



BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: PETITION FOR APPROVAL)
OF CONTRACT AWARD)
FOR MANAGEMENT AND)
OPERATIONS OF THE F1)
FUEL PIER AND FACILITY)
WITH TRISTAR TERMINALS)
GUAM, INC. BY PORT)
AUTHORITY OF GUAM)**

PAG DOCKET 21-01

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the January 8, 2021 Petition (hereinafter referred to as the “Petition”) for review and approval of the Tristar Terminals Guam Inc. (“Tristar”) contract related to the management and operation of the F-1 Fuel Pier Facility, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of this professional services contract with Tristar.¹

On January 26, 2021, 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

The F-1 Fuel Pier Facility is a dock constructed on submerged land that is located adjacent to the “fingertip portion of the Cabras Island Industrial Park” and owned by PAG.²

¹ The 2014 F-1 Fuel Pier Facility Management and Operations Agreement is attached hereto as “Exhibit A.”

² PAG Request for Proposal No. RFP-PAG-019-004 (the “RFP”), p. 4 (Apr. 4, 2019).

Based on the RFP documents, the facility includes pilings, a deck, dolphins, walkways, a dock shed, pipelines, valves and manifolds. A generator, mooring hooks, storage tanks, and an office building also sit on the facility. This fuel pier is where petroleum products, like gasoline and oil, and non-petroleum products are offloaded, discharged, and distributed.³ There, 7,000,000 to 10,000,000 barrels of petroleum products are imported and exported through the facility each year.⁴ In addition, based on the RFP documents, there are presently three (3) users of the fuel pier.

On April 5, 2019, PAG issued RFP-PAG-019-004 (the “RFP”), which sought services related to the management and operations of the F-1 Fuel Pier Facility.⁵ Three firms submitted proposals, which were evaluated and ranked by a PAG Evaluation Committee.⁶ Thereafter, the Evaluation Committee reviewed the submissions and identified IP&E Holdings, LLC dba IP&E Guam (“IP&E”) as the highest ranked proposal and, therefore, recommended that IP&E be given an opportunity to negotiate a contract with PAG.⁷ The Evaluation Committee identified Tristar as the second ranked proposal.⁸

³ Petition, p. 1 (Jan. 8, 2021).

⁴ RFP, p. 4.

⁵ Petition, p. 1.

⁶ Petition, p. 1.

⁷ Memorandum from the Contract Management Administrator to the General Manager, “Evaluation Analysis and Recommendation—RFP No. PAG-019-004 M&O of F1 Fuel Pier and Facility” (“Evaluation Analysis”), p. 2 (Sept. 13, 2019).

⁸ Evaluation Analysis, p. 2.

According to PAG, after several sessions of cost negotiations with IP&E, PAG terminated negotiations with IP&E on the basis that such negotiations were unsuccessful.⁹ As a result, PAG began negotiations with Tristar, the next ranked offeror, on March 19, 2020.¹⁰

On November 9, 2020, PAG and Tristar arrived at mutually agreeable terms and costs. On December 22, 2020, through Resolution No. 2020-18, PAG's Board of Directors approved the contract award to Tristar and authorized PAG to seek PUC approval of the contract.¹¹

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. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval" Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold." *Id.*, p. 3.

⁹ See Petition, p. 1. (According to PAG, "after our initial cost negotiations meeting and two (2) counter-offers by the Port, IP&E failed to respond to our 2nd counter-offer.").

¹⁰ Petition, p. 1.

¹¹ PAG Board of Directors Resolution No. 2020-18, p. 1 (Dec. 22, 2020).

2. Scope of Services

The RFP provides that the contractor must operate and manage the F-1 Fuel Pier, maintain and secure the pier, respond to emergencies, as well as perform related bunkering pier duties.¹² In particular, the contractor is required to receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products; deliver fuel for export; bunker fuel oil and marine gas oil; and coordinate with ship masters and harbor pilots to ensure safe dockage.¹³

In addition, the contractor is tasked with providing preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock; and conducting maintenance repairs required for operations.¹⁴ Further, the contractor is tasked with providing operational access by scheduling operations of the facility by uses; and collecting the Port's user fees.¹⁵

As part of its responsibilities, the contractor is also tasked with responding to emergencies, such as fuel spills; and preparing and securing the facility in the event of an anticipated storm or weather disturbance and storm recovery.¹⁶ The contractor is further required to perform any duties related to bunkering as may be required from time to time.¹⁷

¹² See RFP, Attachment No. 1.

¹³ RFP, Attachment 1.

¹⁴ RFP, Attachment 1.

¹⁵ RFP, Attachment 1.

¹⁶ RFP, Attachment 1.

¹⁷ RFP, Attachment 1.

3. Contract Terms

According to PAG, the 2014 F-1 Fuel Pier Facility Management and Operations Agreement shall generally serve as the proposed contract, with most terms remaining in place.¹⁸ For instance, the default termination provisions that are contained in the 2014 contract shall remain the same. In addition, the scope of the agreement will still include managing vessels that are not petroleum related; the contractor securing liability insurance for \$100 million coverage; and a thirty percent (30%) fee will still be assessed on the assigned value of the contract where the contractor assigns it to a third party.¹⁹

With regard to compensation, for the first two years of the contract, the contractor will be paid a throughput rate of \$0.162 per barrel on the first four million barrels of imported petroleum products.²⁰ This amount reflects a \$0.04 (or 29.6%) increase in the throughput rate, which is currently \$0.125 per barrel for the first three million barrels, and \$0.10 per barrel thereafter.²¹ With respect to years three, four, and five, this fee will increase another three percent (3%) each year, compensating the contractor at a rate of \$0.167, \$0.172 and \$0.177, for the third, fourth and fifth years, respectively.²² All products in excess of four million barrels shall be subject to the rate of ten cents per barrel, which is the same rate provided under the current agreement.

¹⁸ Petition, p. 3.

¹⁹ Petition, p. 3.

²⁰ Petition, p. 2.

²¹ Petition, p. 2.

²² Petition, p. 2.

In addition, there are a few other changes, such as a reduction in the fee for bunkering petroleum products, which will be \$0.33 per barrel, as opposed to the current fee of \$0.66. There is also a new crane rental fee, which is fixed at \$140,000.00 per year.²³

With regard to routine maintenance, PAG will reimburse the contractor up to \$70,000.00 per year for labor and materials for such work, as opposed to the \$60,000.00 cap contained in the current agreement. Lastly, the proposed contract provides for a five-year term.

4. Cost

PAG estimates annual cost for the management fee is \$650,000.00,²⁴ for an estimated total of \$3,250,000.00 for the full five-year term. The annual estimate is based on Tristar handling four million barrels of imported petroleum products per year. PAG submits that the contract will be funded internally through its O&M budget.

5. Tristar

According to its Proposal, Tristar was specifically formed to manage fuel operations in Guam.²⁵ Tristar presently owns and operates the Agat Bulk Fuel Terminal and petroleum cargo lines, which extends from the Agat terminal to the F-1 dock.²⁶ In addition, Tristar's workload includes the storage, transfer, and management of jet fuel for the U.S. Department of Defense.²⁷ Further, Tristar is the current manager and operator of the F-1

²³ Petition, p. 2.

²⁴ Petition, p. 3.

²⁵ Technical Proposal in Response to RFP-PAG-019-004 ("Tristar Proposal"), p. 3 (Aug. 8, 2019).

²⁶ Tristar Proposal, p. 13.

²⁷ Tristar Proposal, p. 13.

facility.²⁸ It has been PAG's contractor for this facility for almost ten (10) years.²⁹ Accordingly, Tristar submits that it has the technical experience and capabilities to manage, operate, and maintain the F-1 Pier and service the operations there.³⁰

6. **Board Approval**

At the December 22, 2020 meeting, PAG's Board of Directors approved the contract award to Tristar. In the Resolution, the Board indicated that after a series of cost negotiations, discussions, and counteroffers, PAG and Tristar reached an agreement that seemed "fair and reasonable" to PAG.³¹ Accordingly, the Board authorized PAG management to petition the PUC for approval of the award to Tristar.³²

CONCLUSION

Based on the documentation provided, the ALJ found that the subject contract is reasonable and necessary. The operation and management of PAG's F-1 Fuel Pier Facility is indeed crucial to PAG's operations. As indicated by PAG, the contract is vital since "Guam imports all its fuel resources."³³ As a result, "[a]ny disruption to the safe distribution of our fuel resource could be a potential threat to the Public Health, Welfare and Safety of our island."³⁴ Further, this contract is "revenue generating" for PAG and, as PAG stated, this contract ensures

²⁸ Tristar Proposal, p. 14.

²⁹ Tristar Proposal, p. 14.

³⁰ Tristar Proposal, p. 6.

³¹ Resolution, p. 1.

³² Resolution, p. 1.

³³ Petition, p. 1.

³⁴ Petition, p. 1.

that “Guam’s fuel resources are distributed throughout our island efficiently and uninterrupted.”³⁵

The ALJ further found that, based on its experience, expertise, work history, and network, as well as the fact that Tristar currently manages and operates the F-1 facility, it is clear that Tristar is qualified to provide the services set forth in the RFP.

In addition, PAG has demonstrated due diligence in negotiating initially with IP&E for eleven months, and then subsequently with Tristar. In fact, the record reflects that PAG has been engaged in cost negotiations with Tristar since March of last year. The procurement record reflects an initial proposal of \$0.297 per barrel. PAG was, therefore, able to lower the fee to the rate structure discussed in Part 3 above.

Accordingly, based on the documentation provided by PAG in this docket, and for the other reasons set forth therein, the ALJ thereby recommended that the PUC approve the award to Tristar, along with the proposed F-1 Fuel Pier Facility Management and Operations Agreement, at an annual cost of \$650,000.00.

The Commission hereby adopts the findings made in the January 26, 2021 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. That the instant Petition is hereby APPROVED.

³⁵ Petition, p. 3.

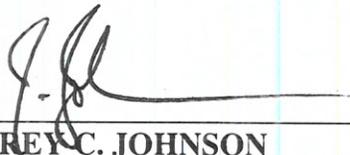
2. PAG is authorized to enter into the proposed contract with Tristar Terminals Guam, Inc. related to the management and operation of the F-1 Fuel Pier Facility, at an annual cost of \$650,000.00.

3. That where PAG anticipates that it may exceed this annual amount by 10%, PAG shall seek prior PUC approval pursuant to Section 10 of the Contract Review Protocol.

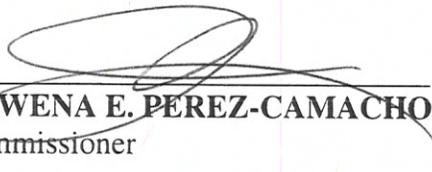
4. PAG is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 28th day of January, 2021.



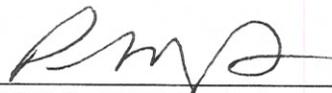
JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
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DORIS FLORES BROOKS
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