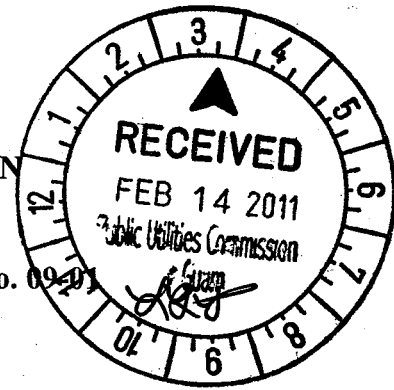


BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE: ADMINISTRATIVE DOCKET )  
CONTRACT REVIEW PROTOCOL )  
FOR THE PORT AUTHORITY OF )  
GUAM )

PAG Docket No. 09-01

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") upon the request of the Administrative Law Judge of the PUC (the "ALJ") for approval and adoption of the proposed Contract Review Protocol ("CRP") for the Port Authority of Guam ("PAG"), which is attached hereto as "Exhibit A."

BACKGROUND

1. Pursuant to Section 12000(a) of Title 12 of the Guam Code Annotated, PAG is a public utility.
2. Under Section 12004 of Title 12 of the Guam Code Annotated, public utilities may not "enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission."
3. Rule 22 of the PUC's Rules for Practice and Procedure provide that the PUC "shall by independent order after public hearing establish and amend a procedure to review utility contracts and obligations, pursuant to its duty under 12 G.C.A. § 12004."
4. The instant ALJ Report endeavors to assist the PUC in establishing and adopting a CRP in order to identify and review regulated contracts and obligations for PAG.

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RECEIVED  
LAW OFFICES OF  
HORECKY & ASSOCIATES  
Date: 2/14/2011  
Time: 4:27pm By: gmw

## ANALYSIS

### A. Contract Review Protocol

5. A discussion that touches on each of the provisions of the proposed PAG CRP follows:

#### i. Section 1

6. Section 1 of the attached proposed PAG CRP identifies the contracts and obligations generally covered under this protocol. The contracts and obligations identified under Section 1, therefore, require PUC approval before PAG may enter into such contracts. In addition, Section 1 also establishes the \$1.5 million contract review threshold. Accordingly, only contracts listed in Section 1 that exceed the \$1.5 million threshold are subject to the PUC's oversight. These contracts include: (1) all internally financed contracts that utilize PAG's operating funds and exceed \$1.5 million; (2) all professional service contracts that exceed \$1.5 million; (3) all externally funded loans and other financial obligations that exceed \$1.5 million; (4) all other contracts that exceed \$1.5 million; (5) any internally funded contract that exceeds a capital improvement project ("CIP") expenditure ceiling; and, (6) any agreement to compromise or settle disputed charges that exceeds the \$1.5 million threshold amount.

7. The ALJ considers the \$1.5 million review threshold reasonable, especially since the \$1.5 million threshold mirrors the Guam Power Authority's current review threshold, which is also set at \$1.5 million.

#### ii. Section 2

8. Section 2 of the CRP addresses revenue contracts, which do not necessarily require PUC approval. The revenue contracts that are implicated by this CRP are contracts involving PAG's receipt of revenues or reimbursement costs in excess of the \$1.5

million threshold. Section 2 provides that PAG is permitted to evaluate such contracts provided that PAG file with the PUC the following: (1) PAG Board of Directors' resolution authorizing the contract; and (2) a petition describing the contract along with supporting documentation.

**iii. Section 3**

9. Section 3 addresses emergency procurements of contracts. Section 3 provides that contracts in excess of \$1.5 million, sought under 5 G.C.A. Section 5215 as an emergency procurement, also do not necessarily require PUC approval. Instead, PAG is simply required to file with the PUC: (1) a report detailing the need for such emergency procurement; and, (2) any supporting documentation related to the emergency procurement.

**iv. Section 4**

10. Section 4 addresses multi-year contracts. Section 4 outlines the conditions that trigger contract review for multi-year contracts. Accordingly, multi-year contracts that fit the conditions set forth under Section 4 require PUC approval before PAG may enter into such contracts.

**v. Section 5**

11. Section 5 of the proposed CRP mandates yearly reporting of PAG's capital improvement budget.

**vi. Section 6**

12. Section 6 outlines PAG's contract review filing process. Section 6 provides that PAG must petition the PUC for regulatory contract review, and that such petition must be supported by the following: (1) PAG Board of Directors' resolution approving the contract; and (2) documentation that includes a report by PAG, or its consultants, supporting its selection of the contract.

**vii. Section 7**

13. Section 7 provides that where PAG has not previously sought the PUC's approval for a contract or obligation, it may do so pursuant to the provisions outlined under Section 6.

**viii. Section 8**

14. Section 8 of the proposed CRP mandates yearly reporting of PAG's contracts and obligations approved by the PUC for the prior fiscal year.

**ix. Section 9**

15. Under Section 9, all internally funded contracts and obligations may not cost the PAG more than ten (10) percent of the contract amount originally authorized by the PUC without the PUC's approval. In addition, all externally funded contracts or obligations also may not be increased without the PUC's approval. These provisions safeguard the regulatory process, as well as provide the agency with some flexibility related to necessary expenses that exceed the contract price.

**x. Section 10**

16. Under Section 10, PAG is required to file monthly financial reports with the PUC five (5) days after such reports are presented to PAG's Board of Directors.

**xi. Section 11**

17. In instances where PAG files a deficient or incomplete petition for regulatory review with the PUC, Section 13 requires the PUC to notify PAG within fifteen (15) calendar days from the date of PAG's filing to inform PAG of such deficiency. The ALJ considers fifteen (15) calendar days to be sufficient for the PUC to ascertain and respond to deficient or incomplete petitions.

**xii. Section 12**

18. Under Section 12, the PUC is required to “use best efforts” to prepare for a hearing on a petition for contract review within thirty (30) days. Section 12 further provides that the ALJ may, for good cause shown, expedite the hearing of such petition.

**xiii. Section 13**

19. Section 13 provides that where a rate or management audit proceeding has been initiated, the PUC is authorized to review all procurements and obligations.

**xiv. Section 14**

20. Under Section 14, the ALJ will be authorized to interpret any provision of the CRP in order to further the PUC’s regulatory oversight of PAG’s contracts.

**B. The PUC Review and Approval Process**

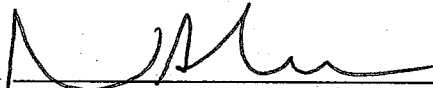
21. During the final development of the attached proposed CRP, consultants for the PUC recommended that the CRP include an outline of the PUC’s review and approval process. At this juncture, the ALJ will consider the consultants’ recommendations to incorporate the regulatory contract review and approval process into the CRP, and will assess whether such process necessitates inclusion in a subsequent CRP.

**RECOMMENDATION**

22. After careful review, the ALJ hereby recommends that the PUC approve and adopt the proposed PAG Contract Review Protocol. The ALJ finds that the provisions contained in the CRP are reasonable and fair. The ALJ further finds that these provisions should promote better efficiency in the regulatory contract review process. Moreover, the ALJ finds that because PAG currently lacks a CRP, the adoption of one is crucial at this time, especially in light of the impending military buildup.

23. For the consideration of the Commission, Orders are submitted herewith approving the proposed Contract Review Protocol.

Dated this 14<sup>th</sup> day of February, 2011.

A handwritten signature in black ink, appearing to read 'D. Mair', written over a horizontal line.

**DAVID A. MAIR**  
Administrative Law Judge

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE:           ADMINISTRATIVE DOCKET    )           PAG DOCKET 09-01**  
**CONTRACT REVIEW            )           ORDER**  
**PROTOCOL FOR THE PORT        )**  
**AUTHORITY OF GUAM            )**  
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Pursuant to its authority under 12 G.C.A. § 12004, the Guam Public Utilities Commission (the "PUC") establishes the following protocol to identify and review regulated contracts and obligations of the Port Authority of Guam ("PAG"):

1. The following PAG contracts and obligations shall require prior PUC approval under 12 G.C.A. § 12004:
  - a) All internally financed contracts utilizing O&M funds in excess of \$1,500,000, whether or not the contract extends over a period of one year or several years.
  - b) All professional service contracts in excess of \$1,500,000.
  - c) All externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,500,000. PAG shall file a petition with the PUC seeking approval as to the intended uses of the proceeds from externally funded loan obligations. The petition shall include a detailed list of projects, a description of the projects, and their estimated costs. PAG shall thereafter report on the expenditure of such proceeds in the manner set forth in Section 5 below or as otherwise ordered by the PUC.
  - d) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved capital improvement project ("CIP") or contract.
  - e) Any internally funded contract in excess of a CIP expenditure ceiling, which the PUC shall establish on or before November 15 of each fiscal year.
  - f) Any agreement to compromise or settle disputed charges for services by PAG, when the amount of the waived charges would exceed \$1,500,000.
2. For contracts that involve the receipt by PAG of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:

**EXHIBIT A**

- a) PAG is permitted to evaluate the contract without PUC approval.
  - b) Prior to entering into the contract, PAG will provide the following to the PUC:
    - i) The PAG Board of Directors resolution authorizing the contract.
    - ii) A petition describing the contract along with supporting documentation.
  - c) The contract will be deemed approved unless rejected by the PUC within thirty (30) calendar days after an adequate filing (as determined by the ALJ) has been made by PAG pursuant to subsection (b) of this Section.
3. Emergency procurements, which are made by PAG pursuant to 5 G.C.A. § 5215, shall not require PUC approval; provided, however, that PAG shall file with the PUC a report for any emergency procurement contract over \$1,500,000 within sixty (60) calendar days following the entry into such contract explaining the need for the procurement and providing supporting documentation and approvals for the emergency.
4. With regard to multi-year contracts:
- a) The term of a contract will include all options for extension or renewal.
  - b) The test to determine whether a contract exceeds the \$1,500,000 threshold for PUC review and approval (the review threshold) is the total bid amount of the procurement, including all costs incurred in any renewal options.
  - c) For a multi-year contract with fixed terms and fixed annual costs, PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold. No additional PUC review shall be required after the initial review process.
  - d) For multi-year procurements with fixed terms and variable annual costs, PAG shall seek PUC approval of the contract if the aggregate cost estimate for the entire term of the procurement exceeds its review threshold. On each anniversary date during the term of the procurement, PAG shall file a cost estimate for the coming year of the procurement. PAG shall seek PUC approval in the event a procurement subject to this Section should exceed 120% of the aggregate cost initially approved by the PUC.
5. On or before September 15 of each year, PAG will use best efforts to file with the PUC its capital improvement budget for the coming fiscal year, plus estimates for



the subsequent two (2) fiscal years. The filing shall contain a description of each CIP contained with the budget and estimates. Project descriptions should be sufficiently detailed to identify the specific location and type of equipment to be purchased, leased, or installed. For capital items that are subject to review by account group, PAG shall file information equivalent to that submitted to its Board of Directors for these items.

6. With respect to any contract or obligation which requires PUC approval under this Order, PAG shall initiate the regulatory review process through a petition, which shall be supported with the following:
  - a) A resolution from the PAG Board of Directors that the proposed contract is reasonable, prudent and necessary and that the PAG Board of Directors has authorized PAG to proceed with the procurement, subject to PUC review and approval.
  - b) The documentation on which the PAG Board of Directors based its approval under subsection (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:
    - i. A description of the project, including timeframes, time constraints, deadlines, and a justification of its need.
    - ii. The projected source of funding for the project with appropriate justification and documentation.
    - iii. A finding that the contract is necessary within the context of other utility priorities.
7. If during any fiscal year, PAG desires to undertake a contract or obligation covered by Section 1, for which approval has not otherwise been received, it may file an application with the PUC for approval of such contract or obligation, which shall contain the information required in Section 6 above.
8. PAG shall, on or before December 1 of each year, file a report on the contracts and obligations approved by the PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by the PUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and in service or completion dates.
9. PAG shall not incur expenses for PUC approved internally financed contracts and obligations in excess of 10% over the amount authorized by the Commission without prior PUC approval. In the event that PAG estimates that it will exceed the PUC approved level of expenditures by more than 10%, it shall submit to the

PUC the revised estimate and full explanation of all additional costs. PAG shall not increase the amount of any externally financed obligation without prior PUC approval.

10. PAG shall file with the PUC monthly financial reports within five (5) business days of presentation of such monthly financial reports to its Board of Directors.
11. To the extent PAG submits a filing to the PUC under this Order which the PUC staff believes is incomplete or deficient, it shall notify PAG within fifteen (15) calendar days thereof with specific indication of the alleged incompleteness or deficiency.
12. The PUC staff will use best efforts to be prepared for hearing within thirty (30) calendar days of a complete PAG filing under the terms of Section 6 above. The PUC's administrative law judge is authorized, in his judgment, to shorten the above thirty (30) day period for good cause shown by PAG.
13. Within the context of a rate or management audit proceeding, the PUC staff may review the prudence of all procurement or obligations, whether or not subject to review herein.
14. The PUC's administrative law judge is authorized to interpret the meaning of any provision of this Order, in furtherance of the contract review process.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

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Joseph M. McDonald  
Commissioner

\_\_\_\_\_  
Rowena E. Perez  
Commissioner

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Filomena M. Cantoria  
Commissioner

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Michael A. Pangelinan  
Commissioner

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE: ADMINISTRATIVE DOCKET ) PAG Docket No. 09-01**  
**CONTRACT REVIEW PROTOCOL )**  
**FOR THE PORT AUTHORITY OF ) ORDER**  
**GUAM )**  
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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) upon the request of the Administrative Law Judge of the PUC (the “ALJ”) for approval and adoption of the proposed Contract Review Protocol (“CRP”) for the Port Authority of Guam (“PAG”), which is attached to the ALJ Report filed on February 14, 2011.

**DETERMINATIONS**

1. On February 14, 2011, the ALJ issued an ALJ Report regarding the approval and adoption of the CRP for PAG attached to the ALJ Report.
2. In the ALJ Report, the ALJ provided an overview of each provision contained in the proposed CRP.
3. The ALJ found that the provisions contained in the proposed CRP were reasonable and fair. The ALJ further found that the provisions contained in the CRP would promote better efficiency in the regulatory contract review process. Moreover, the ALJ additionally found that because PAG currently lacked a CRP, the adoption of one was crucial at this time, especially in light of the impending military buildup.
4. Thus, the ALJ recommended that the PUC approve and adopt the proposed CRP attached to the ALJ Report.

The Commission hereby adopts the findings made in the ALJ Report and, therefore, issues the following:

## ORDERING PROVISIONS

Upon consideration of the record herein, the February 14, 2011 ALJ Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The Commission approves and adopts the Contract Review Protocol, which the Commission files as a separate Order. This Contract Review Protocol shall govern the procedure to identify and review regulated contracts and obligations of PAG.

2. PAG is further ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with conducting the review process. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

SO ORDERED this \_\_\_\_ of February, 2011.

\_\_\_\_\_  
Jeffrey C. Johnson  
Chairman

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Joseph M. McDonald  
Commissioner

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Rowena E. Perez  
Commissioner

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Filomena M. Cantoria  
Commissioner

\_\_\_\_\_  
Michael A. Pangelinan  
Commissioner