

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:	ADMINISTRATIVE DOCKET)	PAG DOCKET 09-01
	CONTRACT REVIEW)	ORDER
	PROTOCOL FOR THE PORT)	
	AUTHORITY OF GUAM)	

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 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 \$1,000,000, whether or not the contract extends over a period of one year or several years.
 - b) All capital items by account group utilizing O&M funds, which in any year exceed \$1,000,000.
 - c) All professional service contracts in excess of \$1,000,000.
 - d) All externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000. PAG shall file a petition with the PUC seeking approval as to the intended uses of the proceeds from externally funded loan obligations and/or any use of bond proceeds. The petition shall include: (1) a detailed list of projects; (2) a description of each project; (3) a justification and cost-benefit analysis demonstrating the need for each project; and (4) the estimated cost for each project. PAG shall thereafter report on the expenditure of such proceeds in the manner set forth in Section 6 below or as otherwise ordered by the PUC.
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,000,000, not including individual contracts within an approved capital improvement project (“CIP”) or contract.
 - f) Any internally funded contract in excess of a CIP expenditure ceiling, which the PUC shall establish on or before November 15th of each fiscal year.

- g) Any agreement to compromise or settle disputed charges for services by PAG, when the amount of the waived charges would exceed \$1,000,000.
- 2. For contracts involving externally funded loan obligations and use of bond funds, or any other contract that is in excess of the review threshold set forth herein, regardless of source, the following procedures shall apply:
 - a) PAG shall file all such contracts with the PUC. Contracts shall be filed within fourteen (14) calendar days in advance of contract execution by PAG.
 - b) The PUC may request more information from PAG relative to a proposed contract, or otherwise require PAG to file a Petition for Contract Review prior to entering into the Contract if PUC or its staff reasonably believes that the Contract could increase PAG's rates.
 - c) Such contract is deemed approved within fourteen (14) calendar days after receipt by PUC unless it notifies PAG of the need for more information or of PAG's need to file a Petition under the Contract Review Protocol.
- 3. For contracts that involve the receipt by PAG of revenues or reimbursement of costs in excess \$1,000,000, the following procedure will apply:
 - 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) PAG's governing body 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.
- 4. 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 \$1,000,000 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.

5. 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 \$1,000,000 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.
6. On or before September 15th 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 governing body for these items.
7. 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.
8. 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 7 above.
9. PAG shall, on or before December 1st 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.
10. 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.
11. PAG shall file with the PUC monthly financial reports within five (5) business days of presentation of such monthly financial reports to its governing body.
12. 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.
13. 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 7 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.
14. 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.

15. 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 20th day of June, 2011.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner