

329TH REGULAR BOARD MEETING
Minutes of Meeting of the Board of Directors
PHILIPPINE PORTS AUTHORITY
PPA Board Room, 5th Floor Marsman Building
Muelle de San Francisco, South Harbor, Port Area, Manila
22 March 2007

MEMBERS PRESENT:

Oscar M. Sevilla	Acting Chairman, PPA, presiding
Romulo L. Neri	Member, NEDA
Noemi L. Saludo	Member, Private Sector Representative
Vicente T. Suazo, Jr.	Member, MARINA
Gaudencio A. Mendoza, Jr.	Alternate Member, DOF
Bashir D. Rasuman	Alternate Member, DPWH
Zenaida C. Maglaya	Alternate Member, DTI
Armi Jane R. Borje	As represented by ASEC T.M. Repizo
David R. Simon	Corporate Board Secretary

OTHERS PRESENT:

Alberto C. Agra	GCC, OGCC
Augusto B. Santos	DDG, NEDA
Benjamin B. Cecilio	AGM - Operations
Aida P. Dizon	AGM - FA
Claro V. Maranan	AGM - Engineering
Raul T. Santos	A/GM - CASP
Leopoldo F. Bungubung	PPA
Arnel F. Reyes	PPA
William Melad	PCG
Henry Basilio	CRC
Ather N. Sajid	NEDA/ODA
Ma. Susana B. Garcia	OGCC
Roberto Abada, Jr.	PPA
Elsa L. Hilario	PPA
Erlinda L. Tucit	PPA
Carolina N. Ramirez	PPA

- I **QUORUM AND CALL TO ORDER** – After a quorum had been duly certified, the Acting Chairman called the 329th Regular Board Meeting to order at 1:10 P.M.
- II **MINUTES OF THE PREVIOUS MEETING** – The Board reviewed the Minutes of the 328th Regular Board Meeting held on 28 February 2007, after which the same was **CONFIRMED**, as presented.

Accordingly, the Board PASSED the following Resolution:

RESOLUTION NO. 2096

“RESOLVED, That on motion duly made and seconded, the Minutes of the 328th Regular Meeting of the PPA Board of Directors, hereto attached and incorporated by reference, held on 28 February 2007, at the PPA Board Room, 5th Floor Marsman Building, 22 Muelle de San Francisco, South Harbor, Port Area, Manila, be, as they are hereby confirmed, as presented.”

III **CONFIRMATION OF BOARDCOM ITEMS/RESOLUTIONS** –
As summarized by the Corporate Board Secretary, the Board **CONFIRMED** the following BoardCom Resolutions, as adopted during the 194th Meeting of the Board Committee held on 22 March 2007:

**BOARDCOM
RESOLUTION**

ACTION TAKEN

- 2007 - 1064 - Approval of the proposed twenty-five (25) year Contract of Lease with Philippine Chips Tagum Plant Corporation over the one (1) hectare reclaimed land adjacent to the Maco Port, Maco, Compostela Valley.
- 2007 – 1065 - Approval of the proposed extension of the Contract with UNISYS from January 16, 2007 to January 15, 2008 at no cost to PPA, with the condition to ensure compliance with the target dates set and as a penalty for not meeting the new timelines, it shall henceforth be made liable to pay the corresponding cost of extending the contract of EDF.
- 2007 – 1066 - Approval of the proposed extension of the Contract with Economic Development Foundation (EDF), for the Project Management Phase of the PPA MIS Computerization Project, from March 16, 2007 to March 15, 2008 with additional cost of Php 16,073,740.00 to cover said extension.

- 2007 - 1067 - Approval of the proposed amendment of Section 7.01.3 of the Contract with UNISYS allowing UNISYS to secure its performance security (Surety Bond) from any insurance company duly accredited by the Office of the Insurance Commissioner.
- 2007 - 1068 - Approval of the proposal of Management to allow ICTSI to handle foreign relay containerized cargo at the MICT subject to the condition that the corresponding charges thereat be the domestic rates and the corresponding government share be at 10%.
- As part of the confirmation, the Board directed Management to submit the resulting impact on how much will be saved from the approved proposal.
- 2007 - 1069 - Approval of the proposal to revisit the exclusivity issue of the Management Contract of the International Container Terminal Services, Inc. (ICTSI) for the foreign container handling operations at the Port of Manila by the Office of the Government Corporate Counsel.
- 2007 - 1070 - Approval of the proposal to authorize the renewal by the PMO-Legaspi personnel of their Calamity Loans even if they have not yet paid fifty percent (50%) of their existing loans as an exemption from the provisions of PPA Memorandum Order No. 30-2004 (Omnibus PPA Guidelines on the Grant of Calamity Loan Assistance), provided that balance of their respective unpaid calamity loans shall be deducted from the proceeds of the new loan renewals.
- 2007 - 1071 - Creation of a Special Review Body to look into the various port and terminal handling fees charged by various foreign

long as it is duly accredited by the Office of the Insurance Commissioner.

On the suggestion of Director Suazo that PPA should come up with a list of duly accredited companies, Atty. Simon replied that PPA has a list of accredited companies.

Atty. Simon informed the Chairman that the extension of the Unisys Contract and the amendment of the surety bond provision in the Unisys Contract will be all put in one supplemental agreement.

On motion duly made and seconded, the BoardCom APPROVED the proposed amendment to the Performance Security Provision of the Unisys Contract.

Accordingly, the BoardCom PASSED the following Resolution

BoardCom Resolution No. 2007-1067

“RESOLVED, That on motion duly made and seconded, and considering that under Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, the contractor may secure a performance security from any reputable surety or bonding company, the proposed amendment of Section 7.01.3 of the Contract with UNISYS for the Implementation Phase of the PPA MIS Computerization Project allowing UNISYS to secure its performance security (Surety Bond) from any insurance company duly accredited by the Office of the Insurance Commissioner, be, as, it is hereby approved;

RESOLVED FURTHER, That the General Manager, be, as he is hereby authorized, to execute the corresponding Supplemental Contract covering the said extension for and in behalf of PPA.”

VII PROPOSAL ALLOWING MICT TO ACCOMMODATE DOMESTIC CARGOES – AGM Cecilio reported that MICT handles about 1.2 million TEUs a year, 400,000 of which are export cargoes and about 100,00 of the 400,000 TEUs come from the south. This means that about 300,000 TEUs comes from Luzon. The 100,000 TEUs coming

from south mostly comes from Cebu, the others come from Cagayan de Oro and Davao. He said, the procedure for export cargoes coming from the south is that these cargoes are placed in containers and are carried by domestic vessels. They are discharged at the North Harbor (NH) then trucked from NH to MICT and eventually loaded on board foreign vessels. This several steps according to him make the export cargoes coming from the south expensive. The World Bank study which shows that Php 500.00 of the total Php 994.00 port-related costs refer to relay cargoes coming from Cebu. He said that although the data has not really been checked, PPA has not been insensitive to this report. The point is, if there is an added expense for export cargoes coming from south, it is because it is loaded on board domestic ships, discharged at a domestic port before it is brought MICT. Exporters or export carriers are requesting that they be allowed to charter domestic vessels so that these vessels can directly carry their relay cargoes to an international port and then load them on board a foreign vessel. In this case, there will be lesser expense on the part of the exporters. However, because there will be some pure domestic cargoes in the process, they should also be delivered directly out of the MICT. ICTSI, in particular, is requesting that they be allowed to do so.

PPA finds the proposal acceptable because it will eliminate the extra charges in NH. Export cargo expenses will be lessened by allowing these foreign vessels to charter domestic vessels to carry their relay cargoes. PPA will also be avoiding the problem of the Cabotage law. Since it is already allowed in South Harbor (SH), MICT should also be allowed to do so to level the playing field. Other documentation or formalities will also be lessened. The cargoes, although they are relay cargoes are essentially domestic and should be charged domestic fees. Cranage fees will still be discussed with the owners of the vessels. The government share will have to follow the 10% share for domestic operations. The vessels will pay Usage Fees, which is domestic.

After the presentation, the following were the concerns of the BoardCom:

1. Director Suazo mentioned that way back in the late 80's PPA had already allowed this proposal but there was no formal approval of this arrangement. He said PPA had allowed this through the "permit to berth" to first dock at MICT or SH to

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discharge transit cargoes before they shift to NH. He said this particular arrangement will formalize the proposal. AGM Cecilio stated that there will be a close coordination with BOC on how this will be operated.

3. As a related matter, Secretary Neri reiterated his previous suggestion to allow Manila Harbour Centre (MHC) to handle (foreign) containers. He said before when he raised the issue, the main complaint of PPA was that PPA will lose a lot of revenues. He said he suggested then that MHC if allowed to operate should also share the same revenues as what MICT is giving. He said he was discussing it then with PPA's finance officer on the possibility and he did not know what happened afterwards.

The Chairman explained that he was able to interview four members of the Bids and Awards Committee (BAC), when they undertook the bidding of the MICT Contract. They said that there were preliminary questions and answers portion during the bidding and ICTSI, through Mr. Enrique Razon, asked the question "Are we to understand that the containers we are talking here and which will be handled by whoever should win this bid is exclusive for the Port of Manila?" The said BAC Members confirmed that it is true because the financial projections given to all bidders assumed all containers passing through the Port of Manila. The Chairman said he had talked to some members of the BAC, namely: Director Vicente T. Suazo, Jr., AGM Aida P. Dizon and Atty. Juan C. Sta. Ana. He said he called the members of the BAC and asked them about the question and answer portion which was made part of the bidding process. It was made clear to him that MICT was exclusive for the Port of Manila to handle containerized cargoes. If we allow others to operate the port in competition with ICTSI for containers, PPA will be sued. Nonetheless, Secretary Neri suggested to review the contract of ICTSI. Secretary Neri mentioned that during the Philippine Development Forum of the World Bank Conference in Cebu, one of the major recommendations to the President was to give more competition in ports, airlines, etc. He added that when MHC came in they really brought competition to bulk cargo handling and bulk cargo handling charges really went down. As a rule, competition always brings down costs. He suggested to review the contract. He inquired why PPA

have to give an exclusivity at the Port of Manila. He said Manila is a very big area and asked Management how it defined Port of Manila.

Director Suazo explained that there was a rationalization of the port facilities in the Port of Manila then. PPA have rationalized SH to handle general cargo, bulk cargo and containers loaded on combo vessels. The MICT was exclusively developed by the government to handle purely containers that is why it is called MICT. He said even during the time of Customs, when he was still connected with BOC, DPWH developed MICT and called it Manila International Container Port (MICP) then. When PPA took over, it continued utilizing it exclusively as a container facility and called it the Manila International Container Terminal (MICT). When the bidding was conducted to privatize MICT, that was the intention then to continue to have it operated exclusively for containers because the investments required from the bidders to put them up, really for container operations. The question was raised during the pre-bid conference when the bidders ask for clarification whether the containers should be exclusively handled by MICT for fully containerized vessels and the answer was yes. In the bid, PPA told them that they should consider this in their proposal and on their commitments to give to government. When they made their projections, it was under this assumption. The projected containers to be attracted to MICT also became the basis of their commitments to government.

3. Secretary Neri informed the BoardCom that even in the case of Manila Water against Maynilad, they put two operators to make sure that there is competition and there is a comparison between the two operators. He added that monopoly is always the result of much higher costs. He reiterated for the review of the contract (ICTSI) to check if it really calls for the exclusivity. The Chairman explained that being a lawyer, he is aware that based on the presentation made by the members of the BAC then, the foreign containerized cargoes is exclusive for the MICT. He said, it is already entered into the framework of the contract which is protected by the Constitution. He also said he will not only violate and impair the provisions of the contract, he is also in danger of

not only being sued in his official capacity but in his personal capacity for damages. Secretary Neri reiterated his suggestion to get a third party or for OGCC to review the contract even for the purpose of information only of the Board.

The Chairman further explained that the point raised that there is a monopoly is not accurate. He said ATI has been allowed to handle containerized cargoes. ATI and ICTSI are now competing in that respect. He further added that the original application of MHC is purely for domestic operations. Secretary Neri explained that his understanding is as long as you are in the same area, container handling is not exclusive to ICTSI. On his query if ATI also handles containerized cargoes, the Chairman replied in the affirmative. On his query as to how many TEUs, AGM Cecilio replied 600,000 TEUs for ATI, while 1.2 million TEUs for ICTSI. On his other query if a third-party can still handle containerized cargoes if there is space, the Chairman replied he does not know. Secretary Neri asked if the exclusivity to container handling is on the area alone because both ICTSI and ATI are handling containerized cargoes. The Chairman explained that ICTSI have the authority under their contract to handle exclusively containers but ICTSI earlier agreed for ATI to also handle containerized cargoes. Knowing that ATI was allowed to handle containerized cargoes with the blessings of ICTSI, Secretary Neri said it is a very strange situation.

4. Director Suazo explained that with regards to MHC, the inclusion of a port in the development of MHC was actually imposed by PPA for the simple reason that PPA wanted MHC to put up a facility that would handle the overflow of NH cargoes because it was reaching over capacity already. He added that for government to put up a facility to address the over capacity problem in NH will take time and MHC was already there. It was included in the commitment of MHC to put up a domestic port. All the documents submitted to PPA for approval were based on the study over the domestic overflow of NH that will be shifted to MHC. He shared his experience as former President and CEO of MHC. He said the intention actually of MHC was not only to handle domestic cargoes but also the operations at the anchorage. Those cargoes staying at the anchorage stayed for

about 30 days and majority of these had affected the cost of pandesal because most of them were wheat. MHC opted then for this particular cargo as long as they will be locators of MHC. If they can be allowed to discharge it at MHC it will bring down the cost of wheat and bring down the stay-time of vessels from thirty (30) to about four (4) or five (5) days. He said MHC applied to PPA and PPA said provided it will be only limited to locators that are there and for general cargo. It is for this reason that MHC started operating and handling these cargoes. He said this is also a very exceptional case. Director Suazo explained that normally when you start applying to built a private port, you are required to submit all the plans and have it approved by PPA, then construct and finish the port. Then and there you are supposed to have it inspected to see whether it is in compliance with the approved plans. Once approved, you are given a Permit to Operate. On record, he said MHC has not been completed and it has never been done completely in accordance with the plans submitted. He added that MHC was given a permit by PPA (under GM Agustin) for initially six (6) years provided that before the end of six (6) years, the port shall have been completed. To date, the port has not been completed.

5. Noting that ATI was allowed to operate containerized cargoes with the blessings of ICTSI, Secretary Neri asked how can there be a real competition. The Chairman replied that he has no objection to the facts mentioned by Secretary Neri. The Chairman mentioned that he is just stating the position of Management in so far as he is concerned that he does not want to be sued based on the contract entered into by PPA with ICTSI. He added that his interviews with the members of the BAC showed that it was really exclusive for the Port of Manila. The projections and the containers coming in were exclusive for the Port of Manila. He stated that if there are any other findings or study that will show otherwise and could overrule the decision of PPA on the matter, he is willing to do so. Secretary Neri reiterated to clarify the legal issues once and for all. He added that although the debate on the national interest issue cannot be avoided, PPA may have gotten itself into a contract that created a monopoly that really had burden the people for so long. The Chairman told the Secretary that he was very happy when he was invited during the Cabinet meeting and this issue was raised. He explained to the President the situation. He explained to the

President that from his interviews with the members of BAC, he was informed that containerized cargoes were exclusive for the Port of Manila. The containers which were part of the bidding process were exclusive for the Port of Manila. The President concurred and said that there is nothing we can do because PPA will be sued. The Chairman added that Secretary Neri was present during the said meeting. Secretary Neri reiterated to clarify the legal issues. He said competition should be the government's policy. He advised Management to get away from monopolistic tendencies. He added that basic economic principles will always show that when there is monopoly costs will be much higher than what they should be vis-à-vis when there is competition.

6. On the proposal for MICT to handle domestic cargoes, GCC Agra inquired if there is already a draft contract, Atty. Simon replied in the negative. The Chairman mentioned that this is one way of helping the exporters because you will be removing that leg from the NH where they will utilize trucks to carry cargoes either to SH or MICT.
7. Secretary Neri requested for an estimate on how much cost of cargo handling will be reduced, AGM Cecilio replied that normally for trucking within a 15-kilometer radius, it is Php 2,500 per van. If we allow the ships to shift from NH to SH or MICT there is a shifting fee or pilotage fee. There are a lot of other costs but this will be totally erased.

On his other query why only MICT and not allow ATI to do the same, AGM Cecilio replied that ATI is already doing it now.

8. With respect to Secretary Neri's suggestion that the contract be reviewed by OGCC, Atty. Bañas mentioned that she could not understand clearly what will be the concept of the legal review by OGCC of the contract between PPA and ICTSI. Secretary Neri replied that he want to be clarified once and for all whether MICT has the exclusive right to handle containerized cargoes.

On her statement that the exclusivity issue has been clarified by the old hands, Secretary Neri replied that he already knew

what the old hands had said on the issue but he wants an external lawyer to tell him. Atty. Bañas stated her point that the ATI contract, which is now existing, valid and extended, is the best evidence that there is a second operator that has already been authorized. Atty. Bañas stated that only a party to a contract can raise or cause a contract to be reopened if there is a violation of the terms of the contract. Secretary Neri replied that he is not reopening the contract. He said he is just raising a question and would like to be advised on the legality of the exclusive container handling operation at MICT.

9. Secretary Neri reiterated that Management's decision should be very clearly rationalized. He also suggested to make a press release that PPA is doing something to reduce transport costs.
10. Director Saludo inquired on the time consumed in moving the goods from NH to MICT. She said that the private sector is concerned not only on the cost of trucking but also on the time of release and delay, pilferage and possible high jacking of the van.
11. Director Neri informed the Board that the WB/ADB Study is being shown in the internet and all over the world. He is concerned that the investors may avoid the Philippines because of the high cargo costs.

On motion duly made and seconded, the BoardCom APPROVED the amendment to the contract of ICTSI allowing MICT to accommodate domestic cargoes.

Accordingly, the BoardCom PASSED the following Resolutions:

BoardCom Resolution No. 2007-1068

“RESOLVED, That on motion duly made and seconded, and considering that the opening of the Manila International Container Terminal (MICT) to domestic operations will further level the playing field between MICT and the South Harbor since the latter has been opened to domestic operations since 2003, and considering further that it will markedly reduce the overall transport costs of containerized domestic cargoes coming from

Visayas and Mindanao by eliminating relay costs between North Harbor and MICT, the proposal to allow the MICT to accommodate domestic vessels and allow the International Container Terminal Services Incorporated (ICTSI) to handle domestic cargoes, primarily foreign relay containerized cargoes, carried by domestic vessels, be, as, it is hereby approved, subject to the following conditions:

- 1. The applicable cargo handling tariff as well as Usage Fees and domestic Wharfage Dues to be used shall be those prescribed at North Harbor. Other cargo handling tariff, if any, must be subject to PPA approval;*
- 2. The shore cranes of ICTSI shall be utilized to maintain the efficiency at MICT and a corresponding crannage fee may be imposed, subject to PPA approval;*
- 3. The corresponding revenue of ICTSI on domestic handling operations shall be subject to 10% government share;*
- 4. Port charges such as Usage Fees for domestic vessels and Wharfage Dues for domestic cargoes shall accrue to PPA and shall be assessed and collected thru the existing MICT computerized systems and procedures; and*
- 5. All pertinent rules and regulations on domestic operations, as may be applicable, shall be observed.*

RESOLVED FURTHER, That the General Manager, be, as he is hereby authorized, to execute the corresponding Supplemental Contract with ICTSI for and in behalf of PPA."

BoardCom Resolution No. 2007-1069

"RESOLVED, That on motion duly made and seconded, the proposal to revisit the exclusivity issue of the Management Contract of the International Container Terminal Services, Inc. (ICTSI) for the foreign container

handling operations at the Port of Manila by the Office of the Government Corporate Counsel (OGCC), be, as, it is hereby directed."

VIII PROPOSAL OF DTI TO REDUCE OR SUSPEND THE COLLECTION OF THE EXPORT WHARFAGE FOR EXPORT CARGOES – The Chairman informed the Secretary of DTI through Director Maglaya that according to the DOTC Secretary there is no problem in suspending the collection of the export wharfage for export cargoes as long as there is no law being violated. He said the PPA's Charter (P.D. No. 857) mandates PPA to collect wharfage on export cargoes. He said if PPA will suspend said fee because of an order or request, PPA may be in trouble. In this regard, the DOTC Secretary advised Management to bring the matter to the attention of the Board.

Director Suazo inquired if the export wharfage is the same as the import wharfage. AGM Cecilio replied that export wharfage is lower than import wharfage. Director Suazo informed the BoardCom that BOC also supported export by having lower duties. In his opinion, PPA is mandated to collect such port dues. It is not within the powers of PPA or even the Board to reduce or suspend its collection. The Chairman informed the BoardCom that it is only the President who can suspend or reduce wharfage dues on export and import cargoes.

On the query of Director Santos as to how much lower is the export wharfage dues compared to the import wharfage dues, AGM Cecilio replied it is 50% lower. Noting that the wharfage dues for export cargoes is Php 250.00/TEU, Director Santos inquired on the estimated number of containers. AGM Cecilio replied that for MICT alone, it is 400,000 TEUS per year and in South Harbor it is almost 100,000 TEUs per year.

Director Saludo stated that she has a record showing that wharfage for export is only 50% of what is being charged compared to an imported item.

The Chairman informed the BoardCom that in the President's SONA, PPA is being asked to develop 28 ports and PPA needs all the revenues it can collect because all these projects will be funded by PPA.