



OFFICE OF THE PUBLIC AUDITOR

February 10, 2004

Honorable Vicente C. Pangelinan  
Speaker 27<sup>th</sup> Guam Legislature  
155 Hesler Street  
Hagåtña, GU 96910

Dear Speaker Pangelinan:

Pursuant to the Office of the Public Auditor's (OPA) responsibility as established by Public Law 26-144, which requires OPA to be "an observer throughout the outsourcing process (of water meters)<sup>1</sup>," this office conducted a formal review into the Invitation for Bid (IFB) 2003-011<sup>2</sup> administered by the Guam Waterworks Authority (GWA). The OPA has completed a review of this project and presents this interim report. Based on our review of documents received from the Guam Waterworks Authority (GWA) and the scope of OPA's involvement, we observed areas where GWA's procurement can be improved.

### **Scope and Objective**

Our objective was to ensure that the process relative to P.L. 26-144 for the outsourcing of water meters was presented in an open and fair procurement setting. The scope of our work was limited to the outsourcing of water meters as authorized by P.L. 26-144.

### **Background**

The GWA is losing an estimated \$7,000 a day due to unaccounted-for water related to water meters under-registering water flow.<sup>3</sup> The equipment's malfunction can be attributed to an outdated water meter system.

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<sup>1</sup> P.L. 26-144, "An Act to Add Article 4 to Chapter 14 of Title 12 of the Guam Code Annotated, Relative to Requiring the Guam Waterworks Authority (GWA) to Outsource the Maintenance and Operation of Water Wells, Booster Pump Stations, and Meters and for Other Purposes" specifically provides in §14403, ¶ 4: "The Public Auditor shall be an observer throughout the outsourcing process specified in this Section, and shall receive copies of all documents involved and shall be invited to any meetings regarding the outsourcing process specified in this section."

<sup>2</sup> Multi-step Sealed Bidding for Water Meters with Radio Frequency Transmitter and Drive-by Reading System, Accessory Equipment, Installation, and Financing.

To address the concerns of the water meter system, several parties have made efforts to rectify the situation. The Guam Legislature passed P.L. 26-144 that requires GWA to outsource the installation, maintenance, and reading of the water meter system. The United States Department of Justice Environment & Natural Resources Division and GWA agreed to the entry of a *Stipulated Order for Preliminary Relief, Civil Case No. 02-00035* that outlines the progress GWA has to make in order to outsource the water meters. The Consolidated Commission on Utilities (CCU) and GWA issued the IFB 2003-011 for the outsourcing of water meters.

The IFB seeks to outsource the installation of 37,400<sup>4</sup> small meters for residential customers and 1,405<sup>5</sup> large meters for larger structures that have a demand for more water flow.

### **Observations and Conclusions**

#### ***Attempts to Outsource Water Meters***

Documents received from GWA establish that three attempts were made to outsource the maintenance and operations of water meters. The first attempt was made on March 6, 2003 with Request for Quote (RFQ) 2003-001, the second was on May 24, 2003 with IFB 2003-007, and the third was on August 8, 2003 with IFB 2003-011. The OPA was not notified of these attempts nor was it represented at any of the meetings associated with these bid requests.

According to GWA management, the procurement process was new and unique to them in the first attempt. RFQ 2003-01 was published on March 6 and opened for bid in April 24. After protests were filed, this RFQ was cancelled.

IFB 2003-007 was published in May 24. GWA stated that at a prebid conference on June 5, the participants stated that they did not understand the process of how things were to be conducted. After multiple vendors filed protests, this IFB was also cancelled.

#### ***OPA's Involvement***

The third and final announcement was published on August 8, 2003. Six potential bidders and an OPA representative attended a prebid conference on August 21. The following day, GWA provided the potential bidders with answers to questions that were raised at the conference. From September 15 through November 24, GWA conducted product-tests for those that submitted bids. On

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<sup>3</sup> IFB 2003-011 Bid Packet, p. 16.

<sup>4</sup> The following is a breakdown of the small water meters: 33,500 units of 5/8" x 3/4", 3,000 units of 3/4", and 900 units of 1".

<sup>5</sup> The following is a breakdown of the large water meters: 450 units of 1 1/2", 600 units of 2", 100 units of 3", 135 units of 4", 70 units of 6", and 50 units of 8".

the basis of the product-test phase, GWA management disqualified two of the six IFB respondents due to malfunctions in their water meters.

During the first phase of IFB 2003-011, GWA held three meetings on November 10, 14, and 26. The OPA was not notified and did not attend any of these meetings. GWA has, however, provided the OPA with minutes for these meetings. According to the minutes, the purposes of the meetings were to evaluate whether vendors who submitted bid proposals were able to pass the first phase of the bid, which entailed physical testing of the water meters.

The OPA was notified and attended the bid opening on December 10. Four vendors who had passed the first phase of the process submitted bids; two vendors were later disqualified due to insufficient bid bonds, as determined by GWA management.

GWA held another meeting on December 12. OPA was notified of this meeting **fifteen minutes prior to its scheduled start**, yet on short notice an OPA representative attended the meeting. The purpose of this meeting was to award the contracts for the large and small water meters.

According to local media reports, a meeting was held on December 23 to discuss the disqualification of a bidder due to an oversight by GWA. OPA was not notified of and did not attend this meeting. It is evident that the OPA has not been consistently informed of meetings regarding the outsourcing of the maintenance and operations of water meters.

#### ***Disclosure of Confidential Information During the Evaluation of the IFB***

According to minutes of the November 26, 2003 meeting, GWA management determined that some confidential information related to some vendors had been released by the Procurement Manager to other vendors. Although GWA management acknowledged that there was nothing to indicate the bid process had been significantly compromised, the General Manager determined that the Procurement Manager should no longer participate in the selection process. An OPA representative was not present at this meeting; this information is based solely on a copy of the minutes provided by GWA management.

#### ***GWA General Manager's Involvement***

During a GWA meeting on December 16, the OPA noted that General Manager David Craddick did not participate in the proceedings of the IFB. According to Mr. Craddick, he did not participate because he invited bidders to participate and bid on this project. OPA also noted that the General Manager made the final determination as to the amount of preferences to be given to each bidder. The selection of the winning bid was made based on the preferences assigned. The decision of the General Manager to not participate with the IFB, yet have the final determination in the overall IFB preferences appears to be inconsistent in carrying out the provisions of the bid.

We are concerned there was no independent verification or review by another professional engineer(s) as to the amount of preferences assigned to each bidder. Because the award was made based on the preferences, the assignment of the preferences becomes crucial as to who will get the award.

We urge that other independent engineers, possibly from the Guam Power Authority or contracted professional engineers independently assign preferences to the respective bidders to ascertain if they are reasonably consistent with the preferences allotted by the General Manager.

As GWA will be having other major bid proposals, we recommend that GWA have other independent professional engineers be assigned to the review, evaluation, and selection of these future projects.

Subsequent to the issuance of this report, OPA was informed that GWA had obtained a third party review from the Water & Energy Research Institute (WERI) engineers. The review supported GWA's properly identified preferences and stated that it was "very appropriate for the purchase of the sophisticated electronic reading meters that you are planning to purchase."

We commend GWA for responding timely to our recommendation. The WERI report confirmed and validated GWA's selection of preference points.

#### ***Lack of Competition with Vendors***

According to the minutes of the meeting held on November 26, the Procurement Officer determined there would be adequate price competition from the four remaining bids that moved on to the second phase. Of the four remaining bids, however, two were subsequently disqualified due to insufficient bid bonds. The remaining two bids were from the same company, but submitted two different water meters.

OPA reviewed documents to support the first bidders' disqualification and confirmed that the vendor did not provide for a proper bid bond in time. The second bidder disqualified was to be awarded the contract for large water meters, however, a letter of intent was later rescinded. A thorough review by GWA management of the second bidder's documents was not initially made, but was later found to be deficient because of the insufficient bid bond. The decision to rescind the intent to award was made during the meeting held on December 23 by the Consolidated Commission on Utilities; the OPA was not notified of this meeting and did not attend it.

OPA attended a meeting on January 9, 2004 at GWA. The purpose of the meeting was to discuss the disqualification of the bidder who was originally awarded the contract for large water meters and the re-award of the contract to another bidder.

### ***Participation of companies where GPA or GWA Employees Have A Financial Interest***

During the December 12 meeting, a GWA representative noted a high-ranking Guam Power Authority (GPA) official had a 35% shareholder interest with one of the vendors that submitted a bid. After hearing this, OPA had concerns about the GPA official and the significant shareholder interest in the vendor's operations. After discussions with Chief Financial Officer and Procurement Specialist at GWA, they determined that OPA's concern did not have any bearing on the recommendation for selection and did not think it was a problem.

OPA staff members visited the vendor and inquired with management about the GPA official's involvement with the operations of the company. The management verified the GPA official did have a 35% shareholder interest, but did not have any involvement in the day-to-day operations of the company.

According to 4 G.C.A. §15206 (a),<sup>6</sup> an employee with a controlling interest in a company is allowed to enter into contracts with the Government of Guam provided that the whole process has gone through an "open, public process." A potential conflict of interest may exist if this process does not go through an "open, public process." In this instance, the bidding company has three major shareholders and two minor shareholders; the GPA official has a 35% shareholder interest, a second partner has a 35% interest, a third partner has a 20% interest, and two employees with 5% each. The GPA official's significant financial interest, although not controlling, could be reasonably construed as a conflict of interest.

We recommend that the CCU establish a policy addressing whether or not it will allow companies affiliated with senior management officials and other CCU employees to bid on contracts of the CCU and its sister companies.

Subsequent to the issuance of this report, OPA was provided with a letter of affidavit from the CCU Chairman indicating that the GPA official was not involved in the day-to-day operations of the company that submitted the bid to GWA.

### ***Question of Procurement Jurisdiction***

On November 5, 2003, the OPA met with representatives from Raytheon Technical Services Guam (Raytheon) to discuss the privatization process of GWA. Raytheon contended that P.L. 24-295 designated it to manage the privatization of GWA. Section 7 of that public law repeals and reenacts 12 G.C.A. § 14112 and provides in ¶ (b)(1) of that section that GWA "shall enter into one or more joint operating agreements with private contractors operating U.S. military water production and distribution systems or wastewater disposal

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<sup>6</sup> 4 GCA §15206 (a) states that "A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process."

systems, or both, regulated under the Federal Clean Water Act and Safe Drinking Water Act, in conformance with its rules and regulations and with statutory authority contained in this chapter.” As Raytheon is the private contractor operating the U.S. military water production and distribution systems, it contended that Raytheon is the company designated by the Legislature to enter into a joint operating agreement with GWA.

During our meeting with the Raytheon representatives, we advised them to obtain concurrence from the Attorney General of Guam before proceeding with their claim. A transmittal with Raytheon’s claim was later submitted to the Office of the Attorney General via OPA. Until this issue is resolved, challenged, or set aside, uncertainty may exist whether GWA can negotiate or award a contract.

Subsequent to the issuance of this report, CCU responded that when they met with Raytheon representatives, Raytheon contended that they not manage the privatization of GWA, but that the entire operation be solely outsourced and privatized to them. CCU stated that “given the fact that other laws allow CCU/GWA to find private partners for operations, the CCU has gone on record since August (2003), published articles and media reports that it will utilize all the laws in place to pursue a competitive bid process (as opposed to a sole source) for finding potential partners.”

### **Management Response**

We provided a draft copy of this report to the CCU Chairman, GWA General Manager, and the Attorney General’s Office in January 2004. Preliminary comments from the CCU Chairman and GWA General Manager indicated they generally concurred with the findings of this report and have already taken corrective action to remedy OPA’s concerns. The GWA General Manager and CCU Chairman did not concur with our observation regarding outside engineers conducting an independent review of the preferences, however, GWA did obtain a third party review from the Water & Energy Research Institute (WERI) and satisfied the recommendation of OPA. See **Appendix A** for GWA General Manager’s response and **Appendix B** for CCU Chairman’s response to our report.

### **Recommendations**

Based on our review of documents submitted to OPA and our observations, we recommend the following with respect to the proposed project and IFB 2003-011. Subsequent to the issuance of our draft report, GWA and CCU may have already addressed some of our recommendations.

- We urge that GWA not award any contract for the proposed project and hold in abeyance any and all Memorandum of Understanding’s, Memorandum of Agreement’s, or other agreements that have been

initiated between GWA and bidders to IFB 2003-011, until an independent review by independent engineers is conducted.

As stated previously, GWA did obtain an independent review from engineers at WERI. WERI confirmed the preferences assigned by GWA management were warranted. This recommendation has been addressed to OPA's satisfaction and is closed.

- As GWA will be having other major bid proposals, we recommend the establishment of a team consistent of GWA, GPA, and other professional engineers to the review, evaluate, and select any relevant future projects.
- We recommend that the CCU establish an ethics policy determining whether or not senior management officials or other CCU employees may bid on government contracts or their sister companies.
- The CCU should determine their position on Raytheon's contention that they are the designated company to manage the privatization of GWA per P.L. 24-295, otherwise uncertainty will exist on whether GWA can negotiate or award a contract that may outsource its functions.

As stated previously, CCU has stated their position on the situation with Raytheon. CCU stated that "given the fact that other laws allow CCU/GWA to find private partners for operations, the CCU has gone on record since August (2003), published articles and media reports that it will utilize all the laws in place to pursue a competitive bid process (as opposed to a sole source) for finding potential partners." This recommendation has been addressed to OPA's satisfaction and is closed.

- For future IFB's, RFQ's, and RFP's, we recommend that all parties involved understand the rules, regulations, and relevant laws that affect the process of soliciting bids, quotes, and proposals. If necessary management should seek guidance with regard to questions they might have before proceeding with the procurement. Additionally, GWA staff and management participants should be made aware of confidential information. If necessary a confidentiality statement should be signed by participating members, which outlines any penalties associated with a breach of confidentiality.
- We recommend that OPA be informed in a timely manner of any meetings, conferences, or other relevant issues that deal with the outsourcing of GWA.

GWA has since been in contact with OPA through electronic mail and telephone conversations since the issuance of the draft preliminary report regarding progress of the water meter project and of relevant meetings.

We thank GWA for providing us with timely information regarding the outsourcing of water meters. As OPA is an observer to the outsourcing of GWA, we look forward to future notifications relative to this process.

**Limitations of the Report**

This letter contains only evidentiary conclusions based on documentation received by GWA and reviewed by OPA staff. OPA did not perform an audit utilizing *Generally Accepted Government Auditing Standards*.

This letter has been released to the GWA General Manager, the Consolidated Commission on Utilities, the Governor, members of the 27<sup>th</sup> Guam Legislature, and the Attorney General. This letter is a matter of public record and its distribution is not limited.

OFFICE OF THE PUBLIC AUDITOR

Senseramente,



Doris Flores Brooks, CPA, CGFM  
Public Auditor

**Appendix A: Guam Waterworks Authority General Manager's Response**



**GUAM WATERWORKS AUTHORITY**

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Reviewed by Office of the  
Public Auditor

1/26/04

3:50PM

January 20, 2004

Doris Flores Brooks, CPA, CGFM  
Public Auditor  
Suite 401, Pacific News Building  
238 Archbishop Flores St  
Hagåtña GU 96910

Dear Ms. Brooks,

GWA offers the following comments on the content of the DRAFT REPORT on the Paragraph 14, **Water Meter Improvement Program**, IFB 2003-011, (MULTI-STEP SEALED BIDDING FOR WATER METERS WITH RADIO FREQUENCY TRANSMITTER AND DRIVE-BY READING SYSTEM, ACCESSORY EQUIPMENT, INSTALLATION AND FINANCING) [IFB 2003-011] of the US District Court Stipulated Order for Preliminary Relief, Civil Case No. 02-00035.

**Attempts to Outsource Water Meters**

Documents received from GWA establish that three attempts were made to outsource the maintenance and operations of water meters. The first attempt was made on March 6, 2003 with RFQ 2003-001, the second May 24, 2003 with IFB 2003-007, and the third August 8, 2003 with IFB 2003-011. The OPA was not made aware of any of these attempts nor was it represented at any of the meetings associated with these bid requests.

According to GWA management, the procurement process was new and unique to them in the first attempt.

**GWA response: This allegation is misleading. The GM said the first multi step bidding was new to the person in charge who was filling in for the regular Procurement Officer. No one knew the OPA was to be an observer at this point.**

RFQ 2003-01 was published on March 6 and opened for bid on April 24. After protests were filed, this RFQ was cancelled.

IFB 2003-007 was published May 24. GWA stated that at a pre-bid conference June 5 the

participants stated that they did not understand the process of how things were to be conducted. After multiple vendors filed protests, this IFB was cancelled.

**GWA response: After this bid the OPA notified GWA that it was to be an observer in the meter process.**

### **OPA's Involvement**

IFB 2003-011, third attempt, was published August 8, 2003. Six potential bidders and an OPA representative attended a pre-bid conference August 21. The following day GWA provided the potential bidders with answers to questions that were raised at the meeting. From September 15 through November 24, GWA held a product test phase for those that submitted bids. On the basis of the product-test phase, GWA management disqualified two of the six respondents to the IFB due to malfunctions in the water meters they provided.

For the first phase of IFB 2003-011, GWA held three meetings, on November 10, 14, and 26 respectively. The OPA was not notified of nor in attendance at these meetings; GWA has, however, provided the OPA with minutes for these meetings. According to the minutes, the purposes of these meetings was to evaluate whether vendors who submitted bid proposals were able to pass through the first phase of the bid, which was basically physical tests of the water meters.

**GWA response: According to GWA's legal advisor this portion of the Bid is confidential as the information could be used to get inside information on other bidders this portion must also remain confidential in the event of a successful challenge to the current meter bid to prevent inside information from getting around.**

The OPA was notified of and did attend the bid opening December 10. Four vendors who had passed through the first phase of the process submitted proposals; two of them were later disqualified due to insufficient bid bonds, determined by GWA management.

GWA held another meeting on December 12. OPA was contacted and notified of this meeting fifteen minutes prior to its scheduled start, yet on short notice an OPA representative attended the meeting. The purpose of this meeting was to award the contracts for the large and small water meters.

According to local media reports, apparently a meeting was held on December 23 to discuss the disqualification of a bidder due to an oversight of GWA. OPA was not notified of or in attendance at this meeting.

It is evident that the OPA has not been consistently informed of meetings regarding the outsourcing of the maintenance and operations of water meters.

**GWA response: GWA agrees with this finding.** The procurement process of multi step bidding was new to GWA procurement personnel with respect to the details of Guam Procurement Regulations. The third and current bid, (IFB 2003-011) was prepared with the assistance of the legal counsel throughout and was intended to comply completely with the 2 GAR Div. 4 Procurement Regulations as required by the CCU. Counsel was present to advise the GWA evaluation committees and GWA management from inception and preparation of IFB 2003-011 through the bid opening.

Notice that GWA procurement activities were inconsistent with regard to keeping the Office of the Public Auditor (OPA) informed is accepted and GWA will make better efforts in this regard in the future with regard to PL 26-144.

GWA is not sure PL 26-144 is applicable in this case. Meter reading was already privatized and not done by GWA at the time the law was passed. GWA has, however inconsistently, strived to err on the side of openness and do our best to keep the OPA informed. The meter installation will be a mix of private and GWA action. Maintenance of meters will be eliminated with the meters being installed as there is a warranty exceeding the useful life. The privatization of reading the meters will be assigned to the radio waves. Whether this is privatization may be arguable. Our belief is that the legislature wanted a more efficient process and just went beyond policy and got into operations by making suggestions how GWA could get more efficient. There are however, many ways to skin the cat. GWA does not believe the legislature intended to give ratepayers money away to end up with an operation more costly than one GWA could come up with. GWA is replacing its meters with state of the art equipment that will make the previous concerns associated with meter maintenance, installation and reading on Guam a thing of the past. With respect to IFB 2003-011, GWA has an open policy with respect to the OPA.

GWA supports and will continue to support any efforts to provide clear information on the details of what is done with all of its procurements not just ones requiring privatization.

### **Disclosure of Confidential Information During the Evaluation of the IFB**

According to minutes of the November 26 meeting, GWA management determined that some confidential information related to some vendors had been released by the Procurement Manager to other vendors. Although GWA management acknowledged that there was nothing to indicate the bid process had been significantly compromised, the General Manager determined that the Procurement Manager should no longer participate in the selection process. An OPA representative was not present at the November 26 meeting and this information is based solely on a copy of the minutes provided by GWA management.

**GWA response: GWA agrees with this comment. Amendment No. 8 to IFB 2003-011 (MULTI-STEP SEALED BIDDING FOR WATER METERS WITH RADIO FREQUENCY TRANSMITTER AND DRIVE-BY READING SYSTEM, ACCESSORY EQUIPMENT, INSTALLATION AND FINANCING) was issued on November 24, 2003 to notify bidders of the corrective action for this matter. (See document "IFB 2003 011 Amendment 8.PDF" a copy of which is attached.)**

### **GWA General Manager's Involvement**

During a GWA meeting December 16th OPA noted that General Manager David Craddick did not participate in the proceedings of the IFB. According to Mr. Craddick, he did not participate because he invited bidders to participate and bid on this project. OPA also noted that the General Manager made the final determination as to the amount of preferences to be given to each bidder. The selection of the winning bid was made based on the preferences assigned. The decision of the General Manager to not participate in the proceedings of the IFB, yet have the final determination in the overall IFB preferences appears to be inconsistent in carrying out the provisions of the bid.

We are concerned that there was no independent verification or review by another professional engineer or engineers of the amount of preferences assigned to each of the bidders. Because the award was made based on the preferences the assignment of the preferences becomes crucial as to who will get the award.

We urge that other engineers possibly from the Guam Power Authority or contracted professional engineers independently assign preferences to the respective bidders to ascertain if they are reasonably consistent with the preferences allotted by the General Manager.

As GWA will be having other major bid proposals, we recommend that GWA have other professional engineers be assigned to the review, evaluation and selection of these future projects.

**GWA response: GWA does not agree with this comment. The GWA Evaluation Committee, not the General Manager, made assignment of preferences to bids. The evaluation committee is made up of staff personnel directly responsible for either the project itself or using the meters and interfacing with ratepayers. Committee members are as follows:**

**Paul J. Kemp, M. S., Procurement Administrator for IFB 2003-011 – Committee Chair  
Gerald Paulino, Department Head, GWA Water Meter Division  
Rebecca Balajadia, GWA Customer Service  
Kathy Reyes, GWA Accounting, Billing Section.  
Loretta Cruz, GWA Customer Service  
Randall V. Wiegand, GWA Chief Financial Officer**

**Victor Torres, Department Head, GWA Information Technology Division. (Responsible for billing software)**

**Serving as legal advisor to this committee was Anthony R. Camacho, Esq..**

**In keeping with the recommendations, although there is no requirement to do so, upon review by the independent engineer they stated they felt the values should be “assigned by those within GWA or by someone with an in depth knowledge on the impacts of the preference items on the long term.” This is exactly what happened.**

**I do not believe there are more qualified people on the island than those that will have to live with their decision for the next 10 to twenty years to make the decision on which the meters are selected.**

### **Lack of Competition with Vendors**

According to the minutes of the meeting held on November 26, the Procurement Officer determined that there would be adequate price competition from the four remaining bids that moved on to the second phase. Of the four bids that passed the first phase, two were subsequently disqualified due to insufficient bid bonds. The remaining two bids are actually the same company with two different water meters.

The two bidders that were disqualified were eliminated because they failed to provide sufficient bid bonds. After requesting and receiving documents to support the first bidders disqualification, it was apparent that the vendor did not provide for a proper bid bond in time and was therefore disqualified. The second bidder disqualified was to be awarded the contract for large water meters; however, a letter of intent was later rescinded. A thorough review of the second bidder’s documents was not initially made but later found to be deficient because of the insufficient bid bond. The decision to rescind the intent to award was made during the meeting held on December 23 by the Consolidated Commission on Utilities; the OPA was not notified of this meeting and did not attend it.

**GWA response: GWA does not agree with this comment. It was determined during Phase I of the IFB 2003-011, (MULTI-STEP SEALED BIDDING FOR WATER METERS WITH RADIO FREQUENCY TRANSMITTER AND DRIVE-BY READING SYSTEM, ACCESSORY EQUIPMENT, INSTALLATION AND FINANCING) that a minimum of two offers were required to insure competition with vendors. At the end of Phase I, there were four (4) meters that passed the evaluation.**

**After opening the Phase II priced submittals, the first view was that all four submittals were properly prepared and intact. Further detailed evaluation later revealed that one vendor had provided an insufficient Bid Bond, and their submittals were sealed and not evaluated further.**

**Further evaluation revealed that one bidder had failed to submit a bid bond at all. This still left two-meter manufacturers that are considered by the committee to be sufficient competition. This does not mean there was a lack of competition, as no bidder would know of this before bidding. There are still two valid proposals for the large meters with a bid bond that covers the most expensive case selection.**

### **Participation of companies where GPA or GWA Employees Have A Financial Interest**

During the December 12 meeting, a GWA representative noted that a high-ranking Government official had a 35% shareholder interest with one of the vendors that submitted a bid. After hearing this, OPA had a concern about the high-ranking government official and their significant shareholder interest in the vendor's operations. After having discussions with two managers at GWA, they determined that OPA's concern did not have any bearing on the recommendation for selection and did not think it was a problem.

OPA staff members visited the vendor and inquired with the management about the high-ranking government official's involvement with the operations of the company. The management verified that the government official did have a 35% shareholder interest, yet did not have any involvement of the day-to-day operations of the company.

According to 4 GCA §15206 (a)1 allows an employee with a controlling interest in a company to enter into contracts with the Government of Guam provided that the whole process has gone through an "open, public process." With a 35% shareholder of a bidder holding a high-ranking government position, there may appear to be a conflict of interest if this process did not go through an "open, public process."

We recommend that the CCU establish as a policy whether or not it will allow senior management officials and other CCU employees to bid on contracts of their sister companies.

**GWA response: GWA does agree with this comment. This matter will be brought the attention of the CCU. GWA prepared the bid, evaluated the bid and prepared a recommendation without the assistance of anyone from GPA. Mr. Benevente's ability to participate was improbable at best. GWA, however, is sensitive to public perception and the CCU has requested a certification from Mr. Benevente as to his participation in the bid with ITI. There appears from the certification to be no collusion on Mr. Benevente's part. The Evaluation Committee did not consider this an issue as no contact with respect to IFB 2003-011, (MULTI-STEP SEALED BIDDING FOR WATER METERS WITH RADIO**

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<sup>1</sup> 4 GCA §15206 (a) states that "A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process."

**FREQUENCY TRANSMITTER AND DRIVE-BY READING SYSTEM, ACCESSORY EQUIPMENT, INSTALLATION AND FINANCING) was made with committee members by persons outside GWA, including Mr. Benevente, other than directly in accordance with IFB 2003-011 requirements and other relevant laws of Guam.**

### **Question of Procurement Jurisdiction**

On November 5, 2003, the OPA met with representatives from Raytheon Technical Services Guam (Raytheon) to discuss the privatization process of the Guam Waterworks Authority. Raytheon contends that it is the designated company to manage the privatization of GWA because of PL 24-295. Section 7 of that Act repeals and reenacts 12 GCA § 14112 and provides in ¶ (b)(1) of that section that GWA “shall enter into one or more joint operating agreements with private contractors operating U.S. military water production and distribution systems or wastewater disposal systems, or both, regulated under the Federal Clean Water Act and Safe Drinking Water Act, in conformance with its rules and regulations and with statutory authority contained in this chapter.” As Raytheon is the private contractor operating the U.S. military water production and distribution systems, it contends that Raytheon is the company designated by the Legislature to enter into a joint operating agreement with GWA.

During its meeting with the Raytheon representatives the OPA advised them that they should get concurrence from the Attorney General of Guam beforehand in order to proceed with their claim. A transmittal was submitted to the Office of the Attorney General with Raytheon’s claim via OPA. The OPA has no evidence that this issue has been resolved between GWA, Raytheon or the Attorney General.

Until this issue is resolved and/or successfully challenged, uncertainty may exist on whether GWA can negotiate or award a contract.

**GWA response: GWA does agree with this comment. IFB 2003-011, (MULTI-STEP SEALED BIDDING FOR WATER METERS WITH RADIO FREQUENCY TRANSMITTER AND DRIVE-BY READING SYSTEM, ACCESSORY EQUIPMENT, INSTALLATION AND FINANCING) was performed directly in accordance with Paragraph 14, Water Meter Improvement Program, of the US District Court Stipulated Order for Preliminary Relief, Civil Case No. 02-00035. The Stipulated order is directed specifically to activities of GWA.**

***Specifically: “14. Water Meter Improvement Program: GWA shall develop a water meter improvement program to ensure that, within 3 years after the Entry Date, each connection to the three public water systems has an accurate and accessible water meter that is read monthly and used for billing. Within 90 days after the Entry Date, GWA shall submit the program to EPA for approval. GWA shall provide a copy of the document concurrently to Guam EPA. Within 30 days after receipt of EPA’s comments, GWA shall respond to EPA’s comments in***

*accordance with Paragraph 2, shall provide the final program to EPA and Guam EPA, and shall implement the program.’*

**The approval letter from EPA of the program is enclosed for your review. This paragraph of the Federal Court Order and EPA’s approval does not include Raytheon. If Raytheon wanted to bid on the meters the procurement was open to all concerned. The bid does not include a joint operating agreement with the bidder and does not purport to follow PL 24-295.**

## **SUGGESTED ACTIONS**

Prior to the conclusion of OPA’s inquiry into this proposed project, the final results that are unknown at this time, OPA strongly recommends the following with respect to the proposed project and IFB 2003-011.

- We urge that GWA not award any contract for the proposed project and hold in abeyance any and all MOU’s, MOA’s or other agreements that have been initiated between GWA and any of the bidders to IFB 2003- 011, until an independent review by independent engineers is conducted.

**Response: GWA has contacted an independent engineer to review the work of the selection committee. The small meters however have already been awarded. The result of their investigation is enclosed.**

- As GWA will be having other major bid proposals, we recommend an establishment of a team consistent of GWA, Guam Power Authority, and other professional engineers to the review, evaluate and select any relevant future projects.

**Response: Typically the design engineer, on bid construction projects, reviews the low bid proposal and recommends, to GWA, whether to award or not. The construction project bids are not requests for proposals for professional work. Requests for Proposals are awarded on evaluation of matters other than price.**

- We recommend that the CCU establish an ethics policy determining whether or not if senior management officials or other CCU employees may bid on government contracts.

**Response: We will bring this request up for CCU review.**

- The CCU should determine their position on the claim by Raytheon contending that they are the designated company to manage the privatization of GWA because of PL 24-295, otherwise uncertainty will exist on whether GWA can negotiate or award a contract that may outsource its functions.

**Response: We will bring this request up for CCU review.**

• For future IFB's, RFQ's, and RFP's, we recommend that all parties involved understand the rules, regulations and relevant laws that affect the process of soliciting bids, quotes and proposals. If necessary management should seek guidance with regard to questions they might have before proceeding with the procurement. Additionally, GWA staff and management participants should be made aware of the confidentiality of certain information. If necessary a confidentiality statement should be signed by participating members, which outlines any penalties associated with a breach of confidentiality.

**Response: This is a good suggestion.**

• In a timely manner, inform OPA of any meetings, conferences or other relevant issues that deal with the outsourcing of GWA.

**Response: We will bring this request up for CCU review.**

Sincerely,



David R. Craddick  
General Manager

ENCL: "IFB 2003 011 Amendment 8.PDF"  
Independent Engineer Report

## **Appendix B: Consolidated Commission on Utilities Chairman's Response**



### **GUAM WATERWORKS AUTHORITY**

Aturidat Kinalamten Hanon Guahan

Government of Guam

P.O. Box 3010, Hagatna, Guam 96932

Phone: (671) 479-7823 • Fax: (671) 479-7879

January 23, 2004

The Honorable Doris Flores Brooks  
Public Auditor  
Office of the Public Auditor  
Hagatna, Guam

Dear Ms. Brooks,

I would like to submit a response to your Draft Preliminary Report on GWA's recent water meter bid. Please note that the Consolidated Commission on Utilities (CCU) has not been able to formally approve any of the submissions from Mr. Craddick or Mr. Camacho that you received yesterday. My submission is also without formal Commission approval. The CCU is expected to review the submissions at Tuesday night's meeting. Should there be any material change or addition, we will provide your office with those changes immediately.

Nonetheless, I have had a chance to review the matter and also informally discuss some of the issues with you and your staff. I would like to add the following perspectives:

#### **OPA's Involvement**

I believe the CCU would welcome the participation of the OPA as an observer of our Privatization efforts as required by Public Law 26-144. Your office provides a second set of eyes to review our efforts to insure we are procuring services properly in order to obtain the lowest costs for the ratepayer. The OPA's experience in procurement also can be a great resource for our efforts.

As we discussed, there are other laws that allow for privatization. Four laws passed by the 24<sup>th</sup> and 26<sup>th</sup> Guam Legislature authorize GWA to implement Build-Operate-Transfer agreements to provide services. These laws do not mention the involvement of the OPA. Public Law 26-144, however, covers a large array of products (e.g. meters, motors, pumps) that are common components of a particular GWA operation that could be appropriate for privatization.

As Mr. Craddick stated in his response, GWA did not consistently inform the OPA during the meter procurement process but would do so from hereon. I believe however that the CCU also will find that P.L. 26-144 applied to this meter procurement and your role should have been insured by GWA. ~~We may not share GWA's uncertainty as to this issue.~~

As the CCU, OPA and GWA work with our relatively new mandates, the CCU would like to establish a protocol that you would find acceptable to establish how and when the OPA will observe our various privatization efforts. The CCU does not want to waste limited OPA resources for procurements not directly tied to privatization (such as buying motors for inventory) but we do want to fully comply with the laws of Guam. I trust we will develop a good working protocol to always insure that the proper checks and balances are in place.

#### **Procurement Review Process**

Your report also recommends that “independent verification or review by another professional engineer or engineers” of the preferences that were available to bidders. GWA’s response is that the evaluation team was comprised of qualified people who are directly responsible for the installation, repair, and use of meters as well as personnel involved with customer service and billing. These “users” have years of experience with water meters.

While we may respectfully disagree that outside engineers were required for the review, GWA obtained a third party review from WERI engineers. The review supported the contention that GWA properly identified preferences and the procurement spreadsheets appear to be correct. It also appears that the preferences were clearly established in the bid for all bidders to know and that the application of the preferences was essentially a verification and calculation exercise as opposed to a discretionary assignment of values. I also understand that the value of the preferences related to the amount of savings to GWA that a preference might generate. A bidder verified to meet the preference got the same mathematical score as another bidder who also qualified.

#### **Potential Conflict of Interest**

The CCU shares your concern over the potential appearance that a conflict of interest might exist with regards to the non-majority ownership interest that John Benavente, GPA GM, has in one of the bidding companies. I have enclosed an affidavit signed by Mr. Benavente that states he is not an employee of the bidder and did not participate in any way in the preparation of the bid or the bid submittal by his company. We would agree that a clear policy should be established regarding potential conflicts.

#### **Procurement Jurisdiction**

You raise an interesting point of view as to whether P.L. 24-295 requires all privatization to be performed within the umbrella of a Joint Operating Agreement with Raytheon, the Current Navy BOS contractor.

We do not necessarily agree that the requirement of a Joint Operating Agreement prevents GWA from procuring needed items for its operations. Further, a number of other laws clearly give the CCU and GWA broad legal authority to procure the services of contractors to jointly operate or manage GWA operations in whole or in part, Build-

Operate-Transfer water/wastewater systems and procure meters, motors and pumps. None of these other laws require the BOS contractor to be involved in these procurements.

We have met with Raytheon and their contention is not that they manage privatization but that the entire GWA operations be sole-sourced and privatized to them. Given the fact that other laws allow CCU/GWA to find private partners for operations, the CCU has gone on record since August in meetings, published articles and media reports that it will utilize all the laws in place to pursue a competitive bid process (as opposed to a sole source) for finding potential partners.

We believe competitive bidding is the best way to insure the best results for the ratepayers, a clear mandate established in our enabling act. This view coincides perfectly with your concerns in the report that GWA insure a proper competitive bidding process.

Raytheon, other potential bidders and the general public are aware that the CCU is obtaining professional services to help prepare an RFP for potential public/private partnerships. We expect to be issuing the subsequent privatization RFP later this spring and expect to have bids in hand by September. We also contemplate issuing in the next few months a BOT RFP for our two largest wastewater plants and the Ugum Water plant in order to meet the federal court ordered timelines. As we have suggested, the CCU would like to establish a good working protocol to insure OPA, where appropriate, is involved in these privatization efforts

#### **The Federal Court Order**

Commissioners have frequently commented at public meetings that the federal court order is not an excuse to violate Guam laws. In negotiating the settlement, we consistently took the position that the federal order could not intentionally force us to violate Guam law. I do not share the broader view espoused by Attorney Camacho and sometimes inferred by GWA management. The federal court order mandates actions but clearly allows GWA to implement changes within the confines of the order, and applicable federal and local law. If local law prevents us from complying, we must inform the court of these possible impediments.

Presently, existing local mandates have not prevented GWA from complying with the court order. However, an interpretation of P.L. 24-295 that all efforts to meet the order should be put on hold until an agreement is worked out with Raytheon would probably not be acceptable to the federal government. GWA's still fragile system cannot afford further delays in its reconstruction and repairs. Delays will clearly put GWA and its ratepayers at risk for major fines and penalties. Our goal is to work together with you and all other stakeholders to insure GWA carries out the court order and implements local and federal laws in ways that best improve service to our customers at the lowest cost.

**Suggested Actions**

The most important part of your report contains your suggestions to insure GWA does the right thing. GWA and the CCU already have taken and will continue to take appropriate action to meet your concerns.

GWA will insure regular communication with the OPA with regards to privatization efforts authorized in P.L. 26-144. We should establish a protocol acceptable to OPA to insure proper observation.

As you recommended, GWA has obtained the independent third party review and they concur with GWA's findings on the suitability of meter criteria. GWA will continue to insure procurement review teams contain appropriate expertise.

The CCU will develop a policy with regards to the involvement of utility employees in outside bids for services from the utilities.

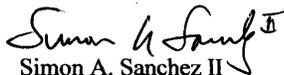
The CCU has established a position on P.L. 24-295 and is confident GWA can proceed to operate and seek opportunities for privatization under an array of local laws.

GWA and GPA must insure that all parties involved with procurements clearly understand all applicable rules and laws. The continued involvement of the OPA in our privatization procurements will further insure proper compliance.

Participation by the OPA is welcomed.

The CCU will review all three submittals provided to you on Tuesday evening. We also stand ready to clarify and discuss further any issues you feel relevant. We thank you for your interest and we look forward to working with the OPA for the benefit of our community.

Senseramente'



Simon A. Sanchez II  
Chairman  
Consolidated Commission on Utilities