

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GWA Docket 25-01
)
CONTRACT REVIEW PROTOCOLS FOR)
THE GUAM WATERWORKS) **ALJ REPORT**
AUTHORITY)
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] pursuant to GWA’s Petition to Waive Contract Review Protocols for All Partial Consent Decree Procurements and Contracts.¹

BACKGROUND

The ALJ adopts the “Background” section set forth in GWA’s Petition. GWA contends that it is required to implement \$330M in procurements and contracts by the Partial Consent Decree [“CD”] over the next five years and the succeeding 5-years. The CD sets strict timelines for compliance by GWA and requires GWA to act expeditiously to ensure that the timelines of the CD are met.

GWA also requests the waiver of the Contract Review protocols to expedite the process and to avoid the possible imposition of penalties for non-compliance.

On October 7, 2024, the ALJ assigned the task to PUC Consultant Georgetown Consulting Group (GCG) of reviewing the GWA petition and determining whether the contract review procedure for projects required under the 2024 Partial CD should be

¹ GWA Petition, GWA Docket 25-01, dated October 4, 2024.

waived.² On October 22, 2024, GCG submitted its Report to the ALJ. A true and correct copy of said Report is attached hereto.³ The ALJ concurs with the recommendations of GCG except to the extent stated herein.

ANALYSIS

1. GWA's Request for Approval

GWA, to summarize its Request, states as follows in the Petition:

"Considering the substantial number of procurements and contracts to be issued to cover \$330M in Partial CD expenses over the next five-years, the succeeding five-years, and the federal Clean Water Act requirements to ensure GWA's systems complies with public safety and sanitation over the next 10-year period, GWA requests the Commission waive its protocol, which in part, is also in place to "review the reasonableness" of proposed procurements. GWA's \$330M has undergone the Commission's thorough review and approval process to enable GWA to have the adequate rate relief to comply with the US EPA's and the Court's requirements over the next five-year period and this review will continue to ensure GWA's has adequate rates to meet Partial CD compliance. In its August 9, 2024, Order the court also found that all projects required under the Partial CD were reasonable, prudent, and necessary."⁴

2. The Requirements for Procurements and Contract Review under the Contract Review Procedure should be Waived for CD Procurements, Contracts, and Projects.

As a preliminary issue, both PUC Staff and the ALJ have noted that there is no Guam Consolidated Commission on Utilities Resolution approving GWA's Petition in this Docket. However, the ALJ determines that prior approval by the CCU of GWA's Petition is not required in this Docket. GWA's Petition does not request approval of a

² Email from PUC ALJ Fred Horecky to GCG, dated October 8, 2024.

³ GCG REPORT RE: GWA Petition to waive Contract Review Protocol for Consent Decree Projects, GWA Docket 25-01, dated October 10, 2024.

⁴ GWA Petition at pgs. 3-4.

contract or obligation under the Contract Review Protocol. It is a request that the PUC waive the contract review procedure. GWA's request for waiver is not a "contract" or "obligation" which requires CCU approval under par. 6 of the Contract Review Protocol. Furthermore, GWA, not the CCU, is a party to the Contract Review Protocol. GWA's Petition is proper.

Both the ALJ and GCG concur that the contract review protocol requirement should be waived for procurements and contracts required by the Partial Consent Decree. As GCG concludes: "Staff is in agreement that the initial filings required under the contract review protocol for the projects covered by the Partial CD should be waived. The projects should proceed based initially on the cost estimates and timelines provided to both the Commission and the EPA."⁵

Review of procurements, contracts, and projects covered by the Partial CD under the contract review protocol should be waived for the reasons stated in the GWA Petition and the GCG Report.

3. GWA Reporting to the PUC should be required for Partial CD Procurements, Contracts, and Projects.

The ALJ concurs with GCG that there should be GWA reporting requirements to the PUC for procurements, contracts, and projects that are not filed with PUC under the contract review protocol. As GCG states: "For the process of planning and reviewing projects to be effective, and to provide adequate rate relief the Commission should request

⁵ GCG REPORT RE: GWA Petition to waive Contract Review Protocol for Consent Decree Projects, GWA Docket 25-01, dated October 10, 2024, at p. 2.

information on the projects that should focus on key areas and be filed in lieu of the contract review protocols.”⁶

GWA should report quarterly to the PUC as to all procurements, contracts, and projects that have been undertaken in accordance with the Partial CD. The reporting should address and provide information and materials concerning the six items referenced in the GCG Report. Those requirements include:

1. Compliance with Regulations
2. Clear Deadlines and Milestone
3. Budget Management
4. Stakeholder Communication
5. Risk Management
6. Program Manager

However, as to GCG Recommendation No. 6, requiring GWA to “hire a qualified Program Manager”, the ALJ suggests that GWA instead can also designate a current employee to fill such function.

RECOMMENDATION


Both the ALJ and GCG recommend that the contract review requirements for procurements, contracts, and projects required under the Partial CD be waived. It is essential that the process for compliance with the CD be streamlined and expedited. However, the PUC should adopt the reporting requirements outlined herein.

⁶ GCG REPORT RE: GWA Petition to waive Contract Review Protocol for Consent Decree Projects, GWA Docket 25-01, dated October 10, 2024, at p. 2.

ALJ Report
Waiver of Contract Review Protocol
for Consent Decree Projects
GWA Docket 25-01
October 28, 2024

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

Respectfully submitted this 28th day of October, 2024.


Frederick J. Horecky
Chief Administrative Law Judge

GWA Petition to waive Contract Review Protocol for Consent Decree Projects

GWA Docket 25-01

GCG Memo to ALJ – October 22, 2024

As requested, GCG has reviewed the materials provided¹ and prepared this memo to respond to your request to provide input to the petition from GWA to waive contract review protocol for Consent Decree (CD) projects filed on October 4, 2024.

Overview

On January 31, 2024 in the Guam U.S. District Court (Civil Case No. 24-000004) the United States, GWA, and the Governor of Guam filed a stipulated Partial Consent Decree (“Partial CD”) for the court’s consideration and review. The Partial CD agreement obligates GWA to implement measures to address critical and priority problems within its wastewater collection system and to plan for long-term rehabilitation and treatment to upgrade its Hagåtña Wastewater Treatment Plant and ensure compliance with its discharge permits for its remaining wastewater treatment plants. In August 2024, the federal court entered an Order accepting the Partial CD making it effective August 9, 2024. The August 9, 2024, Order triggered proximate and appropriate deadlines for GWA to address a long series of assessments, planning, reporting, rule updates, and construction measures within a 10-year period with deadlines to be completed within months following the effective date of the Partial CD. Stipulated fines and penalties that can be assessed range from per-day AND per-violation fines for any failure by GWA to meet compliance milestones, interim milestones, reporting requirements, and required actions (which vary) to cure specific violations as listed within the Partial CD.

In addition to the requirements of the Partial CD, the Commission also has certain requirements that are currently in place. These deadlines include additional approvals and requests imposed by the PUC’s Contract Review Protocol, as ordered by PUC Docket 00-04(1)(a-c) dated October 27, 2005, which fall outside of the court’s requirements but are necessitated by Guam law, at 12 G.C.A. §12004, to ensure the PUC considers all reasonable procurements and their cost made by GWA for Guam’s ratepayers. The PUC’s 2005 Contract Review Protocol Order requires that (a) all capital improvement projects, (b) all capital items, and (c) all professional service procurements in excess of \$1M, receive PUC approval before procurements can begin and contracts are executed. There are a substantial number of procurements and contracts to be issued to cover \$330M in Partial CD expenses over the next five-years, the succeeding five-years, and the federal Clean Water Act has added requirements to ensure GWA’s systems complies with public safety and sanitation over the next 10-year period.

GWA asserts that the \$330M of Partial CD projects have undergone the Commission’s thorough review and approval process to enable GWA to have the adequate rate relief to comply with the US EPA’s and the Court’s requirements over the next five-year period. In its August 9, 2024, Order the court also found that all projects required under the Partial CD were reasonable, prudent, and necessary. GWA, therefore, requests the Commission waive its protocol, which in part, is also in place to “review the reasonableness” of the proposed procurements covered by the Partial CD.

¹ GPUC Order dated April 11, 2003 and the GWA petition dated October 4, 2024.

Analysis

As stated above, in its August 9, 2024, Order the court found that all projects required under the Partial CD were reasonable, prudent, and necessary. However, GWA states that the \$330M of Partial CD projects have undergone the Commission's thorough review and approval process to enable GWA to have the adequate rate relief to comply with the US EPA's and the Court's requirements over the next five-year period.

Staff believes that in the most recent rate proceeding the Partial CD projects were treated as being required much along the lines of the Commission Order on March 11, 2003. In that proceeding the Commission addressed the very issues raised here. The Commission stated:

the Commission finds that the essential purpose of section 12004 (Commission review of reasonableness and prudence of proposed procurement) is satisfactorily addressed by the history of the EPA litigation, the depth and scope of the Stipulated Order, and by the fact that EPA will serve a significant oversight role in the crafting and implementation of the various procurements. Accordingly, the Commission finds and orders that procurements required by the Stipulated Order shall not require Commission review and approval under its contract review protocol. The Commission wants to make a clear distinction, under the Stipulated Order between these procurements and the interim and final financial plans, which shall undergo a thorough Commission review and approval process.

Clearly in the recent proceeding given that the United States, GWA, and the Governor of Guam filed a stipulated Partial Consent Decree ("Partial CD") the need and prudence for the projects was taken as a given. However staff does not believe that any analysis along the lines stated in the Commission's March 11, 2003 Order stating that the procurements in the interim and final financial plans shall undergo a thorough Commission review and approval process. Our recommendations to deal with this requirement is stated below in the next section. The recommendations permit GWA to comply and meet all the time requirements and deadlines required.

Recommendations

Staff is in agreement that the initial filings required under the contract review protocol for the projects covered by the Partial CD should be waived. The projects should proceed based initially on the cost estimates and timelines provided to both the Commission and the EPA. However, additional information on these projects should be provided to the Commission.

For the process of planning and reviewing projects to be effective, and to provide adequate rate relief the Commission should request information on the projects that should focus on key areas and be filed in lieu of the contract review protocols:

1. **Compliance with Regulations:** GWA compliance with both federal regulations like the Clean Water Act and local Public Utilities Commission (PUC) protocols continue to be important. GWA

sought a waiver from the PUC to streamline contract approvals for projects under a Consent Decree, emphasizing the need for **timely** project execution.

2. **Clear Deadlines and Milestone:** Projects must adhere to strict deadlines and be provided to the Commission. These deadlines, such as compliance milestones or reporting requirements, should be clearly defined, monitored, and provided and reviewed regularly (quarterly).

3. **Budget Management:** With GWA's \$330 million expenditure over five years, it is essential to ensure that budgeting aligns with project goals and regulatory requirements. The basis for cost estimates should be clearly provided to the commission for review and future adjustments to the estimates should also be provided. Budget versus actual data should also be provided.

4. **Stakeholder Communication:** Regular updates, probably quarterly, and clear communication between project stakeholders, including PUC, GCG, legal counsel, and internal teams, will help manage expectations and resolve issues early in the process.

5. **Risk Management:** Identifying potential risks, such as delays or non-compliance, and having a mitigation plan in place should be provided with the (quarterly) data provided.

6. **Program Manager:** GWA should hire a qualified Program Manager, not affiliated with any engineering design firm hired to design and manage specific projects. PM would be tasked with quarterly reporting and preparation of an annual report of progress and budget compliance.