



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GWA DOCKET 25-03
)
)
) PUC COUNSEL REPORT
GUAM WATERWORKS AUTHORITY'S)
LIQUID CHLORINE CONTRACT)

INTRODUCTION

1. This matter comes before the Public Utilities Commission ["PUC"] pursuant to the Guam Waterworks Authority's ["GWA"] Petition to Approve GWA's Liquid Chlorine Supply Contract for Water Production and Treatment Facilities Island-Wide.¹
2. GWA is requesting the PUC to approve its indefinite quantity contract with Marianas Gas Corp., dba Island Equipment Company ["Island Equipment"], to provide liquid chlorine for island-wide water production and treatment facilities. The contract has a three-year initial term with two one-year options to renew and is estimated to cost \$4,920, 534.60 if it renewed up to its fifth year.²

BACKGROUND

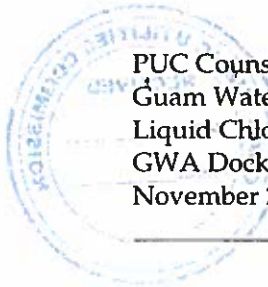
3. The PUC has previously determined that GWA's need for chlorine is essential and indispensable to its daily operations concerning the purification of Guam's drinking water. The use of chlorine in disinfecting drinking water is common, and a standard and regulated practice. GWA is required to purchase liquid chlorine for the treatment of drinking water to disinfect impurities, and to satisfy both local and federal standards with respect to water quality.³
4. The last liquid chlorine supply contract the PUC approved was with Island Equipment and it expired on or about July 28, 2019.⁴ The PUC also determined that GWA had awarded the contract to Island equipment in 2014 and despite the

¹Petition to Approve GWA's Liquid Chlorine Supply Contract for Water Production and Treatment Facilities Island-Wide, GWA Docket 25-03, dated November 4, 2024 [GWA Petition].

² GWA Petition at 2. NOTE: The page numbers in GWA's Petition and its exhibits are not continuous, and the page numbers cited herein refer to the page number of the PDF version of the Petition which is continuous.

³ Order dated July 28, 2017 in GWA Docket No. 17-09 at 4.

⁴ Id..



contract cost being \$2,460,984 between 2014 and 2017 GWA only obtained approvals from the Guam Consolidated Commission on Utilities [“CCU”] and the PUC to issue the solicitation for a liquid chlorine supplier but did not obtain CCU or PUC approval for the contract with Island Equipment.⁵ Despite this, the PUC ratified the contract and the existing \$2,460,984 expenditures GWA made under for the contract, and the PUC authorized GWA to exercise the two one-year renewal options and their estimated additional \$1.8 million cost.⁶

6. Prior to the expiration of its liquid chlorine supply contract on July 28, 2019, GWA issued GWA-IFB-2019-05 and awarded a new liquid chlorine supply contract to Island Equipment with a three-year initial term and two one-year options to renew.⁷ This contract cost GWA \$4,628,004.30 over its five-year term which expired on or about September 16, 2024 and GWA obtained the CCU’s approval for this contract but did not obtain the PUC’s approval for the solicitation or the award of the contract to Island Equipment.⁸
7. On July 11, 2024, GWA issued GWA-IFB-2024-12 for Indefinite Quantity requirements contract for Liquid Chlorine Cylinders to be used to chemically treat and disinfect water extracted from the Northern Guam Lens Aquifer and the Ugun River at GWA’s water production and treatment facilities.⁹
8. Only Island Equipment submitted a bid for the amount of \$2,952,320.76 for the contract’s initial three-year term and the amount of \$1,968,213.84 for the contract’s two one-year renewal options for a total estimated contract price of \$4,920,533.84.¹⁰
9. On October 22, 2024, the CCU issued GWA Resolution No. 03-FY2025 which found Island Equipment’s bid offer to be fair and reasonable and which authorized GWA’s management to award the contract to Island Equipment subject to the PUC’s approval.¹¹

⁵ Id., at 4.

⁶ Id., at 3 and 5.

⁷ GWA Legal Counsel Email dated November 27, 2024 attached herein as Exhibit A.

⁸ Id.

⁹ GWA Petition at 4.

¹⁰ Id., at 5.

¹¹ Id.,

ANALYSIS

10. GWA was required to obtain the PUC's authorization to issue GWA-IFB-2019-05 and to award that solicitation's contract to Island equipment. The PUC's Contract Review Protocol mandates that GWA obtain PUC approval for solicitations and contracts that exceed the amount of \$1,000,000.¹² GWA states that it did not seek the PUC's authorization for the solicitation or the contract in 2019 because it believed that the PUC's 2003 order exempting GWA solicitations and awards of contracts required by the Stipulated Order in *United States v. Guam Waterworks Authority*, Civil Case No. 02-035 (U.S. District Court of Guam), from the contract review protocol still applied.¹³ However, this is not supported by the current contract review protocol, which was established on October 27, 2005 which does not include that older exemption. Additionally, it is not supported by precedent because in 2017 the PUC determined that the current contract review protocol required GWA to obtain the CCU and the PUC's approvals prior to issuing a solicitation for or awarding a contract for GWA's liquid chlorine supply that exceeded GWA's contract review threshold amount of \$1,000,000.¹⁴
11. GWA must obtain the PUC's authorization to issue GWA-IFB-2024-12 and to enter into the contract to Island Equipment. The PUC's Contract Review Protocol mandates that GWA obtain PUC approval for solicitations and contracts that exceed the amount of \$1,000,000.¹⁵ Here, the contract will cost an estimated \$4,920,533.84 if it is performed up to its fifth year. Therefore, GWA was required to obtain the PUC's prior authorization to issue GWA-IFB-2024-12 and there is no evidence indicating that GWA complied with this requirement. Further, GWA must obtain the PUC's authorization to enter into the contract with Island Equipment.
12. GWA's estimated \$4,920,533.84 cost of the liquid chlorine supply contract with Island Equipment arising from GWA-IFB-2024-12 is reasonable. As stated above, GWA's prior contract with Island Equipment for liquid chlorine cost GWA \$4,628,004.30 and the new contract is \$292,529.54 more than the old contract ($\$4,920,533.84 - \$4,628,004.30 = \$292,529.54$) resulting in a 6% increase. In contrast, in 2019 GWA had an increase in the cost of its liquid supply contract in that its 2014 contract cost approximately \$4,260,984 and its 2019 contract was \$367,020.30 more than its 2014 contract ($\$4,628,004.30 - \$4,260,984 = \$367,020.30$)

¹² Contract Review Protocol for GWA, Administrative Docket 00-04 dated October 27, 2005 at Par.1(c).

¹³ Paragraph 3, Order dated April 11, 2003, GWA Miscellaneous Dockets, and GWA Legal Counsel Email attached as Exhibit A herein.

¹⁴ PUC Order dated July 27, 2017, GWA Docket No. 17-09 at 4.

¹⁵ Contract Review Protocol for GWA, Administrative Docket 00-04 dated October 27, 2005 at Par.1(c).

resulting in a 9% increase in price. Hence, although there is an increase in the contract's price from the last contract, it is 3% less than the previous contract's increase which is a positive trend. It must also be considered that there is not much price elasticity to GWA's liquid chlorine supply contracts because there is a lack of competition demonstrated by the many potential bidders who received IFB packets for GWA's three liquid chlorine solicitations over the last decade, with only Island Equipment submitting a bid for each of those solicitations. Additionally, the liquid chlorine gas industry is highly regulated, and the contract's cost reflects this fact. Accordingly, GWA's estimated \$4,920,533.84 contract cost is reasonable.

13. GWA's liquid chlorine supply contract is prudent. As stated above, the use of chlorine in disinfecting drinking water is common, and a standard and regulated practice. Further, Guam Procurement Regulations authorize GWA to procure an indefinite delivery and indefinite quantity contracts which is a contract for an indefinite amount of supplies or services to be furnished as ordered instead of at specified times. 2 G.A.R., Div. 4, §3119(i)(2). Here, this type of contract is appropriate because the amount of liquid chlorine GWA requires is based on drinking water demand which is variable. Additionally, GWA can only use this type of contract twice per fiscal year per supply or service and GWA will not be requiring another liquid chlorine supply contract for at least the next three years. Thus, GWA's solicitation for an indefinite delivery indefinite quantity liquid chlorine supply contract is prudent.
14. GWA's liquid chlorine supply contract is necessary. As stated above, 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. Therefore, GWA's liquid chlorine supply contract is necessary to ensure GWA's safe and regulatory compliant operation of GWA's Water Production and Treatment Facilities.
15. Based on the foregoing, GWA's request for the PUC to approve GWA's liquid chlorine supply contract with Island Equipment is reasonable, prudent, and necessary.

RECOMMENDATION

16. Counsel recommends that the PUC approve GWA's petition to award the indefinite delivery, indefinite quantity liquid chlorine supply contract to Island Equipment and that it ratify GWA's issuance of GWA-IFB-2019-05, its award of that solicitation's \$4,628,004.30 contract to Island Equipment, and order GWA to comply with the PUC's current contract review protocol for its liquid chlorine supply contracts and solicitations.

17. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 27th day of November, 2024.

Anthony R. Camacho

Anthony R. Camacho, Esq.
PUC Legal Counsel



Outlook

RE: GWA Docket No. 25-03 Liquid Chlorine Supply

From tgrojas@guamwaterworks.org <tgrojas@guamwaterworks.org>

Date Tue 11/26/2024 4:21 PM

To 'anthony camacho' <arcesq@hotmail.com>

Cc 'Bianca DeSoto' <jsdesoto@guamwaterworks.org>; nicole@guamwaterworks.org
<nicole@guamwaterworks.org>

 8 attachments (9 MB)

1_IFB 2019-05 Liquid Chlorine Contract signatures completed 09-16-19.pdf; 2_Contract_Renewal_expiration_09162024.pdf; 3_IFB 2019-05 LIQUID CHLORINE.pdf; 4_Island Equipment IFB 2019-05_table_of_purchase_orders.pdf; 5_GWA Resolution 03-FY2025 Rel to App the Liquid Chlorine Supply Contract.pdf; 6_Resolution 31-FY2019 Approval of Chlorine Bid.pdf; 7_GWA Resolution 18-FY2022 Relative to Increasing Liquid Chlorine Supply Contract.pdf; 8_PUC_Order__GWA Regulatory Matters SIGNED_Apr 11 2003.pdf;

1. Who was providing the liquid chlorine supply to GWA from July 28, 2019 to the present?
 - **Marianas Gas Company DBA as Island Equipment Company has been providing GWA its liquid chlorine supply from July 19, 2019 to the present.**

2. Was there a contract for the supply of liquid chlorine for this period?
 - **Yes, a three-year term contract was first entered on September 16, 2019 to expire September 16, 2022 with GWA and Island Equipment Company for the purchase of liquid chlorine.**
 - **Subsequently a two-year contract renewal was exercised and entered for the period covering September 16, 2022 through September 16, 2024.**
 - **The September 16, 2019 contract was initiated by IFB 2019-05.**
 - **Please See attachments “1_IFB_2019-05_Liquid_Chlorine_Contract” and “2_Contract_Renewal_expiration_9162024” and “3_IFB_2019_05_Liquid_Chlorine”.**

3. What was GWA paying for the liquid chlorine supply each year from July 28, 2019 to the present?
 - **Please see attachment “4_Island_Equipment IFB 2019-05_table of purchase_orders” which is also snipped out below.**

EXHIBIT A-1

**Guam Waterworks Authority
Multi-Year Contract Tracking Details**

IFB or RFP reference:	IFB 2019-05
Description	Liquid Chlorine
Awarded to:	Island Equipment

Purchase Order	Year	Period	Paid
304290	2019	07/28/2019 - 09/30/2019	177,751.80
303251	2020	10/1/2019 - 09/30/2020	902,940.46
305559	2021	10/01/2020 - 09/30/2021	872,594.02
500786	2022	10/01/2021 - 09/30/2022	828,376.90
501938	2022	10/01/2022 - 09/30/2023	922,265.32
503005	2022	10/01/2023 - 09/30/2024	924,075.80
		10/01/2024 - 11/26/2024	
			\$ 3,703,928.50

4. Did GWA obtain the PUC approval to solicit for GWA-IFB-24-12?

- **No, PUC approval was obtained for GWA to solicit OR procure for liquid chlorine through GWA-IFB-24-12; however CCU approval was obtained via GWA CCU Resolution 03-FY2025 for GWA to award the contract for liquid chlorine to Island Equipment.**
- **CCU Resolution 03-FY2025 was approved on October 22, 2024 and is attached as "5_GWA Resolution 03-FY2025 Rel to App the Liquid Chlorine Supply Contract.."**
- **As some background, IFB-2024-12 was first advertised on July 11, 2024 and only (1) bid proposal was submitted for the liquid chlorine supply. Other interested bidders picked up packets but GWA only received one bid submission from Island Equipment.**
- **Prior, to IFB 24-12:**
 - **IFB 2019-05 was advertised on February 27, 2019 and there again only (1) bid proposal was submitted for the liquid chlorine supply. Again, other interested bidders picked up packets but in end GWA only received one bid submission from Island Equipment.**
 - **For IFB 2019-05 CCU approval was obtained via GWA CCU Resolution 31-FY2019 for GWA to award the contract for liquid chlorine to Island Equipment.**
 - **CCU Resolution 31-FY2019 was approved on May 28, 2019 and is attached as "6_Resolution 31-FY2019 Approval of Chlorine Bid.**
 - **Subsequently, GWA requested for the approval of CCU Resolution No. 18-FY2022 to increase the approved contract amount for liquid chlorine.**
 - **See "7_ GWA Resolution No. 18-FY2022 Relative to Increasing the Liquid Chlorine Supply Contract.**

5. Did the PUC approve the contract or contracts to supply liquid chlorine from July 28, 2019 to the present?

- **No, PUC approval was obtained for GWA to solicit OR procure OR award liquid chlorine through GWA-IFB-2019-05; however GWA PUC Docket 25-03 is a request for the PUC's approval for the contract award for IFB-2024-12.**

- In prior years it was the position of GWA's former counsel and presently GWA's Assistant GM for Compliance and Safety that because drinking water disinfection was required under the Safe Drinking Water Act (SDWA) and the Guam Primary Drinking Water Regulations (GPDWR) which GWA was required to meet as specified in the 2011 Court Order; that any request to procure or award chlorine purchases were exempt from the PUC review.
- ON April 11, 2003, the PUC issued an Order stating that "procurements required under the Stipulated Order shall not require Commission review and approval under its Contract Review Protocol." See "8_PUC_Order_GWA_Regulatory_Matters_Signed_April_11_2003."
- Considering prior counsel's position, and in line with the PUC April 11, 2003 Order, PUC approval for liquid chlorine contracts were not sought for the approval of IFB-2019-05 and any contracts stemming from that procurement at those times.

**GUAM WATERWORKS AUTHORITY**

Theresa G. Rojas, Esq.

Legal Counsel

Guam Waterworks Authority

Ste 200, Gloria B. Nelson Public Service Building

688 Route 15

Mangilao, Guam 96913

Work (671) 300-6853

tgrojas@guamwaterworks.org

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From: anthony camacho <arcesq@hotmail.com>

Sent: Tuesday, November 26, 2024 1:48 PM

To: tgrojas@guamwaterworks.org

Subject: Re: GWA Docket No. 25-03 Liquid Chlorine Supply

Dear Theresa,

The Board Packets go out tomorrow. Please provide me the information as soon as possible, preferably today or as early tomorrow morning as possible.

Sincerely,

Anthony R. Camacho, Esq.
PUC Legal Counsel

Sent from [Outlook](#)

From: tgrojas@guamwaterworks.org <tgrojas@guamwaterworks.org>

Sent: Monday, November 25, 2024 8:01 PM

To: 'anthony camacho' <arcesq@hotmail.com>

Subject: RE: GWA Docket No. 25-03 Liquid Chlorine Supply

Attorney Camacho,

Thank you for your note below. I understand that a contract for GWA's liquid chlorine supply was in place post July 2019 and was set to expire this year; but, I am in the process of verifying this information to ensure we provide you with an accurate response. I have also reached out to our finance division and am researching our contract records and the CCU's files to get the answers to your questions asap.

Liquid chlorine is a critical supply for the water system, so I request some additional time (less than 24 hours) to send our answers before you consider and decide to table the docket. I will be in touch and hope to send a complete email with all answers before 10AM tomorrow. If our information is not collected and sent before that time; I recognize that you will exercise your discretion to table our docket before OR at that time regardless.

Thank you,

Theresa

From: anthony camacho <arcesq@hotmail.com>

Sent: Tuesday, November 26, 2024 8:14 AM

To: tgrojas@guamwaterworks.org

Subject: GWA Docket No. 25-03 Liquid Chlorine Supply

Dear Therese,

In researching this docket, I noted that Island Equipment was the previous supplier of Liquid Chlorine to GWA. I also noticed that the last time the contract for liquid chlorine was brought before the PUC was on July 27, 2017 in GWA Docket No. 17-09, wherein the PUC authorized GWA to extend their existing contract with Island Equipment for two one-year periods that expired on or about July 28, 2019. Of note in that docket, was the determination that GWA had not complied with GWA's contract review protocol because it did not obtain the PUC's prior permission to solicit for the liquid chlorine supply or enter into the multi-year contract with Island Equipment despite GWA knowing or should have known that the contract would exceed the \$1,000,000 review threshold.

Here, I could not find any evidence that there was a contract for liquid chlorine brought before the PUC or the authorization for a solicitation from GWA for liquid chlorine from the time of GWA Docket No. 17-09 to the present. I recommend that we table this matter until the next PUC meeting so that the following questions can be answered:

1. Who was providing the liquid chlorine supply to GWA from July 28, 2019 to the present?
2. Was there a contract for the supply of liquid chlorine for this period?
3. What was GWA paying for the liquid chlorine supply each year from July 28, 2019 to the present?

4. Did GWA obtain the PUC approval to solicit for GWA-IFB-24-12?

5. Did the PUC approve the contract or contracts to supply liquid chlorine from July 28, 2019 to the present?

Please contact me if you have any questions.

Sincerely,

Anthony R. Camacho, Esq.
PUC Legal Counsel

Sent from [Outlook](#)



RE: GWA Docket No. 25-03 Liquid Chlorine Supply

From tgrojas@guamwaterworks.org <tgrojas@guamwaterworks.org>

Date Tue 11/26/2024 5:32 PM

To 'anthony camacho' <arcesq@hotmail.com>

Attorney Camacho,

Thank you. Also, below is a revised table for No. 3.

Apologies, one cell included a hidden amount which threw off the original numbers. The corrected amount is the **\$4.628M** figure below.

Happy Thanksgiving to you and the family as well!!

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EXHIBIT A-2

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please contact the sender by replying to this e-mail and destroy/delete all copies of this e-mail message.

From: anthony camacho <arcesq@hotmail.com>
Sent: Wednesday, November 27, 2024 9:28 AM
To: tgrojas@guamwaterworks.org
Subject: Re: GWA Docket No. 25-03 Liquid Chlorine Supply

Received, thanks and have a Happy Thanksgiving.

Sent from [Outlook](#)

From: tgrojas@guamwaterworks.org <tgrojas@guamwaterworks.org>
Sent: Tuesday, November 26, 2024 4:21 PM
To: 'anthony camacho' <arcesq@hotmail.com>
Cc: 'Bianca DeSoto' <jsdesoto@guamwaterworks.org>; nicole@guamwaterworks.org
<nicole@guamwaterworks.org>
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Sent from [Outlook](#)

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Attorney Camacho,

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Liquid chlorine is a critical supply for the water system, so I request some additional time (less than 24 hours) to send our answers before you consider and decide to table the docket. I will be in touch and hope to send a complete email with all answers before 10AM tomorrow. If our information is not collected and sent before that time; I recognize that you will exercise your discretion to table our docket before OR at that time regardless.

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No. 17-09 to the present. I recommend that we table this matter until the next PUC meeting so that the following questions can be answered:

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2. Was there a contract for the supply of liquid chlorine for this period?
3. What was GWA paying for the liquid chlorine supply each year from July 28, 2019 to the present?
4. Did GWA obtain the PUC approval to solicit for GWA-IFB-24-12?
5. Did the PUC approve the contract or contracts to supply liquid chlorine from July 28, 2019 to the present?

Please contact me if you have any questions.

Sincerely,

Anthony R. Camacho, Esq.
PUC Legal Counsel

Sent from [Outlook](#)