

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL)	GWA DOCKET 19-04
OF GWA’S PROPOSED)	
CONTRACT FOR LAB)	ALJ REPORT
SERVICES WITH EUROFINS)	
EATON ANALYTICAL INC.)	
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “Commission” or the “PUC”) pursuant to the November 29, 2018 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”). GWA seeks PUC approval so that it may enter into a multi-year contract with Eurofins for laboratory services.

BACKGROUND

On April 26, 2018, the PUC approved the procurement of a contractor for laboratory services.¹ On May 7, 2018, GWA issued an invitation for bid specifically procuring a U.S. Environmental Protection Agency (“U.S. E.P.A.”) certified lab to analyze water and wastewater samples to comply with the Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.² According to GWA, while two

¹ Order, GWA Docket 18-05, p. 4 (Apr. 26, 2018).

² Petition for Approval of GWA’s Bid and the Proposed Contract for Lab Services with Eurofins Eaton Analytical, Inc. (“Petition”), p. 1 (Nov. 29, 2018).

contractors submitted bids, GWA determined that neither bidder was entirely responsive and thereafter rejected the two bids.³

On September 10, 2018, GWA again issued an invitation for bid procuring a contractor for such laboratory services.⁴ According to GWA, only Eurofins submitted a bid.⁵

DISCUSSION

A. Contract Review Protocol

Pursuant to 12 G.C.A. §12105, 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”⁶ 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.”⁷

³ Consolidated Commission on Utilities (“CCU”) Resolution No. 02-FY2019 (“Resolution”), p. 1 (Nov. 27, 2018).

⁴ Resolution, p. 2.

⁵ Resolution, p. 2.

⁶ GWA’s Contract Review Protocol (“Contract Protocol”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁷ Contract Protocol, p. 4.

In this instance, GWA seeks PUC approval of a multi-year contract with Eurofins. GWA submits that the anticipated cost of the contract is \$405,638.00 annually, which would result in a total contract award of \$1,216,914.00 for an initial three-year term; and up to \$2,028,190.00 in the event GWA exercises two (2) year-long options to renew, which is provided under the proposed contract.

B. GWA’s Petition for Approval of the Proposed Contract for Lab Services with Eurofins Eaton Analytical, Inc.

In its Petition, GWA requests that the PUC approve a three-year contract with Eurofins for laboratory services, which also includes two (2) year-long options to renew.⁸ GWA submits that it is “required under federal law to conduct scheduled testing on water and wastewater samples by a laboratory certified by the National Environmental Laboratory Accreditation Conference and accepted by the U.S. E.P.A. and Guam Environmental Protection Agency.”⁹ GWA further submits that “[t]here are no U.S. E.P.A./GEPA certified labs on-island” and it has “no reasonable alternatives to securing these essential services”¹⁰

C. 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 (Unregulated Contaminants Monitoring Rule 3) samples. These tests are intended to measure levels of pesticides,

⁸ Petition, p. 2.

⁹ Petition, p. 2.

¹⁰ Petition, p. 2.

metals and toxicity in GWA's water and wastewater, among others. For example, Guam's water will be tested every three (3) years for lead and copper; and wastewater will be tested annually for effluent toxicity, pesticides, and priority pollutants. With every sample, the contractor is given a thirty-day turnaround to complete its analysis.

D. Term, Cost, and Funding Source

The proposed contract between GWA and Eurofins indicates an initial term of three (3) years, with two (2) year-long options for renewal, "subject to the availability of funds and agreement between the parties."¹¹ The annual cost of the contract is estimated at \$405,638.00. Accordingly, GWA is seeking approval for \$1,216,914.00 for the first three (3) years, and another \$811,276.00 for the two-year renewal, for a total cost of \$2,028,190.00. GWA submits that the projected source of funding for the contract will be from GWA revenues.

E. Eurofins Eaton Analytical

Based on its bid submission, Eurofins has served as GWA's contractor for laboratory services for more than fifteen (15) years; and, therefore, is "familiar with the water quality of GWA's village wells, springs, surface water and treatment facilities." According to Eurofins, it is experienced in managing the samples to and from Guam; and according to its bid submission, Eurofins also has "the largest water-only testing laboratory in the United States, accredited and approved by the EPA"

¹¹ Resolution, p. 3.

F. CCU Resolution No. 02-FY2019

The instant Petition is supported by Resolution No. 02-FY2019 (the “Resolution”) issued by the CCU. Pursuant to the Resolution, the CCU found that the terms of Eurofin’s proposal were “reasonable, prudent, and necessary.”¹² Further, the CCU authorized GWA to petition the PUC to seek approval to award the lab services contract to Eurofins for three (3) years, with the two (2) year-long options to renew, for an “aggregate amount” of \$2,433,828.00, which includes a ten percent (10%) contingency.¹³

CONCLUSION

Based on the documentation provided by GWA, the Administrative Law Judge assigned to this docket (the “ALJ”) finds the subject contract 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 and monitoring is required under the Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.

Furthermore, the ALJ finds that Eurofins is certainly qualified to provide the laboratory testing services since it is a U.S. E.P.A. certified lab, and since it has significant experience providing such services to GWA and the island of Guam. Moreover, the ALJ finds that the annual cost of the contract, which is estimated at \$405,638.00, appears reasonable given that the PUC approved the annual cost of \$568,185.00 for such services in the prior contract with Eurofins.

¹² Resolution, p. 3.

¹³ Resolution, p. 4.

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. Specifically, GWA should be permitted to enter in the proposed contract with Eurofins for the initial three-year term, and should also be permitted to exercise the two (2) year-long options to renew the contract if it elects to do so. A proposed Order is submitted herewith for the Commission's consideration.

Dated this 24th day of December, 2018.



JOEPHET R. ALCANTARA
Administrative Law Judge

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On December 24, 2018, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On April 26, 2018, the PUC approved the procurement of a contractor for laboratory services.¹ On May 7, 2018, GWA issued an invitation for bid specifically procuring a U.S. Environmental Protection Agency (“U.S. E.P.A.”) certified lab to analyze water and wastewater samples to comply with the Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.² According to GWA, while two contractors submitted

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\$2,028,190.00 in the event GWA exercises two (2) year-long options to renew, which is provided under the proposed contract.

B. GWA’s Petition for Approval of the Proposed Contract for Lab Services with Eurofins Eaton Analytical, Inc.

In its Petition, GWA requested that the PUC approve a three-year contract with Eurofins for laboratory services, which also includes two (2) year-long options to renew.⁸ GWA submitted that it is “required under federal law to conduct scheduled testing on water and wastewater samples by a laboratory certified by the National Environmental Laboratory Accreditation Conference and accepted by the U.S. E.P.A. and Guam Environmental Protection Agency.”⁹ GWA further submitted that “[t]here are no U.S. E.P.A./GEPA certified labs on-island” and it has “no reasonable alternatives to securing these essential services”¹⁰

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years, with the two (2) year-long options to renew, for an “aggregate amount” of \$2,433,828.00, which includes a ten percent (10%) contingency.¹³

Based on the documentation provided by GWA, the ALJ found the subject contract 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 and monitoring is required under the Safe Drinking Water Act and the Guam Primary and Secondary Drinking Water Regulations.

Furthermore, the ALJ found that Eurofins is certainly qualified to provide the laboratory testing services since it is a U.S. E.P.A. certified lab, and since it has significant experience providing such services to GWA and the island of Guam. Moreover, the ALJ found that the annual cost of the contract, which is estimated at \$405,638.00, appears reasonable given that the PUC approved the annual cost of \$568,185.00 for such services in the prior contract with Eurofins.

The ALJ recommended that the PUC approve GWA’s Petition. Accordingly, GWA should be authorized to enter into a multi-year contract with Eurofins for laboratory services. Specifically, GWA should be permitted to enter in the proposed contract with Eurofins for the initial three-year term, and should also be permitted to exercise the two (2) year-long options to renew the contract if it elects to do so.

The Commission hereby adopts the findings made in the December 24, 2018 ALJ Report, and therefore, issues the following:

¹³ Resolution, p. 4.

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 instant Petition is hereby APPROVED and GWA is authorized to enter into the subject contract for laboratory services with Eurofins Eaton Analytical, Inc. for the initial three-year term, and is also permitted to exercise the two (2) year-long options to renew the contract if it elects to do so, for a total amount of \$2,028,190.00.

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 matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 27th day of December, 2018.

JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

MARK MILLER
Commissioner

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