

Protecting the People’s Purse II: The Recovery of Misused Public Funds in Government Contracts

Clarence Tiu*

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I. INTRODUCTION

In these modern capitalist times, it is all but a truism that any form of human endeavor requires funding. Goods, supplies, and services rendered by people demand recompense, and economically speaking, human beings are primarily motivated by monetary gain. Money, therefore, is the lifeblood of all human organizations. The same is true for the largest organization in the Philippines — the government. The government achieves its goals and objectives through people, and these people (i.e., government officials and employees) are compensated with public funds collected from taxpayers and other sources of state revenues. Government personnel work because they

* '17 J.D., *with honors*, Ateneo de Manila University School of Law. He currently serves as Court Attorney VI in the Office of Associate Justice Jose Midas P. Marquez of the Supreme Court of the Philippines. He previously served as Court Attorney VI in the Office of Senior Associate Justice Estela M. Perlas-Bernabe of the Supreme Court of the Philippines. He was also a Junior Associate at Cruz, Marcelo, & Tenefrancia Law Offices. He devotes most of his spare time doing socio-civic activities and pursuing humanitarian initiatives as an active member of Junior Chamber International (JCI) - Manila. He also authored *Protecting the People’s Purse: Recent Landmark Jurisprudence on the Recovery of Unlawful Allowances and Other Forms of Improper Compensation Granted to Government Personnel*, 66 ATENEO L.J. 234 (2021).

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are remunerated with salaries, wages, allowances, benefits, bonuses, incentives, and other forms of benefits or compensation given by their respective government offices, agencies, or corporations.

Then again, a government does not solely operate through its people. It taps other organizations to enable it to perform its functions and duties. These organizations may be private individuals, businesses, corporations, or even non-profit organizations and enterprises. They supply goods and services which governmental entities cannot obtain from its own people. Normally, they do not do so for free. They demand payment from the government which also pays them with public funds from the State's coffers. Indeed, the Philippine government disburses billions of pesos each year to private entities. Therefore, not only is the Philippine government the largest employer of people, it is also, in the aggregate, one of the largest, if not factually the largest, single consumer of private goods and services.

The size of the country's wallet, which is held tightly by Congress¹ and managed through the Executive branch (i.e., the Department of Budget and Management (DBM)) and specifically used through each functioning government entity, makes it vulnerable to misuse and abuse.² In an ideal world, "all resources of the government [are] managed, expended[,] or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy, and effectiveness in the operations of government."³ However, as a reality that almost all Filipinos can manage to agree on, such ideal is definitely not the case.

Each year, the country's "watchdog" of public spending, the Commission on Audit (COA),⁴ issues notices of disallowance flagging billions of public funds in the aggregate, spent by government entities on account of the defects, such as: (1) lack of appropriation of funds; (2) lack of public purpose and lack of supporting documents; (3) lack of approval by the proper official or agency; (4) lack of public bidding or failure to comply with

1. See PHIL. CONST. art. VI, § 29 (1).

2. See *Araullo v. Aquino III*, 737 Phil. 457, 826 (2014).

3. *Ordaining and Instituting a Government Auditing Code of the Philippines [GOVERNMENT AUDITING CODE OF THE PHILIPPINES]*, Presidential Decree No. 1445, § 2 (1978).

4. See *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, 208 SCRA 726, 746 (1992).

other requirements of the Philippine procurement law and its rules and regulations; or (5) being excessive, unnecessary, or otherwise illegal.⁵

In said cases, what happens to the misused public funds is either: (1) the erring authorizing officers are held solidarily liable with the recipients for their return; (2) only the erring authorizing officers themselves or recipients themselves are held liable, as the case may be; and (3) neither of them is liable, which means the government solely bears the loss.⁶ For another thing, jurisprudence has also adopted the rule on *quantum meruit* for improper spending involving government contracts.⁷ Under such rule, a party, usually the private contractor or provider of goods or services, is allowed to recover a reasonable amount of money even if the underlying contract or disbursement is declared void for being illegal or improper.⁸ The parameters of who is liable for what, and under which circumstance and legal basis, have not been definitive in Philippine jurisprudence.

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5. See Max Limpag, *₱3.15 Million Spent on Fiesta 'Wasteful,' COA Tells Cebu Town*, RAPPLER, July 9, 2023, available at <https://www.rappler.com/nation/visayas/malabuyoc-cebu-government-fiesta-expenses-coa-report-2022> (last accessed July 31, 2023) [<https://perma.cc/T78Y-68TW>]; Beatriz Marie D. Cruz, *COA Flags Insurance Commission's Unauthorized Fund Releases, Incentives Program*, BUSINESSWORLD, June 1, 2023, available at <https://www.bworldonline.com/the-nation/2023/06/01/526350/coa-flags-insurance-commissions-unauthorized-fund-releases-incentives-program> (last accessed July 31, 2023) [<https://perma.cc/3FKV-ZBLC>]; Anne Claire Nicholls, *COA to DPWH Davao: Refund Over ₱11.6M in Irregular Spending for Traffic Safety Projects*, CNN PHIL., Dec. 8, 2022, available at <https://www.cnnphilippines.com/news/2022/12/8/COA-to-DPWH-Davao--Refund-over--11.6M-in-irregular-spending-for-traffic-safety-projects.html> (last accessed July 31, 2023) [<https://perma.cc/Z7ML-9BV4>]; Julie M. Aurelio, *COA: DPWH Lost ₱1.3B to Contractors*, PHIL. DAILY INQ., Oct. 24, 2020, available at <https://newsinfo.inquirer.net/1351878/coa-dpwh-lost-p1-3b-to-contractors> (last accessed July 31, 2023) [<https://perma.cc/BPV6-7NEW>]; & Angela Casauay, *COA Reveals Irregularities in DPWH Projects Worth ₱1.7B*, RAPPLER, June 10, 2014, available at <https://www.rappler.com/nation/60182-audit-irregularities-dpwh-projects> (last accessed July 31, 2023) [<https://perma.cc/YEG3-RBB7>].
6. See generally *Torreta, et al. v. Commission on Audit*, 889 Phil. 1119 (2020).
7. See *id.*
8. See *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, 402 SCRA 612, 735 (2003) (citing *Melchor v. Commission on Audit*, G.R. No. 95398, 200 SCRA 704, 713-14 (1991)).

For the longest time, the differing factual antecedents of each case presented a difficult challenge for jurisprudence to hurdle. The specific law applicable in each case is not always clear and whatever may be just and equitable for the parties involved (i.e., the authorizing officers, the recipient/private contractor, and the State) in a given situation is also challenging to ascertain. Notably, this quandary was also true in the case of disallowed salaries, wages, and benefits granted to government personnel. In audit disallowances of items of government compensation, the framework for civil liability was also rife with issues. In 2020, the Supreme Court of the Philippines in the case of *Madera v. Commission on Audit*⁹ tackled the issue head on and established a clear set of rules, based on statutory authority, in the context of disallowance cases involving employee incentives and benefits.¹⁰

A few months thereafter, or on 10 November 2020, the Court acknowledged that the *Madera* framework did not apply in disallowance cases involving government contracts for the procurement of goods and services.¹¹ It therefore established a clearer set of special guidelines in the latter instance through its promulgation of the case of *Torreta v. Commission on Audit*.¹²

This Article rigorously examines and dissects the rules recently edified in *Torreta*, as further refined by subsequent jurisprudence. However, for a fuller appreciation of the foregoing cases, a brief overview of the use and misuse of public funds in government contracts is first necessary.

II. USE OF PUBLIC FUNDS IN GOVERNMENT CONTRACTS

The use of public funds in government contracts¹³ in the Philippines usually involve the purchase of goods and services from private entities. There are

9. *Madera v. Commission on Audit*, 882 Phil. 744 (2020).

10. *See id.*

11. *Torreta, et al.*, 889 Phil. at 1156.

12. *Torreta, et al. v. Commission on Audit*, 889 Phil. 1119 (2020).

13. In his dissenting opinion in the case of *Archbishop Capalla, et al. v. Commission on Elections*, 687 Phil. 617, 863-64 (2012), Justice Brion elaborated

—
A government or public contract ... is defined as a contract entered into by officers ... acting on behalf of the State, and in which the entire people of the State are directly interested. It relates wholly to matters of public concern ... , and affects private rights only insofar as the statute confers

basic requirements government officers and entities must follow in order for them to get what they need and pay off their suppliers and contractors with state resources. These are:

- (1) A government transaction must be financed by funds appropriated by a general or special appropriation law;¹⁴
- (2) A government transaction must be for a public purpose;¹⁵
- (3) A government transaction must be supported by complete documentation as provided by rules and regulations;¹⁶
- (4) A government transaction must be approved by the proper officials or authorities;¹⁷
- (5) As a rule, a government transaction (involving the procurement of goods and services) must undergo public bidding and comply with the other requirements of Republic Act No. (R.A.) 9184,¹⁸ otherwise

such rights when its provisions are carried out by the implementing officer undertaking his tasks.

'A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of.' The pertinent provisions of the Civil Code on the particular kind of contract involved generally apply as well to a government contract.

However, since a government contract would generally involve the disbursement of public funds, several laws and regulations, otherwise not applicable in an ordinary contract, would have to be observed. These laws are aimed not only to ensure the correct expenditure of these funds, but, most importantly, the protection of public interest in ensuring transparency and the most advantage to the government.

Id.

14. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 4 (1). *See also* PHIL. CONST. art. VI, § 29 (1).
15. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 4 (2).
16. *Id.* § 4 (6).
17. *See generally* GOVERNMENT AUDITING CODE OF THE PHILIPPINES.
18. *See generally* An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes [Government Procurement Reform Act], Republic Act No. 9184 (2003).

known as the “Government Procurement Reform Act,” and its implementing rules and regulations.¹⁹

The foregoing are the five general imperatives to be followed when it comes to the whole gamut of government procurement of goods and services. More specific requirements may be found in laws, rules, and regulations, but normally, these are simply particularized permutations.

First, a government transaction must be financed by funds appropriated by a general or special appropriation law.²⁰ Basic is the constitutional precept that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”²¹ This means that only Congress may authorize the expenditure of public funds since it is the only institution that can pass laws in the Philippines.²² Indeed, “the existence of appropriations and the availability of funds are indispensable pre-requisites ... for the execution of government contracts.”²³

To verify if funds have indeed been appropriated by law to justify a particular transaction, one must simply check if there is a “provision of law [that]: (a) sets apart a determinate or determinable amount of money, and (b) allocates the same for a particular public purpose.”²⁴ There is “[n]o particular form of words [] necessary for the purpose, if the intention to appropriate is plainly manifested.”²⁵ The authorization of Congress is “embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application.”²⁶ “An appropriation measure is sufficient if the legislative intention clearly and certainly appears from the language employed.”²⁷

19. *Id.*

20. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 4 (1). *See also* PHIL. CONST. art. VI, § 29 (1).

21. PHIL. CONST. art. VI, § 29 (1).

22. *See* PHIL. CONST. art. VI, § 1.

23. Commission on Elections v. Quijano-Padilla, G.R. No. 151992, 389 SCRA 353, 368 (2002).

24. Belgica v. Ochoa, 721 Phil. 416, 564 (2013).

25. *Id.* at 565.

26. Guingona, Jr. v. Carague, G.R. No. 94571, 196 SCRA 221, 237 (1991).

27. *Id.*

Notably, the appropriation requirement is cemented in Sections 85,²⁸ 86,²⁹ and 87³⁰ of Presidential Decree No. 1445, otherwise known as the "Government Auditing Code of the Philippines,"³¹ Sections

28. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 85.

Section 85. *Appropriation before entering into contract.*

- (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
- (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriation account.

Id.

29. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 86.

Section 86. *Certificate showing appropriation to meet contract.* Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

Id.

30. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 87.

Section 87. *Void contract and liability of officer.* Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

Id.

31. *See generally* GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

46,³² 47,³³ and 48³⁴ of Book V, Title I, Subtitle B, Chapter 8 of Executive Order No. 292,³⁵ otherwise known as the “Administrative Code of 1987,”³⁶

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32. Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292, bk. V, tit. I, ch. 8, § 46 (1987).

Section 46. *Appropriation Before Entering into Contract.*[:]

- (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and
- (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

Id.

33. ADMIN. CODE, bk. V, tit. I, ch. 8, § 47.

Section 47. *Certificate Showing Appropriation to Meet Contract.* — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

Id.

34. ADMIN. CODE, bk. V, tit. I, ch. 8, § 48.

Section 48. *Void Contract and Liability of Officer.* — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

Id.

35. ADMIN. CODE, bk. V, tit. I, ch. 8.

as well as the annual General Appropriations Act,³⁷ which requires the proper accounting official of the particular government office concerned to first issue a “Certificate of Availability of Funds (CAF)” before entering into a contract, as a rule.³⁸

Second, a government transaction must be for a public purpose.³⁹ This is another basic principle that inherently stems from the very nature of “public” funds. As one may easily discern, what constitutes a purpose that is “public” in character may sometimes be difficult to ascertain given the scope of possible benefits that may accrue to the public at large. One may also wonder as to the number of people which a transaction must benefit in order for the same to be deemed “public” enough. Fortunately, this issue was already addressed in the 1960s with the landmark case of *Pascual v. Secretary of Public Works and Communications*,⁴⁰ where the Court took a narrow view in ruling

36. *See generally* ADMIN. CODE.

37. An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty One, Two Thousand and Twenty Three, Republic Act No. 11936, § 31 (2022). It provides

Section 31. *Certification of Availability of Funds.* — No obligations chargeable against any authorized allotment shall be incurred by departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy, SUCs, GOCCs and LGUs, without first securing a certification of availability of funds (CAF) for the purpose from the agency chief accountant, subject to Section 40, Chapter 5, and Section 58, Chapter 7, Book VI of E.O. No. 292. The CAF sufficient to cover the cost of the contracted activities shall be contained in, and made part of, the contract duly signed by the chief accountant of the contracting agency.

For multi-year projects, the CAF shall be issued annually based on the budget for the year. In case of multi-year projects with no funding requirement on any given year, instead of the CAF, the chief accountant shall issue a certification that no fund is needed for the year, as indicated in the approved multi-year contractual authority (MYCA).

Id.

38. *Department of Health v. C.V. Canchela & Associates, Architects*, G.R. No. 151373, 475 SCRA 218, 238 (2005).

39. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 4 (2).

40. *Pascual v. Secretary of Public Works*, 110 Phil. 331, 340 (1960) (citing 25 BURDETT ALBERTO RICH & WILLIAM MARK MCKINNEY, RULING CASE LAW 398-400 (1914)).

that one must look into “the essential character of the direct object of the expenditure” to determine whether the same is public in nature,⁴¹ viz. —

It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. Incidental advantage to the public or to the [S]tate, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money.⁴²

This means that the direct purpose of any government transaction must be for the benefit of the public at large or at least a specific community, such that the apparent intent should not favor specific persons or private interests.⁴³ To be sure, Pascual exhorted that “[i]ncidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business is not allowed.”⁴⁴ Apart from *Pascual*, notable is the more recent case of *Planters Products, Inc. v. Fertiphil Corp.*,⁴⁵ where the Court, in discussing the concept of “public purpose” in relation to the taxation, appeared to soften the standard laid down in *Pascual* by including the cause of social justice, without conceding too much and diluting its meaning. It was held that

[t]he power to tax can be resorted to only for a constitutionally valid public purpose. By the same token, taxes may not be levied for purely private purposes, for building up of private fortunes, or for the redress of private wrongs. They cannot be levied for the improvement of private property, or for the benefit, and promotion of private enterprises, except where the aid is incident to the public benefit.

...

The term ‘public purpose’ is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that ‘public purpose’ should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public

41. *Id.* at 340.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Planters Products, Inc., v. Fertiphil Corporation*, 572 Phil. 270 (2008).

money may now be used for the relocation of illegal settlers, low-cost housing[,] and urban or agrarian reform.⁴⁶

Very recently, the Court, in the 2023 case of *Genuino v. Commission on Audit*,⁴⁷ reaffirmed the parameters in *Pascual* and *Planters*, adding that the

expenditure of public funds requires that the purpose be mainly for the public, with any benefit to private enterprises be merely incidental, and not the other way around. This narrow view laid in *Pascual* [was] put in place precisely to serve as guard against the squander of state resources[.]⁴⁸

Accordingly, the Court has held that a donation of public funds to rehabilitate roads of a private subdivision lacked a public purpose.⁴⁹

Third, a government transaction must be supported by complete documentation as provided by rules and regulations.⁵⁰ Needless to state, without the proper documents, one cannot verify the authenticity and propriety of government transactions.⁵¹ Thus, the necessity of a complete paper trail stems from the Constitutional canon that “public office is a public trust”⁵² as it ensures transparency and accountability in the use of State resources. It also goes into the COA’s duty and power to “examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the [g]overnment.”⁵³ The specific documents one needs to support a particular government contract varies depending on the kind of transaction involved, and the applicable rules and regulatory framework governing the agency concerned.⁵⁴ Presently, however, COA Circular No.

46. *Id.* at 280-81 & 296 (citing 71 AM. JUR. 2D *General Requisites of State or Local Taxation, Generally, Public Purpose* § 35 (2008)).

47. *Genuino v. COA*, G.R. No. 230818, Feb. 14, 2023, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68955> (last accessed July 31, 2023).

48. *Id.*

49. *See id.* *See also* *Young v. City of Manila*, 73 Phil. 537, 543 (1941).

50. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 4 (6).

51. *Id.*

52. *Biteng v. Department of Interior and Local Government (Cordillera Administrative Region)*, G.R. No. 153894, 451 SCRA 520, 522 (2005).

53. PHIL. CONST. art. IX (D), § 2 (1).

54. *See* Government Procurement Reform Act, art. VI, § 17.

2012-001,⁵⁵ dated 14 June 2012, prescribes a list of general and specific documentary requirements for common government transactions.⁵⁶

Fourth, a government transaction must be approved by the proper officials or authorities.⁵⁷ The proper official is usually the head of the government office concerned as he or she is “immediately and primarily responsible for all government funds and property pertaining to his agency.”⁵⁸ Under procurement law, the head of the procuring entity refers to the head of the agency or his duly authorized official, for national government agencies, the governing board or its duly authorized official, for government-owned and/or-controlled corporations, or the local chief executive, for local government units.⁵⁹ In some instances, disbursement of public funds also require the additional approval of another authority.⁶⁰ This is true in grants of additional allowances and benefits to government personnel which require the prior approval of the President, and contracts for the engagement of private lawyers by government agencies and instrumentalities which require the concurrence of the Office of the Solicitor General and the COA.⁶¹

Lastly, as a rule, a government transaction (involving the procurement of goods and services) must undergo public bidding and comply with the other requirements of R.A. No. 9184, otherwise known as the “Government Procurement Reform Act,” and its implementing rules and regulations.⁶² The purpose of public bidding is to protect public interest through open

55. Commission on Audit, Prescribing the Revised Guidelines and Documentary Requirements for Common Government Transactions, COA Circ. No. 2012-001, Series of 2012 [Revised Documentary Requirements for Common Government Transactions] (June 14, 2012).

56. See *Puentevella v. Commission on Audit*, G.R. No. 254077, Aug. 2, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/68568> (last accessed July 31, 2023).

57. See generally GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

58. GOVERNMENT AUDITING CODE OF THE PHILIPPINES, ch. 5, § 102.

59. Government Procurement Reform Act, art. I, § 5 (j).

60. See *id.* art. V, § 11, ¶ 1; art. XII, § 37, ¶¶ 2-3; art. XXIII, § 69, ¶ 1; & art. XXIII, § 37 (c).

61. See *Power Sector Assets and Liabilities Management (PSALM) Corp. v. Commission on Audit*, G.R. No. 247924, Nov. 16, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68091> (last accessed July 31, 2023).

62. See generally Government Procurement Act.

competition.⁶³ Public interest is safeguarded because “bidders are placed on equal footing which means that all qualified bidders have an equal chance of winning the auction through their bids.”⁶⁴ Furthermore, “competitive bidding [precludes] suspicion of favoritism and anomalies in the execution of public contracts.”⁶⁵ It consists of the following processes: “advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluations of bids, post-qualification, and award of contract.”⁶⁶

III. DISALLOWANCE OF MISUSED FUNDS INVOLVING GOVERNMENT CONTRACTS

At this juncture, it is noteworthy to highlight that an assiduous survey of case law reveals that most, if not all, audit disallowances of payments made pursuant to government contracts involve defects which stem from non-compliance with either of the five aforementioned requirements. To summarize, such defects are:

- (1) Lack of appropriation of funds;⁶⁷
- (2) Lack of public purpose;⁶⁸
- (3) Lack of supporting documents;⁶⁹

63. *Pabillo v. Commission on Elections*, 758 Phil. 806, 841 (2015).

64. *Id.* at 842.

65. *Id.*

66. *Id.* at 841.

67. See *Metro Laundry Services*, G.R. No. 252411, Feb. 15, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68128> (last accessed July 31, 2023); *Bodo v. Commission on Audit*, G.R. No. 228607, Oct. 5, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67884> (last accessed July 31, 2023); *Estrella v. Commission on Audit*, G.R. No. 252079, Sept. 14, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68652> (last accessed July 31, 2023); & *Melchor*, 200 SCRA at 713.

68. See *Genuino*, G.R. No. 230818 & *Young*, 73 Phil. at 543.

69. See *Puentevella*, G.R. No. 254077; *Menzon v. Commission on Audit*, 892 Phil. 336, 355 (2020) (citing Commission on Audit, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, Circular No. 2009-006, Series of 2009 [COA Circ. No. 2009-006] ch. III, § 9 (Sept. 15, 2009)); *Cruz, et al. v. Commission on Audit*, 788 Phil. 435, 439 (2016); & *Albert v. Gangan*, G.R. No. 126557, 353 SCRA 673, 683-84 (2001).

- (4) Lack of approval by the proper official or agency;⁷⁰
- (5) Lack of public bidding or failure to comply with other requirements of the Philippine procurement law and its rules and regulations;⁷¹ and
- (6) Being excessive, unnecessary, or otherwise, illegal.⁷²

Noteworthy recent cases include the following:

- (1) Disallowance of payments made for constructing the facilities needed for the 23rd Southeast Asian Games at Bacolod City in the amount of ₱36,778,105.44 for failure to submit required supporting documents;⁷³
- (2) Disallowance of payments made to three lawyers by the Bureau of Investments amounting to an aggregate of ₱797,790.77 on the ground that their engagement did not have

70. See *Ricalde v. Commission on Audit*, G.R. No. 253724, Feb. 15, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68247> (last accessed July 31, 2023); *Corpuz v. Commission on Audit*, G.R. No. 253777, Nov. 23, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68220> (last accessed July 31, 2023); *Dr. Oñate v. Commission on Audit*, 789 Phil. 260, 267 (2016); & *Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit et al.*, 750 Phil. 258 (2015). See generally *Alejandrino, et al. v. Commission on Audit*, 866 Phil. 188 (2019); *Verceles v. Commission on Audit*, 794 Phil. 629 (2016); *Polloso v. Gangan*, G.R. No. 140563, 335 SCRA 750 (2000); & *Eslao v. Commission on Audit*, G.R. No. 89745, 195 SCRA 730 (1991).

71. See generally *Metro Laundry Services*, G.R. No. 252411; *Henson v. Commission on Audit*, 876 Phil. 474 (2020); *Fernandez v. Commission on Audit*, 866 Phil. 292 (2019); *Subic Bay Metropolitan Authority, et al. v. Commission on Audit*, 845 Phil. 982 (2019); *Lazaro, et al. v. COA*, 845 Phil. 940 (2019); *Fernando, et al. v. COA En Banc, et al.*, 825 Phil. 828 (2018); *Joson v. Commission on Audit*, 820 Phil. 485 (2017); *Baghari-Regis v. Commission on Audit*, G.R. No. 210900 (2017); & *Andres v. Commission on Audit*, G.R. No. 94476, 201 SCRA 780 (1991).

72. See generally *Sto. Cristo Construction v. Commission on Audit*, G.R. No. 246777, Mar. 2, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67304> (last accessed July 31, 2023); *Fernando, et al.*, 825 Phil.; & *Suarez v. Commission on Audit*, 294 SCRA 96 (1998).

73. See *Puentevella*, G.R. No. 254077.

the conformity and acquiescence of the Office of the Solicitor General (OSG) and the written concurrence of the COA;⁷⁴

- (3) Disallowance of payments in the total amount of ₱36,084,006.00 made by the Department of Public Works and Highways-National Capital Region to private contractors for infrastructure projects for circumventing the requirements of R.A. No. 9184 and its IRR;⁷⁵
- (4) Disallowance of the amount of ₱2,420,603.99 paid by the Subic Bay Metropolitan Authority to procure special and field uniforms for its employees, since it failed to include the procurement in the Annual Procurement Plans (APP), failed to post it in the PhilGEPs bulletin board, properly create a Bids and Awards Committee — all in violation of R.A. No. 9184 and its IRR;⁷⁶
- (5) Disallowance of payments by the Province of Laguna to private suppliers and distributors to procure medicines, medical and dental supplies, and equipment in the total amount of ₱118,039,493.46 for lack of public bidding and for specifying brand names in violation of R.A. No. 9184 and its IRR;⁷⁷
- (6) Disallowance of payments made pursuant to a contract for design and construction of steel pedestrian bridges in various parts of Metro Manila, with William L. Tan Construction on the ground of excessiveness, as the COA found that the amount paid was way higher than its own estimated costs and due to the contractor's high percentage mark-up and erroneous computation of site works;⁷⁸
- (7) Denial of money claim in the amount of ₱1,851,814.45 for laundry services performed by Metro Laundry for the City of Manila on account of the lack of appropriation of funds, lack of public bidding, and lack of written contract;⁷⁹

74. See *Ricalde*, G.R. No. 253724.

75. See *Estrella*, G.R. No. 252079.

76. See *Subic Bay Metropolitan Authority, et al.*, 845 Phil. at 990.

77. See *Lazaro, et al.*, 845 Phil. at 946.

78. See *Fernando, et al.*, 825 Phil. at 834.

79. See *Metro Laundry Services*, G.R. No. 252411.

- (8) Disallowance of the amount of ₱22,626,714.71 paid by the Department of Public Works and Highways to Sto. Cristo Construction for being excessive due to the overstatement of embankment materials used in road rehabilitation works in Mexico, Pampanga.⁸⁰

In audit disallowances of payments made pursuant to government contracts, one of the main issues is the recovery of misused public funds i.e., civil liability for the disallowed amount.⁸¹ The COA, being constitutionally charged with the determination, prevention, and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds, plays a primary role in their identification and recovery.⁸² The recovery process, which stems from the COA's conduct of regular or special audit as mandated by law,⁸³ commences with the issuance of a notice of disallowance by a duly authorized auditor against the government entity concerned as well as the persons held liable thereunder (i.e., the authorizing officers and recipients). This is in accordance with the commission's rules —

SECTION 10. Notice of Disallowance (ND). —

- 10.1. The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.
- 10.1.1. Illegal expenditures are expenditures which are contrary to law.
- 10.1.2. Unconscionable expenditures are expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.
- 10.2. The ND shall be addressed to the agency head and the accountant; served on the persons liable; and shall indicate the transaction and amount disallowed, reasons for the disallowance, the laws/rules/regulations violated, and persons liable.⁸⁴

80. See *Sto. Cristo Construction*, G.R. No. 246777.

81. See *Madera*, 882 Phil. at 781.

82. See *Caltex Philippines, Inc.*, 208 SCRA at 745.

83. See GOVERNMENT AUDITING CODE OF THE PHILIPPINES, § 28. See also ADMIN. CODE, bk. V, tit. I, ch. 6 (B), §§ 38-41.

84. COA Circ. No. 2009-006, s. 2019, ch. 3, §§ 10.1-10.2.

Upon discovery of improper handling of public funds, the question now becomes, who should be liable for their return?

Case law has not achieved a clear consensus in answering this question. A review of jurisprudence shows that either: (1) the erring authorizing officers are held solidarily liable with the recipients for their return;⁸⁵ (2) only the erring authorizing officers themselves or recipients themselves are held liable;⁸⁶ or (3) neither of them is liable, which means the government solely bears the loss.⁸⁷ The amount to be returned also varies on a case-to-case basis.⁸⁸ In some instances, the full amount of the transaction was ordered to be returned, while in others, the Court allowed the private contractor or supplier to retain a reasonable amount of money even if the underlying transaction was declared void.⁸⁹ Under the equitable rule on *quantum meruit*, a party, usually the private contractor or provider of goods or services, is allowed to recover a reasonable amount of money even if the underlying contract or disbursement is declared void for being illegal or improper.⁹⁰

The parameters of who is liable, for what amount, and under which circumstance and legal basis has not been definitive. That said, in practical terms, the lack of a uniform approach is understandable given the differing underlying facts of each case. The applicable law is not always clear and whatever may be just and equitable for the parties involved (i.e., the authorizing officers, the recipient/private contractor, and the state) in a given situation also depends on the peculiarities of the transaction involved.

To introduce more clarity on the issue, the Court decided to cement a definite framework for civil liability in disallowances involving government contracts in the case of *Torreta v. Commission on Audit*.

85. See *Madera*, 882 Phil. at 810 (citing COA Circ. No. 2009-006, s. 2009, ch. 3, § 16.3).

86. *TESDA v. COA Chairperson Tan, et al.*, 729 Phil. 60, 89-93 (2014).

87. See *Madera*, 882 Phil. at 801 (citing Manila International Airport Authority v. Commission on Audit, 681 Phil. 644, 668-69 (2012) & *TESDA*, 729 Phil. at 76 (citing *Dr. Velasco*, 695 Phil. at 242)).

88. See *Madera*, 882 Phil. at 817-18.

89. See *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, 402 SCRA 612, 735 (2003) (citing *Melchor*, 200 SCRA at 713-14).

90. *Id.*

IV. ESTABLISHING A DEFINITE FRAMEWORK FOR CIVIL LIABILITY: THE CASE OF *TORRETA V. COMMISSION ON AUDIT*

On 8 September 2020, the Court, in the landmark case of *Madera*, crafted a rubric of civil liability based on statutory sources in the context of disallowance cases involving the return of unlawful incentives and benefits given to government employees, viz. —

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

- (1) If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
- (2) If a Notice of Disallowance is upheld, the rules on return are as follows:
 - (a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - (b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
 - (c) Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
 - (d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.⁹¹

To summarize the foregoing rules, the Court in essence:

- (1) Decisively abandoned the previously entrenched Good Faith Rule which excused recipients from refunding misused public funds they received, and instead instituted a general rule of return under the principle of *solutio indebiti*;⁹²
- (2) Confirmed that good faith is material with respect to the approving and certifying officers of disallowed amounts on the

91. *Madera*, 882 Phil. at 817-18.

92. *Id.*

basis of Section 38 and 39, Chapter 9, Book I of the Administrative Code;⁹³

- (3) Confirmed that bad faith, malice, and gross negligence must be clearly shown before the approving and certifying officers may be held solidarily liable for disallowed amounts as provided under Section 43, Chapter V, Book VI of the Administrative Code;⁹⁴
- (4) Introduced the concept of “net disallowed amount” by deducting the “amounts excused on the part of the recipients” from the amount to be returned by the erring approving and certifying officers;⁹⁵ and
- (5) Created exceptions on the general rule of return on the part of the recipients under Rule 2c (i.e., amounts genuinely given in consideration of services rendered) and Rule 2d (i.e., excuse based on undue prejudice, social justice considerations, and other bona fide exceptions).⁹⁶

A few months thereafter, or on 10 November 2020, the Court acknowledged that the *Madera* framework did not squarely apply in disallowance cases involving government contracts for the procurement of goods and services.⁹⁷ It therefore established a special set of rules to govern the latter instance through its promulgation of the case of *Torreta*.

The case involved the COA's disallowance of the National Dairy Administration's (NDA) delivery of 150 dairy animals valued in the amount of ₱17,316,000.00 in favor of Hapicows Tropical Dairy Farm (Hapicows).⁹⁸ This was done pursuant to NDA's Dairy Multiplier Farm program under which the NDA distributed and imported, mature female dairy animals to eligible and qualified participants, who, within a certain period of time, would make a repayment-in-kind. NDA found Hapicows qualified for the program.⁹⁹ However, upon audit, the COA issued Notice of Disallowance No. 10-002 (10), finding the transaction irregular as it lacked supporting

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Torreta, et al.*, 889 Phil. at 1147.

98. *Id.* at 1126.

99. *Id.* at 1127.

documents.¹⁰⁰ The COA also found that Hapicows failed to comply with the prescribed standards of sound dairy production and husbandry management as mandated in the MOA due to observed high incidence of mortality and abortion cases among the dairy animals.¹⁰¹ For the return of the funds used to procure the dairy animals, the COA held Hapicows, as recipient, solidarily liable together with NDA officers Naomi K. Torreta and Jaime M. Lopez.¹⁰²

The Court affirmed the merits of the disallowance.¹⁰³ It ruled that the non-submission by NDA of the documents required in audit constituted a valid ground for disallowance.¹⁰⁴ It also concurred with the COA's finding that the NDA failed to strictly implement the Qualification Requirements and Selection Criteria for the Dairy Multiplier Farm program when it awarded the project to Hapicows.¹⁰⁵

However, the Court also used the occasion to clarify that the recently promulgated *Madera* rules did not squarely apply in the case since it did not involve employee incentives and benefits.¹⁰⁶ This was pointed out by Senior Associate Justice Estela M. Perlas-Bernabe during the deliberations of the case, as narrated in the *ponencia* penned by Associate Justice Samuel H. Gaerlan,¹⁰⁷ viz. —

As pointed out by Justice Perlas-Bernabe, the above-mentioned rules were specifically borne from the context of disallowance cases involving employee incentives and benefits and not to government contracts for the procurement of goods and services involving the use or expenditures of the public funds, as in this case. Quoting her discussion, to wit [—]

To recall, *Madera* is a landmark jurisprudence which not only abandoned the then prevailing 'good faith rule' that absolved passive recipients from civil liability to return disallowed incentives and benefits received by them, but also detailed the statutory bases for the new rules of return in disallowance cases. In *Madera*, the Court primarily situated the civil liability of approving/authorizing officers under Section 38, Chapter 9, Book I of the Administrative Code,

100. *Id.* at 1128.

101. *Id.* at 1129.

102. *Id.* at 1131-32.

103. *Torreta, et al.*, 889 Phil. at 1138.

104. *Id.* at 1139.

105. *Id.*

106. *Id.* at 1145-47.

107. *Id.*

while that of recipients under the civil law principles of *solutio indebiti* and unjust enrichment.

Further, pursuant to Section 43, Chapter 5, Book VI of the Administrative Code, the Court ruled that the approving/authorizing officers who had acted with bad faith, malice, or gross negligence are solidarily liable for the disallowance. However, as discussed in *Madera*, such civil liability should only be confined to the net disallowed amount, i.e., the total disallowed amount minus the amounts excused to be returned by recipients particularly those: (a) genuinely given in consideration of services rendered (Rule 2c); and (b) excused by the Court based on undue prejudice, social justice considerations, and other bona fide exceptions as may be determined on a case-to-case basis (Rule 2d). These exceptions were formulated by the Court relative to the *solutio indebiti* nature of the recipients' civil obligation, on a finding that these grounds for return negated the existence of unjust enrichment, and hence, resulted in no proper loss on the part of the government.

...

Given the backdrop of *Madera*, the *solutio indebiti* nature of the recipients' obligation to return the incentives and benefits they had received, and the considerations behind Rules 2c and 2d as above-discussed, it is my view that the *Madera* rules do not squarely apply in disallowances made under the peculiar auspices of unlawful/irregular government contracts authorizing the use or expenditure of public funds.

Since these contracts, by their very nature, provide for the expenditure of public funds in consideration of services rendered/to be rendered and/or the delivery of property/goods, the exception under Rule 2c of the *Madera* Rules (genuinely given in consideration of services rendered), as formulated, should not squarely apply. Neither should the grounds for excuse under Rule 2d (undue prejudice, social justice considerations, and other bona fide exceptions) apply since these grounds were intended to address the inequitable situation of requiring government employees to still return the incentives and benefits they had already received based on exceptional fairness or social justice considerations.¹⁰⁸

Accordingly, Senior Associate Justice Perlas-Bernabe acknowledged that some of the rules in *Madera*, i.e., Rule 1, 2a, and 2b, can still be applied to disallowances involving government contracts. Under Rule 1, “[i]f a Notice of Disallowance is set aside by the Court, no return shall be required from

108. *Id.*

any of the persons held liable therein.”¹⁰⁹ Meanwhile, Rule 2a establishes the defense of good faith on the part of public officers who approved or certified the payment of the disallowed amounts.¹¹⁰ Such defense is based on Section 38 and 39, Chapter 9, Book I of the Administrative Code,¹¹¹ which read —

Section 38. *Liability of Superior Officers.* — (1) A public officer shall *not be civilly liable* for acts done in the performance of his official duties, unless there is a *clear showing of bad faith, malice[,] or gross negligence.*

...

Section 39. *Liability of Subordinate Officers.* — No subordinate officer or employee shall be *civilly liable* for acts *done by him in good faith in the performance of his duties.* However, he shall be liable for *willful or negligent acts done by him which are contrary to law, morals, public policy[,] and good customs even if he acted under orders or instructions of his superiors.*¹¹²

On the other hand, Rule 2b provides for the solidary liability of the approving and certifying officers with the recipients for the disallowed amount depending on a clear showing of bad faith, malice, or gross negligence.¹¹³ Such liability is based on Section 43, Chapter V, Book VI of the Administrative Code, viz. —

Section 43. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every *official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.*¹¹⁴

This solidary liability, attributed against both the authorizing officers and recipients, is similarly reflected under the pertinent COA Rules, which provide in relevant part —

109. *Torreta, et al.*, 889 Phil. at 1145.

110. *Madera*, 882 Phil. at 817.

111. ADMIN. CODE, bk. I, ch. 9, §§ 38-39.

112. *Id.* (emphases supplied).

113. *Madera*, 882 Phil. at 817.

114. ADMIN. CODE, bk. VI, ch. V, § 43 (emphasis supplied).

COA Circular No. 94-001¹¹⁵

...

Section 30. Liability for Unlawful/Illegal Expenditures or Uses of Government Funds

...

- 30.1.2. Every expenditure or obligation authorized or incurred in violation of law or of the annual budgetary measure shall be void. Every payment made in violation thereof shall be illegal and *every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable for the full amount so paid and received.*¹¹⁶

COA Circular No. 2009-006¹¹⁷

...

Section 16. Determination of Persons Responsible/Liable. —

...

- 16.1.4. *Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.*

...

- 16.3. The *liability of persons determined to be liable under an ND/NC shall be solidary* and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.¹¹⁸

However, as Senior Associate Justice Perlas-Bernabe highlighted, Rules 2c and 2d of the *Madera* rules cannot be applied to disallowances involving government contracts. Instead, she advanced an exception based on the *quantum meruit* rule, which she suggested can be applied in their stead.

115. Commission on Audit, Prescribing the Use of the Manual on Certificate of Settlement and Balance (Revised 1993), Circular No. 94-001, Series of 1994 [COA Circ. No. 94-001, s. 1994] (Jan. 20, 1994).

116. *Id.* § 30 (emphasis supplied).

117. COA Circ. No. 2009-006, s. 2019, §§ 16, 16.1.4, & 16.3.

118. *Id.* (emphases supplied).

Given the backdrop of *Madera*, the *solutio indebiti* nature of the recipients' obligation to return the incentives and benefits they had received, and the considerations behind Rules 2c and 2d as above-discussed, it is my view that the *Madera* rules do not squarely apply in disallowances made under the peculiar auspices of unlawful/irregular government contracts authorizing the use or expenditure of public funds.

...

Notably, the application of Sections 38 and 43 — as embodied in Rules 2a and 2b of the *Madera* Rules on Return — to unlawful/irregular government contracts is consistent with the provisions of the General Appropriations Act, as well as pertinent COA rules and regulations. However, it should be qualified that with respect to the application of *Madera*'s Rule 2b in this case, it is discerned that instead of applying the concept of net disallowed amount — which was specifically formulated in *Madera* relative to the grounds for excuse under Rules 2c and 2d — the liability of the recipient-counter party may instead, be reduced by the amounts qualified by the principle of quantum meruit, if so warranted by the peculiar facts and evidence submitted in each case. As discussed in *Geronimo v. Commission on Audit*:

Recovery on the basis of *quantum meruit* [is] [...] allowed despite the invalidity or absence of a written contract between the contractor and the government agency.

...

Quantum meruit literally means 'as much as he deserves.' Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity.¹¹⁹

Perceptively, the Court in *Torreta*, through the *ponencia* of Associate Justice Gaerlan, adopted the foregoing suggestion, explaining —

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum meruit* literally means 'as much as he deserves.' Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue

119. *Torreta, et al.*, 889 Phil. at 1156-59 (citing *Geronimo v. Commission on Audit, et al.*, 844 Phil. 561, 662 (2018)).

enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. In the case of *Geronimo v. COA*, it has been held that 'the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.' In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.¹²⁰

In this regard, it bears expounding that, in recognition of the patent injustice resulting from disallowed government contracts which have been partly or fully consummated, settled jurisprudence has recognized the principles of *quantum meruit* and unjust enrichment as equitable sources of rights of innocent private parties to receive a reasonable amount of compensation for costs incurred, goods delivered, or services rendered in favor of the government.¹²¹ As explained in *Geronimo v. Commission on Audit*

Quantum meruit literally means 'as much as he deserves.' Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity.¹²²

Thus, when proper, innocent payees of disallowed government contracts (i.e., the suppliers or contractors) are permitted to retain the amounts they have received to the extent that they represent a reasonable equivalent of the benefit derived by the government based on a consideration of all relevant factors and upon an adequate showing of proof, as may be determined on a

120. *Id.* at 1148-49 (citing *Geronimo*, 844 Phil. at 662 & *Eslao*, 273 Phil. at 106-07).

121. See *RG Cabrera Corp., Inc. v. Department of Public Works and Highways*, G.R. No. 231015, Jan. 26, 2021, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66919> (last accessed July 31, 2023); *Sto. Niño Construction v. Commission on Audit*, 865 Phil. 695 (2019); *EPG Construction Co. v. Vigilar*, G.R. No. 131544, 354 SCRA 566 (2001); *F.F. Mañacop Construction Co., Inc. v. Court of Appeals*, G.R. No. 122196, 266 SCRA 235 (1997); *National Housing Corporation v. Commission on Audit*, G.R. No. 101370, 226 SCRA 55 (1993); *Melchor*, 200 SCRA at 704; & *Eslao*, 195 SCRA at 730 (1991).

122. *Geronimo*, 844 Phil. at 662.

case-to-case basis.¹²³ Conversely, only the disallowed amount in excess of such value would have to be returned by payees solidarily with the erring public officers.¹²⁴ In these cases, since there is no proper loss to the government, the operation of *quantum meruit* in favor of payees would also benefit the erring public officers, who, notwithstanding their bad faith, malice, or gross negligence in authorizing the transaction, are also excused from civil liability in the same extent.¹²⁵ This means that, when the *quantum meruit* rule applies, the civil liability for the disallowed amount is reduced or, even all-together excused, as the case may be.¹²⁶ Furthermore, as the reasonable value of the thing delivered or service rendered is a factual question, the Court has remanded disallowance cases back to the COA for the determination of the proper amount to be return after applying the *quantum meruit* rule, such as what it did in *Torreta*.¹²⁷

Ultimately, the Court in *Torreta* established the foregoing guidelines to govern disallowances involving unlawful/irregular government contracts, viz. —

Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:

- (1) If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
- (2) If a Notice of Disallowance is upheld, the rules on return are as follows:
 - (a) Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - (b) Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.

123. *Madera*, 882 Phil. at 818.

124. *Id.* at 840-41.

125. See generally *Torreta, et al.*, 889 Phil. 1119.

126. See *id.*

127. *Id.* at 1150.

- (c) The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case-to-case basis.
- (d) These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.¹²⁸

V. CONCLUSION

In introducing a definite framework for civil liability in disallowances involving government contracts, the Supreme Court showed remarkable ingenuity and steadfast commitment to the rule of law and the cause of justice. Philippine society evolves with the flow of time and case law should also follow suit. Given the billions of pesos in audit disallowances plaguing the government and relevant stakeholders, it was ripe for the Court, as the final interpreter of laws, to produce a liability framework for misused public funds founded on clear statutory bases and legal principles. With the promulgation of *Madera*, and now, *Torreta*, Philippine jurisprudence has definitely been enriched.

¹²⁸ *Torreta, et al.*, 889 Phil. at 1159-60.