

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

PAG Docket 22-05

PETITION OF THE PORT AUTHORITY
OF GUAM FOR PUC REVIEW AND
APPROVAL OF THE INVITATION FOR
BID (IFB) PROCUREMENT CONTRACT
AWARD TO SUMITOMO MITSUI
CONSTRUCTION COMPANY FOR THE
REBID OF THE CONSTRUCTION
REHABILITATION OF HOTEL WHARF
AND HIGHWAY 11 ROADWAY
RECONSTRUCTION (CONSTRUCTION
PROJECT), IFB-PAG-CIP 022-002

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the June 9, 2022, Port Authority of Guam ["PAG"] Petition for Review and Approval of the Procurement Contract Award to Sumitomo Mitsui Construction Company for the Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB-PAG-CIP 022-002.¹

BACKGROUND

1. The Procurement Process for the Hotel Wharf Rehabilitation Project

The first bid on the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Construction was issued on July 26, 2021. However, by the deadline,

¹ PAG Petition, PAG Docket 22-05, dated June 9, 2022.

September 13, 2021, no bids had been submitted. The Port determined that it would rebid the IFB.²

On October 27, 2021, PAG issued the Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB-PAG-CIP 022-002.³ At the bid opening on January 28, 2022, only one company submitted a bid: Sumitomo Mitsui Construction Company [“SMCC”]. PAG determined that the only responsible and responsive bidder with the lowest price was SMCC, with a submitted bid amount of \$59,683,065.00.⁴

Upon further review and consideration of the price, the Port General Manager determined that the Port would seek to negotiate the price, scope of work, specifications, and terms and conditions of the Project in accordance with Title 2 GARR, Division 4, Chapter 3, §§3102(c)(1)(C) and 3112(c) [Negotiation in Sole Source Procurement].⁵

On June 9, 2022, the Port and SMCC, after months of negotiation, agreed to “SMCC’s Revised Price Proposal for Marine Structure Works.” Attached to the ALJ Report as Exhibit “1” is the joint Letter of Acceptance/Notice of Intent to Award to SMCC for the Construction Rehabilitation of Hotel Wharf, which letter is signed by both parties.⁶

² Memorandum from General Manager to Procurement Record, Re: IFB-PAG-CIP-021 Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction: Determination to Rebid.

³ PAG Petition, at p. 1.

⁴ Id.

⁵ Id.

⁶ Letter of Acceptance/Notice of Intent to Award [signed by Port GM and GM of SMCC] dated June 9, 2022, attached to the ALJ Report as Exhibit “1”.

Therein the parties agreed to break the project up into three phases. Phase 1, 2, and 3. Phase 1 included the procurement of all steel piling works materials for the Wharf (sheet piles, king piles, tie rods, dead-man piles, compression and tension piles, and other associated miscellaneous steel connections), and installation of the piles for the south wall. Phase 2 would include the installation of the west and east wall piles and other marine structures such as bulkhead concrete works (east, west and south wall), on-shore bollards, bulkhead mooring-cleat and bollard, and cell fenders. The respective negotiated costs for Phase 1 and Phase 2 are \$39,485,672.00 and \$6,846,223.00, for a total of \$46,331,895.00.⁷

Phases 1 and 2 are mandatory scope requirements which must be completed “on or before the TIGER grant Period of Performance of May 31, 2024.”⁸ Phase 2 is a mandatory Option to be awarded within one (1) year from the Notice to Proceed of Phase 1. Phase 3, which includes the Highway 11 Roadway Reconstruction and other “off-site” works, is “optional” and will be evaluated and awarded upon available funding.⁹

The parties agreed to a “performance period of seven hundred thirty-five (735) calendar days from the issuance of the Notice to Proceed.”¹⁰

2. The Hotel Wharf Rehabilitation Project

The Construction Rehabilitation of Hotel Wharf involves “the repair and upgrade of Hotel Wharf with a new bulkhead with a modern mooring and fendering system, utilities and upland pavement...”¹¹

⁷ Id.

⁸ Id. at p. 2.

⁹ Id.

¹⁰ PAG Petition at p. 2.

Hotel Wharf was built between 1948-1953 and was used by the Navy as a munitions wharf during the Vietnam conflict until it was formally transferred to the Government of Guam in October 1989. The Government of Guam subsequently operated the wharf as a passenger vessel facility, and boat charter operators also used the wharf. The wharf was also used for the import of cars and light trucks, and the export of scrap metal. It stopped being used as a commercial wharf in December 2001.¹²

A good description of the scope of work for the construction rehabilitation by the contractor is set forth in the Hotel Wharf Technical Specifications:

“The proposed construction involves replacement of existing wharf structures and roadway in essentially their current locations. Wharf replacement involves construction of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface while preventing the existing wharf from collapsing into Apra Harbor...

Both the wharf construction and the roadway construction will involve the construction of or replacement of underground utilities. Utilities under the roadway will include water line replacement, stormwater piping, and empty data transmission conduit. Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, stormwater with oily water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in handholes to support future construction...

¹¹ Letter to Leevin T. Camacho, Attorney General of Guam, from Rory J. Respicio, General Manager of the Port of Guam, Re: Notification of Procurement over \$500,000 (Form 12) for IFB-PAG-CIP-022-002 Rebid of the Construction Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, dated October 14, 2021, at p. 1.

¹² William F. Jeffrey, Ph.D. (Maritime Archeologist and Assistant Professor, University of Guam), Final Technical Report (Underwater Archeology Survey for the Hotel Wharf and Access Road Maintenance and Repair project Cabras Island, Apra Harbor, Guam), July 2020, at p. 41.

Wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile "deadmen" walls, better piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pierhead line in the ship unloading zone. Structural fill will be placed in the area between the existing and new bulkheads.

Dredging is not a component of the current project but was a design consideration to allow for deeper draft vessels to utilize the wharf in the future. Sheet piling will be thicker and deeper than the original in order to allow for future dredging along the pierhead line.

The upland surface will be impervious with the area outside the 100 feet ship unloading zone consisting of asphalt pavement. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems. Surface runoff from the new access roadway will be collected in bioswales for natural filtration prior to outfalling to Apra Harbor through underground stormwater pipes.

Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structure including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavements, and the partial demolition of existing bulkheads and concrete caps. Excavation to install new tied rods and utilities and make roadway drainage improvements is not currently expected to result in the disposal of unsuitable materials. However, in the event unsuitable materials are detected once construction gets underway, proper disposal and replacement with clean materials and structural fills would be a requirement."¹³

SMCC submitted a detailed Proposal as to how it intends to carry out the Construction Rehabilitation of Hotel Wharf. A portion of that proposal concerning Hotel Wharf is attached to the ALJ Report as Exhibit "2".¹⁴

¹³ WSP USA Inc., Port of Guam Hotel Wharf Technical Specifications, submitted on July 20, 2021.

¹⁴ Submission of Sumitomo Mitsui Construction Co., Ltd., for IFB-PAG-CIP-022-002, Rebid of the Construction of Hotel Wharf and Highway 11 Roadway Construction, dated January 28, 2022.

3. Action by the Port Board of Directors

The Port Authority Board of Directors plans to consider approval of the procurement contract award to Sumitomo Mitsui Construction Company for the Construction Rehabilitation of Hotel Wharf at its meeting on June 16, 2022. A draft resolution has been prepared that would approve the bid award. A PAG Board Resolution will be submitted to the PUC upon approval.¹⁵ If the PAG Board of Directors approves the procurement award and submits a Resolution to the PUC before its meeting on June 16, 2022, the PUC may appropriately consider the matter.

4. Administrative Law Judge Report

The ALJ submitted his Report dated June 14, 2022. The PUC adopts the conclusions and recommendations stated therein.¹⁶

DETERMINATIONS

1. PAG's Contract Review Protocol.

PAG has indicated that the revised cost of this project is \$46,331,895.00. As will be discussed, PAG intends to fund the project through Grant, Bond, and local revenue funds. Pursuant to PAG's current Contract Review Protocol, professional service

¹⁵ Phone Conversation between Port Authority General Manager Rory Respicio and PUC ALJ Fred Horecky on June 9, 2022.

¹⁶ ALJ Report, PAG Docket 22-05, dated June 14, 2022.

contracts in excess of \$1,000,000, and projects using bond funds, must be approved by the PUC.¹⁷ This contract award must be reviewed by the PUC.

2. PAG has established that there is a Need for the Hotel Wharf Construction Rehabilitation Project.

There is clearly a need for the Hotel Wharf construction rehabilitation project. Such need has been recognized by the Port for many years in its Master Plans.

On April 19, 2021, the Port issued its “Determination of Need” [“DON”] for the Hotel Wharf Rehabilitation Project.¹⁸ The DON indicates that the Port Authority operates the only commercial seaport in Guam, as the primary seaport in Micronesia, and serves as a trans-shipment hub for the entire Western Pacific Region. It currently handles over two (2) million tons of cargo per year.¹⁹ Continuity of commerce and the sustainment of uninterrupted marine transportation into Guam and the Micronesian region is contingent upon the dependability and resiliency of Port assets and infrastructure.²⁰

The DON states as follows regarding the rehabilitation and upgrade of Hotel Wharf:

“The rehabilitation and upgrade of Hotel Wharf and the repair of the access roadway that leads to the facility is a capital improvement project that will provide additional infrastructural support, expanded laydown area, and augmented operational capacity to the main container yard. The Port currently has three (3) berths to accommodate container ships, general and unitized cargo vessels, and passenger ships. With the anticipated 2023-2024 peak in military buildup construction, NAVFAC

¹⁷ Contract Review Protocol, PAG Docket 09-01, Par. 1(c) and (d), at p. 1.

¹⁸ Rory J. Respicio, General Manager, “Determination of Need”, Hotel Wharf Rehabilitation and Access Roadway Repair Project, dated April 19, 2021.

¹⁹ Id.

²⁰ Id.

Marianas' forecast revealed that there will be a substantial increase in container and breakbulk cargo volume in the main container yard."²¹

Because of its off-site location, it was determined back in 2013 that Hotel Wharf would be a perfect site to serve as an alternate loading and off-loading berth that will alleviate the congestion at F3-F6 during the peak of buildup related activities. Examples of specific special cargos that can be handled at the rehabilitated Hotel Wharf include, but are not limited to: 1) aggregate, 2) special imported construction materials, 3) Roll On/Roll Off (RORO), 4) research vessels, 5) passenger vessels, and 5) military support vessels, if requested.²²

3. In various Public Laws, the Guam Legislature has approved the Hotel Wharf Construction Rehabilitation and Funding for the Project.

In a series of Public Laws, the Guam Legislature has approved the H-Wharf project. In Public Law 32-155, the Guam Legislature approved certain capital improvement projects included in the Port Master Plan update of 2013. The Legislature recommended that "the Port focus near term" on certain "sustainability projects", which included the H-Wharf. Such project was deemed to be "**critical to preserving marine industrial capabilities in the CIP schedule.**"²³ (emphasis added).

In Public Law 34-70, the Guam Legislature authorized the Port Authority to issue revenue bonds for the purpose of financing certain improvements. The Legislature recognized its intent "to provide funding for Capital Improvement Projects, which include the rehabilitation of "H" Wharf and Access Road...."²⁴ The Legislature also authorized the Port to finance: "local match for the Transportation Investment

²¹ Id.

²² Id.

²³ See Public Law No. 32-155, "An Act to Approve and Adopt the Capital Improvement Projects (CIP) Schedule....", Section 1, enacted May 21, 2014.

²⁴ See Public Law No. 34-70, Section 1, enacted December 7, 2017.

Generating Economic Recovery (TIGER) grant program funding for rehabilitation of “H” Wharf and access road in the approximate amount of \$14,200,000...”²⁵

In Public Law No. 35-44, the Guam Legislature reprogrammed bond funds and approved the amount of \$13,774,255 for rehabilitation of “H” Wharf and the access road.²⁶

4. The Parties have exercised best efforts in negotiating the Project Scope and reaching a reasonable Amount for the Contract Award.

As set forth above in the Background section, the parties engaged in negotiations to reach “a fair and reasonable works and price agreed by both parties.”²⁷ A copy of the Revised Price Proposal for Marine Structure Works is attached to the ALJ Report as Exhibit “3”.²⁸ As a result of the negotiations, the parties have reduced the bid amount from \$59,683,065.00 to \$46,331,895.00. The scope has also been changed to focus on the construction rehabilitation of Hotel Wharf.

Currently, the Port has a total of \$20,277,248.39 for the Hotel Wharf Construction Rehabilitation. \$10,000,000 is from the Tiger Grant; the Port’s matching share from bond funds is \$10,277,248.39. The Guam Legislature had approved over \$13M for the Hotel Wharf project, but over \$3M of that amount was for the Highway 11 Roadway

²⁵ Id., at Section 4(a)(1).

²⁶ Public Law No. 35-44, Section 2(a)(1), enacted October 16, 2019.

²⁷ Sumitomo Mitsui Construction Co., Ltd., Revised Price Proposal for Marine Structure Works, dated May 18, 2022, attached as Exhibit “3” to the ALJ Report, at p. 1.

²⁸ Id.

Order
Petition for Approval of
Rehabilitation for
"H" Wharf and Access Road
PAG Docket 22-05
June 16, 2022

Reconstruction.²⁹ As such, there is a shortfall of \$26,054,646.61 to fund Phase 1 and Phase 2.³⁰

The Port has already developed a funding plan for the shortfall:

"Hotel Wharf and Highway Route 11 Road Construction Phase 1 and 2
46,331,895

LESS: Current Budget

MARAD Funding 10,000,000

Bond Funding 10,277,249

Total FY22 Budget 20,277,249

Project Shortfall 26,054,646

Proposed Funding Source for Shortfall:

General Reserve Account 15,000,000

FY23 CIP Budget 3,000,000

FY24 CIP Budget 3,000,000

Bond Capital Improvement Reserve 5,054,646

Total Proposed Funding Source 26,054,646

Balance 0."³¹

²⁹ Phone Conversation between PAG GM Rory Respicio and PUC ALJ Fred Horecky on June 13, 2022.

³⁰ Inter-Office Memorandum from Clarence V. Lagutang, CIP Coordinator, to Rory J. Respicio General Manager, re: Request for Supplemental Budget for the Account No. C22B001.1783.1 for Construction Rehabilitation of the Hotel Wharf and Highway 11 Road Construction Phase 1 and 2, dated June 9, 2022.

³¹ Email from PAG Financial Affairs Controller Jose B. Guevara III to PAG GM Rory Respicio, and attached Request for Supplemental Budget, Hotel Wharf, dated June 13, 2022

Order
Petition for Approval of
Rehabilitation for
“H” Wharf and Access Road
PAG Docket 22-05
June 16, 2022

A formal request from the Financial Affairs Controller to the General Manager for such funding has already been made.³²

The \$15,000,000.00 is in the Port General Reserve Fund; these funds are American Rescue Plan Act Funds that were transferred by the government of Guam to PAG in February 2022.³³

The Port Board of Directors has also authorized the Port General Manager to utilize Port Revenues, unrestricted Port funds and/or other revenues and federal grants to supplement the short-fall funding of the revenue bond projects.³⁴

This project is very expensive; costs have been impacted by world economic conditions, inflation, and supply chain issues. Cost for materials such as steel have been soaring. However, for many years the Port of Authority, the Federal Maritime Administration, and the Guam Legislature have recognized that the construction rehabilitation of Hotel Wharf must be accomplished.

As was the case with the Port’s Waterline Replacement Project, it is not likely that a rebid of this project would lead to any lesser of a price proposal.³⁵ There were no price submittals upon the original bid for this project, and only one, that of SMCC, for the Rebid. The parties have done their best to negotiate a fair and reasonable price.

³² Id.

³³ Inter-Office Memorandum from PAG Financial Affairs Controller Jose B. Guevara III to PAG GM Rory Respicio Re: Request for Transfer – Bank of Guam, dated March 15, 2022.

³⁴ Port Board of Directors Resolution No. 2021-07, Relative to Authorizing the General Manager to Use Port Revenues, Port Unrestricted Funds and/or Other Revenues and Federal Grants to Supplement the Funding of Revenue Bond Projects, All of which Shall Remain Subjected to Procurement and Public Utilities Statutory Requirements, dated July 29, 2021.

³⁵ See ALJ Report, PAG Docket 22-02, dated February 14, 2022, at pgs. 7-8.

5. SMCC is eminently qualified to perform the Contract.

From the bid submittal, it appears that SMCC is "a leading Japanese construction company with operations that span the globe." Its 2021 assets approach \$3 Billion. It has available bonding capacity on Guam of \$100,000,000. It has done many major works involving Piling and Deep-Water Area Works. It has performed a substantial number of projects on Guam, including Guam Waterworks Authority projects such as Construction of Agat Santa Rita Wastewater Treatment Plant replacement, Phase II, various pipeline, water main and pumpstation projects for GWA, Guam Airport and Guam Power Authority projects and many private sector projects. Some of its main project engineers and managers have extensive experience with projects in Guam.

6. The Proposed Agreement for the Hotel Wharf Construction Rehabilitation protects the Interests of the Port and Ratepayers

The Port has provided a proposed Agreement between the Port and SMCC.³⁶ In accordance with the IFB, SMCC is required to provide a bid guarantee of not less than fifteen percent [15%] of the total bid amount for which an award can be made. SMCC is also required to provide the Port with an executed performance and payment bond in an amount at least equal to one hundred percent [100%] of the accepted bid as security for the faithful performance of the contract and security for the payment of all persons performing labor and furnishing materials in connection with the contract.³⁷

The proposed Agreement contains adequate provisions to protect the interests of the Port and its customers. The Agreement provides that PAG may terminate or modify

³⁶ The Port transmitted a copy of the Agreement to the PUC on June 10, 2022 [AGREEMENT BETWEEN JOSE D. LEON GUERRERO COMMERCIAL PORT AND SUMITOMO MITSUI CONSTRUCTION CO., LTD.].

³⁷ IFB-PAG-CIP-022-002, Vol. 2, Bid Guarantee and Performance and Payment Bond.

the Agreement "**based upon a lack of funding.**" PAG may terminate the Agreement for "default" or "cause."³⁸ There is a "indemnification" clause which protects the Port.³⁹

There are "liquidated damages" provisions which require the Contractor to pay \$4,000.00 per day to the Port for each day beyond the expiration of 735 calendar days from issuance of a Notice to Proceed by the Port.⁴⁰

CONCLUSION

The Port has established that there are funds available to pay for the Hotel Wharf Project. The PAG General Manager has indicated that the Port will not seek any rate or tariff increases in FY23 and FY24.⁴¹ In accepting \$15M in American Recovery Act Funds for this project, the Port agreed that it would not seek a rate increase. Therefore, this is not a contract award that will increase rates.

This project will assist PAG in further modernizing the Port infrastructure and facilities.

ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of PAG for Approval of Procurement Contract Award to Sumitomo Mitsui Construction Company for the Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB-PAG-CIP 022-002, the ALJ Report, and for good cause shown, on motion duly made, seconded,

³⁸ AGREEMENT BETWEEN JOSE D. LEON GUERRERO COMMERCIAL PORT AND SUMITOMO MITSUI CONSTRUCTION CO. LTD., par. 4 at pgs. 4-7.

³⁹ Id., at par. 12.

⁴⁰ Id., at par. 2.2, Liquidated Damages.

⁴¹ Representation by the Port GM in a Phone Conversation with PUC ALJ Horecky on June 13, 2022.

Order
Petition for Approval of
Rehabilitation for
"H" Wharf and Access Road
PAG Docket 22-05
June 16, 2022

and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. The Invitation for Bid Procurement Contract Award to Sumitomo Mitsui Construction Company for the Rehabilitation of Hotel Wharf and Highway 11 Roadway Reconstruction, IFB-PAG-CIP 022-002, is approved.


2. PAG is authorized to expend the amount of \$46,331,895.00 for the approved Contract Award for the Rehabilitation of Hotel Wharf. The Project will assist PAG in further modernizing the Port infrastructure and facilities.

3. PAG 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.

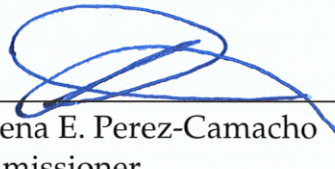
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Order
Petition for Approval of
Rehabilitation for
"H" Whard and Access Road
PAG Docket 22-05
June 16, 2022

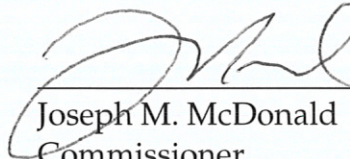
Dated this 16th day of June 2022.



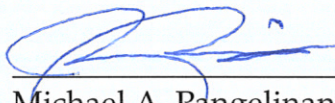
Jeffrey C. Johnson
Chairman



Rowena E. Perez-Camacho
Commissioner

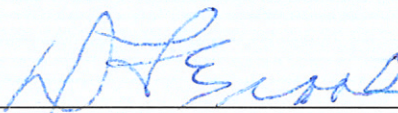


Joseph M. McDonald
Commissioner

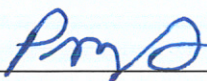


Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner



Doris Flores Brooks
Commissioner



Pedro S.N. Guerrero
Commissioner