

**GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
February 24, 2022
GCIC CONFERENCE ROOM, GCIC BUILDING, HAGATNA**



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:40 p.m. on February 24, 2022, pursuant to due and lawful notice. Commissioners Johnson, Montinola, Perez-Camacho, McDonald, Pangelinan, and Guerrero were in attendance. The following matters were considered at the meeting under the agenda included as *Attachment "A"* hereto.

1. Approval of Minutes

The Chairperson announced that the first item of business on the agenda was approval of the minutes of January 27, 2022. Upon motion duly made, seconded, and unanimously carried, the Commission approved the minutes subject to corrections.

2. Guam Power Authority

The Chairperson announced that the next item of business on the agenda was Guam Power Authority [GPA] Docket 22-06, Petition to Approve GPA/Navy Utility Service Agreement, ALJ Report, Proposed Order. ALJ Horecky stated that GPA is requesting approval of the utility services contract with the U.S. Navy, which represents all of the Department of Defense installations on Guam, the current contract expires in July, 2022, the new contract is a 10-year contract beginning on August 1, 2022 and ending on July 31, 2032, that the contract establishes a framework for the relationship between GPA and the Navy, that the contract produces annual GPA revenues of approximately \$60-70 million, that the Navy uses about 43 megawatts per year of power, that the contract sets the formula for how rates between GPA and Navy are established, and he recommended that the PUC approve it. GPA GM Benavente stated that most of the assets the Navy was going to transfer to GPA were not located on military bases but some of the transmission lines being transferred to GPA did lead unto some bases, and that the Navy must obtain environmental clearances prior to transferring the assets to GPA. A discussion ensued between GPA GM Benavente and the Chairperson, and Commissioner Montinola concerning the frequency of GPA's billing to the Navy, how the contract's fuel cost computations are made, and whether the Navy was paying its fair share of GPA's fuel costs. Commissioner Montinola moved to approved the proposed order granting GPA's petition which was seconded by Commissioner

McDonald, the motion carried with five affirmative votes and with Commissioner Guerrero casting the only vote to deny the motion.

The Chairperson announced that the next item of business was GPA Docket 22-07, Petition to Approve Cabras Unit #2 Major Overhaul, PUC Counsel Report, and Proposed Order. ALJ Horecky stated that the report is not yet complete.

The Chairperson announced that the next item of business was GPA Docket 22-08, Petition for Review and Approval of GPA's 2022 Integrated Resource Plan [IRP], Status Report. ALJ Horecky stated that this matter is not yet ready to be addressed by the PUC and that GPA is requesting approval of its 2022 Integrated Resource Plan [IRP], that the IRP is really a road map of what GPA intends to do over the next five years to improve the power system, that GPA is requesting a nine-year budget of about \$233 million to integrate new renewables energy into the GPA system to meet the renewable portfolio standards established by the legislature which are the 50% renewables by 2035, and 100% by maybe 2040 or 41, and that the PUC's consultant, Daymark Energy Advisers, is conducting a review of GPA's IRP which is expected to be completed in May, 2022. GPA GM Benavente stated that this really GPA's plan for the next 10 years which is based on the projected loads, projected fuel pricing, what equipment we have and it tries to determine how much renewables GPA needs over the next 10 years. A discussion ensued between Commissioners Montinola, Pangelinan, and Perez-Camacho, ALJ Horecky, and GPA GM Benavente, concerning the time it would take GPA to develop electric vehicle charging stations in the IRP, whether GPA's filing of the IRP was a statutory mandate, and whether the plan complies with the legislative mandate for renewable energy.

3. Port Authority of Guam

The Chairperson announced that the next item of business was Port Authority of Guam [PAG] Docket 22-01, Petition of the Port Authority to Approve Award for Ultra Low Sulfur Diesel Fuel [ULSD] Delivery by South Pacific Petroleum Corporation [SPPC], ALJ Report, and Proposed Order. ALJ Alcantara stated that PAG requests PUC approval of a contract with South Pacific Petroleum Corporation [SPPC] for the delivery of ULSD to PAG's load centers, above-ground storage tank, and gantry cranes, that the ULSD is necessary for PAG's cargo handling operations, that PAG utilizes approximately 15,000 gallons of ULSD per month, that PAG issued an invitation for bid [IFB] in November, 2021 for its ULSD requirements and received two bids with SPPC submitting the lowest bid at \$2.75 per gallon of ULSD or about \$460,690.00 per year for about 170,000 gallons of ULSD, that the contract has an initial three-year term with two

one-year options for renewal, that that contract will cost approximately \$460,000 annually, and he recommended that the PUC approve the contract. PAG GM Respicio stated that PAG has been on month to month extensions with SPCC which held the prior ULSD fuel contract, and that the price for the new contract is the same as the old contract. Commissioner Guerrero moved to approve the proposed order approving PAG's petition which motion was seconded by Commissioner Perez-Camacho, and the motion was passed unanimously.

The Chairperson announced that the next item of business was PAG Docket 22-02, Petition of the Port Authority for Approval of the Waterline Replacement Project-IFB-PAG-CIP-021-005, ALJ Report, and Proposed Order. ALJ Horecky stated that PAG is requesting PUC approval of the procurement contract award to BME & Sons Inc. [BME] for the Waterline Replacement project, that this is a very complex project to replace PAG's old main waterlines to repair numerous water leak, that BME is charging PAG \$4,856,598.91 to complete the project, that PAG will use bond funds to pay for the project, that the contract has the standard provision including provisions for bid security, a performance bond, labor and material bonds, and he recommended that the PUC approve the contract. PAG GM Respicio stated that the waterline project is PAG's most important revenue bond-funded projects, that PAG has a waterline break almost every four to six months which are very disruptive to PAG's operations and place PAG at great risk in the event there is a fire. A discussion ensued between Commissioners McDonald, Pangelinan, PAG GM Respicio, PAG's Muna regarding the timeline BME has to complete the project and the liquidated damage provisions of the contract, and whether the Guam Attorney General's Office has given a Special Attorney General Designation to PAG's Attorney to review this procurement because it is over \$500,000. Commissioner Guerrero moved to approve the proposed order granting the petition which motion was seconded by Perez-Camacho, and the motion passed unanimously.

4. The Guam Waterworks Authority


The Chairperson announced that the next item of business was Guam Waterworks Authority [GWA] Docket 22-06, Petition to Authorize the GWA to Issue an IFB to Procure Property, General Liability & Other Insurance Services, ALJ Report, and Proposed Order. Commissioner Pangelinan recused himself from this matter due to a conflict of interest. ALJ Alcantara states that this matter concerns GWA's petition for PUC approval to issue an IFB to procure property, general liability, and other insurance services for the GWA, that these insurance policies are required by GWA's bond indentures, that GWA's current insurance coverage is set to expire on May 1, 2022, that GWA anticipates the contract of insurance will exceed \$1 million per year based on its current insurance premiums, and he recommended that the PUC authorize GWA to issue the IFB. Commissioner Montinola moved to approve the proposed order granting

GWA's petition which motion was seconded by Commissioner Perez-Camacho, and the motion was passed unanimously.

5. Administrative Matters

The Chairperson announced that the next item on the agenda was Administrative Matter, a brief discussion ensued between the Commissioner concerning their official PUC emails.

There being no further business, the Commissioners moved to adjourn the meeting.



Jeffrey Johnson
Chairperson

ATTACHMENT A
THE GUAM PUBLIC UTILITIES COMMISSION
NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that the Guam Public Utilities Commission [PUC] will conduct a regular business meeting, commencing at 6:30 p.m. on February 24, 2022, Suite 202, GCIC Building, 414 W. Soledad Ave., Hagatna.

The following business will be transacted:

Agenda

- 1. Call to Order**
- 2. Approval of Minutes of January 27, 2022**
- 3. Guam Power Authority**
 - GPA Docket 22-06, Petition to Approve GPA/Navy Utility Service Agreement, ALJ Report, Proposed Order
 - GPA Docket 22-07, Petition to Approve Cabras Unit #2 Major Overhaul, PUC Counsel Report, and Proposed Order
 - GPA Docket 22-08, Petition for Review and Approval of GPA's 2022 Integrated Resource Plan [IRP], Status Report
- 4. Port Authority of Guam**
 - PAG Docket 22-01, Petition of the Port Authority to Approve Award for ULSD Delivery by South Pacific Petroleum Corporation ALJ Report, and Proposed Order
 - PAG Docket 22-02, Petition of the Port Authority for Approval of the Waterline Replacement Project-IFB-PAG-CIP-021-005, ALJ Report, and Proposed Order
- 5. Guam Waterworks Authority**
 - GWA Docket 22-06, Petition to Authorize the Guam Waterworks Authority to Issue an Invitation for Bid (IFB) to Procure Property, General Liability & Other Insurance Services, ALJ Report, and Proposed Order
- 6. Administrative Matters**
- 7. Adjournment**

Due to the current public health emergency, all persons attending the meeting will be required to wear masks. Social distancing protocols will be observed. Further

information about the meeting may be obtained from the PUC's Administrator Lou Palomo at 472-1907. The meeting will be broadcast live on the PUC website at guampuc.com. Those persons who require special accommodations, auxiliary aids, or services to attend the meeting should also contact Ms. Palomo.

This Notice is paid for by the Guam Public Utilities Commission

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

The Application of the Guam Power
Authority for Approval of the Utility
Services Contract (USC) with US Navy.

)
) GPA Docket 22-06
)

) **ORDER**
)
)
)



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of the Guam Power Authority ["GPA"] requesting Approval of the Utility Services Contract (USC) with the U.S. Navy.¹
2. The present Utility Services Contract under which GPA currently provides electric service to the U.S. Navy will expire on July 31, 2022.²

BACKGROUND

3. The Navy is GPA's largest customer.³ In the last 12 months, GPA received revenues from the Navy for the Base Rate in the amount of \$19.2M and Fuel Payments in the amount of \$43.7M, for total revenue of \$62.9M.⁴
4. Under the existing USC, GPA has received as much as \$70M in revenue per year.⁵

¹ GPA Petition for Approval of the Utility Services Contract with the U.S. Navy, GPA Docket 22-06, filed January 27, 2022.

² Issues for Decision, CCU Board packet for January 25, 2022 Meeting, at p. 117.

³ Id.

⁴ Guam Power Authority Presentation to the Consolidated Commission on Utilities on the Navy Utility Service Contract, January 20, 2022, at p. 2.

⁵ Guam Power Authority Presentation to the CCU on the Navy Utility Service Contract, July 10, 2012, pgs. 7 & 9.

5. Previously, there was a Customer Services Agreement (CSA) in effect between GPA and the Navy from August 1992 through July 31, 2012.⁶
6. The present Utility Services Agreement, was signed in July 2012 and expires, as previously indicated, on July 31, 2022.⁷
7. The first Utility Services Contract was approved by the PUC in GPA Docket 12-08.⁸ The PUC recognized that the USC would provide “a consistent revenue stream to GPA that supplements the remainder of its customer base.”⁹
8. The PUC also found that the USC would “enable GPA, as the sole company charged with operating and maintaining the Island-Wide Power System (IWPS), to render adequate and efficient electric service to support the DoD’s military mission.” The Contract was also advantageous to GPA, in that it recognized GPA as the “unique service provider for the military on Guam, the only service provider, unlike other jurisdictions in the nation.”¹⁰
9. GPA and the Navy have successfully negotiated a new contract for GPA to provide electric utility services to Navy’s facilities for the next 10 years, from August 1, 2022, to July 31, 2032.¹¹
10. GPA has attached a copy of the proposed USC to its Petition.¹²

⁶ Guam Power Authority Presentation to the Consolidated Commission on Utilities on the Navy Utility Service Contract, January 20, 2022, at p. 4.

⁷ Id.

⁸ PUC Order, GPA Docket 12-08, GPA Petition for Approval of USC with the U.S. Navy, dated July 30, 2012.

⁹ Id., at p. 2.

¹⁰ Id.

¹¹ Issues for Decision, CCU Board packet for January 25, 2022 Meeting, at p. 117.

¹² GPA Petition for Approval of the Utility Services Contract with the U.S. Navy, GPA Docket 22-06, filed January 27, 2022, Guam Power Authority Utility Services Contract 2022 (Pending Approval).

11. Attached to the ALJ Report as Exhibit “1” is the Presentation which GPA made to the Guam Consolidated Commission on Utilities on January 20, 2022.¹³
12. On January 25, 2022, the Guam Consolidated Commission on Utilities adopted GPA Resolution FY2022-06, which found that the USC between GPA and U.S. Navy was “reasonable and prudent.” The General Manager of GPA was authorized, subject to PUC approval, to execute the GPA-Navy Utility Services Contract.¹⁴
13. The ALJ filed his Report herein dated February 8, 2022. The PUC adopts the conclusions and recommendations therein.

DETERMINATIONS

13. Under the USC, both GPA and the Navy receive mutual benefits and advantages.
14. Navy receives the benefit of adequate and efficient electric service to support its mission, and a mechanism for GPA to provide power system support for Navy distribution systems upon request by the Navy.¹⁵
15. Navy has agreed to transfer certain generation and transmission facilities to GPA. Tables 3, 4, and 5 provide, respectively, “Navy Joint Use Generation and Transmission Facilities”, “Navy 13.8 kv Distribution and 34.5 kv Assets to be Transferred to GPA, and “Navy Joint Use Assets Not Incorporated in Lease Table 3 and Table 4 to be Transferred to GPA”.¹⁶

¹³ Guam Power Authority Presentation to the Consolidated Commission on Utilities on the Navy Utility Service Contract, January 20, 2022.

¹⁴ GPA Resolution No. FY2022-06, Authorizing the Guam Power Authority to Seek PUC Approval to Execute the GPA Navy Utility Services Contract, adopted and approved on January 25, 2022.

¹⁵ Id., at p. 1.

¹⁶ Guam Power Authority Utility Services Contract 2022, Table 3, 4, and 5.

16. The USC provides GPA with guaranteed demand and assured revenues. Articles 13 and 14 establish annual Navy minimum demands for GPA to forecast expected revenues. Navy current demand is approximately 43MW.¹⁷
17. As to GPA compensation, GPA may submit invoices to NAVFAC Marianas for the Navy share of the fuel cost every seven (7) days. The Navy will make weekly payments seven (7) calendar days after receipt of a proper invoice. The summary billing will be submitted by GPA to Navy monthly, which offsets the fuel payments made by the Navy during the billing month.¹⁸
18. Regarding billings for Electric Utility Service, GPA will bill monthly. The billing will be provided to Navy within twenty-one (21) working days of the end of the month. All bills are due and payable within fifteen (15) days after presentation. There are late payment charges as are required of other customers of GPA.¹⁹
19. The provisions of the USC continue to recognize the Guam Public Utilities Commission as “an eligible regulatory body in accordance with FAR 52.241-7”; “the Navy accordingly agrees to comply with the current regulations, practices and decision of the PUC concerning accounting practices, allowability of costs, cost allocation, pricing and rates, settlement charges, and other charges and fees subject to appeal to the Guam Superior Court and continuing through normal judicial channels.”²⁰
20. The Navy further recognizes the authority of the PUC to set base rates for GPA electricity service, to perform cost of service studies, to calculate and invoice fuel rates for Navy, and to change Navy rates through rate proceedings governed by

¹⁷ Id., at Articles 13 and 14; see also Guam Power Authority Presentation to the Consolidated Commission on Utilities on the Navy Utility Service Contract, January 20, 2022, at p.116.

¹⁸ Guam Power Authority Utility Services Contract 2022, Id., at Article 5.

¹⁹ Id., at Article 21.6.

²⁰ Id., at Article 12.1.

PUC procedures.²¹ Procedures for changes in rates are addressed as well as the applicability of procedures before the PUC.²²

21. In Appendix A to the USC, a “Procedures for Developing the Cost to Serve the Navy and Determining Navy Rates” is set forth.²³ These procedures concern appropriate accounting procedures for determination of various rate base elements.

ORDERING PROVISIONS

After review of the record herein, GPA’s Petition for Approval of the Utility Services Contract (USC) with the U.S. Navy, and the ALJ Report, for good cause shown, on motion duly made, seconded, and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA’s Petition for Approval of the Utility Services Contract (USC) with the U.S. Navy is hereby approved.
2. The General Manager of the Guam Power Authority is hereby authorized to execute any and all documents incidental to executing the GPA-Navy Utility Services Contract.
3. GPA is ordered to pay the Commission’s regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC’s regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

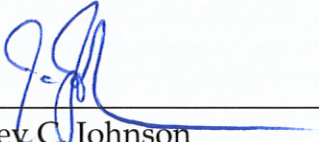
²¹ Id., at Articles 12.2, 12.3, 12.4, and 12.5.

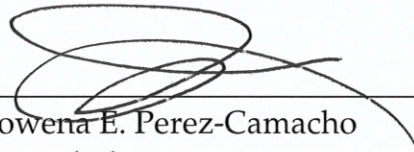
²² Id., at Article 12.6.

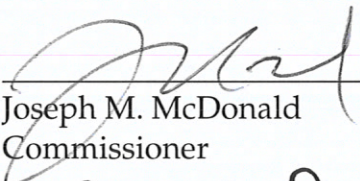
²³ Id., at Appendix A.

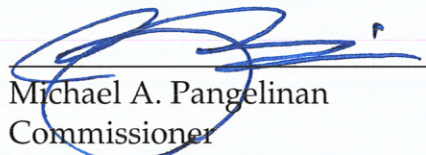
Order
Request for approval of
Utility Services Contract with US Navy
GPA Docket 22-06
February 24, 2022

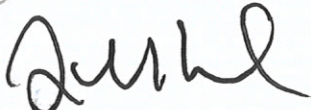
Dated this 24th day of February 2022.




Jeffrey C. Johnson
Chairman

Rowena E. Perez-Camacho
Commissioner

Joseph M. McDonald
Commissioner

Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner

Doris Flores Brooks
Commissioner

Pedro S.N. Guerrero
Commissioner

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.”¹ “It operates the largest U.S. deep water seaport in the Western Pacific Region and currently handles over 2 million tons of cargo a

¹ Determination of Need, p. 1 (Oct. 7. 2021).

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

The Port, therefore, needs sufficient fuel for its cargo handling operations, specifically for cargo to be discharged, unloaded, loaded, and “stuffed.”⁴ 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.”⁵ According to PAG, it utilizes Ultra-Low Sulfur Diesel (“ULSD”) fuel of about 15,000 gallons per month.⁶

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.⁷ Thereafter, PAG received two bids.⁸ SPPC offered the lowest responsible and responsive bid of \$2.757 per gallon of ULSD, or about \$468,690.00 per year⁹ for 170,000 gallons of ULSD.¹⁰

On December 20, 2021, PAG issued SPPC a Notice of Intent to Award.¹¹ 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.¹²

² Determination of Need, p. 1.

³ Determination of Need, p. 1.

⁴ Determination of Need, p. 1.

⁵ Determination of Need, p. 1.

⁶ Determination of Need, p. 1.

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

⁸ Resolution No. 2022-03, p. 1.

⁹ SPPC Bid, p. 37.

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

¹¹ Legal Review, p. 2.

¹² 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).¹³ 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.¹⁴ 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.¹⁵ All quantities and deliveries of fuel will be on an "as needed basis" and will be coordinated between PAG and the contractor.¹⁶

¹³ IFB, p. 33.

¹⁴ IFB, p. 33.

¹⁵ IFB, p. 33.

¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹ PAG submits that the contract will be funded through its operations budget.²⁰

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,

¹⁷ IFB, p. 33.

¹⁸ IFB, pp. 25-28.

¹⁹ Petition, p. 1.

²⁰ 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."²¹ 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 year²² 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

²¹ Determination of Need, p. 1.

²² 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]

//

//

//

//

//

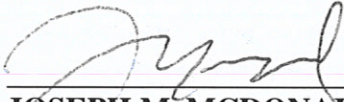
//

SO ORDERED this 24th day of February, 2022.

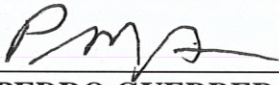
JEFFREY C. JOHNSON
Chairman



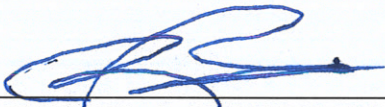
ROWENA E. PEREZ-CAMACHO
Commissioner



JOSEPH M. MCDONALD
Commissioner



PEDRO GUERRERO
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner

DORIS FLORES BROOKS
Commissioner

P223009.JRA

IN THE MATTER OF:

PORT AUTHORITY OF GUAM'S
PETITION FOR APPROVAL OF
PROCUREMENT CONTRACT AWARD
TO BME AND SON'S INC. FOR THE
WATERLINE REPLACEMENT PROJECT

ORDER



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

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 yard. 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

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.

DETERMINATIONS

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 to the ALJ Report 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.

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GWA for Approval of Procurement Contract Award to BME and Son's Inc. for the Waterline Replacement Project, the ALJ Report, and for good cause shown, on motion duly made, seconded, and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

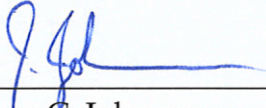
1. The Invitation for Bid Procurement Contract Award to BME and Son's Inc. for the Waterline Replacement Project, IFB-PAG-CIP-021-005, is approved.
2. PAG is authorized to expend the amount of \$4,856,568.91 for the approved Contract Award for the Waterline Replacement Project. The PAG has provided a strong justification for the necessity of the Waterline Replacement Project, and the Project will assist PAG in further modernizing the Port infrastructure and facilities.

²⁸ Id.

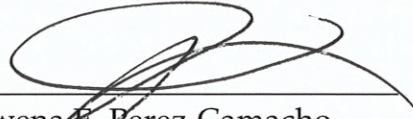
3. GWA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses are authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

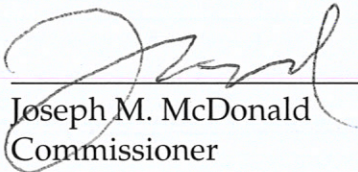
Dated this 24th day of February 2022.



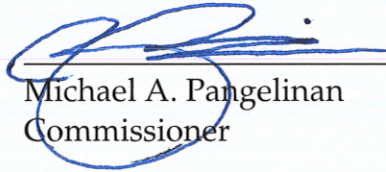
Jeffrey C. Johnson
Chairman




Rowena E. Perez-Camacho
Commissioner



Joseph M. McDonald
Commissioner



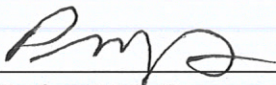
Michael A. Pangelinan
Commissioner



Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



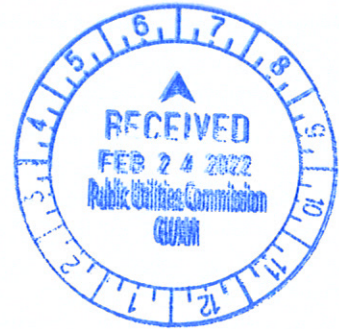
Pedro S.N. Guerrero
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**PETITION TO AUTHORIZE THE
GUAM WATERWORKS AUTHORITY
TO ISSUE AN INVITATION FOR BID
(IFB) TO PROCURE PROPERTY,
GENERAL LIABILITY AND OTHER
INSURANCE SERVICES**

GWA DOCKET 22-06

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the February 11, 2022 Petition to Issue an Invitation for Bid (IFB) to Procure Property, General Liability and Other Insurance Services for the Guam Waterworks Authority (hereinafter referred to as the “Petition”), filed by the Guam Waterworks Authority (“GWA”). GWA seeks PUC approval of its procurement of property, general liability and other forms of insurance coverage.

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

A. GWA’s Petition to Issue Procurement

In its Petition, GWA requests that the PUC approve GWA’s issuance of an Invitation for Bid for the purchase of property insurance, as well as other types of insurance, itemized

in the Petition on the basis that such insurance is required under its revenue bond indentures.¹ According to GWA, its current insurance coverage is set to expire on May 1st of this year.

GWA submitted that Section 6.06 of its 2005 Water and Wastewater System Revenue Bonds General Indenture requires GWA to maintain insurance on the system with responsible insurers “in such amounts and against risks as are usually maintained by prudent operators of systems similar and similarly situated.”²

Accordingly, GWA’s draft procurement documents seek sealed bids for property insurance, general liability insurance, directors and officers liability insurance, automobile insurance, cyber liability, and crime insurance to cover GWA’s system, assets, management, and personnel, much like GWA’s current insurance coverage.

B. GWA’s Contract Review Protocol

Pursuant to 12 G.C.A. §12105, GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. Additionally, pursuant to GWA’s Contract Review Protocol, “[a]ll professional service procurements in excess of \$1,000,000” and “[a]ny contract or obligation not specifically referenced above which exceeds \$1,000,000” “shall require prior PUC approval under 12 G.C.A. Section 12004.”³ With regard to multi-year contracts, “the test to determine whether

¹ Petition, p. 1.

² Petition, p. 1.

³ Contract Review Protocol, GWA Docket 00-04, p. 1 (Oct. 27, 2005).

a procurement exceeds the \$1,000,000.00 threshold for PUC review and approval is the total estimated cost of the procurement, including cost incurred in any renewal options.”⁴

In this instance, GWA requests PUC review and approval of its procurement of insurance because it anticipates that the contract for insurance will exceed \$1 million per year based on its current insurance premiums.⁵ According to GWA, the premiums for its current contract for insurance is about \$969,000.00 per year.⁶ A three-year contract, therefore, will require PUC review and approval.⁷

C. Section 6.06 of GWA’s Revenue Bond Indenture

Indeed, pursuant to Section 6.06 of GWA’s 2005 Series Bond Indenture, GWA must maintain insurance on its system “in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners . . . ”⁸

RECOMMENDATION

This Commission has previously found that GWA is required to maintain “insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated . . . to protect its interests and the interests of the

⁴ Contract Review Protocol, GWA Docket 00-04, p. 2.

⁵ Petition, p. 2.

⁶ Petition, p. 2.

⁷ Petition, p. 2.

⁸ Order, GWA Docket 12-02, pp. 2-3 (Mar. 26, 2012).

Bondowners” pursuant to provisions of its bond indentures.⁹ Accordingly, this Commission has historically determined that GWA’s 2005 Series Bond Indenture, along with its supplemental indentures, require GWA to maintain insurance on the system in amounts and against risks normally maintained by other water and wastewater authorities.

Further, the need for GWA to procure property insurance is clear: while property insurance is required by GWA’s 2005 Bond Series Indenture, “the availability of property insurance will potentially benefit rate payers with regard to the protection of system assets” since “[i]nsurance proceeds can assist recovery efforts after natural disasters such as typhoons or earthquakes.”¹⁰ Accordingly, the ALJ therefore recommended that the PUC approve GWA’ procurement of property, general liability and other forms of insurance coverage.

Based on the record established in this docket, and for the reasons set forth herein, the ALJ recommended that the PUC approve GWA’s procurement of a contract for insurance as indicated in GWA’s Petition.

The Commission hereby adopts the findings in the January 24, 2022 ALJ Report and therefore issues the following.

⁹ Order, GWA Docket 12-02, pp. 2-3 (Mar. 26, 2012).

¹⁰ ALJ Report, GWA Docket 12-02, p. 3 (*quoting* PUC Counsel Report, GWA Docket 10-02, p. 2 (Oct. 6, 2010)).

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; and that GWA is authorized to procure insurance to cover GWA's system, assets, management and personnel.

2. GWA 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]


/ /

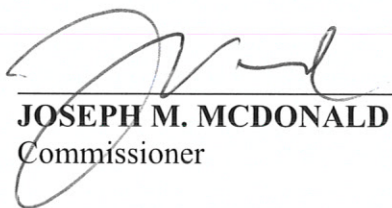
/ /

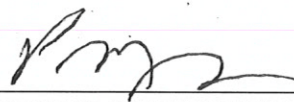
/ /

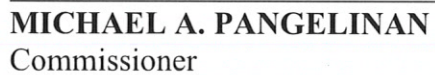
SO ORDERED this 24th day of February, 2022.



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

P223011.JRA