

**NPM No. 32-2008**

30 September 2008

**MS. AIDA N. CARPENTERO**

*Director III*

*Procurement Service*

**DEPARTMENT OF EDUCATION**

DepEd Complex, Meralco Avenue

Pasig City

**Re : Payment**

Dear Dir. Carpentero:

This pertains to your letter dated 18 June 2008 requesting clarification on the pending settlement of the account of the Department of Education (DepEd) with the Montevista Villas, Mimosa Leisure Estate managed by the Clark Development Corporation (CDC), for its Front Loading and Synchronized Planning-Budgeting-Procurement Workshops for FY 2009-2011 in Clark, Pampanga.

Based on your representations, DepEd directly taps facilities owned/managed by different government agencies to fast track the need for venues for the department's numerous trainings, workshops and conference. Notably, the selection of the needed facilities no longer passes through competitive bidding.

Parenthetically, per conversation with Ms. Ruby Aquino of DepEd's Planning Service Division last 26 September 2008, this office has been informed that delay in payment of said account with Mimosa Leisure Park, under the CDC, has already accrued interest.

Your good office, likewise, stated that, and we quote: *"Upon verification, it was found out that CDC, a subsidiary of the BCDA, is formed in accordance with the Philippine Corporation Law (BP 68) and regulations promulgated by the SEC pursuant to Sec. 16 of RA 7227. With reference to Section 53 (e) Negotiated Procurement of R.A. 9184 and its IRR-A, CDC is excluded in the procurement using "agency-to-agency" arrangements."*

In view of the foregoing, DepEd now seeks from this office clarification on the following issues:

- a) Whether or not settlement of the account with Mimosa Leisure Park can be had and
- b) Whether DepEd can directly tap the specified venues/facilities which are owned/managed by the following government agencies, for its trainings, workshops

and conferences, instead of thru public bidding, on the assumption that these are government agencies.

<b>FACILITIES</b>	<b>OWNED/MANAGED</b>
DAP Tagaytay Conference Facilities	Development Academy of the Philippines
Phil. Tourism Authority Resort	LGU of San Fabian, Pangasinan
Marikina Hotel	LGU of Marikina
UP Hostel	University of the Philippines
SEAMEO-INNOTECH	South East Asean Ministries of Education Organization
Facilities of Other State Colleges and Universities identified Centers for Excellence	e.g. Don Mariano State University, Bulacan State University, Central Luzon State University, Philippine Normal University, et.al.

### **Terms of Payment**

Evidently, the selection of the Mimosa Leisure Park for the abovementioned workshop was not made through public bidding nor was there any indication that an alternative mode recognized under the Implementing Rules and Regulations Part A (IRR-A) of RA 9184 was resorted to. In fact, based on your representations, settlement of said account is still pending in view of the fact that the same did not pass through the procurement process under R.A. 9184.

Incidentally, we note that, the first issue regarding the propriety of payment for the usage of the Mimosa Leisure Park is clearly beyond the jurisdiction of this office to rule upon. As a policy body, we do not interfere with issues which clearly still fall within the head of the procuring entity's determination.

Please note that the Government Procurement Policy Board (GPPB) has no quasi-judicial<sup>1</sup> functions under the law; rather, it is imbued with quasi-legislative or rule-making powers primarily intended to determine policy directions in the area of public procurement. Based on the foregoing, we find it inappropriate to render opinion on the issue at hand. Nevertheless, this does not preclude other appropriate agencies or bodies from conducting verification/validation/investigation of the actions and decisions of the concerned procurement officials and personnel involved in the undertaking.

Considering, however, that services have already been rendered, the DepEd may want to look into the possibility of payment on the basis of the equitable principle of *quantum meruit* subject to pertinent budgeting, accounting and auditing rules and regulations.

### **Agency-to-Agency Agreements**

Kindly note that the prohibition on the use of agency-to-agency agreement by the GPPB per Section 53 (e) of the IRR-A of R.A. 9184 pertains only and specifically to GOCCs

<sup>1</sup> Quasi-judicial is defined as a term applied to the actions and discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law, 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848[1988])

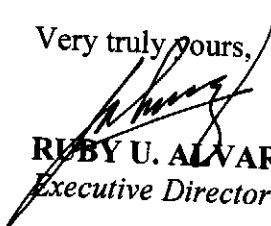
incorporated under the Corporation Code and not to any other government agency or corporation created by special law. It is a cardinal rule under statutory construction that where the terms are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of the court, and interpretation, only when literal application is impossible or inadequate.<sup>2</sup>

Thus, should DepEd make a final determination that the abovesited venues/facilities owned/managed by the said government instrumentalities are service agencies which do not fall within the category of a GOCC created and organized by virtue of the Corporation Code, then the proscription provided under GPPB Resolution No. 18-2007 dated 31 May 2007 clearly will not apply.

Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,

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

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<sup>2</sup> Commissioner of Internal Revenue vs .Lim-Pan Investment Corporation and CTA, G.R. Nos. L-28571 and L-28644, July 31, 1970