



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>IN RE:</b>	<b>CONTRACT REVIEW FOR</b>	)	<b>GWA DOCKET 17-01</b>
	<b>PROPERTY INSURANCE</b>	)	
	<b>INVITATION FOR BID</b>	)	<b>ORDER</b>
		)	
		)	

---

**INTRODUCTION**

This matter came before the Guam Public Utilities Commission (the “PUC”) pursuant to the December 12, 2016 Petition for Approval of GWA’s Insurance Bid and Authorization to Issue Policy (hereinafter referred to as the “Petition”) filed by the Guam Waterworks Authority (“GWA”). GWA seeks PUC review and approval of the invitation for bids (the “IFB”) since GWA’s current contract for commercial property insurance expires on April 12, 2017. On December 27, 2016, the Administrative Law Judge of the PUC Joepheth R. Alcantara (the “ALJ”) filed a report regarding the Petition, which included his findings and recommendations based on the administrative record before the PUC.

**DETERMINATIONS AND FINDINGS**

**1. GWA’s Petition**

In its Petition, GWA requested that the PUC approve its purchase of commercial property insurance. GWA maintained that under the provisions of the 2005 Series Bond Indenture, GWA is required to “maintain insurance on its system that a reasonable prudent operator of a similar system would maintain.”<sup>1</sup> GWA further indicated that a risk management consultant will assist GWA in preparing the IFB, as well as updating the values of insurable

---

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

properties in preparation of the bid documents.<sup>2</sup> GWA submitted that the IFB will be similar in form to the IFB issued in 2012, but will reflect updated policy requirements, additional assets and revised values.<sup>3</sup> The Petition is supported by Resolution No. 08-FY2017 issued by the Consolidated Commission on Utilities (the “CCU”), which authorizes GWA to issue an IFB to procure property insurance, as well as to seek PUC approval under GWA’s Contract Review Protocol.<sup>4</sup>

## **2. GWA’s Contract Review Protocol**

Pursuant to 12 G.C.A. §12105,<sup>5</sup> GWA cannot enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. Additionally, pursuant to GWA’s current Contract Review Protocol, “[a]ll professional service procurements in excess of \$1,000,000” and “[a]ny contract or obligation not specifically referenced above which exceeds \$1,000,000” “shall require prior PUC approval under 12 G.C.A. Section 12004, which shall be obtained before the procurement process is begun.”<sup>6</sup>

With respect to multi-year contracts, “[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal”; and the “test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the threshold review) is the total estimated cost of the procurement,

---

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

<sup>3</sup> Petition, p. 3.

<sup>4</sup> Petition, “Exhibit A,” CCU Resolution No. 08-FY2017 (“Resolution”), pp. 1-3 (Dec. 6, 2016).

<sup>5</sup> Formerly 12 G.C.A. Section 12004.

<sup>6</sup> GWA’s Contract Review Protocol (“GWA CRP”), GWA Docket 00-04, p. 1 (Oct. 27, 2005).

including cost incurred in any renewal options.”<sup>7</sup> GWA submitted that a multi-year contract for insurance is more cost effective and beneficial to GWA; and that by its best estimates, the value of the IFB will exceed \$250,000.<sup>8</sup>

**3. Section 6.05 of the 2005 Series Bond Indenture**

Based on its Petition, GWA maintained that under Section 6.05 of the 2005 Series Bond Indenture, GWA must maintain insurance on its system that would usually be “maintained by prudent operators” of similar systems.

In particular, GWA submitted that Section 6.05(A) requires that:

The Authority will maintain or cause to be maintained insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable costs.<sup>9</sup>

In addition, Section 6.05(B) provides that:

The Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of systems similar to the System.<sup>10</sup>

---

<sup>7</sup> GWA CRP, p. 2.

<sup>8</sup> Resolution, p. 2.

<sup>9</sup> Petition, p. 1.

<sup>10</sup> Petition, p. 2.



Therefore, according to GWA, its 2005 Series Bond Indenture, along with its supplemental indentures, require GWA to maintain insurance on the system in amounts and against risks normally maintained by other water and wastewater authorities.

#### **4. CCU Approval**

The Resolution issued by the CCU authorizes GWA to issue an Invitation for Bids to procure property insurance, as well as to seek PUC approval for such insurance under GWA's Contract Review Protocol.

In the December 27, 2016 ALJ Report, the ALJ found that GWA is required to maintain "insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners" pursuant to provisions of its bond indentures. The ALJ further found that procurement of commercial property insurance for GWA's systems is both reasonable and necessary. In addition, the insurance coverage sought by GWA appears necessary and reasonable to satisfy its bond indenture provisions. Failure to obtain and secure such insurance would run afoul of the provisions of its bond indentures.

The ALJ additionally found that the PUC has consistently supported GWA's purchase of commercial property insurance. As previously expressed in the October 6, 2010 PUC Counsel Report issued in GWA Docket 10-02, "[t]he need for GWA to procure property insurance is clear: property insurance is required by GWA's 2005 Bond Series Indenture." PUC Counsel Report, GWA Docket 10-02, p. 2 (Oct. 6, 2010). Significantly, too, "the availability of

property insurance will potentially benefit rate payers with regard to the protection of system assets” and that “[i]nsurance proceeds can assist recovery efforts after natural disasters such as typhoons or earthquakes.” *Id.* at 3. Based on the reasons set forth therein, the ALJ recommended that the PUC authorize GWA to issue an Invitation for Bids for commercial property insurance.

The Commission hereby adopts the findings contained in the December 27, 2016 ALJ Report and, therefore, issues the following:

### **ORDERING PROVISIONS**

After careful review and consideration of the above determinations, the December 27, 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 December 12, 2016 Petition for Approval of GWA’s Insurance Bid and Authorization to Issue Policy is GRANTED; GWA is therefore authorized to issue an IFB to procure bids for commercial property insurance.

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 29<sup>th</sup> day of December, 2016.

---

**JEFFREY C. JOHNSON**  
Chairman




---

**ROWENA E. PEREZ**  
Commissioner



---

**JOSEPH M. MCDONALD**  
Commissioner



---

**FILOMENA M. CANTORIA**  
Commissioner



---

**MICHAEL A. PANGELINAN**  
Commissioner



---

**PETER MONTINOLA**  
Commissioner



---

**ANDREW L. NIVEN**  
Commissioner

P163047.JRA