

exceeded the GWA's Engineer of Record's estimate, GWA's cost expectations, and the available federal grant funding. GWA cancelled the IFB and awarded the contract to A&R Pacific-Garney Federal JV via a sole source procurement in the amount of \$5,584,375.⁴ On May 27, 2025, the Guam Consolidated Commission on Utilities ["CCU"] issued GWA Resolution No. 42-FY2025 authorizing GWA to enter into the Contract and expend up to \$6,142,812.50 with a 5% contingency in the amount of \$307,140.63 for a total amount of \$6,449,953.13.⁵

4. The Contract was executed on September 23, 2025 and it's original scope of work, in relevant part, included: (1) The refurbishment, reuse, and relocation of existing GAC vessels from GWA Deep Wells A-8 and F-87 to Deep Wells D-17 and M-4; (2) The construction of a new GAC treatment system at Deep Well sites D-17 and M-4; and (3) The installation of electrical improvements and a new GAC treatment system at Deep Well site Y-15.⁶ The Contract was for a lump sum amount of \$6,142,535.⁷
5. On February 17, 2026, GWA issued Change Order No. 1 in the amount of \$191,763.74 for the construction of the interim treatment system for well Y-15 which increased the total cost of the Contract to \$6,334,576.24.⁸ The increased scope of work involved the relocation and refurbishing of existing GAC vessels from F-08 to Y-15 and the installation of the interim system at Y-15 inclusive of the construction of an earthwork, concrete pad, piping, structural supports and backwashing of the GAC media.⁹
6. To complete the Contract on time, GWA desires to modify the Contract by adding the following to the Contract's Scope of Work: (1) Install dust barriers and address the endangered *Samoana Fragilis* snail species that was located at well M-4; (2) Modify construction work at well Y-15 to accommodate a 4-vessel system instead of the originally planned 2-vessel design; (3) Add treatment to well M-3 by installing a transmission line linking it to well M-4's GAC treatment system; (4) Procure three

⁴ Id.

⁵ Id., at 8.

⁶ Petition at 2.

⁷ Exhibit A, GWA Response to ALJ's RFI No. 1 dated April 10, 2026, GWA Docket No. 26-04 ["GWA Responses"] at 2.

⁸ Petition, Exhibit A at 2.

⁹ Change Order No. 1, Exhibit A, GWA Responses.

additional GAC treatment systems to increase GWA's treatment capacity in response to increases in Dieldrin and other contaminants; and (5) Procure GAC media, GAC system storage, and GAC media storage.¹⁰

7. On March 17, 2026, the CCU issued GWA Resolution No. 14-FY2026 authorizing GWA to modify the Contract and incur \$4,588,396.38 in additional costs with a 15% contingency of \$688,259.46 for a total amount of \$5,276,655.84,, which will increase the authorized Contract cost to \$11,726,608.97, subject to the PUC's approval.¹¹

ANALYSIS

8. GWA was required to obtain the PUC's prior approval to issue the IFB and enter into the Contract, and GWA is required to obtain the PUC's prior approval to issue the proposed Change Order at issue here. The PUC's Contract Review Protocol mandates that GWA obtain PUC approval for multi-year contracts that exceed the amount of \$1,000,000 and such approval shall be obtained before the procurement process is begun.¹² Additionally, any financial obligation that involves the use of bond funds must also be reviewed by the PUC.¹³ Here, GWA's initial sole source contract award was \$5,584,375 and the CCU subsequently authorized GWA to expend up to \$6,142,812.50 with a 5% contingency in the amount of \$307,140.63 for a total amount of \$6,449,953.13. This amount exceeds the \$1,000,000 threshold and GWA failed to obtain the PUC's prior approval to issue the IFB and enter into the Contract. GWA is required to obtain the PUC's prior approval to issue the Change Order at issue here to incur \$4,588,396.38 in additional costs with a 15% contingency of \$688,259.46 for a total amount of \$5,276,655.84 because this amount exceeds the \$1,000,000 review threshold and GWA will partially cover these costs using bond funds.
9. GWA's argument that it was not required to obtain prior PUC approval to issue the IFB and enter into the Contract because it was federally grant funded and that GWA's Contract Review Protocol permits GWA to evaluate contracts without PUC

¹⁰ Petition at 2-3.

¹¹ Petition, Exhibit A, at 4.

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

¹³ Id., at Par.1(d).

approval if it involves the receipt of reimbursements or costs in excess of \$1,000,000 has no merit.¹⁴ GWA's Contract Review Protocol states that for contracts that involve the receipt by GWA of revenues or reimbursement of costs in excess of \$1,000,000, GWA is permitted to evaluate the contract without PUC approval.¹⁵ However, for such contracts, GWA is permitted to evaluate the contract without PUC approval if prior to entering into the contract, GWA provides the following to the PUC: (1) A CCU resolution authorizing the contract; (2) An affidavit from GWA management stating that the contract does not produce an increased revenue requirement with supporting documentation; and (3) A narrative description of the contract.¹⁶ If GWA follows this procedure, the contract will be deemed approved unless rejected by the PUC within thirty-days after an adequate filing, as determined by the Administrative Law Judge, has been made.¹⁷ Hence, such contracts require PUC approval using the aforementioned procedure. Here, GWA did not comply with the aforementioned procedure. Therefore, GWA violated its contract review protocol by failing to obtain the PUC's prior approval before issuing the IFB, before entering into the Contract, and it violated the contract review protocol because it failed to follow the aforementioned procedure.

10. The \$5,276,655.84 amount GWA is requesting must be adjusted to \$5,143,676.29 to be reasonable. As shown above, GWA's sole source award was \$5,584,375, however, the final contract was for a \$6,142,535 lump sum amount which is \$558,160 ($\$6,142,535 - \$5,584,375 = \$558,160$) more than the award amount. The CCU authorized GWA to expend \$6,142,812 on the Contract with a 5% contingency of \$307,140.63 for a total amount of \$6,449,953.13. This resulted in a contingency amount of \$307,418.13 ($\$6,449,953.13$ authorized by the CCU - $\$6,142,535$ Contract Lump Sum = $\$307,418.13$). Five months later, GWA issued Change Order No. 1 for \$191,763.74 which reduced the contingency amount to \$115,654.39 ($\$307,418.13 - \$191,763.74 = \$115,654.39$). To be reasonable, the remaining contingency amount should be applied to the Change Order at issue here resulting in a reduction of the Change Order authorization to \$4,472,761.99 ($\$4,588,396.38$ CCU Authorization for Change Order at issue here - $\$115,654.39$ remaining contingency amount = $\$4,472,761.99$). Additionally, the 15% contingency amount should be based on the \$4,472,761.99 amount and should be \$670,914.30 ($\$4,472,761.99 \times 15\% = \$670,914.30$).

¹⁴ GWA Responses at 1.

¹⁵ Contract Review Protocol for GWA, Administrative Docket 00-04 dated October 27, 2005 at Par.2.

¹⁶ Id., at Par.2(a) and (b).

¹⁷ Id., at Par.2(c).

Thus, the reasonable amount for the Change Order at issue here, inclusive of the 15% contingency, is \$5,143,676.29 ($\$4,472,761.99 + \$670,914.30 = \$5,143,676.29$). This amount is \$132,979.55 ($\$5,276,655.84 - \$5,143,676.29 = \$132,979.55$) less than the \$5,276,655.84 requested by GWA.

11. The Change Order at issue here is prudent. The Change Order combines five GWA Work Change Directives ["WCD"]. WCD No. 2 for \$2,286,653.93, WCD No. 3 for \$5,431.45, WCD No. 4 for \$415,330, WCD No. 5 for \$1,508,086, and WCD No. 6 for \$272,895 for a total amount of \$4,448,396.38.¹⁸ WCD No. 2 covers additional Model-10 GAC vessels and GAC media for Y-15, 80,000 pounds of media, M-4, 20,000 pounds of media, and D-17, 20,000 pounds of media.¹⁹ Increasing the amount of GAC vessels and the amount of media used in the vessels will help prevent or mitigate the effects of Dieldrin or PFAS contamination in Guam's drinking water system. WCD No. 3 is for the construction of a dust barrier to mitigate the effects on the project on the endangered *Samoana Fragilis* snail that was found at M-4.²⁰ GWA is required by laws and regulations to mitigate or prevent harm to endangered species and their habitats and this will likely prevent potential fines and other penalties. WCD No. 4 is for the removal, relocation, installation, and commissioning of the GAC vessels at A-08 to M-04.²¹ WCD No. 5 is for the redesign of Y-15.²² WCD No. 6 is for the removal, relocation, installation, and commissioning of the Y-15 GAC Filtration System to D-17. Moving the GAC vessels and filtration systems will help lower the costs of this project because it will not require new vessels and filtration systems that will have to be shipped to Guam causing a prolonged delay and increased project costs. Thus, the Change Order at issue here is prudent.
12. The Change Order at issue here and its \$5,143,676.29 adjusted cost are necessary. As shown above, GWA solicited for and awarded this project to comply with GEPA's IAL. Hence, the Change Order at issue here is necessary.
13. Based on the foregoing, the Change Order at issue here and its \$5,143,676.29 adjusted cost are reasonable, prudent, and necessary.

¹⁸GWA Responses at 2.

¹⁹ Exhibit B, Id., at 1.

²⁰ Id., at 3.

²¹ Id., at 4.

²² Id., at 7.

RECOMMENDATION

14. Counsel recommends that the PUC ratify the Contract and approve GWA's Petition for Approval of Fund Increase to A&R Pacific-Garney Federal JV's Construction Contract for Deep Wells D-17, Y-15, and M-4 GAC Systems for Dieldrin Treatment in part, by adjusting the authorized cost of the Change Order at issue here to \$4,472,761.99 and the 15% contingency to \$670,914.30 for a total authorized adjusted cost of \$5,143,676.29. Additionally, Counsel recommends that GWA seek the PUC's prior approval for any amounts in excess of this adjusted authorized amount.
15. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 27th day of April, 2026.



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