

BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: REQUEST FOR REVIEW)
AND APPROVAL OF)
AGREEMENT WITH)
MARINE TECHNICAL)
SERVICES, INC. BY PORT)
AUTHORITY OF GUAM)

PAG DOCKET 14-04

ALJ REPORT



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the March 20, 2014 Petition for review and approval of the Marine Technical Services, Inc. (“MTS”) Performance Management Contractor contract related to the management, operation, and maintenance of the Port of Los Angeles cranes (“PoLA” or “POLA” cranes), as well as PAG’s other cranes (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 Performance Management Contract with MTS.¹

BACKGROUND

Public Law 31-145 (“P.L. 31-145”), enacted on November 17, 2011, requires PAG to contract the services of a Performance Management Contractor (“PMC”) to manage the performance, operation, and maintenance of the PoLA cranes, as well as the other cranes, utilized in PAG’s operations. P.L. 31-145, pp. 6-7 (Nov. 17, 2011).

On June 29, 2012, PAG issued Request for Proposal No. PAG-012-003 for services related to the PMC contract.² Two firms submitted proposals in response to the RFP,

¹ The proposed Performance Management Contractor contract is attached hereto as “Exhibit A.”

² Petition, p. 1; Executive Summary, Request for Proposal (RFP) No. PAG-012-003, Performance Management Services for Port’s Cranes, Board of Directors Regular Meeting (“Executive Summary”), p. 1 (July 25, 2013), attached hereto as “Exhibit B.”

which were evaluated and ranked by PAG's Evaluation Committee.³ Thereafter, the Evaluation Committee identified MTS as the highest ranked offeror.⁴ MTS, therefore, was invited to negotiate the contract cost with PAG.⁵

After several months, PAG's Cost Negotiations Committee and MTS arrived at mutually agreeable terms and cost with respect to the contract for services.⁶ At the July 25, 2013 Board of Directors Meeting, the Cost Negotiations Committee presented the agreed-upon terms and recommendations to PAG's Board of Directors.⁷ The Board of Directors then approved the PMC contract award to MTS.⁸ On March 27, 2014, the Board of Directors authorized PAG to petition the PUC for review and approval of the PMC contract with MTS.⁹

DISCUSSION

1. PAG's Contract Review Protocol

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 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

³ Executive Summary, p. 1.

⁴ Executive Summary, p. 1.

⁵ Executive Summary, p. 1.

⁶ Executive Summary, pp. 2-3.

⁷ Executive Summary, pp. 2-4.

⁸ PAG Resolution No. 2014-06 ("Resolution No. 2014-06"), p. 1 (Mar. 27, 2014), attached hereto as "Exhibit C."

⁹ Resolution No. 2014-06, p. 1.

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.”

2. Public Law 31-145

Pursuant to P.L. 31-145, PAG is required to contract the services of a PMC to manage the performance, operation, and maintenance of the PoLA cranes, including other gantry cranes used for PAG’s operations. P.L. 31-145, pp. 6-7. The statute further provides that “[s]aid contractual services *shall* be crafted to ensure that employees of the Port Equipment Maintenance Division will be utilized to the maximum extent possible, and that *no* employee will be displaced *except* for cause.” *Id.* at 7 (emphases in original). In addition, PAG is further required that it “*shall not* obtain such services through the use of a Task Order to any existing or subsequent contract, lease or agreement.” *Id.* (emphasis in original).

3. Scope of Services

Pursuant to the proposed contract, MTS will be required to furnish the following services, among others. In general, MTS is required to assist PAG with the management of crane maintenance, and its supporting facilities, such as rails and shore power, for PAG’s Gantry 3 Crane, Mobile Harbor Crane, PoLA #14, PoLA #16, and PoLA #17.¹⁰ MTS is also required to assist PAG with the development and implementation of operating procedures that are Industry Best Management Practice for the performance of daily operations, equipment maintenance,

¹⁰ Proposed Contract, Exhibit 4 (“Scope of Services”), p. 1.

procurement, and employee training and supervision.¹¹ MTS will also manage and supervise PAG's Crane Maintenance Section ("CMS") employees, who will assist in the repair and maintenance of the cranes.¹²

MTS will additionally be required to assist PAG in obtaining all crane certifications required under federal and Guam law.¹³ It will be responsible for developing a work order system with respect to scheduling preventative and corrective maintenance of these cranes.¹⁴ MTS will further assist PAG in maintaining the parts and supply inventory, and will also assist PAG with the procurement of parts, materials, and supplies necessary for crane management, operations, repairs, and maintenance.¹⁵

Moreover, MTS will assist PAG with establishing and implementing safety training and procedures, and ensure that PAG personnel comply with occupational safety requirements under federal and Guam law.¹⁶ MTS will also assist PAG in complying with all federal and local environmental laws and regulations.¹⁷ MTS will also be responsible for developing and maintaining management information records pertaining to its operations; and will also assist PAG with preparation of annual operations and maintenance expense budgets for crane maintenance and related procurements.¹⁸

¹¹ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 1.

¹² Proposed Contract, Exhibit 4 ("Scope of Services"), p. 1.

¹³ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 2.

¹⁴ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 2.

¹⁵ Proposed Contract, Exhibit 4 ("Scope of Services"), pp. 2-3.

¹⁶ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 3.

¹⁷ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 3.

¹⁸ Proposed Contract, Exhibit 4 ("Scope of Services"), p. 4.

Pursuant to the provisions contained in the scope of work, MTS is expected to “evaluate PAG’s current manning/staffing levels and staffing pattern relative to crane maintenance and recommend adjustments.”¹⁹ Also pursuant to its scope of work, MTS will lead the CMS team by providing work assignments, work schedules, establishing safety procedures, performance training, and other management action necessary for crane maintenance. MTS will also assist PAG with obtaining all crane certifications required under federal and Guam law.²⁰

Further, MTS will be required to assist PAG in developing and proposing an appropriate organizational structure for PAG’s CMS operations.²¹ MTS will also be required to assist PAG in training PAG’s crane maintenance employees and helping such employees obtain necessary certifications.²² MTS, under PAG’s direction, will prepare a training plan and training budget for PAG.²³

4. Insurance and Assignment

The RFP and proposed contract require that MTS carry the following insurance: (1) Worker’s Compensation; (2) Business Auto Liability; (3) Motor Truck Cargo; and (4) Commercial General Liability.²⁴ The RFP and proposed contract further provide that MTS will

¹⁹ Proposed Contract, Exhibit 4 (“Scope of Services”), p. 4.

²⁰ Proposed Contract, Exhibit 4 (“Scope of Services”), p. 2.

²¹ Proposed Contract, Exhibit 4 (“Scope of Services”), p. 5.

²² Proposed Contract, Exhibit 4 (“Scope of Services”), p. 5.

²³ Proposed Contract, Exhibit 4 (“Scope of Services”), p. 5.

²⁴ Request for Proposal, Performance Management Contract (“RFP”), Vol. I: Terms and Conditions, p. I-16 (June 2012).

be solely responsible for the provision of services, and therefore, the contract may not be assigned, or subcontracted to another firm or entity, without PAG's prior written consent.²⁵

5. MTS

According to its Proposal, MTS and its related companies provide "global services to its Maritime, Shipping, and Industrial customers" and, collectively, form an organization with "experience of over 60 years and 110 full-time employees."²⁶ Accordingly, MTS touts that it "has the ability to draw from a vast array of managerial, technical, labor, and equipment resources to solve any crane operational, maintenance, or emergency repair issue."²⁷

MTS submits that it will provide an on-site Maintenance Manager, who will be a "degreed professional with on the job experience managing the maintenance of various types of cranes" and "is experienced in scheduling, training and managing a workforce"; with technical experience with ship-to-shore cranes.²⁸ MTS will additionally provide a Service Engineer, who will be a "degreed professional with on the job experience in repairs and maintenance with various types of cranes" and has experience in "troubleshooting of the various components of the cranes and quickly bringing them back on-line to operation."²⁹

MTS contends that it has been a "successful industry leader in container handling crane maintenance and project contracting worldwide" and is presently "committed to serving customers by providing full service maintenance and repair contracting and maintenance

²⁵ Proposed Contract, p. 8; RFP, Vol. I: Terms and Conditions, p. I-17.

²⁶ MTS Proposal, p. 2.

²⁷ MTS Proposal, p. 2.

²⁸ MTS Proposal, p. 9.

²⁹ MTS Proposal, p. 9.

management for cargo handling equipment.”³⁰ Its “[f]ield and maintenance teams are backed by a full service repair facility providing structural repairs, machined parts fabrication, electrical and general engineering contracting services” and, therefore, is able to “perform services worldwide including crane maintenance contracting, retrofitting, relocations, drive upgrades, off-loading and commissioning of new cranes arriving from overseas manufacturers, and the demolition of surplus container handling ship to shore cranes.”³¹

Indeed, since 1992 to the present, MTS “has provided crane maintenance technical support personnel as requested in support of various shipping lines that have called upon the Port of Guam to provide improved crane reliability and Vessel turnaround times.”³² Further, “MTS is currently being contracted by Matson to provide one Crane Service Engineer to perform technical assistance and training as directed by Matson.”³³

In addition, MTS was contracted by Matson for four months in 2000 to provide Matson with a Crane Service Engineer to assist with the following: evaluating the training needs of the newly hired crane mechanic; provide crane-specific training to increase the skill level of the newly hired mechanic; evaluating the status of the equipment, operations, reoccurring problems, spare parts, supplies, etc.; reviewing existing maintenance programs and make recommendations; and providing technical support and assistance with respect to reoccurring problems and spare parts.³⁴

³⁰ MTS Proposal, p. 10.

³¹ MTS Proposal, p. 10.

³² MTS Proposal, p. 12.

³³ MTS Proposal, p. 13.

³⁴ MTS Proposal, p. 13.

From 1992 through 1995, MTS was contracted by American Presidential Lines (“APL”) for two crane service engineers to provide technical support, including maintenance program evaluation, maintenance program development, training, parts procurement assistance, troubleshooting assistance, skill and manning level evaluation, and other technical support.³⁵ Interestingly, the President of MTS has extensive experience as a Crane Mechanic, Foreman, Superintendant, and Manager, over the same Hitachi PoLA cranes while the cranes were owned and operated by APL in the Port of Los Angeles.³⁶

Moreover, MTS has experience providing “full service day to day maintenance of 41 container handling cranes at the Ports of Los Angeles, Oakland, Seattle and Dutch Harbor.”³⁷ MTS also has provided “full service day to day” maintenance and repair services for cranes for the following clients: Stevedoring Services of America, at the Port of Long Beach, California; Pacific Coast Recycling, at the Port of Long Beach, California; Tang Ming Lines, at the Port of Los Angeles, California, to name a few.³⁸

6. Contract Term

The proposed contract provides for an initial term of two years, with year-long options to renew, but not to exceed five years for the entire contract term. The option for renewal shall be exercised “at the sole discretion of the Port”³⁹ The proposed contract

³⁵ MTS Proposal, p. 13.

³⁶ MTS Proposal, p. 14.

³⁷ MTS Proposal, p. 15.

³⁸ MTS Proposal, pp. 15-16.

³⁹ RFP, Vol. I: Terms and Conditions, p. I-9.

provides that PAG may terminate the contract upon a ninety-day written notice.⁴⁰ In addition, “[t]he Port is not obligated to renew the agreement and does not have to give reason if the Port elects not to renew.”⁴¹

7. Cost

PAG submits that contract is a fixed fee of \$85,000.00 per month, and therefore \$1,020,000.00 per year.⁴² This fee includes on-site management, as well as planned and unplanned repair work.⁴³ The fee also includes two technical engineers, laptop computers, safety equipment for the engineers, airfare, transportation, fuel, housing and utilities, and a per diem.⁴⁴ PAG submits that the contract will be funded through its Crane Surcharge.

8. PAG’s Savings Analysis

According to PAG, the PMC contract will result in a savings for PAG. For instance, PAG submits that the FY2013 budget for crane maintenance and services was set at \$2,645,500, and that the operating expenses for the cranes in FY2013 were estimated at \$2,301,675.⁴⁵ In addition, Matson’s estimated annual budget for maintenance of the three PoLA cranes total \$2,089,000, which includes the following: \$1,157,000 for labor and technical support; \$84,000 for parts and supplies; and \$416,000 for fuel costs.⁴⁶ Repairs and maintenance for Gantry 3 in FY2012 total \$2,106,646, which included \$1,751,813 for labor and technical

⁴⁰ Proposed Contract, p. 3.

⁴¹ RFP, Vol. I: Terms and Conditions, p. I-9 (June 2012).

⁴² Petition, p. 2.

⁴³ Executive Summary, p. 2.

⁴⁴ Executive Summary, p. 2.

⁴⁵ Executive Summary, p. 3.

⁴⁶ Executive Summary, p. 3.

support, and \$354,833 for parts and materials. For three quarters in FY2013, that amount was \$946,785. Moreover, PAG spent \$722,336 for maintenance to the PoLA cranes for two quarters in FY2013.

PAG further submits that based on average annual costs for maintenance, PAG stands to save roughly \$1.54 million through the PMC contract with MTS. In particular, PAG submits that annual costs for labor, technical support, and subcontracted labor for four cranes is estimated at \$2,559,012, which includes an annual average cost of \$1,402,012 for Gantry 3, and an annual budget of \$1,157,000 for the three PoLA cranes.

Additionally, PAG submits that MTS is familiar with, and has the technical and structural knowledge of the PoLA cranes since MTS was a subcontractor for the former owners of the PoLA cranes.⁴⁷ PAG further submits that MTS presently maintains “a local presence in Guam which will allow smooth transition with current maintenance provider thus will minimize disruption of service to Port’s cranes or its operations.”⁴⁸

9. **Board Approval**

At its July 25, 2013 meeting, PAG’s Board of Directors approved the contract award to MTS, and at its March 27, 2014 meeting, authorized PAG to petition the PUC for review and approval of the subject contract.⁴⁹

RECOMMENDATION AND CONCLUSION

Based on the documentation and information discussed above, the ALJ finds that the subject contract is reasonable and necessary.

⁴⁷ Executive Summary, p. 4.

⁴⁸ Executive Summary, p. 4.

⁴⁹ Resolution No. 2014-06, p. 1.

Pursuant to P.L. 31-145, PAG is mandated to contract the services of a PMC to manage the performance, operation, and maintenance of the PoLA cranes, as well as the other cranes, utilized in PAG's operations.

The subject contract will "enable the PAG to effectively manage, plan the operations and the maintenance of the cranes, as well as, fully implement the Structured Maintenance Program for the Cranes"⁵⁰ Other benefits of this contract include "the ability to have access to a variety of resources, parts inventory and material suppliers through MTS' world-wide network system"; and will allow PAG's CMS team to benefit from the "technical guidance and hands-on training" MTS will provide.⁵¹ Accordingly, the ALJ agrees that the subject contract "is instrumental to PAG's objectives to maintain an efficient cargo operation in Guam as well as to comply with [P.L. 31-145]."⁵²

Additionally, it appears that the PMC contract may result in a \$1.54 million savings for PAG. Based on average annual costs for maintenance, PAG stands to save roughly \$1.54 million through the PMC contract with MTS. In particular, PAG submits that annual costs for labor, technical support, and subcontracted labor for four cranes is estimated at \$2,559,012, which includes an annual average cost of \$1,402,012 for Gantry 3, and an annual budget of \$1,157,000 for the three PoLA cranes.

More still, the PMC contract also appears to cost less than what PAG has budgeted and expended on maintaining its cranes. For instance, the FY2013 budget for crane maintenance and services was set at \$2,645,500, and that the operating expense for the cranes for

⁵⁰ Petition, p. 2.

⁵¹ Petition, p. 2.

⁵² Petition, p. 2.

FY2013 were estimated at \$2,301,675.⁵³ Matson's estimated annual budget for maintenance of the three PoLA cranes total \$2,089,000.⁵⁴ Repairs and maintenance for Gantry 3 in FY2012 totaled \$2,106,646, and \$946,785 for three quarters in FY2013.⁵⁵ PAG also spent \$722,336 for maintenance on the PoLA cranes for two quarters in FY2013.

Further, MTS is familiar with, and has the technical and structural knowledge of the PoLA cranes since MTS was a subcontractor for the former owners of the PoLA cranes⁵⁶; and MTS presently maintains "a local presence in Guam which will allow smooth transition with current maintenance provider thus will minimize disruption of service to Port's cranes or its operations."⁵⁷ Indeed, since 1992, MTS "has provided crane maintenance technical support personnel as requested in support of various shipping lines that have called upon the Port of Guam to provide improved crane reliability and Vessel turnaround times" and "is currently being contracted by Matson to provide one Crane Service Engineer to perform technical assistance and training as directed by Matson."⁵⁸ Interestingly also, the President of MTS has extensive experience as a Crane Mechanic, Foreman, Superintendant, and Manager, over the same Hitachi PoLA cranes while the cranes were owned and operated by APL in the Port of Los Angeles.⁵⁹

MTS has a clear history "in container handling crane maintenance and project contracting worldwide" and "serving customers by providing full service maintenance and repair

⁵³ Executive Summary, p. 3.

⁵⁴ Executive Summary, p. 3.

⁵⁵ Executive Summary, p. 3.

⁵⁶ Executive Summary, p. 4.

⁵⁷ Executive Summary, p. 4.

⁵⁸ MTS Proposal, p. 13.

⁵⁹ MTS Proposal, p. 14.

contracting and maintenance management for cargo handling equipment.”⁶⁰ Its “[f]ield and maintenance teams are backed by a full service repair facility providing structural repairs, machined parts fabrication, electrical and general engineering contracting services” and, therefore, is able to “perform services worldwide including crane maintenance contracting, retrofitting, relocations, drive upgrades, off-loading and commissioning of new cranes arriving from overseas manufacturers, and the demolition of surplus container handling ship to shore cranes.”⁶¹

MTS has experience providing “full service day to day maintenance of 41 container handling cranes at the Ports of Los Angeles, Oakland, Seattle and Dutch Harbor.”⁶² MTS also has provided “full service day to day” maintenance and repair services for cranes for the following clients: Stevedoring Services of America, at the Port of Long Beach, California; Pacific Coast Recycling, at the Port of Long Beach, California; Tang Ming Lines, at the Port of Los Angeles, California, to name a few.⁶³ Thus, MTS is qualified to provide the services required under the PMC contract.

Accordingly, the ALJ recommends that the PUC approve the proposed PMC contract related to the operations and maintenance of PAG’s cranes at an annual cost of \$1,020,000.00.

⁶⁰ MTS Proposal, p. 10.

⁶¹ MTS Proposal, p. 10.

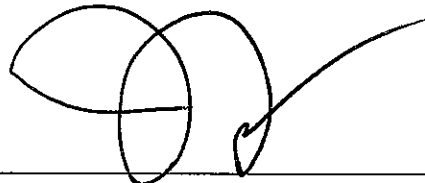
⁶² MTS Proposal, p. 15.

⁶³ MTS Proposal, pp. 15-16.

CONCLUSION

Based on the documentation provided by PAG in this docket, and for the other reasons set forth herein, the ALJ recommends that the PUC approve the proposed PMC contract with MTS, for a cost of \$85,000.00 per month, and at an annual cost of \$1,020,000.00. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Respectfully submitted this 22nd day of April, 2014.

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'A' followed by a checkmark-like flourish.

JOEPHET R. ALCANTARA
Administrative Law Judge

P143033.JRA

AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
(PORT AUTHORITY OF GUAM)
AND
MARINE TECHNICAL SERVICES, INC.
FOR
PERFORMANCE MANAGEMENT SERVICES FOR PORT'S CRANES

THIS AGREEMENT is entered into by and between the JOSE D. LEON GUERRERO COMMERCIAL PORT (PORT AUTHORITY OF GUAM) ("Port"), a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 ("Authority") and MARINE TECHNICAL SERVICES, INC. (hereinafter referred to as "Contractor") authorized and licensed to do business in Guam, whose address is: 211 North Marine Avenue, Wilmington, California 90744, collectively hereinafter referred to as the "Parties".

WHEREAS, the Port issued a Request for Proposal ("RFP") RFP No. PAG-012-003 seeking to retain a contractor to perform Performance Management Services for the Port's Cranes.

WHEREAS, the Contractor responded to the RFP through submitting a proposal ("Proposal") to provide services in accordance with the RFP, MARINE TECHNICAL SERVICES, INC.. was selected as the highest most qualified Offeror;

WHEREAS, in submitting the Proposal, Contractor warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

WHEREAS, the Port desires to retain the Contractor as an independent contractor on the terms and conditions set forth in this Agreement and Contractor has agreed to accept such retainer;

WITNESSETH, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

I. Statement of Work to be Performed.

A. Scope of Work. The Contractor shall furnish Performance Management Services to the Port's Cranes pursuant to and in accordance with the Scope of Services as identified in the RFP, attachments to the RFP, Contractor's Proposal and Attachment A & B as agreed to by the Parties. A copy of the RFP, attachments to the RFP, Contractor's Proposal and

Attachment A & B are attached as Exhibit 1, 2, 3 and 4, and are incorporated as part of this Agreement ("Agreement"). Contractor shall provide status reports on the services performed and required under this Agreement upon request by the Port, at a frequency of no more than one (1) per month or 12 in any given 12 month period. Contractor recognizes that failure to perform all services required under this Agreement constitutes a material breach of this Agreement.

B. Contractor Provisions of Resources. Contractor agrees to furnish two qualified personnel, and transportation to perform the services provided for in this Agreement. The Port will assign its Crane Mechanic Division to assist Contractor in furtherance of this Agreement and will remain under the management of the Port. The Contractor and the Port shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. The Port acknowledges and agrees that Contractor may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Contractor is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Contractor must immediately cease performing those third party services upon being notified in writing by the Port and the Port may invoke further available remedies under the terms of this Agreement.

D. Location of Services. Contractor may perform the services under this Agreement at any suitable location.

II. Term of Agreement.

The initial contract period shall be for two (2) years and may be renewed annually thereafter, for additional one-year periods, but not to exceed five (5) years from the date of the initial term. The annual renewal of this agreement after the initial contract period shall be at the sole discretion of the Port, if reasonable and justified, and subject to price adjustment and availability of appropriated and/or budgeted funds. If no funds are appropriated and/or budgeted in the next fiscal year, the contract may be terminated upon giving of a minimum of ninety (90) days prior written notice.

III. Compensation.

A. Compensation. In consideration for the Performance Management Services for Port's Cranes performed under this Agreement, the Port shall pay Contractor a fixed weekly fee of nineteen thousand six-hundred fifteen dollars (\$19,615.00) (monthly \$85,000.00), in addition to any time and materials fees charged by Contractor for such services directed by the Port in accordance with the negotiated Contractor Rates and Terms, as identified in Attachment B (Exhibit 4) of this Agreement.

B. Payment Terms. Payment shall be made pursuant to the Payment Terms set forth in the Contractor Rates and Terms, as identified in Attachment B (Exhibit 4). However, payment shall only become due upon the receipt and certification of satisfactory performance by Contractor of the services in compliance with the terms of this Agreement, and shall be payable within thirty (30) days. Upon written notification by the Port of unsatisfactory performance by Contractor, Contractor shall remedy its performance within ten (10) days. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

C. No Compensation Prior to Approval of Agreement. The Port shall not be liable to Contractor for any services performed by Contractor prior to full execution of this Agreement by all parties, and all Contractor expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

D. Final Payment. Final payment shall be made pursuant to the Payment Terms set forth in the Contractor Rates and Terms, as identified in Attachment B (Exhibit 4) and upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Prior to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to the Port a conditional waiver and release. This document is effective only upon the Contractor's receipt of payment from the financial institution from which it is drawn.

E. Payment. All rates and prices and payments to the Contractor shall be in the currency of the United States.

IV. Early Termination.

A. By the Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion:

(i) Termination without Cause: The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Contractor at least ninety (90) days prior to the intended date of termination;

(ii) Termination in the Best Interest of the Government of Guam: The Procurement Officer may, when the interest of the territory so require, terminate this contract in whole or in part, for the convenience of the territory. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(iii) The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the

terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the territory. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(iv) Termination for Cause/Default: If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(v) Effects and Responsibilities of Parties for Early Termination by the Port: In the event of an Early Termination Contractor agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event

B. By Contractor.

(i) Termination for Cause: Contractor shall notify the Port in writing of deficiencies or default in the performance of the Port's duties under this Agreement. The Port shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Contractor (said extension not to be unreasonably denied). Upon Contractor's termination of this Agreement for cause, the Contractor shall be entitled to payment, in accordance with Contractor Rates and Terms, as identified in Attachment B (Exhibit 4) and Section III(D) of this Agreement. The Contractor shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

C. Termination/Modification for Lack of Funds. The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to the Contractor and within thirty (30) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to Section IV of this Agreement as applicable.

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Port, the Contractor shall take timely, reasonable and necessary action to protect and preserve the property in the possession of Contractor in which the Port has an interest.

E. Additional Provisions. In the event that either party affects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defenses with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

V. Contact Person.

The Contractor and the Port agree that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsive to the questions and direction of the Port or the Contractor. The contact persons must be identified in writing within thirty (30) days after full execution of this Agreement by the Parties.

VI. Confidentiality.

A. Information. The Contractor shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Contractor shall use and have access to the Information for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Contractor to safeguard the confidentiality of the Information.

The Contractor shall keep copies of the Information and the provisions of this Section shall remain in effect for the term of this Agreement or at the termination of this agreement per Section IV, whichever comes first. The Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Contractor shall include a letter attesting to the complete return of Information and documenting, if any, the destruction of copies and derivations with the returned Information.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

VII. Conflicts of Interests/Ethics

A. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES.** The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations. The this Port shall provide to Contractor within 30 days of the execution of this Agreement a copy of Guam's procurement law and regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Contractor is a material breach of this Agreement and shall entitle the Port to terminate this Agreement. Contractor agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this Agreement with the Contractor pursuant to Section IV, paragraph A(iv).

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, the Contractor agrees that with respect to any sub-Contractor it engages to perform any work contemplated by this Agreement, such sub-Contractor(s) will also be subject to the provisions presented in Section VII(A) and (C).

VIII. Gratuities and Kickbacks

A. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

B. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

IX. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues

A. No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

B. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

C. Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

XWaiver.

No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

XI. Severability.

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

XII. Survival of Warranties.

All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion or termination of this Agreement for a period of six (6) months

XIII. Fees and Expenses.

Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

XIV. Notices.

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be affected by personal delivery, mail (registered or certified, postage, prepaid with return receipt requested) or express delivery with signature required (FedEx or similar). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Express Delivery notices shall be deemed communicated as of the date the recipient signs for receiving such notice. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PORT: PORT AUTHORITY OF GUAM
JOSE D. LEON GUERRERO COMMERCIAL PORT
Attn: Ms. Joanne M. S. Brown
General Manager
1026 Cabras Highway, Suite 201
Piti, Guam 96925

TO CONTRACTOR: MARINE TECHNICAL SERVICES, INC.
Attn: Mr. Mickey Hawke
P.O. Box 1301
San Pedro, California 90733
211 North Marine Avenue
Wilmington, California 90744

XV. Assignment/Subcontractors.

It is expressly acknowledged that the Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. The right and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part or all of payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, unless a related entity of Contractor without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Contractor, Contractor agrees that any subcontractors retained by Contractor or assignees shall be subject to all provisions of this Agreement.

XVI. Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

XVII. Scope of Agreement.

This Agreement consisting of the RFP, attachments to the RFP, Contractor's Proposal and Attachment A & B collectively: supersedes any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Contractor and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

XVIII. Captions.

All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

XIX. Counterparts.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

XX. Governing Law and Forum Selection.

Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

XXI. DISPUTES

A. All controversies between the territory and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within 60 days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision, within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

B. The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

C. Any such decision shall be final and conclusive, unless fraudulent, or: (i) the contractor brings an action seeking judicial review of the decision in the Superior Court of Guam.

D. The contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of the contract by the territory; provided, however, that in any event the contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency has made a written determination that continuation of work under the contract is essential to the public health and safety.

XXII. Compliance with Laws.

A. In General. The Contractor shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Contractor represents and warrants that it will be fully licensed to do business in Guam to render the services to be provided herein prior to the commencement of the Agreement. Contractor shall furnish a copy of its business license to the Port indicating it is authorized to conduct business on Guam prior to the commencement of this Agreement.

B. Non-Discrimination in Employment. The Contractor agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

XXIII. Retention and Access to Records and Other Review.

The Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices between the hours of 10am and 4pm, Tuesday, Wednesday and Thursday, excluding United States Federal, California State and business specific holidays during the Agreement period and for three (3) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Contractor to provide access to all documents and Port property reasonably necessary to the performance of Contractor's services under this Agreement.

XXIV. Liability.

A. Indemnification. The Contractor shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Contractor and/or the Contractor's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of the Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to Contractor's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXV. Delays, Extensions and Suspensions.

The Port unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Port. The Contractor agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or ~~interruptions~~interruptions. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Contractor's services will be granted for delays that arise from causes beyond the control and without the fault or negligence of the Contractor, such as war and other hostilities, riots, epidemics, natural disaster, accidents, abnormal low or high water, labor disputes, labor availability, other Acts of God, acts of terror, industrial disputes, governmental regulations or other impacts not within the reasonable control of the Port or Contractor, the impacts to the Agreement shall be discussed and agreed between the Parties and neither Party hereto shall be liable to the other Party for a failure to perform any of its obligations due to the aforementioned reasons. If the circumstances of Force Majeure continue to produce their effect for more than six (6) months, either of the Parties shall be entitled to terminate the Contract.

XXVI. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The Port shall have the ability to modify the Agreement at any time subject to the written agreement of the Contractor. In the event of any future change in federal or Guam laws, and the Port materially alters the obligations of the Contractor, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter

the obligations for the Contractor, then the Contractor shall be entitled to an adjustment in the rates and charges established under the Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. The Port and the Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the Port and the Contractor shall negotiate in good faith, an adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

XXVII. Independent Contractor and its Employees.

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the Port, and are not employees of either the Port or the Government of Guam. The Contractor and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement. Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Contractor and the Port a relationship of partnership, agency, association, joint, venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port for the Contractor.

B. Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required-, specifically excluding any existing, newly adopted or future adopted taxes or assessments for Guam, including but not limited to all State, County, City, local, Port, municipal and jurisdictional agencies. Contractor is responsible for paying all U.S. taxes -incurred as a result of the services performed by the Contractor under this Agreement. Contractor shall maintain at- Contractor's expense all necessary insurance for its employees including but not limited to Worker's Compensation and general liability insurance as required under U.S. and Guam Law.

XXVIII. Disclosure.

The Contractor hereby represents that it has disclosed to the Port all matters regarding Contractor which if not disclosed to the Port would materially affect the Port's decision to enter into this Agreement with Contractor.

XXIX. Disposition of Property and Materials; Intellectual Property Rights.

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be the property of the Contractor during the term of this Agreement and shall be provided to the Port at the termination of the Agreement and will thereafter remain the property of the Port, regardless of whether the Contractor is in possession of such Work Product, and may be used by the Port upon becoming the Port's property without permission from Contractor and without any additional costs to the Port.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the property of the Contractor during the term of this Agreement and shall be provided to the Port at the termination of the Agreement and will thereafter remain the sole and exclusive property of the Port. The Contractor acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement upon termination of this Agreement.

XXX. Attachments, Exhibits, Schedules, and Entire Agreement.

The Agreement, including its Exhibits, constitute the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

XXXI. Computation of Time.

Whenever this Agreement provides for a time period of ten (10) days or less days, weekends, -Government of Guam and Federal holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends, -Government of Guam and Federal holidays are to be included in the computation.

XXXII. Partial Invalidity.

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

XXXIII. Amendments/Modifications.

Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year appearing opposite their respective signatures.

CONTRACTOR:

Port Authority of Guam
JOSE D. LEON GUERRERO
COMMERCIAL PORT

Print name here
President/General Manager

JOANNE M.S. BROWN
General Manager
Port Authority of Guam

Date: _____

**Port Authority of Guam
LEGAL COUNSEL:**

PHILLIPS & BORDALLO LLP

Date: _____

Date: _____

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

MIAMI E. ULBENARIO,
Financial Affairs Controller
Port Authority of Guam
Jose D. Leon Guerrero Commercial Port

Date: _____

EXHIBIT 4

ATTACHMENT A

SCOPE OF SERVICES

1. DESCRIPTION OF THE PORT'S CRANES

Listed below are the Cranes currently at the Port's terminal that are part of the Contractor's Scope of Services.

Crane Referenced Name	Ownership	Current Maintenance Performed By
Gantry No.3	Port	Matson
Mobile Harbor Crane	Port	Port
POLA #14	Port	Matson
POLA #16	Port	Matson
POLA#17	Port	Matson

2. CONTRACTOR OPERATIONAL & FUNCTIONAL RESPONSIBILITIES

The Contractor will assist the PAG in the management of crane maintenance and its supporting facilities including but not limited to tie downs, pin downs, rails, stoppers and shore power.

A. Operating Procedures

The Contractor will assist the PAG in developing and implementing operating procedures that are Industry Best Management Practice for the performance of daily operations, equipment maintenance, procurement, and employee training and supervision.

B. Port Employees

Existing PAG employees in the Crane Maintenance Section (CMS) will be led by the Contractor who will assist the Port with the management and supervision of these employees to repair and maintain the Port's cranes. Such employees will maintain their employment status with the Port. The CMS includes the Crane Mechanics, Leaders, Trades Helper and a Supervisor.

C. Delineation of Maintenance Management and Staffing

The Port's Maintenance Manager is currently responsible for the day-to-day operation activities of the Equipment Maintenance Division and the Facility

Maintenance Division, as well as the Maintenance Control Section. The Maintenance Manager will continue to provide oversight for the activities of the Maintenance Department. The Facility Maintenance Division, the Administrative Staff and the Maintenance Control Section will remain under the management of the Port.

D. Crane Maintenance Section (CMS)

The Port's full time employees working at the CMS will be led by the Contractor. The Contractor, after receiving approval from the Port Maintenance Manager, can establish work rules, lead the work of the Port's work force, make work schedules, establish safety procedures, prescribe training, and any other necessary actions in performing the requirements of this contract.

E. Equipment Certifications

The Contractor shall assist the PAG with obtaining all crane certifications required by Federal and Guam law including the regulations in 29 CFR Chapter XVII, Part 1919, which provides the procedures and standards governing accreditation of person by the Occupational Safety and Health Administration, U.S. Department of Labor, for the purpose of certifying vessels, cargo gear and shore based material handling devices, and the manner in which such certification shall be performed.

F. Work Order System

The Contractor will be responsible for developing a work order system acceptable to the Port for the scheduling of preventive and corrective maintenance of the Port's cranes under its management to ensure that they are maintained in accordance with Industry Best Management Practice.

G. Parts & Supplies Inventory Control and Reporting

The Contractor will assist the Port in maintaining the parts and supply inventory using Industry Best Management Practices in order to ensure that the cranes are maintained and operated in an efficient and cost effective manner. All crane parts and supply in stock will be owned and controlled by the Port. The Contractor shall assist the PAG in providing improved control of the parts and supplies.

H. Quality Improvement Program and Training

The Contractor, with approval from the Port, will institute a training program to introduce and establish a quality improvement process for the crane maintenance employees.

I. Procurement

The Contractor will assist the Port in the procurement of the parts, materials and supplies necessary to support the crane management, operations, repairs and maintenance

functions. The Port will purchase all the parts, materials and supplies, unless the Contractor is requested to assist the Port to perform these tasks. At all times the Port will be responsible for all insurance coverage(s) for the parts, materials and supplies, and will always be considered the "owner" of the purchased items and accordingly be fully responsible, including inventory control and warehousing.

1. Programmed Procurements

On an annual basis the Contractor will assist the Port in the preparation of an Operations and Maintenance (O&M) budget. With respect to procurements, the Contractor will assist the Port in budgeting procurements to support crane management, operations and maintenance.

2. Unscheduled or Emergency Procurements

As emergency or unscheduled procurement needs arise, the Contractor will assist the Port to arrange procurements in a timely fashion.

J. Terminal Security

The Contractor shall assist the Port and Port Police with coordinating special or extraordinary security requirements with Port Police (e.g., night or weekend gate operations).

K. Safety Management

The Contractor shall assist the Port in establishing and implementing safety training and procedures and ensures that its operations and personnel comply with regulations of the Occupational Safety & Health Administration (OSHA), the Guam OSHA (GOSHA), US and Guam Environmental Protection Agency, (USEPA/GEPA) the United States Coast Guard (USCG) and other applicable Federal and Guam laws and regulations.

L. Environmental Management

The Contractor shall assist the Port to be in compliance with all applicable federal and local environmental laws and regulations. The Contractor shall assist the Port in implementing environmental training and procedures in its operations, maintaining environmental records, reporting environmental incidents and conforming to all applicable federal and local agencies' rules and regulations.

1. Penalties & Fines

The Contractor under no circumstances will be responsible for any fines or penalties levied on the Port as a result of operations during the term of the Agreement.

M. Management Information

The Contractor will be responsible to develop and maintain management information records pertaining to its operations at a sufficient level of detail to support the crane management.

1. Specific Management Information Data Types

The specific management information data provided to the Port by the Contractor should include the following:

- a. Downtime Reports
- b. Others as agreed to by Contractor

N. O & M Budgeting & Management

The Contractor will assist the Port in the preparation of the annual operations and maintenance (O&M) expense budget for crane maintenance and related procurements.

3. STAFFING & ORGANIZATION

The Contractor will be expected to evaluate the Port's current manning/staffing levels and staffing pattern relative to crane maintenance and recommend adjustments. The Contractor will initially operate under the Port's current manning/staffing levels and pattern while its evaluation is underway and its recommendations are being prepared.

4. CONTRACTOR SUPERVISION & TRAINING OF EMPLOYEES

The Contractor will assist the Port in planning, organizing, scheduling and assigning the work of the crane maintenance employees.

A. Adjusting Staffing Levels

The Contractor will assist the Port in adjusting staffing levels, with Port's approval, for optimal operation and maintenance of the cranes.

B. Line Management Assistance

The Contractor shall assist the Port in leading the crane maintenance employees in accordance with standard operating procedures in consultation with the Port. Such assistance may include, in consultation with the Port, work assignments, work schedules, establishment of safety procedures, performance training, and other management actions as necessary for the satisfactory performance of the crane maintenance employees.

C. Creation of Appropriate Organizational Structure

The Contractor will assist the Port in developing and proposing an appropriate organizational structure for the CMS operations.

D. Manage Scheduling of Leave Time

The Contractor will assist the Port in managing the scheduling of vacation, holiday and other leave to minimize overtime and other O & M costs. The Contractor will also have authority, as approved by the PAG, to schedule extended hours, staggered hours, flexible hours and Sunday working hours as determined necessary to ensure the safe and efficient management, operation and maintenance of the cranes.

E. Overtime

In the event that Contractor requires CMS Personnel to perform overtime, the Contractor shall follow applicable local and federal laws and regulations, as well as the Port's Personnel Rules and Regulations.

F. Employee Hiring, Firing, Promotion, Demotion, Discipline and Reviews

The Port will have all responsibility for the hiring, firing, promotion, demotion and discipline of the crane maintenance employees. The Contractor will provide input and opinion to the Port on these matters.

G. Training

The Contractor will assist the PAG in the training of crane maintenance employees. The Contractor will identify any required or appropriate certifications for crane maintenance employees and will provide training programs to enable employees to obtain such certifications, if available. The Contractor, based on the direction from the Port, will prepare a training plan and training budget for the Port's approval.

ATTACHMENT B

CONTRACTOR RATES AND TERMS

1. FIXED FEE STRUCTURE

- A. For the on-site Contractor personnel, including planned and unplanned maintenance and repair work.
 - i. Fixed Fee of \$19,615 to be paid weekly (\$85,000 monthly).
 - (a) Fixed Fee rate to be effective through September 30, 2014.
 - (b) Fixed Fee rate is subject to escalation due to any cost increase, including but not limited to wages, pension, insurance and taxes.
 - ii. Includes two Service Engineers.
 - (a) Two Individuals to be located in Guam.
 - iii. Includes 48 Weeks of Work per Year/4 Weeks of Paid Vacation per Year per Individual.
 - iv. Includes a Maximum of 55 Hours per Week.
 - (a) All hours worked in excess of 55 hours in a defined work week period will be billed at the Time & Materials Fee Structure.
 - v. Includes two laptop computers, coveralls and safety supplies for Service Engineers, airfare, transportation, fuel, per diem, housing and utilities at housing.
 - vi. Port will provide all materials, tools, equipment, software, supplies, expendables, office spaces, office and cellular telephones, office support equipment, office furniture and shipping.
 - vii. Items not included in "e" above and not provided by the Port in item "f" above will be procured by Contractor with the Port's approval and invoiced to the Port at cost plus a 15% administrative mark-up based on a 30 day payment schedule.

2. TIME AND MATERIALS FEE STRUCTURE

(Invoices submitted monthly based on Net 30 Day Terms for Payment)

- A. All off-site home office Contractor support, such as technical support, parts procurement services, administration and accounting will be invoiced on a Time and Materials basis, as needed and directed by the Port, based on the Time & Materials rates below.
 - i. Regular Contractor monthly accounting, such as invoices to the Port or support for our two Service Engineers residing in Guam will be the responsibility of the Contractor.

- B. All parts assistance, support and handling will be invoiced on a Time and Materials basis, as needed and directed by the Port, based on the Time & Materials rates below.
- C. All parts acquisition and procurement whereby Contractor purchases the parts approved by the Port and places the parts into the Port inventory will be invoiced on a Time and Materials basis, as needed and directed by the Port, based on the Time & Materials rates below and will also include a reimbursement to the Contractor of the total parts cost including all applicable taxes, shipping and handling, with an additional 15% administrative mark-up to be added by Contractor to the total parts cost.
- D. All costs associated with procuring OSHA Certified Inspectors, inspections and certifications will be invoiced on a Time and Materials basis, as needed and directed by the Port, based on the Time & Materials rates below and will also include a reimbursement to the Contractor for the inspectors, inspections and certifications costs, including all applicable taxes and expenses with an additional 15% administrative mark-up to be added by Contractor to the total cost.
- E. All Contractor Technical Trainers will be invoiced on a Time and Materials basis, as needed and directed by the Port, based on the Time & Materials rates below and will also include a reimbursement to the Contractor for the training costs, including all applicable taxes and expenses with an additional 15% administrative mark-up to be added by Contractor to the total cost.
- F. The below Time & Materials Rates shall apply for 2 (A) through 2 (E), as well as all other work completed by Contractor, at the direction of the Port, not covered in 1 (A) and 2 (A) through 2 (E) of the attachment.

DESCRIPTION	HOURLY		
	ST	OT	DT
Senior Technical Support	\$ 130	\$ 156	\$ 183
PMC Service Engineer	\$ 108	\$ 130	\$ 152
PMC Technical Trainer	\$ 108	\$ 130	\$ 152
Parts Procurement Support	\$ 85	\$ 103	\$ 123
Accounting Support	\$ 72	\$ 87	\$ 104
Administration Support	\$ 56	\$ 68	\$ 81
Rates are based on the PMC Service Engineer and PMC Technical Trainer classifications working a minimum (and maximum) of 55 hours per week.			
Rates are effective through September 30, 2014. Rates are			
Materials, tools, equipment, software/computers, supplies, expendables, coveralls, safety supplies, similar items, outside third party services, airfare, transportation, fuel, per diem, reasonable housing and utilities, telephone and shipping: cost plus 15% administrative mark-up based on a 30 day payment schedule.			
Rates do not include local sales or business taxes, including assessments or other jurisdictionally levied assessments or taxes.			

**Port Authority of Guam
Board of Directors Regular Meeting
July 25, 2013**

**Executive Summary
Request For Proposal (RFP) No. PAG-012-003
Performance Management Services for Port's Cranes**

PURPOSE: Request for the Board of Directors (BOD) to approve the contract award for the Performance Management Services for the Port's Cranes through RFP No. PAG-012-003.

BACKGROUND:

Public Law 31-145 which was signed into law on November 2011, amended PL 30-57 and authorizes PAG to enter into negotiations with Matson & Horizon for the specific purpose of acquiring the Port of Los Angeles (POLA) gantry cranes and mandates the Port to contract the services of a Performance Management Contractor (PMC) to manage the performance, operation and maintenance of the POLA cranes and other cranes used in support of Port operations.

On June 29, 2012, a Request For Proposal No. PAG-012-003 was issued to solicit interests to provide professional and technical services of a PMC for the Port's cranes. Ten (10) firms expressed their interest by purchasing the RFP package. Two (2) firms submitted their proposal in response to the RFP prior to the established deadline of September 14, 2012. The established Evaluation Committee completed the evaluation of the technical proposals received from Shaw GBB, LLC and Marine Technical Services (MTS). As a result of the evaluation, **Marine Technical Services** was deemed to be the highest ranked and the best qualified firm to perform the required services.

On October 26, 2012, MTS was notified of the evaluation results and was invited to enter cost negotiations with the Port. Meanwhile, the General Manager established the following individuals to serve as the Cost Negotiations Committee:

1. Ernest Candoleta, Maintenance Manager
2. John B. Santos, Operations Manager
3. Joaquin P. Pangelinan, Equipment & Support Manager
4. Glenn Nelson, Commercial Manager
5. Joann Conway, Acting Financial Affairs Controller
6. Alma Javier, Procurement & Supply Manager

The initial fee proposal dated December 7, 2012 submitted by MTS identified a multi-approach compensation structure made up of four components: fixed fee, time and materials, lump sum and reimbursement method. The initial fee proposal highlights the following:

- Schedule A, On-site Management: Time & Materials (T&M) for PMC Manager and 2- Technical Engineers, relocated to Guam, with hourly rates of \$130 and \$108, respectively.
- Schedule B, Planned and Unplanned Maintenance/Repair Work: T&M for PMC Manager and 2- Technical Engineers, relocated to Guam, with hourly rates of \$130 and \$108, respectively.
- Incidentals: Direct Cost plus 18% for materials, tools, equipment, computers, transportation, fuel, airfare, per diem, housing, utilities, telephone, etc.
- Schedule C, Off-site support services: Fixed fee rate of \$7,500 per month
- Schedule D, Parts Acquisition and handling: Direct Cost plus 18%
- Schedule E, CIP Work: lump sum to be negotiated or performed on time & materials at same hourly rates above
- Schedule F, Inspections and Certification compliance requirements: Reimbursement of all cost plus 18%
- Schedule G, Training: T&M rate of \$108 per hour for a Technical trainer on a 6-month duration

The Negotiation Committee met regularly for months and conducted several Cost Negotiations Meetings via teleconference with MTS Team. During these meetings, the Committee gathered and reviewed data, records, and information from several sources, including crane maintenance expenditure data obtained from Matson/Horizon as previous owners of the POLA cranes.

As a result of the recent teleconference meeting held on July 8, 2013, the following key elements have been mutually agreed upon by both parties, subject to Port's BOD approval:

1. Schedule A & B (On-site management, planned and unplanned repair work)
 - a. Fixed Fee: \$19,615 weekly or \$85,000 monthly inclusive of the following:
 - 2-Technical Engineers to be relocated in Guam
 - 48 work-week per year, 4 weeks paid vacation
 - 55 hours maximum per week, any excess is charged on T&M
 - Includes 2-laptop computers, coveralls and safety supplies for Engineers, airfare, transportation, fuel, per diem, housing & utilities
 - Fixed rate is effective through September 30, 2014 and is subject to escalation due to any cost increase, such as wages, pension, insurance and taxes.
 - Firm to submit budget to Port for other incidentals, i.e. office support equipment, furniture, materials, tools, equipment, cell phones, etc.
2. Schedule C (Off-site home office support) i.e. technical support, accounting, parts procurement network, is billable based on time & materials
3. Schedule D (Parts Acquisition) - direct cost plus 15% (inclusive of taxes, shipping & handling), based on 30 day payment schedule
4. Schedule E (CIP) - Proposal on project by project basis to be presented to Port for consideration

5. Schedule F (Inspections and Certifications) – All cost associated with OSHA Inspection and certifications are to be invoiced at direct cost plus 15%.
6. Schedule G (Training) – Staff evaluation to be performed and recommendation of needed training in different levels to different personnel will be submitted to Port along with the budget. Training to be performed by 1-Technical Trainer for 6-month duration based on Time & Material rate. Technical Engineers located in Guam may and can provide hands-on training.

A copy of Procurement Record of Negotiations is attached for reference.

ANALYSIS

The Cost Negotiation Committee analyzed numerous factors and considerations, including but not limited to:

- FY2013 total approved budget under crane maintenance and services of \$2,645,500 (\$3,245,500 less: \$300K, \$250K, \$50K for fuel, G2-demo, OT-PAG Welders, respectively)
- The FY2013 estimated Operating Expense for Cranes reflects \$2,301,675 (\$3,801,666 less: \$759,991 for loan interest, \$600,000 for depreciation and \$140,000 for insurance)
- Matson's estimated annual budget for maintenance of 3-POLA Cranes total \$2,089,000 includes:
 - \$1,157,000 for labor, technical support (subcontractors)
 - \$84,000 for POLA parts & supplies
 - \$416,000 for fuel cost
- Gantry 3 repairs and maintenance actual expenditures:
 - \$2,109,001 - FY 2010
 - \$1,198,906 for labor, technical support, subcontractors
 - \$910,095 for parts and materials²
 - \$2,235,776 - FY 2011
 - \$1,255,318 for labor, technical support, subcontractors
 - \$288,355 for parts and materials
 - \$692,103 for CIP projects
 - \$2,106,646 - FY 2012
 - \$1,751,813 for labor, technical support, subcontractors
 - \$354,833 for parts and materials
 - \$946,785 – FY2013 (represents 3 quarters)
- POLA cranes maintenance expenditure from acquisition date (12/2012)
 - \$722,336 for 2 quarters of FY2013
- National Average Salary for Technical Engineers plus fringe benefits

Following review and analysis of such data and considerations, determinations were made:

1. Estimated annual cost for labor, technical support and outside labor (subcontractors) for four (4) cranes: \$2,559,012
 - a. \$1,402,012 annual average for Gantry 3
 - b. \$1,157,000 annual budget for 3-POLA cranes
2. Proposed Annual Fixed Fee under MTS – PMC : (\$85,000 @ 12) \$1,020,000
3. Estimated savings from labor costs, technical support, subcontractors: **\$1,539,012**
4. MTS' familiarity, technical and structural knowledge of the POLA cranes being the subcontractor of the former owners of the cranes
5. MTS maintains a local presence in Guam which will allow smooth transition with current maintenance provider thus will minimize disruption of service to Port's cranes or its operations.

LEGAL REVIEW

Complete review of the Procurement file has been performed by Legal Counsel. A draft agreement has been transmitted to Legal Counsel for review and approval as to form. Upon approval of contract award, a petition will be forwarded to the Public Utilities Commission for contract approval under the Contract Protocol Review process.

RECOMMENDATION

The Cost Negotiation Committee has determined that the negotiated rates and fees are fair and reasonable; therefore, requests the Board of Directors motion to approve the contract award to Marine Technical Services for the Performance Management Services for Port's Cranes to serve as the PMC. The contract term is for one year and may be renewed annually, for an additional one-year period, but not to exceed the total contract term of five (5) years.

BOARD OF DIRECTORS

*Francisco G. Santos, Chairman
Christine Won Pat Baleta, Vice Chairperson
Mary Michelle Gibson, Secretary
Timothy T. Kernaghan, Member*



Resolution No. 2014-06

**RELATIVE TO THE APPROVAL OF MARINE TECHNICAL SERVICES, INC.
AS THE PERFORMANCE MANAGEMENT CONTRACTOR**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO
COMMERCIAL PORT:**

WHEREAS, on November 2011, Public Law 31-145 was signed into law which mandated the Port Authority of Guam (PAG) to contract services of a Performance Management Contract (PMC) to manage the performance, operation and maintenance of the POLA cranes and other cranes used in support of Port operations; and

WHEREAS, a Request for Proposal (RFP) No. PAG-012-003 was publicly announced on June 29, 2012 to initiate the solicitation process, having two offerors respond to the RFP proposal; and

WHEREAS, the Port Evaluation Committee reviewed and evaluated the technical proposals received from the two offerors and as a result, Marine Technical Services, Inc. was deemed to be the highest ranked and the best qualified firm to perform the required services; and

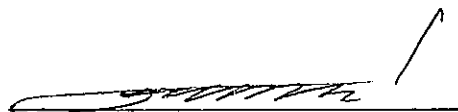
WHEREAS, after months of numerous cost negotiations with the Port's Negotiation Committee and Marine Technical Services, Inc. it was determined that the negotiated rates and fees are fair and reasonable; and

WHEREAS, the Port Authority Board of Directors at its regular meeting of July 25, 2013 approved the contract award to Marine Technical Services, Inc. for RFP No. 012-003 for the professional and technical services of a Performance Management Contractor to manage the performance, operation and maintenance of PAG's cranes; now therefore be it

RESOLVED, the Port Authority Board of Directors authorizes management to petition the Public Utilities Commission (PUC) to review and approve the contract award to Marine Technical Services, Inc. in accordance with the Contract Review Protocol for the Port Authority of Guam; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that a copy of this resolution be sent to the Public Utilities Commission.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 27th DAY OF MARCH, 2014.**


**FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

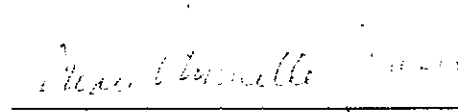

**MARY MICHELLE GIBSON
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

EXHIBIT C