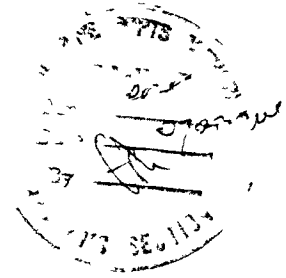


**JUL 02 2001**



**PPA ADMINISTRATIVE ORDER**  
**NO 01 - 2001**

**T O** All District Managers, Port Managers, Department Managers  
Cargo Handling Operators and Others Concerned

**SUBJECT** **Guidelines for the Issuance of Probationary & Long-Term  
Contracts For Expired and Expiring CH Contracts**

**1. AUTHORITY**

- 1 1 Sections 6-a (iii) (v) and 6-b (vi) of PD 857, as amended
- 1 2 Letter of Instructions No 1005-A dated 11 April 1980
- 1 3 COA Decision No 1222 dated 26 January 1990
- 1 4 PPA Board Resolution No 1868 confirming BoardCom Res No 2001-769 both adopted on 3 May 2001

**2. RATIONALE**

The new administration aims at enhancing and promoting economic growth and providing a "heal and build" policy between stakeholders of the economy and the government. To help achieve this goal, the Authority will support existing cargo handling operators with serious plans and commitments to invest and improve the quality of services in the ports.

**3. SCOPE**

- 3 1 This Order applies to expired contracts of existing cargo handling operators in government ports under the jurisdiction of the Authority, including those to expire within the next two (2) years from the effectivity of this Order
- 3 2 The following situations are not covered by this Order: a) where the cargo handling services have been bid out but no contracts have been awarded; b) where such services were subject to public bidding and the conduct of such bidding resulted in litigations now pending in courts; c) those contracts now under litigation for reasons other than bidding; or d) contracts of cargo handlers which have deliberately violated major PPA rules like refusing to render services to clients or to implement the authorized tariff regulation.



#### **4. OBJECTIVE**

- 4 1 To encourage existing cargo handling operators willing and prepared to invest in providing quality services in the ports
- 4 2 To grant two-year probationary contracts to existing qualified holders of expired contracts and to those expiring within the next two (2) years, subject to prescribed requirements and PPA approval
- 4 3 To ensure that only qualified and efficient cargo handling operators may be issued long term contracts of not more than ten (10) years after a 2-year probationary contract. The term of such contracts shall depend on port traffic, equipment requirements and investment commitment for the port

#### **5. REQUIREMENTS FOR THE ISSUANCE OF CONTRACT**

The following will guide applicant for the issuance of probationary and long-term contracts

##### **5.1 Probationary Contract**

A probationary one-time contract for two years may be issued to existing cargo handling operators subject to compliance to all the following

- a) Productivity commitment acceptable to the Authority and affected port users
- b) Requirement on no outstanding accounts with the Authority at the time of award of contract
- c) Compliance to existing and pertinent labor laws, social security rules or CBAs, vis a vis minimum wages and other benefits
- d) Availability of port labor trust funds for the retirement and separation of concerned port workers
- e) Submission of a Business Plan covering the projected long term contract including the 2-year probationary period as provided in Sec 5 2 (b) hereof
- f) Favorable endorsement of concerned port users and clients or their association/organization.
- g) Protection, maintenance, cleanliness and orderliness of the port and its facilities
- h) Development program for its workers & employees

## 5.2 Long-Term Contract

After a probationary contract, a long-term contract of not more than ten (10) years, may be issued depending on the operational, financial and development needs of the port and the investment made by the operator, subject to the following requirements

- a) *Cargo Handling Performance* – the performance required shall be at least *VERY SATISFACTORY* for the 2-year probationary period, measured and established through
  - (1) Performance audit with at least “Very Satisfactory” rating for the 2-year period
  - (2) Evaluation of the operator’s monthly performance using the “*Cargo Handling Compliance Report*” by the PMO concerned
  
- b) *Business Plan* – a business strategy employed by the cargo handling operator to effectively provide, manage, operate and market the services aimed to ensure fast turn around of vessels, attain service satisfaction of concerned users and entice port clientele to patronize the port. The Plan shall include, among others, the following
  - (1) *Traffic Projection and Analysis* - based on actual statistics on vessel, cargo and passenger traffic to determine appropriate requirements of the port for the duration of the long-term contract
  - (2) *Cargo Handling Equipment* – the equipment requirement sufficient to handle the cargoes, procured and made available for the duration of the contract
  - (3) *Productivity Commitment* – the productivity commitment to efficiently handle cargoes and passengers of the port
  - (4) *Capital Structure* – investment or capitalization requirements sufficient to attain its objectives as stated in the Business Plan
  - (5) *Safety and Security Program* – a yearly commitment of action plans and projects to ensure safety and security of the port, cargoes and its facilities
  - (6) *Marketing Strategy* – a set of activities that will show how the services will be marketed, to include among others, a description of marketing mix to provide the desired service to port users (product), make such services conveniently available (place), offer a positive



image of the company (promotion), and make the service affordable and reflect the value of the services rendered (price)

- (7) *Manual of Systems and Procedures* – prepared systems and procedures manual for port operations and finance transactions, and other activities of the cargo handling operator with its clients and port users
- (8) *People Development* – a program for the improvement of the workers' and employees' welfare to include, among others, training, financial amelioration, etc
- c) *Outstanding Accounts with PPA* – the operator shall have no outstanding obligations with the Authority at the time of the award of the long-term contract
- d) *Port Labor Trust Fund* – amount deposited in authorized bank/s sufficient to be used for the retirement and separation benefits of individual port workers employment term, or a program for the same trust fund secured thru an accredited service provider
- e) *Endorsement by Stakeholders* – a favorable endorsement from concerned stakeholders to grant the long-term contract, which may be done thru public hearing. Additionally, written reports from affected cargo owners/shippers or their association may also be submitted to the Evaluation Committee
- f) Protection, maintenance, cleanliness and orderliness of the port and its facilities

## **6. MECHANICS OF IMPLEMENTATION**

### **6.1 Issuance of Probationary Contract**

- a) Cargo handling operators with expired or expiring contracts may be issued probationary contracts, subject to terms and conditions set forth by PPA together with the requirements of port users or their association
- b) The cargo handling operator shall submit the corresponding application for a probationary contract to the PMO concerned for its initial evaluation and documentation before submitting the same to the Evaluation Committee for appropriate action. The application submitted shall include a commitment from the applicant, as required in Sec 7 of this Order
- c) Similarly, the applicant shall commit and comply with the requirements provided in Sec 5 1 hereof and the same shall be stipulated in the 2-year probationary contract



- d) As a requirement for the evaluation and documentation of the application, the PMO shall conduct a public hearing with concerned port users
- e) The initial evaluation and documentation of the application by the PMOs shall be submitted to the Evaluation Committee for review, evaluation and endorsement to Management for approval
- f) During the contract term, the PMOs shall monitor and evaluate every quarter the performance of the operator's compliance to prescribed requirements, terms and conditions. The evaluation shall be based on a rating system indicating numerical points for the committed requirements for compliance or a qualitative description of the performance of the operator
- g) The PMO quarterly monitoring reports shall be submitted to the Evaluation Committee, at least ten (10) working days after the PMO evaluation
- h) A cargo handling operator, with existing probationary contract and very satisfactory compliance of the prescribed requirements, may be issued a long-term contract even prior to the expiration of a probationary contract. Issuance of same shall be subject to review and endorsement of the Evaluation Committee and approval by Management or PPA Board

The detailed procedures for the issuance of probationary contract are shown in Attachment "1"

## **6.2 Issuance of Long-Term Contract**

- a) At least five (5) months prior to the expiry of the probationary contract, the Evaluation Committee shall evaluate the performance of the cargo handling contractor
- b) If the cargo handling operator fails to comply with the contract conditions and the requirement for the port users' endorsement, the probationary contract shall be cancelled. The Authority shall take over the cargo handling services and conduct a public bidding consistent with existing regulations
- c) If the operator successfully meets the requirements of the contract and garners at least "Very Satisfactory" performance rating during the 2-year contract term, such operator may be issued a long-term contract, subject to the requirements provided in Sec 5.2 hereof, together with additional terms and conditions the Authority may require, depending on factors obtaining in the port concerned



- d) The Evaluation Committee, may endorse and recommend the grant of long-term contracts of qualified operators to Management, or to the PPA Board, if the contract is beyond five (5) years
- e) The PMO shall monitor and evaluate the operator's performance on a semi-annual basis. In addition, the PDO shall conduct regular performance audits annually. But at the end of the year, the cargo handling operator shall submit a yearly performance report to the PMO and the Evaluation Committee as added basis for the evaluation
- f) The Evaluation Committee shall immediately inform the operator of any adverse findings giving it thirty (30) days within which to rectify them, otherwise, the contract shall be revoked or terminated. In such case, the Authority shall takeover the cargo handling services and a public bidding shall be conducted to select a new operator
- g) During the validity of the long-term contract, the Authority shall exercise its visitatorial powers to determine compliance by the operator of its contractual commitments and obligations to ensure continuous provision of efficient service. Failure by the contractor to comply with any of his contractual commitments and PPA rules and regulations shall cause the cancellation of his contract. In this event, PPA shall notify the concerned contractor of such failure and consequently take over the management and operation.

The detailed procedures for the grant of long-term contract are shown in Attachment "2"

## **7. COMMITMENT**

- 7.1 The provision of cargo handling services in the ports is a primary function and responsibility of PPA and no cargo handling operator shall claim any vested right to provide and operate such services
- 7.2 The applicant-operator shall therefore submit, together with the application for a probationary contract, a sworn statement stating, among others that it shall not undertake any action against PPA to prevent the conduct of a public bidding, negotiation, and/or award of the contract to other qualified parties
- 7.3 The cargo handling operator who fails to qualify for a long-term contract shall abide by the foregoing commitment. Such commitment shall, however, be without prejudice to the right of the disqualified operator to question its disqualification by exhausting administrative remedies

**8. FORMATION AND FUNCTIONS OF THE EVALUATION COMMITTEE**

8 1 An *Evaluation Committee* shall be formed and organized in every Port District Office (PDO) to be composed of the following

Chairman	District Manager
Vice-Chairman	Port Manager (PMO having jurisdiction of the port subject to renewal of contract)
Members	Representative from shipping companies which have no interest in cargo handling services nominated by their association/organization  Representative from cargo owners/shippers nominated by their association/organization  Head Office Representatives Managers of CSD, LSD and POSD

8 2 Functions of the Evaluation Committee

- a) Evaluate applications for the issuance of contracts (probationary or long-term) to existing cargo handling operators with expired or expiring contracts to determine their qualification and compliance with prescribed requirements
- b) Recommend issuance of probationary contracts to Management and long-term contracts to the PPA Board
- c) Monitor the performance of the operator on a regular basis, particularly compliance of requirements set forth in Sec 5 1 for a probationary contract and Sec 5 2 for a long-term contract

**9. EVALUATION PROCEDURES AND DOCUMENTARY REQUIREMENTS**

9 1 Pertinent provisions of PPA Memo Circular No 27-94 dated 28 September 1994 and other pertinent regulations, insofar as they apply to renewal contracts, shall serve as guidelines for the evaluation and documentation requirements. Additional requirements necessary to validate and establish the efficiency and competence of the cargo handling operator may be required subject to approval of the General Manager or the Assistant General Manager for Operations

9 2 Specific evaluation of the prescribed contract requirements listed in Sections 5 1 and 5 2 hereof is provided in Annex "A"

**10. RESPONSIBILITY OF THE PORT MANAGER AND DISTRICT MANAGER**

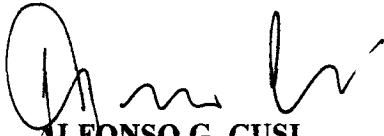
10 1 The Port Manager and District Manager concerned shall be generally responsible to initially determine, establish and document the competence and eligibility of the existing cargo handling operators applying for a probationary or a long-term contract, prior to deliberation by the Evaluation Committee

10 2 The Office of the AGM for Operations shall, likewise be responsible to monitor the competence/qualification and performance of said cargo handling operators, to include the evaluation made by the PDOs and PMOs

10 3 Specifically during the term of the contract, the Port Manager concerned shall monitor and evaluate the performance of the operator and the requirements herein prescribed every quarter. The monitoring reports shall be submitted to the Evaluation Committee ten (10) working days after such evaluation period

**11. EFFECTIVITY**

This Order shall take effect fifteen (15) days after the last day of its publication in a newspaper of general circulation.



**ALFONSO G. CUSI**  
General Manager

Published in the following newspapers:

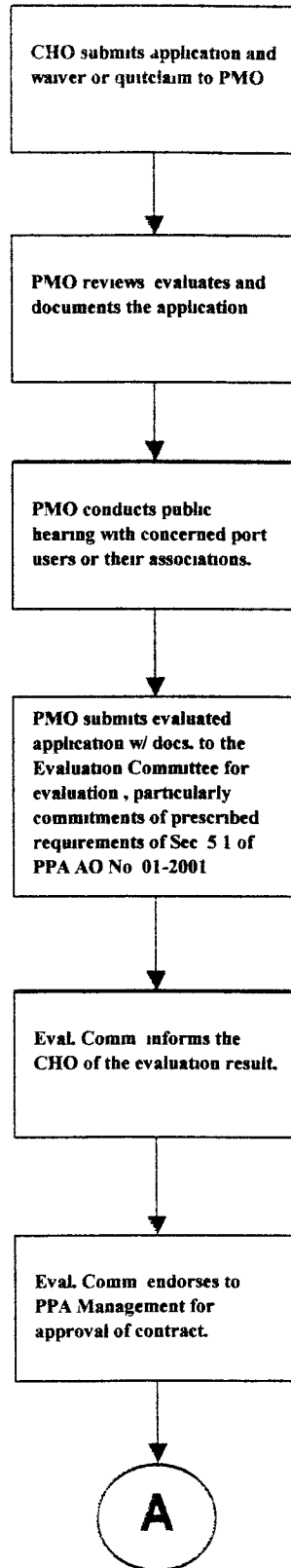
1. Philippine Star) July 6 & 9, 2001
2. Manila Standard)

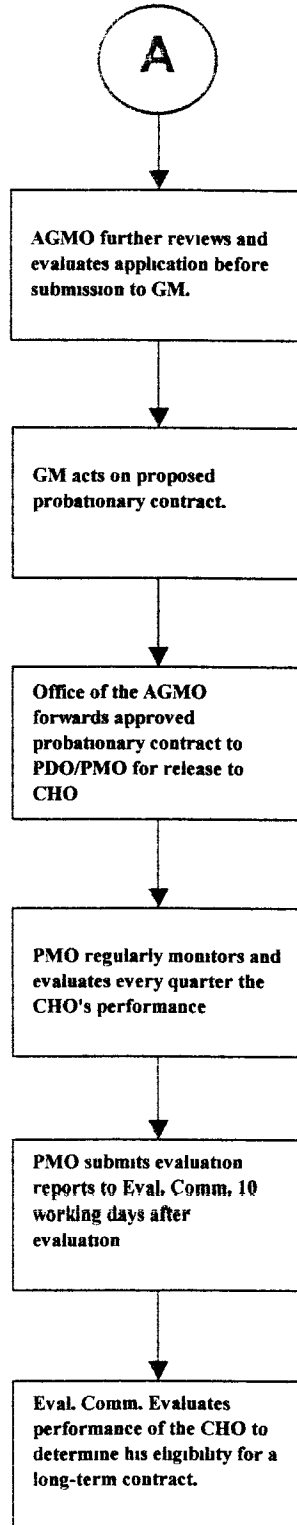
Effectivity Date - July 24, 2001

POSD/TSDDPB  
Renewal Contract/04/26/2k1  
(02 July 2k1)pm

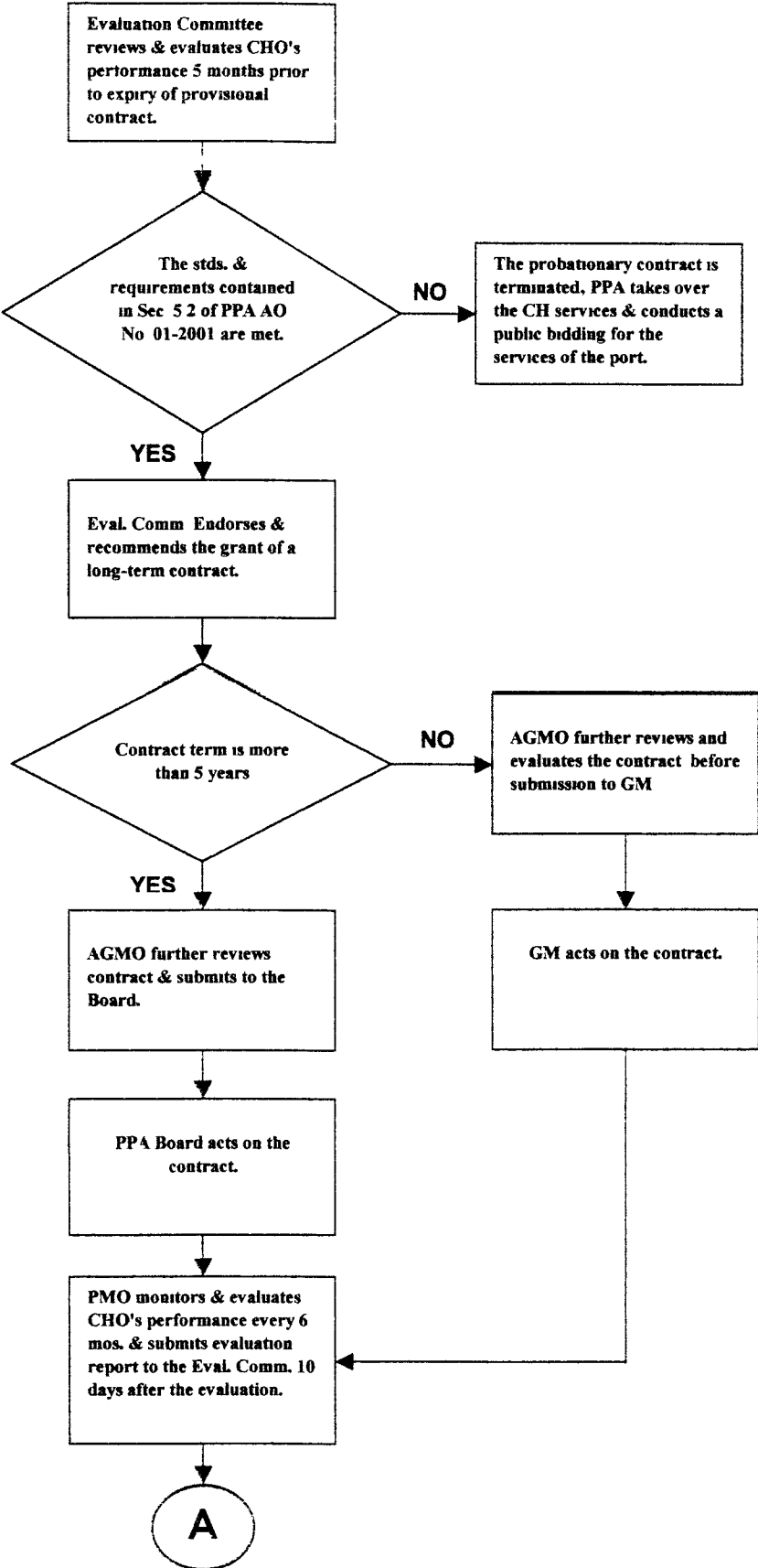


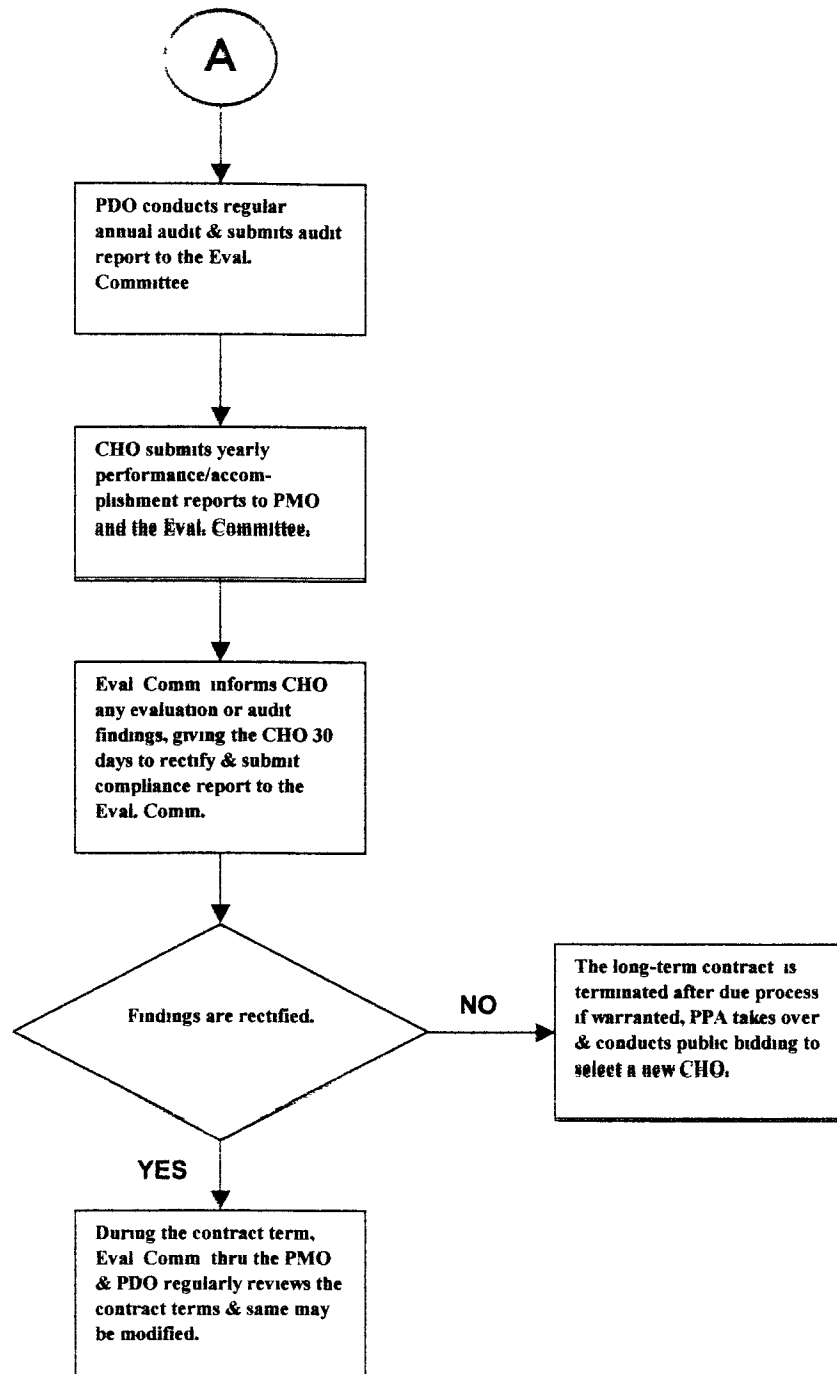
**FLOW CHART  
ISSUANCE OF PROBATIONARY CONTRACT ( 2 YEARS )**





**FLOW CHART  
ISSUANCE OF A LONG-TERM CONTRACT**





HALICAPANG  
Manila

TRAFFIC SECTION

LETTER OF INSTRUCTION NO. 1005-A

To The General Manager  
Philippine Ports Authority

WHEREAS, it is a declared national policy to support and accelerate the development of government port facilities as well as vital port development projects and services;

WHEREAS, the Philippine Ports Authority is required by its Charter and by its international commitments to various foreign lending institution to maintain an adequate return on its assets,

WHEREAS, it is a prime concern of government to protect the interests of legitimate port workers and port users in the country;

WHEREAS, the Government, through the PPA must provide the cargo-handling and other port-related services, whether on its own, by contract or otherwise, within the Port Districts and the approaches thereof;

WHEREAS, there is need to rationalize and integrate cargo-handling and other port-related services, as may have been contracted out or authorized by the PPA in the various ports of the country;

✓ WHEREAS, the procedures of voluntary merger, consolidation and/or bidding for the awarding or contracting of cargo-handling and other port-related services have heretofore proven ineffective and resulted in prolonged and unproductive wrangling, all to the detriment of efficient port operations and development; and

WHEREAS, it now becomes necessary to revitalize and streamline the PPA to carry out its functions and duties as a vital link in the governmental machinery and the thrust for national economic development;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby direct you:

1. To submit a program for the further acceleration of the rationalization and integration of all cargo-handling activities and port-related services in major ports where such has not yet been effected.

✓ 2. To expeditiously evaluate all recognized cargo-handling contractors and port-related service operators doing business in all Port Districts in the country under such criteria as PPA may set and to determine the qualified contractor or operator under said criteria in order to ensure effective utilization of port facilities, prevent pilferage and/or pinpoint responsibility forthwith and provide optimum services to major ports vital to the country's trade and economy.

3. To intensify the collection of all port charges including the government share from all cargo-handling contractors and port-related service operators, all back accounts, in order for them to share the burden of the accelerated development, construction and maintenance of the government facilities they utilize. The government share for all cargo-handling contractors and port-related service operators shall be at a rate not less than 10% taken from their gross income earned from such services.

4. In order to ensure the collection of said government share, to conduct spot audit either on its own or in coordination with such other government agencies under the visitatorial power of the state.

5. To ensure the protection of labor and their legitimate rights under the law by such measures as will include, among others, the absorption of displaced port workers in the integrated scheme.

6. To streamline the procedure for processing and selecting the awardees of special permits, memoranda of agreement and management contracts under the franchise-granting power of PPA.

7. To effectively implement these instructions, to restructure the organizational set-up and reorganize the PPA and to take any other measure within such limitations as may be required by law.

Done in the City of Manila, this 11th day of April, in the year of Our Lord nineteen hundred and eighty.

(SGD.) FERDINAND E. MARCOS  
President of the Philippines

Article IV ESTABLISHMENT, CONSTITUTION, POWERS & DUTIES

SECTION 4 CREATION OF PHILIPPINE PORTS AUTHORITY —

- a) There is hereby established a body corporate to be known as the Philippine Ports Authority (hereinafter called the Authority) which shall be attached to the Department of Transportation and Communications for policy and program coordination (pursuant to Executive Order No. 710 dated 27 July 1981 and Malacañang Administrative Order No. 15 dated February 11, 1987)
- b) The principal office of the Authority shall be located in Metropolitan Manila, but it may establish port management units and other offices elsewhere in the Philippines as may become necessary for the proper conduct of its business

SECTION 5 PORT DISTRICT — The Authority may from time to time, submit to the President, through the National Economic and Development Authority, applications for the declaration of specific areas as Port Districts. Such applications shall be accompanied by a survey plan indicating the geographical location of the area or areas to be declared as Port Districts with their respective boundaries properly delineated

SECTION 6 CORPORATE POWERS AND DUTIES —

- a) the corporate duties of the Authority shall be
  - (i) To formulate in coordination with the National Economic and Development Authority a comprehensive and practicable Port Development Plan for the State and to program its implementation, renew and update the same annually in coordination with other national agencies
  - (ii) To supervise control regulate construct maintain operate and provide such facilities or services as are necessary in the ports vested in or belonging to the Authority
  - (iii) To prescribe rules and regulations procedures and guidelines governing the establishment construction maintenance and operation of all other ports including private ports in the country
  - (iv) To license control regulate supervise any construction or structure within any Port District
  - (v) To provide services (whether on its own by contract, or otherwise) within the the Port District and the approaches thereof, including but not limited to —
    - berthing, towing mooring moving slipping or docking any vessel
    - loading or discharging any vessel,
    - sorting weighing measuring, warehousing or otherwise handling goods
  - (vi) To exercise control of or administer any foreshore rights or leases which may be vested in the Authority from time to time
  - (vii) To coordinate with the Bureau of Lands or any other government agency or corporation in the development of any foreshore area

(viii) To control regulate and supervise pilotage and the conduct of pilots in any Port District

(ix) To provide or assist in the provision of training programs and training facilities for its staff or staff of port operators and users for the efficient discharge of its functions, duties, and responsibilities

(x) To perform such acts or provide such services as may be deemed proper or necessary to carry out and implement the provisions of this Decree INCLUDING THE ADOPTION OF NECESSARY MEASURES TO REMEDY CONGESTION IN ANY GOVERNMENT PORT AND IN COORDINATION WITH THE BUREAU OF CUSTOMS IN THE CASE OF PORTS OF ENTRY (As amplified by Exec Order No. 513)

b) The corporate powers of the Authority shall be as follows

(i) To succeed in its corporate name

(ii) To sue and be sued in such corporate name

(iii) To adopt alter and use a corporate seal which shall be judicially noticed

(iv) To adopt amend or repeal its bylaws

(v) To create or alter its own organization or any Port Management Unit, and staff such an organization or Port Management Unit with appropriate and qualified personnel in accordance with what may be deemed proper or necessary to achieve the objectives of the Authority

(vi) To make or enter contracts of any kind or nature to enable it to discharge its functions under this Decree

(vii) To acquire purchase own lease mortgage, sell, or otherwise dispose of any land port facility wharf quay or property of any kind, whether movable or immovable

(viii) To exercise the right of eminent domain by expropriating the land or areas surrounding the Port of harbor, which in the opinion of the Authority are vital or necessary for the total development of the Port District

(ix) To levy dues rates or charges for the use of the premises, works, appliances facilities or for services provided by or belonging to the Authority or any other organization concerned with port operations

(x) To reclaim excavate enclose, or raise any part of the land vested in the Authority

(xi) To dredge or provide dredging services within a Port District or elsewhere

(xii) To acquire any undertaking affording or intending to afford facilities for the loading and discharging or warehousing of goods in the Port Districts

(xiii) To supply water or bunkers for ships

(xiv) To obtain insurance for or require the insurance of any property, movable or immovable belonging to the Authority and/or goods in the custody of the Authority



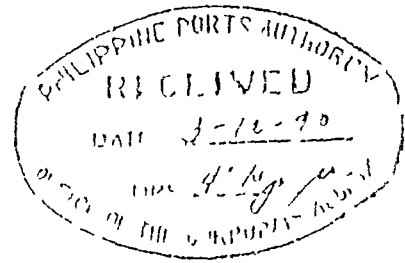


COMMISSION ON AUDIT  
 COMMONWEALTH AVENUE, QUEZON CITY, PHILIPPINES

RECEIVED

LOA Decision No. 1222

PPA Report of ROGELIO A. DAYAN, General Manager, Philippine Ports Authority (PPA), Manila for reconsideration of the decision of the Commission concerning in the opinion of the PPA Corporate Auditor that all cargo handling service contracts will be entered into thru public bidding pursuant to PD No. 298, s. 1940, as amended by PD No. 301, s. 1987.



2nd Indorsement  
 January 26, 1990

Respectfully returned, thru the Auditor, to the General Manager, Philippine Ports Authority (PPA), Port Area, Manila.

Briefly, the within papers show that PPA entered into negotiated contracts for cargo handling services. The Auditor thereof objected to said contracts on the ground that there was no public bidding conducted for the purpose. Such adverse stand of the Auditor was subsequently affirmed by this Commission under a 1st indorsement dated June 21, 1989. Hence, this request for reconsideration.

The main question to be resolved is whether, or not, PPA can enter into negotiated contracts for cargo handling services.

It bears stressing that PPA is empowered under PD No. 857, as amended, to provide cargo handling services in any Philippine Port. This grant of power is reiterated under Letter of Instructions No. 1005-A, issued on April 11, 1980, to the effect that -

"WHEREAS, the Government, through the PPA must provide the cargo-handling and other port-related services, whether on its own, by contract or otherwise, within the Port Districts and the approaches thereof."

The PPA is further directed "to expeditiously evaluate all recognized cargo-handling contractors and port-related service operators doing business in all Port Districts in the country under such criteria as PPA

Id Nos. 99-402, 96-79-88, 96-77-41, 98-72-66

*[Handwritten initials and signature]*

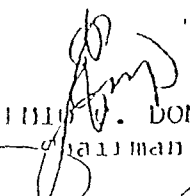
may set and to determine the qualified contractor or operator under no contract in order to ensure effective utilization of port facilities, prevent overcharges and/or pinpoint responsibilities for it and provide optimum service to major ports vital to the country's trade and economy."

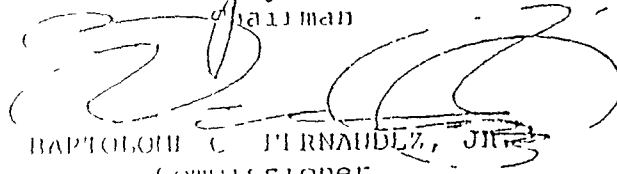
If the manner that PPA as a government agency is empowered by law to provide cargo handling services, whether on its own, by contract or otherwise. This is to say that if PPA cannot provide the services on its own, then it may do so by contract or otherwise.

The phrase 'or otherwise' in every day parlance means 'or in any other way' (30 Words & Phrases) similar to those specified. Stated differently, PPA shall provide the services by itself, by contract or by other forms of procurement. Such being the case, it can be safely asserted that PPA can enter into negotiated contracts following the 'ejusdem generis' rule of statutory construction.

Premises considered, this Commission finds the within request meritorious and gives due course thereto. Accordingly, the opinion embodied in its 1st Indorsement dated June 23, 1989, is hereby superseded.

P 1

  
LUIS R. DOMINGO  
Chairman

  
BARTOLOME C. FERNANDEZ, JR.  
Commissioner

DISSENTING  
ALBERTO P. CRUZ  
Commissioner

lego  
NDT/GAM/cbq

COPI  
BCF/PPH/LAB/vhl-joc  
r-26-ppadayan

**SECRETARY'S CERTIFICATE**

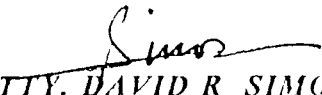
I *ATTY DAVID R SIMON* duly designated Corporate Board Secretary of the Philippine Ports Authority, with principal office at Marsman Building 22 Muelle de San Francisco South Harbor Port Area Manila, and having custody of the Board records of the PPA do hereby certify

That during the 267th Regular Meeting of the Board of Directors of the Philippine Ports Authority held on 03 May 2001 at the PPA Board Room 5<sup>th</sup> Floor Marsman Building South Harbor Port Area Manila the following Resolution was adopted

***Resolution No 1868***

*RESOLVED That on motion duly made and seconded Board Com Resolution Nos 2001-768 to 2001-771 as adopted during the 132nd Meeting of the Board Committee held on 03 May 2001 hereto attached and incorporated by reference, be as they are hereby confirmed*

IN WITNESS WHEREOF I have signed this Secretary's Certificate this 4th day of May 2001 at the above-mentioned address

  
**ATTY. DAVID R SIMON**  
Secretary

**SECRETARY'S CERTIFICATE**

I *DAVID R SIMON* duly designated Secretary of the Board Committee as created by the Board of Directors of the Philippine Ports Authority and having custody of the Board records of the said committee, do hereby certify

That during the 132nd Meeting of the Board Committee held on 03 May 2001 at the PPA Board Room 5<sup>th</sup> Floor Marsman Building South Harbor, Port Area Manila the following Resolution was adopted

***BoardCom Resolution No 2001-769***

*“RESOLVED That on motion duly made and seconded and subject to certain corrections and improvements in its provisions the proposed Draft PPA Administrative Order providing Guidelines on the Issuance of Probationary and Long-Term Contracts for Expired and Expiring Cargo Handling Contract hereto attached and incorporated by reference be as it is hereby approved for adoption after proper public hearing or consultation with the port users concerned*

IN WITNESS WHEREOF I have signed this Secretary's Certificate this 9<sup>th</sup> day of May 2001 at the above-mentioned address

  
**ATTY. DAVID R SIMON**  
Secretary