



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION TO AWARD A TWO)
YEAR CONTRACT)
EXTENSION FOR LIQUID)
CHLORINE TO MARIANAS)
GAS CORPORATION DBA)
ISLAND EQUIPMENT COMPANY)
_____)

GWA DOCKET 17-09

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the July 20, 2017 Amended Petition for the Authority to Award a Two Year Contract Extension for Liquid Chlorine to Marianas Gas Corporation dba Island Equipment Company (the “Amended Petition”), filed by the Guam Waterworks Authority (“GWA”).¹ The Amended Petition generally seeks PUC approval so that GWA may extend the life of its contract with Marianas Gas Corporation dba Island Equipment Company (hereinafter “Island Equipment”) for two additional years.

BACKGROUND

On January 6, 2014, GWA petitioned the PUC for approval of the procurement related to the purchase of liquid chlorine.² On January 30, 2014, the PUC authorized GWA to proceed with the procurement of liquid chlorine.³ Thereafter, GWA issued Invitation for Bid Number GWA IFB 2013-07 for the purchase of liquid chlorine. An award was subsequently

¹ On July 12, 2017, GWA filed a petition generally seeking PUC approval to extend the life of Island Equipment contract for one additional year. This Amended Petition supersedes the July 12, 2017 request.

² GWA Docket No. 14-03, Order, p. 1 (Jan. 30, 2014).

³ *Id.* at 2.

made to Island Equipment; and on July 28, 2014, GWA entered into a multi-year contract with Island Equipment for the purchase of liquid chlorine.⁴

On July 26, 2017, the Administrative Law Judge of the PUC Joephet R. Alcantara (the “ALJ”) filed a report regarding the instant Petition, which included his findings and recommendations based on the administrative record before the PUC. The ALJ made the following findings.

DETERMINATIONS

Pursuant to 12 G.C.A. §12105,⁵ 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”⁶

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 that the “test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options.”⁷

⁴ Amended Petition for the Authority to Award a Two Year Contract Extension for Liquid Chlorine to Marianas Gas Corporation dba Island Equipment Company (“Amended Petition), p. 1 (July 20, 2017).

⁵ Formerly 12 G.C.A. § 12004.

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

⁷ *Id.*, p. 2.

Under the provisions of GWA's Contract Review Protocol, GWA is required to return to the PUC for approval of multi-year contracts that exceed \$1,000,000 over the life of such contracts, which include any options for renewal.

GWA petitioned the PUC for ratification of purchases made under its existing contract with Island Equipment, and for authorization so that GWA may exercise two (2) yearlong options for renewal. GWA sought approval of \$2,460,984 in purchases made under the existing contract. Specifically, GWA spent the following: \$107,280.00 for FY2014; \$797,538.15 for FY2015; \$782,451.90 for FY2016; and \$773,713.80 for FY2017. With regard to the two-year extension of the contract, GWA estimated that it will purchase an additional \$1.8 million.

The subject contract was executed on July 28, 2014 and provides for an initial three-year term. Accordingly, the contract is set to expire on July 28, 2017. The contract, however, provides for two (2) yearlong options for renewal, which if exercised may extend the contract through July 28, 2019.

The initial price of liquid chlorine under the initial term was set as follows: (1) \$558.75 per 150 lb. cylinder; and (2) \$5,807.40 per one (1) ton cylinder. The contract contains a provision that the price would be set annually between the parties. The renewal agreement to the contract contains an amendment to the price, which provides a new set price for two-years, specifically: (1) \$586.86 per 150 lb. cylinder; and (2) \$6,097.78 per one (1) ton cylinder.

The Amended Petition is supported by Resolution No. 49-FY2017 (the "Resolution") issued by the Consolidated Commission on Utilities ("CCU") on July 25, 2017. In the Resolution, the CCU remarked that while both the CCU and the PUC approved the procurement of liquid chlorine, neither the CCU nor the PUC formally approved the resulting

contract.⁸ The CCU further noted, however, that since GWA will continue to need liquid chlorine far into the future, the Renewal Agreement is in the best interest of GWA”⁹ Ultimately, the CCU ratified the existing contract and purchases by GWA, and also approved the execution of the contract extension.¹⁰

In the July 26, 2017 ALJ Report, the ALJ further found the following. As the CCU properly observed in Resolution No. 49-FY2017, while both the CCU and the PUC approved the procurement of liquid chlorine, neither the CCU nor the PUC formally approved the resulting contract.¹¹ Under the provisions of GWA’s Contract Review Protocol, GWA is required to return to the PUC for approval of multi-year contracts that exceed \$1,000,000 over the life of such contracts, which include any options for renewal. GWA should be reminded of this requirement.

It was notable too that the subject contract appeared before the Commission for review on the month the contract is set to expire. It was further recommended that GWA be more mindful of such termination deadlines, and to submit requests for approval of contracts or extensions well in advance so as to allow the commissions adequate time for meaningful review.

The ALJ found that, ultimately, GWA’s need for chlorine is essential and indispensable to its daily operations in purifying Guam’s water. The use of chlorine in disinfecting drinking water is common and standard industry and regulated practice. GWA is required to purchase liquid chlorine for the treatment of drinking water to disinfect impurities, and to satisfy both local and federal standards with respect to water quality.

⁸ CCU Resolution No. 49-FY2017 (“Resolution”), p. 2 (July 25, 2017).

⁹ Resolution, p. 2.

¹⁰ Resolution, p. 3.

¹¹ Resolution, p. 2.

Accordingly, based on the documentation provided by GWA in this docket, and for the other reasons set forth in the ALJ Report, the ALJ recommended that the PUC approve GWA's request for a two-year extension of its contract with Island Equipment.

ORDERING PROVISIONS

Upon careful consideration of the record herein, the July 26, 2017 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. The PUC hereby RATIFIES GWA's contract with Island Equipment; and therefore authorizes the purchases made under said contract in the amount of \$2,460,984; and APPROVES GWA's request to exercise two (2) yearlong options for renewal.

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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 27th day of July, 2017.



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

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