

FOURTEENTH CONGRESS OF THE REPUBLIC)
 OF THE PHILIPPINES)
 First Regular Session

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SENATE

RECEIVED BY

P. S. Res. No. 142

Introduced by Senator Francis N. Pangilinan

**A RESOLUTION CALLING FOR
 TRANSPARENCY IN TRANSACTIONS
 INVOLVING PUBLIC FUNDS AND
 COMPLIANCE WITH DISBURSEMENT,
 ACCOUNTING AND AUDITING RULES
 PRESCRIBED BY THE GOVERNMENT**

WHEREAS, the contract between North Luzon Railways Corp. (“North Rail”) and the Chinese contractor — China National Machinery and Equipment Corp. (“CNMEC”) is allegedly unbecoming and detrimental to the Philippine government.

WHEREAS, despite the lack of competitive bidding, the questionable legality of the buyer credit loan agreement (“BCLA”) and the lack of the contractor’s engineering expertise and experience, the railway rehabilitation project, under a government-to-government loan agreement, was approved by the Philippine government. The contract lacked formal certification and did not go through the proper bidding process. The North Rail contract did not comply with the requirements under Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, i.e. lack of competitive bidding.

WHEREAS, President Gloria Macapagal Arroyo signed the Government Procurement Reform Act to consolidate numerous procurement laws and issuances and to standardize guidelines, procedures, and forms for agencies, government-controlled corporations, and local government units. The law also calls for public monitoring of the procurement process to promote greater transparency and competition, and to enhance the flow of information.

WHEREAS, the North Rail contract was considered as an “executive agreement” by the two (2) governments of the Philippines and China, contrary to the claim that it was an agreement of two (2) private corporations. According to North Luzon Railways Corp. of the Philippines, all companies in China are owned by the state and by virtue of the Philippines’ Department of Finance loan agreement with the Export-Import Bank of China (“Eximbank”), the contract was government to government.

WHEREAS, while it is true that the infrastructure development is a priority in economic cooperation and trade between China and the Philippines, public officials should not circumnavigate the law/s on bidding process and negotiate directly with contractors. Further, the government should not disregard real competition and shroud the project in secrecy through closed-door talks. This results to less transparency, less

competition and does not appear to have saved the government from incurring unnecessary expenses.

WHEREAS, another contract was entered into between the Philippine government and China's Zhong Xing Telecommunication Equipment ("ZTE") Corp., which was awarded the national broadband project. The national broadband network ("NBN") project is a \$329-million contract that aims to connect government agencies throughout the Philippines through the Internet. The project will be funded through a loan to be contracted by the Philippine government from China's Export-Import Bank over a twenty (20) year period. This is similar to the North Rail project which is funded by a \$400 million loan from China.

WHEREAS, the deal was signed in Boao, China on April 21, 2007 by Transportation and Communications Secretary Leandro Mendoza while visiting China as part of the entourage of Philippine President Gloria Macapagal Arroyo, who was on a brief state visit. At that time, the government was not allowed to sign contracts because of the then-upcoming senatorial and local elections.

WHEREAS, the NBN project has become controversial for allegedly being overpriced and for supposedly having been signed without going through the proper bidding process. ZTE won the contract to build the National Broadband Network project in bidding against Amsterdam Holdings Inc. ("AHI"), a local company whose majority owner is Joey de Venecia, son of House Speaker Jose de Venecia Jr.

WHEREAS, the Supreme Court of the Philippines promulgated a temporary restraining order last September 11, 2007 on the \$330-million NBN contract between the Philippine government and China's ZTE (based on certiorari suit by Iloilo Vice-Governor Rolex Suplico and AHI. The court gave ZTE, 5 days to comment on the injunction.

WHEREAS, Vice-Governor Suplico alleged that the agreement was sealed without public bidding and violated the Telecoms Policy Act, which required privatization of all telecom facilities. Nueva Viscaya Congressman Padilla at the Office of the Ombudsman sued the Department of Transportation and Communication ("DOTC") and ZTE officials of violating the Anti-Graft and Corrupt Practices Act, the Telecommunications Policy Act, the Build-Operate-Transfer ("BOT") Act and the Government Procurement Act. Amsterdam Holdings Inc. ("AHI") also petitioned the Court to direct the DOTC to provide copies of the contract, since it should have won the same.

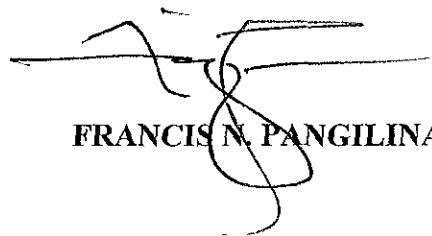
WHEREAS, the NBN project entails a huge capital expenditure. AHI insists it should have won the contract as it submitted the first complete unsolicited proposal for the project, and offered to build the NBN at no cost to the government because it is a build-operate-transfer ("BOT") deal, unlike ZTE's which required the Philippine government to secure a \$330-million loan from the Chinese government.

WHEREAS, the public is most certainly entitled to be informed of all aspects of the NBN project. The agreements executed between DOTC and China's ZTE Corp. are necessarily the primary repositories of information regarding the alleged overpricing and any other anomaly in the project. Further, the terms and conditions of the contract may have been grossly disadvantageous and detrimental to the Philippine government. Based on reports, the NBN project was not subjected to public bidding in violation of Philippine laws.

WHEREAS, there exists no legal and practical reason for the Philippine government to spend billions of pesos for its own cyber backbone, when in truth and in fact there are other telecommunications firms/companies, operated by the private sector in the Philippines, available and capable of providing these services. A private-sector broadband network would spare taxpayers the burden of spending for additional costs/expenses in maintenance and upgrades.

RESOLVED, as it is hereby resolved, that amidst the alleged anomaly and controversies in the North Rail project and NBN project, the Philippine government should promote transparency in the negotiated procurement of any contract for infrastructure development, whether it involves a treaty, international agreement or executive agreement in order to eradicate any doubt as to its validity and to avoid any anomaly in the preparation, negotiation, perfection and implementation of such project. The award or procurement shall be done in accordance with the Philippine Constitution as well as other related laws such as but not limited to Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, Administrative Code of 1987 and the Government Auditing Code.

Adopted,



FRANCIS N. PANGILINAN