

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

**THE PETITION OF THE GUAM
WATERWORKS AUTHORITY (GWA)
TO APPROVE THE CONTRACT FOR
PROPERTY INSURANCE, GENERAL
LIABILITY INSURANCE, AND OTHER
INSURANCE UNDER GWA IFB NO.
2022-09**

GWA Docket 22-08

ORDER



INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] pursuant to the May 11, 2022 Petition to Approve the Contract for Property Insurance, General Liability Insurance, and Other Insurance under GWA IFB No. 2022-09. GWA seeks PUC approval of a proposed contract for such insurances.¹

BACKGROUND

On April 27, 2017, in GWA Docket 17-05, the PUC approved a Contract for GWA Insurance with AM Insurance for a term of 5 years, at a total cost of \$4,528,804.00. The insurance covered property insurance, general liability insurance, directors’ and officers’ liability insurance, automobile insurance, crime insurance, and cyber insurance.²

On February 11, 2022, GWA petitioned the PUC to issue an Invitation for Bid (IFB) to procure new Property, General Liability and Other Insurance Services for the Guam

¹ GWA Petition to Approve the Contract for Property Insurance, General Liability Insurance and Other Insurance under GWA IFB No. 2022-09, GWA Docket 22-08, dated May 11, 2022, at p. 3.

² PUC Order, GWA Docket 17-05, Request by the Guam Waterworks Authority for Approval of its Contract for Insurance with AM Insurance, dated April 27, 2017.

Waterworks Authority.³ The PUC authorized GWA to procure insurance to cover GWA's system, assets, management and personnel.⁴

On March 3, 2022, GWA issued IFB No. 2022-09 which sought competitive sealed bids for three (3) and/or five (5) year terms for property insurance and various other insurance coverages.⁵ Only one bidder, AM Insurance, submitted a bid.⁶ The IFB evaluation committee recommended a conditional award be made to AM Insurance for its five-year term option as the sole bidder with the lowest priced bid.⁷

On May 23, 2022, the ALJ filed his Report in this Docket. The Commissioners adopt the findings and recommendations therein.⁸

DETERMINATIONS

1. GWA's Petition and Insurance Coverage

In its Petition, GWA requests that the PUC approve GWA's purchase of property insurance for a five-year term, as the insurance coverages are "reasonable, prudent, and required."⁹ In particular, GWA seeks approval to award a 5-year contract to AM Insurance for property, general liability, directors, officers and employment practice liability, automobile, and crime insurance for a total combined annual premium of \$1,775,122, and a total five (5) year contract

³ PUC Order, Petition to Authorize the Guam Waterworks Authority to Issue an Invitation for Bid (IFB) to Procure Property, General Liability and Other Insurance Services, GWA Docket 22-06, dated February 24, 2022.

⁴ Id., at pg. 5.

⁵ GWA Petition at p. 2.

⁶ Id.

⁷ Id. at p. 3.

⁸ ALJ Report, GWA Docket 22-08, dated May 23, 2022.

⁹ GWA Petition to Approve the Contract for Property Insurance, General Liability Insurance and Other Insurance under GWA IFB No. 2022-09, GWA Docket 22-08, dated May 11, 2022, at p. 3.

award of \$8,875,608.¹⁰ The Petition is supported by the CCU Resolution, which authorizes GWA to award the contract for insurance coverage to AM.

2. Proposed Insurance Premiums

In the Petition, GWA seeks approval of the following annual premiums for a term of five years: (1) Property Insurance (\$30 million limit) at a premium of \$1,475,604; (2) General Liability Insurance at a premium of \$213,483.00; (3) Directors and Officer Liability Insurance at a premium of \$27,750.00; (4) Automobile Insurance at a premium of \$44,798.00; and (5) Crime Insurance at a premium of \$13,487.00. The total cost of coverage for the 5-year term offered by AM is \$8,875,608.00.¹¹ AM did not bid for cyber insurance.¹²

3. GWA's Contract Review Protocol

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 GCA Section 12004."¹³ PUC review of GWA's proposed insurance contract is required under the Contract Review Protocol.

4. Sections 6.05 and 6.06 of GWA's Revenue Bond Indentures

This Commission has previously found that, as indicated under Section [6.06] of GWA's 2005 Series Bond Indenture, GWA must maintain insurance on its system "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

¹⁰ Id.

¹¹ Id., at p. 2.

¹² Id.

¹³ GWA Contract Review Protocol, GWA Docket 00-04, p. 1, dated October 27, 2005.

it shall deem advisable or necessary to protect its interests and the interests of the Bondowners.”¹⁴

Therefore, this Commission has already concluded that GWA’s 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.

In addition, this Commission has continually highlighted the importance of maintaining property insurance, having previously found that “[t]he need for GWA to procure property insurance is clear: property insurance is required by GWA’s 2005 Bond Series Indenture” and that “the availability of property insurance will potentially benefit rate payers with regard to the protection of system assets” since “[i]nsurance proceeds can assist recovery efforts after natural disasters such as typhoons or earthquakes.”¹⁵

5. CCU Approval

In GWA Resolution No. 16-FY2022, the Guam Consolidated Commission on Utilities [“CCU”] approved GWA’s recommendation to award the contract for insurance coverage to AM. The CCU found that AM, “a local insurance brokerage firm, and the sole bidder, submitted a firm and fixed bid”; and that “GWA’s Risk Consultant [Bolton Insurance and Risk Management], GWA’s Chief Financial Officer and GWA’s Procurement Administrator have reviewed the bid and determined that the bid submitted by AM Insurance was responsive and responsible....”¹⁶ The CCU further found that “the terms of the bids submitted by AM Insurance is prudent, fair and reasonable under the circumstances and, therefore, authorized the management of GWA to enter

¹⁴ PUC Order, GWA Docket 12-02, pgs. 2-3, dated Mar. 26, 2012.

¹⁵ PUC Order, GWA Docket 10-02, p. 2, dated Oct. 11, 2010.

¹⁶ GWA Resolution No. 16-FY2022, Relative to Approving the Contract for Property Insurance, General Liability Insurance, and Other Insurance under Guam Waterworks Authority (“GWA”) Invitation for Bid No. GWA 2022-09 and Authorizing GWA to Petition the Guam Public Utilities Commission (“PUC”) for Approval under the Contract Review Protocol, adopted on April 26, 2022 (see Petition at Exhibit B-004).

into a contract with AM Insurance, subject to PUC approval under the Contract Review Protocol.¹⁷

Finally, the CCU authorized GWA to petition the PUC for approval of the contract, as well as to execute all documents and to undertake all action necessary to secure the insurance policies.¹⁸

6. Substantial Increase in the cost of the Insurance Policy

Attached to the ALJ Report as Exhibit “1” is “AM Insurance Price Comparison, Current Premiums vs. Proposed Premiums.”¹⁹ The exhibit demonstrates that under the prior 5-year contract, the annual premium was \$967,834 per year and \$4,839,170 total for the 5-year term. Under the proposed Contract, the annual premium would be \$1,775,122 per year and \$8,875,608 total for the 5-year term. Some of the specific insurance coverages have more than doubled, and the total 5-year premium under the proposed contract is nearly double that of the premium under the current 5-year contract.

There is a substantial increase in the insurance costs. But under current circumstances, it does not appear that GWA has viable options. AM Insurance was the sole bidder under the new proposed Contract as well as the prior 5-year contract. There is little likelihood that a “rebid” of the contract would result in lower costs. In addition, GWA’s Risk Consultant, Bolton Insurance and Risk Management, deemed that the commercial insurance lines procured to cover GWA’s system, assets, and key officers and personnel, coverage amounts, deductibles and terms were “appropriate.”²⁰ GWA’s Risk Management Consultant also reviewed the AM Insurance 5-year term options and “confirmed that current insurance market conditions generally indicate rising premiums are to be expected giving current global events.”

¹⁷ Id., at Exhibit B-003.

¹⁸ Id., at Exhibit B-004.

¹⁹ See Attachment to the ALJ Report, Exhibit “1”.

²⁰ GWA Petition at p. 2.

GWA and its Risk Consultant carefully reviewed all the premiums and options offered by AM Insurance.²¹ Funding for the insurance policies will come from GWA's operating revenues.²²

Attached to the ALJ Report as Exhibit"2" is a copy of a letter from GWA's Risk Management Consultant, Bolton Company, indicating its opinion that the insurance coverage costs provided by AM Insurance in its bid are "fair and Reasonable."

GWA suggests that it will examine its insured property and determine whether any items can be excluded from coverage.²³ GWA must carefully consider all possible alternatives to reduce its insurance costs. GWA should report to the PUC within ninety days of any proposals or possible remedies it has to reduce such costs.

Despite the substantial increase in premium cost, the ALJ does not believe that GWA has any viable immediate options at the present time other than to seek approval of the contract with AM Insurance.

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. The PUC approves GWA's contract for insurance with AM Insurance for coverage as indicated in the Petition, and at the total cost of \$8,875,608.00.

²¹ Id., at pgs. 2-3.

²² Id.

²³ Phone conference between GWA Legal Counsel Theresa Rojas and PUC ALJ Fred Horecky on May 18, 2022.

2. Within ninety (90) days from the date of this Order, GWA shall file a report with the PUC indicating any alternatives, proposals, or remedies it is considering to reduce insurance costs, what discussions it has had with its Risk Management Consultant in this regard, and any steps that it has taken or implemented to reduce such costs.

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.

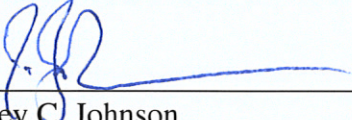
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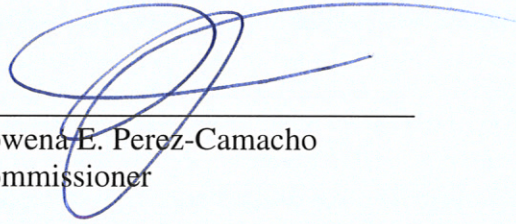
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SO ORDERED this 26th day of May, 2022.

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Jeffrey C. Johnson
Chairman

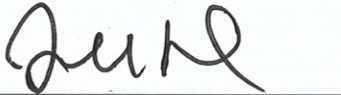
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Rowena E. Perez-Camacho
Commissioner

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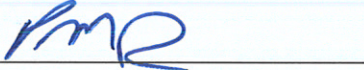
Joseph M. McDonald
Commissioner

Michael A. Pangelinan
Commissioner

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Peter Montinola
Commissioner

Doris Flores Brooks
Commissioner

A blue ink signature of Pedro S.N. Guerrero, with stylized initials followed by a horizontal line.

Pedro S.N. Guerrero
Commissioner