



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:) **PAG DOCKET 20-05**
)
 PETITION FOR APPROVAL)
 OF ADDITIONAL \$800,000.00)
 FOR PAG OWNER'S AGENT) **ORDER**
 ENGINEER SERVICES)
)
 _____)

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 June 23, 2020, whereby PAG requests review and approval of an additional \$800,000.00 to its Owners/Agent Engineering Services contract with WSP USA, Inc. formerly known as Parsons Brinckerhoff (hereinafter referred to as "WSP").

On July 27, 2020, 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

The Owners/Agent Engineering Services ("OAE") contract was procured back in 2015. The RFP for the contract 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;

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.¹

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.² Eventually, Parsons Brinckerhoff, now WSP, was awarded the contract. On August 27, 2015, the PUC authorized PAG to enter into a contract with WSP.³

Recently, on January 16, 2020, PAG sought approval of about \$1.574 million in additional funding for its OAE contract. This amount included an \$800,000.00 grant from the federal Office of Economic Adjustment. About \$774,000.00 was allocated to H-Wharf projects, such as coral removal and relocation. And the money from the federal grant would fund certain projects, which included program management and coordination, updates to PAG's Master Plan, certain feasibility studies, and certain architectural and design services.⁴ On January 30, 2020, the PUC approved the additional cost to PAG's OAE contract.⁵

In February of this year, PAG submitted a grant application to the Office of Economic Adjustment requesting additional funding.⁶ In March, PAG was notified from the

¹ Petition, PAG Docket 15-05, RFP, "Attachment 1," pp. 1-3 (Aug. 11, 2015).

² Petition, PAG Docket 15-05, RFP, "Attachment 1," pp. 4-5.

³ Order, PAG Docket 15-05, p. 8 (Aug. 27, 2015).

⁴ Order, PAG Docket 20-03, pp. 5-6 (Jan. 30, 2020).

⁵ Order, PAG Docket 20-03, p. 6.

⁶ PAG Board Resolution No. 2020-03, p. 1 (June 9, 2020).

Office of Economic Adjustment that it had been awarded \$800,000.00 in additional funds to supplement the original grant.⁷

A. Regulatory Review

Under 12 G.C.A. §12105, 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"⁸

B. Petition

In its Petition, PAG requested that the PUC review and approve the additional \$800,000.00 contract amount for the Professional Services Agreement between PAG and WSP.⁹ This amount, which is wholly federally funded, supplements an original grant award, and covers services for calendar years 2020 and 2021.

According to the "Special Conditions" indicated in the new grant award, the additional funds "is not severable from the original OEA award"¹⁰ Therefore, according to PAG, it intends on utilizing all of the grant money, both the original award and the supplement award, "to retain WSP" in order to "continue the implementation of the PAG's Port Modernization Program"¹¹

⁷ PAG Board Resolution No. 2020-03, p. 1.

⁸ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁹ Petition, PAG Docket 20-05, p. 1 (June 23, 2020).

¹⁰ Petition, PAG Docket 20-05, p. 1.

¹¹ Petition, PAG Docket 20-05, p. 1.

PAG submitted that utilizing the federal funding in this way will “ensure”: the progress of its modernization projects; that its operations are sustainable for both near and long-term; and that “the Department of Defense assistance is soundly sustained.”¹²

PAG further submitted that the \$800,000.00 supplemental funding will be used for ten (10) subtasks: Program Management and Coordination; a 2020 Master Plan update; Wharf Service Life Extension; STS Crane Program Support; Future Tariff Analysis; IT Support; Environmental Programs; CIP Program Support; Health and Safety Programs; and a Deep Draft Wharf and Fill Improvements Project Feasibility Study.¹³

A list of the services and deliverables are provided in the Petition. For instance, with regard to the 2020 Master Plan Update, \$3,288.00 of the supplemental assistance will fund a shortfall.¹⁴ With regard to Wharf Service Life Extension, one item includes developing scopes of work for conducting inspections and design work for any repairs.¹⁵

With regard to STS Crane Program Support, the contractor will continue to work with the Port to improve crane maintenance and procedures.¹⁶ With respect to Future Tariff Analysis, the contractor will be required to provide an annual update to the financial modeling related to tracking the Port’s financial performance; it will also assist in preparing the necessary material and engagement for any new tariff petitions.¹⁷

¹² Petition, PAG Docket 20-05, p. 1.

¹³ Petition, PAG Docket 20-05, p. 2.

¹⁴ Petition, PAG Docket 20-05, p. 3.

¹⁵ Petition, PAG Docket 20-05, p. 3.

¹⁶ Petition, PAG Docket 20-05, p. 3.

¹⁷ Petition, PAG Docket 20-05, p. 3.

With respect to CIP Program support, in addition to assisting with various construction projects, the target deliverables include providing written procurement recommendations, scopes of works, and bid item and bid evaluation sheets.¹⁸ With respect to health and safety, the contractor will be required to provide mentorship to key Port personnel, provide training to employees, and to conduct job hazard analyzes, to name a few.¹⁹

Several tasks were identified with respect to the Deep Draft Wharf and Fill Improvement Project. The primary task would be to perform a feasibility study on the financial and operational impact of this particular project on the Port.²⁰ This project concerns the construction of a 15,500 linear feet deep-draft wharf along the Glass breakwater in Apra Harbor and to fill approximately 17 acres of reclaimed land in three shallow embayments within Apra Harbor.²¹ The contractor will also be engaged to consider performing a new Environmental Impact Statement.²² Further, there are tasks that include providing the Port with support for its cyber security project; introduction of management reporting systems; and developing a Resource Conservation and Recovery Act contingency plan.²³

In response to a Request for Information issued by the ALJ, the Port has indicated that the proposed budgets are estimates and that the budgets related to the tasks may be revised pending the Port's negotiations with its contractor. Further, as further indicated in its grant application, PAG's estimates were derived from its recent estimates and negotiations with WSP.

¹⁸ Petition, PAG Docket 20-05, p. 4.

¹⁹ Petition, PAG Docket 20-05, p. 5.

²⁰ Petition, PAG Docket 20-05, p. 5.

²¹ Petition, PAG Docket 20-05, p. 5.

²² Petition, PAG Docket 20-05, p. 5.

²³ Petition, PAG Docket 20-05, p. 4.

C. Board Resolution

On June 9, 2020, PAG's Board of Directors issued Resolution No. 2020-03. In the Resolution, the Board authorized PAG to petition the PUC for approval of the use of the \$800,000.00 supplemental OEA program assistance for the WSP contract.²⁴

CONCLUSION

In its grant application materials, PAG has indicated that with the Office of Economic Adjustment's assistance, "[t]o date, the Port continues to make major advances in the implementation of the Port Modernization Program, with the assistance of the professional and technical services of its OAE" and that the funding assistance to pay for this contractor "has been instrumental to the Port's progress and accomplishments"

In PAG Docket 20-03, this Commission has highlighted the significance of the WSP OAE contract and has noted that it "has been a very important contract for PAG because the scale, complexity, and challenges imposed by completing PAG's Port Improvement Program are unprecedented for PAG and require considerable technical expertise, capacity, and capability that is currently not present in PAG's organic staff and resources."²⁵

Indeed, in a Memorandum of Agreement between the Governor's Office and PAG related to the subject contract ("MOA"), which this Commission has previously reviewed, the parties have noted that PAG is presently "undertaking a major Modernization Program"; and that "the scale and complexity of this effort is unprecedented" and "requires considerable technical expertise."²⁶ The grant allows PAG to retain "professional consultants, in the form of an

²⁴ PAG Board Resolution No. 2020-03, p. 1 (June 9, 2020).

²⁵ Order, PAG Docket 20-03, p. 2 (Jan. 30, 2020).

²⁶ Petition, PAG Docket 15-05, MOA, p. 1 (Aug. 11, 2015).

‘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.”²⁷

In addition, such funding relieves ratepayers of any negative impact related to PAG’s modernization efforts. Accordingly, based on the record before the Commission in the instant docket, and for the other reasons set forth herein, the ALJ found that the projects outlined in the Petition are reasonable, prudent, and necessary; and that the use of the supplemental funding for the subject contract is reasonable, prudent, and necessary.

The ALJ thereby recommended that the PUC approve an additional \$800,000.00 to its Owners/Agent Engineering Services contract.

The Commission hereby adopts the findings made in the July 27, 2020 ALJ Report, and therefore, issues the following.

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. PAG's Petition for review and approval of an additional \$800,000.00 to its Owners/Agent Engineering (“OAE”) Services contract is hereby approved.

2. ~~PAG is hereby authorized to expend an additional \$800,000.00 for its~~
OAE Services contract solely for the projects itemized in its Petition.

²⁷ Petition, PAG Docket 15-05, MOA, p. 1 (Aug. 11, 2015).

3. PAG shall adhere to the conditions and requirements set forth in the notices of award corresponding to the federal grants awarded to it by the Office of Economic Adjustment.

4. PAG 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 30th day of July, 2020.

JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



DORIS FLORES BROOKS
Commissioner

P203019.JRA