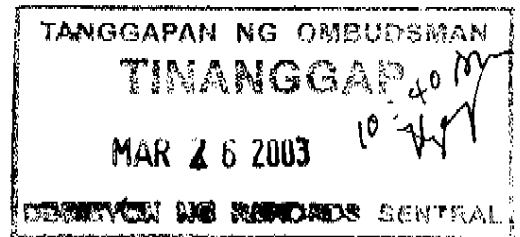


REPUBLIC OF THE PHILIPPINES
OFFICE OF THE OMBUDSMAN
QUEZON CITY



ARIEL T. LIM,
Complainant,

- versus -

OMB Case No. _____
For: Plunder [RA 7080] and
Violation of Section
3(e), RA 3015 [Anti-
Graft and Corrupt
Practices Act
as amended

ALFONSO CUSI, General Manager
Philippine Ports Authority [PPA],
EFREN B. BOLLOZOS, Head, PPA
Facilities Construction and Maintenance Division;
ANGIE TAN, Head PPA Technical Working Group,
OSCAR C. CLARIN- Acting Division Manager,
PPA Visayas;
CELSO S. FAJARDO - PPA Project Manager-Roxas
City;
RONNIE C. PANGILINAN, PPA Engineering Assistant,
IDA C. ABENDANO-GUINTO and AGUINALDO
"HOMER" GUINTO, doing construction business
under the name and style GOLDEN CITY
CONSTRUCTION AND DEVELOPMENT, and
JOHN DOES and MARY ROES,
Respondents.

X-----X

COMPLAINT-AFFIDAVIT

I, ARIEL T. LIM, of legal age, Filipino and with office address at
Unit 50-F, St. Dominic Bldg., 50 Timog Avenue, Quezon City, after
being first duly sworn, hereby depose and state:

1. I am executing this affidavit to indict and accuse the
following respondents, namely:

| <u>Name</u> | <u>Position</u> | <u>Address</u> |
|--------------|---------------------|--------------------------------------|
| ALFONSO CUSI | PPA General Manager | PPA Head Office Port Area, Manila |

| | | |
|---|--|---|
| EFREN B. BOLLOZOS | Head, PPA FCMDivision | PPA Head Office Port Area, Manila |
| ANGIE TAN | Head, PPA Technical Working Group | PPA Head Office Port Area, Manila |
| OSCAR C. CLARIN | Acting Division Manager- Visayas | PPA Head Office Port Area, Manila |
| CELSO S. FAJARDO | PPA Project Manager | PPA Head Office Port Area, Manila |
| RONNIE C. PANGILINAN | PPA Engineering Assistant | PPA Head Office Port Area, Manila |
| SPOUSES IDA C. ABENDANO GUINTO and AGUINALDO HOMER" GUINTO | Owners and Sole Proprietor | Golden City Construction Development at 3368 Harvard St., Pinagkaisahan, Makati City, Metro Manila |
| OHN DOES AND MARY ROES | - other PPA technical and/or administrative personnel involved in the subject anomalous project whose identities are presently unknown to complainant, but once known shall be disclosed in due course in pursuance hereof | |

where they may be served notices and processes respectively, for the following crimes and offenses:

2.1 PLUNDER as defined and penalized under RA No. 7080, otherwise known as the "PLUNDER LAW"; and

2.2 VIOLATION OF Section 3(e), RA No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act, as amended".

3. Respondents, conspiring, confederating and cooperating with each other, committed the crimes charged under the circumstances and in the manner set forth hereinafter:

3.1 . As early as 1998, the PPA already knew that per its bore hole data evaluation, the Culasi port and reclamation site already showed the presence of soft/unsuitable materials.

3.2 Despite this, however, respondents PPA personnel deliberately concealed and did not input this adverse information in their proposed cost estimate of the Project. As will be shown hereinafter, this suppression was intended to enable them to bid and award the Project to Golden City at a low amount, and thereafter simply increase or bloat it, without bidding, by means of EXTRA WORK orders via negotiated supplemental agreements upon revision or modification of the costing based upon such already existing bore hole data report, to plunder the Government and give their favored contractor Golden City unwarranted benefits through increased profits.

3.3 Indeed, on or about 28 December 1999, respondents PPA personnel initially granted and awarded, in favor of respondent Golden City Construction and Development the construction and development of the "RECLAMATION AND CONSTRUCTION OF BERTHING, PORT OF CULASI, ROXAS CITY", hereinafter called the "Project" at the seemingly minimal contract price of P106,808,305.90, more or less.

3.4 True to their above fraudulent intent, respondents thereafter systematically and administratively launched a charade and stratagem with utmost precision to modify, alter and revise on paper the design of the Project; gave Golden City extra work orders under supplemental agreements in accordance

with their changes and extra works, and bloated the cost of the Project from P106,808,035.90 to P169,804,981.60, as follows:

3.4.1 Initially, in an apparent bid to sanitize, justify and trigger their premeditated intention to change, modify and revise the design of the Project, respondents PPA personnel made it appear that they had to revert to the PPA's 1998 bore hole data report citing the presence of soft/unsuitable materials at the proposed Culasi Port and reclamation area.

3.4.2 Thereafter, to further sanitize, justify and then pave the way for their fraudulent intent, respondents by way of pretense made it appear that:

- a. PPA's FCMD [Facilities Construction and Maintenance Division] in a memorandum dated December 10, 1999 had recommended that a re-study of the sheet pile design as well as the advisability of replacing part of unsuitable materials inside the reclamation area be undertaken;
- b. PPA Assistant General Manager for Engineering in a meeting held on December 15, 1999 had instructed FCMD to conduct soil investigation and drive test pile to confirm the borehole data gathered, and that the result of the investigation purportedly indicated the

presence of unsuitable materials down to - 12.50m elevations.

c. Consequently, the PPA Project Development Department therefore had to revise the plans/estimate as approved by AGME on February 24, 2001 including the following scope of work:

- a. Construction of R.C. Wharf and trestle on Tubular Piles,
- b. Construction of Containment Bulkhead in lieu of the original Reinforced Concrete Sheet Piles,
- c. Reduction of reclamation area;

d. However, the Engineering Office had opted not to remove all the unsuitable materials in view of the cost involve, for which it then recommended, as they did, the following alternatives/schemes that PPA made to appear to have recommended as a result of the already existing 1998 bore holes data report as follows:

- A. Dredging the whole reclamation area up to 12.50m
- Dredging the whole reclamation area up to - 12.5 meter elevation will necessitate the revision in design/plans.
- Driving of sheet piles will no longer be possible due to hard estrata - 12.50m; hence provision of rock bulkhead maybe used.

This revision will entail additional cost of P46.1M, breakdown as follows:

| Scope of Work | Additional Cost | Remarks |
|------------------------|-----------------|--|
| 1. Rock Bulkhead | P35.9M | This is in addition from the revised contract amount. If we excavated/dredged the area from - 7.00m up to 12.50m elev. (See Annex 1 - Detailed Estimate) |
| 2. Granular Fill | P6.8M | |
| 3. Excavation/Dredging | P3.4M | |
| TOTAL | P46.1M | |

a photocopy of the facade PPA recommendation is attached hereto as Annexes "A", "A-1" to "A-5".

3.4.3 In implementation of the foregoing, respondents, via two (2) Extra Work Orders contained in the unbidded Supplemental Agreement, then did the following:

I

FIRST COUNT

Re: Undue and warranted Deletion of Reinforced Concrete Sheet Piles and its change to Steel Sheet Piles from an original cost of P9,697,551.30 to P63,559,145.26 anomalously booked as "EXTRA WORK" or a bloating of 53,861,593.96, more or less.

- a. Per the attached excerpt of the original PPA Bill of Quantities for the Project, specifically Items 3.01 to 3.16 appearing on pages 5 and 6, Annexes "B", "B-1 to "B-8", the Culasi port, as originally bidded, awarded and contracted to

respondents' favored contractor Golden City, would have used reinforced concrete sheet piles at a total estimated cost of P9,697,551.30, more or less.

- b. As the foregoing bid cost was too low, hence would expectedly result in anticipated losses to Golden City, and with the evident sinister motive to plunder and make more money from the Project, respondents as shown above conspiratorially and conveniently, by way of pretense and strategem, changed the design of the pile structure from **reinforced concrete piles to steel piles** which they made to appear as Extra Work Order I under a purported Supplemental Agreement at the much higher cost of P63,559,145.26, as shown in the attached Final Accomplishment Report [Final Billing No. 9] submitted by Golden City for billing purposes and which respondents PPA personnel have duly paid, hereto marked and made integral parts hereof as Annexes "C", "C-1" to "C-6".
- c. That Golden City would suffer losses if the Reinforced Concrete Piles, which it originally bid at P9,697,551.30, would be implemented, is shown by the fact that the

revised steel piles was bloated to P63,559,145.26 since the latter was not subject of bidding but merely negotiated by the parties.

II

SECOND COUNT

Re: Respondents' Fraudulent Use and/or Tolerance of the Use of Substandard Materials rendered the Culasi port's structure highly defective as in fact its Pillars are now highly deteriorated and corroded rendering it a constructive total loss, despite the lapse of only one (1) year.

- a. Based on an on-site ocular inspection of the Project, it appears that the Project was fraudulently undertaken and carried out by respondents, Golden City contractor, with the evident connivance of respondents PPA personnel who had supervisory functions thereto, using **substandard materials**, hence making the port's structure **highly weak, defective and beyond repair as to render it a constructive total loss.**

- b. As shown in the attached pictures taken, hereto marked and made integral parts hereof as Annexes "D", "D-1" to "D-9", the conspiratorial pretended change and revision from **Reinforced Concrete piles to steel**

sheet piles has resulted in grave damage and prejudice to the Government in that at this early stage, the pillars, structures and foundations of the port have now chipped off, are crumbling and would soon be lost by corrosion, resulting in the expected collapse of the port.

- c. Per the transcript of the interview of Golden City's labor subcontractor, Quintin A. Anda, who now works as a security guard at PPA's Culasi Port Office, hereto attached and made integral part hereof as Annex "E", "E-1" and "E-2", it appears that the ideal concrete mix ratio of "1, 2, 3" cement, sand and gravel has been fraudulently altered upon the instructions of Golden City, with the apparent connivance of respondents PPA personnel tasked to supervise the same, to "1-4-5" ratio thereby making the concrete mix highly diluted, very weak and in layman's term "HILAW" or "AMPAW".
- d. Thus, despite the acceptance of the Project, Annex "F", being only on 15 February 2002 and the lapse of only one (1) year therefrom, the structure of the Culasi port is now highly deteriorated, corroded and is in near total

collapse. Worse, it is beyond repair as to make it a constructive total loss for which the Culasi port itself must be demolished in its entirety in order that a new one could be built in replacement thereof.

III

THIRD COUNT

Re: The reclamation portion has been made to appear, billed and paid by PPA as "CORE ROCKS" when in truth and fact what was used was LIMESTONE ROCKS or BUGA which is highly weak and soluble due to its low specific gravity.

- a. As shown in Golden City's Final Billing, specifically Annex "C-2-a", as paid by respondents PPA personnel, respondents made it appear, contrary to the truth, that the contracted reclamation was undertaken via use of "**CORE ROCKS**" in the total amount of P59,293,005.22, **but in truth and in fact they merely used limestone rocks or BUGA** in construction reclamation parlance which is highly soft and soluble rocks which easily disintegrate on water due to its low specific gravity. In no time, indeed, the limestones would have dissolved completely as to make the purported reclamation a complete fraud.

- b. In fact, no less than the DENR has discovered more fraud in the construction and reclamation of the Culasi Port, via its Report dated 13 December 2002, Annexes "G", "G-1" to "G-4", for which it has recommended imposing penalty for violation of its ECC.

- c. The fraud committed by all of the respondents is shown by the fact that they misrepresented in their billing and collection as paid by PPA, that they used CORE ROCKS when in truth and in fact they merely used soluble LIMESTONE ROCKS, a much cheaper and lower grade or kind of rock.

CONCLUSION

In all, it is clear that based on the above three (3) counts of fraudulent construction and reclamation of the Culasi Port, respondents in conspiracy with each other plundered the Government and/or gave the favored contractor Golden City, jointly or alternatively, of the following amounts:

| | |
|---------------|-------------------------------|
| First Count: | P 53,861,593.96, more or less |
| Second Count: | 169,804,981.60, more or less |
| Third Count: | 59,293,005.22, more or less |

RELIEF

WHEREFORE, complainant respectfully prays that after due hearing, a resolution be issued:

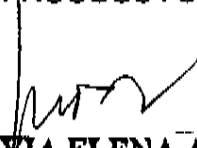
1. Immediately upon filing hereof, directing the PPA to disqualify Golden City and/or respondents Spouses Ida and Aguinaldo Guinto from any and all past, present or future biddings or transactions with the PPA;
2. Imposing administrative sanctions against the above erring PPA personnel; and
3. Directing the filing of the appropriate information against all of the respondents for PLUNDER and/or Violation of Section 3(e), Anti-Graft and Corrupt Practices Act and other applicable laws incident to the foregoing.

FURTHER AFFIANT SAYETH NAUGHT.


ARIEL T. LIM
Complainant

SUBSCRIBED AND SWORN to before me this 26th day of MARCH 2003 at D.C.. I further certify that I have personally examined the affiant and that I am satisfied that he has executed this Complaint-Affidavit and has understood the contents hereof of his own personal knowledge.

INVESTIGATING PROSECUTOR


MARIA OLIVIA ELENA A. ROXAS
Graft Investigation Officer I

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2003.