



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-17-CRM-2149 to 2151  
Plaintiff, For: Violation of Section 3(e)  
of R.A. 3019

Present

- versus -

ROGER C. CHIO, ET AL.

Accused.

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

Promulgated:

February 14, 2020 [Signature]

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DECISION

**FERNANDEZ, SJ, J.**

Accused Roger C. Chio, Romulo S. Palcon, Isagani L. Basco, Alma B. Mahinay, Godofredo A. Ramos and Onofre M. Nugal are charged with three (3) counts of Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) for allegedly awarding and/or causing the award of the contracts for the supply of (a) 308 sets of jetmatic pumps and 50 sets of grass cutters, (b) 23 units of multi-purpose tent, and (c) 30 sets of desktop computers, to PZA despite not conducting the pre-procurement and pre-bid conferences, and notwithstanding the fact that PZA failed to qualify during the preliminary examination because it failed to submit the original copy of its bank certificate.

The accusatory portion of the Information in SB-17-CRM-2149 reads:

That from December 2006 to January 2007, or sometime prior or subsequent thereto, in Davao City, Philippines, and within the jurisdiction of this Honorable Court, accused **ROGER CABALES CHIO, ROMULO SUPEÑA PALCON**, high-ranking public officers being the Regional Executive Director/Head of Procuring Entity and

[Handwritten signatures]

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Regional Technical Director/Bids and Awards Committee (BAC) III Chairman, respectively, **ISAGANI L. BASCO**, Chief, Administrative Division/BAC III Vice-Chairman, **ALMA BERMEJO MAHINAY**, Chief, Finance Division/BAC III Vice-Chairman, **GODOFREDO ARCE RAMOS**, Administrative Officer V/BAC III Provisional Member, and **ONOFRE M. NUGAL**, Chief V of the Regional Agricultural Engineering Division/BAC III Provisional Member, all of the Department of Agriculture Regional Field Unit XI, Davao City, while in the performance of their administrative and/or official functions and committing the crime in relation to office, taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally give PZA Trading (PZA) unwarranted benefits, advantage or preference by awarding and/or causing the award to PZA the contract for the supply of 308 sets of Jetmatic Heavy Duty Pump and 50 sets of grass cutter amounting to PhP2,582,840.00, despite the fact that during the preliminary of examination [sic] of PZA's bid it failed to qualify because it lacked the original copy of its bank certificate, and absent any re-advertisement and re-bidding of the contract and without conducting pre-procurement and pre-bid conferences, in violation of R.A. No. 9184, to the damage and prejudice of public interest.

CONTRARY TO LAW.

The three (3) Informations are similarly worded, except for certain particulars. For convenience, such particulars are summarized as follows:

<b>SB-17-CRM-</b>	<b>Amount</b>	<b>Contract</b>
2149	₱2,582,840.00	Supply of 308 sets of Jetmatic Heavy Duty Pump and 50 sets of grass cutter
2150	₱862,500.00	Supply of 23 units of multi-purpose tent
2151	₱2,415,000.00	Supply of 30 sets of desktop computer

When arraigned, the accused separately entered their pleas of "Not Guilty".<sup>1</sup>

The case was dismissed as to accused Basco in view of his death.<sup>2</sup>

During the pre-trial,<sup>3</sup> the parties stipulated as follows:<sup>4</sup>

<sup>1</sup> Order dated May 23, 2018; Record, Vol. 1, pp. 238-239

<sup>2</sup> Resolution dated November 4, 2019; Record, Vol. 1, pp. 218-219

<sup>3</sup> Pre-Trial Order dated September 19, 2018; Record, Vol. 2, pp. 43-56

<sup>4</sup> Pre-Trial Order dated September 19, 2018, pp. 1-5; Record, Vol. 2, pp. 43-47

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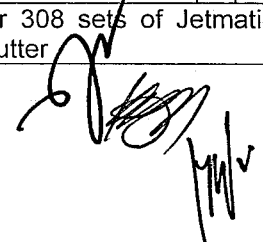
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1. Accused Roger C. Chio, Romulo S. Palcon, Alma B. Mahinay, Godofredo A. Ramos, and Onofre M. Nugal are the same persons named and charged in the Informations docketed as SB-17-CRM-2149 to 2151;
2. At the time material to the allegations in the Informations, the following accused are public officers of the Department of Agriculture, Regional Field Unit (RFU) XI in Davao City, occupying the following positions:
  - a) Roger C. Chio – Regional Executive Director and Head of Procuring Entity
  - b) Romulo S. Palcon – Regional Technical Director and Chairman of the Bids and Awards Committee (BAC) III
  - c) Alma B. Mahinay – Chief, Finance Division and Vice-Chairman of the BAC III
  - d) Godofredo A. Ramos – Administrative Officer V and BAC III Provisional Member
  - e) Onofre M. Nugal – Chief, Regional Agricultural Engineering Division and BAC III Provisional Member
3. PZA Trading was awarded the contract for the supply of 308 sets of Jetmatic Heavy Duty Pump and 50 sets of grass cutter amounting to Php2,582,840;
4. PZA Trading was awarded the contract for the supply of 23 units of multi-purpose tent amounting to Php862,500.00;
5. PZA Trading was awarded the contract for the supply of 30 sets of desktop computer amounting to Php2,415,000.00;
6. The Invitation to Apply for Eligibility and to Bid for the three (3) project [sic] was published in the Philippine Fiscalizer, 15 December 2006 issue;
7. The Honorable Sandiganbayan has jurisdiction to try the above-entitled cases;
8. All the above-named accused admit the existence, authenticity and due execution of the following documentary exhibits:

EXHIBITS	DESCRIPTION
BB	Invoice Receipt for property with IR No. 07-022
HH	Invoice Receipt for Property with IR No. 07-005
LL	Summary of Quotations for 30 sets of desktop computer with accessories
MM	Summary of Quotations for 23 units of multi-purpose tent
NN	Summary of Quotations for 308 sets of Jetmatic Heavy Duty and 50 sets of grass cutter



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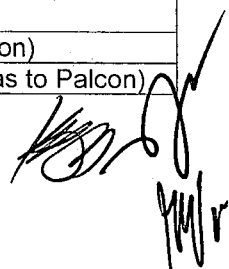
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9. **Plaintiff** and accused **Chio** also stipulate on the existence, authenticity, and due execution of the following documentary exhibits:

EXHIBITS	DESCRIPTION
C	Purchase Request No. 2006-3764 dated 4 December 2006
D	Purchase Request No. 2006-3632 dated 29 November 2006
E	Purchase Request No. 2006-3765 dated 4 December 2006
F to F-1	Invitation to Apply for Eligibility and to Bid (IAEB) consisting of two (2) pages
L	Notice of Award issued to Erlinda A. Mendoza, Proprietress of PZA Trading for the supply and delivery of 30 sets of desktop computer
M	Notice of Award issued to Erlinda A. Mendoza, Proprietress of PZA Trading for the supply and delivery of 23 units multi-purpose tent
N	Notice of Award issued to Erlinda A. Mendoza, Proprietress of PZA Trading for the supply and delivery of 308 sets Jetmatic heavy duty and 50 sets grass cutter
O	Purchase Order No. 2625 dated 28 December 2006
P	Disbursement Voucher No. 07-01-0668 dated 15 January 2007
Q	Philippine National Bank (PNB) Check No. 82110 dated 15 January 2007
U	Invoice Receipt for Property with IR No. 07-004
V	Purchase Order No. 2006-2626 dated 28 December 2006
W	Disbursement Voucher No. 07-01-0672 dated January 2007
X	PNB Check No. 82111 dated 15 January 2007
DD	Disbursement Voucher No. 07-01-06-70 dated 15 January 2007
EE	PNB Check No. 82109 dated 15 January 2007
OO	Purchase Order No. 2006-2624 dated 28 December 2006
QQ	Service Records of accused Roger C. Chio
QQ-1	Personal Data Sheet (PDS) of accused Chio
QQ-2	Oath of Office of accused Chio

10. **Plaintiff** and accused **Palcon, Mahinay, Ramos, and Nugal** stipulate on the existence, authenticity, and due execution of the following:

EXHIBITS	DESCRIPTION
G	Newspaper clipping containing the IAEB as published in the 15 December 2006 issue of Philippine Fiscalizer
H to H-2	Minutes of the Opening of Bids for Various Projects dated 28 December 2006, consisting of three (3) pages
I	BAC III Resolution No. 63, series 2006
J	BAC III Resolution No. 65, series 2006
K	BAC III Resolution No. 64, series 2006
RR	Service Records of accused Romulo S. Palcon (Admitted as to Palcon)
RR-1	PDS of accused Palcon (Admitted as to Palcon)
RR-2	Oath of Office of accused Palcon (Admitted as to Palcon)



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TT-1	Service Records of accused Alma B. Mahinay (Admitted as to Mahinay)
UU	PDS of accused Mahinay (admitted as to Mahinay)
UU-1	Service Records of accused Godofredo A. Ramos (Admitted as to Ramos)
UU-2	PDS of accused Ramos (Admitted as to Ramos)
VV	Service Records of accused Onofre M. Nugal (Admitted as to Nugal)
VV-1	PDS of accused Nugal (Admitted as to Nugal)

11. Accused Palcon also stipulates on the existence, authenticity and due execution of the following documents:

EXHIBITS	DESCRIPTION
C	Purchase Request No. 2006-3764 dated 4 December 2006
D	Purchase Request No. 2006-3632 dated 29 November 2006
E	Purchase Request No. 2006-3765 dated 4 December 2006

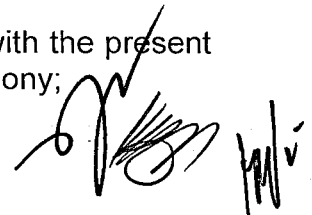
The parties agreed that the issue to be resolved is whether or not the accused violated Sec. 3(e) of R.A. No. 3019, as amended.<sup>5</sup>

EVIDENCE FOR THE PROSECUTION

The prosecution presented as witnesses **Victoria R. Grupo**,<sup>6</sup> **Jocelyn G. Gerones**,<sup>7</sup> **Rinah A. Garrido**,<sup>8</sup> **Siegfred L. Labang**,<sup>9</sup> and **Floreen Marie O. Verdad**.<sup>10</sup>

During the hearing on September 19, 2018,<sup>11</sup> the prosecution presented **Victoria R. Grupo**, Chief of the General Services Section (GSS) and Head of the Bids and Awards Committee Secretariat (BAC Secretariat) of the DA-RFU XI. The parties stipulated:

- 1) She executed a judicial affidavit in connection with the present cases, which shall constitute as her direct testimony;



<sup>5</sup> Pre-Trial Order dated September 19, 2018, p. 5; Record, Vol. 2, p. 47

<sup>6</sup> TSN, September 19, 2018; *Judicial Affidavit of Victoria R. Grupo* dated September 4, 2018 (Record, Vol. 1, pp. 312-368)

<sup>7</sup> TSN, September 20, 2018; *Judicial Affidavit of Jocelyn G. Gerones* dated September 10, 2018 (Record, Vol. 1, pp. 300-311)

<sup>8</sup> TSN, October 24, 2018; *Judicial Affidavit of Rinah A. Garrido* dated September 24, 2018 (Record, Vol. 1, pp. 385-437)

<sup>9</sup> TSN, November 5, 2018; *Judicial Affidavit of Mr. Siegfred L. Labang* dated October 25, 2018 (Record, Vol. 1, pp. 451-522)

<sup>10</sup> TSN, November 19, 2018; *Judicial Affidavit of Floreen Marie O. Verdad* dated November 6, 2018 (Record, Vol. 2, pp. 25-34)

<sup>11</sup> Order dated September 19, 2018; Record, Vol. 1, pp. 379-A and 379-B

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- 2) She can identify her judicial affidavit, her signature therein, and the attachments thereto;
- 3) She is presently the Chief of the General Section and head of the Bids and Awards Committee (BAC) Secretariat of the Department of Agriculture (DA) – Regional Field Unit XI;
- 4) As Chief of the General Section and head of the BAC-Secretariat, she submitted official machine copies of documents relevant to the procurement by the DA-RFU XI sometime in 2006 of (a) 30 sets of desktop computers; (b) 23 units multi-purpose tents; (c) 308 sets of heavy duty Jetmatic, and 50 sets grass cutters;
- 5) She can identify the submitted documents previously marked as Exhibits “C”, “D”, “E”, “F”, “F-1”, “G”, “H” to “H-2”, “I”, “J” “K”, “O” “P”, “Q” “S”, “T” to “T-1”, “V” “W”, “X” “Y”, “Z” “AA”, “AA-1” “BB”, “CC” “CC-1”, “DD” “EE”, “GG” “II”, “JJ” “LL”, “MM”, “NN”, and “OO” as among the documents on file with the DA-RFU XI;
- 6) She issued a certification as to the available documents on file with her office for the procurement by the DA-RFU XI sometime in 2006 of (a) 30 sets of desktop computers; (b) 23 units multi-purpose tents; (c) 308 sets of heavy duty Jetmatic, and 50 sets grass cutters; and
- 7) She can testify on other matters relevant to the purposes of her testimony and the material allegations in the Information subject to the qualification that said witness has no personal knowledge of the transactions and that the documents mentioned in paragraph 5 and attached to her judicial affidavit are all photocopies.

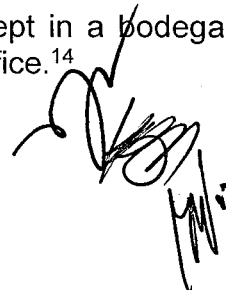
In her Judicial Affidavit dated September 4, 2018, she identified Exhibits C, H to H-2, I, O, P, Q, S, T, T-1, II (SB-17-CRM-2151), D, F to F-1, J, V, W, X, Y, Z, AA, AA-1, BB, JJ, LL, MM (SB-17-CRM-2150), E, G, K, CC, CC-1, DD, EE, GG, NN, OO (SB-17-CRM-2149), and XX (Certification dated August 31, 2018). She further testified:

1. She has been the Chief of the GSS since January 8, 2015,<sup>12</sup> and the Head of the BAC Secretariat since July 12, 2018.<sup>13</sup>
2. The documents she identified were kept in a bodega located around 15 kilometers from the GSS Office.<sup>14</sup>

<sup>12</sup> TSN, September 19, 2018, p. 12

<sup>13</sup> TSN, September 19, 2018, p. 14

<sup>14</sup> TSN, September 19, 2018, pp. 15-16



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3. Said bodega is locked. Only the property custodian, who possesses the key, has access to the documents.<sup>15</sup>
4. Her staff did the actual search for the documents listed in the subpoena.<sup>16</sup>
5. The documents she identified are the only ones available with regard to the subject procurements. The documents pertaining to each transaction were bound by a fastener.<sup>17</sup>
6. The documents in the bodega were placed in sacks.<sup>18</sup> Her staff had to go through all the documents in the sack to find the ones listed in the subpoena.<sup>19</sup>
7. There are many sacks in the bodega. The sacks are labeled based on the year of the transactions to which the documents pertain. The documents inside the sacks are not labeled.<sup>20</sup>
8. Only the photocopies of the documents were found. Based on the practice or procedure being followed, the originals are submitted to the Commission on Audit (COA).<sup>21</sup>

In her Judicial Affidavit dated September 10, 2018, **Jocelyn G. Gerones**, Planning Officer II, identified the Minutes of the Opening of Bids for Various Projects Held at DA Conference Room on December 28, 2006 (Exhibit H), and declared that in 2006, she held the position of Clerk II at the Planning, Monitoring and Evaluation Division of DA-RFU XI, and was also designated as one of the members of the BAC Secretariat.<sup>22</sup>

During the hearing on October 24, 2018,<sup>23</sup> the prosecution presented **Rinah A. Garrido**, State Auditor IV of the Commission on Audit (COA). The parties agreed to stipulate:

- 1) She is a State Auditor IV at the Commission on Audit;
- 2) From November 17, 2017 to April 11, 2018, she was the Audit Team Leader of the audit team assigned at the COA-NGS-Cluster 8, Department of Agriculture-Regional Field Unit XI (DA-RFU XI);

<sup>15</sup> TSN, September 19, 2018, pp. 16-17

<sup>16</sup> TSN, September 19, 2018, pp. 21-22

<sup>17</sup> TSN, September 19, 2018, pp. 23-24

<sup>18</sup> TSN, September 19, 2018, p. 24

<sup>19</sup> *Ibid.*

<sup>20</sup> TSN, September 19, 2018, p. 25

<sup>21</sup> TSN, September 19, 2018, p. 26

<sup>22</sup> *Judicial Affidavit of Jocelyn G. Gerones* dated September 10, 2018, p. 3 (Record, Vol. 1, p. 302)

<sup>23</sup> Order dated October 24, 2018; Record, Vol. 1, p. 449-A

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- 3) In the course of the performance of her duties as Audit Team Leader, she certified copies of documents marked as Exhibits C, D, E, F, F-1, G, I, J, K, L, N, O, P, Q, R, S, T, T-1, U, V, W, X, Y, Z, AA, AA-1, BB, CC, CC-1, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN and OO as true and faithful reproductions of the original copies in her custody;
- 4) She executed a judicial affidavit in connection with the present cases, which shall constitute her direct testimony;
- 5) She can identify her Judicial Affidavit dated September 24, 2018, her signature therein, and the attachments thereto;

Accused Palcon, Mahinay, Nugal and Ramos further agreed to stipulate that as the Audit Team Leader, she had over-all custody of all records of the COA, DA-RFU XI, and authority to certify documents within her custody.<sup>24</sup>

In witness Garrido's Judicial Affidavit dated September 24, 2018, she identified Exhibits C, D, E, F to F-1, G, I, J, L, N, O, P, Q, R, S, T, T-1, U, V, W, X, Y, Z, AA, AA-1, BB, CC, CC-1, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN and OO. She further testified:

1. Only the Audit Team Leader and the secretary have access to the vault wherein the documents are stored.<sup>25</sup>
2. The documents were already in the vault when she assumed her position as Audit Team Leader of the DA.<sup>26</sup>

In his Judicial Affidavit dated October 25, 2018, **Siegfred L. Labang**, Associate Graft Investigation Officer (AGIO) III of the Office of the Deputy Ombudsman for Mindanao, identified Exhibits C, D, E, F to F-1, G, H to H-2, I, J, K, L, M, N, O, P, Q, R, S, T, T-1, U, V, W, X, Y, Z, AA, AA-1, BB, CC, CC-1, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM NN and OO, and declared:

1. In 2007, he held the position of AGIO II at the Field Investigation Unit (FIU) of the Office of the Deputy Ombudsman for Mindanao.<sup>27</sup>
2. The FIU investigated the subject procurements after receiving a Complaint dated July 16, 2007 (Exhibit B) from a certain Dionisio M. Antao.<sup>28</sup> The documents attached to said Complaint

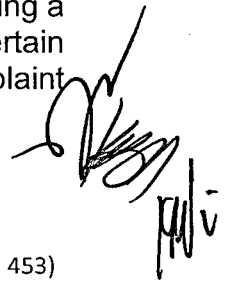
<sup>24</sup> *Ibid.*

<sup>25</sup> TSN, October 24, 2018, p. 10

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

<sup>27</sup> *Judicial Affidavit of Mr. Siegfred L. Labang* dated October 25, 2018, p. 3 (Record, Vol. 1, p. 453)

<sup>28</sup> *Judicial Affidavit of Mr. Siegfred L. Labang* dated October 25, 2018, p. 4 (Record, Vol. 1, p. 454)





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pertain to a goat house/shade project purportedly covered by Advice Sub-allotment (ASA) No. 101-2006-214.<sup>29</sup>

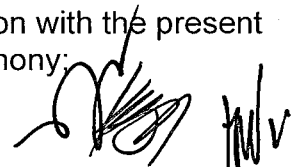
3. After they requested documents pertaining to ASA No. 101-2006-214, the DA-RFU XI submitted documents pertaining to the subject procurements.<sup>30</sup>
4. He analyzed the information obtained from the documents and found irregularities attending the subject procurements.<sup>31</sup>
5. After conducting his investigation, he recommended that criminal cases be filed against the accused for Violation of Sec. 3(e) of R.A. No. 3019. He then prepared an Investigation Report, submitted the same to his superiors,<sup>32</sup> and prepared an Affidavit-Complaint (Exhibit A).<sup>33</sup>

He further testified:

1. He did not inquire from the BAC Secretariat or from the Department of Agriculture about whether there was indeed no pre-procurement and pre-bid conferences conducted because they already requested the documents and the same were not submitted.<sup>34</sup>
2. When they issued the subpoena for the documents, they requested for the originals or certified true copies.<sup>35</sup>
3. There is no specific provision of law that was violated by the fact that the amount of the bid is exactly the same as the approved budget for the contract. However, it is a sign of collusion.<sup>36</sup>

The testimony of **Franzel A. Racho** was dispensed with after the parties agreed to stipulate on all matters, except No. 6 in the offer of testimony as stated in her Judicial Affidavit dated October 30, 2018.<sup>37</sup>  
To wit:

1. She executed a Judicial Affidavit in connection with the present cases, which shall constitute her direct testimony:



<sup>29</sup> Judicial Affidavit of Mr. Siegfred L. Labang dated October 25, 2018, p. 5 (Record, Vol. 1, p. 455)

<sup>30</sup> *Ibid.*

<sup>31</sup> Judicial Affidavit of Mr. Siegfred L. Labang dated October 25, 2018, p. 8 (Record, Vol. 1, p. 458)

<sup>32</sup> Judicial Affidavit of Mr. Siegfred L. Labang dated October 25, 2018, p. 11 (Record, Vol. 1, p. 461)

<sup>33</sup> Judicial Affidavit of Mr. Siegfred L. Labang dated October 25, 2018, p. 12 (Record, Vol. 1, p. 462)

<sup>34</sup> TSN, November 5, 2018, p. 14

<sup>35</sup> TSN, November 5, 2018, p. 31

<sup>36</sup> TSN, November 5, 2018, p. 33

<sup>37</sup> Record, Vol. 2, pp. 13-21

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2. She can identify her Judicial Affidavit and her signature thereon, as well as the attachments thereto;
3. She is presently the Chief of the Records Unit of the Department of Agriculture – Regional Field Unit XI (DA-RFU XI) in Davao City;
4. As Chief of the Records Unit of the DA-RFU XI, she issued a Certification dated October 26, 2018 relative to the procurement of the following; (a) 30 sets of desktop computer, (b) 23 units multi-purpose tent; and (c) 308 sets Jetmatic heavy duty and 50 sets grass cutter, by the DA-RFU XI sometime in 2006;
5. She can identify the Certification dated October 26, 2018;
6. To testify on other matters relevant to the purposes of her testimony and the material allegations in the Information.

The parties further agreed to stipulate as to the authenticity, existence, and due execution of the Certification dated October 26, 2018 (Exhibit YY) that she issued; and, that she has no personal knowledge of the transactions subject of the present cases.<sup>38</sup>

In her Judicial Affidavit dated November 6, 2018, **Floreen Marie O. Verdad**, COA State Auditor IV, identified the Certification dated October 29, 2018 (Exhibit ZZ) that she issued. She further testified:

1. The minutes of the procurement conference and the minutes of the pre-bid conference are not included in the list of documents that are required to be submitted to the COA, but they are not precluded from requesting the submission of the same if they deem it necessary.<sup>39</sup>
2. She did not find in her records any document showing that the previous auditor directed the submission of the minutes of the pre-bid and pre-procurement conferences.<sup>40</sup>
3. The back portion of some disbursement vouchers have a list of documents required to be submitted.<sup>41</sup>
4. The bid documents form part of the basic documents that are categorized as "legality."<sup>42</sup>

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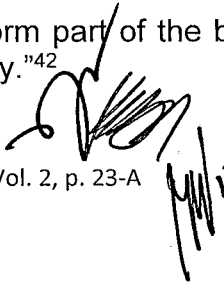
<sup>38</sup> Order dated November 5, 2018; Record, Vol. 2, p. 23-A

<sup>39</sup> TSN, November 19, 2018, p. 10

<sup>40</sup> TSN, November 19, 2018, p. 11

<sup>41</sup> TSN, November 19, 2018, p. 13

<sup>42</sup> TSN, November 19, 2018, p. 15



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The following exhibits offered by the prosecution were admitted in evidence:<sup>43</sup>

Exhibit	Document
A to A-5	Affidavit-Complaint dated September 30, 2014 of Siegfred L. Labang
B	Complaint dated July 16, 2007 of Dionisio M. Antao
C	Purchase Request No. 2006-3764 dated December 4, 2006
D	Purchase Request No. 2006-3632 dated November 29, 2006
E	Purchase Request No. 2006-3765 dated December 4, 2006
F	Invitation to Apply for Eligibility and to Bid
G	Newspaper clipping containing the IAEB as published in the December 15, 2006 issue of The Philippine Fiscalizer
H	Minutes of the Opening of Bids for Various Projects Held at DA Conference Room on Dec. 28, 2006
I	BAC III Resolution No. 63 Series of 2006 dated December 28, 2006
J	BAC III Resolution No. 65 Series of 2006
K	BAC III Resolution No. 64 Series of 2006 dated December 28, 2006
L	Notice of Award dated December 29, 2006 for the supply and delivery of 30 sets desktop computer
M	Notice of Award dated December 29, 2006 for the supply and delivery of 23 units multi-purpose tent
N	Notice of Award dated December 29, 2006 for the supply and delivery of 308 sets of Jetmatic heavy duty and 50 sets grass cutter
O	Purchase Order No. 2006-2625 dated December 28, 2006
P	Disbursement Voucher No. 07-01-0668 dated January 15, 2007
Q	Check No. 82110 dated January 15, 2007
R	PZA Trading Official Receipt No. 0054 dated January 16, 2007
S	Inspection & Acceptance Report in relation to PO No. 06-2625
T	PZA Trading Delivery Receipt No. 0114 dated January 12, 2007
T-1	PZA Trading Sales Invoice No. 0015 dated January 12, 2007
U	Invoice Receipt for Property No. 07-004
V	Purchase Order No. 2006-2626 dated December 28, 2006
W	Disbursement Voucher No. 07-01-0672 dated January 15, 2007
X	Check No. 82111 dated January 15, 2007
Y	PZA Trading Official Receipt No. 0060 dated February 13, 2007

<sup>43</sup> Resolution dated December 14, 2018; Record, Vol. 2, pp. 133-B and 133-C

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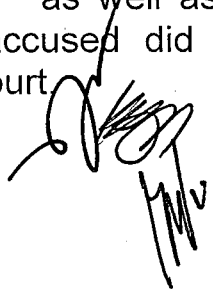
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Z	Inspection & Acceptance Report for multi-purpose tent
AA	PZA Trading Delivery Receipt No. 0115 dated February 12, 2007
AA-1	PZA Trading Sales Invoice No. 0013 dated February 12, 2007
BB	Invoice Receipt for Property No. 07-022
CC	PZA Trading Delivery Receipt No. 0113 dated January 12, 2007
CC-1	Sales Invoice No. 0016 dated January 12, 2007
DD	Disbursement Voucher No. 07-01-0670 dated January 15, 2007
EE	Check No. 82109 dated January 15, 2007
FF	PZA Trading Official Receipt No. 0052 dated January 16, 2007
GG	Inspection & Acceptance Report in relation to PO No. 2006-2624 dated December 28, 2006
HH	Invoice Receipt for Property No. 07-005
II	Notice to Bidders for Sealed Canvassing with Reference: 06-3764 dated December 4, 2006
JJ	Notice to Bidders for Sealed Canvassing with Reference: 06-3632 dated November 29, 2006
KK	Notice to Bidders for Sealed Canvassing with Reference: 06-3765 dated December 4, 2006
LL	Summary of Quotations for 30 sets desktop computer
MM	Summary of Quotations for 23 units multi-purpose tent
NN	Summary of Quotations for 308 sets Jetmatic Heavy Duty and 50 sets grass cutter
OO	Purchase Order No. 2006-2624 dated December 28, 2006
XX	Certification dated August 31, 2018 issued by Victoria R. Grupo
YY	Certification dated October 26, 2018 issued by Franzel A. Racho
ZZ	Certification dated October 29, 2018 issued by Floreen Marie O. Verdad

The Court denied the accused' respective *Motions for Leave to File Demurrer to Evidence*,<sup>44</sup> as well as accused Chio's *Motion for Reconsideration*.<sup>45</sup> The accused did not file their demurrers to evidence without leave of court.



<sup>44</sup> Resolution dated April 8, 2019; Record, Vol. 2, pp. 246-253

<sup>45</sup> Resolution dated May 14, 2019; Record, Vol. 2, pp. 339-345

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EVIDENCE FOR THE DEFENSE

Accused **Alma B. Mahinay**<sup>46</sup> was the sole witness for the defense. In her Judicial Affidavit dated July 29, 2019, she declared:

1. She was the Chief of the Finance Division of DA Region XI from July 1, 1988 to September 19, 2013, when she retired.<sup>47</sup>
2. In 2006, she was designated as the Vice Chairperson of the Bids and Awards Committee (BAC) of the regional office.<sup>48</sup>
3. The other members of the BAC were Palcon (Chairperson), Basco (Co-Vice Chairperson), Bergonio and Cayabyab (regular members), and Ramos and Nugal (provisional members). The BAC Secretariat was headed by Maria Magdalena Apolinario.<sup>49</sup>
4. On November 7, 2006, the BAC members who were present during the opening of the bids recommended the award of the contracts for (a) 30 units of desktop computer, (b) 23 units of multi-purpose tent, and (c) 308 sets of Jetmatic and 50 sets of grass cutters, to PZA Trading, the lone bidder.<sup>50</sup>
5. Her basis for recommending the award of the contract to PZA were as follows:<sup>51</sup>
  - a. There was a Purchase Request, Sub-Allotment and cash allocation;
  - b. PZA was the lone bidder despite publication; and,
  - c. There was compliance with the two-envelope system.
6. The subject procurements were sourced not only from ASA No. 101-2006-2014, but also from the continuing appropriation of the DA RO XI, as indicated in the respective Purchase Requests.<sup>52</sup>
7. She does not recall if there were Pre-Bid and Pre-Procurement Conferences. The subject procurements happened almost 13

<sup>46</sup> TSNs, August 5, 2019 and August 6, 2019; *Judicial Affidavit* dated July 29, 2019 (Record, Vol. 2, pp. 400-415)

<sup>47</sup> *Judicial Affidavit* dated July 29, 2019, p. 2 (Record, Vol. 2, p. 401)

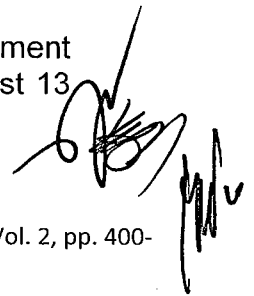
<sup>48</sup> *Ibid.*

<sup>49</sup> *Judicial Affidavit* dated July 29, 2019, pp. 2-3 (Record, Vol. 2, pp. 401-402)

<sup>50</sup> *Judicial Affidavit* dated July 29, 2019, p. 3 (Record, Vol. 2, p. 402)

<sup>51</sup> *Ibid.*

<sup>52</sup> *Judicial Affidavit* dated July 29, 2019, p. 4 (Record, Vol. 2, p. 403)



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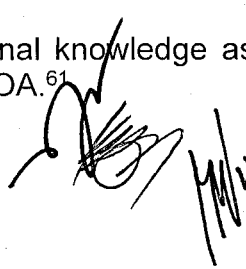
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years ago, and they conducted numerous biddings in the regional office.<sup>53</sup>

8. Ombudsman Investigator Siegfred Labang's erroneous conclusion that no pre-bid and pre-procurement conferences were conducted was based on the documents he obtained. He was not able to obtain complete documents pertaining to the subject procurements.<sup>54</sup>
9. Mr. Siegfred Labang obtained the documents from the COA because all Disbursement Vouchers and supporting documents were submitted to the COA for post-audit.<sup>55</sup>
10. The documents they submitted to the COA were those enumerated in the checklist based on a COA Circular. If they failed to submit certain documents, the COA issued a Notice of Suspension, and eventually a Notice of Disallowance.<sup>56</sup>
11. Until her retirement, she had not received any Notice of Suspension or Notice of Disallowance.<sup>57</sup>
12. The differences in the quantities and amounts in (a) the Invitation to Apply for Eligibility and to Bid for the multi-purpose tents (23 sets for ₱874,000.00), (b) the Invitation, as published (25 sets for ₱800,000.00), and (c) in the Notice to Bidders for Sealed Canvassing (23 units), are due to a typographical error. The correct figure is 23 units because it is the number of units indicated in the Purchase Request.<sup>58</sup>
13. The typographical error was made by the BAC Secretariat.<sup>59</sup>

She further testified:

1. The original entries in Exhibit D, prior to the alterations, are not the same as the entries in Exhibit G.<sup>60</sup>
2. She has no personal knowledge as to which documents are submitted to the COA.<sup>61</sup>



<sup>53</sup> Ibid.

<sup>54</sup> Judicial Affidavit dated July 29, 2019, p. 5 (Record, Vol. 2, p. 404)

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Judicial Affidavit dated July 29, 2019, pp. 5-6 (Record, Vol. 2, pp. 404-405)

<sup>58</sup> Judicial Affidavit dated July 29, 2019, p. 6 (Record, Vol. 2, p. 405)

<sup>59</sup> Ibid.

<sup>60</sup> TSN, August 6, 2019, p. 12

<sup>61</sup> TSN, August 6, 2019, p. 20

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- 3. The Technical Working Group determines the eligibility of prospective bidders.<sup>62</sup>
- 4. Pre-bid and pre-procurement conferences were conducted for other projects. She does not know why said conferences were not conducted for the subject procurements.<sup>63</sup>

The testimonies of **Atty. Roy Ursal** and **Ms. Floreen Marie Verdad** were dispensed with after the parties stipulated:<sup>64</sup>

x x x (1) The authenticity and due execution of : (a) Letter of Atty. Ursal dated April 12, 2019 (Exhibit 1), (b) Endorsement of State Auditor Floreen Marie O. Verdad dated April 10, 2019 and (c) Request Form signed by Atty. Antonio Rafael Ongkeko, Jr.; (2) That Atty. Ursal and Ms. Verdad have no personal knowledge on whether an audit was conducted on the subject transaction and on whether COA issued a Notice of Disallowance.

The following exhibits offered by the defense were admitted in evidence:<sup>65</sup>

Exhibit	Document
1	Letter dated April 12, 2019 of Atty. Roy L. Ursal
1-A	2 <sup>nd</sup> Indorsement dated April 10, 2019
1-B and 1-C	Request Form

The prosecution filed its *Plaintiff's Memorandum*<sup>66</sup> on October 14, 2019. The Court received accused Chio's *Memorandum*<sup>67</sup> on October 29, 2019, and that of accused Palcon, Mahinay, Nugal and Ramos, on November 6, 2019.<sup>68</sup>

THE FINDINGS OF FACT

Sometime near the end of 2006, accused Romulo S. Palcon, Regional Technical Director of the Department of Agriculture Regional Field Unit XI (DA-RFU XI), commenced the procurement of the following, by signing the respective Purchase Requests therefor:

<sup>62</sup> TSN, August 6, 2019, p. 25  
<sup>63</sup> TSN, August 6, 2019, p. 29  
<sup>64</sup> Order dated June 24, 2019; Record, Vol. 2, p. 384  
<sup>65</sup> Resolution dated August 27, 2019; Record, Vol. 2, p. 442  
<sup>66</sup> Dated October 14, 2019; Record, Vol. 2, pp. 461-492  
<sup>67</sup> *Memorandum* dated October 16, 2019; Record, Vol. 2, pp. 494-520  
<sup>68</sup> *Memorandum* dated October 21, 2019; Record, Vol. 2, pp. 523-534

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Purchase Request No. / Date	Item/s
2006-3764 / December 4, 2006 (Exhibit C)	30 units desktop computer (SB-17-CRM-2151)
2006-3632 / November 29, 2006 (Exhibit D)	23 units multi-purpose tent (SB-17-CRM-2150)
2006 – 3765 / December 4, 2006 (Exhibit E)	308 sets Jetmatic heavy duty and 50 sets grass cutters (SB-17-CRM-2149)

The Invitation to Apply for Eligibility and to Bid for the aforementioned projects was published in *The Philippine Fiscalizer* on December 15, 2006.<sup>69</sup> The pertinent portion of the listing of projects reads:

<u>Name of Project/Description</u>	<u>Source of Fund</u>	<u>Location</u>	<u>Contract Duration</u>
1) 308 sets Jetmatic Heavy Duty 50 sets Grass Cutter (both are complete w/accessories [sic] basic standard tools for maintenance operation)	PDAF P2,590,000.00 Ref. PR#06-3765	2 <sup>nd</sup> District of Davao Oriental under Cong. Almario	15 days
2) 30 sets Desktop Computer	PDAF P2,415,000.00 Ref PR#06-3764	2 <sup>nd</sup> District of Davao Oriental under Cong. Almario	15 days
3) 25 sets Multi-Purpose Tent, 10 x 20 ft., full color with four (4) aluminum stand	PDAF P800,000.00 PR#3632	End District of Davao	15 days

During the bid opening on December 27, 2006, PZA Trading (PZA) was the lone bidder for the subject contracts. Its first envelope was marked "failed" because it failed to submit the original copy of the Bank Certificate. However, on December 28, 2006, upon the request for reconsideration of two-thirds of the Bids and Awards Committee (BAC), PZA's bid for the subject contracts was opened for the second time, and PZA was able to provide the original copy of said Bank Certificate. Consequently, PZA's envelope A was marked "passed," and upon opening its envelope B, it was revealed that its bid amount

<sup>69</sup> Exhibit G



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was in the total amount of ₱5,860,340.00.<sup>70</sup> This amount is broken down as follows:

Description	Unit Price	Total
30 units desktop computer	₱80,500.00 (Exhibit II)	₱2,415,000.00 (Exhibit LL)
23 units multi-purpose tent	₱37,500 (Exhibit JJ)	₱862,500.00 (Exhibit MM)
308 units Jetmatic heavy duty / 50 sets grass cutters	₱4,980 / ₱20,980 (Exhibit KK)	₱2,582,840.00 (Exhibit NN)

Thereafter, the BAC issued BAC III Resolutions No. 63,<sup>71</sup> 64<sup>72</sup> and 65,<sup>73</sup> Series of 2006, recommending the award of the subject contracts to PZA. The resolutions were signed by accused Palcon (Chairperson), Isagani L. Basco (Vice-Chair), Alma B. Mahinay (Vice-Chair), Godofredo A. Ramos (Provisional Member), Onofre M. Nugal (Provisional Member), and by Maria Magdalena Apolinario (BAC Secretariat). Accused Roger C. Chio (Regional Executive Director) approved said resolutions. Subsequently, accused Chio signed the pertinent Purchase Orders, all dated December 28, 2006,<sup>74</sup> and issued three (3) Notices of Award,<sup>75</sup> all dated December 29, 2006, to Erlinda A. Mendoza, proprietor of PZA.

The procured items were eventually delivered and checks were issued in payment therefor. For convenience, the dates of acceptance and inspection, and the checks issued for the items procured are summarized as follows:

Project	Date of inspection and acceptance	Disbursement Voucher No.	Check No. / Date / Amount
30 units desktop computer	January 12, 2007 (Exhibit S)	07-01-0668 (Exhibit P)	82110 / January 15, 2007 / ₱2,270,100.00 (Exhibit Q)

<sup>70</sup> Exhibit H

<sup>71</sup> Exhibit I

<sup>72</sup> Exhibit J

<sup>73</sup> Exhibit K

<sup>74</sup> Exhibits O, V and OO

<sup>75</sup> Exhibits L, M and N

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23 units multi-purpose tent <sup>76</sup>	February 12, 2007 (Exhibit Z)	07-01-0672 (Exhibit W)	82111 / January 15, 2007 / ₱810,750.00 (Exhibit X)
308 units Jetmatic / 50 sets grass cutters	January 12, 2007 (Exhibit GG)	07-01-0670 (Exhibit DD)	82109 / January 15, 2007 / ₱2,427,869.60 (Exhibit EE)

After receiving the checks as payment, PZA issued Official Receipts No. 0052<sup>77</sup> and 0054,<sup>78</sup> both dated January 16, 2007; and No. 0060<sup>79</sup> dated February 13, 2007.

DISCUSSION

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

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

x x x

(e) Causing 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.

The elements of the offense are as follows:<sup>80</sup>

1. The accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);

Handwritten signature and initials in black ink, appearing to be 'S. Chio' and 'M/V'.

<sup>76</sup> The number of units indicated in the Disbursement Voucher is 30.

<sup>77</sup> Exhibit FF

<sup>78</sup> Exhibit R

<sup>79</sup> Exhibit Y

<sup>80</sup> Please see *Fuentes v. People*, G.R. No. 186421, April 17, 2017

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2. That the accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and
3. That such action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.

### *First element*

The first element is present as to accused Chio, Falcon, Mahinay, Ramos and Nugal. They were public officers at the time material to the present cases, and the acts they are charged with were performed in the discharge of their official functions.

### *Second element*

The second element is present if the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence. In *Garcia v. Sandiganbayan*,<sup>81</sup> the Supreme Court explained the modes by which Violation of Sec. 3(e) of R.A. No. 3019 may be committed. *viz.:*

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained 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. 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 or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

Here, the accused are charged with awarding and/or causing the award of the subject contracts despite the following circumstances:

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<sup>81</sup> G.R. No. 197204, March 26, 2014

