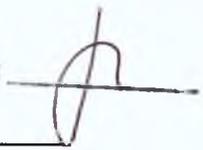


NINETEENTH CONGRESS OF THE PHILIPPINES)
REPUBLIC OF THE PHILIPPINES)
First Regular Session

23 JAN 12 P3:57

S E N A T E

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COMMITTEE REPORT NO. 19

Submitted by the Committee on Accountability of Public Officers and Investigations on JAN 12 2023.

P.S. Res. No. 120 - "A RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON), TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED OVERPRICED AND OUTDATED LAPTOPS PROCURED BY THE DEPARTMENT OF EDUCATION (DEPED) THROUGH THE DEPARTMENT OF BUDGET AND MANAGEMENT-PROCUREMENT SERVICE (DBM-PS)" by Senator Aquilino Koko Pimentel III; and

P.S. Res. No. 134 - "RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON) TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PROCUREMENT BY THE DEPARTMENT OF EDUCATION, THROUGH THE PROCUREMENT SERVICE OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, OF LAPTOPS FOR TEACHERS FOR USE IN DISTANCE LEARNING" by Senator Alan Peter S. Cayetano

Recommending the approval of the Committee Report.

Sponsor: Senator Francis N. Tolentino

Mr. President:

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) has conducted an inquiry, in aid of legislation, on **P.S. Res. No. 120** (*The alleged overpriced and outdated laptops procured by the DepEd through the PS-DBM*) by Sen. Aquilino Koko Pimentel III and **P.S. Res. No. 134** (*The procurement by the DepEd, through the PS-DBM, of laptops for teachers for use in distance learning*) by Sen. Alan Peter S. Cayetano.

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) has the honor to submit to the Senate its Report, after conducting an inquiry.

Recommending the adoption of the recommendations contained therein.

“Technology will never replace great Teachers, but in the hands of great teachers, it’s transformational.”

- George Couros

I. CONTEXT: LOCKDOWN AND ONLINE CLASSES

1. The 1987 Constitution imbues the Philippine State with the responsibility to ensure accessibility of quality education to all Filipinos. It provides that “the State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.”¹
2. On **08 March 2020**, President Rodrigo R. Duterte (President Duterte, for brevity), recognizing that the COVID-19 public health event constituted a threat to national security and in order to activate a whole-of-government-approach in addressing the COVID-19 outbreak, declared a State of Public Health Emergency throughout the entire Philippines through Proclamation No. 922.²
3. Said proclamation urged all government agencies and local government units (LGUs) to render full assistance, cooperation, and mobilization of the necessary resources in undertaking critical, urgent, and appropriate

¹ Phil. Const., Article XIV (Education), Section 1. It further provides that “the State shall give priority to education, science and technology, [...] foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.” Phil. Const., Article II (Declaration of Principles and State Policies), Section 17.

² Sec. 1 of Proclamation No. 922, available at <https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf> (last accessed 01 December 2022).. See also the seventh whereas clause of IATF Resolution No. 10 dated 09 March 2020.

responses and measures promptly to curtail and eliminate the threat of COVID-19.³

4. On **09 March 2020**, the following day, the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) issued Resolution No. 10, suspending classes in Metro Manila from 10-14 March 2020.⁴
5. As the novel coronavirus spread worldwide rapidly, the World Health Organization (WHO) announced that the COVID-19 outbreak had become a pandemic.⁵ As a consequence, and considering the increasing number of COVID-19 cases in the country, the IATF, thru Resolution No. 11, dated **12 March 2020**, extended the suspension of classes in all education sector levels in Metro Manila up to 12 April 2020.⁶
6. On **16 March 2020**, to prevent the sharp rise of COVID-19 cases in the country, the President Duterte declared through Proclamation No. 929⁷ the following:
 - a. A State of Calamity throughout the Philippines for six (6) months, unless earlier lifted or extended as circumstances may warrant; and
 - b. Imposition of an Enhanced Community Quarantine throughout Luzon beginning 12 midnight until 12 April 2020, unless earlier lifted or extended as circumstances may warrant.

³ Sec. 2 of Proclamation No. 922

⁴ IATF Resolution No. 10, Sec. 1 (a).

⁵ WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020> (last accessed on 01 December 2022).

⁶ IATF Resolution No. 11 dated 12 March 2020, (B) (1), available at <https://www.officialgazette.gov.ph/downloads/2020/05may/20200312-IATF-RESO-11.pdf> (last accessed 01 December 2022).

⁷ Proclamation No. 929, available at <https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf> (last accessed 01 December 2022).

7. The declaration of a State of Calamity was extended by Proclamation No. 1021⁸ until 12 September 2021. Under Proclamation No. 1218⁹, the declaration was further extended to 12 September 2022. President Ferdinand R. Marcos, Jr. (President Marcos, Jr.) through Proclamation No. 57¹⁰ extended the State of Calamity up to December 31, 2022.

8. At the time of the lockdown, the pre-covid baselines for the education sector, according to the Department of Education (DepEd) can be summarized as follows:
 - a. "Basic education had a total enrollment of 27,770,263 learners from Kindergarten to Grade 12. Excluding the 21,786 enrollees in Philippine Schools Overseas (PSOs), resulting in a total of 27,748,477 learners in the country, of which 22,572,923 were accounted for by DepEd schools".¹¹
 - b. "In addition to the learners, the **DepEd employed over 900,000 regular personnel, of which more than 800,000 are teachers.** There were also about 10,000 contracts of service personnel in the various offices of DepEd nationwide, adding some 300,000 private school teachers and personnel."¹²
 - c. "Thus, basic education directly accounts for nearly 30 million learners, teachers, and personnel, not counting the ancillary services supporting the education system, including transport, food, and other services. This 30-million figure represents about 27.8 percent of the estimated 108 million current Philippine population and is 20 percent higher than the total number of people employed in the services sector, the biggest employer of the country's labor force."¹³

9. Responding to the unprecedented crisis, Congress enacted, among others, the following legislative measures:

⁸ dated 16 September 2021.

⁹ dated 10 September 2021.

¹⁰ Issued on 12 September 2022

¹¹ Department of Education (DepEd), Basic Education Learning Continuity Plan in the time of COVID-19 (BE-LCP), https://www.deped.gov.ph/wp-content/uploads/2020/07/DepEd_LCP_July3.pdf, accessed on 23 September 2022, page 16.

¹² *Id.*, page 17.

¹³ *Id.*, second paragraph.

- a. On **24 March 2020**, Congress passed **Republic Act No. (RA) 11469** entitled "*An Act Declaring the Existence of a National Emergency Arising from the Coronavirus Disease 2019 (COVID-19) Situation and a National Policy in Connection Therewith, and Authorizing The President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, to Exercise Powers Necessary and Proper to Carry Out the Decided National Policy and for Other Purposes.*"
- b. On **17 July 2020**, **Republic Act No. 11480** entitled "*An Act Amending Section 3 of Republic Act No. 7797, Otherwise Known as "An Act to Lengthen the School Calendar from Two Hundred (200) Days to not More than Two Hundred Twenty (220) Class Days"* was enacted into law. Under the said law:

*"The school year shall start on the first Monday of June but not later than the last day of August: **Provided, That in the event of a declaration of a state of emergency or state of calamity, the President, upon the recommendation of the Secretary of Education, may set a different date for the start of the school year in the country or parts thereof.** (Emphasis supplied)*

Notwithstanding, the provision of any law to the contrary, the deferred school opening shall apply to all basic education schools, including foreign or international schools."

- c. On **11 September 2020**, Congress passed **Republic Act No. 11494**¹⁴ entitled "*An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for other Purposes (Bayanihan II).*" Section 10 (n) of Republic Act No. 11494 provides:

¹⁴ Amended by Republic Act No. 11519 which extended the validity of the appropriations under said Act to 30 June 2021.

"Section 10. Appropriations and Standby Fund. - The amounts that will be raised under Section 4 paragraphs (pp), (qq), (rr), (ss), (sss) and (ttt) of this Act shall be used, for the response and recovery interventions for the COVID-19 pandemic authorized in this Act and the following:

XXX

***(n) Four-billion pesos (P4,000,000,000.00) to assist the DepEd in the implementation of Digital Education, Information Technology (IT) and Digital Infrastructures and Alternative Learning Modalities, including printing and delivery of self-learning modules of the DepEd."** [Emphasis supplied]*

10. The lockdown and suspension of classes happened near the end of the **School Year (SY) 2019-2020** which, while challenging, lessened the adjustments needed to complete the school year.

11. However, **SY 2020-2021** was a different story. Under Republic Act No. 7797, the school year should start on the first Monday of June but not later than the last day of August. Initially, **SY 2020-2021** was supposed to open on 24 August 2020 and end on 30 April 2021. However, upon the appeal of the various stakeholders, a memorandum was issued by Malacañang on 14 August 2020, stating the following:

"Please be informed that pursuant to the instructions of President Rodrigo Roa Duterte, and as recommended by the DepEd, the opening of classes is deferred to 05 October 2020."¹⁵

¹⁵Available at <https://www.officialgazette.gov.ph/downloads/2020/07jul/20200814-Memorandum-from-Executive-Secretary.pdf>. (last accessed on 24 September 2022).

12. President Duterte's directive was based on Republic Act No. 11480, which allows a President to set a different date for the start of the school year in the country during a state of emergency or state of calamity.

13. DepEd Order No. 007, s. 2020,¹⁶ provides that:

"School opening **will not necessarily mean traditional face-to-face learning in classroom**. The physical opening of schools will depend on the risk severity grading or classification of a locality, pursuant to the guidelines of the Department of Health (DOH), the Inter-Agency Task Force for the Management of Emerging Infectious Diseases in the Philippines (IATF), or the Office of the President (OP). Even in areas where schools are allowed to open, physical distancing will still be required, which will necessitate schools to combine face-to-face learning with distance learning."

14. On **30 October 2020**, DepEd Secretary Leonor M. Briones (Sec. Briones) requested Department of Budget and Management ("DBM") Secretary Wendel E. Avisado (Sec. Avisado) for the issuance of Special Allotment Release Order (SARO) in the amount of **Four Billion Philippine Pesos (Php4,000,000,000.00)** to cover the implementation of the Digital Education Information Technology (IT) and Digital Infrastructure and Alternative Learning Modalities, including printing and delivery of self-learning modules of the DepEd. The biggest item in the said request for SARO was the **Two Billion Four Hundred Million Pesos (Php2,400,000,000.00) appropriation to provide mobile/internet load to some 3.2 million high school learners nationwide**. In November 2020, a SARO was released accordingly.

15. Nevertheless, DepEd presented an alternative use for the Php2.4 billion. DepEd conceptualized the "Laptop for Teachers" to be funded by the Php2.4 Billion allocation intended initially for the Connectivity Load of SHS students during this period. **The modification was supposedly to ensure that teachers have the necessary tools**

¹⁶ dated 11 May 2020.

to conduct classes through online learning.¹⁷ DepEd transferred the said amount to Procurement Service-Department of Budget and Management ("PS-DBM") which in turn, acting as "Procuring Agent (Procuring Entity) in an End-to-End capacity ... as expressly agreed upon"¹⁸, conducted a procurement process and bidded out the laptop project on 8 June 2021, for delivery within forty-five (45) days from receipt of the notice to proceed.¹⁹

16. According to the Basic Education Learning Continuity Plan in the time of COVID-19 of DepEd,

"within the public school system, there are 1,042,575 devices (desktops, laptops, tablets) that are distributed across 44,155 or ninety-three percent (93%) of schools. Among these devices, 459,578 are laptops/tablets that may be brought home, which represents only 2 percent of total learners in the public schools. Some 22,645 or 48 percent of public schools have internet connections. Another 8,478 or 18 percent of public schools are located in areas with Internet Service Providers, but they have not yet connected."²⁰

17. In terms of ownership of laptops and desktops at home, of the 787,066 teacher respondents to the survey conducted by DepEd, 687,911 or 87 percent of the teachers indicated that they have available computers (laptop or desktop) at home, while 99,155 or 13 percent of the teachers have no computer at home. In terms of access to internet, of the 687,911 teachers who were surveyed with computers at home, 49 percent or 336,252 indicated that they have internet connection at home, 41 percent or 280,531 indicated that while they have a

¹⁷ See Concept Paper - Laptop for Teachers by Director Abraham Y. C. Abanil attached to his 24 November 2020 Memorandum to Usec. Annalyn M. Sevilla with the subject - Justification to Modify the Connectivity Load for Senior High School (SHS) Students under the Bayanihan Act 2 into Laptops for Teachers, reflected in the records as Exhibit "A-2".

¹⁸ DepEd Letter dated 28 May 2021 with attached signed and notarized DepEd and PS-DBM Memorandum of Agreement dated 16 February 2021 is reflected in the records as Exhibit "A-9". It is also labeled as, among others, Annex "DD" of the Sworn Statement of DepEd Dir. Atty. Marcelo H. Bragado, Jr. (Dir. Bragado).

¹⁹ See Memorandum of Agreement (MOA) dated 16 February 2021 between DepEd and PS-DBM and Bidding Documents.

²⁰ DepEd, *supra* note 11, at 25.

computer, they don't have internet access, and 10 percent or 71,128 responded that internet signal is not available in their area.²¹

18. Subsequently, for the succeeding school year (**SY 2021-2022**), DepEd Order (DO) No. 029, s. 2021²² mandated the start of classes on 13 September 2021, and to end on 24 June 2022. According to the said school year guidelines, face-to-face classes, whether on partial or full-scale, were prohibited unless the President permitted it.
19. On **30 June 2022**, a new administration was sworn into office. Vice President Sara Vicenta Duterte-Carpio (VP Sara Duterte), who was appointed Secretary of the Department of Education, spearheaded the return to in-person or face-to-face classes, which began 22 August 2022, and will end on 7 July 2023.²³
20. Moreover, in the DepEd's official school calendar²⁴

"starting **2 November 2022**, all public schools shall transition to five days of in-person classes. After said date, no public school shall be allowed to implement purely distance learning or blended learning except for those that are expressly provided an exemption by the schools' division superintendent, those whose classes are automatically canceled due to disaster and calamities, and those implementing Alternative Delivery Modes as provided in DO 21, s. 2019, titled "Policy Guidelines on the K to 12 Basic Education Program" and DO 01, s. 2022 "entitled Revised Policy Guidelines on Homeschooling Program"."²⁵

II. COA AUDIT REPORTS

²¹ *Id.* at 27.

²² dated 05 August 2021.

²³ See DepEd Order No. 34, s. 2022 dated 11 July 2022, available at https://www.deped.gov.ph/wp-content/uploads/2022/07/DO_s2022_034.pdf (last accessed 01 December 2022).

²⁴ *Id.*

²⁵ DepEd Order No. 50, s. 2022 dated 03 November 2022, par. 3, available at https://www.deped.gov.ph/wp-content/uploads/2022/11/DO_s2022_050.pdf (last accessed 01 December 2022).

21. On **28 June 2022**,²⁶ the Commission on Audit (COA) published, among others, its Consolidated Annual Audit Report on the Department of Education for the Calendar Year 2021 (COA Report).²⁷ COA flagged the procurement of teacher's laptops procured through PS-DBM for **being "pricy"** for an entry-level laptop. The COA Report states the following, among others:²⁸

a. "Economy and efficiency were not assured when DepEd settled and agreed with the price and technical specifications of an entry-level laptop provided by PS-DBM, contrary to Section 2 of PD No.1445²⁹ and Section 36 of RA No. 9184³⁰ or the Government Procurement Reform Act. The adjustments made thereof resulted in **pricy laptops with low-end processor which adversely decreased the number of intended beneficiaries from 68,500 to 39,583 public school teachers.**" [Emphasis supplied]

b. "COA could not ascertain the PS-DBM's basis for adopting the unit price of P58,300 in its recommended Approved Budget for the Contract (ABC). Apparently, **the supposed number of**

²⁶ Published on 29 July 2021.

²⁷ The findings mentioned above reiterated the Audit Observation Memorandum (AOM) issued by the COA's DepEd 1 Audit Group, Cluster 5- Education and Employment on 9 March 2022 addressed to Secretary Leonor M. Briones of the Department of Education (DepEd). See also the Commission on Audit's PowerPoint Presentation (COA Audit Findings), reflected in the records as Exhibit "C-7".

²⁸ COA Audit Report - Part II- Observations and Recommendations, pages 349-352.

Other findings not quoted - 1. Lacking documentary requirements to support the fund transfer to PS-DBM amounting to Php2.4 Billion; 2. Non-posting of the Minutes of Meeting on PS-DBM's official website, 3. Non-submission of required documents for awarded procurement contract per COA Circular No. 2009-001 dated 12 February 2009, 4. The fund transferred to PS-DBM remained unliquidated.

²⁹ Section 2. Declaration of Policy. It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned.

³⁰ **SEC. 36. Single Calculated/Rated and Responsive Bid Submission.** – A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

(a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements; (b) If after the advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or (c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

laptops to be procured at 68,500 units was significantly reduced to 39,583 units which was mainly due to the huge increase of estimated cost from P35,046.50 based on DepEd's submitted Agency Procurement Request³¹ (APR), to P58,300.00 anchored on the PS- DBM's recommendation, which was duly accepted by the DepEd." [Emphasis supplied]

- c. "The **huge difference of P23,253.50 per unit price** resulted in a significant **decrease by 28,917 laptop computers**, purportedly for distribution to intended recipient-teachers." [Emphasis supplied]
- d. "During the same month (**May 2021**), **PS-DBM conducted a bidding for a mid-range laptop with a unit price of P45,431.20**. Clearly, the price is cheaper and the performance of that computer would be way faster/better than the laptop procured by the Department during the same period." [Emphasis supplied]
- e. "Previous to that, DepEd also engaged the services of PS-DBM on **16 June 2020, wherein they had procured brand-new laptops with a faster Intel Core i5 processor, 8th generation, Turbo Speed of 3.9GHz, 4-Core, 6MB cache with a unit price of only P32,500.00.**" [Emphasis supplied]
- f. "The base price of the same model of **Dell laptop available in the market with a better screen (15.6" and HDD) ranges from P22,490.00 up to P25,000.00.**" [Emphasis supplied]
- g. In addition, based on the initial feedback gathered from the auditors in NCR and CAR, the delivered laptop computers by the winning bidder were:

³¹ Agency Procurement Request PS APR No. 21-0013s dated 11 December 2020, signed by DepEd Sec. Briones, DepEd Chief Accountant Ma. Rhunna Catalan, Property Supply Officer Maritess L. Ablay, is reflected in the records as Exhibit "B-6".

- “Too slow because the processor is Intel Celeron, which is outdated; and
 - The price is too high based on the specifications as attached to the DepEd Memorandum.”
- h. As such, COA asked and recommended to the management of DepEd the following:
- a. “Explain why the amount of Php58,300 price per unit was accepted by DepEd as part of PS-DBM’s recommended ABC despite the fact that the estimated price based on the DepEd’s approved Annual Procurement Plan (APP) and APR was Php35,046.50 only;
 - b. “Evaluate the concerns of the recipients on the conditions, performance, and technical specifications of the laptops and communicate the same to PS-DBM for appropriate action;
 - c. “Require the PS-DBM to submit the requirements per COA Circular No. 2009-001 including the necessary documents to support and record the liquidation of the fund transferred amounting to Php2.4 Billion pursuant to items 6.5 and 6.6 of the MOA; and
 - d. “Consider posting notices, contract award and other documents on DepEd’s official websites pursuant to Item 6.3 of the MOA.”³²
- i. In addition, the COA of PS-DBM also issued its separate Audit Report on the said project with the following findings:³³
- a. Technical specifications consist of parameters that can be classified as quantitative or qualitative. With respect to quantitative specification, it refers to a requirement that

³² COA Report -DepEd- Executive Summary, page 28.

³³ Dated 29 June 2022 signed by Theresa Ronquillo -State Auditor IV- OIC Supervising Auditor - DBM Audit Group. See pages 38-48.

can be quantified, counted or measured, and given numerical value. In the case of laptop computers, quantitative parameters may refer to the size of the laptop computer screen, amount of storage and memory, and lastly, the base clock speed and the amount of cache memory of the processor. On the other hand, a qualitative specification is descriptive in nature, expressed in terms of language rather than numerical values. According to the report, **the minimum specifications for the processor of the laptop computer should be 1.9 GHz base clock speed, 2 MB processing cache, which is a quantitative specification and cannot be obsolete or outdated.** If a bidder wanted to participate and win the bidding, it should offer the said specifications or a better or superior laptop with a specification higher than 1.9 Ghz. In this case the supplier could have opted to distribute Dell Latitude 3420 equipped with at least an Intel Core i3 processor. Dell latitude 3420 can be manufactured with six different processors:

Options	1	2	3	4	5	6
Processor Type	Intel Celeron 6305U	11th Generation Intel Core-i3 1005G1	10th Generation Intel Core-i3 1115G4	11th Generation Intel Core-i5 1135G7	11th Generation Intel Core-i5 1145G7	11th Generation Intel Core-i7 116 5G7

Of the six (6) options for the processor of Dell Latitude 3420, options 2-6 can meet the required specifications. Yet, the bidder chose to supply the Dell latitude 3420-Option 1 equipped with Intel Core Celeron that cannot meet the required processor. Moreover, the supplier already had knowledge that Intel Core Celeron chipset is not going to pass the requirement, but it did not call the attention of the BAC and raise such an issue in the pre-bid conference where the last opportunity to modify the terms of the specifications can be made. The COA then referred to a letter from Intel dated 21 April 2021. Consequently, **without amendment in the bidding documents, the 1.9 GHz should be complied with and any**

substantial changes after bid opening constitute a bid modification that is not allowed by the rules.

- b. With regard to the laptop bag, physical inspection by the Audit Team belies the representation made by the Joint Venture and DELL that it is made of ballistic nylon. Based on the specifications provided by Dell, the fabric used for the bag refers to 1680D Ballistic Polyester and not Ballistic Nylon. Even the label inside the laptop bag submitted revealed that the material used was made out of "polyethylene" which is the chemical name for polyester, or polyethylene terephthalate.
 - c. In the notice of post-disqualification, the JV was disqualified based on five grounds but the JV only raised four justifications in its request for reconsideration. The submission of an alternative bid, as a complete and separate ground for disqualification, remained unresolved by the SBAC I which may have overlooked it. In its bid, the Joint Venture submitted an alternative bid or bid with options, specifically by submitting two different samples for the laptop/carrying bag. **An alternative bid is contrary to the nature of competitive bidding, creates undue advantage over other bidders and eliminates competition.**
22. Proceeding therefrom, two Senate Resolutions were filed in the Senate and referred to the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), namely:
- a. **Senate Resolution No. 120³⁴** filed by Senator (Sen.) Aquilino "Koko" Pimentel III - "RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON), TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED OVERPRICED AND OUTDATED LAPTOPS PROCURED BY THE DEPARTMENT OF EDUCATION (DEPED) THROUGH THE DEPARTMENT OF BUDGET AND MANAGEMENT-PROCUREMENT SERVICE (DBM- PS);" and

³⁴ Filed on 10 August 2022, available at http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SRN-120 (last accessed 02 December 2022).

- b. **Senate Resolution No. 134³⁵** filed by Senator Alan Peter “Compañero” Cayetano - “RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON) TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PROCUREMENT BY THE DEPARTMENT OF EDUCATION, THROUGH THE PROCUREMENT SERVICE OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, OF LAPTOPS FOR TEACHERS FOR USE IN DISTANCE LEARNING.”
- c. Pursuant to its mandate under the Rules of the Senate and acting according to its internal rules, the Blue Ribbon Committee conducted public hearings on said resolutions on the following dates:
 - i. August 25, 2022 - Initial Public Hearing;
 - ii. September 8, 2022- - Second Public Hearing;
 - iii. September 15, 2022 - Third Public Hearing;
 - iv. September 29, 2022 - Fourth Public Hearing; and
 - v. October 20, 2022 - Fifth Public Hearing.

After examining the testimonies of the witnesses and numerous documents submitted, the Blue Ribbon Committee hereby adopts the following statement of facts, issues, findings, observations, conclusions, and recommendations.

III. THE ANTECEDENT FACTS

- 23. Section 10 (n) of Republic Act No. 11494, enacted on 11 September 2020, provides for a budget of Four Billion Pesos (P4,000,000,000.00) “to assist the DepEd in the implementation of Digital Education, Information Technology (IT) and Digital Infrastructures and Alternative Learning Modalities, including printing and delivery of self-learning modules of the DepEd”³⁶.

³⁵ Filed on 11 August 2022, available at http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SRN-134 (last accessed 02 December 2022).

³⁶ According to Sen. Alan Peter Cayetano, the intent of the members of the House of Representatives was to use the funds for the purchase of Tablets. (See TSN, 25 August 2021, pages 42-43).

24. Pursuant to this legal mandate, DepEd Secretary Leonor M. Briones issued **Office Memorandum OM-OSEC-2020-009** on **2 October 2020** assigning the following Executive Committee (ExeCom) members to ensure the expeditious implementation of actions required by the said provision:
- a. Finance:
 - i. Undersecretary (Usec.) Annalyn M. Sevilla³⁷ (Usec. Sevilla)
 - ii. Assistant Secretary (Asec.) Ramon Fidel G. Abcede³⁸ (Asec. Abcede)
 - b. Administration and Procurement
 - i. Usec. Alain Del B. Pascua³⁹ (Usec. Pascua)
 - ii. Atty. Salvador C. Malana III⁴⁰ (Usec. Malana)
 - c. Curriculum and Instruction
 - i. Usec. Diosdado M. San Antonio⁴¹ (Usec. San Antonio)
 - ii. Asec. Alma Ruby C. Torio⁴² (Asec. Torio)
25. On **30 October 2020**, as aforesated, Secretary Briones requested DBM Secretary Avisado for the issuance of the SARO covering Four Billion Pesos (Php4,000,000,000.00) for the implementation of the Digital Education Information Technology (IT) and Digital Infrastructure and Alternative Learning Modalities, including printing and delivery of self -learning modules of the DepEd.
- a. Said SARO request's largest item was the **Two Billion Four Hundred Million Pesos (Php2,400,000,000.00) appropriation to provide mobile/internet load to some 3.2 million high school learners nationwide.**

³⁷ Usec. Sevilla, in her capacity as DepEd's Undersecretary for Finance.

³⁸ Asec. Abcede, in Assistant Secretary for Finance

³⁹ Undersecretary for Administration

⁴⁰ Assistant Secretary for Procurement and Administration

⁴¹ Undersecretary for Curriculum and Instruction

⁴² Assistant Secretary for Curriculum and Instruction

26. On **11 November 2020**,⁴³ the Department of Budget and Management (DBM) issued a **SARO⁴⁴ amounting to Four Billion Pesos (Php4,000,000,000.00)**, to cover the implementation of the said provision of RA No. 11494.
27. On **24 November 2020**, Director Abram Y.C. Abanil⁴⁵ (Dir. Abanil) of the DepEd's Information and Communications Technology Services (ICTS) through a memorandum⁴⁶ to Usec. Pascua and Usec. Sevilla requested that the Php2.4 Billion budget intended for the Connectivity Load of SHS Students as originally planned be modified instead to purchase teachers' laptops. In the "Concept Paper Laptop for Teachers"⁴⁷ Dir. Abanil asserted that:

"To ensure that teachers have the necessary tools to conduct classes through online learning, the Department proposes to modify the Bayanihan 2 funds amounting to Php2.4 Billion that was originally allocated for the Connectivity Load of SHS students into laptops for teachers. The said fund will allow the Department to provide 68,500 teachers throughout the country with a laptop."
[Emphasis supplied]

28. Assenting thereto, Usec. Pascua and Usec. Sevilla added to the **24 November 2020** Memorandum, among others, the following:
- a. their signatures of approval including the latter's marginal notes⁴⁸ in the upper right portion where she stated the following:

*"Alec,
Let's prepare the draft letter of request to DBM & endorse it to SLMB thru a cover memo.
This is already coordinated with DBM & HOR.*

⁴³ In a Memorandum dated 24 November 2020, Usec. Sevilla stated that the SARO was issued on 19 November 2020 though dated 11 November 2020.

⁴⁴ SARO-BMB- F-20 0019122 signed by Sec. Avisado

⁴⁵ Director IV, ICTS

⁴⁶ Exhibit "A-2"-Records of the Committee

⁴⁷ Concept Paper Laptop for Teachers is reflected in the records as Exhibit "A-7".

⁴⁸ Exhibit "A-60"- Records of the Committee.

*Thanks.
(Signed Usec. Sevilla)
11/24"*

- b. In the lower right portion of the same memorandum, Usec. Sevilla further stated:

Since it is already near end of FY 2020, let's have the procurement done by DBM-PS. [Emphasis supplied]

- c. However, this copy with Usec. Sevilla's marginal note was not among the documents officially submitted by the Department of Education to the Senate Blue Ribbon Committee. A review of the documents submitted to the Blue Ribbon Committee revealed that the submitted copy of the said 24 November 2020 Memorandum did not contain said notations. The COA of DepEd also confirmed that it had not seen the document with the notations of Usec. Sevilla as it was not submitted to the audit team. In her memorandum, Usec. Sevilla stated that the document with her marginal notes is an internal document and that the marginal notes were placed in the memorandum regarding the procurement to be made by PS DBM due to the limited validity of the fund which was about to expire in December 2020.⁴⁹

29. Secretary Briones approved the change in the use of the Php2.4 Billion fund with the contents of the memorandum forming part of her letter to Sec. Avisado on **24 November 2020**.⁵⁰ In the said letter, Sec. Briones requested from DBM that the Php2.4 Billion General Management and Supervision-Maintenance and Other Operating Expenses (MOOE) provision for mobile/internet load to some 3.2 million senior high school learners nationwide be modified to DepEd Computerization Program - Capital Outlay for the provision of laptops to 68,500 teachers nationwide as it was necessary to deliver teaching and learning process during the pandemic.

⁴⁹ Par. 18 and 18.1 of her Memorandum, TSN, 8 September 2022, page 122.

⁵⁰ Which was received on 27 November 2020 per the Reply Document of DBM.

30. This letter apparently was drafted by Usec. Sevilla, per her Memorandum OUF-2020-0665 of the same date to Sec. Briones.⁵¹ In the letter of Secretary Briones to Sec. Avisado, the per unit cost of the laptop **was P35,036.50 only.**
31. In reply to said document,⁵² DBM on **28 November 2020**, required the submission of the following:
- a. Latest Financial Accountability Report (FAR) No. 1/FAR 1-A;
 - b. Budget Execution Document Nos. 1 and 2; and
 - c. Justification and details relative to the proposed augmentation e.g. regional distribution of the laptops, no. of physical units and its corresponding costing.
32. In answer to item (c) above, Director Abanil, on **10 December 2020**, transmitted to DBM the "Concept Paper Laptop for Teachers" previously mentioned in this Committee Report. An Agency Procurement Request (APR) dated **11 December 2020**⁵³ signed by Sec. Briones, Chief Accountant Ma. Rhunna L. Catalan and Agency Property/Supply Officer Marites Ablay with the following details:

ITEM NO.	ITEM AND DESCRIPTION/ SPECIFICATIONS/STOCK / NO.	QUANTITY	UNIT PRICE	AMOUNT
1	LAPTOP (For Public School Teachers)	68500	35,036.49 6	2,400,000,00 0

was also submitted by DepEd to PS-DBM.

⁵¹ Memorandum - Modification of the Funds from Connectivity Load for Senior High School Students under RA No. 11494 into provision of Laptops for Teachers.

⁵² DBM Reply Document (DMS Reference No. 2020-BF-0113160) was signed by Ma.Cecilia M. Narrido and received by the Office of the Undersecretary Finance (DepEd) on 4 December 2020.

⁵³ Exhibit "**B-6**", See also TSN, 20 October 2022, page 127.

33. Afterwards, upon the request of Usec. Pascua, Secretary Briones, on **14 December 2020**, issued an **Authority to Procure (Purchase Request) for 68,500 laptops at an estimated per unit cost of Php35,036.50 or a total estimated cost of Php2.4 Billion**⁵⁴. In addition to the signatures of Sec. Briones and Usec. Pascua on the Authority to Procure, the initials of Usec. Sevilla, as confirmed by her during the **29 September 2022** hearing of the Blue Ribbon Committee, likewise appeared in the document.⁵⁵
34. On **18 December 2020**, the DBM issued **SARO-BMB-F-20-0022307 in the amount of Php2.4 Billion** to cover the reallocation of funds for the purchase of Information and Communication Technology devices to implement the Basic Education Learning Continuity Plan (BE-LEP), pursuant to Section 10 (n) of RA No. 11494.
35. In another modification of the procurement, on **29 January 2021**, Usec. Pascua, Usec. Sevilla and Asec. Malana recommended to Secretary Briones the transfer of the project's fund: "Laptop for Teachers," to the PS-DBM.⁵⁶ The said document was received by the latter's office on 04 February 2021 and evidenced by a marginal note thereto, Sec. Briones approved the recommendation.
36. Interestingly, acting on the instruction of Asec. Salvador C. Malana III, on **13 January 2021**, Atty. Marcelo H. Bragado⁵⁷ (Dir. Bragado), Director IV of the DepEd's Procurement Management Service (ProcMS) had already met virtually with Atty. Jasonmer L. Uayan (Atty. Uayan), OIC Director IV of PS-DBM regarding the Php2.4 Billion laptops project under Bayanihan 2. This was followed by a face-to-face meeting on **5 February 2021** in which the idea of PS-DBM as Procurement Agent was raised.⁵⁸

⁵⁴ Exhibit "**A-24**" - Records of the Committee.

⁵⁵ TSN, 29 September 2022, page 106. See Exhibit "**A-24**"; The said document was also signed by Mr. Selwyn Briones, Supervising Administrative Officer, Budget Division of DepEd, who certified the availability of allotment.

⁵⁶ OUA MEMO 00-0121-0132 signed by Usec. Pascua and coursed through Usec. Sevilla and Asec. Malana who both signed the document.

⁵⁷ Dir. Bragado's identification card issued by the Integrated Bar of the Philippines is reflected in the records as Exhibit "**A-10**".

⁵⁸ Memorandum ProcMS-OD-2021-029 from Dir. Bragado to Usec. Annalyn Sevilla entitled "Status Updates on the Transferred DEPEd Projects in the DBM PS as of 23 April 2021, page 2. It is reflected in the records as Exhibit "**A-19**".

37. On **11 February 2021**, Secretary Briones formally requested⁵⁹ Sec. Avisado for PS-DBM to undertake the procurement activities and implementation of the Php2.4 Billion funds automatically appropriated to DepEd under Section 10 (n) of RA No. 11494. The request was made supposedly due to the limited time to implement the project, as the appropriation shall be valid for release, obligation, and disbursement by 30 June 2021 only.⁶⁰ Said letter was pursuant to an endorsement letter of Usec. Pascua, Usec. Sevilla, and Asec. Malana on the same date.
38. The request as mentioned above was followed by a letter dated **18 February 2021** from Usec. Pascua to Undersecretary Lloyd Christopher A. Lao (Usec. Lao), OIC Executive Director of PS-DBM furnishing the latter with the required documents,⁶¹ including the updated technical specifications (as of **22 February 2021**)⁶² for the project laptop for teachers. The processor requirement was 1.9 GHz base speed and 2 MB cache in the technical specifications submitted.⁶³
39. Part of the Committee record is a **Memorandum of Agreement (MOA)** between DepEd and PS-DBM authorizing the latter to be its **Procurement Agent (Procuring Entity) in an End-to-End capacity to undertake the DepEd's procurement activities and contract administration and implementation**⁶⁴ subject to specific terms and conditions, including a 3% service fee.⁶⁵ The MOA was entered into following Section 7.3.3 of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184. The document was **purportedly signed and notarized on 16 February 2021** with Secretary Briones signing for DepEd and Usec. Lao for PS-DBM

⁵⁹ See: 11 February 2021 letter of Secretary Briones to Secretary Avisado (attention: Undersecretary Lloyd Christopher A. Lao), reflected in the records as Exhibit "**A-1**".

⁶⁰ *Id.*

⁶¹ Request for approval to Transfer the Fund of the Project, Agency Procurement Request, Justification to Modify Connectivity Load for Senior High School under Bayanihan Act II into Laptops for Teachers, DBM Reply Document to item #3; DepEd Response to DBM Reply Document DBM Ref. No. 2020-BF-0113160, Request letter to DBM Secretary Wendell Avisado from DepEd Secretary Leonor Magtolis Briones, Authority to Procure, Updated Technical Specifications (February 22, 2021), List of Recipients, Project Procurement Management Plan and Work Financial Plan.

⁶² Updated Technical Specifications dated 22 February 2021 is reflected in the records as Exhibit "**A-7-1**".

⁶³ The letter was dated February 18, 2020 (should be 2021) but it included an attachment dated as of February 22, 2021. Stamps received by DBM on March 12.

⁶⁴ Article 1.1 of the Memorandum of Agreement.

⁶⁵ Article 3.1 of the Memorandum of Agreement.

with Asec. Malana and Atty. Uayan signing as witnesses. An in-depth discussion on the matter is contained in the latter part of this Committee Report as the documentary and testimonial evidence presented to the Blue Ribbon Committee contradicts the date of signing and notarization.

40. According to the affidavit of Usec. Sevilla,⁶⁶ the following circumstances led DepEd to engage PS-DBM to assist in the procurement:

- a. The DepEd must focus its limited resources and time on the very much needed shift of the learning modality from face-to-face to blended learning;
- b. The period of validity of the given allotment from the Bayanihan Fund was very short and tight. The SARO was issued by DBM sometime in December 2020 and had to be procured, obligated, and paid not later than 30 June 2021; and
- c. The DepEd was already undertaking a substantial load of procurement activities, and there was a need to efficiently speed-up the procurement process for these existing projects, considering the scheduling and other constraints that came with the pandemic lockdown, as well as reported supply limitations in the market.⁶⁷

41. Usec. Sevilla also stated that DepEd transferred the funds to PS-DBM in two stages:

- a. First, the transfer of allotment amounting to Php2.4 Billion through Obligation Request and Status No. 06-102415-2021-02-

⁶⁶ Dated 24 August 2022.

⁶⁷ Paragraph 8 of the Affidavit of Usec. Sevilla.

00415 dated **17 February 2021**.⁶⁸ This document was certified by Usec. Pascua⁶⁹ and Mr. Selwyn C. Briones.⁷⁰

- b. Second, the transfer of cash in the same amount on **23 June 2021**, through Journal Entry Voucher No. 01-2021-06-0010655. All these fund transfers were in compliance with the provision of the MOA which included the service fee to the PS-DBM computed at three percent (3%) of the contract award price.⁷¹
42. Notably, according to a certification issued by PS-DBM, it does not have in its custody records, communications and supporting documents relative to the transfer as mentioned above of allotment and funds.⁷² The DBM-Office of the Secretary also issued a separate Certification of No Records concerning said transactions.⁷³
43. In a Letter dated **26 February 2021**, replying to the DepEd's Letter dated 11 February 2021, Usec. Lao stated that, "upon confirmation of the PS-DBM Comptroller Division", Php4 Billion has not yet been recorded in the "PS-DBM Subsidiary Ledger (SL)".⁷⁴ To support the request for the PS-DBM to undertake the procurement activities for the provision of laptops to public school teachers, Usec. Lao asked⁷⁵ for the submission of the following documents:
- a. Agency Procurement Request (APR);
 - b. Annual Procurement Plan (in case laptops are NCSE requirements); and
 - c. Payment/Proof of Payment.

⁶⁸ Paragraph 9 (a) of the Affidavit of Usec. Sevilla. However, per the document, it should be **18 February 2021 and not 17 February 2021**.

⁶⁹ Certified that the "Charges to appropriation/allotment are necessary, lawful and under my direct supervision; and supporting documents valid, proper and legal."

⁷⁰ Certified that "Allotment available and obligated for the purpose /adjustment necessary as indicated above.

⁷¹ Paragraph 9 (b) of the Affidavit of Usec. Sevilla.

⁷² Certification of No Records issued on 13 October 2022 by Ms. Amy T. Dela Cruz (OIC-Chief Accountant).

⁷³ Certification of No Records issued on 17 October 2022 by Dante B. De Chavez, Director IV, Finance Service.

⁷⁴ *Id.*

⁷⁵ PS-DBM Letter dated 26 February 2021, signed by Usec. Lao and addressed to Sec. Briones.

44. Also on 26 Feb. 2021, an advance copy of the Supplemental MOA was sent by PS-DBM to the Office of the Director-ProcMS which was subsequently forwarded to Asec. Malana for comments and recommendations.⁷⁶
45. On **4 March 2021**, PS-DBM Office Order No. 041-2021⁷⁷ created two Special Bids and Awards Committee (SBAC) for the Various Procurement Projects of DepEd. In line therewith, the project "Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education, was endorsed to SBAC I chaired by Mr. Ulysses E. Mora (Mr. Mora) by the Procurement Division I for implementation.
- a. It included SBAC I which designated the following personnel: Mr. Ulysses E. Mora (Mr. Mora), as Chairperson; Mr. Vic Anthony A. Tubon (Mr. Tubon), as Vice-Chairperson; Atty. Shiela O. Valinio (Atty. Valinio), as Regular Member; Mr. James F. Gabilo (Mr. Gabilo), as Provisional Member; Mr. Jules Amiel D. Angeles (Mr. Angeles), for the Technical Working Group (TWG); Mr. Raymund Francis P. Lasam (Mr. Lasam), as Alternate TWG; Ms. Rowena R. Inocentes (Ms. Inocentes), as Secretariat; Ms. Nina Marie Louise C. Protacio (Mrs. Protacio), also as Secretariat; and a vacant seat, for an Ad Hoc Member "designated by the end-user agency".
46. Pursuant to Article 2.3 of the purported MOA dated 16 February 2021, on **17 March 2021**, Ms. Sharon Y. Baile (Ms. Baile), OIC-Chief, Procurement Division I of PS-DBM, initiated a market price analysis for the procurement project, and signed the Request for Quotation⁷⁸ (RFQ), which Engr. Marwan Amil (Engr. Amil), the Procurement Management Officer in Charge (PMOIC) for the Project, emailed to six suppliers on **17, 18, 19, and 23 March 2021**.⁷⁹ According to Ms. Baile, as a long-standing practice of PS-DBM and following the Desk

⁷⁶ Dir. Bragado's Sworn Statement dated 28 September 2022, par. 12.

⁷⁷ TSN, 20 October 2022, pages 125-126.

⁷⁸ Request For Quotation No. PSPD1-RFQ - 21-03-001-NCSE.

⁷⁹ TSN, 25 August 2022, pages 163-164. See also Engr. Amil emails on said dates.

Procedure on the Conduct of Market Survey, the PMOIC shall send the RFQ to a minimum of three (3) manufacturers/suppliers.⁸⁰

47. When asked during the **25 August 2022** Committee hearing on who chose the suppliers to be sent RFQs, Engr. Amil admitted that he was the one who selected the six (6) suppliers, such matter being within his discretion.⁸¹ He initially stated that the six (6) are the common suppliers of laptops of PS-DBM, but he was corrected by PS-DBM Executive Director Dennis S. Santiago (Dir. Santiago), who opined that the accreditation concept lacks recognition under the law and the rules and that while there's a definition of "common-use-supplies," there is none for "common suppliers."⁸²
48. In a letter dated **22 March 2021** addressed to Engr. Ofelia L. Algo (Engr. Algo), the Chief of the Technology Infrastructure Division of DepEd, Ms. Baile notified the former of a notice of preliminary meeting for the procurement project on **25 March 2021** to discuss the following:
- a. **Preparation of Memorandum of Agreement**
 - b. Budgetary Requirements
 - c. Technical Specifications
 - d. Other matters concerning the project
49. Also on **22 March 2021**, Usec. Pascua nominated⁸³ the following as focal persons for the "Laptop for Teachers Project:"
- a. Bids and Awards Committee (BAC)
Abram Y. C. Abanil - Provisional Member
Engr. Ofelia L. Algo – Alternate

⁸⁰ Paragraph 7 of the Affidavit of Ms. Sharon Baile dated 2 November 2022. See also item 4.3 of the Desk Procedure-DP-004: Market Survey (Price Monitoring) (Annex D) attached to the affidavit of Ms. Sharon Y. Baile. **However, the effective date of said Desk Procedure was on 16 August 2021.**

⁸¹ TSN, 25 August 2022, page 167.

⁸² TSN, 25 August 2022, pages 165-166.

⁸³ Letter dated 22 March 2021, with the subject "Nomination of Focal Persons for Laptop for Teachers Project (BAC and TWG Members), signed by Usec. Pascua, and addressed to Usec. Lao, which is reflected in the records as Exhibit "A-4".

b. Technical Working Group Members
Engr. Sean Michael Angelo Brucal
Ms. Alexandria C. Antivola

50. In a document dated **26 March 2021**, the Price Analysis⁸⁴ of PS-DBM for the project was released and it contained a recommended Approved Budget for the Contract (ABC) in the amount of **P58,300 per laptop, which was the unit price quoted by VST ECS PHIL. INC.**, when it returned the RFQ to PS-DBM. The Price Analysis was prepared by Engr. Amil, reviewed by Ms. Baile (signed "for" by Mr. Gabilo), recommended for approval by Atty. Uayan and approved by Usec. Lao. Dir. Abanil also signed the document. According to Engr. Amil, the Php58,300 became the per unit ABC as it was the lowest received quotation compliant with the technical specifications.⁸⁵
51. It appears that while the document was dated 26 March 2021, **some of the parties actually signed the Price Analysis on a later date, i.e., April 19⁸⁶/April 26, and that Dir. Abanil signed it ahead of Mr. Gabilo.**⁸⁷ Further discussion on this matter can be found in the later portion of this Committee Report.
52. Of the four companies that replied to the RFQ, only VST ECS PHIL. INC., and Bowman Technologies Inc., complied with the specifications according to the Price Analysis. The laptop models submitted by Huawei and Columbia Technologies were decided to be non-compliant as the offered models were 1.6 Ghz base speed only despite the 1.9 Ghz clear requirement in the RFQ.⁸⁸
53. In its reply to the RFQ, in lieu of the word "comply" as required, VST ECS PHIL. INC. indicated that it will **"leverage the latest generation of Intel, need to adjust base frequency to 1.8ghz and better cache of 4MB."**⁸⁹ Engr. Amil acknowledged that they missed out on

⁸⁴ Price Analysis PSPD1-PA-21-03-0001-NCSE - Supply and Delivery of Laptops for Public School Teachers for the Department of Education (DepEd).

⁸⁵ TSN, 25 August 2022, page 171.

⁸⁶ See email of Ms. Sharon Baile to Mr. Amil dated 19 April 2021.

⁸⁷ Paragraphs 6 and 7 and 9 of Mr. James Gabilo Affidavit dated 02 November 2022.

⁸⁸ Huawei price per unit - P42,999 (RFQ not signed); Columbia price per unit of Acer Travelmate P214-P46,000.

⁸⁹ See also TSN, 25 August 2022, pages 123-124

the statement of compliance of VST ECS and mistakenly stated that it complied with the requirements in the Price Analysis.⁹⁰

54. While canvass sheets were sent to Advance Solutions Inc., and Apple (Switch), said suppliers did not submit quotations. It is important to note that Switch is an exclusive dealer of Apple products and as testified by Engr. Amil, the technical specifications in the RFQs are for Windows only. Moreover, when asked why Switch was included despite it being an Apple supplier, Engr. Amil mentioned that at that time, the planning division was unaware that Switch is an Apple supplier. Further, Engr. Amil also admitted that he failed to research Switch well during the planning stage.⁹¹

55. As part of its market survey, PS-DBM also canvassed from the internet and picked Huawei Matebook 14 (2020) AMD (Ryzen) 5-4600H with a price of P54,999 as its sample. However, after reviewing its specifications, PS-DBM in its analysis concluded that the chosen sample technical specifications compliance with the requirements cannot be determined.

56. Rather than demand from the suppliers a compliant quote or send new RFQ's to other suppliers, PS-DBM recommended the amount of P58,300 as the ABC in its Price Analysis based on the two (2) remaining compliant quotations, namely: Bowman Technologies quote of P60,000 and VST ECS Phil quote of P58,300. As a result of the resulting higher per unit quote, the budget needed to procure the laptop computers must either be increased or the quantity to be procured decreased.⁹²

57. Ms. Baile issued PS Reply/Action Document (RAD)⁹³ dated **26 March 2021** to Dir. Abanil containing a recommended ABC of Php58,300 and a total required budget of Php3,993,550,000 which exceeded the Php2,400,000,000⁹⁴ funding for the project by Php1,685,857,692.31.

⁹⁰ TSN, 25 August 2022, pages 130-131

⁹¹ TSN, 25 August 2022, page 171- 172.

⁹² TSN, 25 August 2022, page 178-180.

⁹³ In case of discrepancy (fund deficiency) between the quoted price and the APR amount, the PMOIC shall inform the End-User Agency through a Reply Action Document to determine appropriate action on the fund deficiency. (item 4.5 of the PS-DBM Desk Procedure).

⁹⁴ Reduced to P2,307,692,307.69 after deducting the 4% service charge of P92,307,692.31.

Contrary to the 3% percent service fee in the MOA, the RAD indicated a 4% service charge amounting to P92,307,692.31. Moreover, the RAD provided DepEd with the following options:

- a. "Authority to charge to unutilized deposit with PS Reference APR No./s: _____;
 - b. Reduce quantity/ies: _____; and
 - c. Remit additional payment on _____."
58. Usec. Pascua and Dir. Abanil also issued on **26 March 2021** a certification that due diligence was undertaken in the crafting of the TOR and that a market survey was conducted by DepEd in **March of 2020**.
59. In a Memorandum dated **6 April 2021** addressed to Atty. Uayan, Dir. Abanil transmitted the following:
- a. **PS Reply/Action Document Acceptance to reduce quantity based on the price estimate;** and
 - b. Copy of the revised recipients' schools⁹⁵ based on the price estimate stated in the price estimate PS/Reply Action Document.
60. In the RAD that was returned to PS-DBM, the **option to reduce the quantity/ies was checked and in the lower portion of the document, the signature of Dir. Abanil conforming to the reduction can be found.**⁹⁶ Nonetheless, when Usec. Pascua testified on 25 August 2022,⁹⁷ he mentioned that the PS Reply/Action slip that was signed by Dir. Abanil was never addressed to the higher ups of DepED and that he did not authorize Dir. Abanil to sign the said document.⁹⁸ Later on, Usec. Pascua changed his statement when Dir. Abanil testified that he informed Usec. Pascua about the reduction in the number of laptops to be procured and that his recommendation on

⁹⁵ Recipient List for Bayanihan 2 Laptop for Teachers, reflected in the records as Exhibit "A-6".

⁹⁶ See the email communications between Marwan Amil, Ofelia Algo and Sharon Baile from 26 March 2021 to 14 April, 2021 discussing the RAD and the Price Analysis.

⁹⁷ TSN, page 63

⁹⁸ TSN, 25 August 2022, page 142-143

the matter was approved by Usec. Pascua when the latter stated "proceed."⁹⁹

61. On **7 April 2021**, Dir. Abanil transmitted to Atty. Uayan the revised recipients¹⁰⁰ in regions and the estimated amount per lot for the project after deducting the 4% service fee. It should be noted that in said document, there were only three (3) lots:

a. Luzon	-	1,276,653,400
b. Visayas	-	520,444,100
c. Mindanao	-	510,591,400
Total	-	2,307,688,900

62. In the affidavit of Mr. Gabilo, he categorically stated that on **19 April 2021**, Ms. Baile requested through email for him to sign the Price Analysis Report and that when the said document was forwarded to him, it had already been reviewed by the OIC-Chief, and signed by the DepEd Representative. A minor revision was made to the report on **26 April 2021**, necessitating a second round of signing.¹⁰¹

63. On **23 April 2021**, in addition to those nominated on 22 March 2021, Usec. Pascua also nominated Mr. Nereo James B. Bolante (Mr. Bolante) as a focal person in the Technical Working Group.¹⁰²

64. In a letter dated **28 April 2021**¹⁰³, Usec. Pascua sought the inclusion of the following technical specifications to the final Terms of Reference (TOR) of the project to ensure that the specifications stated therein fit the DepEd's requirement.

⁹⁹ TSN, 25 August 2022, pages 143-146

¹⁰⁰ In a *DepEd ICTS Letter dated 06 Apr. 2021*, with subject "Transmittal of Documents for the Project: Procurement of Laptops for Teachers" addressed to PS-DBM Atty. Uayan, Dir. Abanil facilitated transmittal stating "with reference to the subject mentioned above, we are submitting the following documents as discussed during the meeting this afternoon: a. PS Reply/ action Document Acceptance to reduce quantity based on the price estimate, attached as Annex A; and] b. Copy of the revised recipients schools based on price estimate stated in the price estimate PS Reply/ Action Document attached as Annex B." The letter also indicated the intended project lots, division of lots, estimated budget amounts divided into Luzon, Visayas, and Mindanao, and authorization of advanced payment.

¹⁰¹ par. 6, 7 and 9 of Gabilo's affidavit. This was confirmed in the affidavit of Ms. Sharon Baile, par. 17

¹⁰² Letter dated 23 April 2021, with subject "Nomination of Additional Focal Person / TWG Member for the Laptop for Teachers Project", signed by Usec. Alain Del B. Pascua, and addressed to Usec. Lao, is reflected in the records as Exhibit "**A-3**".

¹⁰³ Letter dated 28 April 2021, with the Subject "Technical Requirements as Indicated in the Agency Procurement Request", signed by Usec. Pascua, addressed to Usec. Lao and calling the attention of Dir. Uayan, is reflected in the records as Exhibit "**A-5**".

- a. ***Must have a single agent for Antivirus, data loss prevention application control, web security, and peripheral control;***
 - b. ***Connectivity flip-down RJ-45 LAN port; and***
 - c. ***Security-wedge-shaped chassis security lock slot.***
65. The letter was in reply to the **28 April 2021**, letter of Usec. Lao¹⁰⁴, where the latter informed DepEd that barring any significant issues that will unexpectedly arise from the procurement team's final review, the posting of the advertisement for the project will happen on 29 April 2021.
66. On **30 April 2021**, the Special Bids and Awards Committee I (SBAC I) conducted its first pre-procurement conference¹⁰⁵ attended by the following members:
- a. Vic Anthony Tubon - Vice Chairperson
 - b. Atty. Shiela Valino - Regular Member
 - c. Engr. Marwan O. Amil - Provisional Member
 - d. Dir. Abram Y.C. Abanil - Ad Hoc Representative¹⁰⁶
 - e. Engr. Ofelia Algo - Alternate Ad Hoc Representative¹⁰⁷
67. As discussed during the conference, the project consists of four (4) lots, with the following information:

¹⁰⁴ Letter dated 28 April 2021, signed by PS-DBM OIC Executive Director Usec. Lao and addressed to DepEd Usec. Pascua, is reflected in the records as Exhibit "B-1".

¹⁰⁵ **SEC. 20 RA No. 9184- Pre-Procurement Conference.** – Prior to the issuance of the Invitation to Bid, the BAC is **mandated to hold a pre-procurement conference on each and every procurement**, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law. This shall be attended by the BAC, the unit or officials who prepared the bidding documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end-user.

¹⁰⁶ Representing DepEd

¹⁰⁷ Representing DepEd

LOT	DESCRIPTION	QUANTITY	ABC
1	Laptop Computers for Public School Teachers	9,278 units	P540,907,400.00
2		12,620 units	P735,746,000.00
3		8,927 units	P520,444,100.00
4		8,758 units	P510,591,400.00

- a. Source of Funding Bayanihan 2
- b. Estimated Budget P2,400,000,000.00
- c. Agency Procurement Request 68,500 laptops with unit price of P35,036.496
- d. ABC P58,300 per the market survey
- e. Distribution List 39,583 units/2,307,688,900.00

68. **The SBAC I noted that the MOA was among the documentary requirements necessary before the commencement of the procurement. As it remains pending, clearance or recommendation will be asked from the Office of the Director of the Procurement Group.** With regard to the number of lots, the PMOIC stated that per DepEd, it was divided into three (3) lots but due to the quantity and geographical locations, it was further divided into four (4) lots. The SBAC I also recommended that the regional coverage per procurement lot be stated in the bidding documents.
69. In a zoom meeting on **30 April 2021** between Usec. Pascua, Usec. Sevilla, Asec. Malana, Dir. Bragado, Usec. Lao, Dir. Uayan and the PS-DBM team, **the parties agreed that the procurement of Php2.4 Billion worth of laptop for teachers shall be covered by a separate MOA but subject to the same arrangement as the 2017 MOA where PS-DBM would be the procurement entity on behalf of DepEd.**¹⁰⁸ What transpired during the zoom meeting was confirmed by Usec. Pascua as shown in the exchanged below:

¹⁰⁸ Item 17 of the Sworn Statement of Dir. Bragado dated 28 September 2022

"THE CHAIRPERSON. What about the contents? "As a result of a meeting via zoom last April 30, 2021... It was agreed upon that the procurement of 2.4 billion laptops for teachers shall be covered by a MOA, similar to the 2017 MOA arrangement." Does that trigger your memory? Was there a zoom meeting?

*MR. PASCUA. I think the content, Your Honor, is accurate.*¹⁰⁹

70. Responding to the **28 April 2021** letter, on **5 May 2021**, Atty. Uayan signing "for" Usec. Lao, informed Usec. Pascua that the SBAC will be incorporating said additional specifications to the final TOR after confirming from suppliers that the specifications will not entail additional cost and thus no separate price monitoring will be required. **It must be pointed out that per certification from PS-DBM, Usec. Lao was the OIC Executive Director of PS-DBM from 2 January 2020 to 2 May 2021,**¹¹⁰ **as such, there was no need for Atty. Uayan to sign "for" Usec. Lao.**
71. On the same day, Asec. Malana, forwarded to Secretary Briones for her approval, Memorandum OM-ProcMS (PPMD)-2021-05-061 (CY 2021 Annual Procurement Plan), to cover the procurement of the project of ICTS-Technology Infrastructure Division in the total amount of Php2.4 Billion. Said annual procurement plan was subsequently approved by Secretary Briones.¹¹¹
72. Also, on the above-mentioned date, the SBAC I conducted a second pre-procurement conference wherein the members agreed that:¹¹²

¹⁰⁹ TSN, 29 September 2022 hearing, page 91. See also Memorandum OM-ProcMS.OD-2021-0032 dated 03 May 2021, with subject "Request for Comments/Review on the Proposed MOA for the 2.4 B Laptop Project, from Dir. Atty. Bragado, Jr., and addressed to DepEd Usecs. Pascua, Malana III, and Abanil, which is reflected in the records as Exhibit "A-20".

¹¹⁰ Certification signed by Jose Rafael Magno (Training Specialist IV- Human Resource Development Division) and Samantha Grace E. Moscoso (OIC-Division Chief, Human Resource Development Division). Said certification is attached to a letter dated 14 September 2022 signed by Executive Director Dennis S. Santiago of PS-DBM.

¹¹¹ Annual Procurement Plan 4 was endorsed by Asec. Malana, recommended for approval by Usec. Alain PAscua and approved by the Secretary.

¹¹² Attended by Mr. Ulysses Mora, Mr. Vic Tubon, Atty. Shiela Valino, Engr. Marwan Amil, Dir. Abram Abanil and Engr. Ofelia Algo.

- a. **DepEd should submit the revised MOA and Supplemental Annual Procurement Plan (APP) prior to the posting of the Invitation to Bid.** Considering the validity of the Bayanihan 2 fund, the Chairperson of the SBAC manifested that he and the Vice-Chairperson will talk to the management to seek clearance with regard to the posting of the Invitation to Bid **pending the approval of the MOA** and submission of Supplemental APP.¹¹³
 - b. **The MOA will be crafted based on the 2017 MOA but with amendments, wherein PS is the Procuring Entity so that the funds will be disbursed by Deped once the project is awarded or before it expires.**¹¹⁴
73. In his testimony before the Blue Ribbon Committee, Mr. Mora, the Chairman of the SBAC I stated that with the clearance of Atty. Uayan, the **SBAC I proceeded to advertise the invitation to bid in spite of the lack of a final MOA.**¹¹⁵ In his Memorandum dated 3 October 2022, Mr. Mora stated that *"I sought and was given clearance by the former Executive Director JASONMER L. UAYAN before posting the bid."*
74. Disbursement Voucher No. 215-6692 was issued by DepEd to PS-DBM as payment for the procurement of laptops for teachers on **5 May 2021**¹¹⁶ signed on various dates by Usec. Pascua, Ms. Rhunna Catalan (Ms. Catalan)¹¹⁷, Engr. Algo¹¹⁸, Usec. Sevilla¹¹⁹ and Sec. Briones.
75. On **6 May 2021**, Ms. Baile required Dir. Abanil to submit the Purchase Request with the revised four (4) lots and quantities for the project as well as the supplemental annual procurement plan that will support the Agency Procurement Request.

¹¹³ See Affidavit of Mr. Ulysses Evangelista Mora, par. 7. See also - Minutes of the 5 May 2021 meeting.

¹¹⁴ See Minutes of the meeting of 05 May 2021.

¹¹⁵ TSN, 29 September 2022, pages 180-183.

¹¹⁶ Records

¹¹⁷ 23 June 2021 (Chief Accountant)

¹¹⁸ 23 June 2021

¹¹⁹ Was initialed by Usec. Sevilla

76. Contrary to the earlier proposition that no “higher ups” approved the reduction of the number of units to be procured, also on **6 May 2021**, per the request of Usec. Pascua, Secretary Briones approved the **Authority to Procure 39,583 laptops divided into four (4) lots**,¹²⁰ with an estimated cost of PHp2.4 Billion. As such, **from the original 68,500 units as contained in the original Agency Procurement Request (APR)¹²¹ and Authority to Procure,¹²² DepEd’s approved the reduction of the number of units to only 39,583 units or a difference of 28,917units.** It is worth mentioning that the matter of approval of higher authorities to said reduction was the subject of heated exchange between Usec. Pascua and Senator Alan Peter Cayetano. Further, Usec. Pascua initially denied approving the action of Dir. Abanil who signed the RAD dated 26 March 2021.
77. Conspicuously, **unlike the Authority to Procure dated 14 December 2020, the unit price per laptop was not indicated in the new Authority to Procure dated 6 May 2021.** In the column for unit cost, what was written was the entire project cost of PhP2.4 Billion. Another thing noticeable was the lack of a signature or initials of Usec. Sevilla.¹²³
78. On **10 May 2021**, PS-DBM published the invitation to bid¹²⁴ with the following details:

¹²⁰ Lot 1 - 9,278 units; Lot 2 - 12,620 units; Lot 3 - 8,927 units and Lot 4 - 8,758 units

¹²¹ Dated 11 December 2020

¹²² Dated 14 December 2020

¹²³ TSN, 29 September 2022, page 106.

¹²⁴ **SEC. 21 -RA No. 9184. Advertising and Contents of the Invitation to Bid.** – In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity’s premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.

The Invitation to Bid shall contain, among others:

- (a) A brief description of the subject matter of the Procurement;
- (b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the Procurement of Consulting Services, the examination and evaluation of Bids, and post-qualification;
- (c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
- (d) The Approved Budget for the Contract to be bid;
- (e) The source of funds;
- (f) The period of availability of the Bidding Documents, and the place where these may be secured;

Public Bidding No. 21-074-7

Item/Description	Lot No.	Total Qty.	Approved Budget for the Contract	Price of Bid Documents	Delivery Period
Supply and Delivery of Laptop Computers for Public School Teachers	1	9,278 units	P540,907,400	P55,000	Within Forty Five (45) calendar Days from the receipt date indicated in the Notice to Proceed (NTP) ¹²⁵
	2	12,620 units	P735,746,000	P74,000	
	3	8,927 units	P520,444,100	P53,000	
	4	8,758 units	P510,591,400	P52,000	

Funding Source - Bayanihan 2 Fund of DepEd.

Bids received in excess of the ABC for each lot shall be automatically rejected at bid opening. Bidders should have complied within Five (5) years prior to the date of submission and receipt of bids, a contract similar to the project.

Summary of Bidding Activities

Advertisement/Posting of Invitation to Bid	10 May 2021
Issuance of and Availability of Bid Documents	10 May 2021
Pre-Bid Conference	17 May 2021

(g) The contract duration; and,

(h) Such other necessary information deemed relevant by the Procuring Entity.

¹²⁵ Note: Presence of the winning bidder's authorized representative is required during the delivery at the project sites .

Last Day of Submission of Written Clarification	20 May 2021 (Amended to 29 May 2021 by Bid Bulletin No. 3)
Last Day of Issuance of Bid Bulletin	24 May 2021 (amended to 25 May 2021 and then to 1 June 2021 by Bid Bulletins No.1 and 3)
Deadline for Submission	31 May 2021, 01:30 P. M (Amended to 01 June 2021 - 1:30 PM and then to 08 June 2021 - 10:00 AM by Bid Bulletins 1 and 3.
Opening of Bids	Immediately after the submission of Bids.

79. On **11 May 2021**, Memorandum ProcMS-OD-2021-037,¹²⁶ with attached Memorandum ProcMS-OD-2021-036¹²⁷ and MOA were submitted by Dir. Bragado for the consideration of Sec. Briones. Said attached memorandum was the Complete Staff Work (CSW) of Dir. Bragado about the Php2.4 Billion procurement. On Memorandum ProcMS-OD-2021-037¹²⁸, the marginal notes¹²⁹ dated **11 May 2021** of Usec. Sevilla states:

1. Pls see my notes, page 2 of CSW

2. I signed endorsement to SLMB but please make corrections to parg 2 CSW

3. Finance to stamp availability of funds sa MOA - % Alec

4 Pls TAG this as "VERY URGENT" as we need to submit MOA to DBM for Issuances of NCA in time for June 2021 payment. [Emphasis supplied]

¹²⁶ Exhibit "A-32" - Records of the Committee

¹²⁷ Exhibit "A-58"- Records of the Committee

¹²⁸ Exhibit "A-33" -Records of the Committee

¹²⁹ Exhibit "A-33-1"- Records of the Committee

Annalyn Sevilla 5/19¹³⁰

80. As stated in the invitation to bid, a Pre-Bid Conference¹³¹ was conducted by the SBAC¹³² on **17 May 2022**, where eighteen (18) prospective bidders attended.¹³³ During the pre-bidding conference, the representatives from HP Philippines, Lenovo, ASUS, AMD and Metro Mobilia all requested that the delivery period be extended to at least one hundred fifty (150) days due to global material constraints/shortages.
81. With regard to the additional specifications requested to be included by Usec. Pascua, Advance Solutions Inc. (ASI), inquired on the following:
- a. If the single agent pertains to the Anti-Virus requirement?
 - b. If an ordinary RJ-45 LAN port was acceptable instead of flip down RJ-45?
 - c. If a generic security lock slot was acceptable instead of a security-wedge-shaped?
82. HP Philippines also asked the SBAC I to relax the military standard requirement as not all laptops are military standard.

¹³⁰ Exhibit "A-33-2"- Records of the Committee

¹³¹ **RA NO. 9184- SEC. 22. Pre-bid Conference.** – At least one pre-bid conference shall be conducted for each procurement, unless otherwise provided in the IRR. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

The pre-bid conference(s) shall be held within a reasonable period before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR.

¹³² All the BAC members were present except Mr. Vic Anthony Tubon. Atty. Shiela Valino indicated that she is a member until 28 May 2021.

¹³³ SGHCI, Micro-Genesis Business System, Evergreen Prime Life Corp., HP Philippines, Silicon Valley Computer Group, Advance Solutions Inc., Metro Mobilia Corp., LDLA Trading & Marketing, Accent Micro Technologies Inc., Diamond Supplies, Accel Prime Technologies Inc., ASUS Philippines, AMD, Lenovo Philippines, RGP Enterprises, Columbia Technologies Inc., Dell Technologies, and Cosmic Technologies Inc.

83. The Chairman of the SBAC I, **Mr. Mora emphasized that the budget for the project was sourced from Bayanihan 2 funds and that the project should be completed/delivered on or before 30 June 2021 as such the bidder should have actual stocks on hand.** He further stated that the project was divided into four (4) lots to make it possible for the bidders to comply with the requirements.
84. After the Pre-Bid Conference, the SBAC I issued four (4) bid bulletins to answer the submitted clarifications of the prospective bidders. The bid bulletins were issued with the approval of the end user on the following dates.
- | | | |
|-----------------------|---|---------------|
| a. Bid Bulletin No. 1 | - | May 24, 2021 |
| b. Bid Bulletin No. 2 | - | May 25, 2021 |
| c. Bid Bulletin No. 3 | - | May 28, 2021 |
| d. Bid Bulletin No. 4 | - | June 01, 2021 |
85. On **27 May 2021**, Dir. Bragado submitted for the signature of Sec. Briones the MOA agreed upon with PS-DBM. Together with said MOA was his Memorandum ProcMS-OD-2021-036 dated 11 May 2021 or the CSW for the project.¹³⁴ The Blue Ribbon Committee finds the last paragraph on page 2 continued on page 3 of the memorandum very significant as it states:

"The MOA is dated 16 February 2021 as our Finance Service has obligated the full amount on 18 February 2021 due to the agreements made between the two agencies when drafting and finalizing this document. These agreements were made through exchange of official letters, official meetings and the acceptance of PS-DBM as procuring agent for this fund, which all happened and dated on February 2021."¹³⁵ *(Emphasis and underscoring supplied)*

86. At the time of its submission, Memorandum ProcMS.OD-2021-036 already contained the signatures of Usec. Sevilla and Asec. Malana and

¹³⁴ Annex "BB" of the Sworn Statement of Dir. Bragado, marked as Exhibit "**A-58**"

¹³⁵ Exhibit "**A-42**"-Records of the Committee

was subsequently approved by Sec. Briones on 28 May 2021.¹³⁶ Significantly, **the above-quoted paragraph was not present in the previous version of Memorandum ProcMS.OD-2021-036 submitted on 11 May 2021.** According to the testimony of Dir. Bragado, as the MOA dated 16 February 2021 would be problematic, he requested an explanation from Usec. Sevilla on why said date was chosen per finance perspective. In a viber message of Usec. Sevilla on 26 May 2021¹³⁷, the Blue Ribbon Committee was appraised that said date was chosen because:

"Ok. Alec pls retrieve the message from dir Mandy why we need use those dates pls. It should be included in the csw na.

I remember it was because we obligated the amount in Feb hence we need the MOA at that period. xxx"¹³⁸

87. Later that day, Alec, the Executive Assistant of Usec. Sevilla sent the new approved and vetted new section in the CSW. See below the text:

"Good evening Dir@Marc Bragado, Below is the approved and vetted new section in the CSW on the DBM-PS MOA on the 2.4 B DCP funds for your reference po:

Date of the MOA

The MOA is dated 16 February 2021 as Finance Service has obligated the full amount on 18 February 2021 due to the agreements made between the two agencies when drafting and finalizing this document. These agreements were made through exchange of official letters, official meetings and the acceptance of PS-DBM as procuring agent for this fund, all happened and dated on February 2021. Thank you po.

¹³⁶ Item 40 of the Sworn Statement of Dir. Bragado.

¹³⁷ Exhibit "A-39"- Records of the Committee

¹³⁸ Item 37 of the Sworn Statement of Dir. Marcelo H. Bragado, Jr. See also Annex "AA-1" of said sworn statement, reflected in the records as Exhibit "A-39".

*cc: Usec @Usec Ann Sevilla, Asec @Ramon Abcede, Asec @Asec Budz Malana, @MR and @Pearl Amarles.*¹³⁹

88. On **28 May 2021**, the DepEd Task Force was informed by Mr. Alec S. Ladanga (Mr. Ladanga), previously mentioned as the Executive Assistant of Usec. Sevilla, that Sec. Briones signed the MOA with certification from Ms. Rhunna as to availability of funds. Usec. Sevilla admitted that it was Alec who:

"xxx coordinated directly sa OSEC. Pinabantayan ko signing ng MOA.

*Can we have it signed by dbm-ps ASAP pls.*¹⁴⁰

89. With the signature of Sec. Briones in the MOA, said document was transmitted to Dir. Uayan with the request that it be signed by Usec. Lao. Such request was embodied in a Letter dated 28 May 2021.¹⁴¹ Dir. Uayan returned the document bearing the signature of Usec. Lao of even date.¹⁴² In his testimony before the Blue Ribbon Committee, Atty. Uayan contended that:

*"The query was requesting assistance for the signature of Usec. Lao. And as I previously mentioned, at that time, Usec. Lao already resigned. So, in response to that letter, I sent back the signed copy that we had to the Office of Dir. Bragado. I think I sent a cover letter to that effect."*¹⁴³

90. Dir. Barago informed the DepEd Task Force that Usec. Lao signed the document on **28 May 2021** eliciting cheers from Usec. Sevilla who stated:

¹³⁹ Item 37 of the Sworn Statement of Dir. Bragado See also Annex "AA-3" of said sworn statement, marked as Exhibit "A-42"

¹⁴⁰ Items 40 and 40.1 of the Sworn Statement of Dir. Bragado, Jr. See also Annex "CC"

¹⁴¹ Letter dated 28 May 2021, Subject: "Memorandum of Agreement for Laptops for Teachers", signed by Dir. Bragado, Jr., and addressed to Atty. Uayan as Exhibit "A-9".

¹⁴² Letter dated 28 May 2021, with Subject: Memorandum of Agreement for Laptops for Teachers, signed by PS-DBM OIC Executive Director Atty. Uayan, and addressed to DepEd Dir. Bragado, is reflected in the records as Exhibit "B-2". Item 41 of the Sworn Statement of Dir. Bragado.

¹⁴³ TSN, 20 October 2022, page 117

*"Yeyyyy, finally thanks... pa notarize na yan dir Marc."*¹⁴⁴

91. On **31 May 2021**, Mr. Mora informed Usec. Pascua that ASI in a letter dated **26 May 2021** alleged that the technical specifications in the Agency Technical Requirements, were "tailor fitted" to a particular brand. Nonetheless, Mr. Mora also informed Usec. Pascua that among the prospective bidders, it's only ASI that raised said issue.
92. In a letter dated **1 June 2021**, Usec. Pascua dismissed said concerns as the majority or most of the potential bidders did not question the technical specifications thereby belying the allegations of "tailor fitting" to a particular brand. In **Bid Bulletin No. 4** dated 1 June 2021, the SBAC I denied ASI's request *"that an equivalent security lock chassis slot and RJ 45 connectivity that is standard to the brand being proposed should be acceptable"* and declared that the *"End User Agency hereby re-affirms that the original requirement is retained."*
93. Said decision reinforces its previous determination that spurned the request of ASI that the connectivity flip down RJ-45 LAN port and the security wedge shaped chassis security lock slot requirements be simplified to "RJ-45 LAN Port and Security lock slot."¹⁴⁵
94. On **2 June 2021**, the notarized MOA was sent to the members of the DepEd Task Force through a viber message by Dir. Bragado.
95. On **8 June 2021**, four entities participated in the bidding, namely:
 - a. Golden Power Mills Enterprises;
 - b. Advance Solutions Inc. (ASI);

¹⁴⁴ 28 May 2021 at 5:54 PM.

¹⁴⁵ See BID Bulletin No. 2 - Clarification No. 6 of Advance Solutions Inc. See also Transcript of Stenographic Notes of the Senate Blue Ribbon hearing on 08 September 2022, pages 152-156, which is reflected in the records as Exhibit "C-1".

c. Joint Venture of Sunwest Construction and Development Corporation, LDLA Marketing, Sunwest & VSTECS (hereinafter referred to as the Joint Venture); and

d. Eridamus Marketing¹⁴⁶

96. After opening the bids, the Net Financial Contracting Capacity (NFCC) of Php130 million submitted by Golden Power Mills Enterprises was declared to be patently insufficient and non-responsive with the requirement under Lot 1, wherein the ABC was Php540 million.
97. On the other hand, Eridamus Marketing Corporation submitted an NFCC of Php227 million for a project with an ABC of Php735 million and as such was declared ineligible to participate further. In addition, Eridamus also submitted as competent proof of identity a Community Tax Certificate contrary to the requirement on this matter.¹⁴⁷
98. Both entities did not file a motion for reconsideration and moved to withdraw their submitted proposals.¹⁴⁸
99. Subsequently, the technical envelopes of ASI and the Joint Venture were declared "Eligible". When the financial envelopes were opened, the following financial offers were revealed:

Bidder	Lot	Description	Total Bid as Read
Advance Solutions Inc.	1	Supply and Delivery of Laptop Computers for Public School Teachers	P501,486,291.36 ¹⁴⁹ @54,051.12 per unit
Joint Venture of LDLA Marketing, Sunwest and VSTECS			P540,629,060.00 @58,270.00 per unit

¹⁴⁶ Correct company name - Eridanus Marketing Corporation

¹⁴⁷ See Section 12 of the 2004 Rules on Notarial Practice - Competent Evidence of Identity.

¹⁴⁸ See Minutes of the Meeting of 8 June 2021- Opening of Bids.

¹⁴⁹ In the minutes of the 8 June 2021 meeting, the amount stated was P501,486,291.26

Bidder	Lot	Description	Total Bid as Read
Advance Solutions Inc.	2	Supply and Delivery of Laptop Computers for Public School Teachers	P682,015,214.20 @P54,042.41 per unit
Joint Venture of LDLA Marketing, Sunwest and VSTECS			P735,367,400.00 @P58,270.00 per unit

Bidder	Lot	Description	Total Bid as Read
Advance Solutions Inc.	3	Supply and Delivery of Laptop Computers for Public School Teachers	P482,525,864.07 @54,052.41.00
Joint Venture of LDLA Marketing, Sunwest and VSTECS			P520,176,290.00 @58,270.00 per unit

Bidder	Lot	Description	Total Bid as Read
Advance Solutions Inc.	4	Supply and Delivery of Laptop Computers for Public School Teachers	P473,396,787.06 @54,052.41.00
Joint Venture of LDLA Marketing, Sunwest and VSTECS			P510,328,660.00 @58,270.00 per unit

100. On **9 June 2021**, the SBAC I declared ASI as the Lowest Calculated Bid (LCB) for all lots. Pursuant to Section 34 of Republic Act No. 9184 and Section 34.1 of the 2016 Revised Implementing Rules and Regulations (IRR) of RA No. 9184, the LCB shall undergo post-qualification to determine whether the bidder concerned complies with and is responsive to all requirements and conditions of the Bidding Documents. On **18 June 2021**, the SBAC I also determined the Joint Venture as the Second Lowest Calculated Bid (SLCB) for Lots 1-4.

101. However, on **19 June 2021**,¹⁵⁰ ASI was disqualified based on the following grounds:

- a. Non-compliance with the requirement that the on-site support engineers must “possess all mandatory certifications for technical support required by the manufacturer of the brand or an NC-II certificate for computer hardware servicing”;¹⁵¹
- b. Non-compliance with the requirement that the on-site support engineers must be a licensed electronics technicians or manufacturer’s technicians;¹⁵² and
- c. Non-compliance with the requirement that the carrying bag/laptop bag be made of Ballistic Nylon.¹⁵³

102. Under Section 55.1 of the 2016 Revised IRR of RA 9184, decisions of the BAC at any stage of the procurement process may be questioned by filing a **request for reconsideration within three (3) calendar days upon receipt of the written notice or upon verbal notification**. As such, on **21 June 2021**, ASI filed a request for reconsideration and argued that the **HP’s Learner ID indicated in the HP PPS Philippines Inc., Certification for its technicians complied with the requirements. Further, ASI advanced the argument that what was submitted by their company as proof that its laptop bag would be ballistic nylon material was the unconditional statement specification and compliance issued by the manufacturer**. It was never the intention of ASI to submit the protective gear of its laptop demo unit as proof of its material as the certification from the manufacturer was sufficient.

103. On **25 June 2021**, the Joint Venture was also disqualified for the following reasons:

¹⁵⁰ Section 34.8 of the Revised IRR of RA No. 9184 mandates that the post-qualification process should be completed within 12 calendar days from the determination of the LCB. In exceptional cases, the post-qualification period may be extended by the HoPE, but in no case shall the aggregate period exceed 45 calendar days.

¹⁵¹ Advance Solutions submitted certificate: Authorize to maintain HP products during the duration of the warranty.

¹⁵² Advance Solutions submitted certificate: Authorize to maintain HP products during the duration of the warranty.

¹⁵³ Advance Solutions submitted sample - 100% polyester.

- a. The certification issued by Microsoft on the authenticity and right to pre-install and distribute Microsoft licenses did not indicate the Model and Product of the Dell Laptop being offered by the Joint Venture;
- b. Bidder submitted an unsigned test results, MIL-STD-810H instead of the required certificate;
- c. The submitted brochure and demo unit was 1.8 GHz, 4 MB cache, 2 Core instead of the 1.9 GHz Base speed, 2 MB cache required; and
- d. Non-compliance with the requirement that the carrying bag/laptop bag be made of Ballistic Nylon.

104. Three days later or on **28 June 2021 starting at 2:15 PM and ending at 9:15 PM**, the SBAC I met and discussed the Request for Reconsideration filed by ASI. According to the minutes of the meeting, the justifications advanced by ASI in support of its Request for Reconsideration were decided in the following manner:

- a. First Ground - Voting 3-1,¹⁵⁴ justification not acceptable;
- b. Second Ground - Voting 3-2,¹⁵⁵ justification not acceptable; and
- c. Third Ground - Voting 2-3,¹⁵⁶ justification acceptable.

105. The SBAC I also deliberated and discussed the Request for Reconsideration filed on **28 June 2021** by the Joint Venture on the same date starting at about 1:47 PM and also ending at 9:15 PM. Unlike in the case of ASI, the SBAC I accepted all the justifications presented by the Joint Venture thereby making the Joint Venture bid the **Lowest Calculated Responsive Bid (LCRB)**. Noteworthy in this regard was the decision made by Chairman of SBAC I, Mr. Ulysses Mora. In the three instances where the votes of the members of SBAC I were tied, he always broke the same by voting in favor of the Joint

¹⁵⁴ Dir. Abanil, Engr. Amil and Mr. Paul Armand Estrada voted against accepting the justification while Mr. Vic Tubon voted to accept it.

¹⁵⁵ Dir. Abanil and Engr. Marwan voted not to accept the justification. Mr. Estrada and Mr. Tubon voted to accept the justification. There being a tie, the Chairman of the SBAC voted against accepting the justification.

¹⁵⁶ Engr. Amill and Mr. Estrada voted against accepting the justification while Dir. Abanil and Mr. Tubon voted in favor. The Chairman voted for accepting the justification.

Venture of Sunwest Development Corporation, LDLA Marketing, and VST ECS Phils. (Joint Venture).

106. Subsequently, on **29 June 2021**, the SBAC I formally notified ASI of the denial of its Request for Reconsideration by stating that :

"ASI merely provided a list of technicians authorized to maintain HP products with their corresponding HP Learner ID. Nothing in the said document shows what are the mandatory certifications for technical support required by HP and that the said on-site engineers possess all these mandatory certifications. The mere indication of the HP Learner ID of each technician does not remedy the said defect."

107. On the same day, SBAC I also notified the Joint Venture that its disqualification was overturned based on the following grounds:

- a. Certification of Microsoft is compliant with the requirement because it clearly covers all the company computer devices of the manufacturer. Therefore, there is no need to indicate all the models and products covered by the certification;
- b. The item offered by the Joint Venture is MIL-STD-810H Tested, which is a higher specification compared to the MIL-STD-810 G standard stated in the technical specifications of the project. Moreover, computer systems generated test results are not normally signed by compliance testing authorities but maybe easily validated from other sources;
- c. The technical specifications of DBM-PS (1.9 GHz, 2 MB) for the processor are already obsolete. Thus, it would not be in the best interest of the Government to procure an item that has already been discontinued; and
- d. Contrary to the findings, the carrying bag/laptop being offered by the Joint Venture is made out of ballistic nylon material as certified by the General Manager of Dell Global.

108. With its disqualification reversed, a **notice of being the Lowest Calculated Responsive (LCRB)**¹⁵⁷ for Lots 1-4 was issued "for the SBAC I" by Mr. Ulysses Mora to the Joint Venture on **29 June 2021**. In said notice, Mr. Mora stated that:

"Upon the approval of this finding by the Head of the Procuring Entity, a Notice of Award for the contract shall be issued, provided that there are no request for Reconsideration or Protests filed. Otherwise, award shall be made only after all requests for reconsideration or protests are resolved."

109. Immediately thereafter, a Billing Statement¹⁵⁸ dated **29 June 2021** was issued by PS-DBM to DepEd in the amount of Php2,400,000,000.00.

110. This was followed by **Resolution No. SBAC-2021-06-25**¹⁵⁹ declaring the Joint Venture as the **LCRB** and recommending to the Head of the Procuring Entity (HoPE), Executive Director Atty. Uayan, the award of contract to the Joint Venture. Atty. Uayan approved said recommendation on **30 June 2021**.

Summary of the 29 June 2021 BAC Resolution

1. *Four bidders participated in the bidding, namely:*
 - a. *Advance Solutions Inc.;*
 - b. *Joint Venture of Sunwest Construction and Development Corporation, LDLA Marketing and VSTECS Phils;*
 - c. *Eridamus Marketing Corporation; and*
 - d. *Golden Power Mills Enterprise*

¹⁵⁷ No. 21-PD7-022, page 2, addressed to Mr. Froilan V. Domingo

¹⁵⁸ Bill No. 2021-06-0016; UACS: 070010100000

¹⁵⁹ 29 June 2021.

2. The bids of Eridamus Marketing Corporation and Golden Power Mills Enterprise were rated "Failed" for the following reasons when it was opened on June 08, 2021.

<i>BIDDERS</i>	<i>DISCUSSIONS/ISSUES</i>
<i>Eridamus Marketing Corporation</i>	<ul style="list-style-type: none"> • <i>Non- Responsive submission of Secretary Certificate</i> • <i>Non-responsive submission of Omnibus Sworn Statement</i> • <i>Non-responsive submission of Net Financial Contracting Capacity (NFCC)</i> • <i>Non-responsive submission of Single Largest Completed Contract (SLCC)</i>
<i>Golden Power Mills Enterprise</i>	<ul style="list-style-type: none"> • <i>Non-responsive submission of Net Financial Contracting Capacity (NFCC)</i> • <i>Non-responsive submission of Single Largest Completed Contract (SLCC)</i>

3. The bids of ASI and the Joint Venture were rated "Passed" having complied with the eligibility, technical and financial requirements. ASI's bid was evaluated as the Lowest Calculated Bid while that of the Joint Venture the Second Lowest Calculated Bid.

4. However, the bid of ASI failed to pass post-qualification based on the following grounds:

<i>Requirement/s</i>	<i>Findings/s</i>
<p><i>Lot 1,2,3,4: Supply and Delivery of Laptop Computers for Public School Teachers</i></p> <p><i>Section VII: Technical Specification</i></p> <p><i>The on-site support engineers must comply with the following:</i></p>	<p><i>Submitted Certificate: Authorize to maintain HP products during the duration of the warranty.</i></p>

<p><i>Possess all mandatory certifications for technical support required by the manufacturer of the brand or an NC-II certificate for computer hardware servicing.</i></p>	<ul style="list-style-type: none"> • <i>Non-compliance with the requirement</i>
<p><i>The on-site support engineers must comply with the following:</i></p> <p><i>Be a Licensed Electronics Technician or Manufacturer's Technician</i></p>	<p><i>Submitted Certificate: Authorize to maintain HP products during the duration of the warranty.</i></p> <ul style="list-style-type: none"> • <i>Non-compliance with the requirement</i>
<p><i>Carrying Bag/Laptop Bag</i></p> <p><i>Description</i></p> <ul style="list-style-type: none"> • <i>Ballistic Nylon</i> 	<p><i>Submitted Sample</i></p> <ul style="list-style-type: none"> • <i>100% Polyester</i> • <i>Non-compliance with the requirement</i>

5. This resulted in a Notice of Post-Disqualification (NPDQ) being issued against ASI on 18 June 2021 for which a Request for Reconsideration (RR) was filed by ASI on 21 June 2021. However, said RR was denied on 29 June 2021.

6. Pursuant to Sec. 34.6 of the 2016 RIRR, the SBAC I initiated and completed the post qualification process of the Joint Venture which also failed to pass on the basis of the following:

<i>Requirement/s</i>	<i>Findings/s</i>
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<p><i>Lot 1,2,3,4: Supply and Delivery of Laptop Computers for Public School Teachers</i></p> <p><i>ITB Clause 20.2:</i></p> <p><i>6. Microsoft authorized Direct OEM Partner with Global Partner Agreement License Confirmation Issued by Microsoft to the Manufacturer, that should indicate the model and product being offered to the agency are authentic and the manufacturer was given the right to pre-install and distribute the Microsoft Licenses under the GPA terms, for the Philippine region, as a local registered named partner in the country</i></p>	<p><i>Submitted Certificate from Microsoft: Dell Inc. is currently licensed by Microsoft licensed agreement to distribute the software products as set forth in the Global Partner Agreement.</i></p> <ul style="list-style-type: none"> <i>• Not indicated Model and Product</i>
<p><i>9. Certification that the item must be MIL STD-810G tested (military standard tested)</i></p>	<p><i>Bidder submitted an unsigned Test Results, MIL-STD-810H instead of the required Certificate.</i></p>
<p><i>Processor</i></p> <ul style="list-style-type: none"> <i>• 1.9 GHz Base Speed, 2 MB Cache</i> 	<p><i>Submitted Two (2) Samples</i></p> <ul style="list-style-type: none"> <i>• 1.8 GHz, 4 MB Cache, 2 Core</i>
<p><i>Carrying Bag/Laptop Bag</i></p> <p><i>Description</i></p> <ul style="list-style-type: none"> <i>• Ballistic Nylon</i> 	<p><i>Submitted Two (2) Samples</i></p> <ul style="list-style-type: none"> <i>• Alternate Bid</i> <p><i>Non-compliance to the requirement</i></p> <ul style="list-style-type: none"> <i>• 100% Polyester</i> <p><i>Non-compliance to the requirement</i></p>

7. The Joint Venture filed a Request for Reconsideration on 28 June 2021 which upon evaluation and deliberations on the justifications

provided in said request, the SBAC I granted the request and eventually declared the bid as responsive.

8. As a consequence of which, SBAC I resolved to declare the Joint Venture as the bidder with the Lowest Calculated Responsive Bid and to recommend to the HoPE, OIC-Executive Director V Atty. Jasonmer L. Uayan the award of the contract to the Joint Venture.

9. The SBAC I resolution contained the signatures of the following:¹⁶⁰

a. Dir. Abram Y.C. Abanil - Provisional Member, DepEd (AdHoc);

b. Engr. Marwan C. Amil - Provisional Members, PS (PMOIC)

c. Paul Armand A. Estrada - Regular Member

d. Ulysses E. Mora – Chairperson

It was approved on 30 June 2021 by Atty. Uayan as the HoPE.

111. Without waiting for the period to file a protest to lapse, a Notice of Award (NOA)¹⁶¹ was issued in favor of the Joint Venture on 30 June 2021 by Atty. Uayan. The Joint Venture through its authorized representative, Mr. Froilan V. Domingo (Mr. Domingo) signed the NOA on said date. This was done despite the fact that the Notice Declaring the Joint Venture as the Lowest Calculated Responsive Bid contained a proviso which stated that “Upon the approval of this finding by the Head of the Procuring Entity, a Notice of Award for the contract shall be issued, ***provided that there are no Request for Reconsideration or Protests filed. Otherwise, award of contract shall be made only after all the request for reconsideration or protests are resolved.***”¹⁶² Further, **Sec. 55 of RA No. 9184 provides that:**

¹⁶⁰ Vic Anthony A. Tubon- Vice Chairperson was on leave and therefore did not participate in the issuance of the BAC Resolution.

¹⁶¹ Vic Anthony A. Tubon- Vice Chairperson was on leave and therefore did not participate in the issuance of the BAC Resolution.

¹⁶² Supra see Note No. 152

"Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods¹⁶³ during which the protests may be filed and resolved shall be specified in the IRR."

112. On the same date, an **Official Receipt (OR) No. 215188 for the amount of Php2,400,000,000.00** was issued by PS-DBM in favor of DepEd for its check payment dated **23 June 2021**.¹⁶⁴
113. In view of the NOA to the Joint Venture as the LCRB, ASI on **30 June 2021** immediately filed a Request for Reconsideration pursuant to the 2016 Revised IRR which provides that:

"Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted. [Emphasis and underscoring supplied]

If a failed bidder signifies his intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.¹⁶⁵

¹⁶³ Under Sec. 55.3 of the 2016 Revised IRR, the protest must be filed within seven (7) days from receipt by the party concerned of the resolution of the BAC denying the request for reconsideration.

¹⁶⁴ Landbank Check No. 1426070, See also Journal Entry Voucher No. 01-2021-06-0010655 dated 23 June 2021.

¹⁶⁵ Section 55.1

In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the HoPE: Provided, however, That a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved.¹⁶⁶

The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest shall be made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which shall be paid in cash in accordance with the following schedule."¹⁶⁷

114. ASI also filed a Motion for Reconsideration (In preparation of the Filing of the Protest) on the SBAC's I Resolution relative to ASI's Request for Reconsideration filed on June 21, 2021. This Motion for Reconsideration dated **1 July 2021** pertained to its post-disqualification and not to the declaration of the Joint Venture as the LCRB.
115. On **2 July 2021**, on the argument that the remedy of a bidder whose Request for Reconsideration was denied by the BAC was to file a protest to the HoPE pursuant to Section 55.2 of the 2016 Revised IRR, Atty. Uayan denied the motion for reconsideration filed by ASI on **1 July 2021**. Moreover, Atty. Uayan posited that ASI's motion was transmitted to him as HoPE as the SBAC I authority to hear and decide matters concerning the project ceased upon award of the same. However, **as can be gleaned from the facts above, PS-DBM already issued a Notice of Award on 30 June 2021 even before said mechanism can be availed of by ASI.**
116. More than two (2) weeks later, in a letter dated **19 July 2021**, Atty. Uayan also denied ASI's Request for Reconsideration dated **30 June 2021** and **14 July 2021** resulting in the affirmation of the declaration of the Joint Venture as the bidder with the Lowest Calculated Responsive Bid (LCRB).

¹⁶⁶ Section 55.2

¹⁶⁷ Section 55.1

<i> GROUNDS FOR REQUEST FOR RECONSIDERATION</i>	<i> GROUNDS FOR THE DENIAL OF THE REQUEST FOR RECONSIDERATION</i>
<i> Failure of one of the Joint Venture partners to declare its on-going contracts</i>	<i> Even without the submission of VST ECS and even by LDLA Marketing and Trading Inc., of their respective Statements of All On-Going Contracts, the JV's submission would still be considered compliant with the rules.</i>
<p><i> Failure to comply with the required technical specifications and requirements:</i></p> <p><i> Processor:</i></p> <p><i> Requirement - 1.9 GHz Base Speed, 2MB Cache</i></p> <p><i> Offer - 1.8 GHz Base Speed, 4 MB Cache</i></p> <p><i> Laptop Bag:</i></p> <p><i> Two (2) different bags were submitted during the demo thereby violating the rule on alternative bids.</i></p> <p><i> USB Recovery for the Notebook :</i></p> <p><i> 3rd Party Brand for the Mouse and Headset:</i></p>	<p><i> Per verification with Dell Technologies, it was confirmed that the offer of the JV is considered superior than the requirement. The JV's offer is based out of an 11th Generation Processor while the requirement is based out of an 10th Generation processor.</i></p> <p><i> The requirement is the submission of one (1) demo unit of the laptop.</i></p> <p><i> This requirement is not required during the demo.</i></p> <p><i> There is no requirement under the bidding documents that the bidders must submit the same brand for all components.</i></p>
<i> Failure of the BAC to comply with the procurement law, which rendered the proceedings null and void.</i>	<i> Requestee failed to specify the law and rules violated by the BAC. Nevertheless, the BAC diligently followed the requirements.</i>

<p><i>Offer of JV is blatantly disadvantageous to the government</i></p>	<p><i>In a public procurement, the contract may be awarded only after the bidder is found to be responsive to and compliant with all the requirements of the bidding documents. The bidder's financial proposal or any other factor for that matter is not the sole parameter in determining whether or not an award should be made.</i></p>
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117. On the issue of the processor, Atty. Uayan was able to arrive at said conclusion after communicating directly with Dell through its Head for Commercial Business Michael Vedula (Mr. Vedula) who on 21 June 2021 in response to a letter dated 2 July 2020¹⁶⁸ stated that:

*"This is to confirm that the Intel Celeron 6305 11th Generation processor with 1.8 GHz frequency and 4MB cache can be **considered to be a superior processor as opposed to the requirement of 1.9 GHZ frequency and 2 MB cache**, which is based out of an Intel Celeron 10th Generation processor specification."¹⁶⁹
[Emphasis supplied]*

118. Per the email thread submitted to the Blue Ribbon Committee, the inquiry was sent on **2 July 2021 and was replied to by Dell on 13 July 2021**. During the 25 September 2022 hearing of the Blue Ribbon Committee, the Dell representative denied any participation in convincing PS-DBM to accept the Motion for Reconsideration filed by the Joint Venture.

"SENATOR PIMENTEL- Okay, balikan ko muna. Did Dell Philippines participate in the arguments with the PS-DBM convincing PS-DBM to justify the motion for reconsideration, yes or no, Ronnie?"

¹⁶⁸ Letter dated 02 July 2020, with the subject "Inquiry on the Specifications Dell Latitude 3420 Notebook", signed by PS-DBM OIC Executive Director Atty. Uayan and addressed to Mr. Michael Vedula of Dell Global BV (Philippine Representative Office) is reflected in the records as Exhibit "**B-4**".

¹⁶⁹ Dell Technologies Letter dated 21 June 2021 signed by Michael Vedula - Head-Commercial Business-Dell Global B.V. is reflected in the records as Exhibit "**C-2**".

*MR. LATINAZO. No, Your Honor. Our only engagement is with the distributor.*¹⁷⁰

119. However, said statement of Mr. Ronnie Latinazo was contrary to the **21 June 2021** letter by Dell addressed to Atty. Uayan where Dell argued that the bid specs of 1.8 GHz, 4 MB cache is "superior" to the 1.9 GHz, 2 MB cache. As aptly put by the Chairman of the Blue Ribbon Committee:

"THE CHAIRPERSON. Thank you, Senator Pimentel. Mr. Ronnie, you just mentioned a while ago, in response to the questions propounded by Senator Pimentel three minutes ago, that you have nothing to do with the negotiations insofar as the change of frequency or even the justification. You just mentioned that 1.8 is superior to 1.9. But I have here, in my possession, a letter coming from Dell Technologies, which is now part of our records. It's addressed to Atty. Uayan, PS-DBM. Letter of response to inquiry on the specifications of the Dell Latitude 3420 Notebook, and I quote the second sentence, "This is to confirm that the Intel Celeron 6305 11th generation processor with 1.8 gigahertz frequency and 4MB cache can be considered as superior processor as opposed to the requirement of 1.9 gigahertz and 2MB cache which is based out of an Intel Celeron 10th generation processor specification."

Apparently, and this document would confirm, that Dell was part of the justification process. So it is not just a verbal, "Okay na iyong 1.8, kasi mas mabilis iyong 1.8 sa 1.9." Your claim will be belied by this document na nagsagutan din kayo, nagsulat—This is signed by Michael Vedula, Head, Dell Global B.V., Singapore. Changi Business Central Park, Changi City, Singapore. [Emphasis supplied]

Are you aware of this letter? Is Michael Vedula part of the internal conversation, corporate-wise, within Dell Technologies that there is a need to justify the

¹⁷⁰TSN, 15 September 2022 hearing, page 74

*downgrading, if downgrading is the proper term, from 1.9 to 1.8 to enable the transaction to proceed? Are you aware of this?*¹⁷¹

120. Thereafter, **Contract/Purchase Order No. PO21-00370-NCSE dated 27 July 2021** was issued to the Joint Venture for **P2,306,501,410.00 with a notation that deliveries of the said articles should be made within 45 calendar days from receipt date indicated in the Notice to Proceed (NTP)**. The document was signed by Atty. Uayan on **28 July 2021** and received and accepted by the Joint Venture on **29 July 2021**.¹⁷²
121. On **29 July 2021**, Atty. Uayan issued the **Notice to Proceed** to Mr. Domingo pursuant to **PO No. PO21-00370-NCSE** and **NOA No. 2021-PSNOA039SBACNOA-DepEd**. It was received by Mr. Tionson of the Joint Venture on the same date.
122. Immediately thereafter, on **30 July 2021**, the Joint Venture informed PS-DBM to deposit any payment/disbursement relative to the project in favor of the Joint Venture to the account¹⁷³ of LDLA Marketing and Trading Inc. pursuant to an agreement between the members of the Joint Venture.
123. Though the Joint Venture accepted the terms of the contract to deliver the laptops within forty-five (45) calendar days from receipt of the Notice to Proceed, on **30 July 2021 or just a day later**, the Joint Venture¹⁷⁴ requested from Atty. Uayan an extension of time of at least sixty (60) days to deliver the laptops due to the surge in demand for certain technology parts such as microprocessors, LCD's and integrated circuits.

¹⁷¹ TSN, 15 September 2022 hearing, pages 75-76

¹⁷² Received by Christopher Tionson for Mr. Froilan V. Domingo.

¹⁷³ Landbank of the Philippines, Mandaluyong City Hall Branch bearing account number 2312-1014-86

¹⁷⁴ Letter was signed by Mr. Froilan V. Domingo

124. In OUA Memo 00-0821-0062¹⁷⁵ dated **9 August 2021** issued by Usec. Pascua amended the allocation and distribution of Laptops under Bayanihan II Funds. In said Memo, the laptops shall be distributed based on the following allocations:
- a. 115 laptops per Legislative District;
 - b. 25 laptops per Regional Office
 - c. 15 laptops for small, 20 for medium, 25 for large and 30 for very large School Divisions Offices
 - d. 1 laptop each per Implementing Unit, and District Office.
125. On **17 August 2021**, the SBAC I discussed the BAC's response to the Request for Reconsideration from ASI wherein it was agreed that the SBAC will draft a general reply in line with the contention of Atty. Uayan, who joined the meeting, that "upon the signing of the Notice of Award, any BAC functions cease to exist."¹⁷⁶ Consistent with said agreement, on **19 August 2021**, Mr. Mora wrote a letter to Ms. Fritzie Marie F. Ventenilla (Ms. Ventenilla) of ASI stating that:

"We wish to reiterate that the Special Bids and Awards Committee's (SBAC) power to conduct procurement activities under Section 12 of the Implementing Rules and Regulations of Republic Act No. 9184 ceases when the Notice of Award is issued by the Head of the Procuring Entity (HOPE) pursuant to Section 37.1 of the same rules."

126. On the request for extension to deliver the laptops, pursuant to the recommendation of Dir. Abanil conveyed through a letter dated **3 September 2021**,¹⁷⁷ PS-DBM on **13 September 2021** granted to the Joint Venture an extension of thirty (30) calendar days or up to **12 October 2021** to deliver the laptops.¹⁷⁸

¹⁷⁵ Amended by OUA Memo 00-0821-0095 dated 11 August 2021. Region IX- Division of Isabela will be entitled to 115 units instead of zero.

¹⁷⁶ SBAC I, Minutes of Meeting, 17 August 2021, page 3.

¹⁷⁷ In response to a letter for comments from Atty. Shiela O. Valino - OIC Division Chief, Procurement Division X Contract Management Division (PS-DBM)

¹⁷⁸ As stated in a 24 September 2021 letter of Mr. Froilan V. Domingo and 28 September 2021 letter of Atty. Shiela Valino.

127. Not satisfied with the extension granted, Mr. Domingo in a **24 September 2021** letter stated that the Joint Venture:

"cannot meet the initial period approved for delivery attributable to the global shipping crisis experienced during this pandemic."

128. Further, because of the ***"reported shortage in chip production which is further compounded by the fact that there is an actual crisis in shipping,"*** the Joint Venture requested for an additional period of sixty (60) days within which to affect the delivery of the laptops.

129. The request of the Joint Venture was initially denied by PS-DBM in an **4 October 2021** letter signed by Atty. Uayan wherein he asserted that:

"[d]ue to urgent need of the public school teachers and upon recommendation of the Department of Education (DepEd) in its letter dated 30 September 2021,¹⁷⁹ received by PS-DBM on 4 October 2021, your request for extension of delivery period under Purchase Order No. PO21-00370 is hereby denied." [Emphasis supplied]

130. In addition, Atty. Uayan also informed the Joint Venture that any delivery made beyond the due date of 12 October 2021 shall be subject to penalty of **liquidated damages as stated in Section 68 of the Revised IRR of RA No. 9184.**

131. Undeterred by the denial, on **6 October 2021**, the Joint Venture averred that the global chip shortage and global shipping shortage were fortuitous events and beyond its control and therefore the request for extension to deliver the laptops should be favorably acted upon by PS-DBM. An addendum to said letter dated **8 October 2021**

¹⁷⁹ Letter of Dir. Abanil to Atty. Uayan with the subject - In Re Request for Additional Period of at least Sixty Calendar Days to Deliver the Laptop. According to Dir. Abanil, DepEd cannot accede to the request as "we have target timeline for the said project."

was also sent by the Joint Venture to Atty. Uayan where it reiterated its previous arguments and attached therewith a letter from Mr. Vedula of Dell Global B.V. dated 8 October 2021;¹⁸⁰ a letter from May Valle-Bolquerin of Kelly Logistics Phils Inc. dated 7 October 2021;¹⁸¹ and a letter from Ms. Sharon Khohayting-Jabanés of Intel dated 2 July 2021¹⁸² to prove the arguments presented above.

132. In reply thereto, on **21 October 2021**, Atty. Uayan, apparently upon the favorable recommendation dated 8 October 2021 of Usec. Pascua, granted to the Joint Venture a thirty (30) calendar days extension thereby extending the delivery period from 12 October 2021 to 11 November 2021. However, such extension was subject to the condition that ***"20% of the deliverables shall be completed one (1) week upon receipt of this letter."***
133. A kick off meeting for the conduct of pre-delivery inspection was conducted on **22 October 2021** with Mr. Domingo of the Joint Venture requesting the inspection of 12,000 laptops that per an **18 October 2021** letter of LDLA arrived on **19 October 2021**.
134. On **3 November 2021**, Atty. Jolas E. Brutás (Atty. Brutás)¹⁸³ of PS-DBM issued a Delivery Rejection Notice¹⁸⁴ to the Joint Venture

¹⁸⁰ According to the said letter, "the Intel Celeron Processor 6305 we configured on these laptops, apparently have a lower worldwide volume allocation as opposed to the 39,543 units that the DepEd project demands."

xxx
xxx

On top of it, we also encountered challenges on the supply of HD panels, timeline for factory customization of the BIOS chips and carrying case.

In another letter of the same date, Dell also stated that "we are continuously experiencing delays stemming from shipment challenges from the factory to the shipping companies that we have contracted to deliver the laptops to the Philippines."

Our warehouse under YCH who already have the entire volume of fully built Dell machines are already congested and daily have been working with Kerry logistics to ship the units as soon as access is given to the terminal and vessel space is allocated.

¹⁸¹ Letter of Kelly Logistics to Dell stating the booking schedule: Vessel Name - EASLINE QINGDAO V.SO20 Estimated Time of Departure - 9 October 2021. In said letter, Kelly Logistics stated that "space are tight and we are lucky to get the booking /space before the holiday."

¹⁸² In said letter, Intel stated that "supply may remain tight for specific segments, such as entry level notebook (which segment the Intel Celeron 6305 Processor falls under), where demand continues to increase. While Intel continues to expect improved support in 2021, we may not be able to support near-term upside or product remix requests that fall within our product lead-time."

¹⁸³ Director IV, Operations Group, OIC-Director, Regional Operations Group.

¹⁸⁴ Rn#:NCSE21-008

following the deficiencies found during the pre-delivery inspection of 12,000 units on **27 October 2021**. In the rejection notice, PS-DBM summarized the findings in the following manner:

Reasons for Rejection

<p>Application Software</p> <ul style="list-style-type: none"> • Latest Available Microsoft Office (with installer and licensed key to be provided by DepEd) • Pre-installed Optimization Software for performance improvement, battery utilization and augmentation of audio quality 	<ul style="list-style-type: none"> • Microsoft Office installed but not activated, all units must be activated • No optimization software installed, all units must have installed optimization software
<p>Copy of Software</p> <ul style="list-style-type: none"> • USB (bootable and capable of restoring the original system state to another hard disk) to be provided to the recipient school. • Provision of one (1) master copy for each recipient Division through IT Officer 	<ul style="list-style-type: none"> • USB's for Schools not yet available • 224 USB's for division should be presented
<p>Special Requirements</p> <p>DepEd Logo</p> <ul style="list-style-type: none"> • DepEd Logo shall be programmed in the "Laptop Bios" (displayed during system start-up) • DepEd logo shall be used as "laptop screen background display/wallpaper." 	<ul style="list-style-type: none"> • Not in compliance with the required Bios Logo based on the letter submitted by DepEd to PS-DBM dated 16 August 2021 • DepEd logo does not fit the screen, all units must have fitted background display/wallpaper.

<p>Preferred Packaging and Mandatory Information</p> <ul style="list-style-type: none"> • Items inside (name, general description, quantity) • Packing/Unpacking restrictions • Recipient Name and Contract Details 	<ul style="list-style-type: none"> • None indicated on the packaging • None indicated on the packaging • Recipient Name and Contact details should be Regional Office.
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135. The Joint Venture on **11 November 2021** requested that the seven (7) day period to deliver the 20% of the remaining deliverables be deferred or extended pending the completion of inspection by the Joint-PS-DepEd Inspection Team as well as an additional period of fifteen (15) days to deliver the remaining 80% to be reckoned from the expiration of the delivery period on 11 November 2021. This was followed by another letter on **26 November 2021** where the Joint Venture requested for another fifteen (15) days extension to be reckoned from 26 November 2021.

136. On **15 November 2021**, upon re-inspection of even date,¹⁸⁵ Atty. Brutas issued a Second Delivery Rejection Notice¹⁸⁶ for 39,583 units on the grounds of (1) unavailability of the USB's for Schools and (2) non-compliance with the required Bios Logo by the supplier.

137. On **6 December 2021**, Mr. Domingo informed Engr. Augusto M. Ylagan (Engr. Ylagan), the Procurement Management Officer of PS-DBM, that the Joint Venture already rectified all the deficiencies observed during the 27 October 2021, 15 November 2021, and 25 November 2021 pre-delivery inspections and that it is now ready to commence delivery of the 39,583 units for Lots 1-4 and deployed the same to the regional offices concerned with Lot 3 and Lot 4 being prioritized for delivery.

¹⁸⁵ Request for re-inspection dated 05 November 2021 and response letter dated 11 November 2021.

¹⁸⁶ RN# NCSE 21-009

138. In response to the **11 and 26 November 2021** letters of the Joint Venture, and upon the favorable recommendation of Usec. Pascua dated **3 December 2021**¹⁸⁷ to extend the delivery period by thirty (30) calendar days or up to **11 December 2021 in consideration of the limitations brought about by the pandemic**, Atty. Uayan granted to the Joint Venture its third delivery extension on **13 December 2021**.¹⁸⁸
139. However, before the lapse of the granted period of extension, on **10 December 2021**, the Joint Venture requested anew for a final extension of thirty (30) calendar days to complete the delivery of the purchased laptops due to the still pending approval of the request to deploy the 39,583 units of laptops and the upcoming Christmas break. In the letter, the Joint Venture informed PS-DBM **that the deliverables for the four (4) lots totaling 39,583 laptops were already available and were due for delivery as early as the last week of October, 2021 but the Joint Venture was unable to start actual delivery as the Joint-DepEd Inspection team has yet to complete the conduct of pre-delivery inspection.**
140. The Blue Ribbon Committee notes that in the above-mentioned letter, the last inspection conducted was on 25 November 2021 where the Joint Inspection Team found out that the Sophos Antivirus installed in the laptops were not activated. The letter was in relation to a **6 December 2021** letter of the Joint Venture to Mr. Ylagan, informing the latter of its **readiness to commence delivery of the 39,583 laptops as the deficiencies observed during the pre-delivery inspection on 27 October 2021, 15 November 2021 and 25 November 2021 were rectified already.**
141. On the same date, Atty. Uayan per the recommendation of the end-user¹⁸⁹ conveyed his approval on the request of the Joint Venture to

¹⁸⁷ Said letter was in reply to the letter of Atty. Shiela O. Valino requesting from DepEd its comments and recommendations as end-user of the product.

¹⁸⁸ Reply to Request for Extension of Delivery for the Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education under Purchase Order No. 21-00370-NCSE dated 13 December 2021 signed by Atty. Jasonmer Uayan; See also PS-DBM Amendment to Order dated 03 February 2022 signed by Atty. Jasonmer Uayan, Ms. Amy T. Dela Cruz and received and accepted by Mr. Froilan V. Domnigo

¹⁸⁹ In a letter dated 9 December 2021, Dir. Abanil informed PS-DBM that they found the supporting documents submitted indicating activation of the software installed in the laptops to be sufficient and had no objections with the commencement of deliveries to the regional offices concerned.

commence the delivery of laptops and peripherals to the concerned regions as indicated in its 6 December 2021 letter.

142. Usec. Pascua issued OUA Memo 00-1221-0071 on **13 December 2021** informing the various Regional Directors and Regional Supply Officers of DepEd on the delivery of the first batch of laptops for teachers with instruction to receive the deliveries.
143. On **23 December 2021**, due to financial constraints brought about by the pandemic, Mr. Domingo requested from PS-DBM that the Joint Venture be allowed to collect partial payment amounting to the 75% of the value of the delivered laptops for Lots 1 and 2 and Central Office with the remaining 25% of the value of the delivered units for Lots 1, 2 and Central Office be billed after the conduct of the user training. The Joint Venture claimed that it already delivered 22,745 units or about 57.46 % of the PO quantity of the 39,583 units. However, to complete the delivery, the TOR dictates that training be conducted by the Joint Venture relative to the features of the delivered laptops. Due in part to the fact that the Joint Venture has yet to receive the list of attendees, the Joint Venture could not schedule the conduct of training.
144. In a letter dated **10 January 2022**, the Joint Venture also requested for an additional forty-five (45) days to complete the delivery to the remaining regional offices under Lot Nos. 3 and 4 due to Typhoon Odette that affected the shipping schedule of the Joint Venture. Another letter requesting for the final allocation of the list of recipients was also sent by the Joint Venture on the same date.
145. **Amendment to Order** dated **2 February 2022** signed by Atty. Uayan on **7 February 2022** was issued by PS-DBM with the following modifications:

REFERENCE AND AMENDMENT	REMARKS
1. Delivery Period	Extension Based on the recommendation of the

Lot Nos.	From	To	Department of Education in its letter dated 03 September 2021
1-4	Within forty-five (45) calendar days from the receipt indicated in the Notice to Proceed	Additional thirty (30) calendar days	
<p>2. Technical Specifications/Terms of Reference</p> <ul style="list-style-type: none"> • For BIOS Logo, kindly share with us the high resolution DepEd Logo picture on bmp file format • For imaging service, kindly share with us the list of all Microsoft Office installer and license key (volume installer, including the version) • Approval of the sample laptop Bag with DepEd Logo presented during the demonstration; and • For the Sophos Anti-Virus installation image <ul style="list-style-type: none"> • User complete name • Position • E-mail address; and • Contact Number. 			Qualifications on the Technical Specifications/Terms of Reference are made based on the communication of DepEd dated 16 August 2021
3. Place of Delivery			The revision in the breakdown of quantity is based on the communication of DepEd dated 16 August 2021 and as approved by the HoPE of PS-DBM in a letter dated 13 September 2021.

Lot No.	ORIGINAL BREAKDOWN			REVISED BREAKDOWN		
1	CAR	9,278 units	782 units	CAR	9,278 units	1,105 units
	Region I		2,160 units	Region I		1,906 units
	Region II		1,527 units	Region II		1,758 units
	Region III		4,809 units	Region III		3,248 units
				Central Office		1,261 units
2	NCR	12,620 units	3,383 units	NCR	12,620 units	4,321 units
	Region IV-A		4,730 units	Region IV-A		4,230 units
	Region IV-B		1,501 units	Region IV-B		1,271 units
	Region V		3,006 units	Region V		2,528 units
				Central Office		270 units
3	Region VI	8,927 units	3,357 units	Region VI	8,927 units	3,135 units
	Region VII		3,182 units	Region VII		2,715 units
	Region VIII		2,388 units	Region VIII		1,880 units
				Central Office		697 units
				BARMM		500 units
4	CARAGA	8,758 units	1,716 units	CARAGA	8,758 units	1,466 units
	Region IX		1,911 units	Region IX		1,549 units
	Region X		2,002 units	Region X		2,090 units
	Region XI		1,790 units	Region XI		1,718 units
	Region XII		1,339 units	Region XII		1,274 units
				BARMM		661 units
	TOTAL	39,583		TOTAL	39,583	

4. Clause 2.2 Payment of Terms Section V. Special Conditions of Contract

For the initial progress payment, a minimum of 25% of the Contract Price per lot or per item shall be paid to the supplier upon a minimum of 25% of the requirement per lot or per item and duly accepted by the school's representative. Final payment shall constitute release of the retention money in case of expiry of the warranty period, or whatever is left of it, after it has been called to use under the warranty provision.

In the same letter dated 21 September 2021 of PS-DBM, it was clarified that for the initial progress payment, a minimum of 25% of the Contract Price per lot or per item shall be paid to the supplier upon a minimum of 25% of the requirement per lot or per item and duly

	accepted by the Regional Representative of DepEd.
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146. In response to the letter of Atty. Uayan dated **4 January 2022** that requested for the collection of payment, Usec. Pascua on **19 January 2022** endorsed for approval to PS-DBM the release of partial payment to the Joint Venture commensurate with the number of delivered laptops. Subsequently on **20 January 2022**, Atty. Uayan in the letter to Mr. Domingo granted the request to collect partial payment.

147. On **7 February 2022**, in an answer to the letter of Atty. Earvin Jay I. Alparque (Atty. Alparque)¹⁹⁰ of PS-DBM, Usec. Pascua made the following recommendations with regard to the various requests of the Joint Venture:

- a. We take cognizance of the fact that the notice to commence delivery was only transmitted to the JV on 10 December 2021, a day before the due date of the delivery and on the reasons stated as justifications for the request, we recommend the grant of another 30 calendar days to deliver the laptops under Lots 1-4.
- b. We take cognizance of the fact that the occurrence of Typhoon Odette and sudden surge of COVID-19 cases due to the community transmission of the Omicron variant, which are fortuitous events and beyond the control of the JV, have affected logistics services all over the Philippines and hampered the operations of our regional offices particularly those situated in the Visayas and Mindanao regions. Thus, we interpose no objection in granting the request for extension of 45 calendar days to deliver the laptops under Lots 3 and 4.
- c. On the final allocation list of the recipients for the delivery of the USB Recovery Tool, said list shall be provided as soon as the submission from the field is completed.

¹⁹⁰ Dated 25 January 2022 where PS-DBM requested for comments and recommendations with regard to the three (3) letters of the Joint Venture (dated 10 December 2021 and two (2) letters dated 10 January 2022).

148. On **14 February 2022**, Atty. Uayan apprised the Joint Venture that its request to collect partial payment for Lot Nos. 1, 2 and Central Office was granted. **Amendment to Order dated 14 February 2022** was likewise approved by Atty. Uayan on **16 February 2022** amending the terms of payment for the laptops. See below the amendments:

REFERENCE AND AMENDMENT		REMARKS
Original Terms and Payment	Amended Terms of Payment	<p>Based on the following letters approved by the HoPE of PS-DBM duly conformed by the authorized representative of the herein supplier:</p> <ol style="list-style-type: none"> 1. Letter dated 23 December 2021 of the LDLA Marketing Trading, Inc. 2. Letter dated 04 January 2022 of PS-DBM. 3. Letter dated 19 January 2022 of DepEd. 4. Letter dated 20 January of PS-DBM with conforme of Mr. Froilan V. Domingo.¹⁹¹

¹⁹¹ Recommended the approval of the request of the JV.

<p>For Lots 1,2,3 and 4:</p> <p>For the initial progress payment a minimum of 25% of the Contract Price per lot or per item shall be paid to the supplier upon a minimum of 25% of the requirement per lot or per item and duly accepted by the school's representative. Final payment shall constitute release of the retention money in case of expiry of the warranty period or whatever is left of it, after it has been called for use under the warranty provision</p>	<p>For Lot Nos. 1, 2 and Central Office of Department of Education</p> <p>75% of the value of the delivered laptops.</p> <p>25% of the value of the delivered laptops will be paid after the conduct of the user training.</p>	
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149. On **22 February 2022**, Atty. Uayan approved the recommendation of Engr. Jaime M. Navarette Jr., and Engr. Ylagan to issue **Inspection and Acceptance Report (ICAR)** with respect to the Amendment to Order dated 14 February 2022 for the delivered laptops under Lots 1 and 2 notwithstanding that the Joint Venture has yet to submit proof of training conducted and the on-going customization of the USB Drives for the recovery tools.

150. With the favorable recommendations of DepEd dated **7 February 2021**, Atty. Uayan on **1 March 2022** granted the request for the extension of the delivery period and at the same time issued an **Amendment to Order** containing the following changes for compliance which were received and accepted by the Joint Venture of event date.

REFERENCE AND AMENDMENT			REMARKS
Delivery Instruction		Due Date	
Delivery Period	Within 45 Calendar Days from receipt date indicated in the Notice to Proceed (received on 29 July 2021)	Until 12 September 2021	<p>The 4th and the 5th extensions are hereby granted based on the following communications:</p> <ol style="list-style-type: none"> 1. Letter dated 10 December 2021 of the JV 2. Letter dated 10 January 2022 of the JV 3. Letter dated 25 January 2022 of PS-DBM 4. Letter dated 07 February 2022 of DepEd
1st Extension	Thirty (30) days	Until 12 October 2021	
2nd Extension	Thirty (30) days, provided that 20% of the deliveries shall be completed one (1) week upon receipt of the letter of PS-DBM (received by the supplier on 27 October 2021)	Until 11 November 2021	
3rd Extension	Thirty (30) days	Until 11 December 2021	
4th Extension	Thirty (30) days	Until 10 January 2022	
5th Extension	Forty-Five (45) days (For Lot Nos. 3 and 4 only).	Until 24 February 2022	

151. Three days later, Usec. Pascua informed Mr. Domingo of the Joint Venture of the list of recipient schools for the delivery of USB flash drives (Recovery Tools).

152. Also, on **4 March 2022**, PS-DBM issued in favor the LDLA Marketing and Trading Inc. LandBank Check No. 0000633113 in the amount of **Php507,115,881.11** as "full payment of 75% PB¹⁹² for **12,662**¹⁹³ units delivered" on December 14, 15,16,17 and 21 of 2021. Said amount was arrived at by taking into consideration the following as shown in Disbursement Voucher No. 22-03-0521 approved by Atty. Uayan and dated **2 March 2022**:

Invoice Amount	-	494,072,370.52
Add 12% VAT	-	59,288,684.46
Less: 1% EWT	-	4,940,723.71
5% FVAT	-	24,703,618.53
3% WARRANTY Retention	-	16,600,831.65
Liquidated Damages	-	-
Total Amount to be Paid	-	507,115,881.11 ¹⁹⁴

153. On **9 March 2022**, Audit Observation Memorandum (AOM) No. 2022-010 (2021) was issued by the Commission on Audit-DepEd 1 Audit Group with the following observations:

"The economy and efficiency in the procurement of laptop computers with an approved budget of P2.4 billion intended for teachers nationwide thru the PS-DBM were not assured when the Department had settled and agreed with the price and technical specifications of an entry level type laptop provided by the former contrary to Section 2 of PD 1445 and Section 36 of RA No. 9184. The adjustments made thereof resulted in a pricey computer laptops with

¹⁹² Progress Billing

¹⁹³ Number of units and date of delivery to the following units: CAR - 1105 units (12/15/21); Region 1 - 1906 units (12/17/21); Central Office (L1) - 1261 (12/21/21); NCR 4321 (12/16/21); Region 4B - 1271 (12/14/21); Region 5 - 2528 (12/17/21); Central Office (L2) - 270 (12/21/21)

¹⁹⁴ Total contract price for 12662 units - Php737,814,740. 75% of which amounts to Php553,361,055 (Sales invoice No. 0000519 of LDLA dated 22 February 2022 addressed to PS-DBM and Collection Receipt No.0000503 of LDLA dated 4 March 2022.

low-end processor which adversely decreased the number of intended beneficiaries from 68,500 public school teachers.”

154. PS-DBM also informed the Joint Venture on **9 March 2022**, that the Recovery Tool must be timely delivered to the Regional Offices of the recipient schools thereby denying the request of the Joint Venture to merely deliver it to the Main Office of DepEd.

155. The second payment to LDLA was made on **8 April 2022** in the amount of **PhP1,030,705,752.59** through LandBank Check No. 0000633331 of PS-DBM. Per Disbursement Voucher No. 22-04-0943¹⁹⁵ dated **7 April 2022** and approved for payment by Atty. Uayan, said amount was arrived at by considering the following:

Invoice Amount	-	1,004,195,004.46
Add 12% VAT	-	120,503,400.54
Less: 1% EWT	-	10,041,950.22
5% FVAT	-	50,209,750.22
3% WARRANTY Retention	-	33,740,952.15
Liquidated Damages	-	-
Total Amount to be Paid	-	1,030,705,752.59

156. The amount covered the remaining 25% balance of the previous deliveries as well as laptops delivered on 21 December 2021 and on 5, 6, 14, 19, 21, 26 and 30 January 2022 numbering **16,136 units**.¹⁹⁶

157. In a letter dated **18 April 2022**, Atty. Uayan formally transmitted to Usec. Pascua the complete set of documents in connection with the award of contract amounting to Php2,306,504,410.00 for the Supply and Delivery of Laptop Computers for Public School Teachers under Public Bidding No. 21-074-7.

¹⁹⁵ See LDLA Sales Invoice Nos. 0000532; 0000531 and 0000517 and Collection Receipt No. 0000515 of LDLA dated 8 April 2022.

¹⁹⁶ Number of units and date of delivery - Region 6- 3135 (1/26/22); Region 7- 2715 (1/21/22); Region 8 - 1880 (1/14/22); Central office - 697 (12/21/21); BARMM - 500 (1/6/22); CARAGA - 1466 (1/19/22); Region 10 - 2090 (1/5/22); Region 11 - 1718 (1/21/22); Region 12- 1274 (1/30/22); BARMM - 661 (1/6/22).

158. On **27 April 2022**, the COA of PS-DBM issued AOM No. 2022-08 (2021) which were later incorporated in the Consolidated Annual Audit Report on PS-DBM by COA.
159. On **11 May 2022**, PS-DBM issued another LandBank Check No. 0000640843 amounting to **PhP82,717,053.64** as its third payment for the delivered laptops. Said amount corresponded to **1549 units** delivered on 21 December 2021¹⁹⁷ and 19 January 2022.¹⁹⁸ See below the computation on how the amount was arrived at per Disbursement Voucher No. 22-05-1213 dated **5 May 2022** signed by Atty. Uayan.

Invoice Amount	-	80,589,491.07
Add 12% VAT	-	9,670,738.93
Less: 1% EWT	-	805,894.91
5% FVAT	-	4,029,474.55
3% WARRANTY Retention	-	2,707,806.90
Liquidated Damages	-	
Total Amount to be Paid	-	82,717,053.64 ¹⁹⁹

160. Office Order 00-OSEC-2021- 020 dated 24 May 2021 -Revised Composition of the Task Force to Monitor the Progress and Status of Funds transferred to DBM-PS was issued by Sec. Briones.
161. The fourth and final payment was made on **27 June 2022 in the amount of PhP493,205,104.83** using LandBank Check No. 0000641386. This final payment corresponds to **9,236 units** delivered on 16²⁰⁰, 17²⁰¹ and 20²⁰² December of 2021. In a **22 June 2022** Disbursement Voucher No. 22-06-1790²⁰³ which was approved by Atty. Uayan, the following computation can be found:

¹⁹⁷ 150 units for Region 9.

¹⁹⁸ 1399 units also for Region 9.

¹⁹⁹ Per the Sales Invoice Nos. 0000539 (5 May 2022) and 0000540 (5 May 2022) of LDLA. See also Collection Receipt No. 0000518 dated 11 May 2022.

²⁰⁰ Region 2 - 1758 units

²⁰¹ Region IV-A - 4230 units

²⁰² Region 3 - 3248 units

²⁰³ See also Sales Invoice No. 0000542 of LDLA dated 20 June 2022 and Collection Receipt dated 28 June 2022

Invoice Amount	-	480,519,392.86
Add 12% VAT	-	57,662,327.14
Less: 1% EWT	-	4,805,193.93
5% FVAT	-	24,025,969.64
3% WARRANTY Retention	-	16,145,451.60
Liquidated Damages	-	
Total Amount to be Paid	-	
493,205,104.83		

162. From the foregoing, the total payments made by PS-DBM per the checks issued amounted to **Php2,113,743,792.17**.

163. However, in addition to said delivery receipts, also in the records of the Blue Ribbon Committee are delivery receipts dated 1 March 2022, 1 April 2022, 7 April 2022, and 9 June 2022 issued by PS-DBM to DepEd.²⁰⁴

164. As mentioned previously, the COA of DepEd issued its consolidated report on **28 June 2022** though published on **29 July 2022** incorporating the contents of its AOM dated **9 March 2021**.

165. In a Memorandum to Usec. Sevilla dated **11 August 2022**,²⁰⁵ Dir. Abanil made the following comments with regard to the 9 March 2022 AOM of COA:

- a. *The estimated cost of Php35,046.5 indicated in the approved APR was based on the projects procured by DepEd in December 2020;*
- b. *In 2021, there were significant fluctuation in the price of electronics due to the shortage of raw materials caused by the COVID-19 pandemic and the trade war between the United States and China; and*

²⁰⁴ See PS-DBM Agency Liquidation Report (APR No. 21-0013S) as of 31 July 2022.

²⁰⁵ Usec. Sevilla subsequently forwarded said comments to COA on 16 August 2022.

- c. *The PS-DBM conducted a more recent market survey which accounted for the said price fluctuations.*

With regard(s) to the decision to adopt entry-level type of laptops, the Technical Specifications of the Laptop for Teachers is a reduced version of the usual specifications purchased under the DepEd Computerization Program. During the period of December 2020 to the first quarter of 2021, there were concerns that the laptops with high specifications would not be available in the market and that there would not be time to rebid the project in case there was failure in bidding due to the very short period which the funds were valid. Because of these concerns, entry level specifications were adopted to allow more players to participate in the bidding in case there was no supply of laptops with higher specifications. These entry level specifications do not preclude suppliers from offering higher specifications if these were the items available in the market.

With regards to the issue of performance that were raised by the recipients, ICTS has found that the performance of the laptops is acceptable when any of the following conditions are met:

- a. *Window updates are allowed to complete.*
- b. *Upgrading to Windows 11 resolves the problem of some devices which are still very slow despite completion of the updating process.*

166. Said comments were subsequently incorporated by Usec. Sevilla to her letter to Director Ma. Theresa S. Yambao (Dir. Yambao) of COA dated **16 August 2022**. Moreover, Usec. Sevilla also informed COA that DepEd submitted a letter to the Commission Proper formally requesting for a Fraud Audit of DepEd with respect to the procurement of laptops for public school teachers using the Bayanihan Funds, **dated 11 August 2022** signed by Usec. Epimaco V. Densing (Usec. Densing).

167. In a Memorandum dated **16 August 2022** to former COA's Chairperson Jose C. Calida, the DepEd's Audit Team informed the former of the subsequent actions undertaken by the team after the issuance of the Annual Audit Report, to wit:
- a. The DepEd Audit Team recommended that a Fraud Audit be conducted;
 - b. The DepEd Audit Team coordinated with the PS-DBM Audit Team requesting assistance for the management of PS-DBM to submit to DepEd the required documents;
 - c. Per inspection, out of the 39,583 procured laptops, 2378 units were allocated to DepEd Central Office employees. However, only 700 units were issued to end-users, thus 1678 units remained unused and stored in the stock room. According to the Asset Management Division, one of the recipients returned the Dell laptops because they prefer their old laptops in terms of speed/performance. Due to this, other employees were reluctant to request these Dell Laptops and decided to retain their current units.
168. In an Inspection Report dated **18 August 2022**²⁰⁶ issued by Office of the Supervising Auditor of DepEd - COA, it found the following upon inspection of the laptops procured by DepEd:
- a. The laptop's processor is too slow, which prevents software program like Microsoft Word, Excel and PowerPoint from functioning properly;
 - b. Upgrading the laptop's operating system or installing the latest Windows version did not improve the processor's speed.
 - c. Contrary to the required 1.9 GHz Base Speed with 2MB cache processor, the consortium delivered 1.8GHz, 4MB cache, 2 Core.
 - d. The required carrying bag/laptop bag of the computers must be made of ballistic nylon. However, the delivered laptop bags are

²⁰⁶ The Inspection Report dated 18 August 2022 issued by the Office of the Supervising Auditor of the COA National Government Sector - Cluster 5 is reflected in the records as Exhibit "C-8".

made of 100% Polyester material (inside) and 100 nylon (outside).

169. On **23 August 2022**²⁰⁷, Executive Director Santiago of PS-DBM submitted to the Audit Team the following documents:

- a. Agency Procurement Request (APR);
- b. Summary of the Payments and Deliveries as of 31 July 2022;
- c. Copies of the Delivery Receipts issued by PS-DBM to the Department of Education;
- d. Journal Entry Voucher (JEV) on the adjustment related to the PS-DBM Service Fee;
- e. Copy of the MOA showing the basis of the 3% Service Fee;
- f. Purchase Order No. PO21-00370-NCSE
- g. Inspection and Certification and Acceptance Report

170. On **31 August 2022**, in response to the update provided by DepEd on 15²⁰⁸ and 17 August of 2022, the Audit Team requested from VP Sara Duterte the submission of the following additional documents relative to the procurement:

- a. Complete set of procurement documents of all the participating bidders;
- b. Checklist Requirements of the Bidding Documents;
- c. Agency Price Market Analysis or the Project Cost Estimate submitted by DepEd to PS-DBM supporting the original Agency Procurement Request (APR) dated 11 December 2020;

²⁰⁷ Received on 26 August 2022.

²⁰⁸ See letter of Usec. Sevilla transmitted to the Audit Team the requested documents as stated in the AOM of 9 March 2021.

- d. **Detailed breakdown of the Php58,300 per unit ABC recommended by PS-DBM and approved by DepEd;**
 - e. Market Analysis conducted by DepEd to countercheck the recommended price per unit of Php58,300, if any;
 - f. **Detailed breakdown of the Php58,300 per unit Contract Cost offered by the Joint Venture of Sunwest, LDLA and VSTECs; and**
 - g. 'Liquidation Report of PS-DBM on the Php2.4 Billion Fund Transfer.
 - h. That the documents previously submitted and to be submitted should be duly certified to ensure their admissibility and probative value.
 - i. The explanation of the ICTS that the increase of the ABC was because of the shortage of raw materials caused by the pandemic and the US-China trade war must be supported by empirical data coming from reputable government agencies such as the Department of Trade and Industry and National Economic Development Authority.
171. On **15 September 2022**, DepEd furnished the Blue Ribbon Committee with the consolidated list of recipients of laptops procured through PS-DBM using Bayanihan II funds²⁰⁹. A review of said consolidated list of recipients can be found in the latter part of this Committee Report.

IV. ISSUES

172. Confronted with the foregoing facts and law, the Senate Blue Ribbon Committee is faced with the following issues:

A. Whether or not the repeated changes by DepEd in the use and allocation of the Php2.4 Billion Pesos, initially from tablets to mobile connectivity loads for students,

²⁰⁹ Exhibit "A-6"- Records of the Committee

and then finally, to laptops for teachers is proper and beneficial to DepEd teachers and students?

- B. Whether or not there is legal basis for PS DBM to act as procurement agent or procurement entity for DepEd and to commence procurement activities without a Memorandum of Agreement duly executed?**
- C. Whether or not there were irregularities observed and/or established during the laptop procurement process conducted by PS DBM and DepEd?**
- D. Whether or not the procured laptops were overpriced?**
- E. Whether or not senior officials and/or representatives of DepEd and PS DBM violated the Anti-Graft and Corrupt Practices Act, the Revised Penal Code, and other laws and relevant rules and regulations, and/or committed offenses and incurred liabilities, criminal, administrative, and civil, for which they should be investigated by the proper commissions, offices or agencies of government and held accountable?**

V. FINDINGS, OBSERVATIONS AND/OR CONCLUSIONS

173. All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or-controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:
- a. Transparency in the procurement process and in the implementation of procurement contracts.
 - b. Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
 - c. Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be

simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.

- d. System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e. Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.²¹⁰

174. It is also the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned.²¹¹

175. The 1987 Constitution expressly states that “[p]ublic office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice[.]”²¹²

²¹⁰ Section 3 of RA No. 9184

²¹¹ Section 2 of PD No. 1445. See also Section 4 which provides that:

Section 4. Fundamental principles. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.
2. Government funds or property shall be spent or used solely for public purposes.
3. Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.
4. Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency.
5. Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.
6. Claims against government funds shall be supported with complete documentation.
7. All laws and regulations applicable to financial transactions shall be faithfully adhered to.

²¹² Phil. Const, Article XI (Accountability of Public Officers), Section 1.

176. Guided by the foregoing governing principles and policies, the Blue Ribbon Committee adopts the following findings, observations and conclusions:

A. The repeated changes by DepEd in the use and allocation of the Php2.4 Billion Pesos, from tablets to mobile connectivity loads for students, and then to laptops for teachers is highly arbitrary, unjustified, improper and not beneficial to DepEd teachers and students.

177. As stated earlier, Section 10 (n) of Republic Act No. 11494 provides for a budget of Four Billion Pesos (P4,000,000,000.00) "to assist the DepEd in the implementation of Digital Education, Information Technology (IT) and Digital Infrastructures and Alternative Learning Modalities, including printing and delivery of self-learning modules of the DepEd".

178. While the provision is in regard, Senator Alan Cayetano the Speaker of the House of Representatives at the time of the enactment of Republic Act No. 11494, stated before the Blue Ribbon Committee that the intent of the House of Representatives was clearly for the purchase of tablets for students:

*"But, ma'am just to input into the discussion, we were consulting DepEd during Bayanihan 2, and the agreement on the side of the House- that is why ngayon ko lang narinig, Chairman, iyong on your side, it was for blended learning - kami, kaya namin nilagay na four billion because the easiest thing to do was to buy tablets and you distribute it, and may existing BAC ang DepEd. xxx. Kaya lang, because we have counterpart, the Senate who had different ideas, and because we needed you to have time to plan, nilagay namin iyon. xxx.
xxx.*

xxx. Kaya nga sabi namin, "Kung hindi ninyo mapaplano, bili nalang kayo ng tablet ." Tapos it was meant as a pilot. So, pili lang kayo: tatlong cities sa Northern Luzon, tatlo sa Southern Luzon , lima sa Visayas. So, that is why, ma'am, kaya ganoon ang frustration ko kanina. But mukhang may disjoint sa communication between passing the law and what really happened."

179. In her Memorandum to the Committee dated 3 November 2022, Usec. Sevilla claimed that:

"Sec. 10(n) of Republic Act No. 11494 did not contain specific instructions as to the particular items which must be procured by DepEd. As such, Sec. Briones through Office Memorandum OM-OSEC-2020-009 assigned Usec. Pascua and Undersecretary Diosdado M .San Antonio, the Undersecretary for Curriculum and Instruction, to identify how DepEd will implement said provision of law."

180. Such a statement is clearly false as Usec. Pascua upon questioning by Sen. Alan Cayetano also testified that the intent for the appropriation was to purchase tablets:

"SEN. A. CAYETANO. Usec. Alain was the one. And do you confirm Usec. Alain, you were the one talking to members of Congress kung ano ang intention namin doon?"

MR. PASCUA. Good Morning, Your Honors. I confirm that, Your Honor. I, together with Usec. Revsee ...

SEN. A. CAYETANO. YES.

MR. PASCUA. ... in consultation with the officials of the House of Representatives.

SEN. CAYETANO. At hindi ninyo na-communicate kay Secretary na tablets ang intention nation noon.

MR. PASCUA. Actually, we have, Your Honor. And not only the tablets na sinabi ninyo, at that time, kung hindi pati iyong smart schools.” [Underscoring supplied]

181. In an attempt to free herself from any liability regarding the conversion of the use of the purpose of the Bayanihan 2 funds, Usec. Sevilla justified her notations to the 24 November 2020 memorandum, titled “Justification to Modify the Connectivity Load for Senior High School (SHS) Students Under the Bayanihan 2 into Laptops for Teachers” which states:

*“Alec,
Let’s prepare the draft letter of request to DBM & endorse it to SLMB thru a cover memo.
This is already coordinated with DBM & HOR.
Thanks.
(Signed Usec. Sevilla)
11/24”,*

by maintaining that it is not her function to question the wisdom of the request for modification which was already approved by Usec. Pascua, rather her responsibility as Undersecretary of Finance was limited to checking the breakdown of the SARO previously issued by the DBM, the current usage of funds, and how this will be affected by the modification requested by the project owner, the ICTS unit of DepEd.

182. Moreover, the Blue Ribbon Committee notes some lapses in the manner the use of the funds was converted. During the Blue Ribbon Committee hearing on 8 September 2022, Dir. Abanil admitted the lack of proper consultation on the modification of the use of the funds from connectivity load to laptops:

SEN. A. CAYETANO. Okay. Sinong kinonsult (consult) ninyo pa? Kayong dalawa lang o may kinonsult pa kayong ibang asec at usec na, “Anong mas maganda, 40,000 laptops for 40,000 teachers? Or 3.2 million senior high school students na walang pambiling load na hindi maka-connect dahil walang face-to-face classes?”

MR. ABANIL. Your Honor—

*SEN. A. CAYETANO. Sino pang kinonsulta ninyo? Ang PTA—
hindi ba may PTA?*

MR. ABANIL. Your Honor, ako kasi under ako kay Usec Alain.

SEN. A. CAYETANO. Kaya kayong dalawa lang ang nag-usap.

*MR. ABANIL. Kaya iyong discussions ko would be with him.
I do not know kung may—*

*SEN. A. CAYETANO. Kaya, sir, kayo lang dalawa ang nag-
usap.*

*MR. ABANIL. That is correct, Your Honor. I do not know if
Usec Alain consulted any other undersecretaries.*

*SEN. A. CAYETANO. So anyway, Mr. Chairman, you see what
I Am driving at.*

xxx.

183. In his memorandum to the Blue Ribbon Committee dated 3 November 2022, Usec. Pascua asserted that:

“At the time the decision was made, a lot of local government units (LGU’s) were already providing cell phones, tablets and loads for students and teachers. If DepEd were to also provide cellphone loads, there would be duplication of efforts. So instead of provisioning cellphone loads, the DepEd resolved to complement the efforts of the LGU’s. Hence, the decision to provide laptops instead to our hardworking teachers. xxx.”

184. Usec. Sevilla on the other hand claimed in her memorandum that she coordinated with the oversight agencies particularly the DBM and the House of Representatives (HOR), to confirm that such modification was appropriate and may be allowed under the Bayanihan 2 Act. She also claimed that there was a change of leadership in the HOR at that time,

and so there was a discussion between the new administration and DepEd as to the composition of the Php4.0 Billion Bayanihan Funds. It is noted in this regard that Usec. Sevilla's initiative may be subject to question because after Congress passed the budget for the Bayanihan 2, the latter becomes a "mere bystander" whose function in relation thereto is merely to oversee that the same was spent for the purpose for which the same was appropriated. To consult the HOR on whether a change in intent is possible may constitute a post enactment measure which is proscribed in the Supreme Court ruling in the Belgica case.

185. From the foregoing, it is clear that the various changes made by DepEd on the specific projects to be funded under Section 10 (n) of RA No. 11494, while seemingly permissible given the general wordings of the relevant provision of the Bayanihan 2 law, were not subjected to consultation and proper coordination with all the stakeholders to ensure that the allocation was consistent with the legislative purpose. The parties seemed to have relied solely on their "coordination with oversight agencies" and their own personal assessment of the situation. Verily, the changes made to the use of the Php2.4 Billion Pesos appear to be arbitrary and not based on actual data, scientific research and robust technical analysis that would have led to an approach which could create more impact and generate more tangible benefits for teachers and students, and for the quality of education as a whole.
186. Further, as a practical matter, considering the limited time to obligate said amount, the original proposal of DepEd to use said fund for the mobile/internet load for high school students, while still not in accordance with the original intent of Congress, is actually more practical, beneficial and would have generated more impact considering the number of the beneficiaries, totaling approximately 3.2 million students, that would have been afforded better access to education services.

B. There is no legal basis and authority for PS DBM to act as procurement agent or procurement entity for DepEd and to conduct procurement activities in the latter's behalf; likewise, there is no basis to obligate the amount of Php2.4 Billion Pesos in February 2021.

Outsourcing of procurement tasks should only be for the purpose of hastening the procurement process and should be limited to departments/ agencies which may not have the proficiency or capability to undertake a particular procurement.

187. Section 7 of Republic Act No. 9184 provides that:

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

No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. In the case of Infrastructure Projects, the Plan shall include engineering design and acquisition of right-of-way."

188. A "Procurement Entity" refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or-controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.²¹³

189. Moreover, under Section 5(j) of RA No. 9184, the HoPE refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized

²¹³ Section 5 (o) of RA No. 9184.

official, for government-owned and/or -controlled corporations; or (iii) the local chief executive, for local government units. Provided, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

190. Section 7.3.3 of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 provides that:

*"In order to hasten project implementation, Procuring Entities which **may not have the proficiency or capability to undertake a particular procurement**, as determined by the HoPE concerned, **may outsource the procurement tasks** by: [Emphasis and underscoring supplied]*

- . Requesting other GoP²¹⁴ agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules; [Underscoring supplied].*

As long as the procurement was conducted in accordance with RA 9184, its IRR and associated issuances, recommendations to award a contract made by government procurement agent shall be accepted by the requesting agency, subject to Section 41²¹⁵ of this IRR.

²¹⁴ Government of the Philippines

²¹⁵ Section 41. Reservation ClauseThe HoPE reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition; b) If the BAC is found to have failed in following the prescribed bidding procedures; or c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

b. xxx.

. xxx.”

191. Pursuant to the said provision of the Revised IRR, on **11 February 2021**, Secretary Briones requested Sec. Avisado for PS-DBM to undertake the procurement activities and implementation of the Php2.4 Billion funds appropriated to DepEd under Section 10 (n) of RA No. 11494, otherwise known as the “Bayanihan to Recover as One Act.” It should be pointed out that **Secretary Briones made said request pursuant to the 29 January 2021 Memorandum** of Usec. Pascua, Usec. Sevilla and Asec. Malana recommending the transfer.
192. According to the letter of Secretary Briones, the request was made due to the limited time to implement the project, as the appropriation shall be valid for release, obligation, and disbursement by 30 June 2021 only. As previously mentioned in this Committee Report, Usec. Sevilla, in an affidavit bolstered said argument by stating the following:
- a. *The DepEd must focus its limited resources and time on the very much ended shift of the learning modality from face-to-face to blended learning;*
 - b. *The period of validity of the given allotment from the Bayanihan Fund was very short and tight. The SARO was issued by DBM sometime in December 2020 and had to be procured, obligated, and paid not later than June 30, 2021; and*
 - c. *The DepEd was already undertaking substantial load of procurement activities, and there was a need to efficiently speed-up the procurement process for these existing projects, considering the scheduling and other constraints that came with the pandemic lockdown, as well as reported supply limitations in the market.”*
193. In her Memorandum, Usec Sevilla posited that her annotations to the Memorandum on having the procurement done by PS-DBM merely corresponds to the fact that, at that point in time, the validity of the

Bayanihan 2 funds was only until the end of December 2020 and because of that, there was very limited time for DepEd to complete the procurement.²¹⁶ What's more, on 11 February 2021, she together with Usec. Pascua and Asec. Malana endorsed to have the procurement of the laptops done by PS-DBM which was later approved by Sec. Briones. On the part of Usec. Pascua, he declared that "at the height of the pandemic, when the world was shutting down, DepEd wanted to focus and concentrate on what it does best: to teach."²¹⁷

194. Before discussing the validity of said arguments, the Blue Ribbon Committee is mindful of the fact that when the matter of outsourcing to PS-DBM was discussed during the 8 September 2022 hearing, there was silence on the part of the top officials of DepEd on who made the decision to transfer the procurement to PS-DBM. As summarized by Sen. Alan Cayetano:²¹⁸

"SEN. A. CAYETANO. Yes. So, anyway, those are the two questions na I heard silence.

1. Bakit hindi ninyo kayang i-bid iyong 2.4, kung kaya naman iyong 500 billion?

*2. **Who ordered na makipag-transact sa DBM-PS rather than bid it themselves?***

195. Asec. Malana even feigned ignorance on the matter by stating that:

"I would not know, Your Honor. I was not privy to the discussions and the decision-making on that matter."²¹⁹

196. In reviewing the arguments presented, the Blue Ribbon Committee finds the arguments without merit for the following reasons:

²¹⁶ Par. 18.

²¹⁷ Par. 6 - Memorandum dated 3 November 2022

²¹⁸ TSN, 8 September 2022, page 119-120.

²¹⁹ TSN, 8 September 2022, page 122

- a. **DepEd possessed the proficiency and capability to undertake the procurement despite the above-mentioned challenges and assertions of Secretary Briones, USec. Pascua and Usec. Sevilla.** The procurement of laptop computers may be technical in nature but it is not something beyond the technical expertise or capability of the personnel of DepEd, especially its Information and Communications Technology Service (ICTS). To the Blue Ribbon Committee, the procurement was for laptop computers and not for satellites, fighter jets, helicopters, or trains, which admittedly would require expertise not found within the DepEd.
- b. **Proof of the technical proficiency and capacity of DepEd was the fact that in the MOA, the preparation of the technical specifications, terms of reference, project requirements and any other document as may be deemed necessary for the conduct of the procurement shall be the responsibility of DepEd.** In fact, both the MOA²²⁰ and Bid Bulletin No. 4²²¹ states that PS-DBM shall defer to the expertise of DepEd in terms of the technical requirements of the project and shall adhere to the technical opinion of DepEd. Further, while it is PS-DBM that shall conduct tests, inspections, validations and acceptance of the goods, it is also specifically stated that PS-DBM shall rely on the recommendation of the DepEd during tests, inspections, validations and acceptance of the goods by reason of the DepEd's expertise on the projects.²²² While the 2016 Revised IRR provides for an exception, its applicability to the DepEd which has ample capacity to conduct big-ticket procurements is suspect. At best, such exceptions should be used sparingly and only in exceptional cases and should not be the norm.
- c. The Blue Ribbon Committee is in full agreement with the blunt statement of Senator Cayetano who on 8 September 8, 2022 said:

²²⁰Article 4(4.2) DepEd - PS-DBM MOA: The DepEd shall be responsible for the preparation of the Technical Specifications, TOR, project requirements, and any other document as may be deemed necessary for the conduct of the procurement activities. The DepEd shall ensure that these documents have been meticulously and judiciously prepared and are in accordance with the format required by PS-DBM. PS-DBM defers to the expertise of the DepEd in terms of the technical requirements of the project and shall adhere to the technical opinion of the DepEd on the matter.

²²¹ 3rd Paragraph of Clarification/Resolution No. 16: PS-DBM defers to the expertise of the DepEd in terms of the technical requirements of the projects and shall adhere to the technical opinion of the DepEd on the matter.

²²² Article 6.9 of the MOA. See also Articles 6.10 and 6-12

"Sanay kayong mag-handle ng 500 billion. Nadagdagan lang kayo ng 2.4 billion na, precisely, for the pandemic. Kayo ang humingi noon sa amin. Kayo ang nagsabi sa amin sa Kongreso na dahil hindi face-to-face, kailangan ninyo ng additional na pera para sa mga estudyante. Hindi namin itinapon sa inyo ang pera. Ang daming humihingi sa amin during that time. Bayanihan 2 came after Bayanihan 1. Wala ng lockdown nito, hindi ba? Nakakapag-meet na, marunong na tayong mag-Zoom, hindi ba? Bago noong lockdown, Zumba lang ang alam natin. Noong after the lockdown, marunong na tayong mag-Zoom, so nagmi-meet na lahat.

So, hindi ko makita iyong sasabihin ninyong busy iyong limang BAC ninyo kaya hindi ninyo man lang matingnan ito. Bakit kayo humingi ng pera sa amin?"²²³

- d. **PS-DBM acting as the Procuring Entity/Agent did not hasten the procurement process but in fact delayed it as the two (2) agencies spent considerable and time consuming efforts to draft the MOA.** Further, delaying the procurement process was the need for a new market survey of PS-DBM to verify the market survey of DepEd. According to the records of the Blue Ribbon Committee, the RFQ's were sent on 17 March, 18 March, 19 March, and 23 March 2021. While the Price Analysis Report was dated 26 March 2021, the actual date of signing of the final report only happened on a later date, with Mr. Gabilo stating that he signed said report only on 19 and 26 April 2021.
- e. If it were not for the transfer to PS-DBM of the procurement, DepEd could have bidded out the project as early as January of 2021 as the SARO was already available on 18 December 2020. It is also worth mentioning that the funds under RA No. 11494 were extended by RA No. 11519 until 30 June 2021.

²²³ TSN, 8 September 2022, page 121

Senator Alan Peter Cayatano even argued that as early as 12 September 2020, the project could have been bid out even without the SARO.

"SEN. A. CAYETANO. Can you bid pag wala pang SARO?"

MR. MALANA. Theoretically, opo.

SEN. A. CAYETANO. Careful sa sagot mo dahil alam ko iyong sagot diyan.

MR. MALANA. Opo, Your Honor. Theoretically, pupwede po ... [simultaneous talking]

SEN. A. CAYETANO. No, not theoretically. We are talking about Philippine government here. Walang theory.

MR. MALANA. Yes, sir.

SEN. A. CAYETANO. Pwede ba o hindi?

MR. MALANA. Pupwede po, Your Honor.

SEN. A. CAYETANO. Pwede. Subject to—hindi ka pwedeng mag-award. You can bid but not award.

MR. MALANA. Yes, Your Honor.

SEN. A. CAYETANO. September 12, pwede na kayong mag-start ng bidding process. Hindi ninyo ginawa hanggang hindi ninyo hinintay iyong SARO. Okay.²²⁴ [Underscoring supplied].

197. With said matters taken into account, it is the Committee's position that outsourcing of procurement tasks should only be for the purpose of hastening the procurement process and be limited to departments/agencies not having the proficiency or

²²⁴ TSN, 8 September 2022, page 123

capability to undertake the procurement - which as earlier discussed is inapplicable for this particular instance to DepEd.

No Memorandum of Agreement had been executed at the time funds were obligated and procurement activities commenced as required by Rule 7.7.3 of the Implementing Rules and Regulations of Republic Act No. 9184

198. In the hearing of the Blue Ribbon Committee on 8 September 2022, the following exchanges transpired between Senator Sherwin T. Gatchalian and Mr. Mora that casted doubts on the due execution of the MOA:

SEN. GATCHALIAN. *In this Minutes of the Meeting dated May 5, mayroon ho akong nakita dito na sinabi ninyo, and I quote—well, I will read it, "The Chairperson manifested that he and the Vice Chairman will talk with the management to seek clearance to post the IB." I guess this is—Ano po iyong IB, invitation to bid, tama po ba?*

MR. MORA. *Yes, sir.*

SEN. GATCHALIAN. *"Pending the approval of MOA and submission of supplemental APP, he added that once clear, the committee will be informed through email." So can you explain this, Mr. Mora?*

MR. MORA. *Opo. Kasi during the second pre-procurement po noong May 5, may mga kulang pa po na mga dokumento na for submission po. So that is the—Isa po doon iyong MOA.*

SEN. GATCHALIAN. *So wala pong MOA during itong May 5. So May 5, 2021, wala pong Memorandum of Understanding, tama po ba?*

MR. MORA. *Mayroon naman po kaya lang po dina-draft—parang pina-finalize pa po nila.*

SEN. GATCHALIAN. *Hindi, hindi, iyong signed MOA?*

MR. MORA. *Yes, sir.*

SEN. GATCHALIAN. *So noong May 5, 2021, walang signed MOA?*

MR. MORA. *For that project po.*

SEN. GATCHALIAN. *For this project. Okay.*

MR. MORA. *Let me correct that, sir. Dina-draft na po nila, hindi lang po nafa-finalize.”²²⁵*

199. Pursuing the same line of inquiry, the Senate Minority Floor Leader, Senator Aquilino Pimentel III recalled the earlier testimonies of Ms. Sharon Baile and suspected that the MOA **may have been antedated** and therefore stated:

“I will pick up from where our very eagle-eyed senator left. Kasi noong narinig ko iyong—si Senator Gatchalian was already entertaining the possibility that the MOA could have been antedated, kasi consistent.

Si Ma’am Sharon says, iyong ginawa niyang 4 percent, hindi niya alam na may 3 percent na nasa MOA. March iyong kaniyang activity. And then, this one, sila Mr. Mora had the signed document where they said, “subject to the execution of a MOA,” and that is dated May. May na. Tapos, we have the MOA—kaming mga nag-i-investigate, naghe-hearing, itong nasa harap namin is a memorandum of agreement—ang date niya sa start, at the first page, 16th day of February 2021; sa acknowledgement, “Before me, a notary public, 16th day of February 2021.”

So noong narinig ko nga iyon na si Senator Gatchalian is entertaining that possibility, because I also entertained that possibility earlier, baka umabot na tayo, Mr. Chairman,

²²⁵ TSN, 8 September 2022, Pages 168-169

*doon sa sinabi mong sana huwag na tayong umabot doon sa patawagin pa natin si Notaryo Publiko. Pero parang ganoon na nga yata, darating yata tayo roon sa situation na—.*²²⁶

200. **To antedate a document means to affix an earlier date; to date an instrument as of a time before the time it was written.**²²⁷

201. Yet, when the Committee inquired from Atty. Uayan, he categorically stated the following:

*"Like I said earlier, Mr. Chairman, the first—the MOA was **executed sometime in February**. And after its execution, since I saw that it was—the role of PS was in an end-to-end capacity, I talked it over with Usec Lao that it should be only as a procuring—what we call as procuring agent. Meaning, up to issuance of BAC resolution only. I had my reservations on the role of PS in an end-to-end capacity due to my stint previously as the inspection division chief of PS wherein a lot of problems during contract implementation involves end-to-end capacity projects. That's the reason why I told Usec Lao that we should revisit the MOA.*²²⁸

202. Boosting further said argument, Atty. Uayan claimed that:

"Mr. Chairman, I am well aware of the fact that it would appear that Ms. Sharon and Mr. Ulysses do not know of the existence of the MOA. They did not have a copy of it. That is the reason for their confusion. The reason why they did not have a copy of it is that we were still discussing it with Usec. Lao and with DepEd regarding the role of the PS-DBM. And it was only—I forgot which date it was finalized, but the records will show that the role of PS as an agent, meaning, not in an end-to-end capacity was not agreed

²²⁶ TSN, 8 September 2022, Page 190

²²⁷ Black's Law Dictionary, Revised Fourth Edition, 1968, Page 118

²²⁸ TSN, 8 September 2022, Page 200

*upon. We stopped with the executed MOA in an end-to-end that is why the funds were subsequently transferred.*²²⁹

203. To shed light on the actual date of the notarization of the MOA, the Blue Ribbon Committee invited the Notary Public who notarized the document, Atty. Jose Floro P. Crisologo, but **was informed that he died on 24 March 2021 as evidenced by his death certificate.**²³⁰ In the absence of credible contradicting evidence during that time, the Blue Ribbon Committee would have been left with little choice but to accept the justification offered Atty. Uayan as it was a plausible explanation on the matter.
204. Fortunately, the Blue Ribbon Committee was able to secure the testimony and Sworn Statement from Dir. Bragado, Director IV DepEd Procurement Management Service, who personally appeared and testified before the Committee and volunteered the information that the MOA, **which was purportedly signed and notarized on 16 February 2021 was actually signed only on 28 May 2021 by Sec. Briones and Usec. Lao and that the notarization happened on or after said date.** Among the documents proving the lack of MOA was his original 11 May 2021 Complete Staff Work (CSW) to Sec. Briones. On Memorandum ProcMS-OD-2021-037, the marginal notes dated **19 May 2021** of Usec. Sevilla stated the following:

- 1. Pls see my notes, page 2 of CSW*
- 2. I signed endorsement to SLMB but please make corrections to page 2 CSW*
- 3. Finance to stamp availability of funds sa MOA - % Alec*
- 4. Pls TAG this as "VERY URGENT" as we need to submit MOA to DBM for Issuances of NCA in time for June 2021 payment. [Underscoring supplied]*

Annalyn Sevilla 5/19

²²⁹ TSN, 8 September 2022, Page 209

²³⁰ Submitted by the Philippine Statistics Authority on 17 November 2022.

205. According to Dir. Bragado, the draft MOA was submitted for the signature of Sec. Briones on 28 May 2021 with the memorandum stating that:

"The MOA is dated 16 February 2021 as our Finance Service has obligated the full amount on 18 February 2021 due to the agreements made between the two agencies when drafting and finalizing this document. These agreements were made through exchange of official letters, official meetings and the acceptance of PS-DBM as procuring agent for this fund, which all happened and dated on February 2021."
[Emphasis and underscoring supplied]

206. Reinforcing the aforementioned matters, during his testimony on 29 September 2022, **Asec. Malana admitted that as of 5 May 2021, there was still no MOA approved and signed between PS-DBM and DepEd.** See below the discussion on the matter between the Chairperson and Mr. Malana:²³¹

"THE CHAIRPERSON. Thank you for clarifying that "PS." **Pero noong date ba noong May 5, mayroon ng MOA, to your recollection?**

MR. MALANA . To my recollection, Your Honor, wala pa po.

THE CHAIRPERSON. Wala pang MOA. So, wala pang MOA noong May 5.

MR. MALANA. Wala pa pong na-finalize na MOA. May mga drafts lamang po.

THE CHAIRPERSON. Drafts lang.

MR. MALANA. Opo."

²³¹ TSN, 29 September 2022, page 128.

207. While Usec. Sevilla was adamant on her alleged lack of knowledge about the antedating of the MOA, her own Memorandum and accompanying viber messages submitted to the Committee contradicts said position. Paragraph 7.4.1 of her Memorandum states:

*"As can be shown in the above screenshots, **the reply of Atty. Bragado to Usec. Sevilla's reminder to have the MOA notarized**, which he purposefully deleted, is grossly inconsistent with his testimony before the Committee and in his Sworn Statement dated 28 September 2022 indicating that he has no personal knowledge as to who brought the documents to the notary public. His message clearly shows that he was actively involved in negotiating the notarization of the MOA with a lawyer." [Emphasis and underscoring supplied]*

208. It is **noteworthy that her reminder to have the MOA notarized was sent on 28 May 2021 at about 5:54 PM several months after the purported notarization date of 16 February 2021.** This belies Usec Sevilla's statements in paragraph 9 of her Memorandum where she asserts that:

"Undeniably, as Usec. Sevilla was neither a signatory to the said MOA, nor was she involved in the notarization of the same, she could not truthfully and competently say if the date of the execution and notarization of the same was indeed incorrect as it was made to appear during the Committee hearings, as she had no personal knowledge on the matter. xxx"

209. Even Atty. Uayan's defense that what he sent to Dir. Bragado on 28 May 2021 was a signed copy of the MOA that they had in their office²³² defies logic as Sec. Briones only signed the MOA on said date, and as such, there can be no signed copy of the purported 16 February 2021 MOA in the files of PS-DBM.

²³² TSN, 20 October 2022, page 117

210. From the foregoing, the Blue Ribbon Committee is **fully convinced that the MOA was antedated in order to justify and cover the action of DepEd of obligating the funds on 18 February 2021.** Moreover, in an attempt to cover-up said falsification, **high-ranking officials of DepEd lied to the Blue Ribbon Committee on multiple occasions.**
211. **With the issue of antedating settled, the next question to be answered by the Committee, is when should the signed and notarized MOA be made available to PS-DBM for purposes of undertaking the procurement of the laptops?**
212. Senator Gatchalian and Executive Director Santiago of PS-DBM discussed the matter lengthily, with Director Santiago initially stating that the MOA should have been submitted to the SBAC I before the publication of the invitation to bid. However, upon further questioning, he adjusted his answer from before invitation to bid to during the pre-procurement conference²³³ as shown below:

SEN. GATCHALIAN. *Yes. Just a quick question to DBM, to Atty. Santiago. Atty. Santiago, at which stage do you need a valid MOA? At which stage of the procurement do you need a valid MOA?*

MR. SANTIAGO. *Your Honor, I mentioned also in the last hearing, we commence our procurement activity the moment we post the invitation to bid.*

SEN. GATCHALIAN. *So, iyong mga request for quotation hindi pa kasama iyon?*

MR. SANTIAGO. *Iyong RFQ, sir, medyo mga preparatory po iyon, sir.*

SEN. GATCHALIAN. *So, you do not need a valid MOA for that?*

²³³ TSN, 29 September 2022, pages 205-207.

MR. SANTIAGO. *Sorry, sir?*

SEN. GATCHALIAN. *You do not need a valid MOA for that?*

MR. SANTIAGO. *I would say so, sir, because those preparatory activities—As a matter of fact, in this case, establishing the ABCs, establishing the technical specs, parang preliminary po to the two parties.*

SEN. GATCHALIAN. *Iyong pre-procurement conference, do you need a MOA for that?*

MR. SANTIAGO. *Sa pre-procurement conference, sir, that will already form part of the determination of the readiness of the procuring entity to commence procurement. So, iniisip ko, dapat ho may MOA na rin at that time.*

SEN. GATCHALIAN. *Dapat may MOA na siya. So, iyong price survey—market price analysis monitoring, do you need a MOA for that? This is one step earlier.*

MR. SANTIAGO. *Earlier pa ho iyan, sir.*

SEN. GATCHALIAN. *Oo nga.*

MR. SANTIAGO. *And then preparatory to their discussions po parang—And then, hindi pa ho ganoon but then, as I said earlier on in the hearing, sabi ko nga po na kapag pinost (post) mo na iyong activity, that is the time na you have to be ready with your MOA already because that defines ho, sir, iyong agreement, the covenants, the stipulations between the parties would define that relationship, sir.*

SEN. GATCHALIAN. *So, dapat sa pre-procurement conference, you have a valid MOA already?*

MR. SANTIAGO. *I would say so, sir. Yes, because you determine the readiness of the procuring entity*

to commence procurement. [Emphasis and underscoring supplied]

213. To the Blue Ribbon Committee, Director Santiago's original argument proceeds from the definition on what is a competitive bidding under RA No. 9184 which starts with the advertisement of the procurement:

*Section 5(e) Competitive Bidding – refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: **advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.** [Emphasis and underscoring supplied]*

214. However, Section 20 of RA No. 9184 also provides that:

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

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law. This shall be attended by the BAC, the unit or officials who prepared the bidding documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end-user. [Emphasis and underscoring supplied]

215. The 2016 Revised IRR further states that:

"Section 20. Pre-procurement Conference

20.1 Prior to the advertisement or the issuance of the Invitation to Bid/Request for Expression of Interest for each procurement undertaken through a competitive bidding, the BAC, through its Secretariat, shall call for a pre-procurement conference. The pre-procurement conference shall be attended by the BAC, the Secretariat, the unit or officials, including consultants hired by the Procuring Entity, who prepared the Bidding Documents and the draft Invitation to Bid/Request for Expression of Interest for each procurement. During this conference, the participants, led by the BAC, shall:

- a. Confirm the description and scope of the contract, the ABC, and contract duration;*
- b. Ensure that the procurement is in accordance with the PPMP and APP;*
- c. Determine the readiness of the procurement at hand, including, among other aspects, the following:
[Underscoring supplied].*

- i. The availability of appropriations. In the case of EPA, the inclusion of the procurement project in the proposed funding source, i.e., the GAA, appropriations ordinance, corporate budget, or loan agreement, as the case may be.*
- ii. completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;*
- iii. completion of the detailed engineering according to the prescribed standards in the case of Infrastructure Projects; and*
- iv. confirmation of the availability of right-of-way site or location, and the possession of affected properties, subject to Section 17.6 of this IRR.*

- d. Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;*
- e. Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and*
- f. Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of this IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.*

xxx."

216. **Executive Director Santiago's interpretation on when the MOA should have been presented, while persuasive, unfortunately failed to consider the fact that without the MOA, PS-DBM cannot perform various procurement activities for and on behalf of DepEd.** The procurement process under the law does not start with the pre-procurement conference or the competitive bidding proper. The law prescribes three stages of a valid public procurement; and the planning and pre-procurement stage, where the technical specifications and the ABC are developed, among others, and the bidding documents prepared, is an important and integral part of the entire process. **The authority of the PS DBM to act as procurement agent, or as prescribed in the 2021 MOA, as procurement entity, commenced only upon execution of the said MOA, and that was only from 28 May 2021 or onwards.**
217. Before the pre-procurement conference which happened on 30 April and 5 May of 2021, PS-DBM without a MOA undertook a market survey through the issuance of RFQs to different suppliers and on 26 March 2021 came up with a Price Analysis with P58,300 as the recommended ABC per unit of laptop. The higher ABC and reduced number of laptops to be procured resulting from said Price Analysis was adopted by DepEd through a Reply Action Document also dated 26 March 2021 and Authority to Procure dated 6 May 2021²³⁴. **All of these important procurement activities happened before the signing and**

²³⁴ Authority to Procure dated 6 May 2021 as Exhibit "A-24"

notarization of the MOA. Thus, their validity is of questionable legal basis in the absence of a valid and existing MOA.

218. Article 1.7 of the MOA provides that:

1.7 The procurement activities will commence upon the DepEd's submission of the following documentary requirements and funding requirements as mentioned in Article 4 of this agreement:

1.7.1. The DepEd Annual Procurement Plan (APP);

1.7.2. Approved Agency Procurement Request (APR) for the Project;

1.7.3. Technical Specifications, Terms of Reference (TOR), Or Project Requirement for the Projects with approved budget for the contract duly certified by the authorized end user;

1.7.4. Certificate of Budget Inclusion for the Service Fee;

1.7.5. Agency Price Market Analysis, as may be requested by PS-DBM, which may serve as the basis of the ABC or the project cost estimate submitted to PS-DBM;

1.7.6. Nomination of at least two (2) representatives to the Bids and Awards Committee: one member, and one alternate;

1.7.7. Nomination of at least two (2) Technical Working Group representatives;

1.7.8. Nomination of at least two (2) inspectors for purposes of project acceptance;

1.7.9. And other documentary requirements, as may be necessary, subject to additional conditions provided for under this Agreement.

219. Moreover, Article 2.1 of the MOA states in part that:

"The funding commitment by the DepEd and its submission of the documentary requirements stated in 1.7 shall be sufficient basis for PS-DBM to commence procurement activities for the project, subject to the latter evaluation of the completeness and readiness of the procurement information and documentation. xxx"

220. Further, Article 4.1 of the MOA also mentioned that:

"In line with its price-monitoring mandate, PS-DBM will conduct the Market Price Analysis, in consultation with DepEd, consistent with Section 2.3²³⁵ hereof to ensure that it is realistic and competitive."

221. From the foregoing provisions, **the MOA is of the utmost importance for without it, the various responsibilities of PS-DBM under the MOA have nothing to stand on.** In the absence of a MOA, PS-DBM cannot act as the Procuring Agent/Procuring Entity of DepEd and therefore bereft of any authority to conduct market survey, call for pre-procurement/bid conference, bid and award the laptop project to the LCRB.

222. Of course, the Blue Ribbon Committee is mindful of the pronouncement of the Supreme Court stating that:

"Notably, that deed is a public document, it having been acknowledged before a notary public. As such, it is evidence of the fact which gave rise to its execution and of its date, pursuant to Section 23, Rule 132 of the Rules of Court."

²³⁵ The DepEd shall ensure that the ABC submitted in its PPMP/APP and PR is based on Market Price Analysis. The PS-DBM may request the DepEd for such a basis to validate its own Price Monitoring. Based on its price monitoring PS-DBM shall determine the ABC in consultation with DepEd. The ABC shall be net of the PS-DBM Service Fee as provided under Article 4 hereof. The submission of the Deped's Market Price Analysis shall not preclude PS-DBM from conducting its own price monitoring.

xxx.

"Sec. 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."²³⁶

223. Usec. Sevilla in Paragraph 10 of her Memorandum states that "the notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. That as public officials enjoy the presumption of regularity of performance of duties, which can only be overcome by strong and convincing evidence."
224. **The Blue Ribbon Committee in the conduct of its five hearings had fully established that the MOA between DepEd and PS-DBM was concluded and signed by Secretary Briones and Usec. Lao sometime on 28 May 2021 and notarized either on the same date or a few days after but not later than 2 June 2021.** Said hearings likewise established that a considerable number of activities by the parties had been performed, such as the transfer of allotment through an Obligation Request Status, market price analysis, nomination of representatives to the BAC and TWG, pre-procurement conference, pre-bidding conference, issuance of disbursement voucher, issuance of an amended annual procurement plan, and authority to procure, publication of invitation to bid, issuance of bid bulletins, etc., prior to said actual signing of the MOA.
225. It should be recalled that **"the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty."**²³⁷ Based on the pieces of evidence presented and the testimonies not only of Dir. Bragado but also of

²³⁶ Siguan vs Lim, G.R. No. 134685, November 19, 1999.

²³⁷ People of the Philippines vs Arposeple and Sulagaol, GR No. 205787, Nov 22, 2017

other personalities privy to the negotiation and signing of the MOA and the fact of death of the Notary Public who allegedly notarized the same, all these taken together will clearly establish doubt as to the authenticity of the said MOA, thus, overcoming the presumption of regularity in the performance of official duty. As stated by the Supreme Court no less, **"To successfully overcome such presumption of regularity, case law demands that the evidence against it must be clear and convincing;** absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit."²³⁸

226. As to the argument that the procurement can be covered by the MOA dated 15 December 2017²³⁹ signed by Sec. Briones and Mr. Bingle B. Gutierrez, Executive Director of PS-DBM, suffices it to say, the MOA limited its scope to "Projects" details of which are provided in the attached Annex/es. **A perusal of the Annex/es will show that the sources of funds for the 2017 MOA were the appropriations of 2016 and 2017 totalling P13,705,121,748.88, thereby making it inapplicable for the procurement of laptops which was funded under Republic Act No. 11494 otherwise known as Bayanihan to Recover As One Act (Bayanihan 2).**

227. With said matters disposed of, the next issue confronting the committee is the effect of said antedating and non-conformity with Sec. 7.3.3 of the 2016 Revised IRR of R.A. No. 9184 in the execution of the MOA. This is further complicated by the fact that Usec. Lao who signed the MOA was no longer the Executive Director of PS-DBM at the time of its signing and notarization. Per the submission of PS-DBM, Atty. Lao was the OIC-Executive Director V of PS-DBM from January 2, 2020 to May 2, 2021.²⁴⁰

228. Relative thereto, Section 3.1, COA Circular No. 85-55-A dated September 8, 1985 and Section 3.1, COA Circular No. 2012-003 dated October 29, 2012 which pertain to irregular expenditures came to mind. **The term "irregular expenditure" signifies an**

²³⁸ Susan A. Yap vs Elizabeth Lagtapon, GR No. 196347, January 23, 2017

²³⁹ Memorandum of Agreement dated 15 December 2017 between the Department of Education, as represented by Secretary Leonor M. Briones, and the Procurement Service - Department of Budget and Management, as represented by Bingle R. Gutierrez, which is reflected in the records as Exhibit "A-13".

²⁴⁰ PS-DBM Certification signed by Ms. Samantha Grace E. Angeles (OIC, Division Chief, Human Resource Development Division).

expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an **irregular** expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.

229. Further, ***SBMA vs COA, G.R. No. 230566, January 22, 2019***, is instructive for in said case the SC ruled that:

"Accordingly, the COA correctly argued that there was an irregular expenditure for the negotiated procurement because it was incurred without adhering to Sections 53 and 54 of the IRR of R.A. No. 9184. Under COA Circular No. 88-55-A, an irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. **It differs from an illegal expenditure since the latter pertains to expenses incurred in violation of the law, whereas an irregular expenditure is incurred in violation of applicable rules and regulations other than the law.**"

230. On account of the evidence presented to the Committee which shows that an important document, the MOA between DepEd and PS DBM which is supposed to establish the agency relationship pursuant to Rule 7.7.3 of the IRR of RA No. 9184 was not in place, all subsequent acts and/or proceedings dependent on it, i.e. the obligating of the Php2.4 Billion Pesos, the subsequent transfer of said amount from DepEd to PS DBM, procurement activities conducted by PS DBM, the award and the signing of the contract to supply the laptops, among others, are clearly irregular, deficient on legal basis, and subject to question. Likewise, all disbursements of public funds attended by the aforementioned irregularities are likewise considered irregular expenditures as defined by law and relevant regulation.

C. Serious irregularities were observed and duly established by evidence to have been committed at all stages of the procurement process which rendered the contract to purchase the laptops defective and highly irregular.

Manipulation of the Approved Budget for the Contract (ABC)

231. The Approved Budget for the Contract (ABC) is legally defined as “the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or - Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.”²⁴¹
232. The ABC shall be the upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award.²⁴² In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.²⁴³
233. For the procurement subject of this investigation, the letter of Secretary Briones to DBM dated 24 November 2020 indicated that the unit cost for a laptop to be procured at that time was pegged at Php35,036.50/unit for 68,5000 units that required an appropriation of Php2.4 Billion.

²⁴¹ Section 5 of RA No. 9184

²⁴² Section 31 of RA No. 9184

²⁴³ Last sentence of Section 36 of RA No. 9184.

234. The amount per unit of laptop was the result of the market survey conducted by DepEd in March 2020.²⁴⁴ However, as DepEd decided to outsource the procurement to PS-DBM, the agency conducted another market survey on various dates in March of 2021.

235. Per the testimonies of the witnesses and pieces of documentary evidence submitted to the Blue Ribbon Committee, there is no doubt that **PS-DBM manipulated**²⁴⁵ the conduct of the market survey for the procurement of the laptops for the DepEd. As a result, an **ABC with a unit price higher than recommended price was used for the bidding process** as contained in the 24 November 2020 letter as well as in the Agency Procurement Request dated 11 December 2020 and Authority to Procure of DepEd dated 14 December 2020²⁴⁶ was recommended for the bidding.

236. The Committee came to this conclusion on account of the following:

- The suppliers who could be selected to provide a quotation from an RFQ of PS-DBM can be found in an Excel file²⁴⁷ created by Project Management Office's (PMO) who can add and delete from said list. Ms. Sharon Baile of PS-DBM confirmed this in her testimony last 8 September 2022 in her answers to Sen. Sherwin Gatchalian:

"SEN. GATCHALIAN. So, Ma'am Sharon, itong list is sino hong gumawa? Sinong naglagay doon ng mga supplier? Kayo ho ang naglagay noon?"

MS. BAILE. Mga ano na po, mga PMOs na lang din, sir, Your Honor.

SEN. GATCHALIAN. So, kung ano lang ang naisipan ni PMO, ilalagay niya lang doon?"

MS. BAILE. Yes, Your Honor.

²⁴⁴ The estimated cost Php35,046.50 indicated in the APR was based on the projects procured by Deped in December 2020.

²⁴⁵ TSN, August 25, 2022, pages 118-121 and 125-126, See also TSN, 8 September 2022, pages 13, 26-39, 188-189

²⁴⁶ Authority to Procure dated 14 December 2020 as Exhibit A-24-1.

²⁴⁷ TSN, 8 September 2022, page 28

SEN. GATCHALIAN. *So, for example, kung mayroong si PMO gustong supplier, halimbawa, mayroon siyang barkadang supplier, puwede niyang ilagay doon?*

MS. BAILE. *I think so, Your Honor. Kasi mga suppliers, lahat naman po ng mga suppliers, dapat ilagay lang po doon.*

SEN. GATCHALIAN. *Kung mayroon din siyang ayaw na supplier, puwede niya ring tanggalin?*

MS. BAILE. *Sorry, Your Honor?*

SEN. GATCHALIAN. *Kung mayroon siyang ayaw na supplier— so, for example, mayroon siyang hindi tipong supplier, puwede niyang tanggalin?*

MS. BAILE. *Wala po kasing nagmo-monitor din po doon sa list, Your Honor.*

SEN. GATCHALIAN. *But that is the—iyang list na iyan, si PMO lang ang gumagawa, in other words?*

MS. BAILE. *May mga iba't-ibang records po ang mga PMO po sa mga list, Your Honor.*

SEN. GATCHALIAN. *So, walang guidelines si PMO how to add, how to subtract?*

MS. BAILE. *Sa—sorry, Your Honor.*

SEN. GATCHALIAN. *Iyon lang ang ginagawa niya? Discretion niya lang to generate that list?*

MS. BAILE. *Your Honor, doon sa desk procedure po kasi namin, the PMO-IC shall send to at least minimum of three suppliers or manufacturers po, Your Honor. So, iyon lang po iyong puwedeng sundin din ni PMOs doon sa procedure po namin. So, iyon lang po iyong guidelines.²⁴⁸*

²⁴⁸ TSN, 8 September 2022, pages 30-31

- b. The suppliers who were asked to provide quotations for the project were **selected solely** by Engr. Marwan Amil (Engr. Amil) as there is no manual or procedure that governs the selection of and where to send the RFQ thereby giving Engr. Amil wide discretion. Said matter was observed by Senator Gatchalian as shown in the following discussions he had with Ms. Baile:

"SEN. GATCHALIAN. *Correct, correct. I am trying understand the process because it starts from there. Diyan po nag-uumpisa iyong proseso, doon sa listahan na iyon.*

And it seems to me, Mr. Chair, that so much discretion is given to the PMO. And how do we prevent the PMO from colluding with preferred suppliers or removing suppliers who are not colluding for that matter? So, that is my point.

Nag-uumpisa ho kasi doon sa universe of that list. And I understand also that si PMO pwedeng pumili doon. Kung mayroon hong bente doon, sino ho ang magsasabi na alin sa bente ang papadalhan ng anim na RFQ? Paano ho iyon?

MS. BAILE. *I think, Your Honor, doon sa ano, kung paano, is, for example, if mga IT products, so sa mga IT companies, Your Honor.*

SEN. GATCHALIAN. *Pero siya na rin pipili po?*

MS. BAILE. *Yes, Your Honor.*

SEN. GATCHALIAN. *Is there any manual or any procedure that governs the generation of list; that governs the selection of suppliers; that governs the selection of where to send the RFQ?*

MS. BAILE. *Your Honor, if there is a manual, for now po, wala pa po. We only have is the desk procedure po on sending if ilan ang papadalhan ng PMOs, Your Honor.*²⁴⁹

- c. With such a wide discretion, the Chairperson of the Committee warned that:

²⁴⁹ TSN, 8 September 2022, page 32.

*"xxx, he was able if acting alone to change the entire legislative intent of the Bayanihan Law which was really to provide connectivity to learners. **Dahil sa isang tao, nawalan ng access iyong ating mga guro na magbigay ng mahigit tatlung libo, magbigay ng quality education during the lockdown period, dahil doon sa ginawa nya. xxx.**"²⁵⁰*

- d. While Engr. Amil selected six (6) suppliers, two did not reply while two others were non-compliant. As a result, in its price analysis, only the quote from Bowman Technologies of P60,000 and VST ECS Phil quote of P58,300 were considered "compliant" thereby increasing the recommended ABC for the project.

Further, VST ECS which quoted a price of Php58,300 was determined to be complying in the Price Analysis despite indicating in the RFQ that it will "leverage the latest generation of Intel, need to adjust base frequency to 1.8ghz and better cache of 4MB," which on its face does not comply with the requirement"

This made Senator Pimentel to comment the following in reaction to Dir. Abanil defending his signature on the Price Analysis:

"Iyon na nga eh. Alam mo, mako-connect na natin ang connect the dots, ang laro. May laro talaga sa PS-DBM. Hinahanda ang mga items na mananalo. So, I think that should - maybe that would be one of our conclusions, Mr. Chairman. Dito, kitang-kita iyong basic document na pinanggalingan. Hindi kinowt (quote) iyong words noong ano. Inilagay "comply". And then when we have a person who is better than us in IT matters signing the document."²⁵¹ That is a big problem."²⁵²

When confronted with said irregularity in the Price Analysis, Engr. Amil testified that:

"MR. AMIL. Yes, Your Honor. We mistakenly –

SEN. PIMENTEL . Mistakenly.

²⁵⁰ TSN, 25 August 2022, page 179

²⁵¹ Referring to Dir. Abanil of DepEd.

²⁵² TSN, 25 August 2022, page 126. See also page 125.

MR. AMIL. *We didn't see it properly, Your Honor.*²⁵³

Compounding his mis-steps, Engr. Amil also sent an RFQ to Switch which is a known exclusive dealer of Apple products and therefore would not qualify as the technical specifications calls for Windows only.

In justifying the RFQ to Switch, Engr. Amil stated the following:

*"During that that time, the Planning Division did not know that Switch is an Apple -"*²⁵⁴

*During planning stage, Your Honor, i did not research well the Switch*²⁵⁵

*"During the sending of the RFQ, Your Honor, Switch is only the company name without an Apple, Your Honor."*²⁵⁶

From the foregoing, the comments below stated by the Chairperson on 25 August 2022 Committee hearing was on point:

"Hindi kaya dinagdag mo lang iyong Switch para makadami na naisyuhan ng RFQ, hind ba? Kasi kung ang padadalhan mo dalawa, tatlo lang kulang talaga iyon. So, you added an entity which is really not compliant, and you know that beforehand. And yet, you added and you issued an RFQ just to "bloat the number."²⁵⁷

Sen. Gatchalian reinforced said comments of the Chairperson with his own forthright statement by stating that:

"Medyo malabo. Kasi think i agree with Senator Tolentino na just to comply with the six-supplier intention, sinu-sino nalang ang pinadlhan ninyo para lang for compliance. But kung mag-iisip ako ng hind

²⁵³ TSN, 25 August 2022, page 132

²⁵⁴ TSN, 25 August 2022, page 172

²⁵⁵ TSN, 25 August 2022, page 173

²⁵⁶ TSN, 25 August 2022, page 173

²⁵⁷ TSN, 25 August, 2022, page 173

*maganda, talagang sinadya ninyo iyan para ma disqualify na siya kaagad.*²⁵⁸

- e. To make matters worse, as part of its market survey, PS-DBM also canvassed from the internet and picked Huawei Matebook 14 (2020) AMD (Ryzen) 5-4600H with a price of P54,999 as its sample. However, to the surprise of the Committee, even its selected sample was declared “non-compliant” with the Price Analysis document declaring that with regard to said laptop “compliance cannot be determined.” The Committee is perplexed on why PS-DBM selected a laptop that it cannot determine compliance with specifications known already to PS-DBM.

Rather than demand from the suppliers a compliant quote or send new RFQ’s to other suppliers, **PS-DBM recommended the amount of P58,300 as the ABC** in its Price Analysis based on the two (2) remaining compliant quotations, namely: Bowman Technologies quote of P60,000 and VST ECS Phil quote of P58,300. **As a result thereof, the budget needed to procure the laptop computers have to be increased or the quantity to be procured decreased.**

- f. The ABC was not unbundled thereby making it difficult to make an “apples to apples” comparison of the proposals of the various suppliers. Senator Alan Cayetano originally brought up a similar matter to this, when he asked why the bag was included in the bidding and not done through a separate bidding? In answer to that inquiry, Senator Cayetano stated:

"Pumunta ka sa store ng Apple, mayroon bang official na Apple bag. Hindi lahat ng computer stores ay gumagawa ng computer bag. Ang tawag doon, third party supplier. Kaya ninyo isinasama sa bidding iyong bag para mas mataas ang presyo, sasabihin ninyo, "Sir, sila lang ang nagsu-supply." Pero kung tinanggal mo ang bag at pumunta ka sa Huawei, pumunta ka sa Samsung, pumunta ka sa HP, pumunta ka sa Lenovo, mas maraming magbi-bid. Kaya dapat alam ninyo kung ano ang inihihawalay sa bid. Kaya ko itinanong dito sa hearing

²⁵⁸ TSN, 25 August 2022, page 175-176

na ito kung alam ba natin paano dayain ito or hindi. Kasi dito tayo sa pre-bid.

*Mr. Chairman, ito po iyong sinasabi kong before pa pre-bid. Itong ABC, diyan mo makikita pag diyan palang may lokohan na tayo, hindi ba?*²⁵⁹

Proceeding therefrom, Senator Gatchalian inquired from Ms. Sharon Baile on the following:

"SEN. GATCHALIAN. *Yes. But how do you quantify this increase? How do you quantify? Because the only way to quantify is to compare from other suppliers. But dito po sa inyong quotation, wala naman hong nag-compare. I don't see any comparison. So, how did you compare those added services that it is the right amount or the right price for the added service? I am looking at the quotation ho. Wala akong makitang— in three years, ganito ho ang presyo; iyong security software, ganito po iyong presyo; iyong ibang mga add-ons, ganitong presyo. I don't see it here.*

MS. BAILE. *Your Honor, iyong sa unit price po, I think nakasama na sa costing po nila iyon, Your Honor. And if you—doon sa ano, Your Honor, sa request for quotation, nakalagay naman po doon iyong kanilang mga statement po. So, doon sa taas na part, Your Honor, mayroon po siyang unit price. So, hindi lang po siya naka-line by line na costing.*

SEN. GATCHALIAN. Hindi siya naka-unbundle, in other words.

MS. BAILE. *Yes. Hindi po siya line by line, iyong costing niya, Your Honor.*

SEN. GATCHALIAN. *Correct. So, naka, kumbaga, all-in na siya, hindi siya naka-unbundle?*

MS. BAILE. *Yes, Your Honor.*

²⁵⁹ TSN, 25 August 2022, page 151

SEN. GATCHALIAN. *But how do you compare now from one supplier to the other if hindi siya naka-unbundle? And how many suppliers po ang nagbigay noong ganoon na package? Parang lumalabas ho, isa lang.*

MS. BAILE. *Dito po, Your Honor, apat po sila na nag-submit. And doon sa dalawa, Your Honor, hindi na po sila nakapag-submit. Then, dito po sa apat po, dalawa dito iyong—²⁶⁰*

Upon inquiry with COA, the Blue Ribbon Committee was informed that the practice of not unbundling the price is not allowed and that COA already requested from DepEd for a breakdown of cost.

THE CHAIRPERSON. *"While you are browsing your notes, may I ask a direct comment from the Commission on Audit?"*

Is this allowed? Is this allowed, iyong sinasabi ni Senator Gatchalian at iyong sagot ni Ms. Sharon na naka-lump na lang doon iyong presyo, hindi naka-identify? Is this allowed in the procurement process?

MR. AGUIRRE. *Good morning, Your Honor.*

We requested the detailed breakdown. I agree with Senator Gatchalian that we should need to unbundle the cost that was given by the—is not allowed. We required them to submit the detailed breakdown of the—

THE CHAIRPERSON. *You required because there are some lacking elements within that document?*

MR. AGUIRRE. *Yes. Correct, Your Honor.*

THE CHAIRPERSON. *So, the answer is, this is not allowed.*

²⁶⁰ TSN, 8 September 2022, pages 35-36

MR. AGUIRRE. Yes.

THE CHAIRPERSON. *That's why you asked for additional—*

MR. AGUIRRE. *Detailed breakdown of the ...*

THE CHAIRPERSON. *Breakdown.*

MR. AGUIRRE. *Yes.*²⁶¹

- g. The Price Analysis, dated 26 March 2021 was completed only on a later date with Mr. James F. Gabilo signing the document on 19 and 26 of April 2021 for Ms. Baile.

Mr. Gabilo in his affidavit stated:

*6. "That on **19 April 2021**, the OIC-Chief requested through email for the affiant to sign the Price Analysis Report for the project " Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education (DepEd)", since she is currently on a Work from Home Arrangement due to Covid and the hard copies of the documents are in the office;*

7. That when said Price Analysis Report was forwarded to the affiant for signature, it had already been reviewed by the OIC-Chief, and signed by the DepEd Representative. However, before acting on the request, the affiant double checked the arithmetical (sic) and computation of the price analysis and the completeness of the attached documents.

xxx.

9. That on 26 April 2021, the PMOIC of the project informed the affiant that the Price Analysis Report has a minor revision so it had to be signed again, so the PMOIC emailed the Price Analysis Report for signature. The

²⁶¹ TSN, 8 September 2022, page 36-37

affiant affix(sic) his e-signature and emailed back the document to the PMOIC.”

The **Price Analysis was prepared by Engr. Marwan O. Amil**, reviewed by Ms. Sharon Y. Baile (signed “for” by Mr. James Gabilo), recommended for approval by Atty. Jasonmer Uayan and approved by Usec. Lloyd Christopher Lao. Dir. Abram Abanil also signed the document. **According to Engr. Amil, the Php58,300 became the ABC as it was the lowest received quotation compliant with the technical specifications.**²⁶²

Ms. Sharon Baile issued PS **Reply/Action Document (RAD)**²⁶³ dated **26 March 2021** to Dir. Abanil containing a recommended ABC of Php58,300 and a **total required budget of Php3,993,550,000** which exceeded the **Php2,400,000,000**²⁶⁴ funding for the project by **Php1,685,857,692.31**. Contrary to the 3% percent service fee in the MOA, the RAD indicated a 4% service charge amounting to P92,307,692.31. Moreover, the RAD provided DepEd with the option to either:

1. Authority to charge to unutilized deposit with PS Reference APR No/s ____;
2. Reduce quantity/ies ____; and
3. Remit additional payment on _____.

DepEd through Dir. Abanil already signed the Reply Action Document even before the finalization of said Price Analysis as he submitted on 6 April 2021 to PS-DBM , the following:

1. **PS Reply/Action Document (RAD) Acceptance to reduce quantity based on the price estimate;** and

²⁶² TSN, 25 August 2022, page 171.

²⁶³ In case of discrepancy (fund deficiency) between the quoted price and the APR amount, the PMOIC shall inform the End-User Agency through a Reply Action Document to determine appropriate action on the fund deficiency. (item 4.5 of the PS-DBM Desk Procedure).

²⁶⁴ Reduced to P2,307,692,307.69 after deducting the 4% service charge of P92,307,692.31.

2. Copy of the revised recipients' schools based on the price estimate stated in the price estimate PS/Reply Action Document.

In the RAD that was returned to PS-DBM, the **option to reduce the quantity/ies was checked and in the lower portion of the document, the signature of Dir. Abanil conforming to the reduction can be found.**²⁶⁵ When Usec. Pascua testified on 25 August 2022, he mentioned that the PS Reply/Action slip signed by Dir. Abanil was **never addressed to the higher ups of DepED²⁶⁶ and that he did not authorize Dir. Abanil to sign the said document.**²⁶⁷ Later on, Usec. Pascua changed his statement when Dir. Abanil testified that he informed Usec. Pascua about the reduction in the number of laptops to be procured and that his recommendation on the matter was approved by Usec. Pascua when the latter stated "proceed."²⁶⁸

- h. In its Annual Audit Report, **COA stated that PS-DBM conducted a bidding in May 2021 for a mid-range laptop with a unit price of P45,431.20.** The price of said laptop was cheaper and the performance of those computers were way faster/better than the laptop procured by the Department during the same period. Previous to that, DepEd also engaged the services of PS-DBM on **16 June 2020, when they procured brand-new laptops with a faster Intel Core i5 processor, 8th generation, Turbo Speed of 3.9GHz, 4-Core, 6MB cache with a unit price of only P32,500.00.**

However, surprisingly, when Engr. Amil was asked on this matter, he informed the Blue Ribbon Committee that he was not aware of the said procurement.²⁶⁹

This reply prompted Sen. Gatchalian to reply that:

"It is not specified here with the department. Atty. Santiago, there is no collaboration of some sorts within your department so that you maximize suppliers, you

²⁶⁵ See the email communications between Marwan Amil, Ofelia Algo and Sharon Baile from March 26, 2021 to April 14, 2021 discussing the RAD and the Price Analysis.

²⁶⁶ TSN, 25 August 2022, page 63

²⁶⁷ TSN, 25 August 2022, page 142-143

²⁶⁸ TSN, 25 August 2022, pages 143-146

²⁶⁹ TSN, 25 August 2022, pages 183-184

*maximize pricing, mayroon bang ganyan na activity sa inyo.*²⁷⁰

He also emphasized that the whole rationale why we have a PS-DBM is to help government save though efficiency, collaboration and coordination and as such:

*"If the bidding was conducted by different departments - DepEd, DOTr- maintindihan ko, iba-iba iyong presyo. But everything is under one roof, I don't understand how come one is buying at 58,000, one is buying at 45,000. In fact, in the same report, June 16, 2020, which is a year before, for a 3.9 gigahertz, PS-DBM bought it at 32,000. So, nawala iyong rationale why we are giving the power of procurement to PS-DBM. When, in fact, within your office, hindi ninyo alam kung anu ginagawa ninyo at magkano ang binibili ninyo dahil iba iyong terminology nito, iba yung terminology, iba iyong nomenclature nito. It doesn't make sense.*²⁷¹

- i. All these, point to the fact that indeed someone orchestrated the manipulation of the ceiling unit price for which the laptops were to be purchased by DepEd to the prejudice of the department in particular and the teachers in general. Regretfully, despite said irregularities, DepEd, the end-user of the laptops accepted and approved – hook, line, and sinker -- the price analysis of PS-DBM which proposed a lower number of laptops than what was previously envisioned when the project was conceptualized, and required a higher per unit cost as a component of the ABC. The higher unit price provided more ceiling space, and facilitated the overprice during the bidding process. The nonchalant attitude reflected in the language of Usec. Pascua is disturbing:

*"More or less, sir, noong nagdi-discuss kami, ang sinabi kulang diyang talaga o ang usapan namin, "Wala tayong magagawa dahil ito iyong recommendation ng DBM, babaan ang quantity.*²⁷²

²⁷⁰ TSN, 25 August 2022, page 184

²⁷¹ TSN, 25 August 2022, page 185

²⁷² TSN, 25 August 2022, page 146

This attitude of Usec. Pascua caused Sen. Ronald Dela Rosa, during the August 25, 2022 hearing of the Blue Ribbon Committee, to exclaim in disappointment:

"Kaya nga, Usec Alain, kung ano man ang explanation mo diyan, hindi pa rin mawawala sa atin iyong konsensiya ba na isipin natin na maraming mawawalang unit ng computer ito kapag ganito kamahal. At saka magdududa ang tao dahil, "Mayroon na kaming sinubmit (submit) na 35,000, tapos ngayon magiging 58,000." Sana hindi na kayo pumayag."

Acceptance of lowered technical specifications

237. During the hearing of the Blue Ribbon Committee on 8 September 2021, the Chairperson of the Committee asked Dir. Abanil on the rationale for the lowering of the the original technical specifications as provided in the Concept Paper:

"THE CHAIRPERSON. *So, wala na si 4-core, itong two terabytes naging one terabyte. Hinati na. Iyong laptop siguro natitiklop na ganoon, kalahati na lang kasi one terabyte na lang. That was February 2, 2021.*

It came from you, Director Abanil, correct? Bakit po natin binago na iyong specs? Malakas-lakas na iyong una.

MR. ABANIL. *Your Honor, ginagawa namin iyong specs para dumami sana iyong makukuha namin na mga laptops, Your Honor. [Emphasis and underscoring supplied].*

THE CHAIRPERSON. *Binabaan ninyo iyong specs para magmura, dumami iyong laptop?*

MR. ABANIL. *Yes, Your Honor.*

THE CHAIRPERSON. *Iyong 68,000, dadami pa. Aba ay Bakit kumaunti, kumaunti lalo?*

MR. ABANIL. *Your Honor, iyong 68,000, iyong figure na iyon lumabas March na, Your Honor. So, ang basis noon was the market survey of PS-DBM.*²⁷³

238. During the bidding, the Joint Venture was initially disqualified for the following reasons:

- a. The certification issued by Microsoft on the authenticity and right to pre-install and distribute Microsoft licenses did not indicate the Model and Product of the Dell Laptop being offered by the Joint Venture;
- b. Bidder submitted an unsigned test results, MIL-STD-810H instead of the required certificate;
- c. The submitted brochure and demo unit was 1.8 GHz, 4 MB cache, 2 Core instead of the 1.9ghz Base speed, 2 MB cache required; and
- d. Non-compliance with the requirement that the carrying bag/laptop bag be made of Ballistic Nylon.

239. The SBAC I subsequently reversed itself and contended that:

- a. Certification of Microsoft is compliant with the requirement because it clearly covers all the company computer devices of the manufacturer. Therefore, there is no need to indicate all the models and products covered by the certification;
- b. The item offered by the Joint Venture is MIL-STD-810H Tested, which is a higher specification compared to the MIL-STD-810 G standard stated in the technical specifications of the project. Moreover, computer systems generated test results are not normally signed by compliance testing authorities but maybe easily validated from other sources;
- c. The technical specifications of DBM-PS (1.9 GHz, 2 MB) for the processor are already obsolete. Thus, it would not be in the best

²⁷³ TSN, 8 September 2022,, page. 150

interest of the Government to procure an item that has already been discontinued; and

- d. Contrary to the findings, the carrying bag/laptop being offered by the Joint Venture is made out of ballistic nylon material as certified by the General Manager of Dell Global.

240. However, after a review of the bidding, the representatives of COA in DepEd as well as in the PS-DBM questioned in its Consolidated Annual Audit Reports the award of the contract to the Joint Venture with both teams pointing specifically to the acceptance of PS-DBM and DepEd of the 1.8Ghz Base Speed, 4 MB Cache Intel Celeron Dell laptop despite the required 1.9 Ghz Base Speed, 2MB cache in the bid documents. Also, observed by the COA was the non-compliance of the bidder with the requirement of ballistic nylon for the laptop bag.

241. In its defense, PS-DBM cited a 21 June 2021 letter of Mr. Michael Vedula of Dell Global B.V. stating that:

*"This is to confirm that the Intel Celeron 6305 11th Generation processor with 1.8 GHz frequency and 4MB cache **can be considered to be superior processor** as opposed to the requirement of 1.9 Ghz frequency and 2MB cache, which is based on an Intel Celeron 10th Generation processor specification."*

242. After a careful evaluation and assessment of the various evidence submitted before it, **the Blue Ribbon Committee is of the view that the DepEd was disadvantaged when it accepted the laptops procured by PS-DBM as the processor of the Dell laptop was below the specifications stated in the bidding documents.** The Committee is in agreement with the COA when it described the parameters of the technical specifications in the following manner:

"Technical specifications consist of parameters that can be classified as quantitative or qualitative. With respect to quantitative specification, it refers to a requirement that can be quantified, counted or measured, and given numerical value. In the case of

laptop computers, quantitative parameters may refer to the size of the laptop computer screen, amount of storage and memory, and lastly, the base clock speed and the amount of cache memory of the processor. On the other hand, a qualitative specification is descriptive in nature, expressed in terms of language rather than numerical values. According to the report, the minimum specifications for the processor of the laptop computer should be 1.9 GHz base clock speed, 2 MB processing cache, which is a quantitative specification and cannot be obsolete or outdated. If a bidder wanted to participate and win the bidding, it should offer the said specifications or a better or superior laptop with a specification higher than 1.9 Ghz. In this case the supplier could have opted to distribute Dell Latitude 3420 equipped with at least an Intel Core i3 processor. Dell latitude 3420 can be manufactured with six different processors:

<i>Options</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>Processor Type</i>	<i>Intel Celeron 6305U</i>	<i>11th Generation Intel Core-i3 1005G1</i>	<i>10th Generation Intel Core-i3 1115G4</i>	<i>11th Generation Intel Core-i5 1135G7</i>	<i>11th Generation Intel Core-i5 1145G7</i>	<i>11th Generation Intel Core-i7 116 5G7</i>

Of the six (6) options for the processor of Dell Latitude 3420, options 2-6 can meet the required specifications. Yet, the bidder chose to supply the Dell latitude 3420-Option 1 equipped with Intel Core Celeron that cannot meet the required processor. Moreover, the supplier already had knowledge that Intel Core Celeron chipset is not going to pass the requirement, but it did not call the attention of the BAC and raise such an issue in the pre-bid conference where the last opportunity to modify the terms of the specifications can be made. The COA then referred to a letter from Intel dated April 21, 2021. Consequently, without amendment in the bidding documents, the 1.9 GHz should be complied with and any substantial changes after bid opening constitute a bid modification that is not allowed by the rules."

243. This matter was nicely captured by the exchanges between Senator Pimentel and Mr. Latinazo of Dell on the hearing of the Blue Ribbon Committee on 15 September 2022:

"SENATOR PIMENTEL. xxx, now if you are informed that the requirement is 1.9 gigahertz, you are now informed that it's 1.9. Is that part of your warranty? And you will replace all the notebooks that you delivered with 1.8 gigahertz minimum base speed with a notebook with a 1.9 gigahertz minimum base speed? Is that part of your warranty or no more kasi sinabihan ka 1.8? Tama, mali?

MR. LATINAZO. Your Honor, we are not warranting that it will have a clock speed of 1.9. We were very clear that what we were delivering is a 1.8 gigahertz processor.

SEN. PIMENTEL. Correct. Tama iyon. Tama po iyon.

MR. LATINAZO. So having said that, sir, I just wanted to clarify that, you know, the overall performance of a processor is not just determined by the clock speed. And that's the reason why, I believe, a request for reconsideration was—it was represented by our resellers that, you know, you might want—DepEd and DBM might want to consider a 1.8 gigahertz clock speed because it was explained by the manufacturer of the processor, in this case, Intel, that the 1.8 gigahertz processor is the newer generation of what used to be the 1.9 because considering the—

SEN. PIMENTEL. That's correct. That's correct. Okay, Ronnie, yes. I think nasa arguments iyan.

MR. LATINAZO. Yes.

SEN. PIMENTEL. Unfortunately nga, this is not a private transaction that you convince the buyer. Gobyerno ito, governed by procurement laws na mayroong quantitative criteria, may qualitative criteria. And pag sinabi mong 1.9 gigahertz base speed, alangan naman sabihin mo na better iyong 1.8.

Hindi. I mean, kasi this is a quantitative ano nga. Okay. So, in this particular case xxx.²⁷⁴

244. In defense of the superiority of the 1.8 GHz, 4 MB cache, Dir. Abanil made the following analogy though he was eventually rebuffed by Senator Pimentel.

"MR. ABANIL. *Sige, Your Honor.*

As a form of analogy, Your Honor, ang processor kasi is, ito iyong 1.9 gigahertz versus 1.8. Similar iyan sa, for example, ako isang tao, may mga papel ako dito sa harap, ang processor speed is gaano ako kabilis magkuha ng mga papel; whereas, iyong cache is gaano kalapit. For example, nandito iyong papel sa harap ko, kung hindi naka-cache, nasa kabilang room, so even if mabilis ako magkuha ng papel, pero kung nasa ibang room, malayo, mabagal pa rin compared sa nandito sa harapan ko iyong mga papel.

So, that's actually the difference between 1.9 gigahertz na base speed with 2MB cache versus 1.8 gigahertz base speed with 4MB cache. Mas mabilis pa rin iyong 1.8 gigahertz base speed with 4MB cache dahil nga mas malapit iyong mga papel, even so, mas mabilis iyong ako ang magdampot ng papel.

SEN. PIMENTEL. *Maganda ang analogy, pero kaya palang i-capture sa specs, bakit di ninyo isinulat. Ang analogy mo, kaya mong—na-reduce mo into specs talk or tech talk. But ang nakasulat sa specs, 1.9 gigahertz, 2 MB cache, hindi ba? So, I think it's not in the base speed ang problema, it's in the cache—1.9 gigahertz, 4 MB cache would be better than 1.8 gigahertz, 4 MB cache. Correct or not correct?*

MR. ABANIL. *Sorry, Your Honor, 1.8 gigahertz and 4 MB cache would be better per certification ng Intel against the 1.9 gigahertz, 2 MB cache.*

²⁷⁴ TSN, 15 September 2022, pages 72-73

SEN. PIMENTEL. *Oo nga, pinalitan ko nga iyong 2 MB cache, sinabi ko nga, "1.9 gigahertz, 4 MB cache would be better than 1.8 gigahertz, 4 MB cache," correct?*

MR. ABANIL. *Yes, Your Honor, kaya iyan.*

SEN. PIMENTEL. *So, kaya. You can reduce iyong analogy mo to tech talk, tech specs. Iyon sana ang ginawa ninyo. Ginawang 1.9 gigahertz, 2 MB cache para pahirapan ang buhay. "I-submit ninyo, 1.8 gigahertz, 4 MB cache, ipapalusot kayo namin." That's the problem. Kasi sasabihin ninyo, "It's better." But you could have made it better in writing.*

Well, anyway, we will discuss this na—we will put this in our final report."

245. In addition, the Chairperson of the Committee was able to elicit the following admissions from Atty. Bong Bernas of VST ECS:

"MR. BERNAS. *For example, Your Honor, with respect to speed, they are not making a reference to the minimum required standard in the bid. Nobody is saying that our submission does not meet that minimum standard.*

THE CHAIRPERSON. *It could have been better?*

MR. BERNAS. *It could have been better. And that's why we understand it to mean—when we look at bids, we understand that to mean, minimum or better. So, that's why even if the specs required 1.8 gigahertz—ah, 1.9 gigahertz, we submitted a processor ...*

THE CHAIRPERSON. *One point (1.8)?*

MR. BERNAS. *... that was better, Your Honor.*

THE CHAIRPERSON. *One point eight (1.8) is better than one point nine (1.9)?*

MR. BERNAS. Not alone, Your Honor. In comparison to the cache and the lithography, the 1.8 is superior, Your Honor. In fact—

THE CHAIRPERSON. So, 1.8 is superior?

MR. BERNAS. Yes, Your Honor. In fact, the current version of this model has a lower basic clock speed, the newest one. Because in combination with the other elements, you produce a faster operating speed.²⁷⁵

246. Based on the foregoing, it is clear that 1.8 GHz alone without combining it with the other technical specifications is not superior to 1.9 GHz. Without sounding repetitive, the 1.9 GHz base speed and 2 MB cache required are quantitative, separate and distinct requirements. Echoing the COA Audit Report **“the minimum specifications for the processor of the laptop computer should be 1.9 GHz base clock speed, 2 MB processing cache, which is a quantitative specification and cannot be obsolete or outdated. Consequently, without amendment in the bidding documents, the 1.9 GHz should be complied with and any substantial changes after bid opening constitute a bid modification that is not allowed by the rules.” [Underscoring supplied]**

247. The Committee also notes that according to an Intel letter dated 30 April 2021, **“Intel Celeron 6305 is a(sic) 11th Generation Mobile U-Series Line (Code Name: Tiger Lake) 1.8 GHz frequency and 4MB Cache launched in Q4 2020 is scheduled to be available until Q2 2022.”** This seems to be inconsistent with the following requirements:²⁷⁶

- a. Warranty Support - Not in “end of life” as reflected in the current product line and as stated in the manufacturer’s official website, product brochure or in the Manufacturer’s Certificate issued for this purpose.

²⁷⁵ TSN, 20 October 2022, page 244-245

²⁷⁶ Bidding Documents - Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education, pages 51 and 53.

- b. Hardware Deliverable - Certificate addressed to the Procuring Entity which states that the equipment being offered is not obsolete or shortly to be phased out of production

248. On the issue of the carrying bag/laptop bag, while the certification from Dell dated 21 June 2021²⁷⁷ stated that the laptop bag **will be built with ballistic nylon** as the material, which was used by the SBAC I to reverse its original decision, may be persuasive, such should not have prevailed over the findings of the Inspection team that the bag presented was made of 100% Polyester.

249. It should be pointed out that in the subsequent Joint PS-DepEd Inspection and Evaluation Report (JIER)²⁷⁸ signed by Mr. Mervin Ian D. Tanquintic and Ronald Alan Fuentes of PS-DBM; Engr. Ofelia L. Algo, Engr. Sean Michael Angelo Brucal, Ariel Tandingan, Robertson Tuliao and Nereo James Bolante of DepEd and noted by Mr. Augusto M. Ylagan, Chief of the Inspection Division of PS-DBM, **confirmed that the bag for the Dell laptop is not ballistic nylon. However, despite said findings, the Joint Inspection and Evaluation Team still stated that said laptop bag delivered by Dell complied with the requirements.**

Agency Specifications	TWG Fact Findings	TWG Remarks	Inspection Findings
Ballistic Nylon	100% Polyester (Dell), Not indicated (Dell)	Non-Complying	Exterior - 100% Nylon Interior - 100% Polyester Compiled as per Minutes of the Meeting, (page 2) Clarification on the Joint Inspection and Evaluation (JIER) for the Supply and Delivery of Laptop Computers for Public School Teachers for the Department of

²⁷⁷ Signed by Mr. Ang Tiang-Hin (Dell -General Manager - Channel-South Asia)

²⁷⁸ JIER No. 22-0915 to 22-0917, page 14

			Education (DepEd) dated November 08, 2021. ²⁷⁹ See attached DELL letter dated 27 October 2021.
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250. Moreover, contrary to said certification, **per inspection by COA, the materials used are 100% polyester and 100% nylon for the interior and exterior of the bag, respectively, and not ballistic nylon.**

251. Of interest, relative to the lowering of the base speed and acceptance of polyester and nylon in lieu of ballistic nylon is the case of *Lim vs COA, G.R. No. 130325. March 12, 2003*, wherein the Supreme Court affirmed the findings of COA and ruled that:

"The 20 KVA generator set, not being in conformity with the specifications provided in the Invitation to Pre-Qualify and Bid, respondent COA's Decision disallowing its payment is in order."

252. In a related matter, **the decision of SBAC I and HoPE to award the contract before the expiration of the reglementary period to file a protest was irregular and contrary to the provisions of Section 57²⁸⁰ of RA No. 9184 mandating that protests must first be resolved before any award is made and Section 55.3 of the 2016 Revised IRR²⁸¹ giving the party seven days to file a protest.**

²⁷⁹ Signatories to said Minutes of the Meeting - Atty. Jasonmer L. Uayan, Mr. Ulysses Mora, Engr. Augusto Ylagan, Mr. Mervin D. Tanquintic, Engr. Ofelia Algo, Mr. Ariel Tandingan, Dir. Abraham Abanil, Mr. Robertson Tuliao, Mr. Nereo Bolante and Mr. Ronald Allan C. Fuentes.

²⁸⁰ **SEC. 57. Non-interruption of the Bidding Process.** – In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

²⁸¹ Under Sec. 55.3 of the 2016 Revised IRR, the protest must be filed within seven (7) days from receipt by the party concerned of the resolution of the BAC denying the request for reconsideration.

253. In sum, by progressively lowering the technical specifications of the laptops, and accepting specifications lower than what was required during the bidding proper, the SBAC I and HoPE of PS-DBM greatly prejudiced our public school teachers as they had to accept and make do with entry level laptop computers with Intel Celeron inside, a processor considered and evaluated to be slow. Worse, **the combined effect of the increase in the unit price as a component of the ABC and the lowering of the technical specifications, ostensibly to allow the procuring entity to buy more laptops, facilitated the overprice and the consequent undue injury and gross disadvantage to the government** which matters are discussed in more detail in other parts of this Report.

Irregularities during contract implementation and distribution process

254. The Notice of Award (NOA) dated **30 June 2021** provides that the laptop under Lots 1-4 shall be delivered "within Forty Five (45) Calendar Days from the receipt date indicated in the Notice to Proceed (NTP)." The NTP was received by Mr. Christopher Tionson on **29 July 2021** as the authorized representative of the Joint Venture.

255. However, **immediately after the signing of the Notice to Proceed, the Joint Venture requested from Atty. Uayan an extension of time of at least sixty (60) days to deliver the laptops** due to alleged surge in demand for certain technology parts such as microprocessors, LCD's and integrated circuits. **Note should be taken of the fact that the first importation of Dell Latitude laptops of the Joint Venture arrived sometime in October 19, 2021 and the bulk of their importation arrived in the latter part of October and early November 2021.** To the Blue Ribbon Committee, this action of the Joint Venture was a clear indication that when its representative/s signed the Notice of Award and the Notice to Proceed, they knew that they had no capacity to deliver, as they had committed, per the original obligation under said documents as well as Section VI. Schedule of Requirements of the Bidding Documents.

256. Not satisfied with the thirty (30) calendar days extension granted by PS-DBM,²⁸² the Joint Venture claimed that the global shipping and chip shortages brought about by the COVID-19 pandemic were fortuitous events and, as such, the extension requested warrants approval. With said argument, PS-DBM²⁸³ extended the delivery period by another thirty (30) calendar days or up to 11 November 2021.
257. However, it must be pointed out that the **Forty Five (45) Calendar days requirement was imposed by the SBAC I despite requests from many bidders to extend the delivery period to One Hundred Fifty (150) Calendar days.** As previously mentioned in the report, during the pre-bidding conference, **the representatives from HP Philippines, Lenovo, ASUS, AMD and Metro Mobilia all requested that the delivery period be extended due to global material constraints/shortages.**²⁸⁴
258. Worse, the extension granted up to 11 November 2021 was further extended as shown in Amendment to Order dated 1 March 2022 reproduced partly below:

REFERENCE AND AMENDMENT		
Delivery Instruction		Due Date
Delivery Period	Within 45 Calendar Days from receipt date indicated in the Notice to Proceed (received on 29 July 2021)	Until 12 September 2021
1st Extension	Thirty (30) days	Until 12 October 2021
2nd Extension	Thirty (30) days, provided that 20% of the deliveries shall be completed one (1) week upon receipt of the letter of PS-DBM	Until 11 November 2021

²⁸² See 24 September 2021 letter of Mr. Froilan V. Domingo to Atty. Uayan expressing his gratitude for the partial (30 days) grant of the JV's extension request dated 13 September 2021. See also the letter of Dir. Abanil dated 3 September 2021 addressed to Atty. Shiela Q. Valino granting the request for extension of 30 calendar days to the Joint Venture.

²⁸³ See 21 October 2021 approval letter of Atty. Uayan and 8 October 2021 approval letter of Usec. Pascua.

²⁸⁴ SBAC I - Minutes of the Meeting, 17 May 2021, pages 5-6

	(received by the supplier on 27 October 2021)	
3rd Extension ²⁸⁵	Thirty (30) days	Until 11 December 2021
4th Extension ²⁸⁶	Thirty (30) days	Until 10 January 2022
5th Extension ²⁸⁷	Forty-Five (45) days (For Lot Nos. 3 and 4 only).	Until 24 February 2022

259. Despite said delay in the delivery of laptop computers, **the Joint Venture was not subjected to the payment of liquidated damages** as shown in the various disbursement vouchers submitted to the Committee and mentioned in the statement of facts.

260. On a separate note, the Bidding Documents proudly stated that the procurement was for the "Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education. Yet, in the documents submitted to the Blue Ribbon Committee by the DepEd dated 15 September 2022 containing **the recipient list of the laptops, it is noticeable that a sizable number of the recipients are not teachers.**

261. Commenting on the recipients list, the Chairperson of the Committee expressed his disappointment stating that:

"THE CHAIRPERSON. *We have a final video presentation coming from—but before that, DepEd is still here? I have in my possession the alleged recipients of the laptops. Supposed to be, the laptops would be for the teachers. But in my*

²⁸⁵ Usec. Pascua recommended the extension for a period of 30 calendar days through a letter dated 3 December 2021. This was followed by the approval letter of Atty. Uayan dated 25 January 2022

²⁸⁶ Recommended for approval in a letter dated 7 February 2022 signed by Usec. Pascua. Approved on 1 March 2022 by Atty. Uayan.

²⁸⁷ Recommended for approval in a letter dated 7 February 2022 signed by Usec. Pascua. Approved on 1 March 2022 by Atty. Uayan.

possession, for Region I, non-teaching personnel, including engineers—that's for Region I—were able to receive—only 20 units were distributed out of the 25 laptops, as five personnel declined to receive the laptop. That's Region I, in Vigan City. In Region II, we never got hold of a list of recipients. In Region II, Bataan, Gapan, and Tarlac City: two engineers, one medical officer, one dentist were even given the laptops. In Region IV-A, the same, some laptops were given to non-teachers in Antipolo and in Tayabas City. In Region IV-B, even a lawyer and a medical officer were given laptops. In Region V, 18 bookkeepers, five accountants, one cashier were given laptops. The same is true in Region VI. And in Region VIII, non-teachers were given laptops.

*So, siguro **na-defeat na rin iyong purpose ng laptops for teaching personnel. Kung saan-saan na napunta. So, let this be part of the records,xxx.***²⁸⁸ [Emphasis supplied]

262. In his Memorandum to the Committee, Usec. Pascua contends that:

30. Concerns were also raised in one of the hearings about the allocation of laptops among DepEd teachers. For the information of the Honorable Senators, we are enclosing herewith the list of intended recipients of the laptops procured. All legislative districts have been allocated an equal number of laptops for teachers (Annex K).

*31. Non-teaching personnel who are assigned to DepEd central, regional, division, and district offices were likewise provided with laptops to aid them with their administrative functions. The Honorable Senators **will please appreciate that only 12% of the laptops procured were allocated to non-teaching personnel.***

263. The Blue Ribbon Committee is dismayed with the diversion of the laptops for teachers to non-teaching personnel as this was contrary to the purpose of the procurement. The laptops procured are intended for teaching personnel, it was never meant for issue to non-teaching

²⁸⁸ TSN, 20 October 2022, pages 226-227.

personnel of the DepEd. The Concept Paper of Dir. Abanil clearly states:

"To ensure that teachers have the necessary tools to conduct classes through online learning, the Department proposes to modify the Bayanihan 2 funds amounting to Php 2.4 billion that was originally allocated for the Connectivity Load of SHS students into laptops for teachers. The said fund will allow the Department to provide 68,500 teachers throughout the country with laptops."

264. The Contract/Purchase Order for the Laptops is also clear in this regard, it is for the **"Supply and Delivery of Laptop Computers for Public School Teachers"**. The Blue Ribbon Committee notes with concern why laptops were given to non-teaching personnel when the purpose of the equipment was to improve the capacity of teachers. Moreover, it appears that not all teachers or teaching personnel were given laptops despite the fact that they are identified beneficiaries; thus, it is disturbing that some of the units were diverted to non-teaching personnel despite the insufficient number of units to serve the intended recipients.
265. At any rate, at the end of the day, what is important is the performance of the Dell Latitude 3420 Intel Celeron laptop delivered by the Joint Venture to the various DepEd offices for distribution originally to public school teachers. Sadly and regrettably, as testified by the teachers group²⁸⁹ invited by the Committee, the laptops are inadequate:

"THE CHAIRPERSON. *And the affidavits would contain statements that would what? What are the contents?*

MR. BASAS. *Well, pinatutunayan po nila, like sabi ko nga, iyong kaninang demonstration, mabilis pa. Like in Baguio City po, five to 10 minutes based on the affidavit of one teacher.*

THE CHAIRPERSON. *Five to 10 minutes iyong booting?*

²⁸⁹ Teachers' Dignity Coalition represented by its National President Mr. Benjo Basa. See also the Letter dated 17 October 2022 with Affidavits from members of the Teachers' Dignity Coalition, which is reflected in the records as Exhibit "C-6".

MR. BASAS. *Yes, sir. Yes, sir. Doon pa lamang. At iyong isa po na taga-San Jose, Nueva Ecija City—nai-submit din po namin sa BROOM—hindi na niya tinanggap noong nakita niya iyong specs po. Sa Aurora po, hindi rin tinanggap ng supposed recipient. Pero hindi isinaili ng school head niya kasi nanghinayang siya dahil wala na ngang kuryente sa kanila, walang Internet and everything, wala pang laptop. So, at least, may laptop po sila roon at nagagamit niya pag pumupunta siya sa Baler or sa Dingalan, kasi taga-San Luis po sila, isang remote baryo—Dimanayat.*

THE CHAIRPERSON. *Baka naman mahina ang Internet connection.*

MR. BASAS. *Wala po talagang Internet connection. Wala nga pong kuryente doon sa kanilang baryo. But at least—*

THE CHAIRPERSON. *Mao-open iyong ano—*

MR. BASAS. *Yes, sir.*

THE CHAIRPERSON. *Mao-open, mabu-boot pero hindi makaka-connect?*

MR. BASAS. *Opo. Hindi po talaga. Kahit signal ng phone, wala po doon.*

Dito po sa NCR, mayroon kaming—tatlo lang po iyong hinahabol namin, ano po, na affidavits galing po sa Pasig. Pare-pareho naman po ang kuwento. Hindi talaga nila magagamit. In fact, naisauli na nila. Kahit after the first grading period—by next week po ay test na namin, ano po, tapos na iyong first quarter, isasauli na noong dalawang teacher. At least, iyong dalawa doon sa tatlo, isasauli na ito dahil imbes na makatulong, namomroblema po sila dahil hindi siya nagagamit. Halimbawa, sa Zoom meeting, doon sa pag-record ng mga videos, medyo nahihirapan po sila.

So, those are some of the—at least kaya ko po binabanggit itong mga ito kasi ito po iyong mayroong sworn statements coming from our members po na teachers po sa baba.

THE CHAIRPERSON. *Can you provide this Committee the copies of the sworn statements?*

MR. BASAS. *Yes po. We have submitted po.*

THE CHAIRPERSON. *Has this been marked? C- (dash) consecutively.*

THE DIRECTOR GENERAL. *Yes, Your Honor.*

THE CHAIRPERSON. *Anything more, Mr. Basas?*

MR. BASAS. *Gamitin ko lang itong pagkakataon, kasi since March of 2020, humihingi na po talaga kami ng laptop. And even actually prior to the pandemic po, dapat may laptop talaga iyong teacher. Hindi po kami makakapagturo kapagka walang computer. So, sana po isa sa mga resulta ng investigation po na ito, maliban sa maparusahan iyong mayroong kasalanan, kung mayroon at mapatutunayan, sana po ay mag-provide ang ating gobyerno noong free laptops at Internet connectivity po para sa ating public school teachers para po doon sa pagtuturo. And I mean, public school teachers, lalong-lalo na po, priority must be given doon po sa mga classroom teachers po talaga.*

THE CHAIRPERSON. *Salamat po. Salamat po sa hanay ng ating mga guro.²⁹⁰*

266. The said experiences of our teachers validated the Inspection Report dated **18 August 2022** issued by Office of the Supervising Auditor of DepEd - COA, where it found the following upon inspection of the laptops procured by DepEd:

- a. The laptop's processor is too slow, which prevents software program like Microsoft Word, Excel and PowerPoint from functioning properly; and
- b. Upgrading the laptop's operating system or installing the latest Windows version did not improve the processor's speed.

²⁹⁰ TSN, 20 October 2022, pages 228-231

267. It is apparent that the government got a raw deal from this procurement. Public school teachers received not only an entry-level laptop with low capacity, but also one which cannot serve its avowed purpose to enhance teaching and learning capacities. Worse, the various extensions and modifications of payment terms requested by suppliers during the contract implementation which were almost routinely approved by Atty. Uayan and other concerned officials serve to highlight the cavalier stance of the suppliers, and the undue favor that public officials were extending to them to the detriment of the public service.

268. Considering the serious and widespread irregularities that have been discovered across the procurement process, i.e. the evident manipulation of the technical specifications and the approved budget of the contract, the irregularities during the bidding stage, the clearly misguided distribution policies, and the undue favor extended to the suppliers, among others, the contract to purchase the laptops can be considered as defective and highly irregular.

D. The laptops procured were overpriced and the contract executed to supply said laptops caused undue injury, and was grossly disadvantageous to the government

269. Under **Section 2 (2), Article IX-D of the 1987 Constitution**, the Commission on Audit (COA) shall have the exclusive authority, subject to the limitation in this Article, to "*xxx promulgate accounting and auditing rules and regulations, including those for the prevention of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.*" This authority is reiterated in Section 33 of Presidential Decree No. 1445, which states:

"Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power

to disallow such expenditures. - The Commission shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property."

270. In ***Miralles vs COA, G.R. No. 210571, September 19, 2017***, the Supreme Court described said terms in the following manner:

- a. The term "**irregular expenditure**" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.²⁹¹
- b. On the other hand, "**unnecessary expenditures**" pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining whether or not an expenditure is necessary.²⁹²
- c. "**Excessive expenditures**" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant

²⁹¹ Section 3.1, COA Circular No. 85-55-A dated 8 September 1985; Section 3.1, COA Circular No. 2012-003 dated 29 October 2012.

²⁹² Section 3.2, COA Circular No. 85-55-A dated 8 September 1985; Section 4.1, COA Circular No. 2012-003 dated 29 October 2012.

price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits.²⁹³

d. Conversely, the term "**extravagant expenditure**" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.²⁹⁴

e. In contrast, "**unconscionable expenditures**" pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.²⁹⁵

271. In the COA Consolidated Annual Report, the auditors characterized the procurement as "pricey." **As to whether "pricey" means "overprice", the COA representative²⁹⁶ during the 29 September 2022 hearing answered in the affirmative.**

THE CHAIRPERSON. Can you equate "pricey" with "overpriced," "over-overpriced," or "a little bit overpriced"?

MS. ABELLA. Yes, sir. I think that is what the audit group meant, sir, it is overpriced.²⁹⁷

272. This was reiterated by Mr. Job Aguirre Jr. of COA-DepEd who presented the following:

²⁹³ Section 3.3, COA Circular No. 85-55-A dated 8 September 1985; Section 5.1, COA Circular No. 2012-003 dated 29 October 2012.

²⁹⁴ Section 3.4, COA Circular No. 85-55-A dated 8 September 1985; Section 6.1, COA Circular No. 2012-003 dated 29 October 2012.

²⁹⁵ Section 7.1, COA Circular No. 2012-003 dated 29 October 2012.

²⁹⁶ Atty. Kristina G. Layug-Abella - State Auditor IV, Audit Team Leader - COA

²⁹⁷ TSN, 29 September 2022, page 189-190

PRICEY = OVERPRICED and EXCESSIVE?

No.	Particulars	Price secured by the Audit Team	Price offered per APR dated May 6, 2021	Difference	Percentage
Basis No. 1	PS-DBM Procured Mid-level Laptop	45,531.20	58,300.00	12,768.80	28%
Basis No. 2	DepEd Laptop procured by DBM-PS on previous year	32,500.00	58,300.00	25,800.00	79%
Basis No. 3					
3.1 Market Survey	PC Express visit	22,490.00	58,300.00	35,810.00	159%
3.2 Online price checking	Amazon with estimated shipping cost	25,000.00	58,300.00	33,300.00	133%

*Basis Nos. 1 and 2 have higher specifications, three-year warranty, after sales support services, and accessories such as laptop bag

*Basis No. 3 has almost similar technical specifications, warranty, and accessories, but without after sales support services

273. Commenting thereto, Mr. Aguirre stated the following:

"MR. AGUIRRE. xxx.

So, next slide, please? Can pricey be equated to overpriced and excessive? That's the big question.

*And then, next slide, please? **Well, under COA Circular 2012-003, dated October 29, 2012, anything that is in excess by 10 percent of the prevailing and current market price is considered excessive. That's our rule, sir.***

Next slide, please. So, in summary, based on our price analysis and evaluation, the ABC price setup, and agreed upon by both PS-DBM and DepEd, is more than 10 percent. Makikita po natin sa last column. For our Basis No. 1, it's 28 percent; Basis No. 2, iyong previous 2020, ito po, laptop na ito, it's 79 percent; our market survey, PC Express is 159 percent; and our Amazon price—

THE CHAIRPERSON. *What do you mean 159 percent?*

MR. AGUIRRE. *It's the difference between the price secured by the audit team versus the price offered per APR, dated May 6, 2021.*

THE CHAIRPERSON. *Ang laki.*

MR. AGUIRRE. *So, iyon ang difference. So, sumosobra po siya, sir, sa 10 percent. And the Amazon is 133 percent.*

Sir, iyong Basis Nos. 1 and 2 have also three-year warranty after sales support services and accessories, such as laptop bag. For Basis No. 3, has almost similar specification, but without three years warranty and after support service. Kaya ganoon siya kamura. Landed cost lang talaga, sir. So, ipinakita lang namin iyong price analysis namin."

274. As correctly stated by the COA representatives, under item 5.2 (Cases that are considered "Excessive" Expenditures of Government Funds)²⁹⁸ of COA Circular No. 2012-03, overpricing is "Excessive" when:

"Overpricing of purchases, characterized by grossly exaggerated or inflated quotations, in excess of the current and prevailing market price by a 10 percent variance from the purchased item."

275. In the submitted importation documents of the Joint Venture to support its request for payment from the DepEd, it merely attached the BOC Single Administrative Document (SAD) indicating the name of the exporter, name of importer/consignee, the name of broker the description of goods, quantity imported of imported goods and the amount thereof and the dutiable value in Philippine Pesos. They also attached the Assessment Notice and Settlement of Duties and Taxes from the BOC. A perusal of the documents submitted to the Committee would show that the Joint Venture failed to include the Invoice from

²⁹⁸ Annex D of said COA Circular.

Dell indicating how much was the cost (actual/landed) of the laptops they procured for the DepEd.

276. From the said submission of the Joint Venture and to have a clear and in- depth analysis of the documents it submitted, the Blue Ribbon Committee requested from the Bureau of Customs (BOC) on 18 October 2022, the following:

- a. Importation documents including but not limited to Goods Declaration, Bill of Lading, Invoice, and Packing Lists relative to the shipments of VST ECS Phil. Inc in 2021 and 2022 of Dell laptops with Intel Celeron 6305 Processor (1.8 GHz, 4 MB cache) showing its cost per unit, taxes, and duties paid, landed cost and such other pertinent to it; and
- b. Necessary permits in support of said importations.

277. During the 20 October 2022 hearing of the Blue Ribbon Committee, the Senate Blue Ribbon Chairperson, Senator Francis N. Tolentino had the following exchange with Atty. Bernas of VST ECS:

MR. BERNAS. *Yes, Your Honor. In fact, the current version of this model has a lower basic clock speed, the newest one. Because in combination with the other elements, you produce a faster operating speed. Now, with respect to price, Your Honor, the COA has referred to a market price. May I respectfully suggest, Your Honor, that there is no market price for 39,000 laptops.*

THE CHAIRPERSON. *But they have conducted an inspection.*

MR. BERNAS. *There might be a price that you can buy at a store for one, two, or maybe even five units that you can get instantly, but I would very respectfully suggest—*

THE CHAIRPERSON. Diretsuhin ko kayo. Maraming nakikinig ngayon. Totoo ba na lahat ng laptops, computers na ito ay nanggaling sa China?

MR. BERNAS. Yes, Your Honor.

THE CHAIRPERSON. Sa China?

MR. BERNAS. Yes, Your Honor.

THE CHAIRPERSON. Okay. At iyong landed cost galing sa China ay hindi tumataas ng ₱26,000?

MR. BERNAS. That is a—I cannot answer that, Your Honor.

THE CHAIRPERSON. If I can produce here the bill of lading, the landed receipts, siguro aaminin mo na iyon. I have in my possession, though not yet confirmed and authenticated, coming from financial institutions as well as the shipping company to show the actual cost which is just one half of the total price, including the name of the shipping company coming from the People's Republic of China. Kaya lahat nitong computer na ito ay galing sa China, hindi tumaas ng 26,000. Ayoko lang ilabas pa ngayon. Dahil binuksan mo iyan, talagang binanggit ko na na iyong presyo ay hindi sa kalahati.

MR. BERNAS. Iyon ho kasing presyo namin—

THE CHAIRPERSON. So, hindi ito nanggaling sa planta o galing sa Amerika, kung saan man ang Dell but galing ito sa People's—the origin of the laptops, all of them came from the People's Republic of China. Hindi ko sinasabing inferior yung product na iyon pero iyong landed cost even if you add the Customs duties will not be more than 27,000 per piece.

MR. BERNAS. Halos lahat po ng laptops sa mundo galing China.

THE CHAIRPERSON. Doon tayo sa price. Halos lahat ng laptops galing ng China. Pero the price.

MR. BERNAS. Doon ho sa presyo—

THE CHAIRPERSON. *Even the Customs duties.*

MR. BERNAS. *Doon ho sa presyo kasi medyo marami hong dagdag doon sa presyo. Kasi ho, halimbawa, mayroon ho kaming onsite support. Ibig sabihin, ang support doon mismo sa eskuwela na tatlong taon.*

THE CHAIRPERSON. *Ito nga, nagrereklamo iyong mga teacher, hindi na tinanggap doon sa Aurora at saka sa Kalinga, hindi ba?*

MR. BERNAS. *Ang bumalik lang ho sa amin tatlo.*

THE CHAIRPERSON. *Tama ba iyon, Mr. Teacher, na ano, tatlo lang daw ang reject? Iyon ho ang sinabi kanina.*

MR. BASAS. *Hindi po natin alam. Pero ibabalik naman po iyon, hindi sa kanila kung hindi sa DepEd po.*

MR. BERNAS. *Tatlo ho lang ang bumalik sa amin at napalitan ho namin kaagad.*

THE CHAIRPERSON. *So, magkalabasan na tayo ng dokumento.*

The name of the shipping company is YCH Kunshan Company Limited, No. 5 Tao Yuan Road, Kunshan Free Trade Zone, Kunshan City 215300 People's Republic of China. And the recipient, the importer consignee's address, VST ECS Philippines MSI-ESC Complex Eusebio Avenue, Barangay San Miguel, Pasig City, Metro Manila. And that refers to your company, sir. Ito yung shipping document signed by—naku, maraming hindi ko na babanggitin. Pati iyong presyo po nandito, kung kailan pumasok sa Pilipinas, kung saan container ports, kung ano iyong number noong mga vans, nandito po lahat, iyong dutiable duties, customs duties, et cetera, et cetera. I have it here. Pinabuksan ninyo lang iyon pero binanggit ko rito although hindi ko sinama as part of the exhibit. I have the original import documents which you secured and produced. Dumaan po ito ng port sa China, dumaan po ito ng port sa— ang broker ninyo po ay si Arvin Belmonte Barrameda of Townhomes Moonwalk. Ang vessel pong ginamit na dumating dito, ang cargo ship ay Zhong Wai

Yun Xin Gang. Ang local carrier po ay Zhong Wai Yun Xin Gang, galing po ng Kunshan City, People's Republic of China. This is a document coming from your files.

MR. BERNAS. *Maaari hong tama iyan.*

THE CHAIRPERSON. *Tama ito. Sa inyo galing ito. Sa inyo galing ito.*

So, makikita rito iyong presyo ay talagang mababa. Hindi ko lang binubuksan ito kasi nabuksan ninyo kasi iyong mga computation- computation kanina pero ang layo ho talaga. Including the value-added tax is here. Pag pinagsama-sama po ninyo iyon, mababa po talaga. Nandito po pati iyong kung ilang container vans ang dumating na naglalaman noong AYNJ Dell Latitude 3420 VTX.

So, hawak ko po lahat iyon kahit po iyong hindi ninyo bina— hindi ko lang nilalabas. Nabuksan ninyo lang iyan kaya nailabas ko lang iyan for the record.²⁹⁹

278. On 25 October 2022, Bureau of Customs (BOC) Acting Commissioner Yogi Filemon L. Ruiz submitted to the Committee one (1) CD containing the importation data for the said period. From said CD, the Committee discovered the following from a representative sample submitted by the BOC, to wit:
- a. One shipment of Dell Latitude 3420 BTX containing 4,450 pieces were imported from YCH KUNSHAN CO LTD, No 5 Taoyuan Road Kunshan Free Trade Zone, Kunshan City 215300 China;
 - b. The consignee in the Philippines was VSTECS PHILS INC, MSI-ECS Complex M Eusebio Ave, Brgy San Miguel Pasig Metro Manila 1600 Philippines;
 - c. The broker was one Alvin Belmonte Barrameda D-7 RSG Townhomes, Moonwalk Parañaque City 1700 Philippines;

²⁹⁹ TSN 20 October 2022, pages 245-248.

- d. The vessel carrying said goods SINOTRANS KAOSHIUNG 2123S originating from China and the port of final destination was the Port of Manila.
- e. The Customs Value of the said shipment amounts to US\$2,016,517.50 with a Dutiable Value of P105,335,970.48 (with 12% VAT P12,651,208.16)
- f. Dell issued an invoice for the said importation. It divided the invoice into two parts, ie., one INVOICE for 2,050 pieces of Dell Latitude laptops and another INVOICE for 2,400 pieces of Dell Latitude Laptops. The INVOICE can be broken down as follows:

- For the 2,050 pieces:

The price per piece of Dell Latitude laptops amounts to US\$ 453.15 totalling US\$928,957.50

The price of the laptop bag (Dell Essential Briefcase) amounts to US\$ 4.50 totalling US\$ 9225.00

Total amount for these: FOB Value US\$ 938,182.50

Freight 3,000.00

Other Charges 4,482.50

Total Value \$945,565.00

- For the 2,400 pieces:

The price per piece amounts to US\$ 453.15 for a total value of US\$ 1,087,580.00

The price of the laptop bag amounts to US\$ 4.50 for a total of US\$ 10,800.00

Total amount for these: FOB Value US\$1,098,360.00

Freight 3,000.00

Other Charges 5,760.00

Total Value US\$1,107,120.00

- g. For this shipment, the Joint Venture paid the total amount of P12,803,991.66. This amount is inclusive of all charges including custom's duties, wharfage dues, etc.
279. In the bid document of the VST ECS, they indicated that the price per unit was P52,026.79 and the sales and other taxes per item was only P6,243.21, the total price per unit being P58,270.00. In addition, the Bid Document of the Joint Venture stated "Philippines" as the country of origin of the laptops they were procuring. Preliminarily, if we consider just the actual cost per laptop which amounts to P26,854.73, the price submitted by VST ECS is clearly overpriced being more than double, or a mark-up of one hundred seventeen percent (117%).
280. Based on the documents at hand, the Blue Ribbon Committee prepared a sample computation of the overprice as follows:

Particulars	Source Document/Basis	Remarks	Amount
Laptop Unit	Sales Invoice No. 5400900558 dated October 11, 2021 of Dell to VSTECs (2,400 units) that includes Windows10 software and the 3 years on-site support	in USD	453.15
Laptop Bag		in USD	4.5
Freight		USD 3,000/2,400 units	1.46
Other Charges		USD 5,760/2,400 units	2.19
Total cost per Invoice of Dell to VSTECs (In USD)			461.30
Exchange Rate (October 11, 2021)			50.8020
Total cost per Invoice of Dell to VSTECs (in Php)			23,434.96
Added Services/Items by the Joint Venture:			
Sophos Endpoint Security	Based on estimates/online checking since the Detailed Breakdown of Contract Cost is still for submission by the DepEd/PS-DBM to COA	based on one-year subscriprion (USD 23.25x50.8020)	1,181.15
Mouse - Genius NX7000			475.00
Headset - Genius HS-M200			380.00
Delivery Cost			560.00
Total Cost incurred by the Joint Venture			26,031.11
Reasonable Allowable Profit (15% of total cost)			3,904.67
Total Price exclusive of VAT			29,935.78
VAT			3,592.29
Total Expected/Reasonable Price per Audit			33,528.07
Unit Price per Contract			58,270.00
Overpricing per unit			24,741.93
Total Number of Laptops Procured			39,583
Total Overpricing			979,359,873.74

It must be noted that the total price is close to the original recommended ABC per unit of P35,036.50.

281. From the foregoing, it is the submission of this Committee that the laptops purchased by the DepEd from this procurement process are indeed overpriced. Not only was this procurement attended by a substantial number of irregularities, it clearly appears that the government paid a lot more than what it was supposed to, considering the true value of the laptops received as established in this Report.

282. The overprice of at least Php 979 million, by any relevant standard, clearly constitutes undue injury and gross disadvantage to the government; and public officials, charged with fiduciary duties to safeguard public funds and properties, who may have had a hand in causing the overprice, or in failing to prevent the same, should be held to account.

E. Senior officials and/or representatives of DepEd and PS-DBM clearly violated the Anti-Graft and Corrupt Practices Act, the Revised Penal Code, and other laws and relevant rules and regulations, and/or committed offenses and incurred liabilities, criminal, administrative and civil, for which they should be investigated by the proper commissions, offices or agencies of government and held accountable.

283. On the basis of the evidence presented during the Blue Ribbon hearings on 25 August, 8, 15, and 29 September, and 20 October, all in 2022, the following laws, rules and/or regulations appear to have been violated, and the corresponding criminal, administrative and civil offenses and/or liabilities committed or incurred:

A. VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019

284. Section 3(e) of the Anti-Graft and Corrupt Practices Act (RA 3019) defines the following as an offense:

"(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.”
(Underscoring supplied)*

285. The case of ***Jacinto vs. Sandiganbayan***, G.R. No. 84571, 2 October 1989, enumerates the elements of a Section 3(e) offense as follows:

“The elements of this offense are:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. That his 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 functions.
(Underscoring Supplied)

286. The case of ***Fonacier vs. Sandiganbayan***, G.R. No. L-50691, 5 December 1994, discusses the various modes of commission of a Section 3(e) offense under RA No. 3019, and clarifies that proof of any one or more of such modes shall be sufficient to warrant conviction, thus:

“The second element enumerates the different modes by which means the offense penalized in Section 3(e) may be committed. “Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith” does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence” has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of

that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

The use of the three phrases "manifest partiality," "evident bad faith" and "gross inexcusable negligence" in the same information does not mean that the indictment charges three distinct offenses but only implies that the offense charged may have been committed through any of the modes provided by the law. In Criminal Case No. 010, all three modes of committing the offense under Section 3(e) are alleged in the information. (underscoring supplied)

287. The case of ***Rivera vs. People***, G.R. No. 156577, 3 December 2014, is also illustrative, describing in detail the elements of the offense defined under Section 3(e) of RA No. 3019:

"The Court has consistently held that there are two ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019. It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.

The terms partiality, bad faith, and gross inexcusable negligence have been explained as follows: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral

obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious in difference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." (underscoring supplied)

288. After five (5) hearings where evidence in the form of testimonies of resource persons, affidavits, memoranda and various documents related to the procurement process for teachers' laptops for use during the pandemic to deliver distance education were received, the Committee finds sufficient basis to believe that senior officials of both DepEd and PS-DBM have violated Section 3 (e) of RA No. 3019 and should be charged and investigated.

289. *First*, it is not disputed that the following resource persons: Annalyn M. Sevilla, Alain Del B. Pascua, Abram Y. C. Abanil, Salvador C. Malana, III, and Mr. Alec S. Ladanga, are all public officers being senior and mid-level officials of the Department of Education. Likewise, it is established that Lloyd Christopher Lao, Jasonmer Uayan, Ulysses Mora, Sharon Y. Baile, James F. Gabilo, and Marwan Amil are all public officers employed by the PS-DBM during the period covered by the Committee's investigation. Also assumed as public officers, in the absence of evidence to the contrary, are the members of the PS-DBM Bids and Awards Committee (BAC), the PS-DBM Technical Working Group (TWG) and the BAC Secretariat, all assigned to implement the procurement process for the DepEd laptop procurement project.

290. *Second*, the Committee believes that the aforementioned senior officials of the DepEd and PS-DBM, acted with evident bad faith, manifest partiality or gross inexcusable neglect in relation to their participation or involvement in the procurement process for the DepEd laptops considering the following:

Undersecretary Annalyn M. Sevilla

291. Usec. Sevilla is the head of the finance service of the DepEd. Her main functions pertain to the management of the finance department and the implementation of finance, accounting, budgeting, and internal control policies of the DepEd. In this capacity, and among her other functions, she is in charge of the obligation and utilization of public funds appropriated by Congress for the DepEd, and coordinates with the DBM on these matters.³⁰⁰ She is also the designated Chairperson of the DepEd Task Force To Monitor the Progress and Status of Funds Transferred to the PS DBM (the "Task Force"). She contends that her work in the department is limited to finance matters, that her responsibilities were limited to ensuring that funds were available for procurement of big-ticket items and that she has nothing to do with the procurement of the laptops. The Committee disagrees.
292. The procurement process is not purely administrative, it is inextricably linked to the budget process which is directly under Usec. Sevilla's supervision; thus, it is not correct for her to say that she has nothing to do with procurement of the laptops. In fact, the task force which she chairs, created by Secretary Briones through an office order³⁰¹, seeks to monitor the progress and status of funds transferred to the PS-DBM, precisely, for procurement purposes. To say that the finance unit of an agency has nothing to do with procurement is placing the procurement process in a vacuum; the reality is, the procurement process has to be aligned, and should be in conformity with the budget process.
293. On a related point, in the early stages of the laptop procurement process, funds were made available through a process called "obligating." The obligating of funds, a step under the direct supervision of Usec. Sevilla, is an internal process of an implementing agency to identify a distinct portion of appropriated funds and allocate it for a specific purpose. In this case, Usec. Sevilla, as the evidence presented to the Committee would show, supervised the obligating of

³⁰⁰ TSN, 29 September 2022, page 34

³⁰¹ Office Order 00-OSEC-2018-028, annexed to the Reply of Usec. Sevilla to Dir. Bragado's Sworn Statement, p. 11, marked as Exhibit "A-14". See also Office Order 00-OSEC-2021- 020 dated 24 May 2021 (Revised Composition of the Task Force to Monitor the Progress and Status of Funds transferred to DBM-PS), reflected in the records as Exhibit "A-15".

the amount of Php2.4 billion pesos for the procurement of the laptop on 18 February 2021.

294. Further, the Committee investigation showed that Usec. Sevilla was deeply involved in the negotiations with PS-DBM officials Executive Director Lao and Atty. Uayan, relating to key provisions of the MOA purportedly dated 16 February 2021 which seeks to authorize the PS-DBM as a procurement agent/procuring entity for the laptops, even claiming during the hearing on 15 September 2021 that she successfully caused the reduction of service fee rate being charged by PS DBM from 4% to 3%.³⁰² While she would repeatedly claim that she had nothing to do with the preparation of the MOA, she admitted before the Committee under oath that she reviewed the financial provisions of the said MOA.³⁰³ This was confirmed by her own executive assistant, Mr. Ladanga during a statement made during one Committee hearing.³⁰⁴

295. In her testimony before the Committee, Usec. Sevilla consistently referred to the MOA as having been executed on the date stated therein, i.e. 16 February 2021; this despite evidence presented by Dir. Bragado to the Committee, consisting of Viber exchanges in a group chat populated by Usec. Sevilla, Mr. Ladanga, and other members of the DepEd task force. The evidence presented to the Blue Ribbon Committee on this matter clearly shows that the said MOA was actually signed by the parties on 28 May 2021 but antedated to 16 February 2021. Notwithstanding the evidence on the antedating of the MOA, and Usec. Sevilla's involvement regarding this antedating, she insists that said MOA existed as of 16 February 2021 – as stated on the face of said document.

296. Her firm posture regarding the stated date of the MOA (16 February 2021) is telling. **The Committee records indicate that Usec. Sevilla, in her capacity as finance chief of DepEd, facilitated the obligating of the Php2.4 billion funds allocated for the laptop procurement project on 18 February 2021. This was done without the MOA in place.** The MOA is an important supporting document, it created the agency or the principal-agent

³⁰² TSN, 15 September 2022, page 256; TSN, 29 September 2022, page 64.

³⁰³ TSN, 15 September 2022, page 256

³⁰⁴ TSN, 20 October 2022, page 85

relationship between the DepEd and the PS-DBM where the former authorized the latter to act as its procurement agent/procuring entity for the purchase of the laptops, Thus, the MOA should have been executed prior to the obligating process for the subject funds.

297. Section 2(j) of the Government Accounting Manual (GAM), Volume 1, defines "obligation" as an act of a duly authorized official which binds the government to the immediate or eventual payment of a sum of money. Obligation may be referred to as a commitment that encompasses possible future liabilities based on current contractual agreement. The GAM also requires that said process of "obligation" be supported by the proper documents, to include a contract or similar documents. It was **necessary therefore for the MOA to have been executed prior to the "obligation" as this contained the agency agreement to authorize the PS-DBM to conduct the procurement for the DepEd's behalf.** Also, the MOA contained financial provisions on the service fee to be paid to PS-DBM as the procurement agent. The evidence, however, points to the fact that the MOA was non-existent when Usec Sevilla facilitated the obligation process for the Bayanihan 2 funds to support the procurement.
298. As established by the trail of evidence on record, a few months after the funds of Php2.4 billion was obligated, Usec. Sevilla must have belatedly realized that no updated MOA has been executed prior to the obligating of the funds on 18 February 2021. Thus, in May 2021, Usec. Sevilla mobilized her executive assistant, EA Ladanga, and the DepEd task force which she directly supervises, to complete the negotiations and the signing of the MOA. From the testimony of Dir. Bragado during the hearings, it was apparent that Usec. Sevilla played a key role in what appeared to be a frenetic effort to have the MOA signed – and it was indeed signed and notarized– but only on or after 28 May 2021. However, when the MOA was released, it was antedated to 16 February 2021 – apparently, to provide legal cover for the obligating process.
299. Premised on the foregoing, Usec. Sevilla's indispensable role in the obligating of the funds for the procurement of the laptops, her participation in the process to antedate the DepEd PS-DBM MOA, and her subsequent activities as finance chief to support the procurement

of the laptops clearly betray her indispensable role and participation in a conspiracy to purchase the overpriced laptops.

Undersecretary Alain del B. Pascua.

300. Usec. Pascua's basic contention is that he has nothing to do with the procurement process for the laptops because this task was contracted out to the PS-DBM. In his memorandum dated 3 November 2022, he reiterated that he was neither a member of the BAC nor head of the procuring entity, thus, his participation in the subject procurement is nominal or negligible.
301. The Committee is not impressed. A review of the evidence on record indicates that Usec. Pascua was involved and/or participated in at least three critical stages of the procurement process, to wit:
- a. Working with Usec. Sevilla, he was deeply involved in the obligating and the transfer of the Php2.4 Billion Pesos from DepEd to PS DBM. Among other documents, he signed the Obligation Request and Status dated 18 February 2021³⁰⁵ in his capacity as Undersecretary for Administration, and the Disbursement Voucher dated 05 May 2021.³⁰⁶ The latter document is significant as it was the basis of the physical transfer of the funds from DepEd to PS DBM.
 - b. He facilitated the adjustment of the technical specifications of the laptops on at least two occasions, these he described in paragraphs 24 and 25 of his Memorandum dated 3 November 2022. The first adjustment, as referred to in paragraph 24 of Usec. Pascua's memorandum lowered the specifications of the laptops. The original specifications of the laptops were designated as "entry-level"; and these "entry-level" specifications were even lowered further as admitted by Usec. Pascua. He also instructed Usec. Lloyd Lao in a letter dated 28

³⁰⁵ Records.

³⁰⁶ Records.

April 2021³⁰⁷ to include these additional requirements i.e, single agent for Antivirus; connectivity flip down RJ 45 LAN port and security wedge shaped chassis security lock slot, which seemed to tailor-fit a particular brand and a specific supplier in the procurement of these laptops.

- c. Equally significant, he facilitated the increase in the unit price of the laptops and a decrease in the quantities of laptops to be purchased. To illustrate, after the conduct of the market analysis by staff of the PS-DBM in March 2021, a Reply Action Document (RAD) was forwarded to DepEd stating that with the increased unit price of the laptops to Php54,300.00, the purchase of the original number of 68,500 laptops will result in a negative budget requirement of Php1,685,857,692.31. The RAD, in the lower left portion of said document, presents DepEd with at least two principal options; *first*, to top-up the allocated funds with additional funding to cover the negative amount, and *second*, to agree to reduce the number of units to be procured from 68,500 to a lower number to accommodate the higher unit price.

Notably, the RAD document submitted to the Committee reflects on its face that it was signed by Director Abanil, signifying his conformity on behalf of DepEd. Director Abanil, however, mentioned in one hearing that the RAD was approved by Usec. Pascua.³⁰⁸ While Usec. Pascua's approval is not in the form of an actual signature in the RAD, a subsequent document prepared by Usec. Pascua confirms this approval. In an **Agency Purchase Request (APR) dated 6 May 2021, signed by Usec. Pascua as author and requester, he recommended to Secretary Briones the approval of a new set of parameters for the ABC.** In said purchase request, he **cleverly disguised the reduced number of units by breaking the number down in lots without providing a total, and stated the aggregate estimated cost, without specifying the increased unit cost** – though the column heading clearly required a unit cost, not an aggregate. In the mind of the Committee, this was clearly a ploy to downplay the adjustments which would have alerted Secretary Briones to direct a full review of the supporting documents, seek further advice, and/or

³⁰⁷ Letter dated 28 April 2021, with the Subject "Technical Requirements as Indicated in the Agency Procurement Request", signed by Usec. Pascua, addressed to Usec. Lao and calling the attention of Dir. Uayan, marked as Exhibit "A-5".

³⁰⁸ TSN, 15 August 2022, page 145

withhold approval. With the adjustments – which were critical and important – albeit effectively disguised, Secretary Briones may have unwittingly approved the new parameters which increased the unit price and decreased the quantity of laptops to be purchased.

Overall, **the participation of Usec. Pascua provided the critical elements which paved the way for the overprice, i.e., the transfer of the funds from DepEd to PS DBM, a lowered technical specifications and a substantially higher unit price for the laptops.** The combined effect of the last two elements mentioned above generated a theoretical separation or a gap in the two procurement elements which opened a window of opportunity for procurement fraud, i.e. a supplier having to pay less to purchase the laptops given the lower specifications, and then selling high to government at the increased ABC unit cost. And as it happened, these actions facilitated the overpricing of the laptops procured.

Director Abram Y. C. Abanil

302. Director Abanil's role and participation in the subject procurement process is quite central and extensive. He signified the conformity of the DepEd to the reduction of the number of units to be procured and the increase in the unit price; though it is doubtful if he had the authority to do this given the far-reaching consequences of this decision, or if he acted on his own or under instruction from higher officials. When pressed on this matter by members of the Committee, particularly after realizing that his action was above his pay grade, he admitted on record that Usec. Pascua had approved the adjustments.
303. It is significant to note that it was Director Abanil who championed the idea of converting the use of the Php2.4 billion of Bayanihan 2 funds from connectivity load to teachers' laptops.³⁰⁹ He was also the one who approved the reduction of the laptops to approximately 39,583 units in a RAD document on 26 March 2021. It is important to add that the reduction of the number of units was prompted by the increase in the unit cost which in turn was driven by the PS-DBM market analysis

³⁰⁹ Exhibit "2-A", Records of the Committee

conducted in March 2021, to which Dir. Abanil conformed even signing before Mr. James Gabilo of PS-DBM, who was supposed to review the document.

304. What is further disturbing is that Director Abanil wrote a letter to PS-DBM on 6 April 2021³¹⁰ explaining to Director Uayan the reduction of the quantity and the increased price estimates, among others, when it was only on 6 May 2021, or a month later, that the Secretary of Education approved it. All told, Director Abanil's acts clearly contributed to and facilitated the overprice for the laptops purchased.

Assistant Secretary Salvador C. Malana III

305. Asec. Malana, whose official title is Assistant Secretary for Procurement, is directly supervised by Usec. Pascua, in his capacity as Undersecretary for Administration and Procurement. In one of the Committee hearings, Asec. Malana stated that for the laptop procurement project, he is under Usec. Pascua for administration purposes.³¹¹ It is clear to the Committee that Usec. Pascua (for administration), Usec. Sevilla (for finance), and Asec. Malana (for procurement) supervised the entire process of procurement for the overpriced laptops, and were therefore responsible for the outcome of the process – the disbursement of government funds for what was clearly the purchase of low-end laptops at a grossly overpriced amount. The fact that the procurement was delegated to the PS-DBM under the antedated MOA will not operate to exculpate them from potential liability.
306. Several circumstances regarding the involvement of Usec. Pascua and Asec. Malana in the laptop procurement process deserves mention. *First*, the MOA was executed only on or after 28 May 2021, as the evidence has shown; thus, all procurement activities prior to the signing of the MOA were effectively under the direct control and supervision of Usec. Pascua and Asec. Malana. *Second*, assuming the said MOA to be existing prior to the commencement of the procurement process, it cannot be a subterfuge for a conspiracy to defraud the government. Verily, the MOA cannot have the effect of

³¹⁰ Records, Memorandum of Director Abram Y.C. Abanil dated 6 April 2021

³¹¹ TSN, 29 September 2022, page 97

relieving Usec. Pascua and Asec. Malana of their responsibilities under their mandate as senior officials of DepEd to ensure that public funds appropriated to their department are disbursed and spent wisely. Both of them had continuing supervision over the procurement process, even after the MOA was executed and the tasks associated with procurement delegated to PS-DBM as procurement agent/entity. Clearly, they remain accountable for the results of the procurement. *Third*, the evidence before the Committee indicates that even after the task of implementing the procurement process was delegated to PS-DBM, there were constant referrals of key issues to DepEd, and in these matters, Asec. Malana, together with Usec. Pascua and Director Abanil, were involved or had a hand.

307. All told, Asec Malana, acting under the direction and supervision of Usec. Pascua, directly participated in the procurement process which led to the overprice of the laptops purchased.

*PS DBM Executive Director Christopher Lao, and
PS DBM Executive Director Jason Uayan (former
Head of Procurement Division, PS DBM)*

308. Usec. Lao was the Executive Director of the PS-DBM from 2 January 2020 to 2 May 2021 per official record of PS-DBM. Atty. Uayan, on the other hand, was earlier the Head of the Procurement Division of the PS-DBM, and took over from Usec. Lao when the latter left office towards the end of April 2021. Thus, the major events leading to the procurement of the DepEd laptops occurred during the tenure of Usec. Lao as PS-DBM Executive Director and of Atty. Uayan as PS-DBM Head of Procurement Division, and eventually as Executive Director as well.

309. The participation of Usec. Lao and Atty. Uayan in the DepEd laptop procurement process is not in dispute. Acting pursuant to the MOA dated 16 February 2021 (actually executed between May 28 and June 2, 2021 as proven by evidence on record), they supervised the procurement process for the laptops for the PS-DBM which was then acting, per the said MOA, as the procurement agent/procuring entity of DepEd. All the major stages, activities and/or events required to be undertaken by law and relevant regulations were all implemented

under their direct supervision. In particular, Usec. Lao³¹² and Atty. Uayan³¹³ approved the price market analysis which led to the lowering of the quantity of laptops procured and the increase in the unit cost, which in turn paved the way for the overprice. Further, the record reflects that the notice of award in favor of the winning bidder, the Joint Venture consortium of Sunwest, VSTECS and LDL Marketing, was signed by Atty. Uayan who took over from Usec. Lao.³¹⁴

310. It is also clear that at every stage of the proceeding, from the negotiations on the MOA, to the process leading to the lowering of the technical specifications, the increase in the ABC, to the actual conduct of the bidding process – a process that remained under the direct supervision and control of Directors Lao and Uayan, they **failed to prevent what was clearly – to the mind of the Committee – a thinly-veiled orchestrated and coordinated effort to increase what government should have paid for the laptops procured.** The resultant overprice caused undue injury to the government; and their acts and/or omissions contributing to this clearly constituted evident bad faith or gross inexcusable neglect.

311. Parenthetically, there were statements made during the Committee hearings that even without the MOA ostensibly dated 16 February 2021, the regularity and validity of the procurement activities for the laptops would not be affected as a 2017 MOA also executed between DepEd and PS-DBM is in place and justifies the 2021 laptop procurement project. The Blue Ribbon Committee, after reviewing the 2017 MOA and the more recent 2021 MOA, cannot subscribe to this view. In the prefatory statements of the 2017 MOA, it was stated in pertinent part:

"The DepEd intends to procure various projects, hereinafter referred to as the "Projects" (details of which are provided in herein attached Annex/es);

The DepEd decides to tap the services of the PS to undertake all of the DepEd's procurement activities for the Projects and the implementation of its resulting contracts."

³¹² Approval

³¹³ Recommending approval

³¹⁴ TSN, 20 October 2022, page 201-202

xx xx xx

The PS agrees to undertake the procurement activities of the Projects on behalf of the DepEd and the implementation of the resulting contracts, subject to the terms and conditions provided hereinunder.” (underscoring supplied)

312. It is very clear from these prefatory statements in the 2017 MOA that the agency arrangement under said contract covers only the procurement projects contained in its Annex “A” in the total amount of Php13,705,121.88, and which list and total amount clearly does not include the 2021 laptop for teachers procurement project which as earlier stated was funded not from the regular budget of the DepEd but through Bayanihan 2.

*Sharon Y. Baile, James F. Gabilo and
Marwan O. Amil*

313. Ms. Baile is the OIC-Chief of the Procurement Division 1; Mr. Gabilo is the Deputy Chief of Procurement Division 1; and, Mr. Amil is the Procurement Management Officer-in-Charge, all of the PS-DBM. Mr. Baile, Mr. Gabilo and Mr. Amil conducted the market analysis which paved the way for the lowering of the quantity of laptops to be purchased and the increase in the unit price from the original Php35,036.50 to the adjusted Php 58,300.00.

314. Specifically, Mr. Amil directly conducted the market survey. Between 17 - 23 March 2021, Mr. Amil sent requests for quotations (RFQs) to prospective suppliers through email. Admitting under oath during a Committee hearing that he chose the suppliers at his personal discretion, he sent emails to six suppliers, namely: Huawei, Columbia Technologies Inc., Bowman and VST ECS Phils. Inc., Advance Solutions Inc., and Switch Apple. According to Mr. Amil, the six suppliers were selected from a PS DBM list of “common suppliers”; when pressed on this issue, he admitted that there is neither a list of common suppliers, nor is there a definition of what is a common supplier. After the results of the market analysis was completed, Mr. Amil drafted the Price Analysis Report which was signed by Mr. Gabilo, for and on behalf of

Ms. Baile upon the latter's request, and approved by Usec. Lao and Atty. Uayan. The said price analysis became the principal basis for the increase in the unit price of the laptops and a decrease in the quantity, which then led to the overpricing of the laptops during the bidding proper. Significantly, Ms. Baile issued the RAD dated 26 March 2021 addressed to DepEd containing the higher ABC unit price of Php58,300.00, and which was signed by Director Abanil and approved by Usec. Pascua.

315. All told, from the foregoing discussion, it is clear that Mr. Amil's role is the most extensive, the price market analysis that he prepared was the basis for the increase in the unit price of the approved budget of contract which in turn led to a decrease in the quantities. The Committee notes on the other hand, that the participation of Ms. Baile and Mr. Gabilo is nominal. Moreover, their demeanor during the Blue Ribbon hearings indicate candor premised on their apparent belief that their participation in the process related to mere administrative measures which have no bearing on the outcome of the procurement process. Thus, the Committee is constrained to hold that in this group only Mr. Amil acted with evident bad faith, manifest partiality and gross inexcusable neglect in the performance of his official functions.
316. While there may be no sufficient basis to recommend an investigation for a criminal offense at this time against Ms. Baile and Mr. Gabilo, the Committee notes and reminds them that they are occupying positions which places them in close proximity to the proceedings under inquiry such that they could have raised the alarm and registered an objection to any manipulation of the process, particularly to the raising of the unit cost of the laptops to be procured, but they failed to do so. On this basis, **they are given an admonition and a stern reminder** that they are bound by their oath of office and under a strict duty to prevent any illegal or improper acts from being perpetrated against the government, especially those that seek to defraud the people of a huge sum of money, and should they fail in this duty in the future, they can be held accountable as well.

Ulysses Mora and the members of the PS-DBM SBAC I, the Chairperson and members of the SBAC TWG, and the SBAC Secretariat.

317. Mr. Mora and the members of the PS-DBM BAC, the members of the TWG and the Secretariat knew at the time of the commencement of the procurement process of the laptops that no MOA between DepEd and PS-DBM had been executed. In fact, Mr. Mora admitted during a Committee hearing that on 10 May 2021, when the Invitation to Bid was posted, he inquired regarding the DepEd and PS-DBM MOA and learned that none was yet in place.³¹⁵ Despite this knowledge, Mr. Mora, acting upon specific instructions of Usec. Lao and Atty. Uayan, proceeded with the procurement activities for the laptops. As earlier discussed, an existing 2017 MOA covered separate procurement projects and cannot support the subject 2021 laptop procurement project.
318. Verily, the following facts are evident from the evidence presented during the Committee hearings:
- a. Mr. Mora, as chairman of the PS-DBM SBAC I, and the members of the SBAC TWG and the SBAC Secretariat, knew fully well that at the time the Invitation to Bid for the 2021 laptop procurement project was posted on 10 May 2021, no MOA has been executed between DepEd and PS-DBM authorizing the latter as procurement agent for the laptop procurement project;
 - b. Despite said knowledge, Mr. Mora, the members of the PS-DBM SBAC I, the SBAC TWG and the SBAC Secretariat, acting under specific instructions of Usec. Lao and Atty. Uayan proceeded with the procurement project and related activities without specific authority as an agent.
 - c. Further, in his capacity as chairperson of the PS-DBM SBAC I, Mr. Mora supervised the bidding stage of the procurement process for the laptops. Mr. Mora, together with the members of the PS-DBM SBAC I, the SBAC TWG and the SBAC Secretariat, had sufficient opportunity to review the bidding documents and other materials submitted to their respective committees or bodies before the bidding proper stage. Despite clear indications from these documents that the earlier manipulations during the planning stage resulted in specifications being lowered, the unit cost increased and the relevant quantity reduced, they

³¹⁵ TSN, 8 September 2022, 169-175

proceeded to implement the bidding activities. Significantly, it was Mr. Mora's vote which literally gave the Joint Venture the contract when he broke the tie on three important issues concerning the post disqualification of the Joint Venture. Worse, notwithstanding the grossly overpriced bid of the winning consortium in the amount of Php58,270.00 for the entry-level laptops, they proceeded to issue notice of awards and notice to proceed, all approved by their superior Atty. Uayan.

319. The foregoing clearly indicates that Mr. Mora and the members of the PS-DBM SBAC, the SBAC TWG and the SBAC Secretariat acted with evident bad faith, manifest partiality and gross inexcusable neglect.

Conspiracy to defraud the government

320. To fully determine liability, there is a necessity to evaluate, beforehand, whether or not there was a conspiracy among the officials of the DepEd and the PS-DBM which led to the overprice of the subject laptops. The Committee is much aware of jurisprudence which emphasizes that conspiracy is not presumed and that elements of conspiracy, like the physical acts constituting the crime itself, must be proven beyond reasonable doubt. However, there are other cases more relevant and directly applicable to the matters under investigation.

321. In the case of ***Dugayon vs. People***,³¹⁶ citing the case of ***Alvizo vs. Sandiganbayan***,³¹⁷ the Supreme Court reiterated what has long been the rule applied to define conspiracy in corruption cases, thus:

"Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be inferred by the court from proof of facts and circumstances which, taken together,

³¹⁶ G.R. No. 147333. August 12, 2004

³¹⁷ G.R. Nos. 98494-98692, 17 July 2003

apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only."
(underscoring supplied)

322. The aforesaid rulings prescribe the following general guidelines pertaining to conspiracy:

- a. No need for direct evidence to prove conspiracy in corruption cases.
- b. Assent of minds attendant to conspiracy may be proven by facts and circumstances which though separate are actually part of a complete whole.
- c. There is conspiracy when two or more persons acting separately but their acts indicate that they aimed to accomplish the same object, and these acts, though separate and independent, were in fact connected and cooperative which tend to establish closeness of association and concurrence of sentiments.

323. In the relevant case of ***Domingo vs. Sandiganbayan***, G.R. No. 149175, October 25, 2005, the Supreme Court applied general principles of conspiracy in a corruption case, particularly emphasizing that conspiracy can be established through a "chain of circumstances", and that once established, all conspirators are equally liable on the basis of the principle that the act of one is the act of all:

"Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt

act leading to the crime committed. To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances. Once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them, for in contemplation of the law the act of one is the act of all." (underscoring supplied)

324. On the basis of these guidelines, the Committee finds sufficient basis to believe that there was indeed a conspiracy to facilitate and/or generate an overprice which indicates manifest partiality, evident bad faith, and/or gross inexcusable neglect on the part of senior officials and staff of the DepEd and the PS-DBM. The following series of acts or omissions attributed to said officials and staff of the DepEd and PS-DBM, established during the Blue Ribbon hearings, support the Committee's finding of a conspiracy:
- a. On 18 February 2021, Usec. Sevilla (as finance service head) and Usec. Pascua (as head of procurement) obligated the amount of Php2.4 billion for the procurement of laptops for teachers even without a MOA creating an agency relationship between DepEd and PS-DBM for procurement purposes as required by Rule 7.7.3 of the IRR or RA No. 9184.
 - b. Realizing this legal infirmity, Usec. Sevilla, working with EA Ladanga, the members of DepEd-PS DBM task force under her supervision, hastily finalized the DepEd-PS-DBM MOA in May 2021, and had it signed by Secretary Briones and Usec. Lao, representing their respective agencies, all between 28 May 2021 and 2 June 2021; then had it notarized and backdated to 16 February 2021 -- evidently, to provide legal basis for the obligating of the funds on 18 February 2021.
 - c. In March of 2021, Mr. Amil, under the supervision of Usec. Lao and Atty. Uayan, conducted a market analysis which led to the increase in the unit cost of the laptops to be procured from

Php35,036.50 to Php58,300.00. The same analysis also led to the reduction of the laptops to be procured from 68,500 to approximately 39,583 units. The Committee notes that the quotation that was adopted as the increased unit cost was the price submitted by a company called VST ECS which eventually surfaced as a member of the Joint Venture consortium to whom the contract was awarded.

- d. The approval process for said adjustments were then forwarded to DepEd in the form of RAD, which significantly was also dated 26 March 2021, same date as the Price Analysis Report. The said RAD was addressed to Director Abanil. Director Abanil signified his conformity to the said adjustments by signing the document and specifically checking the option to "reduce quantity/ies". The Committee notes that when Director Abanil approved the option to reduce quantities, it also had the effect of approving the increase in the unit cost component of the ABC.
- e. Usec. Pascua then approved the changes reflected in the RAD. Thereafter, he prepared an agency purchase request or an APR which he submitted to Secretary Briones. He however disguised the crucial changes in the following manner: 1) by dividing the reduced number of laptop units into lots without stating the total, and, 2) under the column requiring the estimated unit cost, he instead stated the total project cost of Php2.4 billion. Secretary Briones approved the said APR, apparently without the benefit of relevant facts that would have alerted her as to the true intention behind the adjustments.
- f. The new bidding parameters, i.e. lower quantity and higher unit price, were reflected in the bidding documents and was used in the bidding process managed by Mr. Mora and the members of the bids and awards committee, and these parameters facilitated the overprice and the consequent undue injury and gross disadvantage to the government.
- g. The Committee also notes that the PS-DBM SBAC I led by Mr. Mora commenced the bidding process for the laptops in the absence of a MOA that would have created an agency relationship between DepEd and PS-DBM to authorize the procurement as required by the Revised IRR of RA No. 9184.

- h. Moreover, the SBAC led by Mr. Mora manifested undue haste when they issued the NOA without waiting for the expiry of the period within which the parties aggrieved by the decisions of the BAC could file a protest. This constitutes both a violation of relevant procurement rules and a clear denial of due process.
 - i. After the award and during the period of contract implementation, Atty. Uayan, Usec. Pascua and Dir. Abanil approved a series of requests for extensions to deliver the laptops, requests to change payment terms, and other adjustments to the contract terms and conditions which, taken together, betray an unusually deferential treatment and favor towards the Joint Venture consortium.
325. On the basis of the foregoing pattern, there is sufficient basis to believe that the aforementioned officials of the DepEd and the PS-DBM, by their seemingly separate but concerted acts as detailed above, engaged in a conspiracy to create an opportunity for favored bidders to submit bloated and excessive bids leading to an overprice in the purchase of the laptops.
326. The final element of the offense defined under Section 3(e) of the Anti-Graft and Corrupt Practices Act involves the inquiry as to whether the conspiracy and the respective acts of the conspirators have caused injury to the government or gave unwarranted benefits, preference or advantage to any party. The Blue Ribbon Committee submits, from the comprehensive review of the evidence presented during the hearings, that such undue injury was indeed caused to the government to the extent of the amount of the overprice, computed earlier in this report as amounting to at least Php 979 Million Pesos, and also gave unwarranted benefits, preference and advantage to the Joint Venture consortium composed of Sunwest, VST ECS and LDL Marketing.
327. The Blue Ribbon Committee considers as credible the testimony of Mr. Job Aguirre, the team leader of the COA team for the DepEd who conducted the audit of the procurement transaction for the laptops. Mr. Aguirre stated during a Committee hearing that the transaction was subjected to audit because the implementation of the Bayanihan Fund 2 was identified as an area for a compliance audit and was

reported in the Consolidated Annual Audit Report during the year. Mr. Aguirre categorically stated that the laptops were overpriced citing COA Circular 2012-003 dated 29 October 2012. He further provided data as to how much similar laptops would cost in the open market, this is crucial to determine the extent of the overprice and the consequent injury, damage and gross disadvantage to the government.

328. Regarding the aforementioned benefits, preference and/or advantage, the Supreme Court defined "unwarranted" in the case of **Gallego vs. Sandiganbayan**,³¹⁸ as "unjustified, unauthorized, or without justification or adequate reason". In other words, the conspiracy to defraud the government as detailed in this Report led to the giving of unjustified, unauthorized and undeserved benefits, preference or advantage to the Joint Venture consortium. In this regard, further fact-finding investigation is highly recommended to gather relevant facts and determine the possible existence of collusion between the representatives of the Joint Venture consortium partners and the public officials earlier identified.
329. At this point, we examine the element that the government suffered undue injury as a result of the conspiracy. In the case of **Santos vs. People**,³¹⁹ the Supreme Court equated undue injury with the civil law concept of "actual damage". As the Supreme Court explained in the case of **Llorente vs. Sandiganbayan**,³²⁰ the undue injury must be specified, quantified and proven to the point of moral certainty, thus:

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

³¹⁸ G.R. No. L-57841, July 30, 1982

³¹⁹ G.R. No. 161877, March 23, 2006

³²⁰ G.R. No. 122166, March 11, 1998

The Blue Ribbon Committee is convinced from the evidence on record, guided by the aforementioned ruling, that undue injury was indeed caused to the government by the conspiracy in the amount of at least Php 979 million pesos.

330. Accordingly, the Blue Ribbon Committee finds sufficient basis to recommend to the Office of the Ombudsman that a complaint be filed against the identified officials of the DepEd and PS-DBM, and a full investigation be conducted to determine whether or not said officials and possible private sector conspirators, are liable for a violation of Section 3(e) of RA No. 3019, and for the administrative offenses of grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service arising from the same acts or omissions.

B. VIOLATION OF SECTION 3(G) OF REPUBLIC ACT NO. 3019

331. Section 3(g) of RA 3019 defines the following as an offense:

xxx

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby. (underscoring supplied)

332. The elements of this offense are as follows:

1. The offender must be a public officer.
2. He or she entered into a contract or transaction in behalf of the government; and
3. The contract or transaction is manifestly and grossly disadvantageous to the government.³²¹

333. The Supreme Court explains the substance of a Section 3(g) offense and restates its elements in the case of ***Presidential Commission***

³²¹ Presidential Ad Hoc Fact Finding Committee on Behest Loans vs Desierto, G.R. No. 135703, April 15, 1989

on Good Government vs. Office of the Ombudsman, G.R. No. 193176, 24 February 2016, thus:

"On the other hand, Section 3 (g) of RA 3019 does not require the giving of unwarranted benefits, advantages or preferences to private parties who conspire with public officers, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government. The elements of the offense are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. (underscoring supplied)

334. To be liable for a violation of Section 3(g) of RA No. 3019, there must be a showing that a contract was entered into by a public officer on behalf of a government agency and that said contract contains terms and conditions which are grossly disadvantageous to the government.
335. Foremost, the fact that Atty. Uayan entered into a contract with the Joint Venture consortium represented by Mr. Froilan V. Domingo and Mr. Christopher Tionson is not disputed.³²² Extensively discussed earlier in this Report is the finding of this Committee that the consideration for the laptop procurement is grossly overpriced by at least Php 979 Million Pesos. The evidence submitted by the COA, read together with the documents provided by the BOC, clearly indicates that the unit price of the laptops, if procured in the open market, should have been in the range of Php32,000.00 to Php 35,000.00. Accordingly, the overprice was established to the satisfaction of this Committee to be approximately Php24,741.93 as computed in this Report. The overprice, or the amount paid by the DepEd in excess of what the laptops would have cost if bought in the open market clearly constitutes gross disadvantage to the government.
336. Since the contract signed by Atty. Uayan, and Mr. Froilan V. Domingo and Mr. Christopher Tionson, representing the Joint Venture

³²² Purchase dated

consortium, clearly caused the government to pay an excessive and overpriced amount for the laptops, there is basis to recommend that an investigation be conducted against them and other officials and/or private parties, earlier identified to have engaged in a conspiracy, for violation of Section 3(g) of RA No. 3019.

337. A final word on this point. The public officials involved in this procurement transaction separately tried during the Committee hearings to either deflect attention away from themselves, i.e. Usec. Sevilla repeatedly stating that she handles only finance and has nothing to do with procurement, or flatly disavowing involvement in any act of approval or assent, i.e. Usec. Pascua and Asec. Malana stating that they did not approve or sign anything, or others plainly stating that they were performing their functions as required by law in good faith. These self-serving denials by principal resource persons from DepEd and PS-DBM were characterized by some members of the Committee as a game of basketball where "the ball gets passed around". In this regard, the apt commentary of Justice J.B.L. Reyes in the case of **Luciano vs. Estrella**,³²³ reminds that Section 3(g) is *malum prohibitum*, that the law punishes not only acts which are unlawful or corrupt *per se*, but those that may lead to or result in graft and corruption. The pertinent portion of Justice J.B.L. explanation is quoted under:

"Second, herein respondent municipal officials were charged with violation of Republic Act 3019 under its Section 3(g), or specifically, for having entered, on behalf of the government, into a contract or transaction manifestly and grossly disadvantageous to the government. It is not at all difficult to see that to determine the culpability of the accused under such provision, it need only be established that the accused is a public officer; that he entered into a contract or transaction on behalf of the government; and that such contract or transaction is grossly and manifestly disadvantageous to that government. In other words, the act treated thereunder partakes of the nature of a malum prohibitum; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in

³²³ G.R. No. L-31622, August 31, 1970

consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain acts of Republic officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that the law does not merely contemplate repression of acts that are unlawful or corrupt per se, but even of those that may lead to or result in graft and corruption. (underscoring supplied)

**C. FALSIFICATION COMMITTED BY A PUBLIC OFFICER,
BY ALTERING TRUE DATES, DEFINED AND PENALIZED
UNDER ARTICLE 171 (5) OF ACT NO. 3815, AS
AMENDED, OTHERWISE KNOWN AS THE REVISED
PENAL CODE**

338. Article 171 of the Revised Penal Code provides for the crime of Falsification by a public officer who, taking advantage of his or her official position, shall commit the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. **Altering true dates;**
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book. (underscoring supplied)

339. The elements of such an offense are as follows:

1. The offender must be a public officer.
2. He or she must take advantage of his official position; and

3. He or she has committed any of the acts enumerated under the law, and relevant to this investigation, he or she must have altered true dates.
340. It has been proven through the testimony and sworn statement of Dir. Bragado that the MOA was actually executed between May 28 and June 2, 2021 -- but antedated to 16 February 2021. While there is some doubt as to who gave the order to antedate the MOA, it is clear to the Committee that Usec. Sevilla, Mr. Ladanga, and some members of the DepEd PS DBM task force were directly involved in the process leading to the said antedating.
341. *First*, there is no doubt that Usec. Sevilla, Mr. Ladanga, and the members of the DepEd Task Force are public officials employed by the DepEd. *Second*, the said officials have clearly taken advantage of their official functions considering that they could not have committed the alleged falsification were it not for their official position and functions. *Third and most important*, the group had conspired to falsify the DepEd PS-DBM MOA by altering the true date of signing, and antedating it to 16 February 2021.
342. Among the identified officials, however, Usec. Sevilla had an observable motive, that is -- to provide legal cover for her hasty act of supervising the obligating of Bayanihan 2 funds for the procurement of laptops before a MOA between DepEd and PS-DBM was actually signed. Verily, the aforementioned officials, except Dir. Bragado, who was granted use immunity by the Committee, must be investigated and held accountable for the crime of Falsification Committed by Public Officials.
343. While the efforts of Director Bragado to present himself as a witness of the Committee deserves commendation, it must also be noted that he could have raised an alarm at an earlier time and prevented the antedating of the document. As the records will show, he was part of a group chat, and the record of message exchanges from this social media group indicates that he was part of conversations involving Usec. Sevilla, EA Ladanga and members of DepEd task force regarding a premeditated plan to antedate the MOA. Thus, he is reminded that his oath of office as a public official requires him to protect the interests of government at all times and to prevent any form of illegal or

fraudulent acts which seeks to defraud the public coffers, and while he is protected by immunity granted by the Committee at this time, his failure to timely do so in the future will merit a more severe treatment and the appropriate sanction.

D. VIOLATION OF SECTION 3(A) OF RA NO. 3019

344. Section 3(a) of RA 3019 defines the following as an offense:

"(a). *Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.*" (underscoring supplied).

345. The elements of this offense are as follows:

1. The accused must be a public officer;
2. He or she must have persuaded, induced or influenced another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter; and
3. He or she allowed himself or herself to be persuaded, induced or influenced to commit such violation or offense.

346. There are two types of possible offenders for a Section 3(a) offense, the one who persuades, induces or influences, and the one who is persuaded, induced or influenced. In other words, the persuader and the one persuaded are equally guilty of this offense.

347. In a resolution of the Supreme Court entitled, ***"Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Courts of Bayombong and Solano and the Municipal Circuit Trial Court, Aritao-Sta. Fe, All in Nueva Ecija"***, A.M. No. 05-3-83-MTC. October 9, 2007, Judge Alexander Balut was found to have

borrowed money from court funds and thus knowingly made clerks of court violate circulars on the proper administration of court funds. Thus:

"The records show, prima facie, that Judge Balut dismally failed to discharge his responsibility. Worse, by "borrowing" money from the court funds, he knowingly made the clerks of court violate circulars on the proper administration of court funds. However, considering that Judge Balut was not given proper opportunity to explain his side on the results of the financial audit, we cannot, in the present case, justly rule on any administrative liability that he may have incurred.

Nevertheless, his signatures on the withdrawal slips as recipient of the cash withdrawn from the funds with MCTC, Aritao-Sta. Fe, and on the deposit slips; the certification which he made regarding his accountability; the certifications made by the involved clerks of court to the effect that he had settled his accountabilities, when taken with the statements of Salimpade, Esconde and Ramos that he asked for and was handed sums of money from the funds in their custody, constitute sufficient basis for the initiation of criminal cases against him, in particular for violation of Republic Act No. 3019, Section 3 (a)." (underscoring supplied)

348. It was earlier discussed in this report that the DepEd PS-DBM MOA was falsified by altering true dates, apparently facilitated by the group of Usec. Sevilla, Mr. Ladanga, and some members of the DepEd task force, acting in concert and in conspiracy with one another. It was also noted that of those identified as having facilitated the antedating of the said document, Usec. Sevilla had the clearest motive, as said antedating was apparently intended, given the proximity of the dates, i.e. February 16 and 18, to justify or support the obligating of Bayanihan 2 funds for the procurement of the laptops.

349. Thus, it is probable that Usec. Sevilla, given a possible motive and her senior rank in the DepEd hierarchy, could have persuaded Mr. Ladanga and the members of the task force to cause the antedating of the document, a clear violation of the Revised Penal Code, the Notarial

Law, and regulations issued by the Supreme Court, and the latter may have allowed themselves to be so persuaded. In any event, there is sufficient ground to investigate the said officials for violation of Section 3(a) of RA No. 3019.

***E. USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS
DEFINED BY ARTICLE 177 OF THE REVISED PENAL CODE,
AS AMENDED***

350. The evidence presented during the Blue Ribbon hearings indicate that Usec. Lao, in signing the DepEd PS-DBM MOA on 28 May 2021, may have violated Article 177 of the Revised Penal Code, as amended (RPC).

351. Article 177 of the Revised Penal Code, as amended by RA No. 379, states:

*"Art. 177. Usurpation of authority or official functions. — Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prision correccional in its minimum and medium periods."
(Amendment to Article 177 of the Revised Penal Code Re: Usurpation of Authority, Republic Act No. 379, [June 14, 1949])*

352. There are two types of offenses defined in Article 177. The first is usurpation of authority, and the second one is usurpation of official functions. Under the first, the public official, under false pretenses, misrepresents himself to have authority while in the second mode, the public official performs a function which pertains to another person in

authority. Thus, in the case of ***Degamo vs. Ombudsman***,³²⁴ the Supreme Court explained how these two types of crimes are committed:

"The crime of usurpation of official functions punishes any person who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so.

Under Article 177 of the Revised Penal Code, as amended, the elements of the crime of usurpation of official functions are when a person: (1) performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof; (2) acts under pretense of official position; and (3) acts without being lawfully entitled to do so. (underscoring supplied)

353. In the case of ***Ruzol vs. Sandiganbayan***,³²⁵ the Supreme Court further explained the two modes of committing the offense defined under Article 177 of the RPC, thus:

"As the aforementioned provision is formulated, there are two ways of committing this crime: first, by knowingly and falsely representing himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; or second, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so. The former constitutes the crime of usurpation of authority, while the latter act constitutes the crime of usurpation of official functions.

³²⁴ G.R. No. 212416, December 5, 2018

³²⁵ G.R. Nos. 186739-960, April 17, 2013

354. When Usec. Lao signed the DepEd PS-DBM MOA on 28 May 2021, he was no longer an official of the PS-DBM. He testified under oath during a hearing of the Committee that he left the PS-DBM on 28 April 2021.³²⁶ He also admitted under oath that he did not appear before Notary Public Crisologo to sign the subject MOA.³²⁷ On this basis, he clearly committed the crime of Usurpation of Official Functions by performing an act which pertains to the Executive Director of PS-DBM, who, at that time, was Atty. Uayan, and without the legal authority to do so. Since Atty. Uayan facilitated the commission of the offense by Usec. Lao, he is considered a co-conspirator and should be investigated for the same offense as well.

F. PERJURY IN SOLEMN AFFIRMATION DEFINED AND PENALIZED UNDER ARTICLE 183 OF THE REVISED PENAL CODE.

355. The crime of Perjury in solemn affirmation is defined and penalized under Article 183 of the Revised Penal Code, as amended by Republic Act No. 11594, thus:

Article 183. False testimony in other cases and perjury in solemn affirmation. — The penalty of prision mayor in its minimum period to prision mayor in its medium period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein: Provided, That if the person responsible for the commission of this felony is a public officer or employee, the penalty shall be imposed in its maximum period: Provided, finally, That the offender shall also suffer a fine not to

³²⁶ TSN, 25 August 2022, pages 88-89

³²⁷ TSN, 15 September 2022, page 23

exceed One million pesos (P1,000,000.00) and perpetual absolute disqualification from holding any appointive or elective position in the government or in any agency, entity or instrumentality thereof."

356. The elements of Perjury, culled from Article 183 of the Revised Penal Code, are as follows:

1. The accused made a statement under oath or executed an affidavit upon a material matter;
2. The statement or affidavit was made before a competent officer authorized to receive and administer oaths;
3. In the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and,
4. The sworn statement containing the falsity is required by law or for a legal purpose."³²⁸

357. In the course of the Blue Ribbon Committee hearings, and as established by the record, the following public officials made various untruthful statements under oath on at least two relevant and material matters, thus:

1. Usec. Sevilla, Usec. Pascua, Executive Director Lao and Atty. Uayan made statements under oath on a material matter to the effect that the MOA was actually signed or executed on 16 February 2021, as dated, and was existing as of said date.
2. Usec. Sevilla, Usec. Pascua, and Asec. Malana made statements during the hearings under oath, and in their sworn statements or memoranda, likewise on a material matter, to the effect that they are neither part of the laptop procurement process, nor privy to any proceedings leading to the procurement of the laptops.

358. The evidence presented to the Blue Ribbon Committee, over the course of its investigation, serve to belie and disprove the aforementioned statements, among others. *First*, the evidence presented by Dir. Bragado to the Committee proves that the 2021 MOA was actually

³²⁸ Reyes, Luis B., The Revised Penal Code Book II, p. 272, 1998 Ed.

signed on 28 May 2021, and notarized subsequently thereafter. Even Asec. Malana admitted during the Committee hearing on 29 September 2022 that as of 5 May 2021, no MOA was in existence. Thus, it is clear that the statements made by Usec. Sevilla, Usec. Pascua, Executive Director Lao and Atty. Uayan regarding the 2021 MOA were outright lies and untruthful statements.

359. *Second*, the Blue Ribbon is convinced from the strong evidence presented to the Committee that Usec. Sevilla, Usec. Pascua and Asec. Malana were deeply involved, in one way or another, in the laptop procurement process. Thus, their statements made under oath, apparently designed to divert blame and evade accountability for their acts or omissions, are likewise untruthful statements.
360. All told, all the elements for the crime of Perjury in Solemn Affirmation exist and the aforementioned officials should be investigated to determine their culpability for the said offense.

**G. ADMINISTRATIVE OFFENSES UNDER
SECTION 50 (A)(1-3) & B (8)
OF THE RULES OF ADMINISTRATIVE CASES IN THE
CIVIL SERVICE (RACCS)**

361. Competent evidence submitted to the Committee indicate that identified public officials from DepEd and PS-DBM may have committed the administrative offenses of Grave Misconduct, Serious Dishonesty, Gross Neglect of Duty, and/or Conduct Prejudicial To The Best Interest of the Service under Section 50 (A)(1-3) and (B) (8) of the *2017 Rules of Administrative Cases in the Civil Service* or the "RACCS".
362. The RACCS classifies these offenses as grave and made punishable by dismissal from the service. Further, Section 57 (a) of the RACCS, provides that the penalty of dismissal from the service shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking Civil Service examination.

363. Grave Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self. (***Fajardo vs. Corral***, G.R. No. 212641, July 5, 2017)
364. Gross Neglect of Duty refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable. (***GSIS vs. Manalo***, G.R. No. 208979, September 21, 2016)
365. Dishonesty is defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. (***Fajardo vs. Corral***, G.R. No. 212641, July 5, 2017) CSC Memorandum No. 13, Series of 2021 classifies dishonesty as serious, less serious or simple. Dishonesty is considered serious if any of the following attended the commission:
- a. The dishonest act caused serious damage and grave prejudice to the government such as when the integrity of the office is tarnished, or the operations of the office are affected.
 - b. The respondent gravely abused his/her authority in order to commit the dishonest act.
 - c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he/she is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.

d. The dishonest act exhibits moral depravity on the part of the respondent whether or not said act was committed in the performance of his/her duties.

366. Conduct Prejudicial to the Best Interest of the Service is the unwarranted act of a public official; it refers to an act or acts of a public officer which "tarnished the image or integrity of his or her office." While there is no concrete definition under civil service laws of conduct prejudicial to the best interest of the service, the following acts or omissions have been treated as such: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safekeep public records and property; making false entries in public documents (i.e., PDS); falsification of court orders; a judge's act of brandishing a gun, and threatening the complainants during a traffic altercation, among others. (*Civil Service Commission v. Rodriguez*, G.R. No. 248255, August 27, 2020)

367. On the basis of the earlier discussions, there is sufficient ground to recommend, concurrent with the investigation of the violations of the relevant penal statutes, that an investigation for the foregoing administrative offenses be opened and conducted to determine administrative liability, particularly for those officials still in government service over which the proper investigative body can acquire jurisdiction.

**H. LIABILITY FOR RESTITUTION, REPARATION AND/OR
REPAYMENT FOR THE OVERPRICE IN THE AMOUNT OF AT
LEAST PHP 979 MILLION PESOS**

368. Section 4 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, (PD No. 1445) states that all financial transactions and operations of any government agency shall be governed by the following fundamental principles:

1. No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.

2. Government funds or property shall be spent or used solely for public purposes.
3. Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.
4. Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency.
5. Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.
6. Claims against government funds shall be supported with complete documentation.
7. All laws and regulations applicable to financial transactions shall be faithfully adhered to.
8. Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations. (underscoring supplied)

369. In the COA DEPED Report 2021, COA identified the following deficiencies:

1. The price per unit is pricey for an entry-level type of laptop which resulted in significant decrease in the number of units provided with the intended users;
2. Lacking documentary requirements to support the fund transfer to DBM-PS amounting to P2.4 billion”;
3. Non-posting of the notices, cont[r]act award[,], and other documents on DepEd’s official website”;
4. Non-submission of required documents for awarded procurement contract per COA circular No. 2009-001”;

5. The fund of P2.4 billion transferred to DBM-PS remained unliquidated at year end due to non-submission of supporting documents by the DBM-PS to DepEd.”
370. On the basis of the foregoing, the identified officials of DepEd and PS-DBM clearly contravened, or failed to comply with most of the foregoing fundamental principles. In the interest of transparency and full accountability, those involved in allowing the payment of the sizable overprice should be investigated and brought to account for the anomaly, should evidence so warrant.
371. The long-standing rule is that public officials found to have abused, misused or misappropriated public funds shall be liable in their personal capacity for restitution or reparation of said funds when these were lost in the process. Section 103 of PD No. 1445 states that “Expenditures of government funds or uses of government property in violation of law and regulations shall be a personal liability of the official or employee found to be directly responsible therefor.” Section 105 of the said law provides that “Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible.”
372. There is basis therefore for the COA to disallow the full overprice of at least Php979 million pesos, and to file civil actions for collection of sums or money and damages against the concerned officials of the DepEd and the PS-DBM for their involvement in a conspiracy to defraud the government in the said amount through the purchase of entry-level, outdated and overpriced laptops.

VI. SUMMARY OF RECOMMENDATIONS.

WHEREFORE, the Blue Ribbon Committee, after a careful review and due consideration of the evidence presented during the five (5) hearings conducted on 25 August 2022, 8 September 2022, 15 September 2022, 29 September 2022 and 20 October 2022, and the documents submitted to the Committee Secretariat, hereby recommends the following:

I. RECOMMENDATIONS FOR LEGISLATION AND REMEDIAL ADMINISTRATIVE MEASURES

- A. **Abolition of the PS DBM.** In the wake of procurement anomalies involving officials and staff of the PS-DBM, there is an urgent need to abolish this office and require government departments, agencies and instrumentalities to conduct their own procurement using their own staff in compliance with the provisions of RA No. 9184 and its implementing rules and regulations. Congress appropriates money for specific government programs and projects and mandates that government departments exercise good stewardship in the disbursement of such funds. In the interest of accountability, government departments, agencies and instrumentalities, including local government units, GOCCs and state colleges and universities, must directly supervise the process of procurement which will lead to the disbursement of public funds. Accountability for public funds reside in the government agency or instrumentality to whom public funds have been appropriated as a matter of principle, thus they should not be allowed to abdicate and pass on this responsibility and accountability by delegating the authority to conduct and approve public procurement projects.
- B. **Greater transparency and accountability for joint venture corporations participating in public bidding.** It is the Committee's recommendation that Rule VIII, Section 23 of the RA No. 9184 IRR portion on eligibilities be revised to require more accountability for joint venture corporations or joint venture arrangements by requiring them to be incorporated and to show compliance with the SLCC and NFCC requirements of the law in their own right; or in case of an unincorporated joint venture, that each member of the joint venture be required to comply individually with the SLCC and NFCC requirements of the law. In addition, the IRR should be amended to ensure that the joint venture arrangements, whether incorporated or unincorporated, be continuously accountable for their warranties under their contract. Finally, it is likewise recommended that joint venture partners be required to submit their Income Tax Returns for the past period, if they have done business before with the government, as a deterrent against possible bribery and/or any illicit payments for special favor or preference.

- C. **Transparency and accountability guidelines for procurement planning activities.** It is also recommended that RA No. 9184 be amended to provide more transparency and accountability in the process of setting the approved budget of contract or the ABC, including the unit cost and quantity components thereof, and the preparation of technical specifications or goods, services or infrastructure to be procured. Among others, the procedure for the preparation of the ABC and technical specifications should be transparent, closely supervised by a senior official, subject to audit, and should abide by clear guidelines and internal controls.
- D. **Recovery of the overprice and the proceeds to be placed in a special National Teachers Trust Fund for the benefit of teachers.** The DepEd is urged to coordinate with the Office of the Ombudsman and the Office of the Solicitor General to initiate legal action under existing laws and regulations to recover the amount of the overprice as proceeds of corruption, and the amount of recovered proceeds be placed in a special National Teachers Trust Fund to be created by law for the benefit of teachers, and to augment existing provident funds to support their health and medical needs and the educational needs of their children through a special scholarship program.
- E. **COA Special Fraud Audit.** The Commission on Audit is urged to immediately commence a special fraud investigation into the matter of the overpricing of laptops under the 2021 Deped Laptop Procurement Project, and to submit a special audit investigation to the Office of the Ombudsman for its appropriate action, with a copy furnished to the Senate and the House of Representatives, through the Senate Blue Ribbon Committee and the House Committee on Accountability and Good Governance, if possible and practicable, within sixty (60) days from the receipt of this recommendation.
- E. **Request an AMLC bank inquiry into bank deposits.** Considering that violations of Section 3(e) and 3(g) of RA No. 3019 are predicate offenses for money laundering, the Committee recommends the referral of this Committee Report to the Anti-Money Laundering Council Secretariat for appropriate action with a strong recommendation for the AMLC to initiate an investigation of possible money laundering activities of public officials identified in this

investigation, including an inquiry into their bank deposits, if the law or the evidence so warrants.

- F. **Request for a Special Tax Compliance Audit.** Building on the findings expressed in this report, the Bureau of Internal Revenue is requested to conduct a special tax compliance review or a tax fraud audit inquiry to determine whether the proper taxes were paid on the income of the Joint Venture consortium partners, and that a report with specific recommendations be prepared and submitted to the Senate Blue Ribbon Committee, the Office of the Ombudsman, the Commission on Audit and the AMLC, if possible and practicable, within sixty (60) days from receipt of this recommendation.

II. RECOMMENDATIONS FOR THE FILING OF CRIMINAL AND ADMINISTRATIVE CASES AGAINST THE OFFICIALS OF THE DEPARTMENT OF EDUCATION AND PROCUREMENT SERVICE - DEPARTMENT OF BUDGET AND MANAGEMENT

It is recommended that the following criminal, administrative and civil complaints and/or charges be filed against officials of the DepEd and the PS-DBM, and the proper investigation be conducted to determine relevant responsibility and accountability, as follows:

1. **One (1) count of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act,** against the following officials of the Department of Education:
 - a. Former Undersecretary Alain del B. Pascua
 - b. Undersecretary Annalyn M. Sevilla
 - c. Former Assistant Secretary Salvador C. Malana III
 - d. Director Abram Y.C. Abanil

the following officials of the Procurement Service of the Department of Budget and Management:

- a. Former OIC Executive Director Lloyd Christopher A. Lao
- b. Former OIC Executive Director Jasonmer L. Uayan

- c. BAC Chairman Ulysses E. Mora as well as the other members of the SBAC I and SBAC TWG and Secretariat, whether from Deped or PS-DBM.
- d. Engr. Marwan O. Amil

and principals, representatives and agents of the Joint Venture consortium partners, or other private parties, who may have colluded and/or conspired, as supported by competent evidence, with the aforementioned officials.

2. One (1) count for violation of Section 3(g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against the following officials of the Department of Education:

- a. Former Undersecretary Alain del B. Pascua
- b. Undersecretary Annalyn M. Sevilla
- c. Former Assistant Secretary Salvador C. Malana III

the following officials of the Procurement Service of the Department of Budget and Management:

- a. Former OIC Executive Director Lloyd Christopher A. Lao
- b. Former OIC Executive Director Jasonmer L. Uayan
- c. BAC Chairman Ulysses E. Mora as well as the other members of the SBAC I and SBAC TWG and Secretariat, whether from Deped or PS-DBM.

and principals, representatives and/or agents of the Joint Venture consortium partners, or other private parties, who may have colluded and/or conspired, as supported by competent evidence, with the aforementioned officials.

3. One (1) count of Falsification of Public Document by a Public Official, defined and penalized under Article 171 of the Revised Penal Code, against the following officials of the Department of Education:

- a. Undersecretary Annalyn M. Sevilla
- b. Former Executive Assistant Alec Ladanga

4. One (1) count for violation of Section 3(a) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against the following officials of the Department of Education:

- a. Undersecretary Annalyn M. Sevilla
- b. Former Executive Assistant Alec Ladanga

5. Multiple counts of Perjury, defined and penalized under Article 183 of the Revised Penal Code, as amended by Republic Act No. 11594, against the following officials of the Department of Education:

- a. Undersecretary Annalyn M. Sevilla
- b. Former Undersecretary Alain del B. Pascua
- c. Former Assistant Secretary Salvador C. Malana III
- d. Former OIC Executive Director Lloyd Christopher A. Lao
- e. Former OIC Executive Director Jasonmer L. Uayan

6. In addition, the following actions are recommended:

- a. That administrative and disciplinary investigations for multiple counts of Grave Misconduct, Serious Dishonesty, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service be likewise initiated against the aforementioned senior officials of the Department of Education and the Procurement Service of the Department of Budget and Management, as may be applicable;
- b. That the Commission on Audit issue Notices of Disallowance for the overprice in the purchase of the laptops in total amount of at least Php 979 million against the following officials of the Department of Education:
 1. Undersecretary Annalyn M. Sevilla
 2. Former Undersecretary Alain del B. Pascua
 3. Former Assistant Secretary Salvador C. Malana III
 4. Former OIC Executive Director Lloyd Christopher A. Lao;
 5. Former OIC Executive Director Jasonmer L. Uayan;
 6. Other DepEd and PS-DBM officials that may be shown by

competent evidence to be responsible for government funds or uses of government property in violation of law and relevant regulations.

c. On the basis of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, that civil complaints be initiated against the following officials and personnel of the Department of Education as well as against officials of the Procurement Service of the Department of Budget and Management to collect and recover the value of the overprice in the amount of at least Php 979 million pesos, including accrued interest and damages, and that they be held jointly and solidarily liable therefor:

1. Undersecretary Annalyn M. Sevilla;
2. Former Undersecretary Alain del B. Pascua;
3. Former Assistant Secretary Salvador C. Malana III;
4. Former OIC Executive Director Lloyd Christopher A. Lao;
5. Former OIC Executive Director Jasonmer L. Uayan;
6. Other DepEd and PS-DBM officials that may be shown by competent evidence to be responsible for government funds or uses of government property in violation of law and relevant regulations.

Finally, let a copy of this Committee Report be furnished the Department of Education, the Department of Justice, the Office of the Ombudsman, the Commission on Audit, the Anti-Money Laundering Council, the Bureau of Internal Revenue, the Office of the Solicitor General, and the Bureau of Immigration, for their information and appropriate action, including, but not limited to, the conduct of preliminary investigation and administrative adjudication, a special fraud audit, a tax compliance review or a tax fraud audit, legal action to recover proceeds of corruption, and an investigation of possible money laundering activities of public officials identified in this investigation, if the law and evidence so warrants, as well as the issuance of the proper Immigration Lookout Bulletin Orders (ILBO) against those concerned, when necessary and as provided by law and existing regulations.

Adopted.

Respectfully Submitted:

Chairperson:



FRANCIS N. TOLENTINO

Vice Chairpersons



**RONALD "Bato" M. DELA
ROSA**

**CHRISTOPHER LAWRENCE T.
GO**

ALAN PETER S. CAYETANO

Members:

PIA S. CAYETANO

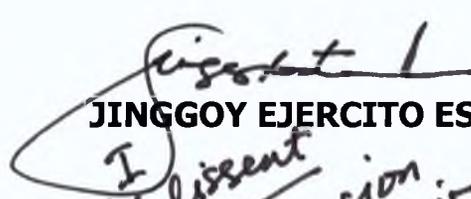
**JUAN EDGARDO "Sonny"
ANGARA**



WIN GATCHALIAN

RAMON BONG REVILLA Jr.

MARK A. VILLAR

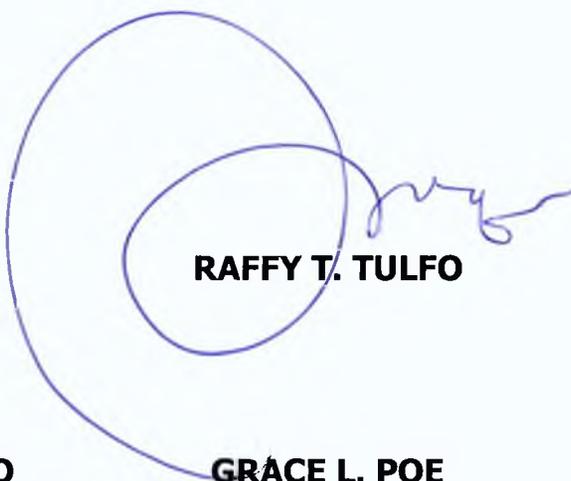


JINGGOY EJERCITO ESTRADA

*I dissent
Pending inclusion
of those who conspired
in awarding contracts
to favored suppliers.
- Will submit dissenting
opinion. P*

with reservations,
Imee R. Marcos

IMEE R. MARCOS



RAFFY T. TULFO



JOSEPH VICTOR G. EJERCITO

GRACE L. POE

MANUEL "Lito" M. LAPID

ROBINHOOD C. PADILLA

Risa Hontiveros
RISA HONTIVEROS

*will interpellate, & may
propose amendments.*

A. Pimentel III
will interpellate;
might supplement

Ex Officio:

**AQUILINO "Koko" PIMENTEL
III**
Minority Leader

JOEL VILLANUEVA
Majority Leader

LOREN LEGARDA
President Pro-Tempore

HON. JUAN MIGUEL "Migz" F. ZUBIRI

President

Senate of the Philippines

Pasay City

Grace Poe
GRACE POE

12/20/22, 10:40 AM

Blue Ribbon Committee Report - Signed (OS Villanueva)

Blue Ribbon Committee Report - Signed (OS Villanueva)

Veron Requejo [osjv.jvrequejo@gmail.com]

Sent: Friday, December 16, 2022 4:35 PM

To: blueribbon; blueribbon1950@gmail.com

Cc: SenatorVillanueva Legis Team [osvillanuevalegis@gmail.com]

Attachments: Blue Ribbon Committee Repo~1.pdf (1 MB)

Dear Committee Secretary,

Please see below the Blue Ribbon Committee Report on PS 120 and 134, signed by Senator Joel Villanueva.

Kind regards,

Veron

IMEE R. MARCOS

RAFFY T. TULFO

JOSEPH VICTOR G. EJERCITO

GRACE L. POE

MANUEL "Lito" M. LAPID

ROBINHOOD C. PADILLA

RISA HONTIVEROS

Ex Officio:

**AQUILINO "Koko" PIMENTEL
III**
Minority Leader

 *"may interpellate"*
JOEL VILLANUEVA
Majority Leader

LOREN LEGARDA
President Pro-Tempore



Blue Ribbon Hearings <blueribbon.hearings@gmail.com>

Re: Blue Ribbon Committee Report - DepEd Laptops

1 message

OSGPLEGIS <osgplegis@gmail.com>
To: Blue Ribbon <blueribbon1950@gmail.com>

Wed, Dec 14, 2022 at 10:26 AM

Good day,

Please see attached e-sig of Sen. Grace Poe for the Committee Report.
Thank you.

On Wed, 14 Dec 2022 at 10:05, Blue Ribbon <blueribbon1950@gmail.com> wrote:
Good day!

As requested, please see attached copy of the committee report on DepEd Laptops.

Thank you.

Blue Ribbon Oversight Office Management
Room 305, 3rd Floor, Senate of the Philippines
GSIS Bldg., Roxas Blvd., Pasay City
Tel. nos. 8552-6851, 8552-6601 local 5112, 5511

 **SGP E-sig.docx**
22K

grace Poe
GRACE POE

12/20/22, 11:14 AM

E-sig of Senator Bong Go

E-sig of Senator Bong Go

Johd Carlos [johdknows@gmail.com]

Sent: Tuesday, December 20, 2022 11:10 AM

To: blueribbon; blueribbon1950@gmail.com

Please affix the e-signature of Senator Bong Go with notation - "with reservations" to the Blue Ribbon committee report on DepEd procurement of laptops.

Thank you.

A handwritten signature in black ink, appearing to be 'Bong Go', written in a cursive style.

with reservations

with reservations

A stylized, handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the text.

Respectfully Submitted:

Chairperson:

FRANCIS N. TOLENTINO

Vice Chairpersons

**RONALD "Bato" M. DELA
ROSA**


**CHRISTOPHER LAWRENCE T.
GO**

with reservations

ALAN PETER S. CAYETANO

Members:

PIA S. CAYETANO

**JUAN EDGARDO "Sonny"
ANGARA**

WIN GATCHALIAN

RAMON BONG REVILLA Jr.

MARK A. VILLAR

JINGGOY EJERCITO ESTRADA

DISSENTING OPINION

With all due respect, allow me to register my contrary view on the following findings contained in the Committee Report, to wit:

1. **OVERPRICE** – The conclusion that there was overprice has no scientific basis. All testimonies relating to cost of the laptops do not approximate the required "apple-to-apple" comparison of delivered items vis-à-vis items available in the market. For one, the DepEd laptops were customized and fully accessorized while the commercially available gadget to which the former have been compared are basic over the counter types. Secondly, given the nationwide distribution of the laptops, shipping costs and other attendant costs like warranties necessarily have been inputted as added costs.
2. **CONSPIRACY** - That there was sufficient basis to believe that there was conspiracy among government officials involved and the suppliers is farthest from the truth. Never in the hearings conducted was there any factual allegation raised that can generate such kind of belief. If at all, such semblance of united design may be attributed only to the procuring officials who, in order not to waste time in tedious paper work, agreed to proceed with the bidding process while firming up the Memorandum of Agreement since all acts may be ratified later by the execution of the MOA, the delivery that actually took place and the payment. What may have been unenforceable or voidable in the beginning have been ratified in the end.
3. **PRICE MANIPULATION** - That there was manipulation in the market survey and analysis resulting in the increase in the ABC is a misleading conclusion. The price increase resulted from, among others, additional requirement for peripherals and accessories which were never considered in the determination of the original ABC.
4. **CRIMINAL INTENT** - To impute criminal intent on the part of the suppliers simply on the bare supposition that there was collusion with the procurement officials is not only unfair and unjust but smacks of abuse of power and discretion on the part of this Committee. There was not a single factual circumstance that was raised and proven during the hearing that can warrant a belief that a conspiracy among the parties ever existed especially one that involved the suppliers.

In view thereof, please consider this to be my DISSENTING VOTE and OPINION.

A handwritten signature in black ink, appearing to be 'Sigsal', written in a cursive style.

**NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**



23 JAN 30 P 4 :19

RECEIVED BY:

SENATE

Investigation of the Committee on Accountability of Public Officers

P. S. Res. No. 120

The alleged overpriced and outdated laptops procured by the DepEd through the PS-DBM

P. S. Res. No. 134

The procurement by the DepEd, through the PS-DBM, of laptops for teachers for use in distance learning

SEPARATE OPINION

The undersigned files this “Separate Opinion” as supplement to the Committee Report filed by our Blue Ribbon Committee (“the Report”) on the investigation regarding the alleged overpriced and outdated laptops procured by the Department of Education (“DepEd”) through the Procurement Service of the Department of Budget and Management (“PS-DBM”).

This was the procurement “flagged” by the Commission on Audit (“COA”) in its 2021 Annual Audit Report for the DepEd.

The undersigned *generally* agrees with the Report but would like to raise the following matters and concerns.

I

While the Report heavily castigated the government officials involved in the procurement of the subject laptops, enumerating the violations of each, it did not touch sufficiently on the “*principals, representatives and agents of the Joint Venture consortium partners, or other private parties, who may have colluded and/or conspired, as supported by competent evidence, with the aforementioned officials*”.

There is little to no discussion on the violations and liabilities of the private parties involved, the ones given the unwarranted benefit.

In the case at bar, there is no doubt that it was the winning bidder who benefitted. The collusion between the government officials involved in the procurement and the winning bidder was evident in the different pieces of evidence presented during the hearings which showed bias in favor of the winning bidder, made manifest through several violations of the mandatory provisions of Republic Act No. 9184 or the Government Procurement Reform Act (“GPRA”), and its 2016 Implementing Rules and Regulations (“IRR”).

Consider the following:

Tailor-fitting of the specifications as well as of the price per unit

The undersigned noticed the tailor-fitting of specifications to that of the winning bidder, Joint Venture of Sunwest Construction and Development Corporation, LDLA Marketing and Trading Inc., and VST ECS Philippines Inc. (hereinafter referred to as “JV of Sunwest Construction”).

The Approved Budget for the Contract (“ABC”) was even patterned after VST ECS Philippines Inc.’s price quotation.

Section 36 of RA 9184 requires that in all instances, the Procuring Entity (“PE”) shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

The increase in the ABC from P35,036.00 to P58,300.00 per unit of laptop was patterned after VST ECS Philippines Inc.'s price quotation of P58,300.00 which was quoted during and as early as the PS-DBM market survey. The ABC therefore became higher, resulting to fewer units of laptops that can be bought, but the technical specifications remained the same.

And these were entry-level technical specifications for laptops. Are these “entry-level laptops” really worth P58,300.00 each? Were they that “customized” to command such an exorbitant price? The Report has shown otherwise and even estimated that these delivered laptops were worth even less than the original ABC of P35,036.00 per unit!

As found by the COA, the laptops procured during the same period by other agencies were cheaper, even when these had better or higher specifications and the orders were fewer in number (thus not being able to take full advantage of the so-called “economies of scale”). It was also found by the COA that it was even cheaper to buy one unit of laptop online or in the mall. If the COA could find this out, then how come the PS-DBM, our supposed to be “procurement experts”, could not?

In Government Procurement Policy Board (“GPPB”) Resolution No. 22-2021¹, the concept of wholesale purchase or bulk buying was explained in this wise:

“In computing the ABC of Procurement Projects, specifically for Goods, PEs are expected to take into consideration the quantity to be procured relative to the cost per item of Goods. Bulk purchasing is a means of acquiring goods that involves large orders of the same item. Because of economies of scale, manufacturers often reduce the

¹ *Approving the Issuance of the Government Procurement Policy Board Position Paper in Response to the Senate Inquiry on the Pricing for the Purchase of Goods*, dated 22 December 2021.

unit price per item based on how many items are sold together. Larger companies can produce more by spreading the cost of production over a larger amount of goods. An industry may also be able to dictate the cost of a product if several different companies are producing similar goods within that industry. This serves a dual purpose: major purchasers, including the government, are encouraged to buy from the discounting manufacturer and the manufacturer is guaranteed a large production run.”

During the pre-bid conference, some of the bidders raised the issue or concern that there were technical specifications set by the PE which were tailor-fitted for Dell laptops, namely:

1. Connectivity flip down RJ-45 LAN port;
2. Security wedge shaped chassis security lock slot; and
3. Pre-installed optimization performance improvement.

Only Dell laptops could comply with the said specifications. Lo and behold, Dell was the laptop brand offered by the winning bidder. This is a clear case of “tailor-fitting” prohibited under our procurement rules.

Section 18 of RA 9184 and its IRR mandate that reference to brand names shall not be allowed. Thus, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. This mandate cannot be circumvented by setting specifications that point or lead to only one brand of goods or items, even though the name of the brand is not mentioned. While PEs can make technical specifications in their bid documents more detailed, they cannot, however, “tailor-fit” for a particular brand because it defeats the very essence and purpose of competitive bidding.²

² NPM No. 041-2015, dated 8 October 2015.

Ineligibility

The undersigned believes that the winning bidder, JV of Sunwest Construction, was ineligible to bid for this procurement.

To reiterate, the procurement contract was awarded to the Joint Venture of Sunwest Construction and Development Corporation, LDLA Marketing and Trading Inc., and VST ECS Philippines Inc. There was an artificial, temporary, and contingent partnership called a “joint venture” which was formed just for this particular transaction.

Upon perusal of the bidding documents submitted to the Committee, we can see that one of the Joint Venture partners, Sunwest Construction and Development Corporation, is a construction company. Being a construction company, it is not eligible to join the bidding for the procurement of laptops.

The last paragraph of Section 23.1(b) of the IRR of RA 9184 provides that each partner of the joint venture shall submit their respective Philippine Government Electronic Procurement System (“PhilGEPS”) Certificate of Registration. This means that each joint venture partner must submit its updated Class “A” Eligibility Documents to the PhilGEPS, which include, among others, the Mayor’s/Business permit issued by the city or municipality where the principal place of business of the prospective bidder/joint venture partner is located (or the equivalent document for Exclusive Economic Zones or Areas).

It is a basic rule that a Mayor’s or Business Permit is issued by a Local Government Unit in order to authorize a company or entity to engage/operate in a particular line of business or activity. What business is Sunwest Construction and Development Corporation authorized to engage in? As shown in its Mayor’s Permit submitted to the Committee, it is supposed to be a “contractor with equipment rental and sales/importer”.

The Government Procurement Policy Board-Technical Support Office (“GPPB-TSO”) in its Non-Policy Matter (“NPM”) Opinion No. 126-2016, had already clarified that:

“[I]t is necessary for the Bids and Awards Committee (BAC) to determine whether the Mayor’s Permit and BIR Certificate of Registration issued to the supplier authorizes it to engage in the business stated therein, such that a finding to the contrary would amount to non-compliance by the bidder and will result to its disqualification. A prospective bidder’s business as stated in the Mayor’s Permit should at the very least be similar to the project to be bid.”

Similarly, in NPM No. 036-2013³, when asked whether a bidder, being a construction company by nature, may participate in the procurement of a vehicle, the GPPB-TSO legal opinion explained that:

“[A] Mayor’s Permit is in the nature of a business permit which authorizes the person, natural or otherwise, to engage in business or some commercial activity. Thus, a prospective bidder’s business as stated in the Mayor’s Permit should allow it to legally perform the requirements and obligations of the project and the resultant contract.

Consequently, it is necessary for the BAC to determine whether the Mayor’s Permit issued to the construction company authorizes it to engage in the business of supplying/selling dump trucks, such that a finding to the contrary would amount to non-compliance by the bidder and will result to its disqualification.”

³ Dated 10 April 2013.

Sunwest Construction and Development Corporation, thus, cannot be part of the joint venture that won the laptop contract.

(As additional information that we have gathered based on the GPPB Online Portal, Sunwest Construction and Development Corporation, and its related companies, had bagged multiple government contracts including those for personal protective equipment [PPE] and other medical items during the pandemic period. Sunwest Construction and Development Corporation ranked top 5 according to the total worth of contracts won, around P1.32 billion.)

Hence, during the Opening of Bids, or even after, during the Bid Evaluation, the JV of Sunwest Construction should have been disqualified for having an ineligible joint venture partner based on its eligibility documents.

Under Section 30.1 of the IRR of RA 9184, the BAC utilizes a non-discretionary “pass/fail” criterion in the examination of bids, such that a bidder is rated “passed” for every complying documentary requirement submitted, and “failed” if it does not include any requirement or otherwise submits an incomplete or patently insufficient document.⁴

Accordingly, if the bidder failed to satisfy the eligibility requirement, the same shall warrant the bidder’s disqualification from bidding.

Non-Compliance with Technical Specifications

As discussed comprehensively in the Report, the winning bidder should have been disqualified for offering a non-compliant bid.

According to the COA Report, the offer of the JV of Sunwest Construction is specifically a Dell Latitude 3420 Notebook, which is bundled with Intel Celeron 6305 processor. In Intel’s website, it is clearly stated that the base speed of the said processor is 1.8 Ghz only. What the DepEd wanted and needed, as very clearly indicated in the

⁴ NPM No. 037-2015, dated 8 October 2015.

bidding documents themselves, was a laptop with a processor of “1.9 Ghz Base Speed, 2MB Cache”.

Delivering laptops with a processor base speed of only 1.8 Ghz is clearly and obviously not delivering what the PE needs.

The Report correctly points out that *“the DepEd was disadvantaged when it accepted the laptops procured by PS-DBM as the processor of the Dell laptop was below the specifications stated in the bidding documents.”* And that *“consequently, without amendment in the bidding documents, the 1.9 Ghz should be complied with and any substantial changes after bid opening constitute a bid modification that is not allowed by the rules.”*

Under Section 17.1 of the IRR of RA 9184, the Technical Specifications form part of the Bidding Documents. The Bidding Documents contain all the specific requirements, limitations, and parameters of the procurement at hand, as determined by the PE, against which the bids will be compared and evaluated for determination of compliance or responsiveness. Thus, non-compliance by the bidder with the Technical Specifications is a ground for disqualification.⁵

The mandate to bidders was clear - that an “equivalent” of the requirements or technical specifications is not allowed. It is either you have it or not.

Thus, allowing the JV of Sunwest Construction to provide an “equivalent” was giving it undue preference or advantage. All at the expense of the government’s and the public’s interest.

The non-acceptability of equivalents was thoroughly discussed when the issue of tailor-fitting was brought up during the pre-bid conference.

⁵ NPM No. 123-2012, dated 8 October 2012.

Since the BAC pronounced that an equivalent is not acceptable, the bid submission of the JV of Sunwest Construction should have been declared as disqualified for failure to comply with the most important technical specification provided for in the bidding documents.

Protest Mechanism for the Aggrieved Party was not complied with

It is noteworthy to highlight that the lowest bidder during the opening of bids, Advance Solutions Inc. (“ASI”), offered an HP 440 G8 powered by Intel Core i3-1115G4, with Base Clock Speed of 3.0 Ghz, with turbo boost up to 4.10 Ghz and 6 MB cache. These specifications are superior to those of the laptops which were delivered to the DepEd by the ultimate winning bidder, the JV of Sunwest Construction. ASI also submitted a bid price lower by PhP167 million compared to the bid price of the ultimate winning bidder.

However, ASI was disqualified by the BAC for failure to submit “a certification that the on-site engineers possess all the mandatory certifications for technical support required by the manufacturer and that these on-site engineers are certified technicians of the manufacturer”.

ASI, in its request for reconsideration, pointed out that the abovementioned requirement simply required proof that the on-site engineers possess all the mandatory certifications “required by the manufacturer”. ASI submitted a certification from the manufacturer for that purpose, thus should have been deemed compliant.

However, their request for reconsideration was denied.

Interestingly, the BAC was not too strict in accepting the 1.8 Ghz Base Speed processor of the JV of Sunwest Construction, which was clearly non-compliant with the minimum requirement of 1.9 Ghz, a technical quantitative requirement which should not have been waived as public bidding contracts require strict compliance with the specifications prescribed in the bidding documents.

On June 21, 2021 ASI filed a request for reconsideration for having been post-disqualified. On June 30, 2021, ASI received an email from the BAC denying their request for reconsideration. At this juncture the BAC was in violation already of Section 55.1 of the IRR of RA 9184 as it failed to resolve ASI's request for reconsideration within seven (7) days.

Also on June 30, 2021, ASI received the Notice of Lowest Calculated Responsive Bid, dated June 29, 2021, informing them that the BAC already recommended to the Head of the Procuring Entity ("HoPE") the award of the contract in favor of the JV of Sunwest Construction. This was done without giving ASI the mandatory 7-day opportunity to file its protest before the HoPE, in accordance with the protest mechanism provided for under RA 9184.

On June 30, 2021, ASI submitted to the BAC another request for reconsideration with regard to its decision to declare the JV of Sunwest Construction as the winning bidder, but to no avail.

On July 2, 2021, ASI's request for reconsideration dated June 30, 2021 was resolved, not by the BAC, but by Atty. Jasonmer L. Uayan, the OIC Executive Director, who was the HoPE of PS-DBM for purposes of this procurement. This procedure was in blatant violation of the procurement law and its IRR, particularly Section 55.1, to wit:

"55.1. Decisions of the BAC AT ANY STAGE of the procurement process may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The BAC SHALL decide on the request for reconsideration within seven (7) calendar days from receipt thereof." [emphasis supplied]

It was also mentioned in the letter of Atty. Uayan that the contract was already awarded to the JV of Sunwest Construction with the issuance of the Notice of Award dated June 30, 2021. Such act of Atty.

Uayan was a clear violation of the provisions of the procurement law and its IRR because of the following:

- a.) There was still no resolution from the BAC on the request for reconsideration ASI filed on June 30, 2021. Under Section 57 of the 2016 IRR of Republic Act 9184⁶, a procuring entity cannot award a contract if there is a bidder who has resorted to the protest mechanism provided by the rules and such request for reconsideration or protest has not been resolved yet;

and

- b.) In the event the BAC denies the request for reconsideration, the bidder still has the right to file a protest before the HoPE within seven (7) days from the receipt of BAC's resolution denying their request for reconsideration under Section 55.2 of the 2016 IRR of Republic Act 9184.⁷

It is clear that the bid was hastily awarded to the JV of Sunwest Construction without giving ASI the opportunity to file a protest.

Based on the foregoing, the non-compliance with the procurement law and rules were badges of “manifest partiality” and giving of “unwarranted benefits” to the JV of Sunwest Construction.

So what is the effect of the non-compliance with the mandatory provisions of the procurement law?

⁶ Section 57. Non-interruption of the Bidding Process

...In no case shall any protest taken from any decision treated in this Rule stay or delay the bidding process: *Provided, however,* That protests must first be resolved before any award is made...

⁷ Section 55.2 In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the HoPE: *Provided, however,* That a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved.

The Supreme Court, in the case of *Jacomille v. Abaya*⁸, declared that failure to comply with the mandatory provisions of the procurement law taints the procurement process and renders it **null and void**.

II

The DepEd and PS-DBM Memorandum of Agreement (MOA) was falsified, hence Void

The Report has discussed in detail the flaws found in the procurement outsourcing of DepEd to PS-DBM, particularly with the Memorandum of Agreement (MOA) executed between the two agencies.

That MOA was antedated to February 16, 2021. The hearings have exposed the fact that the MOA was only finalized in May 2021.

Procurement activities by the PS-DBM started way before May 2021, without any legal basis. The 2017 MOA between the DepEd and PS-DBM cannot be used as the legal basis for their activities as this particular procurement was clearly not envisioned in the list of procurements covered. Reference to the said 2017 MOA was an afterthought, is unjustified, and is merely a “*palusot*”.

The signatory in the MOA on the part of PS-DBM, their then already “former” Executive Director Christopher Lao, was no longer authorized to sign the antedated MOA, as his term in office has ended by the time the MOA was finalized and signed.

Worse, the MOA was “notarized” by a deceased notary public.

The parties to this MOA between the DepEd and PS-DBM took great steps and exerted unimaginable effort to falsify the said document.

⁸ G.R. No. 212381, 22 April 2015.

Based on the foregoing, the undersigned believes that the MOA between DepEd and PS-DBM, which was the cornerstone of the laptop procurement process, is a **void** instrument, thus without any legal effect.

There was therefore no valid procurement outsourcing to PS-DBM by the DepEd.

Consequently, the procurement project denominated as “Supply and Delivery of Laptop Computers for Public School Teachers for the Department of Education”, the subject matter of the Committee investigation and of this present Report, should be considered **null and void** as well.

There was a **conspiracy** among the personalities involved in this void/falsified transaction and the Committee correctly pointed out that all of them had, on many occasions, the chance to correct the anomalous situation, but they opted to just keep quiet about it. In a conspiracy, the act of one is the act of all. Hence, all those whose signatures appear on the falsified MOA must be treated the same. Hence, if we charge one, we must charge all.

What is the effect of a void contract? According to the Supreme Court, in Tomas P. Tan, Jr., vs. Jose G. Hosana:⁹

“It is basic that if a void contract has already ‘been performed, the restoration of what has been given is in order.’ This principle springs from Article 22 of the New Civil Code which states that ‘every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same.’ Hence, the restitution of what each party has given is a consequence of a void and inexistent contract.”

⁹ Dated February 3, 2016.

Government should therefore demand the return of the entire amount it paid for laptops which did not answer its needs. Plus consequential damages too.

Someone got to dispose of his old stock of laptops at exorbitant prices at the expense of the Filipino People. We should not allow this.

III. Other Concerns

Possible Conflict of Interest

We have strict rules on **conflict of interest**.

Starting with the 1987 Constitution which provides that:

“No Senator or Member of the House of Representatives shall directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office.”

Under Section 3(i) of Republic Act No. 6713 or the “Code of Conduct and Ethical Standards for Public Officials and Employees”:

“‘Conflict of interest’ arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.”

Further, the said Code of Conduct and Ethical Standards for Public Officials and Employees clearly mandates that a public official or employee shall avoid conflicts of interest at all times.

Moreover, Republic Act No. 3019 or the “Anti-Graft and Corrupt Practices Act” provides that it shall be unlawful for any Member of the Congress during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term. The prohibition likewise applies to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

The Committee should have examined and discussed, minutely and in detail, the Articles of Incorporation, General Information Sheets, and other documents, particularly those pertaining to ownership, submitted by the component corporations of the winning bidder, the JV of Sunwest Construction, in order to make sure that there is or was no conflict of interest in the award of the multi-billion government contract subject of this investigation.

We should call on the Office of the Ombudsman to undertake this minute and detailed examination.

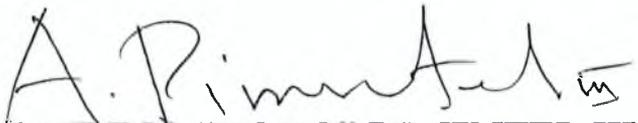
Re-Examine Policy allowing unregistered Joint Ventures to participate in public biddings

Joint Ventures are partnerships under our existing laws.

Joint Venture entities participating in public biddings of this magnitude should at least be required to register their partnership agreements with the Securities and Exchange Commission.

Lately, there have been serious amounts of People's Money involved in public biddings. The government procurement system is not merely a money-making game. Serious commitment to help our country with its needs is the call of the times. Is it too much to ask these supposed to be "serious" bidders to take the time and effort to make steps necessary to manifest their serious commitment to each other as commercial partners as well as the more critical commitment to the State to be its development partner?

RESPECTFULLY SUBMITTED.


AQUILINO "KOKO" PIMENTEL III