

**NPM No. 07-2010**

28 February 2010

**MS. MA. THERESA T. DEFENSOR**

*President*

**ALABANG - STO. TOMAS DEVELOPMENT COMPANY, INC.**

PNCC Complex, EDSA corner Reliance St.

Mandaluyong City, Metro Manila

**Re : Agency-to-Agency Agreements**

**Dear Ms. Defensor:**

We refer to your letter dated 15 January 2010 seeking confirmation on whether the opinion stated in Non-Policy Matter (NPM) 21-2008 issued last 16 September 2008 applies to the proposal of Alabang – Sto. Tomas Development Company, Inc. (ASDI) to engage the services of Philippine National Construction Corporation (PNCC).

We understand that ASDI is a stock corporation duly organized and existing under the Corporation Code of the Philippines. At present, fifty-one percent (51%) of its outstanding capital stock is owned by PNCC, while the remaining forty-nine percent (49%) is owned by the National Development Company, Inc. (NDC).

Under Section 53.5 of the Implementing Rules and Regulations of Republic Act 9184 on Agency-to-Agency Agreements, government-owned and/or –controlled corporations (GOCC) formed under the Corporation Code are excluded from the definition of agency, and consequently, not qualified to act as servicing agencies.

The exception to the foregoing is enunciated in NPM 21-2008 which is based on the opinion of the Office of the Government Corporate Counsel (Opinion No. 213, dated 26 September 2007). Thus, GOCCs formed under the Corporation Code may enter into such agreements provided that a parent-subsidiary relationship exists between the two in view of the power of control that the parent company exercises over its subsidiary, as well as the primary purpose of the subsidiary to render service to its parent company.

Unlike the circumstances covered by the foregoing opinions, however, it is ASDI, the subsidiary, which seeks to engage the services of its parent company PNCC, a GOCC likewise formed under the Corporation Code. Consequently, ASDI does not have the power of control over PNCC *i.e.*, the power to govern the financial and operating policies of an

enterprise so as to obtain benefits from its activities. It also seems unlikely that PNCC was formed with the primary mandate of servicing the needs of ASDI.

Therefore, inasmuch as the circumstances obtaining in the present case are not the same as those stated in NPM 21-2008, it is our considered opinion that NPM 21-2008 may not apply to the proposed contract between ASDI and PNCC.

We hope to have provided sufficient guidance on the matter. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,



**RUBY U. ALVAREZ**  
*Executive Director III*