

BEFORE THE PUBLIC UTILITIES COMMISSION

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| IN RE: REQUEST FOR REVIEW) | PAG DOCKET 24-02 |
| AND APPROVAL OF) | |
| IFB AWARD TO AMERICAN) | |
| MATERIAL HANDLING, INC.) | ORDER |
| FOR THE PURCHASE OF) | |
| NINE TERMINAL YARD) | |
| TRACTORS BY PORT) | |
| AUTHORITY OF GUAM) | |



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the April 26, 2024 Petition for review and approval of the Invitation for Bid and Contract Award to American Material Handling, Inc. (“AMH”) for the purchase of nine Terminal Yard Tractors (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 AMH in the amount of One Million Seven Hundred Ninety-One Thousand Three Hundred Twenty-Seven Dollars (\$1,791,327.00).

On May 28, 2024, 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

Back on April 8, 2022, PAG issued Invitation for Bid No. IFB-PAG-006-22 for the solicitation of Terminal Yard Tractors (“IFB”).¹ That IFB was unsuccessful inasmuch as

¹ Petition, p. 1.

the submitted bid “far exceeded the budgeted allocation” for the tractors.² Subsequently, PAG issued IFB-PAG-010-023, soliciting again for terminal yard tractors.³ Three bids were received and PAG determined that AMH submitted a qualifying bid and met the requirements of the Build America Buy America Act (“BABAA”) mandates, which generally requires that the product be manufactured in the U.S.⁴ Through certain negotiations, PAG was able to have the U.S. Maritime Administration, or “MARAD”, help fund the purchase of the tractors.

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 Petition, p. 1.

³ Petition, p. 1.

⁴ Petition, p. 1.

2. April 26, 2024 Petition

In its Petition, PAG seeks PUC review and approval of its bid award to AMH for the purchase of the nine Terminal Yard Tractors.⁵ In particular, PAG has indicated that it needs an additional nine (9) terminal yard tractors for its operations.⁶ Accordingly, it issued IFB PAG-010-23, which sought the procurement of a particular Kelmar Ottawa tractor. PAG submitted that, in its review of the bids and subsequent determination, one bid met the requirements of the BABAA.⁷ Further, with the support of MARAD, PAG's acquisition of the tractors can be funded under an American Marine Highway grant.⁸ According to PAG, a grant award from MARAD allows for an 80/20 cost share to PAG.⁹

3. Invitation for Bid No. PAG-010-23 and Bid Specifications

Based on the Bid Specifications, the IFB sought nine (9) terminal yard tractors, specifically for Kalmar Ottawa T2 4X2 DOT/EPA Certified tractors. These tractors shall have a minimum of 200 horsepower, with turbo diesel engines, fueled by Ultra Low Sulfur diesel. These tractors will also come with a 6-speed automatic transmission, push-button shifter, with power steering. The Bid Specifications also request certain warranties, for instance a manufacturers' warranty.

4. AMH's Submission

Based on its offer, AMH's unit price for a Kalmar Ottawa T2 4X2 Tractor Trailer is \$194,699.00 per tractor, which includes \$28,840.00 for door-to-door delivery. The offer

⁵ Petition, p. 1.

⁶ Resolution No. 2024-04, issued by PAG's Board of Directors, p. 1 (Apr 25, 2024).

⁷ Petition, p. 2.

⁸ Petition, p. 1.

⁹ Petition, p. 1.

further includes a 2% discount on the tractors' base price per unit, which amounts to a discount of \$29,862.00 off the cost of all nine (9) tractors. After all applicable taxes and fees, the total cost for all nine (9) tractors is \$1,791,327.00.

5. Proposed Contract

The proposed contract for the AMH Kalmar Ottawa T2 tractors contains provisions guaranteeing that the tractors will be free from manufacturing defects and will be subject to any applicable warranty period.¹⁰ The contract also contains requirements on licensing, termination provisions, and a liquidated damages clause, among other standard contract provisions that protect PAG and ratepayers in the event of non-performance. The contract further contains several provisions containing federal requirements, such as compliance with certain federal Clean Air Act requirements, prohibitions on lobbying, and whistleblower protections, among others.¹¹

6. Funding

PAG submits that the purchase of the nine (9) terminal yard tractors is subject to an 80/20 cost share through a MARAD grant.¹² Accordingly, this purchase may only cost PAG \$358,265.40, with the rest of the cost paid by MARAD.

7. Board Approval

The Petition is supported by Resolution No. 2024-04, issued by PAG's Board of Directors on April 25, 2024. In the Resolution, the board approved the purchase of nine

¹⁰ Agreement for Purchase of Terminal Yard Tractors, p. 4-5.

¹¹ Agreement for Purchase of Terminal Yard Tractors, pp. 30-33.

¹² Petition, p. 1.

Terminal Yard Tractors from AMH, and at total cost of \$1,791,327.00.¹³ The Resolution further authorized PAG management to petition the PUC for approval of the contract award to AMH.¹⁴

RECOMMENDATION AND CONCLUSION

Based on the record before the Commission, the ALJ found that the procurement of the Terminal Yard Tractors and subsequent award to AMH appears proper and reasonable based on the circumstances described by PAG.¹⁵ Accordingly, the contract for the purchase of these tractors appears reasonable, prudent, and necessary. The ALJ further found that terminal yard tractors are indisputably an integral component of PAG's operations. And since the subject purchase of the tractors is subject to an 80/20 cost share with MARAD, the ALJ found that PAG has prudently utilized this opportunity to further improve its operations. Indeed, the purchase of additional terminal yard tractors will improve PAG's cargo handling capabilities.

Therefore, based on this record, the ALJ recommended that the PUC approve the bid award to American Material Handling, Inc., for nine Terminal Yard Tractors at a total cost of \$1,791,327.00.

The Commission hereby adopts the findings in the May 28, 2024 ALJ Report and therefore issues the following.

¹³ Resolution No. 2024-04, p. 1 (Apr. 25, 2024).

¹⁴ Resolution No. 2024-04, p. 1.

¹⁵ See Petition, p. 1.

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 PAG's Petition is hereby APPROVED and PAG is authorized to enter into the contract with American Material Handling, Inc., for the purchase of nine Terminal Yard Tractors at a total cost of \$1,791,327.00, subject to an 80/20 cost share through a MARAD grant.

2. 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, 2024.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner

PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner

DORIS FLORES BROOKS
Commissioner

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