

MALACAÑANG  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 93

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH  
FORFEITURE OF BENEFITS ON RODOLFO C. NAYGA, PRESIDENT  
OF ISABELA STATE UNIVERSITY, ECHAGUE, ISABELA.

This refers to the administrative case against Rodolfo C. Nayga, President of the Isabela State University (ISU), Echague, Isabela.

Pursuant to Executive Order No. 151, series of 1994, as amended, the Presidential Commission against Graft and Corruption (PCAGC), being the Presidential arm tasked to investigate charges of graft and corruption against Presidential appointees, took cognizance of the case and subsequently conducted a hearing. Thereafter, the PCAGC submitted its report, styled as "Resolution".

As gathered from the PCAGC report and the records, the following are the relevant facts:

At the core of the case are the contracts for soil poisoning and termite extermination in certain buildings in the University complex awarded by the ISU in favor of Quadro A Marketing on October 16, and 20, 1992 and January 2 and 5, 1993, for a total contract price of P 581,000.00, more or less. Respondent Rodolfo C. Nayga ("Nayga" or "respondent", hereinafter), as the complaint would suggest, was alleged to be at the forefront of all major decisions in carrying out the transaction/s in question. Nayga's participation allegedly consisted primarily of knowingly approving and/or signing falsified contracts in connection with said termite extermination project. His co-respondents' participation allegedly consisted of making it appear that the transactions underwent public bidding when there was no such bidding; of allowing disbursements *vis-a-vis* the said contracts, and/or of falsifying documents.

The antecedents relevant to this case show that in a resolution dated August 12, 1993, the Isabela State University Employees and Faculty Association (ISUEFA) charged Nayga and several other officials/employees of ISU for graft and corruption for entering into anomalous transactions. After investigation, the National Bureau of Investigation (NBI), in a report dated October 8, 1993, recommended the filing of appropriate charges against Nayga and other officials of the ISU. The said report, augmented by other evidence, subsequently formed part of the basis of the charges filed by the ISUEFA before the PCAGC against Nayga for violation of Republic Act (R.A.) No. 1319 - the Anti-Graft and Corrupt Practices Act - specifically Section. 3, par. (e) thereof, i.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 . . . functions through manifest partiality, evident bad faith or gross*



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*inexcusable negligence . . .” and par. (g), i.e. “Entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not a public officer profited or will profit thereby”.*

Per its report, the NBI secured sworn statements, the relevant statements being those of -

- a). Fernando P. Ibarra (Chief Accountant and Bidding Committee Member) who stated that the contract was not subjected to public bidding, or if there was one, the same was simulated.
- b). Avelino C. Manaay (Supply Officer and Bidding Committee Member) who “*insinuated that the said project was never subjected to public bidding*”; and
- c). Arnuldo A. Sepillos (supplier representing Quadro A Marketing) who admitted that he did not participate in any public bidding relative to the project.

There were also certifications issued by the end-users, namely: Virgilio R. Anolin and Carmen Y. Pinzon, Dean of the College of Agriculture and Dean of the College of Arts and Sciences, respectively, to the effect that the whole project was completed and accepted in accordance with existing accounting and auditing rules. These certifications, however, were considered by the NBI as part of the falsification scheme because the said documents were allegedly made the basis for the disbursements on the transaction/s.

The NBI report suggested that there was practically no bidding for the soil poisoning and termite extermination project because only two (2) bidders actually participated, the third bidder having backed out for the reason “*not interested*”; that, since there was a failure of bidding, the proper recourse should have been an offer for the re-bidding of the project and not the outright award thereof to Quadro A Marketing; and that to justify the splitting of payments because of insufficiency of funds for the project, the contracts were allegedly falsified to support each and every disbursement made thereon.

Apart from the NBI report, complainant ISUEFA offered evidence consisting, *inter alia*, of the affidavits of some of its members as individual complainants. These affidavits contain -

1. A statement that Quadro A Marketing is not registered with the Securities and Exchange Commission; that its given address at 697 Cebu St., Sampaloc, Manila is non-existent, and that it is registered with the Department of Trade with a measly capital of P20, 000.00;
2. Accounts that certain documents were already made and dated and/or fabricated as part of respondents’ evidence; and



3. A detailed discussion about the anomalous bidding and related contracts that are the subjects of the controversy.

The collective defense of respondent Nayga and other ISU officials consisted of a long narration, traversing point-by-point the inculpatory findings contained in the NBI report aforesaid. They also submitted documentary evidence, such as the affidavits of Fernando Ibarra, et al., recanting their sworn statements taken by the NBI and alleging that their individual statements were taken without the presence of counsel.

In summary, respondent claimed that on July 15, 1992, the University's landscaping co-ordinator wrote Andres Karganilla, the University's Director of Infrastructure, to inform him that the College of Agriculture was infested with termites; that, after an ocular inspection, Karganilla reported that the College of Arts and Sciences building was also infested with termites and recommended anti-pest treatment; that the University's Board of Regent adopted a resolution authorizing the University President (Nayga) to hire expert service to conduct soil treatment and termite extermination on the buildings and to pay for the services out of available funds for the calendar year 1992, and that any remaining balance shall be paid in 1993, subject to accounting and auditing rules; and that the Notice for the Invitation to Bid and Bid Invitations dated July 1, 1992, were forthwith issued to be received on or before July 16, 1993 and to be opened on July 16, 1993.

According to the respondents, the following events took place on July 16, 1993: 1) the bidders' proposal and quotations of prices were submitted; 2) an abstract of quotation of prices was prepared by the ISU committee on Bids and Awards, and 3) the Notice of Award to Quadro A Marketing was issued. Moreover, the succeeding events, indicated opposite the dates of occurrence, took place:

- July 20, 1992 - Letter of Arnold Sepillos (Quadro A Mktg.) expressing willingness to undertake the whole project depending on the availability of funds.
- October 1, 1992 - Notice to Sepillos to proceed with the project.
- October 16, 1992 - Contract signed for P214, 616.50
- October 16, 1992 - Contract signed for P 97,125.00
- January 2, 1992 - Contract signed for P112, 875.00
- January 5, 1993 - Contract signed for P156, 383.50

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Total: P581, 000.00

Respondents' other allegations were along the following lines:

1. All the contracts in question were notarized.
2. On October 15, 1992, the Bids and Awards Committee adopted a resolution, approved by respondent Nayga, stating, among other things, that since the funds were insufficient to finance the whole project, the



award should only cover the following project components at the price indicated:

<u>College</u>	<u>Entire Area</u>	<u>To be Awarded For 1992</u>	<u>Cost per sq. m.</u>	<u>Total Cost</u>
Agriculture	1,200 sq. m.	555 sq. m.	P 175	P 97,125.00
Arts and Sciences	1,200 sq. m.	1,226.38 sq. m.	P 175	214,616.50

**Balance for 1993  
To Be Awarded  
(if funds are available)**

Agriculture	1,200-555	645 sq. m	175	112,875.00
Arts and Sciences	2,120-1226.38	893.62 sq. m.	175	156,383.50

- The individual Project Program of Work for the College of Agriculture with a total cost of P 212,535.42 had the recommendation/approval of Andres F. Karganilla, Jr., Chairman, Technical Committee, and Nayga's approval. The Bill of Materials and Cost Estimates amounted to P 211,535.42, but there was no indication as to who prepared the same. The individual Project Program of Work for the College of Arts and Sciences with a total project cost of P 381,730.23 had the checked/recommending approval of Karganilla and approval of Nayga. The Bill of Materials and Costs Estimates for P 381,730.23 did not indicate who prepared the same.

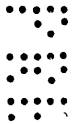
Based on the foregoing, Nayga and his co-respondents claimed that they are not culpable of the charges filed against them.

At the PCAGC, the focus of inquiry centered on the question of whether or not there was a valid public bidding, it appearing that all subsequent transactions, e.g. contracts, certifications and disbursements, among others, flowed therefrom. Then, to get to the core of the problem, the PCAGC initially probed into the sworn statements taken by the NBI in the light of the alleged violation of the affiants' right to counsel.

After due hearing, the PCAGC discerned that the said sworn statements deserve more credence because, at that time they were made, the respondents-affiants were ready to tell the truth as they appeared to do so spontaneously. The issue of recantation was considered as a matter of defense or as an afterthought because "survival" was foremost in the minds of respondents. The PCAGC added that, even if the said statements are deemed inadmissible, the NBI findings, independent of said statements, are still valid on the basis of the finding that there were only two (2) bidders; hence, there was a failure of bidding.



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According to the PCAGC, the appropriate bidding procedures should have been adhered to strictly to obviate the possibility of fraud in the award of contracts.

From the evidence, the PCAGC pointed out other circumstances indicative of said violation. It referred to the virtual rigging of bids, because on certain dates (July 15 and 16, 1992) when the bid documents were released to certain bidders, the Bids and Award Committee already awarded the contract to Quadro A Marketing.

The PCAGC also noted that in the pre-qualification stage, the matter of looking into the financial capacity, expertise, availability and accessibility of manpower and supplies, and a reasonable time frame for inspection and for follow-up to determine the extent of infestation and effectiveness of treatment were not taken into account. From the PCAGC's perception, this gross omission and the precipitate contract award to Quadro A Marketing support the NBI finding that, indeed, there was no public bidding.

Respondents' contention that time was of the essence because termites destroy in so short a time is untenable. As the PCAGC explained and as borne out by the records, it took the respondents two and a half months from July 15, or on October 1, 1992, to notify Quadro A Marketing to proceed with the project; and still another 15 days therefrom to execute the earlier two (2) contracts. The PCAGC added that, while the respondents submitted a Board Resolution adopted on October 19, 1992, authorizing management to enter into contracts on installment owing to insufficient funds, the two (2) contracts entered into or executed on October 16, 1992 were even ahead of the Board Resolution by three (3) days. This, as the PCAGC aptly observed, is plain and simple manipulation.

In view of the vital role that the documents played in the transactions, the PCAGC carefully considered the weight, credence and value of the aggregate evidence on both sides. Beyond the documentary evidence presented, the PCAGC discerned lack of transparency and openness in the transactions in question, specifically with respect to the bidding and subsequent related financial transactions and contracts. Finally, in the light of clear-cut instances of irregularities in carrying out the project, including the falsification of certain documents to support disbursement of funds, the PCAGC decided to recommend administrative sanctions for all the respondents, including Nayga, a Presidential appointee, with the following observation:

*"From the evidence, it has been proved that, from the very inception of the project (bidding, approval of the pertinent resolution, notice to proceed) to that stage where the various contracts were executed, up to that final point when the disbursements were made, respondent Nayga was invariably involved. He was at the forefront of all major decisions. He is found to have violated the provisions of the Anti-Graft and Corrupt Practices Act, specifically Sec. 3, par. (e) thereof which provides, as follows:*

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x

x



*and par. (g) of said Section, which provides:*



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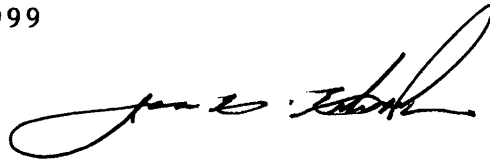
*Because of the attendant falsifications, his offense is basically one of dishonesty, a grave offense where the imposable penalty is dismissal."*

After review of the facts in the light of the evidence presented, this Office is inclined to agree with the recommendation of the PCAGC. As it were, the public bidding was supposed to be held for the protection of the ISU and to secure for itself the best possible advantages by means of an open competition between and/or among bidders. The aim of a public bidding is basically to secure the lowest price, to curtail favoritism in the award, to avoid suspicion or anomalies and to foster fairness among the bidders. But, as disclosed, the facts and circumstances surrounding the transactions in question betrayed these ideals. To that extent, I concur with the PCAGC's conclusion. If there are meaningful words to express the same, these are aptly said in pertinent portions of its report, thus:

*xxx "it is ironic that the subject matter of the complaint is termite extermination and soil poisoning. The dreaded termites are those who prey on public funds and gobble them up. It is this specie of termites that should be exterminated. As to soil poisoning, it is the University grounds that should be scorched, not with chemicals, but with torch of truth and justice so that the leaders that will emerge therefrom are men and women who can impart to young minds the gift of learning and true meaning of integrity."*

**WHEREFORE**, all the foregoing considered, and as recommended by the Presidential Commission against Graft and Corruption, respondent Rodolfo C. Nayga is hereby found guilty as charged and is hereby **DISMISSED** from the service with forfeiture of benefits that may be due him, effective upon his receipt of this order.

SO ORDERED. November 5, 1999



By the President:



**RONALDO B. ZAMORA**  
Executive Secretary

