

**PPA MEMORANDUM CIRCULAR
NO. _____ - 2016**

TO : Port Managers, Department Managers,
Cargo Handling Operators and
Others Concerned

SUBJECT : **IMPLEMENTING GUIDELINES OF PPA ADMINISTRATIVE
ORDER NO. 03-2016, ENTITLED "PORT TERMINAL
MANAGEMENT REGULATORY FRAMEWORK"**

I. Authority

Pursuant to Sections 6-a(iii), and (v), 6-b(vi) and 26 of Presidential Decree No. 857, as amended and PPA Board Resolution No. 2530, and to harmonize the requirements of bidding procedures and award of port terminal management contract with the other pertinent regulations on the matter in light of the issuance of PPA Administrative Order No. 03-2016, "Port Terminal Management Regulatory Framework," the following implementing guidelines are hereby prescribed for the information and compliance of all concerned.

II. Statement of Policy

As a general rule, the award of contracts for the port terminal management shall be through a transparent and competitive public bidding.

III. Governing Principles in Public Bidding of Port Terminal Management

- a) Transparency in the bidding process and in the implementation of Port Terminal Management contracts.
- b) Competitiveness by extending equal opportunity to enable contracting parties who are eligible and qualified to participate in the public bidding.
- c) Streamlined bidding process that will uniformly apply to all bidding processes.
- d) System of accountability where both the public officials directly or indirectly involved in the bidding process, as well as in the implementation of the port terminal management contracts and the private parties that deal with the Authority are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e) Public monitoring of the bidding process and the implementation of awarded port terminal management contracts with the end view of guaranteeing that such contracts are awarded pursuant to this Order and that all these contracts are performed strictly to specifications.

IV. Scope and application of the guidelines

These guidelines shall govern and apply to the bidding and award of contracts for the Port Terminal Management as specified in PPA Administrative Order No. 03-2016.

V. When to Conduct Public Bidding

- a) The conduct of the public bidding for port terminal management shall be done at least six (6) months before the expiration of the existing port terminal management/CH contracts in the port.
- b) For CH services in ports without authorized CH operators or for new port facilities, the bidding of such services shall be conducted immediately.
- c) CH services under existing Special Takeover Units (STUs) shall be bid out within six (6) months from the effectivity of this Order. CH services that may hereafter be taken over by the Authority shall be bid out within six (6) months from the date of the take-over of said services.

VI. Bids and Awards Committee (BAC)

- a) Constitution of the BAC

The BAC shall be constituted for the conduct of the public bidding of port terminal management with the following members or as the General Manager may determine.

For Tiers 1 and 2:

- | | | |
|------------------|---|---|
| Chairperson | - | AGM for Operations |
| Vice Chairperson | - | Manager, Port Operations and Services Department |
| Members | - | Port Manager
(PMO having jurisdiction of the port) |
| | - | Manager, Legal Services Department |
| | - | Manager, Commercial Services Department |
| | - | Manager, Port Planning and Design Department |
| | - | Manager, Treasury Department |

For Tier 3 and 4:

- | | | |
|------------------|---|--|
| Chairperson | - | Port Manager
(PMO having jurisdiction
of the port) |
| Vice Chairperson | - | Manager, Port Services Division, PMO |
| Members | - | Manager, Engineering Services
Division, PMO |
| | - | Manager, Administrative Services
Division, PMO |
| | - | Attorney IV, PMO |

For Tier 5:

- | | | |
|------------------|---|---|
| Chairperson | - | Manager, Port Services Division
(PMO having jurisdiction
of the port) |
| Vice Chairperson | - | Manager, Engineering Services
Division, PMO |
| Members | - | Manager, Administrative Services
Division, PMO |
| | - | Attorney IV, PMO |
| | - | Terminal Supervisor, PMO |

b) Observers:

Authorized representative from each of the following organizations:

- i. Shipping Industry;
- ii. Philippine Chamber of Arrastre and Stevedoring Operators (PCASO);
- iii. Philippine Chamber of Commerce and Industry (PCCI);
- iv. Commission on Audit (COA).

c) The BAC shall have at least five (5), but not more than seven (7) members.

- d) Unless sooner removed for a cause, the term of the members of the BAC shall be co-terminus with the bidding process but not to exceed one (1) year, from the date of appointment, renewable at the discretion of the General Manager. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death, the replacement shall serve only for the unexpired term: Provided, however, that in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the General Manager. In the interest of professionalization, the General Manager may extend the term of office of deserving members.

VII. Functions of the BAC

- a) The BAC shall have the following functions:
- 1) Advertise and post the Invitation to Bid (IB);
 - 2) Conduct pre-procurement and pre-bid conferences;
 - 3) Issue Supplemental/Bid Bulletin;
 - 4) Determine the eligibility of prospective bidders;
 - 5) Receive and open bids;
 - 6) Conduct evaluation and comparison of bids;
 - 7) Undertake post-qualification proceedings;
 - 8) Resolve motions for reconsideration;
 - 9) Recommend award of port terminal management contract to the appropriate approving authority; and
 - 10) Perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the bidding.
- b) Quorum
- A majority of the total BAC composition shall constitute a quorum for the transaction of business, provided the presence of the Chairperson or Vice Chairperson shall be required.
- c) Meetings
- 1) The Chairperson, or in his absence, the Vice Chairperson, shall preside at all BAC meetings. The decision of at least a majority of those members present at a meeting in which there is a quorum shall be valid and binding as an act of the BAC.
 - 2) The Chairperson or in his absence, the Vice Chairperson, shall vote only in case of a tie.

- 3) Observers and representatives of BAC members shall have no right to vote during BAC meetings, nor shall the representatives of BAC members be authorized to sign in behalf of the members represented.

VIII. BAC Observers

- a) To enhance the transparency of the competitive bidding, the BAC shall, during the pre-bid conference, preliminary examination of bids, bid evaluation and post-qualification, invite all observers mentioned in Section VI, b) of this Circular to sit in its proceedings.
- b) Observers will be informed at least five (5) days before the stages of bidding to which observers shall be invited on the following bidding activities:
 - 1) Pre-bid conference;
 - 2) Opening of bids;
 - 3) Bid Evaluation; and
 - 4) Post-qualification;

The absence of observers will not nullify the BAC proceedings, provided, that they have been duly invited in writing.

- c) The observers shall have the following responsibilities:
 - 1) Preparation of report either jointly or separately indicating their observations on the bidding activity, BAC compliance with the provisions of this Order, and areas of improvement in the BAC's proceedings for submission to the General Manager and Port Manager, copy furnished the BAC Chairperson;
 - 2) Upon request, the BAC shall furnish the observers a copy of the following documents:
 - (a) Minutes of BAC Meetings;
 - (b) Abstract of Bids;
 - (c) Post-qualification Report; and
 - (d) Copies of opened bids.
 - 3) Sign the abstract of bids and post-qualification report, if amenable to the bidding activities and results of the post-qualification; and
 - 4) May give a copy of their reports to the Office of the Ombudsman or Resident Ombudsman if the BAC is found to have failed in following the prescribed bidding procedures or for any justifiable and reasonable ground where the award of the port terminal management contract will not redound to the benefit of the Authority.

IX. BAC Secretariat and its Functions

- a) The Chairperson of the BAC shall designate a Secretariat which will serve as the main support unit of the BAC. The Secretariat shall have the following functions:
- 1) Provide administrative support to the BAC;
 - 2) Organize and make all necessary arrangements for BAC meetings;
 - 3) Attend BAC meetings as Secretary;
 - 4) Prepare the “Minutes” of the BAC meetings;
 - 5) Take custody of all bidding documents and be responsible for the sale and distribution of bidding documents to interested bidders;
 - 6) Assist in managing the bidding process;
 - 7) Monitor bidding activities and milestones for proper reporting to relevant agencies when required;
 - 8) Make arrangements for the pre-procurement and pre-bid conferences and bid openings;
 - 9) Record all proceedings of the bidding and prepare the corresponding report thereof, as well as the relevant documents to be submitted to the concerned offices of the Authority; and
 - 10) Serve as the central channel of communications for the BAC.
- b) The Head of the BAC Secretariat shall be at least a third ranking permanent employee of the PPA Head Office/PMO concerned where the bidding will be conducted, or if not available, a permanent official of the next lower rank
- c) The members of the BAC, TWG and Secretariat may be granted honoraria in accordance with the pertinent Department of Budget and Management (DBM) guidelines on the matter

X. Preparation of Bidding Documents

- a) The bidding documents shall be prepared by the procuring entity (PPA Head Office/PMO concerned) following the generic forms appended in this Order. The BAC may, however, modify pertinent provisions of said bidding documents, or include new or additional provisions to the said documents depending on the requirements of the port terminal management or the circumstances obtaining in the port subject of bidding. The bidding documents prepared by the procuring entity shall be subject to review and approval of the appropriate approving authority. The bidding documents shall be as follows:
- 1) Invitation to Bid (Annex A);
 - 2) Instructions to Bidders (Annex B);

- 3) Bid Data Sheet (Annex C);
 - 4) Terms of Reference (Annex D);
 - 5) Technical Component (Annex E);
 - 6) Financial Component (Annex F); and
 - 7) Pro-forma Port Terminal Management Contract (Annex G).
- b) The bidding documents shall clearly and adequately define, among others: (a) objectives and scope of the contract; (b) contract duration; (c) obligations and duties of the winning bidder; and (d) minimum eligibility requirements.
 - c) The BAC may require additional documentary requirements or specifications, where applicable and necessary, to complete the information required for the bidders to prepare and submit their respective bids.
 - d) The specifications and other terms in the bidding documents shall reflect the minimum requirements or specifications required to meet the needs of the BAC in clear and unambiguous terms. The bidder may submit a bid which provides for superior specifications and/or better terms and conditions to the Authority. However, these shall not be given any bonus, credit or premium in the bid evaluation.
 - e) Prospective bidders shall be given ample time to examine the bidding documents and to prepare their respective bids. Bidders shall be required to pay for the bidding documents a non-refundable amount prescribed by the Authority to recover the cost of its preparation and development. The BAC shall issue the bidding documents upon payment of the corresponding cost thereof to the collecting officer of the Authority.
 - f) It shall be the sole responsibility of the prospective bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the port terminal management to be bid.
 - g) The Authority shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the Authority.

XI. Invitation to Bid (IB)

- a) Pre-procurement Conference

Prior to the advertisement or issuance of the IB, the BAC shall call, through the Secretariat, for a pre-procurement conference. The conference shall be attended by the BAC, the Secretariat, the unit or officials who prepared the Terms Of Reference (TOR), bidding documents and the draft advertisement, as the case may be, as well as those who separately reviewed these documents prior to the final approval, if any. During this conference, the participants, led by the BAC, shall:

- 1) Determine the readiness of the procurement at hand and adherence of the bidding documents to relevant procurement guidelines on the matter;
 - 2) Review, modify and agree on the criteria for eligibility screening to ensure their fairness, reasonableness and that they are of the "pass/fail" type and are written in such manner;
 - 3) Review, modify and agree on the criteria for the evaluation of bids to ensure their fairness, reasonableness and applicability to the procurement at hand;
 - 4) Clarify that the specifications and other terms in the bidding documents are minimum requirements and that the bidder may submit a bid which provides better terms and conditions to the Authority at no extra cost, without any bonus, credit or premium in the bid evaluation; and
 - 5) Emphasize the importance of confidentiality during the bid evaluation process and the applicable sanctions and penalties for violation thereof.
- b) Advertising, Posting and Contents of the IB
- 1) The IB shall provide the prospective bidders, among others, the following information:
 - a. Brief description of the terminal management of the port;
 - b. A general statement on the criteria and minimum requirements to be used for the eligibility check, the examination and evaluation of bids and post-qualification;
 - c. The date, time and place of the pre-bid conference(s) and the submission and receipt of bids and the opening of bids;
 - d. The period of availability of the bidding documents, the place where the bidding documents may be secured and the price of the bidding documents;
 - e. The duration of the port terminal management contract;
 - f. The name, address, telephone or mobile number, facsimile number, e-mail and website addresses of the Authority (PMO) and the designated contact person(s); and
 - g. Such other necessary information deemed relevant and necessary by the BAC.
 - 2) The IB shall be advertised and posted as follows:
 - a. Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for

at least two (2) years before the date of issue of the advertisement;

- b. Posted continuously in the PPA website and the Philippine Government Electronic Procurement System (PhilGEPS) for seven (7) calendar days starting on date of advertisement; and
- c. Posted at any conspicuous place/s in the premises of PPA Head Office, PMO and in the port subject of bidding for seven (7) calendar days.

c) Pre-Bid Conference(s)

- 1) The pre-bid conference(s) shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.
- 2) Attendance of the bidders to the pre-bid conference is not mandatory. However, only those who have purchased the bidding documents shall be allowed to participate in the said conference and raised or submit written queries or clarifications.
- 3) The pre-bid conference shall discuss, among others, matters relative to the technical and financial components, and other relevant bidding matters.
- 4) The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference.
- 5) Any statement made at the pre-bid conference shall not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental or Bid Bulletin.
- 6) Supplemental/Bid Bulletin
 - (a) Supplemental/Bid Bulletin may be issued upon the BAC's initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents shall be identified as an amendment. Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with the pertinent provisions hereof.
 - (b) Requests for clarification on any part of the bidding documents or for an interpretation must be in writing and submitted to the BAC at least ten (10) calendar days before the deadline set for the submission and receipt of bids.

The BAC shall respond to the request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairperson to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. It shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure Supplemental/Bid Bulletin that may be issued by the BAC.

(c) All Supplemental/Bid Bulletin issued by the BAC shall also be posted on the PPA website and on the PhilGEPS.

d) Eligibility Criteria

The following shall be allowed to participate in the bidding for the port terminal management:

- 1) Duly licensed Filipino citizens/sole proprietorships;
- 2) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- 3) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- 4) Persons or entities forming themselves into a joint venture that intend to be jointly and severally responsible or liable for the port terminal management contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA; or
- 5) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to the citizens of the Philippines.

The shipping companies shall not be eligible to participate in the bidding of port terminal management, either as a sole bidder or as a member in a joint venture. However, individual stockholders of the shipping companies are allowed to be a member of a joint venture provided that the individual share holdings shall not exceed 5% nor the aggregate share holdings of all such stockholders shall exceed 10% of the total shares of the corporation that will be formed if it will be declared the winning bidder.

XII. Submission and Receipt of Bids

A. Technical Component

A.1 Eligibility Documents

For purposes of determining the eligibility of bidders using the criteria stated in Section XI, d) of this Circular, the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

Legal Documents

- 1) Articles of Incorporation/Partnership/ Cooperation and By-Laws, whichever may be appropriate under existing laws of the Philippines
- 2) Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC) or Cooperative Development Authority (CDA) Certificate of Registration, whichever may be appropriate under existing laws of the Philippines
- 3) Valid and current Mayor's Permit or Municipal License from the City or Municipality where the principal place of business is located
- 4) Joint Venture Agreement in case of persons or entities forming themselves into a Joint Venture
- 5) Omnibus Sworn Statement
- 6) Other appropriate documents, clearances and licenses that may be required by the Authority

Technical Documents

- 1) Business Profile of the Prospective Bidder
- 2) Curriculum Vitae (CV) of prospective bidder's principal/key personnel for port terminal management, namely: General Manager, Operations Manager, Safety Officer and Supervisor, all of which must have at least five (5) years relevant work experience.
- 3) Statement of prospective bidders of its completed, ongoing and awarded but not yet started port terminal management/CH contracts
- 4) The types and number of CH equipment that the prospective bidder owns, has under lease, and/or has under purchase agreements, if any
- 5) Copy of latest General Information Sheet (GIS) submitted to the SEC, if applicable

Financial Documents

- 1) Audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "Received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission. For new establishments, balance sheet and income statement, stamped "Received" by the BIR or its duly accredited and authorized institutions for the most recent quarter
- 2) Income Tax Return (ITR) for the immediately preceding year duly filed and stamped "Received" by the BIR, or proof of electronic filing of the same. For new establishments which have no annual ITR, the most recent quarterly ITR duly filed and stamped "Received" by the BIR or proof of electronic filing thereof
- 3) Value Added Tax (VAT) or Percentage Tax Return (PTR) covering the immediately preceding six (6) months duly filed and stamped "Received" by the BIR, or proof of electronic filing of the same. For those with less than six (6) months of operations, the monthly business tax returns duly filed and stamped "Received" by the BIR or proof of electronic filing thereof
- 4) Tax Clearance per Executive Order No. 398, Series of 2005, as finally reviewed and approved by the BIR.
- 5) Certification from the PPA Head Office Treasury Department that the prospective bidder has no outstanding account
- 6) Prospective bidder's computation of its Net Financial Contracting Capacity (NFCC).

To ensure that the winning bidder is determined to be financially capable of entering into a contract, an NFCC requirement is hereby prescribed using the following formula:

$$\text{NFCC} = K (\text{Current Assets} - \text{Current Liabilities}) - V$$

Where

K = 20, which is the prescribed factor for contracts of more than 2 years, as adopted from civil works projects;

V = Value of all outstanding contracts or uncompleted portions of projects under on-going contracts, including awarded contracts yet to be started coinciding with the contract to be bid.

The values of the bidder's current assets and current liabilities shall be based on the data submitted to the BIR, through Electronic Filing and Payment System (EFPS).

The computation of the prospective bidder's NFCC must be at least equal to the minimum concession fee for the entire duration of the contract.

- 7) Prospective bidder's intended working capital for port terminal operations

A.2 Technical Bid

The Technical Bid shall contain the following technical information and documents:

- 1) Bid security as to form, amount and validity period;
- 2) Certificate of Site Inspection issued by duly authorized official of PMO concerned;
- 3) Organizational Chart for the port terminal management contract to be bid;
- 4) The Business Plan with all its components, as provided for in Article II, Section 17 (b) (5) of PPA Administrative Order No. 01-2006, as amended, and each component shall include the prescribed minimum requirements thereof, if any; and
- 5) List of principal/key port terminal management personnel for deployment at the start of operations.

B. Financial Component

The Financial Component shall contain the highest concession fee for the terminal management of the port subject of bidding for the entire duration of the contract depending on its tier classification as specified in the Terms of Reference (TOR) and whose bid complies with all the requirements and limitations thereof.

XIII. Modification and Withdrawal of Bids

- a) A bidder may modify its bid, provided this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid but shall only be allowed to send another bid equally sealed, identified and linked to its original bid and marked as "Modification" thereof and stamped "Received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

- b) A bidder, thru a letter, may withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as may be imposed by the Authority. A bidder may also express its intention not to participate in the bidding thru a letter, which should reach and be stamped received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same bidding.

XIV. Bid Security

- a) All bids shall be accompanied by a bid security, payable to the Authority as a guarantee that the successful bidder shall, within ten (10) calendar days from receipt of the Notice of Award (NOA), enter into a port terminal management contract with the Authority.
- b) The bid security shall be in a form of Bid Securing Declaration or in the amount at least equal to, and not lower than, a percentage of the total gross income from port terminal management / CH operations at the subject port in the immediately preceding year based on the record of the Authority, in any of the following forms:
- i. Cash or cashier's/manager's check issued by a Universal of Commercial Bank;
 - ii. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;
 - iii. Surety bond, callable upon demand, issued by the Government Service Insurance System (GSIS) or other reputable surety or insurance company duly licensed by the office of the Insurance Commission; or

The required amount of the above forms as bid security shall be in accordance with the following schedule:

FORM OF BID SECURITY	P _____ (TOTAL GROSS INCOME FROM PORT TERMINAL MANAGEMENT/CH OPERATIONS OF THE PORT FOR THE IMMEDIATELY PRECEDING YEAR)
Cash or cashier's/ manager's check	Two percent (2%)
Bank guarantee	
Surety Bond	Five percent (5%)

The required bid security based on the above schedule shall be the minimum amount thereof and shall be stated in Philippine Peso in the bidding documents.

- c) No bid securities shall be returned to the bidder after the opening of bids and before contract signing, except to those that (i) failed to comply with any of the requirements to be submitted in the first bid envelope (Technical Bid) of the bid, or (ii) were post-disqualified and submitted a written waiver of its right to file a motion for reconsideration and/or protest in accordance with the pertinent provisions hereof. Without prejudice to the provisions on the forfeiture of bid securities, bid securities shall be returned only after the winning bidder has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period.

XV. Bid Validity

- a) Bids and bid securities shall be valid for a period of one hundred twenty (120) calendar days from the date of the opening of bids and such validity period shall be indicated in the bidding documents.
- b) Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the Procuring Entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

XVI. Bid Opening

The BAC shall open the bids at the time, date and place specified in the IB and the bidding documents. The bidders or their duly authorized representatives may attend the opening of bids. All BAC members or their duly authorized representatives who are present during the bid opening, shall initial every page of the original copies of all bids received and opened. The "Minutes" of the bid opening shall be made available to the concerned parties upon written request and payment of a specified fee to recover cost of materials.

XVII. Bid Evaluation

A. Preliminary Examination of Bids

- a) The BAC shall open the first bid envelopes of prospective bidders in public to determine each bidder's compliance with the documents required to be submitted for the eligibility and for the technical requirements. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered "failed" for the particular requirement and immediately return to the bidder concerned its Financial Bid unopened. Otherwise, the BAC shall rate the said Technical Bid as "passed".
- b) A bidder determined as "failed" has three (3) calendar days upon written notice, or if present at the time of bid opening, upon verbal

notification, within which to file a request for reconsideration with the BAC; provided, however, that the request for reconsideration shall not be granted if it is established that the finding of failure is due to fault of the bidder concerned; provided, further, that the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed bidder signifies his intent to file a motion for reconsideration, in the case of a bidder who fails in the Technical Bid, the BAC shall hold the Financial Bid of said failed bidder unopened and duly sealed until such time that the motion for reconsideration has been resolved.

- c) Immediately after determining compliance with the requirements in the Technical Bid, the BAC shall forthwith open the Financial Bid of each remaining eligible bidder whose Technical Bid was rated "passed". The Financial Bid of each complying bidder shall be opened within the same day. In case one or more of the requirements in the Financial Bid of a particular bid is missing, incomplete or patently insufficient, the BAC shall rate the bid concerned as "failed".
- d) The Financial Bid shall be considered as non-complying and shall be rejected if the Financial Bid submitted provides a concession fee that exceeds the "floor" prescribed therefor in the bidding documents.
- e) Only bids that are determined to contain all the bid requirements for both Technical and Financial components shall be rated "passed" and shall immediately be considered for evaluation and comparison.
- f) Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the NOA.

B. Detailed Evaluation and Comparison of Bids

- a) The BAC shall undertake a detailed evaluation and comparison of the financial bids to determine their compliance with the requirements of Section XI B of this Order. If the financial bid does not meet the said requirements, the same is considered non-complying and shall be rejected.
- b) The BAC shall rank the complying bidders thereof in descending order based on their financial bids to identify the Highest Calculated Bid (HCB).
- c) The bidder with the HCB shall be subject to post-qualification to determine its responsiveness to the eligibility and bid requirements.
- d) After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding bid securities

and the minutes or proceedings of the bidding. The Abstract of Bids shall contain the following:

- 1) Name of the port subject of bidding and its location;
- 2) Time, date and place of bid opening; and
- 3) Names of bidders and their corresponding financial bid arranged from highest to lowest the amount of bid security and the name of the issuing entity.

XVIII. Post-Qualification

Objective and Process of Post-Qualification

- a) Within seven (7) calendar days from the determination of the HCB, the BAC shall conduct and accomplish a post-qualification of the bidder with the HCB to determine whether the bidder concerned complies with all the requirements and conditions for eligibility and the bidding, as specified in the bidding documents, in which case the said bidder's bid shall be considered and declared as the Highest Calculated and Responsive Bid (HCRB).
- b) The post-qualification shall validate and ascertain all statements made and documents submitted by the bidder with the HCB, among others, the following:
 - 1) Legal Requirements – To verify, validate and ascertain licenses and agreements submitted by the bidder and the fact that he has not been blacklisted by the Government or any of its agencies or instrumentalities;
 - 2) Technical Requirements – To determine compliance with the requirements of the bidding documents and the contract, to include, among others:
 - (a) Verification and validation of the bidder's stated competence and experience and those of the key officials and personnel to operate and manage the port terminal;
 - (b) Verification of availability and commitment, and/or inspection of port terminal/CH equipment and gears owned, leased or to be leased by the bidder; and
 - (c) Ascertainment of sufficiency of the bid security, as to type, amount, form and wording and the validity period.
 - 3) Financial Requirements – To verify, validate and ascertain, among others, the financial bid, available paid-up capital and committed working capital.
- c) If the BAC determines that the bidder with the HCB passes all the criteria for post-qualification, it shall declare the said bidder as the HCRB and the port terminal management contract shall be awarded to the said bidder.

- d) If, however, the BAC determines that bidder with the HCB fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post disqualification, and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request from the BAC, if it so wishes, a reconsideration of this decision. The BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary criteria and shall issue its final determination of the said request within seven (7) calendar days from receipt thereof.
- e) Immediately after the BAC has notified the first-ranked bidder of its post-disqualification and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the second-ranked bidder. If the second-ranked bidder passes the post-qualification and provided that the request for reconsideration of the first-ranked bidder has been denied, the second-ranked bidder shall be post-qualified as the bidder with the HCRB and the port terminal management contract shall be awarded to it.
- f) If the second-ranked bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next-ranked bidder, and so on until the HCRB is determined for award.

In the event two or more bidders have been post-qualified as HCRB, the tie shall be resolved through the following tie-breaking scheme, viz:

1. The lotto scheme shall be used wherein the concerned bidders shall select the lotto draw dates to be used (e.g. 6/42 – every Tuesday and Saturday, 6/45 – every Monday, Wednesday and Friday or 6/49 – every Sunday and Thursday);
2. From slots 1 to 6, each concerned bidder shall select their respective slot thru drawing of numbers;
3. During the lotto draw date (as selected by the bidders), the numbers as consecutively drawn shall be placed in the slots 1 to 6; i.e. first number to be drawn shall be placed in slot no. 1, second to be drawn in slot no. 2 and so on;
4. The bidder whose slot gets the highest number shall be declared as the HCRB;
5. In case there are more than six (6) tied bidders, the BAC shall use the bingo chips to break the tie.

XIX. Failure of Bidding

- a) The BAC shall declare the bidding a failure and conduct a rebidding with re-advertisement and/or posting, after a re-evaluation of the terms, conditions and specifications of the first bidding, when:
 - 1) No bids are received;

- 2) All prospective bidders are declared ineligible;
 - 3) All bids fail to comply with the bid requirements or failed post-qualification;
 - 4) The bidder with the HCRB refuses, without justifiable cause to accept the award of the contract; or
 - 5) Unavoidable reasons resulting to non-completion of the selection process not attributable to the participating port terminal management applicant-operators.
- b) The BAC shall modify the terms, conditions and specifications in the first bidding documents, when necessary. All bidders who have initially responded to the IB and have been declared eligible in the first bidding shall be allowed to submit new bids. The BAC shall observe the same process and set the new bidding timetable according to the same rules following the first bidding.
 - c) Should there occur a second failure of bidding, the Authority may adopt the alternative method of negotiated procurement.

XX. Single Calculated and Responsive Bid Submission

A single calculated and responsive bid (SCRB) shall be considered for award if the process falls under any of the following circumstances:

- a) If after advertisement, only one (1) prospective bidder submits an LOI and applies for eligibility check, in accordance with the provisions of this Order, and meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements;
- b) If after advertisement, more than one (1) prospective bidder submits an LOI and applies for eligibility check, in accordance with the provisions of this Order, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or
- c) If after the eligibility check, more than one (1) bidder meets the eligibility requirements, but only one (1) bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

The BAC shall ensure that the technical and financial bids of this bidder are advantageous to the government.

XXI. Notice and Execution of Award

- a) Contract Award
 - 1) The Port Manager, the General Manager or the PPA Board of Directors, depending on the term of the port terminal management contract, shall within a period of fifteen (15) calendar days from the determination and declaration of the HCRB or SCRБ, as the case may be, and receipt of the corresponding recommendation for the

award of port terminal management contract, approve or disapprove said recommendation. In case of approval, the NOA shall be immediately issued to the bidder with the HCRB or SCRB with corresponding advice to submit the required performance security within thirty (30) calendar days from the effectivity of the contract.

- 2) Contract award shall be made within the bid validity period. Should it become necessary to extend the validity of the bids and, if applicable, the bid securities, the Authority shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid securities.
- 3) The BAC shall also notify all losing bidders of its decision.

b) Contract Documents

- 1) The following documents shall form part of the port terminal management contract:
 - (a) Invitation to Bid;
 - (b) Bidding Documents;
 - (c) Addenda and/or Supplemental/Bid Bulletin, if any;
 - (d) Technical and Financial bids including all its annexes;
 - (e) Notice of Award and the winning bidder's "Conforme" thereto;
 - (f) Performance security and other documents that may be required; and
 - (g) Other documents as may be required by existing laws or by the Authority.

c) Contract Signing

The winning bidder or its duly authorized representative shall formally enter into contract with the Authority within ten (10) calendar days from receipt of the NOA.

d) Approval of port terminal management contract by Higher Authority

When further approval of the PPA Board of Directors is required, the BAC shall, through appropriate channels, submit to the Board the port terminal management contract with all the required supporting documents and the Board shall act on the same within twenty five (25) calendar days from receipt thereof.

e) Notice to Proceed (NTP)

The Authority shall issue the NTP, together with a copy or copies of the approved port terminal management contract to the successful bidder, within three (3) calendar days from date of approval. All notices called for by the terms of the port terminal management contract shall be effective only at the time of receipt thereof by the successful bidder. If an effectivity date is provided in the NTP, all notices called for by the terms of the approved port terminal management contract shall be effective only from such effectivity date.

f) Performance Security

To guarantee the faithful performance by the winning bidder of its obligations under the contract, it shall post a Performance Security within thirty (30) calendar days from effectivity of the port terminal management Contract. The performance security shall be in any of the following forms:

- (a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank;
- (b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial bank; Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;
- (c) Surety bond, callable upon demand, issued by the GSIS or other reputable surety or insurance company duly licensed by the office of the Insurance Commission; or

The required amount of the above forms of security shall be in accordance with the following schedule:

FORM OF PERFORMANCE SECURITY	P_____ (TOTAL GROSS INCOME FROM PORT TERMINAL/CH OPERATIONS OF THE PORT FOR THE IMMEDIATELY PRECEDING YEAR)
Cash or cashier's check, manager's check	Five percent (5%)
Bank draft/guarantee or irrevocable letter of credit	Ten percent (10%)
Surety Bond	Thirty percent (30%)

The performance security shall be posted in favor of the Authority and shall be forfeited in favor of the Authority in the event it is established that the winning bidder is in default in any of its obligations under the port terminal management contract.

g) Failure to Enter into Contract and Post Performance Security

- 1) If the bidder with the HCRB or SCRB fails, refuses or is unable to make good its bid by entering into a contract with the Authority or post the required performance security within the period stipulated in the bidding documents, the bid security shall be forfeited and the appropriate sanctions shall be imposed, except where the failure, refusal or inability is through no fault of the said bidder.
- 2) In case of failure, refusal or inability of the bidder with the HCRB to enter into contract and post the required performance security, the BAC shall disqualify the said bidder and shall initiate and complete the post-qualification process of the bidder with the second HCB. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a rebidding with re-advertisement. Should there occur another failure of bidding after the conduct of the rebidding, the Authority may avail of alternative method of negotiated procurement.
- 3) In case of failure, refusal or inability of the bidder with the SCRB to enter into contract and post the required performance security, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a rebidding with re-advertisement and posting. Should there occur another failure of bidding after the conduct of the contract rebidding, the Authority may avail of the alternative method of negotiated procurement.

XXII. Reservation Clause

The Authority reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

- a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Authority, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- c) For any justifiable and reasonable ground where the awarding of the port terminal management contract will not redound to the benefit of the Authority.

XXIII. Protest Mechanism

- a) Protests on Decisions of BAC

Decisions of the BAC on the bidding conducted may be protested in writing to the Authority: Provided, however, that a prior motion for reconsideration has been filed by the party concerned within the reglementary periods specified in this Order. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its motion for reconsideration. A protest may be made by filing a verified position

paper with the Authority, accompanied by the payment of a non-refundable protest fee. The protest fee shall be in an amount equivalent to one percent (1%) of the total gross income from port terminal management / CH operations for the preceding year in the port subject of bidding as indicated in the bidding documents.

b) The verified position paper shall contain the following information:

- 1) Name of bidder;
- 2) Office address of the bidder;
- 3) Name of the port subject of bidding;
- 4) Name of the contract;
- 5) Issue(s) to be resolved; and
- 6) Other matters and information pertinent and relevant for the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect and results to the outright dismissal of the protest.

c) Resolution of Protests

The protests shall be resolved primarily on the basis of the records of the BAC. The Authority shall resolve the protest within seven (7) calendar days from receipt thereof.

d) Non-Interruption of the Bidding Process

In no case shall any protest taken from any decision treated in this Order stay or delay the bidding process: Provided, however, that protests must first be resolved before any award is made.

e) Resort to Regular Courts

Court action may be resorted to only after the protests contemplated in this Order shall have been completed and resolved by the Authority with finality.

This Memorandum Circular shall take effect fifteen (15) calendar days from its publication in the Official Gazette or in a newspaper of general circulation and a copy filed with the University of the Philippines Law Center.

JAY DANIEL R. SANTIAGO

General Manager

OAGMO/POSD/TSD

HEM_____/RCA_____/RTDM_____/JDLR_____/proposed implementing guidelines
of PPA A.O. No. 03-2016