



Republic of the Philippines
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0546

For: Violation of Section 3(e) of
Republic Act No. 3019

- versus -

Present:

FERNANDEZ, SJ, J.

Chairperson

MIRANDA, J. and

VIVERO, J.

**ROLANDO MARTIN ASIS,
BERNA COLAGO COCA,
LUVISMINDA HARDER NARCISO,
DANILO MINGUEZ PEROY,
MARILYN HILAGA CELIZ, and
FERNANDO SEBLET TUARES.**
Accused.

Promulgated:

July 31, 2019

X-----X

DECISION

VIVERO, J.:

THE CHARGE

Accused, Director IV Rolando Martin Asis,¹ together with five (5) co-employees from the Department of Public Works and

¹ Accused Rolando Martin Asis died on July 6, 2017; consequently, the Sandiganbayan dismissed this case (SB-16-CRM-0546) against him on November 8, 2017.

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Highways (DPWH) Regional Office No. VI, Iloilo City, Province of Iloilo, are indicted for violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act". The accusatory portion of the Information is couched in the following language:

SB-16-CRM-0546²

(For violation of Section 3(e) of R.A. No. 3019)

"That on 08 January 2008, or sometime prior or subsequent thereto, in Iloilo City, accused **ROLANDO MARTIN ASIS**, Salary Grade 28, a high ranking public official, being then a Regional Director of the Department of Public Works and Highways (DPWH), Regional Office VI, Iloilo City, **BERNA COLAGO COCA**, Salary Grade 25, **LUVISMINDA HARDER NARCISCO**, Salary Grade 24, **MARILYN HILAGA CELIZ**, Salary Grade 24 and **FERNANDO S. TUARES**, Salary Grade 19, Chairman and Members of the Bids and Awards Committee (BAC), respectively, of DPWH, Regional Office VI, Iloilo City, and within the jurisdiction of this Honorable Court, taking advantage of their official positions and while in the discharge of their official or administrative functions, and committing the offense in relation to their respective offices, acting with evident bad faith, gross inexcusable negligence or manifest partiality, conspiring and mutually helping with (sic) one another, did then and there, willfully, unlawfully, and criminally gave IBC International Builder's Corporation (IBC) unwarranted benefits, advantage or preference, by awarding to the latter the Asphalt Overlay Project, without an appropriation to cover the expenditure for said project and certificate showing funds specifically appropriated to meet [the] contract as required by Sections 85 (1) and 86 of Presidential Decree No. 1445 and without conducting a public bidding as required under R. A. No. 9184, to the damage and prejudice of the public service.

"CONTRARY TO LAW.

"Quezon City, Philippines, 14 June 2016." (Emphasis and Underscoring Supplied.)

THE CASE

Before the 2008 Dinagyang Festival,³ Panay News, a regional newspaper in Western Visayas, was lambasting continually the

² Records, Vol. 4, pp. 1 - 3.

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Department of Public Works and Highways (DPWH), Regional Office VI, on account of the allegedly overpriced and substandard Asphalt Overlay of the Iloilo-Jaro Diversion Road, a project that was awarded directly to IBC International Builders Corporation (IBC, *for brevity*).⁴ Word got around that the anomalous transaction was the “*mother of all scams*”.⁵

This exposé prompted the Office of the Ombudsman-Visayas (OMB-VIS) to investigate and ascertain the truth. On February 19, 2008, a *subpoena duces tecum* was issued to Rolando M. Asis, Director IV of the DPWH, Regional Office VI, directing him to submit certified true copies of all bid documents relative to the subject project. Director Asis forwarded said documents.⁶ In addition, he explained that:

“... [T]he said project was directly negotiated with IBC Int'l Builder Corp. pursuant to Section 53(b) of Republic Act [No.] 9184 and its Implementing Rules and Regulations. The BAC, this office, had already recommended award of the contract to said firm provided that the Notice/ Letter of Award be issued to said firm only when funds are already available. The Letter/ Notice of Award was not yet issued as there is (sic) no release of funds yet to cover the cost of [the] contract. In view of the urgency in the implementation of the (sic) said project, this office had requested IBC Int'l Builders Corp. to work on the project on their own risk while this office awaits for (sic) the availability of funds to which IBC conformed.

“x x x.”⁷

On March 5, 2008, OMB-VIS requested the Commission on Audit (COA), Regional Office No. VI, to conduct a special audit examination of the subject project, but said office declined because no public funds had been disbursed yet for the project; hence, it was premature to conduct an audit.⁸

³ The Dinagyang is a religious and cultural festival in Iloilo City, Philippines held on the fourth Sunday of January, or right after the Sinulog in Cebu and the Ati-Atihan in Aklan. It is held both to honor the Santo Niño and to celebrate the arrival on Panay of Malay settlers and the subsequent selling of the island to them by the Atis. (<https://www.iloilo.net.ph/dinagyang-festival>).

⁴ EXHIBITS “36”, “37”, “38” for Coca, et. al..

⁵ EXHIBIT “36-B” for Coca, et. al.: Panay News dated January 24, 2008, p. 9 (Records, Vol. 1, p. 84); EXHIBIT “37” for Coca, et. al.: Panay News dated January 29, 2008, p. 9 (Records, Vol. 1, p. 85).

⁶ EXHIBIT “19” for Asis, and Coca, et. al..

⁷ EXHIBIT “20” for Asis, and Coca, et. al..

⁸ EXHIBIT “43” for Coca, et. al.: Complaint-Affidavit dated March 20, 2014, of the Office of the Ombudsman-Visayas (OMB-VIS), p. 1 of 8.

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A year later, the audit team of said Regional Office, together with representatives of the DPWH, Regional Office VI and IBC International Builders Corporation, conducted an ocular inspection of the subject project.⁹ Said contractor undertook the asphalt overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Sta. 2+732.60 – Sta. 5+102.30, Iloilo City) from January 11 to February 9, 2008.¹⁰ Save for minor defects, the project was completed.¹¹

Still, the Office of the Ombudsman-Visayas (OMB-VIS) opted to pursue a thorough probe and, thereafter, on March 20, 2014, it lodged a complaint¹² against the following personnel of the Department of Public Works and Highways (DPWH), Regional Office VI (Iloilo), namely:

1. Director IV **Rolando Martin Asis**;
2. Project Manager I **Berna Colago Coca**;
3. Engineer V **Luvisminda Harder Narciso** (Chief, Quality Assurance and Hydrology Division);
4. Engineer V **Danilo Minguez Peroy** (Chief, Maintenance Division);
5. Engineer V **Marilyn Hilaga Celiz** (Chief, Construction Division); and
6. Engineer III **Fernando Seblet Tuares**.

Said complaint impugned the award sans mandatory, competitive bidding of the asphalt overlay of the Iloilo-Jaro Diversion Road by Director Asis, purportedly upon the recommendation of its Bids and Awards Committee (BAC) of the DPWH, Regional Office VI (Iloilo) to IBC International Builders Corporation. Among the members of the BAC that endorsed direct negotiation of the subject project to IBC were Messers. Peroy and Tuares, and Engrs. Coca, Narciso and Celiz.

⁹ EXHIBIT "21" & "22" for Asis, and Coca, et. al.

¹⁰ EXHIBITS "X-16-A" & "X-16-B", EXHIBITS "23" & "24" for Asis, and Coca, et. al..

¹¹ EXHIBIT "X-4", EXHIBITS "25", "26" & "27" for Asis, and Coca, et. al..

¹² EXHIBIT "40" for Celiz & Narciso; EXHIBIT "43" for Coca, et. al.: Complaint-Affidavit dated March 20, 2014, of the Office of the Ombudsman-Visayas (OMB-VIS), pp. 1 – 8 (Records, Vol. 1, pp. 74 - 82).

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On August 1, 2014, Director Rolando M. Asis and his co-respondents filed their joint counter-affidavit.¹³ Salient portions thereof are quoted below, viz:

“ . . . The afore-subject asphalt overlay project was prosecuted to its completion (January 1 to February 9, 2008) in accordance with its program of works and specifications and within its budget allocation. x x x The government was not damaged thereat. The issue on the alleged ‘overprice’ remains as an issue. It has no factual and legal basis. On the contrary, the subject project has bolstered and restored public trust and service in the government. The immediate action undertaken was necessary to restore vital public services and road facility for the good and safety of the traveling public.

“ . . . [T]he subject project was undertaken as there is an urgent necessity at the time for its implementation and execution in view of the forthcoming Dinagyang Festival ; and that the subject road is a major access from Iloilo City to the New Iloilo Airport, and the central part of the Province of Iloilo. Under the circumstances, the mode of procurement undertaken for the execution and prosecution of the project was legal and necessary.

“x x x

“ . . . [U]nder the circumstances, we could invoke Section 53(b) to resort to negotiated procurement. The said law provides –

(b) In case of imminent danger to life or property during a state of calamity, or when times (sic) is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other utilities.’

“x x x The subject project was prosecuted to its completion in good faith and for no ulterior motives.

“x x x.”¹⁴

Following an in-depth investigation, the Office of the Ombudsman found probable cause to indict Regional Director Asis

¹³ Joint Counter-affidavit dated July 31, 2014, of Rolando M. Asis, et. al., pp. 1 – 9 (Records, Vol. 1, pp. 21 – 29).

¹⁴ Id., at pp. 26 – 27.

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and the five (5) members of the BAC¹⁵ for alleged violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.¹⁶ On August 16, 2016, the Information against Regional Director Rolando M. Asis and his alleged co-conspirators, that is, the five (5) members of the Bids and Awards Committee, DPWH, Regional Office VI, Iloilo City was filed before this Court.¹⁷

On August 22, 2016, warrants of arrest¹⁸ were issued against the six (6) accused. Moreover, they were barred from leaving the Philippines except upon prior approval of this Court.¹⁹

On September 16, 2016, the six (6) accused voluntarily surrendered²⁰ and posted their respective cash bonds for their provisional liberty.²¹ Accordingly, the warrants of arrest issued against said accused were recalled,²² and the arraignment was set.

On November 17, 2016, accused, while assisted by their respective counsel, were arraigned and all pleaded "**Not Guilty**" to the offense charged in the Informations.²³ Afterwards, the Court ordered the parties to file their pre-trial briefs. The prosecution filed

¹⁵ EXHIBIT "1" for Celiz & Narciso, Asis, and Coca, et. al., .

¹⁶ Joint Resolution dated October 6, 2015, of the Office of the Ombudsman, pp. 1 – 7 (Records, Vol. 1, pp. 6 – 12).

¹⁷ Information dated June 14, 2016, for Criminal Case No. SB-16-CRM-0546, pp. 1 – 3 (Records, Vol. 2, pp. 1 – 3).

¹⁸ Records, Vol. 1, pp. 134 - 144.

¹⁹ Minute Resolution dated August 22, 2016, directing the Bureau of Immigration to hold the departure of R. M. Asis and his co-accused, p. 1 (Records, Vol. 1, p. 135).

²⁰ Certification dated September 16, 2016, issued by the National Bureau of Investigation, Western Visayas Regional Office 6 (NBI-WEVRO), p. 1 - 2 (Records, Vol. 1, p. 145 - 146).

²¹ Order dated September 16, 2016, of Acting Executive Judge Gloria G. Madero, Regional Trial Court, Branch 29, Iloilo City, p. 1 (Records, Vol. 1, pp. 150, 161, 170, 179, 194); Minute Resolution dated October 6, 2016, p. 1 (Records, Vol. 1, p. 200).

²² Minute Resolution dated October 6, 2016 (Records, Vol. 1, p. 200).

²³ Order dated November 17, 2016, pp. 1 – 2 (Records, Vol. 1, pp. 368-A – 368-B); Certificates of Arraignment dated November 17, 2016, p. 1 (Records, Vol. 1, pp. 370 – 375).

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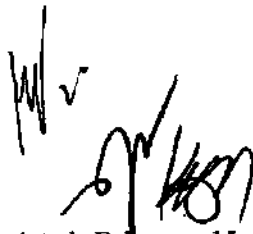
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seasonably its brief.²⁴ On the other hand, accused filed theirs separately.²⁵

It took awhile before the preliminary conference was held due to the travel abroad of accused Asis for the continued treatment of his hepatic cancer.²⁶ Likewise, accused Narciso and Celiz went abroad with leave of Court.²⁷ On April 4 and 5, 2017, the preliminary conference transpired and, in the course thereof, documentary exhibits of the parties were marked accordingly.²⁸ Moreover, the issues were delimited, and the parties made their admissions and stipulations of facts.²⁹ On August 31, 2017, pre-trial was terminated.³⁰

Incidentally, Director Rolando M. Asis *died* on July 6, 2017.³¹ Accordingly, deceased's counsel moved for dismissal.³² The Court gave Asis' counsel a month to ascertain the details.³³ Eventually, the fact of Asis' death was confirmed. Thence, this Court resolved that:

"x x x



²⁴ Prosecution's Pre-trial Brief dated February 15, 2018, pp. 1 - 14 (Records, Vol. 2, pp. 119 - 132).

²⁵ Pre-trial Brief (For Accused Luvisminda H. Narciso and Marilyn H. Celiz) dated February 10, 2017, pp. 1 - 13 (Records, Vol. 2, pp. 159 - 171); Amended Pre-trial Brief (For Accused Rolando M. Asis) dated May 20, 2017, pp. 1 - 21 (Records, Vol. 2, pp. 261 - 281); Amended Pre-trial Brief (For Accused Coca, Peroy and Tuares) dated June 22, 2017, pp. 1 - 14 (Records, Vol. 2, pp. 310 - 333).

²⁶ Minute Resolution dated January 20, 2017, pp. 1 - 2 (Records, Vol. 2, pp. 36 - 37); Minute Resolution dated March 13, 2017, pp. 1 - 2 (Records, Vol. 2, pp. 208 - 209).

²⁷ Minute Resolution dated December 2, 2016, p. 1 (Records, Vol. 1, p. 419); Minute Resolution dated December 6, 2016, pp. 1 - 2 (Records, Vol. 1, pp. 470 - 473).

²⁸ Minutes of hearing held on April 4, 2017 (Records, Vol. 2, pp. 220 - 221); TSN dated April 4, 2017, pp. 14 - 23; Minutes of hearing held on April 5, 2017 (Records, Vol. 2, pp. 227 - 228).

²⁹ TSN dated July 4, 2017, pp. 6 - 39.

³⁰ Order dated May 25, 2017, p. 1 (Records, Vol. 1, p. 284); Order dated August 31, 2017, p. 1 (Records, Vol. 2, p. 348).

³¹ Certificate of Death No. 2017-3015, of Rolando M. Asis, pp. 1 - 2 (Records, Vol. 2, p. 364 - 365).

³² Motion (Dismissal in so far [as] accused Rolando M. Asis) dated August 23, 2017, pp. 1 - 5 (Records, Vol. 2, pp. 338 - 342).

³³ Order dated August 31, 2017, p. 1 (Records, Vol. 2, p. 348).

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"In view of the submission of the death certificate of Rolando Martin Asis, as verified from the Philippine Statistics Authority, the fact of death of the said accused has been sufficiently established. Accordingly, there being no objection from the prosecution, **THE CASE IN SO FAR AS ACCUSED ROLANDO MARTIN ASIS IS CONCERNED IS ORDERED DISMISSED** conformably with Article 89 of the Revised Penal Code.

"As prayed for, the cash bail bond in the amount of thirty thousand pesos (P 30,000.00) under Official Receipt No. 4315251 dated September 16, 2016, posted by accused Rolando Martin Asis with the Regional Trial Court, 6th Judicial Region, Iloilo City, Branch 29, is hereby ordered released to his heirs, including the original receipt evidencing payment thereof which has been transmitted to this Court, subject to the usual accounting and auditing procedures. Likewise, the travel bond of accused Rolando Martin Asis in the amount of thirty thousand pesos (P 30,000.00) under Official Receipt No. 7381876 dated November 18, 2016, is hereby ordered released to his heirs, subject to the presentation of the original receipt evidencing payment thereof, and to the usual accounting and auditing procedures.

"SO ORDERED."³⁴ (Capitalization Supplied.)

Trial commenced on October 12, 2017,³⁵ and the Prosecution presented as its initial witness, State Auditor IV Helen P. Hubo.³⁶ On February 27, 2018, the Prosecution was set to present Budget Officer III Aurora S. Tingson,³⁷ but on the appointed date, the Prosecution informed the Court that it had no other witness to present.³⁸ Accordingly, the Court directed the Prosecution to file its formal offer of evidence, and for the accused to file its corresponding comment.³⁹

The Office of the Special Prosecutor filed its *Formal Offer of Evidence*⁴⁰ on March 16, 2018. Accused Celiz and Narciso filed

³⁴ Minute Resolution dated November 8, 2017, p. 1 (Records, Vol. 2, p. 422).

³⁵ Order dated October 12, 2017, p. 1 (Records, Vol. 2, p. 379).

³⁶ TSN dated October 12, 2017, pp. 1 - 76.

³⁷ TSN dated November 8, 2017, pp. 31 - 32; Order dated November 8, 2017, p. 1 (Records, Vol. 2, p. 426)

³⁸ Order dated February 27, 2018, pp. 1 (Records, Vol. 2, p. 507).

³⁹ *Ibid.*

⁴⁰ Prosecution's Formal Offer of Documentary Exhibits dated March 14, 2018, pp. 1 - 12 (Records, Vol. 3, pp. 6 - 17).

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their joint Comment⁴¹ thereto on March 28, 2018, while accused Coca, Peroy and Tuares filed theirs jointly on April 3, 2018.⁴² With the admission of its documentary exhibits, including the testimonies of the witnesses who testified thereon, the prosecution was deemed to have rested its case.⁴³

On April 4, 2018, accused Coca, Peroy and Tuares were one in manifesting before this Court their intent to file a *Motion for Leave to File Demurrer to Evidence*.⁴⁴ They filed said motion⁴⁵ on April 11, 2018. The specific grounds set forth in said motion are as follows:

"4. x x x [T]he evidence presented by the prosecution is insufficient to prove the allegations in the information, hence, the guilt of the accused was not proven beyond reasonable doubt;

"5. The prosecution presented Helen P. Hubo as its only witness and the same was not corroborated, hence, her testimony is self-serving and bereft of credit;

"6. x x x

"7. It is apparent from the offer of documentary exhibits of the prosecution that only few exhibits were offered. This is because no other witness was presented to testify as to the genuineness, due execution and authenticity of other documentary exhibits of the prosecution [which had been] marked during the pre-trial;

"8. x x x

"9. x x x

"10. x x x [T]here is no evidence of conspiracy
x x x In fact, in the Notice of Disallowance (Exhibit 'Z' ...) as testified to by the witness, not all that were allegedly

⁴¹Comment (To the Prosecution's Formal Offer of Documentary Exhibits) dated March 27, 2018, of M. H. Celiz and L. H. Narciso, pp. 1 - 6 (Records, Vol. 3, pp. 77 - 82).

⁴² Comment/ Opposition (To the Prosecution's Formal Offer of Documentary Exhibits) dated April 2, 2018, of B. C. Coca, D. M. Peroy and F. S. Tuares, pp. 1 - 4 (Records, Vol. 3, pp. 85 - 87).

⁴³ Resolution dated April 3, 2018, pp. 1 - 2 (Records, Vol. 3, pp. 90 - 91).

⁴⁴ Order dated April 4, 2018, p. 1 (Records, Vol. 3, p. 95).

⁴⁵ Motion for Leave to File Demurrer to Evidence dated April 10, 2018, of accused Coca, Peroy and Tuares, pp. 1 - 6 (Records, Vol. 3, pp. 97 - 102).

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determined to be liable for [the] transaction are charged in this case, hence, conspiracy was not established by the prosecution.

“x x x.”⁴⁶ (Emphasis and Underscoring Supplied.)

By the same token, accused Narciso and Celiz filed their *Motion for Leave of Court to File and Admit Attached Demurrer to Evidence*,⁴⁷ including their *Demurrer to Evidence*.⁴⁸

Contrariwise, the prosecution asserted that:

“4. x x x [E]ven though Auditor Helen P. Hubo of the COA was the sole witness presented during the trial, her testimony, nevertheless, was corroborated by the documentary evidence identified by her, which are all public documents gathered during the conduct [of] her audit, all of which shows the existence of all the elements for violation of Sec. 3(e) of Republic Act [No.] 3019.

“x x x

“8. The absence of public bidding was proven by the unnumbered BAC Resolution signed by the said accused on January 8, 2008, recommending that the project be implemented through negotiated procurement pursuant to Section 53(b) of R.A. 9184. As testified to by Auditor Hubo, the negotiated procurement resorted to by the accused is not valid considering that the requirements under Sec. 53 was (sic) not met.

“9. . . . [T]he absence of the fund for the said project is clearly established by the fact that [the] sub-allotment of the fund intended by (sic) the said project was released only on December 24, 2008 or ten (10) months after the implementation of the said project on January 11 – February 9, 2008 as per the submitted Statement of Overlay Work Accomplished.

“10. . . . [T]hat the element of undue injury was not proven by the Prosecution, the same is belied by the Notice of

⁴⁶ *Op. cit.*, pp. 2 – 3 (Records, Vol. 3, pp. 98 – 99).

⁴⁷ Motion for Leave of Court to File and Admit Attached Demurrer to Evidence dated April 16, 2018, of accused L. H. Narciso and M. H. Celiz, pp. 1 - 6 (Records, Vol. 3, pp. 120 - 125).

⁴⁸ Demurrer to Evidence dated April 16, 2018, of M. H. Celiz and L. H. Narciso, pp. 1 – 33 (Records, Vol. 3, pp. 127 - 159).

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Disallowance issued by the OCA against all the accused.
x x x.

"11. x x x [S]ufficient evidence was adduced to show that the act of accused-movants redounded to giving unwarranted benefit to IBC.

"x x x

"14. . . . [I]t is apparent that the Prosecution was able to discharge its duty to prove the existence of all the elements for violation of Sec. 3 (e) of Republic [Act No.] 3019.

"x x x." ⁴⁹ (Emphasis and Underscoring Supplied.)

On April 24, 2018, the Court denied the *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Coca, Peroy and Tuares.⁵⁰ The Court ratiocinated in this wise:

"After a careful study of the documentary and testimonial evidence submitted by the prosecution, the Court finds that, if unrebutted, the same is sufficient to convict the accused. x x x.

"This is without prejudice to the filing by the accused of a *Demurrer to Evidence*, without prior leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

"x x x." ⁵¹ (Emphasis and Underscoring Supplied.)

By parity of reasoning, the Court denied the *Motion for Leave of Court to File and Admit Attached Demurrer to Evidence* filed by accused Narciso and Celiz.⁵² Stymied, accused Coca, Peroy and Tuares manifested that they will no longer file a demurrer to evidence

⁴⁹ Comment/ Opposition (To Accused Coca, Peroy and Tuares' Motion for Leave of Court to File Demurrer to Evidence) dated April 16, 2018, pp. 2 - 5 (Records, Vol. 3, pp. 106 - 109).

⁵⁰ Resolution dated April 24, 2018, pp. 1 - 2 (Records, Vol. 3, pp. 189 - 190).

⁵¹ Id. at p. 2 (Records, Vol. 3, p. 190).

⁵² Resolution dated April 26, 2018, pp. 1 - 2 (Records, Vol. 3, pp. 192 - 193).

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sans leave of the Court.⁵³ Accordingly, the Court noted said *Manifestation* and set the initial presentation of defense evidence.⁵⁴

On June 18, 2018, Engineer IV Julie M. Tambasen, the first defense witness, testified before the Court.⁵⁵ Stipulations of facts and admissions expedited the proceedings. On November 7, 2018, the last defense witness, Marilyn H. Celiz, completed her testimony.⁵⁶ Thereupon, the Court ordered the defense to file its formal offer of evidence, while the prosecution was directed to file its comment, if any, thereon.⁵⁷ In compliance therewith, both parties filed seasonably their respective papers.⁵⁸

With the admission of accused's documentary exhibits and the declarations of witnesses who testified thereon, accused Celiz, et. al. and Coca, et. al. are deemed to have rested their case.⁵⁹ Pursuant to the Court's Order on January 16, 2019, and the prosecution's manifestation that no rebuttal evidence will be adduced,⁶⁰ the parties were directed to file their respective memoranda.⁶¹ Conformably, accused Coca, Peroy and Tuares filed their memorandum⁶² on March 8, 2019, and accused Celiz and Narciso filed theirs⁶³ on March 12,

⁵³ Manifestation dated April 27, 2018, of B. C. Coca, D. M. Peroy and F. S. Tuares, pp. 1 - 3 (Records, Vol. 3, pp. 194-A - 194-C).

⁵⁴ Minute Resolution dated May 15, 2018, p. 1 (Records, Vol. 3 p. 198).

⁵⁵ Minutes of Proceedings on June 18, 2018, p. 1 (Records, Vol. 3, p. 241); Order dated June 18, 2018 (Records, Vol. 3, p. 242-A).

⁵⁶ Minutes of proceedings on November 7, 2018 (Records, Vol. 4, p. 41).

⁵⁷ Order dated November 7, 2018 (Records, Vol. 4, p. 57).

⁵⁸ Accused M. H. Celiz and L. H. Narciso filed their Formal Offer of Documentary Exhibits on November 28, 2018, pp. 1 -10 (Records, Vol. 4, pp. 60 - 69), while accused Coca, Peroy and Tuares filed their Formal Offer of Exhibits on November 28, 2018, pp. 1 - 14 (Records, Vol. 4, pp. 204 - 217; on the other hand, the Office of the Special Prosecutor filed its Comment [To Accused Marilyn H. Celiz and Luvisminda H. Narciso's Formal Offer of Documentary Exhibits] on December 6, 2018, pp. 1 - 8 (Records, Vol. 4, pp. 489 - 496), and its Comment [To Accused Coca, Peroy and Tuares' Formal Offer of Exhibits] on December 6, 2018, pp. 1 - 2 (Records, Vol. 4, pp. 469 - 488).

⁵⁹ Resolution dated December 14, 2018, pp. 1 - 2 (Records, Vol. 4, p. 498-A - 498-B).

⁶⁰ Manifestation and Compliance dated January 16, 2019, of the plaintiff, pp. 1 - 2 (Records, Vol. 4, pp. 497 - 498).

⁶¹ Resolution dated January 16, 2019, p. 1 (Records, Vol. 4, p. 499).

⁶² Memorandum dated February 28, 2019, of Coca, Peroy and Tuares, pp. 1 - 42 (Records, Vol. 5, pp. 5 - 46).

⁶³ Memorandum dated February 28, 2019, of L. H. Narciso and M. H. Celiz, pp. 1 - 51 (Records, Vol. 5, pp. 48 -98).

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2019. For their part, the prosecution filed its memorandum⁶⁴ on April 5, 2019. Thence, this case was submitted for decision.

FACTUAL ANTECEDENTS

The facts, as culled from the records, are summarized below, viz:

On November 23, 2007, Jerry P. Treñas, Mayor of Iloilo City, requested **Rolando M. Asis**, Director IV of Regional Office VI of the Department of Public Works and Highways (DPWH) in Iloilo, to swiftly repair the Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) in line with the forthcoming *Dinagyang* Festival on January 25 to 26, 2008.⁶⁵ On November 29, 2007, Director Asis sent a Request for Clearance for Negotiated Procurement⁶⁶ to Hermogenes E. Ebdane, Jr., Secretary of the DPWH. Such request was approved.⁶⁷

The composition of the Bids and Awards Committee (BAC) of said office of the DPWH is as follows:

1. Project Manager I **Berna C. Coca** – Chairperson;
2. Engineer V **Luvisminda H. Narciso** (Chief, Quality Assurance and Hydrology Division) – Member;
3. Engineer V **Danilo M. Peroy** (Chief, Maintenance Division) – Member;
4. Engineer V **Marilyn H. Celiz** (Chief, Construction Division) – Member; and
5. Engineer III **Fernando S. Tuares** - Provisional Member.

⁶⁴ Memorandum dated March 28, 2019, of the People of the Philippines, pp. 1 – 10.

⁶⁵ EXHIBIT “3” for Celiz & Narciso, Asis, and Coca, et. al.: Letter dated November 23, 2007, of Mayor J. P. Treñas to Director R. M. Asis, p. 1 (Records, Vol. 1, p. 67); TSN, July 4, 2017, p. 38.

⁶⁶ EXHIBIT “5” for Celiz & Narciso, Asis and Coca, et. al.; Records, Vol. 1, p. 68.

⁶⁷ EXHIBITS “5-A”, “5-B”, “5-C” for Celiz & Narciso, Asis, and Coca, et. al.

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On January 2, 2008, the aforesated BAC unanimously passed a Resolution recommending direct negotiation of the contract for the asphalt overlay of the Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Sta. 2+732.60 – Sta. 5+102.30) to IBC International Builders Corporation (IBC, *for brevity*).⁶⁸ The approved budget for the proposed contract is fifty-four million three hundred seventy thousand one hundred sixteen and 70/100 pesos (P54,370,116.70).⁶⁹ Immediately thereafter, Berna C. Coca, BAC Chairperson, notified Helen Edith Lee Tan, President of IBC, to submit the firm's quotation therefor.⁷⁰ IBC submitted its bid documents accordingly.⁷¹

On January 8, 2008, the Bids and Awards Committee (BAC) passed a resolution recommending the award of said Asphalt Overlay Project to the IBC International Builders Corporation, but subject to the modification that the proposed, albeit unreleased, appropriation therefor be fixed at fifty-four million three hundred eight thousand eight hundred three and 44/100 pesos (P 54,308,803.44).⁷²

On January 9, 2008, Director Asis notified IBC International Builders Corporation about the BAC's recommendation, and asked said contractor if it was willing to assume the risk of undertaking the project despite the fact that funds therefor cannot be released in the meantime.⁷³

On January 10, 2008, IBC International Builders Corporation accepted the offer of Director Asis.⁷⁴ Thereupon, it commenced civil works on January 14, 2008.⁷⁵

⁶⁸ Records, Vol. 1, pp. 114 – 115; EXHIBITS "9", "9-C" for Coca, et. al.; EXHIBITS "8", "8-A" for Celiz Narciso; TSN dated November 6, 2018, pp. 12 – 16.

⁶⁹ *Ibid*; EXHIBIT "4" for Asis, and Coca, et. al.: Supplemental Annual Procurement Plan CY 2007: DPWH Regional Office VI.

⁷⁰ *Id.* at 116; EXHIBITS "6" and "6-A" for Celiz & Narciso, Asis, and Coca, et. al.; TSN dated November 6, 2018, pp. 16 – 18.

⁷¹ EXHIBIT "7" (First Envelope) and EXHIBIT "7-A" (Second Envelope).

⁷² Records, Vol. 1, p. 117; EXHIBITS "10", "10-A", "10-B", "10-C" for Celiz & Narciso, Asis, and Coca, et. al..

⁷³ EXHIBITS "11", "11-C" for Asis, and Coca, et. al.: Letter dated January 9, 2008 of Rolando M. Asis to Helen Edith Lee Tan, p. 1 (Records, Vol. 1, p. 118).

⁷⁴ EXHIBITS "12", "12-B" for Asis, and Coca, et. al.: Letter dated January 10, 2008, of H. E. Lee Tan to Director R. M. Asis, p. 1 (Records, Vol. 1, p. 119).

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On December 24, 2008, Sub-Allotment Release Order (SARO) No. SR2008-12-0011207 amounting to fifty-three million five hundred ninety-five thousand pesos (₱ 53,595,000.00) was approved and issued to the DPWH, Regional Office VI.⁷⁶ Yet, on January 21, 2009, said office received the Sub-Allotment Advice (SAA) wherein only fifty-two million one hundred ten thousand pesos (₱ 52,110,000.00) was available for payment, while the balance of two million one hundred ninety-eight thousand eight hundred three and 45/100 pesos (₱ 2,198,803.45) shall be subject to availability of funds.⁷⁷

On January 26, 2009, the BAC issued an unnumbered resolution recommending the award of the contract for asphalt overlay of the Iloilo-Jaro Diversion Road to IBC.⁷⁸

On January 28, 2009, the BAC, through its new Chairperson, Juby R. Cordon, sent the Notice of Award for said project to IBC.⁷⁹ Notably, accused Celiz and Narciso were not signatories to said document.⁸⁰

On January 29, 2009, the Contract for the Asphalt Overlay Project to that effect was executed.⁸¹ Notably, accused Celiz and Narciso were not signatories therein.⁸² The resident auditor from the Commission on Audit (COA), who was stationed at the DPWH, Regional Office No. VI, evaluated said Contract.⁸³

⁷⁵ Amended Pre-trial Brief (for Accused Rolando M. Asis) dated May 20, 2017, p. 5 (Records, Vol. 2, p. 265).

⁷⁶ EXHIBITS "X-46", "X-46-A"; EXHIBITS "13" for Asis, and Coca, et. al.: Records, Vol. 1, p. 120; EXHIBIT "14" for Celiz & Narciso, Asis, Coca, et. al..

⁷⁷ EXHIBITS "X-43", "X-43-A"; EXHIBIT "15" for Asis, and Coca, et. al.: BAC Resolution dated January 26, 2009, p. 1 (Records, Vol. 1, p. 121).

⁷⁸ EXHIBITS "15" & "15-A" for Asis, Coca, et. al..

⁷⁹ EXHIBITS "X-39", "X-39-A", EXHIBITS "16", "16-A" for Asis, and Coca, et. al.: Notice of Award (Letter of Acceptance) dated January 28, 2009, p. 1 (Records, Vol. 1, p. 123).

⁸⁰ Pre-Trial Order dated October 12, 2017, pp. 1 - 2 (Records, Vol. 2, pp. 380 - 381).

⁸¹ EXHIBITS "X-40", "X-42", "X-42-B"; EXHIBIT "18" for Asis, and Coca, et. al.: Contract dated January 29, 2009, between The Government of the Republic of the Philippines and IBC International Builders Corporation, pp. 1 - 5 (Records, Vol. 1, pp. 124 - 128); EXHIBITS "19", "19-A", "20", "20-A", "20-B" & "20-C" for Asis, and Coca, et. al..

⁸² EXHIBIT "18" for Asis, Coca, et. al..

⁸³ EXHIBIT "19" for Asis, Coca, et. al..

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On March 31, 2009, the DPWH, Regional Office No. VI, together with representatives of the CoA and the Office of the Ombudsman-Visayas, conducted an ocular inspection of the subject project.⁸⁴ Tests revealed that the project, as it were, conformed with the standards and technical specifications of the DPWH.⁸⁵

On April 30, 2009, partial payment for the subject project was released to IBC.⁸⁶

The BAC resorted to negotiated procurement allegedly to finish civil works on the two-kilometer road⁸⁷ in time for the annual Dinagyang Festival. The Iloilo-Jaro Diversion Road is a major thoroughfare from the airport to the central business district, and *vice versa*. IBC, the only contractor with an asphalt batching plant in Iloilo,⁸⁸ completed the asphalt overlay project on February 9, 2018.⁸⁹ Accused Tuares, Chief of the Maintenance Division, DPWH, Regional Office No. VI, supervised IBC's horizontal construction.⁹⁰

The resident auditor took issue with the fact that the implementation of the asphalt overlay project by IBC was allegedly made without: (1) competitive public bidding; (2) a contract; and (3) the Chief Accountant's Certification as to Availability of Fund (CAF) to cover the contract in accordance with Sections 85(1)⁹¹ and

⁸⁴ EXHIBITS "20", "21", "22" for Asis, Coca, et. al., Narciso and Celiz.

⁸⁵ EXHIBITS "26", "26-A" and "27" for Coca, et. al..

⁸⁶ EXHIBIT "33" for Coca, et. al.: Disbursement Voucher (D.V.).

⁸⁷ EXHIBITS "27" to "27-G" for Asis, Coca, et. al..

⁸⁸ EXHIBIT "23" for Coca, et. al., Narciso & Celiz.

⁸⁹ EXHIBIT "33" for Asis; EXHIBITS "35", "35-A" for Coca, et. al..

⁹⁰ Records, Vol. 1, p. 36.

⁹¹ Section 85. *Appropriation before entering into contract.*

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

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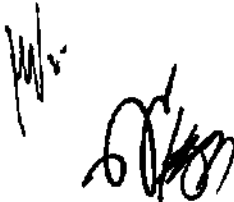
86⁹² of Presidential Decree (P.D.) No. 1445, otherwise known as the Government Auditing Code of the Philippines. The Notice of Disallowance (ND) issued by the team led by State Auditor IV Helen P. Hubo encompassed these red flags.⁹³ The findings and conclusions of the Audit Team that muddled through the records were affirmed by the Commission Proper.⁹⁴

The Office of the Ombudsman-Visayas took the cue from the Commission on Audit and delve into an in-depth inquiry into the alleged irregularities. Finding probable cause of malfeasance, accused were formally charged before the Anti-Graft Court.

ISSUES

The parties got down to brass tacks during the preliminary conference and delimited the issues to be resolved. These were stated in the Court's Pre-Trial Order,⁹⁵ to wit:

"Whether or not all the accused acted in conspiracy with one another in committing violation of Section 3(e) of Republic Act No. 3019;



⁹² Section 86. *Certificate showing appropriation to meet contract.* Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

⁹³ EXHIBIT "Z": Notice of Disallowance No. 09-001-101(09) dated December 16, 2009, issued by State Auditor IV Helen P. Hubo, pp. 1 - 3 (Records, Vol. 1, pp. 30 - 32).

⁹⁴ EXHIBIT "DD": Decision No. 2015-066 dated March 11, 2015, of the COA (Central Office) regarding the petition for review filed by Rolando M. Asis, et. al. from the decision affirming the Notice of Disallowance on the first and final payments for the asphalt overlay of Iloilo-Jaro Diversion Road in the amount of ₱43,967,223.94 .

⁹⁵ Pre-Trial Order dated October 12, 2017, pp. 1 - 31 (Records, Vol. 2, pp. 380 - 410).

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"Whether or not all the accused are guilty of the crime charged;

"Whether or not there was inordinate and unjustified delay in the termination of the fact-finding and preliminary investigation which constitutes a violation of the rights of the accused to the speedy disposition of the case;

"Whether or not the award of the Asphalt Overlay Project to [IBC] International Builders Corporation was without an appropriation and certificate showing [availability of] funds;

"Whether or not the award of the Asphalt Overlay Project to IBC was without the conduct of a public bidding."⁹⁶

ADMITTED FACTS AND STIPULATIONS

The judicial admissions, as culled from the records, include the following facts, to wit:

"A. As proposed by the prosecution, the accused admit the following:

1. At the time material to the allegations in the information, the accused Rolando Martin Asis, Berna Colago Coca, Luvisminda Harder Narciso, Danilo Minguez Peroy, Marilyn Hilaga Celiz, and Fernando S. Tuares, are all public officers, being employed with the Department of Public Works and Highways (DPWH), Regional Office No. 6.

"B. As proposed by accused Asis, the prosecution admits the following:

1. Accused Rolando Asis is a public officer with the position of Regional Director of the Department of Public Works and Highways, Region VI, Iloilo

⁹⁶ *Loc. cit.*, pp. 2 - 3.

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City (DPWH-6) at the time alleged in the information.

2. Accused Asis is not a member of the Bids and Awards Committee of [the] DPWH-6 and may be considered the Head of the Procuring Entity (HoPE, for brevity).
3. Every third week of January of each year, Iloilo celebrates one of the country's biggest and most awaited activities which is the Dinagyang Festival
x x x.
4. The then City Mayor Jerry Treñas (now Congressman of the Lone District of Iloilo City) sent a letter dated November 23, 2017, to herein accused [Asis] requesting for immediate repair of the Iloilo Diversion Road.
5. On December 24, 2008, Sub-Allotment Release Order (SARO) with No. SR2008-12-0011207 was released.
6. BAC Resolution dated January 26, 2009 was issued Recommending Award of Contract for Asphalt Overlay of Iloilo-Jaro Diversion Road to [IBC] International Builders Corporation ...
7. The Contract was executed between IBC and the Government of the Republic of the Philippines through the DPWH, Region VI, represented by OIC Asst. Regional Director Berna Coca on January 29, 2009.

"C. As proposed by accused Coca, Peroy, and Tuares, the prosecution admits the following:

1. The Dinagyang Festival is being attended by hundreds of thousands of people, Filipinos all over the country and foreigners whose safety and security are the priority of the government during the festivity.



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2. On November 23, 2007, the then City Mayor Jerry Treñas requested for help/ assistance to facilitate the immediate repair/ rehabilitation of [the] Iloilo-Jaro Diversion Road in preparation for the Dinagyang Festival 2008.
3. On January 2, 2008, the Bids and Awards Committee (BAC) issued [a] Resolution recommending Direct Negotiation of the proposed project with [IBC] International Builders Corporation

“D. As proposed by accused Narciso and Celiz, the prosecution admits the following:

1. The Dinagyang Festival is held in Iloilo City every January of every year.
2. Accused Celiz and Narciso are *not* signatories in the Notice of Award dated 28 January 2009.
3. Accused Celiz and Narciso are *not* signatories in the Contract for [the] Asphalt Overlay Project dated 29 January 2009.”⁹⁷

EVIDENCE FOR THE PROSECUTION

A. Testimonial evidence

A.1 The Office of the Special Prosecutor slated five (5) witnesses⁹⁸ to appear before the Court. It turned out that only one (1) was presented, namely:

1. Helen P. Hubo (State Auditor IV).

⁹⁷ Pre-Trial Order dated October 12, 2017, pp. 1 - 2 (Records, Vol. 2, pp. 380 - 381).

⁹⁸ *Id.* at p. 10 (Records, Vol. 2, p. 389).

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A.2 The direct testimony of the witnesses for the Prosecution are summarized below, viz:

1. HELEN P. HUBO

State Auditor IV Helen P. Hubo acted as the Audit Team Leader that conducted the post-audit examination of the asphalt overlay of the Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Sta. 2+732.60 – Sta. 5+102.30), Iloilo City. The Team's material findings are as follows:

First. The award of the project to IBC International Builders Corporation was made without prior appropriation to cover expenditures therefor.

Second. No certificate of available funds existed.

Third. The project was implemented without going through mandatory, competitive bidding in accordance with Republic Act No. 9184.

Fourth. The award of the project to IBC showed that said contractor was given unwarranted benefits or preference by then-members of the Bids and Awards Committee (BAC) of the DPWH, Regional Office No. VI, Iloilo City.⁹⁹

State Auditor IV Hubo characterized the subject project as "highly irregular".¹⁰⁰ It bypassed public bidding altogether.¹⁰¹ Moreover, the project gained headway and was implemented even though there was –

a. *no* notice of award;¹⁰²

⁹⁹ TSN dated October 12, 2017, p. 10.

¹⁰⁰ Id. at p. 15.

¹⁰¹ Id. at pp. 20, 43; TSN dated November 7, 2017, p. 20.

¹⁰² EXHIBITS "X-39", "X-39-A"; TSN dated October 12, 2017, p. 23 – 24.

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- b. *non*-inclusion of the asphalt overlay in the Annual Procurement Plan of the DPWH (Region VI-Western Visayas) for CY 2008 to 2009;¹⁰³
- c. *no* written contract that had been perfected beforehand;¹⁰⁴ and
- d. *no* available funds that had been earmarked and allotted for the project.¹⁰⁵

The foregoing findings prompted the Audit Team to issue a Notice of Disallowance.¹⁰⁶ Both the Regional Office No. VI and the Central Office of the Commission on Audit affirmed *in toto* the Team's Notice of Disallowance.¹⁰⁷

The Statement of Overlay Work Accomplished,¹⁰⁸ which was signed by accused Asis, Coca and Tuares,¹⁰⁹ showed that the project was implemented from January 11 to February 9, 2008.¹¹⁰ To be sure, the completion of said project came three (3) weeks after the Dinagyang Festival; hence, the very reason for resorting to negotiated procurement was non-existent.¹¹¹

Further, the Sub-Allotment Release Order¹¹² (SARO) for the project was issued on December 24, 2008,¹¹³ while the Contract¹¹⁴ was executed only on January 29, 2009.¹¹⁵ Lest we forget, accused Coca and Tuares signed

¹⁰³ TSN dated October 12, 2017, pp. 22 – 23; TSN dated November 7, 2017, p. 14.

¹⁰⁴ Id. at pp. 25 – 26; TSN dated November 8, 2017, p. 5.

¹⁰⁵ TSN dated October 12, 2017, pp. 20 – 22; 38 - 39.

¹⁰⁶ EXHIBIT “Z”; TSN dated October 12, 2017, pp. 27 – 32.

¹⁰⁷ EXHIBITS “CC”, “DD”; TSN dated October 12, 2017, pp. 31 - 35.

¹⁰⁸ EXHIBIT “X-16”.

¹⁰⁹ EXHIBIT “X-16-b”.

¹¹⁰ EXHIBIT “X-16-a”; TSN dated October 12, 2017, pp. 16, 56; TSN dated November 8, 2017, pp. 20 – 21.

¹¹¹ TSN dated October 12, 2017, pp. 56 – 57.

¹¹² EXHIBIT “X-46”.

¹¹³ EXHIBIT “X-46-A”.

¹¹⁴ EXHIBITS “X-40”, “X-41”, “X-42”.

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said Contract on behalf of the "Republic of the Philippines".¹¹⁶ The irregularity, as explained in the Notice of Disallowance, stems from the fact that the project was implemented sans the Contract and the Certification as to the Availability of Funds.¹¹⁷ Thus, the legal requirements for negotiated procurement were not complied with.¹¹⁸

State Auditor Hubo found that the Contract was awarded to IBC via negotiated procurement.¹¹⁹ The recommendation to that effect by the BAC was embodied in two resolutions (i.e. S. of 2008;¹²⁰ S. of 2009¹²¹).¹²² She stressed that the BAC, not the Head of the Procuring Entity (HoPE), determines the mode of procurement and, thereafter, recommends its choice to the HoPE.¹²³

B. Documentary evidence

The Prosecution pre-marked¹²⁴ sixty-six (66) documentary exhibits. However, these were whittled down considerably. After the prosecution rested its case, the documentary evidence which it formally offered,¹²⁵ and which this Court considered as admissible in evidence,¹²⁶ were confined to the following:

¹¹⁵ EXHIBIT "X-40-A"; TSN dated October 12, 2017, pp. 26 - 27, 61.

¹¹⁶ EXHIBIT "X-42-B".

¹¹⁷ TSN dated November 8, 2017, pp. 10 - 12.

¹¹⁸ Id. at p. 18.

¹¹⁹ TSN dated October 12, 2017, p. 18.

¹²⁰ EXHIBIT "X-47", "X-47-A".

¹²¹ EXHIBITS "X-43", "X-43-A".

¹²² TSN dated October 12, 2017, pp. 20, 65.

¹²³ TSN dated November 8, 2017, pp. 8, 24.

¹²⁴ Pre-Trial Order dated October 12, 2017, pp. 3 - 10 (Records, Vol. 2, pp. 382 - 389).

¹²⁵ Prosecution's Formal Offer of Documentary Exhibits dated March 14, 2018, pp. 1 - 12.

¹²⁶ Resolution dated May 10, 2018, p. 1 (Records, Vol. 3, p. 131).

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EXHIBIT	DESCRIPTION
X	Disbursement Voucher (DV) No. 101-09-3-1172 in the amount of ₱ 43,967,223.94, net of ₱ 52,109,302.45 after the deduction of the 10% tax thereon Inspection Report dated March 31, 2009, <i>vis a vis</i> the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
X-1	Official Receipt (O.R.) No. 4658 dated April 30, 2009, issued by IBC International Builders Corporation to DPWH, Region VI in the amount of ₱ 43,967,223.94,
X-4	Inspection Report dated March 31, 2009, <i>vis a vis</i> the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
X-16	Statement of Asphalt Overlay Work Accomplished
X-16-A	Date the asphalt overlay of the Iloilo-Jaro Diversion Road was done from January 11 to February 9, 2008
X-16-B	Names and signatures of F. S. Tuares, B. C. Coca, and R. M. Asis as the officials of DPWH, Region VI, who allowed the implementation of the asphalt overlay project even without prior release of allotment therefor
X-39	Notice of Award (Letter of Acceptance) dated January 28, 2009, to IBC International Builders Corporation at a Contract Price equivalent to ₱ 54,308,803.45
X-39-A	Date of Notice of Award (January 28, 2009)
X-40, X-41, X-42	Contract dated January 29, 2009, between the Government of the Republic of the Philippines and IBC International Builders Corporation for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (5 pages)
X-40-A	Date of execution of the Contract between the Government of the Republic of the Philippines and IBC International Builders Corporation
X-42-B	Names and signatures of Berna C. Coca and Fernando S. Tuares as the officials who contracted for and on behalf of the Philippine Government with IBC International Builders Corporation
X-43	BAC Resolution dated January 26, 2009, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)

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X-43-A	Names and signatures of Fernando S. Tuares, Danilo M. Peroyo, Marilyn H. Celiz, Luvisminda H. Narciso, Juby B. Cordon, and Rolando M. Asis as the officials who recommended and approved BAC Resolution dated January 26, 2009
X-46	Sub-Allotment Release Order (SARO) CY 2008 in the amount of ₱ 53,595,000.00 for the improvement of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Iloilo City)
X-46-A	Date of the SARO (December 24, 2008)
X-47	BAC Resolution dated January 8, 2008, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. .2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)
X-47-A	Names and signatures of Fernando S. Tuares, Danilo M. Peroyo, Marilyn H. Celiz, Luvisminda H. Narciso, Berna C. Coca, and Rolando M. Asis as the officials who recommended and approved BAC Resolution dated January 8, 2008
Z	Notice of Disallowance (ND) No. 09-001-101(09) dated December 16, 2009, by the Commission on Audit (COA) regarding the Asphalt Overlay of Iloilo-Jaro Diversion Road (4 pages)
Z-1	Name and signature of State Auditor IV HELEN P. HUBO, Audit Team Leader of the OCA who prepared the Notice of Disallowance
Z-2	Proof of Service of the Notice of Disallowance to D. M. Peroy, B. C. Coca, F. S. Tuares, L. Narciso, M. H. Celiz, and R. M. Asis
AA	Memorandum of Appeal dated July 1, 2010, filed jointly by R. M. Asis, A. C. Tantiado, D. M. Peroy, F. S. Tuares, M. H. Celiz, L. Narciso and B. C. Coca relative to the Notice of Disallowance by the COA (22 pages)
BB	Memorandum dated March 10, 2011, to the COA Regional Office No. VI relative to the Notice of Disallowance on the first and final payments for the asphalt overlay of Iloilo-Jaro Diversion Road in the amount of ₱43,967,223.94
BB-1	Answer dated December 16, 2009, of the COA Regional Office No. VI to the appeal of R. M. Asis, et. al. with respect to the Notice of Disallowance on the first and final payments for the asphalt overlay of Iloilo-Jaro Diversion Road in the amount of ₱43,967,223.94 (6 pages)
CC	Decision No. 2013-003 dated August 6, 2013, of the COA (Regional Office No. VI) in the case entitled " <i>Rolando M. Asis, Regional Director, DPWH, Regional Office VI versus State Auditor IV Helen P. Hubo and State Auditor V Arlene D. Togonon</i> " (9 pages)

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DD	Decision No. 2015-066 dated March 11, 2015, of the COA (Central Office) regarding the petition for review filed by Rolando M. Asis, et. al. from the decision affirming the Notice of Disallowance on the first and final payments for the asphalt overlay of Iloilo-Jaro Diversion Road in the amount of P43,967,223.94 (4 pages)
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EVIDENCE FOR THE ACCUSED

A. Testimonial evidence

A.1 The defense, as a collective whole, presented six (6) witnesses, namely:

1. Julie M. Tambasen (Engineer IV, DPWH, Regional Office No. VI, Iloilo City);
2. Jerry P. Trefias (Former Mayor¹²⁷ of Iloilo City);
3. Atty. Mary Grace B. Bulaquiña (Chief, Legal Division, DPWH, Regional Office No. VI);
4. Lolita C. Camarista (Accountant IV, DPWH, Regional Office No. VI);
5. Fernando S. Tuares (Head, Maintenance Division, DPWH, Regional Office No. VI); and
6. Marilyn H. Celiz (Engineer V, DPWH, Regional Office No. VI, Iloilo City).

A.2 The direct testimonies of the defense witnesses are summarized below, viz:

1. ENGR. JULIE M. TAMBASEN

Julie M. Tambasen served as the Monitoring Engineer of the DPWH, Regional Office No. VI. She issued a Certification that from 2004 to 2007, IBC International Builders Corporation was the only contractor

¹²⁷ Now, Member, House of Representatives of the Philippines for the Lone District of Iloilo City.

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that had completed asphalt overlay projects in the city and province of Iloilo.¹²⁸ This information was culled from official records of the District Implementing Office of the DPWH.¹²⁹

2. JERRY P. TREÑAS

Jerry P. Treñas, the former Mayor of Iloilo City, sent a letter¹³⁰ to Director Rolando M. Asis to facilitate rehabilitation works on the Iloilo-Jaro Diversion Road in time for the 2008 Dinagyang Festival.¹³¹ This arterial thoroughfare is an expressway from the airport to the central business district of Iloilo, and *vice versa*.

Then-Mayor Treñas clarified that the one kilometer stretch remains "passable" to all motor vehicles, and, save for some "rough areas," it did not pose any danger to motorists and passers-by alike.¹³² Hence, neither public safety nor tourism would be adversely affected even if the asphalt overlay project did not push through. Truth to tell, the only reason for the repairs was to make it "presentable" to visitors during the Dinagyang Festival.¹³³

3. ATTY. MARY GRACE B. BULAQUIÑA

The Court made short work of the testimony of Atty. Mary Grace B. Bulaquiña after the parties stipulated:

1. That Atty. Bulaquiña is the Chief of the Legal Division of the DPWH, Regional Office No. VI;

¹²⁸ TSN dated June 18, 2018, pp. 6 – 9, 12; EXHIBIT "23".

¹²⁹ TSN dated June 18, 2018, pp. 17 – 18.

¹³⁰ EXHIBIT "3"; TSN dated November 6, 2018, pp. 11 – 12.

¹³¹ TSN dated June 19, 2018, pp. 9 – 13.

¹³² TSN dated June 19, 2018, pp. 14 – 16.

¹³³ TSN dated June 19, 2018, p. 15.

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- 2. That one of her functions is to certify documents wherein the DPWH, Region VI is a party;
- 3. That Atty. Bulaquiña can identify the documents that she certified;
- 4. On the existence and due execution of the documents attached to her Judicial Affidavit; and
- 5. That she has no personal knowledge as to the contents and veracity of the documents, except Exhibits "13", "15" and "18" (for Coca, Peroy and Tuares).¹³⁴

4. LOLITA C. CAMARISTA

Lolita C. Camarista, former Accountant IV of the DPWH, Regional Office No. VI, had no personal knowledge about the preparation and due execution of the following documents,¹³⁵ to wit:

DOCUMENT	DESCRIPTION
Exh. "25"	Certified true copy of the Inspection Report dated March 31, 2009, of the DPWH-Region VI (Western Visayas) in connection with the request of IBC International Builders Corporation for the payment of work accomplished for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct Iloilo-Antique Road up to Dungon Bridge)
Exh. "26"	Certified true copy of the Inspection Report for Infrastructure Projects dated December 2, 2009, of the COA Regional Office No. VI, Technical & Information Technology Services concerning Asphalt Overlay of the Iloilo-Jaro Diversion Road (Jct Iloilo-Antique Road up to Dungon Bridge)
Exh. "27"	Certified true copies of photographs ("Before," "During," and "After") of the Asphalt Overlay of the Iloilo-Jaro

¹³⁴ Judicial Affidavit dated July 18, 2018, of Atty. M. G. B. Bulaquiña, pp. 1 - 11 (Records, Vol. 3, pp. 282 - 292); TSN dated July 24, 2018, pp. 4 - 8.

¹³⁵ Judicial Affidavit dated July 18, 2018, of L. C. Camarista, pp. 1 - 6 (Records, Vol. 3, pp. 481 - 485); TSN dated September 5, 2018, pp. 8 - 9.

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to "27-G"	Diversion Road (Jct Iloilo-Antique Road up to Dungon Bridge) (7 pages)
Exh. "35" for Coca, et. al.	Certified true copy of Certificate of Completion dated March 31, 2009, of the the Asphalt Overlay of the Iloilo-Jaro Diversion Road (Jct Iloilo-Antique Road up to Dungon Bridge) by IBC International Builders Corporation that was issued by DPWH Regional Director Rolando M. Asis

Notwithstanding the disavowal of personal knowledge by Ms. Camarista with respect to the due execution of the above-mentioned documents, she, who had custodial responsibility over the originals thereof, vouched for their existence and genuineness.¹³⁶

5. FERNANDO S. TUARES

Accused testified thru his judicial affidavit.¹³⁷ The former head of the Maintenance Division, DPWH Regional Office No. VI, Iloilo City was a member of the Bids and Awards Committee (BAC) of said agency during the time material to the Information. He stated unequivocally that the segment of the Iloilo-Jaro Diversion Road was "severely damaged" and "time is of the essence" for rehabilitation works prior to the Dinagyang Festival.¹³⁸ Yet, when cross-examined, he backtracked and said that:

"[T]he ... condition of the Jaro-Iloilo Diversion Road is not enough to stop the conduct of trade and commerce in that area ... It is still serviceable ..." ¹³⁹

Hermogenes E. Ebdane, Jr., Secretary of Public Works and Highways, had authorized the BAC to resort to negotiated procurement in order to fast-track roadworks, and IBC International Builders Corporation (i.e. IBC) was the sole

¹³⁶ Order dated September 5, 2018, p. 1 (Records, Vol. 3, p. 508).

¹³⁷ Judicial Affidavit dated October 4, 2018, of Fernando S. Tuares, pp. 1 - 7 (Records, Vol. 4 pp. 12 - 18).

¹³⁸ *Id.* at p. 2 (Records, Vol. 4, p. 13).

¹³⁹ TSN dated October 9, 2018, p. 24.

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contractor with an asphalt batching plant in Iloilo. Tuares admitted, however, that although the Dinagyang Festival was celebrated on the third week of January 2008; yet, the asphalt overlay project was completed on February 2008.¹⁴⁰

Tuares alleged that the BAC performed its function in good faith and the project was implemented and completed. Moreover, no findings of sub-standard and overpricing of the asphalt overlay project were unearthed.¹⁴¹

6. MARILYN H. CELIZ

The direct testimony of Marilyn H. Celiz dwelt with the following relevant matters, to wit:

1. Engr. Celiz and Engr. Narciso were provisional members of the Bids and Awards Committee (BAC), DPWH Regional Office No. VI, Iloilo City.¹⁴²
2. As members of the BAC, Engr. Celiz and Engr. Narciso were not involved in the award and implementation of the project. Rather, it is the Regional Director, as Head of the Procuring Entity (HoPE), who makes the award and gives the go-signal for the implementation of the project.
3. The BAC, DPWH Regional Office No. VI conducted a procurement for the asphalt overlay of the Iloilo-Jaro Diversion Road, but the Committee recommended that it should not be awarded unless and until funds are available.
4. Negotiated procurement was resorted to upon approval by the Secretary of the DPWH due to the urgent need for immediate action to prevent

¹⁴⁰ Id. at p. 26.

¹⁴¹ Id. at p. 3 (Records, Vol. 4, p. 14).

¹⁴² EXHIBITS "1", "1-A".

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damage to life and property as a result of dilapidated roads.¹⁴³

5. The BAC resolved to award the asphalt overlay project upon availability of funds therefor.¹⁴⁴
6. Both Engr. Celiz and Engr. Narciso have clean service records and they have served continuously at the DPWH for a long period.¹⁴⁵

Marilyn H. Celiz declared under oath that the BAC recommended the direct negotiation of the Asphalt Overlay Project to IBC International Builders Corporation only after deliberation and after taking into consideration other contractors.¹⁴⁶ Such recommendation is based on the records of the DPWH Regional Office VI that from 2004 up to 2007, only IBC had completed asphalt overlay projects in the city and province of Iloilo.¹⁴⁷

Celiz and Narciso had no participation in the award and implementation of the project, as well as in the disbursement of public funds therefor.¹⁴⁸

B. Documentary evidence

The documents that accused Berna C. Coca, Danilo M. Peroy, and Fernando M. Tuares formally offered,¹⁴⁹ and that the Court admitted¹⁵⁰ as evidence are listed below, viz:

¹⁴³ EXHIBITS "5", "5-A", "5-B"; TSN dated November 6, 2018, pp. 8 - 10.

¹⁴⁴ TSN dated November 6, 2018, pp. 20 - 23.

¹⁴⁵ TSN dated November 6, 2018, pp. 5, 28.

¹⁴⁶ Memorandum dated February 28, 2019, of accused L. H. Narciso and M. H. Celiz, p. 44 (Records, Vol. 5, p. 91); EXHIBITS "E", "8", "8-A", "8-A-1"; TSN dated November 6, 2018, pp. 12 - 14.

¹⁴⁷ Memorandum dated February 28, 2019, of accused L. H. Narciso and M. H. Celiz, p. 44 (Records, Vol. 5, p. 91); EXHIBIT "23"; TSN dated November 6, 2018, pp. 14 - 16.

¹⁴⁸ TSN dated November 7, 2017, p. 10 (Testimony of H. P. Hubo); Memorandum dated February 28, 2019, of accused L. H. Narciso and M. H. Celiz, pp. 44, 46 (Records, Vol. 5, pp. 91, 93).

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EXHIBIT	DESCRIPTION
1	1 st Indorsement dated February 21, 2007, by Assistant Secretary Juanito P. Abergas, Chairman of the BAC for Civil Works, Area II (Regions IV-B, V, VI, VII & VIII), showing that accused Coca, Peroy and Tuares were among the members of said BAC
1-B	Signature of Atty. Mary Grace B. Bulaquiña, custodian of the document (Exh. "1")
2	Individual Program of Work, which includes the Asphalt Overlay of Iloilo-Jaro Diversion Road (Junction Iloilo-Antique Road up to Dungon Bridge): (7 pages)
2-B	Signature of Atty. Mary Grace B. Bulaquiña
3	Letter Request dated November 23, 2007 of Jerry P. Trefias, Mayor of Iloilo City, to Rolando M. Asis, Director IV of the DPWH, Regional Office VI
3-A	Typewritten name and signature of Mayor Jerry P. Trefias
3-B	Signature of Atty. Mary Grace B. Bulaquiña
4	Supplemental Annual Procurement Plan CY 2007 of the DPWH, Regional Office VI
4-A	Inclusion of the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) in the Supplemental Annual Procurement Plan CY 2007
4-B	Signature of Atty. Mary Grace B. Bulaquiña
5	Request for Clearance of Negotiated Procurement dated November 29, 2007, of Director R. M. Asis to Hermogenes E. Ebdane, Jr., Secretary of the DPWH, in connection with the contract for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
5-C	Signature of Atty. Mary Grace B. Bulaquiña
6	Letter dated January 2, 2008, of B. C. Coca, BAC Chairperson, to H. E Lee Tan, President of IBC International Builders Corporation, inviting the latter to submit its quotation/ bid offer for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
6-B	Signature of Atty. Mary Grace B. Bulaquiña

¹⁴⁹ Formal Offer of Exhibits (For Accused Coca, Peroy and Tuares) dated November 19, 2018, pp. 1- 16 (Records, Vol. 4, pp. 204 - 219).

¹⁵⁰ Minute Resolution dated December 14, 2018, pp. 1 - 2 (Records, Vol. 4, pp. 498-A - 498-B).

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7	Bid documents submitted by IBC International Builders Corporation (First Envelope)
7-A	Bid documents submitted by IBC International Builders Corporation (Second Envelope)
7-B	Signature of Atty. Mary Grace B. Bulaquiña
8	Bid and Post-Qualification Evaluation Report on the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (3 pages)
8-B	Signature of Atty. Mary Grace B. Bulaquiña
9	BAC Resolution dated January 2, 2008, Recommending Direct Negotiation of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (2 pages)
9-C	Signature of Atty. Mary Grace B. Bulaquiña
10	BAC Resolution dated January 8, 2008, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)
10-C	Signature of Atty. Mary Grace B. Bulaquiña
11	Letter dated January 9, 2008, of Director R. M. Asis to H. E. Lee Tan, President of IBC International Builders Corporation
11-C	Signature of Atty. Mary Grace B. Bulaquiña
12	Letter dated January 10, 2008, of H. E. Lee Tan, President of IBC International Builders Corporation, in reply to the letter dated January 9, 2008, of Director R. M. Asis
12-B	Signature of Atty. Mary Grace B. Bulaquiña
13	Sub-Allotment Release Order (SARO) dated December 24, 2008, in the amount of ₱ 53,595,000.00
13-B	Signature of Atty. Mary Grace B. Bulaquiña
14	Letter dated January 26, 2009, of F. S. Tuares, informing the BAC Chairman about the release of ₱ 53,595,000.00 for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
14-B	Signature of Atty. Mary Grace B. Bulaquiña

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15	BAC Resolution dated January 26, 2009, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)
16-B	Signature of Atty. Mary Grace B. Bulaquiña
16	Notice of Award (Letter of Acceptance) dated January 28, 2009, to IBC International Builders Corporation at a Contract Price equivalent to ₱ 54,308,803.45
16-D	Signature of Atty. Mary Grace B. Bulaquiña
17	Memorandum to the Budget Officer III, CFMD regarding the Obligation Request (ObR) for the amount of ₱ 52,109,302.45
17-B	Signature of Atty. Mary Grace B. Bulaquiña
18	Contract dated January 29, 2009, between the Government of the Republic of the Philippines and IBC International Builders Corporation for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (5 pages)
18-A	Signature of Atty. Mary Grace B. Bulaquiña
19	Letter dated January 29, 2009, of Atty. Conrado A. Agot, Chief, Legal Staff, to Ely G. Navarro, State Auditor IV
19-B	Signature of Atty. Mary Grace B. Bulaquiña
20	Letter dated February 29, 2008, of Director R. M. Asis, to Virginia Palanca-Santiago, Asst. Ombudsman for the Visayas
20-C	Signature of Atty. Mary Grace B. Bulaquiña
21	Letter dated March 16, 2009, of Juby B. Cordon, BAC Chairperson, to Ely G. Navarro, State Auditor IV
21-B	Signature of Atty. Mary Grace B. Bulaquiña
22	Letter dated March 17, 2009, of Juby B. Cordon, BAC Chairperson, to V. Palanca-Santiago, Asst. Ombudsman for the Visayas
22-A	Signature of Atty. Mary Grace B. Bulaquiña
23	Certification dated October 19, 2016, issued by Engineer III Julie M. Tambasen, DPWH, Regional Office VI, that IBC International Builders Corporation is the only contractor with Asphalt Overlay projects in Iloilo
23-A	Signature of Engineer III Julie M. Tambasen
23-B	Handwritten name and signature of Engineer III Julie M. Tambasen



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24	Statement of Work Accomplishment (January 11 – February 9, 2008) concerning the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
24-A	Name and signature of Accountant IV Lolita C. Camarista
25	Inspection Report dated March 31, 2009, <i>vis a vis</i> the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
25-D	Name and signature of Accountant IV Lolita C. Camarista
26	Inspection Report for Infrastructure Projects dated December 2, 2009, on the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (2 pages)
26-A	Name and signature of Accountant IV Lolita C. Camarista
27	Photographs of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (7 pages)
27-G	Name and signature of Accountant IV Lolita C. Camarista
28	Service Record of Berna Colago Coca (2 pages)
29	Service Record of Danilo Minguez Peroy (1 page)
30	Service Record of Fernando Seblet Tuares (1 page)
31	Laboratory Test Report on Thermoplastic Traffic Paint dated January 15, 2008, in connection with the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
32 to 32-J	Test Reports of the Bureau of Research and Standards, DPWH, on Cut-Back Asphalt, Emulsified Asphalt and Asphalt Cement in connection with the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (11 pages)
33	Disbursement Voucher (DV) showing payment to IBC International Builders Corporation in the amount of P 43,967,223.94 for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
33-A	Name and signature of Accountant IV Lolita C. Camarista
35	Certificate of Completion dated March 31, 2009, issued by DPWH, Region VI, to IBC International Builders Corporation for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City

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35-A	Name and signature of Accountant IV Lolita C. Camarista
36	Page 13 of January 21, 2008 issue of Panay News
36-A	Date (January 28, 2008) the Office of the Ombudsman-Visayas received a copy of page 13 of the January 21, 2008 issue of Panay News
36-B	Date of issue (January 21, 2008) of Panay News regarding "IBC's Asphalt Overlay"
37	Page 9 of January 24, 2008 issue of Panay News
37-A	Date of issue (January 24, 2008) of Panay News regarding the "Mother of All Scams," the asphalt overlay project undertaken by IBC International Builders Corporation
37-B	Date (January 28, 2008) the Office of the Ombudsman-Visayas received a copy of page 9 of the January 24, 2008 issue of Panay News
38	Page 9 of January 25, 2008 issue of Panay News
38-A	Date of issue (January 24, 2008) of Panay News regarding "That Asphalt Overlay Anomaly, Again!"
38-B	Date (January 28, 2008) the Office of the Ombudsman-Visayas received a copy of page 9 of the January 25, 2008 issue of Panay News
43	Complaint-Affidavit dated March 20, 2014, of the Office of the Ombudsman-Visayas against Asis, Coca, Narciso, Tuares, Peroy and Celiz of the DPWH, Region VI (9 pages)
43-A	Paragraphs 10 and 11 (page 2) of the Complaint-Affidavit
43-B	Date (March 20, 2014) of execution of the Complaint-Affidavit
43-C	Name and signature of Ma. Sonnette S. Daquita, Graft Investigation and Prosecution Officer I, Office of the Ombudsman, Regional Office VI
43-D	Name and signature of Theodore P. Banderado, Graft Investigation and Prosecution Officer I, Office of the Ombudsman, Regional Office VI
43-E	Paragraphs 2, 3, and 4 (page 1) of the Complaint-Affidavit

Further, the documentary exhibits that accused **Marilyn H. Celiz** and **Luvisminda H. Narciso** formally offered,¹⁵¹ and that the Court admitted¹⁵² as evidence include the following:

¹⁵¹ Formal Offer of Documentary Exhibits (For Accused Marilyn H. Celiz and Luvisminda H. Narciso) dated November 12, 2018, pp. 1 – 10 (Records, Vol. 4, pp. 60 – 69).

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EXHIBIT	DESCRIPTION
1	1 st Indorsement dated February 21, 2007, by Assistant Secretary Juanito P. Abergas, Chairman of the BAC for Civil Works, Area II (Regions IV-B, V, VI, VII & VIII), showing that accused Coca, Peroy and Tuares were among the members of said BAC
1-A	Names of Luvisminda H. Narciso and Marilyn H. Celiz as Vice-Chairman and Member, respectively of the Bids and Awards Committee (BAC), DPWH, Regional Office No. VI
3	Letter Request dated November 23, 2007 of Jerry P. Treñas, Mayor of Iloilo City, to Rolando M. Asis, Director IV of the DPWH, Regional Office VI
4	Supplemental Annual Procurement Plan CY 2007 of the DPWH, Regional Office VI
5	Request for Clearance of Negotiated Procurement dated November 29, 2007, of Director R. M. Asis to Hermogenes E. Ebdane, Jr., Secretary of the DPWH, in connection with the contract for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
5-A	Approval by Secretary Hermogenes E. Ebdane, Jr. of the Request for Clearance of Negotiated Procurement of the contract for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
5-B	Name of Rolando M. Asis, Regional Director of the DPWH, Regional Office No. VI, as the person who made the Request for Clearance of Negotiated Procurement of the contract for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
5-C	Request for Clearance of Negotiated Procurement of the contract for the Asphalt Overlay of the Iloilo-Jaro Diversion Road <i>"is in accordance with Section 53(b) of the IRR-A of R. A. No. 9184 . . ."</i>
6	Letter dated January 2, 2008, of B. C. Coca, BAC Chairperson, to H. E Lee Tan, President of IBC International Builders Corporation, inviting the latter to submit its quotation/ bid offer for the Asphalt Overlay of the Iloilo-Jaro Diversion Road
6-A	Name and signature of Berna C. Coca on the letter dated January 2, 2008
7	Bid documents submitted by IBC International Builders Corporation to the BAC of the DPWH, Region VI in line with the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct.

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	Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
8	1 st page of BAC Resolution dated January 2, 2008, Recommending Direct Negotiation of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation
8-A	2nd page of BAC Resolution dated January 2, 2008, Recommending Direct Negotiation of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation
8-A-1	Names and signatures of D. M. Peroy, F. S. Tuares, M. H. Celiz, L. H. Narciso, B. C. Coca, and R. M. Asis on the above-described BAC Resolution dated January 2, 2008,
9	Bid and Post-Qualification Evaluation Report <i>vis a vis</i> the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City (3 pages)
9-A	Page 2 of the Bid and Post-Qualification Evaluation Report
9-B	Page 3 of the Bid and Post-Qualification Evaluation Report
9-B-1	Name and Signature of Marilyn H. Celiz as the person who prepared the Bid and Post-Qualification Report
10	BAC Resolution dated January 8, 2008, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)
10-A	8 th paragraph of BAC Resolution dated January 8, 2008, which reads: "The BAC further recommends that since funds for the purpose has (sic) not been released, a Notice/Letter of Award be issued to IBC International Builders [Corporation] only, when funds is (sic) already available."
10-B	Names and signatures of D. M. Peroy, F. S. Tuares, M. H. Celiz, L. H. Narciso and B. C. Coca as members of the BAC who unanimously approved BAC Resolution dated January 8, 2008
14	Letter dated January 26, 2009, of F. S. Tuares, Informing the BAC Chairman about the release of P 53,595,000.00 for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct.

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	Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City
14-A	1 st and 2 nd paragraphs of the letter dated January 26, 2009, of F. S. Tuares informing the BAC Chairman that only P=52,110,000.00 is available for payment, while the balance of P 2,198,803.45 shall be requested for additional release to cover the Contract Amount
14-B	Name and signature of Fernando S. Tuares as the person who executed the letter dated January 26, 2009
15	BAC Resolution dated January 26, 2009, Recommending Award of the Contract for the Asphalt Overlay of Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge) Sta. 2+732.60 – Sta. 5+102.30, Iloilo City to IBC International Builders Corporation (1 page)
15-A	4 paragraphs of BAC Resolution dated January 26, 2009
15-B	Names and signatures of F. S. Tuares, D. M. Peroy, M. H. Celiz, L. H. Narciso and J. B. Cordon, as members of the BAC who unanimously approved the Committee's Resolution dated January 26, 2009
23	Certification dated October 19, 2016, issued by Engineer III Julie M. Tambasen, DPWH, Regional Office VI, that IBC International Builders Corporation is the only contractor with Asphalt Overlay projects in Iloilo
23-A	Name and signature of Julie M. Tambasen on the Certification dated October 19, 2016
40	Complaint-Affidavit dated March 20, 2014, of the Office of the Ombudsman-Visayas against Asis, Coca, Narciso, Tuares, Peroy and Celiz of the DPWH, Region VI (9 pages)

THE COURT'S RULING

The Information herein formally charged Rolando M. Asis, then-Director of the Department of Public Works and Highways (DPWH), Regional Office No. VI, Iloilo, who was allegedly complicit with Berna Colago Coca, Chairperson of the Bids and Awards Committee (BAC) of said agency, and four co-employees, with

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violation of Section 3(e) of Republic Act No. 3019, as amended.¹⁵³
This special penal law 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.

In *Alejandro C. Rivera v. People*,¹⁵⁴ the Supreme Court held that to justify an indictment under this section, the existence of the following elements must be established:

- (1) the accused must be a public officer discharging administrative, judicial or official functions;
- (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- (3) the action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.¹⁵⁵

¹⁵³ Otherwise known as the Anti-Graft and Corrupt Practices Act which was promulgated on August 17, 1960.

¹⁵⁴ G.R. Nos. 156577, 15658, 156749, December 3, 2014 (743 SCRA 476).

¹⁵⁵ Id. at 496; *Belongilot v. Cua*, G.R. No. 160933, November 24, 2010 (636 SCRA 34, 48); *Galario v. Office of the Ombudsman (Mindanao) and Piano*, G.R. No. 166797, July 10, 2007 (527 SCRA 190), citing *Sistoza v. Desierto* 437 Phil. 117, 130 (2002); *Venus v. Desierto*, 358 Phil. 675, 694 (1998).

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There are two ways¹⁵⁶ by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions, to wit:

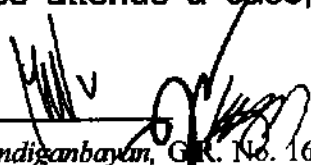
- (1) by causing undue injury to any party, including the Government; or
- (2) by giving any private party any unwarranted benefit, advantage or preference.

The accused may be charged under either mode or both.¹⁵⁷ The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. 3019.¹⁵⁸

In so far as the first element is concerned, it is undisputed that all the accused were public officers discharging administrative functions at the time material to this case. Notably, there is a judicial admission in this regard.¹⁵⁹

Anent the second element, the Court is called upon to address the issue of whether or not the award of the asphalt overlay of the Iloilo-Jaro Diversion Road (Jct. Iloilo-Antique Road up to Dungon Bridge, Sta. 2+732.60 – Sta. 5+102.30, Iloilo City) by officials of the DPWH, Regional Office No. VI, to IBC International Builders Corporation without public bidding conformably with Republic Act No. 9184 occurred by reason of *manifest partiality, evident bad faith or gross inexcusable negligence*.

This Court had occasion to explain in *People v. Darius F. Josue, et al.*,¹⁶⁰ that in order to determine whether any of these circumstances attends a case, the following parameters should be considered:


¹⁵⁶ *Cabrera v. Sandiganbayan*, G.R. No. 162314 – 17, October 25, 2004 (484 Phil. 350, 360; 441 SCRA 377), citing *Jacinto v. Sandiganbayan*, 387 Phil. 872, 881 (2000).

¹⁵⁷ *Velasco v. Sandiganbayan*, G.R. No. 160991, February 28, 2005 (492 Phil. 669, 677; 452 SCRA 593).

¹⁵⁸ *Quibal v. Sandiganbayan*, 314 Phil. 66; 244 SCRA 224 (1995); *People v. Santos L. Nacaytuna*, SB Crim. Case No. 27759, October 4, 2005; *People v. Ramon B. Mondano*, SB Crim. Case Nos. 26124 to 26125, August 13, 2004.

¹⁵⁹ Pre-Trial Order dated October 12, 2017, pp. 1 of 31 (Records, Vol. 2, p. 380); TSN dated July 4, 2017, pp. 6 – 7.

¹⁶⁰ SB-11-CRM-0373, May 25, 2018, citing *Fuentes v. People*, G.R. No. 186421, 17 April 2017

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"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. x x x [It] contemplates a state of mind affirmatively operating with furtive design or with some motive of 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 wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."¹⁶¹ (Citations omitted.)

Further, this Court, in *People v. Aniceto A. Fernandez, et. al.*,¹⁶² emphasized that:

"... [A] violation of Section 3(e) of R.A. No. 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.¹⁶³ Unlike in the commission of ordinary felonies however, the law requires that the intent or negligence, which must attend the commission of the prohibited acts under Section 3(e) of RA No. 3019, should meet the gravity required by law. Thus, in construing these phrases, the Court observed that bad faith or partiality, on the one hand, and negligence, on the other hand, per se are not enough for one to be held criminally liable under the law; that the bad faith or partiality is evident or manifest, or, that the negligent act or omission is gross and inexcusable must be shown."¹⁶⁴ (Emphasis and Underscoring Supplied.)

Since the case against the deceased Asis is, for all intents and purposes, over, judicial inquiry zeroes in on the misfeasance imputed

¹⁶¹ SEE ALSO *People v. Atienza, et. al.* G.R. No. 171671, June 18, 2012 (673 SCRA 470, 480-481, cited in *Araullo v. Office of the Ombudsman*, G.R. No. 194157, July 30, 2014; *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290; *People v. Raquel Austria Naciongayo*, Crim. Case No. SB-16-CRM-0085, December 7, 2018; *People v. Santos L. Nacayuma*, SB Crim. Case No. 27759, October 4, 2005.

¹⁶² Crim. Case No. SB-09-CRM-0158 to 0161, June 29, 2017, citing *Jaca v. People*, G.R. Nos. 166967, 166974, 167167, January 28, 2013 (689 SCRA 270).

¹⁶³ *Uriarte v. People*, G.R. No. 169251, 20 December 20, 2006 (511 SCRA 471, 486), citing *Santos v. People*, G.R. No. 161877, March 23, 2006 (485 SCRA 185, 194).

¹⁶⁴ *Uriarte v. People*, G.R. No. 169251, December 20, 2006 (511 SCRA 471, 487-488); *Umptig v. People*, G.R. No. 171359, July 18, 2012.

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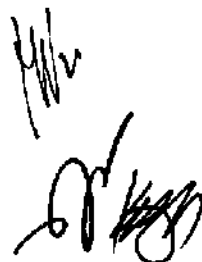
against the five (5) members of the BAC. Now, to put things in proper perspective, the Court looks into the nature of the accused's collective function. In this regard, Section 12 of R.A. No. 9184 is apropos. It reads:

"Section 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 of 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 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." (Emphasis Supplied.)

As members of the BAC, it is accused's bounden duty to ensure that the procuring entity abides by the standards set forth under R. A. No. 9184 and its IRR.¹⁶⁵ Fiscal stewardship demands punctiliousness to ensure fealty with strictures of the law. Lest we forget, authority, unconfined and vagrant, must be canalized within its banks to keep it from overflowing.¹⁶⁶



¹⁶⁵ *People v. William I. Ramirez, et. al.*, SB-11-CRM-0293, June 16, 2016.

¹⁶⁶ *Schenker Poultry Corp. v. United States*, 295 U.S. 495 [1935, Per J. Cardozo, Concurring Opinion]; *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 496, 522 – 523 [1937].

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The DPWH, the implementing agency herein, memorialized the guidelines for procurement via the internet.¹⁶⁷ Lamentably, accused, as members of the BAC, paid scant regard thereto.

A. THE PROJECT WAS NOT SUFFICIENTLY FUNDED AT THE COMMENCEMENT OF THE PROCUREMENT PROCESS

Accused Tuares, who was tasked to oversee the subject project, admitted that no appropriation had been earmarked beforehand. His direct testimony, which is congruent with the "irregular expenditure"¹⁶⁸ noted by the CoA, reads:

"Q: x x x I am showing to you Exhibit 'X-47' for the prosecution. It is entitled 'Resolution Recommending Award the Contract for the Asphalt Overlay of Iloilo Diversion Road . . . There is no amount. Kindly go over this and tell us if this is the resolution that you signed in connection with this case in 2008.

"A: Yes, ma'am.

"x x x

"Q x x x This resolution states Resolution No. blank, s. of 2008. Can you explain to this Honorable Court why it appears that there is no Resolution Number . . . ?

"A: . . . [T]he reason behind this is that no funds [were] yet available with regards to this.

"Q: So, no funds is (sic) available. Okay.

"A: Yes.

"Q: So, RIGHT AT THE VERY START, sir, YOU KNOW THAT THERE IS NO FUND AVAILABLE FOR THIS PROJECT.

"A: Yes, ma'am.

"Q: YET, AT THE TIME IT WAS IMPLEMENTED.

¹⁶⁷ http://www.dpwh.gov.ph/dpwh/tambuli/2005/jul_sept_05/ra_9184.htm;
<https://www.slideshare.net/junealapa/frequentlyaskedquestionsaboutra9184>

¹⁶⁸ EXHIBIT "CC": Decision dated August 6, 2013, of the Commission on Audit, Regional Office No. VI, p. 7.

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"A: Yes, ma'am, because the director had instructed us to

"Q: It's okay, sir. There is (sic) no funds. But, in this fifth whereas clause, Mr. Witness, it is stated that the approved budget for the contract for the aforementioned project is Php54,370,116.70. My question is - **IF AT THAT TIME, THERE IS YET NO AMOUNT FOR THE SAID PROJECT, HOW COME THE BAC ALREADY KNEW OF THE APPROVED BUDGET FOR THE CONTRACT FOR THE SAID PROJECT? IN FACT, IT WAS STATED IN YOUR RESOLUTION.**

"A: The approved budget, ma'am **ACTUALLY THE AMOUNT STATED IN THAT RESOLUTION IS THE PRICE QUOTED BY THE CONTRACTOR.**

"Q: So, that contractor that you are referring to is IBC.

"A: Yes, ma'am.

"x x x

"JUSTICE VIVERO:

"... The witness should answer yes or not.

"Q: **AS EARLY AS JANUARY 2008, IBC WAS ALREADY TALKING WITH DPWH REGION 6, YOUR HONOR, OR SAY NEGOTIATING WITH DPWH REGION 6.** That is why they are quoting the amount of 54 million, 370 thousand and something.

"A: I am no really aware of that, ma'am. I cannot remember.

"x x x

"Q: But, you are certain that **THIS IS THE AMOUNT THAT CAME FROM THE QUOTATION OF IBC.**

"A: **YES**, ma'am, because that is the amount that they have submitted.

"x x x." ¹⁶⁹ (Emphasis and Capitalization Supplied.)

Accused Narciso and Celiz contend that the commencement of the procurement of the asphalt overlay project without the availability of funds is allowed and in consonance with Circular No. 02-2008

¹⁶⁹ TSN dated October 9, 2018, pp. 18 - 23.

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which was issued by the Government Procurement Policy Board (GPPB).¹⁷⁰

Accused's argument is specious. Administrative regulations are solely intended to carry out, not to supplant or to modify, the law.¹⁷¹ In *Jacomille v. Abaya*,¹⁷² the Supreme Court definitively stated the reckoning point for availability of funds *vis a vis* a project. Pertinent excerpts lifted from said Decision are quoted below, *viz*:

"Before the enactment of R.A. No. 9184, there were already laws that required sufficient appropriation before the government could enter into a contract. The **Administrative Code of 1987** expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. *First*, there must be an appropriation law authorizing the expenditure required in the contract. *Second*, there must be a certification by the proper accounting official and auditor, attached to the contract, attesting that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void.¹⁷³

"The **Government Auditing Code of the Philippines** also provides for the same provisions.¹⁷⁴ It further declares that any contract entered into contrary to above-cited two requirements shall be void, and the officer or officers entering into the contract shall be liable to the government for any consequent damage.¹⁷⁵

"x x x

"The requirement of availability of funds before the execution of a government contract, however, has been modified by R.A. No. 9184. The said **LAW** presents a novel policy which

¹⁷⁰ Memorandum dated February 28, 2019, of L. H. Narciso and M. H. Celiz, pp. 21 – 23.

¹⁷¹ *Lokin v. COMELEC*, G.R. Nos, 179431-32 & 180443, June 22, 2010.

¹⁷² G.R. No. 212381, April 22, 2015.

¹⁷³ Sections 46, 47 and 48, Chapter 8, Subtitle B, Title I, B; TSN dated October 9, 2018, pp. 18 - 23.

¹⁷³ Memorandum dated February 28, 2019, of L. H. Narciso and M. H. Celiz, pp. 21 – 23.

¹⁷³ *Lokin v. COMELEC*, G.R. Nos, 179431-32 & 180443, June 22, 2010.

¹⁷³ Sections 46, 47 and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987.

¹⁷⁴ Sections 85 and 86 of the Government Auditing Code of the Philippines.

¹⁷⁵ Section 87 of the Government Auditing Code of the Philippines.

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REQUIRES, NOT ONLY THE SUFFICIENCY OF FUNDS AT THE TIME OF THE SIGNING OF THE CONTRACT, BUT ALSO UPON THE COMMENCEMENT OF THE PROCUREMENT PROCESS. This progressive shift can be gleaned from several provisions of R.A. No. 9184, to wit:

Section 5. Definition of Terms. - x x x

(a) Approved Budget for the Contract (ABC) - refers to the budget for the contract duly approved by the Head of the Procuring Entity, **as provided for in the General Appropriations Act and/or continuing appropriations**, in the National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O.No.518, series of 1979, in the case of Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.

x x x

Section 7. Procurement Planning and Budgeting Linkage. - **All procurement should be within the approved budget of the Procuring Entity** and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

x x x

Section 20. Pre-Procurement Conference. - Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end-user. (Emphases supplied)

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"The above-cited provisions of **R.A. No. 9184** demonstrate that **THE LAW REQUIRES THE AVAILABILITY OF FUNDS BEFORE THE PROCURING ENTITY COMMENCES THE PROCUREMENT OF A GOVERNMENT PROJECT.** x x x ... [A]ll procurement must be within its approved budget. Also, even before the issuance of the invitation to bid, the law requires a pre-procurement conference to confirm the certification that the funds for the government project are indeed available.

"x x x." ¹⁷⁶ (Emphasis and Capitalization Supplied.)

Concededly, IBC did the asphalt overlay from January 11, 2008 to February 9, 2008.¹⁷⁷ Ten (10) months later, the allotment for said project was released.¹⁷⁸ One (1) year later, IBC accepted the offer to undertake the civil works on January 28, 2009,¹⁷⁹ and the Contract¹⁸⁰ to that effect was executed on January 29, 2009. Apparently, the BAC put the cart before the horse, so to speak. This is irregular and patently illegal.

B. NEITHER AN EXTRAORDINARY CIRCUMSTANCE NOR A CALAMITOUS EVENT WITHIN THE CONTEMPLATION OF R.A. NO. 9184 JUSTIFY ACCUSED'S RESORT TO NEGOTIATED PROCUREMENT

In *Office of the Ombudsman v. Antonio Z. De Guzman*,¹⁸¹ the Supreme Court, through the *ponencia* of Justice Marvic M.V.F. Leonen, explained the statutory requirements akin to negotiated procurement, *viz*:



¹⁷⁶ SEE *People v. Manuel A. Tio*, Crim. Case No. SB-13-CRM-0575, November 29, 2016.

¹⁷⁷ EXHIBITS "X-16" & "X-16-A": Statement of Overlay Work Accomplished.

¹⁷⁸ EXHIBIT "X-46": Sub-Allotment Release Order CY 2008 dated December 24, 2008.

¹⁷⁹ EXHIBIT "X-39": Notice of Award (Letter of Acceptance).

¹⁸⁰ EXHIBIT X-40" to "X-42".

¹⁸¹ G.R. No. 197886, October 4, 2017.

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"As a general rule, all government procurement must undergo competitive bidding.¹⁸² This ensures transparency, competitiveness, and public accountability in the procurement process.¹⁸³ However, the government entity may, subject to certain conditions resort to alternative methods of procurement, namely: (1) limited source bidding, (2) direct contracting, (3) repeat order, (4) shopping, and (5) negotiated procurement.¹⁸⁴ The procuring entity must ensure that in any of these methods, it secures the most advantageous price for the government.¹⁸⁵

"In negotiated procurement, the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.¹⁸⁶ Resort to procurement is allowed only under the following conditions:

Section 53. Negotiated Procurement. -
Negotiated Procurement shall be allowed only in the following instances:

- (a) In cases of two (2) failed biddings, as provided in Section 35 hereof;
- (b) ***In case of imminent danger to life or property during a state of calamity, or when TIME IS OF THE ESSENCE arising from natural or man-made CALAMITIES OR OTHER CAUSES where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;***
- (c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- (d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the

¹⁸² Rep. Act No. 9184, art. IV, sec. 10.

¹⁸³ Rep. Act No. 9184, art. I, sec. 3.

¹⁸⁴ Rep. Act No. 9184, art. XVI, sec. 48.

¹⁸⁵ Rep. Act No. 9184, art. XVI, sec. 48.

¹⁸⁶ Rep. Act No. 9184, art. XVI, sec. 48 (e); Revised IRR of R.A.9184 (2009), Sec. 53.

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original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further,* That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

- (e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989.

"x x x.

"... [N]egotiated procurement under Republic Act No. 9184, Section 53(b) involves situations beyond the procuring entity's control. Thus, it speaks of 'imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is necessary.' Following the PRINCIPLE OF EJUSDEM GENERIS, where general terms are qualified by the particular terms they follow in the statute,¹⁸⁷ the phrase 'OTHER CAUSES' is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities." (Italics and capitalization supplied.)

A reputable authority on Government Contracts explains the stringent justification for a negotiated infrastructure contract, viz:

"x x x [T]he emergency contemplated is that which arises from a **NATURAL CALAMITY** (e.g. floods, typhoons, volcanic eruptions, earthquake) giving rise to urgent necessity for the project. Any other kind of emergency is

¹⁸⁷ See *Vera v. Cuevas*, 179 Phil. 307 (1979) [Per J. De Castro, First Division].

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apparently excluded. Absent such calamity, there is no valid factual basis for declaring an emergency that would provide cause for negotiation. ***A MERE CERTIFICATION ISSUED BY THE AGENCY HEAD concerned as to the existence of an emergency without any mention whatsoever of any natural calamity that gave rise thereto and gratuitously alluding to the project involved as being emergency in nature, in the writer's view, WOULD NOT SUFFICE AS A VALID JUSTIFICATION FOR DISPENSING WITH THE BIDDING REQUIREMENT. X X X.***¹⁸⁸ (Italics and Capitalization supplied.)

In *People v. Gregorio R. Vigilari, et. al.*,¹⁸⁹ this Court sustained the validity of a negotiated contract between officials of the DPWH and Toyo-Ebara Joint Venture, a Japanese consortium, for the procurement of replacement and maintenance spare parts for the Balut-Vitas flood-control pumping stations in Tondo, Manila. The urgency for repairs to prevent flooding, plus the imminent closing date of the Loan Agreement between the Philippines and Japan justified direct engagement (i.e. sole source contracting). Also, in *People v. Lauro L. Baja, Jr.*,¹⁹⁰ time was of the essence to finish repairs at the official residence of the ambassador, which served as the venue for the campaign of the Philippines for a seat in the Security Council of the United Nations. Thence, the presumption of the validity of the contract prevailed.

The Prosecution alleged that –

“The DPWH cannot resort to negotiated procurement since the Dinagyang Festival does not qualify as one of the highly exceptional cases which would warrant an immediate action to prevent damage to or loss of life or property.”¹⁹¹ (Emphasis Supplied.)

Contrarily, accused Coca, Peroy and Tuares justified the BAC's recommendation in the following manner:

¹⁸⁸ Bartolome C. Fernandez, Jr., A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW, Central Lawbook Publishing Co., Inc., 1996 Edition, pp. 82 – 83.

¹⁸⁹ SB-09-CRM-0153, August 9, 2017.

¹⁹⁰ SB-11-CRM-0030, September 28, 2018.

¹⁹¹ Memorandum dated March 28, 2019, of the Office of the Special Prosecutor, p. 5.

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"The accused BAC members relied heavily on the authority given by no less than DPWH Secretary Hermogenes Ebdane in November of 2007 to resort to Negotiated Procurement.

"x x x [I]f the accused did not obey the order of their superior, for sure they will be held liable for insubordination or neglect of duty.

"x x x

"Indeed, it bears stressing that there was at that time, a serious need to immediately repair that particular road since [the] Dinagyang Festival was fast approaching on January 25, 2008. Thus, to prevent any injury or accident to the multitudes, which include local and foreign tourist and visitors who were expected to attend the festival and use that road during the festivities, there was a need to immediately repair the same as evidenced by the request of then Iloilo City Mayor Jerry P. Treñas"¹⁹² (Emphasis Supplied.)

The Court is loath to sustain the self-serving and unsubstantiated averment of the accused. Negotiated procurement can be resorted to in cases of emergency *only if* the following elements concur:

- 1) there is an existing emergency;
- 2) prior approval to resort to negotiated procurement;¹⁹³
and
- 3) the chosen supplier is technically, legally, and financially capable.¹⁹⁴

Then-Mayor Jerry P. Treñas downplayed the allegedly exigent "need" for the asphalt overlay. He was straightforward in saying that the major thoroughfare remained "*passable*" for all motor vehicles. Save for some "rough areas," it was "*not dangerous*" to the general public.¹⁹⁵ Accused Tuares, Chief of the Maintenance Division of the DPWH, Regional Office No. VI, stated unequivocally that:

¹⁹² Memorandum dated February 28, 2019, of accused Coca, Peroy and Tuares, pp. 20 – 21 (Records, Vol. 5, pp. 24 – 25).

¹⁹³ IMPLEMENTING RULES AND REGULATIONS, PART A, OF REPUBLIC ACT 9184 (AS AMENDED) (2003), Sec. 48.1. Hereinafter "IRR-A of R.A. 9184."

¹⁹⁴ Id. Sec. 53.

¹⁹⁵ TSN dated June 19, 2018, pp. 14 – 18.

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"[T]he ... condition of the Jaro-Iloilo Diversion Road is not enough to stop the conduct of trade and commerce in that area ... It is still serviceable ..." ¹⁹⁶

Irrefragably, no actual emergency requiring due and deliberate dispatch from the BAC and the DPWH, Regional Office No. VI, existed. Ubiquitous potholes cannot, by any stretch of the imagination, cause traffic snarls along the Iloilo-Jaro Diversion Road and dissuade tourists trekking to the central business district for the Dinagyang Festival. Accused have ridiculously blown out of proportion the road's condition *vis a vis* the assumed hazard. These are not sinkholes whose concrete adverseness is massive. The Court's succinct *dictum* in *People v. Jerry P. Pasigian*¹⁹⁷ is instructive, *viz*:

"... The 'imminent danger to life' contemplated by RA 9184 to justify a negotiated procurement ... additionally requires the predicate situation of a 'state of calamity'. x x x."
(Emphasis Supplied.)

There is no gainsaying that prior to the project's implementation, ***no clear, present and imminent danger*** to motorists and tourists existed that would ***logically, inevitably and necessarily*** demand a quick-fix solution *via* negotiated procurement. Also, no *force majeure* or calamity preceded the supposed danger. To put it differently, the perceived emergency was more imagined than real.

More. Neither Secretary Ebdane's *imprimatur*¹⁹⁸ nor Mayor Treñas' letter-request¹⁹⁹ are talismans that can supplant the overarching public policy and blur the mandate of the black-letter law. In *Manila International Airport Authority v. Olongapo Maintenance Services, Inc. and Triple Crown Services, Inc.*,²⁰⁰ the Supreme Court emphasized that public bidding secures the government of the optimum benefits and services out of a contract which ultimately redound to the benefit of the public which stands as the final recipient of the object of the contract, *viz*:

¹⁹⁶ TSN dated October 9, 2018, p. 24.

¹⁹⁷ SB-17-CRM-0463 & 0464, December 6, 2018.

¹⁹⁸ EXHIBIT "5" for Coca, Peroy & Tuares.

¹⁹⁹ EXHIBIT "3" for Coca, Peroy & Tuares.

²⁰⁰ G.R. No. 146184-85, 161117, 167827, January 31, 2008 (543 SCRA 269; 567 Phil. 255).

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"The rationale behind the requirement of a public bidding, as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers. Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts."²⁰¹ (Emphasis Ours.)

C. PROCEDURAL SHORTCUTS THAT DEVIATE FROM THE STATUTORY REQUIREMENTS FOR NEGOTIATED PROCUREMENT EFFECTIVELY NEGATES THE CONTRACT'S VALIDITY

In *Maglaya - De Guzman v. Office of the Ombudsman and Bestforms Incorporated*,²⁰² the Supreme Court stressed that when an agency or office resorts to any of the alternative modes of procurement under R.A. No. 9184, particularly Section 13, Article V,²⁰³ not all procedures followed in competitive biddings are dispensed with. Sections 20²⁰⁴ and 22²⁰⁵ of Article VII

²⁰¹ Id. at 275.

²⁰² G.R. No. 229256, November 22, 2017.

²⁰³ **SEC. 13. Observers.** — To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit at least two (2) observers to sit in its proceedings, one (1) from a duly recognize private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

²⁰⁴ **SEC. 20. Pre-Procurement Conference.** — Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional, x x x

²⁰⁵ **SEC. 22. Pre-Bid Conference.**—At least one pre-bid conference shall be conducted for each procurement unless otherwise provided in the IRR. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder. The pre-bid conference(s) shall be held within a reasonable period before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR.

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thereof, as well as Section 21.2.4 of its IRR,²⁰⁶ mandates that in pursuing alternative modes of procurement, compliance with the following requirements is indispensable, to wit:

- 1) a pre-procurement conference/pre-bid conference;
- 2) presence of observers throughout the whole bidding process; and
- 3) publication and/or posting of the Invitation to Apply for Eligibility and to Bid (IAEB) and other notices must still be followed.

Ineluctably, an alternative method of procurement is justified only in highly exceptional cases, as provided for by law²⁰⁷ and when the following conditions exist:

- 1) There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; and
- 2) The conditions required by law for the use of alternative methods are present;²⁰⁸ and
- 3) The method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.²⁰⁹


²⁰⁶ Section 21. Advertising and Contents of the Invitation to Bid. x x

21.2.4. For alternative methods of procurement as provided for in Rule XVI of this LRR-A, advertisement in a newspaper as required in this Section may be dispensed with: Provided, however, That posting shall be made in the website of the procuring entity concerned, if available, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAG Secretariat of the procuring entity concerned, during the same period as above.

²⁰⁷ Sec. 48.2, Rule XVI of the IRR of RA 9184: In accordance with Section 10 of this IRR-A, as a general rule, the procuring entity shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. Alternative methods shall be resorted to only in the highly exceptional cases provide for in this Rule.

²⁰⁸ The IRR provision states:

1.1 In accordance with Section 10 of this IRR-A, as a general rule, the Procuring Entities shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. Alternative methods shall be resorted to only in the highly exceptional cases provided for in this Rule. (Id.)

²⁰⁹ Manual of Procedures for the Procurement of Goods and Services, p. 81.

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It is clear from the foregoing that the claimed budgetary and time constraints in the procurement of the contractor for the asphalt overlay project do not even come close to any of the exceptional circumstances above-enumerated in order to consider the contract between the government and IBC International Builders Corporation as a negotiated procurement exempt from the bidding requirement. To stress, the IRR has declared that alternative methods of procurement shall be resorted to only in highly exceptional cases,²¹⁰ which is not the situation here.

Here, the circumstances are not so extraordinary as to permit negotiated procurement. Pragmatism may be one of the tools in policy-making but law is the lone tool given to this Court to perform its judicial function. For legality of government actions should be tested against what the law says and not what practicality dictates. This brings to mind the axiom: *Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legum administration* (Nothing more preserves in tranquility and concord those subjected to the government than a due administration of the laws).

Competitive public bidding may not be dispensed with nor circumvented, and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law.²¹¹ *Neminem oportet esse sapientiores legibus* (No man ought to be wiser than the law).

The true nature of every contract is ascertained through judicial determination, undergirded by principles of law. It is never what the parties deem it to be.²¹² A contract entered into by the procuring entity without the required appropriation and the certificate of the accounting official showing available funds to cover said contract is

²¹⁰ Sec. 48.2, Implementing Rules and Regulations of R.A. No. 9184; See HANDBOOK ON PHILIPPINE GOVERNMENT PROCUREMENT, Fourth Ed., Government Procurement Policy Board and Technical Support Office, September 2007, p. 93.

²¹¹ *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, G.R. Nos. 146184-85, 161117 and 167827, January 31, 2008 (543 SCRA 269, 294; 567 Phil. 255).

²¹² "It is true that contracts are not what the parties may see fit to call them, but what they really are as determined by the principles of law." (*Borromeo v. Court of Appeals*, 150-B Phil 770, 778-779 [1972]).

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void²¹³ Thus, Sections 46(1), 47 and 48, Book V, Title I, Subtitle B, of Executive Order No. 292, otherwise known as The Administrative Code of 1987 provides:

CHAPTER 8
Application of Appropriated Funds

"x x x

"SECTION 46. Appropriation Before Entering into Contract.— (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure;

x x x

"x x x

"SECTION 47. Certificate Showing Appropriation to Meet Contract. — x x x [N]o contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

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

"x x x." (Emphasis Supplied.)

²¹³ *People v. Wenceslao B. Trinidad, et. al.*, SB-11-CRM-0249 to 0250, November 26, 2015; *Oani v. People*, G.R. No. 139984, March 31, 2005 (454 SCRA 416, 439), citing *Malaga v. Penachos, Jr.*, G.R. No. 86695, September 3, 1992 (213 SCRA 516, 526).

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Existing laws are read into and form part of every government contract. Accordingly, the DPWH's non-compliance with the set procedures - formative as they are of the bidding rules which have been crafted precisely to realize the objectives of the procurement law and give life to the State's policy on public bidding - may, in itself, be considered as a ground to invalidate the resultant contract.²¹⁴ Consistent with *Murphy's Law*,²¹⁵ if a contract is legally infirm, chances are, the subsequent act rooted from the same contract would, in one way or another, inherit the same or similar infirmity under the same legal consideration. This is one such case.

The law on public bidding is not an empty formality.²⁹ A strict adherence to the principles, rules and regulations on public bidding must be sustained if only to preserve the integrity and the faith of the general public on the procedure.²¹⁶

D. ACCUSED MEMBERS OF THE BIDS AND AWARDS COMMITTEE ACTED WITH MANIFEST PARTIALITY AND GROSS INEXCUSABLE NEGLIGENCE IN THEIR BRAZEN ABRIDGEMENT OF THE APPLICABLE LAW

The Prosecution posits that –

... [T]he accused's recommendation which gave rise to the implementation of the project in the absence of an appropriation

²¹⁴ See *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Inc.* (G.R. No. 183789, August 24, 2011, 656 SCRA 214, 241) where the Supreme Court held that "public bidding is the established procedure in the grant of government contracts [and that] [t]he award of public contracts through public bidding is a matter of public policy."

"Public policy has been defined as that principle under which freedom of contract or private dealing is restricted for the good of the community. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold a transaction when its object, operation, or tendency is calculated to be prejudicial to the public welfare, to sound morality or to civic honesty." (See also *Agan, Jr. v. Phil. International Air Terminals, Co., Inc.*, 450 Phil. 744 [2003].)

²¹⁵ *Murphy's Law*, cited in Dissenting Opinion of Justice Arturo D. Brion in *Archbishop Fernando R. Capalla, et. al. v. Commission on Elections (COMELEC)*, G.R. Nos. 201112, 201121, 201127, 201413, June 13, 2012 (673 SCRA 1).

²¹⁶ *Philippine Sports Commission (PSC) v. Dear John Services, Inc.*, G.R. No. 183260, July 4, 2012.

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and certification and prior to the execution of a valid contract is a clear proof that accused acted with manifest partiality and in bad faith in the performance of their official duties.”²¹⁷

The Court agrees.

A textually demonstrable commitment to the law's stringent requirements should have been the primordial consideration for the members of the BAC. Yet, accused dovetailed their quick-quote strategy with the pre-determination of IBC as the contractor even though no funds had been allotted yet for the project.²¹⁸ Similarly, in *People v. Peter Payna Ruaya*,²¹⁹ the BAC pre-determined the supplier for the heavy equipment before the procurement process got under way. The Court held that this unmasked the BAC's manifest partiality and gross inexcusable negligence, thereby giving unwarranted benefit, advantage and preference to its chosen supplier.²²⁰ *In pari passu*, the Court's Decision dated April 5, 2019, in *People v. George Ejercito Estregan, et. al.*,²²¹ drives the point home. Its ruling read:

“Accused [Mayor] Estregan's barefaced claim that FRCV [First Rapids Care Ventures] was the only qualified company to render the service required by the Municipality does not hold any water. He neither possessed the expert qualification to make such determination, nor was he empowered by law to do so. He likewise was **UNABLE TO PRESENT ANY EVIDENCE TO CORROBORATE HIS TESTIMONY THAT HE EXERCISED DUE DILIGENCE IN DETERMINING THAT FRCV WAS THE ONLY COMPANY QUALIFIED** to render the accident protection service - or casualty insurance per insurance law - as required by the Municipality, and that he asked for and received offers from Philamlife and Oriental Insurance.

“x x x

“Moreover, even if it were true that FRCV was the **ONLY** entity offering the APA services, **THE NECESSARY PROCESSES UNDER THE PROCUREMENT LAW SHOULD**

²¹⁷ Memorandum dated March 28, 2019, of the Office of the Special Prosecutor, p. 7 (Records Vol. 5, p. 106).

²¹⁸ **EXHIBITS “10”, “10-A”, “10-B” for Narciso & Celiz: Unnumbered Resolution dated January 8, 2008, p. 1.**

²¹⁹ SB-11-CRM-0035, August 29, 2017.

²²⁰ *Ibid.*

²²¹ SB-16-CRM-0124.

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HAVE BEEN OBSERVED OR FOLLOWED. Instead, accused Estregan, with the eventual consent and conformity of accused Sangguniang Bayan members, arrogated the functions of the BAC and, by themselves, made a determination of FRCV's qualification.
x x x." (Emphasis and Capitalization Supplied.)

The same ratiocinations apply to the instant case. The BAC paved the way for the untrammelled selection of IBC as the contractor for the asphalt overlay project. It was a *fait accompli* with no other options. BAC's three (3) unnumbered Resolutions dated January 2, 2008,²²² January 8, 2008,²²³ and January 26, 2009,²²⁴ were veritable testaments of its predilection to award the project to *primarily, directly and exclusively* to IBC despite the unavailability of an appropriation therefor. *In pari materia*, the Court, in *People v. Pedro E. Budiongan, Jr., et. al.*,²²⁵ adjudged that the Sangguniang Bayan of Carmen, Bohol was **grossly negligent** in passing a Resolution authorizing the mayor to enter into a contract for the asphalt overlay of a street despite the absence of an appropriation ordinance. Further, bespoke notices²²⁶ solely to Helen Edith Lee Tan, President/Proprietor of IBC, were corroborative evidence that the BAC tailored fit the project for IBC from the outset. Thence, the BAC defeated the very end of the procurement process, that is, that the contract must be awarded on the basis of the best price/quality ratio, based on the most economically advantageous tender.

Republic Act No. 9184 took effect on January 26, 2003, while the Implementing Rules and Regulations (IRR) took effect on October 8, 2003. Both R.A. No. 9184 and its IRR-A had been enforceable for five (5) years when accused, as members of the BAC, passed the dubious Resolutions. Meanwhile, accused Coca, Peroy and Tuares had been *working at the DPWH for over thirty (30) years*.²²⁷ The same holds true for accused Asis, the HoPE. That said, they cannot feign ignorance that public bidding is the primary mode of procurement, and that they are bound to comply faithfully with the

²²² EXHIBITS "9", "9-A", and "9-B" for Coca, Peroy & Tuares.

²²³ EXHIBITS "10" and "10-B" for Narciso & Celiz; EXHIBIT "X-47".

²²⁴ EXHIBITS "15" for Coca, Peroy & Tuares, and Narciso & Celiz; EXHIBIT "X-43".

²²⁵ Crim. Case No. 28075, November 19, 2009; SEE ALSO *People v. Raul B. Bandoña*, SB-09-CRM-0196, January 27, 2017.

²²⁶ EXHIBITS "6" and "11" for Coca, Peroy & Tuares.

²²⁷ EXHIBITS "28", "29" & "30" for Coca, Peroy & Tuares: Service Records of Coca, Peroy and Tuares.

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the law and its IRR-A., even in cases wherein resort to alternative modes of procurement is permissible. In sum, their conscious indifference to strict rules, thereby become enablers of irregularities, constitutes **gross and inexcusable negligence**.

Jurisprudence holds that, absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties.²²⁸ However, this presumption must fail in the presence of an **explicit rule** that was violated, as in the instant case. For instance, in *Reyna v. COA*,²²⁹ the Supreme Court affirmed the liability of the public officers therein, notwithstanding their proffered claims of good faith, since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations. In similar regard, the High Tribunal, in *Casal v. COA*,²³⁰ sustained the liability of certain officers of the National Museum who again, notwithstanding their good faith participated in approving and authorizing the incentive award granted to its officials and employees in violation of AO Nos. 268 and 29 which prohibit the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President. The Court ratiocinated, thus:

"The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the CoA amounts to gross negligence, making them liable for the refund thereof.
x x x." (Emphasis Supplied.)

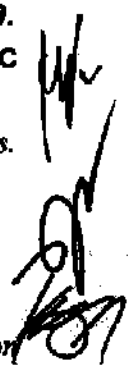
What the **presumption of regularity** establishes is merely compliance with the ordinary procedures and the usual standards in the processing and approval of a disbursement. On the other hand, the **presumption of good faith** aids the public officer in establishing substantial or colorable compliance with the law.²³¹ The Notice of Disallowance effectively negates these presumptions *juris tantum*. If there is a clear CoA finding, express or implied, that the public

²²⁸ *Sambo and Avila v. Commission on Audit*, G.R. No. 223244, June 20, 2017; *De los Santos et al. v. COA*, 716 Phil. 322, 335 (2013).

²²⁹ 657 Phil. 209, 225 (2011).

²³⁰ 538 Phil. 634, 644 (2006).

²³¹ *Technical Education and Skills Development Authority (TESDA) v. The Commission on Audit (CoA)*, G.R. 204869, March 11, 2014 (per J. Arturo Brion).



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officer was guilty of gross negligence amounting to bad faith that resulted in the illegal disbursement of public funds, then the defense of presumption of good faith is deemed rebutted and his act is considered *ultra vires*.²³²

E. ACCUSED, WHILE ENGAGED IN THE DISCHARGE OF ITS OFFICIAL FUNCTIONS, GAVE UNWARRANTED BENEFIT, ADVANTAGE AND PREFERENCE TO THE CONTRACTOR

There are two (2) distinct modes of committing Section 3(e) of R.A. No. 3019, to wit:

- 1) By causing undue injury to any party, including the Government; or
- 2) By giving any private party any unwarranted benefit, advantage or preference.²³³

Under the second mode, damage is not required.²³⁴ It suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.²³⁵ In *Fonacier v. Sandiganbayan*,²³⁶ the Supreme Court *en banc* added that proof of the extent of damage is *not* essential. It is sufficient that the injury suffered or the benefits received can be perceived to be substantial enough and not merely negligible.

²³² *Meneses v. Court of Appeals*, G.R. Nos. 82220, 82251 and 83059, July 14, 1995 (246 SCRA 162, 174).

²³³ In *Gallego v. Sandiganbayan* (G.R. No. L-57841, July 30, 1982 (115 SCRA 793), the Supreme Court explained that:

"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."

²³⁴ *People v. Rolando E. Sison and Rigoberto De Jesus*, Crim. Case No. 24618 - 24622, November 14, 2005.

²³⁵ *Alvarez v. People*, G.R. No. 192591, June 29, 2011 (668 Phil. 216-300; 653 SCRA 52).

²³⁶ G.R. No. L-50691, December 5, 1994 (238 SCRA 655).

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Accused Coca, Peroy and Tuares argued that:

"x x x [D]uring the inspection of the project, a representative from the Resident Auditor and the Office of the Ombudsman were present during the ocular inspection. The documents presented by the prosecution do not show that the government, DPWH-Region VI, suffered damage in the said amount considering that the project was completed. In fact, there was (sic) no findings of sub-standard and overpricing of the said project. The claim of the prosecution that there was damaged (sic) to the government when the contract was awarded through negotiation, is a mere speculation."

"x x x

"x x x The Bids and Awards Committee (BAC) has negotiated with IBC International Builders Corporation because it is a contractor that is financially, legally and technically capable to undertake the project and a contractor of good standing and given the circumstances at that time that the project needs to be implemented since time is of the essence." ²³⁷

This red herring²³⁸ is a puerile defense.

The crux of the controversy relates to the accused's palpable violation of the procurement law. Matters arising from the allegedly "substandard" and "overpriced" asphalt overlay are collateral particulars. Considering that the ocular inspection of the roadworks was conducted one year after its completion in 2008,²³⁹ it is impractical to ascertain if the subject project measures up to engineering standards and is value-for-money. Instead of being sidetracked, attention must focus on hard evidence showing that the asphalt overlay project was implemented despite the following glaring deficiencies:

- 1) No contract and Certificate of Availability of Funds (CAF);

²³⁷ Memorandum dated February 28, 2019, of accused Coca, Peroy and Tuares, pp. 34 - 35 (Records, Vol. 5, p. 38 - 39).

²³⁸ "Red herring" refers to a fact, idea, or subject that takes people's attention away from the central point being considered a fact, idea, or subject that takes people's attention away from the central point being considered (<https://dictionary.cambridge.org/dictionary/english/red-herring>)

²³⁹ EXHIBIT "X-4".

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- 2) Non-release of allotment;
- 3) Non-inclusion in the Annual Procurement Plan (APP) of the DPWH, Regional Office No. VI for CY 2008 – 2009;
- 4) No Notice of Award;
- 5) No Notice to Proceed;²⁴⁰ and
- 6) Non-compliance with the conditions for negotiated procurement under R.A. No. 9184 and its IRR-A.

The confluence of the above-mentioned shortfalls resulted in what the CoA considered as an **“irregular expenditure”**.²⁴¹ In as much as ₱43,967,223.94²⁴² was paid to IBC following the Disbursement Voucher’s²⁴³ approval for payment by accused Asis, this is the quantifiable damage to the government. In line with the Supreme Court’s ruling in *Fonacier*, this injury to the pecuniary interests of the government is perceptibly **“substantial enough”**.

F. THE PROSECUTION, UNLIKE THE ACCUSED TO WHOM THE BURDEN OF EVIDENCE HAD SHIFTED, ADDUCED WEIGHTY AND SUFFICIENT EVIDENCE THAT POINT TO THE INESCAPABLE CONCLUSION THAT ACCUSED ARE GUILTY OF THE OFFENSE CHARGED

Besides official records, the Prosecution’s cache of evidence consists of the direct testimony of its sole witness, State Auditor IV Helen P. Hubo. Accused cast doubt on their sufficiency, weight and probative value. Accused Celiz and Narciso sought to discredit Hubo, including her testimony. They alleged that:

²⁴⁰ EXHIBIT “26” for Coca, Peroy & Tuares (Inspection Report for Infrastructure Projects dated December 2, 2009, p. 1).

²⁴¹ EXHIBIT “CC”: COA Circular No. 85-55A.

²⁴² EXHIBIT “X-1”: Official Receipt No. 4658 dated April 30, 2009, from IBC International Builders Corporation.

²⁴³ EXHIBIT “X”. Disbursement Voucher (DV) No. 101-09-3-1172 dated April 30, 2009.

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"... [T]he Notice of Disallowance, which is the basis of the testimony of Ms. Hubo, has not yet attained finality x x x.

"... Ms. Hubo is not even a competent witness to testify as to whether or not a negotiated procurement is proper under the prevailing circumstances.

"In addition, while Ms. Hubo made such a finding, she admitted that she did not provide an explanation or rationalization therefor in her Notice of Disallowance. This omission on her part is very important because such explanation or rationalization should have been the foundation of her finding ...

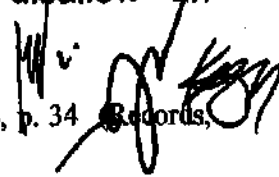
"Furthermore, Ms. Hubo's finding is a mere observation based solely on documents she supposedly examined sans any personal knowledge of the transaction or project involved."²⁴⁴

The Court disagrees.

The auditorial power under the Constitution²⁴⁵ of the Commission on Audit ensures **accountability** enforcement in the disbursement of public funds.²⁴⁶ Corollary to such power, Section 2(2) of Article IX-D further provides:

Sec. 2(2). The Commission shall have **exclusive** authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (Emphasis supplied)

A disallowance is the disapproval of a credit or credits to an account/accountable officer's accountability due to non-compliance with law or regulations.²⁴⁷ Thus, the auditor may disallow an expenditure/transaction which is unlawful or improper.²⁴⁸

²⁴⁴ Memorandum dated February 28, 2019, of accused Celiz and Narciso, p. 34 Records, Vol. 5, p. 81). 

²⁴⁵ 1987-CONSTITUTION, ARTICLE IX-D, Sections 2(1).

²⁴⁶ *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

²⁴⁷ **Sec. 2k** Commission on Audit Circular No. 85-156-B. Section 3.9 of the Manual on Certificate of Settlement and Balances (Revised 1993) (Commission on Audit Circular No. 94-001) which superseded COA Circular No. 85-156-B, defines *disallowance* as "the disapproval in audit of a transaction, either in whole or in part." ; SEE *Rodrigo, Jr., et. al. v. Sandiganbayan*, G.R. No. 125498, February 18, 1999.

²⁴⁸ **Sec. 19, id.** See also Section 14 of the Manual on Certificate of Settlement and Balances(Revised 1993).

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In *De los Santos v. Commission on Audit*,²⁴⁹ the Supreme Court exhorted the citizenry, especially taxpayers, to lend credence and accord respect to the findings of the CoA, the State's public spending watchdog. The Court's *dictum* reads:

"At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

"Corollary thereto, it is the **GENERAL POLICY OF THE COURT TO SUSTAIN THE DECISIONS OF ADMINISTRATIVE AUTHORITIES, ESPECIALLY ONE WHICH IS CONSTITUTIONALLY-CREATED, SUCH AS THE CoA, not only on the basis of the doctrine of SEPARATION OF POWERS but also for their PRESUMED EXPERTISE in the laws they are entrusted to enforce. FINDINGS OF ADMINISTRATIVE AGENCIES ARE ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY** when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x." (Emphasis and Capitalization Supplied.)

Prescinding from the foregoing, the credible testimony of State Auditor IV Hubo, plus the Notice of Disallowance issued by CoA's Audit Team, deserve merit. Contrariwise, the self-serving testimonies of witnesses for the accused cannot prevail over the array of authenticated public documents. Generally, documentary evidence prevails over testimonial evidence.²⁵⁰

Given the overarching public policy of strict adherence to competitive bidding, except for specific alternative modes of government procurement, the **burden of evidence** to justify

²⁴⁹ G.R. No. 198457, August 13, 2013 (703 SCRA 501, 512 – 513).

²⁵⁰ *GSIS v. Court of Appeals and Agricultural Credit Administration (ACA)*, G.R. No. L-52080, May 28, 1993; *Marvel Building Corporation vs. David*, G.R. No. L-5081, February 24, 1954 (94 Phil. 376).

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non-compliance with the competitive bidding requirement under R.A. No. 9184 **shifted to the defense**. Stated otherwise, it was necessary for the defense to show that the alternative mode of procurement was resorted to validly.²⁵¹ In this regard, the Supreme Court, in *Cabrera, et. al. v. Hon. Simeon V. Marcelo*,²⁵² declared that:

"It is incumbent upon a party who invokes coverage under the exception to a general rule to prove the fulfillment of the requisites thereof. The rule is akin to the maxim in criminal law that whenever a person accused of the commission of a crime claims to be within the statutory exception, it is more logical and convenient that he should aver and prove the fact than that the prosecutor should anticipate such defense, and deny it."

Admittedly, the BAC resorted to negotiated procurement.²⁵³ As discussed earlier, the BAC flagrantly deviated from the strict statutory requirements for this alternative mode of procurement. On the other hand, the Prosecution formally offered official records. Conformably with Rule 132, Section 24 of the Rules of Court, certified photocopies of these public documents were attested to by the officer having the legal custody of the record. Besides, these formed part of the joint stipulations of facts; hence, these became judicial admissions.²⁵⁴

G. IMPLIED CONSPIRACY AMONG THE MEMBERS OF THE BIDS AND AWARDS COMMITTEE (BAC), INCLUDING THE HEAD OF THE PROCURING ENTITY (HoPE) HAD BEEN PROVEN BEYOND REASONABLE DOUBT

The procurement and disbursement stages are separate and distinct, and require acts that are carried out by different responsible public officers. The procurement process is carried out by the agency's BAC, whose functions include facilitating pre-procurement and pre-bid conferences, determining the eligibility of prospective

²⁵¹ *People v. Richard M. Ramos*, SB-16-CRM-0799, April 30, 2019.

²⁵² G.R. No. 157419 – 20, December 13, 2004.

²⁵³ TSN dated November 6, 2018, pp. 5, 28.

²⁵⁴ Rule 129, Section 4, Rules of Court; *Bayas v. Sandigambayan*, 440 Phil. 54, 69 [2002].

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bidders, receiving bids and evaluating the same, undertaking post-qualification proceedings, and thereafter recommending the award of contracts to the head of the procuring entity — in this case accused Asis. In the event that competitive bidding cannot push through, the BAC has the responsibility to recommend the resort to alternative modes of procurement provided under the R.A. No. 9184. In other words, the BAC has complete control in determining the qualification and capacity of bidders or direct contractors to perform the service that the agency requires. After the BAC has determined the contractor, it is accused Asis, as the head of agency who signs, among others, the disbursement voucher (DV) to effect payment.

A conspiracy may be inferred from the totality of the circumstances even if there is no formal agreement among those who connived to commit an unlawful act. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts but only by looking at it as a whole. Acts done to give effect to the conspiracy may be, in fact, wholly innocent acts. Yet, if they are parts of the sum of the acts which are relied upon to effectuate the conspiracy which the law forbids, they lose that character. Such acts become a public wrong if the result is prejudicial to the citizenry against whom the concerted action is directed.²⁵⁵

Accused Narciso and Celiz sought to pin the blame – hook, line and sinker - on the HoPE (Asis) as a last ditch effort to go scot free. Their argument is quoted below, viz:

“... [A]t all material times, accused Narciso and Celiz, as mere members of the Bids and Awards Committee (‘BAC’) of [the] DPWH, Region VI, did not enter into any contract in relation to the Asphalt Overlay Project. As a matter of fact, accused Narciso and Celiz were not parties or signatories to the Contract executed between the DPWH, Region V and IBC. This was admitted by the Prosecution during the Pre-trial.

“x x x

“Besides, as members of the BAC, the role of accused Narciso and Celiz ends after they have recommended [the] award of ... the Asphalt Overlay Project.

“x x x

²⁵⁵*People v. Amando C. Aumento, Sr., et. al., SB-14-CRM-0173 & 0174, October 22, 2014.*

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"A careful examination of the Statement of Work Accomplished reveals that accused Narciso and Celiz did not participate in the execution thereof.

"Clearly, contrary to the specious theory of the Prosecution, accused Narciso and Celiz did not have a hand in the implementation of the Project before its award to IBC."²⁵⁶

The Court is not persuaded.

The roles of the BAC and the HoPE are inextricably woven. The BAC has paved the way to realize the desire of accused Asis, the HoPE, by skirting public bidding resolving to directly engage IBC for the asphalt overlay project thru negotiated procurement. Notably, the BAC never hinted to conduct open, competitive bidding. The tedious process it would require and the time it would consume runs counter to the accused officials' intent to fast-track the procurement. The chain of circumstances shows conclusively that accused were resolute in conferring the project to IBC since the outset. Taken together, the overt acts of Coca, Peroy, Tuares, Narciso Celiz, and Asis clearly manifest a joint purpose and design, which is the irregular award, approval and payment for the asphalt overlay project in favor of IBC International Builders Corporation. Collectively, they have resorted to negotiated procurement sans immediate and compelling justification and, worse, sans fealty with the law. The bottom line is that the end does not justify the means.

Accused argue that nothing was stated either in the Notice of Disallowance or in the testimony of State Auditor IV Hubo regarding the alleged conspiracy.²⁵⁷ The criminal case before the Office of the Ombudsman, is separate and distinct from the proceedings on disallowance before the CoA.²⁵⁸ It goes without saying that the Court's appreciation of the evidence does not hinge solely on CoA's findings. Perhaps, more importantly, the *mode, method and manner* of procurement recommended by the BAC and adopted by the HoPE run afoul with the law's stringent requirements.

²⁵⁶ Memorandum dated February 28, 2019, of accused Celiz and Narciso, pp. 18 - 19 (Records, Vol. 5, pp. 65 - 66).

²⁵⁷ Memorandum dated February 28, 2019, of accused Coca, Peroy and Tuares, 13 - 15, 34 (Records, Vol. 5, pp. 17 - 19, 38); TSN dated October 12, 2017, pp. 69 - 71.

²⁵⁸ *Reyna and Soria v. Commission on Audit*, G.R. No. 167219, February 8, 2011

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The audit disallowance²⁵⁹ impugns the legality of the government contract and the process leading to its perfection and consummation. Corollarily, Section 43, Chapter V, Book VI of the Administrative Code provides the consequent liabilities in this wise:

"x x x [E]very official or employee authorizing or making an illegal payment and every person receiving the illegal payment shall be jointly and severally liable to the Government for the full amount so paid or received."
(Emphasis Supplied.)

This provision should be interpreted in relation with Sections 51, 52, Chapter IX, Title I-B, Book V of the Administrative Code and Section 103 of P.D. No. 1445 which state:

Section 51. Primary and Secondary Responsibility. -

(1) The head of any agency of the Government is immediately and primarily responsible for all government funds and property pertaining to his agency;

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government.

Section 52. General Liability for Unlawful Expenditures. -
Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Successive acts in pursuance of the conspiracy were evident in the chronology of events showing cooperation among members of the BAC and the HoPE. As explained earlier, accused actively and maliciously participated in the twin phases of procurement and disbursement. They were in it together every step of the way.

**H. THE MALFEASANCE ALLEGED AND
DULY PROVEN WARRANTS THE
IMPOSITION OF THE APPROPRIATE
PENALTY IN ACCORDANCE WITH R.A.
NO. 3019, AS AMENDED**

²⁵⁹ When the CoA issues a notice of disallowance, it disapproves the transaction for being illegal, irregular, unnecessary, excessive, extravagant, or unconscionable, and, determines the persons liable for the disallowed amounts (CoA Circular 2009-006, Sec. 4.17).

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The requirement of proof beyond reasonable doubt in Criminal Law does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or proof which produces conviction in an unprejudiced mind.²⁶⁰ After a judicious assessment of the testimonial and documentary evidence on record, the Court finds, and so holds, that the **ALL the accused committed the offense charged.**

Section 9(a) of R.A. No. 3019 punishes a public officer who transgressed Section 3 thereof with imprisonment of not less than six (6) years and one (1) month to not more than fifteen (15) years and perpetual disqualification from public office. In addition, Section 13 of the Anti-Graft and Corrupt Practices Act provides that if convicted by final judgment, the erring public officer shall lose all retirement or gratuity benefits under any law.

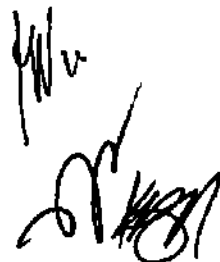
Meanwhile, Act No. 4103, as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law, provides that if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

Pursuant to the above, the Court sentences the following accused members of the Bids and Awards Committee (BAC), DPWH, Regional Office No. 6, namely:

1. **Berna Colago Coca;**
2. **Daniño Minguez Peroy;**
3. **Fernando Seblet Tuarez;**
4. **Luvisminda Harder Narciso; and**
5. **Marilyn Hilaga Celiz**

with imprisonment for a minimum period of six (6) years and one (1) month and a maximum period of eight (8) years. Further, the accessory penalties of perpetual disqualification from public office and loss of retirement or gratuity benefits under any law shall also be imposed upon the above-named accused.

²⁶⁰ People v. Suarez, 456 SCRA 333, 351 - 352.



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WHEREFORE, premises considered, the Court hereby finds the following accused, namely:

1. **BERNA COLAGO COCA;**
2. **LUVISMINDA HARDER NARCISO;**
3. **DANILO MINGUEZ PEROY;**
4. **MARILYN HILAGA CELIZ;** and
5. **FERNANDO SEBLET TUARES**

GUILTY beyond reasonable doubt of violating **Section 3(e)** of **Republic Act No. 3019**, as amended.

Each of the above-named accused is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification to hold public office and loss of all retirement and gratuity benefits under any law.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice

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ATTESTATION

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


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson, Sixth Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE - TANG
Presiding Justice

