


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

16 NOV -7 P2:19

SENATE

RECEIVED BY: 

P. S. RES. NO. 222

Introduced by SENATOR LEILA M. DE LIMA

**A RESOLUTION
DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN
INQUIRY, IN AID OF LEGISLATION, ON THE VARIOUS INVESTMENT
DEALS, PARTICULARLY THOSE INVOLVING PUBLIC PROCUREMENT,
SIGNED OR ENTERED INTO BY THE PRESENT ADMINISTRATION
DURING THE PRESIDENT'S STATE VISIT TO CHINA LAST 18 TO 21
OCTOBER 2016**

WHEREAS, the Constitution, Article II, Section 27 provides that “[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption”;

WHEREAS, the Constitution, Article II, Section 28 provides that “[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest”;

WHEREAS, Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act”, Section 4 provides that it “shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, *regardless of source of funds, whether local or foreign*, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed”;

WHEREAS, Section 10 of the same Act provides that “[a]ll procurement shall be done through Competitive Bidding, except as provided for in Article XVI of [said] Act”;

WHEREAS, upon the invitation of President Xi Jinping of the People's Republic of China, President Rodrigo R. Duterte paid a state visit to China last 18 to 21 October 2016;

WHEREAS, on the occasion of said state visit, the *Philippine Daily Inquirer*, on 23 October 2016, reported that Trade Secretary Ramon Lopez announced that several

billions of US dollars (or several trillions of pesos) worth of investment projects were signed,¹ including business-to-business contracts and public financing agreements, such as:

- Memorandum of Understanding (MOU) between Columbus Capitana and China CAMCE Engineering Co., Ltd. involving joint projects in renewable energy, major infrastructure and real estate (\$100 million)
- Strategic Cooperation Agreement to infuse \$200 million to build a Generation Steel Mill Plant (Mannage Resources Trading Corp and SHC Shanghai International Trade Hongkong)
- MOU to invest about \$500-700 million to construct a steel plant (Global Ferronickel and Baiyin International Investment Ltd.)
- MOU to jointly pursue development and construction of renewable energy products in various locations (Trademaster Resources Corp, Servequest Inc. and TBEA Xinjing Sunoasis Co., Ltd worth \$97 million US dollars)
- MOU involving Davao Coastline and Port Development Project (Mega Harbour Port and Development, Inc and China Harbour Engineering Co., Ltd, worth \$780 million)
- MOU involving Manila Harbour Center Reclamation Project (R-II Builders and China Harbour Engineering Co., Ltd., worth \$148 million)
- MOU involving Cebu International and Bulk Terminal Project (Mega Harbour Port and Development Inc, and CCCC Dredging Co., worth \$328 million)
- MOU worth \$2.5 billion (MVP Global Infrastructure and China Railway Engineering Corp.)
- MOU to invest \$3 billion to build cabling manufacturing facilities (MVP Global Infrastructure and Suli Group)
- MOU to develop Manila EDSA Bus Transportation program and for other places with initial investment of \$100 million (Philippine State Group of Companies and Yangtse Motor Group and Minmetals International (H.K.) Ltd.)
- Cooperation agreement to invest \$160 million to produce hybrid rice enough to plant in 2 million hectares of rice fields (SI Agritech and Jiangsu Hongqi Seed Co., Ltd)
- Letter of Intent (LOI) to invest \$300 million to build a manufacturing facility (Zhuhai Granton Bus and Coach Company)
- MOU to invest \$100 million in Banana Plantation (AVLB Asia Pacific Conglomerate Inc. and Shanghai Xinwo Agriculture Development Co., Ltd.)

¹ Remo, A.R. (23 October 2016). Itemized List of PH Projects Covered by China's \$15-B Investment Pledges to Duterte. Available at: <http://business.inquirer.net/217269/itemized-list-ph-projects-covered-chinas-15-b-investment-pledges-duterte> (Accessed: 27 October 2016).

- MOA on development of 300 MW Pulangi-5 Hydro Project (Greenery Development Corp. and Powerchina Guizhou Engineering Corp., worth \$1 billion)
- MOU on Pasig River, Marikina River, Manggahan Floodway Bridges Construction Project (Zonar Construct and SinoHydro, worth \$600 million)
- Ambal Simuan Sub-River Basin of the Mindanao River Basin Flood Control Project (One White Beach Land Development Corporation and Sino Hydro, worth \$325 million)
- Nationwide Island Provinces Link Bridges for Sustainable Development (Zonarsystems Solutions Inc. and Powerchina Sinohydro, worth \$800 million);²

WHEREAS, following an investigation by the World Bank's Integrity Vice Presidency into Phase I of the Philippines's National Roads Improvement and Management Project (NRIMP I), the World Bank announced, on 14 January 2009, "the debarment of seven firms and one individual for engaging in collusive practices,"³ particularly for having "participated in a collusive scheme designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."⁴ Among those sanctioned was China Road and Bridge Corp. (CRBC), which was debarred for eight years from bidding on future World Bank-financed contracts;⁵

WHEREAS, on 29 July 2011, the World Bank "announced the debarment of China Communications Construction Company (CCCC) Limited, and all its subsidiaries,"⁶ in its capacity as the designated successor entity to CRBC, for fraudulent practices under NRIMP I, pursuant to which sanction CCCC is ineligible to engage in any road and bridge projects financed by the World Bank Group until January 12, 2017;⁷

WHEREAS, China Harbour Engineering Company Limited (CHIEC) is one such subsidiary of CCCC, allegedly possessing a "diverse infrastructure portfolio includ[ing] marine engineering, dredging and reclamation, road and bridge, railway, airport,

² Ranada, P. (23 October 2016). What Duterte Accomplished in China. Available at: <http://www.rappler.com/nation/150049-duterte-accomplishments-china-visit> (Accessed: 27 October 2016).

³ World Bank (14 January 2009). World Bank Debars Seven Firms and One Individual for Collusive Practices Under Philippines Roads Project. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22034560~pagePK:34370~piPK:34424~theSitePK:4607,00.html> (Accessed: 27 October 2016).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ World Bank (29 July 2011). World Bank Applies 2009 Debarment to China Communications Construction Company Limited for Fraud in Philippines Roads Project. Available at: <http://www.worldbank.org/en/news/press-release/2011/07/29/world-bank-applies-2009-debarment-to-china-communications-construction-company-limited-for-fraud-in-philippines-roads-project> (Accessed: 27 October 2016).

⁷ *Ibid.*

equipment assembly,” and “abundant expertise and experiences in other industries as well, such as building, municipal works, environmental, hydraulic engineering, power plant and energy, and resource exploration”;⁸

WHEREAS, it was also reported that a Memorandum of Understanding (MOU) on Financing Cooperation between the Export-Import Bank of China and the Government of the Republic of the Philippines, represented by the Department of Finance, was also signed during President Duterte’s state visit to China,⁹ which may indicate that these public infrastructure projects will be financed through Loan Agreements between the parties to said MOU, thus raising the possibility that such loan agreements are so-called “tied loans”;

WHEREAS, Justice Antonio T. Carpio, in his dissenting opinion in the NBN-ZTE case, raised objections against resort to “tied loans” in order to evade public bidding requirements, saying that “[a] tied loan, driven by a handpicked supplier, violates the principle of fair and open process in government procurement transactions. Such a tied loan, which arbitrarily reserves a contract to a pre-determined supplier, will likely lead to anomalies. This is contrary to the state policies enunciated in Sections 27 and 28, Article II of the Constitution”¹⁰;

WHEREAS, Presidential Spokesperson Ernesto Abella attempted to allay fears about the signing of instruments with apparently pre-identified contractors by stating that “the *deals* are not yet final and will still go through the regular process,” yet, at the same time, admitted that he was merely speaking of his “understanding” that the MOUs will still be subject to public bidding;¹¹

WHEREAS, even in light of such attempted reassurance, it has nonetheless been our nation’s unfortunate and oft-repeated experience that questionable contracts are only discovered after public funds have already been expended, and the public interest has already been compromised;

WHEREAS, past attempts to obtain definitive judicial remedy against similar, apparently questionable contracts have either failed (such as the NBN-ZTE case brought before the Supreme Court, which was not decided on the merits for having become “moot and academic”¹²) or have been only marginally successful in providing partial relief (such as when the Supreme Court ruled that the Contract Agreement between Northrail and

⁸ China Harbour Engineering Company Ltd. > about CHEC > corporate overview (2009). Available at: <http://www.chec.bj.cn/tabid/67/Default.aspx> (Accessed: 3 November 2016).

⁹ *Supra* footnote #2.

¹⁰ *Suplico v. NEDA*, G.R. No. 178830, July 14, 2008.

¹¹ ABS-CBN News (28 October 2016). Palace: Deals with Allegedly Dubious Chinese Firms not Yet Final. Available at: <http://news.abs-cbn.com/news/10/28/16/palace-deals-with-allegedly-dubious-chinese-firms-not-yet-final> (Accessed: 3 November 2016).

¹² *Supra*, footnote #10.

CNMEG was not an executive agreement, but “merely an ordinary commercial contract that can be questioned before the local courts”¹³;

WIHEREAS, Justice Carpio, in his dissenting opinion in the NBN-ZTE case, expressed the transcendental importance to the nation of addressing such issues, not only because they involve legal issues “capable of repetition yet evading review”, but also because they put “to the test the efficacy of constitutional and statutory proscriptions designed precisely to prevent such contracts”;¹⁴

WIHEREAS, likewise alarmed by such contracts and their continued prevalence, then Senator Sergio Osmeña III delivered a privilege speech on 17 September 2012 regarding the bridge program contracts under the Arroyo administration, which consists of a series of 14 contracts (with a total sum of ₱111,942,110,000) that were, according to him, awarded without open and public and competitive bidding, without the necessary due diligence check, no site identification, no site inspection, no comparables dug up or researched for equivalent or better financing terms, no prequalification of the supplier, much less, the inspection of the goods that the supplier wanted to sell and which he, therefore, described as the “grandmother” of all scams and is one of the reasons why the country cannot adequately supply its citizens with basic necessities;

WIHEREAS, given the transcendental importance of avoiding the damage that anomalous contracts can inflict on our nation and our people, there is a need to inquire into the important issues involved in such deals, agreements, arrangements or contracts, in order to halt, once and for all, the prevalence of government contracts that violate the Constitution and existing statutes, or otherwise compromise the public interest;

NOW THEREFORE, BE IT RESOLVED, as it is hereby resolved by the Philippine Senate to direct the appropriate Senate Committee to conduct an inquiry, in aid of legislation, on the various investment deals, particularly those involving public procurement, signed or entered into by the present administration during the President’s state visit to China last 18 to 21 October 2016.

Adopted,


LELA M. DE LIMA

¹³ *CNMEG v. Santamaria, et al.*, G.R. No. 185572, February 7, 2012.

¹⁴ *Supra*, footnote #10.