



NOTICE TO BIDDERS BULLETIN No. 6

PROJECT : **PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES, THRU A 50-YEAR LEASE ARRANGEMENT**

DATE : 16 October 2015

The following are the clarifications to the Terms of Reference (TOR) for the Privatization of the Former Mimosa Estate covering 201.64 hectares, thru a 50-year Lease Arrangement.

QUERY	CLARIFICATION
Deepwells	<p>In relation to Annex E, Item 3.1 (Special Conditions of the Lease Agreement) is hereby amended to read as follows:</p> <p style="text-align: center;">x x x</p> <p>The Property shall also include existing deepwells <u>except</u> :</p> <ul style="list-style-type: none"> a. Deepwells M1, M6 & M7 b. 3 Booster Pumps with 3 Pressure Vessels for Water Treatment c. 1 Cistern Tank d. Potable Water Distribution Lines e. Wastewater Network. <p style="text-align: center;">x x x</p>
<p>Playing Rights Issue</p> <p>Questions arise out of this issue, which are:</p> <ul style="list-style-type: none"> a. Is there any documentation with respect to CDC's honoring the rights of members belonging to the MGCC (or members that purchased the rights from the former operator MLRC) and what are commitments of CDC, if any. b. What is the expiration date of these playing rights or are these "perpetual" 	<ul style="list-style-type: none"> a. Yes. There are Board actions and publications on the validation of golf membership for purposes of endorsing members in good standing. b. The NC shall recognize these playing rights co-terminus with the original

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rights.	Lease Agreement dated February 28, 1994 and expiring on February 27, 2044.
c. Should the NC decide to sell new rights isn't an approval of the SEC sufficient to enforce the sale.	c. Yes, if the sale being mentioned pertains to new golf playing rights.
Pending Cases	
<p>Please provide us copies of the following agreements:</p> <ul style="list-style-type: none"> a. Interim Agreement dated May 29, 2001 between Clark Development Corporation ("CDC") and Mimosa Leisure and Resorts Corporation ("MLRC"); b. Interim Agreement dated June 8, 2001 between the Philippine Amusement and Gaming Corporation ("PAGCOR") and CDC; c. Supplemental Interim Agreement dated June 25, 2002 between CDC and MLRC; d. Amendment to Interim Agreement dated July 30, 2001 between PAGCOR and CDC; e. Supplemental Interim Agreement dated June 25, 2002 between PAGCOR and CDC; f. Interim Agreement dated February 2, 2004 between PAGCOR and CDC; g. Memorandum of Understanding dated May 5, 2003 between CDC and MLRC; h. Memorandum of Agreement dated February 20, 2004 between CDC and MLRC Secured Bank Creditors; 	<p>Copies of the requested documents are available at the Legal library as previously advised to all the Bidders.</p> <p>These are part of the documentation in the pending cases listed under the free and harmless clause of the TOR.</p>
<p>Are CDC and MLRC presently negotiating for a settlement of all or some of the cases involving them?</p> <p>Please give details on the status of out-of-court negotiations or court-annexed mediations with MLRC, including settlement offers and counter-offers from the parties.</p>	<p>No, Judicial Dispute Resolution (JDR) already terminated. CDC's motion to resolve pending resolution.</p> <p>The details are already provided in the executive summary of the cases previously distributed during the Pre-bid Conference.</p>
<p>Are CDC and Asset Pool A (SPV-AMC), Inc. and/or other secured or unsecured creditors of MLRC presently negotiating for a settlement of all or some of the cases involving them?</p> <p>Please give details on the status of out-of-court negotiations or court-annexed mediations with MLRC, including settlement offers and counter-offers from the parties.</p>	<p>There are ongoing exchanges of communications between CDC and Asset Pool A exploring possible solutions to its claims.</p> <p>The details are already provided in the executive summary of cases previously distributed during the Pre-bid Conference.</p>

To date, has any party filed or threatened to file a court action to enjoin the Project?	Yes, in the attached letter of Asset Pool A dated 06 October 2015 to CDC (Annex "A").
With respect to <i>MLRC vs. CDC and PAGCOR (Civil Case No. 13344)</i> and <i>MLRC vs. CDC (Civil Case No. 13347)</i> , kindly provide us with the following details, if any: (a) a list of the movables allegedly found in the former Mimosa Regency Casino and Mimosa Leisure Estate, and which MLRC is claiming; and (b) the amount of share in the Casino's revenue being claimed by MLRC.	CDC has no available list as of this time. Please note that the alleged basis of MLRC's right in these cases are no longer valid, binding and effective, because the same carried only a term and effectivity of one (1) year from date of signing thereof and had no automatic renewal.
Please provide us with a copy of: (a) the Commission on Audit's [i] Decision No. 2013-158 dated October 7, 2013 and [ii] Decision No. 2014-099 dated June 5, 2014; and (b) the Supreme Court's Resolution dated August 18, 2015 in G.R. No. 213058, which is yet unpublished. Has CDC filed a motion for reconsideration or other pleading in this case upon receipt of the Resolution?	Copies of the requested documents are available at the Legal library as previously advised to all the Bidders. Yes. Copies are likewise available at the Legal library.
Insurance	
Please confirm that: a. the Lessee may also be included as a beneficiary during the effectivity of the LA and that b. consequently, other insurance companies may also be allowed to insure the Property in respect of the Lessee's insurable interest.	Yes, but as co-beneficiary to the extent of its insurable interest. The Lessee may get insurance cover from other insurance company on top of required insurance covered from GSIS.
Financial Statements	
Kindly provide us with copies of CDC's AFS for the <u>last five years</u> .	In compliance to the Citizen's Charter, the Audited Financial Statement of CDC is posted at the CDC website under the Transparency Seal (www.clark.com.ph)
Hotel, Villas, Clubhouse, and Concessionaires	
a. Is there a separate management agreement for the Montevista Villas? Please provide us with copies all relevant management agreements, as well as contracts executed	There is no separate management agreement for the Montevista Villas. Contracts with concessionaires are part of

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with concessionaires and long-staying guests.	the documents provided after the Pre-bid Conference while the contracts with long-staying guests are part of Bid Bulletin 4.
b. With respect to the unfinished clubhouse, may we request for the (a) floor area and the (b) construction plan?	See "Annex B" (<i>Unfinished Country Club Plans</i>) This is also to correct Bid Bulletin 4- Hotels, Villas and Clubhouse.
Percentage Gross Revenues ("PGR")	
Please clarify whether the gross revenues of individual retail components (e.g. "sublessees," "concessionaires," and "consignors") are included in the 2% PGR imposed. Please clarify also the manner of payment and collection of the PGR imposed on these separate entities. Please confirm that "sublessees," "concessionaires," and "consignors" may be removed from the coverage of the PGR.	This was answered under Bid Bulletin 3- Payment of Lease.
Is the 2% PGR on the gross revenues of "sublessees," "concessionaires," and "consignors" deductible from the P160 Million Annual Minimum Guaranteed Lease?	No. This is on top of the Annual Minimum Guaranteed Lease
Eligibility Requirements	
Based on the definition of "mixed-use", please confirm that not all the activities/uses defined are required to be present in one specific project for such project to be eligible, i.e., several projects each with one or a combination of these activities/uses, but not all, will qualify.	Yes. One or a combination of these activities/uses may qualify provided that the total shall be no less than Php 2.5 Billion.
Map	
In view of the availability of computer-aided design maps of the Estate, please provide us with any reference as-built site drawings (scanned copy or drawings)	See "Annex C" (<i>Old Mimosa Master Plan showing location of existing buildings and other facilities</i>).
In connection with the Privatization of MIMOSA, may we know the legal framework under which the bidding of the same shall be conducted and what criteria will be used in the evaluation of the bids , and the mechanism for protest or appeal should the same be necessary ?	Please refer to the following: a. Bid Bulletin No. 3 – Legal Basis b. Article VIII, Section 3 – Submission, Opening and Evaluation of Bids of the Terms of Reference c. Article X, Section 7 – Appeal of the Terms of Reference
Is the bidding to be governed by RA 9184 or RA 6957?	No.

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	Please refer to the Terms of Reference and Bid Bulletin 3 – Legal Basis of Privatization.
Does CDC have approval of the Government Corporate Commission for the privatization considering the Estate lease agreement involves more than ten years and ten hectares?	Not applicable.
May we also know the legal basis for the insistence that CDC get a Five Percent (5%) stake in the New Corporation to be formed? How can CDC be regulator and Investor at the same time and yet the New Corporation will still be treated like an ordinary Investor and required to pay all the necessary fees such as rent and the like plus PGR?	This was answered under Bid Bulletin Nos. 3, 4 and 5.
While it is claimed that having a 5% share is in the best interest of CDC, CDC should consider and remove the 5% equity share and board seat entitlement in the NC as these are totally contrary to the policy of the national government in all other Public-Private-Partnership (PPP) projects implemented by DPWH, DOTC and other agencies whereby regulatory authority is retained while the private concessionaire assumes total ownership, financing, design and construction, operations and maintenance, and assumes commercial risk during the concession agreement. Further, other similar lease agreements in Clark Freeport Zone do not have such entitlements.	This was answered under Bid Bulletin Nos. 3, 4 and 5. In addition, owning a five (5) percent equity in the corporation is not tantamount to directly operating the business activity of the corporation. The Management and direction of the corporation are lodged with the Board of Directors acting as a corporate body. The stockholders merely have residual powers over fundamental and major corporate changes.
In the event that there is a need to increase capitalization, will CDC pay for the increase to maintain its 5% share? Will CDC share in the liabilities of the New Corporation?	No. Please refer to Bid Bulletin No. 3 – Equity and Board Seat Yes, CDC's share in the liabilities of the New Corporation, but up to the extent of its ownership only.
Will CDC allow the winning bidder/lessee-NC to establish of a wholly--owned subsidiary to manage the Estate but shall be jointly responsible in the obligations in the 50-year lease agreement?	Yes
In connection with the P5 Billion investment, in case the New Corporation reinvests its income	Yes. This was answered under Bid Bulletin No. 5, Item No. 27

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back into the Mimosa Estate, will this be considered part of the P5 Billion?	
May we also know up to what extent we are required to recognize the playing privileges of the former members of the MIMOSA Golf Club? Does the so-called playing right issued by CDC have an expiration date?	This was answered under Bid Bulletin Nos. 3 – Golf Playing Rights and 4 – Recognition of Golf Playing Rights
Are we required to issue them Golf Club Shares in the event that we secure SEC Approval to sell.	The requirement of issuing golf shares to the former members of the MIMOSA Golf Club rests on the NC's decision.
<p>In the TOR, CDC commits to hold the prospective Investor free and harmless in the event of any judgment against CDC in the cases detailed in the TOR.</p> <ul style="list-style-type: none"> Does CDC also commit to hold the Investor free and harmless in the event cases are filed after the publication of the TOR and even after award for issues which may have occurred prior to the takeover by the new Investor? 	No. This was answered under Bid Bulletin Nos. 3 – Free and Harmless Clause, 4 – Concerns on Indemnity and 5, Item No. 21.
In the event judgment is rendered against CDC forcing the winning bidder to turn over the property to the winner of the case against CDC, will our investments be returned, inclusive of all deposits and advance payments? How soon?	CDC is holding the Bidders free and harmless on the list of pending cases stated under the Terms of Reference and is limited to the judgment award.
In the approval of the development plans, will CDC commit that the approval must be given within thirty (30) days from submission and that approval cannot be unreasonably withheld?	Yes. This was answered under Bid Bulletin No. 5, Item 30
In the event there will be a change in law that may be approved in the future like the rationalization of tax incentives to all Special and Freeport Zones, which is pending in the Congress, will CDC pay the corresponding tax and duties to be imposed in the remaining years of the lease period?	No.
May we be furnished with the Indemnification Agreement prepared by CDC to be signed by the winning bidder with respect to the pending cases so we may know the extent of the indemnification to be assumed by CDC	Currently being drafted and will be provided accordingly.

The foregoing revision shall modify, amend or supplement the affected provisions of the Terms of Reference previously issued. All other provisions not inconsistent herewith shall remain valid.

CDC reserves the right to accept or reject any or all bids; to extend the date of submission and/or opening of bids upon prior notice, if in CDC's opinion, there are valid grounds to warrant the same; to waive any defect, formality, informality, or technicality in them without affecting the substance of the bids, or to accept such bids considered, if in CDC's opinion, to be most advantageous to the government; and annul the bidding process without offering any reason. The decision of CDC on all matters shall be final. CDC also neither assumes any obligation to compensate nor indemnify the bidders for any expense or loss that may be incurred in connection with this public bidding, nor does CDC guarantee that an award will be made.

All bulletins, notices and issuances by Special Asset Privatization Committee (SAP-Com) are likewise posted at the Corporation's website (www.clark.com.ph)

All issuances and/or communications from other sources are not sanctioned by the SAP-Com or by the Corporation. Only communications, bulletins and/or issuances sent out through the Office of the SAP-Com Secretariat are considered official and binding.

This issued bid bulletin would form part of the required submission of the Eligibility Envelope Component.

Please be guided accordingly.





EVANGELINE G. TEJADA

Chairman

Special Asset Privatization Committee

Received:



Name and Signature of Authorized Representative	:	
Position	:	
Company	:	