



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

IN THE MATTER OF THE APPLICATION OF THE) WATER
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY)
FOR APPROVAL OR COMMENT TO A) ORDER APPROVING
PROFESSIONAL OPERATIONS SERVICES) PUBLIC PRIVATE CONTRACT
AGREEMENT BETWEEN UNITED WATER JERSEY)
CITY, INC. AND PETITIONER, THE JERSEY)
CITY MUNICIPAL UTILITIES AUTHORITY) BPU DOCKET NO. WE08010007

(SERVICE LIST ATTACHED)

BY THE BOARD:

On January 2, 2008, pursuant to N.J.S.A. 58:26-19 et. seq., the New Jersey Water Supply Public-Private Contracting Act (the Water Act), Petitioner, the Jersey City Municipal Utilities Authority (JCMUA), filed with the Board of Public Utilities (Board) for approval of a proposed Professional Operations and Services Agreement (POSA or Agreement) with United Water Jersey City (UWJC) for the operation and maintenance of the Jersey City's water system by UWJC through January 31, 2018. Petitioner states that approval of the POSA is a crucial step in implementation of a comprehensive contract between UWJC and JCMUA for adequate operation and maintenance of the Jersey City water supply system. Neither the JCMUA nor UWJC is a public utility subject to N.J.S.A. 48:2-1 et seq.

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. Water supply services, as defined by the Water Act, mean the financing, designing, construction, improvement, operation, maintenance, administration or any combination thereof, of a water supply facility (i.e., water system). Public-Private Contracts for water supply services must be submitted to the Board for review and approval. However, N.J.S.A. 58:26-25, confines the scope of the Board's review of such contracts to four specific areas. In its review of the contract the Board shall apply the following criteria in determining whether to approve the contract:

- 1 The private firm entering into the contract has the financial capacity and technical and administrative expenses to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning

financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.

2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate based rate of return methodology.
3. The franchised customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water; and
4. The contract contains the provisions required by paragraph (1) (2) and (6) of subsection e. of section 5 of P.L. 1995, c 101 (C 58:26-23).

The Water Act further states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges.

The Courts have held that the Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities undertake to service residents in other municipalities. See Petition of South Lakewood Water Co., (61 N.J. 230 (1972)). Pursuant to N.J.S.A. 40A:31-23 (d) (1) the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction "by inference" or "lightly implied." Jersey City Incinerator Authority v. Dept. of Pub. Util., 146 N.J. Super. 243, 255-56 (App. Div. 1976). Rather, a grant of such power "must be firmly anchored in some clear legislative delegation of jurisdiction." Id. at 256. Furthermore, the Board's own enabling statute expressly limits the Board's jurisdiction over contracts of the type under review here to the parameters of the Public-Private Contracting Act. N.J.S.A. 48:2-13 states:

Except as provided in [N.J.S.A. 58:26-25] the Board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to [N.J.S.A. 58:26-19] in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the Board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to [N.J.S.A. 58:28-19].

In accord with this legal mandate, the Board has limited the scope of its review to the four criteria set forth above and, for reasons discussed below, concludes that the contract meets the applicable criteria. Because the Legislature has carefully circumscribed our authority over the rates to be charged to end-use customers and other issues, the Board does not make any

determination with respect to issues related to the ultimate rates to be charged by the Jersey City Municipal Utilities Authority to its residents for services.

Background / Parties to the Contract

The City of Jersey City's water system, servicing approximately 35,890 customers within the boundaries of the City of Jersey City, is currently operated by UWJC pursuant to a POSA entered into by JCMUA and UWJC on or about January 1, 2000 (Initial POSA). The Initial POSA was approved by the Board on January 27, 2000, under Board Docket No. WE99110867. Being that the old POSA is about to expire, (January 31, 2008)¹ JCMUA initiated the process of bidding, negotiating and approving a new POSA for the operation of the Jersey City water supply system.

On October 21, 2005, the JCMUA made application to the Local Finance Board (LFB) and the Board of Public Utilities for review and approval of substantial amendments to the Initial POSA, as well as, comment by the Department of Environmental Protection (DEP). At its December 21, 2005 Agenda Meeting, the Board approved these amendments. In December 2005, these amendments were also approved by the LFB. The DEP chose not to comment on these amendments.

United Water Jersey City is a wholly owned subsidiary of United Water Operations, which in turn is a wholly owned subsidiary of United Water Resources, (UWR) a New Jersey Corporation, and a Board regulated public utility. United Water Jersey City has demonstrated over the past eleven years that it has the financial, technical and administrative capacity to meet all the demands of the proposed contract. For the last eleven years, United Water Jersey City has increased revenues and reduced costs which have contributed to stabilized rates for the City. The Company has also helped the City grow by improving water system performance, water quality and service reliability.

In addition, United Water Management and Services, (UWMS) a New Jersey corporation, provides various support services to United Water Jersey City for this project and is a wholly owned subsidiary of UWR, the project guarantor. UWMS provides support services such as technical, engineering, legal, accounting and tax to United Water Jersey City. UWR, founded as Hackensack Water Company in 1869, initially provided water service to the counties of Hudson and Bergen, and has now grown to be one of the nation's leading water service companies providing water and wastewater services to 7.7 million people in 21 states. In addition to owning and operating regulated utilities, UWR operates municipal systems through public-private partnerships and contract agreements. UWR was later acquired by Suez, an international industrial and services group. Suez provides public authorities, businesses and individuals with services in electricity, natural gas, energy services and water and wastewater management. UWR is a subsidiary of the Suez Environment division of Suez. Suez Environment's business activities include drinking water production and distribution, wastewater collection and treatment and waste treatment and recovery.

¹ The POSA contains a provision that allows for an extension of the termination date. Specifically, the POSA states "if the Agreement expires or is terminated by either party for any reason, the Contractor agrees to furnish the services necessary to continue normal operations for a period of sixty (60) days after the termination date.

MUNICIPALITY'S SELECTION PROCESS

Pursuant to N.J.S.A. 58:26-19 et seq., the JCMUA issued a public notice of intent to contract for a professional operations services agreement. The notice was published on May 29, 2007, in the Star Ledger and the Jersey Journal. A Request for Proposal (RFP) was available to all interested proposers at the JCMUA. Proposals were to be submitted no later than 4:00 pm on July 31, 2007.

On July 31, 2007, the JCMUA received one proposal, United Water Jersey City. The Evaluation Committee, consisting of Counsel, the Executive Director, the Chief Engineer, the Director of Financial Management, the Purchasing Agent, the City Engineer, and outside consultants from Hatch Mott MacDonald, reviewed UWJC's response. On or about October 11, 2007, the JCMUA and UWJC met for an informal question and answer session.

On November 12, 2007, the JCMUA published notice that it would be holding a public hearing on the proposed POSA. Copies of the final draft POSA were made available to the public at the JCMUA. The public hearing was held on November 29, 2007, at the Jersey City Municipal Utilities Authority office in Jersey City, New Jersey. At the public hearing, no member of the public made comment with respect to the POSA. Pursuant to the Water Act, the public hearing was held open for written comment for seven (7) days, until the close of business on December 6, 2007. No written comments were submitted by the public. A public hearing report has been prepared and has been submitted with this application.

On December 27, 2007, the Board of Commissioners of the JCMUA approved the proposed POSA, subject to approval by the LFB and the Board, and comments by the DEP.

On February 13, 2008, the LFB approved the public private contract agreement between the JCMUA and UWJC. The DEP has not provided any comments with respect to the public private contract.

PROVISIONS OF THE PUBLIC-PRIVATE CONTRACT

Pertinent provisions of the proposed Public-Private Contract between JCMUA and UWJC are as follows:

- 1 The base term of the POSA shall be for a ten (10) year period, ending on December 18, 2018. There shall be two (2) options to renew, at the exclusive discretion of the JCMUA, one for five (5) years and one for four (4) years.
2. The annual service fee for year one (1) shall be \$12,933,849. At the end of the first twelve (12) months of the POSA and in each subsequent year thereafter, the annual service fee shall be increased using the weighted average of the three component indices:
 - a. The Parties (JCMUA and UWJC) have agreed to use three component indices to most accurately reflect and project the annual increase in the service fee (Labor – 53.9%, Consumer Price Index – 37.6%, and Chemical costs – 8.6%):
 - b. For this fee, the POSA proposes that UWJC shall provide the following services:

- i. Provide a computer based maintenance management system and monthly reports;
- ii. Provide access to all billing and collection databases and related information to the JCMUA through real time internet access using a standard browser;
- iii. Ensure site, facility and equipment security;
- iv. Operate and maintain the watershed property and reservoirs;
- v. Perform routine maintenance on the buildings and grounds, including repaving, repainting and repairing roof leaks;
- vi. Operate, maintain and repair water transmission and distribution system and all its parts;
- vii. GPS and GIS: GIS all assets in the water distribution system to efficiently maintain the system;
- viii. Meters: Read or estimate a reading for all meters on at least a quarterly basis for all small meters and at least a monthly basis for all large meters. Bi-monthly billing for all small meters will continue until June 2009. After that small meters will be read on a quarterly basis;
- ix. Meter Purchase: The JCMUA shall be responsible for purchasing all meters and UWJC shall be responsible for installing all of them. The POSA provides that every small meter shall be changed/replaced every fifteen (15) years, or if the meter becomes defective, and every large meter shall be tested on a five (5) year cycle. Large meters shall be replaced on a case by case basis, at the discretion of the MUA;
- x. Hydrants: UWJC shall exercise and flush all hydrants in accordance with the Unidirectional Flushing Program - this means that one third of the hydrants will be flushed every year (so all will be done within a three year period);
- xi. Valve Exercise: Exercise all valves in the water supply system;
- xii. Indemnification: UWJC agrees to defend, indemnify, protect and hold and save harmless the JCMUA and the City, its officers and officials from and against any damage, order, claim, demand, penalty, judgment, including reasonable attorneys' fees arising from or in connection with the management, maintenance or operation of the facility by UWJC or service provided by UWJC except for disputes related to Billing and Collection matters. These matters will be dealt with separately under standard operating procedures.

The proposed Public – Private contract does not have a concession fee provision.

CONCLUSIONS

After review of the record herein, the Board FINDS that the statute-imposed criteria listed hereinabove have been met.

- 1 United Water Jersey City has the financial capacity and technical and administrative experience to ensure continuity of service over the contract term. United Water Jersey City is a wholly owned subsidiary of United Water Operations, which in turn is a wholly owned subsidiary of United Water Resources, (UWR) a New Jersey Corporation, and a Board regulated public utility. United Water Jersey City has demonstrated over the past eleven years that it has the financial, technical and administrative capacity to meet all the demands of the proposed contract. For the last eleven years, United Water Jersey

City has increased revenues and reduced costs which have contributed to stabilized rates for the City. The Company has also helped the City grow by improving water system performance, water quality and service reliability.

(N.J.S.A. 58:26-25 (c) (1)).

2. The terms of the contract are not unreasonable given the services that are to be performed by United Water Jersey City:
 - i. Provide a computer based maintenance management system and monthly reports;
 - ii. Provide access to all billing and collection databases and related information to the JCMUA through real time internet access using a standard browser;
 - iii. Ensure site, facility and equipment security;
 - iv. Operate and maintain the watershed property and reservoirs;
 - v. Perform routine maintenance on the buildings and grounds, including repaving, repainting and repairing roof leaks;
 - vi. Operate, maintain and repair water transmission and distribution system and all its parts;
 - vii. GPS and GIS: GIS all assets in the water distribution system to efficiently maintain the system;

(N.J.S.A. 58:26-25 (c) (2)).

3. N.J.S.A. 58:26-25 (c) (3) is intended to protect franchise customers outside the City of Jersey City. All of the JCMUA's retail customers are located within Jersey City's boundaries, except for 55 retail customers including 6 bulk water sales customers, which are located outside Jersey City's boundaries. The rates charged for these outside customers are the same as those charges for the customers within Jersey City's boundaries.

4. The contract contains provisions addressing the following:

N.J.S.A. 58:26-23 (e) (1); the charges, rates, fees or formulas to be used to determine the charges, rates, or fee to be charged by the public entity for the water supply services to be provided are incorporated. JCMUA fixes the rates for the water service pursuant to N.J.S.A. 40:14B-21. The service agreement does not fix rates for the JCMUA customers. The JCMUA rates for retail customers outside of Jersey City are the same for similarly situated customers in Jersey City. There is no subsidization of customers outside the municipal boundaries. (See page 18 of the POSA).

N.J.S.A. 58:26 (e) (2); the allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; (See page 8-18 of the POSA) and;


N.J.S.A. 58:26-23 (e) (6); the employment of current employees of the public entity whose positions or employment will be affected by the terms of the contract are addressed. No employees of the JCMUA are affected by the POSA. (See page 27 of the POSA).

Therefore, based upon the above, the Board HEREBY APPROVES the Public-Private Contract JCMUA and UWJC, subject to the following provisions:

1. The JCMUA, within ten (10) days of receipt of this Order, shall submit the approval of the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs, as required by N.J.S.A. 58:26-25 (a).
2. The JCMUA shall notify the Board of any comments made by the New Jersey Department of Environmental Protection, based upon its review, in accordance with N.J.S.A. 58:26-25 (a), within ten (10) days of receipt of any such comments.
3. The JCMUA shall obtain the final opinion of Bond Counsel, pursuant to N.J.S.A. 58:26-23 (g) and submit it to the Board within ten (10) days of closing on the proposed Public-Private Contract.
4. The JCMUA shall notify the Board if the proposed Public-Private Contract is not executed within forty-five (45) days of the date of this Order and advise as to why such contract has not been executed.
5. Any extension of the contract beyond the initial 10-year term shall be subject to Board review and approval.
6. This Order shall be effective as of the date of this Order.

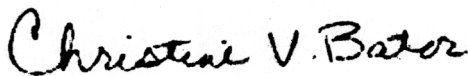
DATED: 3/4/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
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FREDERICK F. BUTLER
COMMISSIONER

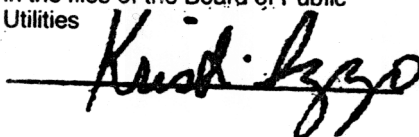

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THE APPLICATION OF THE JERSEY CITY MUNICIPAL UTILITIES
AUTHORITY FOR APPROVAL OR COMMENT TO A PROFESSIONAL OPERATIONS
SERVICES AGREEMENT BETWEEN UNITED WATER JERSEY CITY, INC. AND
PETITIONER, THE JERSEY CITY MUNICIPAL UTILITIES AUTHORITY

BPU DOCKET NO. WE08010007

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