Tender Mercies: Contracts, Concessions and Privatization

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Introduction

At the center of various corruption issues during the Estrada administration was the purported existence of a "nocturnal cabinet" or "court" composed of relatives and close personal friends of the deposed president. Involved in a wide array of businesses from legalized gambling to stock trading, they were said to directly influence the awarding of government contracts or to tilt government's regulatory provisions to their, or their associates' favor, despite President Estrada's assertion that his government was one of *"walang kaibigan, kamag-anak o kakilala"* (no friends, relatives or acquaintances).

Oblique references in the past from palace and business insiders were made on how the presidential goodwill was employed by these people to further their economic and political interests. However, it took a serious rift between President Estrada and one of his closest friends, Ilocos Sur Governor Chavit Singson, to give the public a solid likeness of an obscure symmetry. The resulting "model" that emerged from the Senate hearings revealed not only the overwhelming prerogative

of the President to influence the awarding of government contracts to his favored associates. More importantly, it was able to situate *that* prerogative within the workings of an informal regime able to combine and stratify the different interests and levels of compensation or payoff for those involved.

Beyond public interest, the prevalence of these allegations of exclusivity reached alarming levels, especially when set against the mainstream of the government's economic reform program that sought even wider private sector participation in the economy. Since 1987, government has undertaken the task of dismantling excessive and unnecessary economic regulations and controls through liberalization, deregulation and privatization. Over the last twelve years, it has sold or contracted government assets and rights to provide public services worth no less than P191 billion to private investors.

There is no sign that the new political leadership will change this course. Prior to and upon assumption of the presidency, Gloria Macapagal-Arroyo articulated her intention of continuing the government's economic reform program anchored on the same commitment, for fiscal and social reasons. Economically, it means a better financial situation for the treasury while at the same time attracting and mobilizing private capital to finance and/or operate services and facilities that the government, for lack of resources, cannot invest in and maintain. The government could thus focus its limited resources in other priority areas.

These economic reasons, in turn, dovetail with the expected social returns. Market competition is expected to trigger reforms on the way these public goods and services are being managed, delivered and priced—aspects habitually neglected by government-supported corporations and/or service providers. Through competition, the people (and users of the service) could also exercise their right to choose, a highly unlikely situation where government maintains its traditional monopoly over the provision and operation of public goods and services.

An established government system for concession and privatization vulnerable to corruption however, could readily undermine these justifications. For the government, corruption in the granting of government concessions means missing out on a fair market or monetary value for the "rights" and resources under its control. It also means compromising the country's development potential since

contracts on privatization and concessions usually involve huge amounts and are intended to have a positive impact on certain sectors in particular and on the country's economy in general.

An oft-neglected point is that eventually, fraudulent transactions affect the business regime itself. For a contractor or service provider, the corrupt nature of the transaction or deal eventually introduces uncertainties into the environment that could have adverse results on how it (and any other firm) conducts business (Campos, Lien, and Pradhan: forthcoming). An uneven transaction environment for instance, could limit the number of bidders, favor connections over competence and promote information asymmetry—all of which add to transaction costs. Over time, such transactions inevitably bind both government negotiators and contractors in a self-sustaining system that promotes inefficiency and ineffectiveness.

Purpose and Scope

This paper examines corruption in government contracting in the private sector for infrastructure or development projects that the government normally finances and operates but now, will be wholly or in part, constructed, operated and maintained with the private sector. To examine corruption of this nature, the study used the government's established system for contracting as articulated in RA 6957 (May 1990), later amended as RA 7718 (July 1994) which is known as the Philippine Infrastructure Privatization Program (PIPP) or Philippine BOT Law as reference.

The system for contracting as articulated in RA 7718 is specifically designed to handle government contracts which tap non-government resources for providing and developing services and infrastructure previously monopolized by the government. The law even specifies the flexible terms for public-private partnership arrangements which govern ownership, financing, construction, operation and maintenance, and investment returns' incentives. Imperfect though it may be, this makes the contracting system specified in RA 7718 a good reference by which to examine government deals or arrangements which run according to the same objectives.

To determine the institutional factors and to account for the circumstances that allow corruption to transpire and take root in the government-private contract-

ing system, the paper examines in detail three government-private sector PIPP deals in infrastructure or development projects including: the Cebu Pond A Reclamation Project, the North Harbor Privatization Project and the Greater Metro Manila Solid Waste Management Contract.

As differentiated from the usual government-private concessionaire contracts, the cases are not those whose intention and design were primarily to "employ" the services of private contractors and paid for using public funds. Rather, these deals are those where some aspects of government's right to provide, operate and maintain a public service or good (e.g., facilities) are offered and awarded to private investors and along with it, the right to collect the benefits that accrue from the users of that service or good for an agreed upon period.

It is difficult to document direct payoffs to officials that are linked to the intention of influencing the different phases of the contract from negotiation to the public (or sometimes government) evaluation of the concessionaire's performance. Such is the case especially, when there are deliberate efforts to conceal these transactions. As the process of negotiations leading to an agreement also involves a number of people and institutions, an attendant task of proving the occurrence of a payoff usually means proving that a conspiracy also exists. But inasmuch as government decisions over the kinds of alternatives or choices to support—within the frame of concessions and privatization—follow an established system, there might be some merit in looking at the phases and inner workings of this system that render it vulnerable to corruption.

The BOT system

The established BOT system for contracting can be divided into four major phases: (i) *project selection and approval*; (ii) *pre-bidding*; (iii) *bidding, evaluation and award*; and, (iv) *contract approval and implementation*. Each part contains defined procedures and even schedules of action. There are also prescribed tools and/or standard parameters for rendering an informed decision that is consistent with the technical and financial goals of the project. There are likewise appropriate guaran-

tees or sanctions which do not only ensure that the *process* of contracting would continue, but that the *obligations* would be met by the contracting parties.

The system similarly provides for a managing and regulatory intermediary between the prospective project proponents and the concerned agency/LGU with the creation of a Pre-qualification, Bids and Awards Committee or PBAC. Its composition conveys impartiality, competence (financial and technical) and accountability.

Figure I
Phases of Contracting

Project Selection and Approval	- Priority Project Selection - Confirmation/Approval
Pre-bidding	- PBAC Creation - Pre-qualification - Preparation/Issuance of Tender/ Bid
Bidding, Evaluation and Award	- Supplemental Notices - Pre-bid Conference - Submission of bids - Bidding, Evaluation and Award
Contract Approval and Implementation	- Approval of Contract - Detailed Design - Construction/Implementation - Supervision

The BOT contracting system furthermore places certain guarantees on how the principles of being *pro-Filipino,* of *non-discrimination* and of *transparency* could be appropriately adhered to across all phases of contracting. There are explicit references to the preferential hiring of Filipino labor, selection of Filipino-owned firms vs. foreign, pre-qualification requirements pertinent to ownership and the transfer of technology during the implementation of the project. These ensure, as far as practicable, the predominance of Filipino involvement in both ownership and undertaking.[1]

Non-discrimination within the system's processes is actualized through the standard application of providing information, feedback, financial and techni-

cal requirements, and rules to all prospective bidders/ contractors. Prospective bidders have an equal chance of being awarded the contract since they follow the same rules, receive the same information at the same time, and are required to adhere to the same mandatory minimum technical and financial requirements.

Finally, transparency is observed and maintained in the system (especially dealings among concerned agencies/LGUs and bidders) through the mandatory observance of information dissemination (compulsory publications), feedback requirements (notices, pre-bidding conferences, explanation of decision) and composition of the managing and evaluating bodies, both at the level of project confirmation and approval (NEDA, ICC and LDCs) and the concerned agency/LGU (i.e., PBAC).

The actualization of all these principles contributes to a credible and level playing field conducive for competition to thrive. Overall hence, one can say that the strength or weakness of the BOT contracting system against graft and corruption would, to a large measure, depend on how the overall principles as well as the defined procedures, tools and parameters, guarantees and organizational intermediary (i.e., PBAC) within each phase of the contracting system are maintained and managed.

In view of the prevalent public perception of corruption in government contracting, one is moved then to ask what principle has been excluded or what defined procedure, standard parameter or time line in what phase has been dispensed with or overlooked. Was the occurrence a failure related to the capacity of the technical/regulatory structure in a particular phase? And if there was any oversight in the application of the system's principle, procedure, parameters and schedule on the part of the technical/regulatory body, was it, by any chance, caused by corruption or imperfections in the system itself?

Thus, categorizing some details and forms of perceived or actual corruption from the excerpts of several cases examined by the study could shed some light.

System checks, cases and gaps

System's doors and windows

The vulnerability of the elements and phases of the BOT contracting system to corruption could be determined largely from the type of "assault" mounted against it. Essentially, whether the failure can be attributed to the weakness of the whole system itself or just to an element in one particular phase of contracting would be principally ascertained by the intent and type of corrupt action (or input) committed.

The process of contracting is sequential, where progress towards one phase would depend on the completion of the other. Based on this, prospective bidders commonly survey four fundamental stages throughout the phases of contracting critical to their interest and to the progress of the whole process:

- their choice project will be selected and approved;
- their company or consortium can pre-qualify;
- their technical and later, financial, proposals can pass the evaluation; and
- they can secure other government approvals required under existing laws, rules and regulations (e.g., environmental clearance, certificates, license) during the course of contract implementation on-field.

Among these stages, it is not totally unexpected that public predilection (and cynicism) should assume irregularities during the stages of technical and financial evaluation and when securing government approvals. The stage of evaluation is a "pass-or-fail" situation, one of the points where the discretionary power of the PBAC is most decisive. It is not surprising that at this stage, the members of PBACs are usually the objects of criticism and insinuations, since they are the officially designated "managers" and "protectors" of the process and of public trust.

Except for instances when it is crucial to pre-qualification or a material input to the bidding, securing government approval is not deemed decisive at the stage of technical and financial evaluations. By then, the decision regarding the contract's award has been made and the winning bidder could always seek the assistance of the concerned agency/LGUs in securing these approvals. The agencies' failure to act promptly merely delays the implementation of an already done deal.

However, behind the decision to issue the mandatory approval or document, the line separating the intent to protect the public interest and to promote self-interest is too thin. The original rationale behind such mandatory approvals and enabling forms might have been to guarantee the interest of the people, but in some cases, the line is breached and has spawned situations analogous to blackmail. It is not surprising that the acquisition of these approvals, licenses or similar documents has always been viewed by the public as a *de facto* form (or opportunity) of extortion that happens even under normal (i.e., non project-related) situations.

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Systemic and localized acts of corruption[2]

In essence, those involved in corruption in government-private sector contracting proceed along two primary domains to ensure that the contract would be awarded to them on very favorable terms and usually, to the detriment of the government and other competitors.

The first or *systemic domain* covers those acts directed towards influencing the contracting environment, or more specifically, to secure a transaction and/or negotiating environment partial to the position of one bidder and/or more open to illicit incentives. Apparently, corruption in contracting needs a predictable system, certain ground that will secure the relation and increase as well the certainty of the result of the transaction or negotiation.

Systemic acts might be *amplified*, that is, directed or designed to change or to bypass the "prescribed" contracting system—all of the phases which make up the whole system. Or it could be *compartmentalized*, that is, limited to one or several phases or stages of contracting. In both types, the acts or initiatives are not illegal in the strictest sense, but they do erode the credibility of the contracting system. The choice of type of initiative to be used would depend, in turn, on the magnitude of change in the environment that one seeks to achieve for his purpose.

In contrast, the *localized domain* includes those acts or initiatives that seek to influence (directly or indirectly) the crucial decision in several (or all) phases of the contracting system. These acts or initiatives proceed from the progress of the prescribed system of contracting, thriving on the "predictability" the said system provides. Their objective is for the prospective corrupt bidder to change the decision at a determining stage to its favor, primarily through illicit means.

Localized acts of corruption are mostly *compartmentalized*; that is, their application is situational, depending on the particular phase(s) or stage(s) that a prospective bidder wants to pass (through corrupt means). It is also possible however, that these acts and initiatives follow an overarching script or conspiracy that renders the process of contracting a "done deal." And in such cases, said acts and initiatives are said to be *amplified*. Otherwise, they are simply an isolated collection of compartmentalized actuations.

There are deliberate efforts to hide these deeds or transactions, making them much harder to prove

Localized acts of corruption constitute most of the allegations of corruption (e.g., bribery) in contracting. There are cases, however, when the cause can only be discerned from the context of the act; in such instances, an analysis of the environment uncovers probable weaknesses on how the contracting system translates the principles of inclusive and transparent contracting into operational guarantees. There are deliberate efforts to hide these deeds or transactions, making them much harder to prove, discovered only occasionally because of whistle-blowers, determined investigative reports and media-courting exposés.

The principal difference between the two domains is the *object* of the initiatives or intent. The two domains are also complementary but not necessarily coincidents. For instance, localized graft initiatives could be pursued at any critical stage of any particular phase of contracting, with or without accompanying initiatives aimed at creating an accommodating transaction and/or negotiating environment. Some firms or individuals on the other hand, do not see the need for any localized initiatives as the existing environment offers enough advantage or guarantees to win the contract. They could also be in the earlier stage of building relations

that could be used as a platform from which to launch localized interventions in the latter phase, or in other projects. What is evident is that the initiatives in both domains can be combined to ensure that the desired outcome will occur, as may be seen in the following selected cases; namely, the Cebu "Pond A" Reclamation Project, the North Harbor Privatization and the Metro Manila Solid Waste Management Project.

Cases, plots and allegations

Cebu City's Reclamation Project

The case of Cebu City's Reclamation Project belongs to the systemic category, albeit with probable tones of localized forms of corruption initiatives. The case does not have enough details to layout how collusion, payoff and perhaps, even kinship, interacted to erode the integrity of the established elements for contracting. The overall plot, however, serves the purpose of the discussion and analysis.

The case began when the Cebu City Development Council passed on the task of contracting the reclamation of the 60-hectare "Pond A" to the Philippine Estates Authority (PEA) in exchange for 65% of the property (Philippine Star: 14 July 2000). This effectively shifted the responsibility of overseeing the contracting away from Cebu to the PEA, where there was less opportunity for LGU oversight.[3] It was alleged that most of the members of the Council were allied with then Mayor Alvin Garcia (it must be noted that, some, along with the Mayor, were members of the PBAC).

Cebu City Board Member Winston Garcia subsequently alleged that each of the councilors was paid P.5 million to "surrender" to the PEA the control rights to oversee contracting. The money supposedly came from sub-contractors to be subsequently engaged by the PEA, and that another P2 million would be paid when the project was eventually bidded out to them (subcontractors).

The allegation of payoffs to city councilors is absorbing but more interesting, if indeed, true, is that the case shows how the strong (or weak) contracting system at the local levels can be readily outflanked. Systemic and compartmentalized, Cebu's case shows how the intended change in the PBAC could cause changes in the dis-

position of all the other succeeding phases of bidding— from pre-bidding until contract implementation. As it was, transferring the Cebu local government's control rights over the process of contracting to PEA was at the same time an automatic decision to accept whatever contracting system PEA had in-place. This subsequently overrode the capacity and rights of Cebu's PBAC to handle the matter.

That the PEA was chosen as Cebu City's contract manager despite the recent fallout from the Amari scam deserves a re-examination of how well the LGU's (and even PEA) PBAC can "vet" prospective bidders/contractors. Either there is a lack of qualified companies who can do the job of reclamation or there is no excellent database that could track the performance and changing profiles of different firms or companies and shadow personalities (despite the proliferation of many professional associations and organizations in that line of work) that could have been valuable in evaluating the prospective bidders or project partners.

The Cebu Reclamation case suggests that any relationship between and among those involved in a corrupt transaction needs stabilizing to increase the certainty of the result of their transaction. Perhaps this was what the contractors sought to gain by allegedly paying off the members of the City's Board. The transfer of contracting rights to PEA meant they could circumvent the long, tedious process of regular LGU-PBAC contracting, wherein each phase could produce surprising results and might require dealing with unfamiliar actors who did not know how to "play ball." The willingness of contractors to provide substantial amounts of graft money to shift control of contracting over to the PEA was, in actuality, a bid to ensure a more accommodating relationship and environment for their transaction. If true, this suggests a lot about PEA's system for contracting, of how its own PBAC might already have been compromised, and that the likely results in some of the contracting phases (e.g., pre-bidding, bidding, evaluation and award, and even the approval of contract) might already have been fixed.

The Cebu Reclamation case similarly revives one detail regarding a phase in contracting, that of *project selection and approval*. While few will dispute that it should be within the purview of the concerned agency/LGU to select the project, how the selection was made at the national and local levels has seldom been clarified. Unfortunately, it is during this phase that other government offices (e.g.,

Malacañang) and officials determine whether the project should fall within the "usual" BOT contracting system.

At present, the development of criteria for the selection process is left to the discretion of the concerned agency or to the LGU's designated unit (the local development councils in the case of the LGUs, or the planning committee, in the case of a concerned agency). This provides some degree of flexibility and serves as filter for the approving/confirming bodies (NEDA, ICC and LDCs). However, the unclear and arbitrary criteria and processes for selection and prioritization could also facilitate collusion among those involved to select projects advantageous to them or those which have the potential for high payoffs (e.g., most projects will involve infrastructure to maximize payoffs from purchase of materials).

For both NGA and LGU concerned, the nature as well as the corresponding technical and resource requirements of the selected projects could also narrow down significantly the number of eligible project contractors, leading to the short-listing of well-connected bidders or concessionaires well before pre-qualifications and public tendering. It might be interesting to find out how early PEA knew that it would be involved in a major project in Cebu; such would determine whether PEA's management of Cebu's project constitutes a set of amplified, localized acts of corruption.

political party affiliation, interests and sheer social influence could determine decisions to favor those that benefit only a select group

Hence, the project selection and approval phase becomes an exercise in forewarning entrenched or developing corrupt connections between and among stakeholders (NGA, LGUs and the private sector) about what opportunities to focus on and from there, which office or person to approach. There are also cases of some LGUs where political party affiliation, interests and sheer social influence could determine decisions to favor those that benefit only a select group, especially for local projects that are also confirmed locally. This is especially since most LDCs only meet once or twice a year (to take on the *whole* local development plan).

In any case, the short listing of the project does not necessarily translate to openness to compartmentalized or amplified forms of localized acts of corruption, especially those whose amount is subject to approval or confirmation by the NEDA and/or ICC for their economic and financial viability. There remain some systemic checks in the long process from project selection to project operation (when the public begin to express their satisfaction or dissatisfaction) that raise a lot of uncertainties as to the outcome.

By and large, the real utility of analyzing the possible emergence of corruption in project selection revolves around the issue of transparency and its meritorious impacts. Whether national or local, a clearer process and standard for project selection that the public could readily understand might give rise to more prudent judgement. It could also inhibit the growing preference of government officials to cite the project's peculiarity or urgency as a pretext to circumvent the guarantees of the system of contracting, and/or fix the result of its progression—from beginning to implementation.

The privatization of the North Harbor

On 26 July 2000, then Senate Minority Floor Leader Teofisto Guingona, contractors, and some labor leaders demanded a suspension to the privatization of ports throughout the country until a thorough investigation on alleged "anomalies" was undertaken (The Philippine Star: 27 July 2000). Sen. Guingona also filed Senate Resolution 813 which directed the Senate Blue Ribbon Committee to investigate the privatization and modernization of ports by the Philippine Ports Authority (PPA).

One of the principal "anomalies" regarding the privatization of North Harbor was the charge that privatization could in fact lead to a "monopoly over cargo operations"—a concern that was raised by a shipper's group led by the Distribution Management Association of the Philippines or DMAP (Philippine Star: 07 July 2000). This was in reaction to efforts by the North Harbor Consortium or NHC (whose members include the Asian Terminals Inc., International Container Terminal Services, Inc. and other major domestic shipping lines) to secure the contract to

operate the harbor which needed a capital infusion of not less than $200 million to reach an acceptable service level. The DMAP believed that the privatization of North Harbor merely amounted to the transfer of a government monopoly to an NHC monopoly for a guaranteed period of 25 years.

In response, the PPA decided to offer a new Terms of Reference (TOR) incorporating changes in the areas of engineering, financial requirements and arrangements and equipment to be provided for the privatization of the harbor and disclosed that it would conduct another hearing (Philippine Star: 13 July 2000).

The North Harbor project had an objective and type that resembled an arrangement covered by the BOT and yet was covered by Executive Order No. 59. The Order allows PPA to contract out the management, operation and development of the government port directly to a company or firm *without public bidding.*[8] This negatively impacts on the built-in guarantees in a BOT contracting system for that critical stage, especially in terms of impartiality, transparency, financial qualifications of prospective contractors and financial security. There is an inherent problem in the situation where the same agency (PPA), who is also a participant in the process (and needs to conclude a deal), has to act at the same time as sole overseer of the process and evaluator of prospective contractors with whom it (PPA) had conducted a lot of business. Conversely, because of unfamiliarity, varying background and multiplicity of interests, it is much harder (but not entirely impossible) to strike a fraudulent deal with a body such as the PBAC whose creation would have been required under this circumstance.[4] It is not surprising therefore, that the PPA and the North Harbor privatization project were perceived by other users of the facility as the principal agent and means, respectively, to establish a "monopoly over cargo operations."[5]

EO 59 has been rescinded (and the privatization of North Harbor put on hold) but not before its systemic implication on government contracting was emphasized. In essence, it was an amplified systemic act, i.e., its object was to change the whole system of contracting itself. While the Cebu Reclamation Project showed how one can opt for a less stringent PBAC (and gain a higher degree of certainty that the fraudulent transaction could be carried out through the switch), the North Harbor

case presented another option—that of a complete bypass—with the authority issued by no less than the Office of the President. The alternative truncates most of the components within the established phases of a "standard" BOT contracting system which ensure the relatively graft-free proceeding of contracting.

Former President Estrada placed the privatization of North Harbor (and all other ports in the country) under a different legal framework, raising more unsatisfactory answers than reasonable questions in the exercise of his prerogative. It might be argued that the PPA observed the same steps, forms and other instruments that a "standard" BOT contracting system follows, even if it is operating under a different legal framework. However, this point only raises the question of why the project has to operate outside the usual contracting system.

Contract recycling: Metro Manila Solid Waste Management

Unlike the two preceding cases, the scope of the alleged corrupt acts in the case of the Metro Manila Solid Waste Management is more comprehensive, covering almost all of the critical stages in the different phases of contracting. Beyond the issue of personalities, it also shows weaknesses and malleability in the government's contracting system, giving the exercise a bad name, particularly under a conducive or complementing environment.

In August 1999, former President Estrada created the Greater Metro Manila Solid Waste Management Committee (GMMSWMC) whose task was to draft a solid waste management plan for Metro Manila and the adjacent eight provinces in partnership with the Metro Manila Development Authority (MMDA). The plan was supposed to take on the problem of handling the tons of trash that Metro Manila and the surrounding provinces generate daily.

The GMMSWMC, which was headed by then Presidential Committee on Flagship Programs and Projects chair Secretary Roberto Aventajado, subsequently designed the Metro Manila Solid Waste Management Project. Among other means of disposal, its aim was to dump a portion (i.e., one third) of the 13,400-ton daily garbage into a sanitary landfill under a build-own-operate scheme.[6] The GMMSWMC proceeded to prepare and issue the Terms of Reference (TOR) for

the project, a 25-year landfill contract whose total worth was $330 million. The TOR was approved four months later by the Metro Manila Development Council.

The President himself gave the green light in January 2000, and solicitations for the proposals were first published on 13 February 2000. On 28 September 2000, the Pro-Environment Consortium (PEC) won the bid for the contract over eight other bidders, but not without allegations that it did so because of its good connections all the way up to Malacanang. It was able to use these connections to its advantage in most, if not all, of the critical stages of contracting.

The contract, however, was not awarded to PEC pending the decision to a lawsuit filed by another firm who claimed to have won a valid waste management contract during the Ramos administration.

PEC's knowledge that the project would be selected and approved reportedly antedated even the creation of the GMMSWMC. One waste management company official, who wants to remain anonymous, recalls that PEC executives already "knew about the landfill project long before the GMMSWMC was going to be created." He also mentioned that PEC executives "were already floating the project before anyone said the word 'bidding' at a time when the MMDA had no money for this [project]" (Sison in PCIJ: 24 January 2001).

The consortium supposedly built on this foreknowledge to engineer certain events that would establish its position once the project was selected and approved. For instance, it held elaborate public presentations on landfills that were attended by government officials and people involved in waste management during the *first quarter of 1999*, predating by far the creation of the GMMSWMC.[7] Whether because of coincidence or market instinct, these presentations widened PEC's head start in several ways. They "provided a great opportunity to pick the brains of officials involved in garbage," which proved valuable in the consortium's later bid to win the contract. The activities also enabled PEC to "cement relationships with people who matter," a strategic gain, since "personal relationships are a factor in government contracts."[8]

Further, through the elaborate presentations, PEC was able to project an impression of involvement in the mainstream and circle of key people involved in solid waste management. This impression placed it directly and inevitably in the

path of the future project. By the time the GMMSWMC "selected" and "approved" the solid waste management project in December 1999, PEC's involvement appeared inevitable, "as a matter of course."

PEC participated in the pre-qualification, all the while already aware that it would be pre-qualified. According to the waste management official, PEC knew the minimum qualifications of prospective contractors (to pre-qualify) at least a year before the bidding, so that it was able to prepare ahead of its competitors. There is also reason to believe that PEC already knew about the salient points of the tender or bid to be issued, based on the pre-qualifying capacity that the project required. Again, PEC was several steps ahead of its competitors.

It was also presumed that the personalities behind PEC, not the consortium's technical capacity, were the main reason for its pre-qualification. The consortium included the German-based Rethman Recycling GmbH, one of the largest waste management companies in Europe with 66 years of experience in the field (Arias in Manila Bulletin: 03 January 2001). It is also reputedly the largest recycling and privately owned waste management company in the world. Other than Rethman however, no other member of the consortium had previous hands-on experience in solid waste management or in operating a landfill site (Sison in PCIJ: 24 January 2001). Even the individuals who formed the PEC did not have a track record in operating a multi billion-peso business.[10]

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This brought into focus one of the consortium's local investors, the Environmental Dynamics Corporation (EDC). Among its incorporators is Frank Puzon, who was the personal pilot and high school classmate of Estrada at the Ateneo de Manila. Another EDC incorporator is sugar trader Raul V. Gamban, a cousin of Guia Gomez, an Estrada mistress and mother of one of Estrada's sons, Joseph Victor or 'JV' Ejercito. There were also allegations that GMMSWMC head Sec. Aventajado was close to the incorporators of PEC.

The active assertion from PEC's other competitors[11] that PEC might have a direct line to the Palace was weighed by members of the PBAC. But PEC was not the only firm which was close to GMMSWMC head Sec. Aventajado or even to the President. There was no shortage of prospective, qualified bidders whose key people were, in one way or another, connected to the Palace or to Palace relatives at that time. The owner of one of the qualified bidders, R-II Builders Inc., is construction heavyweight Reghis Romero, who bought the Manila Times from the Gokongweis, and was known as a close associate of Aventajado.[12] Jacinto Ng Sr., one of Estrada's longtime friends was behind another bidder, ECWES. He and one of his companies are reported to be the owners of two mansions in Wack-Wack, Mandaluyong that have been linked, in turn, to another presidential mistress, Laarni Enriquez (Sison in PCIJ: 24 January 2001).

Very few (if any) members of PBAC would have failed to notice these links, or to consider them as incidental. At any rate, the PBAC's decision to pre-qualify PEC, despite the consortium's manifest technical dependence on only one of its investors, contributed to strong public suspicions about PEC's connection to the Palace. Sec. Aventajado claimed that other competitors' links to Estrada prevented the Palace from being partial. However, this did not prevent the members of PBAC from responding to what they perceived to be signals (even if there were none) from Malacanang.[13] Then too, the parameters that were used during pre-qualification might not have been as stringent as believed.

PEC allegedly participated in the bidding stage helped by two crucial bits of information. One was that technically, it had already received considerable help from officials of the MMDA itself in preparing their proposal.[14] The assistance did not only help PEC technically; it also conveyed the impression that the consortium was already operating "from the inside." PEC had a working feel of what the proponent agency (MMDA) operationally needed, so that its proposal was in closer accord with what was required during tendering and bidding.

The other was that PEC was given insider information on the government's ceiling on the tipping fee (i.e., the amount paid for every ton of trash thrown in a designated dumping site) which provided a good baseline figure on how low the bidder could go. According to the same company official, who was likewise famil-

iar with the detailed workings of the MMDA, PEC was also "told about what proposal the government would be most interested in, what the desired time frame is, and what the expectations are in terms of system efficiency" (Sison in PCIJ: 24 January 2001).

From the time of the TOR's issuance up to the deadline of submission of bids to the PBAC on 06 June (2:00 p.m.), it only took PEC about six months to prepare the technical and financial aspects of its proposal. Matching the profile of the consortium's technical expertise vis-a-vis this accomplishment raised some amount of skepticism. Some of the requirements needed time to prepare, given the local resistance to a garbage "dumpsite" in their communities such as the certificates of willingness to host a landfill from the host province and willingness to host transfer stations; certification of site suitability from the Department of Environment and Natural Resources (DENR); and certificate of conversion exemption from the Department of Agrarian Reform (DAR). As the company official pointed out, "these requirements certainly take time to accomplish so that anyone with no benefit of guidance would find it impossible to secure them right away" (Sison in PCIJ: 24 January, 2001).

Because of the volume and stringency of the requirements, it is not surprising that of the 17 companies that purchased the proposal documents for the project, only nine actually submitted their proposals. Of these nine, only two—PEC and Dizon-CGEA— passed financial and technical evaluation.[15] PEC eventually won over Dizon-CGEA due to its much lower tipping fee bid of $18.89 per ton against Dizon-CGEA's $32.

PEC might have passed all the phases of contracting but in the end, the government failed to award the contract due to a Temporary Restraining Order (TRO) issued by the Pasig RTC. The TRO was requested by Jancom Environmental Corporation and Generale des Eaux Vivendi, who claimed that they had been awarded a $350-million contract on solid waste management during the administration of former Pres. Fidel Ramos (Sison: TAG Report February, 2001).

Faced with this problem, the MMDA and GMMSWMC solicited new proposals and conducted a new bidding in November 2000 to solve the garbage problem on an interim basis (Arias in Manila Bulletin: 03 January 2001). The urgency of the

garbage problem increased with the closure for San Mateo's sanitary landfill and the public outrage over the Payatas landfill garbage avalanche in July which killed more than 120 people (Trinidad in PDI: 13 July 2000).

By the following month (December), two two-year contracts with a total value of $51.1 million for interim controlled dumpsites were awarded by the MMDA and GMMSWMC. One contract went to Waste Action Recycling (WAR), the other to a consortium made-up of R-II Builders, DM Consunji and Celdex. In effect, the two contracts were stopgap measures for solid waste management while the GMMSWMC and MMDA took on the Jancom lawsuit. Ironically, the members of the R-II consortium had failed the technical evaluation for the 25-year contract while WAR was not even among those who participated in the earlier bidding.[16]

Meanwhile, residents and local officials of Mariveles, Bataan (the interim site of WAR) and Semirara, Antique (the interim site of R-II Builders-DM Consunji-Celdex) opposed the setting-up of the dumpsites. Both areas already secured TROs to prevent the contractors from dumping garbage in their areas. The Jancom-Vivendi suit is yet to be decided.

All told, the metro garbage case teaches how systemic initiatives (even if compartmentalized) and localized acts can work interdependently to clear each critical stage of contracting; among these would be the use of a "trojan horse" to prequalify, the subtle appearance of long involvement in solid waste management long before the issue became important, alleged interfacing with MMDA, and the persuasive projection of the firm's influential linkages. The case demonstrates how one (or perhaps, even several) prospective bidder(s) could maximize its high-level contacts and stock of inside information to maintain the timing and momentum of its bid and eventually, win the contract.

The case is also significant in that it brings to view the limits of the contracting system's legal boundaries to account for those actions which, while not really illegal, suggest shades of corruption incongruous with the contracting system's principles when taken within their contextual environment. Except for obtaining insider's information, most of the schemes that PEC employed, for example, fall within this domain. They are systemic and localized acts whose corruption become evident

only when placed within the context they occurred in—not far from the Filipino's concept of *delicadeza*.

Whether deliberate or not, this point is particularly illustrated by the situation created when PEC's actuations were set alongside its claims. Inspite of not having any prior knowledge of the project nor experience on solid waste management, it entered the field and was even able to prepare the stage for its later involvement prior to project selection and approval. It might be interesting to find out exactly when Rethman learned of the project.

PEC denies that the contract was a "done deal" and that its connection to the Palace was a factor in the evaluation and awarding of the contract. But just a week after it won the bid, Ms. Gomez met with EDC incorporators and other people close to Estrada in her office.[17] Ms. Gomez might not have been an incorporator of EDC, but in addition to her personal relationship with Estrada, she is also close to then Presidential Management Staff (PMS) Head Leonora de Jesus (the companion of Ramon Abad, Estrada's campaign manager). In January 1999, the task of reviewing government projects costing P50 million and more had been transferred to the PMS. The trail of social connections did not end here, for the PMS section tasked to review the projects was headed by Atty. Crispin Remulla. Atty. Remulla is not only the son of former Cavite governor Juanito Remulla, a loyal ally of Estrada; he was also a former lawyer of "JV" Ejercito (Tordesillas, 2000: 192).

What made the phases and stages more vulnerable to these subtle systemic and localized acts were the fundamental weaknesses by which PBAC managed them. It could have checked some of the allegations, especially that which concerns access by one (or several bidders) to inside information. It could also have coordinated its own investigations or examination (especially prior to pre-qualification) of the bidders with other offices which have other, more appropriate indicators of impropriety.[18] Further, PBAC's lapses in acting as impartial manager and arbiter were also manifest. Despite the fixed date and time of the deadline, it allowed late bidders to participate in the bidding.[19] It was also unclear whether a dispute resolution mechanism was established (or inoperable) among the parties, given references in public of certain "irregularities" coming from among the bidders

themselves.[20] Overall, these oversights contributed to the growing suspicion of partisanship, bribery and competence of the PBAC.

Much of the latter oversights however, could be traced to the absence of an alternative plan (in case of serious delays or failure to award the 25-year contract) and subsequent belated efforts to compensate for this lack. The bidding proceeded on the assumption that the Jancom-Vivendi contract could be ignored. By the time it became apparent that the new contract under PEC would not materialize, MMDA and GMMSWMC were already hard-pressed to find quick solutions. Their solution came in the form of posthaste solicitations of new proposals and a new round of bidding for two two-year contracts.[21]

Operating quickly, it was inevitable that defined procedures, schedules, parameters, requirements and perhaps, even the basic principles of contracting were corrupted.[22] There were reports that bids for the interim project contracts were opened behind closed doors (for MMDA's eyes only) and that some of PEC's earlier ideas and bids were used by other bidders. One of the contracts was awarded to a consortium of firms that was disqualified in the previous service; the other was to a company (WAR) which did not even participate in the earlier bidding for the 25-year landfill contract (Bondoc in Manila Bulletin: 03 December 2000).[23] There was also confusion on whether the 2-year interim project contracts were part of the original 25-year contract (which PEC considers the "main" contract) or were, in fact, new contracts with distinct TORs. From all indications, it seemed that the original objective, course and procedures of contracting on solid waste management were overtaken by situational necessities (landfill closure, Payatas tragedy and lobbying inside Malacanang).

One last point that the metro garbage case presents is the likelihood of a contract being a "fixed or done deal." Were the initiatives really compartmentalized or did they follow an overarching script or conspiracy (i.e., amplified) only to give a semblance of legitimacy and fairness to the process of awarding?

Compared to Cebu's reclamation case, the metro garbage case appears to have all of the necessary capital to rig a deal. Circumstances seem to support allegations that PEC knew about the project beforehand. It had influence from its connection to the Palace and that influence was expanded by its dealings with key people and

concerned government agencies, especially in refining its technical and financial proposals. It was also highly likely that PEC had access to inside information. Its high state of readiness and detailed knowledge of technical project specifications material to its position in each of the phases of contracting were, to some outsiders, too fortuitous to be attributed only to business acumen. Because of these advantages, PEC was able to keep uncertainty to a minimum or predictable level.[24]

It is thus highly likely that the metro garbage deal was a contract pursued with bias.

It is thus highly likely that the metro garbage deal was a contract pursued with bias. Ironically, the contract was not awarded to PEC, not because of the anti-corruption guarantees in the contracting system that are integrated within the procedures, the technical and financial parameters, or competence of the PBAC but because of a legal technicality.

Recapitulation and Summary

Thus far, it is possible to plot some domains and the corresponding types of corrupt acts or initiatives currently in service. Regarding systemic initiatives, prospective bidders and/or partner government officials could opt to change the entire system of contracting (amplified initiatives) by opting to operate under a different legal framework and system for contracting. Such was the case of the North Harbor privatization contracting "bypass." Other systemic acts were directed not to change the whole contracting system but only to a particular or to several phases or stage in contracting (compartmentalized). PEC's alleged interfacing with MMDA personnel improved its technical position and conveyed the impression and regard, both publicly and to MMDA, that it was a buddy, a familiar hand to the agency. In a similar vein, it was able to "cement relationships with people who matter," particularly those who could act on its behalf (when the process of contracting would be in full swing) during its public presentations.

The case of Cebu's "Pond A Reclamation Project" is another example of this systemic, compartmentalized approach. The PBAC shift was expected to change

the disposition of succeeding phases of contracting, from pre-bidding to the implementation phase. The change would also relax the atmosphere involving the suspected payment of additional bribes by sub-contractors later, most likely after the contract was awarded.

On localized acts and initiatives, prospective bidders and/or partner government officials could opt to change or bring the decision in any determining phase (or stage) of the contracting system to their favor by using individuals or institutions. In the metro garbage case, there were allegations that PEC for instance, had used Malacanang and agency insiders heavily to obtain crucial information to hurdle the stages of pre-qualification and technical and financial evaluations ahead of its competitors. One PEC executive admitted that each of the bidders had its own "backers," probably reaching all the way to the Palace. In hindsight perhaps, there is some merit to looking into the composition, individual track record and actions of decision makers granted discretionary powers within the system of contracting such as head of agencies, the LDCs, (project selection and approval), and the PBAC (as manager and arbiter of the system).

Localized initiatives such as the use of other individuals or institutions might be directed at a specific determining decision phase or stage (i.e., compartmentalized). They could also be part of an elaborate plot or conspiracy to conclude a "pre-awarded contract" (i.e., amplified). Said plots are deemed unlikely, given the host of uncertainties or contravening variables attendant to the long process of contracting.

PEC's (and to some point, Cebu's) case illustrates this possibility. It appears that in such cases, the use of localized initiatives should be matched by an accommodating environment to render the progression of contracting more stable and hence, predictable. At the minimum, it would require a combination of systemic and localized acts which make use of overwhelming influence, compelling incentives and a well-developed level of collaboration.

Conclusion and Recommendations

The vulnerability of the BOT contracting system to corruption could be determined largely from the type of "assault" that could be mounted against it. Various initiatives or acts of corruption in contracting generally come from two domains: those that seek an environment partial to their position and illicit incentive and those that seek to change or fix the decision in any determining phase (or stage) of the contracting system in favor of a group or individuals who participate in the bid.

vulnerability of the BOT contracting system to corruption could be determined largely from the "assault" mounted against it.

The following conclusions and recommendations are made regarding the vulnerability of the BOT contracting system to such initiatives:

1. *While the use of an "alternative" BOT contracting system will always remain an option for the President to take, there is a need perhaps to elaborate the circumstantial and economic parameters involved in exercising this prerogative.*

Circumventing a "standard" BOT contracting system is not readily done, in most cases, only the President can provide or allow it. Since the power crisis in the early 1990s, Malacanang has found convincing reasons—a crisis and/or extreme necessity—to use other systems of government contracting in private sector infrastructure and development projects (BOT Program) under the mantle of limited emergency powers.

Unfortunately, it appears there is no shortage of crises and extreme necessities that compel the petition for and use of emergency powers, and with this, the non-use of the standard contracting system.

Circumventing the "standard" BOT contracting system might be circumstantially attractive or expedient, but its economic cost could also be high. To solve the power crisis for example, the Ramos administration signed long-term contracts worth billions of pesos with private power producers where NAPOCOR was duty-bound to buy and pay for their their entire production even if it was unable to use the supply because of low demand (Philippine Star: 07 July 2000).

Higher still is the cost of the vulnerability it brings to government contracting in general. It strips effectively the contracting system of its safeguarding principles, guiding procedures, decision parameters and sanctions integrated within each phase, rendering the total alternative system highly susceptible to *localized acts* of graft and corruption.

2. *The government should guarantee the use of a standard BOT contracting system in its operations.*

Despite the BOT Law, government (i.e., agencies, LGUs) follows different systems of contracting even for projects that fall within the various schemes under the BOT. This does not only inhibit private sector participation, the different systems also make it difficult to follow the trail of responsibilities and accountabilities. Corollary to these points, the discretional latitude from the *per project* or *per agency* approach invites corruption. Furthermore, this approach and the consequent variances in the inputs and procedures run counter to the overall thrust of the Arroyo administration to simplify transactions and to minimize the exercise of discretionary powers.

3. *The government should, along with the private sector (business and members of the civil society) review and further streamline the processes and requirements of contracting.*

The BOT contracting system has built-in guarantees (e.g., procedures, standards, requirements, sanctions, information exchange) which ensure that the process of contracting would continue and that obligations can be met by the contracting parties. This elaborate array of guarantees however, could also delay the implementation of the project to be contracted, lending reason to those who opt for more expedient ways of contracting.

In view of this, the government (through NEDA/DTI) could initiate a review of the BOT contracting system with other sectors, whose objective would be to improve the system's flow as well as guarantees. One specific area that could be examined is how to actualize transparency in all phases of contracting, particularly in project selection and approval. Another thrust of the review is to shorten the

system's phases and sub-processes. For instance, the process of pre-qualifications could be discarded since stringent technical and financial evaluations would be done anyway during the opening of bids. As it is, pre-qualifying becomes an opportunity for some government officials to seek rent, especially in contracts involving procurement (e.g., medicine and other medical supplies, textbooks, communications equipment). Some government offices continue to pre-qualify firms that they or other agencies have had some problems with in the past.

4. *The government should develop and install a better system to examine and/or "vet" prospective bidders.*

With the assistance of other sectors, the government should develop and install a centralized system to monitor individuals and firms that would want to bid for government contracts (even those not under the BOT). Said system in-place could "institutionalize" the reputation of the business and the person, especially those with opprobrious contracts and performance records (locally or in other countries).

Said system could also discourage the practice of firms with "well-placed" executives from using their connections to win the contract.[25] It might even pressure them to be more circumspect in their actions, and the public, to be more factual and responsible in their accusations and suspicions. It could counter the justifications based on ignorance by government officials (and agencies) for their continued dealings with "notorious" individuals and firms.

5. *There is a need to develop a norm for a cooperative, inclusive, transparent and fair contracting system.*

In a way, a contracting system based on the principles of inclusiveness and transparency remains largely in congruent with the prevailing socio-political culture in the country which places a premium on personal relationships rather than on institutional checks and balances. It is also an anachronism vis-à-vis an economy whose configuration is defined by a few, supra industrialists.[26]

Rather than subscribe to the rule of the fittest, an inclusive and transparent contracting system remains the best alternative to manage the different in-

terests of firms and individuals in the business. From this, government, along with business and other sectors, could undertake long-term initiatives to develop or set a norm that emphasizes cooperative approaches to the maintenance (and furtherance) of a contracting system that is non-discriminatory and transparent.

an inclusive and transparent contracting system remains the best alternative to manage the different interests of firms and individuals in the business.

An initial step towards this direction is the signing of agreements or public "pacts" by government, business and other concerned sectors regarding their stance and conduct pertinent to contracting. Although these agreements may or may not carry legal obligations, they could serve as fair and legitimate referent points for censuring (or commending) those, including government, who violate the agreement (or code of conduct) and put pressure as well on those who did not sign them. Perhaps the agreement could also cover those acts that while not deemed as illegal, give nevertheless, a sense of impropriety to the conduct of the transaction.

6. *There is a need to consolidate and rationalize the activities and involvement of non-government sectors and representatives in the system of contracting.*

One cannot fail to notice the seeming inability of those in the non-government sector to maximize their participation in the process of contracting. This, despite their mandated involvement in the process, as provided for by the provisions of the BOT Law and Local Government Code. While there has been a proliferation of initiatives that run parallel to government, few of those in the non government sector have made use of quasi-government venues for decision-making (e.g., LDCs and PBAC) which offer direct routes to influence decisions and policies. Doubtless, an independent course of action is preferable, but maintaining said course of action entails some cost and lost strategic opportunities.

It might be in the best interest of those in the non government sector and members of the civil society to consolidate their efforts in checking corruption in

government contracting. Other than for reasons of economy, this consolidation could be directed to provide appropriate focus, increase their persuasive influence and systematically develop the level of their technical competencies pertinent to contracting. This professionalized approach to government "contract watching" could provide one of the bases for a sustained and operationally more weighty non-government sector involvement in contracting.

In line with this consolidation, there might be some merit to looking at the current level of involvement of professional groups and societies in the business of contracting. Their more active involvement could provide the initial stock of technical capability or expertise to monitor and further reform the contracting system.

Finally, there is also some merit to remembering the primary reasons why government enters into these contracts. It might be possible that after so much effort, after transparency and inclusiveness have been served, that succeeding management systems to ensure that the supposed socio-economic benefits would benefit their intended beneficiaries may cause their eventual failure.

Notes

1 Being Filipino or Filipino-owned improves the prospect of being selected, but it must be noted that Filipino firms and/or corporations are still subject to the same rules, processes and requirements that apply to all other non-Filipino bidders. Moreover, it must also be considered that the primary intent is to ensure Filipino involvement as much as practicable, which at present is hindered by the lack of capital resources and not to tilt the entire contracting exercise to their favor.

2 The classification was developed from the following cases and articles: Antonious (1990), The World Bank (June 1999), UNDP (1998), Wolfensohn, J.D. (15 October 1998), CIME (21 November 1997), and PCIJ (1998, 1999, 2000).

3 The project amount insulates it from the approval and confirmation tasks of the NEDA and ICC (not above P50 million).

4 This moved then Sen. Guingona, to claim that the port privatization violated Art. 12 sec. 19 of the Philippine Constitution which prohibit monopolies, and that no combinations in restraint of trade or unfair competition can be allowed,

given the potential advantages that the deal can have on the members of the NHC against all other users of the harbor.

5 And which would have been under pressure to lend impartial evaluation, given the second-line oversight that the NEDA and ICC could have provided.

6 An argument that could have been checked by the ICC under the "standard" BOT contracting set-up.

7 See also a related article by Nocum, A. (Philippine Daily Inquirer: 13 July 2000), entitled "Bidding for Metro landfill faces delays," PDI Report.

8 John Gabriel Puzon, one of the incorporators of Environmental Dynamics Corporation (EDC) one of PEC's four investors, admits that his family arranged the presentations and affirmed that they started holding these as early as 1998. He however denies that PEC executives had prior knowledge of the project, or that they received help from the MMDA.

9 In Sison, M. (PCIJ: 24 January 2001), quoting the same waste management official.

10 In Sison, M. (PCIJ: 24 January 2001). See also Transparency and Accountable Governance (TAG) Report, entitled "Firm Linked to Estrada Got Metro Manila Garbage Contract" by the same author (February, 2001).

11 Denying that they received any assistance from Guia Gomez, PEC's John Gabriel Puzon pointed out that each of the bidders had its own backers, their rivals were heavyweights, and PEC was the only weak one (Sison in PCIJ: 24 January 2001).

12 The Manila Times was sold by the Gokongweis shortly after the newspaper was sued by then President Estrada for libel. It was later established that Romero had merely fronted for presidential friend Mark Jimenez (Sison in PCIJ: 24 January 2001).

13 There was the tendency of some members of Estrada's cabinet to please him by using their public offices. Then BIR chief Rualo, for example, is known for investigating tax irregularities of private companies (including the Manila Times) deemed hostile to the President.

14 The claim was supposedly made by Gene Puzon (brother of Frank, one of EDC's incorporators) to an unnamed waste management official (supra, footnote 19: p. 32).

15 According to MMDA records, 17 bidders had registered their intent to participate in the bidding. Only seven submitted their bids on time; namely, R-II Builders Inc.; Celdex-Cintec-DMCI Holdings; Pro-Environment Consortium (PEC); Lamar Integrated Construction Services Inc.; Dizon Copper-Silver Mines Inc. and CGEA Asia Holdings Pte. Ltd.; Eurasian Company for Waste and Environment Service Phils. Corp. (ECWES); and the FLB Construction-Kabukiran Garden-Big Trust International Joint Venture (FLB-Kabukiran-BTI). Under the BOT Law, these bids should have been returned unopened to the prospective bidders.

16 Along with Eurasian Company for Waste and Environment Service Phils. Corp (ECWES), R-II Builders and Celdex-DM Consunji failed in the technical evaluation for having no bid security, no technical description of the proposed interim sanitary landfill, and "inadequate preliminary design drawings to support narrative descriptions on project components" (Sison in PCIJ: 24 January, 2001).

17 Ms. Gomez met Puzon's nephew and co-EDC incorporator, John Gabriel Puzon, and Raul Roberto de Guzman, Estrada's nephew who was then the presidential consultant on the environment and water. The meeting was held at her Wynsum Tower office in Pasig. See Sison (PCIJ: 24 January 2001).

18 There might not be a correlation but the pattern of changes in the value of the companies' stock as well as their record of involvement in other government contracts could also be examined.

19 Deadline was set on 06 June 2000 at 2:00 p.m. PBAC however allowed two bidders who submitted their bid beyond the stated time to participate: Solid Waste Integrated Sustainable Systems-Philippines Inc., and IPM Construction and Development Corp. (Nocum, A. in PDI: 13 July 2000).

20 See Nocum, A., (PDI: 13 July 2000).

21 It is surprising that the President did not request emergency powers to solve the metro garbage problem. Or there might have been some truth to allegations that it was already a done deal, until the Jancom-Vivendi lawsuit complicated the situation.

22 According to PEC, it took only nine days for the PBAC to decide on these two contracts.

23 Prior to the award, Sec. Aventajado reportedly claimed that he did not know the people behind WAR (Bondoc in Manila Bulletin: 03 December 2000).

24 The uncertainty involved in the long process of contracting leading to the implementation of the project is considerable. In fact, it might even be directly proportional to the duration and pace of the process due to the growing probability of contravening variables from occurring.

25 Finding or securing a new "rulebook," one that is partial to one's position and more accommodating to bribery, is not readily acquired, for in most cases, only the President can provide or allow it. With this, it also follows that it is not acquired on the cheap, that is, it can only be obtained (or engineered) by those who have substantial political, social and economic capital or incentives.

26 It is not surprising hence, that Estrada's "poor people" can identify whom they derisively call the *mayayaman* (rich) and where their capital is—Makati, the country's financial district. As in politics, these same people (and their relatives) dominate the different boardrooms of large and small businesses in the country.

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