

BEFORE THE PUBLIC UTILITIES COMMISSION

PETITION FOR APPROVAL OF)	GWA DOCKET 19-03
CONTRACT FOR ROUTE 1 ASAN-)	
ADELUP-HAGATNA SEWER)	
REHABILITATION AND)	ORDER
REPLACEMENT CONSTRUCTION)	
PROJECT WITH INFRA TECH)	
INTERNATIONAL, LLC BY GUAM)	
WATERWORKS AUTHORITY)	
_____)	

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the November 8, 2018 notification to the PUC related to the Route 1 Asan-Adelup-Hagåtña Sewer Rehabilitation and Replacement Project contract with Infratech International, LLC (hereinafter referred to as the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

On November 27, 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

Back in June 2015, GWA procured an engineering team to design a sewer rehabilitation and replacement project for the sewer line along Route 1, from the “War in the Pacific National Historical Park” in Asan to the Main Pump Station in Hagåtña. GWA then entered into a contract with HDR Engineering, Inc. (“HDR”) to design this rehabilitation and replacement project.¹ In April, 2017, HDR completed the final design of this project.

¹ CCU Resolution No. 44-FY2018, p. 2.

Based on HDR’s designs, GWA issued an Invitation to Bid for the project on May 12, 2017. However, GWA received no bids. On October 31, 2017, GWA again issued an Invitation to Bid for the project. But again it received no bids.

Thereafter, GWA consulted with contractors to determine why the procurement for the project had been unsuccessful. Subsequently, GWA developed two separate bids: “Schedule A,” which involves “cured-in-place piping”; and “Schedule B,” which involves “open cut trenching.”²

On May 4, 2018, GWA issued an Invitation to Re-Bid, particularly IFB-05-ENG-2018, for the rehabilitation and repair project, and included Schedules A and B. Thereafter, GWA received two (2) bids.³ Both bidders submitted proposals for “Schedule A”; and no proposals for “Schedule B.”

HDR evaluated the two bids and determined that Infratech International, LLC (“Infratech”) submitted the lowest responsive and responsible bid.⁴ HDR further noted in its review that “[o]verall, the pricing for the base bid line items were close to the engineer’s estimate”⁵

On August 28, 2018, the Consolidated Commission on Utilities (the “CCU”) authorized GWA to accept the bid proposed by Infratech, specifically “Schedule A” and “Additive Bid No. 2,” through Resolution No. 44-FY2018.⁶ Accordingly, the CCU authorized GWA to enter into a contract with Infratech, and further authorized funding in the total amount

² CCU Resolution No. 44-FY2018, p. 2.

³ CCU Resolution No. 44-FY2018, p. 3.

⁴ CCU Resolution No. 44-FY2018, p. 3.

⁵ CCU Resolution No. 44-FY2018, “Exhibit B,” p. 1.

⁶ CCU Resolution No. 44-FY2018, p. 4.

of \$6,903,361.17, which includes a ten percent (10%) contingency on top of Infratech's proposed total bid of \$6,275,782.88.⁷

According to GWA, the entire project would be fully funded by the U.S. E.P.A. through a State Revolving Fund grant, and that the cost of the project is one hundred percent (100%) reimbursable.⁸

1. GWA's 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. Generally, 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"⁹

However, Section 2 of the Contract Review Protocol further provides that "[f]or contracts that involve the receipt by GWA of revenues or reimbursement of costs in excess of \$1,000,000 . . . (a) GWA is permitted to evaluate the contract without PUC approval"¹⁰ Still the Contract Review Protocol requires that prior to entering into the contract, GWA must provide the PUC with the following: (i) GWA's governing body resolution authorizing the contract; (ii) an affidavit from GWA management stating that the contract does not produce an increased revenue requirement with supporting documentation; and (iii) a narrative description

⁷ CCU Resolution No. 44-FY2018, p. 4.

⁸ Affidavit of Miguel Bordallo, P.E., p. 1 (Nov. 8, 2018).

⁹ GWA's Contract Review Protocol ("Contract Protocol"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

¹⁰ Contract Protocol, p. 2.

of the contract.¹¹ Such contract will be “deemed approved” unless rejected by the PUC within thirty (30) days after an adequate filing has been made.¹²

2. Narrative Description of the Contract and Scope of Work

Based on the bid documents, the scope of work includes the following: trench excavation for pipe repair work; removal of existing asbestos cement pipes; pipe repair through installation of PVC pipes; pavement resurfacing; and sewer line cleaning, to name a few. Included also are closed-circuit television inspections; and the installation of cured-in-place pipes. The work includes the rehabilitation of sewer manholes, new manhole frames, and traffic control work.

In its submission, GWA maintained that the “[t]he objective . . . is to improve the sewer collection system” by “rehabbing, repairing and/or replacing sewer manholes and over 5,000 linear feet of gravity sewer line.” The project extends along Route 1, from the “War in the Pacific National Historical Park” in Asan, to the Main Pump Station in Hagåtña, and will be limited to sewer infrastructure elements along the government easements. The work is expected to be completed within 450 days.

3. No Increased Revenue Requirement

A. Affidavit of Miguel Bordallo, P.E.

Based on the affidavit submitted by Miguel Bordallo, General Manager for GWA, the subject contract will be “fully funded by grants or funds provided to [GWA] under the U.S. E.P.A.’s State Revolving Fund and the work called for under the contract for said project is

¹¹ Contract Protocol, p. 2.

¹² Contract Protocol, p. 2.

100% reimbursable”¹³ The affidavit therefore maintained that the contract “will not produce an increased revenue requirement” for GWA.¹⁴

B. Cost and Funding

According to the documents submitted by GWA, it has been authorized by the CCU to enter into a contract with Infratech, for a total amount of \$6,903,361.17, which includes a ten percent (10%) contingency on top of Infratech’s proposed total bid of \$6,275,782.88.¹⁵

In addition, according to the documents submitted by GWA, this project will be fully funded by the U.S. E.P.A. through an SRF grant fund. Attached to the affidavit is a copy of a Notice of Award from the U.S. E.P.A. that indicates an amount of \$17,399,733.00 for “the design and construction of projects identified on the approved Guam Environmental Protection Agency’s priority list for the protection of human health and the environment.”

4. Governing Body Resolution Authorizing the Contract

On August 28, 2018, the CCU issued Resolution No. 44-FY2018, which authorized GWA to accept the bid proposed by Infratech, specifically “Schedule A” and “Additive Bid No. 2.”¹⁶ Through its Resolution, the CCU also authorized GWA to enter into a contract with Infratech, and authorized funding in the total amount of \$6,903,361.17, which includes a ten percent (10%) contingency on top of Infratech’s proposed total bid of \$6,275,782.88.¹⁷

¹³ Affidavit of Miguel Bordallo, P.E., p. 1 (Nov. 8, 2018).

¹⁴ Affidavit of Miguel Bordallo, P.E., p. 1 (Nov. 8, 2018).

¹⁵ CCU Resolution No. 44-FY2018, p. 4.

¹⁶ CCU Resolution No. 44-FY2018, p. 4.

¹⁷ CCU Resolution No. 44-FY2018, p. 4.

The ALJ found that the subject contract involves the reimbursement of costs in excess of \$1,000,000; accordingly, GWA is permitted to evaluate the contract without PUC approval”¹⁸ Further, GWA has adequately submitted documentation to support the approval of the contract.

Specifically, GWA provided the PUC with a copy of CCU Resolution No. 44-FY2018, which authorizes GWA to accept the bid proposed by Infratech, specifically “Schedule A” and “Additive Bid No. 2”; The resolution also authorizes GWA to enter into a contract with Infratech, and authorized funding in the total amount of \$6,903,361.17, which includes a ten percent (10%) contingency on top of Infratech’s proposed total bid of \$6,275,782.88.¹⁹

The ALJ further found that GWA has sufficiently provided the PUC with an affidavit by GWA Management, with supporting documents, indicating that the subject contract will be “fully funded by grants or funds provided to [GWA] under the U.S. E.P.A.’s State Revolving Fund and the work called for under the contract for said project is 100% reimbursable”²⁰ and that the contract “will not produce an increased revenue requirement” for GWA.²¹

The ALJ found that GWA has adequately described the nature of the contract through a narrative, and through supporting documentation, such as the bid evaluation by HRD and Infratech’s winning bid. The ALJ further found that based on the submission of the Notice of Award, the subject project appears fully funded by the U.S. E.P.A. through an SRF grant fund.

The Commission hereby adopts the findings made in the November 27, 2018 ALJ Report, and therefore, issues the following:

¹⁸ Contract Protocol, p. 2.

¹⁹ CCU Resolution No. 44-FY2018, p. 4.

²⁰ Affidavit of Miguel Bordallo, P.E., p. 1 (Nov. 8, 2018).

²¹ Affidavit of Miguel Bordallo, P.E., p. 1 (Nov. 8, 2018).

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 DEEMED APPROVED so that GWA may enter into the subject contract with Infratech International, LLC for an amount not to exceed \$6,903,361.17, which includes a ten percent (10%) contingency on top of Infratech's proposed total bid of \$6,275,782.88.

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 29th day of November, 2018.

JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ
Commissioner

JOSEPH M. MCDONALD
Commissioner

FILOMENA M. CANTORIA
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

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