[ADMINISTRATIVE ORDER NO. 92, October 14, 1999]

IMPOSING THE PENALTY OF SUSPENSION OF THREE (3) MONTHS ON IMELDA A. BUENAFE, PRESIDENT, ABRA STATE INSTITUTE OF SCIENCE AND TECHNOLOGY

This resolves the letter-complaint dated August 25, 1995, of Erasto V. Ramos ("complainant"), charging Imelda A. Buenafe ("respondent"), President, Abra State Institute of Science and Technology ("ASIST"), with, among others, the following: (1) malicious and capricious filing of an administrative complaint against a faculty member; (2) allowing the ASIST administration to undertake the concreting of the ASIST main road contrary to the ruling of the Board of Trustees and implementing the same without COA clearance; (3) overpricing of cement and other construction materials in the concreting of the ASIST main road; (4) granting of unauthorized cash advances to a non-accountable officer for the procurement of athletic goods for the IRRA meet in Baguio City; (5) violation of COA rules and regulations by using daily an EDPITAF-EEC Land Rover from home to office without accomplishing the required trip tickets in violation of COA rules and regulations; and (6) committing an act of dishonesty by taking two (2) sacks of mangoes, allegedly to be used to bribe budget personnel.

On November 28, 1997, after proceedings duly held, the Presidential Commission Against Graft and Corruption (PCAGC) issued a resolution which, although absolving respondent from the majority of the charges leveled against her, nonetheless found her guilty of simple neglect of duty and recommended her suspension for a period of three (3) months for violating the following government rules and regulations:

1. Sec. 102 of the State Audit Code (P.D. 1455) for her failure to enforce compliance with the conditions set forth in E.O. 182, series of 1987, before undertaking the concreting of the ASIST main road by administration and which failure constitutes neglect of duty under Sec. 127 of the said Audit Code;
2. R.A. 7845 (General Appropriations Act of 1995) and COA Circular 75-6 (November 7, 1975) requiring the marking of all government vehicles with the words "FOR OFFICIAL USE ONLY"; and
3. COA Circular 75-6 for the improper use of the ASIST Land Rover for her travels to and from her hometown in Tayum, Abra and for her use of the same vehicle without the required trip tickets.

After a careful review of the records of the case, this Office concurs with recommendation of the PCAGC, as well as on the findings upon which it is based. As regards the specific wrongdoing committed by respondent, we quote with approval the findings of the PCAGC, to wit:

> "In connection with the concreting of the ASIST main road, complainant alleges that the ASIST administration headed by respondent undertook

the said project contrary to the ruling of the Board of Trustees and implemented the same without COA clearance. Respondent submitted as part of her evidence a copy of the Excerpts of the minutes of the 50th, 51st and 57th ASIST Board Meetings held on March 10, 1994, April 14, 1994 and September 8, 1994, respectively (Exhibits '13', '15' and '16' for respondent, pages 128, 126 and 125 of records) to refute complainant's claims that the concreting of the main road was in contravention of the decision of the ASIST Board of Trustees.

Respondent claims that during the Board meeting on March 10, 1994, Regent Jeremias Zapata objected to her proposal to award the contract for the concreting of the main road to APO General Construction. She further claims that her proposal was based on the result of the public bidding for the proposed project conducted in December 1993. As a consequence of Regent Zapata's objection, the Board passed Res. No. 39 s. 1994 declaring the bidding on December 14, 1993 null and void because of the absence of a list of functions to guide the Prequalification, Bids and Awards Committee (PBAC). (Exhibit "13" for respondent, ibid.)

In view of the Board's decision to declare the bidding null and void, respondent, at the 51st ASIST Board Meeting on April 14, 1994, requested for authority to prosecute by administration the construction of the ASIST Road Concreting Project. The authority granted to ASIST management is embodied in Res. No. 46 s. 1994. (Exhibit "15" for respondent, supra)

While it is true that construction projects in government are generally undertaken by contract after competitive bidding, exceptions may be allowed under certain conditions. Sec. 63 of the General Appropriations Act of 1993 (RA 7645) provides:

> 'Construction projects funded from capital outlays authorized in this Act under the various departments xxx of the national government, including the construction of buildings for state universities, colleges, schools xxx shall be implemented only in accordance with the appropriate standards and specifications for the planning, survey, design and construction of the project as prescribed by the Department of Public Works and Highways or the Department of Transportation and Communication xxx In the implementation of the construction projects, sections 2, 3, 4, 5, 6, 7, 9, 10 and 12 of Executive Order No. 182 entitled 'Rationalizing Public Works Measures, Appropriating Funds for Public Works, and for other purposes', and other legislations on public works shall be strictly complied with.'

Sec. 7 of said Executive Order No. 182 dated June 3, 1987 provides:

> 'x x x a project costing over P1,000,000.00 may be prosecuted by administration by the agency concerned only in case of failure to award a contract after open competitive public bidding for a valid cause or causes, and subject to the approval of the Secretary of Public Works and Highways or the

> Secretary of Transportation and Communications, if the project cost is P10,000,000.00 or less; xxx'

A study of the provisions enumerated above reveal two (2) requirements for construction projects costing more than one million pesos (P1,000,000.00), namely: (a) failure to award after public bidding for valid cause/s and (b) approval of the Secretary of DPWH.

The prosecution by the ASIST management of the concreting project with an approved agency estimate (AAE) of P1,341,719.30 (p. 146 of records) raises a few issues which, even if not directly attributable to respondent, must be disclosed for the information of the Office of the President. The Commission is of the opinion that the ground for declaring the bidding null and void does not come under any of those enumerated in Sec. 562 of the Government Accounting and Auditing Manual (GAAM, Vol. I). Further, the general functions of the Prequalification, Bids and Awards Committee (PBAC) for all government agencies are embodied in Sec. 549 as well as in other sections of Title 3, Chapter 3 (Infrastructure contract) of the same Government Manual. These serve as the guidelines for all committees constituted for the same purposes, regardless of the government agency or its location. There is no need for a specific enumeration of PBAC functions for each government agency.

While it is true that respondent constituted only one (1) vote of the total seven (7) votes on the Board, she cannot be absolved from liability for the unlawful expenditure.

The ground relied upon by the Board failed (sic) to justify its grant of authority to the ASIST management to prosecute the concreting project by administration. The excerpt of the minutes of the 50th ASIST Board of Trustees Meeting on March 10, 1994 indicates that respondent, representing ASIST management, was not in agreement with the objection of Regent Zapata. The stand of respondent is recorded, thus:

> 'On the other hand, management justifies its action on the following premises: xxx Second, while management recognizes the importance of PBAC delineation of functions duly adopted by the Board, it is not always a necessary pre-requisite in the conduct of bidding since such functions are already explicit in P.D. 1594 and its implementing guidelines. In fact, the Honorable Board had been approving PBAC recommendations which were guided solely by the provisions of P.D. 1594 and its implementing guidelines ever since[.]' (Exh. '13' for respondent, p. 128 of records)

Hence, the Commission is surprised with respondent's turnaround when she requested for authority to prosecute by administration the aforementioned project during the 51st meeting of the ASIST Board of Trustees on April 14, 1994 (Exh. '15' for respondent, p. 126 of records).

What is even more disconcerting is the subsequent request of respondent dated September 5, 1994 for authority to implement/undertake ALL civil works at ASIST by administration. She cites the unsatisfactory and