

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) PAG Docket 25-01
)

THE PORT AUTHORITY OF GUAM'S)
PETITION TO INCREASE FUNDING)
FOR THE WATERLINE REPLACEMENT)
PROJECT AGREEMENT AND FOR)
APPROVAL OF AMENDMENT)
NO. 2)

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] pursuant to the February 6, 2025, Port Authority of Guam ["PAG"] Petition to increase funding for the BME & Son's, Inc. Waterline Replacement Project Agreement, and for approval of Amendment No. 2.¹

BACKGROUND

On February 24, 2022, the PUC approved the PAG Waterline Replacement Project Award to BME & Son's, Inc. ["BME"] in the amount of Four Million Eight Hundred Fifty-Six Thousand Five Hundred Sixty-Eight dollars and Ninety-One Cents (\$4,856,568.91).² The project is for the construction of a new waterline piping system and Fire Protection pipelines that will feed all infrastructure buildings inside the Port of Guam yard and Cabras Island.³

BME has proceeded diligently to execute the project. However, the Port and BME have identified several conditions in the field that have prevented BME from performing the

¹ PAG Petition, PAG Docket 25-01, dated February 6, 2025 at p. 1.

² PUC Order, PAG Docket 22-02, dated February 24, 2022 at p. 8.

³ PAG Petition at p. 1.

work as designed and planned. In addition, the current scope of work does not include certain items “necessary to have a complete working waterline system.”⁴ The Port is requesting that the PUC approve Amendment No. 2 to the Construction Agreement between the Port and BME. A true and correct copy of Amendment No. 2 is attached to the ALJ Report as Exhibit “1”.

Proposed Amendment No. 2 would increase the total funding for the PAG-BME Waterline Replacement Agreement in the amount of \$691,698.65. This cost increase was negotiated by the parties. The six major changes negotiated to the scope of work of the Agreement are as follows:

- (1) Removal and replacement of 22 total Fire Hydrants;
- (2) Realignment of waterline at STA 20 (a devanning ramp was built previously and there is a need for re-routing of the pipes);
- (3) Addition of 140 linear feet to connect piping to the GWA water meter;
- (4) Re-routing of pipes at STA 41;
- (5) Replacement of CFS Building connection pipe for Fire Suppression System (corroded and unusable), and repair of leak;
- (6) Installation of Water Tank Back Flow Preventer appurtenances (not installed when the tank was built).

The full additional services which BME will perform for the change orders to the Scope of Work are set forth in detail in the attachments to Amendment No. 2 (Exhibit 1 to the ALJ Report). The cost breakdown for each of these six items is indicated in the Memorandum of Negotiations, dated January 10, 2025, and attached to the ALJ Report as Exhibit “2”.

⁴ Id.

The Port has extended the period for performance under the BME Agreement. The original period of performance in the Agreement was for one year (365 calendar days), with the projected completion date as February 4, 2024. The parties, in Amendment No. 1 to the Agreement, extended the time for the waterline project for 331 additional calendar days, with a new contract completion date of December 21, 2024.⁵ Amendment No. 2 would further extend the Contract for 394 Calendar days, for a total of 1090 calendar days from the issuance of the Building Permit. Under the new contract period for performance, the project must be completed by January 29, 2026.⁶

The Port Board of Directors approved the Petition, Amendment No. 2, and the extension of the contract period for performance at its February 27, 2025, monthly meeting.

The ALJ filed his Report herein dated February 14, 2025.⁷ The PUC adopts the conclusions and recommendations stated in the Report.

DETERMINATIONS

1. PAG's Contract Review Protocol.

The PAG petition indicates that it seeks PUC approval under the Contract Review Protocol, PAG Docket 09-01, Section 10: "PAG shall not incur expenses for PUC approved **internally financed contracts and obligations** in excess of 10% over the amount authorized by the Commission without PUC approval." (emphasis added).

⁵ PAG Petition at p. 15, Inter-Office Memorandum dated January 22, 2024, Subject: Proposed Amendment No. 1 for No Cost Time Extension for Waterline Project.

⁶ PAG Petition at p. 4, Amendment No. 2; PAG Petition at pgs. 28-29, Inter-Office Memorandum dated January 27, 2025.

⁷ ALJ Report, PAG Docket 25-01, dated February 14, 2025.

However, this particular provision is not applicable to PAG's petition. The Waterline Replacement Project is not an "internally financed contract" or obligation. This project is funded from Bond Funds.⁸ In accordance with par. 1(d) of the Contract Review Protocol, PAG is required to file a petition with the PUC seeking approval for "any use of bond proceeds."⁹ In addition, Section 10 of the Protocol provides that "**PAG shall not increase the amount of any externally financed obligation without prior PUC approval.**"¹⁰ (emphasis added).

2. An Increase in Funding for the Waterline Replacement Project Agreement is necessary to ensure that its intended purposes are accomplished.

PAG's petition states that "[T]he approval of Amendment No. 2 for IFB-PAG-CIP-021-005, Waterline Replacement Project, will ensure and enhance the Port's capability to supply the water necessary to contain and extinguish a fire."¹¹ The Port receives, transports and stores a variety of cargo and materials, some of which is highly flammable and/or explosive.¹² Certain specialized equipment at the Port contains significant quantities of fuel and other flammable fluids: "implementing fire safety measures is crucial to safe guarding the Port facilities and logistics terminal from potential fire incidents and ensuring the protection of personnel and assets."¹³

The current state of the fire hydrants provides a significant challenge to the Port's fire fighting capabilities should a fire occur on the dock side.¹⁴ As mentioned, 22 total Fire Hydrants will be replaced.

⁸ PUC Order, PAG Docket 22-02, dated February 24, 2022, at p. 3.

⁹ Contract Review Protocol, PAG Docket 09-01, par. 1(d) at p. 1.

¹⁰ Id. at par 10, p. 4.

¹¹ PAG Petition at p. 1.

¹² Id.

¹³ Id. at pgs. 1-2.

¹⁴ PAG Petition, Amendment No. 2, at p. 3.

The waterline must be re-routed around the cargo ramp in order to complete the new connections.¹⁵ The PAG engineering Department recommended that there be modifications from the point of connection to the new waterline.¹⁶ Repairing the water leak in the CFS fire system will activate the CFS Fire Protection System if no other leaks develop.¹⁷

3. The cost for the additional Waterline Replacement Project is reasonable.

The parties negotiated the cost of the six additional items. The BME Cost Proposal was for \$705,663.98. The negotiated cost was reduced to \$691,698.65.¹⁸ The PAG CIP Manager has reviewed the proposed Amendment No. 2 and finds the amount to be fair and reasonable based on cost comparison and pricing data in the original bid.¹⁹ The PAG team used the contract's schedule of values, as well as market research, and field measurements for quantity, to derive the cost estimates.²⁰

ORDERING PROVISIONS

Upon consideration of the record herein, the PAG Petition to increase funding for the BME & Son's, Inc. Waterline Replacement Project Agreement, and for approval of Amendment No. 2, 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:

¹⁵ Id.

¹⁶ PAG Petition, Inter-Office Memorandum dated October 8, 2024 from CIP & Engineering Manager to Rory J. Respicio, General Manager, at p. 43.

¹⁷ Id.

¹⁸ See Exhibit "2".


¹⁹ PAG Petition at p. 1.

²⁰ PAG Petition, Memorandum of Negotiations for Amendment No. 2, dated January 10, 2025, at p. 42.

1. PAG's Petition and Amendment No. 2 to the Agreement between the Port and BME & Son's, Inc., are approved.
2. The Port is authorized to expend the additional sum of \$691,698.65 for the six new items in the scope of work of the Waterline Replacement Agreement. The total Agreement funding is increased from \$4,856,568.91 to \$5,548,267.56.
3. The 394 Calendar Days Contract Extension in Amendment No. 2 is also approved. The deadline for completion of the Waterline Replacement Project is January 29, 2026.
4. 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.


[SIGNATURES TO FOLLOW ON NEXT PAGE]


Dated this 27th day of February 2025.




Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Peter Montinola
Commissioner

Rowena E. Perez-Camacho
Commissioner

Michael A. Pangelinan
Commissioner

Doris Flores Brooks
Commissioner