



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

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 so that it may 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 an estimated annual amount of \$568,185.00.³ GWA subsequently determined that this bid was the lowest responsive and responsible bid.⁴ However, the proposed contract provided a three-year initial contract term, with two one-year options to renew.⁵ 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 five-year contract term with Eurofins.⁶

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”⁷ With respect to “multi-year contracts,” “[t]he test to determine whether a procurement exceeds the \$1,000,000

³ Petition, p. 1.

⁴ Petition, p. 2.

⁵ Petition, p. 2.

⁶ Petition, p. 2.

⁷ 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.”⁸

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.⁹

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.¹⁰ 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.”¹¹ GWA further submits that “[t]here are no reasonable alternatives to such 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.”¹²

⁸ GWA CRP, p. 4.

⁹ Petition, p. 2.

¹⁰ Petition, p. 1.

¹¹ Petition, p. 2.

¹² Petition, p. 2.

1. Scope of Services

Based on documentation submitted by GWA, GWA's invitation to bid requires that the contractor must be able to provide monthly, quarterly, biannual, and annual tests on GWA's water, wastewater, and UCMR3 samples. These tests are intended to measure levels of pesticides, metals and toxicity in GWA's water and wastewater, among others.

2. Term and Cost

The existing contract between GWA and Eurofins is for a term of one (1) year. However, GWA maintains that the "bid documents" allow for "a contract term of up to five years" and, therefore, it seeks approval to contract with Eurofins "for the full five years in the maximum amount of Two Million Eight Hundred Forty Thousand Nine Hundred Twenty-Five Dollars (\$2,840,925.00)."

3. Projected Source of Funding

GWA submits that the projected source of funding for the contract will be from its O&M budget.

C. CCU Resolution No. 30-FY2013

The instant Petition is supported by Resolution No. 30-FY2013 (the "Resolution") issued by the CCU. Pursuant to the Resolution, the CCU found that "the terms of the fee proposal submitted by 'Eurofins' are fair and reasonable."¹³ Further, the CCU authorized GWA to petition the PUC to seek approval to award the lab services contract to Eurofins for the full five years and for a maximum contract amount of

¹³ Resolution, p. 2.

\$2,840,925.00.¹⁴ The CCU also determined that “GWA may use this Resolution as a justification under Section 6(b) of the Contract Review Protocol since no alternatives are available, GWA received only one bid and the services sought are necessary for GWA to comply with federal and local laws and testing with certified labs in required by the U.S. Environmental Protection Agency.”¹⁵

D. Safe Drinking Water Act and the Guam Primary and Secondary Safe Drinking Water Regulations

According to GWA, it is “required to have water and wastewater samples tested by a lab certified by the U.S. E.P.A.”¹⁶ “in a manner that meets the ‘Standardized Monitoring Requirements,’”¹⁷ 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.”¹⁸

CONCLUSION

Generally, GWA should apply for PUC approval prior to the issuance of “[a]ll professional service procurements in excess of \$1,000,000,” which include multi-year contracts.¹⁹ The ALJ finds, however, that based on the circumstances presented by GWA, the ALJ shall consider both the procurement, as well as the resulting contract

¹⁴ Resolution, p. 2.

¹⁵ Resolution, pp. 2-3.

¹⁶ Petition, p. 2.

¹⁷ Guam Consolidated Commission on Utilities, Resolution No. 30-FY2013, p. 1 (May 28, 2013).

¹⁸ Petition, p. 2.

¹⁹ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

award to Eurofins, in this instance, which would permit GWA to extend its current contract for laboratory services with Eurofins for another four (4) years.

Based on the documentation provided by GWA, the ALJ finds the procurement to be reasonable, particularly for services of a U.S. E.P.A. certified lab to analyze the water and wastewater samples GWA provides to the Guam Environmental Protection Agency, considering that such testing is required under Guam's Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.²⁰

In addition, based on the documentation provided by GWA, the ALJ finds that GWA is "required to have water and wastewater samples tested by a lab certified by the U.S. E.P.A."²¹; that "no reasonable alternatives to such services" exist; and that such service will be required "for a long period of time."²² Furthermore, the ALJ finds that the estimated annual amount of \$568,185.00 for laboratory services is reasonable under these circumstances, and understands that the actual contract value would be determined by GWA's need, which it maintains could vary depending on regulatory requirements.²³

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²⁰ 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).

²¹ Petition, p. 2.

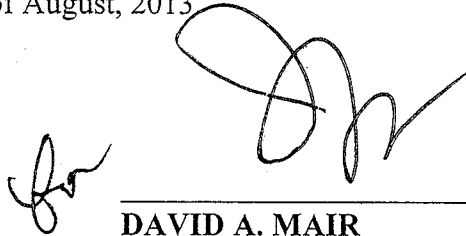
²² Petition, p. 2.

²³ Petition, p. 1, n.1.

RECOMMENDATION

Based on the foregoing, the ALJ recommends that the PUC approve GWA's petition. Accordingly, GWA should be authorized to enter into a multi-year contract with Eurofins for laboratory services. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 23rd day of August, 2013



DAVID A. MAIR
Administrative Law Judge

P134081.JRA

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL)
OF GWA'S BID AND THE)
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LAB SERVICES WITH)
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”¹ 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.”²

¹ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

² GWA CRP, p. 4.

On August 23, 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 considered both 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.

Additionally, the ALJ found the procurement to be reasonable, particularly for services of a U.S. E.P.A. certified lab to analyze the water and wastewater samples GWA provides to the Guam Environmental Protection Agency, considering that such testing is required under Guam's Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.

The ALJ further found that GWA is "required to have water and wastewater samples tested by a lab certified by the U.S. E.P.A."; that "no reasonable alternatives to such services" exist; and that such service will be required "for a long period of time." Moreover, the ALJ found that the estimated annual amount of \$568,185.00 for laboratory services is reasonable under these circumstances.

The Commission hereby adopts the findings contained in the August 23, 2013 ALJ Report and, therefore, issues the following:

ORDERING PROVISIONS

Upon careful consideration of the record herein, the August 23, 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 is authorized to enter into a multi-year contract with Eurofins for laboratory services, for the full five years, not to exceed the amount of Two Million Eight Hundred Forty Thousand Nine Hundred Twenty-Five Dollars (\$2,840,925.00).

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 27th day of August, 2013.

JEFFREY C. JOHNSON
Chairman

JOSEPH M. MCDONALD
Commissioner

ROWENA E. PEREZ
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

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