

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

PORT AUTHORITY OF GUAM'S
PETITION FOR APPROVAL OF AWARD
TO MATSON NAVIGATION
COMPANY, INC. FOR THE
PERFORMANCE MANAGEMENT
CONTRACT FOR THE PORT GANTRY
CRANES

PAG Docket 21-06

ALJ REPORT



INTRODUCTION

This matter comes before the Guam Public Utilities Commission [PUC] pursuant to the September 8, 2021, Port Authority of Guam ["Port"] Petition for Approval of Award to Matson Navigation Company, Inc. ["Matson"] for the Performance Management Contract for the Port Gantry Cranes.¹

BACKGROUND

Prior to the filing of this petition for approval of the PMC, the Port has historically sought the technical assistance of consultants for the maintenance and repair of its Gantry Cranes. From approximately 2015 through 2020, Port had a Technical Services Agreement with Matson regarding the Gantry Cranes. However, that contract expired in November 2020. Because of a requirement that the Chief Procurement Officer of the General Services Agency be involved in the procurement, the Port was not able to complete the procurement process for a PMC and proceed with the filing of a petition at the PUC until the instant petition was filed. The Port believes that the deteriorating condition of the Gantry Cranes require the help and assistance of a PMC, and that

¹ PAG Petition, p. 1 (September 8, 2021).

preventative measures will need to be taken to address issues concerning the deterioration of the condition of the cranes.²

On July 13, 2020, PAG initiated the competitive solicitation process for the PMC RFP - PAG-020-005.³ The RFP, Performance Management Contract for Gantry Cranes, solicited proposals from qualified firms “to provide the services of a Performance Management Contractor to assist with the management of performance, operations, maintenance, emergency response, trouble shooting, repairs required, inclusive of all parts and labor; and preventative maintenance of all equipment and facilities directly associated with the Gantry Cranes, including but not limited to the acquisition for replacement of such equipment on an as needed basis. The contract shall include Certification for the Port Gantry Cranes and Training for the Port Crane Mechanic Staff.”⁴

A Contractor was sought by the Port to assist in the Performance, Operations, Maintenance, Emergency Response, Trouble Shooting, Diagnostics, and Repairs of Port Gantry Cranes #4, #5 and #6.⁵

Two proposals were received by PAG in response to the RFP. On October 6, 2020, the PAG Evaluation Committee independently assessed and ranked the offerors’ proposals. It was determined that Matson Navigation Company, Inc. was the highest and best qualified offeror to perform the required services in accordance with the criteria set forth in the RFP.⁶ On December 21, 2020, Port’s Management approved the

² Zoom conference between ALJ Fred Horecky and Port General Manager Rory Respicio/Procurement Staff/Legal Counsel, September 21, 2021.

³ Id.

⁴ RFP-PAG-020-005, p. 4.

⁵ Id., at p. 5.

⁶ PAG Memorandum to Procurement File from the General Manger, (undated) at p. 2.

recommendation and assigned committee members to negotiate fees with Matson. After the Port Management and Matson came to a final agreement on August 11, 2021, a request to approve the award was made to Port's Board of Directors.⁷ On August 26, 2021, in Resolution No. 2021-10, the PAG Board of Directors approved the contract award to Matson for RFP PAG-020-005 for the Performance Management Contract to provide maintenance and certification of the Port Authority of Guam Gantry Cranes, subject to review and approval by the PUC.⁸

DISCUSSION

1. PAG's Contract Review Protocol

PAG indicates that the cost of the PMC Contract will be the amount of \$200,000.00 per year for an initial contract term of five (5) years, with options to renew the contract for the five (5) additional years thereafter, not to exceed a total contract of twenty (20) years.⁹ Pursuant to PAG's current Contract Review Protocol, "All professional service contracts in excess of \$1,000,000" require prior PUC approval under 12 GCA § 12105. This PMC contract must be reviewed by the PUC.¹⁰

2. "Need" for the PMC Contract and Legislative Requirements

A. Determination of Need

⁷ Petition, p. 2.

⁸ PAG Board of Directors, Resolution No. 2021-10, Relative to Petitioning the Public Utilities Commission (PUC) for the Approval of the Award to Matson for the Performance Management Contract for the Port Authority of Guam Gantry Cranes, adopted and approved on August 26, 2021, p. 2.

⁹ Id.

¹⁰ Contract Review Protocol, PAG Docket 09-01, p. 1. (June 20, 2011).

The Port indicates that it is necessary for it to enter a Performance Management Contract for the Gantry Cranes. On March 18, 2020, the Port General Manager Rory Respicio issued a “DETERMINATION OF NEED, PERFORMANCE MAINTENANCE CONTRACT FOR GANTRY CRANES.” Therein the General Manager stated: “the Port Authority of Guam (Port), in accordance with Public Law 31-145, is soliciting a Request for Proposal RFP) for a Performance Management Contract (PMC) with a Professional entity to provide services for the Training of Port Crane Mechanic Staff and the Performance, Operation, Maintenance Emergency Response, Trouble Shooting, Diagnostics and Repairs to Port Gantry Cranes on an on-call, as needed basis. The purpose of the Performance Management Contract is to ensure compliance with 12 GCA Chapter 10 Article 4 § 10401.”¹¹

B. Legislative Requirements

A part of the history of the purchase of the Gantry Cranes by the Port is set forth in Public Law No. 31-145.¹² In 2011, the Guam Legislature determined that ownership of the Gantry Cranes operating on its rails would improve operational efficiency and reliability in the movement of cargo through the Port and for transshipment to the neighboring islands in the region¹³, and that it would be prudent for the Port to explore acquisition of the POLA Cranes through direct purchase.¹⁴ Further, the Legislature authorized PAG to enter into negotiations with the Carriers with the specific purpose of acquiring through purchase or lease-to-own one (1) or more of the POLA Gantry Cranes.¹⁵

¹¹ Port General Manager Rory J. Respicio, DETERMINATION OF NEED, PERFORMANCE MAINTENANCE CONTRACT FOR GANTRY CRANES, dated March 18, 2020.

¹² P.L. No. 31-145 (November 17, 2011).

¹³ Id. at Section 1.

¹⁴ Id.

¹⁵ Id. P.L. No. 31-145 (November 17, 2011) at Section 1.

At that time the POLA Cranes were numbered as 15, 16, and 17. These Cranes were subsequently renumbered by the Port as 4, 5, and 6, and are the subject of the present RFP. Pursuant to the legislative process specified in P.L. 31-145, the Port purchased the POLA Cranes from Matson/Horizon.

Section 3 of P.L. 31-145 also added a new Section 5 to Public Law 30-57. Section 5(h), Maintenance, which provided as follows: **“in the event the Port acquires the POLA Gantry Cranes, the Port *shall* contract, pursuant to the Guam procurement act, the services of a Performance Management Contractor (PMC) to manage the performance, operation, and maintenance of the newly acquired POLA Gantry Cranes, and other Gantry Cranes used in support of Port operations.** Said contractual services *shall* be crafted to ensure that employees of the Port Equipment Maintenance Division will be utilized to the maximum extent possible, and that *no* employee will be displaced *except* for cause...”¹⁶ (emphasis added).

Furthermore, 12 GCA §10401, Public-Private Partnership Authorization through a Performance Management Contract, authorizes the Board of Directors of the Port “to issue a Request for Proposal (RFP)...soliciting... proposals from qualified parties for the management, operation, and maintenance of its cargo handling equipment through a performance management contract, subject to the procurement laws of Guam.”¹⁷

The Port has “determined that a PMC is necessary for the Port to effectuate the technical and professional support services relative to the Port’s Gantry Cranes. The Port’s need and record of planning is documented by Public Law 31-145, the Determination of Need, Requisitions, the Market Research Surveys, and related documents contained in

¹⁶ P.L. No. 31-145 (November 17, 2011) at Section 3.

¹⁷ 12 GCA §10401(a).

the Procurement Planning Documents.”¹⁸ **The Port is not only authorized but required by law to enter into a Performance Management Contract for the Gantry Cranes.**

3. A History of PUC Involvement with the Port and the POLA Cranes

Since 2012, the PUC has been actively involved in addressing issues concerning the POLA Cranes, as well as the efforts of the Port to enter into Maintenance Agreements and a PMC for the Cranes. On August 27, 2012, pursuant to the Report of PUC Consultant Slater Nakamura, the PUC approved the Sales Agreement pursuant to which the Port purchased the POLA Cranes.¹⁹ PUC also ordered the Port (1) to complete the development of a Structured Maintenance Program for all its cranes, which it had initiated with Parsons Brinkerhoff and sub-consultant Sarandipity, L.L.C.;²⁰ and (2) to make repairs to the Cranes, and to develop a tariff to acquire, finance, and maintain such Cranes.²¹

On December 11, 2012, the PUC approved an interim surcharge on containers of \$105, which increased to \$125 after February 28, 2013. A \$5 surcharge per ton was assessed with respect to breakbulk, non-containerized cargo.²² 9.5% of the revenues from the crane surcharge were ordered to be deposited into a crane replacement sinking fund.²³

¹⁸ PAG Memorandum to Procurement File from the General Manager, (undated) at p. 2.

¹⁹ PUC Order, PAG Docket 12-01, Review of POLA Sales Agreement and Interim Maintenance Agreement, dated August 27, 2012, at p. 7.

²⁰ Id.

²¹ Id., at pgs. 7-8.

²² PUC Order, PAG Docket 12-02, Petition for Crane Surcharge by Port Authority of Guam, dated December 11, 2012, at p. 9.

²³ Id. at p. 10.

On April 24, 2014, PUC approved the Marine Technical Services Agreement of the Port for an estimated cost of \$1,020,000.00.²⁴

4. Scope of Work and Proposed Contract

A. Scope of Work

The primary service provided by the Contractor will be performance of monitoring requirements for the Gantry Cranes, preventative maintenance of all equipment and facilities directly associated with the Gantry Cranes, including, but not limited to the acquisition for replacement of such equipment.²⁵

The Scope of Work includes all services required in the RFP and those set forth in the proposal of Matson.²⁶ The first element of the Matson organization execution plan will be to mobilize a team to conduct crane condition surveys, including any recent surveys, concurrent with an assessment of the maintenance program, maintenance records, recurring problems, and spare parts inventory.²⁷ Matson will provide the work services and presents extensive background and experience in assisting the Port in the past with equipment maintenance, safety, and asset management services for over five years. The work will be performed in conjunction with PBA (Paul Bridges) a firm with substantial engineering and crane maintenance experience including work on the Port Authority Gantry Cranes.²⁸

²⁴ PUC Order, PAG Docket 14-04, Request for Review and Approval of Agreement with Marine Technical Services, Inc. by Port Authority of Guam, at p. 1.

²⁵ RFP, Attachment 1.

²⁶ Agreement between Jose D. Leon Guerrero Commercial Port (Port Authority of Guam) and Company, par. 1A, Scope of Work.

²⁷ Matson Proposal for a Performance Management Contract for Gantry Cranes, p. 11.

²⁸ Id., at p. 4.

Matson will provide a far-reaching training program for the PAG Crane Mechanic Staff. Within 30 days of Notice of Award, Matson/PBA will assess the knowledge and skill level of the Mechanic Staff and develop a training plan consisting of a combination of online courses through ABB University, hands on training, and classroom style training. Such training will include Diesel Engine Fundamentals, Electrical Crane Standards, ABB Training, Base Electricity for Crane Mechanics, Procurement, and others.²⁹

Matson will also conduct quarterly assessments and evaluation of the condition of PAG's cranes, including its operations and spare parts inventory. Matson will provide detailed reports of assessments and evaluations with recommendations for improvement following the quarterly assessments and evaluations.³⁰ During the course of negotiations, Matson agreed that training would be provided by equipment manufacturers.

B. Contract Term

Based upon the proposed contract, the term of the contract is for five (5) years, with options to renew every five (5) years and shall not exceed a total of twenty (20) years subject to the availability of funds. Each renewal period is subject to the consent of both parties.³¹ The contract terms and limits are specifically approved pursuant to 12 GCA §10402, Contract Limits. The Contract contains "Early Termination" provisions for the Port for termination without cause, termination in the best interest of the Government of Guam, termination for cause, and termination for lack of funds.³²

²⁹ Id., at p. 5.

³⁰ Id., at p. 12.

³¹ Agreement between Jose D. Leon Guerrero Commercial Port and Matson Navigation Company, Inc., at Par. II, p. 2.

³² Id., at Par. IV, pgs. 2-3.

5. Cost and Funding

The funding for the PMC contract is through local Port funds. A requisition has been approved covering the amount of two hundred thousand dollars (\$200,000) per year, for a term of 5 years. Projects issued via Task Orders against the contract will also be funded with local Port funds.³³ The Port Authority and Matson engaged in extensive negotiations between February 2021 and August 2021 on various funding issues. The parties reached agreement that Matson would charge 10% plus cost for the procurement of parts as opposed to 20% plus cost. Matson also agreed to comply with the PAG Travel policy requiring economy travel. Matson further agreed that training would be provided by the manufacturer and not a third party, and that training entities would be approved by PAG.³⁴ The Port staff indicated diligence and thoroughness in negotiating acceptable pricing. PAG's cost negotiation efforts were in accordance with procurement law and in the best interest of the Port and the people of Guam.

6. Board Resolution

Resolution No. 2021-10, issued on August 26, 2021, approved the award to Matson Navigation Inc., and authorized the expenditure from PAG local funds in the amount of \$200,000.00 per year for an initial contract term of five (5) years, with options to renew the contract for five (5) additional years thereafter, not to exceed a total contract term of twenty (20) years.³⁵

³³ PAG Executive Summary for Board of Directors, August 26, 2021.

³⁴ Id., at pgs. 1-2.

³⁵ PAG Board of Directors, Resolution No.2021-10, Relative to petitioning the Public Utilities Commission (PUC) for the Approval of the Award to Matson for the Performance Management Contract for the Port Authority of Guam Gantry Cranes, adopted and approved on August 26, 2021.

RECOMMENDATION AND CONCLUSION

PAG has established that it needs assistance in maintaining, certifying, and repairing the Gantry Cranes. The PMC model is more advantageous to the Port than prior “technical services agreement” contracts. The PMC model will allow Matson to assist the Port with emergency procurement in case of necessary immediate repairs.

Having reviewed the procurement record, the ALJ concludes that the Port and its personnel diligently pursued and accomplished the requirements of procurement law. The result of the procurement was the selection of a highly qualified team, Matson/PBA, which has already assisted the Port in maintaining and servicing the Gantry Cranes for at least 5 years. Once the Port selected Matson as the most qualified Offeror, the Port procurement team negotiated in an attentive and responsible manner to ensure that the final pricing and terms were most advantageous to the Port and Guam.

When compared to other utility PMCs, the cost of the Port of \$200,000 per year is far less. The Port will ensure that the PMC funds are used for essential services such as assessment, maintenance, and training. The Port has other funds available for the maintenance and repair of the Cranes through the Crane Surcharge Fund. As the Port has stated, the PMC provides a “safety net” to the Port for maintaining and repairing the Gantry Cranes.


At the same time, the Port is proceeding ahead to develop funding for new Gantry Cranes around 2025 and thereafter.³⁶ Just yesterday, the Port Board of Directors approved plans to replace two of the POLA Cranes, after a funding source has been found and all regulatory approvals have been satisfied.³⁷

The PMC model was first developed by the PUC in the 1990s and was adopted by the Guam Power Authority. This model has been helpful for Guam Utilities in strengthening their operations. It should be a useful tool for the Port in maintaining and repairing the POLA Cranes.

Based upon the records, the ALJ recommends that the PUC approve the award to Matson of the Performance Management Contract for the Port Gantry Cranes and authorize the expenditure of \$200,000 per year for the initial term of 5 years.

A Proposed Order is submitted herewith for the Commissioners consideration.

Respectfully submitted this 24th day of September 2021.


Frederick J. Horecky
Administrative Law Judge

³⁶ Zoom conference between ALJ Fred Horecky and Port General Manager Rory Respicio/Procurement Staff/Legal Counsel, September 21, 2021.

³⁷ Guam Daily Post, September 24, 2021, at p. 6.