

## BEFORE THE PUBLIC UTILITIES COMMISSION

PETITION TO APPROVE AWARD  
FOR ULSD DELIVERY TO SOUTH  
PACIFIC PETROLEUM  
CORPORATION BY PORT  
AUTHORITY OF GUAM

PAG DOCKET 22-01

ORDER



### INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the February 3, 2022 Petition (hereinafter referred to as the “Petition”) for review and approval of the South Pacific Petroleum Corporation (“SPPC”) contract related to the delivery of Ultra-Low Sulfur Diesel fuel to its Load Centers, Above Ground Storage Tank and Gantry Cranes, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”).

On February 21, 2022, 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

According to PAG, the Port is “the primary seaport in Micronesia,” and serves as a “transshipment port for the entire Western Pacific Region.”<sup>1</sup> “It operates the largest U.S. deep water seaport in the Western Pacific Region and currently handles over 2 million tons of cargo a

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<sup>1</sup> Determination of Need, p. 1 (Oct. 7. 2021).

year.”<sup>2</sup> In addition, it maintains “various cargo handling equipment to move cargoes and to support the maintenance of other cargo handling equipment.”<sup>3</sup>

The Port, therefore, needs sufficient fuel for its cargo handling operations, specifically for cargo to be discharged, unloaded, loaded, and “stuffed.”<sup>4</sup> This fuel is further required to ensure that such operations continue 24-hours daily, for any vessel, “in a safe and timely manner” and to “prevent costly delays” to consumers, its “customers and the people of Guam.”<sup>5</sup> According to PAG, it utilizes Ultra-Low Sulfur Diesel (“ULSD”) fuel of about 15,000 gallons per month.<sup>6</sup>

On November 29, 2021, PAG issued IFB PAG-022-002, which sought the services of a contractor who could deliver ULSD to the Port’s gantry cranes, load centers, and above-ground storage tank.<sup>7</sup> Thereafter, PAG received two bids.<sup>8</sup> SPPC offered the lowest responsible and responsive bid of \$2.757 per gallon of ULSD, or about \$468,690.00 per year<sup>9</sup> for 170,000 gallons of ULSD.<sup>10</sup>

On December 20, 2021, PAG issued SPPC a Notice of Intent to Award.<sup>11</sup> On January 20, 2022, PAG’s Board of Directors approved the contract award to SPPC and authorized PAG to petition the PUC for approval of the contract.<sup>12</sup>

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<sup>2</sup> Determination of Need, p. 1.

<sup>3</sup> Determination of Need, p. 1.

<sup>4</sup> Determination of Need, p. 1.

<sup>5</sup> Determination of Need, p. 1.

<sup>6</sup> Determination of Need, p. 1.

<sup>7</sup> PAG Resolution No. 2022-03, p. 1 (Jan. 20, 2022) (“Resolution No. 2022-03”).

<sup>8</sup> Resolution No. 2022-03, p. 1.

<sup>9</sup> SPPC Bid, p. 37.

<sup>10</sup> Resolution No. 2022-03, p. 1; Legal Review of IFB PAG-022-002, p. 2.

<sup>11</sup> Legal Review, p. 2.

<sup>12</sup> Resolution No. 2022-03, p. 1.

## **1. PAG's Contract Review Protocol**

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval under 12 G.C.A. §12004." Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold."

## **2. Scope of Services, Contract Provisions, and Cost**

The IFB sought a unit price for a gallon of ULSD fuel (for 170,000 gallons).<sup>13</sup> As indicated in the IFB, the fuel is specifically for the Port's cargo handling and support equipment, namely: Gantry #4, Gantry #5, Gantry #6; the Port's 5 Load Centers; and the Port's 8,000-gallon above-ground fuel tank.<sup>14</sup> The IFB requires the direct delivery of such fuel from the contractor's tanker truck to the Port's cranes, load centers, and fuel tank. The IFB requires safety hook-up fittings to transfer the fuel; and that the fueling must meet all local and federal requirements.<sup>15</sup> All quantities and deliveries of fuel will be on an "as needed basis" and will be coordinated between PAG and the contractor.<sup>16</sup>

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<sup>13</sup> IFB, p. 33.

<sup>14</sup> IFB, p. 33.

<sup>15</sup> IFB, p. 33.

<sup>16</sup> IFB, p. 33.

According to the IFB, the storage and handling of such fuel shall comply with applicable NFPA (National Fire Protection Association) flammable and combustible liquid code.<sup>17</sup> Other provisions include cancelation of the contract should PAG have insufficient funds for payment to the contractor; the requirement of insurance coverage; and 24 hours notice for deliveries, among others.<sup>18</sup>

The IFB further provides for an initial three-year term, with two additional option years. The invoice cost of the ULSD is calculated based on a formula provided in Exhibit 1 of the IFB, which explains that the invoice price shall be the sum of the previous month's average cost of the fuel plus the premium fee. The "fixed premium fee" is calculated as the Bid Price minus the monthly average cost of the fuel for the previous month.

According to PAG, it anticipates spending approximately \$460,000.00 per year for the delivery and fuel.<sup>19</sup> PAG submits that the contract will be funded through its operations budget.<sup>20</sup>

### **3. SPPC Guam**

According to its website 76CircleKGuam.com, SPPC specifically offers bulk fuel delivery for commercial needs, as well as temporary fuel storage tanks. SPPC can also fuel a variety of vessels through its tanker truck, and has its own terminal on Cabras Island.

### **RECOMMENDATION AND CONCLUSION**

Based on the documentation provided, the ALJ found that the subject contract is reasonable and necessary. The fueling of the Port's cargo handling and support equipment,

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<sup>17</sup> IFB, p. 33.

<sup>18</sup> IFB, pp. 25-28.

<sup>19</sup> Petition, p. 1.

<sup>20</sup> Petition, p. 1.

namely: Gantry #4, Gantry #5, Gantry #6; the Port's 5 Load Centers; and the Port's 8,000-gallon above-ground fuel tank, is crucial to its operations. Indeed, the Port needs sufficient fuel for such cargo handling operations, and to ensure that such operations continue 24-hours daily, uninterrupted, and "in a safe and timely manner" in order to "prevent costly delays" to consumers, its "customers and the people of Guam."<sup>21</sup> Based on the services it offers, as well as the fact that SPPC has its own terminal at the Port, it is clear that SPPC is qualified to provide the services set forth in the IFB.

Based on this record, the ALJ recommended that the PUC approve the IFB award to SPPC and approve the contract related to the delivery of ULSD to the Port's gantry cranes, load centers, and above-ground storage tank; and for a cost of up to \$468,690.00 per year<sup>22</sup> for 170,000 gallons of ULSD.

The Commission hereby adopts the findings in the February 21, 2022 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. That the instant Petition is hereby APPROVED.
2. PAG is authorized to enter into the proposed contract with South Pacific Petroleum Corporation for the delivery of ULSD to the Port's gantry cranes, load centers, and

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<sup>21</sup> Determination of Need, p. 1.

<sup>22</sup> SPPC Bid, p. 37.

above-ground storage tank; and for a cost of up to \$468,690.00 per year for 170,000 gallons of ULSD.

3. 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]

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**SO ORDERED** this 24<sup>th</sup> day of February, 2022.



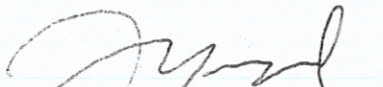
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**JEFFREY C. JOHNSON**  
Chairman



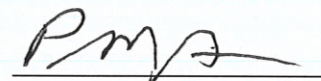
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**ROWENA E. PEREZ-CAMACHO**  
Commissioner



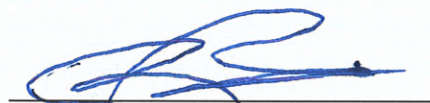
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**JOSEPH M. MCDONALD**  
Commissioner



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**PEDRO GUERRERO**  
Commissioner



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**MICHAEL A. PANGELINAN**  
Commissioner



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**PETER MONTINOLA**  
Commissioner

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**DORIS FLORES BROOKS**  
Commissioner

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