



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL OF GWA'S BID AND THE PROPOSED CONTRACT FOR LAB SERVICES WITH EUROFINS EATON ANALYTICAL INC. ) GWA DOCKET 13-03 ) ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the June 6, 2013 Petition for approval of a multi-year contract for laboratory services provided by Eurofins Eaton Analytical, Inc. ("Eurofins"), filed by the Guam Waterworks Authority ("GWA"). In the petition, GWA seeks PUC approval to enter into a multi-year laboratory services contract with Eurofins.

BACKGROUND

On January 10, 2013, GWA issued an indefinite quantity invitation to bid for a U.S. Environmental Protection Agency ("U.S. E.P.A.") certified lab to analyze the water and wastewater samples GWA provides to the Guam Environmental Protection Agency pursuant to the Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.1 GWA submits that the invitation to bid was based on estimated quantities set by GWA, but that the actual contract value would be determined by GWA's need, which it maintains could vary depending on regulatory requirements.2

1 Petition for Approval of GWA's Bid and the Proposed Contract for Lab Services with Eurofins Eaton Analytical, Inc. ("Petition"), p. 1 (June 6, 2013).

2 Petition, p. 1, n.1.

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According to GWA, only Eurofins submitted a bid, which offered its services for an estimated annual amount of \$568,185.00.<sup>3</sup> GWA subsequently determined that this bid was the lowest responsive and responsible bid.<sup>4</sup> However, the proposed contract provided a three-year initial contract term, with two one-year options to renew.<sup>5</sup> GWA thereafter sought and received approval from the Consolidated Commission on Utilities (the "CCU") so that it may enter into a year-long contract with Eurofins, as well as petition the PUC for approval of a multi-year contract with Eurofins.<sup>6</sup>

## DISCUSSION

### **A. Contract Review Protocol**

Pursuant to 12 G.C.A. §12004, 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 00-04, "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun . . . ."<sup>7</sup> With respect to "multi-year contracts," "[t]he test to determine whether a procurement exceeds the \$1,000,000

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<sup>3</sup> Petition, p. 1.

<sup>4</sup> Petition, p. 2.

<sup>5</sup> Petition, p. 2.

<sup>6</sup> Petition, p. 2.

<sup>7</sup> GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

threshold for PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options.”<sup>8</sup>

In addition, GWA’s Contract Review Protocol further requires, *inter alia*, that GWA submit documentation indicating “[t]he projected source of funding for the project with appropriate justification and documentation.”<sup>9</sup>

In this instance, it appears that GWA seeks PUC approval for the procurement, as well as the resulting contract award to Eurofins, which would permit GWA to extend its current contract for laboratory services with Eurofins for another four (4) years. GWA submits that the anticipated cost of the laboratory services contract is \$568,185.00 annually, which would result in a total contract award of \$2,840,925.00 for five (5) years.<sup>10</sup>

**B. GWA’s Petition for Approval of GWA’s Bid and Proposed Contract for Lab Services with Eurofins Eaton Analytical, Inc.**

In its petition, GWA essentially requests that the PUC approve a four-year extension of its existing contract with Eurofins for laboratory services.<sup>11</sup> GWA submits that it is “required to have water and wastewater samples tested by a lab certified by the U.S. E.P.A.” and that “[i]f GWA does not have lab samples tested by a lab properly certified, the reports that contain the sample result data may be rejected by the regulatory agency.”<sup>12</sup> GWA further submits that “[t]here are no reasonable alternatives to such

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<sup>8</sup> GWA CRP, p. 4.

<sup>9</sup> GWA CRP, p. 4.

<sup>10</sup> Petition, p. 2.

<sup>11</sup> Petition, p. 1.

<sup>12</sup> Petition, p. 2.

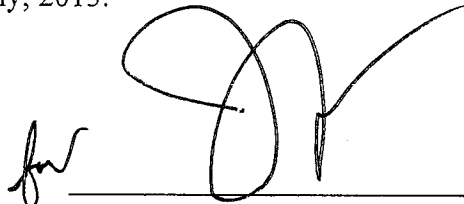
services that GWA is aware of” and, therefore, “the need is well established,” and that this type of service will be required “for a long period of time.”<sup>13</sup>

\* [ With respect to GWA’s funding source for the subject contract extension, GWA does not indicate any “projected source of funding for the project with appropriate justification and documentation.”<sup>14</sup> In addition, such information is unable to be gleaned from any documentation GWA provided to the PUC to support its petition. ]

### RECOMMENDATION

Inasmuch as GWA’s petition fails to indicate any projected source of funding for the proposed extension of the Eurofins contract, the ALJ recommends that GWA be required to furnish such funding information to the PUC in compliance with Paragraph 6 of GWA’s Contract Review Protocol. A proposed Order is submitted herewith for the Commissioners’ consideration.

Dated this 26<sup>th</sup> day of July, 2013.

  
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**DAVID A. MAIR**  
Administrative Law Judge

P134076.JRA

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<sup>13</sup> Petition, p. 2.

<sup>14</sup> GWA CRP, p. 4.

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN RE: PETITION FOR APPROVAL )  
OF GWA'S BID AND THE )  
PROPOSED CONTRACT FOR )  
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EUROFINS EATON )  
ANALYTICAL INC. )  
\_\_\_\_\_ )

**GWA DOCKET 13-03**

**ORDER**

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the June 6, 2013 Petition for approval of a multi-year contract for laboratory services provided by Eurofins Eaton Analytical, Inc. ("Eurofins"), filed by the Guam Waterworks Authority ("GWA"). In the petition, GWA seeks PUC approval to enter into a multi-year laboratory services contract with Eurofins.

**DETERMINATIONS**

Pursuant to 12 G.C.A. §12004, 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 00-04, "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun . . . ." <sup>1</sup> With respect to "multi-year contracts," "[t]he test to determine whether a procurement exceeds the \$1,000,000 threshold for PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options."<sup>2</sup>

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<sup>1</sup> GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

<sup>2</sup> GWA CRP, p. 4.

In addition, GWA's Contract Review Protocol further requires, *inter alia*, that GWA submit documentation indicating "[t]he projected source of funding for the project with appropriate justification and documentation."<sup>3</sup>

On July 26, 2013, the Administrative Law Judge of the PUC (the "ALJ") filed an ALJ Report detailing his review of GWA's request to enter into a multi-year laboratory services contract with Eurofins. In the Report, the ALJ found that GWA failed to indicate any "projected source of funding for the project with appropriate justification and documentation."<sup>4</sup> The ALJ further expressed that such information could not be gleaned from any documentation GWA provided to the PUC to support its petition. Accordingly, the ALJ recommended that the PUC require GWA to furnish to the PUC, in compliance with Paragraph 6 of GWA's Contract Review Protocol, information regarding its projected source of funding for the extended Eurofins contract.

The Commission hereby adopts the findings contained in the July 26, 2013 ALJ Report and, therefore, issues the following:

#### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, the July 26, 2013 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. That, with respect to the proposed extension of the Eurofins contract, GWA provide the PUC with "the projected source of funding for the project

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<sup>3</sup> GWA CRP, p. 4.

<sup>4</sup> GWA CRP, p. 4.

with appropriate justification and documentation,” in compliance with Paragraph 6 of GWA’s Contract Review Protocol.

2. GWA is further ordered to pay the Commission’s regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses associated with the instant contract review. Assessment of the PUC’s regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§12002(b), 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

**SO ORDERED** this 30<sup>th</sup> day of July, 2013.

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**JEFFREY C. JOHNSON**  
Chairman

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**JOSEPH M. MCDONALD**  
Commissioner

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**ROWENA E. PEREZ**  
Commissioner

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**FILOMENA CANTORIA**  
Commissioner

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**MICHAEL A. PANGELINAN**  
Commissioner

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**PETER MONTINOLA**  
Commissioner

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