

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

)
) GSWA Docket 23-02
)

The Application of the Guam Solid Waste)
Authority for Review and Approval of the)
Award and Contract to Pacific Human)
Resources Services for Temporary Staffing)
Services)
_____)

ALJ REPORT

INTRODUCTION

This matter came before the Guam Public Utilities Commission [PUC] pursuant to the Petition for Review and Approval of the Award and Contract to Pacific Human Resources Services [“PHRS”] for Temporary Staffing Services.¹ GSWA’s initial Petition was filed on October 14, 2022 and was supported by GSWA Board of Directors Resolution No. 2022-013. However, GSWA filed an Amended Petition herein on November 17, 2022.² The Amended Petition is now supported by GSWA Board of Directors Resolution No. 2023-005.³ GSWA Board of Directors Resolution No. 2023-005 supersedes GSWA Board of Directors Resolution No. 2022-013.⁴

BACKGROUND

The Administrative Law Judge [“ALJ”] adopts the BACKGROUND Section in GSWA’s Petition for Contract Review and Approval as follows:

¹ GSWA Petition, GSWA Docket 23-02, dated October 14, 2022.

² GSWA Amended Petition, GSWA Docket 23-02, dated November 17, 2022.

³ GSWA Board of Directors Resolution No. 2023-005, Relative to Amending the Petition to the Public Utilities Commission (PUC) for Approval of the Award to Pacific Human Resource Services Inc. for Temporary Staffing Services, adopted and approved on November 17, 2022.

⁴ GSWA Amended Petition, GSWA Docket 23-02 dated November 17, 2022, at p. 3.

“PHRS is a private company that connects job seekers to businesses for temporary or contract work. On or about October 8, 2009, Gershman Brickner & Bratton Inc. (GBB), in its capacity as the federal Receiver for GSWA, entered into a written contract with PHRS to provide temporary workers to supplement the agency’s staff and fill the positions of Sanitation Workers, Equipment Operators, Heavy Equipment Mechanic Leader, Administrative Assistants, and Customer Service Representatives.

Although the temporary workers filled roles at GSWA and did their work at and on behalf of the agency, they were not GSWA employees. Rather, they remained employees of PHRS and did not acquire any of the benefits or civil service status afforded to employees of the government of Guam. Nevertheless, the positions filled by the temporary worker were, and still are, essential to the day-to-day operations of GSWA. Over the years since 2009, the contract with PHRS was extended and renewed with the approval of the District Court of Guam. The latest renewal expired on September 30, 2022.

Earlier this summer on June 20, 2022, and prior to the contract expiration date of September 30, GSWA issued Invitation to Bid (ITB) No. GSWA-005-22 for Temporary Staffing Services. Although six prospective bidders expressed interest in the solicitation, only two bids were received by the submission deadline of August 1, 2022. The two bidders were PHRS and Allied Human Resources.

The bids were publicly opened on the same date of August 1, and PHRS was determined to be the lowest responsive and responsible bidder. On September 14, 2022, GSWA issued a Notice of Intent to Award to PHRS.

Based upon PHRS’s bid, GSWA has determined that the contract award shall be for a term of three (3) years beginning October 1, 2022 and ending on September 30, 2025. Subject to the availability of funds, the contract shall be paid the GSWA Operations Fund at a cost of \$2,002,000.00 broken down as follows:

Year 1: \$1,100,000.00;
Year 2: \$451,000.00; and
Year 3: \$451,00.00.

On November 17, 2022, the award was approved by the GSWA Board of Directors in its Resolution No. 2023-005.... Resolution No. 2023-005 amends and supersedes Resolution No. 2022-013 which was approved by the Board on or about September 22, 2022, and which provided for a more expensive contract with a longer term and scope of work.

Since the opening of the bids on August 1, and the giving of a notice of intent to award the contract to PHRS on September 14, 2022, no procurement protest has been filed and the 14-day period for under 5 GCA § 5425(a) has long since passed.”⁵

DISCUSSION

1. GSWA’s Contract Review Protocol

GSWA indicates that the cost of the PHRS Contract will be approximately \$2M for a term of three years.⁶ All professional service contracts, or any other contract or obligation, in excess of \$750,000.00, require prior PUC approval.⁷ This proposed award and contract must be reviewed by the PUC.

2. Project Description and Scope of Services

⁵ Id. at pgs. 2-3.

⁶ GSWA Amended Petition at p. 2.

⁷ 12 GCA §12105 and the Contract Review Protocol for the Guam Solid Waste Authority, GSWA Docket 19-02 & Administrative Docket, par. 1(d) and par. 1(e).

The IFB provides the following Scope of Services:

“The Contractor shall be responsible for performing all work as outlined in the specifications.

1. Provide GSWA with Temporary Staffing Services which will include all employee recruitment, retention, processing and releasing services for the term of the contract, including, at a minimum:
 - a. Advertising, recruiting, and processing employees;
 - Specifications for each position is attached as Exhibit A – Job Descriptions
 - b. Background screening, drug testing, and other applicable evaluation;
 - c. Comply with the requirements of local and Federal Drug-Free workplace;
 - d. Comply with federal and local laws as an equal opportunity employer;
 - e. Pay employees and administer and maintain all employment and payroll records, payroll processing, tax withholding, worker’s compensation, remittance of payroll and taxes, including the provision for the distribution of payroll time-sheets and checks;
 - f. Administration, maintenance of, and compliance with all employee eligibility verification;
2. Bidder must have the ability to provide the services required:
 - a. Assign sufficient personnel to meet GSWA needs;
 - Estimated No. of Personnel for Each Category:

| Position Title | Job Site | Estimated No. of Personnel Needed |
|----------------|-------------|--|
| Sanitation | GSWA Office | 27 |

| | | |
|---------------------------------------|---------------------------------|---|
| Worker | Residential Transfer Station | 2 |
| Equipment Operator | GSWA Main Office | 5 |
| Customer Service Representative | GSWA Main Office | 2 |
| Administrative Assistant | GSWA Main Office | 2 |
| Buyer | GSWA Main Office | 1 |

- b. Maintain the flexibility to expand, reduce, or shift staffing categories;
- c. Require employees to comply with GSWA policies and procedures;
- d. Take disciplinary actions involving any misconduct of any employee;
- e. Remit invoices to GSWA for services rendered; and
- f. Collect, maintain, retain, and make available all documentation with providing the services.”⁸

3. The “Need” for the PHRS Contract

On April 12, 2022, GSWA issued a Determination of Need Re: Temporary Staffing Services. Therein GSWA stated: “GSWA has acquired the services of a temporary staffing agency since 2009 to fulfill essential job positions..... Due to the nature of the work, GSWA experiences high employment turnover rates for the laborious positions and finds the constant need to replace personnel. GSWA has attempted to recruit for

⁸ PROCUREMENT RECORD, Invitation for Bid IFB No. GSWA-005-12, Temporary Staffing Services, filed by GSWA with the PUC on October 14, 2022, at p. 35.

these positions through the Government of Guam recruitment process which has proven to be inefficient and has found little success. The use of a temporary staffing agency is necessary for GSWA Operations.”⁹

In its initial Petition, GSWA contended that the temporary services procured by the contract with PHRS are essential and critical to the day-to-day operations of GSWA: “most especially, the positions of Sanitation Worker and Equipment Operator are physically laborious and hazardous to health. The nature of the work makes it difficult to recruit and retain permanent employees.”¹⁰ GSWA concludes that “the contract with PHRS seeks services that are essential to the operation of GSWA and in turn, critical to maintaining the health, safety and welfare of the public.”¹¹

In Its IFB, GSWA originally sought to have the Bidder provide sanitation workers, equipment operators, customer service representatives, administrative assistants, and a buyer.¹² However, in its Amended Petition, GSWA indicates that “the only positions covered will be the employment of temporary Sanitation Workers and Equipment Operators. These particular positions are especially critical due to the laborious and hazardous nature of the work which makes it difficult to retain permanent employees.”¹³

⁹ PROCUREMENT RECORD, Invitation for Bid IFB No. GSWA-005-12, Temporary Staffing Services, filed by GSWA with the PUC on October 14, 2022, at p. 396.

¹⁰ GSWA Petition at p. 3.

¹¹ Id. at p. 4.

¹² PROCUREMENT RECORD, Invitation for Bid IFB No. GSWA-005-12, Temporary Staffing Services, filed by GSWA with the PUC on October 14, 2022, at p. 35.

¹³ GSWA Amended Petition at p. 4.

In a letter dated February 23, 2022 from GSWA to the Director, Department of Administration, GSWA indicated that it has been unsuccessful in recruiting for important positions such as Sanitation Worker and Equipment Operator. As of February 22, 2022, GSWA had 33 current open temporary positions; however, based upon qualified applications received, GSWA would potentially only be able to meet one-fifth of its labor needs.¹⁴ A true and correct copy of the letter from GSWA to the Director of Administration is attached hereto as Exhibit "1".

GSWA has demonstrated a pressing and urgent need to contract with PHRS for the hiring of Sanitation workers and Heavy Equipment Operators.

4. Beneficial Improvements to the PHRS Contract

After it had filed its initial Petition, GSWA Management decided to make several substantial changes to the PHRS Contract. In its initial Petition, GSWA anticipated that the cost of the PHRS Contract would be \$2M for an initial three-year term, plus an additional \$4M for two additional 1-year options (a total cost of \$6M).¹⁵ GSWA has now shortened the term of the contract to three years rather than five years.¹⁶ The cost of the three (3) year contract will be roughly \$2M, a reduction of \$4M in cost.¹⁷

Furthermore, effective January 2, 2023, the positions of Customer Service Representatives and other administrative employees shall be ended and removed from the contract; thereafter the positions covered by the contract shall be limited for the

¹⁴ PROCUREMENT RECORD, Invitation for Bid IFB No. GSWA-005-12, Temporary Staffing Services, filed by GSWA with the PUC on October 14, 2022, at pgs. 219-220.

¹⁵ GSWA Petition at p. 2.

¹⁶ GSWA Board Resolution No. 2023-005, Relative to Amending the Petition to the Public Utilities Commission (PUC) for Approval of the Award to Pacific Human Resource Services Inc. for Temporary Staffing Services, adopted and approved on November 17, 2022, at p. .

¹⁷ Id., at p. 1.

remainder of the term to the employment of temporary Sanitation Workers and Equipment Operators.¹⁸

The GSWA Board of Directors approved the contract award to PHRS for a three-year term beginning October 1, 2022 and ending September 30, 2025. The Board authorized GSWA Management to petition the PUC for review and approval of the award to PHRS Inc. for Temporary Staffing Services.¹⁹ The new proposed contract decreases the cost, shortens the term, and reduces the number of employees that PHRS will hire. The cost-saving measures approved by the Board are in the interest of GSWA and the ratepayers.

5. GSWA's Authorization to Enter the Contract

The present law seems to indicate a preference that GSWA transition away from “non-Government of Guam” employees hired through contract no later than three years from the date of “turnover”, which was April of 2019.²⁰

However, the “Transition” provisions in 10 GCA §51A118 refer to the retention or hiring by GSWA of non-government employees through employment contracts. Here GSWA is not hiring non-government employees through contracts but contracting with PHRS to hire such employees and provide employment services. The provision refers to the transition of contracts from the receivership to the autonomous GSWA, and how such contracts will be dealt with. However, in this matter the GSWA Board now plans to enter a new contract for the provision of employment services. PHRS will hire the employees, not GSWA. Therefore, the Transition provisions do not appear to be applicable.

¹⁸ Id. at p. 2.

¹⁹ Id.

²⁰ See 10 GCA §51A118.

In accordance with 10 GCA §51A104(10), GSWA shall have and exercise the power to “control, operate, improve, equip, maintain, repair, review, replace, reconstruct, alter and insure that the solid waste management system is compliant with any applicable zoning, building, environmental and health regulations of Guam.”²¹ Furthermore, GSWA has the power to enter into contracts and execute all instruments “necessary or convenient in the exercise of its powers.”²² GSWA’s contract with PHRS is based upon “necessity.” This contract is “necessary.” Without the contract, GSWA has demonstrated that it would likely be unable to carry out its functions due to an inability to hire Sanitation Workers and Heavy Equipment Operators. The contract is justified under GSWA’s contract powers and the doctrine of necessity.

The ALJ notes that the Director of Administration approved the Temporary Staffing Services Contract on April 13, 2022. A copy of the Director’s letter is attached hereto as Exhibit “2”.

RECOMMENDATION AND CONCLUSION

Based upon the documentation provided, the ALJ finds that the PHRS contract is reasonable and necessary to enable GSWA to maintain its trash collection services. The positions of Sanitation Worker and Equipment Operator are essential and critical for GSWA’s operations. GSWA has made prudent efforts to reduce the term and cost of this contract, as well as limiting the contract to the two categories of employees (Sanitation Workers and Equipment Operators). The ALJ recommends that the PUC approve the award and contract to PHRS for Temporary Staffing Services and authorize

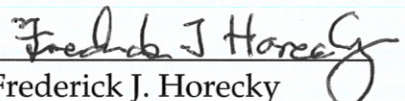
²¹ 10 GCA §51A104(10).

²² 10 GCA §51A104(5).

GSWA to expend for such contract the sum of \$2,002,000.00 in accordance with the Year 1, 2, and 3 breakdowns indicated in GSWA's Petition.

A Proposed Order is submitted herewith for the Commissioners' consideration.

Respectfully submitted this 21st day of November 2022.


Frederick J. Horecky
Chief Administrative Law Judge



GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO
IRVIN SLIKE
Governor of Guam
General Manager

JOSHUA F. TENORIO
Lt Governor of Guam



February 23, 2022

To: Director, Department of Administration

From: Assistant General Manager, Guam Solid Waste Authority

Subject: Request for Availability of Temporary Staffing Services

Hafa Adai Director Birn,

Since 2009, GSWA has acquired the services of a temporary staffing agency to fulfill essential job positions. Due to the nature of our work, GSWA experiences high employment turnover rates for the laborious positions and finds the constant need to replace personnel. In 2021, turnover rate for Sanitation Workers was at 38%.

Additionally, GSWA has found little success in its attempts to recruit for these important positions through the current recruitment process which has proven to be inefficient. This, if continued, will be a detriment to operations.

On October 25, 2021, GSWA opened and advertised for a Heavy Equipment Mechanic Leader and, to date, has not received any applications. On January 2, 2022, GSWA had opened several job announcements to create a pool of applicants for the positions of Sanitation Worker, Equipment Operator, Heavy Equipment Mechanic Leader, Customer Service Representative, and Administrative Assistant.

The job announcements were advertised on the GSWA Website and in Newspapers of public circulation such as the Pacific Daily News and Guam Daily Post on December 3, 2021, January 2, 2022, and February 25, 2022.

As of February 22, 2022, GSWA has received the following responses to the job announcements which we believe to be an insufficient amount to replace the current 33 temporary positions.

| Job Title | Applications Received | Qualified Applicants | Unqualified Applicants | Incomplete Submissions |
|---------------------------------|-----------------------|----------------------|------------------------|------------------------|
| Sanitation Worker | 4 | 2 | 2 | 0 |
| Equipment Operator | 5 | 2 | 2 | 1 |
| Heavy Equipment Mechanic Leader | 0 | 0 | 0 | 0 |
| Administrative Assistant | 11 | 4 | 4 | 3 |
| Customer Service Representative | 13 | 7 | 4 | 2 |

We will seek to hire the seven identified qualified candidates; however, potentially only a fifth of our labor needs would have been met in 90 days of advertising and more time with selection.

546 N. MARINE CORPS DRIVE, TAMUNING, GU 96913 * TEL: 671-646-3111 | FAX: 671-649-3777
<https://www.guamsolidwasteauthority.com/>

EXHIBIT "1"



GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO
IRVIN SLIKE
Governor of Guam
General Manager

JOSHUA F. TENORIO

Lt Governor of Guam



With the current contract ending in May 2022 and future projects in mind, GSWA plans to solicit proposals from qualified, responsible, and responsive firms to provide GSWA with the following services:

1. Provide employees based on the specific skill sets required when needed:
 - a. Knowledge of administrative and clerical procedures
 - b. Knowledge of systems such as Microsoft Word and Excel spreadsheets
 - c. Knowledge of business and management principles involved in strategic planning, resource allocation, human resource modeling, leadership technique, production methods and coordination of people and resources
 - d. Proficient in stenography and transcription
 - e. Process contract and Personnel Action Forms, maintain and audit employee time work/time missed records, analyze payroll data and prepare journal entries
 - f. Ability to design forms
 - g. Ability to manage files and records
2. Provide Staffing Services for temporary employees
 - a. Accommodate payroll services
 - i. Employer of record
 - ii. Time cards
 - iii. Payment to employee
 - iv. Tax withholding
 - v. Worker's compensation
 - vi. And all other activities associated with employee management to comply with local and Federal laws
3. Provide human resource and business consulting services
 - a. Conducting outreach and orientation in the community and each district
 - b. Facilitate meetings and strategic planning
 - c. Provide additional services as required

Therefore, pursuant to 5GCA § 5249 (e) and 2 GAR, Div. 4 § 3114 (c), GSWA is hereby submitting a reasonable inquiry on the availability of personnel and/or resources to perform the services required under the proposed contract.

We kindly request your expeditious review and response. If there is any additional information that GSWA needs to provide to assist with our request, please do not hesitate to contact me at 671-646-3239 or email at irvin.slike@gswa.guam.gov. We look forward to hearing from you soon.

Sincerely,

Irvin Slike
GSWA General Manager



EDWARD M. BIRN
Director (Direktot)
BERNADINE C. GINES
Deputy Director (Sigundo Direktot)

**DEPARTMENT OF
ADMINISTRATION**
DIPATTAMENTON ATMENESTRASION

DIRECTOR'S OFFICE
(Ufisinan Direktot)
Telephone (Telfon) (671) 475-1101/1250



LOURDES A. LEON GUERRERO
Governor (Maga'håga)
JOSHUA F. TENORIO
Lt. Governor (Sigundo Maga'håhi)

April 13, 2022

Memorandum

To: General Manager, Guam Solid Waste Authority
From: Director of Administration
Subject: Extension of Temporary Staffing Services Contract

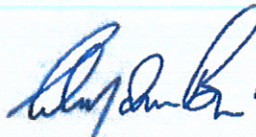
Hafa Adai Mr. Slike:

Thank you for your memorandum of March 31, 2022.

Department of Administration has no objection to an extension of the current contract with the assurance that GSWA will follow procurement statutes and regulations.

Since this matter has been an issue reported in the Single Audit, GSWA should respond to the Finding accordingly, with this correspondence.

Si Yu'os Ma'asel



EDWARD M. BIRN