

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 53

IMPOSING THE PENALTY OF PERPETUAL DISQUALIFICATION FROM RE-EMPLOYMENT IN THE GOVERNMENT SERVICE ON RESPONDENTS ERNEST F. O. VILLAREAL, BENJAMIN V. CARIÑO, JOEMARI D. GEROCI, SULFICIO O. TAGUD, JR., MARTIN S. SANCIEGO, JR., RODOLFO T. TUAZON, and ANGELITO M. VILLANUEVA

Quoted hereunder are the findings of facts and law by the Presidential Anti-Graft Commission (PAGC) embodied in its Resolution dated 28 November 2002:

"THE CASE

This resolves the case against the members of the Board of Directors and some employees of the Public Estates Authority pertaining to the alleged irregularities surrounding the construction of the President Diosdado Macapagal Boulevard (PDMB).

On 25 September 2002, Chief Presidential Legal Counsel Avelino "Nonong" J. Cruz, Jr. referred¹ to the Presidential Anti-Graft Commission the complaints against Public Estates Authority (PEA) and JD Legaspi Construction relating to the Central Boulevard Project, popularly known as the President Diosdado Macapagal Boulevard.

The President Diosdado Macapagal Boulevard (PDMB) is a 5.123-kilometer, 8-lane road starting from Buendia to Pacific Avenue, with 3 bridges. Three contractors, namely, Shoemart Incorporated (SM), R-I Consortium, and JD Legaspi Construction (JDLC), developed the PDMB. Each contractor was assigned a portion of the road and a bridge to construct. The approximate total cost of the PDMB is ONE BILLION ONE HUNDRED THIRTY-FOUR MILLION SIX HUNDRED SIX THOUSAND FOUR HUNDRED ONE PESOS AND SEVENTY-SEVEN CENTAVOS (P1,134,606,401.77).

The 73.80% of the total cost is the total contract price amount for the JDLC portion of the PDMB, a 2.229-kilometer road and 42-meter inland bridge, in the amount of P837,317,343.77. The actual payment made to JDLC as of 31 August 2002, is P816,006,251.93.

The JDLC still has a collectible of P21,311,091.84 due it from the PEA. Of the total project cost of P1,134,606,401.77, 14.52% of the total cost in the amount of P164,798,866.00 was paid to R-I Consortium for the 1.186-kilometer road and 55-meter bridge, and 11.68% of the total cost in the amount P132,490,192.00 was paid to SM Inc. for the 1.426-kilometer road and 100-meter bridge, all components of the PDMB.

For the completion of the PDMB, the PEA entered into a Joint Venture Agreement with SM² dated 9 August 1994; a Memorandum of Agreement³ with

R-I Consortium with Implementing Agreement No. 5 dated 21 December 2001, and a Construction Agreement⁴ with JDLC dated 10 April 2000. The PDMB was inaugurated on 5 April 2002 and was opened to the public in July 2002.

Below is the sequence of events in the implementation of the President Diosdado Macapagal Boulevard (PDMB) Project:

On 24 September 1998, pursuant to Administrative Order No. 224⁵ ordering the PEA to implement plans, programs and the projects in the Boulevard 2000, the PEA Board issued Resolution No. 1895, Series of 1998, ordering the construction of the Central Boulevard/PDMB and adopting the proposed action plan of the PEA Management to borrow money from various financial institution in an estimated amount of P1 Billion to fund the construction of the Central Boulevard/PDMB with an estimated project cost of P731,443,700.00⁶.

The members of the Old PEA Board of Directors⁷ then were:

	NAME	POSITION	TERM
1.	Frisco F. San Juan	Chairman	3 July 1998 to 30 April '01
2.	Carlos P. Doble	General Manager	3 July 1998 to 30 June '01
3.	Carmelita De Leon-Chan	Board Member	3 July 1998 to 30 June '01
4.	Daniel T. Dayan	Board Member	3 July 1998 to 30 June '01
5.	Salvador P. Malbarosa	Board Member	3 July 1998 to 30 June '01
6.	Leo V. Padilla	Board Member	3 July 1998 to 30 June '01
7.	Elpidio G. Damaso	Board Member	3 July 1998 to 29 Aug. '01

On 22 April 1999, the PEA requested the Office of the President for authority to bid and award contract packages thru Simplified Bidding. On the

same date, GM Carlos P. Doble of PEA issued Office Order No. 070⁸ creating the Ad Hoc Committee tasked to handle the bid and award of the Central Boulevard Project and the Ombudsman Building.

On 2 July 1999, the Office of the President approved⁹ the request of the PEA to bid and award contract packages through Simplified Bidding.

The simplified bidding was conducted by the Ad Hoc Committee from 8 July 1999 to 23 September 1999 based on the list of ten contractors provided by the Department of Public Works and Highways (DPWH). The following were the five prequalified bidders:

Bidders of the Proposed Central Boulevard Road Project¹⁰
(Approved Agency Estimate: P 549,713,194.00)

BIDDER	BID PRICE
1. JD Legaspi Construction	P 584,365,885.05
2. D.L. Cervantes Construction	P 631,588,119.00
3. Tokwing Construction	P 642,404,794.19
4. W. Red Construction and Development Corporation	P 652,999,429.18
5. Egapol Construction	P 656,373,738.03

On 3 November 1999, the PEA Board through Resolution No. 2032¹¹, approved the award of the contract to JDLC and the appropriation of the total contract amount of P584,365,885.05 chargeable against the proceeds of the P1 billion loan from Land Bank of the Philippines (LBP)/All Asia Capital. The Notice of Award to JDLC was subsequently issued on 26 November 1999.

On 15 December 1999, the PEA Board through Resolution No. 2057¹², approved the Construction Agreement executed between PEA and JDLC. The same was approved by the Office of the President¹³ on 29 January 2000 with the condition that any price adjustment or variation orders should first be approved by the Office of the President before the changes could be effected.

On 10 April 2000, the Construction Agreement was signed by the PEA and JDLC; and the Notice to Proceed¹⁴ subsequently issued to JDLC.

On 5 July 2000, the PEA Board through Resolution No. 3017¹⁵ approved the Variation Order No. 1 (Additional Works) in favor of JDLC in the amount not exceeding P117,454,756.71, for the detailed design and construction of the Proposed Seaside Drive Extension and the proposed bridge connecting CBP II and CBP I B & C.

On 29 January 2001, the PEA Board through Resolution No. 3089¹⁶, confirmed the approved Variation Order No. 1 involving the realignment of items of work with no additional cost and additional time to the original Construction Agreement to suit actual field conditions. The previously approved Variation Order No. 1 was changed to realignment of additional works at no cost to PEA.

On 19 March 2001, Ernest F. O. Villareal was appointed as Chairman of the PEA Board of Directors¹⁷.

On 26 April 2001, the PEA Board through Resolution No. 3099, confirmed the time extension of 37 days granted to JDLC. On the same date, Resolution No. 3102¹⁸ was issued approving the updated cost of Variation Order No. 2, previously designated as Variation Order No. 1, in the total amount of P126,440,810.20. The appropriation of additional funds in the amount of P8,986,053.49 was charged against the balance of the P1 Billion loan proceeds from LBP.

The following are the members of the new PEA Board of Directors¹⁹:

NAME	POSITION	APPOINTMENT
Ernest F. O. Villareal	Chairman	1 March 2001
Benjamin V. Cariño	General Manager	1 July 2001
Joemari D. Gerochi	Board Member	1 July 2001
Sulficio O. Tagud, Jr.	Board Member	1 July 2001
Angelito M. Villanueva	Board Member	1 July 2001
Salvador D. Sarabia, Jr.	Board Member	1 July 2001 to 18 March '02
Martin S. Sanciego, Jr.	Board Member	29 August 2001 to Present
Rodolfo T. Tuazon	Board Member	18 March 2002

On 5 December 2001, the PEA Board deferred confirmation of the Board Resolution No. 3153²⁰ series of 2001, since Dir. Sulficio O. Tagud, Jr. questioned the Board's authority to approve the contract price adjustment in favor of JDLC, considering that the amount involved was P42,418,493.64²¹. DGM Manuel Beriña informed the Board that the said contract price adjustment was allowed under Items C1 12.1 par. 5 and IB 10.10 par. 2 of PD 1594. The confirmation of the said contract price adjustment was likewise deferred on 14 December 2001 meeting²² of the Board, pending the submission by Management of the basic justifications on the increase in the general prices of construction materials.

On 18 March 2002, Rodolfo T. Tuazon was appointed to office as member of the Board of Directors vice Salvador D. Sarabia, Jr. Rodolfo T. Tuazon assumed office on 19 April 2002.²³

On 19 April 2002, the PEA Board through Resolution No. 3203²⁴, confirmed the approved Contract Price Adjustment to JDLC in the total amount of P42,418,493.64.

On 23 July 2002, Beriña requested the Board for confirmation of Variation Order No. 3 (Landscaping Works-Central Boulevard), Variation Order No. 4 (Additional Items of Work) and Variation Order No. 5 Landscaping Works-Seaside Drive), amounting to P13,357,005.00, P4,759,630.80 and P1,244,949.00, respectively as well as the final bill of quantities in the total amount of P79,332,524.08.²⁵

On 13 August 2002, upon motion of Director Rodolfo T. Tuazon, the PEA Board through Resolution No. 3272²⁶ series of 2002 approved Variation Order No. 4 and the Final Bill of Quantities. In the minutes of the said meeting, Director Tagud stated that he was abstaining and withholding comment for or against the motion for approval, pending clarification on the project components. Nonetheless, the Board confirmed Variation Order No. 4 (Additional Items of Work) and the Final Bill of Quantities (Overruns/Underruns) for the CBRP, with

the approximate amount of P4,759,630.80 and P79,332,524.08, respectively. The said amount was to be charged against the proceeds of the P1 billion GSIS loan.

On 10 September 2002, Director Tagud registered his negative vote on the motion for approval of Variation Order No. 4 (Additional Items of Work) and the Final Bill of Quantities (Overruns/Underruns) for the CBRP, in the approximate amount of P4,759,630.80 and P79,332,524.08, respectively.²⁷

On 16 September 2002, Dir. Tagud sent a letter-complaint²⁸ to Her Excellency President Gloria Macapagal-Arroyo alleging irregularities surrounding the construction of the PDMB.

On 25 September 2002, the Office of the President referred to the PAGC the letter-complaint of Dir. Tagud against PEA officials and the reply of the PEA officials to said complaint.

On 12 November 2002, the Investigation Office of the PAGC, as a nominal complainant, filed a Formal Charge against the members of the PEA Board of Directors and some PEA employees involved in the alleged irregularities surrounding the construction of the PDMB.

On 22 November 2002, the Preliminary Conference was conducted wherein respondents were given the chance to raise clarificatory questions. The Commission denied respondent Tagud's Motion to Refer Administrative Case to

the Ombudsman by virtue of the letter from the Ombudsman dated 17 October 2002, quoted herein:

This has reference to your letter dated 14 October 2002 requesting for authority to conduct administrative disciplinary proceedings against the presidential appointees at the Public Estates Authority (PEA) named respondents in the case involving the construction of the President Diosdado Macapagal Boulevard (PDMB).

It is our humble view that the authority is not necessary.

The Office takes the opportunity to confirm the fact that the case filed with this Office on 3 October 2002, involving the subject controversy, is criminal in nature. It now bears the docket number OMB-C-C-02-0667-J, entitled "Sulficio Tagud, Jr., et al. versus Ernest Villareal, et al." The basic complaint has not been further docketed as an administrative case. Thus, the same did not preclude the subsequent filing with the PAGC of an administrative complaint against the concerned PEA officials. (underscoring provided)

In the same hearing of 22 November 2002, the Commission granted the request of the counsel of respondent Tagud to file an Answer/Counter-Affidavit on 25 November 2002.

Upon agreement of the parties, the preliminary conference on 22 November 2002 was terminated. Immediately thereafter, the Commission issued an Order²⁹ directing the parties to file their Position Paper and/or Memorandum not later than 26 November 2002, after which the case shall be deemed submitted for Resolution.

THE CHARGE

Among the members of the PEA Board of Directors charged are the following:

1. Ernest F. O. Villareal, Chairman
2. Benjamin V. Cariño, General Manager and Ex-Officio Member
3. Joemari D. Gerochi, Board Member
4. Sulficio O. Tagud, Jr., Board Member
5. Martin S. Sanciego, Jr., Board Member
6. Rodolfo T. Tuazon, Board Member
7. Angelito M. Villanueva, Board Member

The employees of the PEA (non-presidential appointees) included in the Formal Charge are the following:

1. Jaime R. Millan, Assistant General Manager
2. Manuel R. Beriña, Jr., Deputy General Manager
3. Theron V. Lacson, Deputy General Manager
4. Bernardo T. Viray, Deputy Manager
5. Ernesto L. Enriquez, Senior Corporate Attorney

The respondents were charged for violation of the following:

1. Item IB2 of IRR of Presidential Decree No. 1594 am.³⁰
2. Section 3 (i) (g) (e) of Republic Act No. 3019³¹
3. Article 217 Chapter 4 Title 7 of the Revised Penal Code³²
4. Section 46 (b) (3) (4) (9) (27) of Executive Order No. 292 or the Administrative Code of the Philippines,³³ and
5. Article 8 of the Construction Agreement³⁴ signed on 10 April 2000, between the Public Estates Authority and J.D. Legaspi Construction;

For the following acts committed:

1. On 22 April 1999, notwithstanding the existence of a duly constituted PBAC, former Public Estates Authority General Manager Carlos P. Doble created an AD HOC Committee, through Office Order No. 070, composed of the following: Deputy General Manager Manuel R. Beriña, Jr., Chairman; with members, Deputy General Manager Theron V. Lacson; Deputy Manager Bernardo T. Viray; and Senior Corporate Attorney Ernesto L. Enriquez. This Ad Hoc Committee is responsible for the bidding and award of the construction contract for the Central Boulevard Road Project.

2. On 21 October 1999, the Ad Hoc Committee recommended to the PEA Board of Directors, for approval, the contract for the construction of the proposed Central Boulevard Road Project (Package 1) to J.D. Legaspi Construction.
3. On 3 November 1999, the PEA Board of Directors approved the award of contract for the Construction of the Proposed Central Boulevard Road Project (Package 1), in the amount of P584,365,885.05.
4. On 26 November 1999, the Notice of Award was issued to J.D. Legaspi Construction. Subsequently, a Notice to Proceed was likewise issued to Engr. Jesusito D. Legaspi, General Manager, J. D. Legaspi Construction, on 10 April 2000, and the same was received on 11 April 2000.
5. On 10 April 2000, the Agreement for the Construction of the Central Boulevard Road Project (Package 1) was signed between JDL Construction and the PEA, represented by then General Manager, Carlos P. Doble.
6. JDL Construction agreed to perform and complete the Project, in strict compliance with the approved plans, specifications, contract documents, relevant government laws, codes, regulations and ordinances. The works in the Contract included the furnishing by the JDL Construction of all labor, materials equipment and supplies. (Article I, 1.1; 1.2), for a total contract price of P584,365,885.05.
7. On 26 April 2001, notwithstanding his personal knowledge of the fixed contract price of the said Project, Deputy General Manager Manuel R. Berina, Jr., requested PEA Board of Directors for the approval the updated cost of Variation Order No. 2, in the total amount of P126,440,810.20. PEA Board of Directors approved Variation Order No. 2 through its Board Resolution No. 3102.
8. On 24 August 2001, Assistant General Manager Jaime R. Millan and Deputy General Manager Manuel R. Berina, Jr. recommended to General Manager Benjamin V. Cariño, for approval, the contract price adjustment in the amount of P42,418,493.64 to JDL Construction, and the appropriation of funds chargeable to the project for the said adjustment; which the latter approved.
9. On 16 April 2002, despite personal knowledge that the contract price of the Central Boulevard Road Project was fixed at P584,365,885.05, Deputy General Manager Manuel R. Berina, Jr. recommended, and noted by GM Benjamin V. Cariño, for the Board's approval the contract price adjustment of P42,418,493.64 to JDL Construction; which was

subsequently approved by the Board on 19 April 2002 per Resolution NO. 3203.

10. On 13 August 2002, PEA Board Member Rodolfo Tuazon, despite having personal knowledge that the Central Boulevard Road Project has a fixed contract price of P584,365,885.05, moved for the approval of Variation Order No. 4 (Additional Items of Work) and the Final Bill of Quantities (Overruns/Underruns) by the PEA Board of Directors. The same was approved by the PEA Board of Directors in its 13 August 2002 meeting, with the approximate amount of P4,759,630.80 for Additional Items of Work and P79,332,524.08, for the Final Bill of Quantities.
11. PEA authorized payment and has actually paid J.D.L Construction the total amount of P816,006,251.93, as of 31 August 2002. The total amount of the contract escalated to P 837,317,343.77 which is 43.29% escalation from the original contract price of P 584,365,885.05.

All the respondents, both the Presidential and the Non-Presidential Appointees, are within the jurisdiction of the Presidential Anti-Graft Commission (PAGC) pursuant to Section 4 and 4 (b)³⁵ of Executive Order No. 12 dated 16 April 2001.

ISSUES

1. WHETHER OR NOT THE AD HOC COMMITTEE HAD THE AUTHORITY TO CONDUCT THE BIDDING AND AWARD OF THE CONSTRUCTION CONTRACT FOR THE CENTRAL BOULEVARD/PDMB;
2. WHETHER OR NOT PRIOR APPROVAL FROM THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES IS REQUIRED FOR THE CONTRACT PRICE ADJUSTMENTS, OVERRUNS, AND/OR VARIATION ORDERS;
3. WHETHER OR NOT THE CONTRACT PRICE ADJUSTMENTS, OVERRUNS, AND/OR VARIATION ORDERS ARE VALID AND JUSTIFIED; AND
4. WHETHER OR NOT THE RESPONDENTS ARE GUILTY OF VIOLATION OF PERTINENT PROVISIONS OF P.D. 1594;

REPUBLIC ACT NO. 3019; THE REVISED PENAL CODE;
EXECUTIVE ORDER NO. 292; AND THE CONSTRUCTION
AGREEMENT SIGNED ON 10 APRIL 2000 BETWEEN PEA AND
JDLC.

DISCUSSION

Presidential Decree No. 1084, creating the Public Estates Authority (PEA), provides in its First Whereas, the purpose of the agency which is for the economical and efficient administration of lands and real estate managed and/or operated by the government. The case at bar shows how the members of the Board of Directors and some employees of the Public Estates Authority miserably failed to uphold agency's mandate resulting to the damage and injury of the government.

The Ad Hoc Committee Had No Authority To Conduct The Bidding And Award Of The Construction Contract For The Central Boulevard or PDMB

The irregularity surrounding the construction of the PDMB started when the former General Manager Carlos R. Doble created an Ad Hoc Committee, through Office Order No. 070³⁶ dated 22 April 1999, for the bidding and award of the construction contract of the Central Boulevard now referred to as the President Diosdado Macapagal Boulevard, notwithstanding the fact that there was an existing Pre/Post Qualification, Bidding and Awards Committee or PBAC

constituted in 9 July 1996, through Office Order 125 pursuant to PD 1084, PD 1594, EO 164, and the approval of the PEA Board of Directors.

Respondents Berifia as Chairman, and Lacson, Viray, and Enriquez as members of the illegally constituted AD HOC Committee participated in the opening of bids for the construction of the Central Boulevard as evidenced by the Abstract of Bids dated 16 September 1999. Respondents then awarded the contract to the JD Legaspi Construction and requested for Board Approval for the said award.

In their Counter-Affidavits, respondents Lacson, Viray, and Enriquez aver that they only performed their duties and responsibilities by virtue of the Office Order No. 070 issued by former GM Carlos P. Doble. They argued that being a member of the said committee could not be considered as unlawful. They aver that they performed their functions diligently and faithfully by securing the necessary clearances and approval in the conduct of the Simplified Bidding up to the Award of the Contract.

Respondent Lacson and Enriquez further stated that there is nothing in Item IB 2 of the IRR of PD 1594 which prohibits the creation of an Ad Hoc Committee for bids and awards nor a proscription that there should only be one (1) PBAC in an agency. Further, they stated that the Ad Hoc Committee substantially conformed to the composition indicated in the said IRR of PD 1594.

In addition, respondents aver that the government did not suffer any undue injury because the bid of JDLC was the lowest among the responsive bids submitted by the bidders. Neither could it be said, according to the respondents, that this is grossly and manifestly disadvantageous to the government.

The Commission finds the contentions of respondents Lacson, Viray, and Enriquez to be without merit. The IRR of PD 1594, specifically IB 2 – 1, directs each agency to constitute a PBAC that should have a total of seven (7) members. The required composition is specified herein:

IB 2 – ORGANIZATION OF THE PBAC

1. Each office/agency/corporation shall have in its head office or in its implementing offices a Prequalification, Bid and Award Committee (PBAC) which shall be responsible for the conduct of prequalification, bidding, evaluation of bids and recommending award of contracts. Each committee shall be composed of the following:

- a. Chairman (regular) - At least third ranking official of the office/agency/corporation.
- b. Executive Officer and Secretary (regular) - Legal Officer of the office/agency/corp.
- c. Member (regular) - Technical member designated by the head of office/agency/ corporation
- d. Member (provisional) - At least two, with experience in the type of project to be bid and in project management, duly designated by the head of the office/agency/corporation on a project to project basis.
- e. Members from the private sector -
To ensure the transparency of bidding process, one qualified representative from a constructors' association DULY RECOGNIZED BY THE CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES (CIAP) and one qualified representative from any of the following organizations:
 - (1) End-user group or non-governmental organization to be designated by the head of the office/agency/ corporation concerned.
 - (2) Associations of Certified Public Accountants or Civil Engineers duly recognized by the Professional Regulation Commission (PRC).Both representatives shall be non-voting members.

Furthermore, Section 2 of IB2 IRR of PD 1594 states that:

IB2. 2. Government owned or controlled corporations shall organize their own PBACs, the members of which shall be appointed by their respective boards preferably along the same line as other government offices. (underscoring supplied)

It is therefore clear that the Ad Hoc Committee composed of only four (4) members chosen by Doble did not conform at all with the requirements indicated in the IB2, IRR of PD 1594. In addition there was no Board approval of the said Office Order creating the Ad Hoc Committee. Respondents could have taken all the necessary steps/measures to protect the interest of the government to ensure that everything is in accordance with the pertinent existing laws, rules and regulations. They failed to act with the diligence of a good father of a family and thus prejudiced the interest of the government.

Respondents' argument that being members of the said Ad Hoc Committee is not illegal is bereft of merit. Performing the functions of the PBAC as members of the Ad Hoc Committee without any color of authority is patently against the law. The acts of the respondents as members of the Ad Hoc Committee taint with irregularity the bidding and award of the construction contract of the PDMB, which to date, has cost the government more than a billion pesos. The duly constituted PBAC is composed of the following: Theron V. Lacson as Chairman, and members Atty. Jaime T. De Veyra, Engr. Rodolfo C. Hernandez, Architect Jorge L. Regala, Mrs. Cristeta Q. Catral, and a Representative from a Professional Organization.

The argument of the respondent that there is nothing in Item IB 2 of the IRR of PD 1594 which prohibits the creation of an Ad Hoc Committee for bids and awards nor a proscription that there should only be one (1) PBAC in an agency is devoid of merit. The IB 2 of the IRR of PD 1594 sets the composition of the PBAC which, in effect, prohibits the constitution of any other committee to be formed that is not in conformity with the guidelines set in the IRR of PD 1594.

One of the objectives of PD 1594 in adopting a set of rules and regulations covering government contracts for infrastructure is to bring about maximum efficiency in project implementation and minimize project cost and contract variations through sound practices in contract management.³⁷ To depart from prescribed rules and regulations will most often result in anomalies sought to be avoided by the government in infrastructure projects. This is precisely what happened in the PDMB project.

Respondent members of the Ad Hoc Committee's actions have caused undue injury to the government.

**Prior Approval From The Office Of The
President Of The Philippines Is Required
For The Contract Price Adjustments,
Overruns, And/Or Variation Orders**

Below is the summary of the contract price adjustments, overruns, and variation orders approved by both the old and present members of the PEA Board of Directors.

Board Resolution No. and Date	Nature	Amount
Resolution No. 3102 26 April 2001 (OLD PEA BOARD)	Variation Order No. 2 (42m. Bridge and Seaside Drive Extension) -originally Variation Order No. 1 in the amount of P117,454,756.71 per Board Res. 3089 but was later revised with the updated cost of P126,440,810.20 and became V.O. No. 2 per Board Res. No. 3102.	P126,440,810.20
Resolution No. 3203 19 April 2002 (NEW PEA BOARD)	Contract Price Adjustment (7.26% of Orig. Price)	P42,418,493.64
Resolution No. 3272 13 August 2002 (NEW PEA BOARD)	Variation Order No. 4 (Additional Items of Work) Final Bill of Quantities (Overruns/Underruns)	P4,759,630.80 P79,332,524.08
TOTAL		P252,951,458.72

Respondents Villareal, Cariño, Gerochi, Tuazon, and Villanueva contend that by virtue of the repeal of Administrative Order No. 7 by Executive Order 109, the requirement of prior Presidential Approval is no longer needed for the contract price adjustments and/or variation orders. Likewise, said respondents contend that nothing in CI 1, 2, 3 IRR of PD 1594 requires prior Presidential Approval for the issuance of change orders, extra work orders, supplemental agreements, overruns/underruns as long as the total aggregate amount does not exceed 100% of the original contract. The Commission finds this contention of the above respondents to be without merit.

First and foremost, the Construction Agreement or contract between the JDLC and the PEA is the primary law between the parties, as in the case of every contract. And Article 8 of the Construction Agreement was more than emphatic in requiring the parties to first secure the approval of the President before any change order could be effected. The pertinent portion of the contract is quoted herein:

Article 8
Change Order and/or Additional Work

8.1. The PEA, may at any time, by written order, make changes in the schedule and work required under this Agreement. If any such change/s causes an increase or decrease in the work or the time required for performing the work, an equitable adjustment shall be made of the contract price and completion date upon mutual agreement of the parties reflecting such adjustments by way of written order subject to the provisions of the IRR of PD 1594, as last amended and the approval of the President.

8.2. Should the PEA find it necessary to have any additional work carried out for purposes of the Project in addition to the contracted work, such additional work will be carried out immediately by the CONTRACTOR upon receiving written approval from the President, provided that the amount of the change order is within the limitations and in accordance with conditions set forth in PD 1594 and its IRR. (underscoring supplied)

Respondent Tuazon opines that the President's approval, taking into consideration governmental hierarchy, should come after, not before, the approval by the PEA Board. There is no logic at all in this argument. The condition stated in the approval of the President of the Construction Agreement between PEA and JDLC on 29 January 2000, is self-explanatory, to wit: "any price adjustment or variation orders should first be approved by the Office of the President before the changes could be effected." This statement does not require any interpretation from any source, especially from the respondents.

Nothing in the records shows that the President's approval was secured before the PEA Board approved the Variation Order No. 2, Contract Price Adjustment, Variation Order No. 4, and Final Bill of Quantities. Former President Joseph Estrada clearly did not approve Variation Order No. 2. Neither did President Gloria Macapagal-Arroyo approve the Contract Price Adjustment, Variation Order No. 4, and Final Bill of Quantities. The members of the **Old and New Board of Directors** were therefore clearly remiss in their duty to protect the interest of the government as manifested in their refusal to follow the directive from the Office of the President and the stipulations in the Construction Agreement.

The contention of the respondents that the President's approval is no longer required in EO 109 is not correct, because Section 9 of EO 109 states the following:

- a. **All Government Contracts** required by law to be acted upon and /or approved by the President, and any subsequent amendments or supplements thereto, shall not be signed until after the **NEDA Board, which is chaired by the President of the Philippines**, has favorably acted upon or approved the same.

What is now required under EO 109 is not only the President's approval but also that of the NEDA Board which is chaired by the President. Legally, the President's approval is still required for contracts. Moreover, there is nothing in the records which shows that approval from the NEDA Board was secured by the

respondents with respect to the price adjustments and/or variation orders. Nor was there any attempt to secure such approval from the President.

Respondents Gerochi and Tuazon contend that if there was failure to secure Presidential Approval, the PEA Board may not be held answerable for such administrative lapse because the Board acts mainly on policy matters. The respondents argue that it was incumbent upon management to secure such Presidential Approval after Board action on the matter.

The Commission finds the contention of respondent Gerochi and Tuazon unmeritorious. The absence of a Presidential Approval for the contract price adjustments, overruns, and/or variation orders is not a mere administrative lapse but rather a reflection of utter disregard of the very basic requirement before any contract price adjustments, overruns, and/or variation orders should be approved and implemented.

The Board Members were chosen and appointed by Her Excellency President Gloria Macapagal-Arroyo for their competence and good judgment in always upholding national interest over and above any other consideration. The Board Members of a corporation cannot simply pass the buck to the Management or its subordinates otherwise the Board itself becomes useless.

**Whether Or Not The Contract Price
Adjustments, Overruns, And/Or
Variation Orders Are Valid And Justified**

Respondents Millan, Beriña, and Viray contend that as employees of the PEA, they were just following the instructions from their superiors and that their actions were only recommendatory. Respondent Millan avers that as the designated Project Director of Construction Task Force (CTF) for the Central Boulevard Road Project (CBRP), he made sure that each and every segment of the contract were all approved by COA. Respondent Beriña avers that because of the delay in issuing Notice To Proceed which took seven (7) months, the contractor requested for a contract price adjustment in the amount of P42,418,493.64 on the basis of IB 10.10 of IRR PD 1594.

Respondent also contends that the 42-meter inland bridge was an additional work to the JDLC because R-I Consortium declined to construct it because it was outside its coverage area. The Commission noted that there was no evidence presented to support this contention.

Respondents further contend that in every project, the overruns/underruns are inevitable because there are no perfect plans nor perfect estimates. Respondents also maintain that until actual excavation and implementation of the design and the plans, there is no absolute means of determining the soil condition or actual work to be done or the precise amount of materials used.

Respondents Villareal, Cariño, Gerochi, Tuazon, and Villanueva contend that the contract was not a “fixed price” contract, but a “unit priced” contract. Respondents contend that Article 8 of the Construction Agreement between PEA and JDLC allows for Change Order and/or Additional Work.

Article 8 of the Construction Agreement providing for possible change orders and/or additional work does not change the nature of the contract to a “unit-priced contract.” What is rather provided for in Article 8 is the requirement needed for a change order to be effected, that is, the President’s Approval.

What is apparent in the arguments of the respondents is the utter disregard of the very nature of the Construction Agreement entered into by the PEA and JDLC, which is a fixed-price contract. Pertinent provisions of the Construction Agreement is quoted herein:

**Construction Agreement
Article I Scope of Work**

1.2 The works to be done in this contract shall include the furnishing by the contractor of **ALL labor, materials, equipment and supplies, and the performance by the Contractor of all operations necessary for the complete construction of the project.**

Article 3 Contract Price

3.1 **As consideration for the full and faithful performance and accomplishment of all obligations** specified in Article I above, which the Contractor agrees to undertake, perform, and accomplish under this Agreement. PEA shall pay the Contractor the **Total Contract Price of FIVE HUNDRED EIGHTY FOUR MILLION, THREE HUNDRED SIXTY FIVE THOUSAND EIGHT HUNDRED EIGHTY-FIVE & 05/100 PESOS (594,365,885.05)** inclusive of Value-Added Tax (VAT), as well as fees and taxes for obtaining the necessary licenses and clearances from the Department

of Environment and Natural Resources, City of Parañaque, Pasay City and other government agencies. (underscoring supplied)

While it is true that there are no perfect plans, as argued by the respondents, the Commission noted that the Construction Agreement itself provides for a fixed contract price. Since the Construction Agreement was not entered into at the price for each unit of work or materials, but rather is a fixed price, lump sum contract, then there can be no justified increase or decrease of the price. It follows that any increase in the cost of constructing and completing the project work must, under the Construction Agreement, be borne by the contractor.

Furthermore, the Supreme Court in the case of BAYLEN Corporation, et.al. vs. CA³⁸, ruled that the contractor can and commonly does, build into its bid or negotiated price a realistic contingency factor to protect its expected profit from erosion by drastic cost increases, pertinent portion is quoted herein:

It is also perhaps well to note that there is nothing exotic about a contractor assuming the risk of the costs of construction moving up before completion of a project. Fixed priced, lump sum contracts are quite common in the construction industry. **The contractor can, in the first place, and commonly does, build into its bid or negotiated price a realistic contingency factor to protect its expected profit from erosion by drastic cost increases. In the second place, the well-organized, credit-worthy contractor should be able substantially to mitigate the impact of expected or possible increases in construction costs.** It is open to such a contractor to take advantage of economies of scale by buying construction materials in bulk and thus availing of bulk discounts, and to anticipate price increases by buying such materials forward. The contractor can, furthermore, reduce its effective costs by increasing the productivity and efficiency of its work force and by keeping its administrative and other overhead costs down. **There is thus nothing unfair about holding a contractor to its fixed price, lump sum contract even in an environment of rising prices.** (underscoring supplied)

The Commission believes that Article 4, Section 4.5³⁹ (Price Escalation) of the Construction Agreement is a provision in the contract inconsistent to Articles 1 and 3 of the Construction Agreement and to the very nature of the contract that is “fixed-price”. To conclude otherwise would render the bidding an exercise in futility if the Contractor will just be allowed to escalate the contract price later in the guise of overruns and variation orders. Precisely, JDLC won the bid over the other bidders on its contract price.

Respondent Cariño and Villareal contend that it is not appropriate to compare the cost incurred by SM and R-I Consortium to that of the JDLC because based on the studies of PEA Technical Management, the scope of work, time factor, as well as materials used, contributed to increased costs in the construction costs of the subject contract. Respondents aver that with the limited time given to JDLC, the latter was constrained to make use of stronger materials for the construction of the roads and that the need to finish the project as soon as possible left JDLC no choice but to get A1 quality materials and resort to extra safety measures to ensure the strength and quality of the roads.

This contention is bereft of merit. At the risk of being repetitious, the three contractors, namely, SM, R-I, and JDLC, worked on the **same PDMB project**. Therefore, it cannot be justified that only JDLC seemed to have exerted more work and encountered more difficulties than the two other contractors. The Commission takes judicial notice of the fact that the land where the PDMB is

located is a reclaimed portion of the Manila Bay, and the reclamation had long been completed as early as the 1970's.

Since all three contractors, namely, SM, R-I Consortium, and JDLC, worked on the same land, it is extremely unlikely that the soil condition of the area assigned to the JDLC is unstable (as it claimed) whereas the areas assigned to the SM and R-I Consortium were stable. JDLC's justification for the price adjustments and/or variation orders borders on the realm of impossible. As such, it deserves to be ignored.

Records and the facts of the case belie the contention of respondents Cariño and Villareal as to the extra works that the JDLC needed to undertake, considering that neither the SM nor R-I Consortium requested for any price adjustments as evidenced by the **CERTIFICATION** dated 15 October 2002 issued by Dominador C. Villanueva, Manager of PEA Construction Management Department, for the R-I Consortium⁴⁰, to wit:

This is to certify that as of today (15 October 2002) the **R-I Consortium** who constructed the Roxas Canal West Bridge under Implementing Agreement NO. 5 and the Central Boulevard (PDMB) road portion from sta. 2+400 to 3+620 under Implementing Agreement No. 6 **has not requested any price adjustment in the construction of the abovementioned road and bridge.**

and a **CERTIFICATION** dated 15 October 2002 from Cristina A. Catral, Manager of PEA Legal Department, for the SM⁴¹, to wit:

Therefore, **any price adjustment resulting from increases in construction costs cannot be given due course** and has no basis in our Joint Venture Agreement with SM.

The other two (2) contractors (SM, Inc. and R-I Consortium), as shown in the above **CERTIFICATIONS**, did not ask for any price adjustments, and yet all three (3) contractors worked on the **same** stretch of road. In addition, the contract price of the two other contractors, SM and R-I Consortium, is much lower than that of the JDLC. The price per kilometer for SM is **P86,821,882.04**; and for R-I Consortium **P132,795,218.37** per kilometer. Compare this with the **price per kilometer** of JDLC which is **P262,165,045.09** as stipulated in the original contract that was signed on 10 April 2000. This shows that indeed variation orders and price adjustments granted to the JDLC amounting to **P252,951,458.72** over and above the original contract price, have absolutely no justification.

Looking at the price difference between JDLC and the other two contractors (SM and R-I Consortium), the thing speaks for itself (res ipsa loquitur) that indeed there was an overprice in the construction of the JDLC portion of the PDMB. It is even safe to conclude that the PDMB can qualify as the most expensive road in the Philippines. **And come to think of it, the road is not even made of cement but of asphalt.**

Respondent Tuazon contends that there is no basis to say JDLC contract is grossly disadvantageous to the Philippine Government; citing the case of Marcos vs. Sandiganbayan, where it was ruled that the lease contract that provided for a

monthly rental of P100,000.00, standing alone, was not found grossly disadvantageous to the government even if the sublease provided for a monthly rental of P700,000.00 monthly.

The Commission takes exception to the contention of respondent Tuazon that contract price for the JDLC is not disadvantageous to the government. The **43.20% escalation** of the contract price, standing alone and unexplained, is more than enough basis to conclude that the variation orders and contract price adjustments are grossly disadvantageous to the Filipino people and the Philippine Government.

Respondent Tagud avers that he questioned the contract price adjustment amounting to P42 Million in the December 5 and 14, 2001 meetings of the PEA Board. What respondent Tagud failed to aver, however, is that on 19 April 2002 the PEA Board approved the said contract price adjustment through Resolution No. 3203, where he was present and raised no objection to the said resolution.

Respondents aver that they relied on the recommendations of their subordinates and on utmost good faith that they enjoy the legal presumption of regularity in the performance of their official functions, which presumption should prevail in the absence of sufficient proof to the contrary. Respondents cited the case of *Arias vs. Sandiganbayan* and *Magsuci v. Sandiganbayan*, in contention that the members of the Board of Directors had only to rely on the

executive officers to guide them in their actions and decisions. They contend that they had no reason to doubt information of the PEA management.

The Commission finds the above contentions of the respondents unacceptable. The board of directors is the directing and controlling body of the corporation. PD 1084 vests in the Board of Directors of PEA the power to control and direct the affairs of the PEA. The Board of Directors occupies a position of trusteeship in relation to the stockholders in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs.⁴² Therefore the ultimate responsibility for all the manifestly unlawful, inequitable, or irregular transactions pertaining to the construction of the PDMB rests on the shoulders of the respondents as members of the PEAE Board of Directors.

Respondents are expected to observe strict integrity and moral responsibility as members of the Board of Directors of the PEA. They should at all times protect the interest of the government and perform acts not repugnant to law. Sadly, they failed in this mission!

Other Issues Raised

Resignation of Respondent Does Not Divest The PAGC Jurisdiction

Respondent Gerochi's resignation was accepted by the Office of the President on 26 September 2002. Respondent Sanciego resigned on 29 October 2002, followed by Tuazon on 30 October 2002, then Tagud on 7 November 2002. Respondents Villareal, Cariño, and Villanueva filed their resignation on 14 November 2002.

By virtue of their resignation, respondents argue that they are no longer within the jurisdiction of the PAGC. They contend that there is no more reason for the Commission to continue with the proceedings, considering that the remaining steps to take, based on the rules of this Honorable Office, are either to recommend to the President administrative actions against all the respondents, the worst of which is dismissal from the service, or to refer the matter to the Ombudsman.

Respondents also contend that the Commission is effectively barred from taking either of the above courses of action. According to respondents, the submission of PAGC's report and recommendation to the President would obviously be useless and any penalty to be imposed would be ineffectual as they no longer occupy their respective offices. Respondents also allege that the referral of this case to the Office of the Ombudsman would be a superfluity since the said Office has already commenced preliminary investigation of criminal charges (docketed as OMB-C-C-02-0667-J) against them for the same subject matter. Therefore, according to the respondents, the instant investigation has already been rendered moot and academic.

Records show that the Office of the President referred the complaints on the irregularity surrounding the construction of the PDMB to the PAGC, for appropriate action, on 25 September 2002. It is thus clear that this Commission had already acquired jurisdiction over the subject matter of the complaint before any of the respondents' resignation was accepted by the President. The PAGC does not only have jurisdiction over the respondents but is duty bound to investigate the irregularities in the construction of the PDMB, pursuant to Section 7 of Executive Order 12 (PAGC's Charter), as quoted herein:

Section 7. Resignation/Retirement of Respondent. – The resignation or retirement of the public officer under investigation shall not divest the Commission of jurisdiction to continue the investigation or hearing and submit its recommendations to the President as to the imposition of accessory penalties or such other action be taken.

Furthermore, no less than the Supreme Court En Banc ruled in the 1975 case of Perez vs. Abiera⁴³, reiterated in the cases of People of the Philippines vs. Valenzuela and Lai Man⁴⁴, Zarate and Chaves vs. Romanillos, and Navarro, Jr. vs. Romanillos⁴⁵, that retirement from the service does not warrant the dismissal of the administrative complaint which was filed against the respondent while still in the service; quoted herein is the pertinent portion of the decision:

The Court's jurisdiction, acquired at the time of the filing of the administrative complaint, is not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce him innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications."(underscoring supplied)

There is likewise no merit to the contention of the respondents that the PAGC can no longer recommend any sanctions since they have already resigned and therefore cannot be dismissed from service anymore. It is incorrect to state that the PAGC can no longer impose sanctions on the respondents who have already resigned. The PAGC can still impose the accessory penalties in an administrative investigation of a respondent. We would like to bring to the attention of the respondents Section 7 of the EO 12, which states that:

Section 7. Resignation/Retirement of Respondents. – The resignation or retirement of the public officer under investigation shall not divest the Commission of jurisdiction to continue the investigation or hearing and submit its recommendations to the President as to the imposition of accessory penalties or such other action be taken.

Precisely the purpose of this investigation is the possible imposition of accessory penalties in the event that substantial evidence will establish the liability of the respondents.

PAGC Observed Due Process

Respondent Tuazon contends that the charges are vague, ambiguous, broad and sweeping, cover not just one but tons of offenses, and virtually deny herein respondent his right to be informed of the nature and cause of the accusations against him and thus his fundamental right to due process.

Due Process, as ruled by the Supreme Court En Banc in the case National Development Company, et.al. vs. Collector of Customs of Manila⁴⁶, to wit:

Indeed, our Constitution provides that "No person shall be deprived of life, liberty, or property without due process of law", which clause epitomizes the principle of justice which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. That this principle applies with equal force to administrative proceedings xxx. (underscoring supplied)

In addition, the Supreme Court ruled in the case Mark Roche International vs. NLRC⁴⁷, to wit:

The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.

Records will show that the Commission has observed the basic requirements of due process throughout the whole proceedings of the case. In fact, a preliminary conference was conducted to give the parties a chance to raise clarificatory questions and other issues related to the case. Respondents were allowed to submit Position Papers, which they did.

DECISION

After thorough evaluation of the evidence in possession of the Commission and that submitted by the parties, the Commission finds substantial evidence against respondents Villareal, Cariño, Gerochi, Tagud, Jr., Sanciego, Jr., Tuazon, and Villanueva, for violation of Section 3 (i) (g) (e) of Republic Act No. 3019.⁴⁸ The Commission recommends the penalty of removal or dismissal for all the respondents. However, In light of the respondents' resignation and the acceptance by H.E. President Gloria Macapagal-Arroyo of the respondents'

resignation, this Commission recommends the imposition of the accessory penalties which are inherent in the imposable penalty pursuant to Section 7 of EO 12.

In the case at bar, one of the disabilities inherent in the penalty of DISMISSAL is perpetual disqualification of reemployment in the government service, as provided for in Sec. 58 EO 292.⁴⁹

Likewise the Commission finds substantial evidence against respondents Millan, Beriña, Jr., Lacson, Viray, and Enriquez, who are non-presidential appointees but who are involved with the presidential appointees in violating Executive Order No. 292, to wit: (9) Committing Acts Punishable under the Anti-Graft Laws and (27) Conduct Prejudicial to the Best Interest of the Service. As provided for in Sec. 52 A (9) (20) of CSC Resolution No. 991936⁵⁰, the imposable penalty for violation of Sections 9 and 27 of EO 292 is Dismissal from the government service.

The evidence also shows that the irregularities surrounding the construction of the PDMB started with the Old Board of Directors composed of Carlos P. Doble, General Manager and Ex-Officio Member; Frisco F. San Juan, Chairman; and Board Members Carmelita De Leon-Chan, Daniel T. Dayan, Salvador P. Malbarosa, Leo V. Padilla, and Elpidio G. Damaso.”

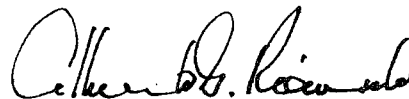
After a careful review of the records of the case, this Office affirms *in toto* the findings of the Commission and holding the respondents GUILTY AS CHARGED for VIOLATION OF SECTION 3 (E) (G) (I) OF R.A. 3019 AS AMENDED.

WHEREFORE, premises considered and as recommended by the Presidential Anti-Graft Commission (PAGC), the penalty of PERPETUAL DISQUALIFICATION FROM RE-EMPLOYMENT IN THE GOVERNMENT SERVICE IS IMPOSED ON RESPONDENTS ERNEST F. O. VILLAREAL, BENJAMIN V. CARIÑO, JOEMARI D. GEROCHI, SULFICIO O. TAGUD, JR., MARTIN S. SANCIEGO, JR., RODOLFO T. TUAZON, and ANGELITO M. VILLANUEVA.

SO ORDERED.

Done in the City of Manila, this 13 th day of December in the year of Our Lord, year two thousand two.

By Authority of the President:


ALBERTO G. ROMULO
Executive Secretary

¹ Records, p. 224.

² Records, p. 106.

³ Records, p. 120.

⁴ Records, p. 9.

⁵ Records, p. 563.

⁶ Records, p. 301.

⁷ Records, p. 2050.

⁸ Records, p. 35.

⁹ Records, p. 318.

¹⁰ Records, p.32. Abstract of Bids dated 16 September 1999.

¹¹ Records, p. 319.

¹² Records, p. 331.

¹³ Records, p.333.

¹⁴ Records, p. 689.

¹⁵ Records, p. 356.

¹⁶ Records, p. 436.

¹⁷ Records, p. 3035.

¹⁸ Records, p. 448.

¹⁹ Records, p. 2937.

²⁰ Records, p. 466.

²¹ Records, p. 467.

²² Records, p.470.

²³ Records, p. 2754.

²⁴ Records, p. 448.

²⁵ Records, p. 523.

²⁶ Records, p. 553.

²⁷ Records, p. 554.

²⁸ Records, p. 226.

²⁹ Records, p. 3272.

³⁰ Item IB2 - Organization of the Prequalification, Bid and Award Committee (PBAC), IRR of Presidential Decree No. 1594, as amended: "IB 2 – ORGANIZATION OF THE PBAC- 1. Each office/agency/corporation shall have in its head office or in its implementing offices a Prequalification, Bid and Award Committee (PBAC) which shall be responsible for the conduct of prequalification, bidding, evaluation of bids and recommending award of contracts. xxx. 2. Government-owned or controlled corporations shall organize their own PBACs, the members of which shall be appointed by their respective boards preferably along the same line as other government offices."

³¹ Republic Act No. 3019, as amended, in particular, Section 3 (i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member and which exercises discretion in such approval even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

Section 3(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.

Section 3 (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.

³² Revised Penal Code. Article 217- Malversation of public funds or property. Presumption of malversation. - Any public officer who, by reason of the duties in his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation of malversation of such funds or property, x x x.

³³ Executive Order No. 292 Section 46 (b) (3) Neglect Of Duty; (4) Misconduct; (9) Committing Acts Punishable under the Anti-Graft Laws; and (27) Conduct Prejudicial to the Best Interest of the Service.

³⁴ Construction Agreement. Article 8. Change Order And/Or Additional Work, 8.1. The PEA, may at any time, by written order, make changes in the schedule and work required under this Agreement. If any such change/s causes an increase or decrease in the work or the time required for performing the work, an equitable adjustment shall be made of the contract price and completion date upon mutual agreement of the parties reflecting such adjustments by way of written order subject to the provisions of the IRR of PD 1594, as last amended and the approval of the President. 8.2. Should the PEA find it necessary to have any additional work carried out for purposes of the Project

in addition to the contracted work, such additional work will be carried out immediately by the CONTRACTOR upon receiving written approval from the President, provided that the amount of the change order is within the limitations and in accordance with conditions set forth in PD 1594 and its IRR.

³⁵ Section 4. Jurisdiction, Powers and Functions. – (b) xxx. In the same manner, the Commission shall have jurisdiction to investigate a non-presidential appointee who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned in this subsection. xxx.

³⁶ Records, page 39.

³⁷ Section 1 (b), PD 1594.

³⁸ Baylen Corporation, Reynaldo M. Reyes, Edna L. Reyes and Emmanuel I. Astillero, Petitioners, vs. Hon. Court of Appeals (14th Division) and Jose Rizal College, Respondents. [G.R. No. 76787. December 14, 1987.] SC Third Division

³⁹ 4.5 Price Escalation. Adjustment of contract price due to price escalation shall be effected in accordance with P.D. 1594 and its IRR, upon written agreement of the parties and subject to availability of funds.

⁴⁰ Records, p. 29.

⁴¹ Records, p. 88.

⁴² Sec. 28, Corporation Law; Angeles vs. Santos [1937], 36 Off. Gaz., 921

⁴³ SC En Banc, Atty. Romeo S. Perez vs. Hon. Judge Carlos Abiera [Adm. Case No. 223-J. June 11, 1975.]

⁴⁴ SC En Banc, People Of The Philippines vs. Hon. Manuel E. Valenzuela And George Lai Man [G.R. Nos. L-63950-60. April 19, 1985.]

⁴⁵ SC En Banc, Atty. Noe Cangco Zarate and Atty. Rosendo Chaves vs. Judge Roberto B. Romanillos [A.M. No. RTJ-941140. March 23, 1995] and Police Superintendent Marcelo E. Navarro, Jr. vs. Judge Roberto B. Romanillos [A.M. No. RTJ-94-1218]

⁴⁶ NDC vs. Collector of Customs of Manila [G.R. No. L-19180. October 31, 1963.]

⁴⁷ Mark Roche International vs. NLRC, G.R. No. 123825, 31 August 1999.

⁴⁸ Republic Act No. 3019, as amended, in particular, Section 3 (i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member and which exercises discretion in such approval even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

Section 3(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.

Section 3 (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.

⁴⁹ EO 292, Section 58. Administrative Disabilities Inherent in Certain Penalties. (a) The penalty of DISMISSAL shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification of reemployment in the government service, unless otherwise provided in the decision.

⁵⁰ EO 292, Section 52 Classification of Offenses. A. The following are grave offenses with their corresponding penalties: (9) xxx committing acts punishable under the anti-graft laws. (20) Conduct prejudicial to the best interest of service.