Guerrero, Santiago, Agudelo, and Hernandez each posted bail which the Court approved.⁶

On June 6, 2016, Tanquintic filed a Motion to Quash Information of even date on the ground that the facts charged do not constitute an offense.⁷ The Court denied the motion to quash information in its Resolution dated August 11, 2016.⁸

On June 9, 2016, Perater, Lozano, Guerrero, Santiago, Agudelo, and Hernandez were arraigned and pleaded "not guilty" to the charge against them. On the other hand, Tanquintic was conditionally arraigned and pleaded "not guilty" to the charge against him.⁹

In the Pre-Trial Order dated September 7, 2016,¹⁰ the parties stipulated on the following:

1. Identities of all the accused as the same persons charged in the information, and their respective public positions at the time material to the allegations, with the qualification that Guerrero and Santiago had already retired from Government;
2. Guerrero was then Chairperson of the Inter-Agency Bids and Awards Committee (IABAC) of the Department of Budget and Management-Procurement Service (DBM-PS) at the time material to this case;

⁴ Information dated March 31, 2016, Records, vol. 1, pp. 1-4.

⁵ Minutes of the Proceedings held on May 10, 2016, Records, vol. 3, p. 6.

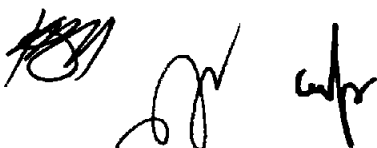
⁶ Certifications all dated May 10, 2016, Records, vol. 3, p. 10 (Perater); Records, vol. 3, p. 13 (Lozano); Records, vol. 3, p. 16 (Tanquintic); Records, vol. 3, p. 19 (Guerrero); Records, vol. 3, p. 22 (Santiago); Minutes of the Proceedings held on May 10, 2016, Records, vol. 3, p. 27; Certification dated May 12, 2016, Records, vol. 3, p. 30 (Agudelo); Minutes of the Proceedings held on May 13, 2016, Records, vol. 3, p. 33; Certification dated May 19, 2016, Records, vol. 3, p. 45 (Hernandez); Minutes of the Proceedings held on May 19, 2016, Records, vol. 3, p. 43.

⁷ Motion to Quash Information dated June 6, 2016, Records, vol. III, pp. 64-80.

⁸ Resolution dated August 11, 2016, Records, vol. 3, pp. 190-196.

⁹ Certificates of Arraignment all dated June 9, 2016, Records, vol. 3, p. 93 (Lozano); Records, vol. 3, p. 94 (Santiago); Records, vol. 3, p. 95 (Agudelo); Records, vol. 3, p. 96 (Perater); Records, vol. 3, p. 97 (Hernandez); Records, vol. 3, p. 98 (Guerrero); Records, vol. 3, p. 99 (Tanquintic); Order dated June 9, 2016, Records, vol. 3, p. 102-103; Order dated June 9, 2016, Records, vol. 3, p. 104.

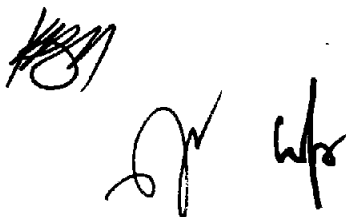
¹⁰ Records, vol. III, pp. 274-298.



3. Santiago was a member of the IABAC of the DBM-PS at the time material to this case;
4. Agudelo, Lozano, Tanquintic, and Perater were members of the IABAC Technical Working Group (TWG) at the time material to this case;
5. Agudelo was the representative of the Philippine Navy in the IABAC TWG at the time material to this case;
6. Hernandez was the Managing Director of JOAVI at the time material to this case;
7. The Court had jurisdiction over the case and person of Hernandez;
8. The approved budget for the supply and delivery of 7 inflatable rubber boats was Six Million Two Hundred Thirty Thousand Pesos (Php6,230,000.00);
9. Geneve S.A. Philippines Incorporated (Geneve) participated in Public Bidding No. 10-049 for the supply and delivery of 7 inflatable rubber boats for the Philippine Navy;
10. Geneve's bid was Five Million Four Hundred Ninety-Five Thousand Pesos (Php5,495,000.00);
11. JOAVI's bid was Three Million Four Hundred Sixty-Five Thousand Pesos (Php3,465,000.00);
12. Geneve was declared ineligible to bid in Public Bidding No. 10-049 on the ground that its bid security, in the form of a surety bond, had no validity period;
13. JOAVI's bid was the lowest calculated bid; and
14. The contract for the supply and delivery of 7 inflatable rubber boats was awarded to JOAVI thru negotiated procurement.

After taking into consideration the issues proposed by the parties, the Court shall resolve the following:

1. Whether or not all of the accused are guilty of violating Section 3(e) of R.A. No. 3019;
2. Whether or not the procedure laid down in R.A. No. 3019 was followed;
3. Whether or not Tanquintic is liable for violating intellectual property rights of Geneve;
4. Whether or not Tanquintic performed his duty to inspect the bidder's literature using a Non-Discretionary Pass/Fail Method during post-qualification; and
5. Whether or not all of the accused acted in conspiracy to commit the crime.

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EVIDENCE FOR THE PROSECUTION

In support of its accusation against all the accused for violation of Section 3(e) of R.A. No. 3019, the Prosecution presented two (2) witnesses, namely: 1) Senen Israel Arabaca (Arabaca); and 2) Captain Rommel Jason Ladines Galang (Captain Galang).

Arabaca testified that:

1. He represented Geneve, a family-owned corporation, which was established in 1998;¹¹
2. As Marketing Manager, he oversaw the marketing operations of Geneve and marketed its products, including rubber boats, to the Philippine Government and some private entities;¹²
3. Zodiac International (Zodiac) was the manufacturer of the products of Geneve. Geneve was the exclusive distributor of the products of Zodiac at the time material to this case pursuant to its Exclusive Distributorship Certification dated March 18, 2009 (Exhibit "Q") and authenticated by the Philippine Embassy, Consular Section, Paris, France (Exhibit "P");¹³
4. At the time of his testimony, however, Geneve was no longer the exclusive distributor of the products of Zodiac;¹⁴
5. There were 3 biddings for the supply and delivery of 7 inflatable rubber boats. He participated in 2 biddings only, namely the second public bidding and the negotiated procurement;¹⁵
6. In 2010, he bought bidding documents for the supply and delivery of 7 inflatable rubber boats for the Philippine Navy in Public Bidding No. 10-49 (Exhibit "B") and identified them during his testimony;¹⁶
7. There were 4 bidders in Public Bidding No. 10-49 and 2 bidders in Negotiated Procurement-Request for Quotation No. 10-30 (Exhibit "C") for the supply and delivery of 7 inflatable rubber boats;¹⁷
8. Public Bidding No. 10-49 failed because Geneve and JOAVI did not comply with the technical specifications of the inflatable

¹¹ TSN dated November 8, 2016, pp.11-12.

¹² *Id.*, p. 12.

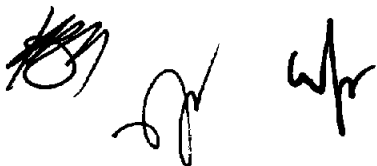
¹³ *Id.*, pp. 22-24.

¹⁴ *Id.*, pp. 84-85.

¹⁵ TSN dated November 9, 2016, pp. 52-53.

¹⁶ TSN dated November 8, 2016, pp. 12-14, 67-68.

¹⁷ *Id.*, pp. 17, 79-81.



- rubber boat. Stone Works was disqualified for late submission of its bid while Roof System submitted a bid but was disqualified;¹⁸
9. In Negotiated Procurement-Request for Quotation No. 10-30, Geneve and JOAVI participated. JOAVI had the lowest calculated bid which was posted at the bulletin board after the negotiated procurement;¹⁹
 10. He is familiar with R.A. No. 9184 because he participated in over 50 public biddings for at least 25 years where Geneve usually earned 25% of the contract. The latest public bidding Geneve won was an award by the Philippine National Police (PNP) of 60 boats;²⁰
 11. Before the publication of the procurement of rubber boats, nobody from the Philippine Navy or the Special Warfare Group (SWAG), the end-user of the inflatable rubber boats, talked to him to discuss the product that he was distributing;²¹
 12. During the pre-bid conference, the IABAC discussed the technical specifications of the rubber boat including the flooring, over-pressure valve, and inter-communication inflation valve;²²
 13. He did not raise the possible infringement by JOAVI of Zodiac's patent. Zodiac had proprietary ownership over the Zodiac FC 470 Futura Commando Rubber Boat but he did not file any action for patent infringement against JOAVI;²³
 14. During the negotiated procurement, Geneve complied with all the technical specifications of the IABAC for the 7 inflatable rubber boats, including the inter-communication valve, over-pressure valve, and roll-up floor (Exhibit "C-1");²⁴
 15. Geneve offered the Zodiac FC 470 Futura Commando Rubber Boat, a product of Zodiac, in Public Bidding No. 10-49 (second failed public bidding) and in the negotiated procurement. The brochure did not state that the said rubber boat was automatically inflatable but he (Arabaca) insisted that it was automatically inflatable because of the inter-communication inflation valve;²⁵
 16. The technical specification of the IABAC for the D-rings fitting of the rubber boat was at least 16. On the other hand, the bid submitted by Geneve specified only 13+1 or 14. Geneve

¹⁸ TSN dated November 8, 2016, pp. 14-17, 78-81

¹⁹ *Id.*, p. 17.

²⁰ *Id.*, pp. 65-66; TSN dated November 9, 2016, pp. 17-18, 28-29.

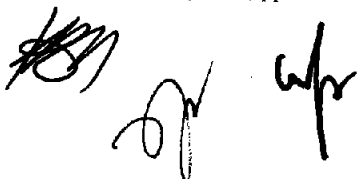
²¹ TSN dated November 9, 2016, p. 49.

²² TSN dated November 8, 2016, pp. 70-71.

²³ *Id.*, pp. 72-73.

²⁴ *Id.*, pp. 25-27, 37-38.

²⁵ TSN dated November 9, 2016, pp. 36-38



- complied with the technical specification of at least 16 D-rings because the offer can be higher or lower than 16;²⁶
17. The technical specification of the IABAC for the bottom fitting of the rubber boat was at least 1,670 decedents. The bid submitted by Geneve provided for only 940 decedents;²⁷
 18. The inter-communication inflation valve is covered by an International Application for Patent of Zodiac (Exhibit "T-1") which was attached to the letter dated September 28, 2011 (Exhibit "T") of Mark Lavorata (Lavorata) to PNP Directorate for Logistics Police Director Jorge Q. Piano (P/Dir. Piano). He had no access to the results of the patent application;²⁸
 19. He printed the brochure of the Aquasports Hypalon Rubber Boat 470 (Exhibit "V-1-a") from the website of Aquasports Boats & Yachts Co., Ltd. (Aquasports). The technical specifications in the said brochure were different from the technical specifications of the Aquasports Hypalon Rubber Boat 470 mentioned in the brochure submitted by JOAVI to the IABAC (Exhibit "N");²⁹
 20. The technical specifications of the rubber boat pertaining to flooring, relief pressure valve, and inter-communication inflation valve were included in the brochure of Aquasports Hypalon Rubber Boat 470 (Exhibit "V-1-a") as options;³⁰
 21. Geneve offered the Zodiac FC 470 Futura Commando Rubber Boat with a relief pressure valve which was different from the technical specification of the IABAC that required an over-pressure relief valve. A pressure valve is the valve block while the over-pressure valve is the valve that automatically reduced excess air from the air chamber;³¹
 22. A relief pressure valve is different from an inter-communication valve. An inter-communication valve is a valve where you can put the air cylinder for automatic inflation;³²
 23. Geneve offered a rubber boat with an aluminum floor which was different from the technical specification of the IABAC that required an aluminum roll-up floor. An aluminum floor is a rigid floor while an aluminum roll-up floor could be folded and roll up, like a handwoven mat;³³

²⁶ TSN dated November 8, 2016, pp. 86-89.

²⁷ TSN dated November 9, 2016, pp. 7-8.

²⁸ TSN dated November 8, 2016, pp. 32-34.

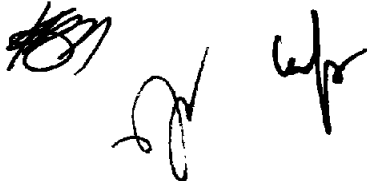
²⁹ *Id.*, pp. 34-37, 72.

³⁰ *Id.*, pp. 75-78.

³¹ TSN dated November 9, 2016, p. 51.

³² *Id.*, p. 52.

³³ *Id.*, p. 50.



24. The Aquasports Hypalon Rubber Boat 470 had no engine and did not comply with the required technical specifications;³⁴
25. The undated Technical Evaluation Report (Exhibit "F") was erroneous because JOAVI failed to comply with the technical specifications requiring an inter-communication inflation valve, over-pressure valve, and roll-up floor. These specifications were all patented to Zodiac;³⁵
26. The undated Technical Evaluation Report (Exhibit "F") was prepared by Tanquintic (Exhibit "F-1") and Agudelo (Exhibit "F-2"), recommended for approval by Lozano (Exhibit "F-3"), and approved by Santiago (Exhibit "F-4") and Guerrero (Exhibit "F-5");³⁶
27. JOAVI submitted its statement of compliance with the technical specifications in its bid offer (Exhibit "J");³⁷
28. The undated Post Qualification Report (Exhibit "G") was erroneous because it stated that JOAVI complied with the required technical specifications when, in fact, it did not. He could not, however, point out the alleged errors in the said document;³⁸
29. The undated Post Qualification Report (Exhibit "G") was prepared by Perater (Exhibit "G-1") and Agudelo (Exhibit "G-3"), recommended for approval by Lozano (Exhibit "G-2"), and approved by Santiago (Exhibit "G-4") and Guerrero (Exhibit "G-5");³⁹
30. In the undated Post Qualification Report (Exhibit "G"), the manufacturer or supplier of JOAVI had an ISO 6185 Certification;⁴⁰
31. The letter dated September 28, 2011 (Exhibit "T") of Lavorata was addressed and sent to P/Dir. Piano after the negotiated procurement. The letter was not connected to the subject matter of this case but the application for patent pertaining to an "automatically inflatable boat" was attached thereto;⁴¹
32. The bid of Geneve was Two Million Pesos (Php2,000,000.00) higher than JOAVI's;⁴²

³⁴ TSN dated November 9, 2016, pp. 39-40.

³⁵ TSN dated November 8, 2016, pp. 39-43.

³⁶ *Id.*, pp. 52-53.

³⁷ *Id.*, pp. 62-64.

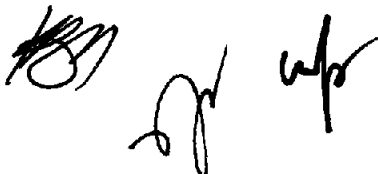
³⁸ *Id.*, pp. 53-59.

³⁹ *Id.*, pp. 60-61.

⁴⁰ TSN dated November 9, 2016, p. 41.

⁴¹ *Id.*, pp. 8-10.

⁴² *Id.*, p. 16.



33. During the negotiated procurement, JOAVI's bid was declared by the IABAC as the lowest calculated bid. After such declaration, Arabaca no longer participated in the proceedings and in the making of the technical evaluation report and post-qualification report;⁴³
34. Bidders would lose a public bidding if they did not comply with the technical specifications;⁴⁴
35. Bidders would substantially copy the technical specifications provided by the procuring agency, otherwise, the bid would be denied;⁴⁵
36. In the technical evaluation, the TWG evaluated whether the bidder's technical specifications complied or conformed with the technical specifications required by the IABAC. If the technical specifications matched, the TWG had no option but to declare the bid compliant;⁴⁶
37. Based on documents and the technical specifications provided by the IABAC, Geneve and JOAVI complied with said technical specifications;⁴⁷
38. In some public biddings, the requirements of the procuring agency were not readily available in the market, especially the rubber boat subject of the bidding. To comply with the technical specifications, the product would be custom-built;⁴⁸
39. The procuring entity, not the bidder or supplier, provided the technical specifications based on its need and budget;⁴⁹
40. The IABAC required a military model used in the North Atlantic Fleet Organization because the technical specifications of the rubber boat required it to inflate automatically. He could not, however, find this requirement in the bidding documents;⁵⁰
41. Item F (Standard Equipment) of the technical specifications of the rubber boat required a foot blower and hose for inflation and deflation, respectively. A foot blower is used for manual inflation;⁵¹
42. JOAVI copied the rubber boat's technical specifications in the bid of Geneve because all offers of the bidders were previously shown to everyone;⁵²

⁴³ TSN dated November 9, 2016, p. 24.

⁴⁴ *Id.*, p. 29.

⁴⁵ *Id.*, p. 29.

⁴⁶ *Id.*, pp. 30-34.

⁴⁷ *Id.*, pp. 22-23.

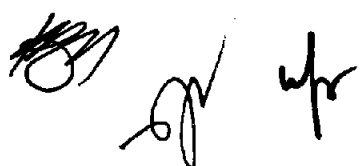
⁴⁸ *Id.*, pp. 34-35.

⁴⁹ *Id.*, pp. 42-43.

⁵⁰ *Id.*, pp. 10-13.

⁵¹ *Id.*, p. 13.

⁵² *Id.*, pp. 21-22.



43. JOAVI did not deliver the rubber boats;⁵³
44. He did not notice any irregularities during the bid opening of the second public bidding;⁵⁴
45. He sought a reconsideration of the disqualification of Geneve but he was later informed by the Undersecretary (Guerrero) that it was turned down;⁵⁵
46. He could not recall whether he protested the award of the contract to JOAVI or called the attention of the IABAC on the alleged infringement of Zodiac's patent;⁵⁶
47. Instead of seeking a reconsideration or protesting the award to JOAVI of the supply and delivery of 7 inflatable rubber boats, he filed a Complaint-Affidavit dated June 21, 2011 (Exhibit "V") and Supplemental Complaint-Affidavit dated November 17, 2011 (Exhibit "W") before the Office of the Ombudsman;⁵⁷
48. In the said complaints, he stated that JOAVI merely copied the major components in the technical specifications of Zodiac, such as the inter-communication inflation valve, over-pressure valve, and roll-up floor, among others, and the IABAC and TWG members made erroneous and false reports during the post-qualification;⁵⁸ and
49. Upon his instructions, the Operations Manager of Geneve communicated with Tony Wong, General Manager of Aquasports in China, through email and tried to order 20 rigid inflatable boats with inter-communication inflatable valve. Tony Wong responded that Aquasports could not manufacture a boat with an inter-communication valve as this was being patented by Zodiac.⁵⁹

Captain Galang testified that:

1. He was the Commander of the Naval Special Operations Group, the counterpart of the United States Navy Seals. This group performed counter-terrorist activities, maritime interdiction operations, and other special operations required by the Philippine Navy;⁶⁰

⁵³ TSN dated November 9, 2016, pp. 78-79.

⁵⁴ TSN dated November 8, 2016, p. 81.

⁵⁵ *Id.*, pp. 81-82.

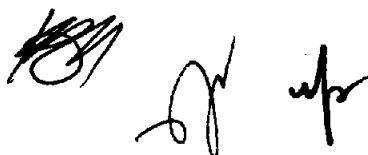
⁵⁶ *Id.*, pp. 82-84.

⁵⁷ TSN dated November 8, 2016, pp. 18-22; TSN dated November 9, 2016, p. 18.

⁵⁸ TSN dated November 8, 2016, pp. 28-30.

⁵⁹ TSN dated November 8, 2016, pp. 44-47; TSN dated November 9, 2016, pp. 23-24.

⁶⁰ TSN dated December 5, 2016, p. 11; The Naval Special Operations Group is also called SWAG.



2. As Commander, he prepared personnel for operations, trained them, and equipped them with the necessary equipment and supplies so they could function properly;⁶¹
3. He made several written requests for inflatable rubber boats. This included a letter dated October 19, 2010 (Exhibit "Y" and a common exhibit for the Defense) to the Flag-Officer-in-Command of the Philippine Navy where he requested for 7 inflatable rubber boats;⁶²
4. He specifically requested for the Zodiac Futura FC470 Commando Rubber Boat in his letter dated October 19, 2010 (Exhibit "Y") because it was the best equipment and was preferred by his men in the field. He personally boarded the said rubber boat when he was the Commanding Officer of *BRP Ang Pangulo*. The said rubber boat followed the wave, contour of the sea, and any condition of the sea such that if the waves go up, the rubber boat also goes up then goes down.⁶³
5. He neither encountered nor heard of any rubber boat of Aquasports. He did not know what happened to his request for rubber boats from the time the request was made until he was relieved of his post;⁶⁴
6. He requested for 7 inflatable rubber boats with roll-up aluminum flooring because said roll-up aluminum flooring was the reason why the rubber boat hugged the sea. A roll-up aluminum flooring is not a rigid and one-floor hull. They only looked at the Zodiac rubber boat in connection with the roll-up aluminum flooring;⁶⁵
7. He did not know of the procurement of the subject rubber boats. He did not participate in discussions between the Philippine Navy and the DBM with regard to the rubber boats;⁶⁶ and
8. He does not have any objections if another rubber boat brand is procured as long as it has the same capabilities. It is possible that other boats can provide for their needs.⁶⁷

On December 20, 2016, the Prosecution offered the following exhibits in evidence:⁶⁸

⁶¹ TSN dated December 5, 2016, pp. 11-12.

⁶² *Id.*, pp. 12-16.

⁶³ *Id.*, pp. 18-20, 30-31

⁶⁴ *Id.*, p. 20.

⁶⁵ *Id.*, p. 21.

⁶⁶ *Id.*, pp. 23-24.

⁶⁷ *Id.*, pp. 27-29.

⁶⁸ Formal Offer of Evidence dated December 15, 2016, Records, vol. III, pp. 369-380.

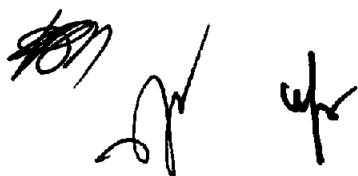


Exhibit	Description
"B"	Certified true copy of Bidding Documents for the Supply and Delivery of Inflatable Rubber Boats for the Philippine Navy (Public Bidding No. 10-49)
"C"	Certified true copy of Bidding Documents for the Supply and Delivery of Inflatable Rubber Boats for the Philippine Navy (Negotiated Procurement-Request for Quotation No. 10-30)
"C-1"	Certified true copy of the Technical Specifications for Negotiated Procurement-Request for Quotation No. 10-30
"D"	Certified true copy of the Bid submitted by JOAVI
"F"	Certified true copy of the undated Technical Evaluation Report of the IABAC relative to the bid of JOAVI in Negotiated Procurement-Request for Quotation No. 10-30
"F-1"	Name and signature of Tanquintic
"F-2"	Name and signature of Agudelo
"F-3"	Name and signature of Lozano
"F-4"	Name and signature of Santiago
"F-5"	Name and signature of Guerrero
"G"	Certified true copy of the undated Bidder's Post Qualification Report of the IABAC relative to the bid of JOAVI in Negotiated Procurement-Request for Quotation No. 10-30
"G-1"	Name and signature of Perater
"G-2"	Name and signature of Lozano
"G-3"	Name and signature of Agudelo
"G-4"	Name and signature of Santiago
"G-5"	Name and signature of Guerrero
"J"	Bidder's Statement of Compliance dated August 17, 2010 of JOAVI
"N"	Certified true copy of the brochure of Aquasports Hypalon Rubber Boat 470 submitted by JOAVI to the IABAC
"O"	Original copy of the brochure of Zodiac FC 470 Futura Commando submitted by Geneve to the IABAC
"P"	Original copy of the Authentication by Maria Josefina V. Ceballos, Consul of the Philippines in Paris, France
"Q"	Original copy of the Exclusive Distributorship Certification between Geneve and Zodiac dated March 18, 2009
"T"	Photocopy of the letter dated September 28, 2011 of Lavorata, General Manager of Zodiac, to P/Dir. Piano (with attachments)

Handwritten signatures and initials, including a large signature on the left and initials 'JP' and 'GR' on the right.

Exhibit	Description
"T-1"	Photocopy of the International Application for Patent of Zodiac published under the Patent Cooperation Treaty with the international publication date of January 6, 2000
"V"	Original copy of the Complaint-Affidavit dated June 21, 2011 of Arabaca filed before the Office of the Ombudsman (with attachments)
"V-1"	Name and signature of Arabaca
"V-1-a"	Original copy of the brochure of Aquasports downloaded by Arabaca from the website of Aquasports Boats & Yachts Co., Ltd.
"W"	Original copy of the Supplemental Complaint-Affidavit dated December 1, 2011 of Arabaca filed before the Office of the Ombudsman
"W-1"	Name and signature of Arabaca
"Y"	Photocopy of the letter dated October 19, 2010 of Naval Special Operations Group Commander Captain Galang
"Y-1" (common exhibit)	Name and signature of Captain Galang

On December 27, 2016, Hernandez filed his Comment/Opposition to the Prosecution's Formal Offer of Evidence dated December 23, 2016.⁶⁹

On January 3, 2017, Guerrero, Santiago, and Lozano filed their Comment on the Prosecution's Formal Offer of Evidence of even date.⁷⁰

On January 9, 2017, Tanquintic filed his Comment (to Prosecution's Formal Offer of Evidence) dated January 3, 2017.⁷¹

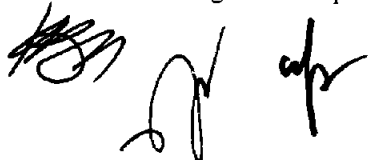
On April 24, 2017, the Court admitted Exhibits "B", "C", "C-1", "D", "F", "F-1 to F-5", "G", "G-1 to G-5", "J", "N", "O", "P", "Q", "V", "V-1", "V-1-a", "W", "W-1", "Y", and "Y-1" of the Prosecution. The Court admitted Exhibits "T" and "T-1" but took note of their provisional marking. The Court also noted that the Prosecution did not offer Exhibits "A", "E", "H", "I", "K", "L", "M", "R", "S", "U", and "X".⁷²

⁶⁹ Comment/Opposition to the Prosecution's Formal Offer of Evidence dated December 23, 2016, Records, vol. III, pp. 381-392.

⁷⁰ Comment on the Prosecution's Formal Offer of Evidence dated January 3, 2017, Records, vol. III, pp. 393-399.

⁷¹ Comment (to Prosecution's Formal Offer of Evidence) dated January 3, 2017, Records, vol. III, pp. 403-408.

⁷² Minutes of the Proceedings held on April 24, 2017, Records, vol. III, pp. 421-422.



On May 15, 2017, Guerrero, Santiago, and Lozano filed a Motion for Leave of Court to File a Demurrer to Evidence dated May 12, 2017.⁷³

On May 16, 2017, Hernandez filed a Manifestation with Respectful Motion for Leave of Court to File a Demurrer to Evidence dated May 15, 2017.⁷⁴

On May 19, 2017, Perater filed a Manifestation and Motion for Leave of Court to File Demurrer to Evidence.⁷⁵ On the same day, accused Agudelo also filed a Motion for Leave of Court to File Demurrer to Evidence.⁷⁶

On May 24, 2017, the Court received Tanquintic's Motion for Leave to File Demurrer to Evidence dated May 17, 2017.⁷⁷

On June 5, 2017, the Prosecution filed its Consolidated Opposition (Re: Motions for Leave of Court to File Demurrer to Evidence) dated June 1, 2017.⁷⁸

On June 20, 2017, the Court denied the motions for leave of court to file demurrer to evidence of all the accused. The Court, however, gave all of the accused ten (10) days within which to file, if they so desire, a demurrer to evidence without prior leave of court subject to the legal consequences of Section 23, Rule 119 of the Rules of Court.⁷⁹

On July 3, 2017, Guerrero, Santiago, and Lozano filed a Demurrer to Evidence.⁸⁰

On July 10, 2017, Hernandez filed a Demurrer to Evidence dated July 7, 2017.⁸¹

⁷³ Motion for Leave of Court to File a Demurrer to Evidence dated May 12, 2017, Records, vol. III, pp. 431-448.

⁷⁴ Manifestation with Respectful Motion for Leave of Court to File a Demurrer to Evidence dated May 15, 2017, Records, vol. III, pp. 451-453.

⁷⁵ Manifestation and Motion for Leave of Court to File Demurrer to Evidence dated May 19, 2017, Records, vol. III, pp. 455-459.

⁷⁶ Motion for Leave of Court to File Demurrer to Evidence dated May 19, 2017, Records, vol. III, pp. 460-465.

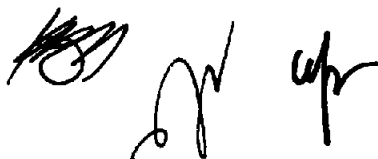
⁷⁷ Motion for Leave to File Demurrer to Evidence dated May 17, 2017, Records, vol. III, pp. 466-469.

⁷⁸ Consolidated Opposition (Re: Motions for Leave to File Demurrer to Evidence) dated June 1, 2017, Records, vol. III, pp. 480-485.

⁷⁹ Resolution dated June 20, 2017, Records, vol. III, pp. 490-492.

⁸⁰ Demurrer to Evidence dated July 3, 2017, Records, vol. IV, pp. 7-57.

⁸¹ Demurrer to Evidence dated July 7, 2017, Records, vol. IV, pp. 59-74.



On August 17, 2017, the Prosecution, through the Office of the Special Prosecutor (OSP), filed its Consolidated Opposition dated August 16, 2017.⁸²

In their demurrer to evidence, accused Guerrero, Santiago, and Lozano allege that: 1) the Prosecution failed to prove conspiracy and all the elements of violation of Section 3(e) of R.A. No 3019 as charged in the information; 2) the documentary evidence submitted by the Prosecution do not prove any of the elements of the crime charged; and 3) the testimonial evidence submitted by the Prosecution is totally weak and proves the baselessness of the criminal indictment of Guerrero, Santiago, and Lozano.

In his demurrer to evidence, Hernandez alleges that: 1) the Prosecution failed to prove conspiracy and establish all the elements of violation of Section 3(e) of R.A. No. 3019; and 2) he adopts and re-pleads the grounds and arguments of Guerrero, Santiago, and Lozano in their demurrer to evidence.

In its consolidated opposition, the Prosecution contends that: 1) all the elements of violation of Section 3(e) of R.A. No. 3019 were proven; and 2) conspiracy between all of the accused was proven.

THE COURT'S RULING

Accused Guerrero, Santiago, Lozano, and Hernandez waived their right to present evidence and submitted the case for decision.

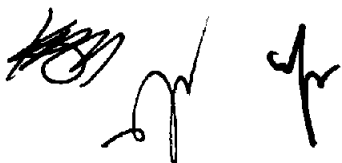
A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law to make out a case or sustain the issue.⁸³ The party filing the demurrer challenges the sufficiency of the Prosecution's evidence. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.⁸⁴ The Court is thus tasked to ascertain if there is competent or sufficient evidence to establish a prima facie case to sustain the indictment or support a verdict of guilt.⁸⁵

⁸² Consolidated Opposition dated August 16, 2017, Records, vol. IV, pp. 80-94.

⁸³ *Singian, Jr. v. Sandiganbayan*, G.R. Nos. 195011-19, September 30, 2013.

⁸⁴ *Tan v. Court of Appeals*, G.R. No. 110715, December 12, 1997.

⁸⁵ *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008.



Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime; and (b) the precise degree of participation therein by the accused.⁸⁶

Section 23, Rule 119 of the Rules of Court provides for the filing of a demurrer to evidence, to wit:

Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.⁸⁷

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In this case, the Court previously denied the motions for leave of court to file demurrer to evidence of accused Guerrero, Santiago, Lozano, Hernandez, Perater, Agudelo, and Tanquintic. Guerrero, Santiago, Lozano, and Hernandez, however, still filed their respective demurrers to evidence without leave of court. They are, thus, deemed to have waived their right to present evidence. Accordingly, this case against them is submitted for decision on the basis of the evidence adduced by the Prosecution.

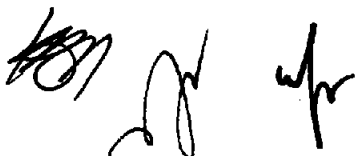
The Prosecution failed to prove that accused Guerrero, Santiago, Lozano, and Hernandez violated Section 3(e) of R.A. No. 3019.

Accused Guerrero, Santiago, Lozano, and Hernandez were charged with violation of Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, which provides:

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:

⁸⁶ *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999.

⁸⁷ Underscoring supplied.



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(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.

The elements of violation of Section 3(e) of R.A. No. 3019 are: 1) the accused must be a public officer discharging administrative, judicial, or official functions, or a private person charged in conspiracy with the public officer; 2) the accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3) the act 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.⁸⁸

The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. To overcome the presumption of innocence, the Prosecution is required to adduce against him nothing less than proof beyond reasonable doubt.⁸⁹ The Prosecution should establish its case with a degree of proof which produces conviction in an unprejudiced mind, with evidence which stands or falls on its merits, and which cannot be allowed to draw strength from the weakness of the evidence of the Defense. Unless it discharges the burden of proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence on his behalf.⁹⁰ He merely has to raise a reasonable doubt and whittle away from the case of the Prosecution. The constitutional presumption of innocence demands no less.⁹¹

With the totality of the Prosecution's evidence now before this Court, We are called upon to appreciate the said evidence and its sufficiency to warrant conviction beyond reasonable doubt.⁹² In the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand.⁹³

⁸⁸ *Consigna v. People*, G.R. Nos. 175750-51, April 2, 2014.

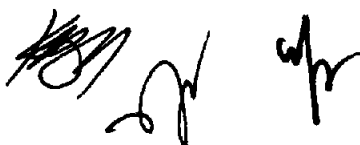
⁸⁹ *People v. Wagas*, G.R. No. 157943, September 4, 2013.

⁹⁰ *Arce v. People, et al.*, G.R. No. 125857, March 20, 2002.

⁹¹ *People v. Tadepa*, G.R. No. 100354, May 26, 1995.

⁹² *People v. Sandiganbayan, et al.*, G.R. No. 164577, July 5, 2010.

⁹³ *People v. Go, et al.*, G.R. No. 191015, August 6, 2014.



After a thorough review of the demurrers to evidence, the consolidated opposition of the Prosecution, the evidence adduced by the Prosecution, and the records of the case, the Court finds the evidence of the Prosecution lacking. Accordingly, the Court **grants** the demurrer to evidence of Guerrero, Santiago and Lozano, and the demurrer to evidence of Hernandez.

First Element: Accused Guerrero, Santiago, Lozano are public officers while accused Hernandez, a private individual, admitted the jurisdiction of the Court over his person.

It is undisputed that accused Guerrero, Santiago, and Lozano admitted and stipulated in the Pre-Trial Order dated September 7, 2016 that they were public officers at the time material to the allegations of this case. Specifically, Guerrero and Santiago were then the Chairperson and Member, respectively, of the IABAC of the DBM-PS while Lozano was a member of the IABAC TWG.⁹⁴ In their capacities as such, they were charged with preparing an undated Technical Evaluation Report (Exhibit "F") and an undated Post-Evaluation Report (Exhibit "G") showing that the Aquasport Hypalon Rubber Boat 470 of JOAVI complied with the required technical specifications when, in fact, it did not as the said rubber boat was not equipped with an inter-communication valve, over-pressure valve, and a roll-up floor.

On the other hand, Hernandez, the Managing Director of JOAVI, admitted the jurisdiction of the Court over the case and over his person. This is clear in the Pre-Trial Order dated September 7, 2016 which Hernandez signed.⁹⁵ Thus, the Court is now left to determine the existence of only the second and third elements of violation of Section 3(e) of R.A. No. 3019.

Second Element: There was no manifest partiality, evident bad faith, and gross inexcusable negligence on the part of accused Guerrero, Santiago, and Lozano.

Violation of Section 3(e) of R.A. No. 3019 may be committed through: 1) manifest partiality; 2) evident bad faith; or 3) gross inexcusable negligence.⁹⁶

⁹⁴ Pre-Trial Order dated September 7, 2016, Records, vol. 3, pp. 274-298.

⁹⁵ *Id.*

⁹⁶ *Alvarez v. People*, G.R. No. 192591, June 29, 2011.



The Information dated August 25, 2010 charges accused Guerrero, Santiago, and Lozano, who were public officers at the time material to this case, in conspiracy with accused Hernandez, a private person, of having acted with *manifest partiality, evident bad faith, or gross inexcusable negligence*, in giving *unwarranted benefits, advantage, and preference* to JOAVI Philippines Corporation, by preparing the undated Technical Evaluation Report and undated Post-Evaluation Report and showing therein that the Aquasports Hypalon Rubber Boat 470 of JOAVI complied with the technical specifications for the supply and delivery of 7 inflatable rubber boats when, in fact, it did not, as the Aquasports Hypalon Rubber Boat 470 was not equipped with an inter-communication valve, over-pressure valve, and a roll-up floor. In addition, JOAVI merely copied the technical specifications of the Zodiac FC 470 Futura Commando Inflatable Rubber Boat manufactured by Zodiac and exclusively distributed in the Philippines by Geneve, resulting in the award of the supply and delivery contract to JOAVI, thereby causing undue injury to the Government and Zodiac in the amount of Three Million Four Hundred Sixty-Five Thousand Pesos (Php3,465,000.00).

Guerrero, Santiago, and Lozano allege that: 1) there are no irregularities in the opening of bids; 2) there is nothing wrong in the procedure of the IABAC because Geneve neither sought a reconsideration nor filed a protest with the IABAC; 3) Arabaca did not call the attention of the IABAC on the alleged patent infringement by JOAVI; 4) the contract for the supply and delivery of the 7 inflatable rubber boats was awarded to JOAVI because it had the lowest calculated responsive bid; 5) the IABAC strictly followed the processes required by R.A. No. 9184 and its Implementing Rules and Regulations (IRR) during the opening of bids, preparation of the technical evaluation report and post-qualification report; and 6) the email of Tony Wong that Aquasports cannot manufacture the required rubber boat is hearsay because it was not Arabaca who communicated with Tony Wong and Tony Wong did not testify in Court.

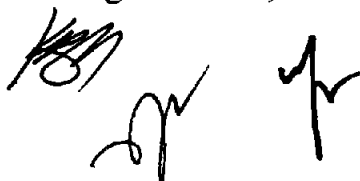
Hernandez argues that: 1) the testimony of Prosecution witness Captain Galang is irrelevant because he had no personal knowledge of the circumstances of the procurement; 2) the letter of Lavorata and the attached patent application cannot be given evidentiary weight because these are mere photocopies, their due execution and authenticity were not established, and they pertain to a different transaction; 3) the beneficial application of Section 46 of the Intellectual Property Code of the Philippines cannot not be extended to Zodiac or Geneve because the Prosecution failed to prove that France, where Zodiac is domiciled, and the Philippines are parties to the treaty relating to intellectual property rights and extends reciprocal rights to the nationals of each country; 4) JOAVI did not copy the technical



specifications of Zodiac FC 470 Futura Commando Rubber Boat because it merely complied with the technical specifications as stated in the bidding documents and that both the bids of JOAVI and Geneve were sealed, submitted at almost the same time, and opened simultaneously during the bid opening; 5) the testimony of Arabaca regarding JOAVI's Statement of Compliance is a mere opinion, thus inadmissible, because he had no hand in the preparation thereof; 6) the IABAC based its undated Technical Evaluation Report (Exhibit "F") and undated Post-Qualification Report (Exhibit "G") on JOAVI's bidding documents and Statement of Compliance; 7) the Aquasports Hypalon Rubber Boat 470 of JOAVI complied with the technical specifications of the inflatable rubber boats; 8) there is no prohibition on other companies to manufacture the same product with the same specifications because the patent of Zodiac is still pending; 9) the signing of the undated Technical Evaluation Report (Exhibit "F") is within the scope of work of accused public officers; 10) Arabaca was not qualified as an expert witness and his opinion on the undated Technical Evaluation Report (Exhibit "F") and undated Post-Qualification Report (Exhibit "G") is inadmissible because he had no participation in the technical evaluation and post-qualification processes; and 11) conspiracy was not established by the Prosecution.

On the other hand, the Prosecution contends that: 1) Arabaca testified that all of the accused certified in the undated Technical Evaluation Report (Exhibit "F") and undated Post-Qualification Report (Exhibit "G") that the Aquasport Hypalon Rubber Boat 470 of JOAVI conformed with the IABAC's technical specifications for the inflatable rubber boat when, in fact, it was not equipped with any inter-communication inflation valve, over-pressure valve, and roll-up floor; 2) the product brochure downloaded from the website of Aquasports Boats & Yachts Co., Ltd. shows that the Aquasport Hypalon Rubber Boat 470 had no inter-communication inflation valve, over-pressure valve, and roll-up floor. It only had a relief pressure valve and an aluminum floor as extra and optional accessories; and 3) Arabaca testified that the inter-communication inflation valve, over-pressure valve, and roll-up floor are patented to and can only be produced by Zodiac.

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 a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Evident bad faith contemplates a state of mind affirmatively operating with a furtive design or with some motive of 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.⁹⁷

The law does not punish partiality, bad faith or negligence per se. These should meet the gravity required by law. The second element of violation of Section 3 (e) of R.A. No. 3019 is present when it is shown that bad faith or partiality is evident or manifest, or that the negligent act or omission is gross and inexcusable.⁹⁸ Proof of any of the three is sufficient to convict.⁹⁹

The Court agrees with accused Guerrero, Santiago, Lozano, and Hernandez. The Prosecution failed to present proof beyond reasonable doubt that they acted with manifest partiality, evident bad faith, or gross inexcusable negligence.

The law governing public procurement during the time material to this case is R.A. No. 9184, or the Government Procurement Reform Act, which took effect on January 26, 2003. Section 10 of R.A. No. 9184 states:

Section 10. Competitive Bidding.- All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. (Emphasis supplied)

Competitive Bidding, as defined in Section 5(e) of the same Act, refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post-qualification, and award of contract.

The specific requirements and mechanics of competitive bidding are defined in the Implementing Rules and Regulations-A (IRR-A) promulgated under said Act and which took effect on October 8, 2003. Section 10, Rule IV of the said IRR-A states that all procurements shall be done through competitive bidding, except as provided in Rule XVI of the IRR-A, which provides for alternative modes of procurement, such as, limited source bidding, direct contracting, repeat order, shopping, and negotiated procurement. Section 48.2, Rule XVI of the IRR-A also provides that the general mode of procurement shall be by public bidding, and that alternative methods shall be resorted to only in highly exceptional cases.

⁹⁷ *People v. Atienza*, G.R. No. 171671, June 18, 2012.

⁹⁸ *Jaca v. People*, G.R. Nos. 166967, 166974 and 167167, January 28, 2013.

⁹⁹ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

