

PETITION FOR RATIFICATION AND)
APPROVE FINAL PAYMENTS TO)
BLACK CONSTRUCTION)
CORPORATION FOR THE)
COMPLETION OF THE NORTHERN)
DISTRICT WASTEWATER TREATMENT)
PLANT UPGRADE)
	1

GWA DOCKET 23-04

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC" or the "Commission") pursuant to the Petition to Ratify and Approve Final Payments to Black Construction Corporation for the Completion of the Northern District Wastewater Treatment Plant ("WWTP") Upgrade (the "Petition"), filed by the Guam Waterworks Authority ("GWA") on January 18, 2023.

BACKGROUND

According to GWA, on August 2016, and April 2018, the U.S. Department of Defense, through the Office of Economic Adjustment, awarded GWA with several grants to fund water and wastewater improvement projects, which included the Northern District WWTP upgrade, the Northern District sewer interceptor rehabilitation, the deep ocean outfall diffuser installation for the Northern District plant, and the Northern Guam Lens Aquifer monitoring system expansion and rehabilitation project.¹

According to GWA, the grants were issued to improve GWA's water and wastewater systems so that such systems could support the relocation of U.S. Marines and their dependents

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to Guam.² In addition, these grants totaled over \$173 million; and according to GWA, \$122,077,088.00 was set aside and authorized by the CCU for GWA's Northern District WWTP Upgrade project.³

On January 11, 2019, GWA issued an Invitation for Bid, requesting technical proposals from qualified bidders to complete the construction required for the Northern District WWTP Upgrade project.⁴ A total of five contractors submitted bids; and thereafter, on May 29, 2019, GWA personnel determined that Black Construction submitted the lowest responsive bid.⁵

On June 5, 2019, the Consolidated Commission on Utilities (the "CCU") authorized GWA to accept Black Construction's bid and to enter into an agreement with Black Construction at a cost of \$122,077,088.00, along with a five percent (5%) of \$6,103,854.40.⁶ On July 9, 2019, GWA and Black Construction entered into a construction contract for the Northern District WWTP upgrades.

DISCUSSION

A. Review of GWA's Black Construction Contract

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 issued in Administrative Docket 00-

² CCU Resolution No. 37-FY2018, p. 1 (June 5, 2019).

Petition, p. 2.

CCU Resolution No. 37-FY2018, pp. 1-2.

⁵ CCU Resolution No. 37-FY2018, pp. 3-4.

⁶ CCU Resolution No. 37-FY2018, pp. 2-3.

04, GWA must seek PUC's approval for any uses of bond funds.⁷ In this instance, GWA is requesting PUC approval since it intends to use bond funds to pay the remaining balance on the Black Construction Contract.

B. The Northern District WWTP Upgrade and Expansion Project

In its Petition, GWA requests that the PUC authorize a total of \$6,707,990.13 in bond funds to pay Black Construction for costs to "close out" the Northern District WWTP expansion and upgrade project.⁸ As described by GWA in its Petition, "[t]he Northern District WWTP upgrade and expansion project was considered urgent and a prompt initiation of construction activities were required in order to meet the awarded federal grant schedule requirements and the opening of the Marine Corps base, now known as Camp Blaz, from which the plant was planned to receive additional wastewater flows."

Indeed, the Office of Economic Adjustment awarded GWA a number of grants intended to fund GWA's Northern District WWTP Upgrade.¹⁰ According to GWA, this grant money was specifically intended for water and wastewater improvements that would support the relocation of U.S. marines and their dependents to Guam.¹¹

Further, based on the recommendation of the U.S. Navy, "the design and construction of the [Northern District] WWTP treatment upgrades" should "comply with the current National

⁷ GWA's Contract Review Protocol, Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁸ Petition, p. 4.

⁹ Petition, p. 2.

¹⁰ Resolution No. 37-FY2018, p. 1.

¹¹ Resolution No. 37-FY2018, p. 1.

Pollutant Discharge Elimination System ('NPDES') permit" that would, among other things, "mitigate impacts to wastewater utilities, nearshore waters, and marine biological resources." Accordingly, "the upgrade and expansion of the [Northern District] WWTP is necessary to provide treatment to secondary standards in accordance with the NPDES permit and to ensure long term, reliable operations" 13

C. Black Construction Contract and Scope of Work

As indicated in CCU Resolution No. 37-FY2018, Black Construction was selected from a list of five qualified contractors. The bid involved thirty-nine (39) discrete project items. The work indicated in the bid and in the contract includes: the construction of a new secondary wastewater treatment plant, and the repurposing of the existing facilities. The work also involves demolition work at the existing plant site; upgrades to the existing pump station and force-main; new plant upgrades, such as oxidation ditches, secondary clarifiers, disinfection and solids stabilization facilities; upgrades to the existing dewatering facility; upgrades to the existing septage facility and force-main; new yard and infrastructure at and between the existing plant and the new secondary treatment facilities; and upgrades to the existing laboratory and control facilities, to name a few. 15

¹² Resolution No. 37-FY2018, pp. 1-2.

¹³ Resolution No. 37-FY2018, p. 2.

¹⁴ Black Construction Contract, p. 1.

Black Construction Contract, p. 1.

The costs for the discrete project items range from \$3.6 million for mobilization, to \$14 million for project management. Other construction costs include: about \$332,000.00 for demolition; about \$10 million for new headworks; about \$14 million for oxidation ditches; about \$10 million for secondary clarifiers and scum pumping station; about \$6 million for a UV disinfection system; about \$4 million for an aerated sludge storage facility and pump station; about \$4.5 million for a thickening facility; and about \$9 million for a digester equipment building, just to name a few. According to GWA, Black Construction has already made a request for the issuance of substantial completion.

E. Cost and Funding Source

As discussed in depth above, GWA received a total of \$122,077,088.00 from the Office of Economic Adjustment to fund the subject contract. According to GWA, it had anticipated that there would be a budget shortfall despite federal grant funding. As a result, "GWA management included the WWTP Secondary Upgrades Completion in GWA's Series 2020A Bond project list and as a CIP line item in GWA's 5-year CIP." In 2020, the PUC approved a budget of \$7,500,000.00, under project number MP-WW-WWTP-08, in GWA Docket 20-03, to complete the Northern District WTTP upgrade.

In addition, because of certain issues, such as delays caused by the Covid-19 pandemic, like travel restrictions affecting equipment commissioning, global supply-chain issues, and

See Base Bid submitted by Black Construction.

¹⁷ See Base Bid submitted by Black Construction.

Petition, p. 3.

increased supply and labor costs, the project resulted in delays and increased costs.¹⁹ Consequently, the project requires an additional \$6,707,990.13 to "close out" the contract.²⁰ In particular, GWA submits that the PUC need only "ratify" payments already made to Black Construction in the amount of \$3,734,026.62, and "approve" an additional amount of \$2,973,963.51 to be paid to Black Construction, to pay all outstanding claims and final change orders.²¹ As discussed above, GWA has identified bond proceeds as the source of funding for this final \$6.7 million cost.

F. 2020A Series Bond

As indicated in the PUC's March 26, 2020 Order issued in GWA Docket 20-03, this Commission approved GWA's issuance and sale of long-term debt in the form of Bonds for the purpose of financing improvements to the System; as well as approved the issuance of additional bonds for the purpose of financing certain improvements described in "Exhibit A" ("Table of Projects Funded by Series 2020A Bonds") of that Order. Based on the "Table of Projects Funded by Series 2020A Bonds," a funding amount of \$7.5 million was set aside for the "completion" of GWA's Northern District Wastewater Treatment Plant, under Project Number "MP-WW-WWTP-08." It is clear that bond funds have been reserved for the subject project.

See Petition, p. 4.

Petition, p. 4.

Petition, p. 4.

Order Approving Long-Term Debt, GWA Docket 20-03, pp. 1-2 (Mar. 26, 2020).

Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.

Accordingly, final payments to Black Construction to finish this project squarely aligns with the approved bond-funded projects and uses.

CONCLUSION

There is no doubt that the Northern District WWTP upgrade and expansion is a significant and vital project for the community. Not only is the project crucial in preparing for the growing military presence in Guam, such that the Office of Economic Adjustment of the U.S. Department of Defense awarded several grants to GWA to fund the project²⁴; but also that "the design and construction of the [Northern District] WWTP treatment upgrades" would "comply with the current National Pollutant Discharge Elimination System ('NPDES') permit" so as to "mitigate impacts to wastewater utilities, nearshore waters, and marine biological resources."

Therefore, "the upgrade and expansion of the [Northern District] WWTP is necessary to provide treatment to secondary standards in accordance with the NPDES permit and to ensure long term, reliable operations" and will support the relocation of U.S. marines and their dependents to Guam.²⁶

In addition, the selection of Black Construction as the contractor for this project was reasonable, especially since the firm was chosen out of five qualified contractors who submitted bids. Further, despite the COVID-19 pandemic creating travel restrictions affecting equipment commissioning, global supply-chain issues, and increased supply and labor costs, Black Construction has been able to complete construction on the project.

²⁴ Petition, p. 2; Resolution No. 37-FY2018, p. 1.

²⁵ Resolution No. 37-FY2018, pp. 1-2.

Resolution No. 37-FY2018, p. 1.

Moreover, in reviewing the issuance of additional bonds for the purpose of financing certain system-wide improvements, this Commission has approved the Northern District WWTP Upgrade project and its corresponding budget of \$7.5 million to complete the Northern District WWTP Upgrade project.²⁷ Accordingly, payments to Black Construction from GWA's bond funds to close out this project squarely aligns with the approved use of such funds.

Based on this record, and for the other reasons set forth herein, the ALJ recommends that the PUC authorize the amount of \$6,707,990.13 in bond funds for GWA to close out its contract with Black Construction. Such authorization would "ratify" payments already made in the amount of \$3,734,026.62, and "approve" an additional amount of \$2,973,963.51 to be paid on the contract. As the record indicates, almost all of the construction and work for this contract has been completed; and about 95% of the contract was funded by federal monies. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 24th day of January, 2023.

JOEPHET R. ALCANTARA Administrative Law Judge

P233002.JRA

Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.



Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913

Letter of Transmittal

Dat	0. 11	. 0 00	10			
Date		July 9, 2019				
			nstruction Corporation	Attn:	Leanard K. Kaae	
Fron			jineering	By:	Thomas Cruz	
Re			of Northern District Wastewate ject No. S17-003-OEA	r Treatm	ent Plant (NDWWTP)	
Via	a: Ha	nd Del	ivery		·	
We are	e sendi	ng her	ewith the following:			
Item	Qty	Unit		Description	on	
1	1	Set	Original "Agreement Between Contract (Stipulated Price)"	Owner a	and Contractor for Construction	
2	1	Set	Copy of Bid Form (Addendum	(C)		
3	1	Ea.	Original Notice to Proceed (D		ed: July 9, 2019)	
4	1	Ea.	Copy Notice of Award (Date of			
					,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	
	L					
These	are tra	nsmitte	d as indicated below:			
	Approv		☐ As Requested	T	Resubmit copies for approval	
Section 10)	your us		☐ Approved as Submit	ted	Submit copies for distribution	
			Return corrected prints			
☐ For	☐ For Signature ☐ Returned for Correction ☐ Other:			Other:		
Rema	arks:					
Before	signing t	his docui	ment, verify that the content you are signi	ing is correc	t. If you did not receive the complete	
_			if enclosures are not as indicated, please	e contact ou	r office immediately at (671) 300-6042	
or (671	300-60	36.				
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X	Angel	a Tir	Norse, 7/9/19		x Ohm S	
Rece	Received By Date Sender					

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between	Guam Waterworks Authority	("Owner") and	
	Black Construction Corporation	("Contractor").	
Owner and Contractor hereby agree as fo			

ARTICLE 1 - WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
 - A. This project consists of the complete construction of a new secondary wastewater treatment plant (WWTP). This new WWTP liquids treatment process will be located north of the existing Northern District Wastewater Treatment Plant and includes upgrades and repurposing of existing facilities at the Northern District Wastewater Treatment Plant.
 - B. Demolition works at the existing Northern District Wastewater Treatment Plant and Southern Link Pump Station.
 - C. Upgrade of the existing GWA Southern Link pump station and force-main.
 - D. The new plant upgrades will include but are not limited to: Headworks, Oxidation ditches, secondary clarifiers, UV disinfection and solids stabilization facilities.
 - E. Upgrades to the existing dewatering facility.
 - F. Upgrade of the existing septage facility and force-main located at the existing Northern District Wastewater Treatment Plant
 - G. New yard piping and infrastructure at and between the existing Northern District Wastewater Treatment Plant and the new secondary treatment facilities.
 - H. Upgrade of the existing laboratory and control facilities.
 - New administration building
 - J. Site improvements to include site security, access, lighting, water, sewer and storm-water systems

ARTICLE 2 - THE PROJECT

The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Upgrade of the Northern District Wastewater Treatment Plant (NDWWTP); GWA Project No. S17-003-OEA.

ARTICLE 3 - ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Dueñas, Camacho and Associates, Inc.

3.02 The Owner has retained Dueñas, Camacho and Associates, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Days

A. The work will be substantially completed within 846 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 906 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - Substantial Completion: Contractor shall pay Owner 5,000.00 for each day that expires
 after the time (as duly adjusted pursuant to the Contract) specified in Paragraph
 4.02.A above for Substantial Completion until the Work is substantially complete.
 - Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 Special Damages

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse

Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
 - A. For all Work other than Unit Price Work, a lump sum of: \$122,077,088.00 (Base Bid)

 All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 Submittal and Processing of Payments
 - A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 Progress Payments; Retainage
 - A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - Prior to Substantial Completion, progress payments will be made in an amount equal
 to the percentage indicated below but, in each case, less the aggregate of payments
 previously made and less such amounts as Owner may withhold, including but not
 limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). And
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 - INTEREST

7.01 All amounts not paid when due shall bear interest at the rate stated in a governing prompt payment statute.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3 inclusive).
 - 4. Other bonds.
 - a. ___ (pages ___ to ___, inclusive).
 - 5. General Conditions (pages <u>1</u> to <u>68</u>, inclusive).
 - 6. Supplementary Conditions (pages 1 to 13 inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. The Drawings listed on the attached sheet index.
 - 9. Addenda (numbers 1 to 4 (Step 1) and 1 to 6 (Step 2), inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 17, inclusive).
 - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREO	F, Owner and Contractor have s	igned this Ag	reement.	
This Agreement will b	e effective on (whi	ch is the Effe	ctive Date of the Contract).	
OWNER:		CONTRACT	OR:	
Guam Waterworks	Authority	BLACK CO	NSTRUCTION CORPORATION	
By: MIGUEL C. Be	ORDALLO, P.E. 7.9.19	By: LE	ONARD K. KAAR	
Title: General Man	lager (nior Vice President & General anager	
			r is a corporation, a partnership, or a joint ach evidence of authority (1976)	
Attest:			ohn M. McSweeney	
Title:		Title: V	ice President of Astimating & usiness Development	
Address for giving not	tices:	Address for	giving notices:	
Gloria B Nelson Publ	ic Service Building	JL Baker St	t. Harmon Industrial Park	
688 Route 15		Harmon, Guam 96913		
Mangilao Guam 969	13	Mailing: P	O. Box 24667, Barrigada, GU 96921	
		License No.	: C-01418-0038 (where applicable)	
to sign. If Owner is a pul authority to sign and res authorizing execution of				
CERTIFIED FUNDS AVA	AILABLE:	APPROVE	O AS TO FORM:	
By: GILDA M. MAI	FNAS Chief Financial Officer		LLY O. CLARK NA General Counsel	
			, 1	
Date:		Date:	7/9/19	
Contract Amount:	\$122,077,088.00		. / /	
Contingency:	\$-0-			
Amount Certified:	\$122,077,088.00			
Funding Source:	OEA Grant OCON676-16-02:	\$ 928,540	.00	
	OEA Grant OCON676-18-04:	\$48,384,605	.00	
	OEA Grant OCON676-18-05:	\$67,164,022	.00	
	System Development Charge:	\$ 5,422,599.	.00	
	GWA Bond WW 12-01:	\$ 177,322.	00	

BID FORM (ADDENDUM C)

Northern District Wastewater Treatment Plant (NDWWTP) Upgrade to Secondary Treatment

GWA Project No. S17-003-OEA

OEA Grant OCO N676-16-02

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ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

Miguel C. Bordallo, P.E. General Manager Guam Waterworks Authority Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 75 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:
 - A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date
01	April 09, 2019
02	April 11, 2019
03	April 17, 2019
04	April 29, 2019
05	May 02, 2019
06	May 08, 2019

- B. Bidder has conducted a thorough, alert visual examination of the Site, staging and adjacent areas, videos, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent

- to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- 1. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

- 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
- "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 - BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s) as delineated per scope item. Prices include all labor, materials, services, and equipment necessary for completion of the Work for a complete and operational wastewater treatment facility at the Northern District WWTP site. All other Work not listed in the following list are considered incidental and are an obligation of the Contractor under the various Bid Items as specified in the Bid at no additional cost to Owner.
 - A. Bidders are informed that the bid plans are ordered by Process. Each process presented in the list below consists of but may not be limited to Mechanical, Architectural, Structural, Plumbing, Electrical, and Instrumentation disciplines. Bidders will use this ordering system when developing the Price for the bid items below that call out a specific process.
 - B. Owner may elect to provide a portion (approximately 200 tons) of the reinforcing steel for this project at a unit rate per ton, provided to the Contractor as a deductive change order. This unit rate will be based on Contractor's realized actual unit pricing, delivered to Guam, and supported by receipts. This rebar is currently located at the Baza Gardens WWTP Site approximately 17 miles from the NDWWTP Site. The Contractor will be responsible for transporting this rebar from Baza Gardens WWTP to the NDWWTP. If there is a cost difference between transporting from Baza Gardens WWTP and transporting from the port to the NDWWTP Site, the Contractor will be reasonably compensated at a price agreed to by both parties.
 - C. Bidders to include in other Bid item(s) the other costs (if any) associated with accepting such assignment and administering the assigned contract.

5.02 Base Bid:

Base Bid				
Scope Item	Description		Price	
1	Mobilization, Not to Exceed 3% of Total Basic Price	\$	3,662,313.00	
2	Insurance and Bonds	\$	2,915,053.00	
3	Project Management, Temporary Facilities and Site Layout	\$	14,130,166.00	
4	Extended Warranty	\$	789,505.00	
5	Environmental Protection and Erosion Control Measures	\$	468,889.00	

se Bid		
6	Site Clearing	\$ 117,982.00
7	Access Road, Guard Rails and Site Pavement	\$ 1,137,513.00
8	Perimeter Fence Line	\$ 244,949.00
9	Project Site Grading and Site Turf	\$ 415,228.00
10	Project Site Drainage Improvements	\$ 521,686.00
11	Site yard piping demolition works	\$ 49,404.00
12	Facility Demolition Works	\$ 332,805.00
13	Asbestos and Lead containing Material Handling and Abatement	\$ 151,029.00
14	Sludge Removal	\$ 492,570.00
15	Process Yard Piping, Including Piping Between Existing and New Site	\$ 8,720,179.00
16	Project off-site Pavement	\$ 617,299.00
17	Site Electrical	\$ 1,965,380.00
18	Process 1: Southern Link Pump Station	\$ 1,717,950.00
19	Process 1-1: Route 3 Pump Station	\$ 1,576,102.00
20	Process 2: New Headworks	\$ 9,988,518.00
21	Process 3: Oxidation Ditches	\$ 14,087,703.00
22	Process 4: Secondary Clarifiers and Scum Pumping Station	\$ 10,283,398.00
23	Process 6: UV Disinfection System	\$ 5,855,281.00
24	Process 7: Septage Receiving Station	\$ 1,034,479.00
25	Process 8: RAS/WAS Pump Station	\$ 2,952,020.00
26	Process 9: Aerated Sludge Storage Facility and Pump Station	\$ 3,980,984.00

se Bid		
27	Process 10: Thickening Facility	\$ 4,575,949.00
28	Process 11: ATAD	\$ 5,479,138.00
29	Process 12: Digester Equipment Building	\$ 8,812,643.00
30	Process 13: Sludge Storage Tanks	\$ 2,143,592.00
31	Process 14: Dewatering Facility	\$ 3,545,203.00
32	Process 15: Side-Stream Pump Station	\$ 786,077.00
33	Process 16: Plant Water Systems	\$ 640,003.00
34	Process 17: New Administration Building	\$ 2,073,255.00
35	Process 18: Renovated/ Repurpose Lab	\$ 2,058,398.00
36	Process 19: Maintenance Building	\$ 154,844.00
37	Process 20: Standby Generator and Building	\$ 2,840,160.00
38	Plant Start-up and Training	\$ 408,129.00
39	Project Closeout	\$ 351,312.00
	Total Base Price	\$ 122,077,088.00

[Total Price In words]

ONE HUNDRED TWENTY TWO MILLION, SEVENTY SEVEN THOUSAND, EIGHTY EIGHT & 00/100 U.S.DOLLARS

ARTICLE 6 - TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following information must be submitted as part of this Bid Form.

 - B. List of manufacturers for the following major equipment:

Specification		Manufacture Name
Number	Equipment	ALFA LAVAL, INC.
442223	Centrifuges	Odortool
443119	Biotrickling Filter Odor Control System	ROTAMIX
444213.13	Jet Mix Aeration System and	HOTAMIX
111213.13	Appurtenances	SULZER
444256.09	Non-Clog Centrifugal Pumps	
444256.13	Progressing Cavity Sludge Pumps	SEEPEX
***********		FLOWSERVE
444257.11	Non-Clog Dry-Pit Centrifugal Pumps	ANDRITZ
444626.02	Gravity Belt Thickener	ANDITIZ
462133	Rotary Drum Screens	LAKESIDE EQUIPMENT
462183	Septage Receiving Equipment	LAKESIDE EQUIPMENT
		HYDRO INTERNATIONAL
462323	Vortex Grit Removal System	Westech Engineering Inc.
464321	Secondary Clarifier	westech Engineering Inc.
465361	Oxidation Ditches	Westech Engineering Inc.
403301		XYLEM WEDECO
466656	Ultraviolet (UV) Disinfection System	
467324	Autothermal Thermophilic Aerobic Digestion System	Thermal Process Systems

ARTICLE 8 - DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDEK: [Indicate correct name of blading entity]				
	Black Construction C	orporation		
By: [Signature]				
[Printed name]	Leonard K. Kaae, Senior Vice President & General Manager			
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)				
Attest: [Signature]	al IIII			
[Printed name]	Mark J. Mamozarz			
Title:	Vice President of Finance, Secretary & Treasurer			
Submittal Date:	May 29, 2019			
Address for giving n	otices:			
	Black Constr	uction Corporation		
	Physical Add	lress: JL Baker St. Harmon Industrial Park, Harmon, Guam 96913		
	Mailing Addr	ess: P.O. Box 24667, Barrigada, Guam 96921		
Telephone Number: (671) 646-4861		61		
Fax Number: (671) 646-9086		86		
Contact Name and e-mail address: Leonard K. Kaae				
		leonardk@blackguam.com		
Bidder's License No	.: C-0418-0038			
	lwhere an	nlicable		



GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building | 688 Route 15, Mangilao, Guam 96913 P.O. Box 3010, Hagatna, Guam 96932 Tel. No. (671) 300-6036

NOTICE TO PROCEED

Owner: **Guam Waterworks Authority GWA Project No.: S17-003-0EA**

Contractor: Black Construction Corporation

Engineer: Dueñas, Camacho and Associates, Inc

Project: Upgrade of the Northern District Wastewater

Treatment Plant (NDWWTP) to Secondary

Treatment

Effective Date of Contract:

July 10, 2019

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on July 10, 2019.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of days to achieve Substantial Completion is (846 calendar days) or November 1, 2021, and the number of days to achieve readiness for final payment is (906 calendar days) or December 31, 2021.

Before starting any Work at the Site, Contractor must comply with the following:

1. See Paragraph 2.03 and 2.04 of the General Conditions

Owner: **Guam Waterworks Authority**

> Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

By:

Thomas Cruz, P.E.

Title:

Chief Engineer

Date Issued: July 9, 2019

CC:

PM/CM



NOTICE OF AWARD

Date of Issuance: June 7, 2019

Owner:

Guam Waterworks Authority

Engineer:

Dueñas, Camacho and Associates, Inc.

Project:

Upgrade of Northern District Wastewater Treatment Plant

(NDWWTP)

Project No.:

S17-003-0EA

Bidder:

Black Construction Corporation

Bidder's Address: P.O. Box 24667, GMF Barrigada, Guam 96921

TO BIDDER:

You are notified that Owner has accepted your Bid dated May 29, 2019 for the above project, and that you are the Successful Bidder and are awarded a Contract for:

All Goods and Special Services described in the Base Bid Form including all labor, materials, services, and equipment necessary for a complete and operational wastewater treatment facility at the Northern District Wastewater Treatment Plant site.

The Contract Price of the awarded Contract is: \$122,077,088.00 (Base Bid) subject to unit prices.

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award:

- 1. Deliver the Contract security [e.g., performance and payment bonds] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
- 2. Other conditions precedent (if any): none

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

After you comply with the above conditions, Owner will transmit to you two unexecuted counterparts of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

Guam Waterworks Authority

Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

By:

Title:

Copy: Engineer

Section 00510 **Notice of Award**

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