

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



**IN RE: PETITION FOR APPROVAL)
OF CONTRACTS WITH)
TOTAL CHEMICAL)
RESOURCES, INC. AND JMI-)
EDISON FOR THE PURCHASE)
OF WASTEWATER CHEMICALS)
FOR WASTEWATER)
TREATMENT PLANTS)**

GWA DOCKET 19-11

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the July 29, 2019 Petition for Approval of the Contracts with JMI-Edison and Total Chemical for the Purchase of Wastewater Chemicals for the Northern, Hagåtña and Agat Santa Rita Wastewater Treatment Plants (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

On August 27, 2019, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On April 17, 2019, GWA issued Invitation for Bid (“IFB”) 2019-17 soliciting bids for the necessary chemicals to operate the wastewater treatment plants (“WWTPs”).¹ According to GWA, out of nineteen (19) prospective bidders, two (2) bidders responded.² Thereafter, GWA’s review committee determined that the lowest

¹ Petition, pp. 1-2.

² Petition, p. 2.

responsive and responsible bidder for anionic polymer and cationic polymer was JMI-Edison; and that the best offer for inorganic coagulant aluminum chlorohydrate (“ACH”) was Total Chemical Resources, Inc. (“Total Chemical”).³

On July 23, 2019, the Guam Consolidated Commission on Utilities (the “CCU”) authorized GWA to enter into contracts with JMI-Edison and Total Chemical, for an amount not to exceed \$4,060,750.00 for both contracts over a three-year term.⁴

A. GWA’s Petition

In its Petition, GWA maintains that it “is required to provide wastewater treatment chemicals to the Northern District and Hagåtña WWTPs for chemically enhanced primary treatment as required by U.S. E.P.A. and specified in § II A Paragraphs 2 and 5 of the 2011 Court Order, and to the Agat-Santa Rita Wastewater Treatment Plant for secondary treatment to ensure the reduction of solids and the discharge of effluent complying with permits for those facilities.”⁵ And from its most recent procurement of its required wastewater chemicals, GWA determined that the lowest responsive and responsible bidder for anionic polymer and cationic polymer was JMI-Edison; and that the best offer for ACH was Total Chemical.⁶ Specifically, JMI-Edison offered \$1.63 per pound for Cationic Polymer and \$1.16 per pound for Anionic Polymer.⁷ Total Chemical offered \$1.09 per pound for ACH.⁸

³ Petition, p. 2.

⁴ Petition, p. 2 and Exhibit A.

⁵ Petition, pp. 1 and 3.

⁶ Petition, p. 2.

⁷ Petition, p. 2.

⁸ Petition, p. 2.

B. Contract Review Protocol

Pursuant to 12 G.C.A. §12105,⁹ 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"¹⁰

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."¹¹

C. Costs

GWA submitted that the total cost of the two contracts for the chemicals is \$4,060,750.00.¹² Specifically, the cost of the three-year contract with JMI-Edison for the supply of Cationic Polymer¹³ and Anionic Polymer¹⁴ is \$1,170,458.88, which includes a ten percent (10%) contingency; and the cost of the three-year contract with Total Chemical

⁹ Formerly 12 G.C.A. §12004.

¹⁰ GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

¹¹ Id., p. 2.

¹² Petition, p. 3.

¹³ Based on JMI-Edison's bid of \$1.63 per pound, at an estimated use of 138,061 pounds per year.

¹⁴ Based on JMI-Edison's bid of \$1.16 per pound, at an estimated use of 125,789 pounds per year.

for the purchase of ACH¹⁵ is \$2,890,290.22, which also includes a ten percent (10%) contingency.¹⁶ Funding for purchase of the chemicals will be from GWA's operating revenue.¹⁷

D. CCU Resolution No. 39-FY2019

The instant petition is supported by Resolution No. 39-FY2019 issued by the "CCU" at its July 23, 2019 meeting. In the Resolution, the CCU found that pursuant to federal court order, GWA is required to operate the Northern District and Hagåtña WWTPs with "Chemically Enhanced Primary Treatment" and that such treatment requires the purchase of these chemicals as part of its treatment process.¹⁸ The CCU added that GWA's "newest treatment plant" at Agat-Santa Rita "will also require the use of these chemicals."¹⁹ The CCU further found that the terms of the bid proposals submitted by JMI-Edison and Total Chemical were fair and reasonable; and authorized GWA to enter into contracts with JMI-Edison, at a cost of \$1,170,458.88 for three years, and Total Chemical, at a cost of \$2,890,290.22 for three years.²⁰

CONCLUSION

These chemicals are indispensable and required for GWA's daily wastewater operations, specifically to operate its Northern District and the Hagåtña WWTPs, along with the new Agat-Santa Rita WWTP, and to keep GWA in compliance with federal laws, permits and federal guidelines.

¹⁵ Based on Total Chemical's bid of \$1.09 per pound, at an estimated use of 803,528 pounds per year.

¹⁶ Petition, p. 2.

¹⁷ CCU Resolution No. 39-FY2019, p. 3 (July 23, 2019).

¹⁸ CCU Resolution No. 39-FY2019, p. 1.

¹⁹ CCU Resolution No. 39-FY2019, p. 1.

²⁰ CCU Resolution No. 39-FY2019, pp. 3-4.

Further, the PUC regularly reviews GWA's purchase of these wastewater chemicals. The three chemicals that are the subject of the instant petition are generally used for wastewater treatment. For instance, anionic polymers aid in filtering wastewater and for dewatering sludge; cationic polymers also aid in the clarification of water. An inorganic coagulant, like ACH, absorbs impurities, also serving to clean the water.

Based on the bids, the prices for Anionic Polymer and ACH also appear to be less per pound when compared to GWA's prior purchase of such chemicals. For instance, the price of ACH went from \$1.25 per pound to \$1.09 per pound; and the price of Anionic Polymer went from \$1.98 per pound to \$1.16 per pound.

In addition, the ALJ found that GWA has provided adequate documentation to support the approval of the subject contracts for the purchase of these chemicals. Therefore, the ALJ recommended that the PUC authorize GWA to enter into contracts with JMI-Edison and Total Chemical.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth above, the ALJ recommended that the PUC authorize the contracts between GWA and JMI-Edison, for a total cost not to exceed \$1,170,458.88 for three years; and between GWA and Total Chemical, for a total cost not to exceed \$2,890,290.22 for three years. These contracts should be subject to the usual cost contingencies provided under the Contract Review Protocol.²¹

The Commission hereby adopts the findings made in the August 27, 2019 ALJ Report, and therefore, issues the following:

²¹ See Section 9, GWA's Contract Review Protocol, Administrative Docket 00-004, p. 1 (Oct. 27, 2005).

ORDERING PROVISIONS

Upon careful consideration of the record herein, 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:

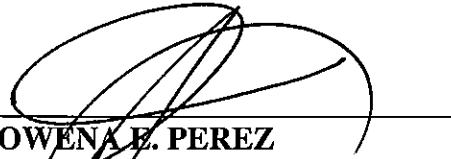
1. That the instant Petition is hereby APPROVED.
2. GWA is authorized to enter into the proposed contracts with JMI-Edison, for a total cost not to exceed \$1,064,053.53 for three years; and with Total Chemical, for a total cost not to exceed \$2,627,536.56 for three years. These contracts shall be subject to the cost contingencies provided under the Contract Review Protocol.
3. 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 this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 29th day of August, 2019.



JEFFREY C. JOHNSON
Chairman



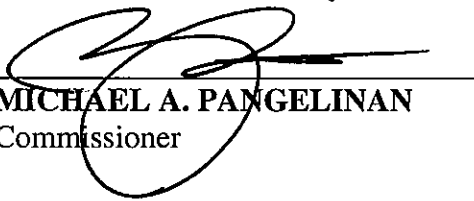
ROWENA E. PEREZ
Commissioner



JOSEPH M. MCDONALD
Commissioner



FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
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MARK MILLER
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