

## HIGH TOLLWAY RATES FROM DEFECTIVE PRIVATIZATION

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Sent: Wednesday, August 3, 2016 10:57 PM  
Subject: Fw: ILLEGAL PUBLIC BIDDING on CALAX and other PPP... Projects

Through herein forwarded emails, I respectfully endorse to all Duterte administration officials concerned, for investigation and appropriate action, the propounded illegality, unjust taxation, and unsound economics in the government's public bidding and award to private investors of the Cavite-Laguna Expressway (CALAX) project in 2013. The illegality and other defects stemmed from the awarding of the CALAX project based on the **highest premium** offer to the government, not on the lawfully required **lowest project construction cost** and **lowest toll rate per kilometer** pursuant to the government's conventional public bidding scheme followed since the Commonwealth Period.

Since two years ago, I have repeatedly requested the past Aquino administration to investigate and address the fatal defects of the public bidding scheme employed in CALAX and other public-private partnership (PPP) projects, to no avail. Hence, my present endorsement to the Duterte administration.

MARCELO L. TECSON  
A Concerned Citizen  
August 3, 2016

Attachments: Emails to Aquino administration officials dated January 8, 2016, September 30, 2014, and August 1, 2014, with a 23-page position paper.

Under its Article I, Section 4, the Government Procurement Reform Act, or the Procurement Law (RA 9184) enacted January 10, 2003, shall apply to government procurement of **infrastructure projects**, goods, and consulting services, regardless of the source of funds, except those covered by treaty or international or executive agreement. Under Article X, Section 4: "In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid." This provision reiterates the old rule that the most advantageous bid is the winning bid.

On the other hand, under Section 5 of the Build-Operate-Transfer (BOT) Law (RA 6957 as amended by RA 7718): "In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the bidder who... submitted the lowest bid and most favorable terms for the project...." Its Section 6 mandates the charging of toll rates based on a reasonable rate of return.

The Cavite-Laguna Expressway (CALAX) was awarded based on the DPWH-estimated construction cost of ₱35.42 billion plus the highest premium of ₱27.3 billion or 77% of cost (Miguel Camus, "DPWH awards Calax Project to MVP group," *Philippine Daily Inquirer*, June 9, 2013, page B1). The CALAX bidding scheme under which bidding competition was on the highest premium payment to the government was similar to that followed in the privatization of Mt. Apo geothermal power distribution in Mindanao in 2014 (Chapter 12). The CALAX bidding was irregular and the award unlawful based on the following violations of the cited provisions of the Procurement Law and the BOT Law, together with the consequent privatization defects, similar to those explained in Chapter 12:

1. There was no bidding competition on the lowest construction cost; validity of using the DPWH cost estimate was not tested or proven in public bidding.
2. There was no bidding competition on the lowest toll rate per kilometer or the lowest rate of return during operation after project completion.
3. The award was based on the highest premium of ₱27.3 billion that added 77% to the cost to be recovered through higher toll rate; this will result in absurdity: highest—not required lowest—toll rate per kilometer.
4. The highest premium to be added to toll rate is not germane to the project as it is not construction cost, hence without legal basis as part of toll rate.
5. The project award based on the highest premium results in unjust taxation, a wholesale subsidy scheme by CALAX users to the rest of the nation, a high-cost borrowing scheme without bidding, and unsound economics.

The present Administration should not repeat the flawed CALAX bidding scheme in its infrastructure projects. The Office of the President and the Toll Regulatory Board should reduce the unduly high CALAX toll rates that emanated from the irregular bidding scheme.

