

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

GWA DOCKET 23-04

ORDER



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.

On January 24, 2023, 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 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

¹ Petition, p. 2.

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 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.

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).

³ Petition, p. 2.

⁴ 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.”⁹

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 Pollutant Discharge Elimination System (‘NPDES’) permit” that would, among other things,

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.

“mitigate impacts to wastewater utilities, nearshore waters, and marine biological resources.”¹² 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.¹⁴ 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

The costs for the discrete project items range from \$3.6 million for mobilization, to \$14 million for project management.¹⁶ Other construction costs include: about \$332,000.00 for demolition; about \$10 million for new headworks; about \$14 million for oxidation ditches; about

¹² Resolution No. 37-FY2018, pp. 1-2.

¹³ Resolution No. 37-FY2018, p. 2.

¹⁴ Black Construction Contract, p. 1.

¹⁵ Black Construction Contract, p. 1.

¹⁶ See Base Bid submitted by Black Construction.

\$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.¹⁷ According to GWA, Black Construction has already made a request for the issuance of substantial completion.¹⁸

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 WWTP 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 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

¹⁷ See Base Bid submitted by Black Construction.

¹⁸ Petition, p. 3.

¹⁹ See Petition, p. 4.

²⁰ Petition, p. 4.

\$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.²² 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."²³ It is clear that bond funds have been reserved for the subject project. 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

²¹ Petition, p. 4.

²² Order Approving Long-Term Debt, GWA Docket 20-03, pp. 1-2 (Mar. 26, 2020).

²³ Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.

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

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.”²⁵

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.

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.

RECOMMENDATION

Based on this record, and for the other reasons set forth herein, the ALJ recommended that the PUC authorize the amount of \$6,707,990.13 in bond funds for GWA to close out its

²⁵ Resolution No. 37-FY2018, pp. 1-2.

²⁶ Resolution No. 37-FY2018, p. 1.

²⁷ Order Approving Long-Term Debt, GWA Docket 20-03, Exhibit A, p. 2.

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.

The Commission hereby adopts the findings in the January 24, 2023 ALJ Report and therefore issues the following.

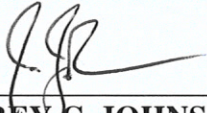
ORDERING PROVISIONS

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; and that GWA is authorized to pay Black Construction Corporation \$6,707,990.13 from bond proceeds.
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 26th day of January, 2023.



JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ-CAMACHO
Commissioner



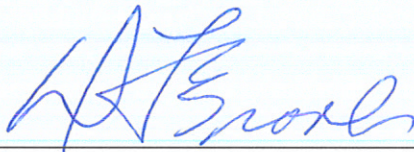
JOSEPH M. MCDONALD
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PEDRO GUERRERO
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