

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



**REQUEST FOR APPROVAL OF THE
CONTRACT FOR ULSD PIPELINE
WITH AYM INTERNATIONAL, INC.**

**GPA DOCKET 19-02
ORDER**

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the June 13, 2019 Petition for Approval of the Contract for ULSD Pipeline with AYM International, Inc. (the “Petition”), filed by the Guam Power Authority (“GPA”).

On July 23, 2019, 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

In October 2018, the PUC reviewed the procurement of GPA’s pipeline project that would supply Ultra Low Sulfur Diesel (“ULSD”) fuel to the Piti Tank Farm, with tie-ins to Piti Power Plants 7, 8, and 9. Based on its review, the PUC found that “[t]he primary purpose of the pipeline is to provide a system for the receipt of ULSD shipments from F-1 dock into the GPA Fuel Bulk Storage Facility.”¹ Specifically, the pipeline will deliver ULSD to the Tenjo and Piti 7 (TEMES) plants, with tie-ins to Piti Plants No. 8 and

¹ PUC Order, GPA Docket 19-02, p. 2 (Oct. 25, 2018).

9 (MEC). And while the new pipeline will not directly serve the planned New Generation Plants in Harmon, such pipeline is necessary since the contractor for the New Generation Plants can build its own pipeline from the Fuel Tank Farm to the New Generation facility.²

The PUC further found that GPA “needs a pipeline for ULSD to its powerplants”; particularly that this pipeline would tie-in to the Tenjo and Piti 7 plants, and could be used to send fuel to the Piti 8 and 9 plants, and that it is “critical” for the subsequent pipeline for the new generation plants.³ The PUC determined that there was a “clear need for such a Pipeline”; and, therefore, approved GPA’s procurement for a new ULSD pipeline.⁴

On January 24, 2019, GPA issued Invitation to Bid (“ITB”) 027-19, which advertised the design-build project for the new ULSD pipeline system. Three qualified bidders responded to the ITB.⁵ On April 2, 2019, GPA’s evaluation team determined AYM International, Inc. to be lowest responsive and responsible bidder.⁶

On May 28, 2019, the Guam Consolidated Commission on Utilities (the “CCU”), through GPA Resolution No. 2019-06, authorized GPA to seek PUC for approval of the contract award to AYM International, Inc.; and subject to the PUC’s approval, authorized GPA to enter into such contract with AYM International, Inc. for \$2,495,944.⁷

² PUC Order, GPA Docket 19-02, p. 2.

³ PUC Order, GPA Docket 19-02, p. 3 (Oct. 25, 2018).

⁴ PUC Order, GPA Docket 19-02, p. 5.

⁵ GPA Resolution No. 2019-06, p. 1 (May 28, 2019).

⁶ GPA Resolution No. 2019-06, p. 1.

⁷ GPA Resolution No. 2019-06, p. 2.

A. Contract Review Protocol

Pursuant to 12 G.C.A. § 12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Furthermore, GPA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,500,000" require "prior PUC approval . . . which shall be obtained before the procurement process is begun."⁸

B. GPA Tank Farm New ULSD Pipeline System Contract

Based on the subject contract and corresponding bid documents, the contractor is responsible for providing the following. According to the technical specifications submitted by GPA, the contractor will be required to prepare the design drawings, calculations, and specifications for the new ULSD pipeline system.⁹

The design shall include "a 24-inch pipeline including gate valves and fittings from the U.S. Navy tie-in to Tanks 1934 and 1935, 12-inch pipeline including gate valves and fitting from Tanks 1934 and 1935 to the new pump station, 6-inch pipeline including valves and fittings from pump station to Piti No. 7, 8 and 9 Power Plants and pump station including its components and an 8-inch manifold, concrete berm, pad and roofing. The design shall also include pipeline pedestals/supports and painting works."¹⁰

⁸ GPA's Contract Review Protocol ("GPA CRP"), Administrative Docket 00-04, p. 1 (Feb. 15, 2008) (emphasis omitted).

⁹ Technical Specifications, 01010-1.

¹⁰ Technical Specifications, 01010-1.

Upon approval of the design drawings and specifications, the contractor will install the pipelines, including the gate valves and fittings; pipeline pedestals and supports; and a new roof-covered pump station, with motor pumps and electrical controls.¹¹

The contractor is further required to paint the new pipeline system and pump station, including all the components; and perform the testing and commissioning of the entire pipeline system, which includes the submission of all required certifications.¹²

The contract requires that the contractor complete the project “ready for use and operation” within two hundred seventy (270) calendar days.¹³ Further, the contract contains standard protections that GPA includes in its construction procurements. For instance, the contract also contains a liquidated damages provision, which obligates the contractor to pay \$1,000 each day beyond the two hundred seventy (270) day timeline.¹⁴ In addition, the contract contains a standard indemnity provision, which protects GPA from lawsuit arising from contractor’s negligence.¹⁵ The contractor is also required to maintain liability and all other related insurance.¹⁶

C. Cost

GPA originally estimated the total cost of the contract at \$5,900,000.¹⁷ However, it now appears that the total cost of the contract is less than originally projected.

¹¹ Technical Specifications, 01010-1; 01010-2.

¹² Technical Specifications, 01010-2.

¹³ Formal Contract, FC-2; SP-1.

¹⁴ Formal Contract, FC-3; SP-1.

¹⁵ Formal Contract, FC-4; GC-14.

¹⁶ Formal Contract, GC-13.

¹⁷ PUC Order, GPA Docket 19-02, p. 2.

In particular, based on the Bid Schedule submitted by AYM International, the bid indicates a total price of \$3,495,944. More specifically, the cost of the contract consists of the following: \$292,645 for the design; \$220,000 for mobilization and demobilization; \$1,972,225 for the new ULSD pipelines and pedestals, and construction; \$770,000 for the new pump station; \$182,074 for paint and painting; and \$59,000 for testing a commissioning.

GPA submitted that the funding source for the entire project will be from the Cabras 3 and 4 insurance proceeds.¹⁸ The use of the insurance proceeds may be appropriate in this instance since the contract relates to GPA's fuel system.

D. GPA Resolution No. 2019-06

The Petition is supported by GPA Resolution No. 2019-06 issued by the CCU at its May 28, 2019 meeting (the "Resolution"). In the Resolution, the CCU found that GPA is "mandated by United States Environmental Protection Agency (USEPA) to significantly reduce power plant emissions"; and that in order to comply, GPA must use ULSD oil to fuel its power plants.¹⁹ According to GPA, it is required by the U.S. E.P.A. to use ULSD to fuel its power plants by 2021.²⁰ Accordingly, GPA intends to build a pipeline system to supply ULSD oil to the Piti Tank Farm and TEMES 7, MEC 8 and 9 power plants.²¹

¹⁸ Petition, p. 1; GPA Resolution No. 2019-06, p. 2.

¹⁹ Resolution No. 2019-06, p. 1.

²⁰ Petition, p. 1.

²¹ Resolution No. 2019-06, p. 1.

According to the CCU, GPA adequately announced the bid for the design and construction for the new ULSD pipeline system, and that from three qualified bidders, GPA identified AYM International, Inc. as the lowest responsive and responsible bidder.²² Funding for the project has already been allocated from GPA's Cabras 3 and 4 Insurance Settlement.²³ Accordingly, as indicated in the Resolution, the CCU authorized GPA to seek PUC for approval of the contract award to AYM International, Inc.; and conditioned on the PUC's approval, authorized GPA to enter into such contract with AYM International, Inc. at a cost of \$2,495,944.²⁴

CONCLUSION

Based on the documentation provided by GPA, along with the record before the Commission, the ALJ found that the PUC has determined that there is a "clear need" for a new ULSD pipeline when it approved the underlying procurement. Indeed, the PUC has previously determined that GPA "needs a pipeline for ULSD to its powerplants"; particularly that this pipeline would tie-in to the Tenjo and Piti 7 plants, and could be used to send fuel to the Piti 8 and 9 plants, and that it is "critical" for the subsequent pipeline for the new generation plants²⁵ since the contractor for the New Generation Plants can build its own pipeline from the Fuel Tank Farm to the New Generation facility.²⁶

²² Resolution No. 2019-06, p. 1.

²³ Resolution No. 2019-06, p. 2.

²⁴ GPA Resolution No. 2019-06, p. 2.

²⁵ PUC Order, GPA Docket 19-02, p. 3.

²⁶ PUC Order, GPA Docket 19-02, p. 2.

Additionally, the ALJ further found that GPA is “mandated by United States Environmental Protection Agency (USEPA) to significantly reduce power plant emissions”; and that in order to comply, GPA must use ULSD oil to fuel its power plants²⁷; and that it must do so by 2021.²⁸ Accordingly, this new ULSD pipeline system to the Piti Tank Farm and TEMES 7, MEC 8 and 9 power plants, satisfies both a practical need, as well as fulfilling a legal obligation to reduce harmful emissions.²⁹

The ALJ further found that the subject contract contains standard protections for GPA, which include liquidated damages, indemnity protecting GPA from lawsuit arising from contractor’s negligence, and insurance. Accordingly, the proposed contract is adequate to protect the interests of GPA and its ratepayers. AYM International, Inc.’s bid is also \$2.4 million less than what was originally projected. AYM International, Inc. is the same contractor who completed the Dededo Substation upgrade in 2016. The ALJ, therefore, finds the instant contract to be reasonable, prudent, and necessary.

Based on the documentation provided by GPA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve GPA’s Petition. Accordingly, GPA should be authorized to enter into a contract with AYM International, Inc. at a cost of \$2,495,944.00.

The Commission hereby adopts the findings made in the July 23, 2019 ALJ Report, and therefore, issues the following:

²⁷ Resolution No. 2019-06, p. 1.

²⁸ Petition, p. 1.

²⁹ Resolution No. 2019-06, 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:

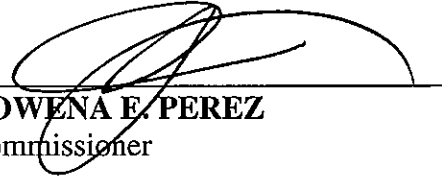
1. That the instant Petition is hereby APPROVED.
2. GPA is authorized to enter into the proposed contract with AYM International, Inc. at a cost of \$2,495,944.00 for a new ULSD pipeline system to the Piti Tank Farm and TEMES 7, MEC 8 and 9 power plants.
3. GPA is authorized to expend from the Cabras 3 and 4 insurance funds, the sum of \$2,495,944.00 for the subject contract.
4. GPA 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 25th day of July, 2019.



JEFFREY C. JOHNSON
Chairman




ROWENA E. PEREZ
Commissioner



JOSEPH M. MCDONALD
Commissioner



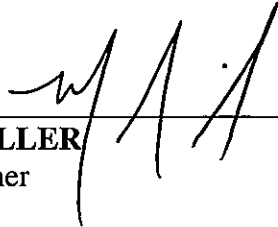
FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



MARK MILLER
Commissioner