

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY THE GUAM)
WATERWORKS AUTHORITY TO)
REVISE THE CONTRACT REVIEW)
PROTOCOL AND TO UPDATE THE)
REPORTS THAT GWA FILES WITH)
THE PUC)

GWA Docket No. 11-07

ALJ REPORT



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") upon the request of Petitioner Guam Waterworks Authority ("GWA") to revise the Contract Review Protocol ("CRP") and its reporting obligations, filed with the PUC on January 21, 2011.

BACKGROUND

1. Pursuant to Section 12000(a) of Title 12 of the Guam Code Annotated, GWA is a public utility.
2. Under Section 12004 of Title 12 of the Guam Code Annotated, public utilities may not "enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission."
3. Rule 22 of the PUC's Rules for Practice and Procedure provide that the PUC "shall by independent order after public hearing establish and amend a procedure to review utility contracts and obligations, pursuant to its duty under 12 G.C.A. § 12004."
4. On December 16, 2003, the PUC approved a CRP for GWA. This CRP established protocol in identifying and reviewing regulated contracts and obligations of GWA.
5. On October 27, 2005, the PUC approved an amended CRP.
6. The instant petition filed by GWA seeks to amend the October 27, 2005 CRP.

ORIGINAL

ANALYSIS

7. In its petition, GWA contends that the existing CRP is “unwieldy” and “appears on its face to exceed the statutory mandate provided to the PUC by having GWA submit two petitions.”¹ GWA maintains that having to file a petition “in advance of the procurement process,” and another petition “to actually obtain approval of the PUC of the proposed contract” “promotes inefficiency.”²

8. Reinforcing its contention, GWA asserts that its procurement process is subject to annual auditing by Deloitte and Touche, as well as by the Public Auditor of Guam, and is subject to review by the Attorney General’s Office for procurements over \$500,000.00. Accordingly, GWA maintains that the proposed changes to the existing CRP will promote efficiency and still aid the PUC in exercising its regulatory oversight of GWA.

9. In addition, GWA further contends that the number and scope of reports it is required to file with the PUC are unnecessary, outdated, and constitute a waste of resources.³ Accordingly, GWA also requests that the PUC issue a “blanket Order” vacating all pre-existing orders related to GWA’s reporting requirements, and that the PUC specify which reporting requirements are necessary to aid the PUC in fulfilling its statutory responsibilities.

A. Contract Review Protocol

i. Section 1

10. GWA’s proposed CRP departs from the existing CRP in two fundamental ways. First, the proposed CRP increases the contract review threshold from \$1 million to \$1.5 million. This alteration is made throughout Section 1, as well as throughout the proposed CRP.

¹ GWA’s Petition to Revise the Contract Review Protocol and Revise the Reports that GWA Currently Is Required to File with the PUC, p. 2 (Jan. 21, 2011).

² *Id.* at 2.

³ *Id.* at 2, 4-5.

Second, the proposed CRP modifies the existing CRP by eliminating the need for PUC oversight prior to the agency's procurement process. As a result, the PUC's regulatory oversight of GWA's contracts is triggered *after* the agency's procurement process, specifically after a contract is selected. Accordingly, the proposed CRP eliminates language that makes reference to PUC approval "before the procurement process is begun."

11. In addition, the proposed CRP further modifies Section 1, which primarily lists the specific contracts and obligations that require the PUC's review and approval, by eliminating the phrase "capital improvement projects," and replaces it with the phrase "internally financed contracts using O&M funds." This alteration appears to more broadly include all GWA contracts that are entered into and financed by GWA's operating funds. Moreover, the proposed CRP eliminates the provision that includes "[a]ll capital items by account group, which in any year exceed \$1,000,000," as contracts or obligations requiring PUC review and approval.

12. The ALJ finds that the foregoing proposed modifications to Section 1 are fair and reasonable. The increase in the contract review threshold from \$1 million to \$1.5 million mirrors the Guam Power Authority's current contract review threshold, which is also at \$1.5 million. In addition, the ALJ agrees with GWA and finds that the original two-step process of obtaining PUC approval of contracts before the procurement process, and then obtaining PUC approval after a contract is selected, is inefficient and duplicative. The ALJ finds that initiating the PUC's contract review after a contract is selected pursuant to the procurement process is sufficient to satisfy the PUC's regulatory responsibilities. This alteration is also reflected throughout the CRP.

ii. **Section 2**

13. With respect to Section 2, which addresses revenue contracts, the proposed CRP again reflects the increase in the contract review threshold from \$1 million to \$1.5

million, and eliminates the provision requiring GWA's management to submit an affidavit stating that such a contract would not produce an increased revenue requirement. Thus, the proposed CRP modifies the requirements for entering into such contracts, without PUC approval, by requiring GWA to provide the PUC with only two documents: (1) GWA's governing body resolution authorizing the contract; and (2) a petition describing the proposed contract along with supporting documentation. The ALJ considers these alterations fair and reasonable as these contracts generally benefit GWA financially, and generally do not negatively impact GWA's ratepayers.

iii. Section 3

14. The proposed CRP modifies Section 3 to the extent that where GWA seeks an emergency procurement of a contract that exceeds \$1.5 million, pursuant to 5 G.C.A. Section 5215, GWA shall only be required to: (1) file a report with the PUC detailing the need for such emergency procurement, and (2) attach any supporting documentation related to the emergency procurement. The ALJ finds the modification of this provision fair and reasonable as 5 G.C.A. Section 5215 already sets forth ample requirements for any agency to file an emergency procurement. The ALJ finds that a report to the PUC detailing and documenting the need for such emergency procurement should suffice in aiding the PUC in exercising its regulatory duties.

iv. Section 4

15. Furthermore, the proposed CRP also modifies Section 4, which addresses multi-year contracts. GWA maintains that this section now reflects "the statutory language relative to contract approval as opposed to procurement approval as discussed in [the petition's]

Introduction.”⁴ Indeed, the proposed CRP reflects the modification of the contract review threshold amount of \$1.5 million, as opposed to \$1 million, and simplifies the first provision as directly stating that “[t]he term of the contract will include all options for extension or renewal.” In addition, the proposed CRP eliminates Section 6(e), which provides that “[u]nless for good cause shown, any petition for the PUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.” The ALJ finds that the deletion of this provision will have no impact on the PUC’s regulatory oversight, as all contracts falling under the review protocol should be subject to the same deadlines and review scrutiny. Accordingly, the ALJ finds that the alterations made to Section 4 are fair and reasonable.

v. Section 5

16. With respect to Section 5, which involves the annual reporting of GWA’s capital improvement budget for upcoming fiscal years, the proposed CRP eliminates reference to a “construction budget” and instead replaces it with the phrase “capital improvement budget.” GWA maintains that it now has a Capital Improvement Plan (“CIP”), and that its expenditures will flow from such plan. The ALJ agrees with this modification inasmuch as most, if not all, of GWA’s expenditures will be based on GWA’s CIP.

vi. Section 6

17. Moreover, GWA’s proposed CRP simplifies Section 6 by eliminating the language that the Consolidated Commission on Utilities (“CCU”) must “confirm” “after careful review” that the proposed contract is reasonable, prudent and necessary. The ALJ agrees with GWA that a resolution by the CCU that such contract is reasonable, prudent and necessary implies that the CCU has made the finding after careful review, consideration, and scrutiny.

⁴ *Id.* at 4.

18. In addition, the proposed CRP eliminates two provisions in Section 6 that require GWA to provide in its petition for contract review: (1) a detailed review of an “alternative” to the proposed contract; and (2) cost estimates and milestones related to such alternative contract. The ALJ finds that the deletion of these two provisions would bear very little impact on the PUC’s regulatory oversight, as the statutory procurement process is the most appropriate mechanism to consider such alternatives to the proposed contract. Accordingly, the ALJ finds that the alterations made to Section 6 are all fair and reasonable.

vii. Section 9

19. With respect to Section 9, the proposed CRP more clearly indicates that the first provision relates to all PUC approved “internally financed” contracts and obligations. The proposed CRP also adds the provision that “GWA shall not increase the amount of any externally funded obligation without prior PUC approval.”

20. The ALJ agrees with these modifications, and thereby finds them reasonable, inasmuch as they more clearly indicate that all internally funded contracts and obligations may not cost the agency more than the contract amount originally authorized by the PUC without the PUC’s approval. In addition, all externally funded contracts or obligations also may not be increased without the PUC’s approval.

21. The ALJ, however, recommends lowering the percentage of excess from 20% to 10%. The ALJ finds that lowering the excess amount to 10% of the contract amount is both reasonable and fair in light of the increase in the contract review threshold from \$1 million to \$1.5 million. In addition, lowering the excess amount to 10% would allow the PUC to better exercise its oversight authority in instances where the approved contract prices are affected by severe cost overruns.

viii. **Section 12**

22. Regarding Section 12, the proposed CRP replaces the forty-five (45) day period with a thirty (30) day period for the PUC to act in response to GWA's requests for regulatory contract review. The ALJ finds this alteration fair and reasonable as it aids in expediting the resolution of such requests by shortening the deadline for the PUC to respond.

B. Reporting Requirements

23. With respect to GWA's request that the PUC consider modifying GWA's reporting requirements, the ALJ will not address this issue at this time and, therefore, the ALJ will reserve judgment on this issue. In the interim, the ALJ recommends that the PUC require GWA to itemize the precise reporting requirements, as well as identify the relative provisions and Orders, that GWA considers unnecessary, redundant, or duplicative, so that the PUC can then review and assess what reporting requirements are presently necessary to facilitate the PUC's statutory duty to provide regulatory oversight of GWA.

RECOMMENDATION

24. GWA has provided the PUC with satisfactory arguments and reasons to modify its existing CRP. The ALJ finds that all of the proposed modifications are reasonable and fair. The ALJ further finds that the proposed modifications also appear to promote better efficiency, and decrease redundancies in the regulatory contract review process. The ALJ, however, recommends lowering the percentage of excess from 20% to 10% in Section 9 of the CRP as discussed above.

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25. For the reasons set forth herein, the ALJ hereby recommends that the PUC approve GWA's proposed Contract Review Protocol, with the exception of incorporating the ALJ's recommended alteration indicated in paragraph 21 of this Report. With respect to GWA's request that the PUC consider modifying GWA's reporting requirements, the ALJ further recommends that the PUC require GWA to itemize the precise reporting requirements, as well as identify the relative provisions and Orders, that GWA considers unnecessary, redundant, or duplicative.

26. For the consideration of the Commission, an Order is submitted herewith approving the proposed Contract Review Protocol and ordering GWA to furnish the information described above. In addition, another Order is submitted herewith establishing GWA's proposed CRP, which also reflects the ALJ's recommended alteration indicated in paragraph 21 of this Report.

Dated this 14th day of February, 2011.

A handwritten signature in black ink, appearing to read 'DAVID A. MAIR', written over a horizontal line.

DAVID A. MAIR
Administrative Law Judge

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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|----------------------------------------------------|-----------------------------|
| IN RE: REQUEST BY THE GUAM) | GWA Docket No. 11-02 |
| WATERWORKS AUTHORITY TO) | |
| REVISE THE CONTRACT REVIEW) | |
| PROTOCOL AND TO UPDATE THE) | ORDER |
| REPORTS THAT GWA FILES WITH) | |
| THE PUC) | |
|) | |

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) upon the request of Petitioner Guam Waterworks Authority (“GWA”) to revise the Contract Review Protocol (“CRP”) and its reporting obligations, filed with the PUC on January 21, 2011.

DETERMINATIONS

1. On December 16, 2003, the PUC approved a CRP for GWA. This CRP established protocol in identifying and reviewing regulated contracts and obligations of GWA.
2. On October 27, 2005, the PUC approved an amended CRP.
3. On January 21, 2011, GWA filed a petition to revise the October 27, 2005 CRP and its reporting obligations ordered by the PUC.
4. On February 14, 2011, the ALJ issued an ALJ Report that addressed the CRP revisions raised in GWA’s petition.
5. In the ALJ Report, the ALJ found that GWA provided the PUC with satisfactory arguments and reasons supporting modification of the existing CRP. The ALJ further found that all of GWA’s proposed modifications were reasonable and fair, and recommended one alteration. The ALJ additionally found that the proposed modifications

seemed to promote better efficiency, and seemed to decrease redundancies in the regulatory contract review process.

6. With respect to GWA's request that the PUC consider modifying GWA's reporting requirements, the ALJ reserved judgment on this issue. Instead, the ALJ recommended that the PUC require GWA to itemize the precise reporting requirements, as well as identify the relative provisions and Orders, that GWA considered unnecessary, redundant, or duplicative.

The Commission hereby adopts the findings made in the ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon consideration of the record herein, the petition filed by GWA January 21, 2011, the ALJ Report filed on February 14, 2011, 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:

1. The Commission approves and adopts the Contract Review Protocol, as revised by the ALJ, which the Commission files as a separate Order. This amended Contract Review Protocol shall govern the procedure to identify and review regulated contracts and obligations of GWA.

2. GWA is ordered to itemize the precise reporting requirements, as well as identify the relative provisions and Orders, that GWA considers unnecessary, redundant, or duplicative.

3. GWA is further 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 conducting the review process. Assessment of the PUC's regulatory fees and

expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

SO ORDERED this ____ of February, 2011.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: **REQUEST BY THE GUAM**)
 WATERWORKS AUTHORITY TO)
 REVISE THE CONTRACT REVIEW)
 PROTOCOL AND TO UPDATE THE)
 REPORTS THAT GWA FILES WITH)
 THE PUC)

GWA Docket No. 11-02

ORDER

Pursuant to its authority under 12 G.C.A. § 12004, the Guam Public Utilities Commission (the "PUC") establishes the following protocol to identify and review regulated contracts and obligations of the Guam Waterworks Authority ("GWA"):

1. The following GWA contracts and obligations shall require prior PUC approval under 12 G.C.A. § 12004:
 - a) All internally financed contracts utilizing O&M funds in excess of \$1,500,000, whether or not the contract extends over a period of one year or several years.
 - b) All professional service contracts in excess of \$1,500,000.
 - c) All externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,500,000. GWA shall file a petition with the PUC seeking approval as to the intended uses of the proceeds from externally funded loan obligations. The petition shall include a detailed list of projects, a description of the projects, and their estimated costs. GWA shall thereafter report on the expenditure of such proceeds in the manner set forth in Section 5 below or as otherwise ordered by the PUC.
 - d) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved capital improvement project ("CIP") or contract.
 - e) Any internally funded contract in excess of a CIP expenditure ceiling, which the PUC shall establish on or before November 15th of each fiscal year.
 - f) Any agreement to compromise or settle disputed charges for services by GWA, when the amount of the waived charges would exceed \$1,500,000.
2. For contracts that involve the receipt by GWA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:

- a) GWA is permitted to evaluate the contract without PUC approval.
 - b) Prior to entering into the contract, GWA will provide the following to the PUC:
 - i) GWA's governing body resolution authorizing the contract.
 - ii) A petition describing the contract along with supporting documentation.
 - c) The contract will be deemed approved unless rejected by the PUC within thirty (30) calendar days after an adequate filing (as determined by the ALJ) has been made by GWA pursuant to subsection (b) of this Section.
3. Emergency procurements, which are made by GWA pursuant to 5 G.C.A. § 5215, shall not require PUC approval; provided, however, that GWA shall file with the PUC a report for any emergency procurement contract over \$1,500,000 within sixty (60) calendar days following the entry into such contract explaining the need for the procurement and providing supporting documentation and approvals for the emergency.
4. With regard to multi-year contracts:
- a) The term of a contract will include all options for extension or renewal.
 - b) The test to determine whether a contract exceeds the \$1,500,000 threshold for PUC review and approval (the review threshold) is the total bid amount of the procurement, including all costs incurred in any renewal options.
 - c) For a multi-year contract with fixed terms and fixed annual costs, GWA must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold. No additional PUC review shall be required after the initial review process.
 - d) For multi-year procurements with fixed terms and variable annual costs, GWA shall seek PUC approval of the contract if the aggregate cost estimate for the entire term of the procurement exceeds its review threshold. On each anniversary date during the term of the procurement, GWA shall file a cost estimate for the coming year of the procurement. GWA shall seek PUC approval in the event a procurement subject to this Section should exceed 120% of the aggregate cost initially approved by the PUC.
5. On or before September 15th of each year, GWA will use best efforts to file with the PUC its capital improvement budget for the coming fiscal year, plus estimates

for the subsequent two (2) fiscal years. The filing shall contain a description of each CIP contained with the budget and estimates. Project descriptions should be sufficiently detailed to identify the specific location and type of equipment to be purchased, leased, or installed. For capital items that are subject to review by account group, GWA shall file information equivalent to that submitted to its governing body for these items.

6. With respect to any contract or obligation which requires PUC approval under this Order, GWA shall initiate the regulatory review process through a petition, which shall be supported with the following:
 - a) A resolution from the Consolidated Commission on Utilities (the "CCU") that the proposed contract is reasonable, prudent and necessary, and that the CCU has authorized GWA to proceed with the procurement, subject to PUC review and approval.
 - b) The documentation on which the CCU based its approval under subsection (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:
 - i. A description of the project, including timeframes, time constraints, deadlines, and a justification of its need.
 - ii. The projected source of funding for the project with appropriate justification and documentation.
 - iii. A finding that the contract is necessary within the context of other utility priorities.
7. If during any fiscal year, GWA desires to undertake a contract or obligation covered by Section 1, for which approval has not otherwise been received, it may file an application with the PUC for approval of such contract or obligation, which shall contain the information required in Section 6 above.
8. GWA shall, on or before December 1st of each year, file a report on the contracts and obligations approved by the PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by the PUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and in service or completion dates.
9. GWA shall not incur expenses for PUC approved internally financed contracts and obligations in excess of 10% over the amount authorized by the Commission without prior PUC approval. In the event that GWA estimates that it will exceed the PUC approved level of expenditures by more than 10%, it shall submit to the PUC the revised estimate and full explanation of all additional costs. GWA shall

not increase the amount of any externally financed obligation without prior PUC approval.

10. GWA shall file with the PUC monthly financial reports within five (5) business days of presentation of such monthly financial reports to its governing body.
11. To the extent GWA submits a filing to the PUC under this Order which the PUC staff believes is incomplete or deficient, it shall notify GWA within fifteen (15) calendar days thereof with specific indication of the alleged incompleteness or deficiency.
12. The PUC staff will use best efforts to be prepared for hearing within thirty (30) calendar days of a complete GWA filing under the terms of Section 6 above. The PUC's administrative law judge is authorized, in his judgment, to shorten the above thirty (30) day period for good cause shown by GWA.
13. Within the context of a rate or management audit proceeding, the PUC staff may review the prudence of all procurement or obligations, whether or not subject to review herein.
14. The PUC's administrative law judge is authorized to interpret the meaning of any provision of this Order, in furtherance of the contract review process.

Dated this _____ day of _____, 2011.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner