

BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:)
)
) **PETITION FOR APPROVAL**)
) **OF AWARD TO WSP USA, INC.**)
) **FOR THE OWNER AGENT**)
) **ENGINEER TECHNICAL**)
) **CONSULTING SERVICES**)
) **BY PORT AUTHORITY**)
) **OF GUAM**)
)

PAG DOCKET 21-05

ALJ REPORT

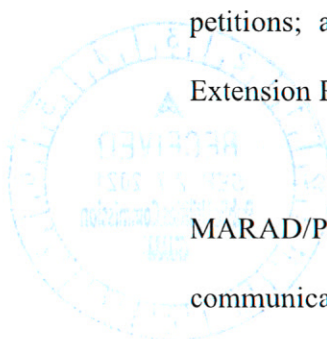


INTRODUCTION

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 September 2, 2021, whereby PAG requests review and approval of a contract award to WSP USA Inc. (hereinafter referred to as “WSP”) for PAG’s Owner’s Agent Engineer Contract (the “Petition”), which will provide technical consulting services to the Port.

BACKGROUND

The history of the Owner’s Agent Engineering Services (“OAE”) contract dates back to 2015. The Request for Proposal (“RFP”) for the first OAE contract sought professional services and technical support in the areas of design and engineering, program management, financial consulting and analysis, and other related services for PAG. In particular, the RFP sought services related to: 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 (“TOS”) 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, that 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

According to PAG, "[t]he appointment of an OAE Services Contract is critical to PAG's day-to-day operations."³ "The Port, in collaboration with the Office of the Governor of Guam ("OOG"), and the assistance of the Office of Economic Adjustment ("OEA"), has determined that there is a need for procuring qualified professional maritime services for an OAE for the Port."⁴ According to the Port, "[t]he scale, complexity, and challenges of the [Port Improvement Program] was and continues to be unprecedented for the Port and requires considerable professional and technical expertise, capacity and capability not currently present . . . within the Port's in-house staff and resources."⁵

On June 16, 2021 the Port issued RFP No. PAG-021-003, which solicited the services of qualified contractors who could provide PAG with technical consulting services.⁶

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 PAG's Determination of Need, RFP No. PAG-021-003, p. 1 (Apr. 28, 2021); PAG's Memo Re: Determination of Planning, RFP No. PAG-021-003, p. 1.

⁴ PAG's Determination of Need, RFP No. PAG-021-003, p. 1; PAG's Memo Re: Determination of Planning, RFP No. PAG-021-003, p. 1.

⁵ PAG's Determination of Need, RFP No. PAG-021-003, p. 1; PAG's Memo Re: Determination of Planning, RFP No. PAG-021-003, p. 1.

⁶ Petition, p. 1.

While eleven (11) prospective offerors requested an RFP packet, only one vendor submitted a proposal on July 7, 2021.⁷

On July 23, 2021, an evaluation committee evaluated and scored WSP's proposal, giving WSP a score of 489 out of a possible 500 points.⁸ Thereafter, a cost negotiations committee met with WSP to discuss rates, task orders, and deliverables.⁹

On July 29, 2021, PAG's Board of Directors issued Resolution No. 2021-08, which approved the proposed contract and award to WSP, subject to successful cost negotiations between the parties.¹⁰ Cost negotiations concluded on August 16, 2021; and a Letter of Acceptance issued, summarizing the cost negotiations, rates, fees, and terms of the contract.¹¹

DISCUSSION

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"¹²

B. Scope of Work

According to the Scope of Work, the OAE will provide Program Management Support and Capital Improvement Program construction technical services, which shall include

⁷ Petition, p. 1.

⁸ Petition, p. 1.

⁹ Petition, p. 1.

¹⁰ Resolution, p. 1.

¹¹ Petition, p. 2.

¹² Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

projects such as the Hotel Wharf and Access Road Maintenance and Repair; Golf Pier Structural Repair; Warehouse #1; Water Line Repair and Replacement; and the Administration Building Renovation and Annex Construction, just to name a few.¹³ The OAE will also provide support to PAG's operations and any Program Management Contractor related to the maintenance, repair and replacement of PAG's Ship-To-Shore Gantry Cranes.¹⁴

The OAE is also tasked with providing the Port with Information Technology ("IT") support. These responsibilities include advising PAG on strategic issues related to cargo operations and IT; providing support for the upgrade of the Terminal Operating System and other modules; providing support for PAG's Financial Management System upgrade project and integration of the Terminal Operating System; providing support for cyber security; providing assistance for the procurement of a Gate Operating System, to name a few.¹⁵

The OAE will also provide PAG with support to continue to develop and maintain PAG's Environmental, Health, and Safety Program. These tasks will include providing PAG employees with health and safety training; and reviewing the health and safety components of PAG's construction projects.¹⁶ Finally, the OAE will provide technical support related to the rehabilitation and safe use of the Port's marine structures, under the Port's Wharf Service Life Extension program.¹⁷

The contract is for a term of two years, with three year-long options for renewal. The contract will be mostly funded by a federal grant, issued by the Office of Local Defense

¹³ Scope of Work, PAG RFP No. 021-003, p. 2.

¹⁴ Scope of Work, PAG RFP No. 021-003, pp. 2-3.

¹⁵ Scope of Work, PAG RFP No. 021-003, p. 3.

¹⁶ Scope of Work, PAG RFP No. 021-003, p. 3.

¹⁷ Scope of Work, PAG RFP No. 021-003, p. 3.

Community Cooperation, of \$1,500,000.00, with the remaining \$100,000.00 to be supplemented by the Port's funds.¹⁸

C. Other Supporting Documents

In March of this year, PAG and the Office of the Governor prepared a Memorandum of Agreement ("MOA") outlining PAG's use of the \$1,500,000.00 federal grant, issued by the Office of Local Defense Community Cooperation, for the subject OAE contract. Pursuant to the terms of this MOA, PAG agrees to use the funding for the work indicated in the grant application, namely for the projects listed under the Scope of Work for the OAE. In addition, in the Notice of Award for the federal grant issued by the Office of Local Defense Community Cooperation, PAG is required to use these funds for the projects described in the application, namely the Scope of Work for the OAE.

D. Board Resolution

On July 29, 2021, PAG's Board of Directors issued Resolution No. 2021-08. In the Resolution, the Board approved the contract award to WSP, at a cost of \$1,600,000.00, conditioned on the successful cost negotiations between the parties. The Board further authorized PAG to petition the PUC for approval of the OAW contract to WSP.¹⁹

CONCLUSION

In its grant application materials, PAG has indicated that "[t]he scale, complexity, and challenges of the [Port Improvement Program] was and continues to be unprecedented for the Port and requires considerable professional and technical expertise, capacity and capability not currently present . . . within the Port's in-house staff and resources." The Port has expressed

¹⁸ PAG's Determination of Need, RFP No. PAG-021-003, p. 1 (Apr. 28, 2021)

¹⁹ PAG Board Resolution No. 2020-03, p. 1 (June 9, 2020).

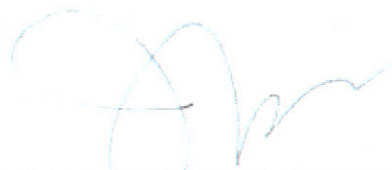
that “[i]t is paramount for the PAG to continue to engage the services of a professional maritime consultant as its OAE to build upon what has been accomplished and to maintain continuity and momentum in the modernization efforts of the PAG”

The federal funding for this contract relieves ratepayers a little bit of the 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 finds that the contract award to WSP, as outlined in the Petition, procurement, and supporting documents, is reasonable, prudent, and necessary.

RECOMMENDATION

The ALJ hereby recommends that the PUC approve PAG’s OAE contract with WSP at a cost of \$1,600,000.00. A proposed Order is submitted herewith for the Commissioners’ consideration.

Dated this 27th day of September, 2021.



JOEPHET R. ALCANTARA
Administrative Law Judge



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

MEMORANDUM TO FILE

TO: Procurement Record

FROM: General Manager, Port Authority of Guam

Subject: Planning and Justification for Appointment of Owner's Agent Engineer

The following determination is made to justify the Port Authority of Guam's ("the Port") record of planning and justification for approval of the above referenced procurement:

1. Determination of Need and Record of Planning:

The Port, in collaboration with the **Office of the Governor of Guam ("OOG")**, and the assistance of the **Office of Economic Adjustment ("OEA")**, has determined that there is a need for procuring qualified professional maritime services for an **Owner's Agent Engineer ("OAE")** for the **Jose D. Leon Guerrero Commercial Port of Guam** (the "**Port**"). The Port is responsible for implementing modernization initiatives through the identification, development, implementation and completion of major **Port Improvement Program ("PIP")** projects that enhance the resiliency, sustainability and core capabilities of the Port. An OAE is critical for the Port to comply with its obligations.

The Port's need and record of planning is documented by its maintaining a contract with an OAE since September 8, 2020, by the Market Research Surveys, the Port Authority of Guam **Owner's Agent Engineer Construction Technical Oversight Services Scope of Work ("SOW")** and related documents contained in the recently canceled and earlier procurements.

Accordingly, it is my determination that Port and the people of Guam greatly benefit from an OAE providing professional maritime services for the operations of the Port.

The scale, complexity, and challenges of the PIP was and continues to be unprecedented for the Port and requires considerable professional and technical expertise, capacity and capability not currently present (discussed further herein) within the Port's in-house staff and resources. The Port has determined that using a **Request for Proposals ("RFP")** to select an OAE is in the best interest of Guam for reasons that include, but are not limited to, the following:

- Program Management Support, Capital Improvement Program Construction Oversight Services, Ship to Shore Crane Program Support Information Technology and Environmental Health & Safety Support, Wharf Service a Life Extension and other support services are all enhanced with the Port contracting with an OAE.

- A review was made of the Port's current staffing and it was confirmed that the Port does not currently have the required experienced or licensed individuals and equipment to perform the scope of services of an OAE.
- Using an RFP process allows the Port to select a responsible professional maritime consultant who can and will provide all OAE services needed for the Port in a timely and professional manner.


Accordingly, it is my determination that the Port shall select a best qualified professional maritime consultant based on submittals and through the evaluation process as outlined in the RFP. The need or plan for maritime consultant services will be governed by the RFP and **Indefinite Delivery Indefinite Quantity ("IDIQ")** contract documents.

2. Determination of Need for Long Term Contract and Relationship with the OAE:

The Port's need for OAE services are unique and warrant a contract term for more than one year in order to maximize costs and other resources. One of the primary reasons in selecting the contract term is to minimize delays, managing project costs, contractor claims, the availability of contractors and workloads and avoiding inconveniencing the public. The Port currently has a number of contracts and projects all of which has to be coordinated with the availability of funds all of which, such as with the RFP, mandate the need for flexibility and contract terms greater than one year. For the reasons stated herein I have determined that an initial contract term of two (2) years, with the Port reserving three (3) options to extend said initial and extended term one year each, as applicable, is reasonable and serves the best interests of the Port and Guam for the current RFP. It is also determined that the preferred relationship with the Port and the OAE is that of an independent contractor.

Finally, these determinations are made for the current RFP only.


RORY J. RESPICIO
General Manager


THOMAS P. KEELER
Assistant Attorney General

Cc: PAG Board of Directors



PORT OF GUAM
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Lourdes A. Leon Guerrero
Governor of Guam
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Lieutenant Governor

DETERMINATION OF NEED

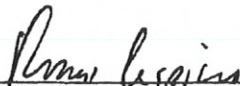
OWNER'S AGENT ENGINEER CONSTRUCTION TECHNICAL OVERSIGHT SERVICES

As the Port Authority of Guam (PAG) continues with its modernization and improvement program, it recognizes the necessity and value of an Owner's Agent Engineer (OAE) contract. As the only commercial seaport serving the island of Guam and as a transshipment hub for goods and services to the surrounding Micronesia Region island communities, we must ensure the uninterrupted free flow of commerce while implementing these modernization projects.

The scale, complexity, and challenges of the program was and continues to be unprecedented for the PAG and requires considerable professional and technical expertise not currently present within the Port's in-house staff and resources. It is paramount for the PAG to continue to engage the services of a professional maritime consultant as its OAE to build upon what has been accomplished and to maintain continuity and momentum in the modernization efforts.

It should be noted that \$100,000.00 has been allocated from the Port's FY 2021 budget to procure the professional and technical services of an OAE. In addition, the PAG was awarded \$1,500,000.00 federal grant funding from the Office of Local Defense Community Cooperation (OLDCC) through the Governor of Guam. This combined funding of \$1,600,000.00 will be used toward the contract of the selected OAE.

To ensure continuity of services, the contract will have an initial term of two (2) years, with three (3) one year options, subject to funding availability.



RORY J. RESPICIO, General Manager

4/28/2021

Date

CC: Procurement File

DETERMINATION
OF NEED

Port of Guam, Jose D. Leon Guerrero Commercial Port is an Equal Employment Opportunity Employer.
Complaints of discrimination should be sent to the Human Resources Division.

**MEMORANDUM OF AGREEMENT
BETWEEN THE
OFFICE OF THE GOVERNOR OF GUAM
AND THE
PORT AUTHORITY OF GUAM**

This MEMORANDUM OF AGREEMENT (MOA) is entered into by and between the OFFICE OF THE GOVERNOR, Government of Guam (hereinafter referred to as the "OOG"), whose address is 513 W. Marine Corps Drive, Ricardo J. Bordallo Governor's Complex Adelup, Hagatna, Guam 96910, and the PORT AUTHORITY OF GUAM, (hereinafter referred to as "PAG"), whose address is 1026 Cabras Highway, Piti, Guam 96915.

This MOA is a subaward of Federal Award No. HQ00052110003, an award for the "Port Authority of Guam Construction Technical Oversight Services". Federal Award No. HQ00052110003 and its terms and conditions are attached to the MOA as "Exhibit A". The description of duties to be performed for OOG by the PAG are outlined in the Scope of Work for the Port Authority of Guam Construction Technical Oversight Services, attached to this MOA as "Exhibit B". The PAG will issue a new competitive Request for Proposal (RFP) for an Owner's Agent Engineer (OAE), and an Indefinite Delivery Indefinite Quantity (IDIQ) Contract to perform this Scope of Work.

Effective Date of the Memorandum of Agreement:

The Subaward Period of Performance is March 1, 2021 to August 31, 2022. However, this MOA shall only be effective upon the signature of the Governor of Guam, and performance of the MOA will begin on or after the effective date.

Office of the Governor agrees to:

1. Subaward the sum of \$1,500,000 to the PAG to execute the Port Authority of Guam Construction Technical Oversight Services in FY20-21 through a work request following the date this MOA becomes effective. Funds for this project are provided under Federal Award No. HQ00052110003 (Exhibit A). Tasks to be performed by PAG are outlined in the attached Scope of Work (Exhibit B).
2. Compensate PAG for tasks performed under the Scope of Work (Exhibit B) in accordance with Federal Award No. HQ00052110003 and upon receipt of the deliverables outlined in the Scope of Work (Exhibit B).
3. Execute and manage and submit all Federal Grant Award Reporting requirements for Federal Award No. HQ00052110003 to the Office of Local Defense Community Cooperation.
4. Review and process invoices received for reimbursement through the Department of Administration (DOA) and submit payment requests to Grantor for reimbursement.

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5. Close out the award when all applicable administrative actions and all required work of the award has been completed by PAG, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

Port Authority of Guam agrees to:

1. Utilize the sum of \$1,500,000 to cover costs of tasks performed as outlined in the Scope of Work (Exhibit B) to accomplish the objectives as outlined in Federal Award Number HQ00052110003 (Exhibit A).
2. Timely perform all tasks listed in the Scope of Work (Exhibit B).
3. Establish and maintain financial reports to accurately account for funds awarded under this MOA. PAG further agrees to submit a report of its expenditures made under this subaward to be included in the final report submitted by OOG.
4. Comply with all applicable terms and conditions of Federal Award Number HQ00052110003. General Terms and Conditions of Federal Award Number HQ00052110003 attached to this MOA as Exhibit A. All applicable terms, conditions, provisions and agreements set forth in Federal Award Number HQ00052110003 and Exhibit A are hereby incorporated in this MOA by reference with the same force and effect as though fully set forth herein. To the extent that any of the terms set forth in this MOA are inconsistent with any of the applicable terms, provisions, or conditions of Federal Award No. HQ00052110003, their terms of the Federal Award shall govern.
5. Comply with all applicable requirements set forth under 2 CFR Part 200. To the extent that any of the terms set forth in this MOA are inconsistent with any of the applicable terms, provisions, or conditions of 2 CFR Part 200, the requirements of 2 CFR Part 200 shall govern.
6. Permit the OOG, the Office of Local Defense Community Cooperation, Department of Defense, or any of their authorized representatives, and any auditors of any of these entities to have ongoing access to its records and financial statements as necessary to meet the requirements of Part 200, Subpart D § 200.300 Statutory and national policy requirements through 200.309 Period of Performance and Subpart F-Audit Requirements. The Department of Defense, Inspectors General, the Comptroller General of the United States, and the Office of the Governor, or any of their authorized representatives, shall have the right of access to any pertinent documents, papers, or other records of PAG and any other subrecipients which that are pertinent to the Federal Award or this subaward, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the PAG and any other subrecipients' personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period, but as long as the records are retained.

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7. Comply with 2 CFR § 200.333 (Retention requirements for records): Financial records, supporting documents, statistical records, personnel records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient.
8. Allow the Office of Local Defense Community Cooperation to conduct periodic site visits, at its own expense, to review project accomplishments and monitor progress, to review financial and performance records, organizational procedures and financial control systems and to provide technical assistance as required. The Office of Local Defense Community Cooperation will make every effort to notify OOG or PAG at least two weeks in advance of any trip to the Office of Local Defense Community Cooperation funded project location. If the Office of Local Defense Community Cooperation makes any site visit on the premises of OOG or PAG, or any other subrecipients or subcontractors, the OOG and PAG must provide, and must require any other subrecipients or subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of government officials in the performance of their duties. All site visits and evaluations are expected to be performed in a manner designed to not unduly delay the implementation of the project.
9. Establish and maintain financial records to accurately account for funds awarded under this MOA.
10. Incorporate all applicable terms and conditions of Federal Award No. HQ00052110003 into all contracts and subcontracts procured with these Federal Award funds.
11. Insert into all contracts and subcontracts procured with these Federal Award funds all applicable contract clauses described in 2 CFR § 200.326, Appendix II – Contract Provisions for Non-Federal Entity Contracts under Federal Awards.
12. Comply with 2 CFR § 200.322, "Procurement of recovered materials," and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; to include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeds \$10,000, procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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13. Submit invoices to the Office of the Governor for reimbursement of funds for work completed under the project. Final and all invoices are due 30 days after the expiration date of the grant. Final payment will be given upon completion of the work.
14. Comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. This certification is a material representation of fact upon which reliance was placed when this certification was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, as amended, Title 31, US Code. 16. Comply with applicable requirements set forth under the Department of the Interior regulations at 2 CFR 1400—Government-wide Debarment and Suspension (Non-Procurement), which adopt the common rule for the government-wide system of debarment and suspension for non-procurement activities, are hereby incorporated by reference and made a part of this subaward.
15. Comply with applicable requirements set forth under the Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Non-Procurement), which adopt the common rule for the government-wide system of debarment and suspension for non-procurement activities are hereby incorporated by reference and made a part of this subaward.

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16. Comply with the requirements set forth under the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) discriminating against individuals with disabilities.
17. Comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.
PAG and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b). The Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the project activities, Scope of Work, and services under this MOA. PAG shall not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age or disability. PAG will take whatever steps are necessary to ensure that its employees are treated equally during employment without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. In the event a federal or local court or local administrative agency makes a finding of discrimination, after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, PAG will forward a copy of the decision or finding to the Office of Civil Rights Compliance (OCRC).
18. Comply with Title V of the Anti-Drug Abuse Act of 1988, 34 CFR Part 85, Subpart F; and the regulations promulgated by the federal government to maintain a drug-free work place.
19. Reimburse the account for any ineligible expenses that may have incurred using subaward funds.
20. Submit in writing to OOG any requests for extension of the subaward no later than 60 days of the subaward's expiration date.
21. Provide other assistance as mutually agreed upon in writing.

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Modifications Scope of Work as outlined Exhibit B:

The tasks as outlined in Federal Award No. HQ00052110003 (Exhibit A) and the Scope of Work of this MOA may only be modified in accordance with the Terms and Conditions of Federal Award No. HQ00052110003. Any change in the approved Scope of Work or project budget must be submitted to the grant manager of the Federal Award for approval. Changes shall not be implemented until the Grant Manager sends written approval.

Pass-through Requirements of 2 CFR 200.331:

1. This MOA is a subaward of a federal award received from the US Department of Defense, Office of Local Defense Community Cooperation by the Office of the Governor to the Port Authority of Guam.
2. Subrecipient: Port Authority of Guam
3. Subrecipient's DUNS Number: 779911338
4. Federal Award Identification Number: HQ00052110003
5. Federal Award Date: February 18, 2021
6. Subaward Period of Performance: Estimated Start date: March 1, 2021
Estimated End date: August 31, 2022
7. Amount of Federal Funds Obligated by this Subaward: \$1,500,000
8. Total Amount of Federal Funds Obligated to the subrecipient by the Pass-Through Entity including the Current Obligation: \$3,100,000
9. Total Amount of the Federal Award: \$1,500,000
10. Federal Award Project Description: Port Authority of Guam Construction Technical Oversight Services
11. Name of Federal Awarding Agency: Office of Local Defense Community Cooperation (OLDCC), DoD
12. Name and Contact Information for Awarding Official: Gary Kuwabara, OLDCC Western Federal Regional Director; Office of Economic Adjustment 1325 J. St., Suite 1500 Sacramento, Ca 95814

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Port Authority of Guam Construction Technical Oversight Services

13. CFDA Number and Name: 12.618 Community Economic Adjustment Assistance for Establishment or Expansion of a Military Installation
14. Name of Pass-through Entity: Office of the Governor of Guam
15. Pass-through Entity Contact Information: Jon Junior Calvo
Federal Awarding Official: Office of the Governor, Chief of Staff
513 W. Marine Corp Drive
Ricardo J. Bordallo Governor's Complex
Hagatna, Guam; 671-472-8931
16. Indirect Cost Rate: 0%
17. Research & Development Award? No
18. The Federal Awarding Agency or OOG will close out the Federal Award when it determines that all applicable administrative actions and all required work of the Federal Award have been completed:
- a. PAG shall submit to OOG, no later than 45 calendar days after the end of the period of the performance, all financial, performance, and other reports as required by the terms and conditions of this subaward and the Federal Award. The Federal Awarding Agency or OOG may approve extensions requested by the PAG.
 - b. Unless the Federal Awarding Agency authorizes an extension, OOG will liquidate all obligations incurred under the subaward or the Federal Award no later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of this MOA or the Federal Award.
 - c. The Federal Awarding Agency or OOG must make prompt payments to PAG for allowable reimbursable costs under the Federal Award being closed out.
 - d. PAG will promptly refund any balances of unobligated cash that OOG paid in advance or paid and that are not authorized to be retained by OOG for use in other projects. (OMB Circular A-129 and § 200.345 Collection of Amounts Due).
 - e. Consistent with the terms and conditions of the Federal Award, the Federal Awarding Agency or OOG must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received. PAG agrees to comply with this condition.
 - f. PAG will account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 200.310 Insurance

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Coverage through § 300.316 Property Trust Relationship and § 200.329 Reporting on Real Property.

- g. The Federal Awarding Agency or OOG should complete all closeout actions for Federal Awards no later than one year after the receipt and acceptance of all required final reports. PAG agrees to comply with this condition.

19. The Federal Awarding Agency or OOG may terminate (de-obligate) PAG's subaward funding for the following reasons:

- Failure to make satisfactory progress towards the goals, objectives, or strategies set forth in the Scope of Work for this project;
- Failure to adhere to the requirements in the agreement, standard conditions, or special conditions of Federal Award No. HQ00052110003 or this MOA;
- Filing of a false certification or other report or documents;
- Failure to submit interim financial reports, interim performance reports, a final financial report, and a final performance report by the due dates indicated in the table below:

Report Title	Report Period	Due Date
Performance Report	Quarterly	2021-06-30
Performance Report	Quarterly	2021-09-30
Performance Report	Quarterly	2021-12-31
Performance Report	Quarterly	2022-03-31
Federal Financial Report	Quarterly	2022-03-31
Performance Report	Quarterly	2022-06-30
Federal Financial Report	Quarterly	2022-11-30
Financial Performance Report	Quarterly	2022-11-30

It is Mutually Agreed That:

Both the Office of the Governor and the Port Authority of Guam certify that they will comply with all applicable Guam and federal laws, statutes, regulations, and requirements as they relate to this project. This MOA may be terminated at any time by the Office of Local Defense Community Cooperation, or the Office of the Governor of Guam if it is determined that cause exists to terminate this subaward or the Scope of Work is not being carried out in compliance with the terms of this MOA or the terms and conditions of the Federal Award.

The terms and conditions of this MOA subaward may only be amended, modified, cancelled for lack of funds, or terminated in accordance with the terms and conditions of Federal Award No. HQ00052110003 and the provisions of 2 CFR Part 200.

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This MOA subaward may be extended in accordance with the Terms and Conditions of Federal Award No. HQ00052110003 and the provisions of 2 CFR Part 200. If OOG elects to extend this MOA, the Extension Term shall be exercised through the execution of an Amendment of the MOA, duly executed by all required parties, as approved by the Federal Awarding Agency, as required by either the Terms and Conditions of Federal Award No. HQ00052110003 or 2 CFR § 200.308.

This MOA shall expire, unless cancelled for lack of funds or earlier terminated, upon either: 1) the expiration of the original term, if no extension is exercised; or 2) upon the expiration of any duly approved subsequent extension Term exercised by OOG. The PAG will return any unexpended funds received under this MOA to the OOG.

This MOA subaward may be signed by the parties hereto in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

Memorandum of Agreement
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*IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement effective
the day and year the Governor of Guam affixes her signature*

**OFFICE OF THE GOVERNOR OF
GUAM**

By: _____
Jon Junior Calvo
Chief of Staff

Date: _____

**OFFICE OF THE GOVERNOR OF
GUAM**

Certified Funds Available:

By: _____
Vera Topasna
Executive Director Certifying Officer
Guam Buildup Office

Date: _____

Account Number: 5101H210201PA125
Amount: \$ 1,500,000.00

PORT AUTHORITY OF GUAM

By: _____
Rory J. Respleio
General Manager

Date: 3/19/2021

By: _____
Christine K. Claveria
Port Staff Attorney
Special Assistant Attorney General

Date: 3/19/2021

**BUREAU OF BUDGET AND MANAGEMENT
RESEARCH**

By: _____
Lester Carlson, Jr.
Director

Date: _____

APPROVED AS TO LEGALITY AND FORM:

By: _____
LEEVIN CAMACHO
Attorney General of Guam

Date: _____

APPROVED:

HONORABLE LOURDES A. LEON GUERRERO
Governor of Guam

Date: _____

Office of Local Defense Community Cooperation

Department of Defense

Notice Of Award

1.FEDERAL AWARDING AGENCY

U.S. DEPARTMENT OF DEFENSE
OFFICE OF LOCAL DEFENSE COMMUNITY COOPERATION
2231 CRYSTAL DRIVE, SUITE 520
ARLINGTON, VA 22202

2.INSTRUMENT TYPE:

Grant Agreement

3.AWARD TYPE

Non-Construction

4.TYPE OF ACTION:

New Award

5.FEDERAL AWARD DATE:

2021-02-18

6.AWARDED TO:

Government of Guam
P.O. Box 2950
Hagatna GU
88932-2950

7.PRINCIPAL INVESTIGATOR

Carol Perez
Grants and Contracts Executive Assistant
Office of the Governor
carol.perez@guam.gov

8.UNIQUE ENTITY IDENTIFIER:

778904292

9.OLDCC AWARD NUMBER:

GR882-21-08

10.FEDERAL AWARD IDENTIFICATION NUMBER:

HQ00052110003

11.PROGRAM TYPE:

Growth

12.AMENDMENT NUMBER:**13.REGULATORY AUTHORITY:**

2 CFR 200

14.PERIOD OF PERFORMANCE:

03/01/2021 - 08/31/2022

15.STATUTORY AUTHORITY:

10. U.S. Code § 2391

16.CFDA NUMBER AND TITLE:

12.618 Community Economic Adjustment Assistance for Establishment
or Expansion of a Military Installation

17.TITLE AND DESCRIPTION:

18.BUDGET SUMMARY

PREVIOUSLY OBLIGATED	\$0	\$0	\$0
OBLIGATED BY THIS ACTION	\$1,500,000	\$0	\$1,500,000
INDIRECT COST RATE IS: 0	\$0	\$0	\$0
TOTAL OBLIGATED ON AWARD	\$1,500,000	\$0	\$1,500,000
GRANT TOTAL	\$1,500,000	\$0	\$1,500,000

19.FEDERAL AGENCY POINTS-OF-CONTACT

Catherine Summers catherine.l.summers2.ctr@mail.mil (703) 697-2174	Gary Kuwabara gary.d.kuwabara.civ@mail.mil (918) 557-7385

20.TERMS AND CONDITIONS

The following terms and conditions are incorporated herein by reference with the same force and effect as if they were given in full text. Upon request the Federal awarding agency will make the full text available, or they can be found as described below.

The following documents may be found at:
<https://oas.gov/grant-management-administration>.

National Policy Requirements
General OLDCC Terms and Conditions
Program-Specific Terms and Conditions

Special Conditions

Prior to the disbursement of funds for sub-recipient activities under this award, the Grantee shall submit an executed agreement(s) for these activities with each sub-recipient.

21.AWARD PERFORMANCE GOALS

Performance Report	Quarterly	2021-06-30
Performance Report	Quarterly	2021-09-30
Performance Report	Quarterly	2021-12-31
Performance Report	Quarterly	2022-03-31
Federal Financial Report	Quarterly	2022-03-31
Performance Report	Quarterly	2022-06-30
Federal Financial Report	Quarterly	2022-11-30
Final Performance Report	Quarterly	2022-11-30

22.AFFIRMATION OF AWARD

By signing this agreement, the Authorized Representative assures that the recipient will carry out the project/program described in its application and will comply with the terms and conditions and other requirements of this award.

FOR THE RECIPIENT

FOR THE UNITED STATES OF AMERICA



Name Jon Junior M. Calvo
Title Chief of Staff

Date Signed
2021-02-22

Patrick O'Brien
Award Official

Date Signed
2021-02-18