



CLARK DEVELOPMENT CORPORATION

## NOTICE TO BIDDERS BULLETIN No. 3

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

DATE : 06 October 2015

This Bid Bulletin is issued to clarify and supplement certain provisions of 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
<b>Legal Basis of Privatization</b>	The Legal Basis is stated in Article I Section 5 of the TOR. In addition, please see attached Office of the Government Corporate Counsel opinion and the 2007 SC decision G.R. 150986.
<b>Foreign Ownership Restriction</b>	<p>Pursuant to Executive Order No. 429 series of 1997, citing Republic Act No. 7652 and its implementing rules, foreigners are allowed to lease the land being managed by Clark Development Corporation (CDC), the specific provisions are cited below, thus:</p> <p><b>"WHEREAS</b>, Section 4 of Republic Act No. 7652, otherwise known as <u>Investors' Lease Act</u>, allows <u>foreign investors investing in the Philippines to lease private lands for the establishment of industrial estates, factories, assembly or processing plants, agro-industrial enterprises, land development for industrial, or commercial use, tourism, and other similar priority productive endeavors for a period not exceeding fifty (50) years, renewable once for not more than twenty-five (25) years;</u></p> <p><b>WHEREAS</b>, Section 1 (d) of the rules implementing RA 7652 defines <u>private lands as those including patrimonial properties of the state owned, held, controlled, supervised or managed by government owned or controlled corporations such as but not limited to the Export Processing Zone Authority, the Phividec Industrial Authority and the Bases</u></p>

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	<i>Conversion arms, such as <u>Clark Development Corporation (CDC)</u> and the <u>Subic Bay Metropolitan Authority</u>"</i>
<b>Free and Harmless Clause</b>	<p>CDC reiterates that the Free and Harmless Clause as stated under Article X Section 9, and Annex G Item 8, is limited only to the pending cases as enumerated in Article <u>VI. Section 2,(2.5) of the Terms of Reference</u> with the exclusion of the following cases that have been resolved in favor of CDC:</p> <ol style="list-style-type: none"> <li>1. Isias L. Juliao, Jr. vs. Mimosa Golf &amp; Country Club, SEAD-NLRC-RAB-III-07-1168-14</li> <li>2. Sa Chul Hong, Chang Sup Shim and Jaesung Shim vs. CDC, Civil Case No. 1365</li> </ol> <p>In relation to Article VI Section 2.5, <b>G.R. No. 213058</b> is included in the list of pending cases covered by the Free and Harmless provision.</p> <p>CDC confirms that the Free and Harmless clause as stated under Article X Section 9 and Supreme Court decision in G.R. 150986 shall serve as a guarantee of the Lessee in its possession, enjoyment, management, and operation of the Estate during the term of the LA.</p> <p>(Related documents are part of the Legal library)</p>
<b>Pending cases</b>	<p>The pending cases listed comprise of all pending cases against CDC only. While there are alleged pending cases against the former Lessee, Mondragon Leisure and Resorts Corporation, CDC is not privy to these alleged cases.</p> <p><b>In Civil case no. 99-1171 (Writ of Attachment)</b>, the moveable assets were attached and under custody of CDC. A portion of the Order dated 20 January 2011 is quoted hereunder, thus:</p> <p><i>" x x x The Court has acknowledged the fact that CDC was merely a custodian of the attached properties by reason of the Agreement it entered with the Hotel and in assuming custody and possession of the</i></p>

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	<p><i>same it also assumed responsibility over the same. In the same manner the Court took cognizance of the other case pending before the Court of Angeles City where the defendants were asking for the accounting of the same properties. Thus, to avoid confusion, it is proper for all the properties to remain in the custody of CDC."</i></p> <p>Note that CDC is not privy to this case. The movable properties are currently in the CDC warehouse.</p>
<b>Equity and Board Seat</b>	In relation to Article IV Section 5, the requirement is a 5% equity ownership of the NC. The related par value of the shares in the NC depends on the capitalization decision of the NC so long as the 5% equity ownership is preserved at no cost to CDC.
<b>Term of Lease</b>	No bidding will be required for purposes of renewing the Lease Agreement for another 25 years but subject to mutually agreed terms.
<b>Transfer Fee</b>	<p>In relation to Annex E Section 29.3 (General Conditions of the Lease Agreement), the existing policy on the computation of transfer fee is as follows:</p> <p>20% (Present Value of total MGL of Old Contract for the Remaining Life)</p> <p><b>--OR--</b></p> <p>5% of the Total Consideration for the Transfer plus MGL for the remaining life,</p> <p><b>Whichever is higher but not lower than Php50,000.00</b></p>
<b>Bid Security</b>	<p>Article VIII Section 2, 2.2. is hereby amended to read as follows:</p> <p><i>Bid Security in the amount equivalent to <b><u>at least</u></b> ten percent (10%) of the Bid offered by the Bidder, which shall be in the form of manager's check or cashier's check. The Bid Security of the Winning Bidder and all other Bidders shall be returned without interest upon signing of the LA between CDC and the Winning Bidder, unless otherwise forfeited</i></p>

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	<i>under Article X, Section 10</i>
<b>Total Cash Upfront</b>	The total cash upfront for the winning bidder shall consist of the sum of the following: <ul style="list-style-type: none"> <li>a. Bid Amount</li> <li>b. Advance Lease Payment</li> <li>c. Security Deposit</li> <li>d. Performance Security</li> </ul>
<b>FINANCIAL REQUIREMENT</b>	
<b>Payment of Lease</b>	1.1 Annual Minimum Guaranteed Lease (AMGL) <b>PLUS</b> 1.2 PGR <ul style="list-style-type: none"> <li>a. 2% of gross revenues from Lessee's own operations  <b>PLUS</b></li> <li>b. 2% of sub-lease rental from non-commercial sub-lease activity  <b>PLUS</b></li> <li>c. 2% sub-lease rental from commercial sub-lease activity or 2% sub-lessee's gross revenues from own operations, whichever is higher  <b>PLUS</b></li> </ul> 1.3 PGR from Casino Operations, if any  The coverage of the PGR includes "sub lessees, concessionaires, and consignors"
<b>PGR from Casino Operations</b>	In relation to Article IV Section 1B, 1.3, Annex E Item 10 (Special Conditions of the Lease Agreement), and Annex K (Statement of Conformity with Other Financial Requirements), the existing policy on the computation of PGR from Casino operations is as follows: <ul style="list-style-type: none"> <li>a. 5% from the Casino Gross Revenues from the own casino operations (slots and tables) of the lessee, plus those arising from transactions entered into by the lessee and/or assignee with any third party chip-washing, junket operator, or casino related gaming operator;</li> <li>b. 5% on any fixed rental/fee that the lessee shall earn from any junket operator, or casino related gaming operator</li> <li>c. 1% on the Casino Gross Revenues from the Casino Operations of the Junket Tour Operator; and</li> <li>d. 5% on the Slot Gross Revenues earned by</li> </ul>

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	<p>the slot Machine Operator.</p> <p>This shall be on top of the 2% PGR from operations, subject to change based on prevailing policy on CDC share at the time of actual operation.</p>
<b>INSURANCE</b>	
<b>Insurance Coverage of the Property</b>	Under AO 141 series of 1994 Section 2, No insurable interest of the Government or any part or portion thereof shall be covered by or insured with and no bonds to the extent of such interest shall be obtained from any entity, enterprise, firm, company, person, corporation or partnership, or any other juridical person other than the GSIS (General Insurance Group).
<b>FINANCIAL STATEMENTS AND TAXES</b>	
<b>Audited Financial Statements (AFS)</b>	There is no separate AFS for Holiday Inn, Montevista Villa and Golf Course. Their net income is consolidated under the Business Income Revenues of CDC.
<b>Tax Liabilities</b>	As of 06 October 2015, there are no pending or threatened tax assessments and/or liabilities against the operating components of the Estate
<b>Tax Clearance Certificate</b>	The requirement of a valid Tax Clearance Certificate under Article VIII 1.2(b) and under Annex F of the TOR is hereby deleted. It is understood however that Tax Clearance Certificate will still be submitted during the Post Qualification Process under Article VIII Section 1.1(f).
<b>RESTRICTIONS AND TRANSPORT REGULATION</b>	
<b>Floor Area Ratio Limitation and Parking Ratio Requirement</b>	The floor area ratio limitation and parking ratio requirement should conform with the requirements of the National Building Code of the Philippines.
<b>Modes of Transportation</b>	<p>At present, the modes of transportation to the Estate and the CFZ are as follows:</p> <ol style="list-style-type: none"> <li>1. Private cars;</li> <li>2. Public Utility Jeepneys;</li> <li>3. Taxis;</li> <li>4. Shuttle buses</li> </ol>

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<b>Integrated Transport System</b>	CDC envisions a reliable, economical, low carbon footprint and smart Integrated Transport System for the Clark Freeport Zone by 2016.
<b>Restrictions on Public Transportation</b>	Public Transportation in CFZ is regulated by the Land Transportation Franchising and Regulatory Board and Land Transportation Office.
<b>Public Transport Terminal</b>	The Winning Bidder, as part of its development plan, may include a public transport terminal consistent with the CDC Integrated Transport System and subject to the approval of CDC.
<b>Decision Making on Transportation Matters</b>	Consultation with the Winning Bidder/Lessee may be made when applicable and necessary.
<b>GOLF COURSE</b>	
<b>Championship Golf Course</b>	Championship Golf Course implies a demanding and challenging golf course worthy of hosting championship tournaments.
<b>Holes in the Golf Course</b>	A 36-hole Golf Course shall be maintained but should be consistent with the approved Master Development Plan for the Estate.
<b>Lot Area of the Golf Course</b>	The lot area of the Golf Course is approximately 155.35 has.
<b>Restoration and Refurbishment of the Golf course</b>	<p>No major restoration, renovation or refurbishment of the golf course has been undertaken since take-over of CDC in 1999. Regular repair and maintenance practices are continuous and on-going.</p> <p>The 36-hole Golf Course within the Estate are fully operational.</p>
<b>Creation of a new company which can sell golf shares</b>	The Lessee may create a new company which can sell golf shares during the effectivity of the LA subject to CDC approval and relevant government approvals, as may be necessary.
<b>Golf Playing Rights</b>	In relation to Article IV Section 1.A.5, Article VI Section 1.1.8, and Annex J (Statement of Conformity with the Minimum Investment Commitment and Standards (Technical)), the golf playing rights of the members of the former Mimosa Golf and Country Club is non-proprietary in nature.

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	<p>CDC merely acknowledges and commits to respect the playing rights upon privatization.</p> <p>The following are the golf playing rights of existing members in good standing:</p> <ol style="list-style-type: none"> <li>1. Playing in the existing 36-hole golf course;</li> <li>2. Use of other existing facilities (locker rooms, gym, Golf Club House/Verandah).</li> </ol>
<b>Benefits for granting playing rights</b>	The Winning Bidder shall be entitled to collect membership dues and other fees related to golf playing rights.
<b>HOTEL, VILLAS, AND CLUBHOUSE</b>	
<b>Management Agreement of Holiday Inn</b>	The Management Agreement for the operation of Holiday Inn as attached will expire on 12 March 2016. This may be pre-terminated in the event of a successful privatization.
<b>Separate Agreement on the use of trade and service marks and brand names</b>	For Holiday Inn, the use of the brand name and trademark is dependent on an existing management agreement with Intercontinental Hotels Group (owner of Holiday Inn brand).
<b>Re-branding</b>	<p>It will be the option of the Winning Bidder to retain the Holiday Inn brand provided the Winning Bidder signs a Management Agreement with Intercontinental Hotels Group. The Winning Bidder has the option to change or replace the operator/manager of the hotel.</p> <p>For other facilities such as but not limited to Montevista, Mimosa and Verandah, these were brand names owned by the previous Lessee.</p>
<b>Turn-over of concessionaires/long staying guests</b>	<p>Consistent with the concept of an Estate, contracts with concessionaires/long staying guests will be assigned, given, transferred to the Winning Bidder.</p> <p>The Winning Bidder may retain or terminate said contracts depending on the specific conditions of the contracts with concessionaires/long staying guests.</p>
<b>Minor Repairs, Additions, and Improvements</b>	The requirement for minor repairs, additions, and improvements should conform to the National Building Code of the Philippines (NBCP).

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<b>Demolition, Renovation, Repair, and Rehabilitation of existing Structures, and or Additions or Improvements in the Property</b>	The Lessee may demolish, renovate, repair and rehabilitate existing structures, and make additions or improvements in the Property provided it is consistent with the approved development plan and secured necessary building permits as required by the NBCP.
<b>Height Limit</b>	In relation to Article IV Section 1.A.3, the maximum height limit for building construction shall be 90 meters, subject to the Civil Aviation Authority of the Philippines' clearance.
<b>EMPLOYMENT</b>	
<b>Continuity of Employment</b>	CDC confirms that there shall be no continuity of employment of the existing personnel in all components of the Estate (CDC-SPRO/Holiday Inn).
<b>MINIMUM INVESTMENT COMMITMENT</b>	
<b>Minimum Acceptable Bid</b>	<p>In relation to Article III Section 2, Article IV Section 1.A.1, Annex E Item 14.5 (Special Conditions of the Lease Agreement) and Annex J (Statement of Conformity with the Minimum Investment Commitment and Standards (Technical)), the bid amount for the right to lease, manage, operate and develop the Estate shall form part in the computation of the minimum investment commitment of Php 5 Billion.</p> <p>The completion of the Php 5 Billion investment commitment is retained at 5 years.</p>
<b>Penalty or consequence for the failure of the Lessee to complete the investment commitment</b>	The applicable penalty or consequences for the failure of the Lessee to complete the Php 5 Billion investment commitment within the 5 year period are stated under Annex E Section 38.1.3 (General Conditions of the Lease Agreement) including the forfeiture of the Performance Security.
<b>ELIGIBILITY REQUIREMENTS</b>	
<b>Technical Capability</b>	<p>The following capacity shall be considered to have fulfilled the Technical Capability requirement:</p> <ol style="list-style-type: none"> <li>1. Developer; or</li> <li>2. Investor; or</li> <li>3. Owner; or</li> <li>4. Operator</li> </ol>

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<b>Mixed-Use, Tourism Related Activities</b>	<p>Mixed-use is an integrated development to include tourism, residential, commercial, and other ancillary services/uses. These functions are physically integrated and that provides pedestrian connections.</p> <p>(No Industrial/ Manufacturing, Warehousing/ Logistics, Agricultural, and Aviation-related)</p>
<b>Php 2.5 Billion Development as a Technical Capability Requirement</b>	<p>Only the aggregate Technical Capability of the members of the consortium will be considered in determining the required Php 2.5 Billion amount.</p> <p>There is no prohibition that the Php 2.5 Billion Technical Capability should only come from one member of the consortium and only one project.</p>

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](http://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.

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Please be guided accordingly.

  
**EVANGELINE G. TEJADA**

 Chairman  
Special Asset Privatization Committee

Received:

Name and Signature of Authorized Representative	:	
Position	:	
Company	:	