

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:)

PAG DOCKET 20-03)

PORT AUTHORITY OF GUAM'S)
PETITION FOR APPROVAL OF)
ADDITIONAL COSTS FOR OWNER'S)
AGENT ENGINEERING SERVICES)
CONTRACT WITH WSP USA INC.)

PUC COUNSEL REPORT

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant the Port Authority of Guam's ["PAG"] Petition for Approval of additional costs for its Owner's Agent Engineering Services ["OAE"] contract with WSP USA Inc. ["WSP"].¹
2. PAG requests that the PUC approve a total of \$1,574,035 in PAG/WSP OAE contract costs for two sets of projects. The first set of projects will cost \$774,035 and are for PAG Task Orders: (1) 3.1 (Expanded H-Wharf Environmental Permitting Support Services); (2) 3.1.R2 (Expanded H-Wharf Environmental Permitting Support Services Shifting from a CATEX Process to a Modified Environmental Assessment Process); (3) 3.1.R3 (Expanded H-Wharf Environmental Permitting Support Services and H-Wharf Package Update); and (4) 3.1.R4 (H-Wharf Coral Relocation and Monitoring Services).²
3. The second set of projects will cost \$800,000 and said projects consist of various FY2020 feasibility studies to ensure that PAG's Capital Improvement Projects ["CIP"] are aligned, planned, designed, and constructed as sound investments that proactively meet evolving cargo transshipment demands and changes in technology.³

¹ PAG Petition for Approval of Additional Costs for OAE Contract with WSP, PAG Docket 20-03 ["PAG Petition"], filed on January 16, 2020 at 1. NOTE: The page numbers expressed herein are based on the Petition's PDF stated page numbers which numerate all pages in an ascending order, from pages 1 thru 130, and said pagination does not necessarily reflect the inconsistent or non-existent page numbering used through the petition and the exhibits attached to it.

² Id., at 1.

³ Id., at 14.

BACKGROUND

3. The PAG/WSP OAE Contract is an Indefinite Delivery, Indefinite Quantity contract that is in its final option year and is set to expire on September 8, 2020.⁴ The contract's initial term was for one year and it had four options to renew for one year each for a total contract term of five years and the PUC approved this contract and its \$1,380,000 for Task Orders 1 and 2 on August 27, 2015.⁵ Since that time, the PUC has approved the Pag's expenditure of \$1,575,947 for six task additional orders under the contract.⁶ This has been a very important contract for PAG because the scale, complexity, and challenges imposed by completing PAG's Port Improvement Program ["PIP"] are unprecedented for PAG and require considerable technical expertise, capacity, and capability that is currently not present in PAG's organic staff and resources.⁷ PAG will be relying on the services of WSP, under this contract, to complete the additional projects that will increase the contract's costs by \$1,574,035.

4. The first set of projects involve PAG's H-Wharf. H-Wharf, which is also commonly known as Hotel Wharf, is a 500-foot-long waterfront structure that was constructed in 1948 by the U.S. military, was renovated sometime in the 1950s, and was used as the U.S. Navy's ammunition wharf throughout the Vietnam War. The U.S. Navy transferred H-Wharf to PAG in 1989 after constructing a new ammunition wharf on the north side of the Orote Peninsula. Between 1989 to 2001, PAG initially leased H-Wharf for various commercial activities such as cruise ship operations, administrative functions, fishing support operations, and recreational activities, and during the later years H-Wharf was used for PAG's scrap metal handling, vehicle import, and storage operations.⁸ PAG ceased its operations at H-Wharf after 2001 because H-Wharf had become structurally unsound. Currently, the maintenance and repair of H-Wharf and its access road is a high priority project for the PAG's PIP because a fully operational and safe H-Wharf is necessary to support PAG's increasing break bulk and bulk cargo handling operations, the PAG's support for potential military operations, and the PAG's cruise vessel mooring and passenger

⁴ Id., at 14 and 109.

⁵ PUC Order dated August 15, 2015, PAG Docket No. 15-05, at 7-8. NOTE: When PAG entered into the contract in 2015 it was with Parsons, Brinckerhoff, in 2017, Parsons, Brinckerhoff became WSP.

⁶ PUC Order dated August 30, 2018, PAG Docket 18-06 at 6.

⁷ PAG Petition at 106.

⁸ Id., at 69.

screening operations.⁹ This project will involve the replacement of the existing wharf cap, tie rods, and anchoring, as well as the installation of new sheet piles outside the existing face of the wharf.¹⁰

5. In addition to H-Wharf, the U.S. Government also transferred Cabras Island and Apra Harbor to the PAG, and PAG owns or asserts jurisdiction over the terrestrial and the submerged lands surrounding H-Wharf, and Dog Leg Pier located to the west of H-Wharf, and Outhouse Beach located to the east of H-Wharf.¹¹ PAG's H-Wharf maintenance and repair project will result in the loss of all marine communities attached to the existing submerged face of H-Wharf and within close proximity to its base. PAG's surveys indicate that there are more than 6,000 coral colonies that will be directly affected by the project and a significant number of them can be moved to adjacent hard bottom habitats that will not be affected by the project.¹²
6. The second set of projects concern the \$800,000 in grant funds that PAG received from a federal Office of Economic Adjustment ["OEA"] grant. PAG desires to use the grant funds for the following projects that it plans on having WSP complete under the contract in FY2020: (1) Program Management and Coordination; (2) The 2020 Master Plan; (3) Customs Inspection Feasibility Study; (4) Conceptual Planning and Development of a Scope of Work for A&E Design Services for the new Administrative Building Annex and Renovation of the Existing Administration Building; and (5) the Deep Draft Wharf and Fill Improvements Project Feasibility Study.¹³

ANALYSIS

8. The PUC's Contract Review Protocol for PAG mandates that PAG must obtain PUC approval for all professional service contracts in excess of \$1,000,000 and for any contract that exceeds the amount of \$1,000,000.¹⁴ Here, the additional \$1,574,035
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⁹ Id., at 56.

¹⁰ Id., at 31.

¹¹ Id., at 70.

¹² Id., at 31.

¹³ Id., at 14-15.

¹⁴ PUC Order re Contract Review Protocol for PAG, PUC Administrative Docket 09-01, filed on June 20, 2011 ["PAG Contract Review Protocol"] at paragraphs 1(c) and (e) at 1.

PAG is proposing for the PAG/WSP OAE Contract must be reviewed and approved by the PUC because it exceeds the protocol's \$1,000,000 review threshold.

9. The \$774,035 cost for the first set of projects are reasonable, prudent and necessary. As stated above, this cost is the total cost for four PAG Task Orders. The first three of these task orders will or have been performed by WSP or its consultants on a time and materials basis not to exceed the following described amounts and each of these task orders involve obtaining the necessary environmental permits for PAG to begin its H-Wharf maintenance and repair project. PAG Task Order 3.1 (Expanded H-Wharf Environmental Permitting Support Services) will cost up to \$153,650 and will continue the environmental permitting process that PAG began in 2018 for the H-Wharf project.¹⁵ PAG Task Order 3.1.R2 (Expanded H-Wharf Environmental Permitting Support Services Shifting from a CATEX Process to a Modified Environmental Assessment Process) will cost up to \$72,985 and involves the implementation of an expedited Environmental Assessment process to obtain permits required by the National Environmental Policy Act ["NEPA"] prior to September, 2019 to meet federal grant obligation deadlines.¹⁶ PAG Task Order 3.1.R3 (Expanded H-Wharf Environmental Permitting Support Services and H-Wharf Package Update) will cost up to \$64,700 and is the result of the Maritime Administration approving PAG's permits required by NEPA in July, 2019. These approvals require PAG, using WSP, to perform support and close out activities and to submit close-out reports and documentation to various regulatory agencies throughout 2020.¹⁷ The total cost of these permitting activities is \$291,335.
10. The remaining \$482,700 involves the most complex, delicate, and environmentally important requirement that PAG must complete prior to starting its H-Wharf maintenance and repair project. PAG Task Order 3.1.R4 (H-Wharf Coral Relocation and Monitoring Services) requires WSP to prepare a coral relocation plan, remove live coral colonies from the base and submerged face of H-Wharf, relocate them to existing submerged coral habitats to the west near Dog Leg Pier, and to the east, near Outhouse Beach, monitor them in their new locations at 6, 18, and 26 month intervals, and to survey an invasive species of coral that was found on the submerged face of H-Wharf.¹⁸ Specifically, dive teams will remove selected coral colonies from the submerged face and base of H-Wharf using hand tools, mainly hammers and chisels, place the removed coral colonies in plastic crates suspended

¹⁵ PAG Petition at 2.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id., at 4.

by surface floats, transport them to their new locations at similar depths in which they were found, and re-secure them to hard bottom substrate using Portland cement.¹⁹ Further, the coral monitoring program targets at least a 75% survival rate for the relocated corals after 6 months, and at least a 65% survival rate after 18 months.²⁰ Hence, the higher cost of this task order reflects the tedious and delicate nature of the work. Further, this project is absolutely necessary because the alternative, simply destroying the 6,000 coral colonies that currently live on the submerged base and face of H-Wharf, albeit a reduction in project costs, would not only be impermissible under the environmental permits PAG has or will obtain for the H-Wharf maintenance and repair project, but would be culturally and publicly unacceptable to the People of Guam.

11. PAG will pay for the \$774,035 cost for the first set of projects using funds from the 2018 Port Revenue Bond financing as the PAG's local match for the 2016 Transportation Investment Generating Economic Recovery grant award in the amount of \$10 million.²¹
12. The \$800,000 cost of PAG's second set of projects are also reasonable, prudent, and necessary. WSP will perform the Program Management and Coordination, 2020 Master Plan, Customs Inspection Feasibility Study and Conceptual Planning and Development of a Scope of Work for A&E Design Services projects on a time and materials basis not to exceed the amount of \$800,000.²² Further, these projects are necessary sub-parts to larger PAG's bond funded projects which are needed to implement PAG's Modernization Program.²³
13. Based on the foregoing, PAG's Petition for Approval of additional costs for the PAG/WSP OAE Contract is reasonable, prudent, and necessary.

RECOMMENDATION

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14. Counsel recommends that the PUC approve the \$1,574,035 of additional costs for the PAG/WSP OAE Contract.

¹⁹ Id., at 33.

²⁰ Id., at 83.

²¹ Id., at 2.

²² Id., at 14.

²³ Id., at 15.

PUC Counsel Report
PAG's Petition for Approval of Additional
Costs for OAE Services Contract with
WSP USA Inc.
PAG Docket 20-03
January 25, 2020

15. A Proposed Order is submitted herewith for the consideration of the
Commissioners.

Dated this 25th day of January, 2020.

Anthony R. Camacho, Esq.
PUC Legal Counsel