



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:

**PETITION FOR APPROVAL
OF OWNERS/AGENT
ENGINEERING SERVICES
AGREEMENT WITH
PARSONS BRINCKERHOFF.**

PAG DOCKET 15-05

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”) on August 11, 2015, whereby PAG requests review and approval of its contract for Owners/Agent Engineering Services with Parsons Brinckerhoff (hereinafter referred to as either “Parsons” or the “Consultant”).

BACKGROUND

On May 28, 2015, PAG began the solicitation process for Owners/Agent Engineering services through publication of RFP No. PAG-015-001 Owner/Agent Engineer Services in the *Marianas Variety*.¹ The RFP sought professional services and technical support in the areas of design and engineering services, program management, financial consulting and analysis, and other related services for PAG. In general, the RFP sought services related to the following: assistance with PAG’s 5-Year Tariff Petition before the PUC; assistance with PAG’s Capital Program, to include assistance with issuance of revenue bonds; implementation of a new Terminal Operating System by assisting with the TOS contract and task order negotiations;

¹ Evaluation Analysis and Recommendation Re: RFP-015-001 Owner/Agent Engineer Services (“Evaluation Analysis and Recommendation”), p. 1 (July 6, 2015); Petition by PAG for Review and Approval of Owners/Agent Engineering Services with Parsons Brinckerhoff (“Petition”), p. 1 (August 11, 2015).

assistance with studies related to rate adjustments and PUC petitions; and technical services during the construction phase of the Marine Service Life Extension Project at the Port's wharfs.² In addition, the RFP further sought services related to assisting with MARAD/PMT sponsored projects, which include renovations to building spaces, linking all communications infrastructure, automating the Gate Complex, maintenance programs, securing security grants, and various infrastructure projects; as well as other tasks required by the Port.³

Proposals were accepted through June 12, 2015.⁴ Thereafter, PAG's Evaluation Committee met and reviewed the proposals submitted pursuant to the RFP.⁵ Two firms submitted proposals.⁶ The Evaluation Committee ultimately selected Parsons pursuant to the members' evaluation and ranking of the submitted proposals.⁷

On July 6, 2015, PAG's Procurement and Supply Manager provided the General Manager with the Evaluation Analysis and Recommendation related to the subject contract. It indicated that Parsons ranked the highest and was the best qualified offeror to perform the required services and, therefore, further recommended that Parsons be given the first opportunity to negotiate with PAG.⁸

² RFP, "Attachment 1," pp. 1-3.

³ RFP, "Attachment 1," pp. 4-5.

⁴ Petition, p. 1; Evaluation Analysis and Recommendation, p. 1.

⁵ Petition, p. 1; Evaluation Analysis and Recommendation, p. 1.

⁶ Evaluation Analysis and Recommendation, p. 1.

⁷ Evaluation Analysis and Recommendation, p. 2.

⁸ Evaluation Analysis and Recommendation, p. 2.

On July 22, 2015, PAG's Board of Directors approved the contract award to Parsons for the professional and technical services, and further authorized PAG management to petition the PUC for review and approval of PAG's proposed contract with Parsons.⁹

DISCUSSION

A. Regulatory Review

Under 12 G.C.A. §12004,¹⁰ the PUC must expressly approve any contractual agreements or obligations which could increase PAG's rates and charges. In addition, under PAG's Contract Review Protocol, "[a]ll professional service contracts in excess of \$1,000,000" "shall require prior PUC approval"¹¹

B. Petition

In its Petition, PAG requests that the PUC review and approve the proposed Professional Services Agreement between PAG and Parsons.¹² PAG maintains that the subject agreement is instrumental to PAG's mission.¹³ Submitted with the Petition is a copy of the RFP, which contains the proposed Professional Services Agreement, along with a copy of the Memorandum of Agreement between PAG and the Office of the Governor (the "MOA"), PAG Board Resolution No. 2015-06, and the Evaluation Analysis and Recommendation and Record of Fee Negotiations related to the subject contract. PAG submits that through the MOA, the Office of Economic Adjustment has provided federal grant assistance in the amount of \$1,380,000 to

⁹ PAG Board Resolution No. 2015-06, p. 1 (July 22, 2015).

¹⁰ Renumbered as 12 G.C.A. § 12105.

¹¹ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

¹² Petition, p. 1.

¹³ Petition, p. 2.

fund the subject contract in order for PAG to complete “several components that are crucial to ensuring PAG’s financial sustainability.”¹⁴

PAG notes that the contract term is comprised of the following: a year-long initial term, with four (4) year-long options to renew, with the total contract term not to exceed five (5) years.¹⁵ In addition, PAG further notes that any amount that exceeds the federal grant amount will require prior approval or subsequent ratification by PAG’s Board of Directors.¹⁶ Also, the projects will be subject to the issuance of task orders, which shall be approved by PAG.¹⁷

C. Proposed Professional Services Agreement

The proposed Professional Services Agreement contains terms and conditions usually contained in PAG’s professional services agreements.

1. Contract Term

With respect to the term of the contract, as indicated above, the initial term is for a period of one (1) year with four (4) year-long options to renew, not to exceed a total of five (5) years.¹⁸ Any such renewal is conditioned on the availability of appropriated or budgeted funds; and should no funds be appropriated or budgeted, then the contract may be terminated.¹⁹

2. Scope of Services

Pursuant to the Scope of Services, the Consultant is required to assist PAG with the following: assistance with PAG’s 5-Year Tariff Petition before the PUC; assistance with

¹⁴ Petition, p. 1.

¹⁵ Petition, p. 2.

¹⁶ Petition, p. 2.

¹⁷ Petition, p. 2.

¹⁸ RFP, “Attachment 2” (“Proposed Contract”), p. 2.

¹⁹ Proposed Contract, p. 2.

PAG's Capital Program, to include tasks associated with the issuance of revenue bonds; implementation of a new Terminal Operating System ("TOS") by assisting PAG with the TOS contract and task order negotiations; assistance with studies related to rate adjustments and PUC petitions; and technical services during the construction phase of the Marine Service Life Extension Project at the Port's wharfs.²⁰ In addition, the Consultant will assist with MARAD/PMT sponsored projects, which include renovations to building spaces, linking all communications infrastructure, automating the Gate Complex, maintenance programs, securing security grants, and various infrastructure projects; as well as other tasks required by the Port.²¹

According to the Grant Application material, the following budget applies to the projects.

Technical Assistance Description	Calendar Year 2015	Calendar Year 2016
Mobilization	\$75,000	
5-Year Tariff Support	\$50,000	\$25,000
TOS/GOS Support	\$200,000	\$50,000
Support PUC Engagement Studies	\$40,000	\$40,000
Bond Issuance Support	\$20,000	\$20,000
SLE Support	\$200,000	\$0
Integrate/Coordinate MARAD/PAG PMP Initiatives & Cabras Island Coordination	\$400,000	\$260,000
Total by Calendar Year	\$985,000	\$395,000
Total Cost	\$1,380,000	

²⁰ RFP, "Attachment 1," pp. 1-3.

²¹ RFP, "Attachment 1," pp. 4-5.

D. Memorandum of Agreement

In the MOA between the Governor's Office and PAG, the parties found the following. PAG is presently "undertaking a major Modernization Program"; and that "the scale and complexity of this effort is unprecedented" and "requires considerable technical expertise."²² PAG requested through the Office of the Governor for funding assistance from the Office of Economic Adjustment to support ongoing technical services crucial to PAG financial stability; and in turn, the Office of Economic Adjustment approved PAG's request and awarded assistance in the amount of \$1,380,000.²³ The grant allows PAG to retain "professional consultants, in the form of an 'Owner's Agent Engineer' to obtain the expertise in a number of different engineering and management disciplines to deal with challenges associated with the military buildup and port modernization."²⁴

Pursuant to the MOA, PAG is required to monitor and manage the scope of work, timelines, and the Consultant's deliverables; and must provide the Office of the Governor with quarterly performance reports and invoices related to the Consultant's work.²⁵ PAG is further required to provide the Office of the Governor with requested deliverables, as well as comply with all federal grant award terms, conditions, and reporting requirements.²⁶ The Office of the Governor, on the other hand, will assist PAG by providing PAG with direction relating to requirements under the MOA.²⁷ The Office of the Governor will also work with PAG on task

²² MOA, p. 1.

²³ MOA, p. 1.

²⁴ MOA, p. 1.

²⁵ MOA, p. 2.

²⁶ MOA, p. 2.

²⁷ MOA, p. 2.

order updates, participate in meetings, review all reports or deliverables submitted by PAG and the Consultant, as well as manage all federal grant award reporting requirements.²⁸

With respect to payments, under the MOA, PAG will submit invoices from the Consultant to the Office of the Governor; the Office of the Governor will then reimburse PAG for expenditures associated with the Consultant's work.²⁹ Any fee outside the scope of work but negotiated with the Consultant will not be reimbursed unless prior written approval is obtained by the Office of the Governor and the Office of Economic Adjustment.³⁰ The MOA was executed by the Governor's Chief of Staff, BBMR, the AG's Office, and PAG.

E. Board Resolution

On July 22, 2015, PAG's Board of Directors issued Resolution No. 2015-06. In the Resolution, the Board found that PAG and the Office of the Governor entered into an MOA whereby the Office of Economic Adjustment would provide federal grant assistance to PAG in the amount of \$1,380,000 to fund professional and technical services related to the completion of critical components that would ensure PAG's financial stability.³¹

On July 22, 2015, the Board approved the contract award to Parsons for the professional and technical services, and further authorized PAG management to petition the PUC for review and approval of PAG's proposed contract with Parsons.³²

²⁸ MOA, p. 2.

²⁹ MOA, p. 2.

³⁰ MOA, p. 2.

³¹ PAG Board Resolution No. 2015-06, p. 1 (July 22, 2015).

³² PAG Board Resolution No. 2015-06, p. 1 (July 22, 2015)

CONCLUSION

The ALJ hereby finds that, based on the information provided by PAG, the terms and conditions of its professional services agreement with Parsons appear commercially reasonable and not burdensome. The ALJ further notes that the MOA between PAG and the Office of the Governor commits funds to PAG to complete the projects discussed herein and that such funding relieves ratepayers of any negative impact. Accordingly, based on the record before the Commission in the instant docket, and for the other reasons set forth herein, the ALJ finds that the subject contract, with its costs, terms and conditions, are reasonable.

RECOMMENDATION

The ALJ hereby recommends that the PUC approve the Professional Services Agreement between PAG and Parsons Brinckerhoff. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 25th day of August, 2015.



JOEPHET R. ALCANTARA
Administrative Law Judge