



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GPA DOCKET 16-14
)
THE PETITION OF THE GUAM)
POWER AUTHORITY FOR APPROVAL) PUC COUNSEL REPORT
OF INSURANCE INVITATION FOR)
BID)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Guam Power Authority [“GPA”] Petition for Approval of Insurance Invitation for Bids.¹
2. GPA seeks to obtain Property Insurance for the policy period beginning November 1, 2016. The current GPA Property Insurance Policy will expire on November 1, 2016.² The policy contains two one-year options for renewal.

BACKGROUND

3. GPA’s Bond Indenture Agreement requires GPA to “secure and maintain property insurance on all facilities constituting the system against risks of loss or damage to the extent that such insurance is obtainable at reasonable cost...”. The Indenture further requires GPA to carry insurance “of a scope and nature as that usually carried in the industry...”.³
4. The insurance coverages for which GPA seeks to issue an IFB are: Property and Boiler & Machinery, Earthquake, Flood, Typhoon and Tsunami, Terrorism, All Risk, Business Income, and Extra Expense.⁴
5. On May 28, 2013, the PUC approved GPA’s last property insurance procurement.⁵ The insurance coverage proposed was for a three-year term plus two (2) One (1) year options to extend upon the mutual agreement of the parties.⁶

¹ GPA Petition for Approval for Insurance Invitation for Bids, GPA Docket 16-14, filed September 8, 2016.

² Id. at p. 1.

³ Guam Consolidated Commission on Utilities Resolution No. 2016-30, issued May 24, 2016.

⁴ Attachment to the Petition of the Guam Power Authority for Approval of Insurance Invitation for Bids, GPA Docket 16-14, filed on September 8, 2016.

⁵ PUC Order, Docket 13-04, GPA Petition for Approval of Insurance IFB, dated May 28, 2013.

⁶ Id. at p. 1.

6. On October 29, 2013, the PUC approved GPA's contract for Property Insurance with AM Insurance for the period of November 1, 2013 through November 1, 2016.⁷
7. As its current Property Insurance Policy will expire on November 1, 2016, GPA now seeks to obtain property insurance for the policy period beginning November 1, 2016.
8. On May 24, 2016, the Consolidated Commission on Utilities adopted Resolution No. 2016-30, which approves the GPA draft Invitation for Bids for Property Insurance to include Boiler and Machinery and Terrorism coverage. It determined that GPA was required to rebid its property insurance policies under Guam Procurement Regulations.⁸
9. Along with its Petition, GPA has also submitted the format for its proposed Invitation for Bids for Property Insurance.

ANALYSIS

10. The CCU approved the Property Insurance IFB on May 24, 2016; however, GPA's Petition for Insurance IFB was not submitted to PUC until September 8, 2016.
11. PUC Counsel sent GPA a letter regarding this Docket on September 16, 2016, a copy of which is attached hereto as Exhibit "A". To date, no response has been received to Counsel's letter.
12. On the same day that GPA sent the Petition to PUC for approval of the Insurance IFB, it publicly announced a Multi-Step Insurance Brokerage Services and Casualty Insurance Bid with 74 pages of documentation.⁹ A copy of the Procurement Notice is attached hereto as Exhibit "B".
13. On the same day that GPA filed its request that the PUC approve its IFB for Insurance Services, GPA had already announced the IFB to the public and was requesting bids on the IFB.

⁷ PUC Order, GPA Docket 13-04, GPA Petition for Approval of Insurance Contract with AM Insurance, dated October 29, 2013.

⁸ Guam Consolidated Commission on Utilities Resolution No. 2016-30, at pg. 2.

⁹ See www.guampowerauthority.com at the Procurement tab.

14. In the Petition filed on September 8, 2016, the GPA Acting General Manager requested that PUC authorize GPA to advertise the bid prior to approval by the PUC: "because this bid document is so similar to prior bid documents that have been approved by the PUC, we are requesting authorization to advertise the bid prior to final approval from the PUC."¹⁰
15. Neither the PUC nor the Administrative Law Judge authorized GPA to issue the IFB for Property Insurance prior to approval by the PUC.
16. PUC authorization for GPA to issue an IFB prior to PUC approval would be in direct violation of the **CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY**. Section 1 of the Protocol provides that certain GPA contracts and obligations, which would include the Property Insurance IFB, "**require prior PUC approval under the 12GCA 12004, which shall be obtained before the procurement process is begun...**"¹¹
17. The **CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY** is a procedure stipulated to by GPA and PUC for the review of GPA contracts by PUC. There is no authority that would allow PUC to disregard, waive, or ignore provisions of the Protocol. The Protocol is a PUC Order.
18. In addition, the timeline for implementing the IFB is compressed; in order to select and implement a new Insurance Provider by November 1, 2016, GPA has also requested that PUC not undertake any final review of the bid award and the cost of the insurance policy.¹²
19. In general, the PUC does require a "second look" at GPA procurements because the ultimate price of the contract is not known until GPA receives bids and awards the contract. That is why the PUC must again review the selected bid prior to award. Otherwise, PUC would have no opportunity to determine if the amount of the bid awarded is reasonable or whether such award could impact rates.

¹⁰ Letter dated September 2, 2016, from Acting GPA General Manager Melinda R. Camacho, to ALJ Frederick Horecky, Re: Invitation for Bids for Property Insurance Policies [attached to GPA's Petition], dated September 2, 2016, and received by the PUC on September 8, 2016.

¹¹ **CONTRACT REVIEW PROTOCOL FOR GUAM POWER AUTHORITY**, Administrative Docket, dated February 15, 2008, at Section 1.

¹² Letter dated September 2, 2016, from Acting GPA General Manager Melinda R. Camacho, to ALJ Frederick Horecky, Re: Invitation for Bids for Property Insurance Policies [attached to GPA's Petition], dated September 2, 2016, and received by the PUC on September 8, 2016, at p. 2.

20. If PUC agreed to a procedure with no "second look", GPA could theoretically award a Property Insurance contract for any price, even over \$8M, with no review or determination by the PUC as to the reasonableness of the amount of the award.
21. Attached as Exhibit "C" hereto is a letter received by the PUC on September 13, 2016, from Mark Grennan, who is the Insurance Risk Consultant of GPA.¹³ The PUC has previously relied upon the opinion of Mr. Grennan in approving the current Property Insurance contract with AM Insurance.¹⁴ The PUC adopted the recommendations of Grennan & Associates.¹⁵
22. In his letter, Mr. Grennan raises serious concerns about the IFB issued by GPA, including the fact that it would choose a bidder based upon a firm price for only 20% of the technical insurance product. Prior GPA Insurance IFBs required a firm price for 80% of the insurance product. In Mr. Grennan's opinion, a requirement for only 20% of the firm insurance price could result in the selected bidder being unable to obtain 100% of the required coverage.¹⁶
23. Based upon the lack of a response in the record to Mr. Grennan's concerns, Counsel is unable to recommend a finding to the PUC that the proposed IFB is reasonable, prudent, or necessary.
24. Disapproval of this IFB will not leave GPA without a remedy or means of obtaining Property Insurance. GPA does have the option of renewing the existing policy for one or two years. If GPA subsequently proposes the IFB in a procedurally correct manner, PUC can reconsider the issuance of such procurement for property insurance in the future.
25. GPA should have submitted its Petition to PUC in a timely manner so that the PUC could have reviewed the proposed IFB prior to its Announcement. It was inappropriate for GPA to issue a notice of the IFB before the procurement has been approved by PUC under the Contract Review Protocol.

¹³ Said letter is now a part of the record in this Docket.

¹⁴ PUC Order, GPA Docket 13-04, dated October 29, 2013, at pgs. 2-3.

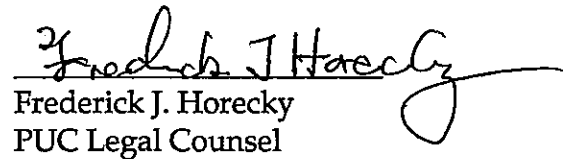
¹⁵ Id. at p. 3.

¹⁶ Exhibit "C" at p. 2.

RECOMMENDATION

26. Counsel recommends the PUC deny GPA's proposed Invitation for Bids (IFB) for GPA's property insurance.
27. PUC Approval of the IFB would violate the Contract Review Protocol.
28. PUC may not lawfully abrogate its responsibility to determine whether the final cost of the insurance bid is reasonable or impacts rates.
28. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 23rd day of September, 2016.


Frederick J. Horecky
PUC Legal Counsel

**PUBLIC UTILITIES COMMISSION
OF GUAM**

Jeffrey C. Johnson
Chairman

Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

David A. Mair
Joseph R. Alcantara
Administrative Law Judge

Commissioners

Joseph M. McDonald
Filomena M. Cantoria
Rowena E. Perez
Michael A. Pangelinan
Peter Montinola
Andrew L. Niven

Telephone: (671) 472-1907
Fax: (671) 472-1917
Email: info@guampuc.com

Frederick J. Horecky
Administrative Law Judge/Legal Counsel

Lourdes R. Palomo
Administrator

September 16, 2016

John M. Benavente
General Manager
Guam Power Authority
PO Box 21868
Barrigada, Guam 96921

Re: GPA Docket 16-14, GPA Petition for Approval of Insurance Invitation for Bids.

Dear General Manager Benavente:

I am in receipt of GPA's above referenced Petition for approval by the PUC of GPA's Insurance Invitation for Bids.

Initially, it is not clear to me how GPA would intend to complete the IFB process and secure a new Property Insurance provider before the expiration of the current policy on November 1, 2016. In her letter to me dated September 2, 2016 (which was received on September 8), Acting General Manager Camacho asked whether GPA could be authorized to advertise the bid prior to final approval from the PUC, and whether the PUC could agree "not to require "a second look at the bid prior to award" "due to the time sensitive nature of the bid and the routine nature of the bid."

Aside from the issue of whether GPA could even complete the bid process by November 1, 2016, the GPA Contract Review Protocol requires that GPA procurements in excess of \$1.5M "shall require prior PUC approval..., **"which shall be obtained before the procurement process is begun."** Thus, it does not appear that the PUC may, under the Protocol, authorize GPA to advertise the bid prior to approval from the PUC. In addition, the PUC has never made it a practice to "not require a second look at the

bid prior to award." In general, the PUC does require a "second look" because the ultimate price of the contract is not known before GPA receives bids and awards the contract. In this case, if the bids received from GPA were in excess of the \$6-7M projected by GPA, PUC would have no opportunity at all to review the proposed award price.

It is not appropriate for GPA to issue a notice of the IFB before the procurement has been approved under the Contract Review Protocol.


A final issue concerns what pricing GPA may receive if a new procurement is issued. We understand that, if the current policy were extended for a two year period, the price for property insurance could be in the range of \$6.4M. Can we assume that with a new procurement, that issuance of an IFB will necessarily result in a better price than that offered for a two year extension of the current property insurance? There is a distinct possibility that prices obtained in a new bid may be even greater. The previous occurrence of the Cabras 3 & 4 explosion may not a positive factor with regard to a rebid by GPA on property insurance.

I would appreciate it if you could respond to these issues as soon as possible. The meeting date is rapidly approaching. Thank you for your assistance in this regard.


Sincerely,

Frederick J. Horecky
PUC Counsel

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GUAM POWER AUTHORITY
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PURCHASING DEPARTMENT MISSION STATEMENT

To properly acquire mission essentials most economical and efficient as possible while providing the necessary safeguards and ensuring availability and controls in support of Guam Power Authority's Mission.

PURCHASING DEPARTMENT VISION STATEMENT

To strive and achieve or exceed our Goals and Objectives with whatever means available and still provide the very best for our customers most deserving of our dedication.

HOURS OF OPERATIONS

Monday thru Friday, 8:00 A.M. - 5:00 P.M.
Closed on Weekends and Holidays

JESSE T. REYES
Buyer Supervisor I
T: 648-3054/55

JAMIE L.C. PANGELINAN
Supply Management Administrator
T: 671-648-3054/55
F: 671-648-3165

Type	Description (PDFs)	Announcement #	Issuance Date	Due Time & Date
RE-BID	Miscellaneous Surplus Salvage Bid (\$25.00 Non-Refundable Fee) Download 190 KB	GPA-SS-003-16	09/20/16	10:00 A.M. 10/06/16
BID	Network Equipment for Data Center Download 617 KB	GPA-103-16	09/20/16	2:00 P.M. 10/06/16
MULTI-STEP BID	Insurance Brokerage Services and Casualty Insurance	GPA-101-16	09/08/16	2:00 P.M. 10/03/16

Exhibit "B"

	<p>Cut-Off Date for Receipt of Questions: 4:00 P.M., Wednesday, September 21, 2016</p> <p>Download 608 KB</p>			
MULTI-STEP BID	<p>Insurance Brokerage Services and Property Insurance</p> <p>Pre-Bid Conference (Non-Mandatory) 9:00 A.M., September 15, 2016 (Guam Standard Time)</p> <p>Cut-Off Date for Receipt of Questions: 4:00 P.M., Wednesday, September 21, 2016</p> <p>Download 705 KB</p>	GPA-102-16	09/08/16	2:30 P.M. 10/03/16
BID	<p>2016 Pressure Digger</p> <p>Download 557 KB</p> <p>Download Amendment No.1 24 KB</p> <p>*** STAY OF PROCUREMENT ***</p>	RE-BID GPA-074-16	08/25/16	**STAY OF PROCUREMENT**
MULTI-STEP	<p>Renewable Energy Resource Phase II</p> <p>Pre-Bid Conference: 10:00 A.M., May 26, 2016 (Guam Standard Time)</p> <p>Cut-Off Date for Receipt of Questions: 4:00 P.M., Thursday, June 23, 2016</p> <p>Download 11.446 MB</p> <p>Download Qualitative Scoring Worksheet 590 KB</p> <p>Download Price Proposal Worksheet 56 KB</p> <p>Download Amendment No I 2.806 MB</p> <p>Download Qualitative Scoring Worksheet Arnd. I 583 KB</p> <p>Download Amendment No II 11.446 MB</p> <p>Download Appendix G 325 KB</p> <p>Download Historical LEAC Rates 36 KB</p> <p>Download Phase I 5650 KW 5.200 MB</p> <p>Download Phase I 20 MW 3.641 MB</p> <p>Download Phase II SGIA Interconnection Agreement 142 KB</p> <p>Download Piti Met Tower Wind Data 2011 1.550 MB</p> <p>Download Piti Met Tower Wind Data 2012 1.563 MB</p> <p>Download Piti Met Tower Wind Data 2013 1.544 MB</p> <p>Download Piti Met Tower Wind Data 2014 1.549 MB</p>	GPA-070-16	05/12/16	4:00 P.M. 10/19/16

September 12, 2016

Mr. John Benavente, GM
Guam Power Authority
Gloria B. Nelson Public Utilities Complex
Route 15 Fadian
Mangilao, Guam 96912

RE: MSB NO. GPA-102-16

Dear Mr. Benavente:

I have read the MSB for 'Insurance Brokerage Services and Property Insurance' posted on GPA's website, and my ongoing concern for ratepayers and my professional obligation to steer you away from situations that could cause the utility economic harm and legal entanglement compel me to write and point out errors and misstatements contained in that MSB which could have serious unintended consequences.

Before I get into those, I wish to restate here and now, as I have many times in the past, my emphatic disagreement with going out to bid at this time. Underwriters had offered you a deal that guaranteed to hold premiums at current levels for more than two additional years, even though the final amount of the Cabras^{3/4} claim was still unknown and could go much higher by the time it was settled. To reject that deal and to invite the competition in to exploit incumbent carriers at the height of their misfortune only serves to jeopardize a partnership that has served the island well for over twenty years, not to mention put receipt of the best possible claim settlement in doubt. Remember, underwriters are free to pay, and often do pay, dubious aspects of claims, even pay amounts that are clearly not covered by the policy, for long term clients and clients in excellent standing. For a client who would cancel coverage at the peak of their vulnerability, it is unlikely concessions of any kind would be granted, or that interpretations of vague policy language would be made in their favor. I can only hope that too much damage has not already been done.

As for the current MSB, you should have been warned about and prevented from releasing a document with so many serious errors and misstatements. Flaws with potentially serious unintended consequences. Mistakes like:

- failure to report all recent claim activity and include the known quantum for each event (the MSB seems to say that Guam Power Authority has been 'loss free for ten years', an erroneous statement underwriters may well rely upon when pricing their new insurance product), thereby yielding an undeservedly low premium based on false pretenses,

- if that loss history, at some time in the future, were found to be false, which they are, payment of future claims could be denied or withheld, and the policy even declared null and void, on the basis of misrepresentation of risk,

- to suggest you choose a bidder based on a firm price for only 20% of the technical product opens up the very real possibility that the bidder will not be able to fill out at that 'cheapest price' in the short time frame allowed, and may result in the utility being completely uninsured, with assets and revenue streams unprotected and in default of critical bond covenants. If GPA cannot comply with the bond covenants then the lender will force place property insurance with no regard of premium or coverage.

There are many more serious errors of omission and commission contained in this MSB that I would like to share with you. If you will invite me back, I will enumerate them for you and explain the remedial steps you can take to restore your reputation, to preserve a critical relationship, and to free yourselves from the potential economic and legal consequences that are being created by this MSB.

Thank you for your consideration.

Best regards,



Mark Grennan, President
Grennan & Associates, Inc.