



APR 25 2016

PPA ADMINISTRATIVE ORDER

NO. 03 - 2016

TO : All Port Managers
Cargo Handling Operators
Private Port Owners/Operators
Others Concerned

SUBJECT : PORT TERMINAL MANAGEMENT REGULATORY FRAMEWORK

Pursuant to the provisions of Section 6 (a) of Presidential Decree No. 857, as amended, and Board Resolution No. 2530, the following guidelines for award of Port Terminal Management contracts are hereby prescribed.

I. Policy Statement

1. The greater participation of the private sector in the management and operations of ports is encouraged.
2. The privatization of the management and operations of all ports under the jurisdiction of the Philippine Ports Authority (PPA) shall be awarded through transparent and competitive public bidding.

II. Objectives

1. To ensure the provision of efficient port management and other related port services through better coordination and realization of economies of scope in all ports to the satisfaction of port users in particular and the public in general;
2. To encourage private sector participation in port operations in order to provide higher quality services;
3. To promote consistency in the determination of contract requirements and contracting procedures in the award of port management contracts through competitive bidding;
4. To reduce compliance, transport and transaction costs for agricultural and other products and related inputs that can result in a more efficient and competitive trade and transport environment;

VISION

By 2030, PPA shall have provided globally competitive port service in the Philippines characterized by increased productivity, efficiency, connectivity, comfort, safety, security and environmental sustainability.

MISSION

1. *Provide reliable and responsive services in ports, sustain development of community and the environment, and be a model corporate agency of the government.*
2. *Establish mutually beneficial, equitable and fair relationship with partners and service providers.*
3. *Provide meaningful and gainful employment while creating a nurturing environment that promotes continuous learning and improvement.*
4. *Establish a world class port operation that is globally competitive adding values to the country's image and reputation.*

5. To provide greater opportunity to build stronger and more sophisticated private sector port operators and/or contractors;
6. To allow costs, including a reasonable return on port investments, to be recovered through port tariffs, while taking into consideration the affordability of port services for all port users; and
7. To improve the environmental and social impact of port operations

III. Coverage

This Administrative Order covers all government ports within PPA's jurisdiction except those with existing port management contracts at the time of the effectivity hereof.

IV. Definition of Terms

- a) Above ground fixtures – immovable properties as defined under the Civil Code, which are located at the port, which include but are not limited to passenger terminal building, pavement, and fence.
- b) Above ground semi-fixtures – movable properties as defined under the Civil Code, which are located at the port, which includes but are not limited to quay cranes and gantry cranes.
- c) Asset register – a register which contains the list of the assets owned by PPA, the Port Zone Delineation, land titles, existing contracts and other details that are material to the operations of the port.
- d) Average gross service time at berth– the time spent by the vessel at berth, including working time and idle time. It is the difference between the time the vessel arrived at and departed from berth or anchorage.
- e) Average working time at berth – the time spent by the vessel at berth while loading and unloading, excluding idle time.
- f) Bagging service – the loading of bulk cargo from the vessel to the hopper or storage container to empty sacks/bags and weighing and sewing of sacks.
- g) Berthside operations - mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any port in the Philippines; or mooring or making fast to a vessel so berthed; or berthing or mooring within any slip, channel, basin river or canal under the jurisdiction of any port of the Philippines.
- h) Business plan – is a business and investment strategy employed by the Contractor to effectively provide, manage, operate and market the services aimed to ensure efficient turnaround of vessels, attain service satisfaction of concerned users and entice port clientele to patronize the port.
- i) Cargo handling – services involving handling of cargo including but not limited to stevedoring, container handling, and other related services.

- j) Competitive bidding – refers to a method of procurement which is transparent and open to participation by any interested party.
- k) Concession agreement– an agreement between the PPA and a Port Terminal Management Operator (hereinafter “Contractor”) with a tenure of at least 25 years to develop, construct, operate, and maintain the port. It spells out the conditions and duration of the agreement and the method of computing concession fees.
- l) Container – a metal unit for carrying cargoes that is durable, reusable, facilitates transference from mode to mode, and of minimum scale.
- m) Container terminal management – services involving management of a container terminal and handling of containers discharged or loaded unto vessels.
- n) Dredging:
 - a. Capital dredging – is an infrequent process usually a one-time expenditure, intended to effect a permanent improvement in the sea-bed assets of the port, which involves the removal of large amounts of virgin material from the sea bed to create, deepen, or otherwise improve a shipping channel
 - a. Maintenance dredging - an ongoing process which involves the periodic removal of silt and sediment that have been deposited in the shipping channel, turning basins and berth pockets restoring the designed depth
- o) Equipment – shall mean any machinery, gear or equipment used by the ship operator or a duly authorized and licensed port operator to service or handle cargo, on board the vessel at the port or in the terminal or container yard such as, but not limited to cranes, forklifts, top lifts, stackers, tractor heads, containers, pallet boards and the like, including all spare parts, replacement parts, appurtenances accessories, articles, supplies and materials thereof.
- p) Management contract – agreement between the PPA and a Contractor hired to improve, maintain or operate the port. It spells out the conditions and duration of the agreement and the method of computing management fees.
- q) Other related services – services within the port area, which cannot be categorized as stevedoring services but are considered incidental to or complementary thereto.
- r) Port user satisfaction survey – a tool to measure how products and services supplied by a company meet, exceed or fall short of customer expectation.
- s) Passenger terminal management – services involving management of a passenger terminal.
- t) Physical landside infrastructure –infrastructure located at the port, including but not limited to wharf, piers, land reclamation.
- u) Physical undersea infrastructure –infrastructure located on the seabed, including but not limited to dredging, such as piles.
- v) Pier – any structure built into the sea but not parallel to the coast line and includes any stage, stair, landing place, landing stage, jetty, floating barge or pontoon, and any bridge or other works connected therewith.

- w) Pilotage services –the act of conducting a vessel from/to Pilot’s Boarding Station, to/from anchorage or berth, at any public or private wharf or pier.
- x) Port – a place where ships may anchor or tie up for the purpose of shelter, repair, loading or discharge of cargo, or for other such activities connected with water-borne commerce and including all the land and water areas and the structures, equipment, and facilities related to these functions.
- y) Port terminal management – services involving the management and operations of a terminal and all the facilities and structures existing thereon, including the handling of cargo.
- z) Port Terminal Management Operator or Contractor – any individual, partnership, or corporation authorized by the PPA to operate ports.
- aa) Port users – the bodies, organizations, or persons which use the port and its facilities
- bb) Port Zone Delineation – a process wherein the President declares specific areas as Port Districts upon the recommendation of PPA, indicating the geographical location of the area or areas to be declared as the Port District with their respective boundaries properly delineated.
- cc) Porterage service – the carriage by manual handling and/or with the use of wheeled equipment like pushcarts, of passengers’ pieces of baggage, luggage, and personal belongings to/from the passengers’ point of embarkation or disembarkation to/from the entrance or exit gates of the port premises.
- dd) Productivity measures – measures designed to allow the monitoring of the productivity of various aspects of port operation.
- ee) Security services – services provided to ensure the safety and security at the port, which may include but not be limited to hiring security guards.
- ff) Ship or Vessel – may be used interchangeably and shall mean any kind, class or type of craft or artificial contrivance capable of floating in water, designed to be used, or capable of being used as a means of water transport for the carriage of passengers or cargo, or both, utilizing its own motive power or that of another.
- gg) Stevedoring –all work performed on board a vessel (ship side) and on the dock (dock side).
- hh) Storage –the storing of containers, bulk and break bulk cargoes in all storage areas at the port.
- ii) Terminal Facility – includes the port and its facilities of wharves, piers, slips, docks, dry docks, bulkheads, basins, warehouses, cold storage, and loading or unloading equipment.
- jj) Tugboat services –a service wherein one vessel (a tugboat) is hired to bring another vessel to a specified place.
- kk) Vessel Traffic Management System (VTMS) – a marine traffic monitoring system established by PPA to keep track of vessel movements and provide navigational safety in a limited geographical area.
- ll) Vessel Traffic Management System (VTMS) Fees – fees paid for the use of VTMS.

- mm) Water distribution service - supplying the water needs of vessels, stallholders, and offices within the port premises.
- nn) Wharf – a continuous structure built parallel to or along the margin of the sea or alongside riverbanks, canals, or waterways where vessels may lie alongside to receive or discharge cargo, embark or disembark passengers, or lie at rest.
- oo) Yard – also called container yard or marshalling yard; a port facility at which containers and other cargo are accepted for temporary stacking before loading onboard ships, or before withdrawn by the consignees.
- pp) Yard dwell time – the time that containers or cargo are stored in the yard.

V. General Guidelines

1. Given the particular nature of port operations at each specific port, PPA shall determine the different modalities of private public partnerships, such as full concessions, pure operations and management contracts, and other modes of partnership in the delivery of the port services and infrastructure.
2. The scope of investment responsibilities to be provided by PPA and the Contractor in developing the port facilities shall be specified prior to a transparent and competitive bidding process.
3. PPA shall make a determination of the incremental investments required for the port infrastructure to match market requirements versus the projected port revenues, including tariff adjustments or reasonable phasing of investments to make the project viable. If the project remains financially non-viable but economically desirable, PPA shall be responsible for capital investment to the extent that is necessary to ensure the commercial viability of the port.
4. PPA shall prepare an asset register that contains the assets owned by PPA, the Port Zone Delineation, land titles, existing contracts and other details that are material to the operations of the port prior to the conduct of the bidding.

VI. Specific Policy Guidelines

1. Investment Categories

- a. The classification of investments arrangements between PPA and the Contractor may be a combination of some or all services as guided by the following table:

Investment	Sample	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6
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	Capital Investments	Full Concession (Greenfield Port)				Pure O&M	PPA-STU Managed Port
Physical undersea infrastructure	Capital, maintenance dredging	Contractor	PPA	PPA	PPA	PPA	PPA
Physical landside infrastructure	Wharf, piers, land reclamation	Contractor	Contractor	PPA	PPA	PPA	PPA
Above ground semi-fixtures	Quay cranes, gantry cranes	Contractor	Contractor	Contractor	PPA	PPA	PPA
Above ground fixtures	Passenger terminal building, pavement, fence	Contractor	Contractor	Contractor	Contractor	PPA	PPA
Mobile handling equipment only	Forklifts, trucks	Contractor	Contractor	Contractor	Contractor	Contractor	PPA

- b. The maintenance of PPA-owned and built equipment and infrastructure shall be undertaken by the Contractor in accordance with to a pre-determined maintenance plan.
- c. The bundling of port terminal management at several ports may be included to ensure the commercial viability of the Contractor.
- d. The Contractor shall ensure that PPA design depth of the port and port channels are maintained.

2. Competitive bidding

- a. Prior to the conduct of the bidding, PPA shall conduct a Master Plan study for each specific port to determine:
 1. The requirements for cargo handling equipment, port facilities and services to achieve minimum performance and productivity targets
 2. The type of Agreement, such as a Concession Agreement if substantial port development and improvement are required, or a Management Contract if mainly port operations and management are involved, among others
 3. The length of the Agreement, which will be designed to allow for reasonable return of investment by the Contractor; and
 4. The optimal port tariffs that provide for cost recovery, while taking into consideration the affordability of port services for all port users.

- b. Upon the determination of the scope of investment responsibilities for the port, PPA shall conduct a transparent and competitive public bidding process, in accordance with Guidelines in the Conduct of Public Bidding to be issued for this purpose.

3. General conditions on all Agreements

- a. A Port Terminal Management Contract (“Agreement”) shall serve as the authority of the Contractor to provide services in the port. The Agreement shall contain the applicable terms and conditions in providing such services and for the faithful compliance by the Contractor for the duration of the Agreement.
- b. The Contractor shall manage and operate the port, provide cargo handling and related services to include, but not limited to, the following:
 - 1. Investments in port terminal infrastructure, as determined in the Agreement
 - 2. Container terminal management
 - 3. Passenger terminal management
 - 4. Stevedoring services
 - 5. Berthside operations
 - 6. Porterage services
 - 7. Bagging services
 - 8. RORO cargo services
 - 9. Parking
 - 10. Storage
 - 11. Water distribution service
 - 12. Security services
 - 13. Ancillary and other related services
- c. The core functions of the Contractor are investments in the port terminal infrastructure, container terminal management, passenger terminal management, cargo handling services, and berthside operations.
- d. Except for the core functions of the Contractor, such Contractor may, subject to approval of PPA, sub-contract or designate a qualified third party to provide any of the foregoing services. Any fees or charges, of any form or kind, to be imposed by such sub-contractor shall be subject to prior disclosure to PPA.

4. Tenure of Agreements

- a. The tenure of Contracts shall be based on investments committed by the Contractor per Tier classification. The duration shall depend on factors which include, among others, the following: (1) extent of port infrastructure investment, (2) type and

volume of vessels and cargo, (3) manner of cargo handling and (4) size, configuration and development of the port.

- b. The tenure of the Agreements will be for a minimum of five years.
- c. Six months prior to the expiration of the Agreement, the PPA must initiate the procurement of a new agreement. The new agreement shall be awarded prior to the expiration of the existing agreement.

5. Financial Obligations and Liabilities

- a. In consideration of the rights and privileges granted to the Contractor, the latter shall remit to PPA a periodic concession and/or management fee and a variable fee as specified in the Agreement. Such amount for the concession and/or management fee shall be increased periodically, subject to a pre-established formula to be determined by PPA.
- b. Should actual traffic volumes exceed certain pre-determined amounts in any given period during duration of the Agreement, the Contractor shall also remit a variable fee to PPA.
- c. Any obligation of the Contractor which is unpaid when due shall bear interest and a penalty charge in accordance with existing regulations.
- d. The consideration mentioned above is exclusive of the Value Added Tax (VAT). The VAT due thereon, including any subsequent increase thereof, shall be paid for by the Contractor.
- e. All expenses incurred by the Contractor under the terms and conditions of the Agreement, and all the liabilities to which it may be subjected, shall be for the account of and paid by the Contractor. This may include, but not be limited to investment and maintenance of port facilities.
- f. The Contractor binds itself to establish and maintain a deposit in a reputable bank the amount specified in the Agreement as working capital to sufficiently meet its day-to-day operational needs, including claims arising from its operations.
- g. The real property tax shall be for the account of the Contractor.

6. Operational obligations

- a. The Contractor shall provide PPA with reports pertaining to the port operations, finances, performance, productivity, engineering and maintenance plans, environmental and safety standards compliance, among others in electronic format on a periodic basis.
- b. The Contractor shall, within one (1) month from the execution of the Agreement, put up a performance security under the conditions and in the amount prescribed in the

Agreement. The performance security shall be obtained from any insurance company which is accredited by the Insurance Commission. The performance security, until so released in writing by PPA, shall remain in full force and effect and shall answer and guarantee the full and faithful compliance with each and every term, stipulation, and condition of the Agreement and other applicable rules and regulations of PPA. The amount of the performance security may be based on annual concession fee, annual revenue or working capital.

- c. The Contractor shall adopt environment-friendly measures and to consider the occupational health and safety of the workers. Additional payments may be required from the Contractor for failing to meet certain safety and environmental standards.
- d. The Contractor shall obtain certification of the standards set under ISO-9001 (Quality Assurance Standard), ISO-14001 (Environmental Management Standard), and OSHS 18001 (Occupational Safety and Health Standards) within five (5) years upon signing of the Agreement.
- e. Port Workers' Retirement and Separation Fund (PRSF) – The Contractor shall establish and maintain a PRSF strictly in accordance with the pertinent provisions of PPA Administrative Order No. 01-2006, as amended. The PRSF shall be used exclusively to finance and pay the benefits of port workers and employees of the Contractor who resign, retire, have been retrenched or whose services have been terminated due to change of contractor at the Port. At the end of the contract, the Contractor shall pay all claims for retirement and separation pay against the PRSF and dissolve the existing PRSF.
- f. The Contractor shall comply with the other terms and conditions of the Agreement to be adopted from PPA Regulations pertaining to Cargo Handling operations, under PPA AO No. 01-2006 as follows:
 - 1. Labor and management relations
 - 2. Records and books of accounts
 - 3. Claims and liability for losses and damages
 - 4. Other relevant provisions (e.g. tax and penal provisions)

7. Charges and related fees

The Contractor shall be allowed to collect fees and charges for the services it will render in accordance with PD 857 and other PPA rules and regulations.

8. Equipment, facilities, and port development plan

- a. As part of its bid documentation, the Contractor shall provide a Port Development Plan. The Port Development Plan shall be a business plan with indicative investment targets, both triggered and fixed targets, designed by the

Contractor to effectively provide, manage, operate and market the services aimed to ensure efficient turnaround of vessels, satisfy the service requirements of concerned users and entice port clientele to patronize the port.

- b. The Contractor shall fully comply with the commitments and conditions stipulated in the Port Development Plan. The Port Development Plan may be revised by the Contractor to ensure that the commitments contained therein continue achieve key port performance targets, and allow the Contractor the opportunity of a fair return of investment. Substantial revisions to the Port Development Plan will require prior approval from by PPA.
- c. The Contractor shall utilize the cargo handling equipment and facilities installed by PPA in the Port, or its own equipment and facilities if these are more efficient than the ones installed by PPA. The Contractor shall have available, at the commencement of the operations, the equipment for the provision of services as required by the PPA, all in serviceable and good condition.
- d. The Agreement shall include a provision on the implementation/compliance to Equipment and Facilities Maintenance Schedule prescribed by PPA.
- e. The facilities and equipment that are used in the port operations shall be covered by insurance. Such insurance shall be obtained by the Contractor from the Government Service Insurance System pursuant to R.A. 656 and Presidential Administrative Order 33 and 141 since the insurance shall cover government property.

9. Performance measures

- a. The Contractor shall efficiently operate the port and provide cargo handling services and related services. The Contractor must be able to maintain productivity equal to or better than pre-specified key performance indicators as detailed in the Master Plan study which may be progressively increased during the duration of the Agreement, such as:
 - 1. Average gross service time at berth
 - 2. Average number of cranes per vessel
 - 3. Average tonnes per hour (bulk, breakbulk)
 - 4. Average moves per hour (container)
 - 5. Average yard dwell time
 - 6. Port user satisfaction survey results
- 7. Minimum port user and passenger service standards

- b. The Contractor's productivity rates shall be considered in setting the approved tariff rates and shall be subject to periodic review by PPA.
- c. The performance metric may be based on a single performance measure for transparency and ease of collection.
- d. If the Contractor fails to maintain productivity equal to or better than pre-specified productivity measures in any given period, the Contractor may be required to provide additional variable fee payments.
- e. If the Contractor fails to maintain productivity equal to or better than pre-specified productivity measures in any given year, PPA will conduct a mandatory review of the provisions of the Agreement. Failure to meet productivity measures for three (3) consecutive years may result in the termination of the Agreement.

10. Status of properties located at the port

- a. Prior to the conduct of bidding of the Agreement, PPA shall determine the inventory and capital expenditure of the port for the last 5 years and investments (e.g. CH equipment) on the part of the Contractor, which are approved by both parties. PPA may provide equipment which the Contractor may not be able to provide (e.g. Gantry Cranes) in order to increase port efficiency. Appropriate rentals shall be collected by PPA as a consideration for providing such equipment.
- b. The Contractor shall seek PPA approval prior to demolition, renovation, sale, or movement of any permanent structure or equipment.
- c. The ownership of all properties of PPA and improvements, facilities, structures, and equipment introduced by PPA shall remain with PPA and shall be returned to it by the Contractor in good working condition upon the termination of the Agreement.
- d. All improvements, facilities, structures, and equipment, if any, introduced by the Contractor in its operations shall be transferred to PPA free from liens and encumbrances, without any obligation to reimburse the cost thereof.
- e. The costs of investments carried out by the Contractor, (including any allowable return on such investments) that cannot be recovered within the remaining period of the Agreement, may be subject to a cost-recovery mechanism. The cost-recovery mechanism must be approved by PPA, before the additional investments are made.

- f. In cases of pre-termination of the Agreement by PPA, the investments by the Contractor may be subject to a pre-termination payment by PPA based on the book or replacement value of the equipment and other investments, as determined by a third party. In cases of pre-termination of the Agreement due to the Contractor's default, the Contractor shall not be entitled to any pre-termination payment.

11. Control and supervision

PPA shall have control and supervision over the operations and services to be performed by the Contractor within the port zone. The Contractor shall, upon notice by PPA, submit to an audit/evaluation of its operations and shall effect the necessary changes or improvements based on the results of the audit within a prescribed period.

12. Competition

Shipping companies may be allowed to bid as a Contractor, provided that safeguards to promote competition are included in the regulations and the Agreement. For auxiliary services, such as chandling, tugboat, pilotage, and bunkering, the Contractor must not prohibit access to other qualified providers and there shall be no special privileges given to a particular provider of auxiliary services.

13. Application of regulations

The Contractor shall comply with all existing policies, rules and regulations, and those that may be issued after the execution its Agreement with the PPA.

VII. TRANSITORY PROVISIONS

Existing cargo handling contracts and those with an authority to operate shall be provided with a hold-over authority until the award of the Agreement under this Administrative Order.

VIII. REPEALING CLAUSE

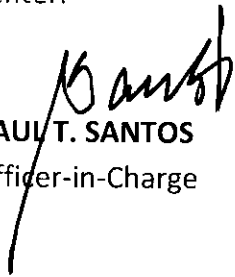
The provisions of PPA AO 01-2006 (Compendium) which are inconsistent with this Order are hereby expressly repealed.

All PPA orders, rules and regulations or issuances inconsistent herewith are hereby deemed modified, amended or otherwise revised accordingly.

IX. EFFECTIVITY

PPA AO No. 03 - 2016

This Order shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation and a copy filed with the University of the Philippines Law center.



RAUL T. SANTOS
Officer-in-Charge

Published in the following newspapers:

The Philippine Star - May 6, 2016
The Standard

Effectivity Date May 21, 2016