Cebu BRT civil works deal due for awarding by May — DoTr

THE Department of Transportation (DoTr) said on Wednesday that it expects to award the civil works contract of the World Bank-funded Cebu Bus Rapid Transit (Cebu BRT) project by May.

"The notice of award for civil works contractor should be issued by May 2022. Hence, earthballing activities for the project should start earlier," the department said in a statement.

Transportation Secretary Arthur P. Tugade said the construction of the project should proceed by June.

The department said Mr. Tugade directed the DoTr's road sector officials on Tuesday to "expedite the immediate construction of the BRT to help ease traffic conditions, while enhancing the mobility of commuters in Cebu City."

BW FILE PHOTO

"A 13.18-kilometer busway, the Cebu BRT will (run) from South Road Properties through Mambaling up to IT Park with 17 bus stations, one terminal (for trunk service), and a depot," the DoTr said.

The BRT system is expected to benefit around 60,000 passengers once operational.

The government has extended the deadline to submit bids for the "Package-1: Works Cebu South Bus Terminal to Capital Urban Realm Enhancement (Link to the port)" to April 21 from March 28 because of the need to give prospective bidders more time to evaluate the bid documents.

In its invitation to bid, the DoTr said the project will be supported by financing from the World Bank.

The department intends to "apply part of the proceeds with a sum of P1.05 billion toward payments under the contract for Package 1."

The contractor is required to complete the project within 365 calendar days.

The DoTr said the government expects the project to be fully operational by 2023. — **Arjay L. Balinbin**

Senator backs giving Agri, Trade departments authority to confiscate smuggled farm goods

THE Departments of Agriculture (DA) and Trade and Industry (DTI) need to be authorized to confiscate smuggled goods, a Senator said on Wednesday.

"A new law is needed if we want to empower the DA and DTI to confiscate smuggled items," Senator Aquilino Martin L. Pimentel III, who chairs the chamber's committee on Trade, Commerce and Entrepreneurship, said in a Viber message.

During an earlier hearing on agricultural smuggling, both departments had asked for greater control over agricultural products since they are currently only allowed to inspect items in public markets but not verify whether they were imported legally.

Mr. Pimentel noted that although the current law allows the Bureau of Customs (BoC) to apprehend smuggled items, their implementation is lacking.

"Customs must intensify its law enforcement powers in pursuing smuggled items," he said.

The La Trinidad Vegetable Trading Areas, the largest agriculture organization in Benguet with about 10,000 members, said in a statement at the weekend that vegetable farmers are losing an average of P2.5 million a day with daily orders declining by up to 40% due to the influx of smuggled vegetables.

Agriculture Assistant Secretary Federico E. Laciste, Jr. has alleged that some politicians have blocked the filing of charges against smugglers of farm goods. He did not identify them.

"We have a situation where agencies take no action even when smuggling is brazenly committed. So aside from the fact that the BoC and the DA have been compromised, there are untouchables," Senator Francis Pancratius N. Pangilinan said.

In a statement on Monday, Agriculture Secretary William D. Dar said DA personnel who participate in such arrangements will be punished according to the law.

"We condemn whoever these personalities are, and we at the Department of Agriculture will act swiftly and decisively to reprimand those involved among our ranks, officials and staff. If found guilty, we will file the appropriate administrative charges against these individuals," he said.

Mr. Pimentel said the current system has sufficient tools to penalize politicians who facilitate smuggling; however, "the problem is nobody complains." — **Alyssa Nicole O. Tan**

Housing readied for Tagum families along rail line

A RESETTLEMENT AREA for families affected by the Mindanao Railway Project in Tagum City, Davao del Norte has been offered to bidders, the Department of Transportation (DoTr) said.

The project is funded by the National Government through the DoTr. The Tagum City government, the procuring entity for the project, invited interested bidders or suppliers to bid for the P114.48-million design and build contract. The deadline to submit bids was March 29, according to the invitation to bid posted on the Philippine Government Electronic Procurement System.

The housing project will be known as Tagumpay Train Village and will consist of 62 quadruplex housing units for families affected by the railway project.

Under the special conditions of the contract, completion of the project must be within 270 days upon receipt of the notice to proceed.

Implementation of site development work is expected to start next month.

The Mindanao Railway Project is a 1,544-kilometer railway system connecting Davao, General Santos, Cagayan de Oro, Iligan, Cotabato, Zamboanga, Butuan, Surigao, and Malaybalay. It is financed through official development assistance from the Chinese government.

The government awarded the P3.08-billion project management consultancy contract of the Mindanao Railway Project Phase 1 to a Chinese consortium composed of China Railway Design Corp. and Guangzhou Wanan Construction Supervision Co., Ltd.

The project management consultant will assist in the preparation and management of the overall project implementation program, including land acquisition activities, coordination with government offices, review of the project's detailed design, and supervision of construction activities.

The first phase covers a 100-kilometer railway connecting Tagum in Davao del Norte, Davao City, and Digos in Davao del Sur, featuring eight stations. It is expected to accommodate 122,000 passengers per day and cut travel time between Tagum and Digos from three hours to one. — **Arjay L. Balinbin**

Gov't must manage demand to ensure adequate power for May polls — think tank

THE Institute for Climate and Sustainable Cities (ICSC) said the possibility of blackouts during election season should spur the government into undertaking demand-side management activities to ensure power supply and avoid questions about the credibility of the May elections.

At a virtual briefing on Wednesday, ICSC Energy Transition Advisor Alberto R. Dalusung III called on the government to start preparing the market for demand-side management measures as such a course of action is "the quickest to implement" among the realistic options, such as requiring solar rooftops and encouraging industrial firms with their own generating facilities from drawing power from the grid.

"The Department of Energy (DoE) has to make an assessment what else that needs to be done and I suppose things like triggering the interruptible load program where industries do not consume from the grid, but use their own generation," he said.

"It's important that even the general public participate. If you can reduce your consumption particularly during 10 a.m. to 2 p.m., during the peak in Luzon… the proper choices (can help ensure more power supply)," he added.

On Wednesday, the think tank reiterated its earlier projection of a power shortage around the time of the elections on May 9 as well as the vote count. It expects rotating blackouts if some power plants have to shut down.

"From the National Grid Corp. of the Philippines' (NGCP) official power outlook, the thin operating reserves will start on the third week of April until the last week of May," ICSC Chief Data Scientist Jephraim C. Manansala said during a virtual briefing.

Mr. Manansala said that if baseload coal plants remain shut down during these months, forced outages could deplete the operating reserve and could trigger rotating brownouts.

"Blackouts will only occur if the operating reserves are depleted below the grid requirements," he added, noting that two coal-fired power plants with a total combined capacity of 423 megawatts (MW) are currently shut down.

Over the weekend, the grid operator placed the Luzon grid on yellow alert, signifying thinning power reserves, after seven power plants suffered forced outages.

Nazrin Camille D. Castro, manager of nonprofit organization The Climate Reality Project, said "unreliable electricity supply will undermine the credibility of the elections."

"We will expect power outages on election day, like previous elections, which will cast doubt again on the whole electoral process due to the delay of the casting and counting of ballots. It happened several times before, so there should be no excuses (if it happens) again," Ms. Castro said.

Ms. Castro noted that household consumers have the highest share of total energy consumption at 31%.

"If all consumers would chip in and practice energy efficiency during these peak hours, I think it would be a big help during these seasons," she said.

Mr. Dalusung said that urging the consumers to manage their usage "can't be done unless there are cues from the government that it has to be done to ensure credibility in our elections."

Last week, the DoE issued an advisory to government agencies to conserve energy as fuel prices rose, to ensure adequate supply during the May elections.

The DoE had called on the public to observe Earth Hour, noting that shutting off nonessentials resulted in a savings of 65.32 MW nationwide.

The savings included 35.26 MW in Luzon, 15.3 MW in Mindanao, and 14.76 MW in the Visayas, the DoE said.

"We hope to sustain this reduction through consistent energy efficiency and conservation practices. The first step is to be mindful of our energy consumption habits, especially during periods of high demand such as this summer," Energy Secretary Alfonso G. Cusi said previously in a statement. — **Marielle C. Lucenio**

OPINION

Amended Public Service Act: Dismantling economic protectionism

TAXWISE OR OTHERWISE

ROBERT JHON C. SALAZAR

Economic protectionism was the main intention of the members of the 1986 Constitutional Commission when they adopted the foreign equity limitations incorporated in Article XII of the 1987 Constitution. Despite the constitutional impediments, such as the Filipinization of public utilities, our need for foreign investment and technology to improve the economy is undeniable. Ever since, foreign investment has played an important role in our infrastructure, more recently via modes of investment like Public-Private-Partnerships.

The late Father Joaquin G. Bernas, S.J., one of the members of the 1986 Constitutional Commission, said that the purpose of the Filipinization of "public utilities" under the constitution is to prevent foreigners from assuming control of the sector, which may be inimical to the national interest. Filipinization is pursuant to an overriding economic goal of the 1987 Constitution: to "conserve and develop our patrimony" and ensure "a self-reliant and independent national economy effectively controlled by Filipinos."

However, what is covered under the term "public utilities" has been the subject of several court decisions. The Supreme Court has consistently held that being a public utility is a matter of judicial, not legislative, determination. The existence of a legislative declaration such as the definition by enumeration in the 86-year-old Public Service Act (PSA) does not ipso facto render a business or service a public utility. Instead, the courts look at the nature of the business or service rendered. These Supreme Court decisions might have validated the reluctance of foreigners to invest in industries that are vital to our economic progress.

Even after their enactment, laws may be amended by decisions of the Supreme Court, which form part of our laws. Policy revisions may be adopted to address unforeseen conditions or refine legal provisions over time.

To stimulate investment, the government recently passed Republic Act (RA) No. 11659, which was approved by the President on March 21. The law amends the 86-year-old PSA. The amendments now limit the coverage of public utilities to key sectors that will remain subject to the 40% foreign equity cap. These key sectors are considered natural monopolies where a single firm can effectively serve the market at lower cost than two or more firms. This includes the distribution and transmission of electricity, petroleum and petroleum product transmission, water distribution and wastewater systems, seaports, and public utility vehicles.

Key industries such as telecommunications, expressways, airports, and shipping have been removed from the category of public utility. Under the new law, these industries may now be 100% foreign-owned.

While the newly amended law may attract critically-needed investment, some may consider the law's liberality as running contrary to the constitutional dictate to conserve the national patrimony and ensure a Filipino-controlled national economy. To address these concerns, the law lays down five key safeguards:

1. The President has the power to suspend or prohibit any investment in public services in the interest of national security upon the review, evaluation, and recommendation of the relevant government agencies;

2. Restrictions are imposed on foreign state-owned enterprises (SOEs) owning capital in a public service classified as public utility or critical infrastructure;

3. Information security clauses ensure that entities engaged in the telecommunications business meet relevant ISO standards;

4. The reciprocity clause prevents foreign nationals from owning more than 50% of capital in the operation and management of critical infrastructure unless the foreign nationals' home countries accord reciprocity to Philippine nationals; and

5. The performance audit provision mandates an independent evaluation to monitor the cost, the quality of services provided to the public, and the ability of the public service provider to immediately and adequately respond to emergency cases.

Why talk about investment when businesses are barely surviving the COVID-19 pandemic?

Sure, the past two years have been challenging. COVID-19 took a heavy toll on our livelihoods: some lost their source of income without any opportunities to look for new ones. As we struggle to adapt to the post-pandemic world, we need more investment to boost our economy. We should not only combat the public health issues due to the pandemic but also take necessary steps to revive our economy. We can do this by attracting more foreign investment. Together with the recently amended Retail Trade Liberalization Act and the Foreign Investments Act, the new PSA is timely and relevant to our most challenging times.

The nationalistic views of the framers of the 1987 Constitution, as reflected in the economic protectionism provisions in Article XII, are not discounted by allowing the entry of foreign investors. The responsibility of boosting economic growth should not be limited to Filipinos in the spirit of nationalism. If protectionism is maintained, it will only create a barrier to achieving the goal of a prosperous society. As the Supreme Court put it: "Nationalism is not a mindless ideal. It should not unreasonably exclude people of a different citizenship from participating in our economy. If it were so, nationalism will not foster social justice; rather, it will sponsor a kind of racism quite like what our ancestors had suffered from in our colonial past." (G.R. No. 205835, June 23, 2020)

Indeed, opening the doors of nationalized industries to foreign investors does not represent the unhampered entry of foreign entities. Domestic market players should not cower in fear of competition. Instead, competition dismantles market inefficiencies like high consumer prices, low-quality products, lack of incentives for innovation, and limited consumer choice. With the PSA safeguard provisions in place, the economy can remain independent and self-reliant while generating employment opportunities, promoting competition, encouraging the inflow of capital, and boosting economic performance.

The views or opinions expressed in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

ROBERT JHON C. SALAZAR is a senior associate at the Tax Services Department of Isla Lipana & Co., the Philippine member firm of PricewaterhouseCoopers global network.
robert.jhon.c.salazar@pwc.com