

AAPA PORT ADMINISTRATION AND LEGAL ISSUES SEMINAR

Miami, FL

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ADDRESSING PORT DEVELOPMENT CHALLENGES

Russ Morrison, Port Everglades

I. ASSIGNMENT

a. Contract is silent to assignment

i. Can the Contract be assigned?

- Unless the contract prohibits an assignment, the contract is freely assignable. General right to assign common law and statutory rights, unless there is an express prohibition in a statute, or a showing that an assignment would clearly offend an identifiable public policy.

b. Conditions for Assignment of Contract

i. Financial capacity of assignee

ii. Experience of assignee

iii. Capability to perform under the contract

iv. Guarantor status of Assignor

II. TERMINATION

a. For Convenience

- The government may not terminate a government contract for convenience in bad faith. Bad faith occurs when the government enters the contract with no intention of fulfilling its promises.

b. For Cause

i. Notice / Cure Periods provided by contracts

ii. Election of Remedies provided by contracts

- *Applicable Law*: Generally, upon substantial breach of a contract, injured party may elect to either rescind contract and recover value of its performance, or treat contract as broken and seek recovery for breach.
- *Specific Performance*: Mutuality of obligation and remedy must exist for a specific performance suit to succeed. Both parties must agree to the obligation at hand and agree to the remedy of specific performance.

III. COMPETITION vs. DIRECT NEGOTIATIONS FOR TERMINAL OPERATORS

a. Specific time / Protests / Time Frame

b. Existing Users

c. Sunshine Negotiations / Behind Closed Doors

d. Public Records / Public Access