

[CPA ADMINISTRATIVE ORDER NO. 03-98, June 19, 1998]

POLICY GUIDELINES AND GENERAL CONDITIONS FOR THE MANAGEMENT AND OPERATION OF CARGO-HANDLING SERVICES

Pursuant to Section 5 (a, b, c), Section 7 (b, e, j), Section 9 (a, c, g, k), and Section 21 of R.A. 7621 (Charter of the Cebu Port Authority), and in order to enhance the efficiency of cargo-handling services in all government ports within the jurisdiction of the Authority, in the interest of public service and benefit, this Administrative Order is hereby promulgated:

**Article I
Declaration of Policy**

SECTION 1.01 Grant of Cargo-Handling Permit/Contract, Financial and Performance Audit — As a general rule, permits/contracts for the management and operation of cargo-handling services in all government ports within the jurisdiction of the Authority shall be awarded through a system of public bidding and only to duly organized Filipino domestic corporations. However, cargo-handling operators with existing permits/contracts, whether on hold-over or otherwise, shall be subjected to a performance and financial audit. And if found satisfactory and they do not have any outstanding obligations to the Authority, to labor, or to port users, their permits/contracts shall be renewed under such terms and conditions as the Authority may deem proper to impose, otherwise the permit/contract shall be cancelled, revoked, or withdrawn, and the same shall be subjected to public bidding.

Public bidding may be dispensed with for cargo handling services in ports with low cargo volumes and/or where the cargo handling operations are primarily manual. Provided, That, the Authority may classify or categorize cargo handling service providers in such ports in accordance with minimum standards prescribed by the Authority and grant accreditation under such terms and conditions as it may deem proper to impose.

The nature of cargo-handling services that is expected of the CHSP shall be taken into consideration in determining the term of the Contract/Permit/Accreditation.

SECTION 1.02 Strengthen Protection and Improve Welfare of Labor — The protection of labor in the cargo-handling industry shall be strengthened by strict compliance with labor standard laws and by imposing penalties on operators found engaged in such illegal activities, among others, the practice of the "Cabo" and/or "Kabit" system (subcontracting).

SECTION 1.03 Social Amelioration Fund — A cargo-handling operator shall comply with the Social Amelioration Fund program for its port- workers in accordance with the guidelines issued by the Authority to cover separation and other benefits over

and above the retirement pay of workers.

SECTION 1.04 Maintenance of Wholesome Port — A cargo handling operator shall cooperate with and assist the Authority in the removal and prevention of port squatters. It shall adopt measures to ensure that its prospective employees are not squatting within the port premises.

Article II Preliminary Provisions

SECTION 2.01 Definition of Terms — For purposes of this Order, the following terms, unless the context indicates otherwise, shall mean or be understood to mean, as follows:

- a. **Authority** means the Cebu Port Authority;
- b. **Cabo** refers to a person or group of persons or to a labor group which, in the guise of a labor organization, supplies workers to a licensed cargo handling service provider, with or without any monetary or other consideration whether in the capacity of an agent of the CHSP or as an ostensible independent contractor;
- b. **Cargo Handling Service Provider (CHSP)** refers to any person or entity awarded the management and operations of cargo-handling services in a port by way of Contract/Permit/ Accreditation;
- c. **Kabit System** refers to the arrangement between a CHSP and a person or group of persons or a labor group whereby the latter performs cargo handling services without its own contract/permit/accreditation but uses or subcontracts the contract/permit/accreditation of a legitimate operator without the permission or consent of the Authority.
- c. **Services** refers to cargo handling services such as quayside/dockside services and shipside services.

Article III Equipment and Facilities

SECTION 3.01 Cargo Handling Equipment — The CHSP shall have available at the commencement of the operation such equipment required by the Authority all in serviceable and ready-line condition. Provided, That within (3) months from the time the CHSP receives an order from the Authority, it shall have available for the operation of the services covered by its Contract/Permit/Accreditation such cargo handling machineries, gears, tools, equipment and materials as may be necessary to efficiently handle and sustain an uninterrupted cargo handling operations for all incoming and outgoing cargoes of all types and classes, including such reserve and standby machineries, equipment and materials to take care of fluctuations of port traffic, as well as breakdown of equipment as shall be determined and enumerated by the Authority.

SECTION 3.02 Equipment Renewal and Modernization — When so required by the Authority, the CHSP shall submit for approval a program for equipment renewal and modernization, consistent with its Contract/Permit/Accreditation with consideration

on utilization, specialized gears for special types of cargo and other progressive material handling trends, concepts, and techniques; the CHSP shall acquire new equipment to replace such equipment which the Authority shall, upon careful inspection, consider unsafe, inefficient or uneconomical to operate by reason of age, wear, disrepair and other causes, Provided, That the CHSP shall procure additional modern equipment to meet the exigencies of the services brought by the increase in volume and type of cargo as the circumstances may demand.

SECTION 3.03 Fire-Fighting Component — The CHSP shall make available for its regular working force on a 24-hour basis fire-fighting equipment as prescribed in "Dockwork Safety and Health Standards" within sixty (60) days from the date of effectivity of its Contract/Permit/Accreditation.

SECTION 3.04 Improve Working Conditions — The CHSP shall undertake to improve the working conditions of its employees and workers by adopting the following measures:

- a. Conduct in-service training program for all categories of personnel from management down the line to ordinary dock worker; for which purpose the CHSP shall provide the necessary funds, facilities and equipment for the proper implementation of this program;
- b. Maintain and keep at its own expense toilet facilities in the wharf including wash basins and bathroom in areas designated by the Authority;
- c. Provide its employees and workers recreation and social facilities in cooperation with existing labor union(s).

SECTION 3.05 Notice of Termination or Renewal of Contract/Permit or Accreditation — Ninety (90) days before the expiration of the Contract/Permit/Accreditation, the Authority shall decide and make known whether the services shall be taken over by the Authority itself, or be subject to bidding, or that the Contract/Permit/Accreditation shall be allowed to continue under terms and conditions imposed by the Authority. In the event that the Authority decides not to extend the Contract/Permit/Accreditation, the necessary arrangements between the Authority and the CHSP to assess and inventory all properties and equipment and perform such other related work shall be made within the said period.

SECTION 3.06 Option to Purchase Equipment — At the expiration of the Contract/Permit/Accreditation or at any time the Contract/permit/Accreditation is cancelled or terminated before such expiration, and the Authority takes over the management and operation of any or all of the services, the Authority shall have the right to immediately take over possession and control and utilize so much of the serviceable cargo handling tools, gears, machinery, equipment, including office equipment, furniture and fixtures of the CHSP as may be needed by the Authority for the continuous and uninterrupted operations of the services taken over. In such event, the Authority shall have the option to purchase the same at appraised or fair market value and payable in eight (8) quarterly installments, the first payment to fall due within first ten (10) days from the execution of the Deed of Sale; Provided, that the Authority shall exercise its option to purchase in writing within (30) days from the time it takes possession of said equipment, etc., mentioned above which it may utilize. In case the Authority opts not to purchase within the said period, just

compensation shall be paid to the owner of the equipment for the time that the same had been utilized by the Authority.

Article IV

CPA Control and Supervision Over Operations

SECTION 4.01 Exercise of Powers and Functions of the Authority — The Authority shall exercise all its powers and functions as prescribed by R.A. 7621 in reference to cargo handling and other related services being performed by the CHSP who shall follow all rules and regulations, order and/or instructions that the Authority or its duly authorized representative has issued and/or promulgated, or may hereafter issue and/or promulgate for the purpose of securing maximum efficiency. The CHSP shall, upon notice by the Authority, submit itself to an evaluation of its cargo handling system and shall promptly effect the necessary changes, modification in the system which the Authority may instruct based on the results of the evaluation.

Article V

Claims and Liability for Losses and Damages

SECTION 5.01 Responsibility and Liability for Loss and/or Damage; Exceptions — The CHSP shall at its own expense handle all merchandise in all work undertaken by it diligently and in a skillful, workman-like and efficient manner.

The CHSP shall be solely responsible as an independent contractor/operator and shall promptly pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes to the extent of the actual invoice or declared value per bill of lading, whichever is lower, for each package unless the value of the goods is otherwise specified or manifested or communicated in writing and supported by a certified packing list to the CHSP by the interested party or parties before the discharge or loading from/unto the vessel of the goods.

The CHSP shall likewise be liable for all damages that may be suffered on account of loss, damage or destruction of any merchandise while in its custody or control in any pier, shed, warehouse facility or other designated place under the supervision of the Authority.

However, the CHSP shall not be responsible for the condition of the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being, received, or remain in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by force majeure or other causes beyond the CHSP's control or capacity.

The CHSP shall be solely responsible for any and all injury, loss, or damage that may arise on account of the negligence or carelessness of the CHSP, its agents or employees in the performance of the undertaking under its Contract/Permit/Accreditation. The CHSP shall hold the Authority free at all times from any claim of third persons in connection with its operations as a cargo handling service provider.

SECTION 5.02 Payment of Claims; Disputes and Resources — While a shipping company carrier shall be required to respond to any consignee(s) or other interested

party for loss, damage or destruction of cargo suffered while in the possession of the CHSP or under its control, the CHSP shall make prompt payment to such shipping company or carrier or its agent, of all claims for which it is determined that the CHSP is liable in conformity with the provisions of the Bill of Lading and/or other documents of probative value.

All claims for losses and/or damages to the cargoes shall be paid by the CHSP within fifteen (15) days from the date of formal filing of the same provided that all documents and supporting papers are complete and available. In case there is dispute as to who is responsible for the loss or damage between the CHSP, shipping company, or consignee(s), or interested party, the concerned parties may agree between or among themselves to jointly submit the dispute to the AUTHORITY for determination in the first instance. In the settlement of the dispute, the Authority shall consider all clauses and exceptions to the carriers bill or bills of lading where these may be relevant or applicable.

SECTION 5.03 Pilferage — The CHSP shall control pilferage which shall not exceed the limit as prescribed by the Authority.

Article VI

Labor-Management Relations

SECTION 6.01 Employment, Investigation and Dismissal of Employees and Labor Personnel — The CHSP shall utilize and employ members of the existing labor force as may be needed in the cargo handling operation subject to the individual screening by the CHSP. The Authority shall have the option to conduct a thorough character investigation of each and every employee of the CHSP and should it be discovered that employees or laborers with derogatory records have been employed, the CHSP shall take appropriate measures in order that their employment may be terminated immediately and to incorporate those conditions in its collective bargaining agreement with the union.

SECTION 6.02 Collective Bargaining Agreement — The CHSP, whenever dealing with organized labor, shall enter into a collective bargaining agreement with one labor union(s) duly chosen or designated as the sole and exclusive bargaining agent/s of the workers and employees in accordance with the Labor Code and its implementing rules. But in no case shall such agreement be beyond the actual life of the Contract/Permit/Accreditation of the CHSP.

SECTION 6.03 Availability of Manpower — The CHSP shall have, within a reasonable period prescribed by the AUTHORITY, in readiness and available at all times, sufficient manpower for all the cargo handling services covered by its Contract/Permit/Accreditation.

SECTION 6.04 Prompt Payment of Wages, Overtime, Benefits, etc. — The CHSP shall pay promptly, as they fall due, the wages and salaries, SSS premiums and other benefits of all laborers and employees, directly or individually, without the intervention whatsoever of any third person, entity, association, partnership or corporation in accordance with pertinent laws, rules and regulations. And in compliance thereto the CHSP shall keep a daily, weekly, and/or monthly record of payments signed by the laborers and employees indicating therein the number of hours and days work, and the corresponding wages or salaries received by each and