

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF:</b>	}	<b>GPA DOCKET 13-10</b>
<b>THE APPLICATION OF THE GUAM POWER AUTHORITY TO APPROVE THE CONTRACT FOR SUPPLY OF RESIDUAL FUEL OIL NO. 6 TO GPA</b>	}	<b>ORDER</b>

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**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Review and Approval of the Contract for Supply of Residual Fuel Oil No. 6 with Hyundai Corporation.<sup>1</sup>

**BACKGROUND**

2. On July 19, 2013, PUC Counsel filed his Report herein. The Report covers the history of GPA's current procurement for Fuel Oil No. 6, and that Report is adopted and incorporated herein.<sup>2</sup>
3. On July 30, 2012, the PUC authorized GPA to proceed with the procurement of RFO No. 6 finding that such fuel was "essential to the operation of the plants."<sup>3</sup> GPA's then current contract for RFO with Petrobras Singapore ["Petrobras"] was set to expire on February 28, 2013.<sup>4</sup>
4. On February 4, 2013, after a protest was filed on the possible award of the contract to Vitol Asia Pte., GPA requested that the PUC approve a six month contract extension with the present supplier of RFO No. 6, Petrobras. On February 11, 2013, the PUC, acting through its Chairman pursuant to 12 GCA §12004, approved GPA's Petition authorizing a 6 month extension of the Fuel Supply Contract with Petrobras.<sup>5</sup>

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<sup>1</sup> GPA Petition for Contract Review, GPA Docket 13-10, filed July 5, 2013.

<sup>2</sup> GPA Petition for Contract Review, GPA Docket 12-09, filed July 16, 2012.

<sup>3</sup> PUC Order, GPA Docket 12-09, issued July 30, 2012, at p. 4.

<sup>4</sup> Id. at p. 1.

<sup>5</sup> Id. at p. 1.

5. On or about April 11, 2013, GPA issued a Re-Bid No. GPA-068-12 procurement of Residual Fuel Oil. GPA decided to cancel the prior IFB in order to rebid the procurement of a new residual fuel oil supply contract.<sup>6</sup>
6. After evaluation of the bids on the "Re-Bid" GPA determined that Hyundai Corporation was the lowest, most responsive bidder meeting the requirements of the bid solicitation.<sup>7</sup>
7. GPA now proposes to enter into a Residual Fuel Oil No. 6 Supply Contract with Hyundai Corporation for a period of two years, commencing September 1, 2013 and expiring on August 31, 2015. Based upon mutual agreement of both parties, there may be up to three one-year extension options renewable annually.<sup>8</sup>
8. The cost of the contract for the ratepayers for the two year contract period is \$719,400,000.<sup>9</sup>
9. On July 8, 2013, GPA forwarded a copy of the RFO Fuel Supply Contract with Hyundai Corporation to the PUC; GPA seeks approval of such contract.<sup>10</sup>

#### **DETERMINATIONS**

10. The proper prerequisites of the procurement process were met for the consummation of this Fuel Oil Supply Contract. The procurement for RFO No. 6 was duly approved by both the CCU and PUC. GPA issued adequate public announcement for the need for such fuel supply services; three bidders submitted bids for GPA's consideration [Hyundai Corporation, Vitol Asia Pte., Ltd., and Petrobras Singapore Pte., Ltd.].<sup>11</sup>
11. To date no procurement protest regarding this bid has been filed.<sup>12</sup> GPA may thus legally proceed with the execution of the Fuel Oil Supply Contract.

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<sup>6</sup> Guam Consolidated Commission on Utilities Resolution No. 2013-37, issued June 25, 2013, at p. 1.

<sup>7</sup> Id. at p. 1.

<sup>8</sup> Id. at pgs. 2-3.

<sup>9</sup> Id. at p. 2.

<sup>10</sup> Emails from Graham Botha, GPA Legal Counsel, to Frederick J. Horecky, PUC Legal Counsel, GPA Docket 13-10, RFO Fuel Supply Contract with Hyundai Corporation, dated July 8, 2013, with contract attached, and Documents for PUC Review.

<sup>11</sup> CCU Resolution No. 2013-37, issued June 25, 2013, at p. 1.

<sup>12</sup> Telephone conversation between GPA Legal Counsel and PUC Counsel on July 12, 2013.

12. The form of the proposed contract between GPA and Hyundai Corporation has previously been approved by the PUC on numerous occasions. When the PUC initially approved this procurement for RFO No. 6 on July 30, 2012, the proposed contract form incorporated in the bid was approved by the PUC.<sup>13</sup>
13. The Contract includes protections for GPA such as substantial performance and payment bond requirements. In addition, the Contract requires that the successful bidder deliver to GPA an executed performance and payment bond as security for the performance of the contract.<sup>14</sup> All risk of loss, cost and liability prior to the time of passage of title of the fuel oil to GPA is upon the contractor.<sup>15</sup>
14. The new proposed Contract appears to include various provisions which adequately protect GPA and its customers.
15. GPA has the power to enter into contracts “necessary or convenient in the exercise of its powers...”<sup>16</sup>, subject, however, to the Contract Review Protocol and prior PUC approval...”<sup>17</sup>
16. GPA has met its burden to demonstrate that its Contract for Supply of Fuel Oil with Hyundai Corporation for Residual Fuel Oil No. 6 is essential to the operation of the Cabras power plants.
17. While Contract premium prices on RFO have increased substantially, the premium prices proposed by Hyundai Corporation are lower than the prices which were included in the 6 month contract extension with Petrobras [from March 1, 2013 through August 31, 2013], and lower than those proposed by other bid competitors.
18. The continuous supply of fuel oil to GPA, for the benefit of ratepayers, must be maintained.

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<sup>13</sup> PUC Order, GPA Docket 12-09, dated July 30, 2012, at p. 3.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> 11 GCA §8104(e).

<sup>17</sup> Contract Review Protocol for Guam Power Authority, Administrative Docket, dated February 15, 2008.

### ORDERING PROVISIONS

Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel 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:

1. GPA's Contract for Supply of Residual Fuel Oil No. 6 with Hyundai Corporation is hereby approved.
2. GPA has demonstrated a clear need for Residual Fuel Oil No. 6 for the Baseload Power Plants, as such fuel is essential to the operation of the plants. The proposed contract is reasonable, prudent and necessary.
3. In general, the premiums for LSFO and HSFO are substantially higher than those in the prior contract with Petrobras which was terminated on February 28, 2013. However, the premiums in the new contract with Hyundai Corporation are lower than those than in the 6 month contract extension with Petrobras which terminates on August 31, 2013, and lower than those submitted by other bidders.
4. GPA has selected the most responsive bid, and the lowest price bid, through an open competitive procurement process. Under the circumstances, the selection of Hyundai Corporation is its best price option.
5. GPA 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 is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 30<sup>th</sup> day of July, 2013.

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Jeffrey C. Johnson  
Chairman

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Rowena E. Perez  
Commissioner

Order  
Contract for Residual Fuel Oil No. 6  
GPA Docket 13-10  
July 30, 2013

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Joseph M. McDonald  
Commissioner

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Michael A. Pangelinan  
Commissioner

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Peter Montinola  
Commissioner