



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

Crim Case No.

SB-16-CRM-0264

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

-versus-

**LEONIDES THERESA B.
PLAZA, SALVADOR L.
SATORRE, ARTHUR CASTRO,
ADULFO A. LLAGAS,
RODOLFO B. EVANOSO,
BEBIANO B. CALO, DANILO C.
FURIA, MELITA LOIDA T.
GALBO, and LUCIO LAPIDEZ**

Accused.

Present:

Cabotaje-Tang, A.M., P.J.,
Chairperson

Fernandez, B.R., J. and
Moreno, R.B., J.

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

Crim Case No.

SB-16-CRM-0265

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

-versus-

**LEONIDES THERESA B.
PLAZA and LUCIO LAPIDEZ**

Accused.

PROMULGATED:

NOVEMBER 21, 2019

x

x 4

DECISION

Moreno, J.:

Accused Leonidas Theresa B. Plaza (Plaza), Salvador L. Satorre (Satorre), Adolfo A. Llagas (Llagas), Arthur Castro (Castro), Rodolfo B. Evanoso (Evanoso), Bebiano B. Calo (Calo), Danilo C. Furia (Furia), Melita Loida T. Galbo (Galbo), and Lucio Lapidez (Lapidez) are charged before this Court with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended. The *Amended Information*¹ reads as follows:

That in the months of April 2004 and May 2004, or sometime prior or subsequent thereto, in the City of Butuan, Province of Agusan Del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused LEONIDES THERESA B. PLAZA, a high-ranking public officer, being then the Mayor of Butuan City; SALVADOR L. SATORRE, being then the City Agriculturist; ADULFO A. LLAGAS, being then the City Treasurer; ARTHUR CASTRO, being then the Assistant City Treasurer; RODOLFO B. EVANOSO, being then the Local General Services Officer; BEBIANO B. CALO, being then the City Accountant; DANILO C. FURIA, being then the City Budget Officer; and MELITA LOIDA T. GALBO, being then the Supply Officer III, all of the City Government of Butuan, while in the performance of their official positions, acting with evident bad faith, manifest partiality or gross inexcusable negligence, and conspiring and confederating with one another and with accused LUCIO LAPIDEZ, a private person who acted as representative of Feshan Philippines, Inc. (Feshan), did then and there, willfully, unlawfully and criminally purchase from Feshan, through accused LAPIDEZ, three thousand three hundred thirty three (3,333) bottles of Bio Nature Liquid Organic Fertilizer at PhP1,500.00 per liter/bottle and cause the payment thereof to Feshan the total amount of PhP4,865,413.65, which procurement and payment were made without complying with the mandatory provisions of R.A. 9184 and its implementing rules and regulations and Commission on Audit issuances, in that:

- 1. The procurement was done without public bidding;*
- 2. Three thousand three hundred thirty three (3,333) bottles of Bio Nature Liquid Organic Fertilizers were delivered to the City Government of Butuan on April 20, 2004 before: (a) the canvass of prices on April 22, 2004, (b) the receipt of the Abstract of Proposal (Canvass of Prices) by the Office of the City Mayor on April 26, 2004, and (c) the issuance of Purchase Order (PO) No. 714 to Feshan on April 22, 2004;*

¹ Dated July 7, 2016.



3. *Purchase Request (PR) No. 1430 specifically referred to the brand Bio Nature Liquid Organic Fertilizer, which was exclusively distributed by Feshan;*
4. *Bio-Nature Liquid Organic Fertilizer, as mentioned in PO No. 714, had limited micro-content vis-à-vis the specific micro-nutrient content of Bio Nature Organic Liquid Fertilizer specified in PR No. 1430;*
5. *Two (2) liquid fertilizers with higher nutrient content and lower prices than that of Bio Nature Liquid Fertilizer, namely, Restorer Liquid Organic and Megayield at PhP 120.00 and PhP 125.00, respectively, were available in the locality;*
6. *The three thousand three hundred thirty three (3,333) bottles of Bio Nature Liquid Organic Fertilizer at the amount of PhP1,500.00 per liter/bottle were overpriced by at least PhP4,369,629.90,*

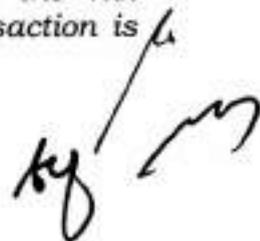
thereby giving unwarranted benefits, advantage and preference to Feshan and/or accused LAPIDEZ and causing undue injury to the City Government of Butuan in the aforesaid amount of PhP4,369,629.90.

CONTRARY TO LAW.

While accused Plaza and Lapidez are charged before this Court with violation of Section 3(g) of Republic Act (R.A.) No. 3019, as amended. The *Amended Information*² states, thus:

That in the months of April and May 2004, or sometime prior or subsequent thereto, in the City of Butuan, Province of Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused LEONIDES THERESA B. PLAZA, a high-ranking public official, being then the Mayor of Butuan City, taking advantage of her position as such, conspiring and confederating with accused LUCIO LAPIDEZ, a private person who acted as representative of Feshan Philippines, Inc. (Feshan), did then and there, willfully, unlawfully and criminally, enter into a contract or transition in behalf of the government with Feshan, represented by accused LAPIDEZ, for the procurement of three thousand three hundred thirty-three (3,333) bottles of Bio Nature Liquid Organic Fertilizer at PhP1,500.00 per liter/bottle, without due observance of public bidding as provided for in R.A. 9184, despite the existence of other identical or similar liquid fertilizers locally available at lower prices of not more than PhP125.00 per bottle and with much higher nutrient content, resulting in the disbursement of public funds in the net amount of PhP4,865,413.65, which contract or transaction is

² Dated July 7, 2016.



X-----X

manifestly and grossly disadvantageous to the City Government of Butuan, Agusan Del Norte.

CONTRARY TO LAW.

The Court issued *Warrants of Arrest and Hold Departure Orders*³ against Plaza, Satorre, Castro, Llagas, Evanoso, Calo, Furia, Galbo, and Lapidez per its *Resolution*⁴ dated May 16, 2016.

On May 27, 2016, accused Plaza, through counsel, filed her *Omnibus Motion (1) to Dismiss the Case for Violation of the Right of the Accused to a Speedy Disposition of Cases; and (2) for Judicial Redetermination of Probable Cause.*⁵ The prosecution filed its *Comment/Opposition*⁶ (on accused Plaza's *Omnibus Motion*) on June 15, 2016. Said *Omnibus Motion* was denied for lack of merit.⁷ Accused Plaza, by counsel, filed a *Motion for Reconsideration*⁸ on October 11, 2016 which was countered by the prosecution in its *Comment/Opposition [to accused Plaza's Motion for Reconsideration dated 10 October 2016]*.⁹ This Court denied accused Plaza's *Motion for Reconsideration* in its *Resolution*¹⁰ dated February 1, 2017.

Accused Plaza filed a *Petition for Certiorari* dated May 5, 2016 with the Supreme Court. The *Petition* was subsequently dismissed on March 6, 2018¹¹ and Plaza's *Motion for Reconsideration [to the Honorable Court's resolution dated 06 March 2018]* was denied with finality on July 23, 2018.¹²

On September 15, 2016, accused Satorre, Castro, Evanoso, Calo, and Galbo (Satorre, et al), through counsel, filed their *Omnibus Motion (To: a) Dismiss the Instant Case; and b) Cancel/Reset the Arraignment set on September 21, 2016)*.¹³ An *Urgent Omnibus Motion*¹⁴ was filed by accused Furia, by counsel, on September 16, 2016. Accused Llagas, through counsel, filed his *Omnibus Motion: Motion to Quash Information*

³ *Records*, Volume 1, pp. 442 – 444.

⁴ *Id.*, p. 441.

⁵ *Records*, Volume 2, pp. 15 – 52.

⁶ *Id.*, pp. 90-104.

⁷ *Id.*, pp. 399 – 411.

⁸ *Id.*, pp. 482 – 488.

⁹ *Id.* pp. 512 – 519.

¹⁰ *Id.*, pp. 593 – 607.

¹¹ *Resolution* dated March 6, 2018, *Records*, Volume 4, pp. 761 – 762.

¹² *Notice of the Resolution* dated July 23, 2018. *Records*, Volume 5, p.337.

¹³ *Supra*, note 5, pp. 315 – 320.

¹⁴ *Id.*, pp. 321 – 348.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'M' with a long horizontal stroke extending to the right. Below it are the initials 'M' and 'J'.

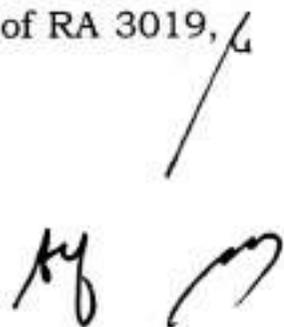
and *Motion to Dismiss*¹⁵ on September 27, 2016. The prosecution filed its *Consolidated Comment/Opposition*¹⁶ to the *Omnibus Motion* of accused Satorre, et al and *Omnibus Motion* of Llagas. This Court in its *Resolution*¹⁷ dated February 7, 2017 denied for lack of merit the *Omnibus Motion* of accused Satorre, et al; *Urgent Omnibus Motion* of accused Furia; and *Omnibus Motion* of accused Llagas.

On February 24, 2017, accused Satorre, et al, by counsel, filed their *Motion for Reconsideration (of: Resolution dated February 7, 2017)*.¹⁸ Llagas, through counsel, likewise filed a *Motion for Reconsideration* on March 13, 2017.¹⁹ On March 20, 2017, the prosecution filed its *Comment/Opposition*²⁰ to the *Motion for Reconsideration* of accused Satorre, et al and on April 3, 2017 a *Comment/Opposition*²¹ to the *Motion for Reconsideration* of accused Llagas. In response, counsel for accused Satorre, et al filed a *Reply to Comment/Opposition (to: Motion for Reconsideration of Resolution dated February 7, 2017)*.²² This Court denied the *Motion for Reconsideration* of Satorre, et al.²³ The *Motion for Reconsideration* of accused Llagas was also denied.²⁴ Accused Satorre, et al, through counsel filed a petition for *Certiorari under Rule 65 with Prayer for the Issuance of Restraining Order and/or Writ of Preliminary Injunction* dated August 5, 2017.

Pursuant to the issuance of a warrant of arrest against Lapidez, representative for Feshan Philippines, Inc. (Feshan), the National Bureau of Investigation (NBI) submitted to this Court a *1st Endorsement* on May 2, 2017²⁵ returning the *Warrant of Arrest* dated May 16, 2016, considering that the subject's given address is a vacant lot. To date, the *Warrant of Arrest* against accused Lapidez remains unserved; thus, he remains at-large.

On April 27, 2017, accused Plaza pleaded 'NOT GUILTY' to the charges of violation of Sections 3(e) and (g) of RA 3019,

¹⁵ *Id.*, pp. 349 - 378.
¹⁶ *Id.*, pp. 460 - 469.
¹⁷ *Records*, Vol. 2, pp. 593 - 607.
¹⁸ *Id.*, pp. 625 - 631.
¹⁹ *Id.*, pp. 635 - 702.
²⁰ *Id.*, pp. 718 - 724.
²¹ *Id.*, pp. 747 - 761.
²² *Id.*, pp. 728 - 731.
²³ *Records*, Vol. 3, pp. 213 - 223.
²⁴ *Id.*, pp. 277 - 286.
²⁵ *Records*, Vol. 1, pp. 28 - 31.

Handwritten signature and initials in the bottom right corner of the page.

X-----X

while accused Furia also pleaded 'NOT GUILTY' to charge of violation of Section 3(e) of RA 3019.²⁶ On June 6, 2017, Accused Satorre, Castro, Evanoso, Calo, and Galbo refused to enter any plea, to which a plea of 'NOT GUILTY' was entered for each of the said accused.²⁷ On August 15, 2017, accused Llagas pleaded 'NOT GUILTY'.²⁸

The parties submitted their *Joint Stipulations* on September 14, 2017²⁹ and stipulated on the following³⁰:

STIPULATIONS OF FACT

A) COMMON TO ALL ACCUSED

1. That at the time material to the allegation in the Informations, the following accused are public officers in Butuan City, Agusan Del Norte, to wit:

LEONIDES THERESA B. PLAZA	- City Mayor
SALVADOR LANSANG SATORRE	- City Agriculturist
ARTHUR CASTRO	- Assistant City Treasurer
ADULFO A. LLAGAS	- City Treasurer
BEBIANO CALO	- City Accountant
RODOLFO B. EVANOSO	- Local General Services Officer
DANILO C. FURIA	- City Budget Officer
MELITA LOIDA T. GALBO	- Supply Officer

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 person identified as named in the Informations for Criminal Cases no. SB-16-CRM-0264 and SB-16-CRM-0265;

B) ACCUSED LEONIDES THERESA B. PLAZA

1. That at the time material to the allegation in the *informations*, accused LUCIO LAPIDEZ, is the representative of Feshan Philippines, Inc.;

²⁶ Order, dated April 27, 2017, *Id.*, pp. 18-19.

²⁷ Order dated June 6, 2017, *Id.*, p. 245.

²⁸ Order dated August 15, 2017, *Id.*, p. 295.

²⁹ *Id.*, pp. 472-485.

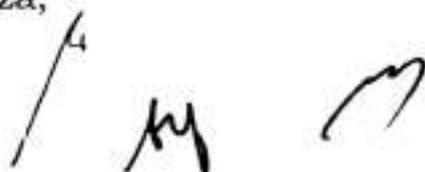
³⁰ Pre-Trial Order dated January 15, 2018, pp. 666 - 682.



2. On April 14, 2004, Purchase Request (PR) No. 1430 for the procurement of 3,333 bottles of liquid organic fertilizer at Php1,500.00 per one (1) liter bottle, with specifications as to the micro-nutrient content of the fertilizer, was prepared by City Agriculturist Salvador L. Satorre and City Treasurer Adulfo A. Llagas and approved by Mayor Leonides Theresa B. Plaza;
3. Check Nos. 611781 and 611782 dated April 22, 2004 amounting to Php3,107,443.19 and Php24,375.00, respectively, were issued to Feshan Phil., Inc. as partial payment for the items purchased;
4. Inspection Report as to the delivery of the purchased items were accomplished by Rodolfo Evanoso, Property Officer and Arturo Malicay, Inspection Officer on April 21, 2004;
5. The release of fund is covered by Disbursement Voucher No. 356 covering two dates, typewritten, May 13, 2004 and hand-written May 31, 2004;
6. The Commission of Audit (COA) issued Notice of Disallowances No. 2005-040(2004) on February 26, 2005, which disallowed in audit the amount of Php4,541,212.50.

**C) ACCUSED SALVADOR L. SATORRE, ARTHUR C.
CASTRO, RODOLFO B. EVANOSO, BEBIANO B. CALO,
and MELITA LOIDA T. GALBO**

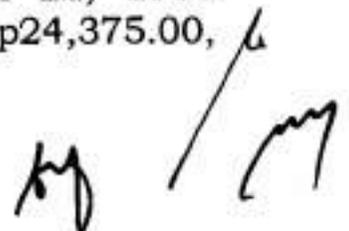
1. That at the time material to the allegation in the *informations*, accused LUCIO LAPIDEZ, is the representative of Feshan Philippines, Inc.;
2. The transfer of fund is covered by an undated Disbursement Voucher No. 101-04-5-693 with proof of receipt in O.R. No. BC 0746301 issued by the City Treasurer of Butuan;
3. On April 14, 2004, Purchase Request (PR) No. 1430 for the procurement of 3,333 bottles of liquid organic fertilizer at Php1,500.00 per one (1) liter bottle, with specifications as to the micro-nutrient content of the fertilizer, was prepared by City Agriculturist Salvador L. Satorre and City Treasurer Adulfo A. Llagas and approved by Mayor Leonides Theresa B. Plaza;



4. On April 22, 2004, Purchase Order (PO) No. 714 was issued by Mayor Plaza to Feshan Philippines, Inc. with business address at Unit D, 5th Floor, West Gate Tower, Investment Drive, Madrigal Business Park, Alabang, Muntinlupa City for the purchase of 3,333 bottles of Liquid Organic fertilizer at Php1,500.00 per bottle or a total amount of Php4,999,500.00;
5. The release of the fund was supported by Disbursement Voucher No. 253 dated April 22, 2004 and April 21, 2004;
6. Feshan Phils., Inc. issued Invoice No. 5685 with signature of Salvador Satorre, City Agriculturist, attesting receipt of purchased items in good order and condition; **(admitted by Satorre only)**;
7. Inspection Report as to delivery of the purchased items were accomplished by Rodolfo Evanoso, Property Officer and Arturo Malicay, Inspection Officer on April 21, 2004; **(admitted by Evanoso only)**;
8. On April 21, 2004, the City Auditor received a letter dated April 20, 2004 from Salvador Satorre, City Agriculturist about the delivery of purchased items which the City Auditor in turn wrote a note "For COA TAS Inspection"; **(admitted by Satorre only)**;
9. The release of fund is covered by Disbursement Voucher No. 356 covering two dates, typewritten, May 13, 2004 and hand-written May 31, 2004;
10. Existence and due execution of Certification dated April 22, 2004, about sole distributorship and as importer of Bio-Nature Organic Liquid Fertilizer;
11. The Commission on Audit (COA) issued Notice of Disallowances No. 2005-040 (2004) on February 26, 2005, which disallowed in audit the amount of Php4,541,212.50. Consequently, Satorre, et al., filed a Motion for Reconsideration, which was later on denied.

D) ACCUSED ADULFO A. LLAGAS

1. Check Nos. 611781 and 611782 dated April 22, 2004 amounting to Php3,107,443.19 and Php24,375.00,



respectively, were issued to Feshan Phil., Inc. as partial payment for the items purchased;

2. On May 31, 2004, the LGU of Butuan City released Check Nos. 0000611863 and 0000611864 dated May 31, 2004 amounting to Php1,720,474.21 and Php13,121.25, respectively, in favor of Feshan Phils, Inc. as payment for the remaining balance while the latter covering the local tax withheld;
3. The release of fund is covered by Disbursement Voucher No. 356 covering two dates, typewritten, May 13, 2004 and hand-written May 31, 2004;

E) ACCUSED DANILO C. FURIA

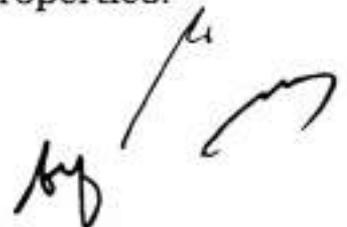
The Commission on Audit (COA) issued Notice of Disallowances No. 2005-040 (2004) on February 26, 2005, which disallowed in audit the amount of Php4,541,212.50. Consequently, Furia, et al. filed a Motion for Reconsideration, which was later on denied.

EVIDENCE FOR THE PROSECUTION

The prosecution presented as its witnesses Atty. Marisol D. Legaspi, Engr. Junrey E. Labatos, Joel V. Bañas, Sylvia P. Kim, and Atty. Catherine G. Pascua-Castro.

Atty. Marisol D. Legaspi was initially called to the witness stand on February 19, 2018, and identified her *Judicial Affidavit*.³¹ Atty. Legaspi is currently the Assistant Regional Director of Commission on Audit (COA), Regional Office No. XIII of Butuan City. She was employed with COA since 1991 as a State Audit Examiner II. In the year 2004-2005, she was the Regional Cluster Director for Legal Adjudication in the COA Regional Office No. XIII. Her duties and responsibilities include the following: (1) evaluate Audit Observation Memoranda (AOM) issued by the auditor involving the violation of law, rules, and regulations in relation to their audit; (2) Issue Notice of Disallowances; (3) act on requests for audit investigation and file cases before the Office of the Ombudsman; and (4) Conduct *motu proprio* audit investigation involving violation of laws, rules, and regulations pertaining to receipts used and disbursements of funds and properties.

³¹ Filed on February 14, 2018, *Records*, Vol. 4, pp. 25 - 136.

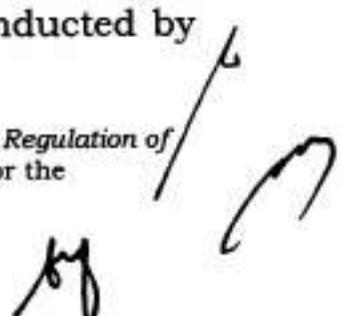


On February 26, 2005, she issued *Notice of Disallowances*³² in relation to the procurement of fertilizer by the City Government of Butuan in 2004 due to glaring violations of Republic Act (R.A.) 9184.³³ Atty. Legaspi observed that in the questioned transaction: *First*, the procurement of 3,333 bottles of Bio-Nature liquid organic fertilizer (Bio-Nature) was not undertaken through public bidding but by a mere canvass of prices when the general rule of procurement under Section 10 of the Implementing Rules and Regulations (IRR) of R.A. 9184 is that procurement should be undertaken through public bidding except if Alternative Modes of Procurement are allowed. Further, the *Certification* of the sole importer and distributor of Bio-Nature which was prepared and submitted by the supplier did not exempt the subject purchase from public bidding. Under Section 21.2.1 of the IRR of R.A. 9184 and Section 21.2.3 and 21.2.4, in procurement of goods costing above two (2) million, the Invitation to Bid is required to be published in the GEPS in a newspaper of general and nationwide circulation, and in conspicuous places within the premises of the procuring entity. The requirement of publication was also not complied with by the City Government of Butuan in the subject transaction. Another violation would be the reference to a specific brand name indicated in the *Purchase Request* which is prohibited under Section 18 of R.A. 9184. Moreover, based on the cost evaluation report of the COA Regional Technical Service Office (RTSO), there was overpricing in the purchase of 3,333 liters of Bio-Nature because in the canvass conducted by the Department of Agriculture (DA) and per *Assay Test* conducted by the DA, Bio-Nature contained only three (3) elements and have lower nutrient percentage as compared to the fertilizers which were locally available at a minimum cost.

She testified that the cost evaluation was conducted by the COA-RTSO as the City Government of Butuan referred the delivery to the COA Audit Team Leader. The Audit Team Leader requested the assistance of COA-RTSO to inspect the delivered liquid organic fertilizers. Consequently, the COA Audit Team Leader assigned an Agricultural Engineer to inspect the delivery and conduct a cost evaluation pursuant to COA rules. The inspection and evaluation was conducted by

³² Exhibit "AA".

³³ Entitled "An Act Providing for the Modernization, Standardization, and Regulation of the Procurement Activities of the Government and for Other Purposes" or the "Government Procurement Reform Act".

Handwritten signature and initials in the bottom right corner of the page.

Engr. Aldan Mola of the Regional COA Regional Technical services. Engr. Mola submitted the *Evaluation Report* and its annexes ³⁴ sometime in August 2004. She issued a *Memorandum* ³⁵ dated August 23, 2004 to Ms. Myrna L. Enriquez, Audit Team Leader of the City of Butuan and inquired whether an AOM was already issued on the matter. Ms. Enriquez responded that there was no AOM but she already furnished a copy of the results of the *Technical Evaluation Report* to the City Mayor of Butuan for their comment. City mayor Plaza responded that the fertilizer canvassed by the Technical and Inspector/Evaluator was a different brand than what was offered by Feshan.

Atty. Legaspi requested Ms. Enriquez for the other supporting documents related to the transaction, ³⁶ which include: (a) DV 253 in the amount of Php3,250,000.00, ³⁷ (b) DV 356 in the amount of Php1,749,500.00, ³⁸ (c) Butuan City Land Bank of the Philippines (LBP) Check No. 611781 in the amount of Php3,107,443.19, ³⁹ (d) Feshan's O.R. No. 3026 in the amount of Php3,107,443.19; ⁴⁰ (e) Butuan City LBP Check No. 611863 amounting to Php1,720,474.21; ⁴¹ (f) Feshan Official Receipt No. 3048 amounting to Php1,720,474.21; ⁴² (g) Butuan City LBP Check No. 611782 amounting to Php24,375.00; ⁴³ (h) Butuan City Official Receipt No. 0753086 amounting to Php24,375.00 for the tax withheld; ⁴⁴ (i) copies of the *Letter* dated January 6, 2004 of Feshan addressed to the City Government of Butuan; ⁴⁵ (j) *Letter* dated February 5, 2004; ⁴⁶ (k) Memorandum of Agreement by and between DA-RFU XIII to Butuan executed on April 12, 2004; ⁴⁷ (l) *Letter Of City Agriculturist Salvador Satorre* to the City Auditor dated April 20, 2004; ⁴⁸ (m) *Acceptance and Inspection Report (AIR)* dated 4-22-2004; ⁴⁹ (n) *Certification* of Julie M. Gregorio dated March 4, 2004; ⁵⁰ (o) *PO* dated April 22, 2004; ⁵¹ (p) *Certification*

³⁴ Exh. "RR" to "TT".

³⁵ Exh. "FFF".

³⁶ Memorandum, Exh. "GGG".

³⁷ Exh. "S".

³⁸ Exh. "EE".

³⁹ Exh. "P".

⁴⁰ Exh. "T".

⁴¹ Exh. "Z".

⁴² Exh. "FF".

⁴³ Exh. "Q".

⁴⁴ Exh. "HHH".

⁴⁵ Exh. "M" and series.

⁴⁶ Exh. "III".

⁴⁷ Exh. "B".

⁴⁸ Exh. "Y".

⁴⁹ Exh. "X".

⁵⁰ Exh. "M-3".

Handwritten signatures and initials on the right side of the page. There is a long, thin signature at the top right, and two other signatures below it, one appearing to be 'by' and another more stylized signature.

stating sole importer and distributor by Feshan Representative dated April 22, 2004;⁵² (q) *Abstract of Proposal*;⁵³ (r) PR No. 1430 dated April 14, 2004;⁵⁴ (s) Quotations;⁵⁵ (t) O.R. No. 0746301 for the fund transfer of the DA in the amount of Php1,750,000.00 dated May 13, 2004.⁵⁶

Atty. Legaspi furnished the RTSO a copy of Butuan City's response for their Office to comment on the *Evaluation Report*. Engr. Mola and Engr. Junrey E. Labatos (Labatos) submitted their *Memorandum*⁵⁷ on September 27, 2004.

Upon evaluation, she found that the procurement was undertaken without public bidding which was in violation of Sections 10 and 21.2.1 of R.A.9184 in connection with Section 21.2.3 of the IRR of R.A.9184—wherein procurement contracts of goods which cost more than Php2.0 Million, the Invitation to Bid should be advertised in a newspaper of general nationwide circulation, posted in the agency website or of its service provider, the Government Electronic Procurement System or "G-EPS" and in three conspicuous places within the premises of the agency. Also, the functions of the BAC under Section 12, paragraph 1 of R.A.9184 enumerated and specified under Sections 2 and 3 thereof as to its duty to recommend to the head of the procuring entity the use of alternative modes of procurement and to ensure that the procuring entity abides by the standards of R.A.9184.

She requested the City Government to explain why procurement of the fertilizer was not undertaken via public bidding in accordance to standards set by the law.⁵⁸ The City Government did not respond to the letter of COA-Regional Office XIII. Because of this, a *Notice of Disallowances*⁵⁹ was drafted as of February 26, 2005. The COA-Regional Office XIII did not immediately release the same to give time for the City Government to submit its comments. Up until the time the *Notice of Disallowances* was released on April 2005, there was still no response from the City Government.

51 Exh. "N".

52 Exh. "V".

53 Exh. "DD".

54 Exh. "O".

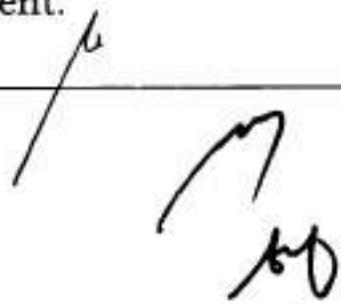
55 Exh. "R", "R-1" to "R-3"

56 Exh. "L".

57 Exh. "UU".

58 Letter dated December 8, 2004 addressed to then City Mayor Democrito Plaza II,
Exh. "VV".

59 Exh. "AA".

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be a stylized 'M' or 'J' followed by initials.

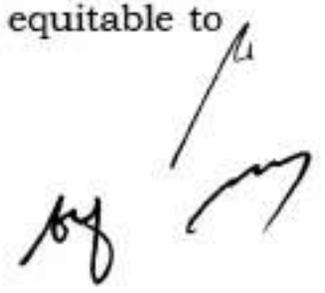
A letter-complaint from the Office of the Ombudsman and the COA-Central Office filed by a certain Ramonita Cervantes was sent to COA-Regional Office No. XIII – Regional Legal and Adjudication Office (RLAO). The letter-complaint included the alleged overpricing in the procurement of fertilizers.

Upon examination of the supporting documents by Atty. Legaspi, she noticed that the *PR* mentioned a brand name which clearly violated Section 18 of R.A. 9184 which prohibited reference to brand names. Even if brand names were allowed by COA-Circular 92-386, the use of the brand name should have been descriptive and not restrictive as in this case because the *PR* restricted local suppliers from participating since Bio-Nature was exclusively distributed by Feshan.

Atty. Legaspi testified that regardless of whether R.A. 9184 was being implemented or COA-Circular 92-386, the general rule in government procurement is public bidding. Under the old rule or COA-Circular 92-386, procurement of supplies or property of foreign origin may be made directly from exclusive or reputable Philippine distributors or agents, but subject to two conditions: (1) the Philippine distributor has no sub-dealers selling at lower prices and (2) no suitable substitutes of substantially the same quality are available at lower prices. Atty. Legaspi emphasized that the *Certificate of Exclusive Distributorship*⁶⁰ that Feshan is the sole importer and distributor of Bio-Nature in the Philippines is not what was contemplated by the COA Circular since it is not a certification coming from the manufacturer of Bio-Nature itself, nor was there proof that there was no suitable substitute of substantially the same quality available in the local market.

Moreover, Atty. Legaspi observed that the canvass or quotation was based on specifications particular to the 'Bio-Nature' brand which was exclusively distributed by Feshan, hence, it would only be Feshan's bid which would be responsive. Atty. Legaspi also noticed that the *PO* issued to Feshan did not enumerate all the micronutrients which was early enumerated in the *PR* and in the quotation forms. Altering the specifications in the *PO* would not be equitable to

⁶⁰ Exh. "AAA".

Handwritten signature and initials in the bottom right corner of the page.

the other suppliers who were made to quote on different specifications as indicated in the PR and quotation forms.

As regards the testing result of Bio-Nature, the RTSO Inspector, through DA RFU-XIII, sent a sample from the inspected and delivered Bio-Nature fertilizer to the Regional Soil Testing Laboratory of DA Regional Office X. In the assay test, it showed that contrary to Feshan's claim, it only contained the following : Nitrogen (2.2%), Phosphoric Acid (1.15%), Potassium (0.48%).⁶¹

In relation to the *Abstract of Proposal*, Atty. Legaspi noted that other than Feshan, local suppliers quoted 'none'. Considering that procurement was allegedly undertaken from an exclusive distributor of Bio-Nature, Feshan, it would only be Feshan which can supply the same. Therefore, the mention of the brand name, "Bio-Nature" is restrictive and does not conform with COA Circular 92-386.

Based on the canvass conducted by Engr. Mola of the COA-RTSO through the DA, there were other suppliers in the locality which can provide for liquid organic fertilizer but not necessarily with the brand name "Bio-Nature", these products were 'Restorer Liquid Organic' and 'Megayield'. Further, the prices were lower than the price quoted by Feshan.

The City Government filed an appeal from the denial of its *Motion for Reconsideration* to the *Notice of Disallowances*⁶² with the COA-RLAO. The COA-RLAO affirmed with modification *COA Decision No. 2005-029*⁶³ dated November 29, 2005. LAO-Local Decision No. 2007-123⁶⁴ was promulgated on August 1, 2007. With no appeal from the LAO-Local Decision, the COA-RLAO issued a *Notice of Finality of Decision*⁶⁵ dated December 28, 2011. The COA-RLAO issued *COA Order of Execution*⁶⁶ dated January 4, 2012. As of November 27, 2017, there is an unsettled balance of Php3,531,843.34 for the overpriced procurement of liquid organic fertilizers.⁶⁷

⁶¹ Exh. "ZZ".
⁶² Dated October 26, 2005, Exh. "WW".
⁶³ Exh. "XX".
⁶⁴ Exh. "BBB".
⁶⁵ Exh. "CCC".
⁶⁶ Exh. "DDD".
⁶⁷ Certification; Exh. "EEE".



On cross-examination,⁶⁸ by counsel for accused Plaza, Atty. Legaspi explained that under COA Circular 92-386, a brand name should be descriptive and not restrictive. "Descriptive" in the sense that the brand name may be used in a *PR* or Request for Quotation, this is to describe the kind, characteristic, or performance requirements of the items to be procured. She explained that the request for quotations indicated the 'Bio-Nature' brand which restricts local suppliers from participating in the bidding because the City Government itself asserted that Feshan is the exclusive distributor of Bio-Nature. This being the case, Bio-Nature organic fertilizer could not be bought in any other store.

On cross-examination⁶⁹ by counsel for accused Llagas, the witness clarified that a government expenditure may be considered irregular, unnecessary and extravagant by taking into consideration the following: the service mission, designs, system, structure, strategy, skills, styles, spirit and financial performances of the government agency. She underscored that if there is overpricing, then the price is deemed excessive; if there are violations of the implementing rules of R.A. 9184, such acts are considered irregular; and if there are violations of provisions of R.A. 9184, then these may be considered as illegal.

On re-direct examination,⁷⁰ Atty. Legaspi added that the amount of Php4,541,212.00 in the *Notice of Disallowance* represented overpricing of Bio-Nature, of more than 1000%. She further testified that for local brands of liquid fertilizer being offered in the City of Butuan, the prices were at Php120.00 for 'Restorer' for one liter bottle and for 'Megayield', it was at Php125.00. Compared to these prices, Bio-nature which was priced at Php1,500.00.

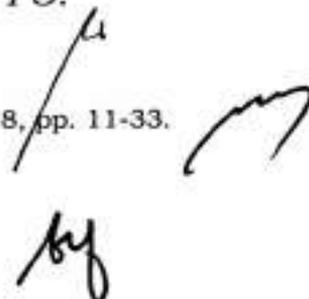
On re-cross examination⁷¹ by counsel for accused Satorre, et al, Atty. Legaspi affirmed that there was overpricing based on the re-canvass conducted by the DA-Region XIII, Butuan City, wherein the following were considered: number of suppliers, availability of stocks, sufficient in quality to meet the requirement of the agency, specifications of items, plus the terms and conditions provided in the contract/*PO*.

⁶⁸ Transcript of Stenographic Notes (TSN) dated February 19, 2018, pp. 11-33.

⁶⁹ *Id.*, pp. 33 - 48.

⁷⁰ TSN dated February 27, 2018, pp. 6 - 29.

⁷¹ *Id.*, pp. 35 - 41.

Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a large, stylized signature, a smaller signature, and the initials 'by'.

Engr. Junrey E. Labatos was called to testify on February 28, 2018, and identified his *Judicial Affidavit*.⁷² Engr. Labatos is a civil engineer and employed with the COA – Regional Office No. XIII, Butuan City since 1998. At the time subject of this case in 2004, he was then a Supervising Technical Audit Specialist of the COA. He supervised around 14 Technical Audit Specialists (TAS) with various fields of expertise such as civil, agricultural, electrical, and mechanical engineers. The functions of the TAS include the conduct of review and evaluation of contracts to determine whether it is reasonable or excessive; conduct inspections to verify compliance with the specifications as contained in the PO or contract. As a Supervising TAS, he supervised the work, reviewed the report of his subordinates and signed reports and conducted inspections for special audit or for highly technical infrastructure projects.

He became aware of the procurement of the liquid organic fertilizer by the City Government of Butuan in 2004 through a request for a TAS to conduct an ocular inspection of the liquid organic fertilizer delivered at the City Agriculture Office of Butuan City. This was upon the request of Ms. Enriquez, the auditor assigned to the Local Government Unit (LGU) of Butuan City who coursed it to the Regional Office. One of their Office's TAS, State Auditor Aldan O. Mola (Mola) inspected the delivered liquid organic fertilizer. He reviewed Engr. Mola's *Memorandum*⁷³ dated May 17, 2004, together with the attached documents, which included a *Cost Evaluation of the Procurement*⁷⁴ and *Canvass*,⁷⁵ to ensure that the basis of their price evaluation was the prevailing price in the locality.

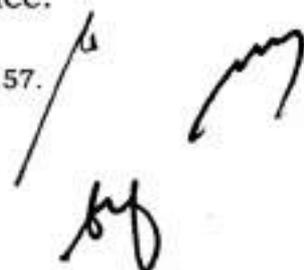
He clarified that it was DA-Region XIII, Butuan City which conducted the canvass and not COA because the item involved was agricultural in nature. If COA was the one which would canvass, the dealers in the locality would immediately know that it is for investigation and will either refuse to provide a quotation or if they would give one, the price given may not be the prevailing price. They requested the DA to canvass because from the nature of their operations, which deals with agriculture, their Office would be more confident that the dealer/s will give the prevailing price.

⁷² Filed on November 23, 2017, *Records*, Vol. 4, pp. 149 – 157.

⁷³ Exh. "RR".

⁷⁴ Exh. "SS".

⁷⁵ Exh. "TT".



During the cross-examination by counsel for accused Plaza, Engr. Labatos confirmed that he did not personally prepare the *Evaluation Report* but only reviewed it, same with the post-evaluation report and the canvass.

On cross-examination⁷⁶ by counsel for Satorre, et al, Engr. Labatos recalled that there was a request from the LGU of Butuan City for the inspection of a liquid organic fertilizer which was made through Ms. Enriquez sometime in April 21, 2004. In compliance with the said request, TAS Mola inspected the liquid organic fertilizer which was delivered at the Office of the City Agriculturist of Butuan City.

On cross-examination⁷⁷ by counsel for accused Llagas, Engr. Labatos affirmed that in the conduct of canvass, the standard operating procedure was that the canvass form will be left with the supplier for it to be filled up and later retrieved. Engr. Labatos expounded that there are two types of canvass, one is to determine the prevailing price and to procure based on the approved budget cost as determined by the procuring entity and the other is just to obtain the prevailing price. For the first type, the prevailing price has to be established so that the price would be competitive during procurement. However, if there is no procurement, it depends upon the buyer and the supplier or dealer as to the price.

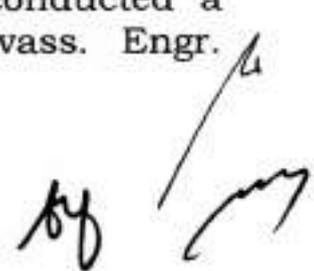
On cross-examination⁷⁸ by counsel for Furia, Engr. Labatos confirmed that the basis for saying that the percentage of nutrient content is much higher for 'Megayield' because the liquid organic fertilizer provided in the PO and as delivered to the City Agriculturist of Butuan City, has a label for the nitrogen, phosphorus, and potassium content. During the canvass, the same nutrients were indicated in the label of 'Megayield'. For 'Megayield' there is a higher percentage of nutrients. The analysis was based on the labels of the fertilizer, since this was approved by the fertilizer authority. Engr. Labatos also confirmed that their Office checked to make sure that the entries are true and factually correct and that they counterchecked the same in the local market.

There being no re-direct examination, the Court interposed a question whether Engr. Labatos conducted a qualitative analysis of the item subject of the canvass. Engr.

⁷⁶ *Id.*, pp. 18 – 29.

⁷⁷ *Id.* pp. 29 – 42.

⁷⁸ *Id.*, pp. 43 – 51.

Handwritten signature and initials in black ink, located in the bottom right corner of the page.

X-----X

Labatos answered in the negative stating that they relied on the regularity of the label since it already passed the fertilizer and pesticide authority. Neither did they conduct an independent validation as to the nutrient contents of the fertilizer as stated in the canvass of Breeders Agrivet.

Joel V. Bañas was initially called to the witness stand on March 5, 2018, and identified his *Judicial Affidavit*.⁷⁹ Mr. Bañas is currently employed at the DA-Regional Field Office (DA-RFO) XIII, holding a position as Administrative Assistant III. In 2004, he was then a Communication Equipment Operator III which was under the General Services Section of the Administrative Division of DA-RFO XIII.

He was tasked to join State Auditor Aldan Mola from COA to conduct a canvass of liquid organic fertilizers from the local suppliers in Butuan. He was designated as a canvasser pursuant to a *Special Order*⁸⁰ issued by Regional Director Nestor W. Rodriguez (Rodriguez). He, together with Engr. Mola, personally furnished a canvass form to Breeders Agrivet, in which form they indicated the product with almost similar content of the liquid organic fertilizer being canvassed and currently being offered for sale. He identified the signature of one Mr. Arnel Ellevera, the dealer of Breeders Agrivet to whom the canvass form was issued and who was the person who accomplished the said form.

On re-direct examination,⁸¹ Mr. Bañas justified that he presumed that the supplier could provide 3,500 bottles of organic liquid fertilizer because when suppliers did not have enough stock, they would put marks or entries that they cannot supply the required quantity. He immediately returned the canvass form to Engr. Mola after the supplier provided the quotations.

Sylvia P. Kim was initially called to the witness stand on March 6, 2018, and identified her *Judicial Affidavit*.⁸² In 2004, Ms. Kim was an Agricultural Technician under the Regional Soil Testing Laboratory of DA - Region X. Her duties and responsibilities were to analyze and examine organic and inorganic fertilizers for their element contents. She also

⁷⁹ Filed November 27, 2017, *Records*, Vol. 3, pp. 596 - 606.

⁸⁰ Exh. "JJJ". *Special Order No. 2003-09* dated February 13, 2013.

⁸¹ *Id.*, pp. 30 - 34.

⁸² Filed February 28, 2018, *Records*, Vol. 4, pp. 300 - 306.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'by' followed by a stylized mark, possibly 'M' or 'L'.

analyzed soil samples. She also performs whatever tasks that are assigned to her by her supervisor.

Sometime in 2004, Ms. Kim recalled having examined and analyzed Bio-Nature Liquid Fertilizer from DA – Region XIII. The results of her examination were reflected in a document entitled '*Assay for Fertilizer/ Guano/ Manure/ Compost/ Limestone/ Organic Fertilizer*'⁸³ which was completed on May 21, 2004. In this *Assay Test*, the following entries were reflected: "Total Nitrogen (N) – 2.21; Total Phosphoric Acid (P₂O₅) = 1.15; and Total Potassium (K₂O₅) – 0.48." Ms. Kim explained that these figures were the result of several methods to determine the quantitative nutrient contents of Bio-Nature liquid fertilizer, which included Kjeldahl, Vanadomolybdate, and Flame Photometer methods.

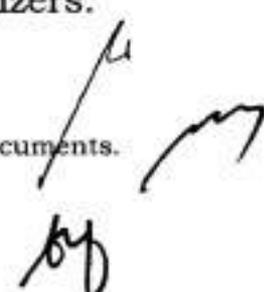
Ms. Kim explained that only the word "Sgd" appears on top of her name instead of her signature in the *Assay Test* because it was only a reproduced copy or reprinted upon request; the original bears her signature. She narrated that the original copy was initially with their Records Office but was eventually disposed of by virtue of the General Records Disposition Schedule common to all Government Agencies, series of 2009. As proof, she presented a *Certification*⁸⁴ dated December 2017 issued by Engr. Elena C. Susaya, Chemist IV of the Regional Soil Testing Laboratory indicating that their office already eliminated the material, tools, and documents that were no longer necessary in the workplace based on the mentioned General Records Disposition Schedule. Further, that the authorized retention for reports and examinations was only two (2) years.

On cross-examination⁸⁵ by counsel for accused Plaza, she testified that she examined the sample of Bio-Nature at the Regional Soil Testing Laboratory of Region X in Cagayan de Oro City. She confirmed that the purpose of the various tests was to determine the amounts of nitrogen, phosphoric acid, and potassium. She explained that these three elements were common to all kinds of fertilizer but she had no knowledge whether there were other elements of Bio Nature other than the ones she tested for. She likewise affirmed that it was not a comparative analysis of Bio-Nature with other fertilizers.

⁸³ Exh. "ZZ".

⁸⁴ Exh. "ZZ-1" up to "ZZ-9", series for the *Certification* and attached documents.

⁸⁵ TSN dated March 6, 2018, pp. 13 – 22.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'Sgd' or similar, with a large flourish above it. Below it are the initials 'by'.

On cross-examination⁸⁶ by counsel for Llagas, she confirmed that the three methods adopted in the conduct of the assay test-- Kjeldahl, Vanadomolybdate, and Flame Photometer, were to determine the quantities of Nitrogen, Phosphoric Acid, and Potassium, respectively. She affirmed that the Bio-Nature fertilizer sample was submitted to their office on May 6, 2004 and that she was only able to complete the examination by May 21, 2004 since there were also plenty of samples scheduled for testing.

During re-direct examination,⁸⁷ Ms. Kim outlined the standard operating procedure observed in their Office in preparing an assay test report. After she finishes the analysis, she encodes the result into the official logbook (handwritten). The encoder then encodes the result, then Ms. Kim signs the report. Ms. Kim supervises the encoder while the entries from the logbook are being encoded. The Chief of their Office then notes the same. She affirmed that as part of their standard operating procedure in their Office, once the original copy is signed, succeeding copies will no longer be signed.

On re-cross examination⁸⁸ by counsel for Satorre, et al, Ms. Kim affirmed that the official logbook where the assay test results were encoded was also disposed of.

Atty. Catherine G. Pascua-Castro was initially called to the witness stand on March 14, 2018, and identified her *Judicial Affidavit*.⁸⁹ She has been with the Office of the Ombudsman as Graft Investigation and Prosecution Officer (GIPO) for eleven (11) years since September 25, 2006 where she was initially assigned at the Field Investigation Office (FIO). In 2006, she was designated as team leader in the General Investigation Bureau-C FIO; in 2009 to 2011, she was designated as Cluster Head. Also in 2009, she was designated as Director of GIB-C, FIO, but given assignments as member of the Task Force on Investigation of Complex Cases which included the Fertilizer Fund Scam. As the Director of the GIB-C FIO, she personally handles complex cases and special case assignments. She reviews the investigation reports, complaints, and pleadings of investigations. She signs documents relevant in the course of their Office's investigations. For Task Force assignments, the nature of her

⁸⁶ *Id.*, pp. 28 - 34.

⁸⁷ *Id.*, pp. 39 - 50.

⁸⁸ *Id.*, p 53.

⁸⁹ Filed February 22, 2018, *Records*, Vol. 4, pp. 175 - 286.

Handwritten signature and initials in the bottom right corner of the page.

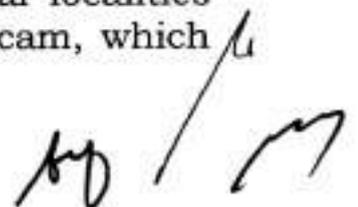
duties are indicated in the Office Order. When asked to explain complex cases, she expounded that these are those which consist of complex issues, voluminous documents, various respondents and witnesses and usually orchestrated through a syndicated scheme of fraud against the public funds of government.

She mentioned the Fertilizer Fund Scam as among those complex cases, she elucidated that it is a syndicated scheme of fraud against the public fund of the *Ginintuang Masaganang Ani Program* (GMA Program) of the Arroyo administration designed to implement farm inputs and implement projects to alleviate the plight of poor farmers nationwide. This scheme involved various Congressmen, Governors, and Mayors in cahoots with other public officials and employees, bogus suppliers and/or private dummies.

She became familiar with the case against then Mayor Leonides Theresa Plaza, et al during the investigation conducted by Task Force Abono-FIO, where she was a member, against then Butuan City Mayor Plaza where the LGU was one of the proponents of the DA involved in the Fertilizer Fund Scam. This case involved the procurement transaction of the government of Butuan City, Agusan Del Norte of liquid fertilizers without public bidding and for overpricing.

She testified that Task Force Abono-FIO is a group of field investigators assigned to gather information, data, documents, statements and relevant records of beneficiaries or proponents to the fertilizer fund. As regards the GMA Program, each investigator is assigned to a locality and other members, where she was assigned, were tasked to review the reports and draft complaints of the investigator assigned in the field. These reports and complaints are reviewed and recommended for approval by the Task Force Chairperson who is the Assistant Ombudsman of the FIO. Being a member of Task Force Abono, she was assigned to further evaluate reports, results of investigation on the Fertilizer Fund Scam case as well as complaints for preliminary investigation and administrative adjudication.

One of her co-members in Task Force Abono is Leonardo Nicolas, Jr. who was tasked to investigate particular localities as proponents allegedly involved in the fertilizer scam, which



X-----X

includes the City Government of Butuan. She was also the immediate supervisor and director of Mr. Nicolas. As her supervisor and director, she was familiar with and had personal knowledge of the documents gathered by Mr. Nicolas in his investigation. Mr. Nicolas recommended the filing of the complaint against the erring officers of the City Government of Butuan. The result of the investigation is embodied in the *Complaint-Affidavit*⁹⁰ against then Mayor accused Plaza, Calo, Satorre, Castro, Llagas, Evanoso, Furia, Galbo, and Lapidez for the filing of criminal cases involving the violation of Section 3(e) and 3(g) of R.A. 3019, violation of R.A. 9184, and the administrative complaint for the illegal disbursement of public funds and for conduct prejudicial to the best interest of the service.

Thereafter, the prosecution offered its evidence consisting of the following:⁹¹

EXHIBIT	DESCRIPTION
"A"	<i>Complaint-Affidavit</i> executed by Mr. Leonardo R. Nicolas, Jr. for the Field Investigation Office of the Office of the Ombudsman on April 11, 2011.
"B"	<i>Memorandum of Agreement</i> by and between DA-RFU XIII to the City Government of Butuan executed on April 12, 2004
"C"	<i>Letter-request</i> of Jocelyn Bolante to Secretary Emilia T. Boncodin dated February 2, 2004
"D"	Department of Budget and Management's Special Release Order (SARO) No. E-04-00164 amounting to Php728 Million dated February 3, 2004
"E"	<i>Letter</i> of Sec. Emilia Boncodin to the Secretary of the DA regarding Advice of NCA issued dated February 3, 2004
"F"	<i>Notice of Cash Allocation</i> No.222447-1 dated February up to December 31, 2004
"G"	LBP check No. 144332
"H"	DV No. 101-04-4-374
"I"	O.R. with No. BC 0648705
"J"	Check No. 144671 in the amount of Php1,750,000.00 dated May 7, 2004

⁹⁰ Exh. "A".

⁹¹ *Consolidated Formal Offer of Documentary Evidence* filed on April 23, 2018. Records, Vol. 4, pp. 409 - 718.

Handwritten signature and initials in the bottom right corner of the page.

	issued by the DA-RFU XIII
"K"	DV No.101-04-5-693
"L"	O.R. No. BC 0746301 issued by the City Treasurer of Butuan
"M" and series	Letter dated January 6, 2004 of Julie M. Gregorio, President, Feshan Philippines, Inc. with attachments
"N"	PO No. 714 dated April 22, 2004 issued by Mayor Plaza to Feshan Philippines, Inc.
"O"	PR No. 1430 dated April 14, 2004
"P"	LBP Check with No. 611781 dated April 22, 2004 amounting to Php3,107,443.19
"P-1"	Dorsal portion of Check No. 611781
"Q"	LBP with Check No. 611782 dated April 22, 2004 amounting to Php24,375.00
"Q-1"	Dorsal portion of Check No. 611782
"R", "R-1" to "R-3"	Quotations
"R-4"	Dorsal portion of the Quotation issued to Pacifica Agrivet, Inc. which is marked as Exhibit "R"
"R-5"	Dorsal portion of the quotation issued to Jeels Masagana which is marked as Exhibit "R-1"
"R-6"	Dorsal portion of the quotation which is marked as Exhibit "R-2"
"R-7"	Dorsal portion of the quotation issued to Feshan Phils., Inc. which is marked as Exhibit "R-3"
"S"	DV No. 253 dated April 22, 2004 and April 21, 2004;
"T"	Feshan Phils. Inc.'s O.R. No. 3026 dated April 23, 2004 for the payment of PhP3,107,443.19 of LGU, Butuan City
"W"	Invoice No. 5685 with signature of Salvador Satorre, City Agriculturist
"X"	Inspection Report dated April 21, 2004 accomplished by Rodolfo Evanoso, Property Officer and Arturo Malicay, Inspection Officer
"Y"	Letter dated April 20, 2004 from Salvador Satorre, City Agriculturist, received on April 21, 2004 by the City Auditor
"Z"	LBP Check with No. 611863
"Z-1"	LBP Check with No. 611864
"Z-2"	Dorsal portion of Check No. 611863
"Z-3"	Dorsal portion of Check No. 611864

Handwritten signature and initials in the bottom right corner of the page.

"AA"	COA Notice of Disallowances No. 2005-040 (2004) dated February 26, 2005
"BB"	Certificate of Canvass
"DD"	Abstract of Proposal
"EE"	DV No. 356 dated May 13, 2004
"FF"	O.R. No. 3048 dated May 3, 2004
"GG"	Letter of Atty. Gerardo del Rosario, Assistant Director, Corporate Filing and Records Division, Securities and Exchange Commission
"HH" and series	Certificate of Registration and Incorporation with attached Articles of Incorporation of Feshan Phil., Inc.
"II"	Amended Articles of Incorporation
"JJ" and series	Personal Data Sheet (PDS), Service Record, and Job Description of Theresa Leonides Plaza
"KK" and series	PDS, Service Record, and Job Description of Salvador Satorre
"LL" and series	PDS, Service Record, and Job Description of Arthur Castro
"MM" and series	PDS, Service Record, and Job Description of Adolfo Llagas
"NN" and series	PDS, Service Record, and Job Description of Bebiano Calo
"OO" and series	PDS, Service Record, and Job Description of Danilo Furia
"PP" and series	PDS, Service Record, and Job Description of Melita Loida Galbo
"QQ" and series	PDS, Service Record, and Job Description of Rodolfo Evanoso
"RR"	Evaluation Report dated May 17, 2004
"SS"	Cost Evaluation of the Procurement
"TT"	Canvass signed by Arnel Ellevera and Joel Bañas
"UU"	Memorandum dated September 27, 2004 of Engr. Aldan Mola and Engr. Junrey E. Labatos
"VV"	Letter of Atty. Marisol Legaspi dated December 8, 2004
"WW"	Motion for Reconsideration filed by some accused pertaining to the Notice of Disallowance No. 2005-040(2004) dated February 26, 2005
"XX"	Decision dated November 29, 2005/RLA Decision No. 2005-029
"YY"	Assay Test result of Feshan
"ZZ"	Assay for Fertilizer/ Guano/ Manure/

	<i>Compost/ Limestone/ Organic Fertilizer</i> signed by Sylvia P. Kim and noted by Remina B. Occeña
"AAA"	<i>Certificate of Exclusive Distributorship</i> issued by Feshan Phil., Inc.
"BBB"	<i>Decision No. LAO 2007-123</i> dated August 1, 2007
"CCC"	<i>Notice of Finality of Decision</i> dated December 28, 2011
"DDD"	<i>COA Order of Execution</i> dated January 4, 2012
"EEE"	<i>Certification</i> on the unsettled balance relating to Notice of Disallowance No. 2005-040 (2004)
"FFF"	<i>Memorandum</i> dated August 23, 2004 to Ms. Myrna L. Enriquez, Audit Team Leader
"GGG"	<i>Memorandum</i> dated September 21, 2004
"HHH"	<i>O.R. No. 0753086</i> for Tax Withheld
"III"	<i>Letter</i> dated February 5, 2004 of then Butuan City Mayor Leonides Theresa B. Plaza
"JJJ"	<i>Special Order No. 2003-09</i> issued by DA-RFU XIII

Accused Plaza,⁹² Furia,⁹³ Llagas,⁹⁴ Satorre, et al,⁹⁵ by counsel, filed their respective *Comments* to the prosecution's *Consolidated Formal Offer of Evidence*. The Court admitted all the prosecutions' documentary evidence in its *Minute Resolution*⁹⁶ dated May 22, 2018.

Accused Satorre, et al,⁹⁷ Llagas,⁹⁸ Plaza,⁹⁹ by counsel, filed their respective *Motions for Leave to File Demurrer to Evidence* to which the prosecution filed its *Consolidated Comment/Opposition* on June 25, 2018. However, the *Motions* of accused Satorre, et al, Llagas, and Plaza were denied by this Court in its *Minute Resolution*¹⁰⁰ dated June 26, 2018.

⁹² *Comment (to the Prosecution's Consolidated Formal Offer of Evidence)* filed on May 2, 2018.

⁹³ *Comment* filed on May 7, 2018.

⁹⁴ *Comment to Formal Offer of Evidence* filed on May 9, 2018.

⁹⁵ *Comment/Opposition to the Prosecution's Consolidated Formal Offer of Evidence* filed on May 16, 2018.

⁹⁶ *Records*, Vol. 4, pp. 758 - 759.

⁹⁷ *Motion for Leave of Court to File Demurrer to Evidence* filed on June 18, 2018.

⁹⁸ *Motion for Leave to File Demurrer* filed on June 18, 2018.

⁹⁹ *Motion for Leave of Court to File Demurrer of Evidence* filed on June 20, 2018.

¹⁰⁰ *Records*, Vol. 5, pp. 13 - 14.

Handwritten signature and initials in the bottom right corner of the page.

Furia,¹⁰¹ through counsel, filed his *Motion for Leave to File Demurrer to Evidence* on June 19, 2018 to which the prosecution filed its *Comment/Opposition with Manifestation* thereto on July 5, 2018. The *Motion for Leave to file Demurrer to Evidence* by accused Furia was likewise denied.

Accused Satorre, et al,¹⁰² Llagas,¹⁰³ and Plaza,¹⁰⁴ through counsel, filed their respective *Manifestations* that they will not be filing a demurrer to evidence. Accused Furia initially intended to file a *Demurrer to Evidence without Leave of Court*, but subsequently filed his *Manifestation*,¹⁰⁵ through counsel, stating that he will not pursue his demurrer without leave of court and will instead present evidence in his defense.

EVIDENCE FOR THE DEFENSE

Evidence for the defense consisted of the testimonies of accused Plaza,

Leonides Theresa Plaza was initially called to the witness stand on November 6, 2018, and identified her *Judicial Affidavit*.¹⁰⁶ An *Amended Judicial Affidavit*¹⁰⁷ was submitted on October 26, 2018 which excluded matters regarding the alleged inordinate delay in filing the case by the Ombudsman since the Supreme Court already denied with finality accused Plaza's *Petition for Certiorari* on July 23, 2018.¹⁰⁸

At the time pertinent to this case in 2004, accused Plaza was then the mayor of Butuan City where she generally supervised all programs, projects, services, and activities of the city government, enforced laws and local ordinances, and represented the City in all its contracts and other business transactions. She testified that during the first quarter of 2004, Regional Director Rodriguez of the DA and co-accused Satorre came to her and informed her that there was a budget allocation with the DA for liquid organic fertilizer. She was not interested at first since she preferred to provide Butuan City's constituent-farmers farm implements. Because of accused

¹⁰¹ *Motion for Leave to File Demurrer to Evidence* filed on June 19, 2018.

¹⁰² *Manifestation* filed on July 16, 2018.

¹⁰³ *Manifestation* filed on July 19, 2018.

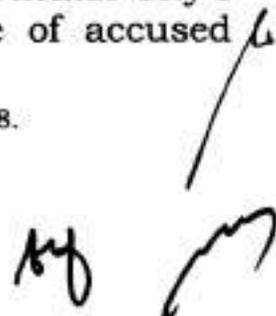
¹⁰⁴ *Manifestation* filed on July 31, 2018.

¹⁰⁵ *Manifestation* filed on September 24, 2018.

¹⁰⁶ Filed on August 28, 2018, *Records*, Vol. 4, pp. 882 - 849.

¹⁰⁷ Filed on October 26, 2018, *Records*, Vol. 5, pp. 267 - 273.

¹⁰⁸ *Supra*, note 12.

Handwritten signature and scribble in the bottom right corner of the page.

Satorre's prodding that liquid organic fertilizer would help grow crops and recondition the soil. Having limited knowledge on this matter, she took accused Satorre's advice and agreed their suggestion to formally request for funding assistance.

She requested for funds¹⁰⁹ from the DA to finance its acquisition of liquid organic fertilizer for Butuan City. The DA granted the City Government's request and she, on behalf of the City, entered into a *Memorandum of Agreement*¹¹⁰ with DA Region XIII - CARAGA who was represented by Regional Director Rodriguez. In the said agreement, the Php5,000,000.00 entrusted by the DA to Butuan City would be for the implementation of various agricultural development programs.

The fund amounts were disbursed to the City Government of Butuan in tranches: the first was on April 13, 2004 covered by DV No. 101-04-4-374¹¹¹ and Official Receipt No. BC-0648705,¹¹² the second was on May 13, 2004 in the amount of Php1,750,000.00 covered by DV No. 101-04-5-693¹¹³ and Official Receipt No. BC-076301.¹¹⁴

Upon receipt of the funds from the DA, accused Plaza arrogated to co-accused Satorre, as the City Agriculturist, all matters relating to the procurement of the liquid organic fertilizer. He prepared all the procurement documents such as PR No. 1430 dated April 14, 2004.¹¹⁵ It was accused Satorre who recommended the brand 'Bio-Nature' due to its micronutrient content and its foreign quality. She received the *Abstract of Proposal*¹¹⁶ wherein it shows that Feshan won the award to supply the liquid organic fertilizer. Seeing that accused Satorre and the other members of the Committee on Awards affixed their respective signatures alongside the canvass documents, she simply signed the same.

She testified that the Office of the City Mayor issued PO No. 714¹¹⁷ dated April 22, 2004 addressed to Feshan, ordering 3,333 bottles of Bio-Nature liquid organic fertilizer in the

¹⁰⁹ Letter dated February 5, 2004, marked as Exhibit "III".

¹¹⁰ Dated April 12, 2004, Exhibit "6-LP"

¹¹¹ Exh. "H".

¹¹² Exh. "I".

¹¹³ Exh. "K".

¹¹⁴ Exh. "L".

¹¹⁵ Exh. "5-LP".

¹¹⁶ Exh. "11-LP"

¹¹⁷ Exh. "N".

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'by' followed by a stylized flourish, with a long arrow pointing upwards and to the right.

amount of Php4,999,500.00. She was later informed that the bottles of fertilizer were received by Butuan City Government. The bottles of Bio-Nature were then distributed to the City's constituent-farmers. The City Government was obliged to pay Feshan in the amount of Php4,999,500.00 for which she prepared checks¹¹⁸ together with the approval of DV No. 253¹¹⁹ dated April 22, 2004 and DV No. 356 dated May 31, 2004.¹²⁰

On cross-examination¹²¹ by the prosecution, accused Plaza confirmed that the visit by Regional Director Rodriguez and co-accused Satorre was sometime in January 2004 or a day prior to February 5, 2004. Accused Plaza testified that the transaction for liquid organic fertilizer is not the first transaction the City Government has had with the DA. Previously, the City Government had projects funded by the DA such as tractors and solar dryers. She noted that on a regular basis, the City Government requests for assistance from the DA for its on-going programs such as providing fertilizer for the farmer-constituents; but this is the first time that she heard about this particular liquid organic fertilizer. This transaction is also the first time that the City Government of Butuan entered into a procurement regarding liquid organic fertilizer in the amount of Php5.0 Million.

Regarding the procurement, it was the City Agriculture Office which procured the liquid organic fertilizers. She acted on the expertise of City Agriculturist Satorre on the procurement of fertilizers, especially the liquid organic fertilizers because he is more knowledgeable than her on these matters. She confirmed that her signature appears on the PR done by co-accused Satorre who purportedly prepared the same and which included the term 'Bio-Nature'.

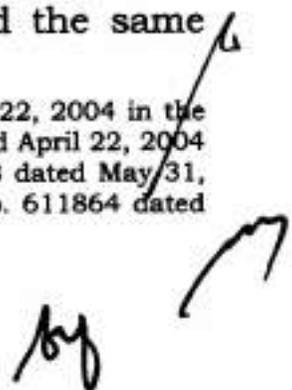
In relation to the *Certificate of Canvass* she attested that she affixed her signature on the same because she did not see any irregularity on the *Abstract Proposal*. Prior to signing, she consulted with the members of the Bids and Awards Committee (BAC). She stressed that she affixed her signature considering the members of the BAC have signed the same

¹¹⁸ Land Bank of the Philippines (LBP) Check No. 611781 dated April 22, 2004 in the amount of Php3,107,443.19 (Exh. "P"); LBP Check No. 611782 dated April 22, 2004 in the amount of Php24,375.00 (Exh. "Q"); LBP Check No. 611863 dated May 31, 2004 in the amount of Php1,720,474.21 (Exh. "Z"); LBP Check No. 611864 dated May 31, 2004 in the amount of Php13,121.25 (Exh. "Z-1")

¹¹⁹ Exh. "S".

¹²⁰ Exh. "EE".

¹²¹ TSN dated November 6, 2018, pp. 9 - 19.

Handwritten signature and a checkmark-like mark.

and upon proper consultation with them. After she consulted with the BAC members upon submission of the canvass form she was concerned that there was no bidding. The BAC members assured her that the procurement was done through a canvass because there are no other companies or agricultural suppliers which submitted their interest in providing the product. The BAC members told her that there was no available liquid organic fertilizer in their area. She asserted that she is not aware that the term 'Bio-Nature' is a particular brand because she thought that it was some kind of medicine, a generic term for a liquid organic fertilizer.

On cross-examination¹²² by counsel for accused Satorre, et al, she attested that the purchased liquid organic fertilizers were given to the farmers for free. This was advantageous to the farmers since it resulted to the increase in the harvest for the year, she also stated that the City Government of Butuan received an Award of *Masaganang Gintong Ani* as a result of this project.

Rodolfo B. Evanoso was initially called to the witness stand on November 13, 2018, and identified his *Judicial Affidavit*.¹²³ He testified that he was a government official since 1973 starting as a clerk in the Office of the City Treasurer, promoted as Chief of the Purchasing Section, then as Supply Officer, and eventually as Local or City General Services Officer Head II (GSO Head II) from 2003 to 2007 upon his retirement.¹²⁴

As GSO Head II, he is in charge of the Office of General Services; formulates measures to ensure the delivery of basic services and adequate facilities; develops plans and strategies on general services for the welfare of inhabitants and implements the same upon approval by the Mayor; collates, disseminates information regarding prices, shipment, and other costs of supplies commonly used by the City; recommends to the Sanggunian and advises the Mayor on matters relating to general services; and exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance, among others.



¹²² *Id.*, pp. 20 – 22.

¹²³ Filed on September 13, 2018, *Records*, Vol. 5, pp. 165 – 179.

¹²⁴ *PDS, Service Record* and Job Description as Exh. "QQ" for the prosecution and "20" for accused Satorre, et al.

X-----X

He testified that he and his Office canvassed for quotations from agricultural local suppliers or dealers of fertilizer, prepared the *Abstract of Proposal*;¹²⁵ signed the *Acceptance and Inspection Report*¹²⁶. He affirmed that the *Abstract of Proposal* was approved by the Committee on Awards after the canvass of the quotations from the agricultural suppliers/dealers was conducted. The documents submitted to him already bore the signature of the City Agriculturist, the City Mayor, and other City officials. These documents included the *PR*¹²⁷ and the price quotation; brochure and other corporate documents of Feshan,¹²⁸ Invitation to Bid, Certificate of Canvass,¹²⁹ DV 101-04-4374;¹³⁰ and O.R. No. BC 0648705¹³¹ indicating receipt of Php3,250,000.00 from DA-RFU Region XIII.

After receiving the *PR* which already bore the signatures of the City Mayor, co-accused Plaza and the City Agriculturist, co-accused Satorre, City Treasurer, co-accused Llagas, the Committee on Awards collectively resolved that the mode of procurement in acquiring the fertilizer was the Alternative Mode of Procurement under Republic Act 7160. He admitted not having personal knowledge of why the Committee on Awards chose this type of procurement.

He testified that at the time the transaction was entered into, he did not know that R.A. 9184 was already in effect and they only knew about it when they were required to attend a seminar conducted by COA - Region XIII on April 27 to 29, 2004, the purpose of which was to familiarize the officials and employees of the LGUs of Region XIII on the various provisions on the said law.

Since it was already resolved that the purchase of fertilizer would be through an alternative mode of procurement, no bidding was conducted by his Office.

However, in compliance with Sec. 105, Rule 11 of COA Circular No. 92-386, in order to determine if Bio-Nature, has no suitable substitutes with substantially the same quality in

¹²⁵ Exh. "DD" for the Prosecution and Exh. "14" for accused Satorre, et al.

¹²⁶ Dated April 21, 2004, Exh. "X" for the Prosecution and Exh. "11" for the accused Satorre, et al.

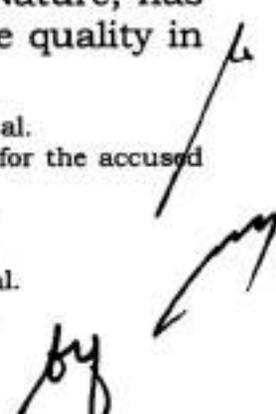
¹²⁷ Exh. "O" for the Prosecution and Exh. "5" for accused Satorre, et al.

¹²⁸ *Certification*, Exh. "9" for accused Satorre, et al.

¹²⁹ Exh. "BB" for the Prosecution and Exh. "13" for accused Satorre, et al.

¹³⁰ Exh. "H" for the Prosecution and Exh. "1" for accused Satorre, et al.

¹³¹ Exh. "I" for the Prosecution and Exh. "2" for accused Satorre, et al.



the locality at a lower price, he caused the canvassing, posting of Invitation for Quotation in conspicuous places within the City Hall of Butuan City as well as sent personal invitations to local/regular agricultural suppliers. These suppliers included Pacifica Agrivet, Jeels Masagana, Breeders Agrivet, and Feshan by providing *pro forma* documents wherein they will fill in the respective proposed quotations and availability of stocks for liquid organic fertilizer specified in the *PR*. From the price quotations, it was only Feshan which submitted a price quotation for liquid organic fertilizer in the amount of Php1,500.00/bottle, submitted proof of availability of its stocks as well as a *Certification*¹³² confirming its status as the sole importer and distributor of Bio-Nature in the Philippine and that it has no authorized sub-dealer selling the same product at a lower price. He confirmed that Pacifica Agrivet, Jeels Masagana, and Breeders Agrivet did not provide a quotation or proof of availability of the items in the *PR* in their stocks. The result of the canvass was recorded in the *Abstract of Proposal*¹³³ and forwarded the same to the Committee on Awards for their review and approval. The procurement was awarded to Feshan since it was only their company which met the specifications in the *PR*.

He explained that in the regular and official course of procurement for the City Government, it is his Office which prepares the *AIR*. However, in this particular transaction, it was not the case as it was forwarded to their Office by the requisitioning agency. He clarified that he signed the *AIR* to confirm that he/his Office inspected the 3,333 bottles of liquid organic fertilizer delivered by Feshan and that items were in conformity with specifications in the *PR*. He signed the *AIR* upon the presentation of the delivery receipt which bore the signature of the Supply Officer, Bienvenido Ocada, Jr.; Head of Internal Audit, Arturo Malicay; and City Agriculturist, co-accused Satorre, and after inspecting the items, he found the same in conformity with the *PR*.

On June 2004, the Office of the City Mayor received a later from State Auditor Enriquez and furnished with a copy of COA TAS *Inspection Report* indicating, among other things, a total deficiency of Php4,582,875.00 covering the delivery of 3,333 bottles of organic fertilizers. The delivered liquid organic fertilizers allegedly had a lower percentage of Nitrogen,

¹³² Exh. "9" for accused Satorre, et al.

¹³³ Exh. "BB" for the prosecution; Exh. "13" for accused Satorre, et al.

Handwritten signature and initials in the bottom right corner of the page.

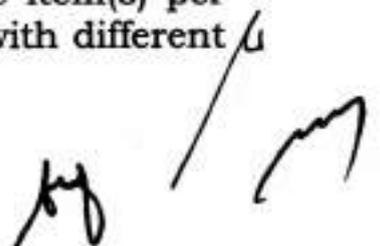
Phosphoric Acid, and Potassium compared to the canvassed fertilizers. On December 2004, the Regional Cluster Director—LAO, COA-Regional Office XIII sent a letter to City Mayor Democrito D. Plaza, II directing the previous BAC to answer charges for Violation of Sec. 10 of R.A. 9184 relative to the purchase of overpriced Bio-Nature liquid organic fertilizer from local distributor, Feshan. On his end, he explained that his or his Office's participation was to canvass for quotations from agricultural local suppliers or dealers of fertilizer, prepared the *Abstract of Proposal*, and signed the *AIR*.

On May 3, 2005, he learned that the City Government received a *Notice of Disallowances* from COA-RLAO through Regional Cluster Director Atty. Legaspi and named him, his co-accused Satorre, Calo, Castro, Llagas, and Furia, as officers liable for violation of Sec. 21.2.1 and 18 of R.A. 9184. On October 27, 2005, accused Satorre, Calo, Castro, Furia, and Evanoso filed a *Motion for Reconsideration* of the *Notice of Disallowance*, which was denied. The appeal with the COA-RLAO was denied on August 1, 2007.

On April 11, 2011, Task Force Abono FIO, Office of the Ombudsman, filed a criminal complaint against him and his co-accused for violation of Section 3, paragraphs (e) and (g) of R.A. 3019 and administrative cases. On September 3, 2013, the Office of the Ombudsman rendered a *Resolution* finding probable cause against him and his co-accused. They filed a *Motion for Reconsideration*, but on September 29, 2015, the same was denied. On March 1, 2016, the case was filed with the Sandiganbayan.

He stressed that he and his co-accused believed in good faith that they chose the correct law on procurement – the alternative mode of procurement—which has always been used for a long time. He justified the same by stating the R.A. 9184 was still in its transition period of information and dissemination to LGUS including the Butuan City Government. He added that there was yet no BAC.

As regards the re-canvass of liquid organic fertilizers by DA-Region XIII, he explained that it was only Feshan which submitted a price quotation with the necessary supporting documents while the other local agricultural suppliers did not submit of quotation or proof of availability of the item(s) per *PR*. The re-canvass was only of one (1) supplier with different



specifications. COA Memorandum No. 07-012 dated March 31, 1997 provides for the guidelines on how to determine sufficient evidence to support audit findings of over-pricing, which the DA failed to abide.

The testimony of the witness was adopted by accused Furia and Plaza.

Accused Evanoso clarified that the purpose of the quotation was to comply with the regulations of COA Circular No. 9236 under Section 105, Rule 11, subject to conditions. The conditions included is to determine if Feshan, as the sole dealer of the product, it offered the City Government the lowest price. Another condition was to determine the liquid organic Fertilizer, Bio-Nature, has suitable substitutes or substantially the same quality at a lower price.

In the approval of the *Abstract of Proposal*, he used as a basis the canvass quotations, *Certificate of Canvass*, then the approved *PR* and other pertinent documents submitted by Feshan. The *AIR* was received by co-accused Galbo, Supply Officer III who affixed her initial and the date of acceptance which is April 21, 2004. He testified that the delivery of the items was not a directive by the City Government, but was made between the City Agriculturist and Feshan.

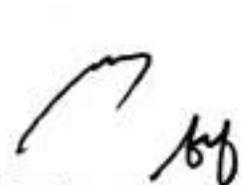
On cross-examination¹³⁴ by counsel for accused Llagas, he affirmed that the *Abstract of Proposal* was approved by the Committee on Awards because at that time they did not have knowledge that it should be the BAC under R.A. 9184 and that they followed the pertinent provisions of the Local Government Code or R.A. 7160.

Bebiano B. Calo was initially called to the witness stand on November 27, 2018, and identified his *Judicial Affidavit*.¹³⁵ He narrated that he began working with the City Government on January 1, 1974 as Fiscal Analyst in the Office of the City Development Staff. He was promoted as Fiscal Analyst I, Senior Management and Audit Analyst in the Office of the City Mayor, Management and Audit Chief and became City Accountant Head on December 2, 2002.¹³⁶

¹³⁴ TSN dated November 14, 2018, pp. 5 - 10.

¹³⁵ Filed on November 9, 2018, *Records*, Vol. 5, pp. 294-306.

¹³⁶ *PDS, Service Record* and *Job Description* marked as Exh. "NN" for the prosecution; Exh. "18" for accused Satorre, et al.

Handwritten signature and initials in black ink, appearing to be 'by' followed by a stylized signature.

He reiterated that as City Accountant Head II he is in charge of both accounting and internal audit services of the city; installs and maintains the City Government's internal audit system; certifies the availability of budgetary allotment against which expenditures and obligations may be charged; reviews supporting documents prior to the preparation of vouchers to determine the completeness requirements; prepares journals and analysis of obligations; and exercises other powers as are provided by law or ordinance, among others.

He approved the *Abstract of Proposal* based on the documents submitted to him which were: (1) PR,¹³⁷ (2) Invitation to Bid, (3) *Certificate of Canvass*,¹³⁸ (4) DV No. 101-04-4-374,¹³⁹ (5) OR No. BC 0648705;¹⁴⁰ and Feshan's corporate documents.¹⁴¹

On June 4, 2004, the Office of the City Mayor of Butuan received a letter from State Auditor Enriquez furnishing a copy of the COA TAS Inspection Report indicating that there is a total deficiency of Php4,582,875.00 covering the delivery of 3,333 1-liter bottles of organic fertilizers.

In December 2004, the Regional Cluster Director for COA- RLAO, sent a letter to then City Mayor Decmocrito D. Plaza II, directing the previous BAC to answer the charges for violation of Section 10 of R.A. 9184 relative to the purchase of Bio-Nature liquid organic fertilizer from Feshan. On May 3, 2005, the Office of the City Mayor received a *Notice of Disallowances* issued by the COA Regional LOA through Atty. Legaspi naming accused Satorre, Evanoso, Castro, Llagas, and Calo as officers liable for violation of Section 21.2.1 of IRR-A and 18 of R.A. 9184. On October 27, 2005, accused Satorre, Evanoso, Castro, Furia, and himself filed a *Motion for Reconsideration* to the *Notice of Disallowances*. On November 2005, the COA-RLAO issued a *Decision* denying the *Motion for Reconsideration* for lack of merit. An appeal was filed, however on August 1, 2007, the COA-RLAO issued a *Decision* denying the appeal for lack of merit. He narrated that the Office of the City Auditor of Butuan issued an *Amended Notice of Disallowance* dated September 9, 2019 naming Feshan, then

¹³⁷ Exh. "O" for the Prosecution; Exh. 5" for accused Satorre, et al.

¹³⁸ Exh. "BB" for the Prosecution; Exh. "13" for accused Satorre, et al.

¹³⁹ Exh. "H" for the Prosecution; Exh. "1" for accused Satorre, et al.

¹⁴⁰ Exh. "I" for the Prosecution; Exh. "2" for accused Satorre, et al.

¹⁴¹ Exh. "V" for the Prosecution; Exhs. "U" and "V" for accused Satorre, et al.

City Mayor accused Plaza, then Vice-Mayor Calo as additional persons liable for violation of Section 21.2.1 and 18 of R.A. 9184.

On April 2011, Task Force Abono FIO of the Office of the Ombudsman filed a criminal complaint for commission of offenses punishable under Section 3, paragraphs (e) and (g) of R.A. 3019 and violation of Section 65-2 (4) of the IRR of R.A. 9184 and administrative cases. On September 3, 2013, the Office of the Ombudsman rendered a *Resolution* finding probable cause against him and his co-accused. A *Motion for Reconsideration* was filed but on September 29, 2015, the Office of the Ombudsman rendered a *Joint Order* denying their *Motion for Reconsideration*. The case was filed on March 1, 2016 before the Sandiganbayan.

He underscored that he and his co-accused believed in good faith that they or the Committee on Awards chose the correct alternative mode of procurement. R.A. 9184 was then in its transition period of information and dissemination to the local government official and employees, hence, they had to familiarize themselves with the various provisions of the law through trainings and seminars by the COA.

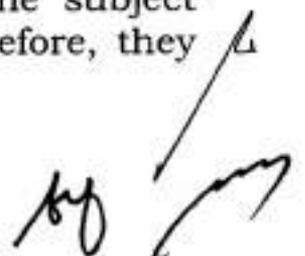
The Committee on Awards opted to choose an alternative mode of procurement because of the urgency of the impending planting and tilling season and clamor of the farmers for free fertilizers to improve their farm productivity. The sufficiency of the documents submitted by Feshan showing that Bio-Nature passed the City Government's criteria of sufficiency, requirement of immediate availability of the product and affordability of the liquid organic fertilizer was also a factor to choose the alternative mode of procurement.

For additional direct examination,¹⁴² by counsel for accused Satorre, et al, accused Calo testified that R.A. 9184 was still not known to the local government officials as it was still in the transition period nor was he given a copy of the law at that time.

On additional direct examination¹⁴³ by counsel for accused Furia, he affirmed that at the time of the subject procurement, he did not know of R.A. 9184. Therefore, they

¹⁴² *Supra*, note 134, pp. 12 - 15.

¹⁴³ *Id.*, pp. 15 - 17.

Handwritten signature and initials in the bottom right corner of the page.

x-----x

followed the mode of procurement from a Philippine distributor or agents under R.A. 7160.

He stated that he was an automatic member of the Committee on Awards when he was appointed as the City Accountant in 2002. He affirmed that the LGU of Butuan City was not subject of any other COA *Notice of Disallowance* as far as he knew.

Several stipulations were made prior to cross-examination by the prosecution: first, that accused Calo is a City Accountant Head II of the City Government of Butuan, Agusan del Norte at the time of the subject transaction; second, the enumeration of the duties and responsibilities of his position; third, that accused Calo was the one who approved the *Abstract of Proposal and Canvass* and that he signed the *DV*; fourth, that administrative and criminal cases were filed against the witness and other accused, that a motion for reconsideration was filed and denied, and subsequently the case was brought before this Court.

On initial cross-examination¹⁴⁴ by the prosecution, when accused Calo was asked if he had any second thoughts as a member of the Committee on Awards to approve to vote for Feshan as the supplier of Bio-Nature considering that the *PR* mentioned specifically the term 'Bio-Nature'. He answered that R.A. 7160, particularly, Section 45 of COA Audit Circular No. 92-386 allows the use of brand names. Mention of brand names is allowed by law if it is to describe the product and its specifications.

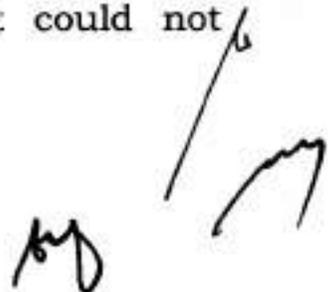
In the transaction in question, accused Calo mentioned that upon review of the documents, he was surprised that the information contained in the *PO* is not the exact information in the *PR* and quotation. Accused Calo testified that the *PO* was incomplete but what was received is the product presented by Feshan which contains all the elements.

In the continuation¹⁴⁵ of cross-examination of accused Calo's testimony by the prosecution, he confirmed that the Committee on Awards deliberated on the committee's evaluation on the submitted quotations¹⁴⁶ but could not

¹⁴⁴ *Id.*, pp. 20 - 42.

¹⁴⁵ *TSN* dated November 28, 2018, pp. 8 - 45.

¹⁴⁶ Exh. "R", "R-1" to "R-3".



remember if there was a written resolution to the alleged alternative mode of direct contracting.

When asked whether as the City Accountant, the DV for the release of money to Feshan, the documents attached to the DV must be the *Abstract of Proposal* and the PO, accused Calo answered that it depended on the mode of procurement since there are some modes which do not require the *Abstract of Proposal*, such as the procurement from a Philippine Distributor.

Salvador L. Satorre was called to the witness stand on February 13, 2019 and identified her *Judicial Affidavit*.¹⁴⁷ Accused Satorre is a retired government employee. He began his government service as a Secondary School Teacher of Agriculture, he became a Farm Management Technician I, Senior Farm Management Technologist, and then City Agriculturist Department Head II of the City Government of Butuan until his retirement in April 7, 2007.¹⁴⁸

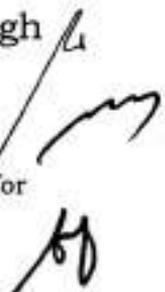
His duties and responsibilities include taking charge of the office for agricultural services; formulate measures for the approval of the City Mayor, provide technical assistance to the City Mayor in carrying out measure to ensure the delivery of agricultural services and provide adequate facilities; develop strategies for agricultural projects and to implement upon approval by the City Mayor; ensure that maximum assistance and access to resources are extended to farmers; recommend to the City and advise the Mayor on all matters related to agriculture and aquaculture to improve the livelihood and living conditions of the inhabitants; and exercise such other powers and perform duties and functions as may be prescribed by law or ordinance, among others.

He alleged that his participation in the questioned transaction of procuring 3,333 bottles of Bio-Nature from Feshan is limited to the following: (a) he was the one who prepared PR No. 1430¹⁴⁹ dated April 14, 2004, his department being the requisitioning agency, (b) As member of the Committee on Awards, joined with the other members to resolve that the mode of procurement would be through

¹⁴⁷ Filed on February 8, 2019, *Records*, Vol. 5, pp. 412 - 424.

¹⁴⁸ PDS, *Service Record*, and Job Description were marked in evidence as Exh. "KK" for the prosecution; Exh. "16" for accused Satorre, et al.

¹⁴⁹ Exh. "O" for the prosecution; Exh. "5" for accused Satorre, et al.

Handwritten signature and initials in the bottom right corner of the page.

exclusive Philippine Agents or Distributors under R.A. 7160 and COA Circular No. 92-386.

He testified that the Committee on Awards resolved to use an alternative mode of procurement because of the urgency of the impending planting and tilling season and the clamor of the farmers for free fertilizers to improve their farm productivity. He stated that it was already planting season then in Butuan City with the farmers of 63 barangays out of the 86 asking from the City Government for free fertilizers. He considered such request as urgent, necessitating the increase in the farmers' yield.

As a result of the clamor of the farmers, he recommended to the City Mayor the purchase of a liquid fertilizer. He then learned that accused Plaza, as City Mayor, requested from the DA a budget allocation to finance the acquisition of liquid organic fertilizer and that the same was granted.

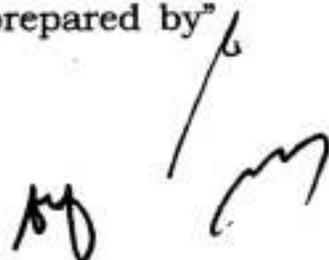
Regional Director Rodriguez of DA – Region XIII, Caraga, endorsed to his Office a letter¹⁵⁰ from a certain Julie M. Gregorio, President of Feshan, dated January 6, 2004 which included the company's profile and brochure of Bio-Nature which was of foreign origin, at Php1,500.00 per bottle. After reviewing Feshan's company profile, brochure, and other documents submitted, accused Satorre observed that Bio-Nature is a liquid organic fertilizer which contained micro-nutrients necessary to the rapid growth of crops, proper reconditioning of the soil, and is cost-efficient considering that the same was foreign-manufactured.

He also learned that relative to the implementation of various agricultural programs of the City Government, the DA, through Regional Director Rodriguez entered into a *Memorandum of Agreement*¹⁵¹ with the former City Mayor, co-accused Plaza.

Based on the MOA and in accordance with R.A. 7160 and COA Circular No. 92-386 which the Committee on Awards resolved to be the governing law in the procurement of the 3,333 bottles of Bio-Nature, accused Satorre prepared and issued the *PR* itemizing the contents of the liquid organic fertilizer. He signed the *PR* under the portion "prepared by"

¹⁵⁰ Exh. "N" and series for the Prosecution.

¹⁵¹ Exh. "B".



X-----X

and certified the necessity of the liquid organic fertilizer under the farm inputs project of the City Government and instructed his staff to submit the PR to the then City Treasurer, co-accused Llagas, for the latter's office to determine the availability of funds and then to forward the same to the City Mayor, co-accused Plaza, for her signature and approval. PR No. 1430 dated April 14, 2004¹⁵² was forwarded to the General Services Office.

On April 20, 2004, with neither his knowledge or instruction, Feshan delivered to his Office 3,333 bottles of Bio-Nature. He informed City Auditor Myrna L. Enriquez in a letter dated April 20, 2004,¹⁵³ of the said delivery from Feshan and requested that COA conduct an inspection of the delivered items. City Auditor Enriquez responded only on June 4, 2004 wherein COA-Region XIII informed then City Mayor, Democrito Plaza, II of its report relative to the delivery of Bio-Nature. He also requested the General Services Office to conduct an inspection of the delivered items. While the General Services Office conducted an inspection and found the same in conformity with the PR.¹⁵⁴ The General Services Office forwarded to his Office a copy of the *Abstract of Proposals* for his signature. Upon receipt and review, he signed the same.

In the letter from City Auditor Enriquez dated June 4, 2004, it stated that a re-canvass was conducted by the COA TAS team which showed that Bio-Nature has a lesser percentage of Nitrogen, Phosphoric Acid, and Potassium compared to the canvassed fertilizers from the local agricultural suppliers and the local supplier quoted a price of Php125.00 per unit against Feshan's Php1,500 per bottle. He was directed by then City Mayor, accused Plaza, to comment on the COA TAS report. He sent a letter/explanation to the City Legal Officer, Atty. Hedeliza Cruz on July 6, 2004. In his explanation, he narrated that the fertilizer 'Restorer' and 'Mega-yield' brands had only three (3) elements compared to Bio-Nature which has 19 micro-nutrients and other trace elements that can promote plant growth and development.

When asked about the assay test conducted by the Bureau of Soil and Testing Laboratory of DA - Region X, he stated that the report showed that the owner was DA - Region

¹⁵² Exh. "O" for the prosecution; Exh. "5" for accused Satorre, et al.

¹⁵³ Exh. "Y" for the prosecution; Exh. "12" for accused Satorre, et al.

¹⁵⁴ *Inspection Report* dated April 21, 2004 and marked in evidence as Exh. "X" for the prosecution and Exh. "11" for accused Satorre, et al.



XIII and not Feshan or the City Government of Butuan. Also, the assay test report did not reflect the whole micro-nutrient content of the product samples subjected for testing unlike the assay test report conducted by the Bureau of Soils of DA, Central Office in Quezon City wherein all the micro-nutrient contents of the product were reflected.

Sometime in December 2004, the Regional Cluster Director for Legal and Adjudication of COA – Regional Office XIII sent a letter to former Mayor Democrito D. Plaza, II directing the BAC to answer charges for violation of Section 10 of R.A. NO. 9184 relative to the purchase of overpriced Bio-Nature liquid organic fertilizer.

On May 3, 2005, accused Satorre learned that the Office of the City Mayor received a *Notice of Disallowances* from the COA, naming him, co-accused Calo, Castro, Llagas, Furia, and Evanoso as the officers liable for violation of Section 21.2.1 and 18 of R.A. 9184. On October 27, 2005, he and co-accused Calo, Castro, Furia, and Evanoso filed a *Motion for Reconsideration* but was denied. The appeal before the Legal and Adjudication Office of COA was likewise denied on August 1, 2007. On April 11, 2011, Task Force Abono – FIO of the Office of the Ombudsman filed criminal and administrative cases against him and his co-accused. On September 3, 2013, the Ombudsman rendered a resolution finding probable cause against them for violation of Sections 3(e) and (g) of R.A. 3019. They filed a *Motion for Reconsideration* and on September 29, 2015, the Office of the Ombudsman issued a *Joint Order* denying the same. On March 1, 2016, the case was filed before the Sandiganbayan.

He asserted that they believed in good faith that the Committee on Awards chose the correct law on procurement under R.A. 7160 and COA Circular No. 92-386 which was used by them since time immemorial. He noted that R.A. 9184 was still at its transition period of information and dissemination to LGUs including the City Government of Butuan. Hence, they still had to familiarize themselves with the various provisions of the law through training and seminars conducted by the COA. He underscored that at that time, there was no BAC yet which was created as required by R.A. 9184.



During the canvass of prices by the City Government through the General Services Office, Pacifica Agrivet, Jeels Masagana, and Breeders Agrivet, specifically Breeders Agrivet did not offer its products and price quotations in its canvass sheets, which means that they have no available stocks of liquid organic fertilizers. He also observed that the 'Restorer' and 'Mega-yield' brands with a price of Php125.00 and Php120.00 quoted by the local supplier, Breeders Agrivet, in the canvass conducted by DA - Region XIII, cannot be considered as "suitable substitutes" for Bio-Nature because the said brands were not offered by the said supplier at the time the City Government conducted its own canvass where Breeders Agrivet was one of the suppliers given a canvass sheet.

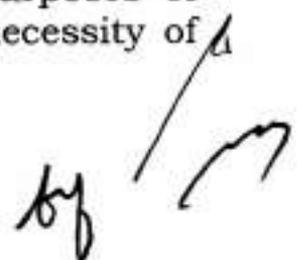
Accused Satorre stated that he had no knowledge whether quotations were sent to suppliers in the locality as this was done by the General Services Office. As a member of the Committee on Awards, he joined to resolve the mode of procurement under Republic Act 7160 and COA Circular No. 92-386—which is through an exclusive Philippine agent or distributor under R.A. 7160.

On the matter of payment, accused Satorre affirmed that he prepared the *DV*¹⁵⁵ and confirmed his signature therein. Accused Satorre also admitted to preparing a *DV* marked Exhibit "EE" including his signature on the same.

The Court asked some clarificatory questions wherein accused Satorre confirmed that he was the one who prepared the *PR*, and in the *PR*, he indicated the 'Bio-Nature' brand and indicated its micro elements. On the matter of the *PO*, it was the Office of the City Mayor which prepared it and he did not have any participation in its preparation nor did he sign it or certify to anything on the *PO*.

When asked about his participation in the preparation of the *DV*, accused Satorre testified that he facilitated the payment of the delivered items and placed his signature in the document. His signature signified that he was the one who prepared the *DV* and that he was also the one who prepared the *PR*. His signature on the *DV* was not for purposes of certifying to anything but there was already the necessity of

¹⁵⁵ Exh. "S".



x-----x

purchasing the items because of the farmers' clamor for free fertilizer.

Upon questioning of the prosecutor, accused Satorre related that the attachments of the *DV* include the *PR*, the *PO*, and *Abstract of Proposals* as far as he could remember.

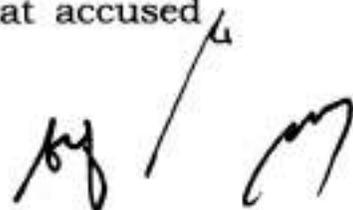
On cross-examination¹⁵⁶ by counsel for accused Plaza, he confirmed that as Department Head, he recommended to the City and advised the City Mayor on all matters relative to agriculture including the recommendation to the City Mayor to purchase liquid organic fertilizer—which advice was followed by the City Mayor.

There being no re-direct, the Court proceeded to ask several questions. When asked whether accused Satorre had proof that the farmers of 63 out of the 86 barangays were clamoring for the immediate purchase of fertilizer, he answered that there were pending requests in his Office and that these were done via resolution, however he does not have copies of the same. Neither could accused Satorre account for the purported 63 resolutions.

When asked regarding whether the micro-nutrients contained in the fertilizer eventually led to the rapid growth of crops, accused Satorre explained that the brochure indicated the micro-nutrients and confirmed that there was rapid growth of crops because of the presence of farm implements and that it was proved to be cost-efficient. Accused Satorre explained that it was cost-efficient considering that the fertilizer was imported. He stated that this was only one of the bases of his recommendation, but also, there was the presence of other elements compared to the local fertilizer. He gave as an example, 'Mega Yield', which cost Php125.00 compared to Feshan which cost Php1,500.00; accused Satorre emphasized that it was still cost-efficient because of the nutrient content. The Court prodded if Bio Nature really contributed to the rapid growth of crops, to which accused Satorre affirmed, but could not produce data for the same. In addition, he mentioned receiving an award because of the increase of crops from 3,000 to 5,000 tons per hectare.

The scheduled cross-examination by counsel of accused Llagas was cancelled due to the manifestation that accused

¹⁵⁶ *Id.*, pp. 12 - 14.



Llagas passed away.¹⁵⁷ Pursuant to the *Notice of Death* filed on February 19, 2019 and without the prosecution objecting thereto, the Court resolved to dismiss the case in SB-16-CRM-0264 with respect to accused Llagas in accordance with Article 89 of the Revised Penal Code and directed that the cash bail bond posted by the deceased-accused in the amount of Php30,000.00 be released.¹⁵⁸

Melita Loida T. Galbo was called to the witness stand on March 5, 2019 and identified her *Judicial Affidavit*.¹⁵⁹ She began working with the City Government of Butuan in 1976 with the Office of the City Treasurer and was transferred to the General Services Office as Supply Officer I. She was promoted to Supply Officer II then III until December 14, 2003. She was promoted to Supply Officer IV on December 15, 2003, a position which she held until her retirement in July 31, 2013.¹⁶⁰

As Supply Officer III, her duties and responsibilities were as follows: (1) Direct and coordinate the procurement custodial functions and activities of the unit; (2) sign Memorandum Receipts of Equipment and Semi-expendable supplies; (3) Prepare Insurance application and payments of the City Government insured with the GSIS; and (4) Check and inspect deliveries of supplies and materials.

She and her co-accused were charged with violations of Section 3, paragraph (e) of R.A. 3019 as well as its IRR. She claimed that her only participation in the procurement of Bio-Nature was that she was the one who certified to the correctness of the *Abstract of Proposal* based on the information on the canvass/quotations submitted by the invited/participating suppliers. She explained that the *Abstract of Proposal*¹⁶¹ is a summary of items or descriptions indicated in the price quotations submitted by local agricultural suppliers and Feshan.

The local suppliers which participated in the canvass conducted by her Office were: Pacifica Agrivet, Jeels Masagana, Breeders Agrivet and Feshan. Feshan even submitted a quotation for the items subject of the canvass.

¹⁵⁷ Order dated January 8, 2019, *Records*, Vol. 5, pp. 387-388.

¹⁵⁸ *Minute Resolution* dated March 22, 2019, *id.*, pp. 734 - 735.

¹⁵⁹ Filed on November 16, 2018, *Records*, Vol. 5, pp. 319 - 327.

¹⁶⁰ Exh. "PP" for the prosecution; Exh. "19" for accused Satorre, et al.

¹⁶¹ Exh. "DD" for the prosecution; Exh. "14" for accused Satorre, et al.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'By' followed by a stylized name, and there are additional initials or marks to the right.

X-----X

She confirmed that the local agricultural suppliers, Pacifica Agrivet, Jeels Masagana, and Breeder Agrivet did not submit any price quotation for the item canvassed. She stated that aside from signing the *Abstract of Proposal*, she had no participation in the procurement of the 3,333 bottles of Bio-Nature. Further, she had no knowledge of the events which took place before and after she signed and certified the *Abstract of Proposal*.

On May 3, 2005, a *Notice of Disallowances* was issued by the COA through COA Regional Cluster Director Atty. Legaspi naming all her co-accused in this case as officers liable for violation of Section 21.2.1 and 18 of R.A. 9184, she was not included as one of the officers liable in the *Notice of Disallowance*.

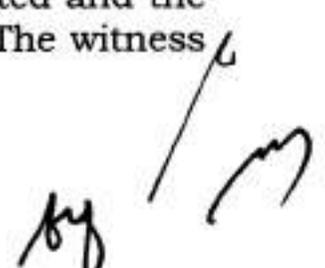
In April 2011, she received an administrative complaint for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and a criminal case was filed by the Task Force Abono – FIO against her and all the co-accused in this case for violation of Section 3, paragraphs (e) and (g) of R.A. 3019 and its IRR. The administrative complaint against her is pending before the Court of Appeals since the Ombudsman found her administratively liable of the offense charge and imposed a penalty of dismissal. The criminal case is the current case before this Court which was filed on March 1, 2016. She added that she was not a member of the Committee on Awards or the BAC, hence, she did not have any participation in the procurement of 3,333 bottles of Bio-Nature, more so, in selecting the mode of procurement to be used or applied.

On cross-examination¹⁶² by the prosecution, accused Galbo confirmed that she certified as correct the *Abstract of Proposal* which was based on the quotations.¹⁶³ These quotations were furnished to the supplies by the official canvasser of her office which was under her supervision. As enumerated above, one of her functions was to check and inspect deliveries of supplies and materials. On April 22, 2004 she related that she was not the one who accepted the delivery of 3,333 bottles of Bio-Nature. To her knowledge, it was the City Agriculturist, the requesting officer who accepted and the GSO for the form of acceptance and inspection.¹⁶⁴ The witness

¹⁶² TSN dated March 5, 2019, pp. 11 - 18.

¹⁶³ Exh. "R", "R-1" up to "R-3".

¹⁶⁴ *Acceptance Inspection Report* marked as Exh. "X".

Handwritten signature and initials in the bottom right corner of the page.

identified her initial on the *AIR* and justified that her initial was there to check the form designed by the Chief of the Office since it was already received and inspected by her Office's inspector as well as the Mayor's Office's inspector. By signing the *AIR*, it shows that the product was delivered the City on 4-22-2014.

Regarding the process of signing the *AIR*, accused Galbo stressed that the inspector must not inspect if the order has no *PO*. Said inspector is under the Office of accused Galbo and under her supervision. Accused Galbo also emphasized that she will not just rely on what the inspector tells her prior to signing the *AIR* but will also check the *OR*. Prior to the conduct of the inspection, there should be a Request for Inspection and the *OR* and received by the receiving officer.

On cross-examination by counsel for accused Furia, accused Galbo related that after she signed the *Abstract of Proposal* and certified to the correctness of the information therein, it is only then that the document is routed to the Committee of Awards. She confirmed that the *Abstract of Proposal* was routed to the GSO on April 21, 2004, but she signed the same the next day or on April 22, 2004. She explained that the City Agriculturist was the one who received the 3,333 bottles of Bio-Nature and not the GSO.

Antenedo E. Milloren was called to the witness stand on April 8, 2019. On the scheduled date for the continuation of the presentation of evidence for accused Furia, after counsel of accused Feria stated the purpose of the offer of Engr. Milloren's testimony, the prosecution objected thereto considering that he is incompetent to testify on the matters stated in his *Judicial Affidavit*.¹⁶⁵ The Court, finding merit in the prosecution's objection, disallowed the presentation of Engr. Milloren¹⁶⁶ for incompetency.

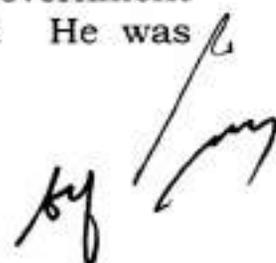
Danilo C. Furia was called to the witness stand on April 22, 2019 and identified his *Judicial Affidavit*.¹⁶⁷ He emphasized that the premise that he was a member of the BAC of the City is wrong since there was no BAC to speak of.

Accused Furia began working with the City Government since April 1986 at the City Budget Department. He was

¹⁶⁵ Filed on March 20, 2019. *Records*, Vol. 5, pp. 721 - 731.

¹⁶⁶ *Order* dated April 8, 2019. *Records*, Vol. 6, p. 6.

¹⁶⁷ Filed on March 7, 2019. *Records*, Vol. 5, pp. 477 - 692.



promoted as the City Budget Officer on September 2004 until he was dismissed from service on September 3, 2015.

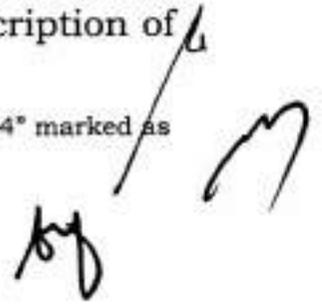
Although he signed the *Abstract of Proposal*,¹⁶⁸ he signed the same on April 23, 2004 when it was routed to him by the City GSO. As a member of the Committee on Awards, his signature was required; he likewise believed in good faith and was under the impression that the proper procedure in the procurement was followed and that nothing was amiss. He emphasized that his signing of the *Abstract of Proposal* was a ministerial duty on his part because it was only in an ex-officio capacity as member of the Committee on Awards. When the *Abstract of Proposal* is routed to a member of the committee for signature, the member is only tasked to check the completeness of the same, not the background of its preparation; if it is found to be complete, then it is ministerial for a member of the Committee to sign the *Abstract of Proposal*.

In this particular transaction, accused Furia observed that the *Abstract of Proposal* appeared to be complete because: (1) there is a tabulation of the quotations from possible suppliers or dealers of goods subject of the PR attached to the *Abstract of Proposal*; (2) there was a certification by the Supply Officer III, co-accused Galbo that the information in the bids proposal and true and correct; and (3) the *Abstract of Proposal* contained as attachments copies of the quotations from the possible suppliers and dealers and that the attachments are consistent with what was reflected in the tabulation.

As a City Budget Officer and ex-officio member of the Committee on Awards, he has knowledge of government procurement as well as the documents necessary in the purchase of goods and services by the government—these include the PR, Canvass of Prices, *Abstract of Proposal*, PO, DVs, and checks. At the time of the questioned transaction accused Furia was only aware of the existence of the *Abstract of Proposal* since it was routed to him on April 23, 2004, he had no knowledge on the other documents.

He also observed that the technical descriptions in the items to be purchased in the PO was inconsistent with the *Abstract of Proposal* with regard to the technical description of

¹⁶⁸ Exh. "SS" of the prosecution; Exh. "5" for accused Furia; date "04-23-04" marked as Exh. "5-A".



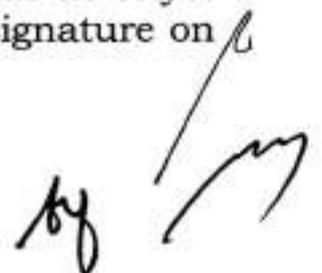
the fertilizers to be purchased. He noticed this discrepancy only when the complaint was filed against him.

Accused Furia reiterated that he was an ex-officio member of the Committee on Awards under the LGC, Section 364 in relation to COA Circular No. 92-386 since one of the automatic members of the Committee is the City Budget Officer. He narrated that there was no BAC when the liquid organic fertilizers were procured because the BAC was only created on October 12, 2004 through EO No. 113, series of 2004¹⁶⁹ as issued by the Office of the Mayor. Pursuant to the said EO, the BAC was to be composed of the City Administrator as Chairperson, City Treasurer as Vice-Chairperson, the City Accountant, City Engineer, and the General Services Officer as members. Accused Furia underscored that as early as the preliminary investigation of the case in the Ombudsman, even prior to the filing of the criminal information against him was filed, he already insisted that he is not a member of the BAC but of the Committee on Awards through the filing of an *Affidavit*¹⁷⁰ furnished to Task Force Abono before the Office of the Ombudsman; a *Notice and Motion for Reconsideration*¹⁷¹ dated August 28, 2015 also with the Office of the Ombudsman; a *Petition*¹⁷² before the Court of Appeal dated October 28, 2017.

During the time of the questioned procurement of fertilizers accused Furia did not have knowledge about Feshan nor its representatives. Neither did he have interactions with with Feshan or its representatives when he signed the *Abstract of Proposal*.

The prosecution, counsels for accused Satorre, et al. and Plaza manifested that they would not conduct any cross-examination. The Court, however, propounded clarificatory questions. When asked about what the regular process was in the signing of the *Abstract of Proposal*, accused Furia replied that the *Abstract* is the basis for the issuance of the *PO*. However, in this case, at the time he signed the *Abstract of Proposal*, he did not know the existence of the *PO*, since what were attached were only the *PR* and the quotations of the suppliers. He added that he assumed that there was as of yet no *PO* because that should be prepared after his signature on

¹⁶⁹ Exh. "4" for accused Furia.
¹⁷⁰ Exh. "7" for accused Furia.
¹⁷¹ Exh. "9" for accused Furia.
¹⁷² Exh. "10" for accused Furia.

A handwritten signature in black ink, appearing to be 'Furia', is located in the bottom right corner of the page. It is written in a cursive style and is positioned to the right of the footnotes.

X-----X

the *Abstract of Proposal*. In response to the Court's inquiry he mentioned that as City Budget Officer, he certifies to the existence and availability of appropriations, apart from being a member of the Committee on Awards. At the time of the questioned transaction, prior to his signing of the *Abstract of Proposal*, it was routed from the GSO which is in-charge of the procurement of goods and services. He reiterated that in the regular and ordinary process before signing the *Abstract of Proposal*, there has to be attached a *PR* and the quotations of canvass from dealers and suppliers. He also mentioned that there is a certification by the Supply Officer that said *Abstract of Proposal* is true and correct. In that certification, the Supply Officer attests that it is for the information of the members of the Committee on Awards. He stressed that the *Abstract of Proposal* is proper and in order when it contains the description of the items to be purchased and are consisted with the *PR*; also, that it is consistent with the quotations of canvass from the suppliers and dealers. He confirmed that if these appear to be in order, it is ministerial on his part to affix his signature on the *Abstract*.

In the said document, the Court observed that the name of accused Furia comes before the name of the City Mayor and that it can be supposed that without his signature, the City Mayor would not sign the document. When asked if there was an instance that the Mayor signs the document without his signature, accused Furia answered in the negative. He confirmed that taking into consideration that the rest of all the signatories have signed, the last signature that the Mayor would look for is the signature of accused Furia. He also affirmed that there has never been an instance wherein the Mayor signed a document relating to procurement, which he himself had not signed, including the *Abstract of Proposal*.

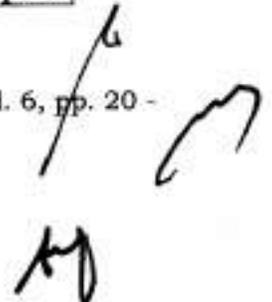
Thereafter, the defense submitted their respective *Formal Offers of Evidence*.

Accused Plaza offered the following documentary exhibits:¹⁷³

EXHIBIT	DESCRIPTION
"5-LP" ¹⁷⁴	Purchase Request No. 1430 dated April

¹⁷³ Consolidated Formal Offer of Evidence filed on May 2, 2019. Records, Vol. 6, pp. 20 - 27.

¹⁷⁴ Exh. "O" for the prosecution; Exh. "5" for Satorre, et al



	14, 2004.
"6-LP" ¹⁷⁵	Memorandum of Agreement by and between DA-RFU XIII to the City Government of Butuan executed on April 12, 2004
"11-LP" ¹⁷⁶	Abstract of Proposal

Accused Furia offered the following documentary exhibits:¹⁷⁷

EXHIBIT	DESCRIPTION
"4" ¹⁷⁸	Executive Order No. 113, series of 2004 – <i>An Order Constituting the Bids and Awards Committee (BAC), the BAC Secretariat and the BAC Technical Working Group along with the Observers for the City Government of Butuan and for Other Purposes.</i>
"5" ¹⁷⁹	<i>Abstract of Proposal</i>
"5-A" ¹⁸⁰	The date "04-23-04" in the <i>Abstract of Proposal</i>
"7"	Accused's <i>Affidavit</i> dated August 23, 2011 filed before the Office of the Ombudsman
"9"	Accused's <i>Notice and Motion for Reconsideration</i> dated August 28, 2015 filed before the Office of the Ombudsman
"10"	Accused's <i>Petition for Review</i> under Rule 43 of the Rules of Court dated October 28, 2017.

Accused Satorre, et al offered the following documentary exhibits:¹⁸¹

EXHIBIT	DESCRIPTION
"1" ¹⁸²	<i>Disbursement Voucher</i> No. 101-04-4-374.
"2" ¹⁸³	<i>Official Receipt</i> No. BC 0648705 dated April 14, 2004

¹⁷⁵ Exh. "B" for the prosecution.
¹⁷⁶ Exh. "DD" for the prosecution; Exh. 14 for accused Satorre, et al; Exh. "5" for accused Furia.
¹⁷⁷ *Formal Offer of Evidence* filed on May 6, 2019. *Records*, Vol. 6, pp. 28 - 236.
¹⁷⁸ Exh."DD" for the Prosecution; Exh. 11 for accused Plaza; Exh. 14 for accused Satorre, et al.
¹⁷⁹ *Id.*
¹⁸⁰ *Id.*
¹⁸¹ *Consolidated Formal Offer of Evidence* filed on May 9, 2019. *Records*, Vol. 6, pp. 248 - 268.
¹⁸² Exh. "H" for the prosecution.
¹⁸³ Exh. "I".

A handwritten signature, possibly 'By', with a large scribble above it, located in the bottom right corner of the page.

"3" ¹⁸⁴	Disbursement Voucher No. 101-04-5-693
"4" ¹⁸⁵	Purchase Order dated April 22, 2004
"5" ¹⁸⁶	Purchase Request dated April 14, 2004
"6", "6-a" to "6-c" ¹⁸⁷	Quotations
"9" ¹⁸⁸	Certification dated April 22, 2004.
"11" ¹⁸⁹	Acceptance and Inspection Report dated April 21, 2004
"12" ¹⁹⁰	Letter dated April 20, 2004 of accused Satorre to the City Auditor of the City Government of Butuan
"13" ¹⁹¹	Certificate of Canvass dated April 14, 2004
"14" ¹⁹²	Abstract of Proposal
"26"	Handout captioned: "Seminar on Republic Act No. 1984 and its IRRs- An IRR COA-Regional XIII Butuan City from April 27 - 29, 2004.
"26-A" and "26-B"	Name of Atty. Legaspi appearing on page 3 of the handout
"27" and "27-A"	Certificate of Appearance and page 10 where the name of accused Calo appeared as one of the attendees

The prosecution filed its *Consolidated Comment/Opposition to the Formal Offers of Evidence* by all the accused on June 3, 2019.¹⁹³ The Court in its *Resolution* dated June 3, 2019 admitted the abovementioned evidence filed by all of the accused.¹⁹⁴

THE ISSUES:

The issue for the Court's consideration in **SB-16-CRM-0264** is whether the guilt of accused Plaza, Satorre, Castro, Evanoso, Calo, Furia, and Galbo for violation of Section 3(e) of R.A. 3019, as amended, have been proven beyond reasonable doubt.

¹⁸⁴ Exh. "K".

¹⁸⁵ Exh. "N".

¹⁸⁶ Exh. "O".

¹⁸⁷ Exh. "R", "R-1", to "R-3".

¹⁸⁸ Exh. "V" for the prosecution; Exh. "1" for accused Plaza.

¹⁸⁹ Exh. "X" for the prosecution; Exh. "12" for accused Plaza.

¹⁹⁰ Exh. "Y".

¹⁹¹ Exh. "BB" for the prosecution; Exh. "10" for accused Plaza.

¹⁹² Exh. "DD" for the prosecution; Exh. "5" for accused Furia.

¹⁹³ *Id.*, pp. 276 - 284.

¹⁹⁴ *Id.*, pp. 299 - 300.

The issue in **SB-16-CRM-0265** is whether the guilt of Plaza and Lapidez for violation of Section 3(g) of R.A. 3019, as amended, have been proven beyond reasonable doubt.

OUR RULING:

SB-16-CRM-0264

From the foregoing documentary and testimonial evidence, the Court finds all the accused¹⁹⁵ guilty of the charges against them for violation of Section 3(e) of R.A. 3019, as amended.

All the elements of the offense charged are present.

Under Section 3(e) of R.A. 3019, as amended, the law provides:

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

x x x

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

A violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁹⁶

¹⁹⁵ Except accused Lapidez, who is still at-large.

¹⁹⁶ *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.

For the first element, that all the accused: Plaza, Satorre, Castro, Llagas, Evanoso, Calo, Furia, and Galbo, save for accused Lapidez, were all public officers at the time of the questioned procurement, was admitted in the stipulation of facts common to all parties.

As to the second element, that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence, is likewise evident and proved with moral certainty. Important to note is that the second element provides for three (3) modalities by which a violation of Section 3(e) of R.A. No. 3019 can be committed. "Manifest partiality", "evident bad faith", or "gross inexcusable negligence" are not separate offenses and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.¹⁹⁷

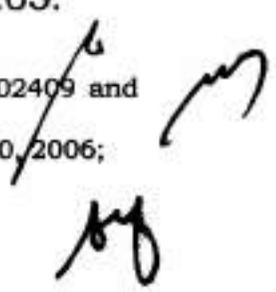
The case of *Uriarte v. People*,¹⁹⁸ explained these modalities:

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

In this case, there was manifest partiality and gross inexcusable negligence on the part of all the accused when their concerted actions facilitated the fast-tracked procurement of and payment for 3,333 bottles of Bio-Nature liquid organic fertilizer, costing Php1,500.00 each, without complying with the mandatory provisions of R.A. 9184 and its IRR and COA issuances, causing undue injury to the City Government of Butuan in the amount of Php4,865,413.65.

¹⁹⁷ *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

¹⁹⁸ *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis in the original.



In *Abubakar v. People*,¹⁹⁹ the Supreme Court ruled that as a general rule, competitive public bidding should be implemented for public contracts, to wit:

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

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

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

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

This principle is reflected in Section 10, Article IV of R.A. 9184,²⁰⁰ wherein all procurement shall be done through competitive bidding except as provided for in Article XVI (Alternative Methods of Procurement). Competitive Bidding under the law is defined as follows:

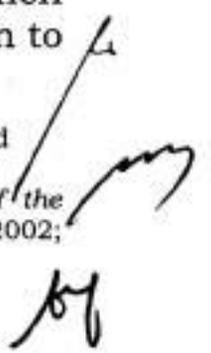
(e) *Competitive Bidding* – refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.

The same principle is echoed in the IRR of R.A. 9184 applicable during the period subject of this case which became effective on October 8, 2003.

As defined earlier, there is 'manifest partiality' when there is a clear, notorious or plain inclination or predilection to

¹⁹⁹ *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

²⁰⁰ *An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes* dated July 22, 2002; Effectivity date: January 26, 2003.

Handwritten signature and initials in the bottom right corner of the page.

favor one side or person rather than another. Further, it is settled that partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather as they are.²⁰¹ The conduct of the procurement process by all the accused, were "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."²⁰² The irregularity which attended the entire proceedings for the purchase of 3,333 bottles of Bio-Nature in this case exemplifies such 'manifest partiality' and 'gross inexcusable negligence'.

The entire procurement process was done in violation of RA 9184 which was already in effect as of January 26, 2003 and IRR-A, effective on October 8, 2003. Accused Satorre, Castro, Calo, and Furia would allege that as members of the Committee on Awards, they believed in good faith that what was still applicable were the provisions of Title VI of the R.A. 7160 on *Property and Supply Management in the Local Government Unit* and COA Circular No. 92-386 issued on October 20, 1992 on *Prescribing Rules and Regulations on Supply and Property Management in the Local Governments*. Furthermore, all the accused in applying the outdated law and COA Circular, as shown in the forms, terms, and procedures accompanying the procurement of the liquid organic fertilizers are evident proof of their gross inexcusable negligence. Salient portions of R.A. 9184 read:

SEC. 76. Repealing Clause. - x x x This law amends Title Six, Book Two of Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991'; x x x Any other law, x x x rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Nowhere in the said law or in the IRR is it stated that there is a transition period of information and dissemination to the LGUs which would allow them to choose arbitrarily which law they would apply. Accused would also cite that at the time of the questioned transaction, the COA-Region XIII has not held its seminar in Butuan City, in fact, the seminar was held a few days *after* the procurement process or from April 27 - 29, 2004 and therefore, were still familiarizing themselves with the

²⁰¹ See *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010.

²⁰² *Plameras v. People*, G.R. No. 187268, September 4, 2013.

Handwritten signature and initials in the bottom right corner of the page.

new law and IRR. Accused cannot hide behind the cloak of ignorance of the law, as the oft-repeated legal tenet provides that ignorance of the law excuses no one from compliance therewith.²⁰³

Since R.A. 9184 and IRR-A were already in force at the time of the subject procurement, the acts of the accused shall be measured against this law and rules—not on the old provisions of R.A. 7160 nor of COA Circular No. 92-386. Under Section 12 on the role of the BAC, the law provides:

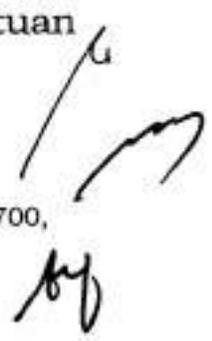
SEC. 12. Functions of the BAC. – The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, that in the event the Head of the Procuring Entity shall disapprove such recommendation such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary including the creation of a Technical working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

Despite the effectivity of R.A. 9184 and IRR-A, the BAC was not constituted, instead, all the accused public officials used the provisions under R.A. 7160 and COA Circular No. 92-386. It was only in 2004 through Execution Order No. 113, series of 2004, where the BAC was constituted by Butuan

²⁰³ Office of the Deputy Ombudsman for Luzon v. Dionisio and Molino, G.R. No. 220700, July 10, 2017 citing Article 3 of the Civil Code of the Philippines.



City.²⁰⁴ There were no Bidding Documents prepared to initiate bidding as described in Section 17 on the *Form and Contents of Bidding Documents* under R.A. 9184 which include: (a) Approved Budget for the Contract; (b) Instructions to Bidders, including the criteria for eligibility, bid evaluation and post-qualification as well as the date, time, place of the pre-bid Conference (where applicable) submission of bids and opening of bids; (c) Terms of Reference; (d) Eligibility Requirements; (e) Plans and Technical Specifications; (f) Form of Bid, Price Form, and List of Goods or Bill of Quantities; (g) Delivery Time or Completion Schedule; (h) Form and Amount of Bid Security; (i) Form and Amount of Performance Security and Warranty; and (j) Form of Contract and General and Special Conditions of Contract.

Neither was there concrete evidence that the BAC recommended to the Head of the Procuring Entity (HOPE) the use of Alternative Methods of Procurement as provided for in Article XVI²⁰⁵ before they proceeded with directly contracting with Feshan to purchase 3,333 bottle of Bio-Nature. As quoted above, the default method for procurement is through competitive or public bidding although the law and the rules admit of certain exceptions. From the allegations in the Information it is apparent that there was direct contracting without the BAC recommending to the HOPE (accused Plaza) the use of this alternative method of procurement. There was no BAC resolution or any documentation to this effect. The salient portion of Article XVI of R.A. 9184 on 'Alternative Methods of Procurement', particularly on direct contracting read:

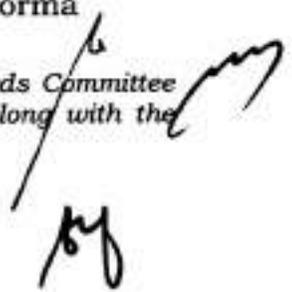
SEC. 48. Alternative Methods. - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative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

x x x

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

²⁰⁴ Exh. "4" for accused Furia; *An Order Constituting the Bids and Awards Committee (BAC), the BAC Secretariat and the BAC Technical Working Group along with the Observers for the City Government of Butuan and for Other Purposes.*

²⁰⁵ Sec. 12, R.A. 9184; Sec. 12.1 of IRR-A.



X-----X

invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.

X X X

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

This mode of procurement is further elaborated in Section 50 of the same law, which provides:

SEC. 50 Direct Contracting. – Direct Contracting may be resorted to only if any of the following conditions:

X X X

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.

To reiterate, direct contracting is an alternative method of procurement as it is still the general rule that procuring entities should adopt public bidding as the general mode of procurement, hence, there should be sufficient lead time for such public bidding. Alternative methods should only be resorted to in highly exceptional cases as provided in IRR-A,²⁰⁶ none of which are applicable in the questioned procurement.

Assuming *arguendo* that Sec. 50 on direct contracting may be resorted to, the conduct of the questioned procurement does not meet the conditions. *First*, there is no proof that the BAC met to decide on the mode of procurement other than their (accused Plaza, Satorre, Evanoso, and Calo) bare allegations, therefore it would be impossible for Plaza to consent to the type of alternative mode of procurement. *Second*, the *Certification*²⁰⁷ issued by the President of Feshan that it is an exclusive distributor of Bio-Nature Liquid Organic Fertilizer is self-serving and is not what is contemplated under the law, because the certification should have come from the manufacturer of Bio-Nature and not by the supplier. *Third*, accused Satorre could hardly justify why the fertilizer to be procured has to be Bio-Nature liquid organic fertilizer other than his testimony to the effect that it has more micronutrients and is imported, hence, can increase crop

²⁰⁶ Sec. 48.2 of IRR-A.

²⁰⁷ Exh. "AAA".

yield. But these assertions by accused Satorre was not backed up by studies, research, or actual results.

Accused Plaza, being the chief executive of the Local Government of Butuan City is charged with the responsibility of ensuring that all transactions which involve the welfare of the City are done within the bounds of law. Unfortunately, when numerous red flags in the purchase of the liquid organic fertilizer arose, she either ignored the procedures in R.A. 9184, reviewed the supporting documents haphazardly or simply signed because other City Officials signed before her.

When accused Satorre received the *Letter* ²⁰⁸ dated January 6, 2004, from a certain Julie M. Gregorio, purported President of Feshan promoting Bio-Nature, accused Satorre went out of his way to ensure that the product would be procured by the Local Government of Butuan. Together with Regional Director Rodriguez, they convinced co-accused Plaza to take advantage of the budget allocation for farm inputs at the DA and to request for financial assistance to purchase liquid organic fertilizer. Accused Plaza, representing the City Government of Butuan City entered into a *MOA*²⁰⁹ with the DA dated April 12, 2004 to implement various agricultural development programs.

Glaring proof of manifest partiality is the acceptance of 3,333 bottles of Bio-Nature on April 20, 2004, which was allegedly delivered *without* the prompting of the City Government of Butuan or any of its officials. Based on the *AIR*, ²¹⁰ the delivery of 3,333 liquid organic fertilizer was marked 'complete' by accused Evanoso and was inspected by a certain Arturo Malicay.

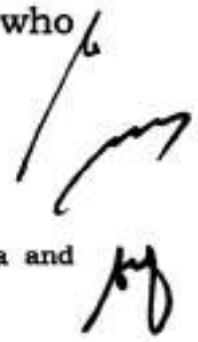
It goes beyond logic that there will be a delivery of goods directly to the City Agriculturist's Office and in the exact quantity as shown in *PR* No. 1430.²¹¹ Note however, that there was yet no *PO* at this stage which would warrant delivery of the goods considering, too, that *PR* No. 1430 was only prepared on April 14, 2004. On April 21, 2004, accused Satorre immediately notified the City Auditor of COA, who

²⁰⁸ Exh. "M" and series.

²⁰⁹ Exh. "B" for the prosecution; Exh. "6-LP" for accused Plaza.

²¹⁰ Exh. X" for the prosecution; Exh. "11" for accused Satorre, et al.

²¹¹ Exh. "O" for the prosecution; Exh. "5-LP" and Exh. "5" for accused Plaza and Satorre, et al, respectively.



X-----X

noted that the delivery was for TAS inspection.²¹² Invoice No. 5685²¹³ from Feshan was signed by accused Satorre which indicated that 3,333 bottles of Bio-Nature were purchased for the unit price of Php1,500.00 or a total of Php4,999,500.00. Accused Satorre's signature appears below the statement "Received the above items in good order & condition." There was no basis for him to accept the delivery as there was no public bidding yet conducted, hence, no PO yet (purportedly issued on April 22, 2004) which should prompt the supplier to provide the requested items.

PR No. 1430 was prepared by accused Satorre and Llagas and approved by accused Plaza. PR No. 1430, dated April 14, 2004, the brand name "Bio-Nature" is identifiable at the bottom row under the 'Item Description' column. Section 18, Article VI of R.A. 9184 on Preparation of Bidding Documents and its IRR²¹⁴ similarly provide:

SEC. 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.

Aside from indicating the brand name "Bio-Nature", it also enumerated the 19 micronutrients purportedly contained in the product. On the basis of PR No. 1430²¹⁵ the Quotation forms²¹⁶ were sent to 3 local suppliers (Pacifica Agrivet, Jeels Masagana, and Breeders Agrivet) and Feshan on April 22, 2004, to be accomplished and submitted on the same day to the Office of the City General Services until 2:30 p.m.

Contrary to the required procedures in RA 9184 and IRR-A, there was no pre-procurement conference; advertising of the Invitation to Bid (ITB); posting of the same in the Procuring Entity's premises, newspapers in general circulation, the G-EPS and the website of the Procuring Entity, if available. There was also no Pre-bid conference held.²¹⁷ These were in violation of Sections 21.2.2, 21.2.3, and 21.2.4 of IRR-A, evidently, the advertising and posting requirements were blatantly brushed aside.

²¹² Exh. "X" for the prosecution; Exh. "12" for accused Satorre, et al.

²¹³ Exh. "W".

²¹⁴ Section 18, Rule VI on the Preparation of Bidding Documents.

²¹⁵ Exh. "O" for the prosecution; Exh. "5-LP" and "5" for accused Plaza and Satorre, et al, respectively.

²¹⁶ Exh. "R", "R-1" to "R-3"; Exh. "6", "6-a" to "6-c".

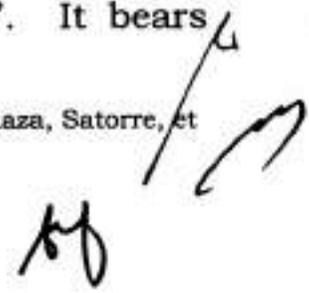
²¹⁷ Article VII on 'Invitation to Bid', Sections 20 and 21 on Pre-Procurement Conference and Advertising and Contents of the Invitation to Bid.

All the accused exhibited manifest partiality and gross inexcusable negligence in continuing with the procurement process which was highly irregular and outright illegal. When each of them signed in the *Abstract of Proposal*²¹⁸ when they knew of certain facts and circumstances which should have alerted them not to do so, are evidence of their complicity to commit acts in violation of Section 3(e) of R.A. 3019. Notably, all the signatories to this document, other than accused Plaza, are public officials who began their careers in Government, all rose from the ranks and are very familiar with the functions of their specific offices, more so, the importance of their signatures in every document that they sign. Accused Plaza, especially, as the chief executive officer of Butuan City is expected to know, abide by, and supervise the city officials to follow all procurement procedures under the current law, that is R.A. 9184, and its IRR—these functions she did not exercise in this case.

Accused Satorre and Evanoso, should not have approved the *Abstract of Proposal* because they are aware that the “bidding” or the canvass was a sham because both of them knew at the signing of the same that 3,333 bottles were already delivered to the Office of the City Agriculturist. Both of them were also aware of the farcical nature of the ‘bidding’ or canvass because the *PR* itself indicated a specific brand name “Bio-Nature”. Accused Satorre is also aware that when he prepared the *PR* which was the basis of the *Quotations*, that the brand name was indicated and that the micronutrients enumerated were particular to the said brand, ‘Bio-Nature’. Included in the letter endorsed to him on January 2004 by Feshan was a Certification that their company was the exclusive dealer of the same. Therefore, the City Government, could not have expected any of the local suppliers to have ‘Bio-Nature’ in their stores.

Accused Calo, Castro (signing for Llagas, as the Assistant City Treasurer), and Furia, cannot deny their involvement in giving favor to Feshan because their signatures warrant that there was an alleged bid or canvass among suppliers and that the winning bidder was Feshan. In the lower portion of the *Abstract of Proposal* it states that the procurement contract is “Awarded to FESHAN PHILIPPINES INC.” and that it was “APPROVED BY THE COMMITTEE ON AWARDS”. It bears

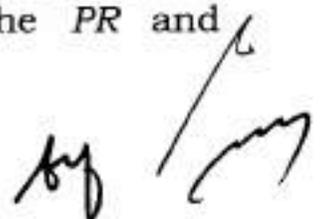
²¹⁸ Exh. “DD” for the prosecution; Exh. “11”, “14” and “4” for accused Plaza, Satorre, et al, and Furia, respectively.



reiterating, that by reason of gross inexcusable negligence, the signatories continued to act as a "Committee on Awards" and not the BAC as mandated by R.A. 9184 and its IRR. More importantly, as previous members of the Committee on Awards, accused Satorre, Evanoso, Calo, Llagas, Furia, and Plaza are cognizant of the importance of the process of public bidding and the decision of the Committee would set into motion the preparation of the *PO*, the *DV*, and release checks for the payment of goods.

Even accused Galbo cannot exculpate herself by stating that she simply certified "that the above summary of information of bids proposal are true and correct." She is not new to the procurement process and it was obvious from the *PR* as well as the *Quotations* that there was an outright violation of Section 18 of R.A. 9182 regarding the non-indication of brand names. Also, the document was supposed to be for participating bidders, when there was no such bidding which occurred. There is nothing on record which would show that any of the signatories were alerted by the blatant violations of the procurement law: (1) that there was no public bidding held and (2) that there was a specific brand name in the *PR* and quotations. Despite these red flags which were obvious on the face of the supporting documents for the *Abstract of Proposal*, all the accused, with gross inexcusable negligence and manifest partiality in favor of Feshan simply signed off on the same. Accused Plaza cannot use as a defense that since all the other City Officials and members of the Committee on Awards, it was matter of course that she would sign the same. When there are glaring violations of the law, prudence and circumspection would demand that she look into the transaction more closely, the people involved, and the circumstances surrounding the same. In this case, accused perfunctorily signed the *Abstract of Proposal*. Unfortunately, the same can be said for accused Galbo, Calo, Castro, and Furia.

In the normal course of the procurement process, *after* the *Abstract of Proposal*, it becomes the basis for the issuance of the *PO*. However, in this case, *PO 714* was dated on April 22, 2004, signed by accused Plaza with the *conforme* of accused Lapidez signed on the same day. The *PO* indicated purchase of 3,333 bottles of Bio-Nature, but this time only indicating three (3) micronutrients (Nitrogen, Phosphorous, and Potassium) which is inconsistent with the *PR* and

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Lapidez', written in the bottom right corner of the page.

Quotation forms which had 19 micronutrients enumerated therein. It becomes more apparent that the accused wanted to favor a single supplier, Feshan, by making it impossible for other suppliers to provide quotations, only to issue a *PO* with fewer micronutrient requirements. Not only is this a showing of manifest partiality, it was done in bad faith. Important to highlight is that accused Plaza executed the *PO* without a basis—the *Abstract of Proposal*. Stamped on the face of the *Abstract of Proposal* was that the Office of the City Mayor only received the document on April 26, 2004. Therefore, it becomes plain that the procurement process is obviously being railroaded for the benefit of Feshan and to the damage and prejudice of the City of Butuan.

True enough, on the basis of the *PO*, DV No. 253 dated April 21/22, 2004 and DV No. 356 dated May 13/31, 2004 were issued. In these documents, accused Satorre certified that “[e]xpenses/cash advances necessary lawful and incurred under my direct supervision.”; accused Calo attested to the “[c]ompleteness and propriety of supporting documents x x x”; accused Llagas certified that there was “cash available”; and approved by accused Plaza as City Mayor. The *PR*, canvass, *Abstract of Proposal*, *PO* were all accomplished in a single day or on April 22, 2004. It did not alert any of the signatories to the DVs that something was amiss. The procurement contract totaled Php4,999,500.00 and all the accused-signatories signed the same with no qualms, hesitation, or objection. Accused Lapidez was even able to issue *O.R.* No. 3026²¹⁹ for the first tranche on April 23, 2004 and for the second tranche, *O.R.* No. 3048²²⁰ dated May 3, 2004. *DV* 356 was dated May 13, 2004/ May 31, 2004 but the *O.R.* was issued much earlier or on May 3, 2004. *DV* 356 even indicated that Lapidez received payment through *O.R.* No. 3048 dated “6/3/2004” which contradicts the entry in Feshan’s receipt.

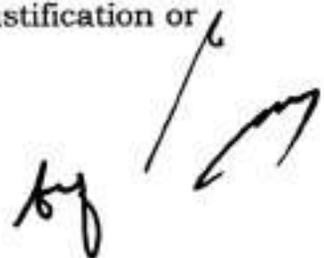
For the third element, that an action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions was also met. In *Alvarez v. People*²²¹, these key phrases were explained, thus:

The word unwarranted means lacking adequate or official support; unjustified; unauthorized or without justification or

²¹⁹ Exh. “T”.

²²⁰ Exh. “FF”

²²¹ G.R. No. 192591, June 29, 2011

Handwritten signature and initials in black ink, located in the bottom right corner of the page.

X-----X

adequate reason. Advantage means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. Preference signifies priority or higher evaluation or desirability; choice or estimation above another.

Clearly, to award and pay for goods which did not undergo public bidding, deprived the City of Butuan from entertaining suppliers which could have provided the fertilizer at a lower price. From the above discussion on the second element, it is obvious that because of the manifest partiality shown by the all the accused towards Feshan, the supplier was able to receive payment within the same day it was "awarded" the contract. Advantage was likewise evident when accused Satorre, with the approval of accused Plaza ensured that only Feshan could provide the liquid organic fertilizer when it indicated the brand name and all 19 micronutrients purportedly attributed to Bio-Nature in the *PR* and *Quotation* forms given to the local suppliers but in the *PO*, only three (3) micronutrients were listed as a requisite for delivery of the liquid organic fertilizer.

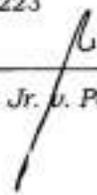
The most evident showing of giving unwarranted benefits, advantage or preference to Feshan is the outright violation of the provisions of RA 9184 and its IRR and making it appear as a valid procurement via the old provisions relating to property and supply management in LGUs under R.A. 7160 on the Procurement from Exclusive Philippine Agents or Distributors under Section 371. However, as earlier discussed, R.A. 9184 governs all types of government procurement, and under certain conditions, Direct Contracting. In this case, the BAC failed to justify why this alternative mode of procurement was implemented and not the general rule on public or competitive bidding.

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement to commit a felony and actually decide to commit it, there must be a common design to commit the same, being a joint offense.²²² Direct proof of the agreement of the parties is not even necessary as the concurrence of willing and common intent to commit the crime can be inferred from their actions.²²³

²²² *Typoco, Jr. v. People*, G.R. Nos. 221857 and 222020, August 16, 2017.

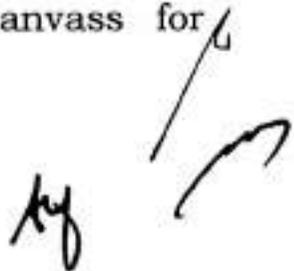
²²³ *Id.*



In *Alvizo v. Sandiganbayan*,²²⁴ the Supreme Court said:

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

From the foregoing facts, the inevitable conclusion is that the accused, through their individual and concerted actions (or inactions) resulted to giving Feshan unwarranted benefits, advantage or preference through accused's manifest partiality, bad faith, or gross inexcusable negligence. Accused Plaza was in direct supervision of the entire procurement process, starting from the request with the DA, through the prodding of co-accused Satorre, to purchase liquid organic fertilizer down to the approval of the checks to be disbursed to accused Lapidez of Feshan. Accused Satorre, as City Agriculturist, advised accused Plaza to purchase in particular, 'Bio-Nature' Liquid Organic Fertilizer based on his reading of the promotional materials provided by Feshan. In cahoots was accused Evanoso who, together with Satorre, accepted the 3,333 bottles of Bio-Nature on April 20, 2004, when there was no PO which would warrant its acceptance. It was the Office headed by accused Evanoso which did the canvass for



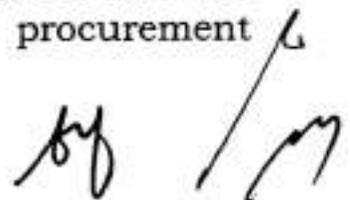
quotations, when he knew full well it was for show since the products sought to be bought were already delivered.

The signatories to the *Abstract of Proposal*, accused Galbo, Satorre, Evanoso, Castro, and Calo signed the same acting as a Committee on Awards, when R.A. 9184 was already in force. Also, despite the fact that there was no request from and approval from the HOPE (accused Plaza) that the alternative mode of procurement (direct contracting) will be used, they still agreed to award the contract to Feshan. All the signatories have seen the supporting documents such as the *PR* and *Quotations*, which on its face, were in violation of R.A. 9184 (inclusion of brand name, did not follow public bidding rules). Without their concerted acts to award the contract to Feshan, the purchase of the overpriced fertilizers would not have taken place. Accused Galbo, knowing that there was no public bidding, and seeing the *PR* and *Quotations* should have signalled defects in the procurement process, her act of still certifying the information on the results of the canvass were correct is still essential towards committing a violation of Section 3(e) of R.A. 3019, since her certification indicates to the Committee on Awards that these were the actual results gathered from a valid canvass.

The *PO* was issued before the routing of/finalization of the *Abstract of Proposal*, as such, it shows that accused Plaza was dead set on sealing the deal with Feshan, through accused Lapidez, even without the results of the canvass and the approval of the BAC. Without question, accused Plaza approved the *DVs* prepared by accused Satorre, seeing that the signatures of co-accused Satorre, Calo, and Llagas' were already in the said document.

The seamless transactions from the alleged preparation of the *PR* on April 14, 2004 to the issuance of checks for the fertilizer and acceptance by Feshan of the payments on April 22, 2004 and May 3, 2004, and the attendant participation of each of the accused to railroad the purchase of Bio-Nature leads this Court to deduce that there is an existence of conspiracy in the present case to commit the violation of Section 3(c) of R.A. 3019.

Had all the accused judiciously exercised their discretion in reviewing the supporting documents and inquired into the circumstances relating to the questioned procurement



process/transaction, the City Government of Butuan would not have suffered undue injury in the amount of Php4,865,413.65.

SB-16-CRM-0265

From the foregoing documentary and testimonial evidence, the Court finds the accused Plaza guilty of the charges against her for violation of Section 3(g) of R.A. 3019, as amended.

All the elements of the offense charged are present.

Under Section 3(g) of R.A. 3019, as amended, the law provides:

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

x x x

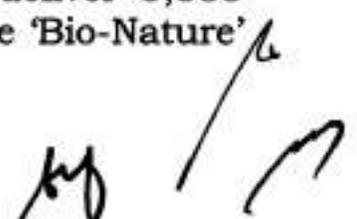
g. Entering on behalf of the Government, into any contract or transaction manifestly or grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

To sustain a conviction under Section 3(g) of R.A. 3019, the following requisites must be met: (1) the accused is a public officer; (2) the public officer entered into a contract or transaction on behalf of the government; and (3) the contract or transaction was grossly and manifestly disadvantageous to the government.²²⁵

For the first element, it is undisputed that accused Plaza, at the time material to the information relating to Section 3(g) of R.A. 3019, she was the City Mayor of Butuan City, Agusan Del Norte.

As regards the second element, that the public officer entered into a contract or transaction on behalf of the government is also present. Considering that the procurement contract was awarded to Feshan, PO 714 dated April 22, 2004 was issued to supplier Feshan requiring it to deliver 3,333 bottle of liquid organic fertilizer, with brand name 'Bio-Nature'

²²⁵ *Nava v. Hon. Palattao*, G.R. No. 160211, August 28, 2006.



in the amount of Php1,500.00 per bottle for a total of Php4,999,500.00. The PO was signed by accused Plaza and co-accused Lapidez for Feshan also on April 22, 2004.

The third element, wherein the transaction was grossly and manifestly disadvantageous to the government is also attendant in this case. In the *Notice of Disallowances*²²⁶ prepared by the COA-RLAO under Regional Cluster Director Atty. Legaspi is very telling. The facts/reasons for the disallowance are quoted herein below:

The procurement was undertaken without public bidding in violation of RA 9184., that requires under Section 21.2.1 of its IRR that the Invitation to Bid be advertised in a newspaper of general nationwide circulation, posted continuously in the Agency website, if available and the G-EPS, and at any conspicuous place in the premises of the procuring entity. Moreover, Section 18 of RA 9184 states that specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirement. Reference to brand names shall not be allowed. The certification of Sole Importer and Distributor of BIO NATURE Organic liquid fertilizer did not exempt the subject purchase to public bidding.

As per Inspection conducted by COA-RTSO, there was an overpricing in the purchase of 3,333 liters organic fertilizers based on the canvass conducted by the DA-RFU XIII. Furthermore, the laboratory test/analysis conducted by the DA-FRU 13 showed that the purchased organic fertilizers contained only three (3) elements and have lower nutrient percentage as compared to the fertilizers locally available with minimal cost.

Per Procurement:	
(3,333 liters x P1,500)	4,999,500.00
Per Canvass:	
(3,333 liters x P125)	<u>458,287.50</u>
Variance/Disallowance	4,541,212.50

(after considering the 10% tolerable allowance). [*Emphasis supplied.*]

As testified to by Atty. Legaspi, the City Government filed a *Motion for Reconsideration* which was denied in *COA Decision No. 2005-029*. The salient portions of the said decision are hereto quoted:

²²⁶ Exh. "AA".

Handwritten signature and initials in black ink, appearing to be 'L' and 'by'.

Under RA 9184, the responsibility to ensure that the provisions of RA 9184 are complied rests with the BAC. By virtue of the direct and indispensable participation of the movants as members of the BAC in the subject transaction, we maintain our findings that they are liable of the overpriced amount.

Considering that there were receipted payment of business taxes, we hereby reduce the amount of audit disallowance and re-compute it as follows:

Purchase Price (3,333 liters x P1,500)	P 4,999,500.00
Less: Price per canvass with 10% tolerable	
Allowance (3,333 liters x P125) x 110%	458,287.50
Tax withheld	<u>37,496.25</u>
 Adjusted Audit Disallowance	 P 4,503,716.25 =====

The City Government filed an appeal with the COA-LAO. The COA-LAO affirmed with modification *COA Decision No. 2005-029* dated November 29, 2005 in its *Decision*,²²⁷ promulgated on August 1, 2007. The discussion on the overpricing in the purchase of Bio-Nature based on the investigation by the CAO-RLAO, Region XIII highlights the discrepancy in prices of liquid fertilizers in the locality and Bio-Nature, to wit:

The delivery was referred by the Audit Team Leader (ATL), City of Butuan, to the COA Regional Technical Service Office, (RTSO) on April 21, 2004. The RTSO Inspector through DA-Regional Field Unit (RFU) Region XIII conducted a local canvass at the Breeders Agrivet, Butuan City on May 5, 2004 which submitted its liquid organic fertilizers brand Restorer and Megayield of similar application with that delivered by FPI, but with higher nutrient content at their respective prices at P120.00 and P125.00 per liter only. Comparison of the prices obtained from Breeders Agrivet against FPI suppliers shows, to wit:

Brand/ Fertilizer/ Nutrients:	Contents	Price/ Liter	Price at 3,333 liters
1. Breeders Agrivet:			
-Restorer liquid organic:		P120.00	P399,960.00
Nitrogen	14.64%		
Phosphorus	2.51%		
Potassium	10.05%		
-Megayield Brand:		P125.00	P416,625.00
Nitrogen	4.00%		
Phosphorous	7.00%		
Potassium	10.00%		

²²⁷ Exh. "BBB".

x-----x

2. FPI:			
-Bio Nature		P1,500.00	P4,999,500.00
Nitrogen	2.00%		
Phosphorous	1.00%		
Potassium	1.00%		

Consequently, an evaluation report dated May 17, 2004 was prepared by the RTSO, concluding that based on the said information the deliveries made by FPI to the LGU-Butuan City is overpriced or has a deficiency amounting to P4,582,875.00.

x x x

With no appeal for the LAO-Local *Decision*, the COA-LAO issued a *Notice of Finality of Decision* dated December 28, 2011. The COA-LAO issued *COA Order of Execution* dated January 4, 2012.

The COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to the government.²²⁸ It has the exclusive authority to define the scope of its audit and examination and to establish the required techniques and methods.²²⁹

Thus, COA's findings are accorded not only respect but also finality, when they are not tainted with grave abuse of discretion.²³⁰ Only upon a clear showing of grave abuse of discretion may the courts set aside decisions of government agencies entrusted with the regulation of activities coming under their special technical knowledge and training.²³¹

In this case, the prosecution presented the *Memorandum*²³² from the RTSO dated May 17, 2004 regarding its evaluation that there were available liquid organic fertilizers in the locality, though of a different brand, with a similar application. The report also stated that the percentage of nutrient content is much higher than the one delivered to the LGU since a canvass through DA-Region XIII revealed that the prevailing liquid organic fertilizer prices range from Php120.00 to Php125.00 per liter, which is lower than the quoted price

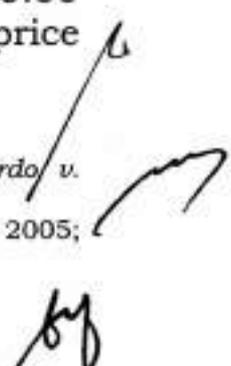
²²⁸ Constitution, Art. IX-D, Sec. 2(1).

²²⁹ Constitution, Art. IX-D, Sec. 2(2).

²³⁰ *Nava v. Hon. Palattao*, G.R. No. 160211, August 28, 2006, citing *Cuerdo v. Commission on Audit*, 166 SCRA 657, October 27, 1988.

²³¹ *Id.*, citing *Villanueva v. Commission on Audit*, 453 SCRA 782, March 18, 2005; *Olaquer v. Domingo*, 359 SCRA 78, June 20, 2001.

²³² Exh. "RR".



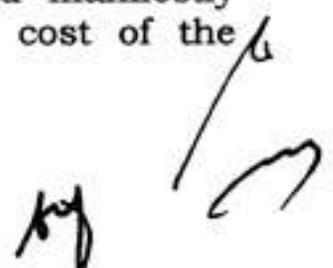
for Bio-Nature, pegged at Php1,500.00 per one-liter bottle. The purchase was clearly overpriced by around 1000%. In the *Cost Evaluation of the Procurement*²³³ the RTSO observed a variance of Php4,582,875.00 between the price of Bio-Nature and Megayield for 3,333 liters of liquid organic fertilizer.

There is no evidence to support the Committee on Awards' decision to immediately resort to direct contracting, given that there were other suitable substitutes for fertilizer. Accused Satorre could not provide a reasonable justification why it has to be 'Bio-Nature' liquid organic fertilizer that needed to be purchased, other than his bare allegation that because of the existence of micronutrients other than the usual Nitrogen, Phosphorous, and Potassium common to all types of fertilizer, Bio-nature would better condition the soil and increase crop yield. Accused Satorre and Plaza would harp on the clamor of the farmers for fertilizers but nary was there proof that there was a need for *that* particular type of fertilizer and/or brand which would require direct contracting. Accused Plaza attested that the farmers who received the same were happy with the fertilizers given to them for free, however, even the list of the farmer-recipients was not offered in evidence. As to the purported higher yield, accused Satorre and Plaza would mention that Butuan City won the *Ginintuang Masaganang Ani* Award for the increase in crop yield—no evidence on this allegation was presented either.

Accused Plaza knew from the start that there was already a preference towards the acquisition of Bio-Nature liquid organic fertilizer when the City Agriculturist, co-accused Satorre, introduced this product to her. Even if she trusted the City Agriculturist's expertise on the matter of fertilizers, she also had the responsibility to ensure that there is an actual need for the procurement, that the most current and applicable law, R.A. 9184, on government procurement will be implemented, and that the purchase or expenditure should not be excessive, taking into consideration the price, volume, supply and demand forces in the market, government price quotations, and warranty of products, and in exceptional cases, even the brand of products.²³⁴ As belied by the facts and previous discussions, accused Plaza still entered into a contract or transaction which was grossly and manifestly disadvantageous to the City Government, the cost of the

²³³ Exh. "SS".

²³⁴ COA Circular No. 85-55-A dated September 8, 1985.

Handwritten signature and initials in the bottom right corner of the page.

fertilizer being overpriced by at least 1000% compared to fertilizers available in the locality, and should therefore be held accountable for the same.

The Proper Penalty

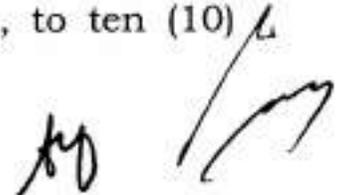
On the appropriate penalty, a person guilty of violating Section 3 (e) of R.A. No. 3019, as amended, is punishable with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years and perpetual disqualification from public office.

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

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

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

1. In **Criminal Case No. SB-16-CRM-0264**, accused **Leonides Theresa B. Plaza, Salvador L. Satorre, Arthur Castro, Rodolfo B. Evanoso, Bebiano B. Calo, Danilo C. Furia, Melita Loida T. Galbo** are found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 3(e) of R.A. 3019, as amended. Accordingly, they are each hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.
2. In **Criminal Case No. SB-16-CRM-0265**, accused **Leonidas Theresa B. Plaza** is found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 3(e) of R.A. 3019, as amended. Accordingly, she is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10)

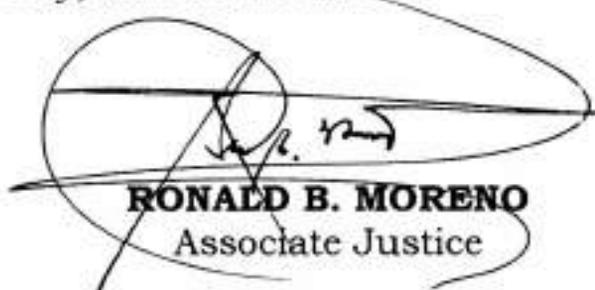


years, as maximum, and to suffer perpetual disqualification from holding public office. Further, that she pay the City Government of Butuan the amount of **Four Million, Five Hundred Three Thousand, Seven Hundred Sixteen and 25/100 Pesos (Php4,503,716.25)**.

Since the Court has not acquired jurisdiction over the person of accused **Lucio Lapidez** because he remains at-large, the case against him is hereby ordered archived, the same to be revived upon his arrest. Let an *alias* warrant of arrest be issued against the said accused.

SO ORDERED.

Quezon City, Metro Manila.



RONALD B. MORENO
Associate Justice

WE CONCUR:



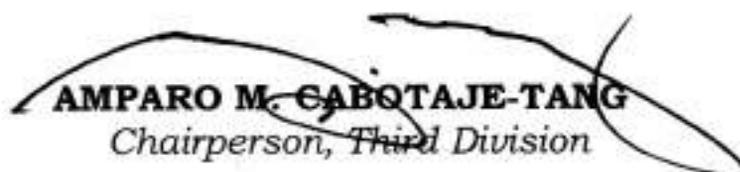
AMPARO M. CABOTAJE-TANG
Presiding Justice, Chairperson



BERNELITO R. FERNANDEZ
Associate Justice

ATTESTATION

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



AMPARO M. CABOTAJE-TANG
Chairperson, Third Division

CERTIFICATION

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


AMPARO M. CABATAJE-TANG
Presiding Justice

ky