

GUIDELINES ON PPA JOINT VENTURE AGREEMENTS WITH PRIVATE ENTITIES OR WITH OTHER GOVERNMENT OFFICES

PPA ADMINISTRATIVE ORDER NO. 08-95, March 01, 1995

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Pursuant to the provisions of PD 857, as amended, Presidential Memorandum Order 266, which presents guidelines and procedures governing minority equity investment and joint venture agreements with the private sector, PPA Board Resolution 1448, dated on February 9, 1995, and Executive Order 212, and in order to encourage the development of port infrastructure projects and port related services through private sector or other government agency participation and enhance commercialization and privatization of port activities, the following guidelines on PPA joint venture agreements with private or government entities are hereby issued for the guidance of all concerned:

ARTICLE 1

Preliminary Provisions

SECTION 1. Policy Statement. — PPA adheres to the policy of encouraging private sector participation in the implementation of its infrastructure projects and port related services. When, however, private sector implementation of such projects may be best undertaken with PPA participation, or when the protection of public interest so requires, the project may be opened for joint venture agreement with both the PPA and private entity as co-venturers.

Where the implementation of port projects or services is found to be more advantageous to PPA when done jointly with another government agency, such project may likewise be opened for joint venture agreement between the PPA and the concerned government agency.

SECTION 2. Scope. — These guidelines cover port infrastructure projects and port related services where joint venture projects may be allowed between PPA and the private sector or with other government agencies.

SECTION 3. General Guidelines. —

3.1 Joint venture agreements shall be limited to activities directly and immediately related to the objectives of the PPA as provided for in P.D. 857;

3.2 Joint venture agreements shall be entered into only on projects or services that are not available in the port yet, or if available, is found to be highly needed by the shipping and port sector;

3.3 The investment agreement shall specify the extent of PPA participation and the benefits that will be mutually derived by the contracting parties;

3.4 PPA shall ensure that its participation in the joint venture shall be amply protected by being represented in the management board of the joint venture, commensurate to its assets in the joint venture;

3.5 In case the Joint Venture will take over the operation or activity previously fully undertaken by a PPA unit, all

personnel in the unit who are willing to be devolved to the joint venture shall be accepted with the following conditions:

- a) A 25% increase in current salary and allowances
- b) Security tenure for 5 years.

They shall thereafter be considered resigned from the government service.

3.6 PPA shall advertise proposed joint ventures at least once in a newspaper of general circulation. Unsolicited joint venture proposals shall, likewise, be advertised and other parties shall be given sixty days to offer a better proposal.

ARTICLE 2

Procedures

SECTION 4. Preferred Port Projects for Joint Venture Agreements. — The PPA may enter into joint venture agreements with the private sector, or, if found necessary, with another government agency, in the implementation of the following PPA port projects or services:

- 4.1 Construction and/or operation of government piers, wharves, special cargo terminals and passenger terminals;
- 4.2 Warehouses, container yard, container freight stations, special handling equipment;
- 4.3 Dredging;
- 4.4 Terminal operation, arrastre and stevedoring services operation;
- 4.5 Installation and/or operation of harbor vessel traffic management system;
- 4.6 Other PPA authorized port-related projects and services.

SECTION 5. Qualification of Co-Venturers; Citizenship of the Joint Venture Company. — For a project to be considered by PPA for joint venture agreement, the private sector co-venturer shall have the following qualifications:

- 5.1 If the private sector co-venturer is a foreign corporation, it must be duly registered with the Board of Investments or any government agency or department regulating foreign investments;
- 5.2 The private sector co-venturer must have had successful experience in the undertaking he intends to do with the PPA, and/or their key personnel must have sufficient experience in the relevant aspects of the project implementation and/or operation;
- 5.3 The private sector co-venturer should have sufficient financial capacity to undertake the project when PPA investment is considered;
- 5.4 For projects with another government agency as co-venturer, the above requirements shall not be applicable;
- 5.5 The resulting Joint-Venture Company shall comply with the citizenship requirement of the Constitution and pertinent existing laws.

SECTION 6. Evaluation of Joint Venture Proposals. —

6.1 In order to allow proper evaluation of joint venture projects, all proposals coming from the private sector shall be submitted together with a pre-feasibility study. Submission shall be made to the Port District Managers-who

shall have them initially evaluated and endorsed to the General Manager through the Chairman, Joint Venture Committee, as created in Section 6.2 hereof;

6.2 A Joint Venture Committee is hereby created with the following composition:

Chairman — AGM for Operations;

Vice-Chairman — Manager, CSD

Members — Manager, PDD

— Manager, LSD

— Manager POSD

— DOTC,

IIG representative

— PDO/PMO Manager

where the joint venture is to be undertaken

6.3 The Commercial Services Department (CSD) shall provide the secretariat services for the Joint Venture Committee;

6.4 Findings and recommendations of the Joint Venture Committee shall be submitted to the MEC for deliberation prior to recommendation to the board. If the project is acceptable to the board, the proposal shall be submitted to the GCMCC for consideration and final recommendation to the President.

SECTION 7. PPA Incentives. —

7.1 The PPA as co-venturer shall not intervene in the day to day operation of the company but shall have direct participation in policy decision making process;

7.2 For PPA joint venture agreements with private sector proponents, PPA equity up to a maximum of 49% of the total project cost shall be allowed;

7.3 PPA shall grant easement rights and areas for site development within its territorial jurisdiction subject to the ceiling as stated in Section 7.2 hereof.

ARTICLE 3

Final Provisions

SECTION 8. Monthly Reports. — The Chairman of the Joint Venture Committee shall submit to the General Manager a monthly report on the status and progress of all activities under process or implementation.

SECTION 9. Saving Clause. — Any provision or portion of this Order declared by competent authority as invalid shall not affect its other provisions to which the declaration does not relate.

SECTION 10. Repealing Clause. — All PPA circulars, memoranda, guidelines and orders inconsistent herewith are hereby repealed or amended accordingly.

SECTION 11. Effectivity. — This Order shall take effect immediately.

Adopted: 01 Mar. 1995

(SGD.) CARLOS L. AGUSTIN

General Manager

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