



BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: REVIEW OF CONTRACT)
 FOR IMPLEMENTATION)
 AND INTEGRATION)
 SERVICES FOR)
 TERMINAL OPERATING)
 SYSTEM)
_____)**

PAG DOCKET 15-02

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the May 5, 2015 Petition for review and approval of the G4S Security Systems (Guam) Inc. (“G4S”) contract related to the Implementation and Integration Services for its Terminal Operating System (“Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks the PUC’s review, ratification and approval of its services contract with G4S, which is attached hereto for the Commissioners’ convenience as “Exhibit A.”

BACKGROUND

On July 10, 2013, PAG issued a Request for Proposal (“RFP”) to solicit services related to the implementation and integration of a Terminal Operating System (“TOS”).¹ The project was proposed as a five (5) year service contract, which also involved tasking of work in phases through Task Orders.² According to PAG, the initial Task Order was designed to produce a detailed business analysis that would include the proposal of a TOS, a proposed

¹ Petition, PAG Docket 15-03, p. 1 (May 5, 2015).

² Petition, p. 1.

financial approach, as well as phases of implementation.³ The implementation phases, as well as the other phases of the project, would be subject to the issuance of subsequent Task Orders, approved by the Port.⁴

The firm sought under the RFP would be required to help PAG transition its current operating practices to “a modern automated system that will have a direct interaction and work protocols with external stakeholders such as the shipping lines, truckers and Customs.”⁵ The selected firm would also be required to furnish the support or any hardware or software required for the implementation of the proposed TOS.⁶

Two firms submitted proposals in response to the RFP, which were evaluated by PAG’s procurement team.⁷ PAG’s procurement team thereafter determined G4S to be the highest ranked and most qualified firm to perform the services.⁸ On February 17, 2014, PAG’s Board of Directors approved the contract award to G4S, and approved the initial Task Order at a cost of \$106,637.00.⁹

On May 16, 2014, G4S submitted its initial proposal for Task Order No. 2 at a total proposed cost of \$6,798,895.30, presenting NAVIS SPARCS N4 License as a TOS.¹⁰ After negotiations between PAG and G4S, Task Order No. 2, which has triggered the instant regulatory review, was negotiated at a cost of \$4,135,112.36.¹¹ Task Order No. 2 involves

³ Petition, p. 1.

⁴ Petition, p. 1.

⁵ Petition, p. 1.

⁶ Petition, p. 1.

⁷ Petition, p. 1.

⁸ Petition, p. 1.

⁹ Petition, p. 1.

¹⁰ Executive Summary Re: Task Order No. 2, Board of Directors Special Meeting, p. 1 (May 13, 2015).

¹¹ Petition, p. 2.

system development; testing and training; implementation and system transition.¹² System development involves hardware, software, and network design; along with application design and build.¹³

DISCUSSION

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12004,¹⁴ 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" "shall require prior PUC approval under 12 G.C.A. §12004."¹⁵

2. Scope of Services

According to PAG, the initial Task Order required G4S to produce a detailed business analysis that would include the proposal of a TOS, a proposed financial approach, as well as phases of implementation.¹⁶ With respect to Task Order No. 2, G4S would assist PAG with the system development of TOS; to include testing and training; implementation and system transition.¹⁷ Such system development includes hardware, software, and network design; as well as the application design and build.¹⁸ Some of the work related to Task Order No. 2 is contained in "Volume III-Functional and Technical Requirements" of the RFP, which is attached hereto as

¹² Petition, p. 1.

¹³ Petition, p. 1.

¹⁴ Renumbered as 12 G.C.A. § 12105.

¹⁵ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

¹⁶ Petition, p. 1.

¹⁷ Petition, p. 1.

¹⁸ Petition, p. 1.

“Exhibit B.” For instance, G4S is required to provide IT training after installation, as well as system startup and operation.¹⁹

3. Contract Term

Pursuant to the RFP and the current contract, G4S is required to complete the project within five (5) years, beginning on the effective date indicated on Task Order No. 1.²⁰

4. Cost

Task Order No. 1 cost PAG \$106,637.00. Task Order No. 2 will cost PAG \$4,135,112.36.²¹ The following is a breakdown of the costs associated with Task Order No. 2: \$1,944,648.11 for Navis TOS license, which includes program installation, training, customization, configuring, commissioning, and testing; \$621,561.60 for five (5) year license maintenance, service, and technical support; and \$1,568,902.65 for labor, materials, and equipment (such as network service, servers, etc.).²²

According to PAG, Task Order No. 2 will be funded as follows: \$500,000.00 will be funded under the CIP Account budgeted for FY2015; \$1,000,000.00 will be funded from the \$10 million SLE loan; and \$2,635,112 will be budgeted and funded from the CIP for FY2016 and 2017.²³

5. Board Approval

Resolution No. 2015-02 indicates that PAG’s Board of Directors approved the contract award to G4S, as well as the issuance of \$106,637.00 for the initial Task Order, during

¹⁹ RFP, p. 29.

²⁰ RFP, p. 14; Contract between PAG and G4S, p. 2.

²¹ Petition, p. 2; PAG Board of Directors’ Resolution No. 2015-02, p. 1 (May 13, 2015).

²² Petition, p. 2; *See also* PAG Board of Directors’ Resolution No. 2015-02, p. 1 (May 13, 2015).

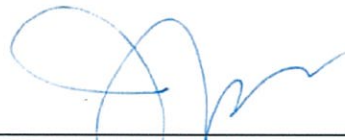
²³ Executive Summary Re: Task Order No. 2, Board of Directors Special Meeting, p. 2 (May 13, 2015).

its February 17, 2014 meeting.²⁴ In addition, the Resolution approved the amount of \$4,135,112.36 for Task Order No. 2, and authorized PAG management to petition the PUC for review and approval of this particular Task Order.²⁵

RECOMMENDATION AND CONCLUSION

Based on the documents provided by PAG in this docket, and the record before the Commission, the ALJ finds that it is critical to PAG's operations that it upgrade its current operating practices to "a modern automated system that will have a direct interaction and work protocols with external stakeholders such as the shipping lines, truckers and Customs."²⁶ Accordingly, the ALJ recommends that the PUC ratify the current contract with G4S, and approve Task Order No. 2 at a cost of \$4,135,112.36. The ALJ further recommends that the PUC require PAG to return to the PUC, for prior approval, for any remaining Task Orders that exceed \$1 million under this particular contract.

Respectfully submitted this 26th day of May, 2015.



JOEPHET R. ALCANTARA
Administrative Law Judge

P153023.JRA

²⁴ PAG Board of Directors' Resolution No. 2015-02, p. 1 (May 13, 2015).

²⁵ PAG Board of Directors' Resolution No. 2015-02, p. 1 (May 13, 2015).

²⁶ Petition, p. 1.

EXHIBIT A
PROFESSIONAL SERVICE AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
AND
G4S SECURITY SYSTEMS (GUAM) INC.

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 **G4S Security Systems (Guam) Inc.** ("Consultant") a firm authorized and licensed to do business in Guam, whose address is 1851 Army Drive, Harmon, Guam 96913.

WHEREAS, the Port issued a Request for Proposal ("RFP"), RFP No. PAG 013-004, seeking to retain a consultant to provide professional/technical services for the Implementation Integration Services for the Terminal Operating System (TOS) identified in the RFP and within the Port Authority on Cabras Island, Piti, Guam.

WHEREAS, the Consultant responded to the RFP through submitting a proposal to provide services in accordance with the RFP, and was selected as the most qualified offeror.

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

WHEREAS, in submitting the Proposal, Consultant 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 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

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. Consultant shall provide Implementation & Integration Services through Task Orders.

Consultant shall perform all of the professional 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. Services under this Agreement will be performed within the property of the Port. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

II. Term of Agreement.

The contract period shall be for five (5) years commencing upon effective date of Task Order No. 1.

III. Compensation.

A. Compensation. In consideration for the services performed under this Agreement, the Port shall pay Consultant based on fees according to specific task order negotiated. The services under this agreement shall consist of Task Orders and all work shall be performed and compensated in accordance with the terms herein and Task Orders agreed upon and authorized by the Parties.

B. Payment Terms. Payment shall be made as set forth in this Agreement including its Exhibits, and based on deliverables. 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 without Cause: Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date and the Port shall have no other or further obligation to Consultant. The 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.

(ii) 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.

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. 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.

X. 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.

XI. 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.

XII. 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.

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

TO CONTRACTOR:	Christopher Garde President G4S Security Systems (Guam) Inc. 1851 Army Drive Harmon, Guam 96913
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XIV. 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.

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 of 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.

SIGNATURES APPEAR ON THE 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

G4S SECURITY SYSTEM (GUAM)
INC.


JOANNE M. S. BROWN
Principal


CHRISTOPHER GARDE
President

Date: 5/6/14

Date: 3/14/14

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APPROVED AS TO FORM:

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**


PHILLIPS & BORDALLO LLP
Port Legal Counsel


MIAMI ULBENARIO
Certifying Officer
Jose D. Leon Guerrero Commercial Port

Date: 5/9/14

Date: 06.04.14



EXHIBIT B



4.2 General Technical Integration Requirements

TOS-IS Provider shall supply and implement systems that conform to the following minimum technical requirements:

- There shall be a clear implementation and testing approach that ensures:
 - Technical capabilities of the system to handle “the load”.
 - Functional capabilities of the system to deliver and prove the required productivity under the defined operational performance scenarios.
 - Migration from the current dedicated developed system called GTS and billing system called TARIFS (AS400). Upload / download between the PAG systems is currently via batch files. (PAG prefers not to migrate any existing records from both systems due data integrity. Parameters and important information should be keyed-in from scratch).
 - Roll-back capability of the application after go-live to the previous release after acceptance.
- There is a project plan that addresses the various system environments in which the application will operate, including the third-party interfaces. It is required that the supplier offers a total system integration plan, the partners, the consortium, the realization. The project will run in parallel with transforming the site per the Port Master Plan.

Furthermore, it is expected from the supplier to deliver:

- A specification of the internal systems architecture and data model, as well as the interfaces with third-party systems, including the (internally) deployed technology for the application(s), the databases, and the communication infrastructure. It is highly preferred that the system is based on open industrial DBMS, SQL version 2008 and above.
- A specification of the hardware and network architecture and preferred OS to put in place at the terminal to run the IT systems. (High availability machine easy to expand and easy to maintain like a high end blade or rack servers running VMWARE).
- An approach for the installation (including the renewed assurance that the new release will not lead to system malfunction) of new releases and bug fixes.
- Software must have the capability to work with Virtual Desktop like VMWare VDI, VMWare VMView, NComputing.
- Software must be able to work with multi-platform OS clients like Windows 7, Vista and Windows XP.



4.3 Server and Network Configuration and Security

The TOS-IS Provider is required to specify TOS specific components of the TSN including but not limited to the following:

- The wireless network to the handheld terminals (to be furnished by TOS-IS Provider)
- The integration requirements for a future Remote Reefer Monitoring System.
- Options for the integration with the security system to be delivered by others in compliance with the ISPS requirements The security system is the Port Police System, including the management of the TWIC card and Port Access Card.
- Requirements for server equipment (including servers and storage systems) supplied by others but needed to support all systems in the TOS-IS Contract. The requirements shall take into consideration stages of the terminal development (i.e., the ability to handle mixed types of operations and sudden modifications of the yard layout due to Terminal Construction work, to upgrade equipment and gradually utilizing additional modules of the system if necessary).
- The offeror is invited to present other concepts, like remote server SAAS or CLOUD computing. Specify the network requirements. These remote service concepts must have same uptime, response times, service levels as if the application server(s) are installed locally. Present your service model.
- Requirements for compatible data terminals for tallymen, TT drivers, and TPL drivers (to be furnished by TOS-IS Provider). APPS for use on I-Phones and I-Pads is certainly an option to be considered.
- Requirements for a future DGPS system.
- Other applicable technical and/or infrastructure requirements, if necessary.

4.4 Maintenance and Bug Fixing Requirements

The TOS-IS Offeror shall be required to conform to the Service Level Classification that it designates in Volume IV and such Service Level Classification shall conform to Best Industry Practice including designations for service requests by Severity Level, Impact, Response Time (RT), and Maximum Fix Time (MFT):

- Critical: System down, data lost or business severely affected, and no work-around is available. RT = 2 business hours; MFT = 1 business day. The priority of Suppliers commitment is on RT.



Software is non-functional. RT = 8 business hours; MFT = 5 business days. The priority of Suppliers commitment is on RT.

- Minor: Cosmetic defect or minor malfunction that does not cause a material software or system failure. RT = 24 business hours; MFT = 30 business days. The priority of Suppliers commitment is on RT.
- Query: General questions and requests for enhancements. RT = 48 business hours; No Maximum Fix Time.
- The Supplier should provide PORT AUTHORITY OF GUAM with full access to any support knowledge base DB for productive/reactive support related issues.

4.5 General Requirements of the TOS

The following sections cover the General TOS requirement at a high level and highlight critical functions that must be available in the standard product.

- Extensively configurable (e.g., terminal layout easily updated through period of terminal build and development, new equipment and ship structures easily added etc.).
- Well defined software release strategy.
- System updates happen in real-time.
- Fat client for GUI intensive applications (e.g., Vessel planning, yard planning)
- HTML client for remote user access (e.g., vehicle booking, vessel schedule review and container updates).
- Rich Internet Architecture (RIA) client for 'normal' users
- Transaction File(s) capturing all activities (e.g., changes, additions, deletions) to Master File Records for audit purposes or similar reporting capability.
- Archive history information separate from production files with ability to access via customizable reporting module.

4.6 Specific Systems Integration Requirements.

A. ERP

PAG is currently using J.D. Edwards World Software (JDEWS) for its financial and certain limited ERP functions. The JDEWS is based on AS400 / DB2 platform.

PAG shall implement the TOS billing module to the extent its functionality complies with its overall requirements. At the same time, it is anticipated that some billing features from the JDEWS system will be retained. The TOS will have to be interfaced with the current JDEWS for



porting and finalizing billing information.

The TOS-IS Offeror shall provide information on the extent and functionality of the interface feasible between existing JDE Systems and the TOS; specifically to support functions such as Invoicing, Job Order Tracking and data resources for General Ledger functions.

B. GUAM Customs

On the U.S. Territory of Guam, the Guam Customs performs the functions performed by U.S. Customs and also the functions performed by USDA in the continental U.S.

Guam Customs are planning their own modernization project. Currently, they work primarily using manual protocols. Customs shall have real-time access to the TOS database in order to support PCT processes and procedures that are contingent upon their review, analysis and approval. The TOS-IS Provider along with PAG staff will be required to meet with Guam Customs, identify their needs to support a smooth and efficient PCT operation and integrate their requirements into its strategy for implementing the TSN and TOS.

B. Automated Gate

PAG plans to build a fully automated gate complex in a next terminal development phase as detailed elsewhere. The TOS shall have manual gate functionality. Upon completion of the Terminal Construction, the TOS shall be integrated with an Automated gate System and a Truck Appointment System. See Appendix VI-3 for the specifications.

C. DGPS

After the successful implementation of the TOS, PAG anticipates the implementation of a DGPS system to use on the Top Lifters. The TOS proposed by the TOS-IS Offeror shall have the technical capability to be integrated with the selected DGPS system. The TOS-IS Offeror shall submit information on the compatibilities between its proposed TOS and DGPS systems currently in use at other similar terminals. See Appendix VI-3 for the specifications.

D. Quay Cranes

PAG may opt to apply the OCR technology deployed in the Automated Gate System for installation on the QCs after completion of the Automated Gate project.

Container weight sensors might be installed in the quay crane spreaders in the future. These technologies are not expected to be implemented before 2015.



The TOS shall be capable of integrating with these potential improvements. The TOS-IS Offeror shall submit information on the capabilities between its proposed TOS and technologies for such future improvements.

E. Shipping Lines

Shipping line representatives serving the PCT have integral roles in the processes and procedures required to operate the PCT.

These processes related to PAG are currently performed on a manual basis including collection of Port fees related to cargo, authorization for cargo acceptance and release. These stakeholders shall have real-time access to certain data in the TOS database in order to support PCT processes and procedures that are contingent upon their review, analysis, and acceptance. The TOS-IS Provider along with PAG staff will be required to meet with such stakeholders, identify their needs to support a smooth and efficient PCT operation, and integrate their requirements into its strategy for implementing the TSN and TOS.

4.7 Communication and Documentation Requirements

The PAG must be able to open/track/update/close all its support calls through internet secured access.

The TOS-IS Provider shall be the single point of responsibility to PAG for all support issues. The TOS-IS Provider's designated point of contact shall be responsible for any Problem Determination (PD) Problem Source Isolation (PSI). Hence, it shall be responsible for the escalation process through the proper channel.

The TOS-IS Provider shall be the prime contractor and as such the sole partner for the PAG for the full system delivery installation and commissioning for all aspects of this RFP.

The TOS-IS Provider shall be a certified business partner of the software company whose TOS is proposed or the TOS software company.

The TOS-IS Provider shall present a maintenance proposal for five (5) years of second level support.

During the five year maintenance agreement the TOS-IS Provider shall furnish advice to PAG on ongoing new developments and make recommendations for improvements and adoption of new technologies.

The trainers used by the TOS-IS Provider shall have certification acquired from the TOS software company or an authorized training institution.