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PHILIPPINE  
PORTS  
AUTHORITY



PPA ADMINISTRATIVE ORDER  
NO. 12 - 2018



TO : Assistant General Managers  
Department Managers  
Port Managers  
Cargo Handling Operators  
Others Concerned

SUBJECT : GUIDELINES FOR THE SELECTION AND AWARD OF  
CONTRACT UNDER THE PORT TERMINAL MANAGEMENT  
REGULATORY FRAMEWORK (PPA ADMINISTRATIVE  
ORDER NO. 03-2016, AS AMENDED)

## ARTICLE I PRELIMINARY PROVISIONS

### Section 1. Authority

Pursuant to Sections 6(a)(iii) and (v), 6(b)(vi) and (ix), and 26 of Presidential Decree No 857, as amended, and Board Resolution No 2530 and to provide the procedure for the selection and award of Port Terminal Management Contracts in relation to Administrative Order No 03-2016, as amended, otherwise known as the "*Port Terminal Management Regulatory Framework*", these guidelines are hereby prescribed for the information, guidance, and compliance of all concerned

### Section 2. Statement of Policy

The Authority acknowledges and recognizes the indispensable role of the private sector. Their participation in the port business and port operations is encouraged.

For this purpose and to ensure that the provision of port services will be of generally accepted global standards, the selection and award of Port Terminal Management Contracts shall be competitive and transparent and shall undergo competitive bidding.

### Section 3. Governing Principles in the Selection and Award of Port Terminal Management Contracts

The selection and award of Port Terminal Management Contracts shall be governed by the following principles:

- a) Transparency in the selection and award process, and in the execution of Port Terminal Management Contracts,

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- b) Competitiveness by extending equal opportunity to all prospective bidders,
- c) Streamlined and uniform selection and award process under these guidelines,
- d) Accountability of all public officials, employees, and private parties who deal with the Authority and who are involved in the selection and award process, and,
- e) Public and constant monitoring of the selection and award process and the execution of Port Terminal Management Contracts with the end view of guaranteeing that such contracts are awarded pursuant to these guidelines

#### **Section 4. Scope and Application**

These guidelines shall govern and apply to the selection and award of Port Terminal Management Contracts under Administrative Order No 03-2016, as amended, except

- a) as provided in Section 25 of these guidelines,
- b) port facilities turned over to the Authority pursuant to PPA Administrative Order No 06-95 entitled "*Liberalized Regulations on Private Ports Construction, Development, and Operation*", as amended, and relevant issuances that may be adopted hereafter,
- c) in cases of takeover by the Authority,
- d) in cases of transfer of the administration and management of ports to local government units and government corporations pursuant to applicable regulations issued by the Authority, and
- e) ports that meet the criteria under unsolicited proposal pursuant to existing laws, rules and regulations, and as may be determined and approved by the Board

### **ARTICLE II** **GENERAL PROVISIONS**

#### **Section 5. Definition of Terms**

For purposes of these guidelines, the following terms or words and phrases shall mean or be understood as follows

- a) ***Approving Authority*** – shall refer only to the General Manager,

- b) **Authority** – the Philippine Ports Authority (PPA) created under Presidential Decree No 505 dated 11 July 1974, as amended by P D No 857 dated 23 December 1975,
- c) **Bid** – the signed offer or proposal to undertake a Port Terminal Management Contract submitted by a bidder in response to, and in compliance with, the requirements of the Bid Documents,
- d) **Bid Documents** – the documents issued by the Authority as the bases for bids, furnishing all information necessary for a bidder to prepare a bid for a Port Terminal Management Contract,
- e) **Bidding Process or Bidding** – the selection and award process beginning from the publication of the Invitation to Bid until the signing of the Port Terminal Management Contract. For this purpose, bidding process, bidding, or selection and award may be used interchangeably,
- f) **Bid Security** – the security to be provided by the bidder to guarantee that it will comply with all its obligations during the bidding process,
- g) **Bids and Awards Committee (BAC)** – the committee created by the Authority through the issuance of a Special Order for purposes of selecting the Port Terminal Management Operator,
- h) **Competitive Public Bidding** – the method of selection and award of a Port Terminal Management Contract, prescribed by these guidelines, which is transparent, open, and competitive,
- i) **Conflict of Interest** – a situation, as may be applicable, wherein a bidder and/or an observer
  - i) Has controlling shareholders in common with another bidder. In the case of observers, it is not necessary that the observer has controlling shareholdings,
  - ii) Receives or has received any direct or indirect subsidy from any other bidder,
  - iii) Has the same legal representative as that of another bidder for purposes of its bid,
  - iv) Has a relationship, directly or through third parties, that places it in a position to have access to information about or to influence the bid of another bidder or to influence the decisions of the approving authority regarding the bidding process. This will include firms or organizations, including any and all of their personnel, which are engaged in consulting services for any preparatory or preliminary activities related to procurement for,

or implementation of, any Port Terminal Management Framework pursuant to these guidelines or the Port Terminal Management Regulatory Framework,

- v) Submits more than one bid in any bidding process,
  - vi) Participated as a consultant of the Authority in the preparation and design of the port subject of the bidding, and,
  - vii) Is in a situation in which the bidder/observer has a duty or responsibility to more than one person or organization involved in any bidding process,
- j) **Concession Period** – the period granted to the Winning Bidder to manage, operate, develop, finance, and/or maintain a port,
- k) **Concession Fee** – the fixed amount to be paid by the Winning Bidder to the Authority, in consideration of the exclusive right and privilege to manage, operate, develop, and maintain a port for a specified number of years,
- l) **Day** – shall refer to a calendar day,
- m) **Financial Bid** – the Concession Fee offered by the Eligible Bidder,
- n) **Net Financial Contracting Capacity (NFCC)** – the financial capability of a bidder to enter into a Port Terminal Management Contract,
- o) **Nominated Entity** – any person nominated by the prospective bidder to undertake the infrastructure investment commitment in the port development plan,
- p) **Outstanding Dispute** – any pending judicial, administrative, or alternative dispute resolution proceeding, including suspension or blacklisting proceedings involving the Prospective Bidder, and the Authority, including its board of directors, officers, the Bids and Awards Committee, the secretariat, the technical working group, and/or employees, in connection with any project of the Authority, which act prevents the Authority from fully or timely complying with its obligations,
- q) **Port** – a place under the jurisdiction of the Authority where ships may anchor or tie up for purposes of shelter, ship repair, loading or discharge of cargo, embarking or disembarking of passengers, or for other such activities connected with water-borne commerce, including all the land and water areas and the structures, equipment, and facilities related to these functions,

- r) **Port Development Plan** – a plan/strategy employed by the Port Terminal Management Operator to effectively (i) finance, develop, manage, operate, and maintain a port for Tiers 1, 2, 3, and 4 or (ii) finance, manage, operate, and maintain for Tier 5 in order to attain service satisfaction of concerned users and attract port clientele,
- s) **Port Performance Measures** – the Key Performance Indicators set by the Authority as basis for monitoring port productivity,
- t) **Port Terminal Management Contract** – a contract involving the (i) financing, development, management, operation, and maintenance of a port for Tiers 1, 2, 3, and 4 or (ii) financing, management, operation, and maintenance of a port for Tier 5, including all the facilities and structures therein, designed and intended to attract private sector interest and participation in terms of investments in port infrastructure, equipment, technology, and manpower and less rigid regulatory controls,
- u) **Port Terminal Management Operator** – a private entity authorized by the Authority to (i) finance, develop, manage, operate, and maintain a port for Tiers 1, 2, 3, and 4 or (ii) finance, manage, operate, and maintain for Tier 5,
- v) **Prospective Bidder** – any person or entity who intends to participate in the bidding process for the selection and award of a Port Terminal Management Contract,
- w) **Technical Bid** – the set of documents offered by a Bidder pursuant to Section 18 of these guidelines,
- x) **Tier Classification** – a classification of port investment arrangements between the Authority and the Port Terminal Management Operator, as prescribed under, and pursuant to, Administrative Order No 03-2016, otherwise known as “Port Terminal Management Regulatory Framework”, and,
- y) **Winning Bidder** – a Bidder determined by the Bids and Awards Committee as having the highest responsive bid or single responsive bid and issued a notice of award as described in Section 27 of these guidelines

## Section 6. When to Conduct Selection and Award

Subject to Section 38, the selection and award process shall commence as follows

- a) For ports under special takeover units, the selection and award of a Port Terminal Management Contract shall commence within one (1) year from the directive of the General Manager,

- b) For newly constructed ports, the selection and award of Port Terminal Management Contracts shall commence within one (1) year from the date of acceptance by the Authority from the contractor,
- c) For ports with existing cargo handling contracts, permits, and/or holdover authorities, the selection and award for Port Terminal Management Contracts shall commence, at least six (6) months, but no earlier than twelve (12) months, prior to the expiration thereof, and,
- d) For ports with existing Port Terminal Management Contracts, the selection and award shall commence, at least six (6) months, but no earlier than twelve (12) months, prior to the expiration thereof

To ensure continued and uninterrupted provision of port services, if no award is made at least fifteen (15) days prior to the expiration of an existing Port Terminal Management Contract, the Authority, in its sole discretion and by way of directive only from the General Manager, has the option to either (a) extend the Port Terminal Management Contract until an award of a new contract is made or (b) take over the operations of the said port

Any extension of a Port Terminal Management Contract or any directive to take-over the operations of any port shall be valid for only (1) year. The selection and award process, if not yet commenced, shall commence immediately upon such extension or take-over

#### **Section 7. Bids and Awards Committee**

A bids and awards committee shall be constituted for the conduct of the selection and award of Port Terminal Management Contracts. The BAC shall be composed of seven (7) members

The General Manager shall appoint as the first member a Chairperson who shall be at least a fourth (4<sup>th</sup>) ranking official of the Authority. The General Manager shall thereafter appoint five (5) members who shall be at least fifth (5<sup>th</sup>) ranking officials each respectively representing the Authority's Port Operations Services Department, Port Planning and Design Department, Commercial Services Department, Controllership Department, and Legal Services Department

The Port Manager of the port subject of the selection and award of the Port Terminal Management Contract shall be the seventh (7<sup>th</sup>) member

The Vice Chairperson shall always be the member representing the Commercial Services Department

Any changes to the BAC membership shall be at the sole discretion of the General Manager. The General Manager may also designate alternate BAC members who shall have the same rank as that of the original members. The alternate members shall have the same term as that of the original members

Unless sooner replaced at the sole discretion of the General Manager, the term of the members of the BAC shall be co-terminus with the bidding process but in no case to exceed one (1) year from the date of designation, renewable at the sole 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

### **Section 8. Functions of the BAC**

The BAC shall have the following functions

- a) Prepare the Bid Documents in accordance with these guidelines for the approval of the General Manager,
- b) Advertise and post the Invitation to Bid,
- c) Conduct pre-bid conferences,
- d) Issue Supplemental/Bid Bulletins,
- e) Determine the eligibility of prospective bidders,
- f) Receive and open bids,
- g) Conduct evaluation and comparison of bids,
- h) Undertake post-qualification proceedings,
- i) Resolve motions for reconsideration,
- j) Recommend award of a Port Terminal Management Contract to the approving authority, and,
- k) Perform such other related functions as may be necessary, including the creation of a technical working group from a pool of technical, financial, and/or legal experts who must be permanent personnel, to assist in the following
  - i) Review of Bid Documents,
  - ii) Evaluation of Bids,
  - iii) Post-qualification, and,
  - iv) Resolution of motions for reconsideration

A majority of the total BAC composition shall constitute a quorum for the transaction of business. The presence of the Chairperson or the Vice Chairperson shall, however, always be required.

The Chairperson, or in his absence, the Vice Chairperson, shall preside at all BAC meetings. The decision of at least majority of those members present at a meeting at which there is a quorum shall be valid and binding as an act of the BAC.

The Chairperson or in his absence, the Vice Chairperson, shall vote only in case of a tie.

A representative of a BAC member shall have no right to vote during BAC meetings, nor shall the same be authorized to sign on behalf of the members represented.

### **Section 9 BAC Observers**

To enhance the transparency of the selection and award, the BAC shall, during the pre-bid conference and opening and preliminary examination of bids, invite observers from the following organizations, who shall have no right to vote, to sit in its proceedings:

- a) Department of Transportation,
- b) Duly Registered Arrastre and Stevedoring Operators Organization,
- c) Catholic Bishops Conference of the Philippines,
- d) Supply Chain Management Association of the Philippines,
- e) Philippine Chamber of Commerce and Industry, and,
- f) Commission on Audit

The representatives from the above organizations should meet the following minimum criteria,

- a) Knowledge, experience, and expertise in selection and award relative to the subject matter of the contract to be bid, and
- b) Absence of actual or potential conflict of interest in the contract to be bid

The observers shall be invited at least five (5) calendar days before the date of pre-bid conference and opening and preliminary examination of bids.

The absence of observers will not nullify the BAC proceedings, provided that they have been duly invited in writing. In the event that a selection and award activity has



to be postponed, the observers shall be notified immediately of the change of schedule

The observers shall have the following responsibilities

- a) To prepare a report, either jointly or separately, indicating their observations made on the selection and award activities conducted by the BAC for submission to the Approving Authority, copy furnished the BAC Chairperson. The report shall assess the extent of the BAC's compliance with the provisions of these guidelines and areas of improvement in the BAC's proceedings,
- b) To submit their report to the Authority. If no report is submitted by the observer within seven (7) calendar days after each selection and award activity, it is presumed that the bidding activity conducted by the BAC followed the correct procedure, and,
- c) To immediately inhibit and notify in writing the Authority of any actual or potential conflict of interest in the contract to be bid

Observers shall be allowed access to the following documents upon their request

- a) Minutes of BAC meetings,
- b) Abstract of Bids,
- c) Post-qualification Report, and,
- d) Copies of opened bids

In all instances, the observers shall be required to enter into a confidentiality agreement with the Authority

#### **Section 10. BAC Secretariat and its Functions**

The Approving Authority shall create a Secretariat, which will serve as the main support unit of the BAC. The Secretariat shall have the following functions

- a) Provide administrative support to the BAC,
- b) Organize and make all necessary arrangements for BAC meetings and conferences,
- c) Attend BAC meetings as Secretary,
- d) Prepare the Minutes of Meetings and Resolutions of the BAC,
- e) Take custody of all Bid Documents,

- f) Manage the sale and distribution of Bid Documents to interested bidders,
- g) Advertise and/or post Port Terminal Management Contract opportunities, including Bid Documents and notices of awards,
- h) Assist in managing the selection and award process,
- i) Monitor selection and award activities and milestones, and,
- j) Serve as the central channel of communications for the BAC

The Head of the BAC Secretariat shall be at least a fifth (5<sup>th</sup>) ranking permanent employee of the Authority, reckoned from the Approving Authority or, if not available, a permanent official of the next lower rank

#### **Section 11. Honoraria of BAC, Secretariat, and TWG Members**

The Authority may grant payment of honoraria to the BAC, Secretariat, and technical working group members in an amount not to exceed twenty-five percent (25%) of their respective basic monthly salaries, subject to availability of funds and in accordance with the pertinent accounting and auditing rules and regulations

#### **Section 12. Preparation of Bid Documents**

The Bid Documents shall be prepared following the generic forms appended to these guidelines. The Bid Documents shall include the following

- a) Invitation to Bid,
- b) Instructions to Bidders,
- c) Legal Documents,
- d) Technical Documents,
- e) Financial Documents, and,
- f) Pro-forma Port Terminal Management Contract

The Eligibility and Bid Documents shall clearly and adequately define, among others, (i) objectives and scope of the contract, (ii) contract duration, (iii) obligations and duties of the winning bidder, and (iv) minimum eligibility requirements

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

The Bid Documents shall reflect the minimum requirements or specifications of the port 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.

Prospective bidders shall be given ample time to examine the Bid Documents and to prepare their respective bids. Prospective Bidders shall be required to pay for the Bid Documents a non-refundable amount prescribed by the Authority to recover the cost of its preparation and development. The BAC shall only accept submission of Bid Documents upon presentation of proof that payment of the corresponding cost thereof has been made to the collecting officer of the Authority.

It shall be the sole responsibility of any prospective bidder to determine for 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.

The Authority shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective bidder out of the data furnished by the Authority.

The Approving Authority may, upon the recommendation of the BAC, modify the provisions of the Bid Documents, or include new or additional provisions thereof, depending on the requirements of the port or the circumstances prevailing in the port subject of bidding. Any modifications to the Bid Documents shall be made prior to the posting/advertisement of the Invitation to Bid.

### **ARTICLE III** **PRE-BID**

#### **Section 13. Pre-Selection Conference**

Prior to the advertisement or issuance of the Invitation to Bid, the BAC shall call, through the Secretariat, for a pre-selection conference. The pre-selection conference shall be attended by the BAC, the technical working group, the Secretariat, and the unit or officials who prepared the Bid Documents, 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

- a) Confirm the scope of the Port Terminal Management Contract, the minimum concession fee, minimum performance measures, and duration of the contract,
- b) Determine the readiness of the selection and award at hand and adherence of the Bid Documents to relevant selection and award guidelines on the matter,

- c) Review, modify, and agree on the criteria for bid evaluation and post-qualification of bids to ensure fairness, reasonableness, and applicability to the selection and award at hand,
- d) Clarify that the specifications and other terms in the Bid 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, however, any bonus, credit, or premium in the bid evaluation,
- e) Review and adopt the selection and award schedule, including deadlines and timeframes, for the different activities, and,
- f) Emphasize the importance of confidentiality during the bid evaluation process and the applicable sanctions and penalties for violation thereof

The BAC may call another pre-selection conference whenever necessary

#### **Section 14. Invitation to Bid**

The Invitation to Bid shall provide the prospective bidders, among others, the following information

- a) Name and location of the contract to be bid and profile of the port subject of the selection and award, and other relevant information as may be determined by the BAC,
- b) A general statement on the criteria to be used for the examination and evaluation of bids, post-qualification, and award,
- c) The date, time, and place of the pre-bid conference(s), the submission and receipt of bids, and the opening of bids,
- d) Minimum concession fee,
- e) The Concession Period of the Port Terminal Management Contract,
- f) The period of availability of the Bid Documents, the place where the same may be secured, and the price thereof,
- g) The name, address, telephone or mobile number, facsimile number, and e-mail and website addresses of the Authority/Port Management Office and the designated contact person(s), and,
- h) Such other necessary information deemed relevant and necessary by the BAC

The Invitation to Bid shall be

- (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 on the website of the Authority for seven (7) calendar days starting on the same date of advertisement, and,
- (c) Posted at any conspicuous place/s in the premises of Head Office of the Authority, Port Management Office, and/or in the port subject of bidding for seven (7) calendar days starting on the same date of advertisement, whichever is applicable

#### **Section 15. Pre-Bid Conference**

The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of the Bid Documents

Attendance of the prospective bidders at the pre-bid conference is not mandatory. Only those bidders who have obtained and paid for Bid Documents shall be allowed to raise or submit written queries or clarifications

Matters relating to the Bid Documents and other relevant bidding matters shall be discussed, clarified, and explained during the pre-bid conference

The minutes of the pre-bid conference shall be recorded and shall be made available upon written request to those who were present at the pre-bid conference not later than three (3) working days after the pre-bid conference

Any statement made at the pre-bid conference shall not modify the terms of the Bid Documents, unless such statement is specifically identified in writing as clarification thereto and issued as a Supplemental/Bid Bulletin

#### **Section 16. Supplemental/Bid Bulletin**

The BAC may issue a Supplemental/Bid Bulletin for purposes of clarifying, correcting (e.g. clerical/typographical errors), or modifying a provision in the Bid Documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Supplemental/Bid Bulletins which modify the Bid Documents shall be subject to the approval of the Approving Authority. Prospective 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

Requests for clarification on any part of the Bid Documents or for an interpretation must be made 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. Such Supplemental/Bid Bulletin shall be made available to all those who have properly secured Bid 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 Bid Documents to inquire about and secure Supplemental/Bid Bulletins that may be issued by the BAC.

All Supplemental/Bid Bulletins issued by the BAC shall also be posted in the website of the Authority and at any conspicuous place within its premises.

#### **ARTICLE IV** **ELIGIBILITY**

##### **Section 17. Eligibility Requirements**

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

- a) Duly licensed Filipino citizens/sole proprietorships,
- b) 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,
- c) 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,
- d) 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 joint venture agreement, and/or,
- e) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to the citizens of the Philippines.

It is understood that the prospective bidder must be duly accredited service provider pursuant to PPA Administrative Order No. 10 - 2018.

A prospective bidder must not be engaged in any business activity, whether primarily or otherwise, which will prevent it from properly and sufficiently discharging its contractual obligations under any port terminal management contract to be awarded pursuant to these guidelines. This prohibition shall cover entities engaged in maritime transportation.

Any prospective bidder or observer who is in a conflict of interest situation as contemplated in **Article II, Section 5 (i)** of these guidelines shall likewise be prohibited and is deemed automatically disqualified from participation in any activity covered by these guidelines

All prospective bidders must have no Outstanding Dispute against the Authority or its Board, officials, and/or employees arising or in connection with the official performance of their functions, whether criminal, civil or administrative, before any court, tribunal, or administrative body

All prospective bidders, its key personnel, and its nominated entity for the development requirement, if any, must meet the minimum experience requirement as provided under the Bid Documents

All prospective bidders must have no record of

- a) Cancelled or pre-terminated contract with the Authority due to the fault of the prospective bidder,
- b) Abuse of its dominant position as found by competent authority,
- c) Abandoned contract without justifiable cause,
- d) Refused acceptance of award, or to enter into a contract with the Authority without justifiable cause, and,
- e) Outstanding financial obligations to the Authority or other government agencies

For purposes of determining the eligibility of bidders using the criteria stated in Section 17 of these guidelines, the following documents shall be required by the BAC, using the forms prescribed in the Bid Documents

A Legal Eligibility

- i Letter of Intent and Application for Eligibility and to Bid,
- ii Business Profile of the Prospective Bidder,
- iii Valid Certificate of Accreditation issued by PPA,
- iv In the case of a joint venture, each partner shall submit the Legal and Financial Eligibility forms required under this Section. For purposes of determining compliance with the Technical and Financial Eligibility requirements, the satisfaction by a joint venture partner or by the joint venture partners, whether singly or collectively, of the said requirements shall be considered as sufficient,

- v Audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "Received" by the Bureau of Internal Revenue 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, the balance sheet and income statement, stamped "Received" by the BIR or its duly accredited and authorized institutions for the most recent quarter, shall be acceptable,
- vi Income Tax Return for the immediately preceding year duly filed and stamped "Received" by the Bureau of Internal Revenue, or proof of electronic filing of the same. For new establishments which have no annual Income Tax Return, the most recent quarterly Income Tax Return duly filed and stamped "Received" by the Bureau of Internal Revenue or proof of electronic filing thereof shall be acceptable,
- vii Value Added Tax or Percentage Tax Return covering the immediately preceding six (6) months duly filed and stamped "Received" by the Bureau of Internal Revenue, 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 Bureau of Internal Revenue or proof of electronic filing thereof shall be acceptable,
- viii For Tiers 1, 2, 3, and 4, the prescribed Philippine Contractors Accreditation Board License of the prospective bidder or any of its partners, in case of joint venture, or the nominated entity who will undertake the development commitment under the Port Development Plan,
- ix Omnibus Sworn Statement in the prescribed form

**B Technical Eligibility**

- i Statement of the prospective bidder of its completed, ongoing, and awarded but not yet started port terminal management/cargo handling contracts within the last five (5) years,
- ii Statement of prospective bidders' participation in all ongoing selection and award of port terminal management contracts but which have not yet been awarded, and,
- iii For Tiers 1, 2, 3, and 4, statement of prospective bidder's completed, ongoing, and awarded but not yet started infrastructure contracts. A prospective bidder must have experience of having a completed contract that is similar to the development commitment under the port development plan.



A prospective bidder shall be allowed to nominate one (1) entity to undertake the development commitment. The entity nominated shall not be nominated by the other prospective bidders for the same Port Terminal Management Contract subject of the bidding.

The nominated entity must have experience of having completed a contract that is similar to the development commitment under the port development plan.

C Financial Capability

i Prospective bidder's computation of its financial capability

To ensure that the winning bidder is determined to be financially capable of entering into a contract, the following rules shall govern:

- 1) For ports classified under Tiers 1, 2, and 3, the prospective bidder's Net Financial Contracting Capacity (NFCC) must be at least equivalent to (a) the minimum concession fee for the entire duration of the contract and (b) the proposed project development costs.
- 2) For ports classified under Tiers 4 and 5, the prospective bidder's NFCC must be at least equivalent to (a) the minimum concession fee for the entire duration of the contract and (b) the minimum working capital required.

The NFCC is computed using the following formula:

$$\text{NFCC} = 20 (\text{Current Assets} - \text{Current Liabilities}) - V$$

V is the value of all outstanding or uncompleted portions of ongoing contracts (VUP), including awarded contracts but not yet started (ACNS), and all bids submitted for port terminal management contract/s (BS), coinciding with the contract to be bid. V shall be computed as follows:

$$V = \text{VUP} + \text{ACNS} + \text{BS}$$

VUP shall be computed as follows:

$$\text{VUP} = \frac{\text{Contract Period} - \text{Period Elapsed}}{\text{Contract Period}} \times \text{AR or Concession Fee}$$

AR refers to the amount remitted by the prospective bidder to the Authority in the immediately preceding year for its existing

contract For the avoidance of doubt, the AR multiplier shall only apply to those ports which have no existing port terminal management contract

The values of the bidder's current assets and current liabilities shall be based on the data submitted to the Bureau of Internal Revenue, through Electronic Filing and Payment System

However, in cases where the prospective bidder's NFCC as computed does not meet the above financial capability requirements, the prospective bidder may submit a Committed Line of Credit from a universal or commercial bank equivalent to seventy percent (70%) of the required financial capability, provided that, the NFCC must be at least thirty percent (30%) of the total financial capability requirements

The determination of eligibility of prospective bidders shall be determined using non-discretionary "PASS/FAIL" criteria as stated in the Instructions to Bidders

Eligibility Documents that are complete, patently sufficient, and complying shall be declared as "PASSED" Otherwise, the BAC shall rate the said Eligibility Documents as "FAILED"

Notwithstanding the eligibility of a bidder, the Authority reserves the right to review the qualifications of a bidder at any stage of the procurement process, including the right to consider a bidder as ineligible or to disqualify a bidder from obtaining an award or contract, in the event that the Authority has reasonable grounds to believe that a misrepresentation has been made by the bidder or that there has been a material change in the bidder's capacity to undertake the project from the time it submitted its eligibility requirements

## **ARTICLE V** **BID**

### **Section 18 Submission, Receipt, and Opening of Technical and Financial Bids**

Prospective bidders shall submit their bids on or before the deadline specified in the Invitation to Bid through their duly authorized representative using the forms prescribed in the Bid Documents The bids shall be in two (2) separate sealed envelopes and shall be submitted simultaneously The first envelope shall contain the eligibility and technical component of the bid The second envelope shall contain the financial bid

The first envelop shall contain the following information/documents

- a) Eligibility Documents as enumerated in Section 17 of these guidelines,
- b) Technical Bid Submission Form,

- c) Bid security as to form, amount, and validity period,
- d) Proposed Organizational Chart for the Port Terminal Management Contract to be bid,
- e) Names of key personnel with their complete qualification and experience data, such as but not limited to the General Manager, Operations Manager, Safety Officer, and Supervisor, all of which must have the required experience as specified in the Bid Documents. In no case shall any officer hold more than one (1) position,
- f) The Port Development Plan, which shall contain project specification standards not lower than that prescribed by the Authority. The minimum project specification standards prescribed by the Authority refer to the following (i) Infrastructure Investment and Maintenance Program and (ii) the Port Productivity Commitments. It shall likewise contain the following
  - i Traffic Projection and Analysis,
  - ii Capital Structure Commitment,
  - iii Equipment Procurement and Maintenance Program,
  - iv Safety and Security Program,
  - v Marketing Strategy,
  - vi Manual of Systems and Procedures, and,
  - vii Manpower Development Program, and,
- g) Bidder's intended working capital for port terminal operations, which shall not be lower than that prescribed by the Authority.

The second envelop shall contain the following information/documents

- a) Financial Bid Submission Form, and
- b) Proposed Concession Fee for the Terminal Management Operations at the port subject of the bidding process

The Financial Bid shall contain the proposed concession fee, exclusive of all taxes, for the terminal management of the port subject of bidding for the entire duration of the contract, the amount of which shall not be lower than the floor or minimum prescribed by the Authority

The BAC shall receive and open the bids at the time, date, and place specified by the Authority. The eligible bidders or their duly authorized representatives may attend the opening of bids. All BAC members or their duly designated alternates 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.

In case the bids cannot be opened as scheduled due to justifiable reasons, the Secretariat shall take custody of the bids submitted and reschedule the opening of the bids on the next working day or at the soonest possible time through the issuance of a notice of postponement to be posted on the website of the Authority.

Bids submitted after the deadline shall not be accepted by the BAC. The BAC shall place in the minutes of bid submission and opening the bidder's name, its representative, and time of submission, including late bids submitted.

The BAC shall ensure the integrity, security, and confidentiality of all bids submitted. The Abstract of Bids as read and the Minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover the cost of materials. 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 of the proceedings of the bidding. The Abstract of Bids shall contain the following:

- a) Name of the port subject of bidding and its location,
- b) Time, date, and place of bid opening,
- c) Names of eligible bidders and their corresponding financial bid arranged from highest to lowest concession fee, and,
- d) The amount of bid security and the name of the issuing entity.

#### **Section 19 Modification and Withdrawal of Eligibility and/or Bid Documents**

A prospective bidder or eligible bidder may modify its Bid Documents submitted provided this is done before the deadline for the submission and receipt of the same.

Where a prospective bidder modifies its Bid Documents, it shall not be allowed to retrieve its original submission but shall only be allowed to send another Bid Document equally sealed, identified, and linked to its original submission and marked as "Modification" thereof. The new Bid Document shall be stamped "Received" by the BAC. Modifications received after the applicable deadline shall not be considered and shall be returned to the prospective bidder or bidder unopened.

A prospective bidder may withdraw its participation through a letter of withdrawal.

Withdrawal of Bid Documents after the applicable deadline shall be subject to appropriate sanctions as may be imposed by the Authority. A prospective bidder that

withdraws its Bid Documents shall not be permitted to participate in the same bidding whether directly or indirectly

**Section 20 Bid Security**

All bids shall be accompanied by a bid security payable to the Authority. The bid security shall serve as a guarantee that the successful bidder shall enter into a Port Terminal Management Contract with the Authority within thirty (30) calendar days from receipt of the Notice of Award.

The bid security shall be in an amount at least equal to, and not lower than, the minimum concession fee and, in the case of Tiers 1,2,3, and 4 ports, the port project development costs 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. The proper confirmation and/or authentication by the issuing Universal or Commercial Bank shall be necessary where the issuer is a foreign bank, or,
- c) Surety bond, callable upon demand, issued by the Government Service Insurance System or other reputable surety or insurance company duly licensed/certified by the Insurance Commission as authorized to issue such security.

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

<b>FORM OF BID SECURITY</b>	<b>AMOUNT OF BID SECURITY</b> Not less than the required minimum concession fee and port development cost for Tiers 1, 2, 3, and 4 ports
Cash, cashier's check or manager's check	Two percent (2%)
Bank draft/guarantee or irrevocable letter of credit	
Surety Bond	Five percent (5%)

The required bid security based on the above schedule shall be the minimum amount thereof, shall be denominated in Philippine Peso, and shall be posted in favor of the Authority.

No bid security shall be returned to the bidder after the opening of bids and the posting of the performance security, but in no case later than the expiration of the bid validity period, unless the same has been extended in accordance with Section 19 of this Guidelines, except to those that (i) failed to comply with any of the requirements to be submitted in the Bid Documents, 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

## **Section 21 Bid Validity**

Bids and bid securities shall be valid for a period of one hundred twenty (120) calendar days from the date of the opening of the Bid Documents and such validity period shall be indicated therein

Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days from the date of opening of bids, the BAC concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor

## **Section 22 Evaluation of Bid Documents**

### **A Preliminary Examination**

- i) The BAC shall open the Eligibility and Technical Bid (first envelope) of the prospective bidders in public to determine each bidder's compliance with the documents required to be submitted. For this purpose, the BAC shall check the submitted documents of each eligible bidder against a checklist of required documents to ascertain if they are all present using non-discretionary "PASS/FAIL" criteria, as stated in the Instructions to Bidders
- ii) If a prospective bidder submits the required document, it shall be rated "PASSED" for that particular requirement. In this regard, Technical Bids that fail to include any requirement or are incomplete or patently insufficient shall be considered "FAILED" for the particular requirement and immediately returned to the eligible bidder concerned with the Financial Bid unopened. Otherwise, the BAC shall rate the said Technical Bid as "PASSED"
- iii) Immediately after determining completeness with the requirements in the Eligibility and Technical Bid (first envelope), 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 is missing, is incomplete, or is patently insufficient, the BAC shall rate the bid concerned as "FAILED"

- iv) The Financial Bid shall be considered as non-complying and shall be rejected if the same provides for an amount that is lower than prescribed minimum concession fee by the Authority
- v) Only bids that are determined to contain all the bid requirements for Eligibility, Technical and Financial bids shall be rated "PASSED" and shall immediately be considered for evaluation and comparison

#### **B Detailed Evaluation**

- i) Members of the BAC, including the BAC Secretariat and technical working group, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. The BAC, however and through its Secretariat, may ask in writing any bidder for a clarification of its bid/s. All responses to requests for clarification shall be in writing and shall be addressed directly to the BAC through the BAC Chairperson
- ii) The BAC shall undertake the evaluation of the Technical and Financial bids to determine compliance with the requirements of these guidelines. If these bids do not meet any of the requirements, these bids shall be considered non-complying and shall be disqualified
- iii) After all bids have been received, opened, examined, evaluated, and ranked, the BAC, through the technical working group, shall prepare the corresponding Bid Evaluation Report

The bidder with the Highest Concession Fee shall be subject to post-qualification to confirm and verify its responsiveness to the bid requirements

#### **Section 23. Post-Qualification**

Within ten (10) days from receipt by the bidder of the notice from the BAC that it has the Highest Concession Fee, the BAC, through the technical working group, shall conduct and accomplish a post-qualification of the bidder with the Highest Concession Fee to determine whether or not the bidder concerned complies with all the requirements, terms, and conditions for eligibility and the bidding. Upon full and faithful compliance with all the requirements, terms, and conditions as specified in the Bid Documents, the eligible bidder's bid shall be considered and declared as the Highest Responsive Bid

The post-qualification shall verify, validate, and ascertain all statements made and all documents submitted by the eligible bidder with the Highest Concession Fee. It shall consider, but shall not be limited to, the following

- a) Eligibility Requirements - To verify, validate, and ascertain the eligibility documents submitted by the bidder and the fact that the bidder has not

been blacklisted by the Authority and other government agencies or instrumentalities, and

- b) Technical Bid - To verify, validate, and ascertain compliance with the technical bid requirements

If the BAC determines that the eligible bidder with the Highest Concession Fee passes all the criteria for post-qualification, it shall declare the said eligible bidder as the Highest Responsive Bidder and the Port Terminal Management Contract shall be awarded to the said eligible bidder

If, however, the BAC determines that the eligible bidder with the Highest Concession Fee fails the criteria for post-qualification, it shall immediately notify the said eligible bidder in writing of its post-disqualification, and the grounds therefor

Immediately after the BAC has notified the first-ranked eligible bidder of its post-disqualification and notwithstanding any pending request for reconsideration, the BAC shall initiate and complete the post-qualification process on the second-ranked eligible bidder. If the second-ranked eligible bidder passes the post-qualification and provided that the request for reconsideration of the first-ranked eligible bidder has been denied, the second-ranked eligible bidder shall be post-qualified as the eligible bidder with the Highest Responsive Bid and the Port Terminal Management Contract shall be awarded to it

If the second-ranked eligible bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated relative to the next-ranked eligible bidder and so on until the Highest Responsive Bidder is determined for award

In the event that two or more eligible bidders have been post-qualified as having the same amount of Highest Responsive Bid, the tie shall be resolved through the drawing of lots or through some other form of lottery or game of chance as may be determined solely by the BAC

#### **Section 24. Failure of Bidding**

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

- a) No eligibility and/or bid proposals are received,
- b) All prospective bidders are declared ineligible,
- c) All bids fail to comply with the Eligibility, Technical and Financial bid requirements or failed post-qualification, or,
- d) Subject to Section 28, the winning bidder refuses, without justifiable cause, to accept the award of the contract,



To determine the reason for the failure and/or for purposes of re-bidding, the BAC shall conduct a mandatory review and evaluation of the terms and conditions in the Bid Documents

Based on its findings, the BAC shall revise the terms, conditions, and specifications and conduct a re-bidding with re-advertisement and/or posting, as provided for in these guidelines

All eligible bidders who have initially been declared eligible in the failed bidding shall be allowed to submit new bids. The BAC shall observe the same process and set the new bidding timetable in accordance with the same rules followed during the previous bidding(s)

Should there occur a second failure of bidding, the Authority may resort to negotiation, as provided in Section 25 of these guidelines

### **Section 25 Negotiation**

For purposes of these guidelines, *Negotiation* is a method of selection and award of Port Terminal Management Contract whereby the Authority directly negotiates a contract with a technically, legally, and financially capable private entity where there has been failure of competitive bidding for the second time as provided for in Section 24 of these guidelines

After conduct of the mandatory review of the terms, conditions, and specifications as prescribed in Section 22 of these guidelines, the BAC, based on its findings and assisted by its Secretariat, the technical working group, and the end-user unit, may recommend a revision of the eligibility requirements and Bid Documents, including adjustment of the floor of the concession fee. This recommendation, as a prerequisite to implementation, shall always be subject to the prior approval of the General Manager

The BAC shall invite at least three (3) private entities, including those disqualified eligible bidders in previous biddings for the project, for negotiations to ensure effective competition. This notwithstanding, those who responded through any of the required postings shall be allowed to participate. Even if only one (1) interested party should respond to such invitation or posting, the BAC shall proceed with the negotiation subject to the rules prescribed hereunder

- a) Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the BAC to an interested party shall likewise be communicated on equal basis to all interested parties engaging in negotiations with the BAC relative to the selection and award. The interested parties shall be given equal time and opportunity to negotiate and discuss the technical and financial requirements of the project to be able to submit a responsive proposal

- b) Following completion of the negotiations, the BAC shall request all interested parties in the proceedings to submit, on a specified date, their best offer based on the final technical and financial requirements
- c) The BAC shall recommend an award of contract to the Approving Authority in favor of the interested party determined to have the Highest Responsive Bid or Single Responsive Bid Award of contract shall be made in accordance with Section 26 of these guidelines

#### **Section 26. Single Responsive Bid Submission**

A single responsive bid shall be considered for award if the process falls under any of the following circumstances

- a) If after advertisement, only one (1) prospective bidder applies for eligibility check in accordance with the provisions of these guidelines and meets the eligibility requirements and criteria, and thereafter submits its Bid Documents, which is found to be responsive to the bidding requirements,
- b) If after advertisement, more than one (1) prospective bidder applies for eligibility check in accordance with the provisions of these guidelines, but only one (1) bidder meets the eligibility requirements and criteria, and it thereafter submits its Bid Documents, which is found to be responsive to the bidding requirements, or
- c) If after the eligibility check, more than one (1) prospective bidder meets the eligibility requirements and criteria, but only one (1) eligible bidder submits its Bid Documents, and its bid is found to be responsive to the bidding requirements

### **ARTICLE VI AWARD**

#### **Section 27. Notice of Award and Execution of Contract**

##### **A Contract Award**

- i) The BAC shall recommend to the Approving Authority the award of contract to the eligible bidder with the Highest Responsive Bid or Single Responsive Bid after the post-qualification process has been completed
- ii) To facilitate the approval of the award, the PBAC shall submit the following supporting documents to the Approving Authority
  - a) Resolution of the PBAC recommending award,
  - b) Abstract of Bids,

- c) Bid Evaluation Report and Post-Qualification Report,
  - d) Notice of Award,
  - e) Contract Template,
  - f) Eligibility, Technical, and Financial Bid Documents,
  - g) Other pertinent documents required by existing laws, rules, and/or the Authority
- iii) Within three (3) calendar days from the issuance of the resolution recommending award of the contract, the BAC shall notify all other eligible bidders, in writing, of its recommendation
  - iv) Within a period not exceeding thirty (30) days from the receipt of the Approving Authority of the recommendation to award the contract, the Approving Authority shall approve or disapprove the said recommendation
  - v) In case of approval, the Approving Authority shall immediately issue the Notice of Award to the winning bidder
  - vi) In the event of disapproval, which shall be based only on valid, reasonable, and justifiable grounds as provided for under these guidelines, the Approving Authority shall notify the BAC and the eligible bidder, in writing, of such decision and the grounds for it
  - vii) When applicable, the BAC shall conduct a post-qualification of the bidder with the next Highest Concession Fee
  - viii) A Motion for Reconsideration may be filed by the bidder with the Approving Authority within three (3) days from receipt of the notice of disapproval. The Approving Authority shall resolve with finality the Motion for Reconsideration within fifteen (15) days from the date of receipt thereof and furnish the eligible bidder a copy of the resolution immediately upon its promulgation. In no case shall the Motion for Reconsideration stay or delay the bidding process. However, the Motion for Reconsideration must first be resolved before any award is made. If no decision or resolution is made within the prescribed period, the Motion for Reconsideration shall be deemed denied.
  - ix) Notwithstanding the issuance of the Notice of Award, any award of contract shall be subject to the signing of the contract within thirty (30) days from the date of receipt of Notice of Award
  - x) Contract award shall be made within the bid validity period provided in these guidelines

- xi) The BAC, through the Secretariat, shall post, within three (3) days from its issuance, the Notice of Award in the website of the Authority, and any conspicuous place in the premises of the Authority

#### **B Contract Signing**

- i) The BAC, through the Secretariat, shall send the Notice of Award and four (4) copies of the Port Terminal Management Contract to the Winning Bidder for its conforme and signature, respectively
- ii) The Winning Bidder shall return the Notice of Award with its conforme, together with the four (4) original signed copies of the Port Terminal Management Contract within ten (10) days from its receipt
- iii) The Approving Authority shall then sign the Port Terminal Management Contract within fifteen (15) days from receipt
- iv) The following documents shall form part of the contract
  - a) Port Terminal Management Contract,
  - b) Relevant documents issued by the Authority,
  - c) Winning bidder's Eligibility and Bid Documents, and all other documents/statements submitted,
  - d) Performance Security,
  - e) Notice of Award of Contract, and,
  - f) Other contract documents that may be required by existing laws and/or the Authority in the Bid Documents

#### **C Performance Security**

- i) 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 the signing 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, or
  - 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, or

- c) Surety bond, callable upon demand, issued by the GSIS or other reputable surety or insurance company duly licensed/certified by the Insurance Commission as authorized to issue such security
- ii) The required amount of the above forms of security shall be in accordance with the following schedule

FORM OF PERFORMANCE SECURITY	AMOUNT OF PERFORMANCE SECURITY	
	TIERS 1, 2, 3 and 4 (Not less than the concession fee equivalent to five (5) years + development costs for the current year)	TIERS 5 (Not less than the concession fee equivalent to three [3] years)
Cash, cashier's check or manager's check	Five percent (5%)	Five percent (5%)
Bank draft/guarantee or irrevocable letter of credit	Ten percent (10%)	Ten percent (10%)
Surety Bond	Thirty percent (30%)	Thirty percent (30%)

The performance security shall be denominated in Philippine Peso and posted in favor of the Authority, which shall be forfeited by 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

**Section 28. Refusal of Award, Failure to enter into Contract, or Submit a Performance Security**

If the eligible or winning bidder refuses to accept the award, fails or refuses to enter into contract, and/or submit the required performance security within the period stipulated, the bid security shall be forfeited except where such failure or refusal is through no fault of the eligible bidder, and the appropriate sanctions, including cancellation of the contract, shall be imposed. In such a case, the BAC shall proceed to evaluate and post-qualify the eligible bidder with the next Highest Concession Fee. The eligible bidder with the next Highest Concession Fee must match the financial bid of the eligible or winning bidder who refused to accept award, enter into contract, or failed to submit the performance security within the prescribed period. Otherwise, the BAC shall declare a failure of bidding.

**Section 29. Period of Action on Selection and Award**

The selection and award process from opening of Bid Documents up to the award of the contract shall not exceed four (4) months. All members of the BAC shall be on a "jury duty" until the Notice of Award is issued by the Approving Authority to complete the entire selection and award process at the earliest possible time.

For purposes of this Section, the term "jury duty" shall be understood to mean a state by which members give utmost priority to BAC assignment over all the other duties and responsibilities until the requirements for the said assignments at hand are completed

### **Section 30. Contract Implementation, Administration, and Monitoring**

The proper implementation, administration and monitoring of the Port Terminal Management Contract shall be governed by the Contract Management Guidelines duly approved by the Authority

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

### **Section 31 Reservation Clause**

The Approving 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 award of the port terminal management contract will not redound to the benefit of the Authority

### **Section 32. Protest Mechanism**

Decisions of the BAC at any stage of the selection and award process may be questioned by filing a motion for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification

The BAC shall decide on the motion for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted

If a failed bidder signifies his intent to file a motion for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved

If the motion for reconsideration is denied, decisions of the BAC may be protested in writing to the Approving Authority

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 shall be made by filing a verified Position Paper with the Approving Authority concerned, 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 concession fee, or Five Hundred Thousand Pesos (PhP500,000.00), whichever is higher.

The verified Position Paper shall contain the following information:

- a) Name of bidder,
- b) Office address of the bidder,
- c) Name of the port subject of bidding,
- d) The Port Management Office or PPA Head Office, as the case may be,
- e) A brief statement of facts,
- f) Issue(s) to be resolved, and,
- g) 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.

In addition, the bidder shall likewise certify under oath that:

- a) The bidder has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein,
- b) If there is such other pending action or claim, the bidder is including a complete statement of the present status thereof, and,
- c) If the bidder should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the Approving Authority wherein bidder protest is filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the verified position paper.

The protests shall be resolved primarily on the basis of the records of the BAC. The Approving Authority shall resolve the protest within thirty (30) calendar days from receipt thereof.

In no case shall any protest taken from any decision under these guidelines stay or delay the bidding process. All pending protests must, however, first be resolved before any award is made.

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

### **Section 33. Legal Assistance and Indemnification of BAC Members**

All the members of the BAC are hereby authorized to engage the services of private lawyers or external counsel immediately upon receipt of court notice that a civil or criminal action, suit, or proceeding is filed against them in connection with the lawful performance of their official functions and duties as BAC members. The lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of these guidelines. For purposes of this Rule, the BAC members shall be understood to include its support staff, such as the members of the technical working group and the BAC Secretariat.

The Authority shall establish an equitable indemnification package for public officials providing services in and for the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all reasonable fees, costs, and expenses incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding to which they may be, or have been made, a party, by reason of the lawful performance of their official functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.

In the event of a settlement or compromise, indemnification shall be confined only to *matters covered by the settlement on which the Authority had been advised by counsel* and that the public officials to be indemnified have not committed gross negligence or misconduct or grave abuse of discretion in the performance of their functions and duties.

The members of the BAC and its support staff, such as the members of the technical working group and the BAC Secretariat, shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

## **ARTICLE VIII FINAL PROVISIONS**

### **Section 34. Amendment**

These guidelines may be amended, modified, or revised subject to the approval of the General Manager.



### **Section 35. Interpretation**

Any ambiguity or doubt in the interpretation of any provision shall be liberally construed in a manner that would uphold the objectives of this Guidelines. The applicable and relevant provisions of Republic Act No. 6957, as amended, otherwise known as "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes" and its implementing rules and regulations, as well as, the Republic Act No. 9184, otherwise known as "The Government Procurement Reform Act" and its implementing rules and regulations shall apply suppletorily to the extent necessary.

### **Section 36. Separability Clause**

If any provision or part hereof is held invalid or unconstitutional, the remainder of these guidelines or the provision not otherwise affected shall remain valid and subsisting.

### **Section 37. Repealing Clause**

All other prior policies, rules and regulations issued by the Authority, or parts thereof, to the extent that the same are in conflict or inconsistent herewith, are deemed amended, modified, or repealed accordingly.

### **Section 38. Transitory Clause**

Notwithstanding the periods provided under Section 6, there shall be a phase by phase implementation of the selection and award process within the first twelve (12) months from the effective date of these guidelines, in accordance with a schedule to be approved by the General Manager, identifying specific ports for the purpose.

### **Section 39. Effective Date**

These guidelines shall take effect fifteen (15) days after its publication in one (1) newspaper of general nationwide circulation and a copy filed with the University of the Philippines Law Center.

  
**JAY DANIEL R. SANTIAGO**  
General Manager

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