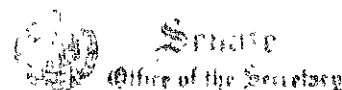


SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)



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SENATE
P. S. R. No. 903

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Introduced by Senator Miriam Defensor Santiago

RESOLUTION
DIRECTING THE PROPER SENATE COMMITTEE
TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION,
ON THE REPORTED CONTROVERSIES INVOLVING THE
PUBLIC-PRIVATE PARTNERSHIP (PPP) PROJECTS OF THE GOVERNMENT,
IN PARTICULAR, THE CAVITE-LAGUNA EXPRESSWAY (CALAX) PROJECT

WHEREAS, the Constitution, Article 2, Section 20 states: "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments;"

WHEREAS, Republic Act No. 6957, as amended by R.A. No. 7718, aka the Build-Operate-Transfer (BOT) Law, Section 1 states:

Section 1. *Declaration of Policy.* – It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector;

WHEREAS, according to some news reports, some of the PPP projects of this administration were hounded by delays and various controversies. An article in the 8 April 2014 issue of the *Philippine Daily Inquirer* states "Not much good news has come out of late on the Aquino administration's Public-Private Partnership program. This flagship investment program has been lurching from one delay to the next – truly disappointing, with just a little more than two years left in the administration";

WHEREAS, the ₱35.42-billion CALAX project, a PPP and a Build-Operate-Transfer project, was recently tainted with controversy because of alleged prejudice and unfairness in the decision to disqualify San Miguel Corporation's subsidiary Optimal;

WHEREAS, the CALAX project reportedly involves the financing, design and construction, and operation and maintenance of the entire four-lane, 47-kilometer closed-system tolled expressway connecting the Cavite Expressway (CAVITEX) and the Southern Luzon Expressway (SLEX);

WHEREAS, there were originally four bidders in the CALAX deal: MPCALA Holdings, a unit of Metro Pacific Investments Corporation (MPIC), MTD Capital Berhad, the Malaysian group that built the Skyway, Optimal Infrastructure Development Inc. (Optimal), a unit of San Miguel Corp. (San Miguel), and a joint venture of Ayala Corp and Aboitiz Equity Ventures (Team Orion);

WHEREAS, however, the three pre-qualified bidders, MTD Capital Bhd., MPCALA Holdings of the MPIC, and Team Orion of the Ayala Corp. and Aboitiz Land Inc., reportedly pointed out to the bids panel that the bid security of San Miguel's Optimal was insufficient;

WHEREAS, the implementing rules and regulations of the BOT Law, Rule 7, Section 7.1 (b) (vi) states that the posting of the bid security is for the purpose of guaranteeing that the proposed contract awardee shall enter into contract with the concerned agency within the prescribed period;

WHEREAS, under the Instruction to Bidders (ITB), a bid without the prescribed bid security shall be automatically rejected. For the CALAX project, the Department of Public Works and Highways (DPWH) reportedly required a validity period of the bid security of at least 180 days from the bidding date or June 2 until November 29;

WHEREAS, it was reported that Optimal's bid bond validity expires on November 25, meaning it is only valid for 176 days instead of the 180 days required under the rules or four days short. Optimal's submission of a noncompliant bid security is allegedly a material violation of the BOT Law and the ITB, and it amounts to a submission of a non-responsive bid, which warrants the automatic rejection of Optimal's entire bid proposal;

WHEREAS, consequently, Optimal was reportedly disqualified because of the deficiency in its bid security; and the joint venture of Ayala Corp and Aboitiz Equity Ventures (Team Orion) bagged the CALAX deal for submitting the highest bid of ₱11.65 billion;

WHEREAS, Optimal's authorized representative Raoul Eduardo C. Romulo said the discrepancy in their bid security is a harmless "typographical error" that was allegedly clarified and certified by ANZ Bank as valid and enforceable in accordance with the requirements of the bid rules, and it does not materially affect their financial bid;

WHEREAS, San Miguel also issued a statement that "... The decision to throw out the bid of our subsidiary Optimal Infrastructure is prejudicial, unfair, and disregards both legal and all common-sense considerations that should be given to projects of this scale and importance";

WHEREAS, the DPWH did not open Optimal's bid documents, but the San Miguel subsidiary reportedly opened them in front of the media; and it turned out that Optimal would have won the bid since it offered ₱20.105 billion for the project, or nearly double the bid of Team Orion;

WHEREAS, the decision to invalidate Optimal's bid because of a typographical error allegedly denied the government an additional ₱8.45 billion windfall or premium;

WHEREAS, the PPP Program brochure published by the government in 2012 states: "Participating in the Philippine PPP Program, allows investors to do business in a

stable economic environment bolstered by sound and consistent policies and processes as well as an improved governance that has reduced the time and cost of doing business”;

WHEREAS, the government will not fully realize the objectives of the PPP program, i.e., to attract local and foreign investors, generate thousands of new jobs, and save money for priority projects, if the PPP deals are always hindered by delays due to prejudiced and inconsistent implementation of bidding policies, and other controversies;

WHEREAS, some of the alleged controversies involving other PPP projects are the following:

1. The awarding of the ₱14.5 billion Mactan Cebu International Airport has been delayed after losing bidder Filinvest-Changi Consortium alleged conflict of interest on the part of top bidder Megawide-GMR Consortium;
2. Health workers and party-list organizations questioned the award of the ₱5.6-billion Philippine Orthopedic Center Modernization to Megawide Construction Corp and World Citi Consortium; and
3. SM Consortium questioned the award of the ₱1.72 billion Automated Fare Collection System to the partnership of Ayala Corporation and Metro Pacific Investments Corporation;

WHEREAS, there is an urgent need to determine if there are loopholes and gaps in the laws and regulations on PPP projects; and how the bidders or the government officials themselves exploit these loopholes that results to numerous postponements of bidding or awarding of contracts;

WHEREFORE, BE IT HEREBY RESOLVED BY THE PHILIPPINE SENATE, to direct the proper Senate committee, to conduct an inquiry, in aid of legislation, on the reported controversies involving the public-private partnership (PPP) projects of the government, in particular, the Cavite-Laguna Expressway (CALAX) Project.

Adopted,


MIRIAM DEFENSOR SANTIAGO

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