



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

RE: PETITION TO APPROVE) GWA DOCKET 15-01
FUEL CONTRACT WITH)
IP&E) ORDER
_____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the October 10, 2014 Petition for Approval of GWA Fuel Contract Beyond the One Million Dollar Threshold Under the Contract Review Protocol, filed by the Guam Waterworks Authority (“GWA”) (hereinafter referred to as the “Petition”). In its Petition, GWA seeks PUC approval to approve and ratify GWA contract with IP&E for fuel.

DETERMINATIONS

In 2011, GWA issued bid number IFB-GWA-2011-15 for diesel and gasoline fuel.¹ GWA originally estimated an annual cost of \$250,000.00 per year for the fuel.² According to GWA, the bid sought a three-year contract term with two (2) options to renew at one (1) year additional terms.³ GWA maintains, however, that during the bid process, GWA’s vehicles operated by its Performance Management Contractor, Veolia

¹ Petition, p. 1.

² Petition, p. 1.

³ Petition, p. 1.

Guam, LLC (“Veolia”), were included in the contract.⁴ GWA contends that adding the Veolia vehicles to the contract significantly increased the cost.⁵

To date, GWA has expended about \$1,586,659.60 for the contract.⁶ However, GWA maintains that “[f]or reasons unknown,” GWA failed to submit the subject contract for either CCU or PUC approval, and was merely executed by GWA management.⁷

On October 28, 2014, the Consolidated Commission on Utilities (the “CCU”) issued Resolution No. 03-FY2015 (the “Resolution”). Through the Resolution, the CCU has authorized GWA to seek PUC approval of GWA’s fuel contract with IP&E.

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. In addition, GWA’s Contract Review Protocol mandates that “[a]ny contract or obligation . . . which exceeds \$1,000,000” shall require “prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun”⁸

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

⁴ Petition, p. 1.

⁵ Petition, p. 1.

⁶ Petition, p. 1.

⁷ Petition, p. 1.

⁸ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

renewal”; and that 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.”⁹

In its Petition, GWA submitted that it obviously “needs diesel and gasoline to operate its vehicles and conduction operations” throughout Guam, as well as to “accomplish the mandates of both federal and local law.” Petition, p. 2. GWA, therefore, needs this gasoline and diesel fuel for its “fleet of trucks, heavy equipment such as backhoes, dump trucks, vacuum trucks, heavy duty pickups with utility beds, etc.” in order to operate, and that without such fuel, it “simply cannot function effectively.” Petition, p. 2.

GWA further submitted that its failure to originally request PUC approval was a complete oversight. “For reasons unknown, GWA did not submit the contract to either the CCU or the PUC for approval despite the obvious need to do so given the fact that to date, GWA has expended approximately One Million Five Hundred Eighty-Six Thousand Six hundred Fifty-Nine Dollars and Sixty Cents (\$1,586,659.60).”¹⁰

The Contract requires IP&E to provide GWA with diesel and gasoline fuel for GWA’s transportation fleet. Pursuant to the contract, IP&E is required to supply about 80,000 gallons per year of diesel fuel, and about 201,000 gallons per year of automotive gasoline.

⁹ *Id.*, p. 2.

¹⁰ Petition, p. 1.

According to the Contract, the initial contract term is for three (3) years, with an expiration on September 30, 2014, and with an option for GWA to renew the contract “for two (2) additional one (1) year term of twelve (12) months per renewal term, at the same contractual bid price offer for the entire duration of the supply service contract”¹¹ The Contract further provides a sixty-day notice right of cancellation based on the availability of funds.¹²

GWA submits that the subject Contract “is a requirements contract, which means that GWA does not, and cannot know what the total expenditures will be under the contract.” However, GWA has indicated that for FY2013, its fuel cost totaled \$532,111.28. It appears that for FY2014, its fuel cost was closer to \$600,000.00. Accordingly, it is likely that the Contract will cost GWA over \$1,000,000 should it exercise its two one-year options. However, under the Contract, GWA saves roughly Eighty-Four Cents (\$0.84) per gallon. According to GWA, based on an estimated monthly consumption of 3,500 gallons per month, on average GWA stands to save about \$35,280.00 per year. The fuel Contract is funded under GWA’s O&M.

The instant petition is supported by the Resolution issued by the CCU. In the Resolution, the CCU found that in a prior resolution, the CCU acknowledged that a fuel bid had been awarded to IP&E, but that GWA management never returned to the CCU for approval to enter into the contract.¹³ The CCU further found that in this instance, there

¹¹ IP&E Contract, p. 2.

¹² IP&E Contract, p. 2.

¹³ CCU Resolution No. 03-FY2015 (Oct. 28, 2014), p. 1.

has been no indication of bad faith or fraud in this procurement; and that this procurement is in the best interest of Guam and GWA.¹⁴

Accordingly, the CCU has ratified all payments made, or to be made, under the contract, and also has authorized GWA to petition the PUC for approval of the contract, for both the initial three-year term, as well as for the two one-year options.¹⁵ In addition, the CCU further authorized GWA to petition the PUC for approval of the entire contract, which includes the initial three-year term, as well as the two one-year options.

The Commission hereby adopts the findings made in the November 26, 2014 ALJ Report and therefore issues the following:

ORDERING PROVISIONS

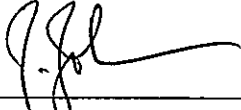
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the contract with IP&E is hereby APPROVED and RATIFIED.
2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

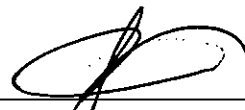
¹⁴ Resolution, pp. 2-3.

¹⁵ Resolution, p. 3.

SO ORDERED this 1st day of December, 2014.



JEFFREY C. JOHNSON
Chairman



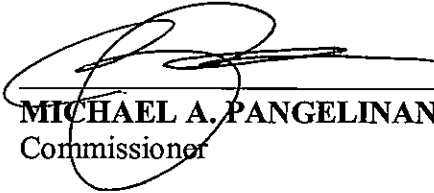
ROWENA E. PEREZ
Commissioner



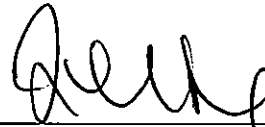
JOSEPH M. MCDONALD
Commissioner



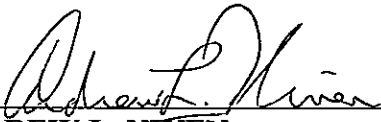
FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

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