

Malacañang
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 10

CONSIDERING MR. AGUEDO Y. CEPTE RESIGNED AND SEPARATED FROM THE SERVICE AS DIRECTOR OF SUPPLY COORDINATION.

This is an administrative case against Mr. Aguedo Y. Cepte, Director of Supply Coordination, for gross negligence and incompetence, dishonesty, misconduct in office and acts prejudicial to the service, particularized as follows:

1. Purchasing and/or causing to be purchased supplies, materials and equipment without public bidding;
2. Splitting requisitions and buyer's orders to avoid the prior intervention of the Auditor General and/or the Secretary of General Services;
3. Channeling awards to favored dealers;
4. Purchasing costly supplies to favor particular dealers;
5. Failing to implement laws, rules and regulations on procurement;
6. Fraternizing with merchants or their representatives doing business with the Bureau of Supply Coordination and utilizing the influence of his office to promote the organization of a clique of merchants dealing with said office; and
7. Following an irregular procedure, causing or tolerating the sales of unserviceable or surplus property of the Government.

The charges were investigated by a committee of three headed by the Solicitor General.

Respondent's defenses are in the nature of confession and avoidance. He admitted in his answer and on the witness stand the transactions involved in the charges but denied liability therefor.

Charge I

The record shows that the Bureau of Supply Coordination made purchases of supplies, materials and equipment during respondent's incumbency as director thereof without the benefit of public bidding allegedly (a) due to the upward trend of prices, (b) because the purchases were

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urgent and (c) because the suppliers were the exclusive manufacturers and distributors of the supplies, materials and equipment involved and no suitable substitutes could be obtained. Purchases were also made without public bidding based on (d) the result of previous bids held to fill different and prior requisitions and (e) so-called bids for incoming requisitions.

A typical example of the class of purchases made without public bidding allegedly because of the "upward trend of prices" is the seven separate buyer's orders dated August 18 and 31, 1959, for culverts, gauge 16 (Exhs. A-1 to A-7). The price of ₱33 per lineal meter stated therein was simply based on a previous bidding for the same item held on May 25, 1959, or three months earlier. There was no valid justification for the use of the price obtained in the old bid as the quantity called for then was only 300 lineal meters while the subsequent purchases involved totaled 1,960 lineal meters. No record of the alleged upward trend of prices as a guide or basis for the waiver of public bidding was presented. On the contrary, the evidence shows that generally there was no upward trend of prices during the period covered by the charge, and fluctuation in price for this item was actually on the downward trend.

Purchases were likewise made without public bidding on the ground that the same were urgent which was not so as shown by the long delay in the release of the requisitions by the requisitioner (Exhs. A-77, A-79). Moreover, the requisitions contained no certification of urgency by the Department Head concerned to justify waiver of public bidding pursuant to Executive Order No. 298, series of 1940.

Neither was there justification for waiver of public bidding in numerous purchases, typified by those for filing cabinets and allied office steel equipment, because the suppliers were said to be "exclusive manufacturers and distributors." These articles, distributed by eight dealers in Manila, are not exclusively by one dealer; hence, public bidding cannot be waived in their procurement except under the conditions mentioned in Executive Order No. 298, which conditions did not exist in any of the purchases made by respondent's office.

Purchases were also made without actual public bidding but based on "bids for incoming requisitions." Unlike actual public bidding where the Government advertises the exact quantities of supplies, materials and equipment to be purchased, the bidding was solely for the purpose of establishing the price of a few pieces of an item and using the same for future purchases of unlimited quantities of the same item spread over a long period of time. An example of such bidding was that conducted on September 14, 1959 (Exh. NN), for filing cabinets and allied office equipment. The advertisement called for only ten pieces for each bid item, but purchases of unlimited quantities were made on the basis of the prices obtained therefrom.

Respondent contends that in view of Executive Order No. 290, series of 1958, making him "primarily responsible for the administration of the supply system of the government," he has the exclusive prerogative of determining whether the purchase should be by bidding or through negotiation. The contention is untenable. Executive Order No. 290 is not self-executing but contemplates the promulgation of implementing rules to govern government procurement, either by bidding or through negotiation (Sec. 12). Until said executive order has been implemented, the rules on government procurement in force at the time of its promulgation should be applied pursuant to its transitory provision (Sec. 43). Under Executive Order No. 298, series of 1940, purchase by public bidding is the rule, by negotiation the exception. Respondent admits that this too is the rule under Executive Order No. 290. Insofar therefore as this aspect of government procurement is concerned, the old setup remains unchanged. Indeed Executive Order No. 290 could not have vested in the head of the Bureau of Supply Coordination unlimited power and discretion in the matter of government procurement with no standard to guide him in the exercise of that power and no safeguard against the abuse of that discretion except his own judgment.

Respondent's claim that all negotiated sales were made only after a thorough canvass of the market is not supported by any record of canvass but only by the testimony of the buyers who allegedly made the canvass by telephone. While other pertinent details are stated in the buyer's orders, nothing is mentioned of the alleged canvass upon which the waiver of public bidding was based. No explanation was made or offered for the omission.

Respondent further contends that the Government sustained no loss in the purchases made without public bidding. Loss is not essential to hold the offending officer administratively liable.

I agree with the investigating committee that respondent is guilty of Charge I.

Charge II

The charge of splitting requisitions and buyer's orders to avoid the prior intervention of the Auditor General and/or the Secretary of General Services is supported by Requisition No. 564 (Exh. C-329) which was split into five buyer's orders (Exhs. C-105, C-106, C-107, C-108 and C-109). Requisition No. 29726 mentioned in the charge was also split into five buyer's orders (Exhs. G-14, G-15, G-16, G-17 and G-23).

Splitting of requisition was prohibited under the memorandum issued by the Secretary of General Services to the Director of Supply Coordination dated January 16, 1959, as reiterated in another memorandum dated September 21, 1959, of the Acting Secretary of General Services who in Department Order No. 10 dated September 18, 1959, required approval by the Department of all contracts or orders involving a total cost of not less than P2,000, leaving to the approval of the Director of Supply Coordination those whose amounts are from P500 to not exceeding P2,000. Administrative Order No. 290 issued

by the President on February 3, 1959, requires all contracts of whatever nature involving \$10,000 or more to be entered into by government offices and entities to be first submitted to the Auditor General for review and examination.

Respondent questions the authority of the Secretary of General Services to issue the directives in question. He contends that the Department Head arrogated unto himself the functions of the Bureau of Supply Coordination in the purchase of supplies, materials and equipment of the Government expressly vested in the Director of said bureau by law which cannot be made subordinate to said departmental instructions.

The departmental directives are legitimate assertions by the Secretary of his power to review the official acts of subordinate officials. In passing upon purchases made by the Bureau of Supply Coordination, he does not exercise or usurp functions pertaining to the Director thereof but merely exercises his control, direction and supervision over said bureau. As elsewhere stated, Administrative Order No. 290, series of 1958, did not vest in the Director of Supply Coordination unlimited power in the matter of government procurement, much less impair the President's control over said bureau and other offices created or organized pursuant to its enabling law (Rep. Act No. 997, as amended; Art. VII, Sec. 10 17, Constitution), or deprive the Department Head concerned of his control, direction and supervision over said offices (Sec. 79 A, Rev. Adm. Code). If he believed that the directives of the Department Head unlawfully limited his power as purchasing agent of the Government, he should have asked their revocation by the Department Head and appealed to the President if his request was denied, instead of proceeding to commit acts of insubordination by deliberately violating the Department Head's directives.

Respondent's attempted justification of the splitting and non-consolidation of requisitions, to wit, to avoid the delay and inaction on the part of the Department of General Services only confirms the charge of splitting requisitions to avoid prior intervention of the Department Head.

Neither is respondent's explanation tenable that it was impractical to consolidate requisitions. The directive of the Secretary of General Services was not intended to apply to requisitions "where the items requisitioned are to be delivered to different end-users in different parts of the country," as he argues in his memorandum (Exh. 45), but to requisitions for one or more items which are needed at the same time or at approximately the same time by the same requisitioner.

Finally, it is no defense that all the questioned purchases were brought to the attention of the Secretary of General Services when the corresponding purchase orders or copies thereof were forwarded to him

for his information and/or approval. Silence by the Secretary after the transaction had been consummated, was no excuse for the repeated violation by respondent of the Secretary's directives and of Executive Order No. 298. Besides, the Secretary himself instituted the present administrative charges when he discovered the irregular acquisitions from the purchase orders or copies thereof forwarded to his department.

Respondent is also guilty of Charge II. As in the first charge, his liability is not contingent on proof of loss to the Government because of said violations of rules on procurement.

CHARGES III AND IV

It is alleged that respondent channeled awards to favored dealers and purchased costly supplies to favor particular dealers. Although there were other merchants dealing in office and school supplies, the awards of requisitions therefor were usually given to three suppliers; namely, Boc's Trading, Efco Trading and S. P. Trinidad. Also, there are eight merchants in Manila dealing in filing cabinets and allied office steel equipment, but purchases thereof were usually made from the Asiatic Steel Manufacturing Company, Arco Trading and Acme Steel Manufacturing Company.

Awards of requisitions for these items were with or without public bidding. Those without public bidding were based either on old bids or on so-called bids for incoming requisitions. If public biddings were held, the dealers of the advertised line items submitted identical bids or uniform prices, which is indicative of conspiracy or collusion among them to rig up the bidding so as to prevent the lowering of prices and at the same time enable all to share in the award. This collusion becomes obvious from the fact that Acme Steel Manufacturing Co., Asiatic Steel Manufacturing Co. and Arco Trading are owned by three brothers.

Respondent stubbornly ignored offers of lower prices by another dealer of filing cabinets and allied steel equipment. Thus, on January 12 1960, the Stateside Steel Manufacturing Co. wrote to him requesting that a public bidding be held on these line items, as it was willing to lower and adjust its prices for them. This offer was reiterated in a second letter to respondent on February 17, 1960, wherein this dealer offered to reduce its prices from 10% to 20% below the prices at which the Bureau of Supply Coordination had been buying them. Respondent paid no attention to this formal offer and did not conduct a public bidding until May 10, 1960. But even this bidding was not actual bidding. It was a bidding for so-called incoming requisitions.

There is no proof that respondent received monetary consideration for his refusal to heed the request for public bidding or to accept the lower offer or that he connived with the dealers in rigging up the bidding. But the evidence shows that he consented to the practice instead of taking steps to break the unholy combination among dealers. His justification for the dealers' act of invariably entering identical bids so as to avoid ruinous competition is untenable.

Charge V

It is claimed that respondent purchased imported supplies instead of locally manufactured products, in violation of the Flag Law. This count has reference only to mimeograph stencil paper and ink. However, in purchasing Gestetner brand, which is of foreign manufacture, respondent did so upon the insistence of the requisitioners or end-users who preferred that brand because of the alleged poor quality of the locally manufactured product which is claimed to be more expensive in the end. Respondent's explanation is believed satisfactory. The same is true as to his failure to furnish periodically, as required by law, local governments with a list of current government prices and specifications of materials, equipment and supplies for want of necessary appropriations to purchase the requisite paper.

Charge VI

The pertinent count that should be treated here is the alleged juggling of funds, to the effect that certain suppliers were paid from deposits or payments made by other requisitioning offices instead of the requisitioners concerned. However, respondent may not be held responsible therefor, as when he signed the corresponding vouchers all supporting papers appeared regular in all respects and they already contained the chief accountant's certification on the availability of funds. Respondent is therefore cleared on this charge.

Charge VII

It appears that thirteen surplus items of assorted parts of equipment and machinery located in Montalban, Rizal, and listed in the report of inventory and inspection (I & I) of August 21, 1959 (Exh. 000), were advertised for sale through public bidding by the respondent. However, three surplus items consisting of one generator and two crushers, covered by another I & I report of August 24, 1959, although not included in the invitation to bid and in the bid of Zoilo San Juan, the winning bidder, were delivered to him. The three extra items had a book value of P10,056.50. Pursuant to Executive Order No. 37 dated May 22, 1954, respondent should have referred the papers to the National Shipyards and Steel Corporation (NASSCO) for disposal of the articles instead of advertising them for sale and proceeding with

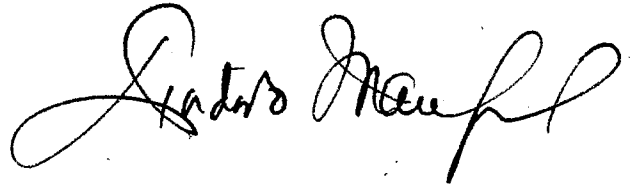
the sale. Considering that the Commissioner of Public Highways, who should have made the reference to NASSCO in the first place, recommended that the surplus items be disposed of through sale in a public bidding, respondent's omission is not altogether inexcusable.

However, the same cannot be said of the three items listed in the second I & I report. The thirteen surplus items sold to San Juan and the three surplus items not included in the sale appear in separate lists which San Juan signed, and he took delivery of the two sets of items on different dates. When respondent was informed of the fraud the articles had not been sold by San Juan, yet he did not take immediate steps to recover them but limited himself to causing or undertaking an investigation to pinpoint responsibility of the employees who connived with San Juan. Respondent was thus negligent in failing to take the necessary steps to protect the interests of the Government.

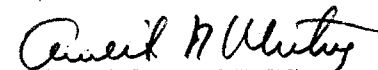
The rules and regulations governing procurement are intended for the protection of the Government. Respondent's predisposition to disregard and circumvent such rules and his want of due zeal to safeguard and promote the welfare of the Government, which is the basic requirement for any public servant, render his continued stay in office as chief procurement officer of the Government inadvisable, risky and untenable. I am therefore left no alternative but to take drastic action against him.

Wherefore, Mr. Aguedo Y. Gepte is hereby considered resigned and separated from the service as Director of Supply Coordination, effective as of the date of his preventive suspension.

Done in the City of Manila, this 29th day of March, in the year of Our Lord, nineteen hundred and sixty-two, and of the Independence of the Philippines, the sixteenth.



By the President:


AMELITO R. MUTUC
Executive Secretary