



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE: REVIEW AND APPROVAL OF ) GWA DOCKET 15-09**  
**PROPOSED REVISED )**  
**CONTRACT WITH )**  
**JMI EDISON FOR WASTE- )**  
**WATER CHEMICALS )**  
**ALJ REPORT**

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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the October 9, 2015 Petition for Approval of the Proposed Revised Contract with JMI Edison for the purchase of additional wastewater chemicals (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

**BACKGROUND**

According to GWA, on October 21, 2014, it issued Invitation for Bid No. IFB-2014-11 (“IFB-2014-11”) for the purchase of wastewater chemicals.<sup>1</sup> This procurement intended to succeed Invitation for Bid No. IFB-2013-06 (“IFB-2013-06”), which was the original bid for the purchase of wastewater chemicals,<sup>2</sup> which did not undergo PUC review.

The bid opening for IFB-2014-11 was held on October 21, 2014, and a Notice of Award eventually issued to Core Tech International Corporation (“Core Tech”)

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<sup>1</sup> Petition by Guam Waterworks Authority for Approval of the Proposed Revised Contract with JMI Edison for wastewater chemicals (“Petition”), p. 1 (October 9, 2015).

<sup>2</sup> Petition, p. 1.

in February, 2015.<sup>3</sup> According to GWA, however, contract negotiations with Core Tech were unsuccessful.<sup>4</sup> Thereafter, GWA awarded the contract to the second highest bidder.<sup>5</sup>

During the time IFB-2014-11 was being evaluated through April 15, 2015, GWA purchased \$997,590.80 worth of chemicals under the JMI Edison contract, due to GWA's inventory being critically low.<sup>6</sup> As a result, the JMI Edison contract "exceeded the One Million Dollar threshold under the Contract Review Protocol" by \$874,966.78,<sup>7</sup> which triggered the instant review.

## **DISCUSSION**

### **A. Contract Review Protocol**

Pursuant to 12 G.C.A. §12004,<sup>8</sup> 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 requires that "[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 . . . ."<sup>9</sup>

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<sup>3</sup> Petition, pp. 1-2.

<sup>4</sup> Petition, p. 2.

<sup>5</sup> Petition, p. 2.

<sup>6</sup> Guam Consolidated Commission on Utilities, Resolution No. 44-FY2015 ("CCU Resolution No. 44-FY2015"), "Exhibit C" ("CCU Summary: Breakdown Cost Overage from Procurement-April 15, 2015," and "Memo to File").

<sup>7</sup> Petition, p. 2.

<sup>8</sup> Renumbered as 12 G.C.A. § 12105.

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

**B. Invitation for Bid No. IFB-2013-06**

According to IFB-2013-06, GWA sought pricing per pound for aluminum chlorohydrate (“ACH”), anionic polymer, and cationic polymer.<sup>10</sup> Based on GWA’s record before the PUC, GWA is required to purchase “ACH and polymer chemicals to ensure that GWA’s Northern District and Hagåtña Wastewater Treatment Plants (‘WWTP’) remain in compliance with the Clean Water Act”<sup>11</sup>; as well as to “operate GWA’s Northern District Wastewater Treatment Plant (NDWWTP) and Hagåtña Wastewater Treatment Plant (HWWTP) and keep GWA in compliance with federal laws, permits and federal guidelines.”<sup>12</sup>

**C. Cost**

GWA submits that the entire cost of the overage is \$874,966.78 through purchase order numbers 296449, 296490, 296491, 297821 and 297849,<sup>13</sup> which included chemicals ordered from October 22, 2014 through April 15, 2015. The funding for this cost overage will be from GWA’s O&M Fund.

**D. GWA’s Petition**

In its Petition, GWA maintains that “due to delays following award [of IFB-2014-11] (which coincided with GWA’s move to Fadian), GWA realized after careful consideration that in order to stay in compliance with federal guidelines relative to

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<sup>10</sup> GWA’s Invitation for Bid No. IFB-2013-06 (“IFB-2013-06”), p. 13 (May 24, 2013).

<sup>11</sup> Petition for Approval of GWA’s Proposed Bid for Chemicals Regarding the Northern District Wastewater Treatment Plant and the Hagåtña Wastewater Treatment Plant (“July 30, 2015 Petition”), p. 1 (July 30, 2015).

<sup>12</sup> July 30, 2015 Petition, p. 2.

<sup>13</sup> Petition, Exhibit 1 at Exhibit A.



operation of the [Northern District Wastewater Treatment Plant], GWA Management agreed that it was in the best interest of the rate payers of Guam that it would order additional chemicals under its existing agreements with suppliers that had not yet expired as to time, but which exceeded the One Million Dollar threshold under the Contract Review Protocol.”<sup>14</sup>

In particular, GWA maintains that during this period, “the inventory of chemicals were critically low and in order to meet compliance GWA had to procure ACH from existing vendors and the overage product exceeded the \$1M threshold.”<sup>15</sup> GWA contends that “[g]iven the time spent in the failed attempt to negotiate a contract as well as the time spent between the October bid submission and the request being made to draft a contract in late January of 2015, GWA was forced to order a significant amount of materials so that it could get the new contract in place with the 2<sup>nd</sup> lowest bidder in GWA IFB-2014-11 and then address the time necessary to have products delivered under the new contract—which according to GWA Procurement is usually around 60 to 90 days from the time the order is made.”<sup>16</sup> GWA submits that based on these circumstances, it had to “choose between non-compliance with [ ] federal regulations and the Contract Review Protocol of the PUC.”<sup>17</sup>

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<sup>14</sup> Petition, p. 2.

<sup>15</sup> Petition, p. 2.

<sup>16</sup> Petition, p. 2.

<sup>17</sup> Petition, p. 2.

**E. CCU Resolution No. 44-FY2015**

The instant petition is supported by Resolution No. 44-FY2015 issued by the Consolidated Commission on Utilities (the “CCU”) at its September 22, 2015 meeting. In the Resolution, the CCU found that GWA had to procure ACH from existing vendors since the inventory was critically low.<sup>18</sup> It further found that such purchase exceeded the PUC’s Contract Review Protocol \$1 million threshold by \$874,966.78.<sup>19</sup>

Based on these findings, the CCU ratified and approved the additional amount owed to JMI Edison, along with any other vendor, for the purchase of the chemical ACH.<sup>20</sup> Accordingly, the CCU authorized GWA to pay the amount owed to JMI Edison for purchase order numbers 296449, 296490, 296491, 297821, and 297849, and corresponding invoices, totaling \$874,966.78.<sup>21</sup>

**CONCLUSION**

The ALJ finds that GWA’s purchase of the ACH chemicals from JMI Edison was reasonable and necessary given that these chemicals are indispensable and required for GWA’s daily wastewater operations. In addition, the ALJ finds that GWA has provided adequate documentation to support the ratification of the subject contract for the purchase of these chemicals, which GWA requires to operate its Northern District Wastewater Treatment Plant (NDWWTP), and keep GWA in compliance with federal laws, permits and federal guidelines. Therefore, the ALJ recommends that the PUC ratify

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<sup>18</sup> CCU Resolution No. 44-FY2015, pp. 1-2.

<sup>19</sup> See CCU Resolution No. 44-FY2015, p. 1.

<sup>20</sup> CCU Resolution No. 44-FY2015, p. 2.

<sup>21</sup> CCU Resolution No. 44-FY2015, p. 3.

the subject contract between GWA and JMI Edison resulting from IFB-2013-06, and authorize payment of \$874,966.78 to JMI Edison.

**RECOMMENDATION**

Based on the documentation provided by PAG in this docket, and for the other reasons set forth herein, the ALJ recommends that the PUC approve payment of the cost overage between GWA and JMI Edison, for a total cost not to exceed \$874,966.78. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Dated this 27<sup>th</sup> day of October, 2015.



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**JOEPHET R. ALCANTARA**  
Administrative Law Judge

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