

Minutes of the Regular Meeting of the Board of Commissioners of the Lake Charles Harbor and Terminal District held at 5:00 P.M., Monday, February 25, 2019 in the Boardroom of the Port of Lake Charles located at 1611 West Sallier St., Lake Charles, Louisiana.

In attendance and constituting a quorum, were:

Michael G. Eason, President
John LeBlanc, Vice President
Elcie J. Guillory, Secretary/Treasurer
David J. Darbone, Assistant Secretary/Treasurer
Carl J. Krielow, Commissioner

Absent:

Dudley R. Dixon, Commissioner
Thomas L. Lorenzi, Commissioner

Also Present:

Bill Rase, Executive Director
Richert Self, Deputy Executive Director/Director of Administration and Finance
Michael Dees, General Counsel
Jon Ringo, Assistant General Counsel
Channing Hayden, Director of Navigation
Donald Brinkman, Director of Security/Engineering, Maintenance and Development
Michelle Bolen, Executive Administrative Assistant

Mr. Eason called the meeting to order at 5:00 P.M. and asked Mr. Guillory to give the invocation. Mr. Darbone led the Board and audience in the Pledge of Allegiance.

Mr. Eason asked if there were any public comments regarding any items on the agenda. There were none.

- 1. Approval of the January 29, 2019 Regular Meeting Minutes.

Mr. Darbone offered a motion to approve the January 29, 2019 Regular Meeting Minutes. Mr. Krielow seconded the motion and it carried unanimously.

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2. Submission 2019 – 002 accepting the responsive bid of Lard Oil Company to supply motor fuel.
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Mr. Rase stated every year the Port goes through the process of looking at the fuel cost. Lard is the company that had the previous contract and are the low bidder this year. Lard has an index, which is published every day and has a percentage they apply over the index. That is actually the price the Port pays. Last year, the Port paid about \$295,000 for fuel. Staff is asking for Board approval of Lard Oil Company to supply fuel to the Port.

Mr. LeBlanc offered a motion to adopt Resolution 2019 – 002 to accept the responsive bid of Lard Oil Company to supply motor fuel. Mr. Guillory seconded the motion and it carried unanimously.

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3. Submission 2019 – 003 accepting the lowest responsive bid for the Contraband Bayou Berth 8 dredging.
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Mr. Eason deferred this item to Executive Session.

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4. Submission 2019 – 004 authorizing the Executive Director to enter into a Terminal Services Agreement with Lake Charles Stevedores.
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Mr. Rase stated this was done on the basis of last year that the Port would have two stevedores be able to bid on USDA cargo. FMT was one of the designated stevedores. The Port put out an RFP asking the other licensed stevedores at the Port to see if there was any interest to be the second stevedore bidder for USDA cargo.

Lake Charles Stevedores responded that they would like to participate. They have a contract now to bring before the Board that shows both stevedores will have to sign the same agreement and work on the same principle for the USDA bids. Once the Board approves that, the Port will send it out to Lake Charles Stevedores and FMT for their signatures.

Mr. Krielow offered a motion to adopt Resolution 2019 – 004 to authorize the Executive Director to enter into a Terminal Services Agreement with Lake Charles Stevedores. Mr. LeBlanc seconded the motion and it carried unanimously.

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5. Submission 2019 – 005 authorizing a settlement agreement with Federal Marine Terminals.
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Mr. Rase said it was brought to the Port's attention that FMT had fallen short on their minimum guarantee for the last two years. They did make it for this current year. It was about \$147,000 that the minimum was missed. They pay by the ton for each ton that they miss. The two prior years added up to be \$147,000.

Port staff went into negotiations with FMT on the minimum charge. They sent a letter that showed USDA had varied its approach, cargo that was available and the budget that was available. FMT explained that was the reason for the shortfall. Staff agreed with that from the process they through when they were looking at how to do the stevedoring. Mr. Self has some specific numbers if the Board would like to get into those. On the other side, there was no time limit for when the money had to be sent in or their protest had to be sent in to the Port.

Out of good faith, FMT is offering to pay the Port \$20,000 this year and \$20,000 next year for a total of \$40,000. Staff is seeking approval from the Board for this settlement.

Mr. Krielow asked when this matter came before the Board, it was during the exploring options for City Docks. In August 2018, FMT was billed for the shortfall. In October, he asked Mr. Self in the financial report if FMT had paid the \$147,000 that was due the Port in their minimal guarantee. Mr. Krielow said Mr. Self told him that it had been accounted for. Mr. Self stated that was not correct. He told Mr. Krielow that it was invoiced. It was invoiced but not paid.

Mr. Krielow stated that if it was invoiced and it became an accounts receivable, so is the Port going to have to take a charge to the accounts receivable if the Board approves this settlement? Mr. Self replied they would.

Mr. Krielow asked Mr. Dees that in the contract, he understands there are provisions for changes that could occur that the contract could request the stoppage of the minimum annual guarantee. But, as part of the 200,000 ton in the exclusive agreement was granted to FMT before he was on the Board, it stated that the contractor shall calculate and pay at the conclusion of each year any shortfall. That is in the top paragraph of page 13 of the contract. He did not think the contractor did that.

Mr. Krielow asked on page 14, paragraph two, it says, "If the contractor, acting reasonably, shall inform the District of any minimum tonnage guarantee stoppage event by notice in writing." His concern is that the notice in writing did not come until it was brought to staff's attention by this Board that there was a shortfall in the agreement. It concerns him because

there are other contracts out there on minimum annual guarantees and if they are going to create a policy or approve a special dispensation for one company, they should be doing this across the board. In his view, he does not think they should be rewarding someone, which is basically taking 25¢ on the dollar for what is owed the Port under the terms of an agreement that they clearly violated. It is actually a breach of contract by them not following the terms of the contract.

He understands that a lot of times a settlement is a lot better than litigation. He does get that, but they have to be consistent in what they are going to do on these agreements with all companies.

Mr. Dees replied that the phrases Mr. Krielow read are certainly there. It also goes on to say “notwithstanding anything that the contrary” in this sections he referenced, “the contractor shall not have a minimum annual tonnage obligation in circumstances, which are outside the control of the contractor.” The last paragraph states, “In the event of a fundamental change to USDA Aid program, from the program existing at the commencement of the agreement, or if there is drought, or any other natural phenomena, then the contractor is relieved from that.” Mr. Dees stated they spent many months where the Port demonstrated with its own statistics to the Board that USDA has fundamentally changed over the time periods that are being discussed here. In his view, he thinks the contract does provide for a minimum, but there are these provisions that take the minimum away. Mr. Krielow said he agreed, but it is a two-sided contract. Two people sign this contract – the contractor and the Port. They have obligations under this contract. The obligation was two-fold. One was to provide that notice in writing when there is a situation that creates something with USDA that would change the tonnage and the most compelling is that the burden is upon the contractor to calculate and pay at the conclusion of each year by the very words of this contract. They did not do it. It did not happen until the Port brought it to their attention and to staff’s attention. He does not think they should come 2 ½ – 3 years later and take 25¢ on the dollar for something that is clearly owed because some term was not followed in the agreement.

Mr. Dees said the notice provision – you could have an argument if there was an event, significant event or explosion or some single event, but what the contract was referencing was a change which happened gradually over time. What a court would say is FMT did not have the opportunity to give a notice because that change in the program gradually changed. They gradually reduced, so there was no time for them to give a notice, “Hey, this event occurred.” Mr. Krielow said that had they been doing the annual calculation and payable at the conclusion of each year, they would have noticed there was a reduction and possible made that argument instead of waiting 2 ½ - 3 years later to come back and offer 25¢ on the dollar.

Mr. Dees replied that he thought they did recognize that. That is why they did not pay. USDA had substantially changed over that time period. He is not saying there is not an argument that they could not advance. It is just in general, the contract seems pretty clear that when there were fundamental changes in USDA, and he does not think anyone disputes that, not only from the volume reduction, but the containerization that occurred over that period of time, which took away the opportunity to bid on bags. Both of those things substantially and fundamentally changed what was happening when the contract was signed. At the end of the

day, if you look through all of this, that is what a court would look at. The minimum really was not applicable because of those changes. It is up to the Board. If the Board wants staff to litigate it, they can do that. He just does not think they will end up at the end of the day winning.

Mr. Krielow stated that he does not think the Port has a consistent policy on how they handle these provisions of these terms of these contracts. There have been other companies that have not met minimums and has been handled differently. Mr. Dees asked who that was. Mr. Krielow said he knew one that was this year. It might have been with Southern Ionics, where they had a supplier that was going to cut off the supply coming out of South America and they immediately sent a notice of a stoppage through force majeure from their suppliers, which was going to affect their lease with the Port. They were abiding by the terms of their notice provisions in their agreements.

Mr. Dees replied that that is the single event he was talking about. That was a single event. They ended up withdrawing it, so there was no treatment. They were not reduced off of the minimum. That did not happen in that case. Mr. Dees said they are not treating anyone any differently. The contract is special to FMT. The language is special. There is no one being treated differently.

Mr. Eason said he did not remember the year when the contract was originally penned – 2012. He remembers their meeting, they were looking at bringing in other stevedoring companies. There was a graph they used that showed the deterioration of USDA over a 5 year time frame. They could probably use the Port's own words in that presentation of that public meeting against the Port. Mr. Dees agreed. He said they have used the Port's own words. It is attached to the board minutes. Mr. Eason stated that is what he remembered.

Mr. LeBlanc asked to table this item until the March 25, 2019 regular meeting so they could get some more information on this. If they could do that, it is not anything that is going to happen today, so why not just table it. He read through some of this and he wants to look at a few things more himself.

Mr. LeBlanc offered a motion to table Resolution 2019 – 005 regarding authorizing a settlement with Federal Marine Terminals until the March 25, 2019 Regular meeting. Mr. Darbone seconded the motion and it carried unanimously.

6.CEA with Sheriff Department Briefing Note

The CEA with the Sheriff Department Briefing Note was rendered to the Board and is on file in the Executive Offices.

7. January 2019 Financials Briefing Note

The January 2019 Financials Briefing Note was rendered to the Board and is on file in the Executive Offices.

Monthly Report.

8. Monthly Staff report from Deputy Executive Director

The Deputy Executive Director's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

9. Monthly Staff report from Director of Navigation.

The Director of Navigation and Security's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

10. Monthly Staff report from Director of Operations.

The Director of Operations' Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

Trade Development.

11. Monthly Staff report from Director of Marketing and

The Director of Marketing and Trade Development's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

12. Monthly Staff report from Director of Engineering, Maintenance,
and Development and Security.

The Director of Engineering, Maintenance, and Development and Security's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

13. Monthly Staff report from the State Port Lobbyist.

The State Port Lobbyist's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

14. Executive Session and appropriate action in any of the following matters:

Mr. Eason asked for a motion to enter into Executive Session. Mr. LeBlanc offered a motion to enter into Executive Session. Mr. Darbone seconded the motion and it carried unanimously.

The Board entered into Executive Session at 5:22 p.m.

- Suit against the Port of Lake Charles – Suit No. 2013-001091-14th JDC, State of LA.
- Suit against the Port of Lake Charles – Suit No. 2014-004268-14th JDC, State of LA.
- IFG Port Holding, LLC vs LCHTD – Case: 2:16-cv-00146 U S District Court, Western District of Louisiana, Lake Charles Division.
- LCHTD vs IFG Port Holding, LLC – Case: 2:16-cv-00785 U S District Court, Western District of Louisiana, Lake Charles Division

The Board returned from Executive Session at 6:27 p.m.

Mr. Eason stated there was one item that was deferred until Executive Session. Mr. Eason asked for a motion to approve Resolution 2019 – 003 accepting the lowest responsive bid for the Contraband Bayou Berth 8 dredging.

Mr. LeBlanc offered a motion to adopt Resolution 2019 – 003 to accept the lowest responsive bid for the Contraband Bayou Berth 8 dredging. Mr. Guillory seconded the motion and it carried unanimously.

15. Other Matters which may properly come before the Board.

There being no further business to come before the Board, Mr. Eason asked for a motion to adjourn. Mr. LeBlanc offered a motion to adjourn and Mr. Darbone seconded the motion and it carried unanimously. The meeting adjourned at 6:28 p.m.

All discussions held on the above items were recorded using the FTR Gold program, and saved on the District's main file server in the District's office.

Please note that when the votes are shown as unanimous, it is the policy of the Board that the President does not vote except in the event of a tie vote by the rest of the Board and/or unless otherwise indicated.

MICHAEL G. EASON, Vice President

ATTEST:

ELCIE J. GUILLORY, Secretary/ Treasurer