**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

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| IN THE MATTER OF:  Petition for Contract Review of Ratification of Additional Charges under the R.W. Armstrong PMO Contract | )  )  )  )  )  )  ) | GPA Docket 14-02  **PUC COUNSEL REPORT** |

**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Guam Power Authority’s [“GPA”] Petition for Contract Review for Ratification of Additional Charges under the R. W. Armstrong PMO Contract.[[1]](#footnote-1)

**BACKGROUND**

2. On January 11, 2012, the PUC authorized GPA to expend a “not to exceed” amount of $3.9M for the Program Management Office Contract with R.W. Armstrong.[[2]](#footnote-2)

3. Notwithstanding the PUC Order, it now appears from the facts set forth in GPA’s Petition that GPA expended $4,444,221.37 for the R.W. Armstrong Contract in 2012 and 2013 ( an excess of $544,221.37 over the authorized amount).[[3]](#footnote-3)

4. GPA indicates that its own Performance Management Contractors for its Cabras Plants are responsible for the over expenditure; according to GPA, the contract cap of $3.9M was exceeded by $544,221.37 “inadvertently” “due to invoices from the Performance Management Contractors.”[[4]](#footnote-4)

5. GPA now requests that the PUC ratify the additional charges under the R.W. Armstrong PMO Contract in the amount of $544,221.37. These additional charges represent work that has already been performed by R.W. Armstrong at the request of GPA.[[5]](#footnote-5) GPA believes that it has a legal obligation to pay the amounts of the invoices to R.W. Armstrong “since work was performed in good faith and was consistent with the mission and objectives of the Authority under the direction of GPA personnel.”[[6]](#footnote-6)

**ANALYSIS**

6. It appears that R.W. Armstrong has performed the services requested by GPA.[[7]](#footnote-7) There was an agreement between GPA’s PMC and Armstrong as to the cost of those services. GPA does have a legal obligation to pay the amounts on the invoices for work performed by R.W. Armstrong.

7. If PUC did not ratify payment of the additional charges, GPA would likely be faced with a claim or suit to collect the unpaid amounts. Since the services were performed pursuant to a contractual agreement, ratification by the PUC is the appropriate course of action.

8. GPA cannot, however, place blame upon its Performance Management Contractor for exceeding the $3.9M contract cap imposed by the PUC Order. GPA management was aware of these expenditures and requested that its PMCs pay R.W. Armstrong. Letters from GPA AGMO dated October 22, 2013, September 30 2013, and July 23, 2013, to TEMES/East West Power Guam.

9. GPA is responsible for the actions of its Performance Management Contractor and is ultimately liable for amounts properly incurred by its PMO and for making payments to the PMO.

10. GPA has failed to comply with the PUC Order dated January 11, 2012, by paying its PMO R.W. Armstrong amounts in excess of the $3.9M cap.

11. GPA violated the PUC Order by paying Armstrong an amount of $544,221.37 in excess of the cap.

12. This action by GPA has lead PUC Counsel to undertake a more detailed review of the PMO Program and the expenditures thereunder.

13. Failure of GPA to properly monitor its expenditures under the PMO Program raises troubling concerns about a lack of monitoring of PMO expenses. GPA has not taken proper care to assure that PMO expenditures are within the limits established by the PUC.

14. PUC Counsel obtained copies of all billings/invoices of R.W. Armstrong, evidences of payments by GPA to Armstrong, work and task orders concerning the PMO Project from its inception in 2012 to the present. Counsel’s review raises numerous preliminary concerns about the PMO Program:

1. In January 2012, the General Manager of GPA indicated that GPA’s PMO costs of $3.9M were anticipated to “cover the next 36 months of PMO services.”[[8]](#footnote-8) Instead, the PMO budget only lasted for two years, and GPA expended a total of $4,444,221.37 for two years (2012-2013) for its PMO services.
2. Upon information and belief, the hourly rates charged by R.W. Armstrong and sub-consultant HDR are higher than the rates charged by other consultants which GPA has used in recent projects such as Smart Grid. At the commencement of the PMO Contract, the highest hourly billings were at a rate of $319 per hour for both entities; many personnel billed between $267 per hour and $319 per hour. Clerical personnel are billed in the range of $90 to $100 per hour. Hourly rates do not include reimbursable expenses such as per diem for meals, lodging ($180/night) Airfare, and car rental. The highest hourly rates could possibly exceed $500 per hour when all reimbursables are factored in. In addition the PMO “umbrella” is large and extensive. Armstrong and HDR may have as many as 30-40 different individuals billing on projects. There are numerous on island and off island consultants billing under the PMO.

(c) On September of 2012, seven months after Armstrong commenced work on the PMO Contract, hourly rates of all Armstrong Consultants were increased. The top hourly rates for certain personnel increased to $332.27 per hour, and all other rates were increased across the board. It is not clear why GPA allowed the PMO Consultant to increase its hourly rates after the PMO Contract commenced and the engagement had already been negotiated.

(d) In addition, in approximately September 2012, for each month after the PMO Contract commenced, all contractors and sub-contractors working with Armstrong began to charge an “Administrative Fee” at 4.16% of the entire billing. This amount was tacked on to all of the hourly billings. There is no indication whether R.W. Armstrong, HDR or other off-island consultants pay Gross Receipts Tax to the Guam Department of Revenue & Taxation. It is also not clear why GPA allowed contractors to tack on such expenses to the contract many months after the contract work had already commenced.

(e) With all billings of R.W. Armstrong and HDR, there is nothing more indicated than the number of hours that each consultant has billed and the hourly rates. Other than a few words indicating the particular task or work order upon which the work was done, there is no indication of what services any of the consultants performed or what results they accomplished.

(f) In addition to the two main contractors Armstrong and HDR, there are numerous and varied other off-island and on-island consultants that are billing under the umbrella of the PMO Office. From a review of the billings, with a few exceptions, it is generally impossible to ascertain what work any particular consultant performed on each project.

(g) GPA assigns the PMO tasks through Task Orders and Work Orders. Each Task Order contains only a lump sum cost price with no breakdown or indication of how the price was arrived at or specific amounts determined. It is difficult for the PUC to review the cost effectiveness of the PMO Consultant when there is no indication in the billings as to what specific work is being done.

(h) Given the lump sum amounts assigned by GPA to projects, it is difficult for the PUC to ensure accountability with regard to the work performed. PUC cannot determine how GPA priced the work projects under each task order.

(i) When the PUC created the PMO in January 2012, the main justifications offered by GPA was a number of new projects that would be required because of the military build-up, and the need to have construction management on capital improvement projects. The “military build-up” rationale has not to date justified any of the expenditures for the PMO. Much of the work of the PMO does not appear to be justified based upon capital improvement projects. There have been substantial billings of hundreds of thousands of dollars and more, related to “development” and execution of a Proactive Relations/Marketing/Communications Strategy; Public Speaking, Media and Communication Training; Rapid Response to Communications Issues identified by GPA; Development and Execution of a strategic Communications Plan; Developing a Rapid Response to Base Rate Increase.

In addition, projects have included such matters as “administrative support” for GPA Budget Office, the internal GPA “Centrex system”, media and many other matters relating to internal GPA functions. It also appears that GPA has relied heavily upon its PMO for the construction of its new office facility in Fadian (instead of its architects RIM). None of the above subjects are the type of projects that PUC contemplated would be used for a Program Management Office. GPA originally indicated that PMO projects would be paid for as approximately 6% of the cost of capital improvements projects. It now appears that the PMO is not working primarily on capital improvement projects, but is performing what would be characterized as purely internal GPA functions, i.e. media, budget, internal phone operations etc. Certain consultants have been participating in internal customer service relations and working on customer power/billing issues. It was never intended by PUC that GPA turn over its internal functions and operations to a PMO. These types of tasks should be appropriately handled by GPA personnel.

(j) To date, Counsel believes that at least some of the projects upon which the PMO has been utilized were not the type of projects originally contemplated by the PUC or for the specific authorized purposes. Questions are raised as to whether the ratepayers are deriving substantial enough benefit from the large amount of resources that are being devoted to the PMO.

(k)Upon information and belief, Counsel is informed that the PMO has no special expertise in LNG matters, nor does its subcontractor HDR. LNG matters have now been further subcontracted to MEI. Since all work is being directed and managed by the PMO, this means that an additional layer of administrative cost and expense is created. All services become more expensive under this arrangement. In the past GPA had contracted directly with expert subject matter consultants to perform needed services. This new model does not appear to be cost effective.

**RECOMMENDATIONS**

15. With reservations, Counsel recommends that the PUC ratify the additional charges under the R.W. Armstrong PMO Contract in the amount of $544,221.37. GPA should be authorized to expend $544,221.37 to pay additional charges for services rendered by R.W. Armstrong.

16. Counsel believes that GPA’s failure to contain its PMO expenditures within the $3.9M cap established by the PUC is evidence of a lack of care by GPA in monitoring PMO expenditures. PUC should undertake a full investigation and review of the PMO program.

17. PUC should find that GPA violated its January 11, 2012 Order by exceeding the cap for the PMO contract.

18. Counsel request that he be authorized, if he deems necessary, to engage the services of one of the PUC consultants to perform an investigation/review of the PMO program.

19. Counsel and the consultant, if retained, should be authorized to explore such issues as the cost-effectiveness of the program, the PUC’s ability to maintain accountability of the program, and options for either eliminating or otherwise carrying out the functions of the PMO program. The PUC Consultant should make recommendations as to what course of action PUC should take.

20. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 22st day of April, 2014.

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Frederick J. Horecky

PUC Legal Counsel

1. GPA Petition for Contract Review, GPA Docket 14-02, filed March 14, 2014. [↑](#footnote-ref-1)
2. PUC Order, GPA Docket 11-02, dated January 11, 2012. [↑](#footnote-ref-2)
3. GPA Petition for Contract Review, GPA Docket 14-02, filed March 14, 2014, at p. 1-2. [↑](#footnote-ref-3)
4. Guam Consolidated Commission on Utilities Resolution No. 2014-08, Relative to the Ratification of Generation Expenditures, issued March 11, 2014. [↑](#footnote-ref-4)
5. GPA Petition for Contract Review, GPA Docket 14-02, filed March 14, 2014, at p. 2. [↑](#footnote-ref-5)
6. Guam Consolidated Commission on Utilities Resolution No. 2014-08, at p. 2. [↑](#footnote-ref-6)
7. Id. at Attachment A. [↑](#footnote-ref-7)
8. Letter from General Manager of GPA to PUC ALJ, GPA Docket 11-02, dated January 5, 2012, at Attachment 2. [↑](#footnote-ref-8)