

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE: GDP MARINA RENOVATION,  
PHASE 1, CONSTRUCTION** ) **PAG Docket No. 10-03**  
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) **ALJ REPORT**  
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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (“GPUC”) upon the request of the Port Authority of Guam (“PAG”) for approval of its proposed Agreement Between Jose B. Leon Guerrero Commercial Port and with Black Construction Corporation (the “Black Construction Contract”), made on December 1, 2010. The purpose of the Black Construction Contract is to obtain services related to the Gregorio D. Perez Marina Renovation & Site Improvements, Phase 1 Project.

**BACKGROUND**

1. Pursuant to Section 12000(a) of Title 12 of the Guam Code Annotated, PAG is considered a public utility.
2. Black Construction Corporation (“Black Construction”) is a Guam Corporation that provides services related to construction projects, civil, structural, architectural, mechanical, and electrical engineering.
3. The Gregorio D. Perez Marina Renovation & Site Improvements, Phase 1 Project is a renovation project funded by federal grants and aimed at improving PAG’s current infrastructure by renovating its marina.
4. The Black Construction Contract is the agreement between PAG and Black Construction to execute the first phase of the renovation project described above.

5. Section 12004 of Title 12 of the Guam Code Annotated provides that a public utility shall not “enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission.”

6. Based on the Bid Analysis and Recommendation, prepared by PAG, an invitation for bid related to the marina renovation project was published in a newspaper of general circulation on September 3, 2010.

7. PAG then held a pre-bid conference on September 9, 2010, and a bid opening on September 30, 2010.

8. Three (3) bidders submitted proposals.

9. Black Construction submitted the lowest bid, which PAG calculated as about twenty-nine percent (29%) less than the Government Estimate for the cost of the project.

10. PAG, thereafter, awarded the contract to Black Construction.

11. There appear to be no irregularities regarding the bid process or PAG’s award to Black Construction.

### **CONTRACT REVIEW**

12. On December 1, 2010, PAG forwarded to the GPUC a draft copy of its proposed agreement with Black Construction. This is the first instance the GPUC has had the opportunity to review the Black Construction Contract.

13. PAG has represented that the Black Construction Contract will not have any effect on rate payers as the entire project is federally funded by the U.S. Department of Interior, Office of Insular Affairs, under GUAM-CIP-2006-1 Grant No.

GR670090 and GUAM-CIP-2007-1 Grant No. GR770061. Accordingly, the terms of the Black Construction Contract presumably also will not affect PAG's operating budget.

14. PAG intends to enter into the Black Construction Contract in order to obtain services related to the renovation and improvement of PAG's marina. The Black Construction Contract contains the standard provisions for construction contracts. The Black Construction Contract further properly incorporates by reference the "General Scope of Work," "Technical Specifications," and "Plans" required of Black Construction to perform under the agreement.

15. Of particular interest to the ALJ are the terms regarding "Compensation," as well as the provisions regarding "Term of the Agreement."

16. The Black Construction Contract provides that Black Construction shall be paid \$1,252,000.000 for services performed under the agreement. The ALJ recognizes that redevelopment and renovations to commercial marinas are costly endeavors. For instance, the design and first-year construction of the City of San Francisco's redevelopment of its marina back in 2002 was estimated to be around \$20,000.00.00.<sup>1</sup> While certainly PAG's marina does not experience the same volume of shipping as the City of San Francisco, such example illustrates the huge costs associated with these types of projects. PAG and Black Construction's contract price, however, is especially reasonable given that the price was twenty-nine percent (29%) less than the

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<sup>1</sup> See Moffatt & Nichol Engineers, *et al.*, "San Francisco Marina Renovation Feasibility Study," prepared for the Bureau of Engineering, Department of Public Works, City and County of San Francisco, p. 21 (December, 2002).

Government Estimate for the cost of the project. Thus, the ALJ finds that \$1,252,000.000 is reasonable for services related to the marina renovation project.

17. The Black Construction Contract further provides that Black Construction shall complete all the required services under the agreement within two hundred seventy (270) calendar days. In other words, Black Construction is expected to complete the project within nine (9) months. The ALJ hereby finds that nine (9) months is a reasonable amount of time to complete the project and, thus, the term of the agreement is reasonable.

18. With respect to the remaining terms of the Black Construction Contract, such terms are found by the ALJ to be standard terms (e.g., terms related to indemnity, warranties, termination, waiver, and liquidated damages), none of which appear improper, and therefore are hereby considered reasonable.

#### **RECOMMENDATION**

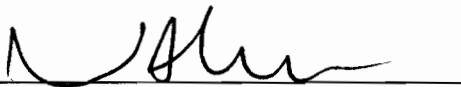
19. The ALJ hereby finds that the terms of the proposed Black Construction Contract are reasonable. Given the impending military buildup, PAG must improve and expand the Gregorio D. Perez Marina in order to appropriately and efficiently handle increased shipping. The construction services related to PAG's marina renovations are in line with the general improvement and expansion of Guam's public utility infrastructure. Accordingly, PAG has demonstrated a need to improve its present infrastructure by renovating its marina.

20. Moreover, it does not appear that the Black Construction Contract will have any effect on rate payers as the entire project is federally funded by the U.S. Department of Interior, Office of Insular Affairs, under GUAM-CIP-2006-1 Grant No.

GR670090 and GUAM-CIP-2007-1 Grant No. GR770061. Thus, the terms of the Black Construction Contract presumably will not affect PAG's operating budget.

21. For the reasons set forth herein, the ALJ recommends that the GPUC approve the Black Construction Contract as requested by PAG.

Dated this 27th day of December, 2010.

  
**DAVID A. MAIR**  
Administrative Law Judge