



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0317
For: Violation of Sec. 3(e) of
R.A. 3019

- versus -

GEMMA FLORANTE ADANA,
ET AL.,

Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

July 31, 2019 *[Signature]*

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DECISION

VIVERO, J.

For decision is the charge for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019)¹ or the *Anti-Graft and Corrupt Practices Act*, as amended, against accused **Gemma Florante Adana (Adana)**, then Municipal Mayor and Head of Procuring Entity, **Roland Cuenca Grijalvo (Grijalvo)**, then Municipal Engineer and Bids and Awards Committee (BAC) Chairman, **Felix Abelano Timsan (Timsan)**, then Municipal Civil Registrar and BAC member, **Emmanuel Fortuno Enteria (Enteria)**, then Human Resource

¹ Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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

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Management Officer IV and BAC member, and **Jonathan Kee Cartagena (Cartagena)**, then Local Revenue Collection Clerk I and BAC Member, all of the Municipality of Naga, Zamboanga Sibugay, for procuring, in behalf of the municipality, five heavy equipment from CVCK Trading through its General Manager **Jose Ely H. Solivar (Solivar)** in the amount of Eight Million Eight Hundred Thousand Pesos (PhP8,800,000.00), without complying with the provisions of Republic Act No. 9184 (R.A. No. 9184) or the Government Procurement Reform Act and its implementing rules and regulations.

The instant case arose from the *Joint Complaint-Affidavit* dated 23 June 2009² for violation of Section 3(e) of R.A. No. 3019, Falsification and Malversation filed before the Office of the Ombudsman on 01 July 2009 against Adana, Grijalvo, Timsan, Enteria, Cartagena, and Solivar together with other respondents for the alleged irregularities in the purchase of the heavy equipment from CVCK Trading.

In its Resolution dated 07 August 2015,³ the Office of the Ombudsman found probable cause to indict Adana, Grijalvo, Timsan, Enteria, and Cartagena for violation of Section 3(e) of R.A. No. 3019 but dismissed the charges against the other respondents. The charges for Falsification and Malversation of Public Funds were likewise dismissed for lack of merit. In its Order dated 21 October 2015,⁴ the same office denied the three Motions for Reconsideration separately filed by the respondents and affirmed its earlier Resolution with modification that Solivar be included in the Information.

Information

The accusatory portion of the Information dated 03 May 2016⁵ filed with this Court on 24 May 2016 reads:

“That from August 22, 2007 to January 9, 2008, or sometime prior or subsequent thereto in the Municipality of Naga, Zamboanga Sibugay, Philippines, and within the jurisdiction of this Honorable Court, accused public officers **GEMMA FLORANTE ADANA**, then Municipal Mayor and Head of Procuring Entity, **ROLAND CUENCA GRIJALVO**, then Municipal Engineer and Bids and Awards Committee (BAC) Chairman, **FELIX ABELANO TIMSAN**, then Municipal Civil Registrar and BAC member, **EMMANUEL FORTUNO ENTERIA**, then Human Resource Management Officer

² Rollo, Vol. 1, pp. 26-49.

³ Id. at pp. 7-17.

⁴ Id. at pp. 18-25.

⁵ Id. at pp. 1-4.

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IV and BAC member, and **JONATHAN KEE CARTAGENA**, then Local Revenue Collection Clerk I and BAC Member, all of the Municipality of Naga, Zamboanga Sibugay, while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, acting with evident bad faith, manifest partiality or gross inexcusable negligence, and conspiring and confederating with each other and with accused private individual **JOSE ELY H. SOLIVAR**, General Manager of CVCK Trading, did then and there wilfully, unlawfully and criminally purchase from CVCK Trading five heavy equipment- one Road Grader, one Payloader, one Road Roller and two Dump Trucks- in the total amount of Eight Million Eight Hundred Thousand Pesos (Php8,800,000.00), without complying with the Government Procurement Reform Act (RA 9184) and its implementing rules and regulations, in that, (1) the Invitation to Apply for Eligibility and to Bid (IAEB) for the subject procurement was not published in the PhilGEPS website; (2) the IAEB did not contain an Approved Budget for the Contract; (3) the Notice of Award to CVCK Trading was issued before the approval of the BAC resolution declaring CVCK Trading as the bidder with the lowest calculated responsive bid; (4) No formal contract was executed between the Municipality and CVCK Trading for said procurement; (5) the specifications of the Road Grader and Road Roller which were offered by CVCK Trading and accepted by accused Adana were modified by the accused after the Notice of Award was issued to the said supplier, despite the fact that such change was not among the aspects of the contract allowed under the procurement law and its rules and regulations to be changed; and (6) no public bidding was conducted with respect to Road Grader and Road Roller after their specifications were changed, thereby giving unwarranted benefit, advantage and preference to CVCK Trading and causing undue injury to the government.

CONTRARY TO LAW."

Proceedings before the Sandiganbayan

On 27 May 2016, this Court found the existence of probable cause and consequently ordered the issuance of warrants of arrest against the accused.⁶ On even date, a Hold Departure Order was issued against them.⁷ All of the accused, except Solivar, voluntarily surrendered and each posted cash bonds for their provisional liberty.⁸ Accused Solivar remained at-large.

On 11 October 2016, accused Grijalvo, Timsan, Enteria and Cartagena (Grijalvo, et al.) filed a Motion to Quash dated 04 October,

⁶ *Id.* at p. 100.

⁷ *Id.* at pp. 98-99.

⁸ *Id.* at p. 128.

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2016,⁹ which was later on adopted by accused Adana in her Manifestation dated 02 November 2016.¹⁰ In its 29 November 2016 Resolution,¹¹ this Court dismissed the said Motion for lack of merit.

Upon their arraignment on 26 January 2017, all the accused refused to enter their plea, thus, a plea of not guilty was entered by this Court in their behalf.¹²

Acting on the Motion to Suspend the Accused *Pendente Lite* dated 27 January 2017 filed by the prosecution, the Court, in its Resolution dated 29 March 2017,¹³ preventively suspended the accused public officers for a period of ninety (90) days, unless the case is sooner terminated.

During the pre-trial, the parties admitted and stipulated on the following:¹⁴

1. At the time material to the allegations in the Information, accused are holding public offices in the Municipality of Naga, Zamboanga Sibugay;
2. On 23 July 2007, the *Sangguniang Bayan* (SB) of the Municipality of Naga passed Resolution No. 14, Series of 2007, authorizing accused Adana, then Municipal Mayor, to enter into a Memorandum of Agreement with the Land Bank of the Philippines (LBP) for loan accommodation of PhP8,800,000.00 for the purchase of heavy equipment;
3. The money loaned from LBP was used in purchasing five (5) heavy equipment – one road grader, one payloader, road roller and two dump trucks;
4. The Municipality of Naga, through accused-BAC members and with the approval of accused Adana, purchased from CVCK Trading the aforesaid 5 heavy equipment;
5. The Invitation to Apply for Eligibility and to Bid (IAEB) was published in the Malaya newspaper on 22 August 2007;

⁹ *Id.* at pp. 187-205.

¹⁰ *Id.* at pp. 256-260.

¹¹ *Id.* at pp. 268-274.

¹² *Id.* at pp. 291-292.

¹³ *Id.* at pp. 334-337.

¹⁴ *Id.* at pp. 428-431.

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6. The existence and authenticity of the Affidavit of Publication dated 22 August 2007 executed by Luzviminda Bugaosin, Advertising Supervisor of Malaya;
7. That the description of the equipment subject of the IAEB contains the following:

" X X X

Name of the Project: Acquisition of Heavy Equipments

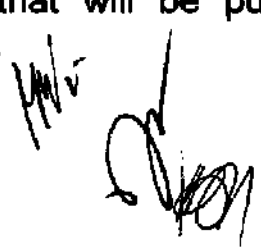
Location: Naga, Zamboanga Sibugay

Brief Description: Reconditioned Heavy Equipments:

- a. One (1) Road Grader
- b. One (1) Backhoe/Excavator
- c. One (1) unit Road Roller with Steering Wheel
- d. Two (2) units 6 Wheelers Dump Truck (Isuzu)

X X X."

8. The IAEB for the procurement of the heavy equipment was not published in the Philippine Government Electronic Procurement System (PhilGEPS) website, with the qualification from the accused that at the time of the publication, there was no available internet provider in the municipality;
9. As contained in the IAEB, the Approved Budget for the Contract (ABC) is to be disclosed during the opening of the bids;
10. The Notice of Award to CVCK Trading was issued by accused Adana on 12 October 2007 and conformed to by accused Jose Ely Salazar (sic) on 15 October 2007;
11. BAC Resolution No. 01-07 declaring CVCK Trading as the bidder with the Lowest Calculated Responsive Bid (LCRB) was issued by the accused BAC members on 08 October 2007 and approved by accused Adana on 16 October 2007; and
12. BAC Resolution No. 01-08 amending the specifications of the heavy equipment particularly the road roller and the road grader that will be purchased was issued on 09 January 2008.



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The parties agreed that the issue for resolution by the Court is whether or not the accused are guilty of violating Section 3(e) of R.A. No. 3019.¹⁵

Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The prosecution presented Virgilio C. Tiare¹⁶ and Gerardo B. Agpaoa¹⁷ as its witnesses.

a) *Virgilio C. Tiare*

In his *Judicial Affidavit* dated 14 July 2017,¹⁸ the witness stated that in the years 2007 to 2008, he was the Municipal Planning and Development Coordinator and at the same time the Head of the BAC Secretariat of the Municipality of Naga.¹⁹ The witness stated that technical specifications should be indicated in the IAEB so the bidders will be appraised of what is being procured, but in the case of the procurement of the 5 heavy equipment, there was no indication in the IAEB.²⁰ He added that the ABC was also not indicated in the IAEB and what was provided is that the ABC will be disclosed during the opening of bids.²¹

Mr. Tiare stated that the ABC that was disclosed during the opening of the bids on 08 October 2007 is PhP8,800,000.00, which is equivalent to the amount of money loaned from LBP.²² He added that three bidders participated but it was CVCK Trading that had the LCRB with a bid offer of PhP8,800,000.00.²³

Mr. Tiare declared that an inspectorate team was created to inspect the heavy equipment as a pre-condition before the delivery of the equipment, but this inspectorate team is separate and distinct from the Technical Working Group.²⁴ The inspectorate team reported that there are equipment of the same type but of superior capacity and performance than those previously offered by CVCK Trading.²⁵

¹⁵ *Id.* at p. 431.

¹⁶ Transcript Stenographic Notes (TSN) dated 23 August 2017 and TSN dated 25 September 2007.

¹⁷ TSN dated 20 November 2017.

¹⁸ *Rollo*, Vol. I, pp. 369-382.

¹⁹ *Id.* at p. 369.

²⁰ *Id.* at p. 370.

²¹ *Ibid.*

²² *Id.* at p. 371.

²³ *Ibid.*

²⁴ *Id.* at p. 372.

²⁵ *Id.* at p. 373.

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The witness testified that the BAC met for the purpose of amending the specifications of the heavy equipment particularly the road roller and road grader because they were informed by accused Grijalvo that the LBP will not release the payment for the delivered equipment since the specifications are different with the ones that were bidden.²⁶

The witness further narrated that the BAC issued Resolution No. 01-08 dated 09 January 2008 amending the specifications of the road roller and road grader.²⁷ No rebidding was conducted according to the witness.²⁸

He identified the following documents:

- a. IAEB published in Malaya Newspaper (Exhibit "B");
- b. Resolution No. 01-07 (Exhibit "D"); and
- c. Resolution No. 01-08 (Exhibit "F").

On cross-examination, the witness testified that it was the BAC Chairman who prepared the IAEB and he was only informed about it after it was published in the Malaya newspaper.²⁹ He confirmed that there was no internet provider in the Municipality of Naga at that time.³⁰ It was allegedly the BAC Chairman who prepared the Notice of Award.³¹

Mr. Tiare declared that the BAC did not conduct pre-bid and pre-qualification conference.³² He stated that the description in the IAEB should be generic but in this case there was a brand name i.e. Isuzu.³³ He admitted though that he did not call the attention of the BAC Chairman about the insufficient description.³⁴

He stated that the BAC conducted a post-qualification sometime in November 2007 in Manila.³⁵ He added that the inspection team that was commissioned to go to Manila to inspect the items was composed of accused BAC Chairman Grijalvo, BAC

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.* at p. 374.

²⁹ TSN dated 23 August 2017, p. 11.

³⁰ *Id.* at p. 11.

³¹ *Id.* at p. 13.

³² *Id.* at p. 16.

³³ *Id.* at pp. 21-22.

³⁴ *Id.* at p. 34.

³⁵ *Id.* at p. 27.

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Member Samuel Gaelon, SB Member Rodolfo Lumanog, and SB Member Ronnie Sandagon.³⁶

He acknowledged that the purpose of the resolution containing the new specifications was not to re-bid but to accommodate the request of the LBP and to approve the recommendation of the Inspectorate Team.³⁷

On re-direct, the witness read on record the persons present during the opening of the bids as indicated in the BAC Attendance Sheet, to wit:³⁸

- a. Mr. Pedro G. Sodusta, NGO-LOGCCO,
- b. Rolando C. Grijalvo, BAC Chairman,
- c. Emmanuel F. Enteria, BAC Member,
- d. Felix A. Timsan, BAC Member,
- e. Samuel B. Gaelon, BAC Member,
- f. Jonathan Kee Cartagena, BAC Member,
- g. Vicente T. Francisco, Noble Equipment Agent, Inc. representative,
- h. Jose Ely H. Solivar, CVCK Trading,
- i. Sergio C. Olivar, CVCK Trading,
- j. Gilbert L. Ligamon, Technical Working Group (TWG),
- k. Ernesto Yu, TWG,
- l. Virgilio C. Tiare, BAC Secretariat,
- m. Rodolfo S. Lumamog, SB Member,
- n. Gerardo B. Agpawa, Land Bank representative, and
- o. Alsad U. Jana, SB Member.

He stated that the one who announced the ABC was accused BAC Chairman Grijalvo.³⁹ The witness clarified that the post-qualification should have been done after the opening of the bids by the BAC-TWG, and after that, the resolution declaring the responsive bidder will be issued and then the Notice of Award will be issued.⁴⁰ The witness backpedaled and stated that in this case no post-qualification was conducted.⁴¹ He withdrew his earlier statement that there was a post-qualification and explained that he was just confused at that time and thought that the team sent to Manila was part of the TWG but rather it was only the Inspectorate Team.⁴²

³⁶ *Id.* at p. 28.

³⁷ *Id.* at p. 34.

³⁸ TSN dated 25 September 2017, pp. 12-13.

³⁹ *Id.* at p. 13.

⁴⁰ *Id.* at p. 14.

⁴¹ *Ibid.*

⁴² *Id.* at p. 15.

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He further identified the following documents:

- a. BAC Attendance Sheet (Exhibit "S"); and
- b. Memorandum dated 11 October 2007 from the Office of the Municipal Mayor (Exhibit "T");

The witness further clarified that what was being amended by Resolution No. 01-08 is not the specifications but actually the units that was delivered.⁴³

On re-cross examination, Mr. Tiare stated that there should be a brief description in the publication of what should be procured in the IAEB.⁴⁴ He reiterated that the Inspectorate Team was not part of the post-qualification process.⁴⁵

b) Gerardo B. Agpaoa

In his *Judicial Affidavit* dated 10 November 2017,⁴⁶ the witness stated that he has been an employee of LBP since June 1993 to present.⁴⁷ In 2007, he was the account officer designated to handle the account of the Local Government Unit (LGU) of Naga.⁴⁸ He identified the Loan Agreement dated 13 November 2007 (Exhibit "S") and the Certification of the BAC dated 16 November 2007 (Exhibit "T").⁴⁹ He stated that among the documents submitted to him, there was no contract between the LGU of Naga and the supplier, CVCK Trading.⁵⁰

On cross-examination, the witness testified that he represented the LBP in the bidding conference as an observer.⁵¹ He added that the road roller and road grader were among those equipment that were utilized as security for the payment of the loan.⁵² He confirmed that there is a required inspection of the units subject of the chattel mortgage before it will be approved by the bank and he could not recall if there were any adverse findings with respect to the condition of the units.⁵³

⁴³ *Id.* at p. 18.

⁴⁴ *Id.* at p. 40.

⁴⁵ *Id.* at pp. 42-43.

⁴⁶ *Rolló*, Vol. I, pp. 445-450.

⁴⁷ *Id.* at p. 445.

⁴⁸ *Id.* at p. 446.

⁴⁹ *Id.* at p. 447.

⁵⁰ *Id.* at p. 448.

⁵¹ TSN dated 20 November 2017, p. 12.

⁵² *Id.* at p. 25.

⁵³ *Id.* at pp. 25-26.

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The testimony of prosecution witness Wenniever R. Rocamora, incumbent Municipal Accountant of Naga was dispensed with in view of the stipulations of the parties on his testimony to the effect that:⁵⁴

- a. The existence and due execution of the judicial affidavit executed by the witness;
- b. That he will confirm the statements made in the judicial affidavit;
- c. The authenticity and due execution of the inventory of plants and equipment of the Municipality of Naga as attached in the judicial affidavit of the witness;
- d. That on 26 December 2007, the Vibrator Road Roller Compactor Dynapac CA-25 was already delivered to and received by the Municipality of Naga; and
- e. That on 06 February 2007 (sic), the Road Grader LG 2H Mitsubishi was already delivered to and received by the Municipality of Naga.

The parties also stipulated that accused Grijalvo, as Municipal Engineer, received the delivery of the said equipment as the end-user for the municipality.⁵⁵

After the prosecution formally offered its evidence, the Court admitted the following exhibits.⁵⁶

Exhibit	Document
B, B-1 to B-3	Affidavit of Publication of Luzviminda Bugaoisan dated 22 August 2007 and the IAEB as contained in the Affidavit of Publication
C, C-1 to C-2	Formal Quotation of CVCK Trading dated 28 September 2007
D, D-1 to D-7	BAC Resolution No. 01-07 dated 08 October 2007 entitled "BAC Resolution Declaring LCRB and Recommending Approval"
E, E-1 to E-3	Notice of Award dated 12 October 2007
F, F-1 to F-6	BAC Resolution No. 01-08 dated 09 January 2008 entitled "BAC Resolution amending the specifications of Heavy Equipment particularly the road roller and road grader that will be purchased by the local government unit of Naga, Zamboanga Sibugay"
I	Certification from the Office of the Municipal Budget Officer/Treasurer/Accountant dated 01 August 2007

⁵⁴ *Rollo*, Vol. I, p. 426.

⁵⁵ *Ibid.*

⁵⁶ *Id.* at pp. 517-518.

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J	Deed of Assignment of Internal Revenue Allotment executed between the Municipal Government of Naga, Zamboanga Sibugay and Land Bank of the Philippines
L	Excerpt from the minutes taken during the 3 rd regular session of the 11 th Sangguniang Bayan of Naga, Zamboanga Sibugay re Resolution No. 14 series of 2007
N	Excerpt from the minutes taken during the 7 th regular session of the 11 th Sangguniang Bayan of Naga, Zamboanga Sibugay re Resolution No. 22 series of 2008
O, O-1 to O-2	Inventory of Property, Plants, Equipment of Municipality of Naga, Zamboanga Sibugay as of 31 December 2008
S, S-1 to S-5	Attendance during the opening of bids for heavy equipment on 08 October 2007
T, T-1	Memorandum dated 11 October 2007 re Inspectorate Team – Acquisition of Heavy Equipment

Accused Grijalvo, et al. and accused Adana filed their separate Motions for Leave of Court to File Demurrer to Evidence dated 29 January 2018⁵⁷ and 01 February 2018,⁵⁸ respectively. In its Resolution dated 19 March 2018⁵⁹, the Court denied both motions.

Evidence for the Defense

The defense presented accused Adana,⁶⁰ Enteria⁶¹ and Grijalvo⁶² as its witnesses.

(a) Gemma F. Adana

In her *Judicial Affidavit* dated 16 April 2018,⁶³ accused Adana stated that in the years 2007-2008, she was serving as the Municipal Mayor of Naga on her first term.⁶⁴ She declared that she is just a high-school graduate.⁶⁵

Anent the procurement of the subject heavy equipment, she explained that the IAEB was not advertised with PhilGEPS because the municipality at that time was not yet equipped with on-line facilities or the technology to conduct procurement by electronic

⁵⁷ *Rollo*, Vol. II, pp. 10-13.

⁵⁸ *Id.* at pp. 6-7.

⁵⁹ *Id.* at pp. 36-39

⁶⁰ TSN dated 23 April 2018 and TSN dated 08 May 2018.

⁶¹ TSN dated 24 April 2018.

⁶² TSN dated 25 April 2018 and TSN dated 07 May 2018.

⁶³ *Rollo*, Vol. II, pp. 163-171.

⁶⁴ *Id.* at p. 164.

⁶⁵ *Ibid.*

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means, but the IAEB was nevertheless published in Malaya, which is a daily newspaper with nationwide circulation.⁶⁶

She recounted that she did not notice if the ABC was not indicated in the IAEB but the amount of PhP8,800,000.00 intended as the budget allocation for the purchase of the heavy equipment was already a public knowledge as early as 23 July 2007 when the *Sangguniang Bayan* issued Resolution No. 14, Series of 2007.⁶⁷

She denied having issued the Notice of Award to CVCK Trading on 12 October 2007 before the approval of the BAC Resolution declaring the latter as the bidder with the LCRB.⁶⁸ She explained that the BAC already approved the Resolution No. 01-07 on 08 October 2007 and her signature with the date of approval indicated as 16 October 2007 was a mere formality.⁶⁹

She also repudiated the allegation that no formal contract was executed.⁷⁰ She identified the Contract for the Acquisition of Heavy Equipments of Naga, Zamboanga Sibugay dated 22 October 2007 (Annexes "4-L" to "4-M").⁷¹

Accused Adana likewise refuted the allegation that the BAC amended the specifications of the road grader and road roller after the Notice of Award was issued to the winning bidder.⁷² She declared that the reconditioned road grader and road roller, as published, were the same reconditioned heavy equipment delivered by the winning bidder to the LGU of Naga, but with superior power and capacity at no additional cost.⁷³ Thus, according to her, there were no amendments or modifications of the items to be acquired in the subject IAEB as published.⁷⁴

The witness declared that she humbly and honestly believed that the selection and purchase of these two equipment were made by the BAC in good faith and for the interest of the municipality.⁷⁵ She was allegedly made to understand that since the same type of reconditioned heavy equipment were to be purchased from the same winning bidder, there is no need, under the law on procurement and

⁶⁶ *Id.* at p. 165.

⁶⁷ *Id.* at p. 166.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Id.* at p. 167.

⁷² *Ibid.*

⁷³ *Id.* at pp. 167-168.

⁷⁴ *Id.* at p. 168.

⁷⁵ *Ibid.*

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its implementing rules, to cause the publication of another bidding or of the IAEB.⁷⁶

She declared that as the Head of Procuring Entity (HoPE), with her limited technical knowledge of the procurement processes – being a high school graduate only, she had to repose greater trust to the integrity, experience, competence and proficiency of the chairman and members of the BAC.⁷⁷

She identified and adopted as integral part of her affidavit the following:

- a. Verified Counter-Statement of Facts of Gemma F. Adana dated 10 September 200, which was submitted to the Office of the Ombudsman (Exhibits "1" to "1-C");
- b. Motion for Reconsideration dated 06 March 2015 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibits "2" to "2-D");
- c. Supplemental Motion for Reconsideration dated 28 April 2015 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibits "3" to "3-E"); and
- d. Second Motion for Reconsideration dated 05 January 2016 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibits "4" to "4-L");

On cross-examination, accused Adana admitted that she has no proof that there is indeed no internet provider in the Municipality of Naga.⁷⁸ Anent her statement that the budget allocation for the purchase of the equipment is already a public knowledge, she admitted that none of the participating bidders is from their Municipality.⁷⁹ She confirmed that it was accused Grijalvo who caused the publication of the invitation to bid in the Malaya Newspaper on 22 August 2007.⁸⁰



⁷⁶ *Ibid.*

⁷⁷ *Id.* at p. 169.

⁷⁸ TSN, dated 08 May 2018, p. 9.

⁷⁹ *Id.* at pp. 9-10.

⁸⁰ *Id.* at p. 23.

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(b) Emmanuel F. Enteria

In his *Judicial Affidavit* dated 10 April 2018,⁸¹ accused Enteria stated that in 2007 he was the Human Resource Management Officer I and was also a member of the BAC of the Municipality of Naga.⁸² He identified the following documents:

- a. Joint Affidavit Complaint filed by Rolando Loon, et al., filed before the Office of the Ombudsman (Exhibit "1");
- b. Joint Order dated 01 July 2014 issued by the Office of the Ombudsman (Exhibit "3");
- c. Ombudsman Order dated 04 December 2014 (Exhibit "4");
- d. Motion for Reconsideration dated 06 March 2015 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibit "7");
- e. Supplemental Motion for Reconsideration dated 28 April 2015 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibit "8");
- f. Ombudsman Resolution dated 26 May 2015 (Exhibit "8-A");
- g. Second Motion for Reconsideration dated 05 January 2016 of accused Grijalvo, Enteria, Timsan and Cartagena, which was submitted to the Office of the Ombudsman (Exhibit "9");
- h. Ombudsman Resolution dated 21 October 2015 (Exhibit "5");
- i. Ombudsman Resolution dated 07 August 2014 (Exhibit "5-A"); and
- j. Motion to Quash the Information (Exhibit "6")

Accused Enteria declared that he considers their conviction in the administrative case finding them guilty of grave misconduct to be unjust, highly irregular, and seriously violative of their Constitutional right to due process for being devoid of factual and legal basis.⁸³

As to why the ABC was not included in the publication of the IAEB, accused Enteria explained that during their deliberation prior to the publication, its non-inclusion was never discussed.⁸⁴ While all of them were then aware that it should be included in the publication of the IAEB, its confidentiality was then already immaterial having become public knowledge as early as 23 July 2007 when the *Sangguniang Bayan* passed Resolution No. 14 series of 2007, authorizing accused Adana to enter into a contract of loan with the LBP in the amount of PhP8,800,000.00 to purchase the subject

⁸¹ *Rollo*, Vol. II, pp. 67-75.

⁸² *Id.* at p. 68.

⁸³ *Id.* at p. 73.

⁸⁴ *Id.* at p. 72.

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heavy equipment.⁸⁵ He allegedly discovered its non-inclusion in the publication of the IAEB when he was able to read it in the Malaya Newspaper as published, inconsistent with the ones posted in three conspicuous places in the bulletin boards of the Municipal building of Naga which all bear the ABC.⁸⁶

On cross-examination, accused Enteria affirmed that the posting of the invitation to bid is a collective action of the BAC.⁸⁷ He explained, however, that he does not know the person who caused the publication of the IAEB in Malaya Newspaper.⁸⁸ He reiterated that the amount of the ABC is of public knowledge since they posted the invitation in three (3) conspicuous places in Naga indicating the amount.⁸⁹

Upon further questioning, accused Enteria admitted that it is the responsibility of the BAC Chairman to cause the publication and that it was the name of accused BAC Chairman Grijalvo that appeared in the said publication.⁹⁰

Accused Enteria also admitted that he has no proof that there is no internet provider in the Municipality in 2007.⁹¹ He confirmed that it was only after the bidding that the specifications of the equipment were ascertained when the winning bidder, CVCK Trading, provided the name/brand and specifications and/or description of the equipment.⁹²

(b) Roland C. Grijalvo

In his *Judicial Affidavit* dated 10 April 2018,⁹³ accused Grijalvo stated that in 2007 he was the Municipal Engineer and Chairman of the BAC of the Municipality of Naga.⁹⁴

Anent the non-compliance with the publication requirement in the PhilGEPS website, he reiterated that the municipality at that time had no internet provider.⁹⁵

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ TSN dated 24 April 2018, p. 13.

⁸⁸ *Ibid.*

⁸⁹ *Id.* at p. 15.

⁹⁰ *Id.* at pp. 21-22.

⁹¹ *Id.* at p. 24.

⁹² *Id.* at pp. 26-27.

⁹³ *Rollo*, Vol. II, pp. 77-84.

⁹⁴ *Id.* at p. 78.

⁹⁵ *Id.* at p. 79.



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As to the non-inclusion of the ABC in the publication of the IAEB, accused Grijalvo expounded that it was due to inadvertence and that he did not notice the same when he affixed his signature approving the IAEB for publication.⁹⁶ He echoed accused Enteria's explanation that during their deliberation prior to the publication, its non-inclusion was never discussed because its confidentiality was then already immaterial having become public knowledge as early as 23 July 2007 when the *Sangguniang Bayan* passed Resolution No. 14 series of 2007.⁹⁷ He alleged that the IAEB was also posted in the Bulletin Boards of the Municipal Building of Naga in three conspicuous places bearing the amount of the ABC.⁹⁸

Accused Grijalvo pointed the Head of the BAC Secretariat, prosecution witness Virgilio Tiare, as the one who actually prepared the IAEB for his signature.⁹⁹ He nevertheless took personal responsibility for the said inadvertence.¹⁰⁰

With respect to the allegation that the Notice of Award was issued before the approval of BAC Resolution No. 01-07 declaring CVCK Trading as the winning bidder, accused Grijalvo explained that the Notice of Award was issued by accused Adana on 12 October 2007 or four (4) days after the passage of BAC Resolution No. 01-07.¹⁰¹ According to him, the date "16 October 2007" was just inadvertently placed below the signature of accused Adana found at the bottom of page two of BAC Resolution No. 01-07.¹⁰² He reasoned out that the issuance of the Notice of Award by accused Adana necessarily carries with it the approval by the HoPE of BAC Resolution No. 01-07.¹⁰³

When asked about the issue on lack of formal contract between the Municipality and CVCK Trading, accused Grijalvo confirmed that there was in fact a formal contract duly executed by the HoPE and the supplier.¹⁰⁴ He presented and identified the Contract for the Acquisition of Heavy Equipments of Naga, Zamboanga Sibugay dated 22 October 2007 between the Municipality and CVCK Trading (Exhibit "9-E").¹⁰⁵

⁹⁶ *Id.* at p. 80

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Id.* at p. 81

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Id.* at p. 82.

Handwritten signature and initials in black ink, appearing to be 'Grijalvo' and 'Tiare'.

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As to the alleged modification of the specification of the road grader and road roller after the Notice of Award was issued, accused Grijalvo clarified that there were no changes made on the specifications as published because the items sought remained as "Reconditioned Heavy Equipments pertaining to one (1) unit Road Roller and one (1) unit Road Grader".¹⁰⁶ The change allegedly did not accord edge or advantage upon CVCK Trading but, on the contrary, even resulted to a substantial economic advantage on the part of the LGU.¹⁰⁷

On cross-examination, accused Grijalvo clarified that he has seen the documents, i.e. publication containing the IAEB, for the first time only when they were sued in the Ombudsman.¹⁰⁸ Confronted with his Counter-Affidavit before the Office of the Ombudsman, accused Grijalvo admitted that he never received a copy of the SB Resolution No. 14, series of 2007.¹⁰⁹ He mentioned that the specifications of the heavy equipment subject of the bidding were based on the bids submitted by CVCK Trading and did not come from the BAC.¹¹⁰

Accused Grijalvo further stated that there was a post-qualification conducted but only on the documents submitted by CVCK.¹¹¹ He admitted that the inspectorate team created by the procuring entity was not part of the BAC and it was created after the Notice of Award.¹¹²

On re-direct examination, accused Grijalvo identified the *Sanggunian* Resolution dated 03 January 2008 (Exhibit "10") amending the specification of the road roller and road grader, which prompted the BAC to issue BAC Resolution No. 01-08.¹¹³ He also clarified that the change of the specifications refers to the change in the capacity and capability of the equipment to the most superior in performance but with the same category as re-conditioned heavy equipment.¹¹⁴

After the defense formally offered its evidence, the Court admitted the following exhibits:¹¹⁵

¹⁰⁶ *Id.* at pp. 82-83.

¹⁰⁷ *Id.* at p. 83.

¹⁰⁸ TSN dated 25 April 2018, p. 13.

¹⁰⁹ *Id.* at p. 18.

¹¹⁰ *Id.* at p. 22.

¹¹¹ TSN dated 07 May 2018, p. 9.

¹¹² *Id.* at p. 10.

¹¹³ *Id.* at pp. 17-20.

¹¹⁴ *Id.* at p. 29.

¹¹⁵ *Rollo*, Vol. II, p. 365.

Handwritten signature and initials in black ink, located to the right of the footnotes.

Exhibits for Accused Adana	Document
1 to 1-N	Verified Counter Statement of Facts (with Motion to Dismiss) dated 10 September 2009 of accused Adana and Counter-Affidavit dated 17 August 2009 of accused Grijalvo, et al. filed before the Office of the Ombudsman-Mindanao
1-O	Affidavit of Publication dated 22 August 2007 signed by Luzviminda Bugaoisan and a copy of the published IAEB
1-P	Formal Quotation of CVCK Trading dated 28 September 2007
1-Q	BAC Resolution No. 01-07 passed on 08 October 2007
1-S	Notice of Award dated 12 October 2007
1-T	BAC Resolution No. 01-08 passed on 09 January 2008
1-V to 1-CC	Sworn Statement of Manuel L. Cuevas, Municipal Accountant of Naga, Zamboanga Sibugay dated 25 August 2009; Certification dated 01 August 2007 signed by the MBO, MTO and Municipal Accountant of Naga, Zamboanga Sibugay; Deed of Assignment between LGU-Naga and the LBP; and Letter of accused Adana to LBP dated 20 November 2017
2 to 2-D	Motion for Reconsideration dated 06 May 2015 filed by co-accused before the Office of the Ombudsman-Mindanao
3 to 3-E	Supplemental Motion for Reconsideration dated 28 April 2015 filed by co-accused before the Office of the Ombudsman-Mindanao
4 to 4-M	Second Motion for Reconsideration dated 05 January 2016 filed by co-accused before the Office of the Ombudsman-Mindanao; Comparative Photographs of the Road Rollers and Road Graders; the Contract for the Acquisition of Heavy Equipments dated 22 October 2007 by and between the LGU-Naga and CVCK Trading

Exhibits for Accused Grijalvo, et al.	Document
1	Joint Affidavit Complaint dated 23 June 2009 filed against the accused before the Office of the Ombudsman-Mindanao

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2	Verified Counter Statement of Facts (with Motion to Dismiss) dated 10 September 2009 filed by accused Adana before the Office of the Ombudsman-Mindanao
3	Joint Order dated 01 July 2014 issued by the Office of the Ombudsman-Mindanao
4	Decision dated 04 December 2014 rendered by the Office of the Ombudsman-Mindanao
5-A	Ombudsman Resolution dated 07 August 2014
5	Ombudsman Order denying the three (3) separate Motions for Reconsideration
6	Motion to Quash
7	Motion for Reconsideration on the Decision dated 04 December 2014
8	Supplemental Motion for Reconsideration
8-A	Ombudsman Order dated 26 May 2015 denying the Motion for Reconsideration and the Supplemental Motion for Reconsideration
9	Second Motion for Reconsideration dated 05 January 2016
10	Certified True Copy of <i>Sanggunian</i> Resolution No. 01 series of 2008 passed on 03 January 2008

With the admission of the foregoing documentary exhibits and testimony of the witnesses, the accused were deemed to have rested their case.¹¹⁶

Facts

Thus, the following facts, as borne by the collective evidence adduced by the parties consisting of both testimonial and documentary, appear undisputed:

On 23 July 2007, the *Sangguniang Bayan* of the Municipality of Naga passed Resolution No. 14, Series of 2007, authorizing accused Adana, then Municipal Mayor, to enter into a Memorandum of Agreement with the LBP for loan accommodation of PhP8,800,000.00 for the purchase of heavy equipment (i.e. one road grader, one payloador, one road roller and two dump trucks).

The IAEB was published in the Malaya newspaper on 22 August 2007 but it was not posted on the PhilGEPS website. The heavy equipment to be purchased were described as follows:

¹¹⁶ *ibid.*

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- a. One (1) Road Grader
- b. One (1) Backhoe/Excavator
- c. One (1) unit Road Roller with Steering Wheel
- d. Two (2) units 6 Wheelers Dump Truck (Isuzu)

The published IAEB did not mention the ABC and instead it was indicated that it will be disclosed during the opening of the bids.

CVCK Trading submitted a Formal Quotation dated 28 September 2007 offering the following heavy duty equipment in the total amount of PhP8,800,000.00:

- a. One unit mini vibratory road roller SAKAI brand articulated 4 to 5 tons operating weight with the price of PhP1,850,000.00;
- b. One unit road grader Mitsubishi brand model MG3 or GD 31H with the price of PhP2,900,000.00;
- c. One unit Caterpillar backhoe/loader with the price of PhP2,350,000.00; and
- d. Two units Mini Dump Trucks, Six Wheelers with the price of PhP1,700,000.00;

During the opening of bids on 08 October 2007, wherein CVCK Trading and two other suppliers participated, the BAC announced that the ABC is PhP8,800,000.00. The two other suppliers were disqualified because their bid offers exceeded the ABC. The BAC declared CVCK Trading as the bidder with the LCRB with a bid offer of PhP8,800,000.00 through Resolution No. 01-07 dated 08 October 2007, which was approved by accused Adana on 16 October 2007.

On 11 October 2007, accused Adana created an inspectorate team to inspect the heavy equipment as a pre-condition before the delivery of the equipment.

Accused Adana issued a Notice of Award dated 12 October 2007 to CVCK Trading, which was conformed to by accused Solivar on 15 October 2007.

On 13 November 2007, accused Adana signified her conformity to the Formal Quotation of CVCK Trading.

Upon the recommendation of the inspectorate team that there are equipment of the same type but of superior capacity and performance than those previously offered by CVCK Trading, Resolution No. 01-08 dated 09 January 2008 was issued amending

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the agreed upon specifications of the Road Roller and Road Grader, as follows:

- a. Road Roller from TW 40 SAKAI Vibro Compactor to DYNAPAC CA-25; and
- b. Road Grader from Mitsubishi Model MG3-6DBI to Mitshubishi LG2H

No rebidding was conducted. The Municipality received the road roller on 26 December 2007 and the road grader on 06 February 2008.

Memoranda of the Parties

Memorandum for the Prosecution

In its Memorandum dated 20 December 2018¹¹⁷, the prosecution submits that:

1. All the elements of violation of Section 3(e) of R.A. No. 3019 are present;¹¹⁸
2. Accused failed to substantiate the allegation that the reason for the non-posting in the PhilGEPS website is the lack of internet provider;¹¹⁹
3. The act of concealing the amount of the ABC in the publication of the IAEB connotes evident bad faith and/or gross inexcusable negligence on the part of the accused;¹²⁰
4. There was manifest partiality in favor of accused Solivar and/or CVCK Trading since the specifications of the heavy equipment were determined only after the opening of the bids and they were based on the bid offer of CVCK Trading;¹²¹
5. In the IAEB, the accused made reference to brand names which is contrary to Section 18 of R.A. No. 9184;¹²²

¹¹⁷ *Id.* at pp. 412-457.

¹¹⁸ *Id.* at p. 427.

¹¹⁹ *Id.* at p. 429.

¹²⁰ *Id.* at pp. 433-434.

¹²¹ *Id.* at p. 439.

¹²² *Id.* at p. 443.



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6. There was no pre-procurement conference that was conducted in the case, which is contrary to Section 22.1 of the IRR-A of R.A. No. 9184;¹²³
7. The Notice of Award to CVCK Trading was issued before the approval of the BAC Resolution No. 01-07 declaring CVCK as the bidder with the LCRB;¹²⁴
8. No post-qualification was conducted in violation of Section 34 of R.A. No. 9184 as CVCK Trading was hastily declared as the bidder with LCRB;¹²⁵
9. No formal contract was executed between the Municipality and CVCK Trading. The defense failed to present the original copy of the photocopy of the alleged contract between the Municipality and CVCK Trading;¹²⁶
10. The specifications of the Road Grader and Road Roller were modified after the Notice of Award was issued to the said supplier despite the fact such change was not among the aspects of the contract allowed to be changed under the procurement law and its rules and regulations, and no public bidding was conducted anew;¹²⁷ and
11. Accused public officers gave accused Solivar and/or CVCK Trading unwarranted benefits, advantage or preference when they pushed through with the purchase of the equipment and paid the latter PhP8,800,000.00 despite several violations of the law.¹²⁸ Accused also caused undue injury to the government, particularly the Municipality of Naga, in the amount of PhP8,800,000.00.¹²⁹

Memorandum for all the Accused

In their Memorandum dated 04 January 2019¹³⁰, the accused contends that:

1. Advertising and posting of the IAEB in the websites of the procuring entity, the service provider of the procuring entity

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Id.* at p. 446.

¹²⁶ *Ibid.*

¹²⁷ *Id.* at p. 447.

¹²⁸ *Id.* at p. 454.

¹²⁹ *Id.* at p. 456.

¹³⁰ *Id.* at pp. 466-483.

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and the G-EPS, at the time material to this case, was not mandatory;¹³¹

2. There was no deliberate intention to conceal the ABC and favor one prospective bidder since the ABC of PhP8,800,000.00 for the purchase of the heavy equipment was never kept confidential as it was already a public knowledge when the *Sangguniang Bayan* issued Resolution No. 14, series of 2007;¹³²
3. There was nothing irregular in the issuance of the Notice of Award. While the signature of accused Adana in BAC Resolution No. 01-07 declaring CVCK Trading as the one with the LCRB is dated 16 October 2007, the said resolution was already deemed approved by accused Adana long before when she issued the Notice of Award on 12 October 2016;¹³³
4. There is no truth to the allegation that no formal contract was executed as the defense was able to present and identify the "Contract for the Acquisition of Heavy Equipments" dated 22 October 2007 by and between the LGU-Naga and CVCK Trading;¹³⁴
5. The amendment as contemplated in BAC Resolution No. 01-08 was merely formal and not substantial as to require another bidding since the same reconditioned road roller and road grader, at the same price, were to be acquired/purchased, consistent with what was contained in the IAEB as published;¹³⁵
6. The specification in the IAEB as "Reconditioned Heavy Equipments" had substantially complied with the requirements of the law. Unlike brand new equipment or goods, the required technical specifications/requirements of reconditioned equipment cannot be precisely defined in advance of the bidding;¹³⁶

¹³¹ *Id.* at pp. 466-467.

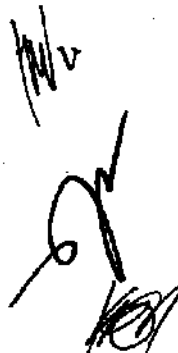
¹³² *Id.* at p. 470.

¹³³ *Id.* at p. 471.

¹³⁴ *Id.* at p. 472.

¹³⁵ *Id.* at p. 474.

¹³⁶ *Id.* at p. 475.



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7. Mistake on a doubtful or difficult question of law may be a basis of good faith;¹³⁷
8. The prosecution failed to present evidence to prove that any one or all of the accused derived pecuniary benefits out of the acquisition of the subject equipment;¹³⁸ and
9. The prosecution failed to prove conspiracy.¹³⁹

ISSUE

As earlier stated, the issue for resolution by the Court is whether or not the accused are liable for violation of Section 3(e) of R.A. No. 3019, as amended.

OUR RULING

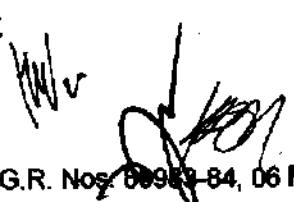
Section 3 (e) of R.A. No. 3019 provides:

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

X X X

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

To be convicted under Section 3 (e) of R.A. No. 3019, the following elements must concur:



¹³⁷ *Id.* at p. 479, citing *Mendola vs. People*, G.R. Nos. 60983-84, 06 March 1992.

¹³⁸ *Id.* at p. 480.

¹³⁹ *Ibid.*

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- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.¹⁴⁰

We evaluate the case on the basis of the foregoing elements.

(1) Accused were public officers discharging their administrative / official functions

The Court need not belabor on the first element as it is indisputably present. The defense admitted that, at the time material to the allegation in the Information, the accused were holding public offices in the Municipality of Naga, Zamboanga Sibugay, as follows:¹⁴¹

- a. Gemma F. Adana – Municipal Mayor
- b. Roland C. Grijalvo – Municipal Engineer and BAC Chairman
- c. Felix A. Timsan – Municipal Civil Registrar and BAC Member
- d. Emmanuel F. Enteria – Human Resource Management Officer IV and BAC Member
- e. Jonathan K. Cartagena – Local Revenue Collection Clerk I and BAC Member.

All are public officers within the contemplation of Section 2 of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act, which states:

"Section 2. Definition of terms. As used in this Act, that term

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other

¹⁴⁰ *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.

¹⁴¹ *Rollo*, Vol. I, p. 428.

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instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph."

(2) The accused, while in the performance of their official duties or in relation to their public positions, conducted a bidding riddled with several irregularities that violates the principles of transparency and competitiveness enunciated in R.A. No. 9184 or the Government Procurement Reform Act.

The published IAEB did not disclose the Approved Budget for the Contract in violation of Section 21.1 of the 2003 IRR-A of R.A. 9184.

The Approved Budget for the Contract or the ABC in this case refers to the budget for the contract duly approved by the *Sangguniang Bayan*.¹⁴² Section 21.1 of the 2003 IRR-A of R.A. No. 9184¹⁴³ specifically mandates the BAC to include in the IAEB the following information as guide for prospective bidders:

"The Invitation to Apply for Eligibility and to Bid shall provide prospective bidders the following information, among others:

1. For the procurement of:

- a. Goods, the name of the contract to be bid and a brief description of the goods to be procured;*
- b. Infrastructure projects, the name and location of the contract to be bid, the project background and other relevant information regarding the*

¹⁴² Section 5(b) of IRR-A of R.A. 9184

¹⁴³ The 2003 IRR-A of R.A. 9184 is the one applicable at the time material to the allegation in the Information. IRR-A of R.A. 9184 was approved through Memorandum Order No. 119 dated 18 September 2003, and was published on 23 September 2003 in two (2) newspapers of general nationwide circulation, namely, Manila Times and Malaya. It took effect fifteen (15) days after its publication or on 08 October 2003.

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- proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works; and*
- c. Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;*
 - 2. A general statement on the criteria to be used by the procuring entity for the eligibility check, the short listing of prospective bidders, in the case of the procurement of consulting services, the examination and evaluation of bids, and post-qualification;*
 - 3. The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;*
 - 4. The approved budget for the contract to be bid;*
 - 5. The source of funding;*
 - 6. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;*
 - 7. The contract duration or delivery schedule;*
 - 8. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person; and*
 - 9. Such other necessary information deemed relevant by the procuring entity." (Emphasis supplied)*

Essentially, the procurement process involves the following steps: (1) pre-procurement conference; (2) advertisement of the invitation to bid; (3) pre-bid conference; (4) eligibility check of prospective bidders; (5) submission and receipt of bids; (6) modification and withdrawal of bids; (7) bid opening and examination; (8) bid evaluation; (9) post qualification; (10) award of the contract;

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and (11) notice to proceed. *A propos*, from the first step of the procurement procedure, the rules are clear to the effect that the approved budget for the contract should be divulged to prospective bidders. There should be strict application of the pertinent public bidding rules, otherwise the essential requisites of fairness, good faith, and competitiveness in the public bidding process would be rendered meaningless.¹⁴⁴

An examination of the IAEB published in the Malaya newspaper on 22 August 2007¹⁴⁵ reveals that the ABC was deliberately omitted. As contained in the IAEB, the ABC is "to be disclose(d) during the opening of the bids".¹⁴⁶ True enough, it was only during the opening of bids on 08 October 2007 when the BAC announced to the bidders the actual amount of the ABC, which is PhP8,800,000.00.¹⁴⁷

This is a serious blunder that violates an elementary and customary rule in a public bidding process. A competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition.¹⁴⁸ Withholding the amount of the ABC in the IAEB thwarts the foundation of a fair, transparent, and competitive public bidding since prospective bidders, except those with inside information on the actual ABC, run the risk of being disqualified. In a stroke of luck, the two other suppliers in this case were disqualified because their bid offers exceeded the ABC while that of CVCK Trading exactly matched the ABC.

The Supreme Court in the case of *Philippine Sports Commission, et al., vs. Dear John Services, Inc.*¹⁴⁹ had the occasion to underscore the importance of divulging the ABC to prospective bidders as early as possible, thus:

"Admittedly, PSC-BAC did not disclose in any of the bidding documents the amount of the AAE. The Bid Bulletin which was posted in conspicuous places and the "Instruction to Bidders" that was distributed to qualified bidders did not indicate the amount of the AAE. Petitioners' contention, that they were not bound to disclose the AAE and that Dear John Services never demanded its disclosure, is untenable. Under the law, the PSC-BAC is mandated to disclose not only the

¹⁴⁴ *Republic v. Capulong*, G.R. No. 93359, 12 July 1991.

¹⁴⁵ Exhibit "B" for the prosecution.

¹⁴⁶ *Rollo*, Vol. I, p. 429.

¹⁴⁷ *Id.* at p. 371.

¹⁴⁸ *De Guzman v. Ombudsman*, G.R. No. 229256, 22 November 2017.

¹⁴⁹ G.R. No. 183260, 04 July 2012.

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description of the items to be procured, and the eligibility requirements, among others, but also the approved budget of the project. Competitive bidding is an essential element of a public bidding. Thus, it should be conducted fairly and openly with full and free opportunity for competition among bidders. It has been held in a long line of cases that a contract granted without the competitive bidding required by law is void and the party to whom it is awarded cannot benefit from it. Had Dear John Services and CBMI known all the information regarding the bidding, a different set of bids might have emerged."

The explanation of accused Grijalvo that the omission was due to inadvertence and that he did not notice the same when he affixed his signature approving the IAEB for publication deserves scant consideration. This is not a case of a simple inadvertent omission but rather a deliberate ploy to withhold the ABC from prospective bidders. The BAC did not just simply miss out the ABC in the published IAEB, but it specifically stated that the ABC will be disclosed during the opening of the bids. The accused failed to provide any acceptable explanation on this.

The BAC had no legal reason not to disclose the ABC in the IAEB since the amount of which was already available as early as 23 July 2007 when the *Sangguniang Bayan* passed Resolution No. 14 series of 2007, authorizing accused Adana to enter into a contract of loan with the LBP in the amount of PhP8,800,000.00 to purchase the subject heavy equipment. It thus boggles the mind of the Court on why the BAC would withhold such vital information in the IAEB, a mystery which up to this point remains unexplained.

The effort to discount the omission of the ABC in the published IAEB on the ground that it was already of public knowledge with the passage of the *Sanggunian* Resolution No. 14 and that it was already posted in the Bulletin Boards of the Municipal Building of Naga likewise holds no water. The inclusion of the ABC in the *Sanggunian* Resolution No. 14 and the notices posted in the Municipal Bulletin Boards, assuming the same to be true, cannot be placed in the same vein as a publication in newspaper of general nationwide circulation for obvious reason. Prospective bidders outside the Municipality of Naga, such as in this case, would have no opportunity to know the ABC since the said notices would necessarily be confined in the Municipality.

Besides, apart from bare allegations, the defense failed to present any proof that copies of the subject IAEB and *Sanggunian*

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Resolution No. 14 were indeed posted at the premises of the Municipality for the information of the general public, including prospective bidders. A certification or the testimony of the person who caused the posting of the said documents would have sufficed but the defense miserably failed to present any.

Notably, other than the ABC, the BAC also failed to include in the IAEB the (a) date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids; (b) the source of funding; (c) the period of availability of the bidding documents and the place where the bidding documents may be secured; and (d) the name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person.

The BAC failed to conduct a Pre-Bid Conference in violation of Section 22 of the 2003 IRR-A of R.A. 9184.

Section 22.1 of the IRR-A mandates that for contracts with an approved budget of One Million Pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bidding documents. As recounted by prosecution witness Virgilio C. Tiare, the BAC did not conduct a pre-bid conference.¹⁵⁰ The defense never disputed this.

The pre-bid conference could have been the best opportunity to discuss the technical and financial components of the contract to be bid, and to inform the prospective bidders as to the amount of the ABC, which was missing in the IAEB. However, the BAC went straight from the publication of the IAEB to the opening of the bids without conducting any pre-bid conference nor issuing any supplemental/bid bulletins.

The Specifications of the Road Grader and Road Roller offered by CVCK Trading and accepted by the Municipality were modified after the Notice of Award was already issued despite the fact that such change was not allowed under the procurement law and its implementing rules.

¹⁵⁰ TSN dated 23 August 2017, p. 16.



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Annex "D" (Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials) of the 2003 IRR-A of R.A. 9184 sets forth the conditions under which an amendment to order may be made, as follows:

"1.2. An amendment to order may be issued only in emergency cases or during fortuitous events requiring necessary adjustments within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:

- a. Drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith;
- b. Method of shipment or packing; or
- c. Place of delivery.

1.3. An amendment to order may also be issued by the concerned procuring entity where there are additional items needed and necessary for the protection of the goods, which were not included in the original contract. Payments for these additional items shall be based on the unit prices in the original contract for items of goods similar to those in the original contract."

None of the above circumstances were present when the accused decided to amend the agreed upon specifications of the Road Roller and Road Grader allegedly upon the recommendation of the inspectorate team that there were equipment of the same type but of superior capacity and performance than those previously offered by CVCK Trading.

Section 37.2.3 of the 2003 IRR-A of R.A. 9184 in relation to Section 25.3(A)(6) provides that the technical specifications and the bid offer of the winning bidder form part of the contract. The Contract for the Acquisition of Heavy Equipments of Naga, Zamboanga Sibugay dated 22 October 2007¹⁵¹ executed by the Municipality of Naga and CVCK Trading likewise states that the bid form submitted by the bidder as well as the technical specifications shall be deemed to form part of the agreement. The inclusion of these documents in the contract created an obligation on the part of the contractor/supplier to deliver the specific goods that it offered.

¹⁵¹ Annex "4-L" to "4-M" for Accused Adana.

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Public bidding contracts require strict compliance with the specifications or minimum requirements prescribed in the bidding documents. On the part of the Procuring Entity, it cannot make substantial changes in the specifications of the contract, after it was awarded, without violating the principle of competition and fairness. On the other hand, the supplier is similarly duty-bound to comply with the specifications it had indicated in its offer as this forms part of the contract with the Procuring Entity, not to mention that upon which promise or offer, the Procuring Entity based its decision to award the contract.¹⁵²

The case of *Caltex (Philippines), Inc. vs. Delgado Brothers, Inc.*¹⁵³ as cited in *Agan, Jr., et al. vs. Philippine International Air Terminals Co., Inc., et al.*¹⁵⁴ is material on this point, viz:

"The Court agrees with the contention of counsel for the plaintiffs that the due execution of a contract after public bidding is a limitation upon the right of the contracting parties to alter or amend it without another public bidding, for otherwise what would a public bidding be good for if after the execution of a contract after public bidding, the contracting parties may alter or amend the contract, or even cancel it, at their will? Public biddings are held for the protection of the public, and to give the public the best possible advantages by means of open competition between the bidders. He who bids or offers the best terms is awarded the contract subject of the bid, and it is obvious that such protection and best possible advantages to the public will disappear if the parties to a contract executed after public bidding may alter or amend it without another previous public bidding."

Further, it was stressed in *Capalla, et al. vs. COMELEC*¹⁵⁵ that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders, and to change them without complying with the bidding requirement would be against public policy.

¹⁵² Government Procurement Policy Board - Non-Policy Opinion No. 050-2017 dated 20 December 2017 (Clarification on the compliance with the minimum requirements based on the Terms of Reference (TOR) and whether one can change the specifications therein after the contract was awarded)

¹⁵³ G.R. No. L-5439, 29 December 1954.

¹⁵⁴ G.R. No. 155001, 05 May 2003.

¹⁵⁵ G.R. No. 201112, 23 October 2012.

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The published IAEB contains brand name as part of the description of the heavy equipment to be procured in violation of Section 18 of the 2003 IRR-A of R.A. 9184.

Section 18 of the 2003 IRR-A of R.A. 9184 mandates that reference to brand names shall not be allowed and thus, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. The BAC violated this when they incorporated the brand "Izusu" (sic) as part of the description of the two (2) units of dump truck.

Other than the above, the prosecution, however, failed to prove the other supposed infirmities in the subject bidding such as the: (a) failure to publish the IAEB in the PhilGEPS website; (b) that the Notice of Award was issued before the approval of the BAC resolution declaring CVCK Trading as the bidder with the LCRB; and (c) lack of formal contract between the Municipality of Naga and CVCK Trading. The defense was able to rebut the forgoing claims with its testimonial and documentary evidence.

As to the alleged failure of the BAC to publish the IAEB in the PhilGEPS website as required under Section 21.2.1(b) of the 2003 IRR-A, we find credible the explanation given by the accused that the Municipality of Naga at that time has no internet provider. Besides, we take note of the latest implementing rules and regulations of R.A. No. 9184, which specifically provides that "a Procuring Entity that cannot post its opportunities in the PhilGEPS for justifiable reasons shall continue to publish its advertisements in a newspaper of general nationwide circulation."¹⁵⁶

The accused also correctly addressed the issue on the alleged premature issuance of the Notice of Award prior to the approval of the BAC Resolution declaring CVCK Trading as the bidder with the LCRB. As correctly pointed out by the defense, accused Adana issued the Notice of Award on 12 October 2016 four (4) days after the BAC issued the Resolution No. 01-07 dated 08 October 2007 declaring CVCK Trading as the bidder with the LCRB. It just so happens that accused Adana belatedly signified her approval on Resolution No. 01-07, which in the first place was already approved by the BAC.

Finally, the defense likewise disproved the prosecution's claim of lack of formal contract between the Municipality of Naga and CVCK Trading by presenting the Contract for the Acquisition of

¹⁵⁶ Section 21.2.1 of the 2016 IRR of R.A. No. 9184.

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Heavy Equipments of Naga, Zamboanga Sibugay dated 22 October 2007.¹⁵⁷

(3) The accused gave CVCK Trading unwarranted benefits, advantage or preference

Under the third element, there are two (2) modes of committing the offense of violation of Section 3(e) of R.A. No. 3019, to wit: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁵⁸ The Supreme Court in *Alvarez vs. People*¹⁵⁹ clarified the use of the disjunctive term "or" (between "undue injury to any party, including the government" and "by giving any private party unwarranted benefits, advantage or preference") connotes that either act qualifies as a violation of Sec. 3, par. (e), or as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.¹⁶⁰

Undue injury to the Government or any party was not sufficiently proven

As to the element of undue injury, the Supreme Court in *Llorente, Jr. vs. Sandiganbayan*¹⁶¹ defined "undue" as "more than necessary, not proper, or illegal" and "injury" as "any wrong or damage done to another, either in his person, rights, reputation or property, that is, the invasion of any legally protected interest of another". The Supreme Court added that in jurisprudence, "undue injury" is consistently interpreted as "actual damage" and actual damage, in the context of these definitions, is akin to that in civil law.¹⁶²

The sole fact that the questioned bidding is riddled with irregularities does not automatically amount to "undue injury" within the contemplation of the law. The prosecution cannot equivocally claim that the Municipality of Naga suffered undue injury when it was deprived of the most reasonable price of heavy equipment to be supplied

 
¹⁵⁷ Annex "4-L" to "4-M" for Adana.

¹⁵⁸ *Constantino vs. Sandiganbayan*, G.R. No. 140656, 13 September 2007.

¹⁵⁹ G.R. No. 192591, 29 June 2011.

¹⁶⁰ *Ibid.*

¹⁶¹ G.R. No. 122166, 11 March 1998.

¹⁶² *Ibid.*

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It is a settled jurisprudence that undue injury cannot be presumed even after a wrong or a violation of a right has been established. In *Llorente*,¹⁶³ the Supreme Court elucidated that:

"Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established.¹⁶⁴ Its existence must be proven as one of the elements of the crime.¹⁶⁵ In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty."¹⁶⁶

In *Soriano vs. Marcelo*,¹⁶⁷ the Supreme Court affirmed that in determining undue injury, courts cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damage.¹⁶⁸

In this case, the prosecution failed to specify, quantify and prove to the point of moral certainty the supposed undue injury suffered by the government. No evidence was adduced to show that the price of the heavy equipment is unfavorable to the government. No comparison was likewise made as to the prevailing price of reconditioned heavy equipment as compared to those procured from CVCK Trading, which would lead to the inference that the municipal government was prejudiced.

The prosecution proved beyond reasonable doubt that the accused gave CVCK Trading unwarranted benefits, advantage or preference



¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ G.R. No. 163178, 30 January 2009.

¹⁶⁸ *Ibid.*

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The terms "unwarranted benefits, advantage or preference to any party" was appositely elucidated by the Supreme Court in *Alvarez*,¹⁶⁹ viz:

"The word unwarranted means lacking adequate or official support; unjustified; unauthorized or without justification or 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." (Emphasis supplied)

In this case, CVCK Trading is deemed to have been given unwarranted benefits, advantage or preference when the contract for the acquisition of the heavy equipment was awarded to it despite the irregularities in the bidding process. There is no quibble that the bidding conducted by the BAC did not meet the principles of transparency and competitiveness enunciated in R.A. No. 9184 or the Government Procurement Reform Act, thus, making it highly irregular.

Proof of unwarranted benefits given to CVCK Trading is sufficient even in the absence of proof of undue injury against the government since, as discussed above, either act penalized under Section 3(e) of R.A. 3019 qualifies as a violation thereof.

(4) *The accused acted with manifest partiality and gross inexcusable negligence*

The Supreme Court in *Uriarte v. People*¹⁷⁰ defined manifest partiality, evident bad faith and gross inexcusable negligence in this manner:

"Section 3(e) of R.A. 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa as when the accused committed gross inexcusable negligence. 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

¹⁶⁹ G.R. No. 192591, 29 June 2011.

¹⁷⁰ G.R. No. 169251, 20 December 2006.

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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."(Emphasis supplied)

While this Court fails to discern evident bad faith on the part of the accused, the evidence, however, is replete as to accused's clear inclination to favor CVCK Trading over the other suppliers. We find that the procurement process conducted by the BAC of the Municipality of Naga was highly anomalous due to manifest partiality, or, at the very least, gross inexcusable negligence on the part of the accused.

The irregularities in the conduct of the procurement and the other suspicious circumstances obtaining in this case all lead to the conclusion that CVCK Trading was already predetermined to be the supplier of the subject heavy equipment. These irregularities and circumstances may be summarized as follows:

1. The ABC was deliberately omitted in the published IAEB. The BAC specifically indicated that the ABC is to be disclosed during the opening of the bids, thus placing prospective bidders, except those with inside information, at the risk of being disqualified for offering bids that exceed the ABC. Indeed, it was only during the opening of bids on 08 October 2007 that the BAC announced that the ABC is PhP8,800,000.00;
2. The IAEB also failed to include the (a) date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids; (b) the source of funding; (c) the period of availability of the bidding documents and the place where the bidding documents may be secured; and (d) the name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person;



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3. Interestingly, while the published IAEB failed to disclose the ABC, CVCK Trading was able to submit a Formal Quotation dated 28 September 2007¹⁷¹ to the Municipality of Naga in the exact amount of PhP8,800,000.00;
4. The BAC did not conduct a Pre-Bid Conference, depriving prospective bidders a chance to seek clarification and/or explanation on the requirements, terms, conditions and specifications stipulated in the bidding documents, especially the amount of the ABC that was missing in the IAEB;
5. During the opening of bids on 08 October 2007, CVCK Trading bid the exact amount of PhP8,800,000.00 while the two other bidders/suppliers were disqualified because their bid offers exceeded the ABC;
6. The bid opening and examination, bid evaluation and post qualification were done and completed in one day or setting, and CVCK Trading was hastily declared as the bidder with the LCRB;
7. The BAC did not provide the specifications of the heavy equipment. It was only after the bidding that the specifications of the equipment were ascertained when the winning bidder, CVCK Trading, submitted its bid and provided the name/brand and specifications and/or description of the heavy equipment it offered; and
8. The specifications of the Road Grader and Road Roller offered by CVCK Trading and accepted by the Municipality were modified after the Notice of Award was already issued despite the fact that such change was not allowed under the procurement law and its rules and regulations.

From the foregoing, it can be concluded that the procurement process conducted by the BAC was meant to favor CVCK Trading. Accused-BAC members, led by accused BAC Chairman Grijalvo, deliberately omitted the ABC in the published IAEB for the benefit of CVCK Trading and despite the irregularities in the procurement process, they still recommended to the HoPE the procurement of the

¹⁷¹ Exhibit "C" for the Prosecution.

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subject heavy equipment. In the face of these obvious irregularities, accused Adana approved the recommendation of the BAC and awarded the contract to CVCK Trading.

Certainly, as a mayor who is required to be acquainted with the basic know-how of the functions of her office, common sense and prudence dictates accused Adana to ask for and duly examine the documents on which to base her approval of the BAC recommendation. Accused Adana, being the HoPE of the Municipality of Naga, had the last opportunity of reviewing the entire procurement process conducted by the BAC and could have even nullified the same on the ground of the infirmities, but she miserably failed to do so. Accused Adana was grossly and inexcusably negligent when she paid no attention at all to the anomalies in the bidding procedure that could have been easily discovered by a simple inspection of the supporting documents especially the published IAEB.

In light of the glaring irregularities, accused Adana's defense of reliance on the favorable recommendations and signatures of his subordinates cannot be sustained. Blind reliance on the BAC, wanting of even the slightest care or minimum diligence, smacks of gross inexcusable negligence. The defense of good faith is likewise unavailing because accused Adana relied on documents which showed palpable defects.

Being the local chief executive, accused Adana is bound to ensure that the proper procedure in the procurement of the heavy equipment was followed. As held in *Ong vs. People*,¹⁷² a local chief executive is not only expected to know the proper procedure in the procurement of supplies, he/she is also duty bound to follow the same and his/her failure to discharge this duty constitutes gross and inexcusable negligence.

Hence, this Court is convinced that all these circumstances, taken together, clearly demonstrate that accused-members of the BAC and accused Mayor Adana herself are guilty of manifest partiality, or, at the very least, gross inexcusable negligence in awarding the contract to CVCK Trading, giving the latter unwarranted benefits to obtain the government contract.

¹⁷² G.R. No. 176546, 25 September 2009.

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Conspiracy between the accused was proven beyond reasonable doubt

Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.¹⁷³

In the present case, badges of conspiracy are evident in the manner by which accused have worked together, as HoPE and as members of the BAC of the Municipality of Naga, to cause the acquisition of the subject heavy equipment without complying with the basic requirements of the procurement law.

Accused Grijalvo caused the publication of the IAEB without including the ABC. Accused-BAC members then signed the Resolution No. 01-07 declaring CVCK Trading as the bidder with the LCRB and accused Adana approved the same and issued the Notice of Award to CVCK Trading for the subject heavy equipment despite the fact that the published IAEB did not disclose the ABC and that the procurement process was riddled with other irregularities in violation of R.A. No. 9184. They cannot simply feign ignorance of such non-compliance with a basic requirement because as Chairman and members of the BAC, they are responsible for the conduct of pre-qualification, or eligibility screening, bidding, evaluation of bids, post-qualification, and recommending award of contract. As the HoPE, on the other hand, accused Adana is responsible for reviewing the entire procurement process conducted by the BAC and approving the same only if warranted under the rules.

In other words, it is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. They may, thus, be held liable for the collective acts and omissions as when they affixed their signatures in official documents as HoPE/BAC Chairman/Members, and in effect certifying to the faithful compliance with the aforesaid rules.

It bears stressing that the separate acts or omissions of all the accused in the present case contributed in the end result of giving

¹⁷³ Go vs. Sandiganbayan, G.R. No. 172602, 13 April 2007.

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unwarranted benefits, advantage or preference to CVCK Trading. Without any of these acts or omissions, the end result would not have been achieved. Suffice it to say that since each of the accused contributed to attain the end goal, it can be concluded that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them.

All these circumstances, taken together, reveal a scheme on the part of the accused to ensure that CVCK Trading would eventually be awarded the contract for the purchase of the subject heavy equipment. Thus, it is clear to the mind of the Court that conspiracy existed among accused, and accordingly, all of them are liable as co-conspirators in the crime charged.

WHEREFORE, in light of all the foregoing, accused **GEMMA F. ADANA, ROLAND C. GRIJALVO, FELIX A. TIMSAN, EMMANUEL F. ENTERIA** and **JONATHAN K. CARTAGENA** are found **GUILTY** beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019, and are each sentenced to imprisonment for a minimum of six (6) years and one (1) month and a maximum of eight (8) years, with perpetual disqualification from public office.

Let the records of this case be sent to the archive files without prejudice on the part of the prosecution to prosecute the case against accused Jose Ely H. Solivar, who remains at-large, as soon as he is apprehended.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



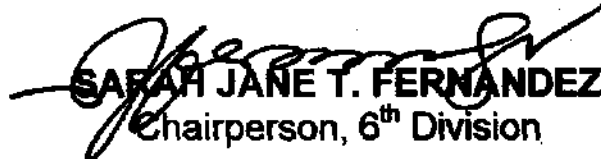
SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
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.


SARAH JANE T. FERNANDEZ
Chairperson, 6th 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. BABOTAJE-TANG
Presiding Justice

M/
KON