



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
 Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff,

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

- versus -

**GEMMA FLORANTE ADANA,**  
**ET AL.,**

Accused.

*Present:*

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

*Promulgated:*

July 31, 2019 *[Signature]*

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**DECISION**

**VIVERO, J.**

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

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

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

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

The instant case arose from the *Joint Complaint-Affidavit* dated 23 June 2009<sup>2</sup> for violation of Section 3(e) of R.A. No. 3019, Falsification and Malversation filed before the Office of the Ombudsman on 01 July 2009 against Adana, Grijalvo, Timsan, Enteria, Cartagena, and Solivar together with other respondents for the alleged irregularities in the purchase of the heavy equipment from CVCK Trading.

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

**Information**

The accusatory portion of the Information dated 03 May 2016<sup>5</sup> filed with this Court on 24 May 2016 reads:

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

<sup>2</sup> *Rollo*, Vol. 1, pp. 26-49.

<sup>3</sup> *Id.* at pp. 7-17.

<sup>4</sup> *Id.* at pp. 18-25.

<sup>5</sup> *Id.* at pp. 1-4.

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

**CONTRARY TO LAW."**

**Proceedings before the Sandiganbayan**

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

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

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<sup>6</sup> *Id.* at p. 100.

<sup>7</sup> *Id.* at pp. 98-99.

<sup>8</sup> *Id.* at p. 128.

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2016,<sup>9</sup> which was later on adopted by accused Adana in her Manifestation dated 02 November 2016.<sup>10</sup> In its 29 November 2016 Resolution,<sup>11</sup> this Court dismissed the said Motion for lack of merit.

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

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

During the pre-trial, the parties admitted and stipulated on the following:<sup>14</sup>

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

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<sup>9</sup> *Id.* at pp. 187-205.

<sup>10</sup> *Id.* at pp. 256-260.

<sup>11</sup> *Id.* at pp. 268-274.

<sup>12</sup> *Id.* at pp. 291-292.

<sup>13</sup> *Id.* at pp. 334-337.

<sup>14</sup> *Id.* at pp. 428-431.

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

" X X X

Name of the Project: Acquisition of Heavy Equipments

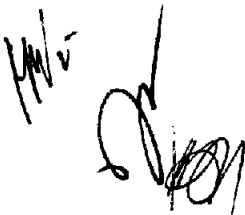
Location: Naga, Zamboanga Sibugay

Brief Description: Reconditioned Heavy Equipments:

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

X X X."

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



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The parties agreed that the issue for resolution by the Court is whether or not the accused are guilty of violating Section 3(e) of R.A. No. 3019.<sup>15</sup>

Thereafter, trial on the merits ensued.

**Evidence for the Prosecution**

The prosecution presented Virgilio C. Tiare<sup>16</sup> and Gerardo B. Agpaoa<sup>17</sup> as its witnesses.

a) *Virgilio C. Tiare*

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

Mr. Tiare stated that the ABC that was disclosed during the opening of the bids on 08 October 2007 is PhP8,800,000.00, which is equivalent to the amount of money loaned from LBP.<sup>22</sup> He added that three bidders participated but it was CVCK Trading that had the LCRB with a bid offer of PhP8,800,000.00.<sup>23</sup>

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

<sup>15</sup> *Id.* at p. 431.

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

<sup>17</sup> TSN dated 20 November 2017.

<sup>18</sup> *Rollo*, Vol. I, pp. 369-382.

<sup>19</sup> *Id.* at p. 369.

<sup>20</sup> *Id.* at p. 370.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Id.* at p. 371.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Id.* at p. 372.

<sup>25</sup> *Id.* at p. 373.

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

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

He identified the following documents:

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

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

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

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

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Id.* at p. 374.

<sup>29</sup> TSN dated 23 August 2017, p. 11.

<sup>30</sup> *Id.* at p. 11.

<sup>31</sup> *Id.* at p. 13.

<sup>32</sup> *Id.* at p. 16.

<sup>33</sup> *Id.* at pp. 21-22.

<sup>34</sup> *Id.* at p. 34.

<sup>35</sup> *Id.* at p. 27.

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Member Samuel Gaelon, SB Member Rodolfo Lumanog, and SB Member Ronnie Sandagon.<sup>36</sup>

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

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

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

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

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<sup>36</sup> *Id.* at p. 28.

<sup>37</sup> *Id.* at p. 34.

<sup>38</sup> TSN dated 25 September 2017, pp. 12-13.

<sup>39</sup> *Id.* at p. 13.

<sup>40</sup> *Id.* at p. 14.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.* at p. 15.



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He further identified the following documents:

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

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

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

b) Gerardo B. Agpaoa

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

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

<sup>43</sup> *Id.* at p. 18.

<sup>44</sup> *Id.* at p. 40.

<sup>45</sup> *Id.* at pp. 42-43.

<sup>46</sup> *Rolló*, Vol. I, pp. 445-450.

<sup>47</sup> *Id.* at p. 445.

<sup>48</sup> *Id.* at p. 446.

<sup>49</sup> *Id.* at p. 447.

<sup>50</sup> *Id.* at p. 448.

<sup>51</sup> TSN dated 20 November 2017, p. 12.

<sup>52</sup> *Id.* at p. 25.

<sup>53</sup> *Id.* at pp. 25-26.

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

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

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

After the prosecution formally offered its evidence, the Court admitted the following exhibits.<sup>56</sup>

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

<sup>54</sup> *Rollo*, Vol. I, p. 426.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Id.* at pp. 517-518.

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

Accused Grijalvo, et al. and accused Adana filed their separate Motions for Leave of Court to File Demurrer to Evidence dated 29 January 2018<sup>57</sup> and 01 February 2018,<sup>58</sup> respectively. In its Resolution dated 19 March 2018<sup>59</sup>, the Court denied both motions.

### Evidence for the Defense

The defense presented accused Adana,<sup>60</sup> Enteria<sup>61</sup> and Grijalvo<sup>62</sup> as its witnesses.

#### (a) Gemma F. Adana

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

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

<sup>57</sup> *Rollo*, Vol. II, pp. 10-13.

<sup>58</sup> *Id.* at pp. 6-7.

<sup>59</sup> *Id.* at pp. 36-39

<sup>60</sup> TSN dated 23 April 2018 and TSN dated 08 May 2018.

<sup>61</sup> TSN dated 24 April 2018.

<sup>62</sup> TSN dated 25 April 2018 and TSN dated 07 May 2018.

<sup>63</sup> *Rollo*, Vol. II, pp. 163-171.

<sup>64</sup> *Id.* at p. 164.

<sup>65</sup> *Ibid.*

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

She recounted that she did not notice if the ABC was not indicated in the IAEB but the amount of Php8,800,000.00 intended as the budget allocation for the purchase of the heavy equipment was already a public knowledge as early as 23 July 2007 when the *Sangguniang Bayan* issued Resolution No. 14, Series of 2007.<sup>67</sup>

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

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

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

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

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<sup>66</sup> *Id.* at p. 165.

<sup>67</sup> *Id.* at p. 166.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id.* at p. 167.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Id.* at pp. 167-168.

<sup>74</sup> *Id.* at p. 168.

<sup>75</sup> *Ibid.*

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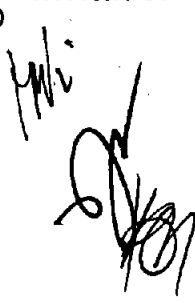
its implementing rules, to cause the publication of another bidding or of the IAEB.<sup>76</sup>

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

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

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

On cross-examination, accused Adana admitted that she has no proof that there is indeed no internet provider in the Municipality of Naga.<sup>78</sup> Anent her statement that the budget allocation for the purchase of the equipment is already a public knowledge, she admitted that none of the participating bidders is from their Municipality.<sup>79</sup> She confirmed that it was accused Grijalvo who caused the publication of the invitation to bid in the Malaya Newspaper on 22 August 2007.<sup>80</sup>



<sup>76</sup> *Ibid.*

<sup>77</sup> *Id.* at p. 169.

<sup>78</sup> TSN, dated 08 May 2018, p. 9.

<sup>79</sup> *Id.* at pp. 9-10.

<sup>80</sup> *Id.* at p. 23.

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**(b) Emmanuel F. Enteria**

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

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

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

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

<sup>81</sup> *Rollo*, Vol. II, pp. 67-75.

<sup>82</sup> *Id.* at p. 68.

<sup>83</sup> *Id.* at p. 73.

<sup>84</sup> *Id.* at p. 72.

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

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

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

Accused Enteria also admitted that he has no proof that there is no internet provider in the Municipality in 2007.<sup>91</sup> He confirmed that it was only after the bidding that the specifications of the equipment were ascertained when the winning bidder, CVCK Trading, provided the name/brand and specifications and/or description of the equipment.<sup>92</sup>

*(b) Roland C. Grijalvo*

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

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

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<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> TSN dated 24 April 2018, p. 13.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Id.* at p. 15.

<sup>90</sup> *Id.* at pp. 21-22.

<sup>91</sup> *Id.* at p. 24.

<sup>92</sup> *Id.* at pp. 26-27.

<sup>93</sup> *Rollo*, Vol. II, pp. 77-84.

<sup>94</sup> *Id.* at p. 78.

<sup>95</sup> *Id.* at p. 79.



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As to the non-inclusion of the ABC in the publication of the IAEB, accused Grijalvo expounded that it was due to inadvertence and that he did not notice the same when he affixed his signature approving the IAEB for publication.<sup>96</sup> He echoed accused Enteria's explanation that during their deliberation prior to the publication, its non-inclusion was never discussed because its confidentiality was then already immaterial having become public knowledge as early as 23 July 2007 when the *Sangguniang Bayan* passed Resolution No. 14 series of 2007.<sup>97</sup> He alleged that the IAEB was also posted in the Bulletin Boards of the Municipal Building of Naga in three conspicuous places bearing the amount of the ABC.<sup>98</sup>

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

With respect to the allegation that the Notice of Award was issued before the approval of BAC Resolution No. 01-07 declaring CVCK Trading as the winning bidder, accused Grijalvo explained that the Notice of Award was issued by accused Adana on 12 October 2007 or four (4) days after the passage of BAC Resolution No. 01-07.<sup>101</sup> According to him, the date "16 October 2007" was just inadvertently placed below the signature of accused Adana found at the bottom of page two of BAC Resolution No. 01-07.<sup>102</sup> He reasoned out that the issuance of the Notice of Award by accused Adana necessarily carries with it the approval by the HoPE of BAC Resolution No. 01-07.<sup>103</sup>

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

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<sup>96</sup> *Id.* at p. 80

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Id.* at p. 81

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Id.* at p. 82.

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



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

On cross-examination, accused Grijalvo clarified that he has seen the documents, i.e. publication containing the IAEB, for the first time only when they were sued in the Ombudsman.<sup>108</sup> Confronted with his Counter-Affidavit before the Office of the Ombudsman, accused Grijalvo admitted that he never received a copy of the SB Resolution No. 14, series of 2007.<sup>109</sup> He mentioned that the specifications of the heavy equipment subject of the bidding were based on the bids submitted by CVCK Trading and did not come from the BAC.<sup>110</sup>

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

On re-direct examination, accused Grijalvo identified the *Sanggunian* Resolution dated 03 January 2008 (Exhibit "10") amending the specification of the road roller and road grader, which prompted the BAC to issue BAC Resolution No. 01-08.<sup>113</sup> He also clarified that the change of the specifications refers to the change in the capacity and capability of the equipment to the most superior in performance but with the same category as re-conditioned heavy equipment.<sup>114</sup>

After the defense formally offered its evidence, the Court admitted the following exhibits:<sup>115</sup>

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<sup>106</sup> *Id.* at pp. 82-83.

<sup>107</sup> *Id.* at p. 83.

<sup>108</sup> TSN dated 25 April 2018, p. 13.

<sup>109</sup> *Id.* at p. 18.

<sup>110</sup> *Id.* at p. 22.

<sup>111</sup> TSN dated 07 May 2018, p. 9.

<sup>112</sup> *Id.* at p. 10.

<sup>113</sup> *Id.* at pp. 17-20.

<sup>114</sup> *Id.* at p. 29.

<sup>115</sup> *Rollo*, Vol. II, p. 365.

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

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

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

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

**Facts**

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

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

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

<sup>116</sup> *Ibid.*

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

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

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

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

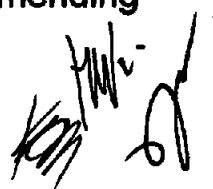
During the opening of bids on 08 October 2007, wherein CVCK Trading and two other suppliers participated, the BAC announced that the ABC is PhP8,800,000.00. The two other suppliers were disqualified because their bid offers exceeded the ABC. The BAC declared CVCK Trading as the bidder with the LCRB with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

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

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

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

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



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

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

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

**Memoranda of the Parties**

*Memorandum for the Prosecution*

In its Memorandum dated 20 December 2018<sup>117</sup>, the prosecution submits that:

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

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<sup>117</sup> *Id.* at pp. 412-457.

<sup>118</sup> *Id.* at p. 427.

<sup>119</sup> *Id.* at p. 429.

<sup>120</sup> *Id.* at pp. 433-434.

<sup>121</sup> *Id.* at p. 439.

<sup>122</sup> *Id.* at p. 443.



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6. There was no pre-procurement conference that was conducted in the case, which is contrary to Section 22.1 of the IRR-A of R.A. No. 9184;<sup>123</sup>
7. The Notice of Award to CVCK Trading was issued before the approval of the BAC Resolution No. 01-07 declaring CVCK as the bidder with the LCRB;<sup>124</sup>
8. No post-qualification was conducted in violation of Section 34 of R.A. No. 9184 as CVCK Trading was hastily declared as the bidder with LCRB;<sup>125</sup>
9. No formal contract was executed between the Municipality and CVCK Trading. The defense failed to present the original copy of the photocopy of the alleged contract between the Municipality and CVCK Trading;<sup>126</sup>
10. The specifications of the Road Grader and Road Roller were modified after the Notice of Award was issued to the said supplier despite the fact such change was not among the aspects of the contract allowed to be changed under the procurement law and its rules and regulations, and no public bidding was conducted anew;<sup>127</sup> and
11. Accused public officers gave accused Solivar and/or CVCK Trading unwarranted benefits, advantage or preference when they pushed through with the purchase of the equipment and paid the latter PhP8,800,000.00 despite several violations of the law.<sup>128</sup> Accused also caused undue injury to the government, particularly the Municipality of Naga, in the amount of PhP8,800,000.00.<sup>129</sup>

***Memorandum for all the Accused***

In their Memorandum dated 04 January 2019<sup>130</sup>, the accused contends that:

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

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<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Id.* at p. 446.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Id.* at p. 447.

<sup>128</sup> *Id.* at p. 454.

<sup>129</sup> *Id.* at p. 456.

<sup>130</sup> *Id.* at pp. 466-483.

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

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

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<sup>131</sup> *Id.* at pp. 466-467.

<sup>132</sup> *Id.* at p. 470.

<sup>133</sup> *Id.* at p. 471.

<sup>134</sup> *Id.* at p. 472.

<sup>135</sup> *Id.* at p. 474.

<sup>136</sup> *Id.* at p. 475.