

CABOT
MANTANONA LLP

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PROCUREMENT APPEALS

AUG 31 2010
9:41 AM BY Joy B.
FILE NO. OPA-PA: 10-004

Attorneys at Law

Cesar C. Cabot, Esq.
Rawlen M.T. Mantanona, Esq.
David P. Ledger, Esq.
Helkei S. Hemminger, Esq.
Sarah A. Strock, Esq.

August 31, 2010

VIA HAND DELIVERY

Office of the Public Auditor
Government of Guam
Hagatna, Guam 96910

Re: **Appeal of Harbor Centre Guam Co., Ltd., and
Harbour Centre Port Terminal, Inc.;**
PAG-010-003

Attached please find original plus three copies of Harbor Centre Guam Co., Ltd., and Harbour Centre Port Terminal, Inc's., Appeal in regards to the PAG-010-003 RFP.

Si Yu'os Ma'ase,



RAWLEN M.T. MANTANONA

RMTM:me

Enclosure

PROCUREMENT APPEAL

AUG 31 2010

TYPE: 9: YRM BY: JCYB
FILE NO. OPA-PA: 10-004

In the Appeal of)
)
HARBOR CENTRE GUAM CO. LTD.)
And HARBOUR CENTRE PORT)
TERMINAL, INC.)
)
Appellant.)
_____)

NOTICE OF APPEAL

Docket No. OPA-PA _____

Name: HARBOR CENTRE GUAM CO., LTD. and
HARBOUR CENTRE PORT TERMINAL, INC.
Hereinafter referred to as "Harbour Centre"

Mailing Address: C/O CABOT MANTANONA LLP
EDGE BUILDING, SECOND FLOOR
929 S. MARINE CORPS DRIVE
TAMUNING, GUAM 96913

Business Address: C/O CABOT MANTANONA LLP
EDGE BUILDING, SECOND FLOOR
929 S. MARINE CORPS DRIVE
TAMUNING, GUAM 96913

Daytime Contact No.: (671) 646-2001 – Contact Persons:
Rawlen Mantanona, Esq.,
David W. Ledger, Esq.

- A) Purchasing Agency: Port Authority of Guam
- B) Identification/Number of Procurement, Solicitation, or Contact: Port RFP No. PAG-010-003
- C) Decision being appealed was made on August 27, 2010 by: Head of Purchasing Agency, Port Authority of Guam, General Manager, Enrique J.S. Augustin;
- D) Appeal is made from: Decision on Protest of Method, Solicitation or Award
- E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

Harbour Centre
Asian Terminal Inc.

ATTACHMENT "1"

Procurement Appeal Grounds

2 GAR § 12104

"Harbour Centre"

1. **Appellant Harbor Centre Guam Co., Ltd., and Harbour Centre Port Terminal, Inc.**, (hereinafter referred to as "Harbour Centre") submits its Procurement Appeal of the Port Authority of Guam (hereinafter referred to as "PAG") decision to select APM Terminals as its highest rated Offeror (HRO) in its Request for Proposal Number Port RFP No. PAG-010-003 Performance Management Contract for the management of cargo terminal operations and maintenance of cargo handling equipment based upon the following grounds:

- (a) The PAG did not perform the RFP process as mandated and in compliance with Public Law 30-90, an Act to amend Section 10401 of Article 4, Chapter 10, Title 12, Guam Code Annotated relative to the Port Authority of Guam's Public-Private Partnership Authorization through a performance management contracted, enacted on February 8, 2010.
- (b) PAG performed the RFP process in violation of Public Law 30-90 when it did not allow for the observation by the General Services Agency's Chief Procurement Officer of the entire RFP procurement process, as required by Public Law 30-90.

- (c) The PAG failed to perform the evaluation process in determining and designation of the "Highest Rated Offeror" (hereinafter referred to as the "HRO"), in compliance with the Guam Procurement Law 5 GCA, Chapter 5, 2 GAR Division 4 and P.L. 30-90.
- (d) PAG violated the Guam Procurement Laws and P.L. 30-90 by not maintaining the mandated security and control of the Bid offers, to preserve and protect the integrity and validity of the procurement process which is the main emphasis and intent of both the Guam Procurement Law, more specifically 5 GCA § 5001 and P.L. 30-90. Because of the integrity and security of the aforementioned, Bids were compromised. Harbour Centre respectfully submits that the RFP process been compromised and the procurement void and invalidated.
- (e) PAG in the procurement process comprised and invalidated the Bid process by permitting Evaluation Committee Members to take off the premises Bid offers from Offerors in violation of 2 GAR § 3114(h)(1). This required the taking of the Bids from PAG's alleged secured location where they were supposed to be kept, so they could be individually, personally and privately evaluated off the premises. This breach of security and integrity was done to make the

evaluation easier and more convenient due to the voluminous size and content of each separate Offer or Bid. The PAG in an effort to minimize its violation, inadvertently admitted its knowing violation of the security of the Bids and integrity of the process, by having Evaluation Committee Members sign non-disclosure affidavits. Proposals must remain in a secured place, sealed and not opened until the presence of two procurement officers. See GAR §3114(h)(1). Further, it is believed that no logs were maintained to control or monitor the check-out for review of any Bid or Offer being reviewed, even for reviews on promises which at a minimum is necessary to protect the Bid offers.

- (f) PAG's actions and violations resulted in the General Services Agency's Chief Procurement Officer (hereinafter referred to as "GSA/CFO") or designee from not observing the procurement evaluation process as required by law in accordance with 5 GCA § 10401. The Legislature specifically requires that GSA/CFO observe the entire procurement process to protect the fairness and integrity of the procurement. It is believed that the GSA/CFO or designees were only given the opportunity to observe only the reaffirmation of the evaluation process.

(g) Pursuant to the Bid, the Committee was required to be constituted by a PAG Personnel, Members of the Board of Directors and the Government of Guam personnel appointed by the PAG Manager. It is believed that there was no independent Government of Guam personnel participating in the Evaluation Committee pursuant to appointment from the General Manager of the PAG.

(h) Harbour Centre reserves the right to raise as a ground in this appeal, any appeal issues that may be substantiated by any information, documents or discovery that may arise in the process of this Appeal.

2. Harbour Centre has been substantially prejudiced based upon the above appeal grounds, and seeks to have PAG re-bid the RFP based upon the grounds decided by the OPA. Further, that its costs and attorneys fees be reimbursed.

3. Harbour Centre believes that any one of the foregoing reasons alone or jointly support the relief requested herein.

4. Appellant hereby submits Exhibits already in its possession for purposes of the Appeal. A list of the Exhibits and Exhibits are contained in Attachment "2".

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Harbour Centre requests a hearing on this matter, and is concurrently filing a Hearing Request Form. There are no court cases currently before the judiciary.

Respectfully submitted this 31st day of August, 2010.

HARBOUR CENTRE

By: 

**RAWLEN M.T. MANTANONA, ESQ.
DAVID P. LEDGER, ESQ., the
duly authorized representatives of
Harbour Centre.**

RMTM:me

H:\MARIE\ROMERO\ATTACHMENT"1"

Portek
Svette Isla Development
Ports America
APM Terminals
IB Port Services

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

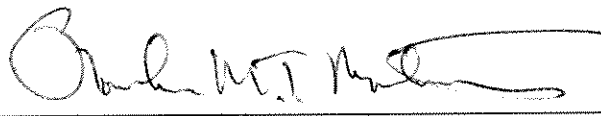
1. A concise, logically arranged, and direct statement of the grounds of appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Please see Attachment "1".

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of its knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 30th day of August, 2010.

By: 

**RAWLEN M.T. MANTANONA and
DAVID P. LEDGER**, Appellant's duly
authorized representatives.
Edge Building, Second Floor
929 S. Marine Corps Drive
Tamuning, Guam 96913
(671) 646-2001

RMTM:me

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

PROCUREMENT APPEAL

AUG 31 2010
TIME: 9:41AM BY: Joy B.
FILE NO. OPA-PA: 10-604

In the Appeal of)
)
HARBOR CENTRE GUAM CO. LTD.)
And HARBOUR CENTRE PORT)
TERMINAL, INC.)
)
Appellant.)
_____)

NOTICE OF HEARING

Docket No. OPA-PA _____

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of the Public Auditor on the ____ day of _____, 2010, at the hour of _____, relative to the above-referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

Please acknowledge receipt of this Notice and return to the Office of the Public Auditor immediately.

Acknowledge receipt:

Receiver's Signature

Print Name

Date

RMTM:me

ATTACHMENT "2"

EXHIBITS "Harbour Centre"

Appellant Harbor Centre Guam Co., Ltd., and Harbour Centre Port Terminal, Inc., hereby submits the following documents for the purpose of its Appeal, and reserves the right to supplement the documents used for the purposes of Appeal as and if they are discovered in the pending appellate process.

1. Denial of Bid Protest by PAG dated August 27, 2010;
2. PAG Non-Disclosure Agreement and Warranty of Confidentiality;
3. Certification of Non-Disclosure and Confidentiality;
4. E-mail from Alma Javier to Angel Wusstig and copy to Marie Benavente;
5. Port Authority of Guam Summary of Meeting of June 1, 2010;
6. Port Authority of Guam Summary of Meeting of July 14, 2010.

Respectfully submitted this 31st day of August, 2010.

HARBOUR CENTRE



By:

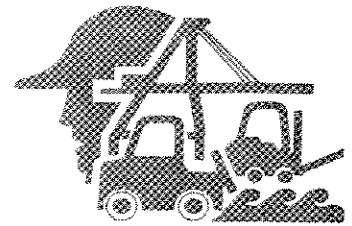
**RAWLEN M.T. MANTANONA, ESQ.
DAVID P. LEDGER, ESQ., the
duly authorized representatives of
Harbour Centre.**

RMTM:me

H:\MARIE\ROMERO\ATTACHMENT"2"



**PORT AUTHORITY OF GUAM
 ATURIDAT I PUEYTON GUAHAN**
 Jose D. Leon Guerrero Commercial Port
GOVERNMENT OF GUAM
 1026 Cabras Highway, Suite 201
 Piti, Guam 96915



Telephone: (671) 477-5931/35
 (671) 477-2683/85
 Facsimile: (671) 477-2689/4444
 Webpage: www.portofguam.com

FELIX P. CAMACHO
 Governor of Guam

MICHAEL W. CRUZ
 Lieutenant Governor of Guam

August 27, 2010

VIA HAND DELIVERY

Rawlen Mantanona, Esq.
 David Ledger, Esq.
CARLSMITH BALL LLP
 401 Bank of Hawaii Building
 134 West Soledad Avenue
 Hagåtña, Guam 96910

CABOT MANTANONA, LLP

Date: 08/27/2010
 Time: 2:51pm
 Initials: OMW

**Re: Protest lodged by Harbor Centre Guam Co. and
 Harbour Centre Port Terminal, Inc. on August 2, 2010**

Dear Attorneys Mantanona and Ledger:

I am writing in response to the protest lodged by you on behalf of Harbor Centre Guam Co., Ltd and Harbour Centre Port Terminal, Inc. (collectively referred to as "Harbour Centre") with the Jose D. Leon Guerrero Commercial Port ("PAG or "Port") on August 2, 2010. The protest relates to Port RFP No. PAG-010-003, Performance Management Contract for Management of Cargo Terminal Operations and Maintenance of Cargo Handling Equipment.

I have reviewed the arguments raised in your protest and the actions taken by the Port during the administration of the RFP, and after careful consideration have come to the conclusion that your protest is without merit. Pursuant to 5 GCA §5425 and 2 GAR §9101(g)(1), you are hereby advised that your protest is rejected and denied.

Each of the allegations contained in your protest is quoted below, with the Port's response immediately following:

- 1. The PAG did not perform the RFP process as mandated by Public Law 30-90 (an Act to amend Section 10401 of Article 4, Chapter 10, Title 12, Guam Code Annotated, relative to the Port Authority of Guam Public-Private Partnership Authorization Through a Performance Management Contract), enacted on February 8, 2010.*

With regard to Harbour Centre's general allegation that the Port did not comply with Public Law 30-90, the Port denies the allegation on the basis that the Port complied with applicable law and regulations regarding the administration of the RFP. Additionally, the RFP was issued on March 29, 2010. To the extent Harbour Centre knew or should have known information prior to

July 19, 2010 regarding the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

2. *The PAG failed to perform its evaluation process, RFP process, designation of HRO [Highest Ranked Offeror] and award in compliance with 5 GCA Chapter 5 et. Seq., "Guam Procurement Law", among others, as required pursuant to such statute and under Public Law 30-90.*

With regard to Harbour Centre's general allegation that the Port did not comply with applicable procurement law and Public Law 30-90, the Port denies the allegations on the basis that the Port complied with applicable law and regulations regarding the administration of the RFP. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 §GCA 5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

3. *Upon information and belief, the PAG, in performing the RFP process, did not allow for the observation and participation of the General Services Agency Chief Procurement Officer (hereafter "GSA/CPO"), and did not provide copies of all documents surrounding the aforementioned RFP to the GSA/CPO, and did not invite the GSA/CPO to all meetings conducted by the PAG, its managers, evaluation team, procurement officer, board members or legal counsel, regarding the aforementioned Bid as required by Public Law 30-90, and the above-mentioned RFP.*

The involvement of the Chief Procurement Officer ("CPO") in the subject RFP process is governed specifically by Public Law 30-90, codified at 12 GCA §10401, which states, "[t]he General Services Agency Chief Procurement Officer shall be an observer throughout the RFP, MSB or IFB process as specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the public-private partnership process specified in this Section." The Port has met the requirements of §10401 and therefore denies Harbour Centre's allegation that the Port failed to do so. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the CPO's alleged lack of involvement in the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely.

4. *Upon information and belief, the bid packages submitted by the various Offerors were not secured and controlled by the PAG, in a manner that would preserve and protect the*

integrity and validity of all Offerors' bids. Because the integrity and security of the aforementioned bids were compromised, Harbour respectfully submits that the RFP process was compromised and invalidated.

With regard to Harbour Centre's general allegation that the Port did not secure and control proposals submitted in response to the RFP, the Port denies the allegations on the basis that the Port complied with applicable law and regulations regarding the submission, collection, and handling of the proposals. Additionally, to the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the handling of the proposals and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

5. *Upon information and belief, the GSA/CPO or her designee did not participate or observe the procurement evaluation process as required by law in accordance with 5 GCA §10401 and in violation of 2 GAR §3114(h)(1). The Legislature specifically requires that the GSA/CPO observes the entire procurement process to protect the integrity of the selection. It is believed that the GSA/CPO or her delegates were not given an opportunity to participate or observe any of the evaluation process. Thus, it raises great questions as to the integrity of this Bid. Further, upon information and belief, it is believed that the members of the evaluation committee actually took copies of the Offeror's [sic] off the PAG's premises for personal and private evaluation. Proposal must remain in a secured place, sealed, and not opened until in the presence of two procurement officials. Further, it is believed that no logs were kept to monitor the review of the prospective offers. These controls are necessary to protect the integrity of the bid to prevent private caucusing or lobbying [sic] by members of the committee for one specific bidder. The evaluations must be made as a group and not in individual basis to prevent random scoring, manipulation of scoring based upon personal preference. [sic] Committee members must evaluate proposals as a group to assign a group score to the proposal. This was not done, so the evaluation and scoring has no integrity, because no safeguards were utilized in this procurement that guarantees fairness in the evaluation process that led to the selection of the HRO.*

The involvement of the Chief Procurement Officer ("CPO") in the subject RFP process is governed specifically by Public Law 30-90, codified at 12 GCA §10401, which states, "[t]he General Services Agency Chief Procurement Officer shall be an observer throughout the RFP, MSB or IFB process as specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the public-private partnership process specified in this Section." The Port has met the requirements of §10401 and therefore denies Harbour Centre's allegation that the Port failed to do so. Additionally, to the extent Harbour Centre knew or should

have known information prior to July 19, 2010 regarding the CPO's alleged lack of involvement in the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. With regard to Harbour Centre's allegations regarding the taking of proposals off Port premises for evaluation, the Port denies the allegations on the basis that the Port complied with applicable law and regulation regarding the handling of proposals submitted in response to the RFP. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the handling of proposals and is protesting the RFP process based on that information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely.

6. *Upon information and belief, the PAG failed to involve the Attorney General in the procurement oversight and advisement of the aforementioned RFP designation of HRO, as required by Public Law 30-90 above.*

The involvement of the Office of the Attorney General ("AG") in the subject RFP process is governed specifically by Public law 30-90, codified at 12 GCA §10401, which states that "[t]he Attorney General shall act as legal advisor during all phases of the solicitation or procurement process ..." The Port has met the requirements of §10401 and therefore denies Harbour Centre's allegation that the Port failed to do so. Additionally, to the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the AG's alleged lack of involvement in the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

7. *Upon information and belief, it is believed that the Attorney General's Office did not act as a legal advisor of this procurement process as required by 12 GCA §10401 but rather the Port utilized the services of its private counsel in this matter.*

The involvement of the Office of the Attorney General ("AG") in the subject RFP process is governed specifically by Public law 30-90, codified at 12 GCA §10401, which states that "[t]he Attorney General shall act as legal advisor during all phases of the solicitation or procurement process ..." The Port has met the requirements of §10401 and therefore denies Harbour Centre's allegation that the Port failed to do so. Additionally, to the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the AG's alleged lack of involvement in the RFP process and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

8. *Upon information and belief, the PAG violated the legal procurement process by not complying with 5 GCA, Chapter 5 and/or relevant GARs by treating Harbour in a discriminatory fashion, and/or that the PAG did not evaluate Harbour's bid tender in accordance with the terms of the RFP.*

With regard to Harbour Centre's general allegation that the Port did not comply with applicable procurement law and treated Harbour Centre in a discriminatory fashion, the Port denies the allegation on the basis that the Port complied with applicable law and regulations regarding the submission and evaluation of all proposals received in response to the RFP, including that of Harbour Centre. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the submission and evaluation of proposals and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA 5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

9. *Upon information and belief, the PAG's technical evaluation was flawed and its standards and RFP requirements were disparately applied by PAG against Harbour.*

With regard to Harbour Centre's general allegation that the Port did not comply with applicable procurement law and that its evaluation was flawed, the Port denies the allegation on the basis that the Port complied with applicable law and regulations regarding the evaluation of all proposals received in response to the RFP, including that of Harbour Centre. To the extent that Harbour Centre knew or should have known information prior to July 19, 2010 regarding the submission and evaluation of proposals and is protesting the RFP process based on that information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

10. *Upon information and belief, other Offerors to this procurement failed to file the necessary three years of audited financial statements or its equivalent, as required under 2.2.1 of the RFP, on page II-4, and other sections of the RFP. Though the Port reserves the right to waive minor irregularities in proposals, waivers are only to apply to immaterial or inconsequential in nature omissions. Audited financial statements are important as opposed immaterial omissions. [sic] It is evidence necessary to establish and demonstrate the Offeror's financial capability to perform this contract. Financial performance and capabilities are important for the reasons set forth in 2.2.2 which requires documentation of offeror's financial performance of its Marine terminal operation business. 2.2.3 which requires Offerors to provide documentation of their ability to fund cash flow requirements*

for the proposed PMC operations to include estimates of working capital needs 2.2.4 to provide documentation of Offerors ability to fund the investment and equipment replacements capital including its estimates of the range of investment capital needs for the proposed PMCP contract to be consistent with the Offeror's investment proposal. Thus, the importance of the financial capabilities of an Offeror is of great importance to this Bid and is not something minor or immaterial nature [sic] that can be waived. It would be a great detriment to the Territory of Guam if the Port were to enter into this contract with an Offeror who did not have the necessary financial stability and capabilities required by the contract. Further, self serving statements as to financial capability and stability are not and could not be considered an equivalent documentation to independently audited statements of financial condition. The reason for auditing financial statements is to assure the Port that a third party has investigated and has determined independently that the Offeror has the financial capabilities to perform this contract.

With regard to Harbour Centre's specific allegation that other Offerors "failed to file the necessary three years of audited financial statements or its equivalent, as required under 2.2.1 of the RFP, on page II-4 , and other sections of the RFP," the Port denies this allegation on the basis that upon review of the proposals submitted in response to the RFP the Port found that each proposal met the minimum mandatory requirements of the RFP or, if there were minor irregularities in any proposals, the Port addressed them in accordance with applicable law or regulation. The content of any specific proposal cannot be revealed in response to this protest as such information is not open to public inspection at this time pursuant to 2 GAR §3114(h). Additionally, Harbour Centre made similar allegations regarding the submission of audited financial statements by Offerors in its written inquiry to the Port on June 14, 2010, which indicates that it had information regarding this issue at that time. To the extent that Harbour Centre knew or should have known information on June 14, 2010 or prior to July 19, 2010 regarding the submission of financial documents by other Offerors and is protesting the RFP process based on that information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely.

11. Upon information and belief, the Offeror designated as the HRO and/or awarded the aforementioned RFP, was non-responsive to the aforementioned RFP, and did not fully conform with the requirements of the RFP, therefore, should have been rejected and disqualified.

With regard to the general allegation that the Offeror designated as the HRO was non-responsive to the RFP and did not fully conform with the requirements of the RFP, the Port denies the allegation on the basis that the Port complied with applicable law and regulations in the evaluation of the proposals submitted in response to the RFP and found that the Offeror designated as the HRO was responsive to the RFP and conformed to the requirements of the RFP. The content

of any specific proposal cannot be revealed in response to this protest as such information is not open to public inspection at this time pursuant to 2 GAR §3114(h). Additionally, to the extent that Harbour Centre knew or should have known information prior to July 19, 2010 regarding the content of the proposal of the HRO and is protesting the RFP process based on that information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely.

12. Upon information and belief, the PAG failed to perform its evaluation process, and RFP process pursuant to Guam and Federal Laws applicable to this matter.

With regard to Harbour Centre's general allegation that the Port did not comply with procurement law, the Port denies the allegation on the basis that the Port complied with applicable law and regulations regarding the administration of the RFP. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the RFP process and is protesting that process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely. Finally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

13. Upon information and belief, it is believed that the evaluation and selection committee was required to be constituted by PAG personnel, members of the Board of Directors and the government of Guam personnel selected by the PAG General Manager. It is believed that there were no independent Government of Guam personnel participating in the selection or evaluation committee.

The composition of the evaluation committee for the RFP is referenced in Volume V, Item 2, Page V-1 of the RFP which provides that the Evaluation and Selection Committee will be "comprised of PAG personnel and members of the Board of Directors, and/or Government of Guam personnel selected by the PAG's General Manager." The Port denies Harbour Centre's allegation regarding the composition of the committee on the basis that the Port complied with applicable law and regulations and Volume V of the RFP. To the extent Harbour Centre knew or should have known information prior to July 19, 2010 regarding the composition of the evaluation committee and is protesting the RFP process based on such information, such protest is beyond the fourteen day period referenced in 5 GCA §5425(a) and is hereby rejected as untimely.

14. The "Notice of Results" as required in Bid Addendum 2.iii.e. [sic] The notice of results was just a notification to Harbour that they were not selected. Said notification did not provide "any kind of results" that were determined by the committee, such as the rankings, or the

scores of the Offeror or those earned by the other Offerors. The Notice of Results transmitted were not in compliance with law, and was nothing more than a rejection letter.

With regard to Harbour Centre's general allegation that notification of results were not in compliance with law, the Port denies the allegation on the basis that the Port complied with applicable law and regulation with regard to notification of Offerors regarding the selection of the HRO. Additionally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

15. Upon information and belief, pursuant to the Bid selection of the HRO was determined by the General Manager. [sic] See Bid v 5.2. It is believed that the General manager's decision is in violation of 5 GCA Chapter 5, and P.L. 30-90.

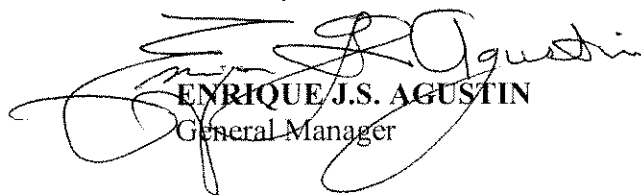
With regard to Harbour Centre's general allegation that the selection of the HRO was in violation of procurement law and Public Law 30-90, the Port denies the allegation on the basis that the Port complied with applicable law and regulation with regard to the selection of the HRO. Additionally, as the allegation lacks reference to specific acts that violate law or regulation, the Port is unable to respond with any specificity and therefore denies the allegation in its entirety.

16. Harbor respectfully submits that it should be designated by the PAG as the HRO, based upon its full compliance with the aforementioned RFP and the merits of its bid tender.

Though the Port appreciates Harbour Centre's allegation that it fully complied with the requirements of the RFP and therefore should be designated as the HRO, the Port denies the allegation on the basis that Harbour Centre's self-assessment of its qualifications is not, pursuant to applicable law or regulation or the provisions of the RFP, the appropriate measure for determining the HRO.

For each of the reasons stated above, Harbour Centre's protest is denied. This is a final decision of the Port as the purchasing agency for the subject RFP. You have the right to administrative and judicial review pursuant to 5 GCA §5425.

Sincerely,


ENRIQUE J.S. AGUSTIN
General Manager

**PAG NON-DISCLOSURE AGREEMENT
AND
WARRANTY OF CONFIDENTIALITY**

The Jose D. Leon Guerrero Port Authority of Guam (PAG) issued a Request for Proposals (RFP) entitled "THE COMPREHENSIVE TARIFF STUDY" on the ___ day of _____ 2010 in order to competitively obtain proposals to provide professional services at PAG. The proposals submitted by prospective offerors or proposers will be evaluated in accordance with the requirements and terms of the RFP by a PAG Evaluation Committee in order to determine the highest ranked or best qualified offeror or proposer. Members of the PAG Evaluation Committee are technical and professional staff or representatives of PAG, which were approved by the General Manager.

I, _____ (hereinafter referred to as a Member), in consideration of participating as a member of the evaluation committee for the above titled Request for Proposals (RFP), agrees and warrants that Member shall keep confidential to the extent permitted by law and shall not discuss nor disclose any information concerning the evaluation, selection, and/or procurement conducted in connection with the RFP. Member agrees that Member will hold all such information concerning the RFP in the strictest confidence. Member will not disclose by way of interview, communication device, electronic or computer email, press release, letter or other document, or manner to any individual, news media, professional organization or third party other than those authorized by PAG or law, any information concerning the evaluation, selection, and/or procurement conducted in connection with this RFP.

If at any time this Non-Disclosure Agreement and Warranty of Confidentiality is knowingly breached or violated by Member, Member shall be liable to the PAG to the extent permitted by law for any and all damages incurred thereby. Member also agrees to hold harmless, indemnify, protect and defend PAG against any and all claims filed or made against PAG as a result of Member's breach or violation of the Non-Disclosure Agreement and Warranty of Confidentiality, and Member will be responsible for any and all costs and/or attorney fees incurred by PAG in the enforcement of the Non-Disclosure Agreement and Warranty of Confidentiality or for defending claims made or filed against PAG as a result of Member's breach or violation of this Non-Disclosure Agreement and Warranty of Confidentiality.

This Non-Disclosure Agreement and Warranty of Confidentiality will remain in force for the duration of the RFP process and for one year after award of the RFP.

In the event any portion of this Non-Disclosure Agreement and Warranty of Confidentiality is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Non-Disclosure Agreement and Warranty of Confidentiality shall remain in full force and effect.

Evaluator's Signature

DATE: _____

Received and Witnessed By:
Jose D. Leon Guerrero Port Authority of Guam

Procurement and Supply Manager or
Duly Authorized Representative

DATE: _____

CERTIFICATION OF NON-DISCLOSURE AND CONFIDENTIALITY

PROJECT: RFP NO. 10-003, PMC FOR THE MANAGEMENT OF THE CARGO TERMINAL OPERATIONS AND MAINTENANCE OF CARGO HANDLING EQUIPMENT

I, _____ (Evaluation Committee Member), in consideration of participating as a member of the evaluation committee for the above titled Request for Proposals (RFP), has concluded and conducted the evaluation and ranking of proposals independently.

I, therefore, certify that my evaluation and ranking of the proposals was done with strictest confidence. I further warrant that I did not disclose nor discuss any information concerning the evaluation or the contents of the proposal to anyone or any party.

Evaluator's Signature

DATE: _____

Received and Witnessed By:
Jose D. Leon Guerrero Port Authority of Guam

Procurement and Supply Manager or
Duly Authorized Representative

DATE: _____

Move to...

Folders

- Inbox
- Drafts
- Sent
- Junk
- Trash

Subject RE: PMC

Sender abjavier@portguam.com
Recipient Angel Wusstig
Copy Marie C bEnavente
Date 17.06.2010 00:57

To Procurement Staff: (forward to Eda)

Re: RFP for the PMC

During the first meeting with the evaluation team, I personally discussed the importance of confidentiality and discussions regarding the RFP. The Procurement Law and Rules & Regs, does not identify how the evaluation is to be conducted whether independently or in a room with all evaluators. Nor the Proc. law identify that proposals are not to be distributed. Each Procurement administrator or manager has its style of how the process will be conducted, as long as the process is in tact and fairness is maintained. In my defense, I prefer that independent evaluation is the best as it prevents collusion amongst evaluators and comments made by evaluators or speaking out loud during an evaluation meeting could influence another evaluator's evaluation certain proposals.

Rest assure that all evaluators are well aware of their role and how the disclosure agreement can implicate their participation, should a breach is identified. Although there were aware, providing a reminder notice will not do any harm.

Meanwhile, all procurement staff is prohibited from providing any information regarding the PMC to any proposers making any follow-up. Address them to Ms. Vivian or to Rick for any status, until I get back. Please do not discuss the status of the PMC to anyone, even if it is a Port employee, whether on casual conversation or in passing or not intentionally discuss. Certain situations have occurred and I can't discuss them to you, so no one is to discuss the PMC as a whole.

I hope the above clarifies your inquiries or confusion. Thanks for your cooperation.

Alma Javier

On Wed, 16 Jun 2010 11:22:36 +1000, "Angel Wusstig"
<pacwusstig@portguam.com> wrote:

Good Morning Ms. Alms & Rie,

Ms. Alms,

Good morning..hope all is well with you and your husband and family..

Message 11 of 53

PORT AUTHORITY OF GUAM

SUMMARY OF MEETING

Date of Meeting: June 1, 2010, 10:00 a.m. at DGM's Office, Administration Building
Subject of Meeting: Orientation Meeting for Evaluation Committee Members
Ref: RFP 10-003, PMC for the Management of Cargo Terminal Operations and Maintenance of Cargo Handling Equipment

In attendance are the following:

- | | |
|---|--|
| 1. John B. Santos, Committee Member | 6. Sooja L. Suk, Committee Member |
| 2. Ernie Candoleta, Committee Member | 7. Dora Jean Perez, Committee Member |
| 3. Joaquin Pangelinan, Committee Member | 8. Glenn Nelson, Committee Member |
| 4. Ray B. Santos, Committee Member | 9. Angel Wusstig, Procurement Official |
| 5. Francine T. Rocio, Committee Member | 10. Alma Javier, Procurement Official |

It is noted that Jovyna Lujan, Committee Member participated via tele-conference call. Alma Javier conducted the meeting. Summary of items discussed are as follows:

1. Non-Disclosure Agreement and Warranty of Confidentiality: The Agreement was read out loud and explained to the evaluation committee the significance and importance of it. Advised the evaluation committee that discussions about the offerors or the proposals amongst themselves or to anyone is not permitted. Re-iterated the contents of the agreement that each member of the evaluation team will be held liable and responsible to PAG to the extent permitted by law for any damages should a breached or a violation to the agreement is made known.
2. Discussions and Supplement Proposals: The evaluation members were advised that the Volume V, Section 5.1 of the RFP stated that discussions may be held with qualified Offerors. Reminded members that the Offerors are afforded the opportunity (at their option) to supplement their proposals after discussions. I advised the members to conduct their initial review and email me any clarifications or additional information that they need from each offeror, no later than June 3rd.
3. Member Jovyna Lujan suggested that we invite the offerors to do a presentation (final pitch) to the evaluators as an opportunity to clarify areas of their proposals.
4. Alternate Evaluation Member: Advised the members to conduct an initial review of the proposals to determine if any member needs to recuse themselves for any conflict or potential conflict. Advised Ms. Dora Jean Perez role as the alternate evaluation member should any member has chosen for a recusal. Informed the committee that Ms. Dora will also be used as a tie-breaker in the process and she will conduct an evaluation but her scores and ranking will only be used if the scores resulted in a tie.
5. A tentative timeline was discussed as identified below:
 - a. June 3rd, Deadline to submit any clarifications needed from each proposer.
 - b. June 18th, Cut-off date for any supplements to the proposals from proposers.
 - c. July 1st or 2nd, Presentations or Discussions
6. The members were advised that after all presentations (if decided) and submission of supplemental documents (if needed); the evaluators will complete their scores and ranking.
7. Members will be notified for any future meeting schedules.

Prepared by: Alma Javier



PORT AUTHORITY OF GUAM

SUMMARY OF MEETING

Date of Meeting: July 14, 2010, 10:00 a.m. at the Port's Board Conference Room
Type of Meeting: Evaluation Committee Meeting
Ref: RFP 10-003, PMC for the Management of Cargo Terminal Operations and Maintenance of Cargo Handling Equipment

In attendance are the following:

- | | |
|---|---|
| 1. John B. Santos, Committee Member | 7. William Beery, Committee Member |
| 2. Ernie Candoleta, Committee Member | 8. Dora Jean Perez, Committee Member |
| 3. Joaquin Pangelinan, Committee Member | 9. Glenn Nelson, Committee Member |
| 4. Ray B. Santos, Committee Member | 10. Jovyna Lujan, Committee Member |
| 5. Francine T. Rocio, Committee Member | 11. Alma Javier, Procurement Official |
| 6. Sooja L. Suk, Committee Member | 12. Peter San Nicolas, Procurement Official (GSA) |

Alma Javier conducted and administered the meeting. The summary of the meeting is as follows:

1. Introduction: Ms. San Nicolas was introduced to the members of the Evaluation Committee and each member was asked to introduce themselves for the record.
2. Instructions: The members were advised that the purpose of the meeting is to finalize their evaluation and ranking scores. It was noted that the initial evaluation score sheets that other members have submitted are being returned for them to finalize. They were advised that each box before them contained the same copies of proposals that was collected back by Procurement and labeled with their names. Any notes that they may have are kept in-tact and additional blank evaluation score sheets were included, should they need them.

The members were advised that a Certification of Non-Disclosure and Confidentiality Form is provided and required from the members to submit at the conclusion of their evaluations. The said certification is an assurance that the member evaluated the proposals independently and that confidentiality was kept without discussions nor disclosure of any information to anyone or anybody.

3. The members were reminded that ample time was provided to them to read, review, digest, understand and absorb all the information on each proposal. The members were advised that rather than the administrator go over page by page of the each proposal, each section of Volume II of the RFP, titled Qualifications of Offerors and Proposed PMC, may be discussed. They were informed that as we go over each offeror's proposal, they need to advise if any clarifications are needed from the offeror.
4. Review of proposals: Following the identified sections in Volume II, the members were asked the following questions (repeatedly) during review of each proposal (7 proposals in total):
 - a. Does the proposal provides enough information regarding the qualifications of the offeror in reference to their experience, background, history of organization, legal structure and ownership, the management of the organization and management's philosophy? (Section 2)
 - b. Does the proposal provides enough information with regards to their experience in marine terminal operations, the history & growth of the marine terminal operations, their existing marine

- terminal operations, their experience with marine terminal maintenance, the experience with training of personnel, experience with O&M budgeting, experience in procurement, safety management, environmental compliance management, unique innovation & technologies and experience with quality management processes? (Section 2.1)
- c. Does the proposal provides enough information that demonstrates is financial capability, the marine terminal financial performance, the ability to fund working capital, and the ability to finance PMCP capital requirements? (Section 2.2)
 - d. Does the proposal provides enough information regarding its legal structure & ownership and management of the organization and proposed PMCP? (Section 3)
5. Evaluation: After review of each proposal, the members were some given time to finalize their evaluation scores. The evaluation score sheets were collected from each member at the end of the review for each proposal. Each time the collection of the evaluation score sheets were made, the number of score sheets were verified by Mr. San Nicolas to ensure that all score sheets were collected.
6. Upon completion of the evaluations, each member were asked to submit the Certification form and they were collected for file.
7. The members were advised that all the scores will be compiled and tallied to determine the final ranking results. They were thanked for their participation.

Attachment: Signed Attendance Sheet

Prepared by: Alma B. Javier



PROCUREMENT APPEAL

AUG 31 2010
TIME: 9:41 AM BY: Joy B.
FILE NO. OPA-PA: 10-064


In the Appeal of)
)
HARBOR CENTRE GUAM CO. LTD.)
And HARBOUR CENTRE PORT)
TERMINAL, INC.)
)
Appellant.)
_____)

HEARING REQUEST

Docket No. OPA-PA _____

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.

Submitted this 31st day of August, 2010.

By:  _____

RAWLEN M.T. MANTANONA and
DAVID P. LEDGER, Appellant's duly
authorized representatives.
Edge Building, Second Floor
929 S. Marine Corps Drive
Tamuning, Guam 96913
(671) 646-2001

RMTM:me

H:\MARIE\ROMERO\HEARINGREQUEST