BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

THE APPLICATION OF THE GUAM POWER AUTHORITY TO APPROVE THE CONTRACT FOR SUPPLY OF RESIDUAL FUEL OIL NO. 6 TO GPA

GPA DOCKET 13-10

PUC COUNSEL REPORT



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] for Review and Approval of the Contract for Supply of Residual Fuel Oil No. 6 with Hyundai Corporation.¹

BACKGROUND

- 2. On July 16, 2012, GPA petitioned the PUC for authorization to procure Residual Fuel Oil No. 6 for the baseload power generating plants.²
- 3. On July 30, 2012, the PUC authorized GPA to proceed with the procurement of RFO No. 6 finding that such fuel was "essential to the operation of the plants." GPA's then current contract for RFO with Petrobras Singapore ["Petrobras"] was set to expire on February 28, 2013.4
- 4. GPA issued a procurement for RFO through IFB No. GPA-068-12. On January 8, 2013, the Consolidated Commission on Utilities ["CCU"] determined that Vitol Asia Pte., Ltd. was the lowest most responsive bidder and should be awarded the contract.⁵
- 5. However, at the PUC Regular Meeting conducted on January 29, 2013, GPA informed PUC that a bid protest had been filed regarding the award of the Contract to Vitol, and requested that the PUC not act on the approval of the Fuel Supply Contract.⁶

¹ GPA Petition for Contract Review, GPA Docket 13-10, filed July 5, 2013.

² GPA Petition for Contract Review, GPA Docket 12-09, filed July 16, 2012.

³ PUC Order, GPA Docket 12-09, issued July 30, 2012, at p. 4.

⁴ Id. at p. 1.

⁵ Guam Consolidated Commission on Utilities Resolution No. 2013-04, issued January 8, 2013.

⁶ PUC Order, GPA Docket 12-09, issued February 26, 2013, at p. 1.

- 6. On February 4, 2013, GPA requested that the PUC approve a six month contract extension with the present supplier of RFO No. 6, Petrobras. On February 11, 2013, the PUC, acting through its Chairman pursuant to 12 GCA §12004, approved GPA's Petition authorizing a 6 month extension of the Fuel Supply Contract with Petrobras.⁷
- 7. At the regular PUC meeting conducted on February 26, 2013, the PUC Commissioners ratified the Order executed by the Chairman.8
- 8. The 6 month extension for the RFO Supply Contract with Petrobras will expire on August 31, 2013.
- 9. On or about April 11, 2013, GPA issued a Re-Bid No. GPA-068-12 procurement of Residual Fuel Oil. GPA decided to cancel the prior IFB in order to rebid the procurement of a new residual fuel oil supply contract.⁹
- 10. After evaluation of the bids on the "Re-Bid" GPA determined that Hyundai Corporation was the lowest, most responsive bidder meeting the requirements of the bid solicitation.¹⁰
- 11. GPA now proposes to enter into a Residual Fuel Oil No. 6 Supply Contract with Hyundai Corporation for a period of two years, commencing September 1, 2013 and expiring on August 31, 2015. Based upon mutual agreement of both parties, there may be up to three one-year extension options renewable annually.¹¹
- 12. The cost of the contract for the ratepayers for the two year contract period is \$719,400,000.12
- 13. On July 8, 2013, GPA forwarded a copy of the RFO Fuel Supply Contract with Hyundai Corporation to the PUC; GPA seeks approval of such contract.¹³

⁷ Id. at p. 1.

⁸ Id.

⁹ Guam Consolidated Commission on Utilities Resolution No. 2013-37, issued June 25, 2013, at p. 1.

¹⁰ Id. at p. 1.

¹¹ Id. at pgs. 2-3.

¹² Id. at p. 2.

¹³ Emails from Graham Botha, GPA Legal Counsel, to Frederick J. Horecky, PUC Legal Counsel, GPA Docket 13-10, RFO Fuel Supply Contract with Hyundai Corporation, dated July 8, 2013, with contract attached, and Documents for PUC Review.

ANALYSIS

- 14. On July 8, 2013, GPA forwarded the Fuel Oil Supply Contract with Hyundai Corporation for which GPA seeks approval from the PUC. Said Contract is duly filed with the PUC and copies of said contract will be provided to the PUC Commissioners prior to the meeting on July 30, 2013.
- 15. It appears that all the proper prerequisites of the procurement process were met for the consummation of this Fuel Oil Supply Contract. The procurement for RFO No. 6 was duly approved by both the CCU and PUC. GPA issued adequate public announcement for the need for such fuel supply services; three bidders submitted bids for GPA's consideration [Hyundai Corporation, Vitol Asia Pte., Ltd., and Petrobras Singapore Pte., Ltd.].¹⁴
- 16. GPA's Legal Counsel indicates that the deadline for procurement appeals on this bid was July 12, 2013; to date no procurement protest regarding this bid has been filed. GPA may thus legally proceed with the execution of the Fuel Oil Supply Contract.
- 17. As to the proposed form of the contract between GPA and Hyundai Corporation, the form follows the standard form utilized in numerous prior fuel oil supply contracts. The form of the proposed contract has previously been approved by the PUC on numerous occasions.
- 18. When the PUC initially approved this procurement for RFO No. 6 on July 30, 2012, the proposed contract form incorporated in the bid was approved by the PUC.¹⁶
- 19. The Order included a review of contract provisions, including protections in the contract for GPA such as substantial performance and payment bond requirements. In addition, the Contract requires that the successful bidder deliver to GPA an executed performance and payment bond as security for the performance of the contract.¹⁷

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¹⁴ CCU Resolution No. 2013-37, issued June 25, 2013, at p. 1.

¹⁵ Telephone conversation between GPA Legal Counsel and PUC Counsel on July 12, 2013.

¹⁶ PUC Order, GPA Docket 12-09, dated July 30, 2012, at p. 3.

¹⁷ Id.

20. The Commission concluded that the contract "appears to protect the interests of GPA and Ratepayers. All risk of loss, cost and liability prior to the time of passage of title of the fuel oil to GPA is upon the contractor." ¹⁸

- 21. In its Report issued in GPA Docket 12-13 on January 23, 2013 regarding LEAC Factors effective February 1, 2013, the Georgetown Consulting Group Inc. recommended acceptance of the proposed contract that had been offered by GPA.¹⁹
- 22. In its Order dated November 13, 2009, in Docket 94-04, the PUC approved the application of GPA for procurement of RFO No. 6 for the baseload generating plants, noting that the "new proposed contract appears to include various provisions which protect GPA and its customers."²⁰
- 23. On February 12, 2010, the PUC, upon submission by GPA of the Fuel Oil Supply Contract with Petrobras Singapore Pte., Ltd., approved such contract. The Commission found that the proposed contract was "reasonable, prudent and necessary."²¹
- 24. The proposed contract has been fully negotiated and contains similar protections to those included in prior GPA Fuel Oil Supply Contracts. GPA does have the power to enter into contracts "necessary or convenient in the exercise of its powers..." However, GPA's power to contract is subject to the Contract Review Protocol, which requires GPA to seek prior PUC approval for any contract which exceeds \$1.5M "before the procurement process has begun..."
- 25. GPA has met its burden to demonstrate that its Contract for Supply of Fuel Oil with Hyundai Corporation for Residual Fuel Oil No. 6 is essential to the operation of the Cabras power plants.
- 26. In general, the PUC has recognized that the premium prices paid by GPA for RFO No. 6 have increased substantially. The prices offered by bidders under the new

¹⁸ Id.

¹⁹ GCG Report, GPA Docket 12-13, Request for LEAC Factors effective February 1, 2013, dated January 23, 2013.

²⁰ PUC Order, Docket 94-04, issued November 13, 2009, at p. 1.

²¹ Id. at p. 1.

²² 11 GCA §8104(e).

²³ Contract Review Protocol for Guam Power Authority, Administrative Docket dated February 15, 2008.

RFO supply Contract are substantially higher than those under the prior contract with Petrobras.

- 27. The premium prices proposed by Hyundai Corporation are lower than the prices which were included in the 6 month contract extension with Petrobras [from March 1, 2013 through August 31, 2013]. RFO premium charged by Hyundai Corporation will result in a lower LEAC Factor.²⁴
- 28. The continuous supply of fuel oil to GPA, for the benefit of ratepayers, must be maintained.

RECOMMENDATION

- 29. Counsel recommends that the PUC approve the Contract for Supply of Residual Fuel Oil No. 6 with Hyundai Corporation.
- 30. A proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 19th day of July, 2013.

Frederick J. Horecky PUC Legal Counsel

²⁴ LEAC Analysis, GPA Docket 13-06 provided by Assistant Chief Financial Officer Cora Montellano to PUC Counsel Re: New RFO Supplier.