



Team Orion Urges Palace to Settle CALAX Stalemate

Team Orion, the consortium of Aboitiz Land, Inc. and Ayala's AC Infrastructure Holdings, Inc., today filed a motion with the Office of the President to urge the President to settle the CALAX stalemate by either accepting the appeal of San Miguel's Optimal Infrastructure Development, Inc. (OIDI) or dismissing it in order to allow the completion of the bid process.

Cognizant of the critical state of the country's infrastructure, Team Orion seeks to prioritize the roll-out of key infrastructure projects in line with its own objective of being a partner in Philippine economic development.

Team Orion reiterates its position that OIDI's appeal be dismissed and that the DPWH decision disqualifying OIDI from the CALAX bid must be upheld on the grounds that OIDI's bid was not only deficient but was also not reviewed for technical compliance. Moreover, OIDI broke the chain of custody by removing its bid from DPWH, ultimately spoiling its own bid.

However, should the President decide to grant OIDI's appeal, Team Orion will respect such decision and commits to abide by it without legal recourse. Team Orion hopes that OIDI also extend the same courtesy to the President should the President decide to reject its appeal and uphold the DPWH decision.

It is Team Orion's hope that this motion, copy of which is attached to this statement, will trigger a final resolution of this long-drawn impasse and allow this vital infrastructure initiative to proceed in earnest.

REPUBLIC OF THE PHILIPPINES
OFFICE OF THE PRESIDENT
Malacañan Palace
Manila

OFFICE COPY

OPTIMAL INFRASTRUCTURE
DEVELOPMENT, INC.

Appellant,

-versus-

O.P. Case No. 14-G-129

DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS, et al.,
Appellees.

X-----X

**MOTION FOR DECISION ACCEPTING APPELLANT'S
ALLEGED BID OR DISMISSING THE APPEAL**

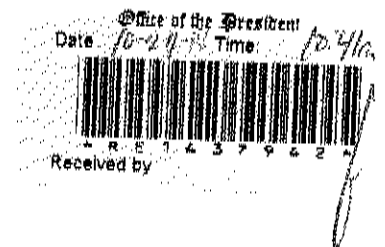
AC Infrastructure Holdings Corporation and Aboitiz Land, Inc. (collectively, "**Team Orion**"), by counsel, respectfully state:

1. In recent days, it has been widely reported that the President is "inclined" to resolve this case by ordering a re-bidding of the **CALAX Project**.¹

2. As Team Orion sees it, a rebidding would require this Honorable Office to employ an unprecedented resort to the fine print in the Instructions to Bidders that the DPWH "reserves the right ... to ... reject any or all Bids." This is because, under Section 11.9 of the BOT Law IRR, a re-bidding is proper only if there is failure of bidding, and a failure of bidding at this stage means that "no complying bids are received" by the grantor/implementing agency. However, no such failure of bidding has occurred.

3. Regrettably, this Honorable Office was forced into this situation of having to "reject any or all Bids" because Appellant Optimal Infrastructure Development, Inc. purportedly opened its alleged bid in front of the media after retrieving its bid unopened

¹ Capitalized terms not otherwise defined herein shall have the meaning given them in Team Orion's Comment dated July 18, 2014.



and unsealed from DPWH. Had Appellant respected the rules and the process and asked DPWH and the SBAC to keep its bid in their custody pending an appeal of Appellant's disqualification, this Honorable Office would have had the option of reversing the disqualification and, at the same time, having the bidding process resumed and completed.

4. Fortunately, Appellant is ***not*** asking for a re-bidding, which means it will accept the consequences of its not having its bid preserved. Appellant only seeks from this Honorable Office that "an order be issued to the DPWH Secretary and SBAC to ... accept OIDI's financial bid by way of 'judicial notice' as officially opened and read in the amount of TWENTY BILLION ONE HUNDRED FIVE MILLION PHILIPPINE PESOS (PHP 20,105,000,000.00) Concession Payment as the Bid Amount of Appellant."²

5. Indeed, Appellant has even issued a statement saying that "[o]ur pending appeal is for Malacañang to declare our bid for the CALAX project as compliant and accept our P20.1 billion bid to get this vital infrastructure going."³

6. Similarly, Team Orion only seeks the dismissal of this appeal so that the bidding process can proceed in accordance with the rules.

7. In conclusion, Team Orion respectfully submits that this Honorable Office should resolve this appeal either by "accept[ing] OIDI's financial bid by way of 'judicial notice'", or dismissing the appeal to allow completion of the bid process. Team Orion pleads against a resort to the fine print in the Instructions to Bidders that DPWH "reserves the right ... to ... reject any or all Bids", because the rejection of all bids is not justified under the circumstances.

8. The decision will have to address the issue of whether this Honorable Office can take "judicial notice" of Appellant's alleged bid, which Appellant could have preserved unopened instead of having it opened before the media at Manila Hotel.

² Memorandum of Appeal dated June 27, 2014, at p. 36.

³ "Calax rebid has no legal basis" (<http://www.philstar.com/business/2014/10/23/1383229/calax-rebid-has-no-legal-basis>),

Prayer

WHEREFORE, it is respectfully prayed that this Honorable Office RESOLVE this appeal either by accepting by "judicial notice" Appellant's alleged bid that was purportedly opened in Manila Hotel or by dismissing the appeal.

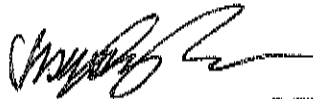
Other just and equitable reliefs are likewise prayed for.

Makati for Manila, October 27, 2014.

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Copy Furnished:**Office of the Secretary**

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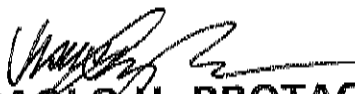
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**Explanation for
Service by Registered Mail**

Due to time constraints, the distances involved and the lack of adequate messengerial services, this pleading shall be served by registered mail.


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