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EXECUTIVE CLERK OF COURT
THIRD DIVISION

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim Case No.

SB-15-CRM-0079

*For: Violation of Section 3(e) of
Republic Act No. 3019, as
amended.*

-versus-

**RICO P. VALDELLON,
LORENZO L. JACINTO,
JACINTO M. ILAGAN,
DON THED J. RAMIREZ, and
RENATO R. VEHELENTE a.k.a.
VEHELENTE**

Present:
Cabotaje-Tang, J.,
Chairperson
Fernandez, B., J. and
Moreno, J.

Accused.

PROMULGATED:

MAY 31, 2019

x-----x

DECISION

Moreno, J.:

Accused Rico Poblete Valdellon (Valdellon), Lorenzo Lozada Jacinto II (Jacinto), Jacinto Moratilla Ilagan (Ilagan), Don Thed Juan Ramirez (Ramirez), and Renato Ramirez Vehemente a.k.a. Vehemente (Vehemente) are charged before this Court with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended. The *Information* reads as follows:

That on 12 January 2012, or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused, RICO P. VALDELLON, LORENZO L. JACINTO, both high-ranking public officials, being Department Managers, Power Sector Assets and Liabilities Management (PSALM), JACINTO M. ILAGAN and DON THED J. RAMIREZ, being Division Managers of PSALM, and then employee RENATO R. VEHELENTE A.K.A. VEHELENTE, all of a government owned and controlled corporation, committing the crime

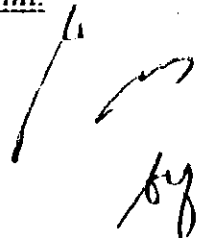
herein charged in relation to their office and taking advantage of their official positions as members of PSALM Bids and Awards Committee on Disposal of Waste Oil (PSALM-BAC Disposal), acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there, willfully, unlawfully and criminally give unwarranted benefit, preference or advantage to a disqualified bidder, the joint venture of Genetron International Company, Atomillion Corporation, and Safeco Environment Services, Inc. ("joint venture") by accepting a belatedly submitted Environmental Compliance Certificate (an illegibility document) during the post qualification, thereby facilitating the undue post qualification and award of contract to the "joint venture" for the sale and disposal of waste oil at Sucat Thermal Power Plant, Paranaque City in the amount of Php35,008,888.80.

CONTRARY TO LAW.

On May 30, 2016, the Court admitted the *Amended Information*,¹ which reads:

That on 12 January 2012, or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RICO POBLETE VALDELLON and LORENZO LOZADA JACINTO II, both high-ranking public officers being Department Managers of the Power Sector Assets and Liabilities Management Corporation (PSALM), a government owned and controlled corporation, conspiring and confederating with one another and with the accused JACINTO MORATILLA ILAGAN, Division Manager of PSALM, DON THED JUAN RAMIREZ, then Division Manager of PSALM, and RENATO RAMIREZ VEHEMENTE, then Corporate Executive Officer of PSALM, committing the crime herein charged in relation to their office and taking advantage of their official positions as members of the PSALM Bids and Awards Committee on Disposal of waste Oil (PSALM-BAC Disposal), acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefit, advantage, or preference to the joint venture of Genetron International Marketing, Atomillion Corporation, and Safeco Environmental Services, Inc. (Joint Venture), by accepting the Amended Environmental Compliance Certificate dated November 21, 2011, an eligibility document which was belatedly submitted by the Joint Venture during the post qualification stage in place of or to remedy the deficient Environmental Compliance Certificate which it submitted during the opening of bids; and thereafter, post-qualifying the Joint Venture and recommending that the contract for the sale and disposal of waste oil at Sucat Thermal Power Plant, Paranaque City be awarded to the Joint Venture at its bid price of THIRTY-FIVE MILLION EIGHT THOUSAND EIGHT HUNDRED EIGHTY-EIGHT AND 80/100 PESOS (Php35,008,888.80); thereby allowing the Joint Venture to be awarded with the above contract in the aforesaid amount.

¹ Records, Vol. 2, pp. 340 - 343.



On July 4, 2016, accused Valdellon, Jacinto, and Hagan entered their separate pleas of “NOT GUILTY”. The Court entered a plea of “NOT GUILTY” for Ramirez and Vehemente when they refused to enter any plea.²³

The Pre-Trial scheduled on March 30, 2017 was terminated without prejudice to the submission of the parties’ *Joint Stipulations of Fact* and the issuance of the Court of a *Pre-trial Order*.⁴

On May 8, 2017, Hagan’s counsel filed a *Motion to Dismiss Case Against Accused Jacinto Hagan*⁵ since his client died on April 25, 2017 due to multiple-organ failure. On September 20, 2017, the Court dismissed the case against accused Hagan pursuant to Article 89 of the Revised Penal Code based on the confirmation by the prosecution of the fact of the latter’s death.⁶

The parties submitted the *Joint Stipulation of Facts* on May 31, 2017.⁷ During the Pre-Trial hearing, the parties stipulated on the following facts, as reflected in the *Pre Trial Order*, viz:⁸

ADMITTED/PROPOSED STIPULATIONS

A. For Accused Rico P. Valdellon

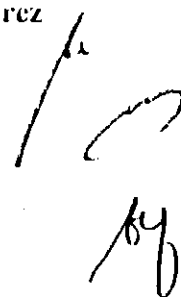
- 1) His identity as one of the persons charged in the Information;
- 2) He was a public officer, being then a Manager at PSALM and Chairman of PSALM Bids and Awards Committee (BAC) on Disposal at the time of the alleged commission of the crime charged in this case; and
- 3) He is now retired.

B. For Accused Lorenzo L. Jacinto II

- 1) He was a public officer at the time relevant to the Information;
- 2) He was the Department Manager, Asset Valuation Department (AVD) and Vice-Chairman, Power Sector Assets and Liabilities Management Corporation (PSALM) Bids and Awards Committee (BAC) on Disposal; and
- 3) He is now retired.

C. For Accused Don Thed J. Ramirez

² Order dated July 4, 2016. *Id.*, p. 478.
³ Vehemente was arraigned on July 24, 2016.
⁴ Order dated March 20, 2017. Records, Vol. 3, p. 170.
⁵ *Id.*, pp. 310 – 312.
⁶ Resolution dated September 20, 2017. *Id.*, p. 579.
⁷ *Id.*, pp. 352 – 391.
⁸ *Id.*, pp. 396 – 423.



- 1) His identity as one of the persons charged in the Information; and
- 2) He was a public officer, being then a Division Manager at PSALM at the time of the alleged commission of the crime charged in this case.

D. For Accused Renato R. Vehemente

- 1) He is the lawyer-member of the BAC on Disposal;
- 2) At the opening of bids, the following submitted their bids:

Bidder	Bid Price	Remarks
Far East Fuel Corp.	P35M	Highest bidder but later on disqualified during post qualification
Joint Venture of Atomillion Corporation, Genetron International Marketing and Safeco Environmental Services (Joint Venture)	P35M	Declared winning bidder
Bensan Industries, Inc.	P30M	Complainant in this case
Hazchem, Inc.	P20M	
RMS Petroleum	P11M	

- 3) Far East Fuel Corporation (Far East) was disqualified by the BAC on Disposal upon the recommendation of the Technical Working Group (TWG). Its ECC permit did not meet the bidding requirements; and
- 4) Moving on to the next highest bidder, the TWG found out that the Environmental Compliance Certificate (ECC) permit of the Joint Venture submitted during the bidding did not meet the bidding requirements. Joint Venture has in its possession an amended ECC permit that was submitted through the TWG. The TWG recommended to disqualify Joint Venture and referred to BAC whether or not to accept the amended ECC of Joint Venture.

EVIDENCE FOR THE PROSECUTION

The prosecution presented the following persons as its witnesses: Dr. Benjamin S. Santos; Dennis O. Celestial; Exequiel De Vera; Amando S. Yanga; and Silvestre Santiago.

Dr. Benjamin S. Santos⁹ is the private complainant and at the time pertinent to this case, was the President of Bensan Industries Incorporated ("Bensan"), one of the companies that participated in the bidding for the sale or disposal of waste oil located at the Sucat Thermal Power Plant (STPP).

⁹ Transcript of Stenographical Notes (TSN) dated June 14, 2017, pp. 14 - 22.

Dr. Santos testified that he was the president of Bensan from 1980 until 2014. He explained that the bidding for the sale and disposal of waste oil at the STPP (the "Project") by the Bids and Awards Committee (BAC) of PSALM was conducted based on a "pass/fail" criterion. He mentioned that there were other bidders which participated but the project was eventually awarded to the Joint Venture of Genetron International Marketing (Genetron), Atomillion Corporation (Atomillion), and Safeco Environmental Services, Inc.(Safeco), collectively, the "Joint Venture".

Dr. Santos confirmed that he filed a complaint with the Office of the Ombudsman because the BAC violated the terms of reference of the bidding documents, that is, wherein the award was given to a bidder which was not qualified.

On cross-examination¹⁰ by counsel for accused Valdellon, Dr. Santos mentioned that he was personally present in various meetings held with regard to the STPP, and that he was accompanied by an authorized representative or his accountant. However, he clarified that he was not present in all meetings, but was only present during pre-qualification meetings. When asked whether he was there during post-qualification meetings, he answered in the negative as he was not invited.

Upon cross-examination¹¹ by counsel for accused Jacinto, Dr. Santos confirmed that he was not present during the opening of bids.

Upon further questioning¹² by counsel for accused Ramirez, Dr. Santos was requested to clarify what he meant by an open bid which was "pass/fail". He responded that in an open bid, all the bidders should be present. He explained that the "pass/fail" criteria pertain to the adherence to the bidding document procedures, as well as to the examination of the existence of bidding documents. When asked about the report from the BAC Technical Working Group (the "TWG") wherein the Joint Venture was deemed not qualified, the witness affirmed that he obtained the said report disqualifying the Joint Venture from the TWG.

On cross-examination¹³ by counsel for accused Vehemente, Dr. Santos stated that Bensan participated in five (5) public biddings. He said that he was familiar with the bid documents and identified the bidding procedure as the most important part. Dr. Santos answered in the affirmative when asked whether he reviewed the Bid Data Sheet (BDS), the terms of reference, and financial documents. He claimed that he did not know that the BAC is merely a recommendatory body and that its decision is subject to the approval of the Head of the Procuring Entity (HOPE).

¹⁰ *Id.*, pp. 22 – 25.

¹¹ *Id.*, pp. 25 – 26.

¹² *Id.*, pp. 26 – 27.

¹³ *Id.*, pp. 26 – 41.

On re-direct examination,¹⁴ Dr. Santos stated that he got the TWG report from PSALM. **Jerry Lejano**¹⁵ is a Power Management Specialist at the Human Resources Division of PSALM. During the hearing, the prosecution offered the following matters for stipulation to the defense counsels, as follows:

- 1) Witness Lejano is a Power Management Specialist at the Human Resources Division of PSALM;
- 2) He has been working at PSALM since 2003;
- 3) Accused Renato R. Vehemente was Corporate Executive Officer II at the PSALM at the time material to this case;
- 4) Mr. Lorenzo L. Jacinto III [sic] is the same person charged in the Information

These were all admitted by the defense. Accordingly, the prosecution dispensed with the testimony of Lejano.

Dennis O. Celestial¹⁶ is currently the Chief of Clearance and Permitting Division, Environmental Management Bureau (EMB), Region III since October 15, 2015 but was previously Chief of the Environmental Impact Assessment and Management Division (EIAM) of the EMB, Region III.

Celestial testified that he was Chief of the EIAM from January 4, 2010 until his assumption of office as the Chief of the Clearance and Permitting Division. As Chief of the EIAM Division, his primary duty was to supervise and recommend the applications for Environmental Compliance Certificates (ECC) and their amendments. When asked to describe the ECC, Celestial explained that it is a document which certifies that a proposed undertaking will not cause significant adverse environmental impacts to the environment because of the environmental management measures stated in the environmental impacts study prepared by the project proponent. He explained that the proposed project should not be implemented if an application for an issuance of an ECC is not approved.

Celestial further testified that amendments to the ECC are obtained, usually for the expansion of operation either in terms of increase in the output or capacity or increase in land area. He recalled that he evaluated the application for an amendment of the ECC of Genetron; validated its supporting documents; and recommended for approval the ECC amendment

¹⁴ *Id.*, pp. 41 - 42.

¹⁵ *Order* dated July 12, 2017. Records, Vol. 3, p. 492.

¹⁶ *TSN* dated September 27, 2017, pp. 7 - 18.

to the Regional Director, Lormelyn E. Claudio. He added that the application for the amended ECC was eventually approved.

On cross-examination, Celestial explained that the *amended ECC* granted on April 8, 2011 was valid up to the time the second amendment was issued November 21, 2011.

On further questioning, Celestial stated that it was the previous mindset of the DENR that the ECC was a mere planning tool: it was later deemed a regulatory tool since it is mandatory and contains a penalty provision.

On cross-examination¹⁷ by counsel for Ramirez, Celestial confirmed that the ECC is both a regulatory tool and a permit. He pointed out that while P.D.1586 or the Philippine Environmental Impact Statement System mentions the ECC as a certification, Section 4¹⁸ provides for its mandatory nature for "declared environmentally critical projects", and that Section 9¹⁹ provides for penalties for violation of Section 4 as well as failure to comply with the terms and conditions in the issuance of the ECC.

When inquired about the number of times the original ECC of Genetron was amended, Celestial stated that from the first or original ECC granted on October 27, 2003, it was first amended on February 26, 2004, then a second time on April 8, 2011. Celestial clarified that he recommended for the approval for the ECC's second and third amendments. According to Celestial, an amendment extends the validity of the ECC in terms of increasing the maximum allowable limit of the rate of treatment for a certain hazardous waste.

On cross-examination²⁰ by counsel for accused Vehemente, Celestial confirmed that the issuance of an ECC is a regulatory function of DENR, and that non-compliance will subject the project proponent to penalties and fines. Celestial added that he evaluated the third amendment in 2011. He also confirmed that in the evaluation of an applicant's papers, the previous conditions of the ECC should have been complied with. According to him, Genetron was compliant with its ECC conditions at the time of the approval

¹⁷ *Id.*, pp. 23 - 30.

¹⁸ **Section 4. Presidential Proclamation of Environmentally Critical Areas and Projects.** x x x No person, partnership or corporation shall undertake to operate any such declared environmentally critical projects or areas without first securing an Environmental Compliance Certificate issued by the President of the Philippines or his duly authorized representative. x x x

¹⁹ **Section 9. Penalty for Violation.** Any person, corporation, or partnership found violating Section 4 of the Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Protection Council (now the Environmental Management Bureau) pursuant to this Decree shall be punished by the suspension or cancellation of his/its certificate and/or a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, at the discretion of the National Environmental Protection Council (now EMB).

²⁰ *Supra*, note 16, pp. 31 - 34.

of the amended ECC, from the first issuance in 2003 until his last recommendation for approval of Genetron's application to amend its ECC.

Exequiel De Vera²¹, testified that he was the Vice-President for Finance or Treasurer of Far East Fuel Corp. (Far East), one of the companies that participated in the bidding for the sale or disposal of waste oil at the STPP conducted by the BAC on November 17, 2011.

De Vera narrated on the witness stand that since Far East is engaged in the business of treatment and recycling of waste oil, it either bid or bought from other companies, including government companies like the National Power Corporation (Napocor) and PSALM. He confirmed that Far East participated in PSALM's bidding for the Project, and described the bidding process as open bidding through non-discretionary 'pass' or 'fail' criterion.

De Vera explained that there were two (2) envelopes required for the bid: the first envelope included the eligibility and technical components while, the other envelope was for the financial component. He expounded that the eligibility and technical component was composed of the Environmental and Trial [*sic*] Certificate, Omnibus Sworn Statement, Mayor's Permit, Discharge Permit and other government permits. He also identified the other companies that joined the bid, viz: Gulf Oil Petroleum Products ("Gulf Oil"), Bensan, the Joint Venture, RMS Petroleum Technology ("RMS Petroleum"), Hazchem, Inc. ("Hazchem") and Cleanway Technology Corporation ("Cleanway").

De Vera described how the bidding on November 17, 2011 was conducted beginning with the opening of the first envelope containing the eligibility and technical component. He added that the BAC declared the bid of Gulf Oil disqualified after it was found that the Omnibus Sworn Statement (OSS) was lacking. He added that per the representative of Gulf Oil, the OSS was placed in the second envelope for the financial component. De Vera clarified that Cleanway was disqualified since it did not submit its OSS.

De Vera added that the next stage of the bidding process was the opening of the second envelope or the financial component. The floor price or the minimum bid price for the Project was Four Million, Ten Thousand Pesos (Php4,010,000.00). From among the qualified bidders, Far East was deemed the highest bidder with a bid of Fifty-five Million, Five Hundred Thousand Pesos (Php55,500,000.00). The second highest bid was that of the Joint Venture in the amount of around Thirty-five Million Pesos (Php35,000,000.00).

²¹ TSN dated September 28, 2017, pp. 11 - 21.

De Vera explained further that after Far East was declared as the highest bidder, post-qualification ensued. Unfortunately, Far East received a *Notice of Disqualification*. According to him, Far East moved to reconsider the disqualification, but it was denied by the BAC. Due to this denial, Far East was prompted to file a complaint²² for the annulment of the awarding of contract. The complaint was denied due to improper venue. Far East filed another complaint before the Office of the Ombudsman, but this was eventually dismissed. Far East also wrote a letter to the President of PSALM, appealing for a reconsideration, one which was also denied. Far East also wrote a letter to then-President Benigno Aquino, III. after a discussion with Dr. Santos of Bengan.

On cross-examination²³ counsel for accused Ramirez, De Vera confirmed that the requirement to submit documents during pre-qualification was based on the bid bulletin and that one of the basis is SBB No. 1. The witness affirmed these statements.

On further questioning²⁴ by counsel for accused Vehemente, De Vera explained that he participated in at least five biddings, and that he was quite familiar with bid documents, instructions to bidders, among others. De Vera also affirmed that there was no response to the letter Far East filed with the Office of the President.

Amando S. Yanga²⁵ is a retired Corporate Staff Officer (CSO) of PSALM and was employed with the said corporation since 2004 up to his retirement in March 2016 as CSO III. He was CSO B of PSALM since August 2004 until March 2016 or on the date of his retirement.

Yanga testified that as part of the performance of his managerial duties and responsibilities as CSO, he served as the head of the TWG in the bidding in the sale or disposal of waste oil at the STPP. He stated that during the opening of bids, Gulf Oil was disqualified as it lacked the "Omnibus" document. He added that Far East turned out to be the highest bidder, while the Joint Venture was the second highest bidder. After the opening of bids, the BAC qualified the two (2) bidders. The highest bidder then being Far East, the TWG was instructed to conduct a post-qualification.

Yanga explained that during post-qualification, the TWG looked into the highest bidder's plant capability and verified the documents submitted, *i.e.*, whether the documents submitted at the time of bidding were authentic and are original copies. After the evaluation of the TWG a report was prepared and presented to the BAC for further discussion. Upon

²² *Complaint* dated January 28, 2012 identified as Civil Case No. 122-M-2012 and marked as Exh. "III".

²³ *Supra*, note 21, pp. 27-32.

²⁴ *Id.*, pp. 32-36.

²⁵ TSN dated October 25, 2017, pp. 10-23.

presentation, he recommended to disqualify Far East, which was approved by the BAC.

Yanga further testified that due to the disqualification of Far East, the bid of the Joint Venture, being the second highest bid, was subjected to post-qualification. During the inspection of the submitted documents, the *Amended ECC* was shown by one of the staff of Genetron. After going over the document, Yanga surmised that the new document shown by the Genetron representative did not conform with the one submitted at the time of bidding. Yanga eventually received the documents (despite his initial reluctance to do so), for him to show the same to the BAC.

Yanga added that after the ocular inspection of the Joint Venture's facility, the TWG prepared a report and presented the same to the BAC. During the BAC presentation, the discussion focused on the ECC. After the lengthy discussion, the BAC decided to vote on whether to qualify the Joint Venture or not based on the ECC. The BAC voted two (2) to one (1) in favor of qualifying Genetron. The witness identified the two (2) BAC members who voted in favor of qualifying Genetron as Ramirez and Jacinto, while Ilagan was the one who was not in agreement. Ultimately, the Project was awarded to the Joint Venture.

On cross-examination²⁶ by counsel for accused Vehemente, Yanga confirmed that, his function as TWG head was merely to recommend based on his findings. The witness also confirmed that from his observations, the bidding process was transparent from the bottom up since it was a public bidding and consequently submitted to the PSALM President for his action.

On cross-examination²⁷ by counsel for accused Valdellon, Yanga explained that as the TWG head, he personally prepared the TWG report on the post-disqualification of Far East. He added that the other members of the TWG agreed to or approved the TWG report individually. According to him, the report was routed to the TWG members and affixed their signatures on the same. Yanga added that the TWG report relating to the post-qualification of the Joint Venture, was signed by him, one technical member, the Pollution Control Officer, and the COA representative.

Yanga also confirmed that the following persons were present during the post-qualification of the Joint Venture: Lauan (Task Team Member), Gerry T. Verin, "Verin", (Pollution Control Officer), Evelyn B. Dimaandal ("Dimaandal"), accused Jacinto and Carlos D. Odfina ("Odfina"). When asked whether these persons were also members of the TWG, Yanga replied that these persons were not part of the TWG's original composition. He testified that he became a member of the TWG pursuant to a designation by

²⁶ *Id.*, pp. 27 -- 32.

²⁷ *Id.*, pp. 32 -- 35.

the President of PSALM through *Memorandum No. 2011-015*, dated August 9, 2011. The witness agreed with Atty. Jacinto that other than himself (witness Yanga), none of those who signed the TWG report were designated as TWG members pursuant to the *Memorandum*.

Yanga likewise confirmed that the document submitted during the post-qualification, specifically the *Amended ECC*, was not the one identified or submitted during pre-qualification of the same. When Yanga was asked whether the *Amended ECC* should not be accepted by the BAC since it was not the one identified or submitted during pre-qualification, he clarified that document should not be "accepted." Yanga clarified that he did not "accept" the *Amended ECC* officially, but only brought a copy to the office (i.e., PSALM).

On re-direct examination,²⁸ Yanga was asked to clarify why signatures of Verin and Lauan appear on the December 7, 2011 TWG report on the post-qualification of the Joint Venture, when they were not part of the original TWG report. Yanga explained that Verin and Lauan were substitutes to the team who conducted the post-qualification since the original Office Order did not include a Pollution Control Officer and an internal audit representative.

On re-cross examination²⁹ Yanga confirmed that there was nothing irregular if the BAC would vote against TWG's recommendation since the BAC has all the authority to reverse any recommendation by the TWG.

When the Court propounded several questions on the authority to sign of Lauan and Vetin on the TWG report especially since their names do not appear in the office *Memorandum* which defined the composition and the designation of the members of the TWG., Yanga expounded that Lauan and Vetin signed by virtue of their official functions: Lauan, as member of the Task Team, which is under the department headed by accused Jacinto, while Vetin is the default Pollution Control Officer of PSALM. Upon further inquiry, Yanga confirmed that it was his Department Manager, accused Jacinto, who authorized Lauan and Vetin to sign the TWG Report.

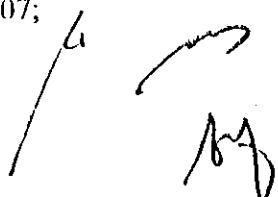
Silvestre Santiago,³⁰ through counsel, offered the following matters for stipulation to the defense counsels:

1. The testimony of Silvestre Santiago is being offered to prove that he is currently a Power Management Specialist at the Power Sector Assets and Liabilities Management Corporation (PSALM);
2. To prove that Mr. Santiago has been a Power Management Specialist since September 2007;

²⁸ *Id.*, pp. 54 - 55.

²⁹ *Id.* pp. 57 - 58.

³⁰ TSN dated November 26, 2017.



3. To prove that as Power Management Specialist of the PSAIM, he was designated sometime on August 2011 as Head of the Secretariat of the Bids and Awards Committee for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets including the Waste Oil at the Sucat Thermal Power Plant;
4. To prove that as Head of the Secretariat, he served as the Custodian of all documents relative to the activities regarding the Sale or Disposal of Waste Oil at the Sucat Thermal Power Plant and that he prepared the Minutes of BAC Meetings;
5. To prove that in compliance with the subpoena of the Office of the Special Prosecutor, Office of the Ombudsman, Santiago issued certified true copies of the following documents, which are common exhibits marked as: Exhibits "B" to "B-2", Exhibit "C", Exhibits "D", "D-1" and "D-2", Exhibit "E" to "E-54", Exhibits "F" to "F-2", Exhibits "G" to "G-3", Exhibit "H" and series, Exhibit "I" and series, Exhibit "J" and series, Exhibits "K" and "K-1" and series, Exhibits "L" to "L-9", Exhibits "M" to "M-40", Exhibit "N" and series, Exhibit "O" and series, Exhibit "P" and series; Exhibits "Q," "R" to "R-1-D", Exhibit "S" and sub-markings, Exhibit "T" and series, Exhibit "U" and series, Exhibit "V" and series, Exhibit "W" to "W-1", Exhibit "X" to "X-3", Exhibit "Y" and series, Exhibit "Z", Exhibit "AA", "AA-1", Exhibit "BB", Exhibit "CC" to "CC-2", Exhibit "D" to "DD-1", Exhibit "EE" to "EE-1", Exhibit "FF", Exhibit "GG" and series, Exhibit "HH" and series, Exhibit "I", Exhibit "JJ" and series, Exhibit "KK" and series, Exhibit "LL" and series, Exhibit "MM" and series, and Exhibit "EEE" and series; and
6. That the witness will identify said exhibits as the same documents which are submitted to the Office of the Ombudsman in compliance with the subpoena.

After the counsels for each of the accused stipulated on the above matters, the prosecution dispensed with the testimony of Santiago.³¹

Thereafter, the prosecution offered its evidence consisting of the following:³²

EXHIBIT	DESCRIPTION
"A" to "A-116"	<i>Complaint-Affidavit</i> of Benjamin S. Santos dated January 25, 2012, with annexes.
"B" to "B-2"	Certified true copy of <i>Memorandum Order No. 2011-015</i> dated August 9, 2011 of PSAIM Re: Designation of Members of the PSAIM BAC, TWGs and Secretariat for Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets
	Certified true copy of <i>Memorandum Order No. 2011-018</i>

³¹ Order dated November 16, 2017, Records, Vol. 3, pp. 633 – 634.

³² Formal Offer of Documentary Evidence filed on February 19, 2018. Records, Vol. 4, pp. 60 -814.

"C"	dated September 14, 2011 of PSAIM Re: Change in the Member of the PSAIM BAC for Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets
"D"	Certified true copy of the <i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP, Philippine Daily Inquirer (PDI) on October 19, 2011
"D-1"	Certified true copy of the <i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP published in the PDI Classifieds on October 20, 2011
"D-2"	Certified true copy of the <i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP, PDI on October 21, 2011
"E" to "E-54"	Certified true copy of Bidding Documents of PSAIM relative to the Sale/Disposal of Waste Oil Located at the STPP dated October 19, 2011
"F" to "F-2"	Certified true copy of <i>Supplemental Bid Bulletin No. 1</i> of PSAIM relative to the Sale/Disposal of Waste Oil Located at the STPP dated November 4, 2011
"G" to "G-3"	Certified true copy of <i>Minutes of the Pre-Bid Conference</i> on Sale/Disposal of Waste Oil Located at the STPP dated November 3, 2011
"H" to "H-1"	Certified true copy of <i>Checklist for Eligibility-Sale/Disposal of Waste Oil Located at Sucat Plant</i> Opening and Preliminary Examination of Bid Documents dated November 17, 2011
"I" to "I-9"	Certified true copy of the <i>Minutes of Bid Opening</i> on Sale/Disposal of Waste Oil Located at the STPP dated November 17, 2011
"J" to "J-56"	Certified true copy of the bid documents submitted by Far East Fuel Corporation
"K-1" to "K-93"	Certified true copy of the bid documents submitted by Genetron, Atomillion, and Safeco
"L" to "L-9"	Certified true copy of the bid documents submitted by Gulf Oil
"M" to "M-40"	Certified true copy of the bid documents submitted by Cleanway
"N" to "N-32"	Certified true copy of the bid documents submitted by Bengan
"O" to "O-15"	Certified true copy of the bid documents submitted by RMS Petroleum
"P" to "P-10"	Certified true copy of the bid documents submitted by Hazchem
"Q"	Certified true copy of <i>Abstract of Financial Bids</i> (Bid Price) dated November 17, 2011 relative to the Sale/Disposal of Waste Oil, Water, Sludge and Other Contaminants Located at the STPP
"R" to "R-1-d"	Certified true copy of a <i>Memorandum</i> dated December 1, 2011 For: BAC, PSAIM Re: TWG Report on the Inspection/Verification of the Plant Treatment/Storage/Disposal (TSD) Facility of Far East Fuel
"S"	Certified true copy of a <i>Letter</i> addressed to Genetron (ECC Ref. Code No. 03BU-0308-27096-120A from

	Lormelyn E. Claudio, Regional Director, Environmental Management Bureau, DENR
"S-1" to "S-1-c"	Certified true copy of <i>Amended Environmental Compliance Certificate</i> (03BU-0308-27096-120A) of Genetron dated November 4, 2011
"T" to "T-19"	Certified true copy of a <i>Memorandum</i> dated December 7, 2011 For: The Chairperson-BAC, PSAIM Re: TWG Report on the Inspection/Verification of the Plant Treatment/Storage/Disposal (TSD) Facility of Genetron for the Joint Venture
"U" to "U-2"	Certified true copy of <i>Minutes of the Meeting</i> , 12 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 8, 2011
"V" to "V-1"	Certified true copy of a <i>Memorandum</i> dated December 13, 2011 addressed to The Chairperson, BAC Re: Report on the Clarification of the Plant Treatment/ Storage/ Disposal (TSD) Permits/ Certificates issued by DENR-EMB
"W" to "W-1"	Certified true copy of <i>Minutes of the Meeting</i> , 13 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 13, 2011
"X" to "X-3"	Certified true copy of <i>Minutes of the Meeting</i> , 14 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 19, 2011
"Y" to "Y-2"	Certified true copy of <i>BAC-Disposal Resolution No. 2012-01</i> entitled 'BAC Resolution for Post Qualification and Recommending Approval on the Sale/Disposal of Waste Oil Located at STPP' dated January 5, 2012
"Z"	Certified true copy of <i>Notice of Award</i> dated January 12, 2012 addressed to Atomillion, Genetron, and Safeco
"AA" to "AA-1"	Certified true copy of <i>Contract Agreement</i> between PSAIM and the Joint Venture dated January 18, 2012
"BB"	Certified true copy of <i>Notice to Proceed</i> dated January 30, 2012 addressed to Mr. John Erik De La Cruz
"CC" to "CC-2"	Certified true copy of <i>Minutes of the Meeting</i> , 10 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 1, 2011
"DD" to "DD-1"	Certified true copy of <i>Notice of Post Disqualification</i> dated November 28, 2011
"EE" to "EE-1"	Certified true copy of a <i>Letter</i> dated December 2, 2011 addressed to the PSAIM Corporation from Atty. Ernesto F. Urbano, Counsel for Far East Re: Notice of Post Disqualification
"FF"	Certified true copy of a <i>Letter</i> dated December 7, 2011 addressed to Atty. Ernesto F. Urbano from Rico P. Valdellon, Chairperson-BAC Re: Notice of Post Disqualification Re: Sale/Disposal of Waste Oil located at the STPP
"GG" to "GG-1"	Certified true copy of a <i>Letter</i> dated December 17, 2011 addressed to PSAIM from Atty. Ernesto F. Urbano, Counsel for Far East Fuel Re: Sale/Disposal of Waste Oil

	located at the STPP
"III" to "III-2"	Certified true copy of <i>Minutes of the Meeting</i> , 15 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 21, 2011
"II" to "II-2"	Certified true copy of <i>Minutes of the Meeting</i> , 16 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on January 3, 2012
"JJ" to "JJ-1"	Certified true copy of a <i>Letter</i> dated January 5, 2012 addressed to Far East and Atty. Ernesto F. Urbano from Rico P. Valdellon, Chairperson-BAC Re: Request for Reconsideration of the Disqualification of the Bid Re: Sale/Disposal of Waste Oil located at the STPP
"KK" to "KK-7"	Certified true copy of a <i>Letter</i> dated January 6, 2012 addressed to the PSALM from Atty. Ernesto F. Urbano, Counsel for Far East Appeal from the Notice of Post Disqualification in the Sale/Disposal of Waste Oil located at the STPP
"LL" to "LL-2"	Certified true copy of <i>Minutes of the Meeting</i> , 18 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on January 16, 2012
"MM" to "MM-5"	Certified true copy of a <i>Letter</i> dated January 18, 2012 addressed to Far East and Atty. Ernesto F. Urbano from Emmanuel R. Ledesma, Jr., President and CEO Re: Far East Fuel Corporation (FEFC) Appeal from the Notice of Post Disqualification in the Sale/Disposal of Waste Oil located at the STPP
"EEE" to "EEE-31"	Certified true copy of <i>Transcript of Discussions</i> BAC-Disposal for the Disposal of Waste Oil at the STPP -- December 16, 2011, PSALM Office
"II"	Photocopy of the <i>Complaint</i> of Far East in Civil Case No. 112-M-2012 before the RTC -- Malolos, Bulacan against accused Valdellon, Vehemente, Jacinto, and Ramirez
"II-1"	Photocopy of the <i>Affidavit-Complaint</i> for Violation of R.A. 3019 filed before the Office of the Ombudsman by Far East against, among others, herein accused Valdellon, Vehemente, Jacinto, and Ramirez
"UUU"	Certified true copy of <i>Letter</i> dated April 8, 2011 addressed to Genetron from Regional Director Lormelyn E. Claudio
"UUU-1"	Certified true copy of <i>Amended Environmental Compliance Certificate</i> 03BU-0308-27096-120A issued on April 8, 2011
"UUU-2"	Certified true copy of <i>Letter</i> dated November 21, 2011 addressed to Genetron from Regional Director Lormelyn E. Claudio
"UUU-3"	Certified true copy of <i>Amended Environmental Compliance Certificate</i> 03BU-0308-27096-120A issued on November 21, 2011

The *Motion to Admit Formal Offer of Evidence* was granted and the formal offer of evidence together with the attached manifestation and motion were admitted in evidence in a *Minute Resolution*³³ dated May 9, 2018.

Accused Valdellon,³⁴ Vehemente,³⁵ and Jacinto³⁶ filed their individual demurrers to evidence, which were denied for lack of merit by the Court.³⁷

EVIDENCE FOR THE DEFENSE

Evidence for the defense consisted of the testimonies of accused Valdellon, Jacinto, Ramirez, and Vehemente; Atty. Geoffrey Masancay; Silvestre Santiago; and Atty. Conrad S. Tolentino.

In his *Judicial Affidavit*,³⁸ **Rico P. Valdellon** testified that he is a retired government employee and previously worked with Napocor in various capacities from 1973 until 2003. He worked at PSALM from 2003 until his retirement in 2016.

Valdellon explained that by virtue of R.A. 9136 or the Electric Power Industry Reform Act of 2001, the PSALM was mandated to manage, among others, the orderly sale and disposition of Napocor generation assets, real estate, and other disposable assets. As such, PSALM issued *Memorandum Order No. 2011-015*³⁹ dated August 9, 2011 creating a BAC for the divestment or disposal of unserviceable assets of sold plants and other disposable assets, assisted by a TWG and a Secretariat. He was appointed as the Chairman of the PSALM BAC – Disposal (BAC) which includes the sale/disposal of the waste oil located at the STPP.

After being appointed as Chairman, Valdellon, together with the other members of BAC, formulated the Bidding Documents⁴⁰ which was comprised of the following documents: Invitation to Bid, Bid Data Sheet (BDS), General Conditions of Contract, Special Conditions of Contract, Schedule of Requirements, List of Assets and Bidding Forms.

Valdellon testified that PSALM advertised the *Invitation to Bid* for the sale/disposal of waste oil at the STPP in a newspaper of general circulation for three (3) consecutive days. Nineteen (19) bidders signified interest to bid and purchased Bidding Documents. He added that the BAC conducted the Pre-Bid Conference on November 3, 2011 and issued *Supplemental Bid*.

³³ *Id.*, pp. 874 – 875.

³⁴ *Motion for Leave of Court to File Demurrer to Prosecution's Evidence*, *Id.*, pp. 888 – 895.

³⁵ *Motion*, *Id.*, pp. 896 – 914.

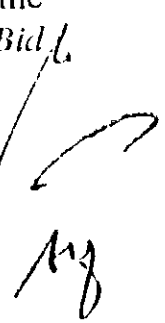
³⁶ *Motion for Leave to File Demurrer to Evidence*, *Id.*, pp. 915 – 922.

³⁷ *Minute Resolution* dated June 20, 2018. Records, Vol.5, pp. 52 – 53.

³⁸ Filed on July 12, 2018, *Id.*, pp. 106 – 251.

³⁹ Exh. "1" to "1-B" for accused Valdellon.

⁴⁰ Exh. "4" to "4-BBB" for accused Valdellon.



*Bulletin No. 1*⁴¹ on the next day which amended the following provisions of the Bidding Documents, viz:

- (1) Clause 9 on the Documents Comprising the Bid: Eligibility and Technical Components, Section II of the Instructions to Bidders (ITB);
- (2) Clause 16 on the sealing and marking of bids, Section II of the ITB;
- (3) Clause 24 on post-qualification, Section II of the ITB; and
- (4) Clause 24.2 (c), Section III of the BDS.

According to Valdellon, seven (7) of the 19 interested bidders submitted their bids, namely: (1) the Joint Venture, (2) Bensan, (3) Cleanway, (4) Far East, (5) Gulf Oil, (6) Hazchem, and (7) RMS Petroleum.

Valdellon explained that in determining to whom the contract would be awarded, the BAC undertook two qualifying procedures: the pre-qualification and the post-qualification process. During the pre-qualification process on November 17, 2011, of the seven (7) bidders which submitted their bids, only five (5) bidders were rated "PASSED" after the evaluation of their Technical Component Envelope (1st envelope) using a non-discretionary pass or fail criteria under ITB-Clause 20. The next step was the evaluation of the Financial Component (2nd envelope) wherein the bids were opened, compared, and ranked from highest to lowest, the results of which are tabulated below:

Bidder	Bid Price
Far East Fuel Corporation	P 55,500,000.00
Joint Venture of Atomillion Corporation, Genetron International Marketing, and Safeco Environmental Services, Inc.	35,008,888.80
Bensan Industries	30,000,888.80
Hazchem Inc.	19,999,999.99
RMS Petroleum Tech	10,600,000.00

The results are summarized in the *Abstract of Financial Bids*.⁴² After the pre-qualification process, Far East was declared the highest bidder and was subjected to the post-qualification process.

Valdellon further narrated that on November 22, 2011, the BAC-TWG headed by Yanga together with accused Jacinto conducted a site inspection of Far East's Treatment, Storage, Disposal (TSD) plant facility in Meycauayan, Bulacan. After the site inspection and evaluation of Far East's

⁴¹ Exh. "5" to "5-B" for accused Valdellon.

⁴² Exh. "16" for accused Valdellon.

post-qualification documents, the BAC deliberated on the TWG Report and recommendation and found that Far East cannot meet the requirements of PSALM. The BAC declared Far East post-disqualified and issued the *Notice of Disqualification* on November 28, 2011.

Valdellon explained that pursuant to Clause 24.5 of the ITB, the second highest bidder, the Joint Venture in this case, underwent the post-qualification process. The TWG conducted an on-site plant inspection and verification of the TSD facility of the Joint Venture in Angat Bulacan on December 6, 2011. During the conduct of the post-qualification processes the Joint Venture handed over to the TWG a copy of the *Amended ECC*⁴³ which was brought by the TWG to the BAC. The TWG recommended the post-disqualification of the Joint Venture on the ground that the latter has no capacity to meet the PSALM requirements under the old ECC. The BAC was initially in a quandary whether to accept the *Amended ECC*, there being a series of deliberations among TWG and BAC members and consultations from authorities prior to making a decision. During the deliberations, some members of the BAC expressed that submission of additional information such as the *Amended ECC* dated November 21, 2011 is allowed under Clause 24.2(c) and 24.3 of Section II of the ITB. PSALM Vice-President Tolentino also gave his opinion relating to Clause 24.2 of the ITB, that it is the prerogative of the BAC whether to accept or not the *Amended ECC*. Upon hearing the opinion advanced by VP Tolentino, the witness put to a vote whether to accept the *Amended ECC* or not. Two (2) BAC members, accused Jacinto and Ramirez, voted to accept the *Amended ECC* while one (1) BAC member, accused Ilagan, voted not to accept the same. The discussions and deliberations of the BAC and TWG were documented in various *Minutes of the Meetings*⁴⁴ held between December 2011 and January 2012.

Valdellon narrated further that the BAC issued *BAC – Disposal Resolution 2012-01*⁴⁵ on January 5, 2012 declaring the Joint Venture post-qualified and recommended to the PSALM President and CEO that the contract be awarded to the Joint Venture. On January 12, 2012, a *Notice of Award*⁴⁶ was issued to the Joint Venture, where the latter was required to post a performance security bond pursuant to Clause 28, Section II of the ITB. On January 18, 2012, the PSALM and the Joint Venture executed the *Contract Agreement*⁴⁷ for the sale/disposal of waste oil located at the STPP.

Valdellon pointed out that Far East questioned its disqualification via an appeal of the denial of its motion for reconsideration in relation to the

⁴³ Exh. "48" to "48-C" for accused Valdellon.

⁴⁴ *Minutes of the Meetings* dated December 8, 2011, December 13, 2011, December 19, 2011, December 21, 2011, and January 3, 2012 were marked as Exh. "21" to "21-B", "22" to "22-A", "23" to "23-A", "24" to "24-B", and "25" to "25-B", respectively, for accused Valdellon.

⁴⁵ Exh. "26" to "26-B" for accused Valdellon.

⁴⁶ Exh. "27" for accused Valdellon.

⁴⁷ Exh. "28" to "28-A" for accused Valdellon.

Notice of Post-Disqualification before the PSALM President and CEO. A complaint was later filed with the Office of the Ombudsman assailing Far East's disqualification, but this was eventually dismissed.

Valdellon stated that PSALM, pursuant to *Office Order No. 2012-034*⁴⁸ issued by the PSALM President and CEO, ordered the creation of a Task Force to conduct a thorough review of the sale/disposal of waste oil at STPP. On May 31, 2012, an *Investigation Report*⁴⁹ on the review of the sale/disposal of waste oil at the STPP was issued.

According to Valdellon, he came to know of the present case against him since this is an offshoot of the criminal complaint filed against him and other members of the BAC before the Office of the Ombudsman by Dr. Benjamin Santos of Bengan sometime in February 2012. The other respondents in the case before the Ombudsman were co-accused Jacinto, Hagan, Ramirez, and Vehemente.

Valdellon emphasized that the ECC of the Joint Venture is sufficient for the requirements of PSALM's waste oil project and that Dr. Santos' allegation that the BAC allowed the Joint Venture to obtain an additional ECC permit was absurd since at the time of the post-qualification inspection, the *Amended ECC* was already approved by the EMB on November 21, 2011. As regards the Joint Venture's plant capacities, Valdellon explained that based on the actual inspection of the facilities and limitations set by the *Amended ECC*, these comply with PSALM's minimum requirements.

Valdellon maintained that there was no manifest partiality, evident bad faith or gross inexcusable negligence as the conduct of the bidding process faithfully complied with the requirements of the bidding documents and relevant laws. Valdellon continued to expound that he never favored anybody as the contract was awarded to the Joint Venture since it complied with all the requirements of PSALM after undergoing the proper qualifying procedures.

On cross-examination,⁵⁰ Valdellon affirmed that the BAC conducted a public bidding for the sale/disposal of waste oil. In order to ensure a fair, honest, and competitive public bidding, the BAC engaged in extensive deliberations, formulated the policies, rules, and requirements in the conduct of the bidding, these were reflected in the *Bid Documents*⁵¹ and *SBB No. 1*.⁵²

With regard to PSALM VP Tolentino's participation in the deliberations of the BAC and TWG, Valdellon clarified that VP Tolentino

⁴⁸ Dated March 14, 2012, Exh. "30" to "30-A" for accused Valdellon.

⁴⁹ Dated May 31, 2012, Exh. "38" to "38-V" for accused Valdellon.

⁵⁰ TSN dated July 17, 2018, pp. 16 – 26.

⁵¹ Exh. "4" for accused Valdellon.

⁵² Exh. "5" for accused Valdellon.

was the witness' immediate supervisor at that time and Chairman of PSALM BAC-Procurement of Goods and Services. However, VP Tolentino was not present at the time the BAC prepared the Bidding Documents. He also confirmed that the members of the Task Force created to review the sale/disposal of the waste oil at the STPP were not members of the BAC.

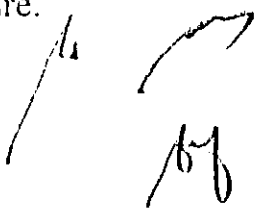
Valdellon added that bids had to be submitted on or before 12:00 noon of November 17, 2011 and that after a bid has been submitted, it cannot be modified by the bidders.

Valdellon confirmed that the BAC adopted a two-envelope system with two (2) qualification procedures. He explained that the first envelope consists of the eligibility requirements or the technical component of the bid which include a certificate of registration with the SEC, or the Department of Trade and Industry, registration certificated from the DENR and ECC and OSS. The second envelope is supposed to contain the financial component of the bid. On the qualification procedures, Valdellon explained there is the pre and post-qualification stages. For the pre-qualification stage, the contents of the two (2) envelopes are supposed to be verified against a checklist using a 'PASS' or 'FAIL,' criteria. If an envelope does not contain at least one of the documents required in the *Bidding Documents*, the pre-qualification is given a 'FAIL,' mark.

Valdellon also confirmed that at the time of the opening of bids at 12:15 p.m. on November 17, 2011, the bids were opened in the order in which they were submitted. One of the bidders was Gulf Oil, but it was disqualified or 'FAILED' the pre-qualification since first envelope, it did not contain the OSS. A representative from Gulf Oil informed the body that it was placed in the second envelope.

On further questioning, the witness also confirmed that since the BAC adopted a 'non-discretionary pass/fail criteria' in the opening of bids, it is either the bidder has or does not have an ECC. If there is such ECC submitted, the bidder is rated as 'PASSED' while if there is no ECC, marked as 'FAILED'.

On clarificatory questions by the Court, the witness asserted that during the pre-qualification, all the bidders submitted ECCs, and that the *Amended ECC* of the Joint Venture was submitted on a later date. When the Court clarified whether the *Amended ECC* was not submitted *after* the post-disqualification of Far East, the witness replied that the *Amended ECC* was submitted *during* the post-qualification of the Joint Venture. No one required the Joint Venture to submit the *Amended ECC*, it was just handed over during the post-qualification and inspection on the facilities of the Joint Venture.

Two handwritten signatures are present at the bottom of the page. The first signature is on the left, and the second is on the right, both appearing to be in black ink.

Atty. Cecilio B. Gellada, Jr.,⁵³ is a lawyer and a co-terminus employee at the Sandiganbayan but at the time material to the case, was the Department Manager of the Litigation and Internal Services Department of PSALM Corporation in 2012 until his retirement in 21 August 2017.

Atty. Gellada, Jr. testified that he came to know about the case when he was designated by the then President of PSALM to head the Task Force to investigate sale/disposal of waste oil at the STPP. His designation was made through *Office Order No. 2012-034*⁵⁴ dated March 14, 2012. By virtue of this *Office Order*, a Task Force was formed, composed of a technical engineer and another lawyer from the Office of the President. The Task Force summoned the members of the BAC and the TWG by requesting for their comments on the directive of the PSALM President, pursuant to the order of the Department of Energy (DOE). After which, each of the BAC members were interviewed. An *Investigation Report*⁵⁵ was drafted and submitted to the Office of the President for submission to the DOE.

On cross-examination,⁵⁶ Atty. Gellada confirmed that he was present during the bid opening and other proceedings relative to it. He pointed out that at the time relevant to the case, he was the Corporate Legal Counsel of Litigation and Internal Services Department of the PSALM, and thus supervised the Litigation Department, particularly the lawyers of PSALM Corporation in handling cases before the courts.

Atty. Geoffrey D.L. Masancay⁵⁷ was called to the witness stand. Atty. Tamares, for accused Valdellon, offered the following matters for stipulation to the prosecution:

1. The position of Atty. Masancay, which is Officer-in-Charge (OIC), General Counsel of PSALM; and
2. That the said office has custody of the original copies of the following documents, marked as Exhibits "30" and "38" of the counsel for accused Valdellon, namely: Office Order No. 2012-034 dated March 14, 2012; and Investigation Report dated May 31, 2012.

These were admitted by the prosecution. In its counter-stipulation, the prosecution asserted that the witness had no personal knowledge as to the preparation and contents of the exhibits which was also admitted by the counsel for accused Valdellon.

Silvestre Santiago, Chairperson of the PSALM Corporation BAC – Disposal Secretariat, was not able to attend the set hearing due to inclement

⁵³ TSN dated August 6, 2018, pp. 8 – 12. Direct examination conducted by Atty. Tamares for accused Valdellon.
⁵⁴ Exh. "30" for Valdellon, Ramirez, and Vehemente.
⁵⁵ Dated May 31, 2012. Exh. "38" for all the accused.
⁵⁶ *Supra*, note 53, pp. 12 – 17.
⁵⁷ *Id.*, pp. 18 – 24.

weather. Atty. Jacinto offered for stipulation Santiago's custody of the originals of the common exhibits for the prosecution and the defense, particularly, Exhibits "1" to "28". The stipulation was admitted by the prosecution, after which, Atty. Jacinto dispensed with the witness' presentation.

In his *Judicial Affidavit*⁵⁸ **Lorenzo L. Jacinto** testified that he is a retired government employee and was the Department Manager of the Asset Valuation Department (AVD) for PSALM in January 2012. He was also designated as Vice Chairperson of the PSALM BAC for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets starting August 9, 2011.

Jacinto declared on the witness stand that from the designation of the members of the BAC, TWG, and Secretariat, the BAC prepared the *Invitation to Bid*, Bidding Documents,⁵⁹ ITB, BDS, General Conditions of Contract, Special Conditions of Contract, Schedule of Requirement, List of Assets and Bidding Forms. The *Invitation to Bid* was published in the Philippine Daily Inquirer on October 19 – 21, 2011 as evidenced by newspaper clippings.⁶⁰ A Pre-Bid Conference was held on 3 November 2011⁶¹ to answer any questions, make clarifications or address any concerns from interested bidders with regard to the project. *SBB No. 1* was issued on November 4, 2011.⁶²

Jacinto further narrated that on November 17, 2011 at 12:15 p.m. the BAC conducted the opening of bids, seven (7) submitted their bids, in the order of submission: (1) Gulf Oil, (2) Far East, (3) the Joint Venture, (4) Bengan, (5) RMS Petroleum, (6) Hazchem, and (7) Cleanway. The opening of the bids was recorded in the *Minutes of the Bid Opening on Sale/disposal of Waste Oil Located at Sucat Thermal Power Plant*.⁶³ As the witness was present during bid opening, he was familiar with those who attended, namely: members of the BAC, TWG, the Secretariat, guests, observers and bidders' representatives.

After the opening of the bids, the BAC evaluated the bids using the non-discretionary pass/fail criteria. In the said evaluation process, based on the Bidding Documents and BDS, a *Checklist for Eligibility*⁶⁴ was prepared by the BAC and used during the opening of bids. The *Checklist* enumerated the eligibility documents and technical documents required in the Bidding Documents and BDS. If all the documentary requirements are present, the bidder is rated as 'PASSED'. If a document is lacking, the bidder is rated as

⁵⁸ Filed on August 10, 2018, Records, Volume 5, pp. 372 - 451.

⁵⁹ Exh. "4", "4-A" to "4-BBB" for accused Jacinto.

⁶⁰ Exh. "3", "3-A" and "3-B" for Jacinto.

⁶¹ Exh. "6", "6-A" to "6-C" for accused Jacinto.

⁶² Exh. "5", "5-A" and "5-B" for accused Jacinto.

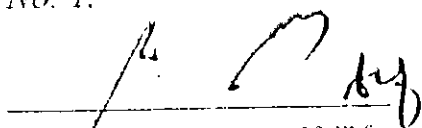
⁶³ Exh. "15", "15-A" to "15-H" for accused Jacinto.

⁶⁴ Exh "14" and "14-A" for accused Jacinto.

'FAILED'. The BAC has no discretion, either the bidder gets a 'PASS' or 'FAIL' rating. In the *Checklist*, it mentions 'Documents and Technical Documents' which is based on the *Bidding Documents*, particularly Section II of the ITB, Section C (9), page 13 and BDS, ITB Clause 9.1, page 27. The witness clarified that the ECC is an eligibility requirement, *i.e.*, if a bidder submitted an ECC, it is rated 'PASSED' and eligible. If there is no ECC, the bidder is rated 'FAILED' and ineligible. The documents submitted by the bidders are only photocopies, the originals are verified during post-qualification.

Jacinto explained that post-qualification is a process of verification wherein the TWG inspects the facility of the winning bidder as well as verifies the authenticity and validity of its documents. After Far East was post-disqualified upon recommendation of the TWG that its actual treatment capacity and discharge capacity did not meet PSALM's requirement, the TWG proceeded to subject the Joint Venture, the second highest bidder, to post-qualification proceedings. During post-qualification, Jacinto was present together with the head of the TWG, Yanga Verin, Lauan, Dimaandal, and Odfina were also present. After the conduct of post-qualification, the TWG submitted a *Report*⁶⁵ to the BAC Chairperson. Jacinto did not sign above his name in the said report despite his presence during the post-qualification evaluation because it was not prepared and signed by the officially designated members of the TWG under PSALM *Memorandum No. 2011-015* dated August 9, 2011. Of those who signed the *TWG Report*, only Yanga was officially designated based on *Memorandum No. 2011-015*.⁶⁶ Genetron, at the time of post-qualification, presented its original documents and permits including the ECC. The team at the treatment facility of the Joint Venture was shown and given a copy of the ECC amendment application dated October 24, 2011⁶⁷ for facility expansion. The *Amended ECC*⁶⁸ was approved on November 21, 2011.

Jacinto testified that upon receipt of the post-qualification report of Yanga, the BAC deliberated on whether or not to consider the *Amended ECC*. Subsequently, the BAC decided to consider the same. The witness differentiated 'admitting' and 'considering' the *Amended ECC* as 'admitting' is only done during bid opening and determining whether the documents are complete or not while 'considering' or 'to consider' occurs during post-qualification when the documents are being examined and evaluated. The witness further testified that the *Amended ECC* was considered as it is allowed under the *ITB*, Section 24.2, as amended by *SBB No. 1*.



⁶⁵ Exh. "19", "19-A" to "19-I" for accused Jacinto.

⁶⁶ The *TWG Report* dated December 7, 2011 where the names and signatures appear was marked as Exh. "19-D-1" for accused Jacinto.

⁶⁷ Exh. "46" for accused Jacinto.

⁶⁸ Exh "47", "48", "48-A" to "48-C" for accused Jacinto.

According to Jacinto, when the BAC decided to consider the *Amended ECC*, the BAC issued *Disposal Resolution No. 2012-01*⁶⁹ which declared the Joint Venture as the bidder with the Highest Responsive Bid and recommended to the PSALM President and CEO the award of the contract to the said bidder. The PSALM President approved the BAC's recommendation. The *Notice of Award* was issued by the PSALM President and CEO. Upon fulfillment of the contract, the PSALM President and CEO issued a *Certificate of Project Completion*⁷⁰ dated March 20, 2013.

Jacinto testified that on March 14, 2012, PSALM President and CEO issued *PSALM Office Order No. 2012-034*⁷¹ creating a Task Force for the review of the sale/disposal of waste oil at the STPP which would be headed by Atty. Gellada, Jr., with Regacho and Alazas as members. This *Office Order* was an action in response to a *Memorandum*⁷² issued by Atty. Josefina Patricia M. Asirit, Chief of Staff/Undersecretary of the DOE addressed to PSALM President and CEO Ledesma, requesting a thorough review of the bidding for the Project.

After the Task Force was created, it issued a *Memorandum*⁷³ directing the BAC to comment and submit pertinent documents in relation to the Project. The BAC submitted its response via a *Memorandum*⁷⁴ addressed to the Task Force dated March 21, 2012. The TWG members were also required to submit their respective comments, particularly Yanga (Head),⁷⁵ Hesiquio A. Quinsay (TWG Assistant Head),⁷⁶ Lady Arriane Lopez (TWG Member),⁷⁷ and Atty. Maria Concepcion B. Mendoza-Baldueza (TWG Member).⁷⁸

He added that on May 31, 2012, the Task Force submitted its *Investigation Report*⁷⁹ to the President and CEO of PSALM. In relation to the post-qualification and contract award to the Joint Venture, the Task Force's findings indicated that the *Amended ECC* is allowed under *ITB* Clause 24.2 (c), Section III, *BDS*, as amended by Item 5 of *SBB No. 1*.

Jacinto pointed out that aside from the PSALM investigation, there was also a criminal case filed with the Ombudsman by Far East against the PSALM President, all members of the BAC, and officers of the companies constituting the Joint Venture. As respondents, they were accused of causing

⁶⁹ Exh. "26", "26-A" to "26-B" for accused Jacinto.

⁷⁰ Exh. "39" for accused Jacinto.

⁷¹ Exh. "30" and "30-A" for accused Jacinto.

⁷² Exh. "29" and "29-A" for accused Jacinto.

⁷³ Exh. "31" and "31-A" for accused Jacinto.

⁷⁴ Exh. "32", "32-A" and "32-B" for accused Jacinto.

⁷⁵ *Memorandum* dated March 23, 2012, Exh. "33", "33-A" to "33-E" and *Memorandum* dated "34", "34-A" to "34-B", for accused Jacinto.

⁷⁶ *Memorandum* dated March 21, 2012, Exh. "35" and "35-A" for accused Jacinto.

⁷⁷ *Memorandum* dated March 23, 2012, Exh. "36" and "36-A" for accused Jacinto.

⁷⁸ *Memorandum* dated March 23, 2012, Exh. "37", "37-A", and "37-B" for accused Jacinto.

⁷⁹ Exh. "38", "38-A" to "38-V" for accused Jacinto.

undue injury and giving unwarranted benefit, advantage, or preference in the bidding process by acting with manifest partiality, evident bad faith or gross inexcusable negligence. Said case was dismissed on October 31, 2013.⁸⁰

Jacinto added that on January 28, 2012, Far East also filed a case with the RTC of Malolos, Bulacan, a case for Annulment of Notice of Award, Damages, and Injunction with Prayer for a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order. On March 25, 2012, Far East also filed a letter-complaint with the Office of the President. The causes of action in these cases relied on the allegation of irregularity in the bidding and causing undue injury, giving unwarranted benefit, advantage or preference and acting with manifest partiality, evident bad faith or gross inexcusable negligence. Both of these cases were dismissed for lack of merit.

During additional direct examination⁸¹ Jacinto stated that there were two (2) ECCs which were submitted by the Joint Venture to the BAC, the first ECC was submitted during the pre-qualification stage of the bidding while the second was submitted during the post-qualification stage. The second ECC is the *Amended ECC*. When the second ECC was submitted to the BAC, the BAC decided to accept the *Amended ECC*, and recommended the award of the contract to the Joint Venture. However, the recommendation to award was after the results of the post-qualification were deliberated upon.

When asked how the capacity of the facility of the Joint Venture was determined, Jacinto replied that based on the Terms of Reference, it should be the actual processing capacity. In determining whether the Joint Venture had the capacity to comply with the requirements of PSALM, the actual facility was inspected using name plates and records of the facility. It was found out that the facility could process 6,000 liters of waste oil per day. Jacinto noted that such capacity cannot be determined by looking at the ECC. He expounded that the output stated in the ECC refers to the finished product or the output after processing. According to him, PSALM's requirement is to determine its processing capacity based on the input. Jacinto opined that the ECC capacity for the output is not the concern of the BAC. When asked whether there was a change in the facility insofar as its capacity was concerned at the time the first ECC was issued and at the time the second ECC was issued to which the witness replied that there was no change.

On cross-examination,⁸² the witness confirmed that as the designated Vice-Chair of the BAC for the sale/disposal of waste oil at the STPP, the

⁸⁰ Ombudsman *Resolution* dated October 31, 2013 (OMB-C-C-12-0075-B), Exh. "49", "49-A" to "49-I" for accused Jacinto.

⁸¹ TSN dated August 15, 2018, pp. 5 - 13.

⁸² *Id.*, pp. 13 - 18.

BAC conducted competitive public bidding. He likewise affirmed that the BAC adopted a two-stage process wherein there are both pre- and post-qualification stages using a 'PASSED' or 'FAILED' criterion. Moreover, the witness agreed that based on this criterion, determining whether an interested party is eligible to bid or rated "PASSED" during the pre-qualification stage, depends on whether the documents it submitted before the opening of bids (held on November 17, 2011) included all the requirements as stated in the Bidding Documents. If a single document was missing, the concerned bidder is rated "FAILED". Jacinto testified that one of the eligibility documents is the *ECC*. The witness also agreed that only photocopies of documents were submitted by eligible bidders and these photocopies are the ones retained by the BAC for post-qualification evaluation. The purpose of post-qualification is to evaluate the bid whether it complies with the requirements and conditions imposed by the BAC in the Bidding Documents. In determining whether the bid complies with the requirements, the documents submitted before the opening of the bids are evaluated and their authenticity verified. There is also an inspection of the plant facility, specifically on the treatment, storage, and disposal. Jacinto also agreed that to safeguard the competitive public bidding, the evaluation of the bid during the post-qualification stage should be limited or should be on the basis of the documents submitted before the opening of the bids. The witness recalled that on November 17, 2011, after the bids were opened and examined, Far East was deemed the highest bidder. On this basis, the post-qualification of Far East ensued, commencing with the inspection of its plant, with the documents examined by the TWG. The witness was present during the post-qualification stage, for which Yanga prepared a report.⁸³ The witness affixed his signature after reviewing the said report. Prosecutor Nuñez again confirmed whether Lauan and Verin were not members of the team, to which the witness answered in the affirmative.

Jacinto also stated that during the deliberations conducted by the BAC regarding the question of whether to accept the second *ECC* of the Joint Venture, the BAC Chairperson directed a Task Team to clarify with the EMB a matter regarding the *ECC*. The Task Team came up with the *Report of Clarification of the Plant Treatment Storage Disposal*.⁸⁴

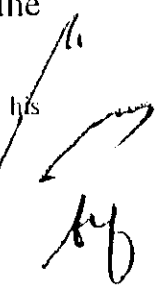
Atty. Conrad S. Tolentino, through his *Judicial Affidavit*,⁸⁵ stated that he was previously employed with PSALM Corporation from 2003 to 2005, then from 2007 to 2013.⁸⁶ At the time the bid subject of this case was conducted and the time when the Project was recommended for award to the Joint Venture, he was then the Vice-President for Asset Management. As VP for Asset Management, the witness oversaw the privatization of the

⁸³ Exh. "R-1" for the prosecution and Exh. "17-A" for accused Jacinto. Accused Jacinto identified his signature on the fifth page of the report.

⁸⁴ Exh. "V" and "V-1" for the prosecution.

⁸⁵ Filed on August 10, 2018, Records, Volume 5, pp. 372 - 451.

⁸⁶ Exh. "53", TSN dated August 29, 2018, p. 10



generation assets, real estate and other disposable assets of Napocor. The waste oil at the STPP is under his supervision and falls under his department.

Atty. Tolentino explained that since the waste oil at the STPP was under his department, PSALM formed a BAC for its sale/disposal. The BAC was composed of accused Valdellon as Chairperson, accused Jacinto for technical matters, accused Vehemente for legal issues, and accused Ramirez for financial matters.

Atty. Tolentino recalled that the opening of bid submissions was sometime in the first two (2) weeks of November 2011 wherein Far East was declared the highest bidder. Post-qualification evaluation of Far East followed in the last week of November 2011. However, Far East was post-disqualified, so the second highest bidder, the Joint Venture underwent the post-qualification evaluation in December 2011. He claimed to be familiar with the procedures taken by the BAC as he received regular updates from the BAC through e-mail or verbal communication and was present in almost all meetings of the BAC, especially on the meeting regarding the report on the post-disqualification evaluation of the Joint Venture, where the witness was specifically invited by the BAC to appear in the said meeting.⁸⁷ Atty. Tolentino added that Valdellon invited the witness to attend the BAC meeting which would include a discussion of the post-disqualification of the Joint Venture and to assist the BAC decide on a certain issue. The BAC, through accused Valdellon, sought his help since he had the experience and background as BAC Chairperson for PSALM's procurement activities which would be relevant to the issue to be discussed. He decided to attend since the issue was legal in nature, and upon learning that accused Vehemente (the BAC legal member) would not be able to attend the meeting.

Atty. Tolentino recalled that during the BAC meeting, the BAC deliberated on whether to accept the *Amended ECC* submitted by the Joint Venture in relation to the proper interpretation of amended Clause 24 on Post-Qualification; Section II, *ITB of SBB No.1*.⁸⁸ When asked about his opinion on the issue, he explained that the BAC had the prerogative to accept the *Amended ECC* or not, taking into consideration all the information it had at that time. When asked on how he arrived at his position or opinion on the matter, Atty. Tolentino replied that the Joint Venture was rated "PASSED" during the bid submission since it submitted all the documents required for that stage. He explained that from his experience as Chairman of the BAC for PSALM procurements, the post-qualification stage was the opportunity for the bidder to present authenticated documents and submit latest versions of permits and licenses issued to it. He added that the *ECC* of the Joint Venture may be considered

⁸⁷ Exh. "15", "15-A" to "15-H" for accused Ramirez and the *Minutes* marked as Exh. "23", "23-A" to "23-C" for accused Ramirez.

⁸⁸ Exh. "5" to "5-B" for accused Ramirez.

a permit or license which would fall under the requirement prescribed under Sec. 24.2(c) of *SBB No. 1*, that it should be submitted within three (3) calendar days from receipt of notice of being the highest bidder. Atty. Tolentino emphasized that the Joint Venture had an obligation to submit its *Amended ECC* to the BAC within three (3) days after receipt of notice. He also observed that the BAC was evaluating the report of the TWG.

According to Atty. Tolentino, the purpose of the TWG under the Procurement Law and its Implementing Rules and Regulations is to assist the BAC. Nonetheless, it is the BAC which ultimately exercises discretion on issues brought before the BAC. He also noted that under the disposal guidelines of the Commission on Audit, the BAC is the sole authority on matters of bidding—it is therefore the prerogative of the BAC to decide on matters before it, notwithstanding inputs from the TWG. He added that the BAC heeded his advice and exercised its prerogative, voting 2 to 1, 2 in favor of accepting the *Amended ECC*.

On additional direct examination,⁸⁹ Atty. Tolentino recalled that accused Ilagan, Valdellon, Ramirez, and Jacinto were present in the December 19, 2011 meeting of the BAC. He mentioned that accused Vehemente was not there since he was in a meeting in Meralco which he instructed the witness to attend. When the witness was made to recall what the numerical result of the deliberations were, he replied that two (2) votes in favor of accepting an *ECC* submitted by the bidder and one (1) against its acceptance. After the discussion on whether to accept the *ECC* was completed, the BAC would make a recommendation to the HOPE, in this case, the PSALM President. The PSALM President, acting on the recommendation of the HOPE decided to award the contract to the bidder (Joint Venture) at that time. The PSALM President, being a member of the Board of Directors is answerable to the latter. There was no action by the Board with regard to the Project.

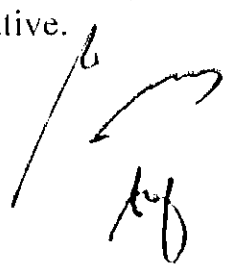
Upon further questioning,⁹⁰ Atty. Tolentino confirmed that the two (2) who voted for the acceptance of the *ECC* were accused Ramirez and Jacinto, while the one (1) vote who voted for its non-acceptance was accused Ilagan. Of the four who were present only three (3) voted. He additionally stated that that it is the PSALM President who decides to award or not to award the contract, taking into consideration the recommendation of the BAC.

On cross-examination,⁹¹ Atty. Tolentino maintained that he carefully read the bid documents pertinent to the Project, which include the *BDS* and the *SBB*, to which the witness answered in the affirmative.

⁸⁹ TSN dated August 29, 2018, pp. 11 – 15.

⁹⁰ *Id.*, pp. 15 – 17.

⁹¹ *Id.*, pp. 17 – 21.

Handwritten signature and initials, possibly 'Tolentino' and 'TJ', written in black ink.

In his Judicial Affidavit, **Ramirez**, stated that he is a Senior Manager for Business Development at First Gen Corporation and was previously an employee of PSALM until July 2012.⁹² He completed his studies in the University of the Philippines, Los Baños and took several trainings related to his work.⁹³ From November 2011 until January 2012, the witness was then the Officer-in-Charge, Division Manager of the Financial Valuation and Tariff Division (FV-Tariff), Liability Management Department of PSALM and was officially promoted to the position in March 2012. As such, his duties and responsibilities include heading the group that:

- (1) Prepares the financial/valuation models of Napocor's generating assets and Independent Power Producer Contracts (IPPs) scheduled for privatization;
- (2) Generates tariff-related models, including the Universal Charge Stranded Contract Cost and Stranded Debt, for application to the Energy Regulatory Commission; and
- (3) Provides pricing models in relation to various negotiations of operations and maintenance contracts entered into by PSALM.

Ramirez recalled that he came to know of the criminal case sometime in the first quarter of 2012 when he received a copy of the *Complaint-Affidavit* filed by Dr. Benjamin Santos of Bengan against him and other members of the BAC. According to him, the BAC was formed by PSALM to conduct a bidding for the sale/disposal of waste oil located at the STPP. The PSALM President designated him as part of the BAC as he wanted someone with a finance background to be a part of the said body. After the BAC was formed, the *Notice to Bid* was sent, the Pre-Bid Conference was set, and the bids were opened; pre-and post-qualification stages ensued, then an ocular inspection of the facilities of the bidders.

Ramirez testified that at the Bid Opening, pre-qualification proceeded wherein seven (7) companies submitted their respective bid documents, including the bid of the Joint Venture. When the bid documents of the Joint Venture were opened, it contained among other documents, an ECC⁹⁴ and a letter dated October 24, 2011.⁹⁵ In the said letter, it stated that the Joint Venture at that time had a pending a request with the DENR for the amendment and expansion of its existing ECC. Of the seven (7) bidders, only five (5) passed the pre-qualification with Far East being the highest bidder, the second was the Joint Venture, and third, Bengan.

⁹² Exh. "50" for accused Ramirez.

⁹³ Original UP undergraduate and Master's diplomas, Certification from JICA and Certification from ADB marked as Exh. "51", "59", "55", and "56", respectively.

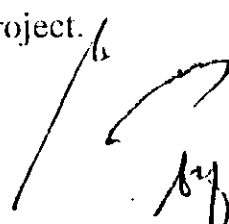
⁹⁴ Exh. "8" to "8-A" for accused Ramirez.

⁹⁵ Exh. "8" for accused Ramirez.

Ramirez narrated that Far East was subjected to post-qualification in the last week of November 2011 with its facilities inspected by technical persons of the BAC and the TWG. Far East was disqualified because upon inspection of the BAC, represented by co-accused Jacinto and members of the TWG, they were able to confirm the TWG report that Far East does not have the capacity to meet the requirements of the project. During the inspection, it was also found out that the *Discharge Permit*⁹⁶ of Far East shows that its facility also does not meet the requirements of the Contract. On December 2, 2011, the *Notice of Post Disqualification*⁹⁷ dated November 29, 2011 was received by Far East.

Ramirez further stated that the Joint Venture was verbally informed by the BAC that it had the highest bid on December 5, 2011. The next day, post-qualification of the Joint Venture was conducted by the technical person of the BAC, accused Jacinto and the TWG represented by Yanga. During post-qualification, the Joint Venture submitted to the BAC its *Amended ECC*⁹⁸ which includes a cover later dated November 21, 2011. The submission of the *Amended ECC* to the BAC did not come as a surprise to the witness since based on his interpretation of the Bid Documents, particularly *SBB No. 1*,⁹⁹ allows bidders to submit necessary permits and licenses.

Ramirez narrated that he verified the name plate capacity of the machines of the Joint Venture and it showed that it had the capacity to meet the requirements of PSALM. He noted that Yanga stuck to the TWG's report recommending the disqualification of the Joint Venture on the basis that the first ECC submitted by the Joint Venture shows that it has no capacity to meet the requirements of PSALM. He recalled that the BAC was in a quandary on whether to accept the *Amended ECC* or not in light of the amended Clause 24 on Post-Qualification and Section II of the *ITB* as modified by *SBB No. 1*. Ramirez admitted that he was still confused during the deliberations, since he was not a technical person nor a lawyer. To him, the technical experts in the BAC were co-accused Valdellon, Jacinto, and Ilagan; with co-accused Vehemente as the legal expert, who, unfortunately, was absent during the BAC deliberations on December 19, 2011.¹⁰⁰ When asked on whether the Joint Venture has the capacity to carry out the requirements of PSALM, Ramirez replied that after listening carefully to co-accused Jacinto's explanation, he was convinced that the Joint Venture had the required capacity to carry out the project.



⁹⁶ Exh. "7-UU" for accused Ramirez.

⁹⁷ Exh. "57" for accused Ramirez, with the proof of receipt of Far East marked as Exh "58" for accused Ramirez.

⁹⁸ Exh. "47" to "48-C" for accused Ramirez.

⁹⁹ Exh. "5" to "5-B" for the prosecution.

¹⁰⁰ Exh. "15" to "15-11" for accused Ramirez.

Ramirez testified that since the interpretation of *SBB No. 1* was legal in nature, the BAC sought the advice of Atty. Tolentino, then Vice-President for Asset Management.

Ramirez pointed out that the Joint Venture was able to carry out the project as evidenced by the *Certificate of Project Completion*.¹⁰¹ He further testified that the State did not sustain any damage when the BAC did not disqualify the Joint Venture but actually prevented the State from sustaining any damages. Ramirez opined that if the Joint Venture was disqualified, the next highest bidder would have been Bensan, the bid of which was lower than that of the Joint Venture. When asked whether Bensan incurred any damage when the Joint Venture was not disqualified, to which the witness replied that there was no damage since Bensan could not assume that it will pass the post-qualification process.

In his Judicial Affidavit, **Vehemente**¹⁰² confirmed that he is the lawyer-member of the BAC for the sale/disposal of waste oil at the STPP. He recalled that he was present during the bidding, wherein the bidders and their corresponding bid prices were as follows:

Bidder	Bid Price
Far East	Php55,500,000.00
Joint Venture of Atomillion, Genetron, and Safeco	35,008,888.00
Bensan	30,000,888.00
RMS Petroleum	10,600,000.00
Hazchem	19,999,999.00

Vehemente testified that after Far East was declared with the Highest Calculated Bid by the BAC, it was then referred to the TWG for post-qualification. He added that on November 28, 2011, the BAC issued a *Notice of Post-disqualification* to Far East upon recommendation of the TWG. He recalled that Far East was disqualified since its facility was not capable of processing oily water from STPP tanks 1, 3, and 4 and its discharge permit of 30 cubic meters per day or 900 metric tons (MT) per month did not meet PSALM's minimum requirement of 85,103.15 liters per day or 2,553 MT/month. Far East filed a *Motion for Reconsideration* with the BAC which was denied. Far East filed an appeal with the PSALM President.

Vehemente narrated further that the BAC proceeded to evaluate the papers of the next highest bidder, the Joint Venture since there was no injunction and no written protest from Far East, and that this action was allowed in Clause 24.5 of the *ITB*.¹⁰³ During the post-qualification of the Joint Venture, there was a site visit by the BAC and TWG wherein the Joint

¹⁰¹ Dated March 20, 2013, Exh. "39" for accused Ramirez.

¹⁰² Filed on October 18, 2018, Records, Vol. 5, pp. 668 - 676.

¹⁰³ Exh. "4-11" for accused Vehemente.

Venture voluntarily gave the *Amended ECC*. The BAC accepted the same and was set for discussion and deliberation on December 19, 2011. The witness was not present during the deliberations as he was on a field assignment, hence, had no participation during the deliberations. However, he was informed that there was a vote of 2-1 in favor of allowing the *Amended ECC*, this was evidenced by the *Minutes of the Meeting* dated December 19, 2011.¹⁰⁴

Vehemente stated that the Joint Venture was post-qualified based on the 2-1 vote of the BAC members after which *BAC Resolution No. 2012-01* recommending the award of the contract to the Joint Venture was made and routed to the members for signature. Upon routing, the witness signed the same even if he was not present during the deliberations because it had accompanying documents, the December 19, 2011 *Minutes of the Meeting* and the details of the antecedent proceedings, and to affirm that there was a 2-1 vote (regarding the acceptance of the *Amended ECC*) prior to the transmittal of the *Resolution* to the President for his approval or disapproval. When asked why the resolution was signed by all the members of the BAC despite a disparity in the vote, Vehemente replied that all the BAC members were required by President Ledesma to sign the said resolution to attest to what transpired before he could make the award.

On direct-examination¹⁰⁵ Vehemente confirmed that he read all the attached documents to the *BAC Resolution* prior to signing it. When asked whether he noticed anything peculiar which would have prompted him not to sign the same on the basis of the documents, the witness replied that there were none as the attachments were factual narrations, particularly the *Minutes of the Meeting* on the deliberations.

On cross-examination,¹⁰⁶ Vehemente stated that the directive of PSALM President Ledesma that all the BAC members sign the *Resolution* was not contained in any memorandum, office order, or any written document.

On clarificatory questions from this Court,¹⁰⁷ Vehemente explained that he affixed his signature on the *Resolution* merely as an affirmation of what transpired during the meeting and the completeness of the documents attached thereto. He also confirmed that his signature on the *Resolution* was merely to affirm what actually transpired on December 20, 2011. Vehemente added that he did have the opportunity to verify the contents of the *Resolution* prior to signing as the attachments were included and the 'whereas' clauses also enumerated the proceedings. Therefore, his signature likewise affirms that the issues other than the vote on the ECC, such as the

¹⁰⁴ Exh. "23" to "23-C" for accused Vehemente.

¹⁰⁵ TSN dated October 23, 2018, pp. 7 - 8.

¹⁰⁶ *Id.*, p.9.

¹⁰⁷ *Id.*, pp. 10 - 11.

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validity of R.A. 8479 was also included in the ‘whereas’ clause. For these reasons, the witness found the *Resolution* in order and signed the same.

Thereafter, the defense submitted their respective *Formal Offers of Evidence*.

Accused Ramirez offered the following documentary exhibits:¹⁰⁸

EXHIBIT	DESCRIPTION
“60” and series	<i>Judicial Affidavit</i> of accused Ramirez dated September 12, 2018.
“50”	<i>Resume</i> of accused Ramirez
“51”	<i>Diploma</i> of accused Ramirez from the University of the Philippines for Bachelor of Science in Agricultural Economics
“55”	<i>Certification</i>
“56”	<i>Certification</i>
“59”	<i>Diploma</i> of accused Ramirez from the University of the Philippines for Masters in Science in Finance
“8” to “8-00000”	<i>Bid Documents</i> submitted by the Joint Venture during the pre-qualification process on November 17, 2011; <i>Letter</i> dated October 24, 2011 of the Joint Venture addressed to Hon. Lormelyn Claudio, Regional Director of DENR-EMB; <i>ECC</i> dated April 8, 2011
“7-UU”	<i>Discharge Permit</i> of Far East
“57”	<i>Notice of Post Disqualification</i> dated November 29, 2011
“48” to “48-C”	<i>Amended ECC</i> of the Joint Venture
“5”, “5-A” to “5-B”	<i>SBB No. 1</i>
“15”, “15-A” to “15-II”	<i>Minutes of the Meeting</i> of the BAC deliberations dated December 19, 2011
“39”	<i>Certificate of Project Completion</i> dated March 20, 2013.
“64” and “54-A-Ramirez”	<i>Judicial Affidavit</i> of Atty. Conrad Tolentino dated August 24, 2018.
“53-Ramirez”	<i>Certificate of Income/Employment</i> dated April 11, 2011 issued by PSALM.
“38” to “38-X”	Task Force to Review the Sale/Disposal of Waste Oil at the STPP. In re: Review of the Sale/Disposal of Waste Oil at the STPP dated May 31, 2012
“52” to “52-A”	Printed copy of R.A. No. 9003 entitled “Ecological Solid Waste Management Act of 2000”; Section 38 of Article 6, R.A. No. 9003

¹⁰⁸ Filed on November 5, 2018. Records, Vol. 6, pp. 7 - 57.

Accused Ramirez likewise adopts and offers the documents referred to and identified in the *Formal Offers of Evidence* filed by co-accused Valdellon and Vehemente.

Accused Jacinto offered the following documentary exhibits:¹⁰⁹

EXHIBIT	DESCRIPTION
"1", "1-A", to "1-B"	<i>PSALM Memorandum Order No. 2011-015</i> dated August 9, 2011 Subject: Designation of the PSALM BAC, TWG and Secretariat for Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets
"3", "3-A", and "3-B"	<i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP as published in PDI on October 19 - 21, 2011.
"4", "4-A" to "4-BBB"; "4-L-1"	<i>Bidding Documents</i>
"5", "5-A", to "5-B"	<i>SBB No. 1</i>
"6", "6-A", to "6-C"	<i>Minutes of Pre-Bid Conference</i> on Sale/Disposal of Waste Oil Located at the STPP dated November 3, 2011
"14" to "14-A"	<i>Checklist</i> for Eligibility-Sale/Disposal of Waste Oil Located at the STPP, Opening and Preliminary Examination of Bid Documents, Date and Time: November 17, 2011/ 12:15 p.m.
"15", "15-A" to "15-II"	<i>Minutes of Bid Opening</i> on Sale/Disposal of Waste Oil located at the STPP dated November 17, 2011, 12:15 p.m.
"19", "19-A" to "19-1" and "19-D-1"	<i>Memorandum</i> dated December 7, 2011; For: The Chairperson, BAC; From Group Head, TWG; Subject: Report on the Inspection/Verification of the Plant Treatment/Storage/Disposal (TSD) Facility of Genetron
"26", "26-A", to "26-B", "26-B-1" and "26-B-2"	<i>BAC-Disposal Resolution No. 2012-01</i> dated January 5, 2012 for Post Qualification and Recommending Approval of the Sale/Disposal of Waste Oil located at the STPP
"29" to "29-A"	<i>DOE Memorandum</i> dated March 5, 2012 addressed to Mr. Emmanuel R. Ledesma, President, PSALM; From Atty. Josefina Patricia M. Asirit, Chief of Staff/Undersecretary; Subject: STPP Waste Oil Sale/Disposal Project (Project)
"30" to "30-A"	<i>PSALM Office Order No. 2012-034</i> dated March 14, 2012; Subject: Creating of a Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"31" to "31-A"	<i>Memorandum</i> dated March 19, 2012; To: BAC, Sale/Disposal of Waste Oil at STPP; Rico P. Valdellon, Chairman; Lorenzo I. Jacinto,

¹⁰⁹ Filed on November 5, 2018. *Id.*, pp. 58 - 130.

	Member; Jacinto M. Ilagan, Member; Don Thed J. Ramirez, Member; Renato R. Vehemente, Member; From: Task Force to Review the Sale/Disposal of Waste Oil at the STPP; Subject: Review of the Sale/Disposal of Waste Oil at the STPP
"32", "32-A", to "32-B"	Memorandum dated March 21, 2012; For: Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From: BAC Sale/Disposal of Waste Oil at the STPP; Subject: Review of the Sale/Disposal of Waste Oil at the STPP
"33", "33-A" to "33-E"	Memorandum dated March 23, 2012; For: The Head, Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From: Group Head, TWG Sale/Disposal of Waste Oil at the STPP; From: Corporate Staff Officer B, AVDD1; Subject: Review of the Sale/Disposal of Waste Oil at STPP
"34", "34-A" to "34-B"	Memorandum dated March 26, 2012; For: The Head, Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From: Group Head, TWG Sale/Disposal of Waste Oil at STPP; From: Corporate Staff Officer B, AVDD1; Subject: Additional Comments-Review of the Sale/Disposal of Waste Oil at the STPP
"35" to "35-A"	Memorandum dated March 21, 2012; To: The Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From Hesiquio A. Quinsay, Assistant Head, TWG Sale/Disposal of Waste Oil at Sucat Thermal Power Plant; Subject: Review of Sale/Disposal of Waste Oil at the STPP
"36" to "36-A"	Memorandum dated March 23, 2012; For: Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From: TWG Member Lady Arriane Lopez, Liability Management Department; Subject: Review of the Sale/Disposal of Waste Oil at the STPP
"37", "37-A" to "37-B"	Memorandum dated March 23, 2012; For: Task Force to Review the Sale/Disposal of Waste Oil at the STPP; From: Maria Concepcion B. Mendoza-Baldueza, Member, TWG, Sale/Disposal of Waste Oil at Sucat Thermal Power Plant; Subject: Review of the Sale/Disposal of Waste Oil at the STPP
"38", "38-A" to "38-X"	Investigation Report dated May 31, 2012 of the Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"39"	Certificate of Project Completion dated March 20, 2013; signed by PSALM Presidents and CEO Emmanuel R. Ledesma, Jr.
"46"	Letter from Genetron dated October 24, 2011 to Hon. Lormelyn Claudio, Regional Director, DENR-EMB, Re: ECC Amendment-Facility Expansion, signed by May Ann M. Estavillo, PCO; Noted by: Mr. Genoveo C. Sebastian, President

"47"	DENR-EMB <i>Cover Letter</i> dated November 21, 2011, ECC Ref. Code No. 03BU-0308-27096-120A signed by Lormelyn E. Claudio, Regional Director addressed to Genetron
"48", "48-A", to "48-C"	DENR-EMB <i>ECC No. 03BU-0308-27096-120A (Amended)</i> for Genetron dated November 21, 2011 with Annexes
"49", "49-A" to "49-I."	<i>Ombudsman Resolution</i> dated October 31, 2013 in Case No. OMB-C-C-12-0075-B entitled: <i>Far East Fuel Corporation v. Emmanuel R. Ledesma, Jr., et al.</i> , for Violation of R.A. 3019, Sec 3(e)

The exhibits stated above are also offered as part of the testimonies of accused Valdellon, Jacinto, Ramirez, and Vehemente, together with Atty. Gellada, Jr., all of whom are common witnesses for the accused.

Accused Valdellon offered the following documentary exhibits:¹¹⁰

EXHIBIT	DESCRIPTION
"1", "1-A", to "1-B"	<i>PSALM Memorandum Order No. 2011-015</i> dated August 9, 2011 Subject: Designation of the PSALM BAC, TWG and Secretariat for Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets
"2"	<i>PSALM Memorandum Order No. 2011-018</i> dated September 14, 2011 (amending 2011-015), Subject: Change in the Members of the PSALM BAC for Divestment or Disposal of Unserviceable Assets of Sold Plants and other disposable Assets
"3", "3-A", and "3-B"	<i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP as published in PDI on October 19 – 21, 2011.
"4", "4-A" to "4-BBB"	<i>Bidding Documents</i>
"5", "5-A", to "5-B"	<i>SBB No. 1</i>
"6", "6-A", to "6-C"	<i>Minutes of Pre-Bid Conference</i> on Sale/Disposal of Waste Oil Located at STPP dated November 3, 2011
"8", "8-A" to "8-00000"	Bid Documents submitted by the Joint Venture
"14" to "14-A"	<i>Checklist</i> for Eligibility-Sale/Disposal of Waste Oil Located at STPP, Opening and Preliminary Examination of Bid Documents, Date and Time: November 17, 2011/ 12:15 p.m.
"15", "15-A" to "15-II"	<i>Minutes of Bid Opening</i> on Sale/Disposal of Waste Oil located at the STPP dated November 17, 2011, 12:15 p.m.
"16"	<i>Abstract of Financial Bids</i>

¹¹⁰ Filed on November 15, 2018. *Id.*, pp. 145-162.

"18" to "18-A"	<i>Notice of Post Disqualification</i> dated November 28, 2011 addressed to Far East
"21", "21-A" to "21-B"	<i>Minutes of Meeting</i> , 12 th BAC, TWG, and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets on December 8, 2011
"22" to "22-A"	<i>Minutes of Meeting</i> , 13 th BAC, TWG, and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets dated December 13, 2011
"23", "23-A" to "23-C"	<i>Minutes of Meeting</i> , 14 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets dated December 19, 2011
"24", "24-A" to "24-B"	<i>Minutes of Meeting</i> , 15 th BAC dated December 21, 2011
"25", "25" to "25-B"	<i>Minutes of Meeting</i> , 16 th BAC dated January 3, 2012
"26", "26-A", to "26-B"	<i>BAC-Disposal Resolution No. 2012-01</i> dated January 5, 2012 for Post Qualification and Recommending Approval of the Sale/Disposal of Waste Oil located at the STPP
"27"	<i>Notice of Award</i> dated January 12, 2012 addressed to Atomillion, Genetron, and Safeco
"28" to "28-A"	<i>Contract of Agreement</i> between PSAIM and the Joint Venture dated January 18, 2012
"30" to "30-A"	<i>PSAIM Office Order No. 2012-034</i> dated March 14, 2012; Subject: Creating of a Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"38", "38-A" to "38-V"	<i>Investigation Report</i> dated May 31, 2012 of the Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"39"	<i>Certificate of Project Completion</i> dated March 20, 2013; signed by PSAIM Presidents and CEO Emmanuel R. Ledesma, Jr.
"48", "48-A", to "48-C"	<i>DENR-EMB ECC No. 03BU-0308-27096-120A (Amended)</i> for Genetron dated November 21, 2011 with Annexes
"49", "49-A" to "49-L"	<i>Ombudsman Resolution</i> dated 31 October 2013 in Case No. OMB-C-C-12-0075-B entitled: <i>Far East Fuel Corporation v. Emmanuel R. Ledesma, Jr., et al.</i> , for Violation of R.A. 3019, Sec 3(e)
"51", and "51-A"	<i>Judicial Affidavit</i> and signature of accused Valdellon
"54-Valdellon" and "54-A-Valdellon"	<i>Judicial Affidavit</i> and signature of Atty. Conrad Tolentino
	<i>Judicial Affidavit</i> and signature of accused Vehemente as identified in open court on October 23, 2018.

Accused Vehemente offered the following documentary exhibits:¹¹¹

EXHIBIT	DESCRIPTION
"1", "1-A", to "1-B"	<i>PSALM Memorandum Order No. 2011-015</i> dated August 9, 2011 Subject: Designation of the PSALM BAC, TWG and Secretariat for Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets
"3", "3-A", and "3-B"	<i>Invitation to Bid</i> for the Sale/Disposal of Waste Oil Located at the STPP as published in PDI on October 19 - 21, 2011.
"4", "4-A" to "4-BBB"	<i>Bidding Documents</i>
"5", "5-A", to "5-B"	<i>SBB No. 1</i>
"6", "6-A", to "6-C"	<i>Minutes of Pre-Bid Conference</i> on Sale/Disposal of Waste Oil Located at the STPP dated November 3, 2011
"7", "7-A", to "7-ddd"	<i>Bid Documents</i> submitted by Far East
"8", "8-A" to "8-NNNN"	<i>Bid Documents</i> submitted by the Joint Venture
"9", "9-A", to "9-F"	<i>Letter</i> dated November 17, 2011 addressed to Gulf Oil from accused Valdellon; <i>Bid Documents</i> submitted by Gulf Oil
"10", "10-A", to "10-NN"	<i>Letter</i> dated November 17, 2011 addressed to Cleanway from accused Valdellon; <i>Bid Documents</i> submitted by Cleanway
"11", "11-A", to "11-FF"	<i>Bid Documents</i> submitted by Bengan
"12", "12-A", to "12-Q"	<i>Bid Documents</i> submitted by RMS Petroleum
"13", "13-A", to "13-J"	<i>Bid Documents</i> submitted by Hazchem
"14" to "14-A"	<i>Checklist</i> for Eligibility-Sale/Disposal of Waste Oil Located at the STPP, Opening and Preliminary Examination of Bid Documents, Date and Time: November 17, 2011/ 12:15 p.m.
"15", "15-A" to "15-II"	<i>Minutes of Bid Opening</i> on Sale/Disposal of Waste Oil located at the STPP dated November 17, 2011, 12:15 p.m.
"16"	<i>Abstract of Financial Bids</i>
"18" to "18-A"	<i>Notice of Post Disqualification</i> dated November 28, 2011 addressed to Far East
"22" to "22-A"	<i>Minutes of Meeting</i> , 13 th BAC, TWG, and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets dated December 13, 2011
"23", "23-A" to	<i>Minutes of Meeting</i> , 14 th BAC, TWG and BAC

¹¹¹ Filed on November 19, 2018. *Id.*, pp. 164-186.

Handwritten signature and initials, possibly 'A.G.' or similar, with a checkmark-like flourish.

"23-C"	Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets dated December 19, 2011
"25", "25-A" to "25-B"	Minutes of Meeting, 16 th BAC, TWG and BAC Secretariat Meeting on Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets dated January 3, 2012
"26", "26-A", to "26-B"	BAC-Disposal Resolution No. 2012-01 dated January 5, 2012 for Post Qualification and Recommending Approval of the Sale/Disposal of Waste Oil located at the STPP
"27"	Notice of Award dated January 12, 2012 addressed to Atomillion, Genetron, and Safeco
"28" to "28-A"	Contract of Agreement between PSAIM and the Joint Venture dated January 18, 2012
"30" to "30-A"	PSAIM Office Order No. 2012-034 dated March 14, 2012; Subject: Creating of a Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"38", "38-A" to "38-V"	Investigation Report dated May 31, 2012 of the Task Force to Review the Sale/Disposal of Waste Oil at the STPP
"39"	Certificate of Project Completion dated March 20, 2013; signed by PSAIM President and CEO Emmanuel R. Ledesma, Jr.
"48", "48-A", to "48-C"	DENR-EMB ECC No. 03BU-0308-27096-1204 (Amended) for Genetron dated November 21, 2011 with Annexes
"53-Vehemente", "53-A-Vehemente", to "53-C-Vehemente"	Judicial Affidavit of Atty. Conrad Tolentino

The prosecution submitted its *Consolidated Comment/Opposition* to the Formal Offers of Evidence by each of the accused on December 17, 2018. On January 8, 2019, the Court admitted the above Exhibits.¹¹²

THE ISSUE:

The issue for the Court's consideration is whether the guilt of accused Valdellon, Jacinto, Ramirez, and Vehemente, for violation of Section 3(e) of R.A. 3019, as amended, have been proven beyond reasonable doubt

OUR RULING:

The evidence on record convinces Us beyond reasonable doubt that all the accused are guilty as charged.

The prosecution duly established the elements of the offense charged.

¹¹² Resolution Records, Vol.6, pp. 272-274.

All the accused had been charged with violation of Section 3(e) of R.A. 3019, as amended, which reads:

Sec. 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

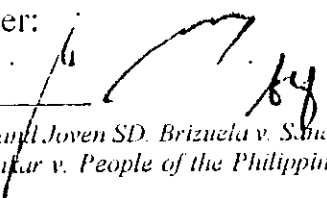
- e. Causing undue injury to any party, including the Government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision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

Reduced to its elements, a violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹¹³

The first element of the offense charged is undisputed, as it was stipulated during pre-trial that Valdellon, Jacinto, and Ramirez were public officers at the time relevant to the *Information*. For clarity, it was stipulated that Valdellon was a Manager at PSALM and Chairman of PSALM Bids and Awards Committee (BAC); Jacinto was the Department Manager of the Asset Valuation Department (AVD) and Vice-Chairman of PSALM BAC on Disposal; and Ramirez was a Division Manager at BAC. Vehemente, on the other hand, was the lawyer-member of the BAC on Disposal.

The second element of the offense was also proved with moral certainty. It bears noting that the second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "Manifest partiality", "evident bad faith", or "gross inexcusable negligence" are not separate offenses and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.¹¹⁴

In *Uriarte v. People*,¹¹⁵ the Supreme Court explained these terms in the following manner:


¹¹³ See *Daniilo O. Garcia and Joven SD. Brizuela v. Sindiganbayan*, G.R. No. 197204, March 26, 2014.

¹¹⁴ See *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

¹¹⁵ *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis in the original.

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

As will be explained below, we hold that the accused exhibited manifest partiality in awarding the contract to the Joint Venture.

To recall, accused Valdellon, Jacinto, Ilagan, and Ramirez were designated as chairperson, vice-chairperson, and members, respectively, of the PSALM BAC for the divestment or disposal of unserviceable assets of sold plants and other disposable assets. Vehemente was designated as a member of the BAC via *Memorandum Order No. 2011-018*¹¹⁶ dated September 14, 2011.

One of the assets to be sold or disposed of was the waste oil located at the Sucat Thermal Power Plant (STPP). Valdellon, as Chairman, together with the other members of the BAC, formulated the *Bidding Documents*¹¹⁷ for the Project which was comprised of the following documents: Invitation to Bid, Instructions to Bidders, Bid Bata Sheet, General Conditions of Contract, Special Conditions of Contract, Schedule of Requirements, List of Assets, and Bidding Forms.

We point out that Instructions to Bidders (ITB) refers to the section of the Bidding Documents that provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Procuring Entity. It also provides information on bid submission, opening, evaluation, and award of contract. Per the Invitation to Bid, the bidding will be conducted through open competitive bidding using a non-discretionary "pass/fail" criterion¹¹⁸; it also states that bids should be delivered to the PSALM office in Makati on or before November 17, 2011 at 12:00 noon.¹¹⁹ Clause 9 of the ITB on the '*Documents Comprising the Bid: Eligibility and Technical Components*', defines the types of documents which the bidder must submit and the manner by which it will be submitted, as follows:

9.1 Unless otherwise indicated in the **BDS**, the first envelope shall contain the following eligibility and technical documents:

¹¹⁶ Exh. "C" for prosecution; Exh. "2" for Ramirez and Valdellon.

¹¹⁷ Exh. "E", "E-1" to "E-54" for the prosecution; Exh. "4", "4-A" to "4-BBB" for the defense.

¹¹⁸ *Invitation to Bid*, par.4.; Exh. "D", "D-1", and "D-2".

¹¹⁹ *Id.*, par. 7.

(a.) Eligibility Documents

Class "A" Documents:

- (i) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration as stated in the BDS;
- (ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located; and

Class "B" Document:

- (iii) If applicable, the JVA, in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

x x x

Corollarily, the Bid Data Sheet (BDS) enumerated the other Eligibility Documents required of the bidders, namely: (1) EMB-DENR Registration Certificate; (2) **Environmental Compliance Certificate (ECC)**; (3) Discharge Permit; and (4) Permit to Operate. To reflect the discussions during the Pre-bid Conference, *SBB No. 1* was issued, further amending Clause 9, which now included the OSS as part of the Class "B" documents.

We emphasize in the present case that the document submitted by the Joint Venture was its previous ECC. However, the BAC allowed the Joint Venture to submit an amended ECC after the deadline for submission of bids, and then eventually awarded the contract to the said entity via a *Notice of Award*¹²⁰ on January 12, 2012. Significantly, this amended ECC was issued by the DENR only on November 21, 2011 (or after the opening of bids), and was only submitted during the TSD post-qualification inspection. By allowing the Joint Venture to belatedly submit an amended ECC, the BAC gave it an opportunity to enhance or improve its bid, enabling it to qualify.

It bears stressing that under the BDS, the ECC was **one of the required eligibility documents to be submitted by the bidders during the pre-qualification**. As such, it should be included in the first envelopes of the respective bidders which were opened on November 17, 2011. In the

¹²⁰ Exh. "Z" for the prosecution; Exh. "27" for Ramirez, Valdellon, and Vehemente.

present case, it is not disputed that the *Amended ECC* was not included in the Joint Venture's first envelope.

Under Clause 24 (Post Qualification) of the *ITB*, the Bidder shall submit within a non-extendible period of three (3) calendar days from receipt by the bidder of the notice from the BAC that it is the Highest Bid, the following documentary requirements: (a) tax clearance per Executive Order 398, series of 2005; (b) latest income and business tax returns in the form specified in the BDS; and (c) other appropriate licenses and permits (required by law), inspection/verification report and stated in the BDS.

Verily, the other appropriate licenses and permits required by law, as well as the inspection/verification report, under Clause 24(c) refers to licenses and permits, inspection/verification report **apart from those enumerated under the BDS as eligibility documents required of the bidders such as the ECC.** A plain reading of Clause 9.1 of the *ITB* in relation to the *BDS* would show that the ECC is considered as one of the eligibility documents required of the bidders, hence, should be included in the first envelope. While it is true that the Joint Venture submitted an ECC during bid opening and was rated "PASSED" for the Eligibility and Technical component of pre-qualification, it cannot amend or modify its bid *after* the deadline of the submission of bids under Clauses 19.1 and 19.4 of the *ITB*, viz:

19.1 The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Seller prior to the deadline prescribed for submission and receipt of bids. x x x Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

x x x

19.4 No bid may be modified after the deadline for submission of bids.

We additionally point out that Clause 24 of the *ITB* enumerates the bases for which the Highest Bidder will be evaluated, specifically, Clause 24.1 states that "[t]he Seller shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Highest Bid complies with and is responsive to all the requirements and conditions specified in *ITB* Clause 5, 10, and 11." Clause 5 refers to 'Bidder's Responsibilities', Clause 10 relates to 'Documents Comprising the Bid: Financial Component' while Clause 11 is on 'Bid Prices'. Clause 24.3 evidently states that the "determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted pursuant to *ITB* Clauses 9 and 10, as well as other information as the Seller deems necessary and appropriate, using a non-discretionary "pass/fail" criterion." We thus find untenable the argument that the *Amended ECC* is a license or permit allowed to be submitted during post-qualification. Clause 9.1 of the *ITB* and modified by the *BDS* explicitly shows that an ECC is an *eligibility*

document, required to be submitted prior to bid opening, and shall be one of the bases for evaluation during post-qualification. Therefore, the belated submission of the Amended ECC was obviously to supplant the ECC initially submitted during bid opening which, upon inspection and verification of PSALM (through its BAC and TWG representatives and other officials), was non-compliant with the required standards set for the completion of the Project.

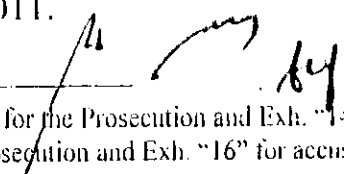
Corollarily, Item 5 of the *Supplemental Bid No. 1* amended Clause 24.2 (c), which states that [i]nspection/verification report of TSD Facilities to determine the plant treatment capability to store and process the Asset within the specified period stated in **Section VI**, Schedule of Requirements, Clause 2 will not also justify the acceptance of an amended ECC during post qualification, as this does not pertain to required eligibility documents to be submitted by the bidders during the pre-qualification.

Simply put, the acceptance of the *Amended ECC* after the bid opening date and its consideration during the deliberations in the BAC, TWG, and BAC Secretariat meetings are acts which exhibit the BAC's partiality in the interpretation of its own *Bidding Documents* and in violation of the office Orders and jurisprudence on the proper disposal of public assets.

We are not unaware that the Joint Venture applied for an amendment of its ECC with the DENR before the submission of bids, and this pending application was brought to the attention of the BAC. Nonetheless, the ECC contemplated by the *ITB* is an ECC that was already granted by the DENR, and not one that is still under application. Simply put, the ECC required in the *ITB* was an existing ECC. Clearly, the Joint Venture cannot be allowed to belatedly submit an amended ECC to supplant the one it submitted during pre-qualification, even if it informed the BAC of the pending application for an amended ECC.

Notably, the BAC awarded the contract to Joint Venture despite the TWG's recommendation to disqualify it. We point that while the Joint Venture was one of the five bidders rated "PASSED",¹²¹ it was not the highest bidder. The Joint Venture was ranked second only to Far East with a bid of ₱35,008,888.80 as against Far East's bid of ₱55,500,000.00.¹²²

As the highest bidder, Far East was subjected to post-qualification procedures as outlined in Clause 24 of the *ITB*. However, Far East was deemed post-disqualified because its TSD facility had no capability to treat/process and discharge the wastewater per PSALM requirements. Accordingly, the BAC issued the *Notice of Post Disqualification* on November 28, 2011.


¹²¹ Exh. "H" and "H-1" for the Prosecution and Exh. "14" and "14-A" for the defense.

¹²² Exh. "Q" for the Prosecution and Exh. "16" for accused Ramirez, Valdellon, and Vehemente.

Pursuant to Clause 24.5, the next highest bidder *i.e.*, the Joint Venture, was subjected to post-qualification procedures. Notably, **it was only during this TSD inspection (a part of the post-qualification process) that a representative from Genetron presented the amended ECC to Yanga, who was then the TWG Chairperson.** We additionally point out that this amended ECC was only issued by the DENR on November 21, 2011, or a few days after the bid submission date.

It is also worth noting that the TWG *Report*¹²³ on the Inspection/Verification of the Plant TSD of the Joint Venture recommended the latter's post-disqualification on the ground that "based on the ECC limit of 13,333.33 liters per day and Discharge Permit of 13,000 liters per day, Genetron has no proven track record to treat/processed [sic] the waste oil and oily water or a large volume like the waste oil at Sucat Plant." Further, "the capability to treat Tank 2 should be based on the old ECC considering the new ECC with a limit of 33,333.33 liters is an additional document submitted only during post qualification." It is thus indubitable that the Joint Venture could not pass the criteria for post-qualification on the basis of its old ECC submitted during the pre-qualification.

In spite of the TWG's sound recommendation, Valdellon, as BAC Chair, still put to a vote whether to accept the *Amended ECC* or not. Two (2) BAC members, accused Jacinto and Ramirez, voted to accept the *Amended ECC* while one (1) BAC member, accused Ilagan, voted not to accept the same. In the 16th BAC, TWG, BAC Secretariat Meeting¹²⁴ on January 3, 2012, Valdellon put to a vote whether the disposal of waste oil at STPP is covered by R.A. 8479. Accused Jacinto, Ilagan, Ramirez, and Vehemente unanimously voted to award the contract to the Joint Venture. Accordingly, the BAC issued *BAC – Disposal Resolution 2012-01*¹²⁵ declaring the Joint Venture post-qualified and recommended to the PSAIM President and CEO that the contract be awarded to the Joint Venture. Thereafter, a *Notice of Award*¹²⁶ was issued to the Joint Venture.

Admittedly, the TWG's Report was *merely recommendatory*; hence, it may be disapproved by the BAC. Nonetheless, the discretion to adopt or disapprove the TWG's recommendation should not be exercised arbitrarily, more so if the latter's recommendation is grounded on bases provided for in the *Bidding Documents* vis-à-vis, timely submissions by the bidders, and evaluated on the same parameters.

It bears emphasis that the members of the team who went to the inspection and verification of the TSD facility of Far East and the Joint

¹²³ Exh. "T" to "T-19" for the prosecution and Exh. "19" to "19-1" for accused Jacinto.

¹²⁴ Exh. "H", "H-1", and "H-2".

¹²⁵ Exh. "Y", "Y-1", and "Y-2" for the prosecution; Exh. "26", "26-A", and "26-B" for the defense.

¹²⁶ Exh. "Z" for the prosecution; Exh. 27 for Ramirez, Valdellon, and Vehemente.

Venture were essentially the same: Yanga (TWG Head), accused Jacinto (Department Manager, AVDDI), Lauan (Task Team Member), and Verin (Pollution Control Officer). Lopez as Finance Member of the TWG and Dimaandal as IAD Observer/Witness were present during the inspection and verification of the facilities of Far East and the Joint Venture, respectively.

We additionally point out in this regard that the TWG Reports for Far East¹²⁷ and the Joint Venture¹²⁸ in its 'Tabulated Results of Findings' both show that the "PSALM requirement is based on a volume of 17,765,473 liters of waste oil and water to be hauled/treated/processed/discharged of wastewater in 150 days." Said reports also show the uniformity in the criteria:

Parameters	*PSALM Requirements	Far East Fuel Corporation	Remarks
Actual Capacity of Treatment Plant to treat waste oil from Tank 2, liters/day, minimum	41,576.64	153,000.00	PASSED
Actual Capacity of Treatment Plant to treat oily water from Tanks 1, 3, 4, liters/day, minimum	76,859.85	37,500.00	FAILED
Discharge Permit, liters per day, minimum	85,103.15	30,000.00	FAILED
Storage Capacity, liters, minimum	118,436.49	900,000.00	PASSED

For the Joint Venture:

Parameters	*PSALM Requirements	Genetron	Remarks
Actual Capacity of Treatment Plant to treat waste oil from Tank 2, liters/day, minimum	41,576.64	13,333.33	FAILED
Actual Capacity of Treatment Plant to treat oily water from Tanks 1, 3, 4, liters/day, minimum	76,859.85	115,000	PASSED
Discharge Permit, liters per day, minimum	85,103.15	115,000	PASSED

¹²⁷ Exh. "R" to "R-1-d".

¹²⁸ *Supra*, note 123.

Storage Capacity, liters, minimum	118,436.49	581,000	PASSED
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Notably, Far East was disqualified, *inter alia*, on the basis of its amended ECC submitted during pre-qualification. We are at a loss why the BAC accepted an amended ECC not submitted by the Joint Venture during pre-qualification.

The manifest partiality on the part of the accused is likewise highlighted in the BAC's strict adherence to its eligibility requirements during pre-qualification wherein Gulf Oil and Cleanway were both marked "FAILED" in the *Checklist for Eligibility*.¹²⁹ To recall, Gulf Oil inadvertently placed its OSS in the 2nd envelope or the financial component of the bid. The BAC disqualified Gulf Oil due to violation of *SBB No. 1* which states that the OSS should be part of the technical component (1st envelope). Cleanway, for its part, had been immediately disqualified for non-submission of the OSS.

In like manner (and as earlier discussed), the BAC's strict treatment as regards eligibility requirements was also evident when it disqualified Far East Fuel Corporation after the TWG found that the company was incapable of processing oily water from water tanks x x x considering that the rate of 600,000 liters per day indicated in the amended ECC was for planning purposes only and did not reflect its actual plant capability x x x. If Far East was disqualified on account of the ECC it submitted during pre-qualification, the Joint Venture should likewise not be allowed to submit an amended ECC to meet the post-qualification criteria.

Significantly, accused Jacinto himself testified on the nature of the ECC as an eligibility document which should be submitted prior to the opening of bids and that to safeguard competitiveness in public bidding, post-qualification should be based on documents submitted prior to bid opening.

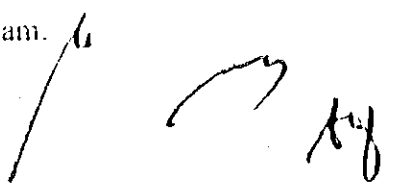
To directly quote from the records:

Pros. Nuñez:

Q: Mr. Jacinto, you mentioned in your Judicial Affidavit that you were designated as the Vice Chair of the Bids and Award [*sic*] Committee (BAC)?

Jacinto:

A: That is correct, Ma'am.



¹²⁹ Exh. "11" and "11-1" for the prosecution; Exh. "14" and "14-A" for the defense.

Q: With regard to the subject waste oil at the Sucat Thermal Power Plant, the BAC conducted or the committee conducted a competitive public bidding?

A: Yes, Ma'am.

Q: For purposes of the competitive public bidding, you adopted as [sic] two-stage process meaning you have the pre-qualification stage and the post-qualification stage?

A: Correct, Ma'am.

Q: You used the passed or failed [sic] criterion in determining the competitive public bidding?

A: Yes, Ma'am.

Q: In accordance with that criterion, Sir, in determining whether an interested parties [sic] eligible to bid - the bidder or interested parties [sic] rated 'passed' during the pre-qualification stage, simply if the documents submitted before the opening of bids which was on November 17, 2011 included all the requirements as stated in the bid document, yes or no?

A: Yes, Ma'am.

Q: Now if a single document is missing, that particular party is rated failed?

A: Yes, Ma'am.

Q: The eligibility documents include environmental compliance?

A: That is correct.

Q: Photocopies of the documents submitted by the eligible bidders are retained by the BAC for purposes of post-qualification evaluation?

A: That is correct, Ma'am.

Q: The post-qualification sir. This is [for] the purpose for [sic] evaluating the bid whether the bid complies with the requirements, the documents submitted before the opening of bids are evaluated and the authenticity is verified, sir?

A: Correct.

Q: Coupled with an inspection of the plant facility or storage of disposal and treatment, Sir?

A: Yes, Ma'am.

Q: So you would agree with me, Sir, that in order to safeguard the competitive public bidding [and to] ensure a level pay [sic] among the bidders, the evaluation of the bid during the post-

qualification stage should be limited or should be on the basis of the documents submitted before the opening of the bids?

A: That is correct, Ma'am.

X X X

[Underscoring supplied.]

Surprisingly, even the appreciation of the TWG Reports¹³⁰ was given a different treatment. Jacinto claimed that he did not sign the TWG Report prepared by then TWG Chairperson, Yanga, because it was not prepared and signed by the officially designated members of the TWG under PSALM Memorandum No. 2011-015. If the composition of the TWG and the PSALM representatives were actually a significant issue for the BAC, this should have been raised at the very first instance, during the inspection and verification of the TSD facility of Far East. Important to note that almost the same team was present during the post-qualification proceedings at Far East's TSD facility. The TWG Report signed by all team members present during the inspection became the bases for Far East's post-disqualification and the subsequent denials of its motions for reconsideration and appeal to the BAC and the PSALM President. Succeeding BAC, TWG, and BAC Secretariat meetings do not indicate that there was an issue with the composition of the post-qualification inspection team nor the veracity of the technical analysis provided therein. However, for the post-disqualification TWG Report for the Joint Venture, it was met with much opposition requiring extended deliberations,¹³¹ and during the trial, accused Jacinto expressed his vehement objection to the TWG Report on the Joint Venture's disqualification for being prepared by a team composed of members which were not the duly designated officials in the office memorandum. From the foregoing, it is obvious that the BAC, individually through its members, and as a collegiate body, exhibited partiality in the evaluation of the bid of the Joint Venture.

It is settled that partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather as they are.¹³² In the present case, manifest partiality is unmistakable when the BAC: (1) accepted and extensively deliberated and delved into the contents of an eligibility document submitted after bid opening date contrary to its own bidding rules; (2) justified its acceptance and consideration as a license or permit allowed to be submitted during post-qualification; (3) relaxed its eligibility rules during post-qualification, while it was strictly applied to other bidders during pre-qualification; and (4) questioned the composition of the investigation/verification team of the Joint Venture TSD facility when this case was instituted and not when Far East was disqualified, nor in any of

¹³⁰ *Supra*, note 123 and 127.

¹³¹ Exh. "EEE", "EEE-1" to "EEE-31" for the prosecution.

¹³² See *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010.



the BAC, TWG, BAC Secretariat meetings where the TWG Report on the Joint Venture was discussed.

The determination of the eligibility of the bidders resides in the BAC, the members of which drafted the *Bidding Documents*, inclusive of the *ITB* which defines what is being bid out, how the bidding process will proceed from the preparation of bids until the withdrawal or removal of the asset to be disposed of. The document was drafted in such a way that the public would be able to understand the provisions therein. Despite the simplicity and straightforwardness of its writing, the BAC blatantly violated its own bidding rules as embodied in the *ITB*, and in an attempt to rationalize the belated acceptance of an eligibility document after bid opening and during post-qualification, sought counsel from VP Tolentino, who unfortunately, was not competent to provide the interpretation of Clause 24.2 (c) of the *ITB*, as amended by the *BDS*, and *SBB No. 1*, since he was not present during the drafting of the same, so much so, his opinion on the application and intent of the provision should not be given credence. The importance of following the provisions in the *ITB*, or the bidding documents in general is enunciated in *Republic v. Capulong*,¹³³ wherein the Supreme Court held that:

The basic rule in public bidding is that bids should be evaluated based on the required documents submitted *before* and not after the opening of bids. Otherwise, the foundation of a fair and competitive public bidding would be defeated. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.

x x x

There should be strict application of the pertinent public bidding rules, otherwise the essential requisites of fairness, good faith, and competitiveness in the public bidding process would be rendered meaningless.

The Court's ruling in *Abubakar v. People*¹³⁴ on this point is particularly instructive, thus:

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

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

¹³³ G.R. No. 93359, July 12, 1991.

¹³⁴ See *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

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

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

As to the third element, it should be noted that there are two (2) ways by which Section 3(e) of RA 3019 may be violated: *first*, by causing undue injury to any party, including the government, or the *second*, by giving any private party any unwarranted benefit, advantage or preference." The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. 3019. An accused may be charged with the commission of either or both.

As regards the first punishable act, an accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures.

The second punishable act under Section 3(e) of R.A. No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another. *Unwarranted* means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. *Advantage* means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. *Preference* signifies priority or higher evaluation or desirability; choice or estimation above another.¹³⁵

To our mind, the accused gave unwarranted benefit, preference and advantage to the Joint Venture when it allowed the submission of an amended ECC after the pre-qualification stage. Valdellon, Jacinto, Hagan, Ramirez, and Vehemente, as members of the BAC, violated the bidding rules and, accepted an enhancement to an eligibility document after bid opening date, the consideration of which was instrumental to the award of the contract to the Joint Venture, giving it unwarranted benefits, advantage, and preference over the other bidders. To our mind, the award was unwarranted because under Clause 24.4 of the *ITB*, it is only the Bidder with the Highest Bid and passed *all* the criteria for post-qualification which would be declared the Highest Bidder. As can be gleaned from the *Memorandum*¹³⁶ dated December 7, 2011 or the TWG Report on the inspection/verification of the TSD facility of the Joint Venture, the Joint Venture could not pass the criteria for post qualification using its previously submitted ECC.

¹³⁵ *Id.*

¹³⁶ *Supra*, note 123.

To directly quote the pertinent portions of this Memorandum:

CONCLUSION:

x x x

- 2) As stated in condition 2 of the TSD Registration Certificate, "The TSD Facility shall not exceed the capacity indicated in the ECC, as such the subject wastes shall be treated within six months from the date of transport as indicated in the Hazardous Waste Manifest". With this limitation, Genetron, with high actual capacity cannot process/treat waste oil more than what is stated in its ECC.
- 3) Based on the ECC limit of 13,333 liters per day and Discharge Permit of 13,000 liters per day, Genetron has no proven track record to treat/processed [sic] the waste oil and oily water on a large volume like the waste oil at [the] Sucat Plant.
- 4) The capability to treat Tank 2 should be based on the old ECC considering the new ECC of 33,333.33 liters is an additional document submitted only during the post qualification.

x x x

Based from the foregoing, Genetron International Marketing Plant TSD facility has no capability to **treat/process the waste oil** per PSAIM requirements and therefore, Genetron **FAILED** the Post Qualification.

RECOMMENDATION:

We recommend to the BAC that the Joint Venture of Atomillion, Genetron, and SAFECO be **DISQUALIFIED** for failure to pass the Post Qualifications [sic] Requirements under the Bidding Process for the Sale/Disposal of Waste Oil Located at Sucat Thermal Plant.

x x x

In sum, the BAC's acceptance of the amended ECC allowed it to pass the criteria for post-qualification, causing prejudice to the other bidders. As earlier discussed, BAC members disregarded the following provisions of the *ITB*: (1) Clause 9.1 in relation to the *BDS* stating that the ECC is an eligibility document; (2) Clause 17, in relation to the *BDS* wherein the deadline of the submission of bids is at 12:00 noon on 17 November 2011; and (3) Clause 19.1 and 19.4 with regard to the non-consideration of and prohibition to modify a bid after the deadline for the submission of bids.

We stress that public auction or competitive public bidding is the primary mode of disposal or divestment of assets of government-owned or controlled corporations (GOCCs) as embodied in Commission on Audit (COA) Circular Nos. 86-264¹³⁷ and 89-296.¹³⁸ The award of contracts

¹³⁷ Entitled: "General guidelines on the divestment or disposal of assets of government-owned and/or controlled corporations and their subsidiaries", issued on October 16, 1986.

through public bidding is a matter of public policy with the purpose of ensuring that the public interest is protected by giving the best possible advantages to the people through open competition and to preclude any suspicion of favoritism or anomalies in its execution.¹³⁹

Corollarily, PSAIM Memorandum Order No. 2011-015 dated August 9, 2011 designating the members of the BAC, TWG, and BAC Secretariat for the Divestment or Disposal of Unserviceable Assets of Sold Plants and Other Disposable Assets was issued pursuant to COA Circular 86-264. Under paragraph 3.1 of the circular on the Modes of Disposal, the default mode of divestment or disposal of assets is through a public auction, the pertinent provision reads:

As a rule, public auction or bidding shall be the primary mode of disposal of assets. The established mechanics and procedures in public auction shall be observed, which shall invariably include: (a) adequate publicity and notification, so as to attract as much number of interested parties; (b) sufficient time frame between publication and date of auction; (c) opportunity to inspect assets to be disposed of by interested parties; (d) confidentiality of sealed bids or proposals; (e) bond and other prequalification requirement to guarantee performance; and (f) fair evaluation of tenders, and proper notification of award. [*Underscoring supplied for emphasis.*]

The same mechanics for public bidding was mirrored in COA Circular No. 89-296 dated January 27, 1989.¹⁴⁰ The responsibilities of the BAC was further refined in Memorandum Order No. 2011-015, wherein the BAC was tasked to perform the following functions:

- a. Advertise and/or post the Invitation to Bid;
- b. Conduct pre-bid conference;
- c. Determine the eligibility of prospective bidders;
- d. Receive bids and conduct the opening of bids in the presence of Commission on Audit representative/s;
- e. Recommend to the President and CEO or his duly authorized representative the award of the contract;

x x x

- j. Approve and issue the award to the winning bidder; and
- k. Perform other functions related to the above as may be assigned by the President and CEO.

Measured against the quoted COA circulars, the individual and collective acts of the BAC miserably failed to exercise a fair evaluation of tenders; neither was the BAC able to properly determine the eligibility of

¹³⁸ Entitled: "Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries, issued on January 27, 1989.

¹³⁹ *Danville Maritime, Inc. v. COA*, G.R. No. 85285, July 28, 1989.

¹⁴⁰ *Supra*, note 138.

prospective bidders—by reason of the BAC’s partiality in recommending approval of the award to the PSAIM President and CEO, giving rise to unwarranted benefit, advantage or preference to the Joint Venture.

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement to commit a felony and actually decide to commit it, there must be a common design to commit the same, being a joint offense.¹⁴¹ Direct proof of the agreement of the parties is not even necessary as the concurrence of willing and common intent to commit the crime can be inferred from their actions.¹⁴²

In *Alvizo v. Sandiganbayan*,¹⁴³ the Supreme Court said:

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. **Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.** [Emphasis ours]

In the present case, the unity of criminal design and its execution is flagrantly displayed by the individual and collective participation of the accused in all stages of the bidding process. All of the accused’s actions or inaction culminating in the recommendation to award to the Joint Venture through the Resolution serves as proof that there was the singular purpose in the execution of an unlawful objective.

We point out that all the accused signed BAC-Disposal Resolution No. 2012-01 (BAC Resolution for Post Qualification and Recommendation Approval on the Sale/Disposal of Waste Oil located at Sucat Thermal power Plant), describing the factual bases of the BAC’s collective decision in the ‘whereas’ clauses as well as its decision to declare the Joint Venture as the bidder with the highest responsive bid and that it is the BAC’s recommendation for the President to approve the award of the contract to the

¹⁴¹ *Typoco, Jr. v. People*, G.R. Nos. 221857 and 222020, August 16, 2017.

¹⁴² *Id.*

Joint Venture. To directly quote the pertinent portions of the BAC Disposal Resolution:

X X X

WHEREAS, in the post-qualification of documents submitted by Joint Venture of AC, GIM and SESI, the second highest bidder, it was compliant;

WHEREAS, after the long discussion on Environmental Compliance Certificate (ECC) issues, hearing the opinion of the Task Team members on post-qualification of bidders and the opinion of BAC and TWG members including the opinion and views of Atty. Conrad S. Tolentino, Vice President – AMG, the BAC decided to accept the amended ECC of GIM;

WHEREAS, after the long discussion of requirements related to R.A.8479 – An Act Deregulating the Downstream Oil Industry and for other Purposes, after hearing the opinion of the BAC and TWG members including the opinion and view of Atty. Vehemente, the BAC decided to award the contract.

NOW, THEREFORE, We, the Members of the Bids and Awards Committee, hereby RESOLVED that the Joint Venture of AC, GIM and SESI be declared as the bidder with the Highest Responsive Bid; and

RESOLVED FURTHER, that the Joint Venture of AC, GIM and SESI be recommended to the President and CEO for contract award at its submitted bid price of Thirty-Five Million Eight Thousand Eight Hundred Eighty Eight Pesos and 80/100 (PhP35,008,888.80). [*Underscoring supplied.*]

Thus, when all the accused signed the *BAC-Disposal Resolution No. 2012-01*,¹⁴⁴ it signified their assent to the processes undergone by the BAC which served as the bases of the HOPE to approve and award the Project to the Joint Venture.

Vehemente's initial opposition to accept the amended ECC was of no moment, as he eventually affixed his signature on the BAC-Disposal Resolution No. 2012-01. In like manner, Ramirez's alleged reliance on the opinion of his co-accused and other BAC members will not exculpate him, as he was not in any way forced to sign the BAC Resolution.

On the part of Valdellon, while may be true that did not cast his vote on whether to accept the *Amended ECC* or not, his signature was nonetheless reflected in *BAC Resolution No. 2012-01*. We find flimsy his (Valdellon's) defense that his signature in *BAC Resolution No. 2012-01* was merely to affirm the antecedent proceedings which were duly accompanied with the supporting documents. Like in the cases of Jacinto, Vehemente and

¹⁴⁴ *Supra*, note 125.

Ramirez, Valdellon's signature in the BAC-Disposal Resolution serves as his acquiescence to the matters contained therein.

The different opinions of the accused held during the meetings prior to the execution of the BAC Resolution will not exonerate the individual BAC member, as their signature on the Resolution signifies their unreserved consent to the alleged validity of the bidding process. Given their presence during the long discussions in each of the meetings held in relation to the disposal of waste oil at the STPP or upon an update of the meeting from their co-BAC members, there was always ample opportunity for each of the accused to question the proceedings or to register one's protest or objection to the bidding process and the recommendation to award the Project to the Joint Venture—this was not done by any of the accused at the critical moment of executing the BAC-Disposal Resolution.

In *Lagoc v. Malaga*,¹⁴⁵ the Supreme Court stressed the importance of a BAC member's signature in official documents and the level of accountability of an erring public officer in the following manner:

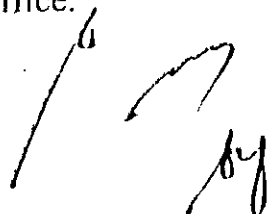
They cannot simply feign ignorance of such non-compliance with a basic requirement because as Chairman (Sales) and Member (Lagoc) of the BAC, they are responsible for the conduct of pre-qualification, or eligibility screening, bidding, evaluation of bids, postqualification, and recommending award of contract. As such, it is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. They may thus be held liable for collective acts and omissions as when they affixed their signatures in official documents as BAC Chairman/Members, and recommended approval of the bids, in effect certifying to compliance with the aforesaid rules.

Petitioner Lagoc claimed that even the complainant acknowledged that she simply signed the Abstract of Bids in her capacity as Project Engineer and provisional member of the BAC. Such excuse is flimsy and unacceptable. Indeed, the affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity.

The Proper Penalty

On the appropriate penalty, a person guilty of violating Section 3 (e) of R.A. No. 3019, as amended, is punishable with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years and perpetual disqualification from public office.

¹⁴⁵ G.R. No. 18-1785, July 9, 2014.



Decision
SB-15-CRM-0079
People v. Valdellon, et al.
X-----X

ATTY. RYAN D. VALL
EXECUTIVE CLERK OF COURT
THIRD DISTRICT

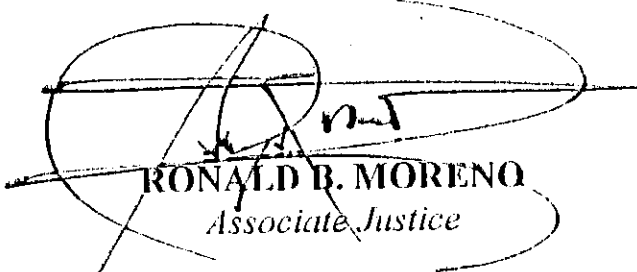
Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.

Accordingly, the Court finds it proper to impose an indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

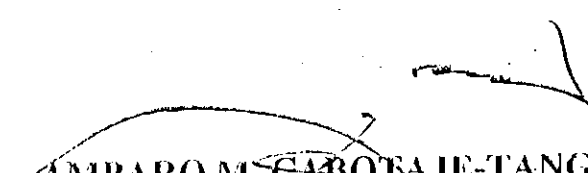
WHEREFORE, in light of all the foregoing, judgment is hereby rendered finding accused Rico P. Valdellon, Lorenzo L. Jacinto, Don Thed J. Ramirez and Renato R. Vehenente a.k.a. Vehemente **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. 3019, as amended, and are hereby **SENTENCED** to suffer the indeterminate penalty of (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

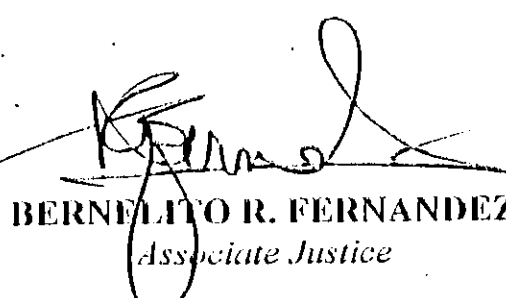
SO ORDERED.

Quezon City, Metro Manila, Philippines.


RONALD B. MORENO
Associate Justice

WE CONCUR:


AMPARO M. CABAJE-TANG
Presiding Justice, Chairperson

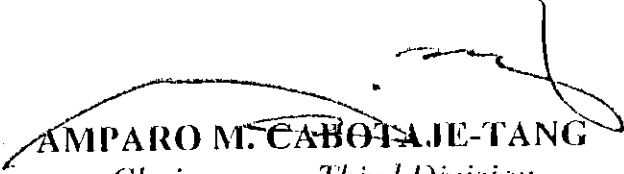

BERNILITO R. FERNANDEZ
Associate Justice

CERTIFIED TRUE COPY:

ATTY. MARY EL R. VALDERAMA
EXECUTIVE CLERK OF COURT II
THIRD DIVISION

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.


AMPARO M. CABOTAJE-TANG
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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. CABOTAJE-TANG
Presiding Justice