

[OP ADMINISTRATIVE ORDER NO. 20, September 23, 1998]

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON
JAIME M. GELLOR, PRESIDENT, CENTRAL MINDANAO
UNIVERSITY**

This is an administrative complaint filed against Dr. Jaime M. Gellor, President, Central Mindanao University (CMU), Musuan, Bukidnon, and Engr. Liberato Balandra, Vice Chairman, Pre-qualification Bids and Awards Committee (PBAC) and Head of the Engineering Technical Committee, CMU, for alleged violation of Section 3 (e) and (g) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act".

The case arose out of the letter-complaint of Dr. Medino A. Yebron et al., dated November 24, 1994, initially filed with this Office, imputing on respondents acts constituting graft and corrupt practices in connection with various infrastructure projects inside the CMU campus. On January 19, 1995, this Office referred the letter-complaint to the Presidential Commission against Graft and Corruption (PCAGC) for appropriate action. Finding sufficient cause for an administrative investigation the PCAGC, in an order of February 13, 1995, required respondents to file their respective counter-affidavits.

The factual milieu as recited by the PCAGC in its report, styled "RESOLUTION", dated March 20, 1998, as follows:

"On February 13, 1995, finding sufficient basis for an administrative investigation, this Commission issued an order requiring respondents to: (1) file 'their respective counter-affidavits xxx xxx within a non-extendible period of five (5) days from receipt thereof; and (b) submit their respective Statements [of] Assets and Liabilities for the last three (3) years (1992, 1993 and 1994).....

"Other cases were earlier filed with the Presidential Anti-Crime Commission (PACC), with the Office of the Ombudsman (Mindanao), and with the Regional Trial Court, all charging respondent Gellor for violation of Republic Act 3019, as amended,.....

"The respondents filed their 'Joint Counter-Affidavit' dated March 15, 1995 denying the charge of illegally awarding the contract for the improvement of the campus roads stating, among other things that; respondents believed in good faith that the award to FGW was in accordance with Presidential Decree 1594 because FGW had an on going project inside the Central Mindanao University (CMU) campus, the Vet-Med Building (Animal Disease Diagnostic Laboratory); FGW did not incur any negative slippage; the costing and estimates in the concreting of the campus road projects; the ETPS estimate for the new project was P

616,604.00, whereas, the negotiated contract cost CMU P 600,000.00 only; and the complainants are disgruntled, dissatisfied professors or personnel of CMU'.

"The complainants, refuting the counter-affidavit, claim that: (a) respondents failed to mention that in response to the Invitation to Bid, twelve (12) contractors from Bukidnon and Misamis Oriental had already met with the PBAC in accordance with the schedule as mentioned in the invitation, and submitted thereby their pre-qualification documents and all were declared pre qualified; (b) the concreting was done at nighttime without the use of any compacting equipment, and without the presence of an inspector or auditor; (d) respondent Gellor abolished the Technical Committee and appointed respondent Balandra to inspect the projects for compliance with plans and specifications; (e) contrary to allegations of the counter-affidavit, FGW Construction, was blacklisted by the previous CMU administration; (f) the Veterinary Diagnostics Building could not be checked for compliance because there were no 'plans and specifications' and for that reason the Dean of the College refused to accept the building; (g) that the road concreting project was not adjacent to or contiguous with Veterinary Diagnostic Building; and (h) it was not true that the complaints were disgruntled CMU Officials and 'have an axe to grind against' respondents.

"Complainant Yebron for himself and the other complainants filed supplemental charges against respondents styled 'Manifestation' dated April 19, 1995, enumerating therein all the other charges including those already filed with the Office of the Ombudsman (Mindanao) and with the Presidential Anti-Crime Commission (PACC).

"On June 2, 1995, this Commission received a pleading denominated 'Counter-Reply and Motion to Dismiss' dated June 1, 1995, alleging, among other things, that the complaint be dismissed on the following grounds: (a) that the Reply filed by complainants were mere 're-instatements of the allegations of their Joint Affidavit filed with the other investigating agencies of the government; and (b) that the negotiated contracts had already been passed in audit by the Office of the Regional Director, Commission on Audit (COA) under the Contract Review Report dated February 27, 1995.

"On June 5, 1995, the said 'Counter-Reply and Motion to Dismiss' was denied.

"On June 6, 1995, finding sufficient basis to conduct administrative investigation of the supplemental charges, respondents Gellor and Balandra were required to file their respective counter- affidavits.

"On June 22, 1995, respondents filed motion for reconsideration of the order of this Commission dated June 5, 1995 denying the motion to dismiss; and before the Commission could rule on the motion for reconsideration, on the same day of June 22, 1995, 'Motion to Set Aside Order and to Dismiss Supplemental Charges' dated June 21, 1995 was filed by respondents.

"On June 26, 1995, this Commission denied for lack of merit, both the said motion for reconsideration and the motion to dismiss.

"Because of the repeated refusal of respondents to file their answer, complainants presented their evidence and on August 3, 1995, filed their 'Formal Offer of Exhibits and Evidence' dated July 24, 1995.

"On August 4, 1995, respondents filed their 'Answer to Supplemental Charges.

"Despite the opposition of complainants for the admission of the 'Answer to Supplemental Charges the same was admitted and respondents were allowed to present testimonial evidence.

"Successive motions to dismiss and motions for reconsideration on identical (sic) grounds were repeatedly filed by respondents. All of them were denied for lack of merit.

"On January 3, 1996, this Commission resolving the respondents' Motion to Dismiss the Supplemental Complaint ordered the dismissal of all the charges except the following: (a) Concreting the 250-meter campus road for P 630,500.00; (b) Construction of Student Ladies' Dormitory for P 2,683,021.69; (c) Construction of Student Center for P 1,795,000.00; (d) Construction of Veterinary Med. Building Phase I for P 2,498,349.04; (e) Construction of Veterinary Med. Building Phase IIB for P 1,080,258.25; (f) Construction of the Veterinary Med. Building Phase III for P 998,075.00; and (g) Construction of Veterinary Med. Building Phase III for P 324,718.91, all through negotiated contracts."

Against the foregoing backdrop, the PCAGC recommended the dismissal of the complaint against respondent Liberato Balandra on jurisdictional ground, the latter not being a presidential appointee. On the other hand, the PCAGC upon the following basic set of facts, principal issues and the differing positions assumed by the parties, to wit:

"In brief, the indisputable facts involved are as follows: (a) that an invitation to pre-qualify and bid was published by the [CMU] with the Daily Post; (b) that twelve (12) construction firms responded to the invitation submitting thereby pre-qualifications documents/papers; and (c) that the infrastructure projects were instead awarded by negotiated contracts

The complainants claimed that awarding the projects to FGW by negotiated contracts and not through public bidding as earlier announced was contrary to law.

On the other hand, the respondents claimed that resort to negotiated contracts as a mode of awarding the projects to FGW was in consonance with Presidential Decree No. 1594.

Clearly, therefore, the only issues to be resolved...are: (a) Whether or not