



With respect to multi-year contracts, “[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal”; and the “test to determine whether a procurement exceeds the \$1,000,000 threshold for the 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>

**B. GWA’s Petition for PUC Approval**

In the Petition, GWA submits that it is required to purchase liquid chlorine for the treatment of drinking water to disinfect impurities and is a requirement by the Safe Drinking Water Act and required by local and federal laws.<sup>3</sup> Also stated in its Petition, GWA intends to issue a bid for a multi-year contract in an effort to lessen costs associated with such purchase of chlorine. GWA maintains that in doing so, it would not have to issue an invitation to bid so frequently, and it would capture a fixed cost for a product for a longer period of time.<sup>4</sup> As part of the Petition, GWA has attached its proposed Invitation to Bid (the “Bid”) as “Exhibit A” to Resolution No. 41-FY2013 (the “Resolution”) issued by the Consolidated Commission on Utilities (“CCU”).

It appears that the current annual cost for the purchase of chlorine amounts to \$652,680.00.<sup>5</sup> Accordingly, the cost for a three (3) year contract, with an exercised two-year option to renew, could potentially cost GWA \$3,263,376 for the next five (5) years.<sup>6</sup>

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

<sup>3</sup> Petition, p. 1; *See* Exhibit B.

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

<sup>5</sup> *See* Exhibit B.

<sup>6</sup> *See* Exhibit B.

**C. Invitation to Bid**

The subject bid seeks pricing for 1,260 150 pound cylinders of liquid chlorine, as well as for twelve tons of liquid chlorine. As noted in procurement documents, the Bid seeks these chlorine cylinders “in order to disinfect drinking water at approximately 100 well sites and one (1) water treatment plant.”<sup>7</sup> Specifically, “[t]he purpose of this bid is to provide GWA with a sufficient quantity of 150 pound and one ton liquid chlorine cylinders and to provide GWA with a sufficient supply of liquid chlorine to allow GWA to safely operate its water system and to comply with the terms and conditions of the U.S. E.P.A./GWA Stipulated Order for Preliminary Relief (as amended) . . . .”<sup>8</sup> “GWA intends to enter into a three (3) year contract with the option to renew for two (2) additional one year terms for the purchase of liquid chlorine in 150 pound cylinders.”<sup>9</sup>

**D. Contract Term**

According to the Bid, “GWA finds that a multi-year fixed price contract will ensure the best price in the long-term to hedge against fluctuating prices which tend to increase over time and to increase[ ] efficiency in operations by not having to proceed through the bid process annually.”<sup>10</sup> The bid further provides that “[i]n the third year price adjustments may be made subject to the provision of verified cost and pricing data from the vendor.”<sup>11</sup>

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<sup>7</sup> Bid, p. 3.

<sup>8</sup> Bid, p. 20.

<sup>9</sup> Bid, pp. 3-4.

<sup>10</sup> Bid, p. 24.

<sup>11</sup> Bid, p. 24.

**E. CCU Resolution No. 41-FY2013**

The instant petition is supported by the Resolution issued by the CCU. In the Resolution, the CCU found that GWA “has determined that issuing the bid . . . for liquid chlorine that is used for disinfecting GWA’s drinking water for a multiple year contract of up to five years in length is in the best interest of GWA due to the fact that prices will be fixed for [a] longer period of time and economics of scale may result in a lower bid price than what GWA would otherwise receive for a shorter contract term . . . .” The Resolution further authorized GWA to issue the bid for the purchase of liquid chlorine for a period of up to five years, as well as petition the PUC for approval of such bid.

**F. Guam’s Safe Drinking Water Act**

Under Guam’s Safe Drinking Water Act, the Guam Environmental Protection Agency is tasked with promulgating and enforcing “primary drinking water regulations and may promulgate and enforce secondary drinking water regulations. Primary drinking water regulations shall protect health using technology, treatment techniques and other means which are generally available.” 5 G.C.A. §53105(a). Further, the statute provides that “[t]reatment techniques covered by primary drinking water regulations shall require treatment necessary to prevent known or anticipated adverse effects on the health of persons.” *Id.* In addition, “[t]reatment techniques covered by secondary drinking water regulations may require treatment necessary to prevent known or anticipated adverse effects on the welfare of persons.” 5 G.C.A. §53105(b). The use of chlorine in disinfecting drinking water is common and standard industry and regulated practice.<sup>12</sup>

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<sup>12</sup> See, e.g., [http://www.cdc.gov/healthywater/drinking/public/water\\_disinfection.html](http://www.cdc.gov/healthywater/drinking/public/water_disinfection.html).

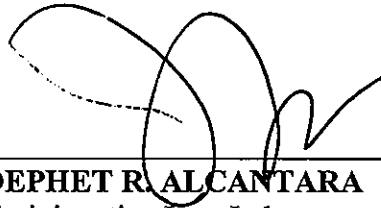
### **CONCLUSION**

The ALJ finds that GWA's use of a multi-year contract for the purchase of chlorine is reasonable and necessary given that chlorine is an indispensable chemical required for its daily operations in purifying Guam's water. In addition, the ALJ finds that GWA has provided adequate documentation to support this procurement of chlorine, which it requires in order to satisfy both local and federal standards with respect to water quality. Therefore, the ALJ recommends that the PUC approve the subject procurement.

### **RECOMMENDATION**

Based on the foregoing, the ALJ recommends that the PUC approve GWA's Petition. Accordingly, GWA should be authorized to proceed with the procurement related to the purchase of chlorine as set forth in the Invitation To Bid submitted by GWA. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 27<sup>th</sup> day of January, 2014.



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**JOEPHET R. ALCANTARA**  
Administrative Law Judge

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