



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0737
For: Violation of R.A. 3019,
Section 3(e)

- versus -

BENEDICTO H. ALCALA,
CATALINO A. SUMAYLO,
ROGELIO S. BONAO,
RENA D. GUIVENCAN,
DIONISIA H. ESTOPITO,
RENE B. LUSTRE,

Accused.

Present:
Lagos, L, Chairperson,
Mendoza - Arcega and
Corpus - Mañalac, II.

Promulgated:

April 26, 2019 *Jcl*

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DECISION

CORPUS - MAÑALAC, J.:

Accused **BENEDICTO H. ALCALA** [Mayor], **CATALINO A. SUMAYLO** [Budget Officer, Accountant-Designate & Bids and Awards Committee (BAC) Chairman], **ROGELIO S. BONAO** [BAC Member], **RENA D. GUIVENCAN** [BAC Member], **DIONISIA H. ESTOPITO** [BAC Member] and **RENE B. LUSTRE** [BAC Member] of the Municipality of Panglao, Bohol, are indicted for Violation of Section 3(e) of Republic Act No. 3019¹ in an *Information* filed by the Office of the Ombudsman on October 3, 2016 docketed as Criminal Case Nos. SB-16-CRM-0737.

The accusatory portion of the *Information* reads:

That in January 2008, or sometime prior or subsequent thereto, in the Municipality of Panglao, Province of Bohol, Philippines, accused **BENEDICTO H. ALCALA**, Mayor of Panglao, a high-ranking public official with Salary Grade 27, and within the jurisdiction of this Honorable Court, and **CATALINO A. SUMAYLO**, **ROGELIO S. BONAO**, **RENA D. GUIVENCAN**, **DIONISIA H. ESTOPITO** and **RENE B. LUSTRE**, all public officers and Members of the Bids and Awards Committee (BAC) of Panglao,

¹ *Anti-Graft and Corrupt Practices Act, as amended.*

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while in the performance of their official functions, committing the offense in relation to office and taking advantage of their official position, did then and there willfully, unlawfully, and feloniously, through evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring, confederating and mutually helping one another, give unwarranted benefit, advantage or preference to Gateway Motors (Cebu) Inc., by causing the procurement of a motor vehicle with a specified brand name of "Kia Sorento" through direct contracting, without just and lawful basis, in blatant violation of the provisions of Republic Act No. 9184 and its Implementing Rules and Regulations, and causing undue injury to the Municipality of Panglao in the amount of Php1,466,964.28 from its 20% Development Fund, since the procurement of a motor vehicle is not one of the allowable development project expense under the Fund as identified under the Department of Interior and Local Government (DILG) and Department of Budget and Management (DBM) Joint Memorandum Circular No. 1, series of 2005.

CONTRARY TO LAW.

This case is an offshoot of the purchase through direct contracting of a brand-new 2008 Kia Sorento from Gateway Motors (Cebu) by the Municipality of Panglao, Bohol for Php1,550,000.00 sourced from the 20% Development Fund of its accumulated Internal Revenue Allotment ("DF-IRA"). The Commission on Audit (COA) later found in its 2008 Annual Audit Report (AAR)² of the municipality that the said purchase was not subjected to a competitive public bidding, thus it violates Republic Act No. 9184.³ The clear preference to the brand name "Kia Sorento" also violates Section 18 of the said law's Implementing Rules and Regulations (IRR). In addition, the purchase of vehicle is not among the development expense allowed for the municipality's use of 20% DF-IRA in violation of DILG and DBM Joint Memorandum Circular No. 1, s. 2005.

Proceedings before this Court

After perusing the *Information* as well as the pieces of evidence attached thereto, a sufficient cause was found to hold the accused for trial.⁴ A Hold Departure Order⁵ and a warrant of arrest⁶ were correspondingly issued against the accused. To secure their temporary liberty, all the accused posted⁷ their respective cash bail bonds with the Office of the Executive Judge, Regional Trial Court of Bohol.

² Exhibit "T"

³ *General Procurement Reform Act*

⁴ *Records, Vol. 1, p. 157*

⁵ *Id.*, pp. 155-156

⁶ *Id.*, p. 162

⁷ *Alcala* posted on October 28, 2016 (*Records, Vol. 1, p. 175*); *Gulvencan* (*Records, Vol. 1, p. 180*), *Lustre* (*Records, Vol. 1, p. 185*), and *Estopito* (*Records, Vol. 1, p. 190*) posted on October 29, 2016; *Sumaylo* (*Records, Vol. 1, p. 196*) on November 7, 2016; and *Bonao* (*Records, Vol. 1, p. 209*) on November 8, 2016

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On January 17, 2017, the accused were arraigned and each pleaded NOT GUILTY to the charge against them.⁸

Thereafter, the Preliminary Conference⁹ ensued whereby the Minutes thereof were adopted in the Pre-Trial Order¹⁰ issued on March 27, 2017.

Meanwhile, on May 3, 2017, the prosecution filed a *Motion to Suspend Accused Pendente Lite* praying for the suspension of all the accused for ninety (90) days pending litigation which was granted in a Resolution dated September 11, 2017.¹¹

Aptly, trial on the merits proceeded.

The Evidence for the Prosecution

The prosecution presented as evidence the testimonies of the following witnesses, viz: [1] **Jairus Duminisac Fuderanan**, Administrative Aide III, Municipal Planning and Development Coordinator's Office of the Municipality of Panglao and concurrently serving as the Head of its BAC Secretariat; [2] **Roque B. Cubar**, Municipal Accountant; [3] **Rosalinda Buca Cabang**, State Auditor IV, Audit Team Leader for the municipality; and [4] **Atty. Marites E. Banzali-Cullen**, Assistant Regional Prosecutor at the Office of the Regional Prosecutor, National Prosecution Service (NPS) of the Department of Justice (DOJ), Regional VII, Cebu City; as well as the stipulated testimonies contained in the Judicial Affidavits of [5] **Marissa Amar Santos**, Chief Administrative Officer, Central Records Division of the Department of Budget (DBM); [6] **Analyn Apduhan**, SB Secretary of the municipality of Panglao; and [7] **Jovencia Sarahina Asilo**, Human Resources Officer of the same municipality.

Fuderanan testified on his Judicial Affidavit¹² stating that he has been the Head of the BAC Secretariat of Panglao, Bohol, since January 2015. As such, he provides administrative support to the BAC. He received a subpoena from the Office of the Special Prosecutor, Office of the Ombudsman for case conference relative to this case. He brought with him in Court and identified the [1] Minutes of BAC Meeting and Pre-Bid Conference conducted on January 9, 2008,¹³ [2] BAC Resolution No. 001, Series of 2008 dated January 9, 2008¹⁴ and [3] the 2007 Annual Procurement Program (APP)¹⁵ of Panglao.

Cubar testified on his Judicial Affidavit¹⁶ that he is the Municipal Accountant of Panglao, Bohol since October 1, 2014. He received a subpoena from the Ombudsman to submit copies of documents involving the municipality's

⁸ *Id.*, p. 234-235

⁹ *Id.*, pp. 254-264; 265-296

¹⁰ *Id.*, pp. 300-314

¹¹ *Records*, Vol. 2, pp. 124-126

¹² *Judicial Affidavit, Records*, Vol. 1, pp. 400-408; TSN dated June 13, 2017; TSN dated June 14, 2017

¹³ Exhibit "D"

¹⁴ Exhibit "C"

¹⁵ Exhibit "E"

¹⁶ *Records*, Vol. 1, pp. 468-502; TSN, July 25, 2017

purchase of the subject vehicle in 2008, which he marked and identified as Exhibits "A" to "P."¹⁷

As Municipal Accountant he is familiar with the procurement process of the subject vehicle because he reviewed the documents relative thereto. In the purchase of Kia Sorento, the process originated with the Municipal Development Council (MDC) of Resolution No. 1, s. of 2007¹⁸ which approved the Priority Development Projects/Programs and Activities for Funding out of the 20% IRA-Development Fund for Calendar Year 2008. This includes the procurement of "Van/SUV/Pick-up-M.O." Relative thereto, the Sangguniang Bayan (SB) of the municipality issued Resolution No. 152, s. of 2007¹⁹ which includes, among others, the said procurement of vehicle with allotted amount of Php1,550,000.00. This procurement is also part of the program procurement of the municipality shown in 2007 Annual Procurement Program (APP).²⁰ A Purchase Request²¹ signed by accused Alcala was prepared, and a 2008 Model Kia Sorento was specified. Thereafter, the BAC issued Resolution No. 001, series of 2008²² recommending to the Head of the Procuring Entity (HOPE) that the acquisition of the said motor vehicle be done through direct contracting. Accordingly, a Purchase Order²³ was prepared bearing the cited specifications of the motor vehicle. The said vehicle was purchased from Gateway Motors (Cebu) as shown in the Obligation Request,²⁴ Disbursement Voucher No. 100-08-01-0023,²⁵ Check dated January 19, 2008,²⁶ Charge Invoice No. 5838,²⁷ Sales Invoice NO. 0409,²⁸ Official Receipt No. 7605,²⁹ Delivery Receipt and Acceptance Report.³⁰ The Kia Sorento vehicle was issued to the Mayor's Office as shown in the Memorandum of Receipt for Equipment Semi-Expendable and Non-Expendable.³¹

On June 14, 2017, the parties stipulated³² upon the testimonies of prosecution witnesses, **Marissa Amar Santos** and **Analyn Apduhan**, respectively as to the existence and issuance of DILG and DBM Joint Memorandum Circular No. 1, series of 2005³³ and SB Resolution No. 152, Series

¹⁷ SB Resolution No. 152 (Exhibit "A"); MDC Resolution No. 1, series 2007 (Exhibit "B"); BAC Resolution No. 001 dated January 9, 2008 (Exhibit "C"); Minutes of BAC Meeting and Pre-Bid Conference (Exhibit "D"); Panglao's 2007 Annual Procurement Program (Exhibit "E"); Purchase Request (Exhibit "F"); Purchase Order (Exhibit "G"); Obligation Request No. 08-01-0005 (Exhibit "H"); Disbursement Voucher No. 100-08-01-0023 (Exhibit "I"); Check No. 1020516 dated January 15, 2008 payable to Gateway Motors (Cebu) Inc. in the amount of Php1,466,964.28 (Exhibit "J"); Gateway Motors (Cebu) Inc.'s Sales Invoice No. 0409 (Exhibit "M"); Gateway Motors (Cebu) Inc.'s Official Receipt No. 7605 dated January 15, 2008 in the amount of Php1,466,964.28 received from the Municipality of Panglao, Bohol (Exhibit "L"); Gateway Motors (Cebu) Inc.'s Delivery Receipt No. 0409 (Exhibit "O"); Inspection and Acceptance Report (Exhibit "K"); Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property (Exhibit "P").

¹⁸ Exhibit "B"

¹⁹ Exhibit "A-1"

²⁰ Exhibit "E"

²¹ Exhibit "F"

²² Exhibit "C"

²³ Exhibit "G"

²⁴ Exhibit "H"

²⁵ Exhibit "I"

²⁶ Exhibit "J"

²⁷ Exhibit "N"

²⁸ Exhibit "M"

²⁹ Exhibit "L"

³⁰ Exhibit "O"

³¹ Exhibit "P"

³² TSN, June 14, 2017; Santos, pp. 8-14; Apduhan, pp. 15-19; Asilo, pp. 20-25

³³ Exhibit "S"

of 2007,³⁴ as well as the testimony of **Jovencia Sarahina Asilo** that she is the custodian of the accused's Personal Data Sheets (PDS) being the Human Resource Officer of the municipality, and that the accused are public officers.

Cabang testified on his Judicial Affidavit³⁵ that she was assigned as the Audit Team Leader for the Municipality of Panglao, Bohol since March 30, 2015. She received a subpoena directing her to provide the Office of the Ombudsman documents under her custody related to the municipality's purchase of a Kia Sorento. Accordingly, she provided the documents³⁶ relative thereto. Among the documents she identified was the 2008 Annual Audit Report (AAR)³⁷ of the Municipality of Panglao, which essentially contains the following findings:

1. The acquisition of motor vehicle was not subjected to competitive bidding in violation of Section 10 of Article IV of RA 9184;
2. The Purchase Request specified the brand to be procured in violation to Section 18 of the IRR of RA 9184 that resulted to direct purchase;
3. The Purchase Request signed by Mayor Alcala is undated and does not bear the Purchase Request Number as well as the estimated Unit Cost of the item;
4. The amount of Php1,550,000.00 for the purchase of the motor vehicle (Kia Sorento) was from the 20% development fund in violation of the DILG and DBM Joint Memorandum Circular No. 1, series of 2005 that sets the guidelines of the appropriation and utilization of the 20% development fund and the purchase of a vehicle is not included therein;
5. The Disbursement Voucher is not dated and the name of the signatory for Gateway Motors was not provided therein;
6. The Official Receipt dated January 15, 2008 bears a signature therein but there is no indication as to who the signatory is and whether he/she is authorized to receive the amount indicated by Gateway Motors (Cebu) Inc.;
7. The Sales Invoice as well as the charge invoice are undated;
8. The details of what constitutes freight and handling/accessories were not indicated or identified.
9. The Delivery Receipt is not dated and that Mayor Alcala received the vehicle is indicated therein;
10. The Inspection and Acceptance Report is not dated and it does not indicate whether the unit was inspected, verified and found "OK" as to quantity and specifications;
11. The Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property is not dated and it does not indicate the property number of the unit for easy reference in the inventory.

³⁴ Exhibit "A"

³⁵ Records, Vol. 2, pp. 17-106; TSN, August 29, 2017

³⁶ 2008 Annual Audit Report of the Municipality (Exhibit "T"); Disbursement Voucher No. 100-08-01-0023 (Exhibit "I"); Check No. 1020516 dated January 15, 2008 payable to Gateway Motors (Cebu) Inc. in the amount of Php1,466,964.28 (Exhibit "J"); Obligation Request No. 08-01-0005 (Exhibit "H"); BAC Resolution No. 001 dated January 9, 2008 (Exhibit "C"); Minutes of BAC Meeting and Pre-Bid Conference (Exhibit "D"); 2007 Annual Procurement Program of Panglao (Exhibit "E"); Purchase Request (Exhibit "F"); Gateway Motors (Cebu) Inc.'s Official Receipt No. 7605 dated January 15, 2008 in the amount of Php1,466,964.28 received from the Municipality of Panglao, Bohol (Exhibit "L"); Gateway Motors (Cebu) Inc.'s Sales Invoice No. 0409 (Exhibit "M"); Inspection and Acceptance Report (Exhibit "K"); Certification from Gateway Motors Cebu dated January 4, 2008 signed by Markane Earle C. Goho; Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property for a Brand New 2008 KIA Sorento (Exhibit "P"); SB Resolution No. 152 (Exhibit "A"); MDC Resolution No. 1, series 2007 (Exhibit "B"); Notice of Suspension No. 2008-001-(101) dated November 14, 2008 (Exhibit "Q"); Notice of Disallowance No. 2009-001 (2008) dated December 29, 2009 (Exhibit "R"); Management Comment on the Notice of Suspension No. 2008-001-(101) dated November 14, 2008 re: Purchase of Luxury Car and Notice of Disallowance No. 2008-001 (Exhibit "QQ").

³⁷ Exhibit "T"

The Notice of Suspension³⁸ dated November 14, 2008 stated that the purchase of the Kia Sorento in question was without authority and/or legal basis. The Notice of Disallowance³⁹ dated December 29, 2009 informed the municipality that the freight and handling charges for the purchase of the subject motor vehicle was disallowed by COA and for the responsible officials named therein to settle the same immediately. The disallowance was not appealed and has become final and executory. The persons liable should have restituted or returned the money subject of the disallowance but they did not.

Banzali-Cullen testified on his Judicial Affidavit⁴⁰ stating that she conducted the fact-finding investigation of this case when she was still a Graft Investigation Officer I at the Field Investigation Office (FIO) of the Office of the Ombudsman-Visayas. She reviewed the records and a number of investigative actions accomplished by the previous investigator, which include various subpoenas to the following: (1) BAC Chairperson of Panglao, Bohol for the submission of bidding documents, resolutions, minutes of meetings pertaining to the purchase of the subject vehicle; and (2) Audit Team Leader for the Municipality of Panglao, Bohol of the COA documents relative to the acquisition of the subject vehicle. Relative thereto, she drafted various letters to the BAC Chair to track the submission documents.

She learned from her investigation that on November 21, 2007, the Sangguniang Bayan of Panglao, Bohol passed Resolution No. 152, s. 2007,⁴¹ listing the priority projects for the accumulated 20% DF-IRA for 2004, 2005, 2006 and 2007. The procurement of the subject vehicle is reflected in the said resolution as well as in the municipality's 2007 APP as "*Van/SUV/Pick-UP-M.O.*" in the amount of Php1,550,000.00. She found that the procurement was essentially attended by the following irregularities:

1. The amount used for the procurement of the said vehicle was sourced out of the 20% Development Fund of the LGU which is violates of the provision(s) of DILG and DBM Joint Memorandum Circular No. 1, series of 2005. Item 3.0 of the said Joint Memorandum provides for the list of development projects which the 20% of the IRA may be utilized and the procurement of a motor vehicle is not one of the development projects listed therein;
2. There was no public bidding conducted in the purchase of the subject vehicle as the same was purchased through direct contracting⁴² in violation of Republic Act No. 9184 (Government Procurement Reform Act) including its Implementing Rules and Regulations (IRR). Section 50 of the said law provides that "Direct contracting may be resorted to only in any of the following conditions: (a) xxx (b) xxx (c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower process and for which no suitable substitute can be obtained at more advantageous

³⁸ Exhibit "Q"

³⁹ Exhibit "R"

⁴⁰ Records, Vol. 1, pp. 337-360; TSN, March 1, 2018

⁴¹ "A Resolution Approving the Priority Development Projects/Programs and Activities for Funding out from the accumulated 20% IRA Development Fund of Calendar Year 2004, 2005, 2006, and 2007 in the Total Amount of Php19,033,121.68 for inclusion in the Annual Budget, Annual Investment Plan and Community Development Plan."

⁴² Panglao's 2007 APP; Exhibit "D" - Panglao's Minutes of BAC Meeting and Pre-Bid Conference; BAC Resolution No. 001

terms to the government.” Gateway Motors was not an exclusive dealer or distributor.

3. The Purchase Request⁴³ as well as the Purchase Order⁴⁴ particularized “1 unit Brand New 2008 Model Kia Sorento EX 97 Seaters) Airon Stero, Accessories Mags 2.5 L Diesel Engine A, Color Black” which violates Section 18, RA 9184 which states that “xxx Reference to brand names shall not be allowed.”

She further testified that the accused gave unwarranted benefit, advantage or preference to Gateway Motors (Cebu) Inc. in the said procurement when the brand name *Kia Sorento* was specified because the municipality did not get the opportunity to obtain the lowest possible price for it. Likewise, undue injury was caused to the municipality when the fund used for the said purchase was taken from the 20% Development Fund in violation of the DILG/DBM Joint Memorandum Circular No. 1, s of 2005. She acted as a nominal complainant in this case⁴⁵ and identified relevant documents.⁴⁶

Accordingly, on March 2, 2018, the prosecution filed its Formal Offer of Evidence⁴⁷ consisting of Exhibits “A-1” to “A-2”, “B” to “UU” inclusive of sub-markings which the Court admitted taking into consideration the objections of:

1. Accused Alcala in Exhibits “A-1” to “A-2”, “C”, “E” to “E-2”, “F” to “S”, “T” to “T-6”, “U-1” to “U-2”, “V”, “W” to “W-3”, “X” to “X-1”, “Y”, “Z” to “Z-3”, “AA” to “AA-1”, “BB”, “CC” to “CC-3”, “DD” to “DD-1”, “EE”, “FF” to “FF-3”, “GG” to “GG-1”, “HH”, “II” to “II-3”, “JJ” to “JJ-1”, “KK”, “LL”, “RR”, “SS”, “TT” and “UU”;
2. Accused Sumaylo in Exhibits “A-1” to “A-2”, “B” to “B-2”, “B-1-a”, “C”, “D”, “E” to “E-2”, “F” to “S”, “T” to “T-6”, “U-1” to “U-2”, “V”, “W” to “W-3”, “X” to “X-1”, “Y”, “Z” to “Z-3”, “AA” to “AA-1”, “BB”, “CC” to “CC-3”, “DD” to “DD-1”, “EE”, “FF” to “FF-3”, “GG” to “GG-1”, “HH”, “II” to “II-3”, “JJ” to “JJ-1”, “KK”, “LL”, “RR”, “SS”, “TT” and “UU”; and
3. Accused Bonaio et al. in Exhibits “A” to “T” inclusive of sub-markings and “LL”.

Meantime, accused Sumaylo filed his *Motion for Leave of Court to File Demurrer to Evidence*⁴⁸ on May 8, 2018, attaching thereto his *Demurrer of Evidence*⁴⁹ dated April 26, 2018. The prosecution filed its *Comment/Opposition*⁵⁰ thereto on May 15, 2018. For lack of merit, the same was denied in a Resolution dated June 5, 2018.⁵¹

⁴³ Exhibit “F”

⁴⁴ Exhibit “G”

⁴⁵ Complaint dated March 27, 2013 (Exhibit “LL”)

⁴⁶ SB Resolution No. 152 (Exhibit “A”); Panglao’s 2007 Annual Procurement Program (Exhibit “E”); The DILG and DBM Joint Memorandum Circular No. 1, series of 2005 (Exhibit “S”); Panglao’s Minutes of BAC Meeting and Pre-Bid Conference (Exhibit “D”); BAC Resolution No. 001 dated January 9, 2008 (Exhibit “C”); Purchase Request (Exhibit “F”); Purchase Order (Exhibit “G”); Obligation Request No. 08-01-0005 (Exhibit “H”); Disbursement Voucher No. 100-08-01-0023 (Exhibit “I”); Check No. 1020516 dated January 15, 2008 payable to Gateway Motors (Cebu) Inc. in the amount of Php1,466,964.28 (Exhibit “J”); Inspection and Acceptance Report (Exhibit “K”); Gateway Motors (Cebu) Inc.’s Official Receipt No. 7605 dated January 15, 2008 for Php1,466,964.28 received from the Municipality of Panglao, Bohol (Exhibit “L”); Gateway Motors (Cebu) Inc.’s Sales Invoice No. 0409 (Exhibit “M”); Gateway Motors (Cebu) Inc.’s Charge Invoice No. 5838 (Exhibit “N”); Gateway Motors (Cebu) Inc.’s Delivery Receipt No. 0409 (Exhibit “O”); Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property (Exhibit “P”); Complaint dated March 27, 2013 (Exhibit “LL”)

⁴⁷ Records, Vol. 2, pp. 177-329

⁴⁸ Records, Vol. 2, pp. 365-368

⁴⁹ *Id.*, pp. 369-379

⁵⁰ *Id.*, pp. 380-387

⁵¹ *Id.*, pp. 424-427

X-----X

The Evidence for the Accused

The defense presented as evidence the testimonies of the following witnesses, *viz*: [1] accused **Rogelio Sarahina Bonao** for himself, accused **Estopito and Lustre**; [2] accused **Rene D. Guivencan** for himself; [3] accused **Catalino A. Sumaylo** for himself; [4] accused **Benedicto H. Alcala** for himself.

Rogelio Bonao testified on his Judicial Affidavit⁵² that he is currently the Municipal Engineer of Panglao, Bohol. That he was charged for violation of RA 3019, Section 3(e) in his capacity as Vice-Chair, BAC at the time of the questioned purchase of motor vehicle based on an audit finding in the 2008 Annual Report of the Municipality of Panglao, Bohol. His co-accused, Alcala was the Mayor. Sumaylo was the Municipal Budget Officer, Accountant-designate and the Chairman of BAC. Rena Guivencan, Dionisia Estopito and Rene Lustre were all members of BAC. He affirmed that the BAC passed Resolution 001, s. 2008⁵³ in relation to the purchase of said vehicle by direct contracting.

The circumstances regarding said purchase is contained in the Minutes of BAC Meeting and Pre-bid Conference.⁵⁴ That on January 9, 2008, the BAC had a pre-bid conference for the rehabilitation of Panglao waterworks system and the reshaping of the municipal and barangay roads, but since no bidders showed up during that time for the said project, Sumaylo suggested to discuss the plan of the Office of the Mayor to purchase a motor vehicle to which the members agreed. Sumaylo, who was also the Budget Officer, presented the APP for 2007⁵⁵ which he prepared and was approved by Alcala, indicating that the Office of the Mayor intended to purchase a vehicle and that the mode for procurement was through direct contracting. He then asked if direct contracting as a mode of procurement is allowed under the existing rules, to which Sumaylo replied that it is allowed under RA 9184. Since Sumaylo as BAC Chair already gave the assurance, he moved for the BAC to pass a resolution recommending that the procurement of the requested vehicle for the Office of the Mayor be done through direct contracting. Said move was unanimously approved.

He claimed that during the said meeting, the BAC did not talk about the brand of the vehicle to be purchased nor was there a mention of Kia Sorento. The BAC merely recommended that the procurement of the subject vehicle be through direct contracting being one of the alternative modes allowed under the procurement law and consistent with the APP. The BAC members had nothing to do in the determination of the source of funds of the projects. The determination usually comes from the MDC and the SB of which the BAC Members are not members as shown in the Minutes of the Meeting of the MDC⁵⁶ dated October 1, 2007 and Excerpts from the Minutes⁵⁷ of the Regular Session of the SB held on November 1, 2007. That he believed there was substantial compliance to the law

⁵² Records, Vol. 2, pp. 394-421; TSN, June 6, 2018

⁵³ Exhibit "4"-Bonao

⁵⁴ Exhibit "5"-Bonao

⁵⁵ Exhibit "6"-Bonao

⁵⁶ Exhibit "1"-Boano

⁵⁷ Exhibit "2"-Bonao

considering the subject vehicle was purchased from an exclusive dealer, i.e. Gateway Motors Cebu, which did not have sub-dealers selling the same car at a lower price and there was no suitable substitute for the said car offered by another supplier at terms more advantageous to the government.

He further testified that State Auditor Lorna S. Piezas confirmed in her Letter⁵⁸ addressed to Assistant Ombudsman (AO) Virginia Palanca-Santiago dated October 6, 2011 stating that: [1] there was no other authorized dealer of the motor vehicle sought by the procuring entity; [2] the price was not excessive; and [3] it was most beneficial to the procuring entity and has the most efficient use being diesel fueled. A *Certification*⁵⁹ issued by Kia Cebu stated that Gateway Motors (Cebu) Inc. is the authorized sole franchise dealer of Kia products like Sorento. The said letter stated that the Municipality of Panglao, Bohol, did not suffer any pecuniary loss on account of the said transaction.

Bonao also testified that he did not receive a copy of the *Notice of Suspension* dated November 14, 2008⁶⁰ and the *Notice of Disallowance* dated December 29, 2009.⁶¹ He only came to know about these documents after he was made to answer a complaint by the Office of the Ombudsman. On the other hand, the *Notice of Disallowance* dated September 20, 2017⁶² only mentioned Alcala and Sumaylo as the persons determined to be liable for the transaction.

Rena Doliente Guivencan testified on her Judicial Affidavit⁶³ corroborating the testimony of her co-accused Bonao. She is currently the Municipal Treasurer of the Municipality of Panglao, Bohol and her participation in the questioned procurement of the motor vehicle was that she was one of the BAC members during the said procurement.

Catalino A. Sumaylo testified on his Judicial Affidavit⁶⁴ that he is the current Municipal Budget Officer of Panglao. At the time the subject vehicle was procured, he served as the Chairman of the BAC. He corroborated Bonao's testimony on what transpired during the BAC meeting on January 9, 2008 when it passed Resolution No. 001 s of 2008⁶⁵ for the purchase of a motor vehicle by direct contracting. As BAC Chair and Budget Officer, he presented the APP where it was reflected that the Office of the Mayor intended to purchase a motor vehicle by direct contracting as its mode of procurement. During that meeting, Bonao inquired from him if direct contracting is possible which he answered in the affirmative. Direct contracting was resorted to upon motion of Bonao and approved unanimously by the BAC. The BAC, however, never discussed and specified the brand "Kia Sorento" during the said meeting.

⁵⁸ Exhibit "19"-Bonao

⁵⁹ Exhibit "17-Bonao et. al"; Annex "N" of Exhibit "LL"

⁶⁰ Exhibit "Q"

⁶¹ Exhibit "R"

⁶² Exhibit "23"-Bonao

⁶³ Records, Vol. 2, pp. 451-476, TSN, August 2, 2018

⁶⁴ Judicial Affidavit, Records, Vol. 3, pp.4-42; TSN, October 30, 2018

⁶⁵ Exhibit "C"

The Purchase Request⁶⁶ from the office of Alcala, which indicated a specific brand of the vehicle as "Brand New 2008 Kia Sorento" was sent first to the BAC before its meeting on January 9, 2008. The documents including the Purchase Order⁶⁷ prepared by Alcala and signed by him, came after the said BAC meeting. He also signed the Obligation Request⁶⁸ considering that there was already an appropriation of P1,550,000.00 for the procurement of the said motor vehicle evidenced by the APP,⁶⁹ MDC Resolution No. 1, s. 2007,⁷⁰ Minutes of the MDC Meeting⁷¹ approving the priority development projects, SB Resolution No. 152, s. 2007⁷² and the Disbursement Voucher⁷³ since the supporting documents are complete. He therefore contended that if there was a violation in the passage of the said resolutions, the BAC members should be excluded. That after the procurement of the said motor vehicle, the same was used by then Mayor Alcala. He believed that they have substantially complied with the law considering that the Kia Sorento was sold by an exclusive dealer, i.e. Gateway Motors Cebu, which did not have sub-dealers selling the same car at a lower price and that there was no suitable substitute for the said car offered by another supplier at the terms more advantageous to the government.

He likewise pointed to the same Letter⁷⁴ of State Auditor Lorna S. Piezas to AO Virginia Palanca-Santiago dated October 6, 2011 which allegedly affirms that there was no other authorized dealer of a motor vehicle sought by the procuring entity and that the price was not excessive. As such, the Municipality of Panglao did not suffer any pecuniary loss from the purchase of the vehicle. The *Certification*⁷⁵ issued by Kia also stated that Gateway is the authorized sole franchised dealer of Kia products like Sorento.

He received a copy of the Notice of Suspension⁷⁶ dated November 14, 2008 on November 17, 2008 but there was no copy sent to the Office of the Mayor. He did not and could not act on it considering that he was not the one using the vehicle. He asserted that this Notice of Suspension was superseded already by the Letter of Piezas to AO Palanca-Santiago stating that the municipality did not suffer pecuniary loss on the procurement of the Kia Sorento. He likewise received a copy of the Notice of Disallowance⁷⁷ dated December 29, 2009 which pertained only to the freight and handling of the subject vehicle and not on the procurement itself. Thereafter, during the pendency of the case, he received on September 27, 2017 a Notice of Disallowance⁷⁸ dated September 20, 2017 but the office of then Mayor Alcala was not served a copy of the same. As BAC Chairman, he did not

⁶⁶ Exhibit "F"⁶⁷ Exhibit "G"⁶⁸ Exhibit "H"⁶⁹ Exhibit "E"⁷⁰ Exhibit "B"⁷¹ Exhibit "A-1"⁷² Exhibit "B"⁷³ Exhibit "I"⁷⁴ Exhibit "19"-Sumaylo⁷⁵ Exhibit "17"-Sumaylo⁷⁶ Exhibit "Q"⁷⁷ Exhibit "R"⁷⁸ Exhibit "23"

recommend direct contracting for the procurement of the said motor vehicle but said mode was reached upon motion of Bonaio, which the BAC unanimously approved. The role of BAC ended after its passage of Resolution No. 001, Series of 2008.

Benedicto H. Alcala testified on his Counter-Affidavit.⁷⁹ That as regards the alleged violation of RA 3019, Section 3(e) for failure to conduct public bidding in the procurement of the subject vehicle, RA 9184, Section 48 allows “direct contracting” as alternative mode of procurement. The said law likewise prescribes that the method of procurement shall be indicated in the APP which the municipality complied since the Office of the Mayor indicated in its APP the mode of procurement for “Van/Suv/Pick-up M.O.” Even the COA in its 2008 Annual Audit Report which is the basis of this case allegedly does not altogether disallow the transaction. That as regards the alleged violation of Section 10 of Article IV of RA 9184 stating the preference of brand name for the vehicle to be purchase, the COA merely recommended for the municipality to stop the said practice. With these “procedural lapses” the COA “merely advised management (LGU) to observe competitive bidding” and that there was no COA finding that the procurement was excessive or extravagant, thus, accused Alcala posited that these errors are “insignificant. These, he claimed do not warrant the charge of violation of RA 3019 Section 3(e) there being no bad faith, gross inexcusable negligence and manifest partiality on his part who is presumed to have regularly performed his duties.

Allegedly as Municipal Mayor, he approved ordinances, resolutions, municipal development plans and procurement programs as well as the budget of the municipality.

Before the Municipal Council operates with regard to the programs of the municipality, it asks the MDC and the Budget Officer Sumaylo what are the items allowed by law to be included in the budget because they are the ones in charge and they know the rules on appropriation. The 20% Development Fund is the only source of fund that they can use in acquiring motor vehicle and other items included in the programs and development of the municipality. He, thus, instructed the Budget Officer who is the Chairman of the BAC to prepare all the necessary requirements for the procurement of the vehicle. The BAC accordingly deliberated on it and thereafter recommended that the procurement of the motor vehicle for the Office of the Mayor be done through direct contracting. While he claimed he did not participate in the BAC proceedings, he admitted that he approved the BAC recommendation to procure the vehicle by way of direct contracting. He relied on the BAC because it is their duty.

The motor vehicle was purchased from the Gateway Motors Cebu. It was the only supplier available in Tagbilaran at that time as shown on the Certification⁸⁰ issued by it being the sole distributor of Kia Sorrento. He instructed

⁷⁹ Counter Affidavit, Records, Vol. 3, pp. 63-91; TSN, November 20, 2018

⁸⁰ Exhibit "7"-Alcala

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his staff to prepare the purchase request for the vehicle. It was his staff who encoded the name of the vehicle and went to the City of Tagbilaran to look for the vehicle and he likewise approved it.

He claimed he did not receive a copy of the Audit Report from COA but he was furnished a copy thereof by a municipal employee.

Thereafter, accused Alcala formally offered his documentary evidence⁸¹ consisting of Exhibits 1 to 8 inclusive of sub-markings.

Accused Sumaylo's Formal Offer of Documentary Exhibits was filed on December 19, 2018 consisting of Exhibits "1" to "23" inclusive of sub-markings. Prosecution's *Comment/Objection*⁸² thereto was filed on December 29, 2018.

Accused Bonao, Guivencan, Estopito and Lustre filed their *Formal Offer of Exhibits*⁸³ on even date consisting of Exhibits "1-Bonao et al." to "23-Bonao, et al."

Per Resolution of the Court dated January 4, 2019, the Court resolved to admit all the documentary exhibits offered by all the accused. The parties accordingly submitted their respective Memoranda.⁸⁴

Thereafter, the case was submitted for decision.

Issues

The issue in this case is: based on the municipality's acquisition of the subject "*Brand New Model 2008 Model Kia Sorento Ex (7 Seaters) Aircon Stereo Accessories Mags 2.5L Diesel Engine A Color: Black*" by direct contracting, the accused may be held guilty of violating of RA 3019, Section 3(e).

Discussion and Ruling

Section 3 paragraph (e) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, provides:

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

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits,

⁸¹ Records, Vol. 3, pp. 59-105

⁸² Records, Vol. pp. 136-143

⁸³ Records, Vol. 3, pp. 115-134

⁸⁴ *Prosecution's Memorandum* (Records, Vol. 3, pp. 160-170) was submitted on January 10, 2019; *Alcala's Memorandum* (Records, Vol. 3, pp. 173-183) was filed on January 23, 2019; *Bonao, Guivencan, Estopito and Lustre's Memorandum* (Records, Vol. 3, pp. 184-190) was filed on February 6, 2019; *Sumaylo's Memorandum* (Records, Vol. 3, pp. 192-201) was filed on February 11, 2019.

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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 order to secure a conviction under the said provision, the following essential elements must be present:⁸⁵

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused undue injury to any party, including the government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.

From the stipulations and documents presented, the *first element* was duly established as the accused were all public officers discharging administrative and official functions at the time material to this case. Accused Alcala was the Municipal Mayor of Panglao, Bohol. Accused Sumaylo was the Budget Officer and BAC Chair, while accused Bonao, Guivencan, Estopito and Lustre were BAC members of the same municipality.

As regards the *second element*, the Supreme Court explained in the case of *People v. AtiENZA, et al.*⁸⁶ citing *Uriarte v. People*⁸⁷ that “Section 3 (e) of RA 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.” It further elucidated what “manifest partiality,” “evident bad faith” and “gross inexcusable negligence” mean, *viz*:

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. Evident bad faith 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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

To begin with, the purpose of procurement of the subject vehicle as stated in Panglao’s 2007 APP is for the Office of the Mayor to “improve monitoring/delivery of basic services” sourcing the funds therefor from the 20%

⁸⁵ *Silverina Consigna v. People*, G.R. No. 175750-51, April 2, 2014 citing *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004), citing *Jacinto v. Sandiganbayan*, 387 Phil. 872, 881 (2000), *Velasco v. Sandiganbayan*, 452 SCRA 593 (2005)

⁸⁶ G.R. No. 171671, June 18, 2012

⁸⁷ G.R. No. 169251, December 20, 2006, 511 SCRA 471

Development Fund of the IRA (DF-IRA). However, the Joint Memorandum Circular No. 1, s. 2005 of the DILG and DBM⁸⁸ prescribes the projects to be funded by the 20% DF-IRA, as follows:

3.0 PROJECTS COVERED

The 20% of the IRA intended for development projects shall be utilized for the following:

3.1 Social Development

- 3.1.1 Establishment or rehabilitation of Productivity Enhancement Center for out-of-school youths, women, minors, displaced families, indigenous people, differently-abled persons and older persons;
- 3.1.2 Establishment of rehabilitation of Manpower Development Center;
- 3.1.3 Construction or rehabilitation of health centers, rural health unit or hospital, and purchase of medical equipment;
- 3.1.4 Construction or rehabilitation of a local government-owned potable water supply system;
- 3.1.5 Installation of street lighting system;
- 3.1.6 Preservation of cultural/historical sites.
- 3.1.7 Other programs or projects of similar nature.

3.2 Economic Development

- 3.2.1 Implementation of a livelihood/entrepreneurship development program or project.
- 3.2.2 Construction/rehabilitation of a communal irrigation or water impounding system and purchase of post harvest facilities such as farm or hand tractor with trailer, thresher, mechanical drier and the like.
- 3.2.3 Construction/rehabilitation of farm-to-market roads.
- 3.2.4 Construction/rehabilitation of local roads or bridges; and
- 3.2.5 Other program or projects of similar nature.

3.3 Environmental management

- 3.3.1 Construction/rehabilitation of sanitary landfill or controlled dumpsite and purchase of a garbage truck or related equipment.
- 3.3.2 Community reforestation or urban greening projects.
- 3.3.3 Flood control programs or projects such as de-clogging of canals or de-silting of rivers.
- 3.3.4 Other environmental management programs or projects that promote air and water quality, as well as productivity of coastal or freshwater habitat, agricultural land and forest land.

Apparently, as found by the COA in its 2008 AAR, the procurement of the subject vehicle is not among the aforementioned project coverage that may be financed by the 20% DF-IRA.

On the other hand, Section 10 of RA 9184 provides that "all procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." By and large, competitive public bidding is the primary mode of procurement in the government. The Supreme Court in *Office of the Ombudsman-*

⁸⁸ Exhibit "S"

*Mindanao v. Martel et al.*⁸⁹ explains that “[a] competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.”

While “direct contracting” is allowed as an exception to the general requirement for a competitive public bidding pursuant to Section 48 and 50, Article XVI of RA 9184, the same is subject to certain conditions, viz:

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

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

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

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

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

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

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

In this case, the accused reasoned mainly that resort to “direct contracting” is justified invoking a *Certification*⁹⁰ by Markane Earle C. Goho, VP for Operations of Kia Cebu Gateway Motors dated January 4, 2008 that the supplier, Gateway Motors (Cebu), Inc., is the “authorized sole franchised dealer of COLUMBIAN AUTOCAR CORP. (CAC) for Kia Products xxx for the islands of Bohol and Cebu,” which offered a reasonable and much lower price than its competitors.

⁸⁹ Office of the Ombudsman-Mindanao v. Richard T. Martel and Abel A. Gulñares, G.R. No. 221134, March 1, 2017

⁹⁰ Exhibit 17-Sumaylo; Exhibit 7-Alcala

While Gateway Motors (Cebu) may pass as a “sole franchised dealer,” however, by the literal import of the cited *Certification*, it refers merely to “Kia products x x x for the islands of Bohol and Cebu” to the exclusion of other brands such as Toyota or Mitsubishi. Thus, reliance on Gateway Motors (Cebu) being a “sole franchise dealer” is misplaced since it became the sole supplier only because the Purchase Request signed by Alcala [both as requester and approving authority], specified the brand. Reference to brand name in procurement is patently prohibited under **Section 18** of RA 9184, viz:

Section 18. Reference to Brand Names.- Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. **Reference to brand names shall not be allowed.** [emphasis supplied]

Even if Gateway Motors (Cebu) is an “authorized” dealer of Columbian Autocar Corp for Kia products, it does not appear to be an “exclusive dealer or manufacturer, which does not have sub-dealers” [of Kia products] within the contemplation of Section 50 of RA 9184. Accused Sumaylo, during the cross-examination, testified:⁹¹

- Xxx
- Q: Okay. What is your proof that Gateway Motors the dealer in this case is an exclusive dealer?
- A: They have a Certification that they are the sub-dealers, exclusive dealer and no sub-dealer, Sir.
- Q: So, Gateway Motors has a Certification and you are probably referring to Exhibit “17”, showing you the Certification, Bonao, et al.?
- A: Yes, Sir.
- Q: Could you please read that Certification?
- A: This Certification: “This is to certify that Gateway Motors Cebu, Incorporated also known as Kia Cebu with business address at E. Cortez, Avenue, Mandaue City is the authorized sole franchise dealer of Columbian Auto Car Corporation for Kia products such as Kia Sorento...Rio and Picanto as well as for its necessary parts – and its facilities for the islands of Bohol and Cebu.”
- X x x x
- Q: So, reading this Certification it says that Gateway Motors is an authorized dealer of Columbian Auto Part (sic) Corporation. Right?
- A: Yes, Sir.
- Q: In other words, Gateway Motors is not a dealer. In fact, Gateway Motors is a sub-dealer? I would like you to read it again, Sir.
- A: Franchise dealer.
- Q: Exactly. What makes Auto Car Corporation as the dealer. Do you confirm that? Auto Car Corporation is the dealer, Gateway Motors is the sub-dealer?
- A: There is no sub-dealer in the letter, Sir, but we believe that that suffice our requirement as a sole distributor or dealer.

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JUSTICE LAGOS

Well, he says that that is the basis, which the BAC decided on as an exception to the General Rule of Public bidding. Now, he has already interpreted the said certification. The other requirement is that there are no sub-dealers offering the same item at lower prices. Is it not under the law?

PROS. BOCO
Yes, Your Honor.

⁹¹ TSN, October 30, 2018, pp. 21-24

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JUSTICE LAGOS

The questions (sic) is, is there any proof that there were really no other sub-dealers offering the item at lower prices? Answer.

A: In the statement of Kia Motors there is no other, the place specified Bohol and Cebu. So, in Bohol there is no other sub-dealer, Sir.

PROS. BOCO

Q: There is no other sub-dealer. Okay. You also made mentioned in your Judicial Affidavit that, Wait, before i go there. At the time of the procurement, what did the bac do to check that no suitable substitutes can be obtained at more advantageous terms to the government?

A: I think that is the responsibility of the technical working group, Sir.

Q: So the BAC did not do anything?

A: Yes, Sir.

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In the case of *Pabillo, et al. v. COMELEC et al.*⁹² the Supreme Court extensively discussed how direct contracting could be justified, citing the Manual of Procedures for the Procurement of Goods and Services of the Government Procurement Policy Board (GPPB Manual), viz:

X x x

How can Direct Contracting be justified?

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

Who are involved in procurement through Direct Contracting?

The following are involved in the conduct of direct contracting:

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat/ Procurement Unit; and
5. The supplier/manufacturer.

Methodology: How is Direct Contracting conducted?

The following steps are undertaken in conducting Direct Contracting:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. For information purposes, the BAC, through the BAC Secretariat shall post the notice of direct contracting in the following:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.

⁹² G.R. No. 216098, April 21, 2015

3. The BAC, through the TWG and the BAC Secretariat, prepares the Request for Quotation, technical specifications and draft contract in accordance with the procedures laid down in this Manual, in the IRR-A and in the PBDs.
4. The BAC, through the Secretariat, identifies the supplier from whom the goods will be procured.
5. If a pre-procurement conference is required or deemed necessary, as previously discussed in this Manual, the BAC holds such a conference. If a pre-procurement conference is held, the participants should confirm the existence of the conditions required by law for procurement through Direct Contracting. [emphasis supplied]

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The evidence shows that no canvass or survey as a condition for direct contracting was conducted prior to the procurement of the vehicle in accordance with R.A 9184. Sumaylo testified:⁹³

PROS. BOCO

Q: Mr. Sumaylo, do you know if an actual canvass was conducted in this case?

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A: We resort to direct contracting. I think there is no need for the canvass, Sir.

Q: So, there was none?

A: Yes, Your Honor.

PROS. BOCO

Q: So, were price quotations from Toyota Mitsubishi obtained?

A: No, Sir.

Needless to state, all public officers should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. (*Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission, G.R. No. 100599, April 8, 1992, 207 SCRA 801, 812*). It is strictly required that they comply with the Procurement Law and other relevant laws that regulate the use of public funds.

To summarize, accused Sumaylo, in his capacity as Budget Officer prepared the Municipality of Panglao's 2007 APP,⁹⁴ specifying "direct contracting" as the mode of procurement of a "Van/SUV/Pick-up" for the Office of the Mayor with an allocated budget of P1,550,000.00 sourced from Panglao's 20% Development Fund in order to "Improve Monitoring/Delivery of Basic Services," which accused Alcala, as Municipal Mayor, approved. On January 9, 2008, Sumaylo as BAC Chair presented the APP to the BAC and on the basis thereof, the BAC including accused Bonao, Guivencan, Estopito and Lustre, as members, passed Resolution No. 001 series of 2008 on January 9, 2008 which Alcala likewise approved.⁹⁵ The said resolution recommended to the Head of the Procuring Entity [Alcala] that the "acquisition of Motor Vehicle under the Office of the Mayor should be done through Direct Contracting." The undated Purchase

⁹³ TSN, October 30, 2018, p. 30⁹⁴ Exhibit "E-2"⁹⁵ Exhibit "C"

Request⁹⁶ of the vehicle signed by Alcala both as a requesting party and approving entity specifically indicated the item to be purchased as “Brand New Model 2008 Model Kia Sorento Ex (7 Seaters) Aircon Stereo Accessories Mags 2.5L Diesel Engine A Color: Black.” The Purchase Order⁹⁷ specifying the same item for acquisition as well as the Obligation Request⁹⁸ were signed by both Alcala as Mayor, and Sumaylo, as Budget Officer, whereas the Disbursement Voucher⁹⁹ was signed by Sumaylo as Municipal Accountant-Designate, Guivencan as Municipal Treasurer, and approved for payment by Alcala, as Municipal Mayor. The corresponding check payment¹⁰⁰ was signed by Alcala and Guivencan, while the Inspection and Acceptance Report¹⁰¹ was signed solely by Alcala.

In view of the foregoing, the procedural lapses in the questioned procurement are evident *viz-a-viz* the requirements of R.A. 9184.

This leads us to the issue of whether or not under the facts obtaining, there is “evident bad faith,” “gross inexcusable negligence,” or “manifest partiality” on the part of the accused to satisfy the *second element* of violation of Section 3(e), RA 3019.

For accused Alcala, there is no excuse for his alleged reliance on the APP which indicated the mode of procurement for the subject vehicle by “direct contracting.” In the first place, it was he himself approved the APP so that he was responsible for the consequences thereof. There is also the question why the APP prescribed “direct contracting” for the “Van/SUV/Pick-up-M.O.” [for the Office of the Mayor], while “public bidding” was the mode indicated for the procurement of “Jeep (Surplus) Peace and Order-PNP.” There is likewise no excuse for his alleged reliance on the BAC since he himself approved and signed the BAC resolution which recommended “direct contracting.” Apart therefrom, he thereafter processed and controlled the procurement of the *Kia Sorento* which he specified in his Purchase Request, in blatant disregard of the procurement law. Alcala testified:¹⁰²

- Q: Okay. So, since you approved the recommendation to procure the vehicle, what happened after that?
- A: So, we procured the ... I instructed them to procure the vehicle.
- Q: From what supplier?
- A: They purchased at the Gateway Motors.
- Q: Where is that located?
- A: In the City of Tagbilaran.
- Q: Is that the only supplier available in Tagbilaran?
- A: Yes, Sir. During that time.
- Q: What do you mean, yes, Sir? Were there no other suppliers during that time?
- A: During the time when we procured the vehicle, it was only the Gateway Motors who's selling vehicle in the City of Tagbilaran.
- Q: Now, who made the decision, Mr. Witness, to specify the procurement of Kia Sorento in this transaction?

⁹⁶ Exhibit “F”

⁹⁷ Exhibit “G”

⁹⁸ Exhibit “H”

⁹⁹ Exhibit “I”

¹⁰⁰ Exhibit “J”

¹⁰¹ Exhibit “K”

¹⁰² TSN, November 20, 2018, pp. 21-24

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- A: I instructed my staff to prepare the purchase request for the purchase of the vehicle and it was my staff who typed the name of the vehicle.
Q: So, it was your staff?
A: It was my staff.
Q: And you followed the recommendation of your staff?
A: Yes, Sir.
Q: Who also made the decision to procure that Kia Sorrento vehicle from Gateway Motors?
A: Yes, Sir.
Q: Who also made the decision to procure that Kia Sorrento vehicle from Gateway Motors?
A: It was my staff who went to the City of Tagbilaran and look for the vehicle that they want to purchase.

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Being the Municipal Mayor and Head of the Procuring Entity, it is his obligation to know the law pertinent to government procurement and ensure that the municipality's purchases comply with existing rules. Under the circumstances of this case, his failure to do so constitutes negligence that is gross and inexcusable, particularly so as the record is bereft of evidence to show that he exerted the slightest effort to comply therewith, or avoid any infraction thereof that he is duty-bound to observe. In *Ong vs. People*,¹⁰³ the Supreme Court thus ruled:

As the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same and his failure to discharge this duty constitutes **gross and inexcusable negligence**. [emphasis supplied]

Incidentally, the Court is aware that the administrative charge of Grave Misconduct against Alcala arising from the subject procurement filed with the Ombudsman-Visayas, docketed as OMB-V-A-14-0136, was dismissed by the Office of the Ombudsman in its Joint Resolution approved by then Ombudsman Morales on January 19, 2016.¹⁰⁴ However, perusal thereof shows that the dismissal was due mainly to the doctrine laid down in *Ombudsman vs. Andutan vs. Jr.*, considering that Alcala was no longer a public officer at the time of the filing of the complaint on April 29, 2014. This dismissal does not affect the finding of probable cause against him in OMB-V-C-14-0141 which led to the filing of the herein Information for violation of R.A. 3019, Section 3(e).

In the same parlance, Sumaylo's approbation for "direct contracting" in the procurement of the vehicle has no valid factual and legal basis. He prepared the APP as Budget Officer, and led the BAC, as Chair thereof, to adopt or recommend "direct contracting" in relation to Alcala's request for the branded vehicle. This was notwithstanding the question raised by Bonao, a BAC member, on the regularity of resort to direct contracting. As the evidence shows, Sumaylo was steadfast in his sweeping assurance that direct contracting is allowed without

¹⁰³ *Ong vs. People*, GR No. 176546, September 25, 2009

¹⁰⁴ *Records*, Vol. 1, pp. 6-15

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specifying that the conditions therefor exist, in gross violation of the Procurement Law. The Supreme Court in *PSC vs. Dear John Services, Inc.* held:¹⁰⁵

The PSC-BAC is obliged to observe and enforce the [rules] in the procurement of goods and services for the project. The law on public bidding is not an empty formality. 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.”

Additionally, in sourcing the fund for the purchase of the vehicle from the 20% DF-IRA, Alcala and Sumaylo, as responsible officers thereof, willfully violated DILG and DBM Joint Memorandum Circular No. 1, s. 2005.

With respect to accused Bonaog, Guivencan, Estopito and Ilustre, while as BAC members they approved the direct contracting method, they were not similarly situated with Sumaylo as it was credibly impressed that they were only passive participants and were misled by the latter’s assertion about the regularity thereof, creating doubts on their supposed knowing and willful intention to violate the procurement law. It bears to note that the Office of the Ombudsman in its Joint Resolution approved by then Ombudsman Morales on January 19, 2016 in OMB-V-A-14-0136 and OMB-V-C-14-0141,¹⁰⁶ found them liable only for Simple Misconduct “considering the complainant failed to establish that their actions were motivated by corruption, willful intent to violate the law, or to disregard establish rules.” They could not be said to have conspired with Sumaylo and Alcala in transgressing the rules on procurement. Upon the other hand, as regards the irregular sourcing of fund for the vehicle indicated in the APP, the prosecution failed to present evidence of their participation therein.

This brings the Court to the determination of the presence of the *third element*. The Supreme Court in *Cabrera v. Sandiganbayan* explained the two (2) modes of committing a violation of Section 3(c) of R.A. No. 3019 in the performance of public functions, namely: [1] by causing undue injury to any party, including the Government; or [2] by giving any private party any unwarranted benefits, advantage or preference.

True, the Letter¹⁰⁷ of Auditor Piezas narrates that “there was no pecuniary loss on the part of the municipality of Panglao, Bohol.” However, this does not totally negate the existence of the third element of violation of R.A. 3019, Section 3 (e) as regards Alcala and Sumaylo. In the first place, the observation that “Kia Sorento had the lowest price,” was based on “available current prices of the three (3) companies namely Toyota, Mitsubishi and Kia with comparable specifications in the internet research x x x comparison of prices used was 2011 x x x.” Therefore, the same is incongruent to the questioned transaction which took place in 2008, or three (3) year before. On the contrary, specifying the brand Kia to be purchased, and thereafter favoring the procurement thereof through direct contracting without specifying that the conditions therefor exist, gave its supplier

¹⁰⁵ *Philippine Sports Commission et al. v. Dear John Services, Inc.*, G.R. No. 183260, July 4, 2012

¹⁰⁶ *Records*, Vol. 1, pp. 6-14

¹⁰⁷ *Exhibit 17-Sumaylo; Exhibit 7"-Alcala*

X-----X

Gateway Motors (Cebu) an unwarranted preferential benefit, to the exclusion of other suppliers. Verily, the COA Notices of Disallowance dated December 29, 2009 and September 20, 2017 altogether disallowed in audit the suspended amount of Php1,550,000.00 covering the purchase of the subject vehicle, and specifically named accused Alcala and Sumaylo as the persons liable.

As a final word, the accused are reminded that the Constitution stresses that a public office is a public trust, and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally enshrined principles, oft-repeated in case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.¹⁰⁸

WHEREFORE, in the light of all the foregoing, the Court finds accused **Benedicto H. Alcala and Catalino A. Sumaylo, GUILTY beyond reasonable doubt** of violation of Section 3(e) of RA 3019, and each is hereby sentenced to suffer the penalty of imprisonment from Six (6) years and One (1) month to Eight (8) years with perpetual disqualification to hold public office. Accused **Rogelio S. Bonaio, Rena D. Guivencan, Dionisia H. Estopito and Rene B. Lustre**, are hereby **ACQUITTED** of the charge for failure to prove their guilt beyond reasonable doubt. For all the accused, no civil liability is adjudged against them as the basis for such award does not exist.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA –ARCEGA
Associate Justice

¹⁰⁸ *Government Service Insurance System v. Mayordomo*, G.R. No. 191218, 31 May 2011.

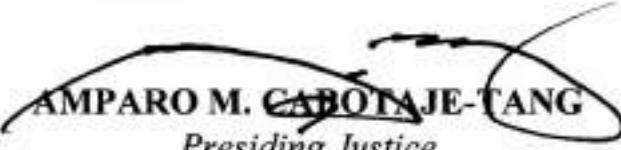
ATTESTATION

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


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

