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**PROTEST
RFP PAG-010-003**

PROTESTOR
Harbor Centre Guam Co., Ltd.
(a Guam Corporation) and
Harbour Centre Port Terminal, Inc.
(a Republic of the Philippine's Corporation)
(collectively referred to as "Harbour")

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By: RAWLEN M.T. MANTANONA
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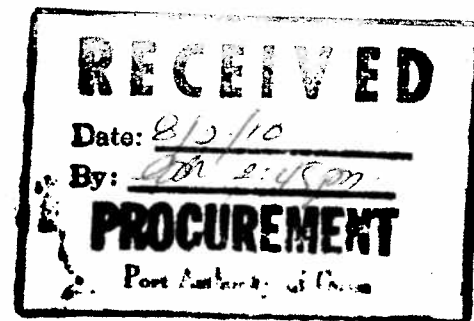
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August 2, 2010

VIA FACSIMILE NO. (671) 477-4445 and HAND-DELIVERY

PORT AUTHORITY OF GUAM
Attn: Mr. Enrique J.S. Agustin
General Manager of the Commercial Port
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96915



Re: **Bid Protest; Port Authority of Guam RFP No. PAG-010-003;**
Performance Management Contract for the Management of Cargo
Terminal Operations and Maintenance of Cargo Equipment

Dear Mr. Agustin,

Our office represents Harbor Centre Guam Co., Ltd. (a Guam corporation) and Harbour Centre Port Terminal, Inc. (a Republic of the Philippine's corporation) (hereafter collectively referred to as "Harbour") regarding the aforementioned matter. Harbour is one of a number of Offerors to the aforementioned RFP No. PAG-010-003 (hereafter "RFP").

We are in receipt of your July 19, 2010 "Notice of Results" correspondence, pertaining to the RFP, and understand that Harbour was not selected as the Highest Ranked Offeror (HRO).

Harbour hereby submits this Bid Protest pursuant to the Guam Procurement Law (5 GCA §5425(a)) et. seq., relevant Port Authority of Guam ("PAG") GARs, P.L. 30-90, and relevant Guam and Federal Laws, for the selection and designation of the HRO and award of the RFP.

Harbour intends on requesting that PAG provide it with a copy of the Bid File. A request for information and records has also been tendered to the General Services Agency. Harbour reserves the right to amend this Protest at such time as it receives the documentation which it has or shall request from the Government, or if it receives new or additional information.

The bases for this Bid Protest include, but are not limited to:

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.
2. The PAG failed to perform its evaluation process, RFP process, designation of HRO 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.
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.
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.
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 off the PAG's premises for personal and private evaluation. Proposals 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 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. 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.

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.
7. Upon information and belief, it is believed that the Attorney General's Office did not act as 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.
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.
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.
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. 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 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 this 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.

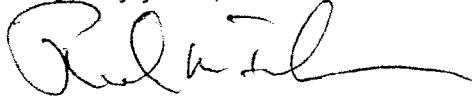
11. Upon information and belief, the Offeror designated as the HRO and/or awarded the aforementioned RFP, was non-responsive to the aforementioned RFP, and did not fully conform with the requirements of the RFP, therefore, should have been rejected and disqualified.
12. Upon information and belief, the PAG failed to perform its evaluation process, and RFP process pursuant to Guam and Federal Laws applicable to this matter.
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.
14. The "Notice of Results" as required in Bid Addendum 2.iii.e. 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.
15. Upon information and belief, pursuant to the Bid selection of the HRO was determined by the General Manager. 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.
16. Harbour 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.

Harbour further requests its costs be reimbursed pursuant to 5 GCA §5425(h)(1).

We request that the PAG and/or GSA resolve this matter under its authority to resolve disputes by awarding this bid to Harbour (5 GCA §5425(b)) and pursuant to P.L. 30-90. We request that all work stop until our Bid Protest has been officially addressed in writing. Please do not hesitate to call upon us, should you have any questions or comments

Thank you for your attention to this matter.

Very truly yours,



RAWLEN M.T. MANTANONA



DAVID P. LEDGER

CCC/RMTM:me

H\MARIE/ROMERO/FINALBIDPROTESTLTR