



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: CONTRACT REVIEW OF)
PERFORMANCE)
MANAGEMENT CONTRACT)
EXTENSION BY GUAM)
WATERWORKS AUTHORITY)

GWA DOCKET 12-03

ALJ REPORT

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INTRODUCTION

This matter comes before the PUC pursuant to the November 15, 2012 Expedited Petition for Approval to Extend the Term of GWA’s Wastewater Performance Management Contract (hereinafter referred to as the “Petition”) filed by the Guam Waterworks Authority (“GWA”). GWA seeks expedited review of extension of the Performance Management Contract (“PM Contract”) with Veolia Water Guam, L.L.C. (“Veolia”) since such contract expires by January 2, 2013.

BACKGROUND

On December 5, 2006, GWA entered into the PM Contract with Veolia for wastewater treatment plans, wastewater lift stations, and wastewater collection system. See Petition, “Exhibit A,” p. 1 (PUC Order, GWA Docket 06-06, Sept. 30, 2009). On September 23, 2009, the PUC approved an extension of the PM Contract for a term of up to three years. *Id.* at 3. As a result, Veolia is GWA’s current wastewater Performance Management contractor; and the subject contract, for which extension is at issue, was approved by the PUC in GWA Docket 06-06.

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DISCUSSION

1. GWA's Expedited Petition

In its Petition, GWA requests that the PUC approve a one year extension of the PM Contract “on the grounds that an extension is necessary” so that Veolia may continue to provide performance management services to GWA “while GWA prepare a more streamlined PMC bid and to wrap up the existing PMC contract.” Petition, p. 2 (Nov. 15, 2012). In addition, GWA further requests that the PUC approve amendments to the PM Contract, which are contained in the Third Amended Contract, attached to “Exhibit C” of the Petition, and which “mainly related to transitioning from the existing PMC structure to a new PMC format.” Petition, p. 2. GWA maintains that “[g]iven the unique nature of this Contract, the need to ensure uninterrupted services from Veolia during the transition period, the fact that the need for the services has been well established, and the fact that the Contract has been previously approved by the PUC, GWA’s request should be approved.” Petition, p. 2.

The Petition is supported by a Resolution issued by the Consolidated Commission on Utilities (the “CCU”), Resolution No. 06-FY2013 (hereinafter referred to as the “Resolution”), which authorizes GWA’s extension and amendment of the PM Contract. Petition, at “Exhibit C.”

2. GWA's Contract Review Protocol

Pursuant to 12 G.C.A. §12004, GWA cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. Additionally, pursuant to GWA’s current Contract Review Protocol, “[a]ll professional service procurements in excess of \$1,000,000” “shall require prior PUC approval

under 12 G.C.A. Section 12004.” Contract Review Protocol, GWA Docket 00-04, p. 1 (Dec. 16, 2003).

3. CCU Approval

The Resolution issued by the CCU authorizes GWA to extend the PM Contract with Veolia for one (1) year commencing on January 2, 2013 and terminating on December 28, 2013 pursuant to the terms of the existing contract. Moreover, the CCU Resolution authorizes GWA to enter into the Third Amended Contract proposed by GWA and Veolia. The CCU found that the terms of the proposed Third Amended Contract included “provisions for wrapping up the PMC Contract for other performance measures” and that such terms were “fair and reasonable and provide adequate flexibility for the parties to effectuate the purposes set forth in the PMC Contract.”

4. Performance Management Contract

Veolia is GWA’s existing contractor for GWA’s performance management services related to GWA’s wastewater treatment plants, wastewater lift stations, and wastewater collection system. *See* Petition, “Exhibit A,” p. 1. The PUC has a longstanding policy “of supporting the retention of private management expertise to manage and operate key public utility systems and resources.” Petition, “Exhibit A,” p. 1. The record indicates that Veolia has provided GWA with “significant benefits in operations and maintenance, health and safety, training, project management and procurement as a result of the PMC with Veolia”; and that Veolia has worked with GWA in ensuring the implementation of capital improvement projects specified in GWA’s Master plans. Petition, “Exhibit A,” p. 2. The management fee under the PM Contract is fixed at approximately \$1 million to \$1.1 million per year.

5. Amendments

The Third Amended Contract attached as "Exhibit A" to CCU Resolution No. 06-FY2013 first amends Section 5.1 of the existing contract by extending the term for one (1) year, commencing January 2, 2013 and terminating on December 28, 2013, but conditioned on the availability of GWA funding.

Next, the Third Amended Contract amends Section 6.1 of the existing contract by adding the following terms:

Without prejudice to the generality of the foregoing responsibilities, the Contractor shall accomplish all the particular tasks identified in Appendix 1 (VWG Particular Tasks) attached herein within the time schedules provided therein PROVIDED THAT the relevant particular tasks identified in Appendix 2 (GWA Particular Tasks) attached herein have been duly implemented within the time schedules provided therein.

The performance of the particular tasks set out in both Appendix 1 and Appendix 2 shall be reviewed on a monthly basis by a committee comprising the General Manager of the Consolidated Utilities Services and at least one representative of each Party (the "Transition Committee"). Towards this objective, the Parties shall, within five (5) days after the end of every month within the contract term, each provide to the Transition Committee a detailed report indicating how they have complied, or intend to comply with the requirements of this paragraph and the Transition Committee shall, within ten (10) days after the end of every month within the contract term, meet to review and discuss the contents of these detailed reports.

The tasks identified in the appendices attached to the Third Amended Contract include tasks related to the transition of responsibilities from Veolia to another contractor or to GWA, as well as tasks related to the federal Stipulated Order projects required under U.S.A. v. Guam

Waterworks Authority and the Government of Guam, Civil Case No. 02-00035 (D. Ct. Guam).

In addition, the tasks also include projects related to GWA's Capital Improvement Plan.

Finally, the Third Amended Contract provides that "[a]ll definitions, terms, provisions and conditions of the Performance Management Contract, which are not altered by this Third Amendment shall remain the same and shall be incorporated hereto in their entirety by reference as if fully set out herein."

RECOMMENDATION

Pursuant to 12 G.C.A. §12004, GWA cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GWA's current Contract Review Protocol, "[a]ll professional service procurements in excess of \$1,000,000" and "[a]ny contract or obligation not specifically referenced above which exceeds \$1,000,000" "shall require prior PUC approval under 12 G.C.A. Section 12004."

The ALJ finds that a one year extension of the PM Contract is both reasonable and necessary to ensure that performance management services are provided to GWA "while GWA prepare a more streamlined PMC bid and to wrap up the existing PMC contract." Petition, p. 2. Specifically, the ALJ finds that "[g]iven the unique nature of this Contract, the need to ensure uninterrupted services from Veolia during the transition period, the fact that the need for the services has been well established, and the fact that the Contract has been previously approved by the PUC, GWA's request should be approved." Petition, p. 2. The ALJ further finds that the amendments to the PM Contract, which are contained in the Third Amended Contract, are fair and reasonable since the new provisions chiefly concern tasks related to the

transition of responsibilities from Veolia to another contractor or to GWA, as well as tasks related to the federal Stipulated Order projects, and projects related to GWA's Capital Improvement Plan.

Moreover, the ALJ finds that the Petition is supported by the findings of the CCU, which has authorized GWA to extend the PM Contract with Veolia for one (1) year commencing on January 2, 2013 and terminating on December 28, 2013, as well as to enter into the Third Amended Contract proposed by GWA and Veolia. The CCU found that the terms of the proposed Third Amended Contract included "provisions for wrapping up the PMC Contract for other performance measures" and that such terms were "fair and reasonable and provide adequate flexibility for the parties to effectuate the purposes set forth in the PMC Contract."

In addition, based on the record before the PUC, the ALJ finds that Veolia, as GWA's existing contractor for GWA's performance management services related to GWA's wastewater services, has provided GWA with "significant benefits in operations and maintenance, health and safety, training, project management and procurement as a result of the PMC with Veolia"; and that Veolia has worked with GWA in ensuring the implementation of capital improvement projects specified in GWA's Master plans. Petition, "Exhibit A," p. 2. The ALJ finds that Veolia's work with GWA has historically comported with the PUC policy "of supporting the retention of private management expertise to manage and operate key public utility systems and resources." Petition, "Exhibit A," p. 1.

Accordingly, the ALJ therefore recommends that the PUC approve the extension, along with the proposed amendments to the agreement contained in the Petition.

CONCLUSION

Based on the record established in this docket, along with the approval of the CCU, and for the other reasons set forth herein, the ALJ recommends that the PUC adopt the findings contained in this report and respectfully requests that the PUC approve GWA's extension of the PM Contract with Veolia. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Dated this 6th day of December, 2012.



DAVID A. MAIR
Administrative Law Judge

P124105.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: CONTRACT REVIEW OF)	GWA DOCKET 12-03
PERFORMANCE)	
MANAGEMENT CONTRACT)	ORDER
EXTENSION BY GUAM)	
WATERWORKS AUTHORITY)	
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INTRODUCTION

This matter comes before the PUC pursuant to the November 15, 2012 Expedited Petition for Approval to Extend the Term of GWA’s Wastewater Performance Management Contract (hereinafter referred to as the “Petition”) filed by the Guam Waterworks Authority (“GWA”). GWA seeks expedited review of extension of the Performance Management Contract (“PM Contract”) with Veolia Water Guam, L.L.C. (“Veolia”) since, according to GWA, such contract expires on January 2, 2013.

DETERMINATIONS

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

On December 6, 2012, the Administrative Law Judge of the PUC (the “ALJ”) filed an ALJ Report detailing his review of GWA’s request for an extension of the PM Contract.

In the December 6, 2012 ALJ Report, the ALJ found that a one year extension of the PM Contract is reasonable and necessary to ensure that performance management services are provided to GWA “while GWA prepare a more streamlined PMC bid and to wrap up the existing PMC contract.” Petition, p. 2. In particular, the ALJ found that “[g]iven the unique nature of this Contract, the need to ensure uninterrupted services from Veolia during the transition period, the fact that the need for the services has been well established, and the fact that the Contract has been previously approved by the PUC, GWA’s request should be approved.” Petition, p. 2.

The ALJ further found that the amendments to the PM Contract, which are contained in the Third Amended Contract, are fair and reasonable since the new provisions chiefly concern tasks related to the transition of responsibilities from Veolia to another contractor or to GWA, as well as tasks related to the federal Stipulated Order projects, and projects related to GWA’s Capital Improvement Plan.

The ALJ also found that the Petition is supported by the findings of the CCU, which has authorized GWA to extend the PM Contract with Veolia for one (1) year commencing on January 2, 2013 and terminating on December 28, 2013, as well as to enter into the Third Amended Contract proposed by GWA and Veolia. The ALJ found that the CCU determined that the terms of the proposed Third Amended Contract included “provisions for wrapping up the PMC Contract for other performance measures” and that such terms were “fair and reasonable and provide adequate flexibility for the parties to effectuate the purposes set forth in the PMC Contract.”

In addition, based on the record before the PUC, the ALJ also found that Veolia, as GWA’s existing contractor for GWA’s performance management services related to GWA’s

wastewater services, has provided GWA with “significant benefits in operations and maintenance, health and safety, training, project management and procurement as a result of the PMC with Veolia”; and that Veolia has worked with GWA in ensuring the implementation of capital improvement projects specified in GWA’s Master plans. Petition, “Exhibit A,” p. 2. Based on the foregoing, the ALJ recommended that the PUC approve the extension, along with the proposed amendments to the agreement contained in the Petition.

The Commission hereby adopts the findings contained in the December 6, 2012 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, GWA’s November 15, 2012 Petition, the December 6, 2012 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 the following:

1. The Expedited Petition for Approval to Extend the Term of GWA’s Wastewater Performance Management Contract with Veolia Water Guam, L.L.C. is hereby approved. GWA is therefore authorized to extend its existing Wastewater Performance Management Contract with Veolia for a term of up to one (1) year.

2. Upon the execution of any contract extension between GWA and Veolia, GWA shall file in this Docket such extension with the PUC.

3. GWA is ordered to pay the PUC’s regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC’s regulatory fees and expenses is

authorized pursuant to 12 GCA §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 11th day of December, 2012.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner

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