

Administrative Order
No. 78
September 19, 1990

**SUBJECT: Regulations on the Issuance of Timber
Production Sharing Agreement (TPSA)**

Pursuant to PD No. 705, as amended, Executive Order No. 192 dated June 10, 1987 and Executive Order No. 278 dated July 25, 1987, and in line with the policy of the Government of ensuring the sustainable productivity of, and equal access to, the timber resources as a tool for economic recovery and national security, the following rules and regulations governing the development of timber resources are hereby promulgated:

CHAPTER I
TITLE, POLICIES AND OBJECTIVES

SECTION 1. Title. - This Administrative Order shall be known as the "Regulations on the Issuance of Timber Production Sharing Agreement" (TPSA).

SECTION 2. Policies and Objectives. - The policies and objectives of Government on timber resources shall be:

- 2.1 To ensure the sustainable productivity, expanding availability, and equitable access to, the timber resources for the continuing support to dependent industries and the generation of employment opportunities and revenues;
- 2.2 To provide a system of rational harvesting and gainful and efficient utilization of the resources;
- 2.3 To provide the government with equitable share in the utilization of timber resources; and
- 2.4 To rationalize the industries which are dependent upon timber as their primary raw material.

SECTION 3. Definition of TPSA. - As used herein Timber Production Sharing Agreement is a privilege granted by the State to qualified persons to develop and utilize timber resources in a specified area whereby the government and the

holder thereof share in the timber cut, gathered or produced or in the cash value of such production.

CHAPTER II AVAILABLE AREAS AND MODE OF DISPOSITION

SECTION 4. Timber Harvesting. - Timber may be commercially cut, gathered, transported and disposed of through a TPSA issued by the Department of Environment and Natural Resources (DENR) following the guidelines prescribed in these regulations.

SECTION 5. Available Areas. - TPSA may be allowed in the following areas:

- 5.1 Residual forests within permanent forest areas which have not been logged for at least 25 years;
- 5.2 Alienable and disposable lands containing timber;
- 5.3 Civil and other reservations, except areas of virgin or old growth forest;
- 5.4 Expired/Cancelled TLA and Expired PTPA with remaining volume that can be utilized economically and sustainably, except the virgin or old growth forest; and
- 5.5 Reforestation areas and other plantations within forestlands that are available for harvesting, without adversely affecting environmental considerations.

Provided that the area is not covered by encumbrances such as:

Within any prohibited area; e.g.

- National Parks,
- Proclaimed and/or Critical Watersheds,
- Wildlife Sanctuaries,
- Wilderness Areas,
- Areas covered by logging ban,
- Islands 10,000 hectares in area or less,
- Such other areas where logging operations may be prohibited by the Secretary of DENR
- Areas over 50% in slope or above 1,000 meters in elevation and

Within any existing timber license;

Covered by conflicts, appeals and/or other legal claims unless otherwise authorized by the Secretary.

SECTION 6. Mode of disposition of available areas. As a general policy, TPSAs shall be granted over production blocks identified by the DENR through public bidding undertaken in consonance with this Order. However, the Secretary may award, through negotiated agreement, available areas as provided for in Section 25, Chapter IV of these regulations.

CHAPTER III COMPETITIVE BIDDING

SECTION 7. Notice of invitation to pre-qualify to bids. Prospective bidders shall be invited to pre-qualify to bid over the subject area by way of a public announcement in at least two (2) newspapers of general circulation. The Notice of Invitation for pre-qualification shall run once a week for three (3) consecutive weeks for new bids and once a week for two (2) consecutive weeks in the case of rebidding. In addition, a copy of the Notice shall be posted at the Department and its Regional, Provincial and Community Offices where the area being advertised is located.

The Notice shall specify, among others, the location, and technical description of the area, the allowable cut, and other important details thereof to guide the prospective bidders.

SECTION 8. Who may pre-qualify. The following may pre-qualify:

- 8.1 Filipino citizens who meet the requirements under these regulations;
- 8.2 Corporations or associations organized under the laws of the Philippines at least 60 percent of whose capital is owned by Filipino citizens, and which meet other requirements under these regulations;
- 8.3 Holders of existing TLAs with good track record of forest protection such as no denuded areas within their concession.

SECTION 9. Who are disqualified.

- 9.1 Individuals, corporations or associations, including officer(s) and/or principal stockholder(s)/ partner(s) thereof who are already holders or awardees of subsisting TPSAs or TLAs with denuded areas determined to be the fault of said TLA holders.
- 9.2 Individuals, corporations or associations any one of whose officers or principal stockholders have derogatory records such as, but not limited to: (a) violations of anti-dummy laws; (b) tax evasions; (c) illegal logging/smuggling; (d) unauthorized subcontracting of forestry/permits and licenses.
- 9.3 Former holders of TLAs and/or other forestry permits and licenses which had been cancelled or not renewed upon expiration due to violations of forestry laws and regulations.

SECTION 10. Pre-qualification requirements. In addition to the pre-qualification forms duly accomplished, the following shall be submitted by prospective bidders:

- 10.1 For individuals:
 - 10.1.1 Certified photo copies of Income Tax Returns for the immediately preceding three (3) years, if applicable;
 - 10.1.2 Proof of sufficient capital and credit lines; and
 - 10.1.3 Sworn statements authorizing DENR representatives to verify submitted information.
- 10.2 For cooperatives:
 - 10.2.1 Certificate of registration issued by the Cooperatives Development Authority (CDA);
 - 10.2.2 Audited Financial Statements for the immediately preceding past three (3) years, if applicable;
 - 10.2.3 Proof/s of sufficient capital and credit lines; and

- 10.2.4 Sworn statement authorizing DENR representative(s) to verify submitted information.
- 10.3 For corporations, partnerships and associations:
 - 10.3.1 Certified photo copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) or the concerned authorized government agency;
 - 10.3.2 Certified photo copy of Articles of Incorporation, Partnership/Association and By-Laws;
 - 10.3.3 Description and background of current principal stockholders, directors, and officers, including their nationalities, biodata, and related experiences;
 - 10.3.4 Audited Financial Statements for the immediately preceding past three (3) years, if applicable;
 - 10.3.5 Proof of sufficient capital and/or credit lines; and
 - 10.3.6 Sworn statement authorizing DENR representative(s) to verify submitted information.

SECTION 11. Submission of documents/requirements. All pre-qualification documents and requirements shall be submitted in seven (7) copies to the Office of the Secretary, DENR, care of the Timber Production Sharing Awards Committee, not later than the time and date specified in the Notice of Invitation to Pre-qualify. No papers and documents submitted by prospective bidders shall be made public unless authorized by the Secretary.

SECTION 12. Timber Production Sharing Awards Committee. The DENR Secretary shall create a Timber Production Sharing Awards Committee (TPSAC) which shall be primarily responsible for the proper receipt, recording, safekeeping and evaluation of pre-qualification and bid proposals pertaining to the timber resource, including the conduct of bidding and recommendations for the award of an area being disposed of in accordance with these regulations.

The members of the TPSAC shall be designated by the Secretary and shall be composed of a Chairman and Executive Officer, and the Regional Technical Director (RTD) for Forestry of the region concerned, two (2) members from the technical forestry group with a rank not lower than a Division Chief or its equivalent, one (1) Legal Officer and a representative each from the Commission on Audit (COA) and the Philippine Wood Products Association (PWPA) as observers.

The TPSAC Chairman is authorized to organize a Secretariat of the Committee.

SECTION 13. Evaluation of pre-qualification requirements. The TPSAC shall, upon receipt of a prospective bidder's pre-qualification requirements, immediately record the same in a permanent record book provided for the purpose indicating the date and time of receipt and the number of pages. Forthwith, the TPSAC shall evaluate the documents taking into account the completeness of the prescribed requirements and the following considerations:

- 13.1 Financial capacity.- The prospective bidder must at least have a net worth equivalent to the log production cost for the first year of operations. This may be supplemented by proofs of available cash capital and credit line facilities;
- 13.2 Technical competence. - Proof of technical know-how and experience, and/or ability to hire the services of competent technical personnel;
- 13.3 Legal requirements.- Meets all the legal requirements such as but not limited to the citizenship and capitalization;
- 13.4 Community development obligations.- Firm plans and commitments for the upliftment of the socio-economic status of the rural community within its sphere of operations;
- 13.5 Standing of prospective bidder.- Prospective bidder should be of good standing status and is not in the blacklisted or suspended category; and
- 13.6 TLA holders with no denuded areas within their concession boundaries shall be eligible for and given preference in the allocation for TPSA.

SECTION 14. Action on Pre-Qualification Documents. If upon evaluation, the TPSAC is convinced that the prospective bidder meets all the requirements, the application for pre-qualification shall be stamped "PREQUALIFIED" and shall be submitted to the Secretary for review/ approval. Within five (5) days from approval by the Secretary, the Committee shall notify the bidder in writing of his pre-qualification. He shall be further advised to secure the Bid Proposal Forms from TPSAC upon payment of the required fees.

On the other hand, application of prospective bidders who do not meet the pre-qualification requirements shall be stamped "DISQUALIFIED" which shall likewise be submitted to the Secretary for review and confirmation. Within five (5) days from confirmation by the Secretary, the pre-disqualified bidders shall be notified in writing of such disqualification.

SECTION 15. TPSA Bid Proposal Forms and Particulars. Bid proposal forms and particulars on an area to be bid shall be made available by the TPSAC to pre-qualified bidders upon request and payment of the corresponding fees therefor.

SECTION 16. Notice of submittal and opening of bids. All pre-qualified bidders shall be served notice of the date, time and place for the submittal and opening of bids at least thirty (30) days prior to the submission and opening of the bids.

SECTION 17. Preparation of bid forms.

- 17.1 Bids shall be submitted in seven (7) copies on Bid Proposal Forms prescribed by the TPSAC in strict compliance with the requirements of the advertisements, Invitation to Bid, Instruction to Bidders, and Terms and Conditions of the TPSA;
- 17.2 Bidder must indicate in the bid his full business address in Metro Manila. Bidders outside Metro Manila shall provide and indicate a forwarding address in Metro Manila to which all notices required under these regulations shall be delivered;
- 17.3 Bidder must submit an indicative plan for the management and development of the area; and

- 17.4 Queries relative to the Instructions of Bidders and Terms and Conditions of the TPSA and the bid forms or any part thereof shall be made during a pre-bid conference. Once a bid is submitted, it is presumed that the bidder has waived any right to be heard regarding any matter contained therein.

SECTION 18. Submission and opening of bids. Bids shall be sealed in envelopes delivered personally or by authorized representatives of the bidder and must be submitted to and received by the TPSAC only on the date and time set for the opening of the bids.

All bid proposals shall, upon receipt thereof, be properly recorded. After opening, every page thereof including attachments shall be numbered consecutively and the original copies initialed by each and every member of the TPSAC.

SECTION 19. Canvassing of bids.

- 19.1 Canvassing of bids shall be done in public immediately after the submission and opening of bids in the presence of the bidders or their authorized representatives and the members of TPSAC.

Within five (5) days after the canvassing of the bids, the corresponding abstracts shall be prepared which shall be signed by the Committee members and the resident auditor or his representative, attaching thereto all the bids with their corresponding supporting papers/documents and the proceedings of the bidding.

- 19.2 No withdrawal of bids shall be allowed after the same is opened.

- 19.3 When a bidder submits two or more bids for the same area, only the highest bid shall be considered or the DENR shall exercise the option to choose.

SECTION 20. Bid guaranty. All bid proposals shall be accompanied by a Bid Guaranty equivalent to ten percent (10%) of the gross cash value of the annual allowable cut (AAC) granted which shall be in the form of a Manager's Check issued by a reputable bank in favor of the DENR. Failure to submit the required bid proposal guaranty with the bid shall be sufficient cause for rejection of bid. The bid guaranty shall form part of the share of the government pursuant to the terms and conditions of the TPSA. All bid guarantees submitted by losing bidders shall be returned to them the next working day after the opening of bids.

SECTION 21. Evaluation of bids. The following general guidelines shall govern the evaluation of bid proposals:

- 21.1 Bid shall be prepared in prescribed bid proposal forms.
- 21.2 There shall be at least two (2) competing bidders at the time of the opening of bids. In the event that there is only one bidder, the bid shall be returned unopened and the area advertised anew for rebidding. If at rebidding, there should still be only one (1) bidder, the area may be awarded through negotiated agreement as provided for in Chapter IV, hereof.
- 21.3 A bid which does not comply with the conditions or requirements set forth in the bid documents shall be rejected.
- 21.4 The Secretary reserves the right to reject any or all bid proposals when in his opinion, public interest will be adversely affected. The right is also reserved to waive minor deviations in the bids which do not affect the substance and validity of the bids. The Secretary likewise reserves the right to require additional information on the capability of the winning bidder to execute satisfactorily the agreement in accordance with the terms and conditions thereof.
- 21.5 After the bids have been evaluated, the Committee shall submit a report of its findings to the Secretary who shall decide as to whom the timber under bid shall be awarded.

SECTION 22. Basis of award. The area subject of bid shall be awarded to the bidder who offers the best proposal advantageous to the government considering such factors as the amount of bid, financial and technical capability, and commitment to community development; Provided, that, the bid offer is not lower than the minimum government share as pre-determined by the Department.

SECTION 23. Decision of award. The Secretary shall review the evaluation report of TPSAC and decide to whom the area shall be awarded and for which a Notice of Award shall be issued; Provided, that, should the awardee refuse or fail to comply with the requirements called for in the Notice of Award within the period prescribed therein, the award shall be nullified and the Bid Guaranty submitted shall be forfeited in favor of the government; Provided, further, that, in such case, the area shall be rebid and the awardee shall be barred from participating in any future bidding.

SECTION 24. Execution of timber production sharing agreement. Within fifteen (15) days from receipt of the Notice of Award, the winning bidder shall enter into a TPSA in the prescribed form accompanied by all the contract documents mentioned therein duly accomplished.

CHAPTER IV NEGOTIATED CONTRACT

SECTION 25. When negotiated bidding/contract may apply. Timber resources previously determined by the Department as available for the issuance of a TPSA may be awarded to qualified applicants through negotiated agreement under any of the following circumstances.

- 25.1 Where the timber resource is located in certified alienable or disposable lands;
- 25.2 Timber volume available in a given area is more or less equivalent of the requirements of cottage industries and/or small-scale wood based projects and/or livelihood industries located in said areas;
- 25.3 The timber has been the subject of two repetitive public biddings. Provided, that, the negotiated government share shall not be less than the minimum bid asked;
- 25.4 When timber is found in recognized tribal lands of indigenous cultural communities in which case the cultural communities involved may opt to enter into a negotiated TPSA.
- 25.5 When the timber license is suspended but subsequently lifted, in which case it may be allowed to continue under a TPSA for the remaining period provided in the original TLA, after which the same shall be subject to bidding; and
- 25.6 When the holder of an existing TLA opts to convert his license to TPSA-cum-Industrial Forest Plantation; provided, that, the negotiated floor price shall not be lower than the prevailing price in similar area in the region.

Any award made by the Secretary under this Chapter shall conform to the terms and conditions of a TPSA.

CHAPTER V AREA AND ALLOWABLE CUT

SECTION 26. Maximum area under the timber production sharing agreement. Consistent with the state-adopted policy of providing equal access to the timber resources without disturbing the regular and even flow of raw materials to industries dependent thereto, the area that may be granted under the agreement shall not exceed 40,000 hectares.

SECTION 27. Allowable Cut.

27.1 For natural forest, the initial annual allowable cut that may be granted under a TPSA shall be determined in accordance with the following formula:

$$AAC = \frac{Ar}{cc} \times Vr \times 0.70 \times 0.75$$

Where:

AAC = Annual Allowable Cut in cubic meters

Ar = Area of operable residual forest in hectares

Vr = Harvestable volume of operable residual forest in cubic meters per hectare (25% of volume of 60cm diameter + 55% of volume of 70cm diameter + 100% of volume of 80cm diameter & larger)

cc = Cutting cycle (60 years)

0.70 = Logging efficiency

0.75 = Reduction factor to give allowance for estimated deficiency of 25% in attaining a satisfactory residual stand

Ar

---- = Annual Cutting Areas or ACA

cc

The allowable cut formula as indicated shall be used to determine the initial cut and may be recalculated to determine the true sustainable cut for the area.

27.2 For civil and other reservations that will be developed for resettlement, farmlots, etc., clear-cutting may be allowed except in virgin forest, and areas above 18% in slope and those within 20 meters from both sides of rivers, lakes and creeks.

27.3 For reforestation areas and other plantations, the prescribed silvicultural system shall be based on the species planted and terrain of the area.

27.4 The Secretary may prescribe other allowable cut formulas and/or silviculture systems after research has determined the true sustainable cut of a forest stand.

CHAPTER VI
TERMS AND CONDITIONS OF THE
TIMBER PRODUCTION SHARING AGREEMENT

SECTION 28. Minimum terms and conditions of the TPSA.

- 28.1 A provision that the agreement holder shall furnish the necessary management, technology, and financial services when required, as determined by the Secretary of the DENR;
- 28.2 A stipulated share of revenues and the manner of payment thereof;
- 28.3 Provision for consultation and arbitration with respect to the interpretation of the agreement;
- 28.4 A provision for anti-pollution and environmental protection measures;
- 28.5 A provision for the restoration and protection of the forest;
- 28.6 A provision for an effective monitoring scheme to be implemented by the Department which shall include but not limited to the periodic inspection of all records and books of account of the agreement holder, and periodic assessment of the timber stand and quality of the area under contract; and
- 28.7 A commitment to community development.

SECTION 29. Base Price. For purposes of computing the value of the annual government share from TPSA, the base price is to be computed as the average Manila log market price of the immediately preceding year of the timber species included in the total allowable cut.

SECTION 30. Government Percentage Share. For purposes of bidding/ negotiating a TPSA, the minimum percentage share of government shall not be less than TWENTY PERCENT (20%) of the value of the annual total TPSA production computed against the base price as defined in Section 29.

SECTION 31. Performance Bond. - The TPSA holder shall, upon issuance of the agreement, post a 5-year bond renewable one (1) year before the expiration, and callable upon demand whose value shall be based on the extent of virgin forest within the TPSA area or the equivalent of One fourth of the expected share of

government based on the annual allowable cut granted, whichever is higher; PROVIDED, That, at least 10% of the value of the bond shall be in the form of cash.

Such bond shall be forfeited in favor of the government for any infraction or violation of the terms and conditions of the agreement.

SECTION 32. Other Terms and Conditions. The other terms and conditions of the TPSA are embodied in the prescribed TPSA form which is made an integral part of this Order.

CHAPTER VII DURATION, RENEWAL AND CANCELLATION OF TIMBER PRODUCTION SHARING AGREEMENT

SECTION 33. Duration and Renewal. A TPSA shall be valid for a period of twenty-five (25) years, renewable for a similar period at the option of the Secretary.

SECTION 34. Grounds for Cancellation. A TPSA shall be cancelled or revoked on any of the following grounds:

- 34.1 Failure and/or refusal by the TPSA holder to pay or remit the share of the government in accordance with the terms of the TPSA;
- 34.2 Failure or refusal to conduct operations within three (3) months after the signing of the Agreement;
- 34.3 When a TPSA holder has been found to be a dummy;
- 34.4 For farming out the agreement or receiving royalty of any kind;
- 34.5 For cutting within the virgin forest or operating outside the approved operations plan or that specifically designated by DENR;
- 34.6 For allowing illegally cut timber to be invoiced under his agreement or inducing any other person to log in other areas in violation of the provisions of this Regulations;
- 34.7 For refusing any forest officer or duly authorized government officials entry into the TPSA premises or any other improvement introduced and use in connection with the operation of the license areas, as well as access to records

and books used in connection with logging and the marketing and/or processing and/or financing of logs production from the area;

- 34.8 When the TPSA holder for the third time after written warnings, intentionally cut, injured or destroyed residual trees marked by forest officers;
- 34.9 For failure to pay his forestry accounts within three (3) months;
- 34.10 For failure to suspend operations within a conflicted area when so required by the DENR Secretary or his authorized representatives, pending final decision of the conflict;
- 34.11 When the TPSA is found to have been obtained through fraud or misrepresentation or by false mis-leading statements;
- 34.12 For using or employing logging and processing machineries or equipment not duly authorized in writing by the DENR;
- 34.13 For cutting in excess of the authorized cut;
- 34.14 For failure to implement selective logging, except in areas specified under Section 27.2 and 27.3;
- 34.15 For failure to reforest and protect his area from illegal loggers and squatters;
and
- 34.16 For any other violation of any of the terms and conditions of the agreement or any of the pertinent provisions of forestry laws, rules and regulations.

CHAPTER VIII EFFECTIVITY

SECTION 35. Effectivity. This order takes effect fifteen (15) days after its publication in a newspaper of general circulation.

FULGENCIO S. FACTORAN, JR.
Secretary

NOTE: Bid Proposal Form Omitted