



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

SB-16-CRM-0459

For: Violation of Sec. 3 (e) of
 R.A. No. 3019

For Review:

**CARMENCITA CARRETAS DAEP,
 AMEIFE LUMEN LACBAIN,
 DIOSCORO ASAYTUNO ARDALES,
 ROBERTO TOLEDO ALVAREZ,*
 ARNOLD BANZUELA CALSIÑA, and
 ERNESTO MATA MILLENA,**

Musngi, J., *Chairperson*
 Pahimna, J.
 Jacinto, J.

Promulgated:

Accused.

OCT 21 2022

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DECISION

JACINTO, J.:

This resolves the complaint for Violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended,¹ against **Carmencita Carretas Daep** (Daep), **Ameife Lumen Lacbain** (Lacbain), **Dioscoro Asaytuno Ardales** (Ardales), **Arnold Banzuela Calsiña** (Calsiña), and **Ernesto Mata Millena** (Millena).

ANTECEDENTS

This case stemmed from a complaint for violation of Secs. 3(e) and (g) of R.A. No. 3019 and of Articles 217 and 171 of the Revised Penal Code filed by Associate Graft Investigation Officer (AGIO) III Corinne Joie M. Garillo of the Field Investigation Office - Task Force Abono, Office of the Ombudsman (OMB) against certain officials of the Municipality of Manito, Albay and of Hexaphil Agriventures, Inc. (Hexaphil) in connection with the Municipality's purchase of 4,285 bottles of Hexaplus liquid fertilizer worth PhP 2,999,500.00 from the latter.

* At large.

¹ ANTI-GRAFT AND CORRUPT PRACTICES ACT.

After the preliminary investigation, the OMB found probable cause to indict the following municipal officials for Violation of Sec. 3(e) of R.A. No. 3019 before this Court:²

Respondent	Position
Carmencita Carretas Daep	Municipal Mayor
Ameife Lumen Lacbain	Municipal Accountant
Dioscoro Asaytuno Ardales	Municipal Budget Officer and Chairperson of the Bids and Awards Committee (BAC)
Roberto Toledo Alvarez	Municipal Engineer and Vice-Chairperson, BAC
Arnold Banzuela Calsiña	Revenue Collection Clerk I, designated Property and Supply Officer, and BAC Member
Ernesto Mata Millena	Municipal Treasurer and BAC Member

PROCEEDINGS BEFORE THE COURT

On 3 August 2016, the OMB filed the *Information* dated 9 June 2016 with the Court. The accusatory allegations thereof read as follows:

That from March to April 2004, or sometime prior or subsequent thereto, in the Municipality of Manito, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, accused Municipal Mayor **CARMENCITA CARRETAS DAEP**, Municipal Accountant **AMEIFE LUMEN LACBAIN**, Municipal Budget Officer and Bids and Awards Committee (BAC) Chairperson **DIOSCORO ASAYTUNO ARDALES**, Municipal Engineer and BAC Vice-Chairperson **ROBERTO TOLEDO ALVAREZ**, Revenue Collection Clerk I and BAC Member **ARNOLD BANZUELA CALSIÑA** and Municipal Treasurer and BAC Member **ERNESTO MATA MILLENA**, all of (sic) Municipality of Manito, Province of Albay, all public officers, committing the offense in the discharge of their official functions, taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, and conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, advantage or preference to HEXAPHIL AGRIVENTURES, INC. (Hexaphil), by awarding a contract for the purchase of 4,285 bottles of Hexaplug liquid fertilizer at P700.00 per bottle through direct contracting to Hexaphil, and causing the disbursement of public funds in the amount of TWO MILLION NINE HUNDRED NINETY NINE THOUSAND FIVE HUNDRED PESOS (P2,999,500.00) to Hexaphil, notwithstanding its ineligibility to transact business with the government, the absence of the conditions which justifies resort to the said alternative mode of procurement in violation of the Government Procurement Law and other pertinent government rules and regulations, and despite several irregularities and instances of fraud attending the transaction such as, but not limited to, the following: 1) Hexaphil was not registered with the Department of Trade and Industry; 2) Its registration with the Securities and Exchange Commission was revoked; 3) Hexaphil had no record of business/permit registration in Laguna where it supposedly held office; 4)

² See OMB Resolution dated 22 October 2014 and Orders dated 5 June 2015 and 14 June 2015, Records, Vol. I, pp. 7-21, 25-29, and 31-35, respectively.

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At the inception of the procurement process, accused BAC members and accused Daep already identified Hexaphil as supplier; and 5) Prior to the release of the first tranche on April 5, 2004, the Purchase Request No. 291 dated March 1, 2004 was already prepared indicating therein the brand "Hexaplus"; to the damage and prejudice of the Municipality of Manito and/or the government.

CONTRARY TO LAW.

On 8 August 2016, the Court issued a Hold Departure Order³ against all the accused and, on 1 February 2017, it issued its Resolution, finding probable cause to hold them for trial.⁴ Considering that accused Daep, Lacbain, Ardales, Calsiña, and Millena had already posted their respective cash bonds,⁵ the corresponding warrant of arrest was issued only against accused Alvarez.⁶ To date, the Court has yet to obtain jurisdiction over his person, hence, proceedings proceeded only as against accused Daep, Lacbain, Ardales, Calsiña, and Millena (herein accused).

On 14 June 2018, herein accused filed a Motion to Dismiss⁷ on the ground that their right to the speedy disposition of their case was violated by the prolonged pendency of the proceedings before the OMB. The Court denied said motion and accused's subsequent Motion for Reconsideration⁸ in its 16 October 2018⁹ and 27 November 2018 Resolutions,¹⁰ respectively.

Undeterred, accused filed a Petition for Certiorari¹¹ with the Supreme Court, assailing the Court's denial of their motion to dismiss and motion for reconsideration. The Petition, docketed as G.R. No. 244649, however, was denied by the Supreme Court in a Resolution dated 14 June 2021.

In the meantime, the prosecution filed its Pre-Trial Brief¹² on 20 August 2018, while herein accused filed their Pre-Trial Brief¹³ on 10 January 2019.

On 14 January 2019, accused Daep, Lacbain, Calsiña, and Millena were arraigned and entered "Not Guilty" pleas.¹⁴

³ Records, Vol. I, p. 244.

⁴ Id., pp. 308-311.

⁵ Id., pp. 265, 268, 271, 274, and 277.

⁶ Id., p. 271.

⁷ Id., pp. 347-352.

⁸ Dated 11 November 2018, id., pp. 420-423.

⁹ Id., pp. 410-411.

¹⁰ Id., pp. 433-434.

¹¹ Id., Vol. II, pp. 55-167.

¹² Dated 20 August 2018, id., pp. 393-402.

¹³ Dated 9 January 2019, id., pp. 2-8.

¹⁴ Id., pp. 12-15.

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On 15 February 2019, the prosecution filed a Supplemental Pre-Trial Brief,¹⁵ while herein accused filed an Amended Pre-Trial Brief¹⁶ on 7 February 2019.

In the meantime, the Court issued an alias warrant against accused Alvarez on 18 February 2019.¹⁷

On 27 February 2019, the parties (except accused Ardales) filed a *Joint Stipulation of Facts and Admissions on Documentary Evidence* dated 20 February 2019,¹⁸ the relevant portions of which were included in the Pre-Trial Order dated 11 March 2019,¹⁹ to wit:

II. **ADMITTED FACTS**

1. At the time material to the allegation in the *information*, the following accused are public officers holding the following positions in the Municipality of Manito, Albay, to wit:

Carmencita Carretas Daep	Municipal Mayor
Ameife Lumen Lacbain	Municipal Accountant
Arnold Banzuela Calsiña	Revenue Collection Clerk I and BAC Member
Ernesto Mata Millena	Municipal Treasurer and BAC Member

2. Whenever referred to orally or in writing by the Honorable Court and the prosecution and/or its witnesses, all the accused admit that they are the same persons being referred to in this case.

3. On February 3, 2004, by virtue of Republic Act No. 9206, the Department of Budget and Management (DBM) issued to the Department of Agriculture (DA) Special Allotment Release Order (SARO) No. E-04-00164 for ₱728,000,000.00, with Notice of Cash Allocation No. 222447-I for P291,200,000.00.

4. The said amount was allocated to purchase farm inputs / farm implements for the identified proponents comprising of congressional districts or local government units in line with the Ginintuang (sic) Ani (GMA) Program of the DA under Republic Act No. 8435.

5. The Municipality of Manito, Albay is one of the beneficiaries of the program and was given an allocation of ₱3,000,000.00. The fund was released in two tranches: ₱1,950,000.00 on April 5, 2004 and ₱1,050,000.00 on May 7, 2004. The releases were made through Memoranda of Agreement executed between the DA – Regional Field Unit V and the Municipal Government of Manito, Albay.

6. On March 8 and 15, 2004, the BAC, composed of accused Ardales, Alvarez, Calsiña, Mapa (deceased) and Millena, conducted public

¹⁵ Dated 15 February 2019, Records, Vol. II, pp. 35-38.

¹⁶ Dated 7 February 2019, id., pp. 29-33.

¹⁷ Id., p. 30.

¹⁸ Id., pp. 52-62.

¹⁹ Id., pp. 79-89.

[Handwritten signatures and initials]

biddings, for the supply of liquid fertilizer. No bidder participated and a failure of bidding was declared.

7. Accused Ardales requested Hexaphil Agriventures, Inc. (Hexaphil) to submit price quotations for liquid fertilizer. On March 16, 2004, Hexaphil wrote a letter-reply offering their product fertilizer Hexaplus (11-7-11) (sic) ₱700.00 per bottle.

8. On March 18, 2004, the BAC signed a Resolution recommending award of the contract for the supply of liquid fertilizer to Hexaphil. Accused Ardales as BAC Chairman recommended to accused Daep the procurement of fertilizer through direct contracting.

9. The Municipality of Manito, Albay purchased 4,285 bottles of Hexaplus (11-7-11) liquid fertilizer from Hexaphil at ₱700.00 per bottle or for a total of for (sic) ₱2,999,500.00. The procurement was covered by Purchase Request No. 291 dated March 1, 2004 and it indicates "Hexaplus 1000 ml." The same was signed by accused Daep as requesting and approving officer and accused Millena, who certified that funds were available.

On 6 May 2019, accused Ardales was arraigned and likewise pleaded "Not Guilty."²⁰ He signed the Pre-Trial Order on the same date.

Thereafter, trial proceeded with the prosecution presenting seven (7) witnesses: (i) **Teresita C. Vargas**,²¹ Building Administrator of Montepino Office Condominium Corporation; (ii) **Cecilia C. Tolentino**,²² Municipal Licensing Officer I, Municipality of Calauan, Laguna; (iii) **Petronilo N. Galsim**,²³ Revenue Collection Officer I, Municipal Treasurer's Office, Los Baños, Laguna; (iv) **Atty. Restituto M. Ancheta, Jr.**,²⁴ Acting Head, Law Department, and Head of the Assessment Division of the Business Permits and Licensing Office (BPLO) of Makati City; (v) **Atty. Corrine Joie M. Garillo**,²⁵ AGIO III, OMB; (vi) **Julieta B. Lansangan**,²⁶ Chief, Fertilizer Regulations Division of the Fertilizer and Pesticide Authority (FRD-FPA); and (vii) **Atty. RJ A. Bernal**,²⁷ Chief Counsel, Company Registration and Monitoring Department of the Securities and Exchange Commission (SEC).

²⁰ Order dated 6 May 2019, Records, Vol. II, pp. 196-197.

²¹ Her direct testimony was received via *Judicial Affidavit* dated 11 March 2019, id., pp. 71-78. See also Order dated 6 May 2019, id., pp. 196-197, and TSN, 6 May 2019.

²² Her direct testimony was received via *Judicial Affidavit* dated 2 May 2019, id., pp. 179-192. See also Order dated 7 May 2019, id., p. 200, and TSN, 7 May 2019.

²³ His direct testimony was received via *Judicial Affidavit* dated 16 May 2019, id., pp. 211-218. See also Order dated 3 June 2019, id., p. 237, and TSN, 3 June 2019.

²⁴ His direct testimony was received via *Judicial Affidavit* dated 24 May 2019, id., pp. 226-234. See also Order dated 17 June 2019, id., p. 241, and TSN, 17 June 2019.

²⁵ Her direct testimony was received via *Complaint Affidavit* dated 11 May 2011, id., pp. 285-424. See also Order dated 1 July 2019, id., p. 427, and TSN, 1 July 2019.

²⁶ Her direct testimony was received via *Judicial Affidavit* dated 16 May 2019, id., pp. 263-281. See also Order dated 2 July 2019, id., p. 430, and TSN, 2 July 2019.

²⁷ His direct testimony was received via *Judicial Affidavit* dated 27 June 2019, id., pp. 247-260. See also Order dated 2 July 2019, id., p. 430, and TSN, 2 July 2019.



On 23 July 2019, the prosecution filed its Formal Offer of Evidence²⁸ and, on 23 August 2019,²⁹ the Court admitted its Exhibits "B" to "Z," "AA" to "NN," "OO," "OO-1," "OO-2," "QQ," "RR," "RR-1," "SS," "SS-1," "SS-2," "UU," "UU-1" to "UU-3," "VV," "WW," "WW-1," "WW-2," "XX," "YY," "ZZ," "ZZ-1," and "AAA" in the tenor that they were testified on by the prosecution's witnesses, over accused's objections.³⁰

Accused Daep, Lacbain, Ardales, Calsiña, and Millena then filed a *Motion for Leave to File Demurrer to Evidence* dated 5 September 2019,³¹ but the same was denied in the Court's 9 October 2019 Resolution.³² Their *Motion for Reconsideration*³³ was also denied in a Resolution dated 4 December 2019.³⁴

The defense then presented seven (7) witnesses: (i) **Arnold B. Calsiña**,³⁵ accused; (ii) **Ernesto M. Millena**,³⁶ accused; (iii) **Ameife L. Lacbain**,³⁷ accused; (iv) **Ciriaco P. Padre, Jr.**,³⁸ Municipal Agriculturist of Manito, Albay; (v) **Nestor M. Baldano**,³⁹ Barangay Chairperson of Brgy. Manumbalay, Manito, Albay; (vi) **Carmencita C. Daep**,⁴⁰ accused; and (vii) **Ma. Loida D. Espinas**,⁴¹ Administrative Aide IV, Office of the Mayor, Manito, Albay.

On 13 April 2022, accused Daep, Lacbain, Ardales, Calsiña, and Millena filed their *Formal Offer of Documentary Evidence*⁴² and, on 19 May 2022,⁴³ the Court admitted their Exhibits "1" to "35" and "37," with their sub-markings, subject to the Court's proper appreciation of their respective probative values.

²⁸ *Prosecution's Formal Offer of Evidence* dated 22 July 2019, Records, Vol. II, pp. 441-698.

²⁹ Resolution dated 23 August 2019, id. Vol. III, p. 58.

³⁰ *Comment/Opposition (To Prosecution's Formal Offer of Evidence dated 22 July 2019)* dated 13 August 2019, id., pp. 19-32.

³¹ Id., pp. 69-78.

³² Id., pp. 102-103.

³³ *Motion for Reconsideration (of the Order dated 09 October 2019)* dated 25 October 2019, id., pp. 107-114.

³⁴ Id., pp. 129-130.

³⁵ His direct testimony was received via *Judicial Affidavit* dated 22 January 2020, id., pp. 136-204. See also Order dated 6 February 2020, id., p. 279, and TSN, 6 February 2020.

³⁶ His direct testimony was received via *Judicial Affidavit* dated 29 January 2020, id., pp. 205-273. See also Order dated 6 February 2020, id., p. 279, and TSN, 6 February 2020.

³⁷ Her direct testimony was received via *Judicial Affidavit* dated 22 January 2020, id., pp. 333-475. See also Minutes of the Hearing dated 22 November 2021, id., p. 538, and TSN, 22 November 2021.

³⁸ His direct testimony was received via *Judicial Affidavit* dated 23 January 2020, id., pp. 476-526. See also Order dated 23 November 2021, id., p. 540, and TSN, 23 November 2021.

³⁹ His direct testimony was received via *Judicial Affidavit* dated 23 January 2020, id., Vol. IV, pp. 62-109. See also Order dated 28 March 2022, id., p. 185, and TSN, 28 March 2022.

⁴⁰ Her direct testimony was received via *Judicial Affidavit* dated 22 January 2020, id., pp. 110-175. See also Order dated 30 March 2022, id., p. 188, and TSN, 30 March 2022.

⁴¹ Her direct testimony was received via *Judicial Affidavit* dated 22 January 2020, id., pp. 176-182. See also Order dated 30 March 2022, id., p. 188, and TSN, 30 March 2022.

⁴² Dated 13 April 2022, id., pp. 194-444.

⁴³ Resolution dated 19 May 2022, id., p. 449.







EVIDENCE FOR THE PROSECUTION

In addition to the stipulations made by the parties, the prosecution's evidence is primarily based on the documents gathered by AGIO III Garillo's team during their investigation of Manito, Albay's implementation of the 2004 FIFI Program, which she identified in Court.⁴⁴ They show the following:

On 3 March 2004,⁴⁵ accused Daep, as Municipal Mayor of Manito, Albay, Representative Carlos Imperial of the 2nd District of Albay, and Dr. Hector M. Sales, OIC-Regional Director of Department of Agriculture (DA) – Regional Field Unit (RFU) V, executed a Memorandum of Agreement (MOA) in connection with the implementation of the PhP 3,000,000.00 FIFI Program for the Province of Albay.

On 4 March 2004, accused Daep signed Purchase Request (P.R.) No. 291⁴⁶ for the procurement of 4,285 bottles of "**Hexaplus liquid fertilizers**" tagged at the price of PhP 700 per bottle, for a total contract price of PhP 2,999,500.00.

Sometime in March 2004, the BAC of Manito, Albay composed of accused Ardales (Chairperson), Alvarez (Vice-Chairperson), Calsiña, Mapa (deceased), and Millena initiated the bidding process for the supply of liquid fertilizers by issuing an Invitation to Apply For Eligibility to Bid (ITB).⁴⁷ Said document indicated the contract price of PhP 2,999,500.00 for the purchase of liquid fertilizers and included, among others, the following schedule of activities:

ACTIVITIES	SCHEDULE
1. Issuance of Bid documents	March 8-14, 2004
2. Pre-Bid Conference	Not Applicable
3. Submission of Letters of Intent and Application for Eligibility (If single stage bidding is issued, delete this activity.	Not Applicable
4. Opening of Bids	March 15, 2004 @ 2:00 p.m. 2 nd Floor, Mun. Building, Manito, Albay
5. Bid Evaluation	March 16, 2004 @ 9:00 a.m. 2 nd Floor, Mun. Building, Manito, Albay
8. (sic) Bid Evaluation	March 16, 2004 @ 9:00 a.m. 2 nd Floor, Mun. Building, Manito, Albay
9. (sic) Post-Qualification	March 15, 2004 @ 2:00 p.m. 2 nd Floor, Mun. Building, Manito, Albay
10. Notice of Award	March 17, 2004

Per the BAC's Minutes of the Proceedings of 15 March 2004, no bidders participated in the biddings purportedly held on 8 and 15 March

⁴⁴ TSN, 1 July 2019, pp. 11-12.

⁴⁵ Based on Date of Notarization, Exh. "D"

⁴⁶ Exh. "AA".

⁴⁷ Exh. "Q".

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2004.⁴⁸ As a consequence, the BAC recommended the resort to negotiated procurement as an alternative mode of procurement, viz:

OFFICE OF THE BIDS AND AWARDS COMMITTEE

MINUTES OF THE BIDDING OF THE BIDS AND AWARDS COMMITTEE HELD AT THE MUNICIPAL SOCIAL HALL ON MARCH 15, 2004 AT 2:00 O'CLOCK IN THE AFTERNOON.

PRESENT:

Mr. Dioscoro A. Ardales	- BAC Chairman & Presiding Officer
Engr. Roberto T. Alvarez	- Vice Chairman
Engr. Donald Mapa	- Member
Mr. Ernesto M. Millena	- Member
Mr. Arnold Calsiña	- Member

ABSENT:

None

PROCEEDINGS

The bidding was called to order at 2:00 o'clock in the afternoon by the Presiding Officer.

The Presiding Officer acknowledged the presence of BAC and TWG members including NGO's as observer. COA representative not around.

The Presiding Officer inform (sic) the body that this is the 2nd time to conduct this bidding for the "Supply of Liquid Fertilizer". The first bidding was conducted last March 8, 2004 but sad to note that no one participated. After the first bidding the Presiding Officer directed the BAC Secretary to republish again said project on the next day to cope up with the period of cropping season and will not violate the election ban of the COMELEC for election period is approaching.

The Presiding Officer said that the ABC of the project is P2,999,500.00 for 4,285 bottle (sic). He open (sic) the bidding informing the bidder to drop their sealed bid envelope in the bid box. The Presiding Officer make (sic) a count of 10 to officially close the time of the bidding but it is sad to say that no one participated.

On motion of Engr. Donald Mapa and unanimously seconded that since no one arrived and participated in todays (sic) bidding for the "Supply of Liquid Fertilizer" I now therefore moved (sic) that the BAC recommend to the Hon. Carmencita C. Daep, Municipal Mayor a failure of bidding for it complies with R.A. No. 9184 for 2 times schedule bidding conducted but no one arrived and participated. It is therefore, **recommended that Alternative Mode of Procurement be use (sic) which is negotiated procurement or other method.**

On motion of Mr. Arnold Calsiña moved (sic) that since no other matter will be taken up the bidding is hereby adjourned and unanimously seconded.

The bidding adjourned at 3:00 o'clock in the afternoon.


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On the same day, accused Ardales sent a letter to Alex Rivera, President of Hexaphil, stating that they conducted two public biddings but both failed. At the same time, he requested Hexaphil to submit a price quotation for its liquid fertilizer. Also on the same date, Municipal

⁴⁸ Exh. "37".



Agriculturist Ciriaco Padre, Jr., purportedly in response to the BAC's request, issued a Certification,⁴⁹ stating that Hexaplus was not available in the local market.

On 16 March 2004, Hexaphil sent a letter-reply,⁵⁰ signifying its intent to provide 4,285 bottles of its liquid fertilizer, Hexaplus, at PhP 700.00 per bottle, or for a total contract price of PhP 2,999,500.00.⁵¹

On 18 March 2004, the BAC recommended⁵² to accused Daep that the procurement of said liquid fertilizers be made through direct contracting and issued its Resolution of Award⁵³ in favor of Hexaphil. Accused Daep approved the said recommendation on 19 March 2004.

On 24 March 2004, the DA issued an Advice of Sub-Allotment⁵⁴ pertaining to "Authorized (Continuing) Appropriations, AFMP R.A. 9206" covering the amount of PhP 11,000,000.00 and NTA No. 04-05-11,⁵⁵ informing the Land Bank of its authority to debit PhP 7,150,000.00 from MDS Account No. 2321-90026-0 and credit the same to DA-RFU V's MDS Account No. 2270-9002-01 for the implementation of the indicated FIFI Program.

On 24 March 2004, another MOA⁵⁶ was entered into by accused Daep, Representative Carlos Imperial, and Dr. Hector M. Sales, OIC-Regional Director of DA – RFU V pertaining to the implementation of the PhP 3,000,000.00 FIFI Program.

On 5 April 2004, the following documents were issued to facilitate the transfer of funds from DA–RFU V to the Municipality of Manito relative to the implementation of the FIFI Program:

- (i) Allotment and Obligation Slip (ALOBS) pertaining to the amount of PhP 1,950,000.00;⁵⁷
- (ii) DA-RFU V DV No. 011 for the same amount;⁵⁸
- (iii) LBP Check No. 9999985862 for PhP 1,000,000.00 issued to the Municipal Treasurer of Manito, Albay;⁵⁹
- (iv) LBP Check No. 9999985863 for PhP 950,000.00 issued to the Municipal Treasurer of Manito, Albay;⁶⁰ and

⁴⁹ Exh. "T".

⁵⁰ Exh. "U".

⁵¹ Exh. "V".

⁵² Exh. "X".

⁵³ Exh. "W".

⁵⁴ Exh. "E".

⁵⁵ Exh. "F".

⁵⁶ Exh. "C".

⁵⁷ Exh. "G".

⁵⁸ Exh. "I".

⁵⁹ Exh. "K".

⁶⁰ Exh. "L".

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- (v) DA-RFU V Official Receipt (O.R.) No. 1776151 for the sum of PhP 1,950,000.00.⁶¹

Relatedly, the Letter⁶² authorizing Ms. Victoria R. Ajero to transact business on behalf of, and collect money for, Hexaphil was executed on the same date.

On 14 April 2004, Hexaphil issued an Invoice⁶³ for the purchase of 4,285 bottles of Hexaplus liquid fertilizers. On the same day, accused Ardales and Calsiña signed an Inspection and Acceptance Report,⁶⁴ which refers to a Purchase Order dated 18 March 2004.

Thereafter, Disbursement Voucher (D.V.) No. 100-0404-135 dated 21 April 2004⁶⁵ was issued for the partial payment of PhP 1,950,500.00 to Hexaphil and LBP Check No. 823839⁶⁶ for the sum of PhP 1,879,090.91 was issued to it on 21 April 2004. To acknowledge receipt thereof, Hexaphil issued O.R. No. 301⁶⁷ on 22 April 2004. The payment was recorded by accused Lacbain in Journal Entry Voucher (JEV) No. 762⁶⁸ dated 18 April 2004 and, on 30 April 2004, the same accused accomplished a Certificate of Status of Funds as of April 30, 2004.⁶⁹

Then, from 4 to 7 May 2004, the following documents were issued to facilitate the transfer of funds from DA-RFU V to the Municipality of Manito, Albay, still in relation to the implementation of the FIFI Program:

- (i) ALOBS dated 4 May 2004 pertaining to the amount of PhP 1,050,000.00;⁷⁰
- (ii) DA-RFU V DV No. 43 dated 4 May for the same amount;⁷¹
- (iii) LBP Check No. 9999985722 dated 6 May 2004 for PhP 1,000,000.00 issued to the Municipal Treasurer of Manito, Albay;⁷²
- (iv) LBP Check No. 9999985723 dated 6 May 2004 for PhP 50,000.00 issued to the Municipal Treasurer of Manito, Albay;⁷³ and
- (v) DA-RFU V O.R. No. 1776161 dated 7 May 2004 for the sum of PhP 1,050,000.00.⁷⁴
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⁶¹ Exh. "O".

⁶² Exh. "Y".

⁶³ Exh. "GG".

⁶⁴ Exh. "Z".

⁶⁵ Exh. "BB".

⁶⁶ Exh. "HH".

⁶⁷ Exh. "FF".

⁶⁸ Exh. "DD".

⁶⁹ Exh. "LL".



⁷⁰ Exh. "H".

⁷¹ Exh. "J".

⁷² Exh. "M".

⁷³ Exh. "N".

⁷⁴ Exh. "P".



On 14 May 2004, D.V. No. 100-0405-150⁷⁵ was issued for the final payment of PhP 1,050,000.00 to Hexaphil. Relative thereto, Check No. 823857⁷⁶ for PhP 1,011,336.36 was issued to Hexaphil on 18 May 2004. To acknowledge receipt thereof, Hexaphil issued O.R. No. 00305.⁷⁷ Said payment was recorded on 18 May 2004 through JEV No. 837,⁷⁸ likewise executed by accused Lacbain, and, on 31 May 2004, through a Certificate of Status of Funds as of May 31, 2004.⁷⁹

In addition to the foregoing documents, the following prosecution witnesses testified as follows:

(i) Atty. RJ A. Bernal, Chief Counsel of the Company Registration and Monitoring Department of the SEC, testified that upon verification, Hexaphil's Certificate of Registration was revoked on 29 September 2003 due to non-filing of its General Information Sheet and Financial Statements. He identified the SEC Certification stating such.⁸⁰

(ii) Teresita C. Vargas, Building Administrator of the Montepino Office Condominium Corporation, testified that Hexaphil was never a tenant at their building,⁸¹ and identified the 8 June 2006 Certification⁸² she issued to attest to the said fact.

(iii) Atty. Restituto M. Ancheta, Jr.,⁸³ Acting Head of the Law Department and Head of the Assessment Division of the BPLO of Makati City, testified that Hexaphil had no business permit in Makati City. He identified a copy of a 21 March 2006 Certification⁸⁴ signed by Pablo Glean, then OIC of the Makati City BPLO, stating that Hexaphil "is a non registered company." However, he claimed that the original thereof may have been lost during the course of the transfer of the BPLO to its new office at the New Makati City Hall Building II. For this reason, he reverified their records and, as a result thereof, issued another Certification dated 17 May 2019,⁸⁵ which states:

This is to certify that upon verification from our existing records of entities/ individuals doing business in the City of Makati, **HEXAPHIL AGRIVENTURES, INC.**, is a non-registered entity.

This further certifies that the Certification dated 21 March, 2006, issued by the OIC of BPLO Makati Pablo R. Glean can no longer be

⁷⁵ Exh. "CC".

⁷⁶ Exh. "II".

⁷⁷ Exh. "KK".

⁷⁸ Exh. "EE".

⁷⁹ Exh. "LL".

⁸⁰ *Judicial Affidavit* dated 27 June 2019, p. 4, jd. See also Exhs. "UU" to "UU-2."

⁸¹ *Judicial Affidavit* dated 11 March 2019, p.3, see note 21.

⁸² Exh. "VV".

⁸³ See note 24.

⁸⁴ Exh. "RR".

⁸⁵ *Judicial Affidavit* dated 27 June 2019, p. 5, see note 27. Exh. "RR-1".

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produced / found because we transferred in (sic) the new office located at the New Makati City Hall Bldg. II.

This is being issued upon request of **Agnes B. Autencio-Daquis, Assistant Special Prosecutor III, Acting Director, Prosecution Bureau IV, Office of the Ombudsman** for whatever legal purpose it may serve.

(iv) Cecilia C. Tolentino, Municipal Licensing Officer of Calauan, Laguna testified that the business permit⁸⁶ Hexaphil submitted to the Manito, Albay BAC was spurious.⁸⁷ She identified the Certification dated 22 February 2007⁸⁸ that she issued to confirm that Hexaphil is not a registered business entity in the Municipality. She likewise affirmed and confirmed her earlier Sinumpaang Salaysay dated 8 March 2007,⁸⁹ where she declared that the "*Pangkat sa Pagbibigay Pahintulot at Lisensiya*" purportedly issued to Hexaphil in 2004 is "not existing and a falsified document," thus -

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to CERTIFY that based on our files and records for the year 2004, the purported "*Pangkat sa Pagbibigay Pahintulot at Lisensiya*" allegedly issued in 2004 by this Office in favor of Hexaphil Agriventures, Inc., is not existing and a falsified document. To illustrate:

- a. The signature of Mayor Buenafrido T. Berris is a forgery;
- b. The control number appearing on the subject business permit and license contained only five digits, whereas all business permits and licenses issued in 2004 had already seven digits-control number;
- c. In 2004, the Secretary of the Sangguniang Bayan stopped the practice of co-signing business permits and licenses and, thus, the signature of the Acting Secretary of the Sangguniang Bayan on the subject business permit and license, is questionable; and
- d. There is strong reason to believe that the subject business permit and license is a reproduction and a superimposition of the 1997 business permit and license issued by then Mayor Editha Sanchez, particularly in the (sic) light of the fact that said business permit and license contained substantially the same amounts and entries.

ISSUED this 6th day of March 2007

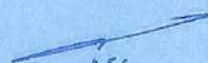
(v) Petronilo N. Galsim, Revenue Collection Officer I at the Municipal Treasurer's Office of Los Baños, Laguna, who at the time relevant to this

⁸⁶ Exh. "NN".

⁸⁷ *Judicial Affidavit* dated 2 May 2019, p.3, see note 22.

⁸⁸ Exh. "XX".

⁸⁹ Exhs. "ZZ" and "ZZ-1".



case was Cashier II of the same office, identified his 20 June 2006 Affidavit, paragraph 3 of which states –

That I am duly authorized representative of the Municipal Treasurer to certify that per record on file of this office, no documents are available re: Business Permit/Registration for CY 2000-2005, including the Application for Renewal of the same, other documents appurtenant thereto issued to **Hexaphil Agriventures, Inc.** (emphasis in the original)

He testified that the above statement was based on the records of their office but that the original thereof is no longer available, having been being water-damaged or lost during the transfer of their office to a new location.⁹⁰

(vi) Finally, Julieta B. Lansangan, FRD-FPA Chief, explained that companies dealing with fertilizers need to secure a License to Operate and a Certificate of Product Registration from their office.⁹¹ She clarified that a license to operate as an importer, manufacturer, national distributor, or area distributor, among others, is a regulatory measure and is required as a condition precedent to the importation, exportation, manufacture, formulation, repacking, distribution, delivery, sale, transport, storage, and use of any fertilizer. In connection therewith, the following documents, among others, must be submitted to the FPA: SEC registration, DTI registration or CDA registration, financial statements, the product registration of all fertilizer grades to be sold, inspection and recommendation of the FPA, and registration of the warehouse.⁹²

A Certificate of Product Registration, on the other hand, is an authority issued by the FPA to any person to sell or distribute a specified fertilizer product. An application for product registration requires the submission of, among others, an itemized list of raw materials used, the production process, the target users, bio-efficacy field trials or tests, and results of laboratory tests.⁹³

According to her, Hexaplus was provisionally registered on 21 February 1995. However, the provisional registration expired on 26 April 1996 without the application process being completed or renewed. On the other hand, while Hexaphil was granted a License to Operate on 20 February 1995, said registration expired on 31 December 1995 without further applications for registration or renewal.⁹⁴ The purported FPA licenses and certificates issued to Hexaphil, which the latter submitted to the BAC of

⁹⁰ *Judicial Affidavit* dated 16 May 2019, pp. 3-4, see note 23. See also Exh. "WW-2".

⁹¹ *Judicial Affidavit* dated 16 May 2019, pp. 3-4, see note 26.

⁹² *Id.*, p. 4.

⁹³ *Id.*

⁹⁴ Exhs. "SS" to "SS-2".

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Manito, Albay are falsified, as attested to by Dr. Wilma N. Obcemea, Chief of the FPA-FRD in her Certification, which the witness identified:⁹⁵

ATTY. JAMES G. VIERNES

Acting Director
Assets Investigation Bureau – C
Field Investigation Office
Office of the Ombudsman
Agham Road, Diliman
Quezon city

RE; CPLC-05-2012; CPL C-05-2298, CPL C-05-2638

SIR:

In compliance with your Subpoena Duces Tecum dated 23 February 2007, I hereby Certify Under Oath that Hexaphil Agriventures. (sic), Inc. did not apply for a license to operate nor did it apply to register its product with our office.

Hence, our office did not issue a **CERTIFICATE OF LICENSE TO OPERATE AND PRODUCT REGISTRATION** to Hexaphil Agriventures, Inc.

The photocopy of the license of Hexaphil Agriventures, Inc. is fake since the assigned FPA Control No. belongs to another company and the signatory Mr. Francisco C. Cornejo had already retired in 1996.

I am issuing this CERTIFICATION Under Oath based on our existing records at the Fertilizer Regulatory Division.

RESPECTFULLY SUBMITTED.

Very truly yours,

(signed)

WILMA N. OBCEMEA, Ph.D.

Chief, Fertilizer Regulatory Services Division

Thus, according to her, Hexaphil was ineligible to do business with the government or with any other establishment for that matter.

She also confirmed that she prepared the Price Quotations of Liquid Fertilizers dated 15 June 2006, which was signed by FPA Executive Director Norlito R. Gicana.⁹⁶ The Price Quotations reflected the prices of liquid fertilizers sold on the market between the years 2004 to 2006.

EVIDENCE FOR THE DEFENSE

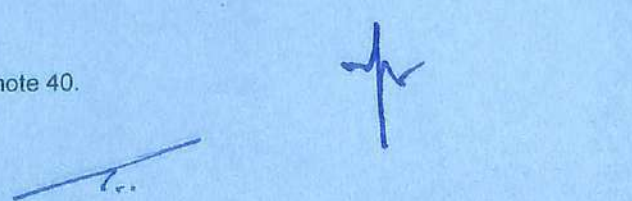
Accused Daep testified that although she signed P.R. No. 291,⁹⁷ the same was prepared by Russel Daep, her late Executive Assistant,⁹⁸ and that she did not know that Hexaplus – which was indicated therein – was a

⁹⁵ Exh. "YY".

⁹⁶ TSN, 2 July 2019, pp. 15-16. Exh. "AAA".

⁹⁷ Exh. "28" / "AA".

⁹⁸ Judicial Affidavit dated 22 January 2020, p. 6, see note 40.



specific brand of liquid fertilizer. Her testimony that it was Russel Daep who prepared P.R. No. 291 was corroborated by Loida D. Espinas, then Administrative Aide VI, who was detailed to her office.⁹⁹

As far as accused Daep knew, no one participated in the scheduled public bidding for liquid fertilizers and that Hexaphil was the only supplier that submitted a Price Quotation. The decision to resort to direct contracting was made by the BAC alone, and her participation therein was limited to signing the Resolution of Award to Hexaphil – which she did based on the recommendation of the BAC and Certification of the Municipal Agriculturist. She also points out that Hexaphil was able to deliver all 4,285 bottles of Hexaplus, and that the same have been distributed to the farmers.

Accused Calsiña and Millena were the only BAC members who testified. They corroborated each other's testimonies that the BAC initiated the procurement in question, with its Chairperson, accused Ardales, issuing the ITB.¹⁰⁰ Unfortunately, nobody participated in the opening of bids held on 8 and 15 August 2004, as narrated in the BAC's Minutes of the Proceedings for the Session Held on 15 March 2004.¹⁰¹ Thus, the BAC recommended the resort to direct contracting.

In turn, the recommendation to award the contract to Hexaphil for the purchase of Hexaplus liquid fertilizer was made since it was the only one that submitted a price quotation. Moreover, Municipal Agriculturist Ciriaco P. Padre, Jr.'s Certification dated 15 March 2004¹⁰² stated that Hexaplus was not being sold in the Municipality or in the Province of Albay.

After determining the sufficiency of Hexaphil's price quotation,¹⁰³ the BAC issued a Resolution of Award dated 18 March 2004 in its favor.¹⁰⁴ Accused Daep approved the said Resolution the following day.

On 15 April 2004, Hexaphil complied with its obligations and duly delivered 4,285 bottles of Hexaplus. To evidence this, accused Ardales and Calsiña issued an Acceptance and Inspection Report.¹⁰⁵

Both accused ¹⁰⁶ admitted that they were not specifically knowledgeable with the procurement law when they performed their duties as BAC members for this transaction.

⁹⁹ See note 41.

¹⁰⁰ Judicial Affidavit dated 22 January 2020, p. 3, see note 35. Exh. "35" / "Q".

¹⁰¹ Judicial Affidavit dated 29 January 2020, pp. 3-4, see note 36. Exh. "37".

¹⁰² Exh. "16".

¹⁰³ Exhs. "19" and "V".

¹⁰⁴ Judicial Affidavit dated 22 January 2020, p. 5, see note 35 and Judicial Affidavit dated 29 January 2020, pp. 3-4, see note 36. Exh. "25" / "W".

¹⁰⁵ Judicial Affidavit dated 22 January 2020, p. 5, see note 35. Exhs. "27" / "Z".

¹⁰⁶ Judicial Affidavit dated 22 January 2020, p. 6, see note 35. Judicial Affidavit dated 29 January 2020, p. 4, see note 36.

Accused Millena further testified that he also signed D.V.s 100-0404-135 and 100-0405-150¹⁰⁷ in his capacity as Municipal Treasurer without further verification of Hexaphil's eligibility, given that it was already signed by the Municipal Accountant, who was obligated to check the veracity of the documents submitted, and considering that the Municipality received funds from the DA, as shown in O.R. No. 1776151 dated 5 April 2004¹⁰⁸ and O.R. No. 1776161 dated 7 May 2004.¹⁰⁹

The bottles of Hexaplus were thereafter distributed to farmer-beneficiaries in the Municipality.¹¹⁰

Padre, Jr., testified to corroborate that he issued such certification after validation and investigation as to the availability of Hexaplus in the Municipality and the Province.¹¹¹ He added that the liquid fertilizers were distributed to farmer-beneficiaries in April 2004. His testimony as to the distribution of the liquid fertilizers was further corroborated by witnesses Nestor Montalban Baldano, Brgy. Chairperson of Manumbalay, Manito, Albay.¹¹²

For her part, accused Ameife L. Lacbain, Municipal Accountant, testified that it was her duty to prepare the Municipality's financial reports and the liquidation reports submitted to the COA. In line thereto, she signed vouchers and disbursements after checking the completeness of attached documents.¹¹³

Specific to the transaction subject of this case, she signed D.V. No. 100-0404-135¹¹⁴ and D.V. No. 100-0405-150¹¹⁵ after checking the "completeness" of the following documents: (i) BAC Resolutions;¹¹⁶ (ii) Acceptance and Delivery Report;¹¹⁷ (iii) documents submitted by Hexaphil, including its Price Quotation,¹¹⁸ Brochure,¹¹⁹ and SEC documents;¹²⁰ (iv) BAC Minutes;¹²¹ (v) ITB;¹²² (vi) Letters; (vii) JEVs;¹²³ and (viii) the Municipal Agriculturist's 15 March 2004 Certification.¹²⁴

¹⁰⁷ Exh. "11" and "11-a" respectively.

¹⁰⁸ Exh. "8".

¹⁰⁹ *Judicial Affidavit* dated 29 January 2020, p. 5, see note 36. Exh. "8-a".

¹¹⁰ *Judicial Affidavit* dated 22 January 2020, p. 5, see note 40.

¹¹¹ *Judicial Affidavit* dated 23 January 2020, p. 3. See note 38.

¹¹² See note 39.

¹¹³ *Judicial Affidavit* dated 22 January 2020, p. 2, see note 37.

¹¹⁴ Exh. "11" / "BB".

¹¹⁵ Exh. "11-a" / "CC".

¹¹⁶ Exhs. "25" / "W" and "26" / "X".

¹¹⁷ Exh. "27" / "Z".

¹¹⁸ Exh. "19" / "V".

¹¹⁹ Exh. "20" / "QQ".

¹²⁰ Exhs. "24" and series / "OO".

¹²¹ Exh. "37".

¹²² Exh. "35" / "Q".

¹²³ Exhs. "12" / "DD" and "12-a" / "E".

¹²⁴ *Judicial Affidavit* dated 22 January 2020, pp. 3-4, see note 37. Exh. "16" / "T".

Accused Lacbain's signatures on the said D.V.s mean that the documents attached thereto were complete and that the previous cash advances for the same purchase were already liquidated.¹²⁵

After signing, she forwarded each D.V. to the Treasurer's Office for check preparation. After the supplier was paid, they processed the liquidation documents by preparing Certificates of Status of Funds as of April 2004¹²⁶ and May 2004.¹²⁷ These documents were thereafter forwarded to the Resident COA Auditor.¹²⁸ The COA verified them, made no negative findings, and concluded that the liquidation documents were sufficient, causing the procurement to pass the Exit Conference for the year 2004.¹²⁹

Accused Daep, Lacbain, Calsiña, and Millena all identified and confirmed the Affidavits and Joint Counter-Affidavits¹³⁰ they submitted during the preliminary investigation proceedings.

MEMORANDUM

In its *Memorandum*,¹³¹ the prosecution points out that it was able to prove all the elements of the offense charged. That the accused public officials acted with manifest partiality, evident bad faith, and gross inexcusable negligence, and conferred unwarranted benefits to Hexaphil are evident in their concerted actions, particularly:

- (i) Their undue award of the contract to Hexaphil, a company that was not registered with the DTI, with a revoked SEC registration, no standing registration with the FPA, no business permit or record of business in its place of operations, no updated registration and record of income tax payments, with a 2003 License to Operate that was purportedly issued by Calauan Business Office but was non-existent and falsified, and whose product was not registered with the FPA;
- (ii) Their resort to direct contracting albeit the conditions provided under Sec. 50 of R.A. No. 9184¹³² were not present;
- (iii) From the onset of the procurement process, the accused already pre-selected Hexaphil, with accused Daep already identifying the said company as supplier and stating that its product, Hexaplus,

¹²⁵ *Judicial Affidavit* dated 22 January 2020, p. 4, see note 37.

¹²⁶ Exh. "9" / "LL".

¹²⁷ Exh. "10" / "LL".

¹²⁸ *Judicial Affidavit* dated 22 January 2020, p. 5, see note 37.

¹²⁹ *Judicial Affidavit* dated 22 January 2020, p. 6, see note 37 and *Judicial Affidavit* dated 22 January 2020, p. 7, see note 40.

¹³⁰ Exhs. "1" to "3".

¹³¹ Dated 25 June 2022 received via electronic mail on 28 June 2022, id., pp. 454-471.

¹³² The Government Procurement Reform Act.

would be the item to be procured per P.R. No. 291 dated 1 March 2004; and

(iv) On the part of the accused members of the BAC of Manito, Albay, their actions leading to their recommendation for direct contracting as the mode of procurement - thereby allowing Hexaphil to be singled out as the supplier – shows their preference to the said company.

The prosecution highlights that there were pronounced violations of R.A. No. 9184 attendant in the actions of the accused BAC members. It points out that while resort to alternative modes of procurement is allowed by law, none of the requirements for direct contracting were present in this case. While accused tried to show, through Ciriaco Padre, Jr.'s Certification, that Hexaplus Liquid Fertilizer was not available in the locality, the prosecution submits that said certification is self-serving, and it does not show that "there is an exclusiveness of dealer or manufacturer and such dealer or manufacturer sells at lower prices and provided further that, no suitable substitute can be obtained by the procuring entity at more advantageous terms," circumstances that have to concur for a valid resort to direct contracting.

Apart from not being able to prove that there were no suitable substitutes available for purchase at that time, accused Daep violated Sec. 18 of R.A. No. 9184 by specifying a brand, Hexaplus, in the P.R.

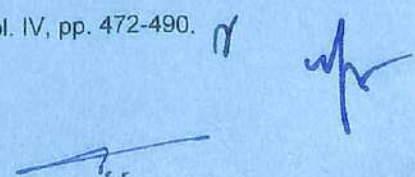
Lastly, as to accused Lacbain, as Municipal Accountant, her liability stems from her act of signing the disbursement vouchers even though the documents required were incomplete. Specifically, there was no certification that a canvass was conducted and that there was no abstract of bids submitted.

On the other hand, in their Memorandum,¹³³ accused Daep, Lacbain, Ardales, Calsiña, and Millena point out that the prosecution failed to prove their guilt. They refer to *Martel v. People*,¹³⁴ which provides that the prosecution cannot rely solely on the fact that the procurement law was violated to prove an accused's guilt under Sec. 3(e) of R.A. No. 3019. It must be shown that "(1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence."

Proceeding from the pronouncement in *Martel* that the accused therein underwent the procurement in good faith and with the honest belief

¹³³ Dated 1 July 2022 and filed on 4 July 2022, Records, Vol. IV, pp. 472-490.

¹³⁴ G.R. Nos. 224720-23 & 224765-68, 2 February 2021.



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that the transaction was allowed, the accused submit that the prosecution was unable to prove that the procurement of Hexaplus caused undue injury to any party, including the Government, that they gave Hexaphil unwarranted benefits, advantage, or preference, and that they acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

None of the prosecution's witnesses had personal knowledge over the subject transactions. On the other hand, accused Lacbain testified that the purchase was not disallowed by the COA during its annual audit.

As for the allegation of undue injury, the accused points out that it should be proven in the same manner as actual damages. As against the prosecution's allegations, they refer to Nestor Montalban Baldano's testimony that legitimate farmer-beneficiaries in his *barangay* received the subject fertilizers.

As for the allegation of conspiracy, there has to be an overt act proven to signify the same. In this case, none of the prosecution witnesses were personally aware of Hexaphil or had any transactions with the said company; hence, they could not testify relating to it.

Lastly, they submit that direct contracting is allowed by law and is not *per se* unlawful. Hence, missing corporate records and permits, by themselves, do not support the conclusion that the accused exhibited bad faith or negligence, especially considering that deliveries of the subject fertilizers were made and that the beneficiaries were able to use them in time for the cropping season.

As for accused Daep, considering that a mere violation of procurement law does not automatically amount to graft, the indication of a specific brand is insufficient to prove the elements of the offense charged. Moreover, she merely relied on the competence of her Municipal Agriculturist in signing the P.R.

In all, considering that the accused enjoy the presumption of regularity in the performance of their official functions and that more than one circumstance exists to disprove their guilt, the Court must find for their acquittal.

RULING

The prosecution alleges that herein accused violated Sec. 3(e) of R.A. No. 3019 when they resorted to direct contracting in the procurement of Hexaplus liquid fertilizer, contrary to the directive in R.A. 9184 that all

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government procurement shall be done through competitive public bidding.¹³⁵ As held in *Ubalde v. Morales*:¹³⁶

R.A. No. 9184 requires that all procurement be done through competitive bidding. The rationale behind this requirement is to "ensure that the people get maximum benefits and quality services from the contracts" and to promote "transparency in government transactions and accountability of public officers." By way of exception, and if only to promote economy and efficiency, the law allows the procuring entity to resort to alternative methods of procurement, such as limited source bidding, direct contracting, repeat order, shopping, and negotiated procurement. (citations omitted)

On the other hand, it is well-settled, that mere defects or irregularities in the procurement process do not automatically amount to a violation of the Anti-Graft law.¹³⁷ In this regard, *Sabaldan, Jr. v. Ombudsman*¹³⁸ instructs that -

xxx For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

Thus, we examine the circumstances of the present case, bearing in mind the foregoing principles.

Sec. 3(e) of R.A. No. 3019 provides:

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

xxxx xxxx xxxx

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

¹³⁵ R.A. No. 9184, Sec. 10.

¹³⁶ G.R. No. 216771, 28 March 2022.

¹³⁷ See *Sistoza v. Desierto*, G.R. No. 144784; 3 September 2006.

¹³⁸ G.R. No. 238014, 15 June 2020.

The essential elements of the offense are as follows:

1. The accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers;
2. The accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and
3. The accused's actions caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his/her functions.¹³⁹

First Element

There is no dispute on the presence of the **first element** in view of the stipulations made by the accused as to their public positions and functions.

Second Element: Evident Bad Faith, Gross Inexcusable Negligence, and Manifest Partiality

The **second element** may be committed in three ways: (i) manifest partiality; (ii) evident bad faith; or (iii) gross inexcusable negligence.¹⁴⁰ Proof of any of the three is enough to convict.¹⁴¹ *People v. Asuncion*,¹⁴² citing *People v. Bacaltos*,¹⁴³ defines each mode as follows:

In *People vs. Bacaltos*, the Court expounded on the different modes of committing the offense penalized under Sec. 3 (e), viz.:

Partiality is synonymous with 'bias' which 'excites a disposition to see and report matters as they are wished for rather than as they are.

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.

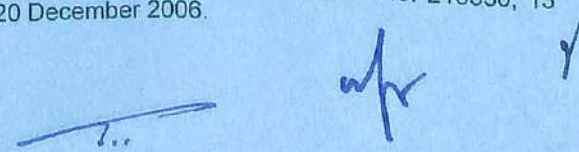
¹³⁹ See *Radaza v. Sandiganbayan*, G.R. No. 201380, 4 August 2021, citing *People v. Naciongayo*, G.R. No. 243897, 8 June 2020.

¹⁴⁰ See *Roy III v. Carpio Morales*, G.R. No. 225718, 4 March 2020.

¹⁴¹ See *People v. Adana*, G.R. No. 250445, 29 March 2022, citing *Coloma, Jr. v. Sandiganbayan*, G.R. No. 205561, 24 September 2014.

¹⁴² G.R. Nos. 250366 & 250388-98, 6 April 2022. See also *Quiogue v. Estacio, Jr.*, G.R. No. 218530, 13 January 2021, citing *Uriarte v. People*, G.R. No. 169251, 20 December 2006.

¹⁴³ G.R. No. 248701, 28 July 2020.



Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. (emphasis in the original; citation omitted)

Accused BAC Officials: Ardales Calsiña and Millena

Accused Ardales, Calsiña, and Millena are members of the BAC of Manito, Albay. They claim that they recommended the resort to direct contracting only after undergoing two failed biddings, as shown by the Minutes of Proceedings of 15 March 2002.

Even if, as pointed out by the accused, the prosecution witnesses have no personal knowledge over what transpired during the procurement process, the prosecution's case can be established by its documentary evidence, such as the P.R., ITB, and Minutes of Proceedings, among others. Relatedly, a review of the events surrounding the procurement process itself would show that the procurement in question was unduly expedited. The Minutes of Proceedings of 15 March 2002, rather than serving as proof of two failed biddings, is but an attempt to cover an aborted bidding, and that the entire process had always been geared towards the procurement of Hexaplus from Hexaphil. Consider the following circumstances:




The Purchase Request – P.R. No. 291 - was signed by accused Daep on 4 March 2004. The BAC, which included Ardales, Calsiña, and Millena, thereafter, proceeded to issue the ITB. After just 14 days, or on 18 March 2004, they issued the Resolution of Award in favor of Hexaphil. All these activities were undertaken and concluded although the funds for the said project were yet to be received by the Municipality.

They attempted to create the impression that the purchase would be made via public bidding, thus they issued an ITB that indicated that the opening of bids would be on 15 March 2004, thus -

INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

The Local Government of Manito Albay through its Bids and Awards Committee (BAC), invites suppliers / manufacturers/distributors/contractors to apply for eligibility and to bid for the hereunder project:

Name of Project	: Supply pf (sic) Liquid Fertilizer
Location	: LGU – Manito, Albay
Brief Description	: Supply of liquid fertilizer
Approved Budget Contract	: P2,999,500.00

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Contract Duration	: 5 Calendar Days
Delivery period	: 7 Calendar Days after the awards

Select one of the following:

For the contract involving delivery of goods:

Prospective bidders should have experience in undertaking a similar project within the last [Two (2) years state the number of years, minimum 2] with an amount of at least 50% of the proposed project for bidding. The Eligibility Check / Screening as well as the Preliminary Examination of Bids shall use non-discretionary "pass/fail" criteria. Post-qualification of the lowest calculated bid shall be conducted.

xxxx

xxxx

xxxx

All particulars relative to Eligibility Statement and Screening, Bid Security, Performance Security, Pre Bidding Conference(s), Evaluation of Bids, Post-qualification and Award of Contract shall be governed by the pertinent provisions of R.A. No. 9184 and its Implementing Rules and Regulations (IRR).

The complete schedule of activities is listed, as follows:

ACTIVITIES	SCHEDULE
1. Issuance of Bid documents	March 8-14, 2004
2. Pre-Bid Conference	Not Applicable
3. Submission of Letters of Intent and Application for Eligibility (If single stage bidding is issued, delete this activity.	Not Applicable
4. Opening of Bids	March 15, 2004 @ 2:00 p.m. 2 nd Floor, Mun. Building, Manito, Albay
5. Bid Evaluation	March 16, 2004 @ 9:00 a.m. 2 nd Floor, Mun. Building, Manito, Albay
8. (sic) Bid Evaluation	March 16, 2004 @ 9:00 a.m. 2 nd Floor, Mun. Building, Manito, Albay
9. (sic) Post-Qualification	March 15, 2004 @ 2:00 p.m. 2 nd Floor, Mun. Building, Manito, Albay
10. Notice of Award	March 17, 2004

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Approved by:

(SGD.) **DIOSCORO A. ARDALES**
BAC Chairman

Yet, the records show that even before the scheduled opening of bids on 15 March 2004, the BAC already zeroed in on one brand of liquid fertilizer – Hexaplus – and one supplier – Hexaphil. That Hexaphil was likewise privy to this intention is apparent from the fact that on 12 March 2004, Hexaphil's President, Alex Rivera, already issued a Certification for the BAC's benefit, stating that it was the manufacturer and distributor of Hexaplus.¹⁴⁴

In addition, Municipal Agriculturist Padre, Jr. testified that on 14 March 2004, or the day before the bid opening, he received the BAC's request for

¹⁴⁴ Exh. "R".

certification as to whether Hexaplus liquid fertilizer was available in the Province,¹⁴⁵ to wit:

- Q May we know, sir who requested you to issue this certification?
A The Bids and Awards Committee of the Municipality of Manito, inquired from me whether *Hexa Plus* liquid fertilizer is available in the local market? (sic)
- Q So, who in particular, sir was it the whole BAC or was there a person who requested you particularly to issue a certification?
A Actually, the one who requested is now deceased, sir.
- Q Yes and who is this person, sir?
A Russel Daep, sir.
- Q Russel Daep. Is he part of the BAC, Mr. Witness at that time?
A BAC Secretariat, sir.
- Q And may we know, sir considering that you issued the Certification on March 15, 2004, can you still recall when was the request for you to issue the certification made?
A 15, I remember it was 15, sir.
- Q Just for clarification, you issued a Certification on the March 15, on the same date wherein you were request (sic) by the BAC to issue a Certification, is that what you are trying to say, sir?
A March 14, sir.
- Q So, a day before?
A A day before, sir.
- Q So the request was made on March 14 for you to issue a Certification, is that correct?
A Yes, sir.

Moreover, the BAC limited its query as to whether Hexaplus was being sold in the Province of Albay. As testified to by Padre, Jr., he no longer inquired if there were other fertilizers available because, “[n]aka-fix lang, kaya, sir ang ano ko doon sa hexa plus for clarification and for verification if there is a manufacturer producing hexa plus, doon lang ako nag-aano.” He further explained that “I just stick on (sic) the request of the BAC.”

Further, on 15 March 2004, the same day as the opening of bids – accused Andales wrote to Hexaphil’s President requesting for a price quotation of its liquid fertilizer.¹⁴⁶

All these circumstances show that even as the bidding process was supposedly on-going, there were already parallel efforts to deal with Hexaphil. ✓

¹⁴⁵ TSN, 23 November 2021, pp. 8-9.

¹⁴⁶ Exh. “S”.

✓

Moving on, the Minutes of Proceedings of 15 March 2004, reveals that the BAC recommended resort to negotiated procurement, *to wit*:

OFFICE OF THE BIDS AND AWARDS COMMITTEE

MINUTES OF THE BIDDING OF THE BIDS AND AWARDS COMMITTEE HELD AT THE MUNICIPAL SOCIAL HALL ON MARCH 15, 2004 AT 2:00 O'CLOCK IN THE AFTERNOON.

PRESENT:

Mr. Dioscoro A. Ardales	- BAC Chairman & Presiding Officer
Engr. Roberto T. Alvarez	- Vice Chairman
Engr. Donald Mapa	- Member
Mr. Ernesto M. Millena	- Member
Mr. Arnold Calsiña	- Member

ABSENT:

None

PROCEEDINGS

The bidding was called to order at 2:00 o'clock in the afternoon by the Presiding Officer.

The Presiding Officer acknowledged the presence of BAC and TWG members including NGO's as observer. COA representative not around.

The Presiding Officer inform (sic) the body that this is the 2nd time to conduct this bidding for the "Supply of Liquid Fertilizer". The first bidding was conducted last March 8, 2004 but sad to note that no one participated. After the first bidding the Presiding Officer directed the BAC Secretary to republish again said project on the next day to cope up with the period of cropping season and will not violate the election ban of the COMELEC for election period is approaching.

The Presiding Officer said that the ABC of the project is P2,999,500.00 for 4,285 bottle (sic). He open (sic) the bidding informing the bidder to drop their sealed bid envelope in the bid box. The Presiding Officer make (sic) a count of 10 to officially close the time of the bidding but it is sad to say that no one participated.

On motion of Engr. Donald Mapa and unanimously seconded that since no one arrived and participated in today's (sic) bidding for the "Supply of Liquid Fertilizer" I now therefore moved (sic) that the BAC recommend to the Hon. Carmencita C. Daep, Municipal Mayor a failure of bidding for it complies with R.A. No. 9184 for 2 times schedule bidding conducted but no one arrived and participated. It is therefore, **recommended that Alternative Mode of Procurement be use (sic) which is negotiated procurement or other method.**

On motion of Mr. Arnold Calsiña moved (sic) that since no other matter will be taken up the bidding is hereby adjourned and unanimously seconded.

The bidding adjourned at 3:00 o'clock in the afternoon.



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Yet, in his Recommendation dated 18 March 2004¹⁴⁷ to accused Daep, accused Ardales recommended the resort to direct contracting. The said recommendation in part reads:

¹⁴⁷ Exh. "21".



Dear Mayor Daep:

After careful study of the documents submitted to us regarding the Proposed Project: SUPPLY OF LIQUID FERTILIZER (HEXAPLUS), we are recommending that "DIRECT CONTRACTING" is the most appropriate procurement mode for this particular contract.

XXXXX XXXXX XXXXX XXXXX

In this regard, it is worthy to note that direct contracting and negotiated procurement are two different modes of procurement, as can be seen from Sec. 48, Art. XVI of R.A. No. 9184:

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

XXXX XXXX XXXX

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

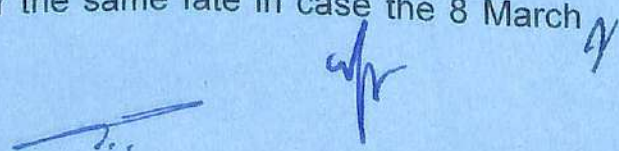
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(e) *Negotiated Procurement* – a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates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

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

Clearly then, the BAC did not even follow its own recommendation to resort to negotiated procurement, and no attempt was made to look for at least three suitable suppliers at all to ascertain whether the Municipality may be able to procure liquid fertilizer from other sources.

Accused justify the resort to direct contracting because of the two failed biddings. Such reasoning, however, is faulty for the following reasons: (i) there is no other ITB to show that an opening of bids was scheduled on 8 March 2004. Even assuming that there was bidding held on said date, the same would have been irregular, as it would have taken place only four days from the issuance of the P.R. on 4 March 2004, making it non-compliant with the period for publication and posting under R.A. No. 9184. In turn, the 15 March 2004 bidding would also suffer the same fate in case the 8 March



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bidding was indeed conducted, as it would not have satisfied the advertising and posting requirements under Sec. 21.2.1 of the IRR-A, specifically:

21.2. Advertising and Posting of the Invitation to Apply for Eligibility and to Bid

21.2.1. Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

a) Advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;

b) Posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the G-EPS during the maximum period of fourteen (14) calendar days stated above; and

c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned.

21.2.2. The following periods from the last day of the period for advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to the opening of bids shall be observed:

(i) For goods, a maximum period of thirty (30) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to opening of bids.

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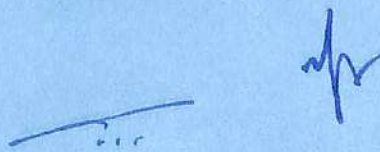
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(ii) having undergone two failed biddings may justify resort to negotiated procurement under Sec. 53 of R.A. No. 9184. It is not, however, a requirement before resort can be had to direct contracting, nor is it sufficient justification in this case. Sec. 50 of R.A. No. 9184 on direct contracting provides:

SECTION 50. Direct Contracting. — Direct Contracting may be resorted to only in any of the following conditions:

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,



(c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

Sec. 50 of the IRR-A essentially contains the same provisions.¹⁴⁸ To add to this, the Manual of Procedures for the Procurement of Goods and Services provides:¹⁴⁹

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the Procuring Entity must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.

Further, as held in *Task Force Abono-Field Investigation Office v. Durusan*:¹⁵⁰

Direct contracting is allowed as an exemption to the general rule of public bidding when the goods needed are sold by an exclusive dealer or distributor, or directly sold by the manufacturer. However, **the Procuring Entity bears the burden of proving the propriety of direct contracting and must not have identified a lower priced suitable substitute to the goods procured through direct contracting.**

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The resort to an alternative mode of procurement such as direct contracting instead of competitive bidding must be clearly justified. **To reiterate, the Bids and Awards Committee bears the burden of justifying its resort to direct contracting by conducting an industry survey and determining the supply source to confirm the exclusivity of the goods or services to be procured. It must likewise be able to prove that there is no suitable alternative that can be obtained at a lower cost.** (emphasis added, citations omitted)

¹⁴⁸ Said provision reads: "SECTION 50. *Direct Contracting*. — *Direct Contracting* or single source procurement is a method of *procurement of goods* that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned procuring entities under any of the following conditions:

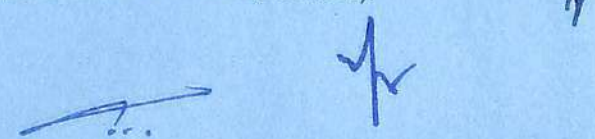
"a) Procurement of items of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

"b) When the procurement of critical plant components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or

"c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government."

¹⁴⁹ Manual of Procedures for the Procurement of Goods and Services, Vol. 2 (2010) <<https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf>> (last accessed on 29 August 2022).

¹⁵⁰ G.R. Nos. 229026-31, 27 April 2022.



In other words, resort to direct contracting may be made if any of the factors stated above obtain, and the Head of the Procuring Entity confirms whether the latter's justification is sound. However, it must be stressed that:

xxx the Procuring Entity bears the burden of proving the propriety of direct contracting and must not have identified a lower priced substitute to the goods procured through direct contracting.¹⁵¹

As such, herein accused need only have shown that they resorted to direct contracting in good faith and in compliance with R.A. No. 9184 and IRR-A. However, the prosecution was able to prove the opposite, and accused's defenses were unable to controvert the proof against them.

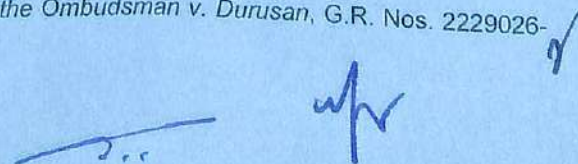
The prosecution's evidence proves that the procurement of Hexaplus from Hexaphil could not have satisfied the first condition for direct contracting: purchase of proprietary goods. There is no evidence that Hexaplus was a proprietary product; that it was any different from other liquid fertilizers in the market; or that it had components or ingredients that were not present in other liquid fertilizers. The mere fact that it was only available for sale through Hexaphil does not satisfy the requirement, as it only means that the said company is the only one that sold the said brand.

More importantly, Hexaphil could not have any proprietary rights over its liquid fertilizer because it did not even possess a valid corporate personality at the time of the sale. It had no right to produce, distribute, and sell Hexaplus, which was not even a validly registered liquid fertilizer that can be legally sold anywhere in the Philippines.

Neither does the second situation - that the procurement concerns the purchase of "critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract" - apply. It was neither alleged nor proven that Hexaplus is of such a nature or that the contract with Hexaphil satisfies said terms.

As to the third situation, even supposing that Hexaphil was proven to be duly licensed and held a valid permit to manufacture Hexaplus, accused were still required by law to show that "no suitable substitute can be obtained at more advantageous terms to the government" since, as stated in the ITB, they were merely purchasing a generic product: liquid fertilizers. They failed to do so. On the contrary, it appears that it was never their intention to search for alternatives to Hexaplus, given that the BAC always intended to select Hexaphil as its supplier.

¹⁵¹ *Task Force Abono-Field Investigation Office, Office of the Ombudsman v. Durusan*, G.R. Nos. 2229026-31, 27 April 2022.



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As revealed by accused Calsiña, Hexaphil's participation was specifically solicited by then BAC Chairperson, accused Dioscoro Ardales, rather than having resulted from an independent canvass or from an investigation of its qualifications:¹⁵²

CHAIRPERSON QUIROZ: I am just wondering, how come that this Hexaphil suddenly cropped up?

WITNESS: It was only introduced to us by the BAC Chairman, Your Honors.

CHAIRPERSON QUIROZ: BAC Chairman, who is? What's the name of the BAC Chairman?

WITNESS: Mr. Dioscoro Ardales, Your Honors.

CHAIRPERSON QUIROZ: And introduced to you the ... (interrupted)

WITNESS: After the two failed biddings, he introduced to us the Hexaphil Agriventures to supply the Hexaplus Liquid Fertilizer, Your Honors.


In all, accused Ardales, Calsiña, and Millena's acts are intentional, and plainly signify the bad faith and manifest partiality that the Anti-Graft Law seeks to prevent and penalize.

Yet, their fault does not stop there. In their rush to award the contract to Hexaphil, they never bothered to check the legal personality of Hexaphil nor the validity of Hexaplus' FDA registration. Their failure to do so led to the procurement of a liquid fertilizer that had no certificate of product registration. It is important to emphasize that this lack of imprimatur for commercial distribution results from the product's failure to undergo and pass the requisite technical and safety tests to assure that it was not only effective, but also safe for use by end-users. Not only was this basic consideration for utility and safety bypassed due to accused's actions, but their conduct also allowed the government to purchase from an entity that is not authorized to do business with the public in general, much less manufacture, sell, and/or distribute such liquid fertilizer in particular. Such acts can only be characterized as having been attended by gross inexcusable negligence.

Accused Municipal Mayor: Daep

Accused Carmencita Daep is impleaded in her capacity as Municipal Mayor of Manito, Albay. While she did not directly participate in the BAC activities, she signed and executed the following documents that were necessary to the procurement of the subject liquid fertilizers: (i) P.R. No. 291 ✓

¹⁵² TSN, 6 February 2020, p. 42.



dated 4 March 2004;¹⁵³ (ii) undated MOA;¹⁵⁴ (iii) MOA dated 24 March 2004; and (iv) the Resolution of Award to Hexaphil.¹⁵⁵

In her defense, she states that she was unaware that Hexaplus was a brand of liquid fertilizer and simply signed the said P.R. prepared by her Executive Assistant. As for approving the BAC's Resolution, she explains that she merely relied on their expert findings after perusing the documents that they provided.

Such claim, however, is not credible.

Accused Daep signed P.R. No. 291 even before signing the MOA for the implementation of the FIFI Program and the official transfer of the first tranche of funds therefor to the Municipality of Manito.

While an undated MOA (Exh. "D") was introduced into evidence, presumably to make it appear that said agreement was executed prior to the transaction with Hexaphil, the same does not appear to be credible due to the following circumstances: (i) while Exh. "D" was notarized on 3 March 2007, the entries supposed to be accomplished by the notary such as - "Doc. No. 100; Page No. 21; Book No. 2" - are the same as the entries in the completely accomplished 24 March 2007 MOA (Exh. "C"), making either one or both documents suspect; and (ii) even assuming that Exh. "D" was validly notarized on 3 March 2007, the Sub-Allotment of the fund was only made on 24 March 2007; hence, it could not have pertained to the same FIFI Program.

In addition, accused Daep not only indicated Hexaplus, a specific brand of liquid fertilizer, in P.R. No. 291 - contrary to Sec. 18 of R.A. No. 9184,¹⁵⁶ which provides that brand names should not be indicated on the P.R. - she also specifically indicated "4,285 bottles of Hexaplus 1000 ml" at PhP 700 per bottle for a total cost of PhP 2,999,500.00.

In *Task Force Abono-Field Investigation Office v. Durusan*,¹⁵⁷ the Supreme Court considered the indication of a specific price for a product, which exactly matches that offered by a given supplier, as indicative of the intent to purchase that particular product:

As petitioner pointed out, the Purchase Request read as if it reproduced a product label and it certainly did mirror Bio Nature's list of

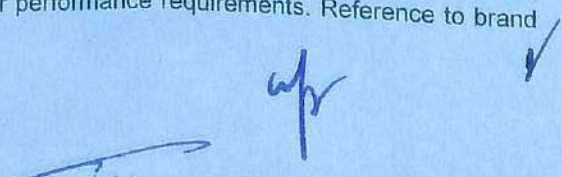
¹⁵³ Exh. "AA"/"28".

¹⁵⁴ Exh. "D"/"4".

¹⁵⁵ Exh. "W"/"25".

¹⁵⁶ Which reads as follows: "SECTION 18. *Reference to Brand Names.* - Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed."

¹⁵⁷ See note 150.



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fertilizer components printed on the bottle. **Additionally, this Court noticed that the Purchase Request already indicated a unit price of P1,500.00, which was Bio Nature's price per bottle sold by Feshan to the Province of Rizal. Clearly then, even if the Purchase Request did not specify a brand or seller, it was unnecessary because by listing down Bio Nature's ingredients, composition per ingredient, and its unit price, it is evident that it was the product being referred to.** (emphasis added)

It bears emphasis that the Supreme Court made such pronouncement in *Durusan* even considering that the specific brand of fertilizer was *not* indicated in the P.R. Here, accused not only provided the specific price, but also assigned the specific brand to be procured. This indicates that the number of units of liquid fertilizers specified in the P.R. was simply computed based on the total budget for the FIFI Program *vis-à-vis* the pre-arranged selling price of Hexaplus. This clearly translates to her preference for Hexaphil even before the procurement process started.


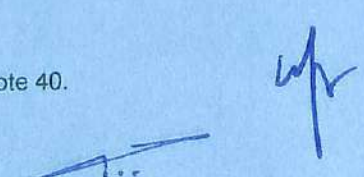
To reiterate, it is no coincidence that P.R. No. 291 already indicated "4,285 bottles of Hexaplus 1000 ml" at PhP 700 per bottle for a total cost of PhP 2,999,500.00 at the time when the funds have not even been transferred to the Municipality.

Without further inquiry, accused Daep also approved the BAC's recommendation to resort to direct contracting even though the Minutes of the BAC proceedings indicated that what the BAC members instead agreed to was the alternative mode of negotiated procurement.

In all, while it is a given that accused Daep was not part of the BAC, her acts were indispensable, such that the latter could not even have initiated any part of the process without her intervention. The procurement of fertilizers supposedly arose from her obligation under the MOA – which, as shown above, was not even executed at that time - and the BAC was tapped for the procurement of Hexaplus after she issued the P.R. for that specific brand of fertilizers. Without her assent, the BAC could not have proceeded with direct contracting, yet, despite all the red flags in the documents referred to above, and all the while claiming that she assessed said documents,¹⁵⁸ she signed off on the same.

These considerations prevent the Court from finding merit in her defense of merely relying on the findings of the BAC or the fact that it was her Executive Assistant who prepared the P.R. Her acts signify intentionality, bad faith, manifest partiality, and a concurrence of criminal intent and purpose with the accused BAC members to make it appear that the procurement of liquid fertilizers from Hexaphil was undertaken lawfully while the converse is true.

¹⁵⁸ *Judicial Affidavit* dated 22 January 2020, p. 5, see note 40.



Even assuming, for the sake of argument, that her liability can be reduced to her act of signing the P.R. and the Resolution of Award, blindly signing off on patently illegal transactions bespeaks of gross inexcusable negligence on her part. As Chief Executive of the Municipality, she owed it to her constituents to acquaint herself with the Procurement Law and its processes. The defense of merely exercising ministerial functions or of relying on the acts of other officials has consistently been rejected when there are red flags that should have alerted a public official. In *Libunao v. People*,¹⁵⁹ the Supreme Court held as follows:

xxx However, despite the blatant absence of the required public bidding, he fully consummated the illegal transactions in blindly signing the POs, RIVs, certifications, and checks payable to the pre-selected companies. Indeed, the Sandiganbayan is justified in saying that by tolerating the direct purchase from Navarro's favored suppliers, petitioner reduced his office to a mere puppet. Contrary to his incessant claims that he merely exercised a ministerial duty, it was because of his gross inexcusable negligence that allowed San Marino and Revelstone to derive unwarranted benefit, advantage or preference from the subject transactions.

Taking accused Daep's acts into account in relation to the evidence on record, the Court concludes that she exhibited evident bad faith and manifest partiality, if not gross inexcusable negligence, relative to the subject transaction.

Accused Lacbain

Accused Ameife Lacbain is impleaded herein in her capacity as Municipal Accountant for signing D.V. No. 100-0404-135¹⁶⁰ dated 21 April 2004 for the initial payment of PhP 1,950,000.00 and D.V. No. 100-0405-150¹⁶¹ dated 14 May 2004 for the final payment of PhP 1,049,500.00 to Hexaphil. Accused submits that she checked whether all the required documents were attached to the said D.V.s, and, seeing that they were complete, affixed her signature thereon. She also points out that the administrative case for grave misconduct filed against her had already been dismissed by the Court of Appeals, hence, the present case against her should also be dismissed.

As a Municipal Accountant, accused Lacbain's powers and duties included:

SECTION. 474. Qualifications, Powers and Duties. - xxx

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¹⁵⁹ G.R. No. 214336-37, 15 February 2022.

¹⁶⁰ Exh. "BB" / "11".

¹⁶¹ Exh. "CC" / "11-a".



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(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

(1) Install and maintain an internal audit system in the local government unit concerned;

(2) Prepare and submit financial statements to the governor or mayor, as the case may be, and to the sanggunian concerned;

(3) Apprise the sanggunian and other local government officials on the financial condition and operations of the local government unit concerned;

(4) Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;

(5) Review supporting documents before preparation of vouchers to determine completeness of requirements;

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(7) Prepare statements of journal vouchers and liquidation of the same and other adjustments related thereto;

(8) Post individual disbursements to the subsidiary ledger and index cards;

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(11) Account for all issued requests for obligations and maintain and keep all records and reports related thereto;

(12) Prepare journals and the analysis of obligations and maintain and keep all records and reports related thereto; and

(13) Exercise such other powers and perform such other duties and functions as may be provided by law or ordinance.

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Accused Lacbain's responsibilities did not require her to go so far as to confirm the authenticity of the documents submitted by Hexaphil - said responsibility fell upon the accused BAC members. Thus, she could not be faulted for not knowing that Hexaphil did not have the requisite legal personality and was not qualified to contract with the Municipality and sell Hexaplus. Notwithstanding this, there were other red flags in the supporting documents that should have required her to review the transaction.

Accused Lacbain testified that she checked the following documents that were attached to the subject D.V.s: (i) the BAC Resolutions; (ii) the Acceptance and Delivery Report; (iii) documents from Hexaphil - including their price quotation, brochure, SEC documents, and FPA Certifications; (iv)

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BAC Minutes; (v) ITB; (vi) Letters; (vii) JEVs; and (viii) Padre, Jr.'s 15 March 2004 Certification.¹⁶²

Sec. 43, Chapter 2, Vol. III of the COA Circular No. 002-02¹⁶³ dated 18 June 2002 define JEVs accordingly:

SECTION 43. *Journal Entry Voucher (JEV)*.— The Journal Entry Voucher (Appendix 40) shall be used for all transactions of the government, whether cash receipts, cash/check disbursements or non-cash transactions. It shall be prepared by the Accounting Unit based on transaction documents presented. Accounting journal entries shall be reflected therein and it shall serve as the basis for recording the transactions in the appropriate journals.

As Municipal Accountant, accused Lacbain did not simply accomplish the JEVs to reflect the disbursements made pursuant to this transaction. She is expected to have known of and examined the corresponding JEVs that credited the Municipality of Manito's receipt of funds from DA-RFU V for the FIFI Program. This is part and parcel with her duty to keep records and certify budgetary allotments. Presumed to have knowledge thereof, the very fact that the entire procurement process was initiated and concluded prior to the Municipality's receipt of the said funds should have already alerted her that the procurement did not undergo the proper process.

Reiterating the rulings in *Tio v. People*¹⁶⁴ and *Umipig v. People*,¹⁶⁵ both of which concern the liability of Municipal Accountants, *Libunao* provides:

On this matter, Our ruling in *Tio v. People* is instructive. There, Tio, then Mayor of the Municipality of Luna, and Cadiz, then municipal accountant, were both convicted of violation of Section 3 (e) of R.A. No. 3019 for awarding a road concreting project to a private corporation in the absence of public bidding. While the prosecution was unable to prove that Cadiz participated in the award of the contract, We did not hesitate to convict her for violation of Section 3 (e) of R.A. No. 3019 for her participation in the unlawful release of funds in consummation of the illegal contract. In certifying the transactions and signing the DVs despite the presence of irregularities, Cadiz was remiss in her duty as municipal accountant, which is to ensure that public funds are disbursed only after the requirements of law are complied with. To the Court, this constitutes gross inexcusable negligence.

In the same vein, the Court ruled in *Umipig v. People* that when public officers make certifications that the expense is necessary and lawful, said officer attests to the transactions' legality and regularity, which signifies that he or she had checked all the supporting documents before affixing his or her signature. The existence of obvious infirmities, however,

¹⁶² *Judicial Affidavit* dated 22 January 2020, pp. 3-4, see note 37.

¹⁶³ Prescribing the Manual on the New Government Accounting System (Manual Version) For Use in All National Government Agencies.

¹⁶⁴ G.R. Nos. 230132 & 230252, 19 January 2021.

¹⁶⁵ G.R. Nos. 171359, 171755 & 171776, 18 July 2012.

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shows that the public officer negligently failed to exercise the reasonable diligence required by law thereby resulting in government loss in favor of private persons.

To be convicted of violation of Section 3 (e), therefore, one's name and signature do not necessarily have to be written on a contract. For as long as the prosecution sufficiently proves the elements of the crime, public officers can rightfully be charged and convicted of the same by their acts of negligently approving the illegal transactions and signing checks for the disbursement of funds. The Court cannot turn a blind eye to their participation that is indispensable to the consummation of the transaction and for which, they must be held accountable. (citations omitted)

Accused Lacbain's duty to review the transaction's supporting documents required her to do more than just flip the pages to see if a particular document is present. More than that, she should have reviewed the contents of said documents and check whether they were regular on their face and consistent with each other. Had she done so, she would have seen that there was only one ITB and only one bidding conducted. She also would have seen that the BAC recommended negotiated procurement, but somehow resorted to direct contracting instead. In other words, she would have noticed that the supporting documents were not consistent with each other.

Thus, while the evidence does not support a finding of bad faith or manifest partiality against accused Lacbain, unfortunately, her act of signing off on the said transaction despite obvious red flags renders her grossly and inexcusably negligent in her duties.



As to the dismissal of the administrative case against her, the general rule is that administrative liability is separate and distinct from penal and civil liability. Thus, the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts to those subject of the administrative complaint. There is, however, a recognized exemption to the rule, as expounded by the Supreme Court in *Lukban v. Sandiganbayan*,¹⁶⁶ drawing from the rulings in *Nicolas v. Sandiganbayan*¹⁶⁷ and *People v. Sandiganbayan*,¹⁶⁸ thus –

It appears from *Nicolas* and *People* that the dismissal of the criminal case was allowed because of a prior dismissal of the related administrative case based on the following requisites: (1) the existence of a criminal case and an administrative case against a public officer based on the same facts; (2) the administrative case has been dismissed with finality; (3) the administrative case was dismissed on the grounds that the acts complained of did not exist, or that there is nothing unlawful or irregular in the acts or omissions of the public officer; and (4) the criminal case is based on the

¹⁶⁶ G.R. Nos. 254312-15, 2 March 2022 (unsigned Resolution)

¹⁶⁷ G.R. Nos. 175930-31, 11 February 2008.

¹⁶⁸ G.R. No. 164577, 5 July 2010.



same facts and evidence passed upon in the administrative case, and no additional evidence was presented by the prosecution.

As provided in *Lukban*, several considerations must be satisfied for the exemption to apply. To start with, it is notable that the administrative cases in *Nicolas*, *People*, and *Lukban* were decided by the Supreme Court, and, as provided in *Vios v. Pantangco, Jr.*,¹⁶⁹ the law of the case doctrine restricts the inferior courts' re-litigation of factual and legal matters already decided by higher tribunals in the same case:

The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court.

Based on this definition, the petitioners' heavy reliance on the law of the case doctrine is clearly misplaced. No opinion has been made in a former appeal that can be considered the controlling legal rule or decision between the same parties thereafter. There is no remanded case to which a previous ruling on appeal applies.

The decision relied upon by accused Lacbain, on the other hand, was rendered by the Court of Appeals, which did so not as an appellate tribunal *vis-à-vis* the action before this Court. Given this, there is no law of the case applicable to the present controversy.

The administrative case against accused Lacbain was for Grave Misconduct, which is distinguished from simple misconduct accordingly:

Misconduct is a transgression of some established and definite rule of action, particularly, as a result of a public officer's unlawful behavior, recklessness, or gross negligence. This type of misconduct is characterized for purposes of gravity and penalty as simple misconduct.

The misconduct is grave if it involves any of the additional elements of corruption, clear willful intent to violate the law, or flagrant disregard of established rules, supported by substantial evidence.

To illustrate, in *Office of the Ombudsman v. Miedes, Sr.*, therein respondents as members of the Bids and Awards Committee (BAC) purchased 19 cellphones without public bidding and from a mere authorized distributor and not the manufacturer or the latter's exclusive distributor in violation of Presidential Decree No. 1445. As BAC members, they were each presumed to know all existing policies, guidelines and

procedures in carrying out the purchase of the cellphones. The Court held petitioner liable only for simple misconduct because while they knew that the approval may violate administrative rules, it cannot be concluded without more as proved by substantial evidence, that they did so with either a corrupt intention or a clear willful intention amounting to an open defiance or a flagrant disregard of the rules. Thus:

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."

In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct. Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.¹⁷⁰

In dismissing the administrative case for Grave Misconduct against accused Lacbain, the Court of Appeals held as follows:

Notably, aside from petitioner Lacbain's signature in the Disbursement Voucher certifying the completeness and propriety of the supporting documents, the record is bereft of any proof that petitioner Lacbain was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that she wrongfully used her position to procure some benefit for herself or for another person, contrary to duty and the rights of others. It must be noted that since she was not a BAC member, she is not familiar with the intricacies of the procurement process and her functions as Municipal Accountant are limited to reviewing the supporting documents to determine the completeness of requirements before preparing the vouchers.

In *Yamson, et al. v. Castro*, the Supreme Court held that –

But to be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. **There must be evidence, independent of the petitioners' failure to comply with the rules, which lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.**

In this case of petitioner Lacbain, aside from her signature in the Disbursement Voucher, no other evidence was presented to prove her liability for Grave Misconduct. In fact, respondent Ombudsman did not even point out a specific law or established rule that was violated when petitioner Lacbain signed the Disbursement Voucher. Verily, such lack of evidence is not sufficient basis to impose the very grave penalty of dismissal from service upon petitioner Lacbain.

It is rather clear that the Court of Appeals' dismissal resulted from a legal determination that accused Lacbain lacked the intent to commit the offense charged. Particularly, it did not find evidence that she "was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that she wrongfully used her position to procure some benefit for herself or for another person, contrary to duty and the rights of others."

In this case, and as pointed out earlier, accused Lacbain acted with gross inexcusable negligence. Intent is not necessary under this mode of violation of Sec. 3(e) of R.A. No. 3019. It is enough that an accused's action or inaction ultimately cause the conferment of unwarranted benefits, as elucidated by Hon. Justice Caguioa in his Concurring Opinion in *Libunao*:

There is "giving of unwarranted benefit" in these cases. To be clear, the law punishes the act of "giving [to] any private party any unwarranted benefits, advantage or preference in the discharge of his [or her] official administrative or judicial functions." While it was not *Libunao* but Navarro who gave Revelstone or San Marino the preferences it obtained as supplier, *Libunao*'s gross negligence ultimately enabled the consummation of the transactions, thereby allowing the aforementioned companies to obtain the unwarranted benefits they received.

To be clear, I maintain, as I had stressed in the case of *Villarosa v. People*, that the element of "unwarranted benefits" must be seen from the lens of graft and corruption. Thus:

As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under RA 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. X x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in *dishonest* ways.

Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules and regulations. Such benefits must have been given by the public officer to the private party with *corrupt intent, a dishonest design, or some unethical interest*. This is in alignment with the spirit of RA 3019, which centers on the concept of graft.

I recognize, however, that in cases of gross negligence — meaning, the crime was committed through *culpa*, not *dolo* — the courts cannot expect to be shown proof of "corrupt intent, a dishonest design, or some unethical interest." Thus, for cases where the crime was committed through the modality of gross negligence, it is enough that the actions, or inaction, of the accused resulted in ultimately causing undue injury or giving unwarranted benefits. It is well to clarify, however, that the negligence must be so gross — as the jurisprudential definition puts it, "with conscious indifference to consequences insofar as other persons may be affected" — that the negligence would rise to the level of willfulness to cause undue injury

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or give unwarranted benefits. (emphasis added; underscoring in the original; citations omitted)

Thus, the present case can stand notwithstanding the dismissal of the administrative case against accused Lacbain.

Third Element: Undue Preference and Damage to the Government

The **third element** may be committed in two ways: (i) by causing undue injury to any party, including the Government, or (ii) by giving any private party any unwarranted benefit, advantage, or preference. An accused may be charged under either or both, but the presence of one would suffice for conviction.¹⁷¹ *Villanueva v. People*,¹⁷² citing *Cabrera v. People*,¹⁷³ reiterates the following definitions for the two modalities accordingly:

The *third* element of Section 3 (e) of RA 3019 consists of when the accused's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

In *Cabrera v. People*, this Court elucidated on the two separate acts under the third element of Section 3 (e) of RA 3019, thus:

The *third* element refers to **two (2) separate acts** that qualify as a violation of Section 3(e) of R.A. No. 3019. **An accused may be charged with the commission of either or both. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.**

The *first* punishable act is that the 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 loss or damage need not be proven with actual certainty. However, there must be "sonic reasonable basis by which the court can measure it." Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper or illegal."

The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another." (Emphasis and underscoring in the original; citations omitted)

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¹⁷¹ See *Nieves v. People*, G.R. Nos. 237432-33, 28 April 2021.

¹⁷² G.R. No. 218652, 23 February 2022.

¹⁷³ G.R. Nos. 191611-14, 29 July 2019.

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Unwarranted Benefits, Advantage, or Preference

As shown above, the accused BAC Members and accused Daep plainly accorded unjustified favor to Hexaphil through their active misrepresentation that it was chosen through a valid procurement process.

Not only did their actions operate to exclude other possible suppliers, Hexaphil's selection lacked adequate and official support, considering that it had no legal personality to enter into a contract with the Municipality of Manito and offer to sell its unregistered fertilizer, which is supposed to be a highly regulated product.

There is likewise no justification to support the preference to specifically purchase Hexaplus. Even by accused's own witness', Municipal Agriculturist Padre, Jr., account, there were other liquid fertilizers that had, at the very least, the same specifications and quality as it did:¹⁷⁴

JUSTICE QUIROZ:

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Q: I assumed being an agriculturist there are some fertilizers which are equally the same specification as that of *hexa plus*, correct?

A: *Hexa plus*, Your Honors.

Q: Yes. Mr. Ciriaco Padre, I am just asking, being a long time agriculturist, there could have been some (sic) same quality as *hexa plus*, is that correct?

A: Yes, Your Honors.

That there were other liquid fertilizers available in the market at that time was further testified to by prosecution witness Julieta B. Lansangan, FRD-FPA Chief, who even identified the Price Quotations of Liquid Fertilizers dated 15 June 2006.¹⁷⁵

Undue Injury and Damage

Accused claim that no damage was suffered by the Government from the subject transaction since deliveries were made to the intended beneficiaries. This is incorrect.

¹⁷⁴ TSN, 23 November 2021, p. 25.

¹⁷⁵ Exh. "AAA".

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The public is injured by the mere fact that procurement laws were transgressed since it was deprived of the opportunity of securing a purchase that is most advantageous to public interest, while at the same time being assured that it was done so at the least possible expense. As stated in *Libunao*:¹⁷⁶

Indeed, the rules on public bidding and on public funds disbursement are imbued with public interest. As a system of transparency in the procurement process, said rules were formulated to guarantee that the public enjoys the most advantageous transactions at the least possible expense. It cannot be denied, however, that these procurement laws, no matter how good, become meaningless without accountable public officials to ensure faithful compliance therewith. (citation omitted)

More than this, as testified to by Julieta B. Lansangan, FRD-FPA Chief, while Hexaplus was provisionally registered on 21 February 1995, the provisional registration expired on 26 April 1996 without the application process being completed or renewed. Such being the case, it would be safe to assume that the FPA does not have any record of the following: itemized list of raw materials used, the production process, the target users, bio-efficacy field trials or tests, and results of laboratory tests¹⁷⁷ - documents supposed to be submitted to the FPA in an application for a Certificate of Product Registration.

In other words, what was purchased by the accused and distributed to the farmers of the Municipality of Manito was a liquid fertilizer made of unknown components and of undetermined efficacy. Not having been registered with the FPA and approved for commercial distribution, Hexaplus could not have been validly sold to the public, much less to the Government, as such, there is no doubt that the Municipality of Manito suffered damages in the amount PhP 2,999,500.00 – the amount paid to Hexaphil.

Presence of Conspiracy

Taking into consideration their respective duties as public officers, all the accused's acts as described above are indicative of a conspiracy to accord unwarranted benefit to Hexaphil through manifest partiality, evident bad faith, and gross inexcusable negligence. In this regard, *Alvizo v. The Honorable Sandiganbayan*¹⁷⁸ instructs that:

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

¹⁷⁶ See note 159.

¹⁷⁷ Id.

¹⁷⁸ G.R. Nos. 98494-98692, 99006-20, 99059-99259, 99309-18, 99412-16 & 99436-99636, 99417-21 & 99637-99837 & 99887-100084, 17 July 2003.

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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 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.

All the herein petitioners contend that they had nothing to do with the preparations and issuances of the LAAs and SACDCs, which turned out to be fake or irregular. While it is true that the fake LAAs and SACDCs originated from the regional office, the falsity of such allotments would be useless if the district officials and employees did not consent to its implementation by making it appear that these were valid requisitions, deliveries, inspections, processing, pre-auditing and approval of the general vouchers and the checks paid to the contractor/supplier. The individual acts of the petitioners including petitioner contractor Genson pointed to a single criminal intent, one performing one part of the transaction and the others another part of the same transaction, so as to complete it with a view to attaining the object which they are pursuing i.e., to defraud the government.

In *Maderazo v. People*,¹⁷⁹ the Supreme Court reiterates that processing and signing documents despite glaring defects therein amounts to bad faith and confirms the presence of a conspiracy to commit graft and corruption:

The evidence established beyond reasonable doubt that Maderazo processed the Request for Obligation and Allotment instead of the municipal engineer, received the amount of ₱160,000 on 28 January 1998, and covered up the non-existent tapping saddles by belatedly effecting the delivery of the tapping saddles, which did not even conform to the Job Contract. For his part, Veruen approved the Disbursement Voucher despite the lack of supporting documents, as found upon audit, in violation of his duties. Moreover, Maderazo and Veruen signed the glaringly incomplete and undated Inspection Report. Verily, Maderazo and Veruen acted in evident bad faith, or such state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. By disbursing ₱160,000 despite the non-existent tapping saddles, Maderazo and Veruen caused undue injury to the LGU of Caibiran for the said amount. Their concerted actions, which demonstrate a common design, justify the finding of conspiracy.

In *Lihaylihay v. People of the Philippines*, the Court found petitioners in evident bad faith for affixing their signatures on the disputed documents despite the glaring defects on it and for approving the "ghost" purchases in the amount of ₱800,000. In *Alvizo v. Sandiganbayan*, the Court convicted petitioners for violating Section 3(e) of RA 3019 upon a finding of conspiracy in the irregular preparation, processing, and approval

¹⁷⁹ G.R. No. 209845 (Resolution), 1 July 2015.

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of simulated documents, and in the payment to the contractors for the nonexistent projects. (emphasis and underscoring supplied)

In *Villanueva v. People*,¹⁸⁰ therein accused's act of participating in a transaction despite obvious defects apparent therein was held to signify conspiratorial intent:

It is rare, if not impossible, to find direct evidence of conspiracy. As such, guides to determine its existence are in place. Here, petitioner's participation in the bidding and his acceptance of the bid award, despite the overwhelming deficiencies in the bidding process, which he must be familiar with considering his record as a supplier of medicines, demonstrated his conspiracy with his co-accused public officers. Additionally, the following acts evidently bolster his connivance with them, thus: 1) failure of petitioner's business entities to submit their Declaration of Business Interests, thereby concealing the composition of the companies; 2) authorizing the spouses Antonio H. Gasapos and Luz M. Sarmiento-Gasapos to act as representatives of his company in clear disregard of arms-length dealing in bids; 3) failure to post the required performance bond and the immediate delivery of medicines, just a day after the award, suggest a pre-arranged and predetermined outcome of the bid; and, lastly 4) immediate processing and acceptance of payment. (citation omitted)




***Martel* does not apply**

The accused essentially argue that *Martel* provides that violations of procurement laws cannot serve as the sole determinant for a conviction under the Anti-Graft Law and, on this basis, submit that their acts may be condoned based on good faith and under the presumption that they performed their duties in a regular manner.

Martel's pronouncement that the elements for Violation of Sec. 3(e) of R.A. No. 3019 must be proven is nothing novel, as in fact, the elements of any crime or felony must be proven to secure a conviction. To quote the pronouncement in the said case:

Thus, in order to successfully prosecute the accused under Section 3 (e) of R.A. 3019 based on a violation of procurement laws, the prosecution cannot *solely* rely on the fact that a violation of procurement laws has been committed. The prosecution must prove *beyond reasonable doubt* that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. This the prosecution failed to do. Specifically, the prosecution miserably failed to prove beyond reasonable doubt that petitioners acted with evident bad faith, manifest partiality, or gross inexcusable negligence in relation to the subject procurements.

¹⁸⁰ G.R. No. 218652, 23 February 2022.



Surely, the Supreme Court did not countenance all violations of procurement laws, as in fact, it extensively discussed R.A. No. 9184 *vis-à-vis* several COA issuances in assessing whether the violations alleged by the prosecution was proven in the said case. Upon confirming this, however, it proceeded to determine whether the modalities of the second element of Sec. 3(e) of R.A. No. 3019 were proven and if the accused therein were able to substantially dispute the same. Based on its assessment, it ruled that the prosecution's evidence did not suffice.

That the accused herein likewise committed numerous violations of the procurement law does not automatically place this case on all fours with *Martel*. In the latter, the Supreme Court discounted the presence of evident bad faith, manifest partiality, or gross inexcusable negligence when it took into consideration the following circumstances, among others: before entering into the questioned transaction, the Provincial Government studied previous purchases it made through direct procurement that were not questioned by the COA; the COA was apprised of the intended purchase and the D.V.s thereto were prepared only after the failure to obtain a response from the latter after one to two months; and the brands specified in the P.R.s were derived from a study conducted by the BAC therein to determine the needs of the requisitioner. None of these circumstances are present in this case.

Here, there is no evidence that the Municipality studied how best to proceed with the procurement in question or referred to any of its previous purchases in general or of liquid fertilizers in particular. Neither was there any attempt to seek the opinion or apprise the COA of its intended purchase. Also, while the BAC in *Martel* explained that its recommendation to purchase vehicles of a specific make and brand resulted from a study it conducted, here, no reason was provided why Hexaphil, to the exclusion of any other liquid fertilizer in the market, had to be procured to satisfy the needs of the FIFI Program.

Martel requires that evidence of the modalities of the second element be proven and that corrupt motive be shown. Accused BAC members' misrepresentation that they conducted two failed biddings, their sudden disregard for negotiated procurement as an alternative mode of procurement while they officially resolved to resort thereto, their lack of effort to conduct a canvass of possible suppliers and suitable substitutes in the market, their failure to confirm Hexaphil's qualifications while they instead inexplicably and suddenly vetted it, their insistence in procuring a specific brand although the procurement was essentially for liquid fertilizers *per se*, their execution of documents that signify that they already intended to engage Hexaphil even prior to holding the bidding on 15 March 2004, and the obvious simulation of the entire procurement process reflect a conscious and concerted effort to defraud the government to favor Hexaphil. ✓

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In fine, there was no subterfuge in *Martel*. Right off the bat, the BAC therein recommended direct contracting as the mode of procurement based on its study that the brand/make of vehicles it specified were best suited to the Province's needs. Here, the accused tried to cover up their acts by making it appear that they first conducted two public biddings and that both failed. They had to make it appear so because Hexaphil and its product, Hexaplus, would have been disqualified in a duly conducted bidding process – or even in a canvass for negotiated procurement wherein the eligibility of a supplier and the competitiveness of its product would have to undergo rigorous qualification procedures - by reason of Hexaphil having no legal personality and Hexaplus being a product not fit for commercial distribution.

Imposable Penalty

Sec. 9 of R.A. No. 3019 provides that any violation of Sec. 3(e) of the same law shall be punished with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years, with perpetual disqualification from public office. Considering that in a number of cases¹⁸¹ the Supreme Court has applied the Indeterminate Sentence Law¹⁸² for crimes involving violations of R.A. No. 3019, and considering the amount of the transaction involved in this case, the Court finds it proper to impose the indeterminate penalty of six (6) years and one (1) month as minimum, to ten (10) years as maximum, with perpetual disqualification from public office.

WHEREFORE, in light of the foregoing, the Court hereby renders judgment as follows:

The Court finds accused **CARMENCITA CARRETAS DAEP, AMEIFE LUMEN LACBAIN, DIOSCORO ASAYTUNO ARDALES, ARNOLD BANZUELA CALSIÑA**, and **ERNESTO MATA MILLENA** **GUILTY** beyond reasonable doubt of the offense of Violation of Section 3(e) of R.A. No. 3019, and are hereby imposed the indeterminate penalty of imprisonment of **SIX (6) YEARS and ONE (1) MONTH as minimum to TEN (10) YEARS as maximum**. Additionally, said accused are sentenced to suffer perpetual disqualification to hold public office.

As for accused **ROBERTO TOLEDO ALVAREZ**, given that the previous warrant issued against him remains unserved, let an Alias Warrant for his arrest be issued. In the meantime, the case against him shall remain archived until such time that jurisdiction over his person shall have been acquired.

¹⁸¹ See *People v. Pajaro*, G.R. Nos. 167860-65, 17 June 2008; *Ong v. People*, G.R. No. 176546, 25 September 2009.

¹⁸² Sec. 1 of Act No. 4103, as amended by Act No. 4225, provides: "Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x"

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SO ORDERED.

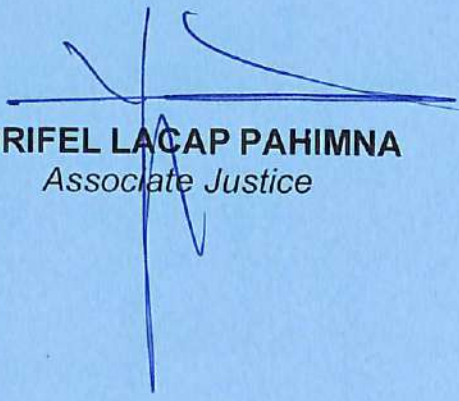


BAYANI H. JACINTO
Associate Justice

WE CONCUR:



MICHAEL FREDERICK L. MUSNGI
Associate Justice
Chairperson



LORIFEL LACAP PAHIMNA
Associate Justice

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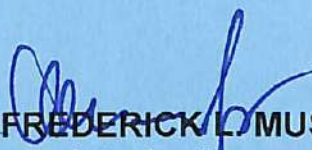
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ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation with the Justices of the Court's Division.


MICHAEL FREDERICK L. MUSNGI
Associate Justice
Chairperson, Fourth Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been 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

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