



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: CONTRACT REVIEW FOR
PROPERTY INSURANCE
INVITATION FOR BID

GWA DOCKET 12-02
ALJ REPORT

INTRODUCTION

This matter comes before the PUC pursuant to the January 13, 2012 Expedited Petition for Expedited Approval of GWA's Insurance Bid and Authorization to Issue Policy (hereinafter referred to as the "Petition") filed by the Guam Waterworks Authority ("GWA"). GWA seeks expedited review of the PUC's consideration of the invitation for bid since GWA's current contract for property insurance expires on March 31, 2012.

BACKGROUND

Under 12 G.C.A. §12004, the PUC must expressly approve any contractual agreements or obligations which could increase GWA's rates and charges. In addition, under GWA's 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, which shall be obtained before the procurement process is begun." Contract Review Protocol, GWA Docket 00-04, p. 1 (Dec. 16, 2003). In GWA Docket 10-02, GWA similarly sought PUC approval in the procurement, as well as, purchase of property insurance.

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DISCUSSION

1. GWA's Expedited Petition

In its Petition, GWA requests that the PUC approve GWA's purchase of property insurance, as well as other types of insurance contained in its draft Invitation for Bids, which it attached as "Exhibit A" to the Petition. GWA maintains that under the provisions of the 2005 Series Bond Indenture, GWA is required to "maintain insurance on its system that a reasonable prudent operator of a similar system would maintain." GWA's Expedited Petition for Approval of GWA's Insurance Bid and Authorization to Issue Policy ("Petition"), p. 1 (Jan. 13, 2012). GWA further indicates that it hired IRIS, Ltd. ("IRIS"), a risk management consultant, to assist GWA in preparing the documentation necessary to determine the types of coverage for, as well as the procurement of, insurance that complies with the provisions of GWA's bond indentures. Petition, at 2. In addition, the Petition is supported by a Resolution issued by the Consolidated Commission on Utilities (the "CCU"), Resolution No. 13-FY2012 (hereinafter referred to as the "Resolution"), which authorizes GWA to issue an Invitation to Bid to procure property insurance, as well as seek PUC approval under GWA's Contract Review Protocol. Petition, at "Exhibit B."

GWA asserts that pursuant to the provisions of its bond indenture, it must purchase insurance on its system. Petition, at 3. GWA maintains that if it does not maintain such insurance, then it could potentially be in default of its obligations under its bond indentures. Petition, at 3. Moreover, GWA further maintains that the PUC should expedite the approval of the invitation for bid since GWA's current contract for property insurance expires on March 31, 2012.

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" 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, which shall be obtained before the procurement process is begun." Contract Review Protocol, GWA Docket 00-04, p. 1 (Dec. 16, 2003).

3. **Section 6.06 of the 2005 Series Bond Indenture**

GWA maintains that under Section [6.06] of the 2005 Series Bond Indenture, GWA must maintain insurance on its system that would usually be "maintained by prudent operators" of similar systems. *See* Petition, at 1.

In particular, Section 6.06(A) provides that:

The Authority will maintain or cause to be maintained insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable cost.

In addition, Section 6.06(B) provides that:

The Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of systems similar to the System.

See Petition, at 2. Accordingly, GWA's 2005 Series Bond Indenture, along with its supplemental indentures, require GWA to maintain insurance on the system in amounts and against risks normally maintained by other water and wastewater authorities.

4. **CCU Approval**

The Resolution issued by the CCU authorizes GWA to issue an Invitation to Bid to procure property insurance, as well as to seek PUC approval for such insurance under GWA's Contract Review Protocol. In the Resolution, the CCU found that under certain provisions of GWA's 2005 and 2010 Series Bond indentures, GWA is required to maintain property insurance "usually maintained by prudent operators of systems similar and similarly situated to GWA's system." Petition, at "Exhibit B." The CCU further found that IRIS had recommended that a \$30 million property insurance coverage satisfied the obligations set forth under the bond indenture provisions. The CCU also found that the term of coverage, either three (3) or five (5) years, would depend on whichever was most cost effective.

Furthermore, the CCU determined that blanket coverage was required for risks of direct physical loss or damage to all real and personal property belonging to GWA or in which GWA has an insurable interest. In addition, the CCU further determined that coverage should also include "a deductible on each and every loss" for "wind, typhoon, earthquake, flood and tidal wave, and, each and every loss in respect of all other perils." *Id.* Finally, the CCU determined that the maintenance of property insurance was prudent under "best business practices" and conforms with the insurance provisions of the bond indentures. *Id.*

5. **IRIS, Ltd.**

GWA's consultant, IRIS, is a risk management firm that consults in risk management for institutions which include air and seaports, educational and financial institutions, hospitals, and public utilities. Its clients include lending institutions in Switzerland and New York, agencies of the City and County of Los Angeles, and several autonomous agencies of the Government of Guam and the Commonwealth of the Northern Mariana Islands.

As part of its work, IRIS has designed and organized insurance programs for previously uninsured entities. It has managed a variety of insurance procurement processes, which involve: site visits and personal interviews with the clients; preparation of procurement RFPs that meet local regulations; preparation of insurance specifications for the insurance brokers; evaluation of proposals received from underwriters; and preparation of comparison displays to provide purchase recommendations to the clients.

In addition, IRIS also provides analyses of replacement costs for damaged or destroyed property, which supports the purchase of adequate insurance coverage in the event of loss. Its vice president, Mark Heath, is a resident of Guam.

6. **Proposed Insurance Coverage**

In the Petition, GWA maintains that it hired IRIS to assist GWA in determining the types of insurance coverage would be necessary to comply with the insurance provisions of its bond indentures. As a result, IRIS has prepared for GWA bid documents that contain the types of insurance coverage necessary to satisfy the bond indenture provisions discussed above.

In GWA's draft invitations for bid, attached as "Exhibit A" to the Petition, GWA seeks property insurance in the amount of \$30 million, with a \$1 million deductible for wind,

typhoon, earthquake, flood, and tidal wave, and a \$100,000 deductible for all others. The property insurance coverage for the amount of \$30 million is the same as its current coverage. GWA also seeks general liability insurance in the amount of \$35 million for each occurrence, which includes products liability, and \$10 million for personal injury liability, and \$15 million for pollution liability, all with a \$300,000 deductible for each and every loss.

GWA further seeks directors and officers liability insurance in the amount of \$2 million with no deductible. In addition, GWA seeks automobile insurance in the amount of \$2 million combined single limit, with a \$100,000 deductible. And finally, GWA seeks crime insurance in the amount of \$1 million, with no deductible. The term for GWA's current contract for insurance is fourteen (14) months. GWA seeks bids described above for either for three (3) or five (5) year terms. While the ALJ has reviewed these draft bid documents, the ALJ has not ascertained the legal sufficiency of GWA's invitations for bids, and therefore provides no opinion on this issue.

CONCLUSION AND RECOMMENDATION

The PUC is tasked with reviewing and approving all uses of bond proceeds pursuant to 12 G.C.A. §12004. In addition, pursuant to the Contract Review Protocol, GWA Docket 00-04, GWA is required to obtain prior PUC approval for any expenditure of bond proceeds, before the Government of Guam procurement process is initiated for contracts in excess of \$1 million.

The ALJ finds that GWA is required to maintain "insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly

situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners” pursuant to provisions of its bond indentures.

The ALJ further finds that GWA’s risk management consultant, IRIS, has significant experience designing and organizing insurance programs, as well as experience assisting public entities with managing a variety of insurance procurement processes. Accordingly, the ALJ finds that the types of insurance coverage identified by IRIS and GWA as necessary to comply with the insurance provisions of its bond indentures appear both reasonable and necessary. The ALJ also finds that the draft bid documents, particularly GWA’s Bid Items 1.0 through 5.0, which contain the types of insurance coverage, appear necessary and reasonable to satisfy such bond indenture provisions.

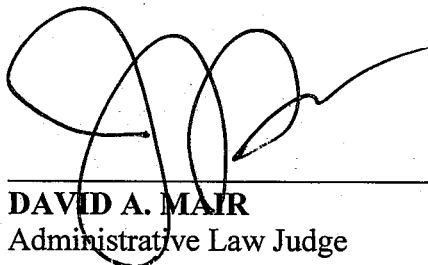
In addition, GWA’s Petition is further supported by the findings of the CCU, which by Resolution, has authorized GWA to issue Invitations to Bid to procure property insurance, among others, as well as to seek PUC approval for such insurance coverage under GWA’s Contract Review Protocol.

As previously expressed in the October 6, 2010 PUC Counsel Report issued in GWA Docket 10-02, “[t]he need for GWA to procure property insurance is clear: property insurance is required by GWA’s 2005 Bond Series Indenture.” PUC Counsel Report, GWA Docket 10-02, p. 2 (Oct. 6, 2010). Moreover, “the availability of property insurance will potentially benefit rate payers with regard to the protection of system assets” and that “[i]nsurance proceeds can assist recovery efforts after natural disasters such as typhoons or earthquakes.” *Id.* at 3.

The ALJ therefore recommends that the PUC approve GWA's bid for, and purchase of, the following: property insurance in the amount of \$30 million, with a \$1 million deductible for wind, typhoon, earthquake, flood, and tidal wave, and a \$100,000 deductible for all others; general liability insurance in the amount of \$35 million for each occurrence, which includes products liability, and \$10 million for personal injury liability, and \$15 million for pollution liability, all with a \$300,000 deductible for each and every loss; directors and officers liability insurance in the amount of \$2 million with no deductible; automobile insurance in the amount of \$2 million combined single limit, with a \$100,000 deductible; and, crime insurance in the amount of \$1 million, with no deductible.

Based on the documentation provided by GWA, 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 authorize GWA to issue an Invitation to Bid to procure the types of insurance coverage, which include the amounts of such coverage, indicated in the Petition.

Dated this 31st day of January, 2012.


for **DAVID A. MAIR**
Administrative Law Judge