



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CERTIFIED TRUE COPY:

ESTELA TERESITA C. ROSETE
Executive Clerk of Court III
Sandiganbayan-First Division *05/31/19*

-versus-

SB-14-CRM-0431

For: Violation of Section 3(e),
R.A. No. 3019, as
amended

DR. ROSALINDA ARANDIA y FERNANDEZ,
DR. ANGELES DE LEON y TORIO,
FLOSERPINA YANGUAS y DURAN,
LUZ PADUA y PINEDA,
MILAGRINA JACINTO y DE VERA,
MICHAEL S. RAQUEL,

Accused.

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Present:

DE LA CRUZ, J., *Chairperson*
ECONG, J. and
CALDONA, J.

Promulgated:

MAY 31 2019 *J*

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DECISION

CALDONA, J.:

At the outset, the records reveal that a Decision¹ was promulgated in this case on January 25, 2019 acquitting all the accused of the crime

¹ Records, Vol. VI, pp. 413-440.

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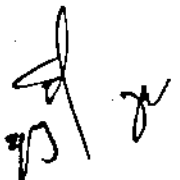
charged on reasonable doubt except for accused Floserpina D. Yanguas who remained at large. It appears that accused Yanguas, who served as chief administrative officer of the Quirino Memorial Medical Center (QMMC) in Quezon City, has resigned on July 16, 2007 and left for abroad in the same year even before the Office of the Ombudsman could start its investigation regarding the instant case in 2009. The case against her had since been archived until such time that jurisdiction over her person can be obtained by the court.

Incidentally, on March 20, 2019 an urgent motion was filed by accused Yanguas, through counsel, praying that the case be revived and set for her arraignment. Upon posting the required bail for her provisional liberty, the accused also filed on March 26, 2019² another motion which prays for the dismissal of the instant case on the ground of violation of her right to speedy trial and that the charge in the information allegedly does not constitute an offense.

At the scheduled hearing on the motion on March 29, 2019, and apparently realizing the futility of the subject legal recourse, the counsel of the accused prayed in open court for the withdrawal of the pending motion. Instead, the counsel manifested the desire of the accused to undergo arraignment which was not opposed by the prosecution.

After arraignment whence accused Yanguas pleaded not guilty to the offense charged, the prosecution and the defense jointly manifested that they were adopting their pre-trial briefs that were previously filed during the proceedings involving the erstwhile accused, including the evidence presented as well as their respective memoranda. With the

² The case was ordered revived from the files of archive cases on the same day that accused posted bail.

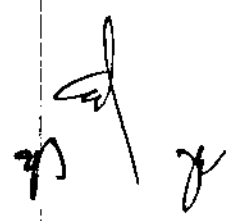
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manifestation made by the parties the case as regard accused Yanguas was deemed submitted for decision³.

To recapitulate, accused Yanguas, together with her erstwhile co-accused, stands charged with the crime of violation of Section 3 (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The indictment is an offshoot of an earlier complaint filed by the Field Investigation Office of the Office of the Ombudsman against certain officials of the QMMC in Quezon City in connection with the procurement of one (1) unit of magnetic resonance imaging (MRI) machine for P44,998,000.00. In gist, the charge dwells on the claim that the award for the procurement of the MRI in favor of Fernando Medical Enterprises, Inc. (FMEI) was irregular or invalid considering that its proposal for collection of payment was with a term or advance installment payments which is not allowed under R.A. No. 9148 for procurement of goods. It was postulated that while the subject procurement consists of two (2) components, which is that of goods relative to the machine itself, and infrastructure anent the installation of structure to keep the machine in place, the law provides that the characterization of the procurement should be determined ultimately by the principal use for which it will be utilized. Inasmuch as the MRI machine is the main component of the project the same should thus be characterized as one which is that of procurement of goods. Clearly, the law requires that payment must be made upon delivery of the goods and after it has been received for commissioning. On the contrary however, the accused, allegedly in conspiracy with each other, decided to treat the procurement as that of goods and infrastructure being different and distinct from each other thereby, allowing for advance payment relative to the infrastructure component thereof.

³ Records, Vol. VI, p. 522.



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The findings of the Office of the Ombudsman in its Resolution dated July 2, 2014 justifying the inclusion of accused Yanguas in the present indictment focused on her alleged participation as member of the QMMC Executive Committee (ExeCom) in providing for justification to allow advance payments to FMEI for the MRI machine with respect to its infrastructure component through the adoption of Committee Resolution Nos. 15 and 15-A. The Office of the Ombudsman explained that after then respondent Dr. Rosalinda Arandia approved the Notice of Award she proceeded to ensure that FMEI would receive advance payments through complicity with the members of the QMMC ExeCom, namely: Roberto Dalmacion, Dra. Angeles de Leon, Floserpina Yanguas and Luz Padua, despite having been already informed by Ms. Lomotan who was then the accountant of the medical center of its invalidity. Thus, Dr. Arandia and the members of the QMMC ExeCom divided the bid amount of FMEI into two parts – one for goods which is the acquisition of MRI machine, and the other for the incidental infrastructure component – through the issuance of Committee Resolution No. 15-A.

In other words, from the observation of the Ombudsman investigator, the QMMC ExeCom and Dr. Arandia applied two different sets of rules on payment for the entire MRI project – the rules on procurement of infrastructure projects that they used as their justification for the down payment and progress payments, and the rules on procurement of goods – when only the latter should apply. Subsequently, Dr. Arandia and the members of the QMMC ExeCom facilitated the release and/or caused the release of advance payments, without prior approval of the President as required by law, in the total amount of P16,406,963.64 to FMEI prior to the completion of the entire MRI project.

Hence, the present charge under the following information:



That from May 12, 2005 to December 22, 2005, and for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the late Roberto F. Dalmacion, accused DR. ROSALINDA F. ARANDIA, DR. ANGELES T. DE LEON, FLOSERPINA D. YANGUAS, LUZ P. PADUA, MILAGRINA D.V. JACINTO, and MICHAEL S. RAQUEL, all public officers being then the Medical Specialist IV (SG 24); Medical Center Chief (SG 27); Chief, Medical Professional Staff II (SG 26); Chief Administrative Officer (SG 24); Nurse VI (SG 22), Nutritionist Dietician III (SG 18); and Medical Technologist II (SG 15), respectively, of Quirino Memorial Medical Center (QMMC), Quezon City, while in the performance of their official and/or administrative functions, conspiring with one another, did then and there willfully, unlawfully and criminally, through evident bad faith, manifest partiality or gross inexcusable negligence, give unwarranted benefits, advantage or preference to Fernando Medical Enterprises, Inc. (FMEI) when ARANDIA, as head of procuring entity, awarded to FMEI, through the issuance of the Notice of Award, the procurement project for the supply, delivery, installation and commissioning of one (1) unit of Magnetic Resonance Imaging (MRI) machine with a contract price of Php44,998,000.00, after Dalmacion, DE LEON, JACINTO and RAQUEL, as chairman, vice chairman and members of the QMMC Bids and Awards Committee (BAC), instead of disqualifying FMEI, gave FMEI's bid the highest overall rating and the highest rating on the price criterion among all bidders, and declared FMEI's bid as the lowest calculated responsive bid, despite FMEI's bid containing terms of payment of "thirty percent (30%) down payment upon issuance of the purchase order, thirty percent (30%) upon delivery of the unit and forty percent (40%) upon commissioning" contrary to the QMMC bidding documents that do not allow any advance payment, AND THEREAFTER, ARANDIA, Dalmacion, DE LEON, YANGUAS, and PADUA proceeded in releasing or causing the release of advance payments to FMEI under modified terms by making a down payment and progress payments totaling Php16,406,963.64, prior to the completion of the supply, delivery, installation and commissioning of one (1) unit of MRI machine, through issuing, signing, certifying, approving and/or entering into papers and documents such as but not limited to resolutions, separate contract, notice to proceed, disbursement vouchers, and checks, thereby facilitating the making of advance payments without the required prior approval of the President of the Philippines, all contrary to Section 88(1) of Presidential Decree No. 1445 (Government Auditing Code of the Philippines), and Republic Act No. 9184 (Government Procurement Reform Act) and Annex D of the Implementing Rules and Regulations Part A (IRR-A) thereof.

CONTRARY TO LAW.

During the pre-trial conference, the following facts were stipulated by the parties:⁴

⁴ Pre-trial Order dated June 16, 2017, Records, Vol. V, pp. 52-76.

Decision

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1. The accused are the same persons charged in the Information.
2. The following accused were occupying the respective positions at the time material in the Information:
 - a. Dr. Rosalinda F. Arandia – Medical Center Chief II, Salary Grade 27, and Head of the Procuring Entity;
 - b. Dr. Angeles T. De Leon – Chief, Medical Professional Staff II with Salary Grade 26;
 - c. Luz P. Padua – Nurse VI with Salary Grade 22;
 - d. Milagrina D.V. Jacinto – Nutritionist Dietician III with Salary Grade 18;
 - e. Michael S. Raquel – Medical Technologist II with Salary Grade 15;all of the Quirino Memorial Medical Center (QMMC), Quezon City.
3. The following accused held positions in the Bids and Awards Committee during that same period as follows:
 - a. De Leon – as Vice Chairman
 - b. Jacinto – as Member
 - c. Raquel – as Member
4. On September 3, 2004, the QMMC-BAC issued the General Conditions for the public bidding for hospital medical equipment and the Rules and Regulations for the public bidding of hospital equipment.
5. Under Item 7.1 of the General Conditions, payment shall be made in Philippine Currency, through check, which shall be made in full upon completion of the delivery and acceptance of the items called for and subject to the release of the agency cash allotment from the Department of Budget and Management.
6. On April 1, 2005, the QMMC-BAC issued Bid Bulletin No. 1-2004 (Exhibit W³; Exhibit 75- Arandia, et al.).
7. On April 7, 2005, the QMMC-BAC issued Bid Bulletin No. 2-2005.
8. On April 25, 2005, the QMMC-BAC issued Bid Bulletin No. 3-2005.
9. Fernando Medical Enterprises, Incorporated, Siemens, Incorporated and Himex Corporation participated in the public bidding for hospital medical equipment by submitting their respective Bid Proposals.

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Between the prosecution and accused De Leon:

10. On August 9, 2005, Purchase Request No. 05-08-1452 for one (1) unit MRI was issued, estimated unit cost of Forty-Four Million Nine Hundred Ninety-Eight Thousand Pesos (P44,998,000.00) as evidenced by Exhibit M².
11. On October 12, 2005, FMEI submitted its proposal for the completion of the QMMC MRI site in the amount of P19,573,000.00.

Between the prosecution and accused Padua and Raquel:


12. The bid proposal of FMEI's terms of payment is 30% down payment upon issuance of the Purchase Order, 30% upon delivery of the unit, and 40% upon commissioning.
13. The IRR-A was the Implementing Rules and Regulations in effect at the time the MRI subject of this case was procured.
14. Accused Padua was neither a member of the BAC nor the end user of the MRI.
15. The bid proposal of FMEI is P44,998,000.00 which was within the ABC of P45,000,000.00.

Between the prosecution and accused Jacinto:

16. Accused Jacinto was not a member of the Technical Working Group on the procurement of the MRI.
17. The FMEI's bid got the highest overall rating of 87.6% among the three participating bidders.
18. There was a Decision rendered by the Department of Health in Administrative Case No. 4406.

As proposed by accused De Leon:

19. The Certification in Disbursement Vouchers No. 363805-12-3916 and No. 06-092391 were all supported with certifications of Accomplishment and Evaluations of Progress Billing by the OIC of the Engineering and Maintenance Section, Resident Architect, Chairman of the BAC and the Medical Center Chief.
20. The infrastructure component including the materials of cabin and shielding were all delivered by FMEI to QMMC.



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Thereafter, trial on the merits ensued during which the following witnesses were presented by the prosecution and the defense including the gists of their respective testimonies, to wit:

For the prosecution:

1. Melanie H. Lomotan, Accountant III of the QMMC in 2005 and 2006, testified on the payments made to FMEI and identified pertinent documents.
2. Dr. Araceli Jacoba, Chairman of the Technical Working Group, testified on the role of the TWG and identified the summary sheet for grading of MRI.
3. Jonil C. de Veas, a member of the BAC Secretariat, identified the Abstract of Bids.
4. Atty. Dennis S. Santiago was presented as an expert witness who testified on the nature of mixed procurements and the applicable provisions of R.A. No. 9184 and its IRR.

The presentation in open court of prosecution witness Dindo B. Jacinto and his alternate witness, Maria Cristina L. Gonaes-Gonzales, was dispensed with. Likewise dispensed with were the testimonies in open court of Luz Duran and Henry Villagrancia after the parties stipulated that 15% was paid as downpayment for the construction of the infrastructure component of the project.



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For the defense:

1. Accused Arandia testified that the DOH approved the award of the contract to FMEI and dismissed the administrative case filed against them.
2. Susan Simbulan, a BAC member at the time material to the instant case, testified that the procurement of MRI was a mixed procurement and that there was no BAC Resolution recommending the award of contract to FMEI.
3. Accused Raquel testified that FMEI's non-compliance with the terms of payment in the General Conditions did not automatically result in its disqualification.
4. Cipriano A. Ravanos, Jr. was presented as an expert witness who testified on the lack of rules with respect to mixed procurements.

The prosecution rested its case with the admission of documentary evidence consisting of Exhibits I to K, N, P to V, Z, A² to F², H², I², K², M², O² to Z², A³ to T³, V³ to Y³, A⁴ to C⁴ with submarkings.

Meanwhile, the defense rested its case with the admission of documentary evidence marked as Exhibits 38, 40, 78, 78-a, 78-b, 80, 81 and V³ for accused Arandia and Exhibits V³ for accused De Leon, Jacinto, Padua and Raquel.

After trial and thorough evaluation of the evidence presented, the court found no substantial dispute anent the factual milieu of the case as presented by the prosecution and the defense in their respective

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memoranda simultaneously filed on October 23, 2018 pursuant to the Order given in open court on October 8, 2018.

Thus, it appears undisputed that On September 28, 2004, the Department of Health (DOH), through the QMMC-BAC, issued an Invitation for Eligibility Screening and to Bid, inviting DOH-accredited suppliers to participate in the conduct of public bidding for its procurement of MRI with an approved budget of P45,000,000.00.

On November 3, 2004, the BAC issued the General Conditions for Public Bidding and the corresponding Rules and Regulations. Under Item 7.1 of the General Conditions, payment shall be made in Philippine currency through check which shall be made in full upon completion of the delivery and acceptance of the items called for and subject to the release of the agency cash allotment from the Department of Budget and Management (DBM). Under the Rules and Regulations, the winning bidder shall be determined based on the following criteria: 30% quality of equipment, 30% specification compliance and additional features, 30% track record of company/item offered and 10% price.

Before the actual bidding, three (3) pre-bid conferences were held on October 22, 2004, April 7, 2005 and April 5, 2005 which were attended by the prospective bidders together with the QMMC-BAC and the TWG. During such conferences, certain issues were raised prominent of which was the criteria to be used in determining the lowest calculated bid. To address the concerns raised by the prospective bidders, the BAC on April 1, 2005 issued Bid Bulletin No. 1-2004, followed by Bid Bulletin No. 2-2005 on April 7, 2005, and Bid Bulletin No. 3-2005 on April 25, 2005. In the last bid bulletin, the BAC finalized the criteria for determining the

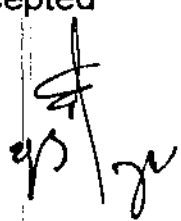
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winning bidder as follows: 50% for the technical specifications, 35% for the price, and 15% for the track record.

Out of the four (4) previous prospective bidders, three (3) actually participated in the bidding, namely: FMEI, Siemens, Inc. and Himex Corp. All the bids were within the approved budget, with FMEI submitting a bid of P44,998,000.00, P44,812,812.00 for Siemens, Inc., and P44,990,000.00 for Himex Corp. Siemens, Inc. stated in its bid that payment shall be 100% upon delivery and turn-over while Himex Corp. simply stated C.O.D. On the other hand, FMEI's terms of payment was 30% downpayment upon issuance of purchase order, 30% upon delivery of the unit and 40% upon commissioning. After evaluating the technical specifications, price and track record of the three bids, the TWG submitted its report to the BAC for final deliberation and approval. The BAC then gave FMEI's bid the highest over-all rating of 87.6. Thus, on June 7, 2005, a Notice of Award was issued.

On September 15, 2005, the QMMC Executive Committee composed of the BAC Vice Chairperson De Leon, together with her co-accused Yanguas, and Padua adopted Resolution No. 15, s. 2005, which was approved by accused Arandia, resolving that: (a) the MRI acquisition contract involves an infrastructure component which may allow a fifteen percent (15%) advance payment based on the cost estimate to be submitted by the FMEI, and thereafter progress billing payments based on the procurement of infrastructure works provision of R.A. 9184 shall govern; and (b) the submitted terms of payment of FMEI in the bidding process should be reformed in conformity with its procurement of goods provision which essentially provides that the full and complete payment of the MRI equipment shall be given after the machine has been accepted by the procuring entity.

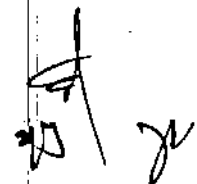


Accordingly, on October 5, 2005, FMEI submitted a revised payment schedule, dividing its previous bid of P44,998,000.00 into two (2) parts: P25,425,000.00 for the equipment and P19,573,000.00 for the facilities with 15% downpayment and balance on progress billing. On October 12, 2005, FMEI submitted a corresponding detailed proposal for the completion of the MRI site.

On October 9, 2005, the QMMC Executive Committee adopted Resolution No. 15-A, approved by accused Arandia, resolving that the acquisition of the MRI is composed of two segments, as follows: (a) the civil works preparation for the MRI site of operation amounting to P19,573,000.00 payable on a 15% initial down payment and the balance based on progress billing; and (b) the actual delivery and acceptance of the MRI unit amounting to P25,425,000.00.

On October 21, 2005, FMEI requested for the release of the 15% downpayment although it was pointed out by the prosecution that the QMMC, represented by accused Arandia, and FMEI entered into a Contract Agreement for the preparation of the MRI site in the amount of P19,573,000.00 at a later date on October 24, 2005. Under the contract, QMMC shall make an advance payment equivalent to 15% of the contract price for the infrastructure component while the balance would be paid through progress billings. The Notice to Proceed was issued on October 25, 2005, signed by accused Arandia.

On October 27, 2005, FMEI received the amount of P2,935,950.00 equivalent to 15% of the total contract price for the infrastructure component of the project as advance payment under DV No. 05-10-3257 dated October 25, 2005 and Check No. 0288321 dated October 26, 2005.

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From December 1, 2005 to September 5, 2006, FMEI received the balance of the contract price for the site preparation through progress billings as follows:

Date of Receipt	Amount	DV No.	Check No.
Dec. 1, 2005	P7,485,215.91	05-11-3638	0288322
Dec. 23, 2005	P3,766,616.37	05-12-3916	460746
Dec. 23, 2005	P2,219,181.36	05-12-3917	288323
Sept. 5, 2006	P1,922,812.50	06-09-2395	465497

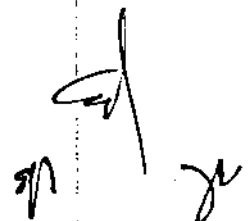
The MRI unit was delivered and inspected on March 31, 2006 but, as the prosecution would observe, was accepted on July 7, 2006. On July 27, 2006, FMEI received the total amount of P23,681,571.44 under DV Nos. 06-07-1963 and 06-07-1963-A dated July 18 and 19, 2006, respectively, and Check Nos. 288326 and 465350 both dated July 26, 2006.

From the above finding of facts the court was next confronted with the issue on whether the accused, in conspiracy with each other, were motivated by evident bad faith, manifest partiality and acted with gross inexcusable negligence in the performance of their official functions relative to the procurement of the MRI machine.

The court ruled in the negative based on the following disquisitions:

At this juncture, the court fails to discern evident bad faith, manifest partiality or gross inexcusable negligence on the part of the accused in the performance of their respective official positions throughout the procurement process.

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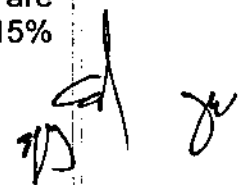
Aside from the transparency in the process of procurement, it can be noted that accused Arandia took time to solicit any comment from the DOH relative to the intended procurement of the MRI machine before taking any further action thereon. This is evident from the fact that the accused referred the matter in a letter dated June 28, 2005, addressed to DOH Secretary Francisco T. Duque through then Undersecretary Alexander A. Padilla, to which were attached the NOA and all other pertinent documents. It was only on July 29, 2005 when the letter was returned without comment nor objection that the NOA was eventually issued and received by FMEI. This precautionary measure on the part of the accused negates any posthaste or reckless decision-making that could be a badge of evident bad faith or gross inexcusable negligence.

Neither does the court discern any manifest partiality nor evident bad faith on the part of the accused members of the BAC and Executive Committee in the evaluation of the bids, in the determination of the nature of procurement and the corresponding schedule of payment.

It must be stressed that there was no adequate proof about any rigging of the bidding process nor any predetermined outcome thereof. The BAC, aided by the TWG, went about screening and evaluating the qualifications of every bidder guided by the specific criteria that were arrived at after consultation with the bidders. Based on the revised criteria under Bid Bulletin No. 3-2005 dated April 25, 2005, FMEI obtained the highest overall rating with a total score of 87.6, followed by Siemens Inc. with a total score of 51.8 and by Himex Corp. with a total score of 45.4. FMEI had an apparent edge on technical specification which constitutes 50% in the grading system as it obtained 49% while the other two (2) bidders obtained 25% and 8%, respectively. On this point alone, which incidentally was not questioned by the prosecution, it was evident that FMEI was the runaway winner, so to speak, over the other bidders as it bested the others also in terms of track record which was likewise not questioned.

The bone of contention then is on the price quoted by the FMEI that it proposed as payable in three (3) tranches which was not in accord with the General Conditions for public bidding. Item 7.1 thereof provides that payment shall be made in Philippine currency through check which shall be made in full upon completion of the delivery and acceptance of the items and subject to the release of the agency cash allotment from the DBM. From the beginning of the procurement process, it was determined that the acquisition of the MRI machine was in the nature of a mixed procurement which consists of two (2) components, e.g. the machine itself (goods) and the construction of works and facilities required for its installation (infrastructure).

Item 7.1 of the General Conditions obviously refers to procurement of goods. On the other hand, infrastructure projects are allowed to be paid in tranches with a maximum advance payment of 15%

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of the total contract price with the balance payable through progress billings. The problem lies from the fact that at the time of the procurement process in 2004, R.A. 9184, otherwise known as the Government Procurement Reform Act, was a relatively new law, having been enacted only on January 26, 2003. Its implementing rules and regulations (IRR-A) were issued on October 8, 2003. While the law concededly requires that the HoPE should determine the primary purpose in case of mixed procurement, which would thus be the basis for the corresponding mode of payment, its interpretation, as would be understood much later, was certainly different from how it was thought applicable just a year after its enactment.

Such legal conundrum appears to be what confronted the accused at the time. It can be gathered from their testimonies that the procurement of the MRI machine was thought to consist of two (2) components, e.g. procurement of goods and infrastructure. Instead of determining the primary purpose strictly however, it was thought possible to treat the two components separately. This can be gleaned from the Committee Resolution No. 15 s. 2005 which classified infrastructure as a distinct component thereby allowing for a separate mode of payment; while maintaining that payment for the machine itself, being a procurement of goods, was governed under Item 7.1 of the General Conditions for public bidding. This, in turn, should explain why FMEI, despite its proposal for terms of payment in its bid, was not disqualified on such basis alone given that its bid documents were complete and concededly submitted better terms under technical specifications and of superior track record.

This court therefore is not inclined to declare that the accused, in acting as they did in the performance of their official functions, were motivated with evident bad faith, manifest partiality or gross inexcusable negligence on the mere basis that they awarded the contract to FMEI which offered a term as a mode of payment in its bid. Aside from what has been discussed, the bid price itself was within the allowed range given the approved budget for the project. None of the other bidders questioned nor lodged any complaint anent the award. It must be also emphasized that the project was completed without delay which thus negates any damage or undue injury against any party including the government. In fact, in its post audit of the subject procurement, the Commission on Audit (COA) found nothing irregular in the procurement process and the price reasonable, thus:

REVIEW OF REASONABLENESS OF CONTRACT COST

The Contract Cost for site preparation restoration and improvement in the amount of Php19,573,000.00 extracted from the original contract of P44,998,000.00 was found to be 8.38% above the COA estimated cost of Php18,060,176.13 which is within the COA allowable limit of 10%, hence the contact cost was found to be reasonable.

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In which event, the defense of good faith by the accused, none of whom are lawyers, was not without any basis. Case law provides that good faith is a valid defense in anti-graft cases which includes the present indictment.

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So too, the allegation of conspiracy among the accused will not hold water in view of the above findings. In order for conspiracy to exist, two or more persons must come to an agreement concerning the commission of a felony and decide to commit it. Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all*. The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone."

Incidentally, accused Arandia and her co-accused were also charged before the DOH for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service in connection with the subject procurement project. The Decision dated August 28, 2008 in the said administrative complaint exonerated them from all the charges under the following justifications:

On the 1st charge as to whether they violated any law in preparing/signing the Notice of Award dated June 7, 2005 for the MRI, duly received by the supplier on July 29, 2005 before getting a copy of the consolidated TWG report which was only submitted on June 10, 2005 by Dr. Araceli Jacoba requesting for final deliberations of the BAC relative to the TWG report. We believe that they did not violate any law. Failure on their part to consider the TWG Report before making a decision to award the contract is not a pre-requisite before any award can be made. The BAC and the head of the procuring entity are given wide latitude in determining the winning bidder. The TWG cannot bind the BAC to whatever will be the outcome of their supposed Technical Evaluation. Specifically, nothing in the law provides that the procuring entity cannot make an award without considering or in the absence of a consolidated TWG Report. Be that as it may, it is clear from the records that the Notice of Award was only signed by respondent Arandia on July 29, 2005 after it was returned from the Department of Health without any corrections or comment.

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Likewise, we find the 2nd charge on the alleged lack of authority of the QMMC-Executive Committee in awarding the contract to Fernando Medical Systems by reclassifying the procurement of goods into infrastructure, and approving the 15% advance payment representing mobilization costs to be devoid of any legal basis. It is clearly within the mandate of the QMMC Executive Committee as the procuring entity to decide on the nature of the procurement in regard to the infrastructure component of the contract. Being in the nature of an infrastructure contract, the respondents can very well decide to grant the 15% advance payment to the contractor in regard to the infrastructure component without the need for the approval of the Office of the President as required under Sec. 88 of PD 1445 as this applies only to advance payments made in relation to the procurement of goods. The advance payment for the mobilization cost is specifically allowed under R.A. 9184.

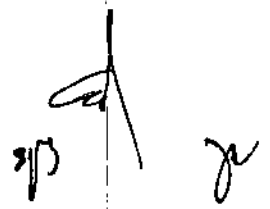
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On the 3rd charge that the respondents violated the provisions of R.A. 9184 by splitting the bid offer of FMEI in the amount [of] P44,998,000.00 with P25,425,000.00 as the amount of the equipment, by highlighting the alleged infrastructure component as "Preparation of the QMMC MRI Site, Ground Floor, PHASE 7" without FMEI having submitted the appropriate clearance or license from the Philippine Constructors Arbitration Board (PCAB). We find for the respondents. It is beyond question that this particular contract has two components, the procurement of goods and the infrastructure component. But it is also admitted that the procurement of the equipment is the primary component of the contract and therefore the winning bidder being a prequalified supplier of the equipment is not required to have a PCAB license as required under the rules for infrastructure contracts. Meaning that the site development is only incidental to the installation of the MRI equipment. The rule that will govern in this particular procurement is the rules on the procurement of goods and not the rules on infrastructure projects in regard to the qualification of the contractor. Definitely, we cannot require the winning supplier to be both a qualified equipment supplier and a PCAB licensed contractor to be able to undertake a mixed procurement. This is explicitly allowed under R.A. 9184.

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From the foregoing, it appears clear that the guilt of the accused for the crime charged has not been established beyond reasonable doubt. In all criminal prosecutions, the accused shall enjoy the right to be presumed innocent until the contrary is proved. Hence, they are entitled to acquittal as a matter of course.⁵ (citations omitted)

⁵ See Note No. 1, pp. 430-438.



CERTIFIED TRUE COPY:

ESTELA TERESITA C. ROSETE
Executive Clerk of Court III
Sandiganbayan-First Division

It can be gleaned from the above discussions that all the accused who went through trial were absolved of the crime charged. Neither was the allegation of conspiracy among them proven with the required quantum of proof, which is that of the crime itself. In particular, the court even made a categorical finding about the absence of manifest partiality or evident bad faith on the part of the erstwhile accused members of the BAC and the QMMC ExeCom in the evaluation of the bids, in the determination of the nature of procurement and the corresponding schedule of payment. Being likewise a member of the QMMC ExeCom, and there being no other independent evidence against her which could set her apart from the other accused aside from those that have been adduced in the previous proceedings, the above findings and conclusions must necessarily apply and redound to the benefit of herein accused Yanguas.

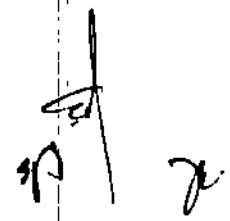
WHEREFORE, premises considered, the accused, Floserpina D. Yanguas, is hereby ACQUITTED of the crime of violation of Section 3 (e) of R.A. No. 3019 on reasonable doubt.

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

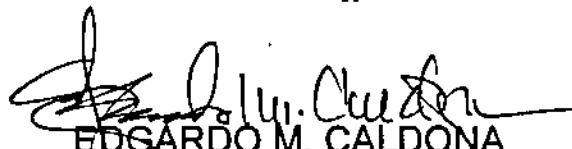
Accordingly, the bond posted by the accused for her provisional liberty is ordered released, subject to the usual accounting and auditing procedures.

The Hold Departure Order (HDO) dated November 24, 2014 is hereby recalled.

SO ORDERED.
Quezon City, Metro Manila, Philippines




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EDGARDO M. CALDONA
Associate Justice

WE CONCUR:


EFREN N. DE LA CRUZ
Associate Justice
Chairperson


GERALDINE FAITH A. ECONG
Associate Justice


ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


EFREN N. DE LA CRUZ
Chairperson, First Division

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. DABOTAJE-TANG
Presiding Justice