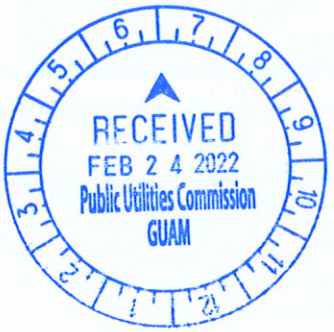
BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:	)	PAG Docket 22-02
PORT AUTHORITY OF GUAM'S PETITION FOR APPROVAL OF PROCUREMENT CONTRACT AWARD TO BME AND SON'S INC. FOR THE WATERLINE REPLACEMENT PROJECT	)	ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the February 3, 2022, Port Authority of Guam ["Port"] Petition for Approval of Procurement Contract Award to BME and Son's Inc. for the Waterline Replacement Project.[1]

BACKGROUND

The Project Description states: "The existing main water lines of the Port Authority of Guam (PAG) are over 50 years old, with some being asbestos pipes. The main line is a 16-inch diameter line that distributes to other water lines throughout the container year. Existing 16-inch and 10-inch diameter water lines run diagonally through the container yard and return to Route 11. The water system contains a 10-inch looped system that covers the waterfront which feeds to the Port buildings on the west end of the terminal. There are also 6-inch diameter water lines connecting from the 10-inch diameter lines to the fire suppression system within the buildings and hydrants in the container yard."[2]

[1] PAG Petition, PAG Docket 22-02, dated February 3, 2022, at p. 1.
[2] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Scope of Work, p. 81. The materials cited herein appear in a Compact Disc filed by PAG with the PUC on February 7, 2022.

The Port Authority describes the Waterline Replacement Project as "replacing existing old main waterlines at the Port of Guam. This intends to repair the numerous water leaks that previously were detected in the Port compound. The project also envisions to relocate the main service feed line from within the container yard to a new routing along the Route 11 roadway. Further the project aims to construct additional waterlines within the Port's container yard to create system redundancy."[3]

The Waterline Replacement Project was identified in the PAG 2018-2022 Capital Improvement Plan.[4] In 2018, the Port issued its Series A and Series B Revenue Bonds. The 2018 Consulting Engineer's Report for the Bond Issuance (prepared by WSP, PAG Consultant) included the Waterline Replacement and Relocation Project as one of the projects to be funded by the 2018 Bonds. The cost of the Waterline Replacement and Relocation Project was estimated at $7.14M.[5]

On September 20, 2021, PAG issued and advertised an Invitation for Bid (Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project) which solicited services for relocation of the Port's main waterline. Five firms submitted bids on or before the established deadline of December 7, 2021.[6] During the bid opening process, a review of the required documents for bidding was undertaken for all the bids submitted. It was determined that the responsible and responsive bidder with the lowest price was BME and Son's Inc., with a submitted bid amount of Four Million Eight Hundred Fifty-Six Thousand Five Hundred Sixty-Eight dollars and Ninety-One Cents ($4,856,568.91).[7]

[3] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Final Submittal Specifications, p. 1.
[4] Memorandum to the Procurement Record, re: IFB-PAG-CIP-021-005 Port Waterline Replacement and Relocation Project, Procurement Planning Phase, (dated June 16, 2021).
[5] Id., Attachment to Memorandum to the Procurement Record.
[6] PAG Petition, PAG Docket 22-02, dated February 3, 2022, at p. 1.
[7] Id.

A thorough Bid Analysis, Evaluation and Recommendation was undertaken by the Contract Management Administrator, which explained the bid process and evaluated each of the Bidders. BME and Son's Inc. was determined to have submitted all the required documents in its bid package and to have submitted the lowest bid: "as a result of our review of the bid documents submitted, BME and Son's Inc. has been determined to have met the standards of responsibility and responsiveness as outlined in the Guam Procurement Regulations and has been determined to be the lowest responsive and responsible bidder."[8]

The Port Authority Board of Directors plans to consider approval of the Waterline Replacement Project, IFB-PAG-CIP-021-005, at its meeting on February 23, 2022. A PAG Board Resolution will be submitted to the PUC upon approval.[9] If the PAG Board of Directors approves the project and submits a Resolution to the PUC before its meeting on February 24, 2022, the PUC may appropriately consider this matter.

ANALYSIS

1. PAG's Contract Review Protocol

PAG has indicated that the cost of this project is $4,856,568.91, to be funded from Bond Funds. Pursuant to PAG's current Contract Review Protocol, "PAG shall file a petition with the PUC seeking approval as to the intended uses of the proceeds from externally funded loan obligations and/or any use of bond proceeds." This contract award must be reviewed by the PUC.[10]

[8] Inter-Office Memorandum dated January 18, 2022, from the Contract Management Administrator to the PAG General Manager, at p. 2.
[9] Email from Steven A. Muna PAG Contract Management Administrator, to Fred Horecky, PUC ALJ, dated February 4, 2022.
[10] Contract Review Protocol, PAG Docket 09-01, par.1(d), at p. 1.

2. Scope of Services under the BME Contract

PAG has submitted a series of drawings in Vol. 5 which indicate the complex scope of this project.[11] Attached hereto as Exhibit "1" is the Project "SCOPE OF WORK."

The project includes abandonment of existing 6-inch diameter waterline, 10-inch diameter waterline, 12-inch diameter waterline, and 16-inch diameter waterline. The contractor is required to use ground penetrating radar in locating the existing waterline subject for abandonment. The contractor will provide the 2-inch core holes spaced at 50 feet on center for the flowable concrete fill to be pumped inside the existing pipe. Existing 6-inch diameter Ductile Iron Pipe (DIP) water laterals will be removed under the concrete deck near the wharves to be replaced later on with new 6-inch diameter PVC waterline. Appropriate utility clearances must be obtained for buried water lines before any construction work is performed.[12]

Approximately 2,500LF of new 16-inch diameter PVC waterline will be provided along Route 11. The new 16-inch waterline will be connected to the approximately 400LF of existing waterline, the 12-inch PVC waterline to remain. Approximately 1,600LF of new 12-inch diameter PVC waterline shall also be provided along Route 11, which will be connected from the existing 12-inch PVC waterline. The contractor shall provide approximately 6,700LF of new 12-inch diameter PVC main waterline inside the Port Authority of Guam compound to replace the 10-inch looped system that covers the waterfront which feeds to the Port Buildings on the west side of the terminal. The contractor shall also provide approximately 880LF of 6-inch diameter PVC waterlines and 570LF of 6-inch diameter Ductile Iron Pipe connecting from the 12-inch diameter

[11] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Drawings.
[12] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Scope of Work, p. 82-83.

lines to the fire suppression system within the buildings and hydrants in the container yard.[13]

The Project is complex and requires that the selected contractor perform extensive duties and responsibilities. The selected Contractor, BME and Sons Inc., was required to meet numerous prequalification criteria to be selected for the Contract Award. Requirements included capacity to provide Performance Bond, Payment Bond, and Insurance; completion of a minimum of five projects of similar type, quality, and scope, including a minimum of two within the last three years; a record of project completion, credit record, and a history of claims/legal proceedings acceptable to Owner.[14]

The amount of work required under the detailed scope, as well as the required level of contractor expertise, likely account for the high cost of this project. The Contractor is required to complete all services required under the Agreement within 365 days from the issuance of a Notice to Proceed by the Port.[15]

3. Justification for the Waterline Replacement Project

PAG's Petition indicates that recent breaks in the waterlines have caused a hinderance to Port operations and a safety hazard to Port personnel and the safe movement of commercial cargo and Port cargo handling equipment. By replacing these old waterlines, the Port can eliminate these operational hazards and save money on the

[13] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Scope of Work, pgs. 81-83 (see particularly Items 8, 9, 10, 11, and 12). The Scope of Work is attached hereto as Exhibit "1".
[14] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Final Submittal Specifications, at pgs. 3-4.
[15] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 4, Sample Construction Agreement & Performance and Payment Bond Form, pg. 61.

constant repairs to the old waterlines and damages that these breaks caused to the concrete and asphalt in the container yard.[16]

The existing main waterlines of PAG are over 50 years old, with some being asbestos pipes. There have been 15 major leaks to the waterlines in the past 3 years, which were detected during required pressurization testing. The project is intended to remedy the situation of water leaks. The new lines will improve water pressure to meet local building codes, National Fire Protection Association and USCG requirements for fire fighting operations. Relocation of the main line will also provide for unobstructed and undisturbed yard operations in the event of repairs.[17]

4. Proposed Agreement for Waterline Replacement Project

The Port has included a Sample Construction Agreement & Performance and Payment Bond Form in its procurement materials.[18]

The proposed agreement contains adequate provisions to protect the interest of the Port and its customers. The agreement provides that PAG may terminate the Contractor "for convenience"[19], or for "default".[20] There is an indemnification clause which protects the Port.[21] There are provisions for bid security and performance bond.[22] Bid

[16] PAG Petition, PAG Docket 22-02, dated February 3, 2022, at p. 1.
[17] Memorandum to the Procurement Record, re: IFB-PAG-CIP-021-005 Port Waterline Replacement and Relocation Project, Procurement Planning Phase, (dated June 16, 2021), at pg. 2.
[18] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 4, Sample Construction Agreement & Performance and Payment Bond Form, pgs. 60-80.
[19] Id., at p. 61.
[20] Id., at p. 63.
[21] Id., at p. 70.
[22] Id., at p. 79.

security in the amount of 5% of the bid amount was required.[23] The Performance Bond, Payment Bond, and Labor and Material Bond are required in the amount of 100% of the Contract.[24] There are also insurance requirements.[25]

5. Reasonableness of the Amount of the Contract Award

Five bids were received on the IFB, as indicated below:[26]

Bidder	Bid Amount
BME and Sons Inc.	$4,856,568.91
AYM International, Inc.	$4,998,698.00
Ian Corporation	$5,676,163.16
Korando Corporation	$6,484,766.50
Sumitomo Mitsui Constr. Co	$6,986,000.00

The BME bid was substantially less than three of the bids, between $700,000 and $2,100,000 less. The next lowest bidder after BME, AYM, was still over $140,000 more than BME's bid.

In 2018, the Consulting Engineer's Report for the Bond Issuance estimated that the cost for the Waterline Replacement and Relocation Project would be $7,140,000. The 2019 estimate for the cost of the Project by PAG's retained Engineer Representative N.C. Macario & Associates, was $2.8M.[27]

[23] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Final Submittal Specifications, at pg. 1.
[24] Bid No.: IFB-PAG-CIP-021-005, Waterline Replacement Project, Vol. 5, Final Submittal Specifications, at pg. 5.
[25] Id.
[26] Inter-Office Memorandum dated January 18, 2022, from the Contract Management Administrator to the PAG General Manager, at p. 1.
[27] Phone Conference between Steven A. Muna, PAG Contract Management Administrator, and Fred Horecky, PUC ALJ, on February 14, 2022.

BME's bid was 73.5% higher than the PAG Consultant estimate. However, PAG determined that BME's bid should be accepted. Prices for products had increased considerably since 2019 and when the bid was issued in December 2021. The Waterline Project was urgently needed.[28]

There was a wide variance between the cost estimates of the Consulting Engineer for Bond Issuance and PAG's Engineer. Based upon the variance of the cost estimates, the low amount of the BME bid compared to the other bids, and the urgent need for the Waterline Project, the Port reasonably determined that it was appropriate to proceed with awarding the Project to BME. The bids received by PAG are a fair indication of the market price for the Project.

RECOMMENDATION

For the reason set forth herein, the Administrative Law Judge recommends that the PUC approve the Invitation for Bid Procurement Contract Award to BME and Son's Inc. for the Waterline Replacement Project, IFB-PAG-CIP-021-005, in the amount of $4,856,568.91. The PAG has provided a strong justification for the necessity of the Waterline Replacement Project. The project will assist PAG in further modernizing the Port infrastructure and facilities.

A Proposed Order is submitted herewith for the Commissioners' consideration.

Respectfully submitted this 14th day of February 2022.

Frederick J. Horecky
Chief Administrative Law Judge

[28] Id.

Due to the large size of the Scope of Work, Specifications, and Drawings, an electronic copy can be obtained at the Port Authority of Guam's Procurement Office on the 1st floor of the Port's Administration Building at Cabra's Island, Piti at no charge.

VOLUME 5

SCOPE OF WORK / SPECIFICATIONS / DRAWINGS

EXHIBIT "1"

SCOPE OF WORK

PROJECT LOCATION:
This project is located within the vicinity of the Jose D. Leon Guerrero Commercial Port.

PROJECT DESCRIPTION:

The existing main water lines of the Port Authority of Guam (PAG) are over 50 years old, with some being asbestos pipes. The main line is a 16-inch diameter line that distributes to other water lines throughout the container yard. Existing 16-inch and 10-inch diameter water lines run diagonally through the container yard and returns to Route 11. The water system contains a 10-inch looped system that covers the waterfront which feeds to the Port buildings on the west end of the terminal. There are also 6-inch diameter water lines connecting from the 10-inch diameter lines to the fire suppression system within the buildings and hydrants in the container yard.

The current water lines are prone to numerous water leaks as exemplified by 15 major leaks in the past three years detected during the required pressurization testing. The project is intended to remedy this situation.

The project is envisioned to include relocation of the main service feed line from within the container yard to a new routing along the Route 11 roadway, additional waterlines as required to provide system redundancy, and replacement of some existing waterlines within the Port's container yard. The new water lines are also intended to improve water pressures to meet local building codes, National Fire Protection Association requirements and USCG requirements for firefighting operations.

The relocation of the main service feed line to the perimeter of the terminal will minimize any impacts to on-going terminal operations should future repairs be required. The inclusion of redundant feed lines should be considered for each major area within the terminal so that a break in any main or secondary feed waterline will not prevent fire water service to any section of the terminal. Shutoff and isolation valves shall be incorporated to allow for proper system testing, servicing and maintenance.

General Requirements:

1. The contractor shall investigate the project sites, verify existing conditions and measurements prior to submitting his or her bid cost proposals. Failure to do so shall not be a cause for additional claims against PAG;

2. Contractor shall provide all labors, materials, tools and equipment to replace waterlines at the Port of Guam;

3. PAG will then issue an intent to award based on the lowest responsible/responsive bid. Official notice to proceed (NTP) will be issued to the contractor upon signing the project contract and purchase order;

4. Contractor to submit within 7 days after NTP issuance, the insurance coverage regarding Comprehensive General Liability Policy and Excess Liability Policy of ($1 Million dollars as a minimum). PAG shall be an additional insured to the policy.

5. Contractor to submit within 10 days after the NTP issuance, a schedule of values, material submittals, submittal status logs, construction schedule, phasing plan, safety plan and personnel listing for approval by the PAG Engineering and Safety Divisions.

6. Contractor's personnel assigned to this project are required to have a Transportation Worker Identification Card (TWIC) and attend the mandatory Maritime Security (MARSEC) Level briefing. Contractor to inquire with the Port Police Office regarding these requirements. No work will commence without TWIC cards;

7. **Contractor has Three Hundred and Sixty Five (365) calendar days to complete this project;**

8. Contractor shall be responsible for the daily clean-up of the project site. All construction debris shall be disposed at a designated government approved dumpsite at no cost to PAG.

9. Contractor shall abide by the OSHA regulations, provide safety warning signs, warning lights, barricades within the work area. All workers shall have a proper Personal Protective Equipment (PPE) to be utilized at all times;

10. PAG Engineers and PAG Safety Divisions will conduct daily inspections and/or random checks of the project site.

Scope of Work;

1. The contractor shall investigate the project site, verify existing conditions and measurements prior to submitting its bid cost proposal. Failure to do so shall not be a cause for additional claims against PAG.

2. The contractor must examine the drawings, field verify all dimensions, elevations, and existing conditions and shall inform the contracting officer of any discrepancy he may find before proceeding with any construction work.

3. The contractor must layout the construction limits, clear unsuitable material and vegetation, and provide safety signage and barriers for the installation of new waterline.

4. The contractor shall provide adequate traffic control measures along Route 11 and inside the PAG compound throughout the duration of the project.

5. The contractor shall provide adequate erosion control measures and protect nearby storm drainage structures from silt during disturbance of existing ground surface. Furthermore, the contractor shall comply with the Federal and Guam EPA requirements on storm water pollution prevention and other environmental protection requirements.

6. The contractor must sawcut existing AC or concrete pavement, driveways, concrete curb, and sidewalks affected by new trenching works.

7. The contractor shall replace existing 2 each sewer manhole covers on a known water meter box along Route 11 near the start point of the new waterline with water manhole covers.

8. The contractor shall abandon approximately 1200 linear feet (LF) of existing 6-inch diameter waterline, 5200 LF of existing 10-inch diameter waterline, 1600 LF of existing 12-inch diameter waterline, and 5400 LF of existing 16-inch diameter waterline, as shown in the design drawings.

   The contractor shall use ground penetrating radar in locating the existing waterline subject for abandonment. Once the existing waterline for abandonment has been identified, provide 2 inches core holes spaced at 50 feet on center in order for the flowable concrete fill to be pumped inside the existing pipe. Ensure all section of the existing pipeline shall be filled with flowable concrete fill prior to pumping of flowable fill inside the pipe. Each end shall be capped and plugged. Contractors shall take precautionary measures during coring for pipes that are asbestos and have an environmentalist/hygienist consultations.

9. The contractor shall remove the existing 6-inch diameter Ductile Iron Pipe (DIP) water laterals under the concrete deck near the wharves to be replaced later on with new 6-inch diameter PVC waterline.

10. The contractor must locate existing buried utility lines in the vicinity of proposed structures and utility lines and obtain the required utility clearances before performing any construction work. Ground Penetrating Radar (GPR) scanning shall be conducted at critical connection points and at every 200 feet with a minimum scan area of 10 feet (5 feet on each side perpendicular of trench) by 2 feet (parallel to trench) for a straight

line to identify underground utilities. For a straight line less than 200 feet, provide 1 location for GPR scanning. Trenches must be excavated with care. The contractor shall be responsible for damages to existing utilities resulting from his work and must bear the cost of repairs to the utilities at no additional cost to the government. The method of repair shall be acceptable to the contracting officer.

11. The contractor shall provide approximately 2500 LF of new 16-inch diameter PVC waterline along Route 11. Connect the new 16-inch waterline to the approximately 400 LF of existing waterline 12-inch PVC waterline to remain. Approximately 1600 LF of new 12-inch diameter PVC waterline shall also be provided along Route 11, which will be connected from the aforementioned existing 12-inch PVC waterline. Provide fittings, transition fittings, thrust blocks, gate valves, valve boxes, blow-off valves, air relief valves, and other appurtenances as required by the design. Connect the new 12-inch waterline to the existing 12-inch waterline farther along Route 11.

12. The contractor shall provide approximately 6700 LF of new 12-inch diameter PVC main waterline inside the Port Authority of Guam compound to replace the 10-inch looped system that covers the waterfront which feeds to the Port buildings on the west end of the terminal. The contractor shall also provide approximately 880 LF of 6-inch diameter PVC water lines and 570 LF of 6-inch diameter Ductile Iron Pipe (for water laterals under the concrete deck near wharves) connecting from the 12-inch diameter lines to the fire suppression system within the buildings and hydrants in the container yard. Provide fittings, transition fittings, thrust blocks, gate valves, valve boxes, blow-off valves, air relief valves, and other appurtenances as required by the design.

13. In the event that any changes in alignment or grade are required due to unforeseen conflict with other underground utilities. The contractor shall inform the contracting officer of such conflict. No changes in alignment or must be made without the approval of the contracting officer and in the event of any changes in alignment or grade shall be done, it shall be at no cost to government.

14. The contractor must dispose all debris and trash to approved sanitary landfill.

15. All materials removed and demolished shall be contractor's property and disposal of material must be as per approved disposal site.

16. The contractor shall provide adequate shoring for excavation on areas with unsuitable soil. Shoring must also be provided for excavations exceeding 6 feet deep.

17. Contractor shall restore any roadways, sidewalks, curb and gutters, land scape areas, pavement markings, and other areas affected by the new work to match existing or better.

18. Contractor shall be responsible for the daily clean-up of the project vicinity. All other construction debris shall be disposed to an approved designated government dumpsite at no cost to PAG.

19. Contractor shall request PAG Engineering in writing 24 hours prior to the pre-final and final inspections for any corrections or punch list related items;

20. After correction of all punch lists and approval by the PAG Engineering Division, contractor shall submit its final invoice and shall provide the close-out documents;

21. Close-out documents shall include the certificate of completion, one (1) year warranty for the workmanship and the material utilized, release of claims and liabilities. Submit documents in hard copy and electronic file in PDF format.

*** * * * END OF SCOPE OF WORK * * * ***

ATTACHMENTS:

1. SPECIFICATIONS
2. DESIGN DRAWINGS