



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: REQUEST FOR REVIEW) PAG DOCKET 19-01
AND APPROVAL OF)
IFB AWARD TO MORRICO)
EQUIPMENT, LLC FOR THE)
PURCHASE OF TWO (2)) ORDER
LOADED CONTAINER)
HANDLERS (TOP LOADERS))
BY PORT AUTHORITY)
OF GUAM)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the April 19, 2019 Petition for review and approval of the Invitation for Bid Award to Morrigo Equipment, LLC (“Morrigo”) for the purchase of two 80,000 Pounds Loaded Container Handlers (the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of the bid award to Morrigo in the amount of One Million Six Hundred Thirty-Nine Thousand Nine Hundred Seventy-Six Dollars (\$1,639,976.00).

On May 28, 2019, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On August 20, 2018, PAG issued Invitation for Bid No. GSA/PAG-009-18 to purchase four 80,000 Pounds Loaded Container Handlers (“IFB”).¹ Two firms submitted bids in

¹ Petition, p.1.

response to the IFB, which were evaluated by PAG's procurement personnel.² Morrico submitted a "Primary Bid" and an "Alternate Bid."³ The other bidder submitted a "No Bid."⁴ PAG's procurement personnel thereafter determined that Morrico's Primary Bid qualified as the lowest responsive bid and responsible bidder.⁵ On March 29, 2019, PAG's Board of Directors approved the bid award to Morrico and issued Resolution No. 2019-04, which also authorized PAG to petition the PUC for approval of the bid award to Morrico.⁶

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Accordingly, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000"; "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years"; and "[a]ny contract or obligation not specifically referenced . . . which exceeds \$1,000,000, not including individual contracts within an approved capital improvement projects ('CIP') or contract"; "shall require prior PUC approval under 12 G.C.A. §12004." Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

2. April 19, 2019 Petition

In its Petition, PAG sought PUC review and approval of its bid award to Morrico for the purchase of two 80,000 pounds loaded container handlers, or "top loaders." PAG

² Bid Analysis on IFB No. GSA/PAG-009-18, p.1 (Jan. 23, 2019).

³ Petition, p. 1; Resolution No. 2019-04, PAG Board of Directors, p. 1 (Mar. 29, 2019).

⁴ Petition, p. 1; Resolution No. 2019-04, p. 1.

⁵ Petition, p. 1.

⁶ Petition, p. 2; Resolution No. 2019-04, p. 1.

submitted that after its evaluation of the bids, it determined that Morrico's bid qualified as the lowest responsive, responsible bid.⁷ PAG further submitted, however, that "[d]ue to the Buy American Act" provision indicated in the IFB, the pricing exceeded PAG's original budgeted amount; and therefore, PAG made the determination to purchase two top loaders, instead of four. According to PAG, GSA thereafter issued Purchase Order No. 15213-OS to Morrico for the purchase of two "U.S. Made" Taylor brand top loaders.⁸

PAG has indicated that the purchase of the top loaders is "100% federally funded by [U.S. Maritime Administration]; from the Port Modernization Project and is not supplemented with local funding."⁹ It stated that it "took advantage of the funding opportunity as an effort to further enhance cargo handling capabilities" and to provide a "safe and sustainable working environment."¹⁰

PAG submitted the following in support of its Petition: Invitation for Bid No. GSA/PAG-009-18IFB; Resolution No. 2019-04, issued by PAG's Board of Directors on March 29, 2019; the January 23, 2019 Bid Analysis on Invitation for Bid No. GSA/PAG-009-18IFB; and Morrico's October 5, 2018 "Primary Bid," and October 5, 2018 "Alternate Bid."

3. Invitation for Bid No. GSA/PAG-009-18

a. Bid Specifications

Based on the Bid Specifications, the original bid sought four 80,000 Pounds Loaded Container Handlers. A few of the specifications include the following: 200 minimum

⁷ Petition, p. 1.

⁸ Petition, p. 2.

⁹ Petition, p. 2.

¹⁰ Petition, p. 2.

horsepower; runs on Ultra Low Sulfur Diesel fuel; 80,000 pounds to 40 tons minimum lifting capacity; vertical exhaust that complies with U.S. Department of Transportation and U.S. Environmental Protection Agency standards; air-conditioned cab; provide sessions on operating procedures and maintenance; and must comply with the federal Buy American Act.

b. Funding

PAG submitted that the purchase of the top loaders is “100% federally funded by MARAD; from the Port Modernization Project and is not supplemented with local funding.”¹¹ Therefore, this particular purchase is a part of the larger project to address PAG’s deficiencies and equipment purchases, as assisted by the U.S. Department of Transportation, Maritime Administration.

4. Morrice Equipment’s Bid Submission

Based on its Primary Bid, Morrice submitted a bid that complied with all of the bid specifications, indicated a unit price of \$819,998 per container handler, and specified an XLC-975 Taylor Loaded Container Handler. In its Alternate Bid, Morrice submitted a bid that complied with all the bid specifications, with the exception of the “Buy American Act” requirement, and indicated a unit price of \$643,575 per container handler, and specified an H1150HD-CH Hyster Container Handling Lift Truck. Morrice further submitted a “Letter of Deviation,” which indicated that the Hyster container top lifters did not qualify under the “Buy American Act” since its container top lifters are manufactured in the Netherlands.

¹¹ Petition, p. 2.

5. Board Approval

The instant petition is supported by Resolution No. 2019-04, issued by PAG's Board of Directors on March 29, 2019. In the Resolution, the board approved the purchase of two Taylor container handlers, as indicated in Morrigo's Primary Bid, and at a total cost of \$1,639,976.¹² The Resolution further authorized PAG management to petition the PUC for approval of the bid award to Morrigo.¹³

CONCLUSION

Based on the record before the Commission, Morrigo's primary bid appears to be the lowest responsive, responsible bid.¹⁴ The ALJ further found that, since the bid pricing exceeded PAG's original budgeted amount, PAG's determination to purchase two top loaders, instead of four, appears reasonable based on the circumstances.¹⁵

Additionally, the ALJ found that top loaders are indisputably an integral component of PAG's operations. And since the subject purchase of the top loaders is "100% federally funded . . . and is not supplemented with local funding," PAG has utilized this opportunity to further improve its operations and with little to no impact to ratepayers.¹⁶ Moreover, ALJ further found that this purchase will add to PAG's operating equipment and will certainly "enhance [its] cargo handling capabilities."¹⁷

¹² Resolution No. 2019-04, p. 1.

¹³ Resolution No. 2019-04, p. 1.

¹⁴ See Petition, p. 1.

¹⁵ See Petition, p. 2.

¹⁶ Petition, p. 2.

¹⁷ Petition, p. 2.

Accordingly, based on the record before this Commission in the instant docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve the bid award to Morrico Equipment, LLC, for the two top loaders at a total cost of \$1,639,976.00. The Commission hereby adopts the findings made in the May 28, 2019 ALJ Report, and therefore, issues the following:

ORDERING PROVISIONS

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

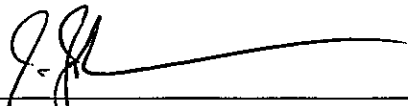
1. PAG's Petition for the review and approval of the Invitation for Bid Award to Morrico Equipment, LLC for the purchase of two 80,000 Pounds Loaded Container Handlers (Top Loaders) is APPROVED, at a total cost of \$1,639,976.00.

2. In exceptional cases where PAG must act on a contract that requires prior PUC approval, PAG shall notify the PUC in writing, which shall (i) alert the PUC that a request for review is forthcoming and (ii) indicate PAG's reasons for immediately acting on such a contract prior to PUC review.

3. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 30th day of May, 2019.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner



JOSEPH M. McDONALD
Commissioner

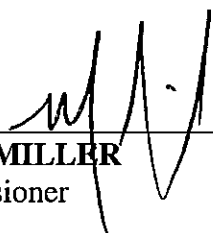


FILOMENA M. CANTORIA
Commissioner

MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



MARK MILLER
Commissioner