



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE: REVIEW AND APPROVAL OF )**  
**CONTRACT WITH MEGA )**  
**UNITED CORPORATION )**  
**FOR COMPLIANCE LAB )**  
**CONSTRUCTION PROJECT )**  
**ORDER**

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the July 11, 2016 Petition for Approval of the Compliance Laboratory Construction Project (the “Petition”) with Mega United Corporation (“Mega United”), filed by the Guam Waterworks Authority (“GWA”).

**DETERMINATIONS**

GWA’s current laboratory was designated a “Hazardous Workspace” by the Guam Occupational Safety and Health division and the U.S. Occupational Safety and Health Act (“OSHA”) Guam office,<sup>1</sup> and as a result, GWA engaged consultants to design a new laboratory to replace the existing laboratory.<sup>2</sup> Thereafter, based on design drawings and specifications provided by its consultants, GWA issued Invitation for Bid IFB-03-ENG-2016 (the “IFB”) for services related to the construction of a new GWA compliance laboratory.<sup>3</sup>

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<sup>1</sup> Draft Guam Consolidated Commission on Utilities (“CCU”) Resolution No. 43-FY2016 (“CCU Resolution”), p. 1 (July 26, 2016).

<sup>2</sup> CCU Resolution, p. 1.

<sup>3</sup> CCU Resolution, p. 1.

In response to the IFB, GWA received six bids.<sup>4</sup> Upon the review of the bids by GWA's PMO, Brown & Caldwell, the PMO determined that Mega United was the lowest responsive bidder.<sup>5</sup> In fact, the bid was lower than the designer's cost estimate.<sup>6</sup>

Pursuant to 12 G.C.A. § 12105,<sup>7</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>8</sup> Further, all externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000, and any use of such funds, must be approved by the PUC.<sup>9</sup>

On July 11, 2016 GWA filed the Petition wherein GWA sought approval of its contract with Mega United. On July 25, 2016, the Administrative Law Judge of the PUC Joephet R. Alcantara (the "ALJ") filed a report regarding the Petition, which included his findings and recommendation based on the administrative record before the PUC.

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<sup>4</sup> Petition for Approval of the Compliance Laboratory Construction Project with Mega United Corporation by GWA (the "Petition"), p. 1 (July 11, 2016); CCU Resolution, p. 2.

<sup>5</sup> Petition, p. 1; CCU Resolution, p. 2.

<sup>6</sup> Petition, Exhibit B, p. 2.

<sup>7</sup> Formerly 12 G.C.A. § 12004.

<sup>8</sup> GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

<sup>9</sup> *Id.*

The ALJ found that the contract involves the construction of a new 5,000 square foot laboratory adjacent to GWA's Upper Tumon office<sup>10</sup> since its current laboratory was designated a "Hazardous Workspace" by the Guam Occupational Safety and Health division and the OSHA Guam office.<sup>11</sup> Specifically, the project will require Mega United to furnish all labor, tools, equipment, and materials to construct this new laboratory.<sup>12</sup> In addition, Mega United will also be required to demolish and remove the remaining existing concrete slabs, pavement, foundations at the location, as well as install a new parking lot.<sup>13</sup>

The ALJ further found that the scope of work includes the construction of the laboratory building, specifically the foundation, roof, walls; doors, windows, typhoon shutters; plumbing, electrical; and paint; at a cost of \$1,482,665. Additionally, the scope of work further includes construction of the generator building and tank enclosure, at a cost of \$290,000. Mega United will also be responsible for site clearing, demolition, parking lots, landscaping, at a cost of \$166,000; and permit fees, bonding and insurance, and other required expenses, at a cost of \$154,320.

The ALJ additionally found that the proposed contract is based on GWA's usual construction contract, containing the usual contract terms. For instance, the contract contains a liquidated damages clause, which provides that the contractor shall pay GWA

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<sup>10</sup> CCU Resolution, p. 1.

<sup>11</sup> CCU Resolution, p. 1.

<sup>12</sup> CCU Resolution, p. 2.

<sup>13</sup> CCU Resolution, p. 2.

one thousand dollars (\$1,000) per day as liquidated damages by failing to complete the work within the three hundred (300) day period.

The ALJ found that, pursuant to the proposed contract, Mega United is required to complete the project within three hundred (300) days from the date of the contract is executed by both GWA and Mega United.

The ALJ further found that the total cost of the contract is \$2,092,985. However, pursuant to the draft CCU Resolution, the CCU intends on authorizing a ten percent (10%) contingency on top of the contract price, for a total cost of \$2,520,083.50. GWA submits that the funding source for the project is the 2013 and 2015 bond funds.<sup>14</sup>

GWA submitted for the PUC's review proposed Resolution No. 43-FY2016, to be issued by the CCU at its July 26, 2016 meeting. The Resolution indicated that the terms and the fee proposal are fair and reasonable,<sup>15</sup> and therefore authorized GWA to enter into the contract with Mega United.<sup>16</sup> Accordingly, the CCU will authorize funding for the subject contract in the amount of \$2,520,083.50, which includes a ten percent (10%) contingency.<sup>17</sup>

Based on the documentation provided by GWA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC approve the contract between GWA and Mega United Corporation, for the work related to the construction of

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<sup>14</sup> Petition, p. 1.

<sup>15</sup> Petition, Exhibit 1, p. 3.

<sup>16</sup> Petition, Exhibit 1, p. 3.

<sup>17</sup> Petition, Exhibit 1, p. 3.



the Compliance Laboratory, Generator Building and Tank Enclosure, as well as a ten percent (10%) contingency, for a total cost of \$2,520,083.50.

The Commission hereby adopts the findings contained in the July 25, 2016 ALJ Report and, therefore, issues the following:

### **ORDERING PROVISIONS**

After careful review and consideration of the above determinations, the July 25, 2016 ALJ Report, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS the following:

1. That GWA's July 11, 2016 Petition for approval of the \$2,290,985.00 contract with Mega United Corporation, for the work related to the construction of the Compliance Laboratory, Generator Building and Tank Enclosure, with the two additional option bid items, is GRANTED; GWA is therefore authorized to enter into contract with Mega United Corporation, for an amount not to exceed \$2,290,985.00, which amount shall be subject to the twenty percent (20%) contingency permitted under GWA's Contract Review Protocol.


2. GWA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses associated with the instant proceeding. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b), 12024(b) (renumbered as 12 G.C.A. §§ 12103(b) and 12125(b)), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

**SO ORDERED** this 28<sup>th</sup> day of July, 2016.



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**JEFFREY C. JOHNSON**  
Chairman




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**ROWENA E. PEREZ**  
Commissioner



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**JOSEPH M. MCDONALD**  
Commissioner



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**FILOMENA M. CANTORIA**  
Commissioner



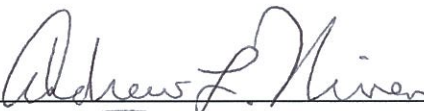
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**MICHAEL A. PANGELINAN**  
Commissioner



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**PETER MONTINOLA**  
Commissioner



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**ANDREW L. NIVEN**  
Commissioner

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