



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:)
REVIEW OF CONTRACT)
FOR LEGAL SERVICES)
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)
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PAG DOCKET 15-01
ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or “the Port”) on May 5, 2015, whereby PAG requests review and approval of its contract for legal services with the Law Offices of Phillips & Bordallo, P.C. (hereinafter referred to as either “Phillips & Bordallo”).

BACKGROUND

On April 8, 2015, PAG began the solicitation process for professional legal services through publication of RFP No. PAG-015-004 Legal Services.¹ The RFP sought professional legal services for representation in litigation matters, legal opinions, legal research, among other services and duties.² The selected firm would act as legal counsel to the Port, review contracts, lease agreements, bid invitations, along with other tasks requested by PAG and its Board of Directors.³ The RFP provided that the contract would be for a term of one year, with three one-year options for renewal.⁴

¹ Evaluation Analysis and Recommendation (“Evaluation Analysis”), RFP No. PAG-015-004 Legal Services, p. 1 (Apr. 22, 2015).

² RFP No. PAG-015-004 Legal Services (“RFP”), “Attachment 1,” p. 1 (Apr. 2015).

³ RFP, “Attachment 1,” p. 1.

⁴ RFP, p. 2.

On April 13, 2015, PAG held a Pre-Proposal Conference.⁵ Proposals were accepted through April 17, 2015.⁶ Thereafter, PAG's Evaluation Committee met and reviewed the proposals submitted pursuant to the RFP.⁷ Only one law firm submitted a proposal.⁸ The Evaluation Committee ultimately selected Phillips & Bordallo pursuant to the members' evaluation of the proposal.⁹

On April 22, 2015, PAG Procurement and Supply Manager, Alma Javier, provided the General Manager with the Evaluation Analysis and Recommendation related to the legal services procurement. Ms. Javier indicated that Phillips & Bordallo ranked the highest and was the best qualified, responsive, and responsible offerer; and, therefore, recommended that Phillips & Bordallo be afforded the opportunity to negotiate a cost for its services.¹⁰ On April 22, 2015, PAG issued a Notice of Intent to Award to Phillips & Bordallo and requested the law firm to submit a detailed cost proposal.¹¹

On May 13, 2015, PAG's Board of Directors approved the contract award to Phillips & Bordallo and further authorized PAG Management to petition the PUC for review and approval of the subject contract for legal services.¹²

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⁵ Evaluation Analysis, p. 1.

⁶ Evaluation Analysis, p. 1.

⁷ Evaluation Analysis, p. 1.

⁸ Evaluation Analysis, p. 1.

⁹ Evaluation Analysis, p. 1.

¹⁰ Evaluation Analysis, p. 2.

¹¹ Notice of Intent to Award, RFP No. PAG-015-004 Legal Services, p. 1 (Apr. 22, 2015).

¹² PAG Board of Directors' Resolution No. 2015-04, p. 1 (May 13, 2015).

DISCUSSION

A. Regulatory Review

Under 12 G.C.A. §12004, the PUC must expressly approve any contractual agreements or obligations which could increase PAG's rates and charges. In addition, under PAG's Contract Review Protocol, "[a]ll professional service contracts in excess of \$1,000,000" "shall require prior PUC approval"¹³

B. Professional Service Agreement

In its Petition, PAG requests that the PUC review and approve the proposed Professional Service Agreement between Phillips & Bordallo and PAG. Submitted with the Petition is the final proposed Professional Service Agreement, which is attached hereto as "Exhibit A" for the Commissioners' convenience.

The Professional Service Agreement indicates that Phillips & Bordallo shall provide the services required and identified pursuant to the RFP. These services include acting as General Counsel to PAG; preparing legal opinions, resolutions, and reports to PAG's Board of Directors or the General Manager; provide representation in litigated matters; provide representation before the Guam Legislature, Boards, and other agencies; review contracts, lease agreements, bid invitations, and other legal assistance and advice, along with other tasks requested by PAG and its Board of Directors.¹⁴

As required under the RFP, the initial contract term is for one calendar year, with three one-year options for renewal. The agreement further provides that monthly billings shall not exceed the sum of \$70,000.00 per month without the prior written

¹³ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

¹⁴ RFP, "Attachment 1," p. 1.

approval or subsequent ratification by PAG's Board of Directors.¹⁵ Based on the record of negotiations between PAG and Phillips & Bordallo, it appears that PAG expended about \$774,803.00 during Fiscal Year 2014 for legal services, and about \$923,563.00 for Fiscal Year 2013. Accordingly, it appears that PAG expends an average of \$70,000.00 per month for legal services.

Pursuant to the negotiations between PAG and Phillips & Bordallo, the cost of services is as follows: \$200.00 per hour for "Shareholders"; \$175.00 per hour for Associates; and \$100.00 per hour for Paralegals, Law Clerks, and Special Assistants. PAG has indicated that the funding source for the Legal Services Agreement is its Operating and Maintenance fund.

CONCLUSION

The ALJ hereby finds that based on the information provided by PAG, the terms and conditions of its contract for legal services appear commercially reasonable and not burdensome. Further, the ALJ also finds that the cost of the subject contract is reasonable, and not uncommon for a large government entity, given that the Law Firm acts as PAG's general counsel and, therefore, handles all in-house legal issues, as well as matters in litigation, and matters before administrative tribunals.

Accordingly, based on the record before the Commission in the instant docket, and for the other reasons set forth herein, the ALJ finds that the subject contract for legal services, with its costs, terms and conditions, are reasonable, prudent, and necessary in order for PAG to successfully operate.

¹⁵ "Exhibit A," [Proposed] Professional Service Agreement between Jose D. Leon Guerrero Commercial Port and Phillips and Bordallo, P.C. ("Legal Service Agreement"), p. 2.

RECOMMENDATION

The ALJ hereby recommends that the PUC approve the proposed Professional Service Agreement between PAG and the Phillips & Bordallo. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 22nd day of May, 2015.



JOEPHET R. ALCANTARA
Administrative Law Judge

P153019.JRA

EXHIBIT A

PROFESSIONAL SERVICE AGREEMENT

BETWEEN

JOSE D. LEON GUERRERO COMMERCIAL PORT

AND

PHILLIPS AND BORDALLO, P.C.

THIS AGREEMENT is entered into by and between the JOSE D. LEON GUERRERO COMMERCIAL PORT, also known as the 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 and Phillips and Bordallo, P.C. ("Consultant") a firm authorized and licensed to do business in Guam, whose address is 410 West O'Brien Drive, Hagatna, Guam 96910.

WHEREAS, The Port intends to engage the professional service of the Consultant to provide consultation services to the Port; and

WHEREAS, the Consultant will be appointed as the Legal Counsel to the Port for this purpose; and

WHEREAS, the services to be rendered are of a special and temporary nature which are in the best public interest to be performed under contract by professional personnel other than employees of the Port; and

WHEREAS, the procurement officer has provided adequate public announcement of the need for such services through a Request For Proposal ("RFP"), RFP No. PAG-015-004, Legal Services, describing the type of services required and specifying the type of information and data required of each offeror and the relative importance of particular qualifications; and

WHEREAS, the Consultant has submitted a statement of qualifications and an interest in providing such service; and

WHEREAS, the award of this contract to the Consultant has been pursuant to a written finding by the purchasing agent that the consultant is the best qualified based upon evaluation factors set forth in the RFP, and that negotiations of compensation has been determined to be fair and reasonable;

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

I. Statement of Services to be Performed.

A. Scope of Work. The Consultant shall furnish legal services consistent, pursuant to and in accordance with the Scope of Services as identified Attachment 1 of the RFP. Consultant shall perform all of the services as described in the Scope of Services as identified in

the RFP and the Consultant's Proposal, each attached herewith as Exhibits 1 and 2, respectively and incorporated as part of this Agreement. Consultant shall provide status reports on the services performed and required under this agreement upon request by the Port. Consultant recognizes that failure to perform all the services required under this Agreement constitute a material breach of this Agreement.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services of a typical Consultant engaged in the same and similar field as Consultant herein. The Port may, in its sole discretion and based upon availability, provide staff assistance to Consultant in furtherance of this Agreement. The Consultant 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 Consultant 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 Consultant is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Consultant must immediately cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

II. Term of Agreement.

The initial term of this contract is for a period of one (1) year with three (3) options to renew for one (1) year period, not to exceed total contract period of four (4) years. The renewal is subject to 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 a minimum of thirty (30) days prior written notice to the beginning of the next fiscal year. In the event of cancellation due to insufficient funds, the consultant will be reimbursed the unamortized, reasonable incurred, non recurring costs.

III. Compensation.

A. Remuneration. In consideration for the services performed under this Agreement, the Port shall pay consultant according to its hourly rate schedule attached hereto as **Exhibit 3**, for the actual time devoted to performing the services. The Consultant's monthly billings shall not exceed the sum of \$70,000.00 per month without prior written approval or subsequent ratification by the Port Board of Directors.

i. Time Records. Time records will be maintained based upon the applicable hourly rates and description of work. The hourly rate shall be computed for all time spent on matters assigned by the Port, including but not limited to, time spent on telephone with Port officials and others on matters related to the Port, in negotiations, preparation of documents,

court appearances, travel, legal research, and in consultation with the Port, other counsel and/or expert witnesses. The Consultant shall invoice in minimum time increments of one-fourth (1/4 or .25) of an hour.

ii. Reimbursement of Expenses. The Port agrees to pay the Consultant, in accordance with this section, all cost and expenses incurred in performing the legal services required by this Agreement. Cost consist of all out-of-pocket expenditures including, but not limited to, photocopying and other reproduction charges, in office photocopying at twenty cents (.20) per page, fees fixed by law, long-distance telephone and facsimile charges, messenger and delivery services, postage, travel expenses such as mileage, parking, airfare, meals and hotel accommodations, which shall be in addition to the hourly rates for travel time, if any, and the like, charges for computer research outside assisted legal research, fees of outside consultants, deposition and transcript expenses, service of process and filing fees, court reporter's fees, court fees or fees assessed by courts or other agencies, jury fees, witness fees, investigators fees, expert's fees or consultant's fees and other similar items. Cost will be itemized by category in monthly invoices to the Port. The Port hereby authorized the Consultant to incur all reasonable costs necessary in Consultant's reasonable judgment, provided that Consultant shall obtain the Port's prior consent before incurring any costs in excess of Two Hundred Fifty Dollars (\$250.00).

B. Payment Terms. Consultant shall send the Port periodic monthly statements or invoices for fees and cost incurred and shall be required to provide a record of hours worked and the description of work. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in Scope of Work and upon satisfactory performance by Consultant 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 the Consultant, Consultant shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

C. Expenses. Consultant shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

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

E. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Consultant under this Agreement. Prior to the final payment due Consultant, and as a condition precedent thereto, Consultant shall execute and deliver to the Port a release in a form approved by the Port of claims against the Port arising under this Agreement. Consultant expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

F. Payment. All rates and prices and payments to the Consultant 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 Consultant at least thirty (30) days prior to the intended date of termination;

(ii) Termination in the Best Interest of the Government of Guam: The Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Consultant and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Consultant's successful completion of services under this Agreement to the satisfaction of the Port.

(iii) Termination for Cause/Default: The Port shall notify Consultant in writing of deficiencies or default in the performance of its duties under this Agreement. The Consultant shall have ten (10) days, which period may be extended by the Port (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the Port. The Port shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Consultant of said action. The action by the Port shall be either to confirm, in whole or in part, the specified deficiencies or default, or find that there are no deficiencies or default, or such action as deemed necessary in the judgment of the Port. Failure of Consultant to remedy said specified default in notice by the Port within ten (10) days of receipt of such notice of such action, or such time reasonably necessary to correct the deficiency and/or cure the default, shall result in the termination of this Agreement, and the Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.

(iv) Effects and Responsibilities of Parties for Early Termination by the Port: In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Consultant agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) by the Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) Termination for Cause: Consultant 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 Consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, Consultant shall be entitled to payment, in accordance

with Section III of this Agreement, for satisfactory services rendered up to the termination date and the Port shall have no further obligations to Consultant. Consultant 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 Consultant and within twenty (20) 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 Consultant shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Consultant in which the Port has an interest.

E. Additional Provisions. In the event that either party effects 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 defense with respect to rights to either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

V. Contact Person.

The Consultant agrees 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 responsible for responding to the questions and direction of the Port. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by the Consultant under this Agreement.

VI. Confidentiality.

A. Information. The Consultant hereby warrants that it 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. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Consultant to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Consultant shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by the Port. All of 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. Consultant shall include a letter attesting to the return of Information and documenting the destruction of copies and derivations with the returned Information.

The Consultant shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the Port, and then only if the Consultant requires the third party (ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party (ies) only for purposes of enabling the Consultant to discharge its responsibilities under this Agreement.

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.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Consultant to liability, including all damages and injunctive relief.

VII. Conflicts of Interests/Ethics

A. The Consultant warrants and covenants that it has not violated and will not violate Guam's procurement law or 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 Consultant is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Consultant agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the Consultant without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Consultant agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to the Port and provide such statement to the Port.

D. Representation Regarding Ethical Standards. The Consultant 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 Guam's Procurement Act and in Guam Procurement Regulations pertaining to ethics in public contracting. Consultant represents that it will comply with ethical obligations under Guam Procurement Law.

VIII. Prohibition Against 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. Covenant Against Contingent Fees

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Port hasll have the right to annul this Agreement without liability, or, in its discretion to deduct from the contract price of consideration or otherwise recorver, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

X. Waiver.

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 of this Agreement and shall not merge in the performance of any obligation by any party hereto.

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 effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). 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, which occurs first. 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: Joanne M. S. Brown,
General Manager
JOSE D. LEON GUERRERO COMMERCIAL PORT
1026 Cabras Highway, Suite 201
Piti, Guam 96925

A copy shall be provided to the Port's Legal Counsel of Record.

TO CONTRACTOR: Michael F. Phillips, Esq.
410 West O'Brien Dr.
Hagatna, Guam 96910

XV. Assignment/Subcontractors.

It is expressly acknowledged that Consultant is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Consultant utilizes one or more subcontractors for such purpose. The right and interest of Consultant under this Agreement (including, but not limited to, Consultant's right to or interest in any part of or all 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, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Consultant, Consultant agrees that any subcontractors retained by Consultant 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, RFP, Consultant's Proposal and Payment Terms collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The

Consultant 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.

In the event of a contradiction between the provisions of any one or more of the documents collectively comprising this Agreement, RFP, Consultant Proposal and Payment Terms the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time) and third, to the provisions of the Consultant Proposal and Payment Terms (as they may be clarified or amended from time to time).

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. Compliance with Laws.

A. In General. The Consultant shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Consultant represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Consultant 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.

C. Designation of Attorney as Special Assistant Attorney General Consultant acknowledges that he may be appointed by the Attorney General as a Special Assistant Attorney General for purposes of litigation under this Agreement. The Attorney General remains the Chief Legal Office for the government of Guam and nothing herein shall be construed to

delegate or waive the Attorney General's legal authority and ethical relationship with the government of Guam under 48 U.S.C. § 1421 g (d) (1) or any other Federal or local law, rule or regulation.

The objectives of litigation shall be determined by PAG. Consultant shall keep the Attorney General and PAG informed of all matters in litigation under this Agreement by providing a periodic summary of the status of such matters as requested by either. On a case-by-case basis, as requested, Consultant shall serve the Attorney General with copies of pleadings or any other documents filed in litigation. Nothing herein shall prevent the Attorney General from joining as co-counsel in any litigation where Attorney is performing legal services under this Agreement. Consultant shall not commit PAG or the Attorney General to any settlement without the prior consent of PAG client and Attorney General to proceed.

The Attorney General shall maintain at all times the authority to rescind any designation of Special Assistant Attorney General given to Consultant. Furthermore, upon termination of this Agreement for any reason, any designation given as Special Assistant Attorney General shall likewise cease; provided, however, notwithstanding the termination of this Agreement for any reason, any designation, the cessation of legal representation in pending litigation shall be contingent upon the filing of a substitution of counsel, or the granting of a motion to withdraw as counsel, or both as the case may be, the Consultant shall cooperate with client and the Attorney General, and take all reasonable and necessary steps to file the substitution of counsel or motion to withdraw as counsel.

Upon termination of status as a Special Assistant Attorney General, Consultant shall promptly return to PAG or Attorney General, as directed, all files, documents, recording and other property of whatever kind pertaining to the subject litigation. Consultant shall issue to PAG and to the Attorney General a written memorandum detailing the status of litigation just prior to the Consultant's termination regardless of the party initiating termination.

PAG and Consultant understand that the Attorney General designates the Deputy of the Civil Litigation Division as its liaison and the person to who all matters regarding litigation should be directed to.

D. Procurements of Five Hundred Thousand Dollars (\$500,000) or more. (5 GCA § 5150) Consultant agrees PAG must notify the Attorney General of any PAG solicitation or procurement which is estimated to result in an award of Five Hundred Thousand Dollars (\$500,000) or more. Consultant acknowledges that the Attorney General is the legal advisor during all phases of the solicitation and procurement process pursuant to 5 G.C.A. § 5150. Consultant agrees to follow all the forms and formats required by the Attorney General and in the event Consultant is designated as a Special Assistant Attorney General with regard to said procurement Consultant agrees to follow all the applicable requirements of that appointment. Consultant agrees to keep the Attorney General cognizance of all legal matters.

XXII. Retention and Access to Records and Other Review.

The Consultant, 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 at all reasonable times during the Agreement period and for six (6) 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 Consultant to provide access to all documents and Port property reasonably necessary to the performance of Consultant's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

XXIII. Liability.

A. Indemnification. Consultant 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 or the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services 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 Consultant and/or the Consultant'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 Consultant's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXIV. Delays, Extensions and Suspensions.

The Port unilaterally may order the Consultant 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 Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or interruption. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Consultant's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another consultant in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

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

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Consultant. The Port shall have the power to make changes in the Agreement and to impose new rules and regulations on the Consultant under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. The Port shall give the Consultant notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations,

financial or otherwise, of the Consultant. In the event the Port materially alters the obligations of the Consultant, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Consultant, then the Consultant or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. Consultant shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The Port and the Consultant 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 changes in law. When such modifications are made to the Agreement, the Port and the Consultant shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Consultant directly and demonstrably due to any modification in the Agreement under this clause.

XXVI. Independent Consultant and its Employees.

A. Status of Consultant. The Consultant 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 Consultant 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. Consultant agrees that Consultant 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, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). 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 Consultant 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 or the Consultant.

B. Liability. The Consultant 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 by the governments of the U.S. and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement. Furthermore, Consultant shall maintain at the Consultant's expense all necessary insurance for its employees including but not limited to Worker's Compensation, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Consultant agrees to hold harmless and indemnify the Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or

damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Consultant or Consultant's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Consultant's failure to comply with terms of this subparagraph B.

XXVII. Disclosure.

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

XXVIII. 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 and remain the property of the Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant 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 sole and exclusive property of the Port. Consultant explicitly acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement. Consultant shall not use or permit others to use in any way or form the Work Product without the express written consent of the Port.

XXIX. Employment of Persons Convicted of a Sex Offense.

Consultant warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the Port while on the Port or Government of Guam property, with the exception of public highways. If any employee of Consultant is providing services on government or Port property and is convicted subsequent to an award of a contract, then Consultant warrants that it will notify the Port of the conviction within twenty-four (24) hours of the conviction, and will remove immediately such convicted person from providing services on government or Port property. If Consultant is found to be in violation of any of the provisions of this paragraph, then Consultant shall take corrective action within twenty-four (24) hours of the notice from the Port, and Consultant shall notify the Port when action has been taken. If Consultant fails to take corrective steps within twenty-four (24) hours of the notice from the Port, then the Port in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

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

This Agreement, including its Attachments, Exhibits and Schedules, 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 and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam 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.

XXXIV. 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 Port in writing, within 60 days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Port 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 Port 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 the contractor appeals the decision to the Office of the Public Accountability.

D. This subsection applies to appeals of the Port's decision to Consultant. For money owed by or to the Port under this agreement, Consultant shall appeal the decision in accordance with the Government of Guam Claims Act by initially filing a claim with the Office of the Attorney General no later than 18 months after the decision is rendered by the Port or from the date when a decision should have been rendered. For all other claims by or against the Port arising under this agreement, the Office of the Public Accountability has jurisdiction over the appeal from the decision of the Port. Appeals to the Office of the Public Accountability must be made within sixty (60) days of Port's decision or from the date the decision should have been made.

E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. The contractor shall comply with any decision of the Port 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 if PAG determines in writing that continuation of services under this agreement is essential to public health and safety, then Contractor shall proceed diligently with performance of the agreement notwithstanding any claim of material breach by the Port.

XXXV. Minimum Wages as Determined by U.S. Department of Labor

Consultant agrees to comply with Title 5, Guam Code annotated, Sections 5801 and 5802. In the event that Consultant employs persons whose purpose, in whole or part, is the direct delivery of service contracted by the Government, then the Consultant shall pay such employees, at a minimum, in accordance with the U.S. Department of Labor Wage Determination for Guam and the Northern Marianas Islands in effect on the date of this contract. In the event that this contract is renewed by the Government and the Consultant, at the time of renewal, Consultant shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands promulgated on a date most recent to the renewal date.

Consultant agrees to provide employees whose purpose, in whole or in part, is the direct delivery of service contracted by the Government those mandated health and similar benefits having minimal value as detailed in the U.S. Department of labor Wage Determination for Guam and the Northern Marianas Islands, and guarantee such employees a minimum of ten (10) paid holidays per annum per employee.

*** SIGNATURES APPEAR ON NEXT PAGE ***

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

JOSE D. LEON GUERRERO
COMMERCIAL PORT

PHILLIPS & BORDALLO, P.C.

JOANNE M. S. BROWN
General Manager

MICHAEL F. PHILLIPS
Title: Sole Shareholder

Date: _____

Date: _____

OFFICE OF THE ATTORNEY GENERAL

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

ELIZABETH BARRETT-ANDERSON
Attorney General of Guam

MIAMI ULBENARIO
Certifying Officer
Jose D. Leon Guerrero Commercial Port

Date: _____

Date: _____

ATTACHMENT 1

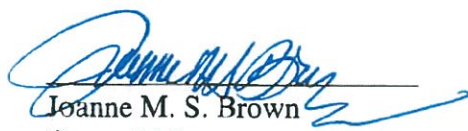
ATTACHMENT 1

SCOPE OF SERVICES LEGAL SERVICES

Description Of Work Involved: The following Scope of Services describes the work to be accomplished.

- A. Act as Counsel to the Port.
- B. Have particular expertise in and prepare opinions, resolutions, and reports at the request of the Board of Directors or General Manager or their designee(s) in:
 - a. Matters of a commercial and business nature.
 - b. Matters in the maritime transportation industry.
 - c. Matters pertaining to federal, regulatory or local statutes
 - d. Matters relating to personnel rules, regulations and procedures.
- C. Undertake such legal research as shall be requested by the Board or the General Manager or their designee as described in section B.
- D. Represent the Authority in litigation matters as described in section B.
- E. Upon Port's authorization, represent the Port in connection with matters before the Legislature, Boards and other agencies of Guam or the United States as described in Section B.
- F. Review contracts, leases, bid invitations and other documents for work as described in section B.
- G. Provide legal assistance and advice during any negotiations with the Port's tenants, concessionaires and contractors for work as described in Section B.
- H. Provide special services as requested by PAG and/or the Board of Directors.
- I. Other Tasks: Port may require other related tasks not specified above.

The above scope of work was developed and prepared by Staff and Management of the Port Authority of Guam and approved by:


Joanne M. S. Brown
General Manager