

BEFORE THE PUBLIC UTILITIES COMMISSION



IN RE: **REQUEST FOR REVIEW**)
 AND APPROVAL OF)
 AGREEMENT WITH)
 TRISTAR TERMINALS)
 GUAM, INC. BY PORT)
 AUTHORITY OF GUAM)
_____)

PAG DOCKET 14-03
ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the February 24, 2014 Petition for review and approval of the Tristar Terminals Guam Inc. (“Tristar”) contract related to the management and operation of the F-1 Fuel Pier Facility (hereinafter referred to as the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of the professional services contract with Tristar.

DETERMINATIONS

On March 27, 2013, PAG issued a Request for Proposal for services related to the management and operations of PAG’s F-1 Fuel Pier Facility (the “RFP”). Four firms submitted proposals, which were evaluated and ranked by PAG’s Evaluation Committee.¹ Thereafter, the Evaluation Committee identified IP&E Holdings, LLC dba IP& E Guam (“IP&E”) as the highest ranked proposal and, therefore, recommended that IP&E be given an opportunity to negotiate a contract with PAG.² The Evaluation Committee identified Tristar as the second ranked proposal.

¹ Petition, p. 1.

² Memorandum from the Contracts Management Administrator to the General Manager, Evaluation Analysis and Recommendation for RFP-PAG-013-003 Management and Operations Services for F-1 Fuel Pier Facility, p. 2 (June 3, 2013).

On June 17, 2013, Tristar filed a protest with PAG.³ According to PAG, the protest alleged the following: that the RFP was “vague and confusing”; that the evaluation factors did not “properly reflect the services to be provided”; that PAG’s responses to questions “were incomplete and inaccurate”; and that the “May 14, 2013 deadline [] for submission of proposals was insufficient.”⁴ On August 21, 2013, PAG issued a denial of Tristar’s protest on the basis that such protest was untimely.⁵

According to PAG, after several sessions with IP&E, it terminated negotiations with IP&E on the basis that such negotiations were unsuccessful.⁶ According to PAG, its “Negotiations Committee concluded that further discussion with IP&E may result in limiting the scope of work and further delay in the project.”⁷ Consequently, PAG commenced negotiations with Tristar, the next ranked offeror.

On January 23, 2014, PAG and Tristar arrived at mutually agreeable terms and cost with respect to the contract for services. On February 17, 2014, PAG’s Board of Directors approved the contract award to Tristar.⁸ On March 27, 2014, the ALJ submitted an ALJ Report detailing his findings with respect to the review of the subject contract.

Pursuant to 12 G.C.A. §12004, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express

³ Petition, p. 1.

⁴ PAG’s Response Re: Protest of Procurement Process/Potential Award of Request for Proposal No. RFP-PAG-013-003, p. 1 (Aug. 21, 2013).

⁵ *Id.*

⁶ Petition, p. 1.

⁷ Petition, p. 1.

⁸ Petition, p. 1.

approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval under 12 G.C.A. §12004." Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with regard to multi-year contracts with fixed terms and fixed annual costs, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold."

In the March 27, 2014 ALJ Report, the ALJ found the following. The RFP requires that the offeror must furnish services related to operations of the F-1 Fuel Pier, maintaining the F-1 Fuel Pier, securing the F-1 Fuel Pier, managing the F-1 Fuel Pier, responding to emergencies, as well as perform related bunkering pier duties.⁹ In particular, the offeror is required to receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products; deliver fuel for export of jet fuel and diesel; bunker fuel oil and marine gas oil; maintain and ensure product quality by conducting field quality checks and maintaining fuel samples for dock customers; and coordinate with ship masters and harbor pilots to ensure safe dockage.

In addition, the offeror is tasked with providing preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock; conducting maintenance repairs to ensure operational availability of this fuel dock; and providing Quality Assurance inspections and controls schedule. The offeror must also secure the F-1 pier

⁹ See RFP, p. 20.

by ensuring compliance with the American Petroleum Standards, ISGOTT, and all applicable federal and local laws.¹⁰

Furthermore, the offeror is tasked with managing the F-1 Management Agreement by providing operational access by scheduling operations of the facility for the co-use of same for the purpose other than petroleum; reporting and collecting Port user fees; and citing Best Management practices and methods for fee recovery.¹¹ The offeror is also tasked with the responsibility of responding to emergencies, such as responding to Tier 1 spills and participate with Tier 2 and off-island Tier 3 responders; and preparing and securing the facility in the event of an anticipated storm or weather disturbance and maintain operational capabilities for post storm recovery.¹² The offeror is further required to perform any duties related to bunkering as may be required from time to time.¹³

With respect to Tristar, based on its Proposal, “Tristar and its affiliated companies have extensive worldwide experience operating and maintaining petroleum facilities of all types, including the F-1 fuel pier, bulk fuel terminals and connecting pipelines on Guam.”¹⁴ Further, Tristar’s workload includes the following: the storage, transfer, and management of jet fuel for the Defense Logistics Agency-Energy (DLA-E); the provision of facility and personnel support for GPA bunkering services; the storage, transfer, and management of jet and diesel fuel for

¹⁰ RFP, p. 20.

¹¹ RFP, p. 20.

¹² RFP, p. 20.

¹³ RFP, p. 20.

¹⁴ Proposal, p. 3.

IP&E; the storage, transfer, and management of liquefied petroleum gas (LPG) for IP&E.¹⁵ Tristar currently manages and operates the F-1 facility.¹⁶ Tristar also presently owns and operates the Guam Agat Bulk Fuel Terminal.¹⁷ “The Agat terminal provides bulk fuel storage and ships aviation fuel, residual fuel oil, diesel, and LPG for the U.S. Government and provides bulk fuel services to customers on Guam . . .” that includes the federal government, PAG, and IP&E.¹⁸

In addition, Tristar’s personnel are “intimately familiar” with the F-1 operations having managed the pier since 1988.¹⁹ According to Tristar, its experience includes the following: the scheduling and handling 158 ships; the safe transfer of more than 14.7 million barrels of petroleum products, and the timely collection of \$5.85 million dollars in user fees.”²⁰ According to Tristar, it is intimately familiar with the bunkering requirements for the F-1 pier, and all bunkering operations involve Tristar personnel and equipment.²¹

With respect to the proposed contract, the contract provides for a five-year term. With respect to cost, PAG has estimated that the annual rate for the management fee is \$555,180.00, for an estimated total of \$2,775,900.00 for the full five-year term. This annual estimate is based on Tristar handling 4.8 million barrels of imported petroleum products per year.

¹⁵ Proposal, p. 3.

¹⁶ Proposal, p. 3.

¹⁷ Proposal, p. 2.

¹⁸ Proposal, p. 2.

¹⁹ Proposal, p. 49.

²⁰ Proposal, p. 49.

²¹ Proposal, p. 77.

As negotiated between the parties, Tristar shall be authorized as compensation \$0.125 per barrel on the first three million barrels, and then \$0.1001 per barrel exceeding the first three million barrels. The tariff rate per barrel for all petroleum products which are off-loaded at the facility is \$0.50 per barrel. The contract will be funded through its O&M budget.

Based on his review, the ALJ found that the subject contract is reasonable and necessary. The ALJ expressed that the operation and management of PAG's F-1 Fuel Pier Facility is crucial to its operations; and based on its workload and history, as well as the fact that Tristar currently manages and operates the F-1 facility, it is clear that Tristar is qualified to provide the services set forth in the RFP.

The ALJ further found that PAG has demonstrated due diligence in negotiating with both IP&E and Tristar, and in arriving at the terms of the subject contract. In fact, Tristar's initial fee proposal was \$0.228 per barrel. PAG was, therefore, able to lower the fee to the rate structure discussed in Part 4 above. Accordingly, the ALJ recommended that the PUC approve the proposed Tristar contract related to the operations and management of the F-1 Fuel Pier Facility for an estimated annual cost of \$555,180.00.

The Commission hereby adopts the findings made in the March 27, 2014 ALJ Report and, therefore, issues the following:


ORDERING PROVISIONS

Upon consideration of the record herein, the March 27, 2014 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. PAG is authorized to enter into the F-1 Fuel Pier Facility Management and Operations Agreement.

2. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with the instant contract review process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 31st day of March, 2014.



JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner



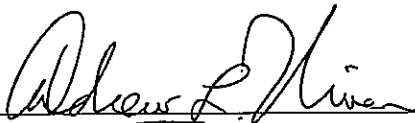
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