

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 59

DIRECTING THE PHILIPPINE PORTS AUTHORITY TO ADOPT AND IMPLEMENT A PROGRAM FOR FURTHER RATIONALIZATION, MODERNIZATION AND IMPROVEMENT OF PORT SERVICES AND FACILITIES IN GOVERNMENT PORTS

WHEREAS, the government recognizes the vital role which sea transport plays to provide livelihood, ensure more economical means of transportation to the public, encourage travel and tourism and spur regional development and inter-island trade and commerce;

WHEREAS, Section 2 of Presidential Decree No. 857, otherwise known as the revised charter of the Philippine Ports Authority, mandates the Philippine Ports Authority (PPA) to implement an integrated program for the planning, development, financing and operation of ports;

WHEREAS, despite this mandate of the PPA, the limited resources of the government has prevented the provision of world class facilities in government ports;

WHEREAS, the private sector has manifested its willingness and capability to invest in the modernization and improvement of port services and facilities in government ports;

WHEREAS, the present state of major and vital government ports adversely affects the poor sector of society and the general public as well as impedes the rapid development and promotion of ports for coastwise and international trade and commerce;

WHEREAS, there is now a pressing need to immediately implement effective government policies and focus the efforts of government agencies concerned to achieve the desired rationalization, modernization and improvement of port services and facilities within the framework of Presidential Decree No. 857;

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:



SECTION 1 Policy on port facilities and services.

It is the policy of the government to pursue an accelerated program for the modernization and development of government ports in partnership with the private sector, especially those presently providing facilities and services in the ports.

Towards this end, the PPA shall effect the unification and rationalization of facility operators and service providers in government ports, encourage a more aggressive investment in port infrastructure, equipment and facilities and for labor to share in the benefits of the development and modernization of the port.

SEC. 2. Unification and rationalization of all facility operators and service providers.

Pursuant to the policy above stated, the PPA shall immediately adopt and implement a program for integration, unification and rationalization of all facility operators and service providers in ports initially with high passenger and cargo volume, including the North Harbor in the Port of Manila. Toward this end, the PPA shall:

(a) Require all existing facility operators and service providers such as cargo handling operators, shipping companies and port workers and labor to unify into one corporation by merger, consolidation, buyout, joint venture, or by any other similar means;

(b) Allow other qualified facility operators and service providers to invest in and join the unified contractor, provided that (i) these other contractors shall provide needed technical or management expertise, or contribute capital equipment or financial resources for the operation and development of port services and facilities or generate significant transshipment traffic, and (ii) no single corporation shall be allowed to own more than 30% of the outstanding capital stock of a unified operator in a port, except in the port where such corporation has an existing permit, cargo handling license, or operating contract from the PPA or where the vessels of the investor shipping company regularly call;

(c) Exercise its authority under its charter to grant the unified contractor a contract to manage, operate and develop the entire government port without need of a public bidding;



(d) Require the unified contractor to adopt and approve the terms and conditions of a stock option plan which shall reserve for labor and employees of the unified contractor, including those who may be retrenched due to redundancy five percent (5%) of its total outstanding capital stock;

Not later than the beginning of the fifth year of its contract, the unified contractor shall start a divestment program offering at least 30% of its authorized capital stock to the public.

(e) Complete the unification of facility operators and service providers as set forth in this executive order within twelve (12) months from the time the port is declared by PPA for modernization;

SEC. 3. Functions and responsibilities of the unified contractor.

The unified contractor shall have, among others, the following functions and responsibilities under its contract to manage, operate and develop an entire government port:

(a) Provide all the port services such as the allocation of berths to vessels and the management of berths, tug assistance, cargo and passenger handling, crange, marshalling, yard and transit storage, warehousing, weighing, checking and surveying, portorage, port security, supply of fuel and water, bunker and chandling supply, and others required by the users and clients of the port, including the supply of necessary equipment and materials, and collect such corresponding fees and charges as may be approved by PPA.

(b) Grant subleases of port areas and buildings to various port users, clients and service companies or in general, undertake overall management of the port real estate and other port facilities, and collect rents due therefrom.

(c) Undertake repairs and maintenance (including maintenance dredging of its immediate berthing areas and turning basin) of all existing and future facilities, fixtures and equipment at its own account.



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(d) Finance and physically develop, subject to approval by the authority, the horizontal and vertical infrastructure of the port, including capital dredging at its own account.

In every case where PPA determines a need for passenger terminal facilities, construction thereof shall commence within six (6) months from the effectivity of its contract and must be operational within the second year of said contract.

(e) Undertake activities to attract new port clients and promote additional business for the port.

(f) Provide personnel, equipment and systems for the security of cargoes, equipment and facilities, as well as control the entry and exit of vehicles and persons in its delineated operational area.

SEC. 4. Functions retained by PPA.

Notwithstanding the award of management, operation and development of the port to the unified contractor, the PPA shall continue to perform therein its regulatory functions and exercise the following inherent duties:

(a) Approve the master and development plan of the ports in support to the national port planning and development thrusts;

(b) Prescribe and enforce operating service and safety standards;

(c) Maintain its tariff setting functions;

(d) Be responsible for harbor traffic management and the regulation of pilotage services;

(e) Collect port and vessel charges due to the government;

(f) Conduct periodic audit of the operations of the operator;

(g) Monitor compliance with the terms and conditions of the contract; and

(h) Maintain its police functions.



Minimum terms and conditions of the contract.

contract shall contain the following minimum terms and conditions:

(a) Notwithstanding the award of its management, operation and the development to the unified contractor, the port shall continue to be operated as common user, multi-purpose facility.

(b) The unified contractor shall pay to the PPA a government share or a fixed contract fee with an escalation rate for the succeeding years. In addition, and in order for government to share in the growth and development of the port, the unified contractor shall pay a variable fee to PPA which shall be a certain percentage of its revenue from operations based on cargo ton, gross revenue or some other parameters.

(c) The PPA shall collect vessel and port charges from port users at private port rates.

(d) The unified contractor shall be jointly and severally liable for the payment of vessel and port charges due to the PPA from its port users and clients.

(e) Upon expiration of the initial terms of the contract or in the event of its termination or cancellation prior to its expiration by the unified contractor, all existing permanent or semi-permanent improvements, structures, buildings and facilities constructed by or belonging to the unified contractor and situated in its delineated operational area shall automatically become the property of the government without any obligation to reimburse, free from any lien or encumbrances.

(f) The unified contractor shall comply with all laws, rules and regulations, and issuances.

SEC. 6. Protection of labor.

In implementing the foregoing mandate, the PPA shall ensure the protection of labor and their legitimate rights under the law. The existing cargo handling or other service operators shall be primarily responsible for the past service benefits and retirement/separation benefits of their employees and contractual workers. In the event the operator is



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insolvent, the unified contractor shall assume the obligation of paying such labor benefits, without prejudice to its right of recourse against the insolvent operator.

SEC. 7. Absorption of labor.

Subject to its own qualification standards, the unified contractor shall absorb into its operations and manpower pool the labor force of the existing operators whose contracts and services shall have been taken over. If the actual operational requirements show a need to reduce the labor force, the unified contractor, before resorting to any other legal remedy or action, shall offer to the employees concerned (a) a voluntary retirement program, (b) a viable skills training or retraining program to allow them to be assigned in any vacant positions in the company, and/or other post-employment assistance programs upon such terms and conditions consistent with labor laws or the provisions of applicable collective bargaining agreements, whichever shall be more favorable to the employees seeking voluntary retirement.

The unified contractor shall be required to respect existing collective bargaining agreements to provide contractual benefits under such collective bargaining agreements as well as those found in existing labor laws.

SEC. 8. Social amelioration fund.

The PPA, under such terms and conditions it may prescribe, shall require the unified contractor to immediately establish, upon the commencement of its operations, a social amelioration fund for the benefit of legitimate port labor.

SEC. 9. Inter-modal transportation plan.

The DOTC shall prepare, in coordination with the Department of Public Works and Highways, the Philippine National Railways, the Light Rail Transit Authority, the PPA and other relevant agencies, a master plan to develop an inter-modal transportation system which would connect high passenger and cargo volume ports to mass transport systems and facilities such as the rail system, to facilitate the efficient and safe movement of passenger and cargo.



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SEC. 10. Other agencies support.

All government departments, offices, agencies, instrumentalities, including government-owned and controlled corporations are hereby ordered to support and assist the PPA in the implementation of this executive order.

SEC. 11. Implementing Rules.

The PPA shall issue the necessary rules and regulations to implement this executive order, except for the implementation of Sections 8 and 9 of this Executive Order which shall be handled by the DOTC.

SEC. 12. Repealing Clause.

This executive order repeals or amends all executive, department and other agency issuances or any provision thereof inconsistent herewith.

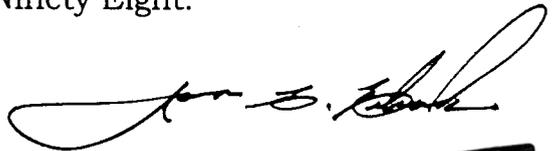
SEC. 13. Separability.

If any provision of this executive order is declared invalid by a court of competent jurisdiction, it shall not adversely affect any other provision of this executive order.

SEC. 14. Effectivity.

This executive order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

DONE in the City of Manila this 28th day of December in the year of Our Lord, Nineteen Hundred and Ninety Eight.



By the President:



RONALDO B. ZAMORA
Executive Secretary

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Date



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