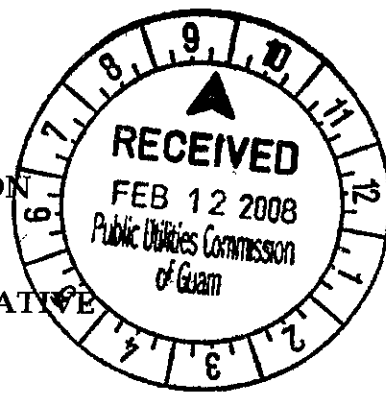


BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CONTRACT REVIEW PROTOCOL
FOR GUAM POWER AUTHORITY

ADMINISTRATIVE
DOCKET



Administrative Law Judge Report

The enabling legislation of the Guam Public Utilities Commission [PUC] [12 GCA § 12004] mandates that regulated utilities shall not enter into contractual agreements or obligations, which could increase rates and charges prior to PUC's written approval. By order, most recently amended on May 26, 2007 [Attachment A], PUC has established a contract review protocol [Protocol] for Guam Power Authority [GPA] by which the mandate of section 12004 is implemented. A December 16, 2008 letter from Mr. Blair, who serves as counsel to PUC's regulatory consultant Georgetown Consulting Group [GCG] [Attachment B], discusses the serious legal consequences of GPA's failure to comply with the Protocol.

Recent PUC orders recount GPA's persistent violation of the Protocol.¹ In response to this problem, GCG has recommended in its October 16, 2007 letter [Attachment D] that eight amendments be made to the Protocol. By letter dated January 11, 2008 [Attachment E], GPA dismisses many of the recommendations as micromanagement and recommends that PUC defer consideration of proposed Protocol amendments so that they can be brought into alignment with GPA's internal contract review procedures, which are being developed. GPA also recommends, without any analysis or justification, that the contract review threshold should be increased from \$1.5 million to \$3 million dollars.

With regard to these proposed Protocol amendments:

1. GPA has failed to present any argument or analysis in support of its recommendation that the contract threshold should be increased. Accordingly, it should be denied.

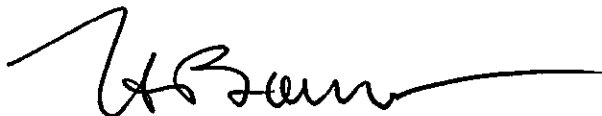
¹ See, for example: a] PUC May 26, 2007 Order, which considers among other things GPA's violation of the protocol regarding its Shell diesel fuel contract; b] PUC September 28, 2006 Order regarding GPA's RFO fuel contract with British Petroleum; c] PUC's February 2, 2006 Procurement Order regarding protocol violations [Attachment C]; and d] PUC's March 31, 2004 Order regarding protocol violations [Attachment D].

2. In Protocol section 4[c], GCG recommends that if GPA desires to amend the pricing terms in an approved multi-year fixed term contract, prior PUC approval should be required. GPA argues that this amendment is unnecessary and burdensome. The undersigned recommends that the last sentence of section 4[c] be amended to read: *No additional PUC review shall be required after the initial review process, unless GPA desires to amend the pricing terms, in which event GPA shall comply with Protocol section 4[d] before entering into such an amendment.*
3. The undersigned supports GCG's recommendation to amendment to Protocol sections 4[e] and 13 and to add a new section 12, provided that section 12 should read: *Unless prior relief is granted for good cause shown, GPA shall make no filing under this protocol less than 60 days before the proposed beginning of the term of the renewed, extended or new contract.*
4. GCG's proposal that a new section 15 be adopted to require that a copy of the protocol be included in *every* GPA procurement package [without regard to whether the procurement requires PUC approval] is burdensome and should not be adopted.
5. The undersigned supports GCG's recommendation that a new Protocol section should require that GPA contracts provide contractors with notice of the statutory requirement that certain contracts require prior PUC approval to be valid. The following substitute language is proposed: 15. GPA shall include the following as a standard provision in every contract it enters: **"PUC Approval.** GPA is required by law to obtain prior approval from the Guam Public Utilities Commission before entering into, extending or amending contracts, which could impact rates. This approval process is described in PUC's February 15, 2008 Order, which is available for inspection. GPA certifies that it has complied with this requirement, if applicable, before entering into this contract.
6. The undersigned supports GCG's recommendation in new Protocol section 16 that GPA be required to assign the duty of contract protocol compliance to a specific manager. PUC should be notified of this assignment.
7. The undersigned agrees with GPA that proposed Protocol section 18 is burdensome and should be rejected.
8. GCG's recommended section 19 [single bid procurements] has already been adequately addressed by recent amendment to Protocol section 5.

The undersigned recommends a further Protocol amendment to address the recurring dilemma, which PUC faces when GPA has entering into a contract in violation of the Protocol and then requests that it be ratified. This practice turns contract regulation on its head. The following new Protocol section is proposed to address this problem: *PUC cautions GPA that unless for extraordinary cause shown, PUC will not ratify a contract or contract amendment, which has been entered into in violation of this protocol order. PUC shall refer any such violation to the Office of the Public Auditor and to the Attorney General for appropriate action.*

An order, by which PUC could adopt these recommendations, is made *Attachment G.*

Dated this 9th day of February 2008.

A handwritten signature in black ink, appearing to read 'H. Boertzel', with a long horizontal flourish extending to the right.

Harry M. Boertzel
Administrative Law Judge

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



CONTRACT REVIEW PROTOCOL FOR
GUAM POWER AUTHORITY

)
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) ADMINISTRATIVE
) DOCKET

ORDER

Pursuant to its authority under 12 GCG Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Power Authority [GPA]:

1. The following GPA contracts and obligations shall require prior PUC approval under 12 GCA 12004, **which shall be obtained before the procurement process is begun:**
 - a) All capital improvement projects (CIP) in excess of \$1,500,000 whether or not a project extends over a period of one year or several years; provided, however, that no regulatory review shall be required for blanket job orders and line extensions.
 - b) All capital items by account group, which in any year exceed \$1,500,000;
 - c) All professional service procurements in excess of \$1,500,000;
 - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,500,000 and any use of said funds;
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved CIP or contract;
 - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
 - g) Any agreement to compromise or settle disputed charges for services by GPA, when the amount of the waived charges would exceed \$1,500,000.

2. For contract that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:
 - a) GPA is permitted to evaluate the contract without PUC approval;
 - b) Prior to entering into the contract, GPA will provide the following to PUC:
 - i) The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii) An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
 - iii) A narrative description of the contract.
 - c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b).
3. Emergency procurements, which are made by GPA under 5 GCA section 5215, shall not require PUC approval; provided, however that GPA shall file its section 5215 declaration, the governor's written approval of same, and the procurement details, as set forth in paragraph 5(b) below, within 20 days of the declaration. Any emergency procurement funded by other than bond revenues shall be included in the CIP ceiling established under paragraph 1(f).
4. With regard to multi-year contracts:
 - a) The term of a contract or obligation [*procurement*] will be the term stated therein, including all options for extension or renewal.
 - b) The test to determine whether a procurement exceeds the \$1,500,000 threshold for PUC review and approval [*the review threshold*] is the total estimated cost of the procurement, including cost incurred in any renewal options.
 - c) For a multi-year procurement with fixed terms and fixed annual costs, GPA 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, GPA shall seek PUC approval of the procurement 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, GPA will file a cost estimate for the coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.
 - e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.
5. In the event GPA receives only one bid for a procurement, which is subject to this contract review protocol, GPA shall obtain prior CCU approval of the prudence of accepting the single bid. GPA shall file with PUC the documentation regarding this CCU prudence review within ten days of CCU action. PUC reserves the authority, after monitoring this prudence review process to reconsider the need for additional regulatory oversight over single bid procurements. In addition, in the event GPA determines to award a contract after receiving only a single bid, GPA shall provide PUC with the determination made by GPA pursuant to section 3102(c) (1) of Chapter 2, Division 4, Title 2 of the Guam Administrative Rules and Regulations, relating to single bid procurements.
6. On or before September 15 of each year, GPA will use best efforts to file with PUC its construction budget for the coming fiscal year plus estimates for the subsequent two 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, GPA shall file information equivalent to that submitted to its governing body for these items.
7. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GPA shall initiate the regulatory review process through a petition, which shall be supported with the following:
- a) A resolution from the Consolidated Commission on Utilities [CCU], which confirms that after careful review of the documentation described in subparagraph (b) below and upon

finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GPA to proceed with the procurement, subject to regulatory review and approval.


- b) The documentation on which CCU based its approval under subparagraph (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 and deadlines, and a justification of its need.
 - ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
 - iv. Cost estimates and supported milestones for the selected alternative.
 - v. The projected source of funding for the project with appropriate justification and documentation.
 - vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
8. If during any fiscal year, GPA desires to undertake a contract or obligation covered by paragraph 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 paragraph 6 above. GPA shall obtain PUC approval thereof before the procurement process is begun.
9. GPA shall, on or before December 1 of each year, file a report on the contracts and obligations approved by PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by 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 inservice or completion dates.

10. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by the Commission without prior PUC approval. In the event that GPA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
11. GPA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to its governing body.
12. To the extent GPA submits a filing to PUC under this order which PUC staff believes is incomplete or deficient, it shall notify GPA and the PUC within 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.
13. PUC staff will use best efforts to be prepared for hearing within 45 days of a complete GPA filing under the terms of paragraph 6 above. PUC's administrative law judge, in his judgment, may shorten the above 45 day period, for good cause shown by GPA.
14. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
15. 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 26th day of May, 2007.


Terrence M. Brooks


Edward C. Crisostomo


Joseph M. McDonald


Jeffrey C. Johnson

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OF COUNSEL
WILLIAM B. CLEARY

December 16, 1998

VIA FACSIMILE
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Administrative Law Judge
GUAM PUBLIC UTILITIES COMMISSION
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Hagåtña, Guam 96910

**RE: CONSEQUENCES OF FAILURE TO COMPLY
WITH 12 GCA § 12004**

Dear Mr. Boertzel:

You have requested from me an analysis of what might be the legal consequences of the Utilities subject to the jurisdiction of the Guam Public Utilities Commission ("PUC") entering into contracts without first receiving the approval required under 12 GCA § 12004, including the possibility of civil or criminal liability of the responsible Utility employees.

We have only conducted a cursory review of the laws of Guam which may be applicable. We have not attempted to reach any definitive conclusions at this time, as we thought this was beyond the scope of your initial inquiry. Rather, this letter is intended to be more in the vein of an "issue-spotting" exercise. We believe additional research would be necessary in order to come to more definitive conclusions. Nonetheless, our cursory research suggests to us that there is a significant potential for both civil and criminal liability for employees of the Utilities who approve and enter into contracts which do not have the required PUC approval under 12 GCA § 12004 and the contract approval procedures established

ATTACHMENT B

To Harry M. Boertzel, Esq.

Date December 16, 1998 Page 3

The requirement of 12 GCA § 12004 that the PUC must first approve any contracts which "could affect rates," is a critical, indeed absolutely essential, element of the ratemaking process in the context of the Guam regulatory scheme. If the Utilities were free to enter into contracts, without prior review as to their reasonableness or prudence, the PUC's statutory mandate would require it to establish rates sufficient to pay for such contracts irregardless of how imprudent they may have been. In prior dockets, the PUC has rejected the suggestion that its authority in this area is limited for the simple reason that to hold otherwise would eviscerate the regulatory scheme contemplated by Guam law. That is to say, if the Utilities were free to enter into contracts without prior approval or if the PUC was bound to honor such contracts, its regulatory role would be rendered meaningless.

At the same time, the PUC has recognized that, in a metaphysical sense, each and every contract entered into by a Utility "could" affect rates and, thus, implicate the possible need for prior PUC approval. It was recognized that such an interpretation would place unreasonable burdens on the Utilities with no offsetting benefits to the Utilities' ratepayers. For this reason, the PUC's staff consultants have worked with each of the Utilities to establish agreed upon contract approval procedures which would minimize the need for seeking prior PUC approval. Stipulations have been entered into between the PUC staff consultants and each of the Utilities in dockets opened by the PUC specifically for that purpose. These stipulations recommending contract approval procedures have been approved by PUC orders.

In addition, the PUC has imposed requirements to seek prior approval of certain contracts entered into in connection with specified projects which were submitted to it for its approval. In the case of GPA, for example, certain revenue bond funded projects have been approved based on cost estimates submitted to the PUC by GPA which were subject to rigorous scrutiny by the PUC and its consultants. Only after careful cost benefit analyses were performed were certain of these contracts considered to be prudent and, therefore, reasonable. The approvals of the PUC were conditioned on GPA staying within the budget estimates reviewed and approved by the PUC. To the extent GPA determined that the costs of the projects would exceed the approved budgets (which invariably

To Harry M. Boertzel, Esq. Date December 16, 1998 Page 4

include a contingency allowance), GPA is obligated to seek prior approval before entering into any contract which would exceed the approved limitation.

Other limitations have been imposed by the statutes which have approved the issuance of revenue bonds. For example, the statutes approving issuance of revenue bonds have, in some cases, limited the use of the bond proceeds to certain projects and no others, without the prior approval of both the PUC and the Guam Legislature. See Public Law 22-136, as an example.

THE PROBLEM — FAILURE TO OBTAIN REQUIRED APPROVAL

Despite these clear limitations, employees of the Utilities have regularly and routinely entered into contracts without seeking the required prior approval of the PUC. Such contracts are entered into in violation of 12 GCA § 12004, applicable PUC orders, other Guam statutes, and the Utilities' own commitments made in the form of stipulations reached in the various dockets.

WHAT ARE THE CONSEQUENCES?

1. Contracts are probably void or voidable.

18 GCA § 88101 (formerly Guam Civil Code § 1667) defines what is "unlawful" in connection with obligations or contracts. That section provides as follows:

What is unlawful? That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals.

As noted, the entering into contracts which "could affect rates" without prior PUC approval is contrary to an express

Harry M. Boertzel, Esq.

Date December 16, 1998 Page 5

provision of law, as well as contrary to the policy of express law. As such, it would seem fairly certain that such contracts by Utilities are "unlawful" contracts and, therefore, likely unenforceable.

To the extent that the contracts might be subject to the strictures of the Guam procurement law, unlawful contracts are, at the least, voidable. 5 GCA § 5451, for example, provides that:

[I]f prior to award it is determined that a ... proposed award of a contract is in violation of law, then the ... proposed award shall be ... cancelled; or ... revised to comply with law.

See, also, GSA Procurement Regulation § 9-202.01. After an unauthorized award is made, if the contractor did not procure the contract through fraud or bad faith, the contract may be ratified and affirmed, or terminated and the person awarded the contract compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. 5 GCA § 5452; GSA Procurement Regulation § 9-203.01.

Presumably, therefore, the PUC could declare a proposed award of a contract or an already awarded contract to be improper and unlawful and order the Utility to take the steps necessary to cancel or terminate the contract.

2. Personal Liability of contracting officers.

Chapter 14 of Title 4 of the Guam Code Annotated governs certifying and disbursing officers of the Government of Guam. The chapter covers the purchasing activities of autonomous agencies, such as the three government-owned Utilities and their dealings with special or trust funds. 4 GCA §§ 14101(a) and (c). Under § 14101(a), a certifying officer may be held personally accountable for and required to make good to the Government of Guam or, in this case, the Utility, the amount of any illegal, improper or incorrect payment resulting from any false, inaccurate or misleading certificate made by him, as well as for payments prohibited by law which did not represent legal obligations under the appropriation or fund involved. 4 GCA § 14105(a)(3). Certain exceptions to

Harry M. Boertzel, Esq.

Date December 16, 1998 Page 6

personal liability (such as good faith) are outlined at 4 GCA §§ 14105(b) and (c). Similar personal liability is also imposed upon disbursing officers (as defined in § 14101(b)) under 4 GCA § 14104(1).

Employees of the three government-owned Utilities are delegated responsibilities to act as procurement employees pursuant to the Government of Guam's procurement laws. They have responsibility for ensuring that funds of their agencies (such as the various funds established under bond covenants or reserved funds established by PUC orders) are properly used to pay only lawful obligations. Payments made pursuant to contracts entered into in violation of 12 GCA § 12004, other applicable statutes, or express PUC orders having the force and effect of law would thus potentially trigger personal liability on the part of the certifying or disbursing officers.

Such personal liability would be consistent with the generally recognized rule that makes a public official who controls public funds personally liable to repay improperly expended funds if the official has failed to exercise due care in permitting the expenditure. See, e.g., Stevens v. Geduldig, 27 Cal.Rptr. 405, 410 Cal. 1986; 63C. Am.Jur.2d Public Officers and Employees § 346.

3. Possible criminal penalties.

Chapter 14 of Title 4 also imposes criminal sanctions on certifying or disbursing officers for authorizing an expenditure of funds in excess of an appropriation. Under 4 GCA § 14105(a)(5), employees are held accountable for and required to make good to the Government of Guam the amount of the illegal, improper or incorrect payment resulting from a false, inaccurate or misleading certificate by him, as well as for payment prohibited by law which did not represent a legal obligation under the appropriation or fund involved. Such conduct constitutes a misdemeanor punishable by a fine not to exceed \$1,000 and a term of imprisonment of up to one year. 4 GCA § 14105(a)(5); 9 GCA §§ 80.34(a), 80.50.

It is presumed such liability would attach to an employee of a Utility since autonomous agencies are specifically covered by Title 4, Chapter 14.

Harry M. Boertzel, Esq.

Date December 16, 1998 Page 7

4. Administrative sanctions.

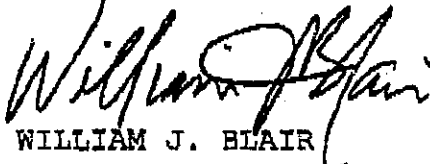
The only sanction specifically made available to the PUC is found in 12 GCA § 12020. That section provides that "any public utility violating or neglecting or failing in any particular way to conform to or comply with this Chapter or any lawful order of the Commission shall forfeit to the Public Utilities Commission funds no more than \$500 for every violation, neglect or failure per day." (Emphasis added.) The efficacy of such a fine is questionable, however, inasmuch as it would be the ratepayers of the Utility who would ultimately bear the brunt of any such fine. To the extent a Utility was fined, however, it could, depending on the facts, presumably seek reimbursement from the employee whose conduct led to the imposition of the fine.

SUMMARY

As noted, initially, I have not attempted to reach definitive conclusions as to the legal issues raised here. The objective of this letter is to alert the Utilities to the fact that continued disregard and disdain for the requirement to comply with 12 GCA § 12004 and applicable PUC orders may have severe consequences. On their face the statutes cited herein appear applicable. Moreover, the normal fiduciary obligations of the officers and agents of the Utilities which flow from agency and corporations law principles would also seem relevant.

Very truly yours,

KLEMM, BLAIR, STERLING & JOHNSON
A Professional Corporation


WILLIAM J. BLAIR

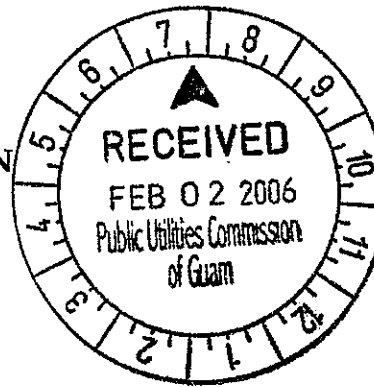
cc: Mr. Jamshed K. Madan

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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM POWER AUTHORITY
PROCUREMENT REVIEW

DOCKET 94-04



Procurement Order

This Order reviews a number of Guam Power Authority [GPA] procurements, which under PUC's December 16, 2003 contract review protocol order [Protocol] require regulatory approval before the procurement process begins. This order also amends the Protocol.

1. Ratification of unapproved procurements.

Georgetown Consulting Group's [GCG] recent review of GPA's FY05 procurement activities disclosed three procurements, which were entered into by GPA in violation of the Protocol. PUC finds these multiple violations particularly disturbing given its admonishment of similar activity in its March 31, 2004 Order [Attachment A], which recommended that *the Consolidated Commission on Utilities [CCU] institute governing controls to assure that GPA strictly complied with the requirements of the Protocol.*

GCG by letters dated December 29, 2005, January 10, 2006 and January 24, 2006 recommends that PUC ratify the following procurements:

- a. 2005 TEMES Deferred Payment Agreement, involving the financing of \$2.99 million in capital expenditures on the Cabras 1 & 2 plants. [amount exceeds \$1.5 million contract review threshold.] PUC approval is also expressly required by PUC's December 16, 2002 Order in Docket 02-04.
- b. 2005 Diesel Engine Cylinder Lubrication Oil Contract. [approval required under Protocol section 4 (multi-year procurement).
- c. 2005 Amendments to Property & Casualty Insurance Policy. [approval required due to a material amendment (\$6.5 million dollar increase in deductible risk) to multi-year policy with \$7.18 million annual premium].

After review of the GCG letters, on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves that the above procurements be and are hereby ratified. PUC reminds GPA and CCU that continued violation of the Protocol is unacceptable and if it reoccurs will require a more pro-active regulatory oversight of GPA procurement activities. As explained in Mr. Blair's December 16, 1998 opinion letter [*Attachment B*], serious legal consequences can result from GPA's failure to obtain PUC approval of regulated contracts.

2. FY06 CIP Ceiling.

The Protocol provides that PUC will annually set a ceiling for GPA internally funded capital improvement expenditures. GCG by its January 24, 2006 letter recommends that the FY06 ceiling be set at \$17.3 million dollars.

After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves to approve the \$17.3 million dollar ceiling.

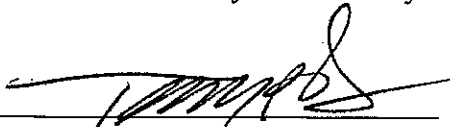
3. 2006 Deferred Payment Agreements.

On December 15, 2005, GPA petitioned PUC for expedited review and approval of 2006 deferred payment agreements with TEMES and Doosan. By its January 10, 2006 letter, GCG has recommended that the agreements be approved. After review, Chairman Brooks determined that adequate grounds existed to warrant his approval of the procurements in advance of PUC's February 2, 2006 business meeting. A copy of his order approving the agreements is made *Attachment C*. After discussion, on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves to ratify the chairman's order.

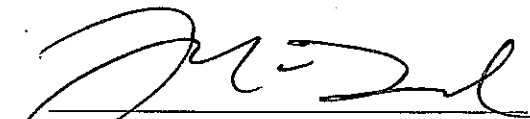
4. Amended Protocol.

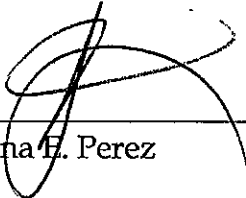
By Order dated October 27, 2005, PUC amended the contract review protocol applicable to Guam Waterworks Authority in order to incorporate a common review standard with CCU. This common standard, which was adopted by CCU on October 18, 2005, will facilitate an expedited and coordinated PUC review of regulated procurements. PUC staff has recommended that the GPA protocol be amended to incorporate the common review standard. After discussion and on motion duly made, seconded and carried by the undersigned commissioners, PUC resolves to amend the GPA protocol in form made *Attachment D*.

Dated this 2nd day of February 2006.


Terrence M. Brooks


Edward C. Crisostomo

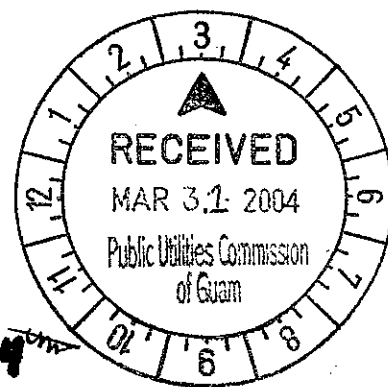

Joseph M. McDonald


Rowena E. Perez

BEFORE THE PUBLIC UTILITIES COMMISSION
OF GUAM

GUAM POWER AUTHORITY
REGULATORY DOCKET -
CONTRACT REVIEW

DOCKET 94-04



ORDER

In its November 28, 2003 report on Guam Power Authority's [GPA] informational filings with the Guam Public Utilities Commission [PUC], Georgetown Consulting Group [GCG] expressed concern regarding a disclosure in GPA's FY02 External Audit that in September 2000 bond reserve fund forward delivery agreements [Agreements] were entered into on GPA's behalf by Governor Gutierrez¹. Under the terms of the Agreements, GPA liquidated, at discount, a long-term interest revenue stream on certain bond proceeds for the payment of \$13.5 million dollars. There was no public notice or disclosure of the transaction. In the transaction, GPA incurred termination fees of \$3.35 million and closing costs of \$1.25 million. GCG recommended that PUC examine whether the transaction required PUC approval pursuant to 12 GCA 12004 and PUC's contract review protocol and further the consequences of GPA's failure to have obtained such PUC approval.

On January 5, 2004, PUC's administrative law judge [ALJ], found that the transaction raised substantial regulatory issues. GPA has conceded that it never sought or obtained PUC approval of the Agreements. GCG was directed by ALJ to investigate the transaction and to report to PUC in preparation for the March 2004 regulatory session. A copy of GCG's February 11, 2004 report is made *Attachment A*. The GCG report concludes that:

1. The transaction contained in the Agreements, by which GPA cashed in a long term revenue stream of interest on its bond reserves, constituted a borrowing which required prior PUC review under paragraph 1(d) of PUC's contract review protocol².

¹ Two agreements were entered into by GPA and its co-trustee U.S. Bank Trust National Association on September 28, 2000: one with Lehman Brothers Special Financing Inc. and one with Bank America N.A.

² The PUC contract review protocol in effect at the time of the transaction is contained in PUC Order dated February 25, 2000 in Docket 00-04.

2. The termination fees of \$3.35 million and closing costs of \$1.25 million, which GPA incurred in the transaction exceed the \$1.5 million review threshold for PUC's contract review. Accordingly, GPA required prior PUC approval before it could lawfully incur these transaction fees.
3. The \$700,790 broker's fee, which was paid to IMAGE in the transaction, is substantially greater than the \$227,800 fee it was paid in an earlier similar transaction and may deserve further investigation as to its reasonableness.
4. This transaction was entered into on GPA's behalf, by the Governor of Guam, under an assertion of organic authority, in the absence of a quorum of the GPA board of directors. There is a substantial question whether the transaction would have sustained regulatory scrutiny. GPA and Governor Gutierrez, with the aid of an ill advised Attorney General's opinion, sidestepped independent public scrutiny that PUC would have brought to bear under its contract review authority.
5. GPA's failure to have obtained prior PUC approval of the transaction in accordance with 12 GCA 12004, makes it voidable³. GCG, nevertheless, recommends that the transaction be ratified for the benefit of third parties.
6. PUC's contract review protocol should be amended to explicitly bring such transactions under PUC's contract review protocol and to put third parties on notice that they deal with regulated utilities at their own peril if required regulatory approval is not obtained.

In comments filed on March 5 and 9, 2004, GPA asserts that the Agreement did not require PUC approval, but nevertheless requests that PUC ratify the Agreement "*so that any questions as to the lawfulness of the Agreement are resolved*". A copy of the GPA comments are made Attachment C. GPA and GCG have agreed to submit this matter to PUC on the record and without need for public hearing.

³ By opinion dated December 16, 1998 [Attachment B] GCG's counsel opined on the consequences of a regulated utility's failure to comply with the requirements of section 12004.

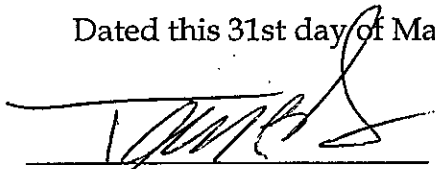
After careful review of the attachments hereto, after consultation with its administrative law judge and for good cause shown, the Guam Public Utilities Commission on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners hereby **FINDS AND ORDERS THAT:**

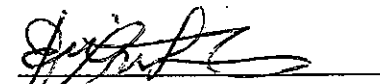
1. The transaction and the Agreements required prior PUC review and approval under 12 GCA 12004 and under PUC's contract review protocol. The transaction constituted a borrowing, which required PUC approval under section 1(d) of the protocol. Moreover, the \$4.6 million termination expenses, which GPA incurred required PUC approval under section 1(e) of the protocol. GPA's failure to have obtained this approval makes the transaction and the Agreements voidable. GPA's inability in its recent March 2004 filings with PUC to understand the clear need for regulatory review and approval of the transaction is troubling.
2. PUC shall reserve its decision of whether to ratify the Agreements and the transaction until the July 2004 regulatory session. In the interim, PUC's administrative law judge is directed to obtain further comment from GPA and GCG regarding: a. the potential negative consequences which could flow from PUC's refusal to ratify the Agreements and the transaction; and b. the impact of PUC's ratification of the Agreements and the transaction on potential civil and criminal liability, if any, of persons involved therein.
3. A copy of this Order shall be transmitted to the Attorney General of Guam and to the Public Auditor for such investigation as they may deem appropriate regarding the broker's fee, which was paid to IMAGE in the transaction.
4. A copy of this Order shall be transmitted to the Guam Legislature and to the Governor of Guam for such consideration as they may deem appropriate regarding the organic issues raised by Governor Gutierrez's assertion of executive authority in the absence of a quorum of the GPA board of directors and further regarding the need for statutory guidelines to govern future transactions of this kind by Guam public corporations and by the government of Guam.
5. Paragraph 1(d) of the contract review protocol dated December 16, 2003, which now governs PUC regulation of GPA contracts and obligations is hereby amended to read:

d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, and bond reserve fund forward delivery agreements [such as discussed in PUC's March 30, 2004 Order in Docket 94-03], in excess of \$1,500,000 and any use of the proceeds of such obligations and transactions;

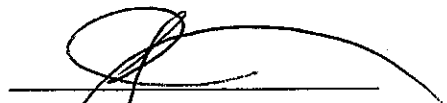
6. A copy of its Order shall be transmitted to the Consolidated Commission on Utilities with the recommendation that it institute governing controls to assure that both GPA and GWA strictly comply with the requirement of contract regulatory review, as contained in the protocols established by PUC.

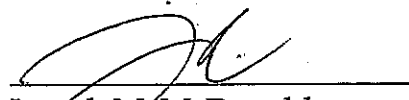
Dated this 31st day of March 2004.


Terrence M. Brooks


Edward C. Crisostomo


Gerald M. Woo


Rowena E. Perez


Joseph M. McDonald


Richie T. Lim


Filomena M. Cantoria

GEORGETOWN CONSULTING GROUP, INC.

716 DANBURY RD.
RIDGEFIELD, CT. 06877

Jamshed K. Madan
Michael D. Dirmeier



Telephone (203) 431-0231
Facsimile (203) 438-8420
jkmadan@gmail.com

Edward R. Margerison
Jean Dorrell

October 16, 2007

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Subject: Amendment to Contract Review Protocol

Dear Mr. Boertzel:

This letter is in response to your recent Email requesting that we renew our April request for changes in the contract review protocol in time for the October regulatory session. As you will recall, the suggested changes resulted from the inactions of GPA regarding the diesel fuel contract. In our April 2007 report (**Attachment A**), we describe more fully the issues raised by the diesel contract. As you noted in your e-mail only one of our suggested changes were included in a May 2007 update of the protocol (**Attachment B -¶6**).

Our recommended changes and additions to the May 2007 protocol are highlighted in **red** in **Attachment C** for ease of review by you and GPA, which has received a copy of this letter and attachments. We have also included our recommended changes that we described in our earlier report on the extension of the Shell lubricant contract. If I can be of further assistance, please do not hesitate to contact me.

Cordially,

Jamshed K. Madan

cc: William J. Blair, Esq.
Joaquin ("Kin") Flores, GM
Lou Palomo, PUC
Lou Sablan, CCU
Graham Boetha, Esq.

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Edward R. Margerison
Jean Dorrell

April 18, 2007

Harry M. Boertzel
Administrative Law Judge
Public Utilities Commission of Guam
Suite 207, GCIC Building
Post Office Box 862
Hagatna, Guam 96932

Subject: Amendment to Contract Review Protocol

Dear Mr. Boertzel:

As requested in your March 7th Memorandum to Kin Flores, we are making recommendations regarding suggested amendments to the Contract Review Protocol for the PUC to consider in light of the recent events regarding the diesel fuel procurement.

The contract approval protocol is the result of a stipulation between GCG and GPA. If GPA breaches the protocol, it is up to the PUC to take appropriate action. The PUC's powers are limited since it is a quasi-judicial entity. Thus, if GPA enters into a contract without needed PUC approval or exceeds the scope of any approval it obtained, any remedy to prevent further transgressions by GPA or to reverse GPA's actions can only be based on the limited powers of the PUC.

One possibility would be to require GPA (GWA & DPW) to insert clear and standardized language in its contracts relating to the need to obtain PUC approval. This would provide a stronger legal basis for a challenge to an imprudent contract that GPA entered into improperly. The PUC could require that GPA provide a copy of the contract approval protocol to any potential bidder on GPA contracts as part of any bid package and to include in any bid package a statement advising whether PUC approval was obtained or the basis upon which GPA asserts that PUC approval is not required. This would at least alert the bidders to the issue and put them on notice of possible action by the PUC or concerned ratepayer.

The PUC could of course deny rate recovery by not recognizing an obligation as being a legitimate revenue requirement, but this could potentially harm ratepayers by denying GPA funds that could be used for the unapproved contract and the lack of such funds could also cause other O&M costs to

ATTACHMENT A

increase from the reduced funding for maintenance or other projects. Denial of rate recovery used as a remedy for ignoring existing PUC protocols should only be used sparingly. However at the same time, the PUC cannot allow imprudent expenses to be incurred that would result in rates that are not just and reasonable. Retaining the express right to disregard contracts that have not been legally authorized and putting would be bidders on notice of the need for PUC approval would enhance the limited enforcement powers of the PUC.

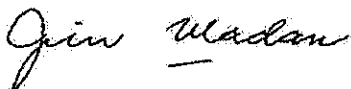
Another major concern to GCG is the lack of responses to recent GPA procurements, especially for supply of fuels. A basic premise underlying the Contract Approval Protocol is that once the PUC has conducted its prudence review and approved GPA proceeding with a particular procurement, the interests of the ratepayers will be protected by the competitive procurement process. However, only one bidder responded to recent diesel fuel procurements. In response to inquiries made by GCG, GPA advised that it made no effort to determine what aspects of bid documents may have discouraged other potential bidders. Thus, it is unknown if changes to the contract terms required by GPA in its bid documents might have encouraged more competition with the resulting benefits to GPA and its ratepayers. GPA's apparent indifference to the lack of competition is troubling to GCG. GCG believes GPA should be more proactive in its efforts to maximize competition, such as, by means of examples, scheduling a pre-bid conference to consider concerns or suggestions of interested bidders. We have made recommended changes to the Contract Approval Protocol in an effort to address our concerns and have attached our proposed redline version to this letter.

As the PUC has recommended and GPA appears to have implemented, we recommend that a specific person be identified as being responsible for the GPA filings and compliance with PUC orders also monitor GPA actions regarding the Contract Review Protocol.

In the past, annual filings required each December 1¹ have generally not made. This requirement would also be a task for the regulatory compliance contact at GPA. We also recommend that it be the responsibility of this individual to inform the PUC a week before each contract that has been approved for implementation is to be executed. Our recommendations have been inserted into the attached version of the existing GPA Contract Review Protocol.

If I can be of further assistance, please do not hesitate to contact me.

Cordially,



Jamshed K. Madan

cc: William J. Blair, Esq.
Joaquin ("Kin") Flores, GM
Graham Boetha, Esq.

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¹ February 2006 Contract Review Protocol, ¶ 8.

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

CONTRACT REVIEW PROTOCOL FOR)
GUAM POWER AUTHORITY)
) ADMINISTRATIVE
) DOCKET

ORDER

Pursuant to its authority under 12 GCG Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Power Authority [GPA]:

1. The following GPA contracts and obligations shall require prior PUC approval under 12 GCA 12004, **which shall be obtained before the procurement process is begun:**
 - a) All capital improvement projects (CIP) in excess of \$1,500,000 whether or not a project extends over a period of one year or several years; provided, however, that no regulatory review shall be required for blanket job orders and line extensions.
 - b) All capital items by account group, which in any year exceed 1,500,000;
 - c) All professional service procurements in excess of \$1,500,000;
 - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,500,000 and any use of said funds;
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,500,000, not including individual contracts within an approved CIP or contract;
 - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
 - g) Any agreement to compromise or settle disputed charges for services by GPA, when the amount of the waived charges would exceed \$1,500,000.
2. For contract that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000, the following procedure will apply:
 - a) GPA is permitted to evaluate the contract without PUC approval;

ATTACHMENT C

- b) Prior to entering into the contract, GPA will provide the following to PUC:
 - i. The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii. An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
 - iii. A narrative description of the contract.
 - c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GPA pursuant to subparagraph (b).
3. Emergency procurements, which are made by GPA under 5 GCA section 5215, shall not require PUC approval; provided, however that GPA shall file its section 5215 declaration, the governor's written approval of same, and the procurement details, as set forth in paragraph 5(b) below, within 20 days of the declaration. Any emergency procurement funded by other than bond revenues shall be included in the CIP ceiling established under paragraph 1(f).
4. With regard to multi-year contracts:
- a) The term of a contract or obligation [*procurement*] will be the term stated therein, including all options for extension or renewal.
 - b) The test to determine whether a procurement exceeds the \$1,500,000 threshold for PUC review and approval [*the review threshold*] is the total estimated cost of the procurement, including cost incurred in any renewal options.
 - c) For a multi-year procurement with fixed terms and fixed annual costs, GPA 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. **Contracts whose annual prices have been adjusted from the contract for which the PUC gave approval shall be viewed as new contracts and subject to the contract review protocol.**
 - d) For multi-year procurements with fixed terms and variable annual costs, GPA shall seek PUC approval of the procurement 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, GPA will file a cost estimate for the coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed

ATTACHMENT C

120% of the aggregate cost initially approved by PUC.

- e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made ~~sufficiently in advance~~ a **minimum of sixty (60) days** of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.
5. In the event GPA receives only one bid for a procurement, which is subject to this contract review protocol, GPA shall obtain prior CCU approval of the prudence of accepting the single bid. GPA shall file with PUC the documentation regarding this CCU prudence review within ten days of CCU action. PUC reserves the authority, after monitoring this prudence review process to reconsider the need for additional regulatory oversight over single bid procurements. In addition, in the event GPA determines to award a contract after receiving only a single bid, GPA shall provide PUC with the determination made by GPA pursuant to section 3102(c) (1) of Chapter 2, Division 4, Title 2 of the Guam Administrative Rules and Regulations, relating to single bid procurements.
6. On or before September 15 of each year, GPA will use best efforts to file with PUC its construction budget for the coming fiscal year plus estimates for the subsequent two 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, GPA shall file information equivalent to that submitted to its governing body for these items.
7. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GPA shall initiate the regulatory review process through a petition, which shall be supported with the following:
- a) A resolution from the Consolidated Commission on Utilities [CCU], which confirms that after careful review of the documentation described in subparagraph (b) below and upon finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GPA to proceed with the procurement, subject to regulatory review and approval.
 - b) The documentation on which CCU based its approval under subparagraph (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:

ATTACHMENT C

- i. A description of the project, including timeframes, time constraints and deadlines, and a justification of its need.
 - ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
 - iv. Cost estimates and supported milestones for the selected alternative.
 - v. The projected source of funding for the project with appropriate justification and documentation.
 - vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
8. If during any fiscal year, GPA desires to undertake a contract or obligation covered by paragraph 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 paragraph 6 above. GPA shall obtain PUC approval thereof before the procurement process is begun.
9. GPA shall, on or before December 1 of each year, file a report on the contracts and obligations approved by PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by 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 inservice or completion dates.
10. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by the Commission without prior PUC approval. In the event that GPA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
11. GPA shall file with PUC monthly financial reports within five working

ATTACHMENT C

days of presentation of monthly financial reports to its governing body.

12. GPA shall make no filing under the terms of this protocol less than 60 days before the beginning of the term of a renewed, extended or new contract.
13. To the extent GPA submits a filing to PUC under this order which PUC staff believes is incomplete or deficient, it shall notify GPA and the PUC within 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.
14. PUC staff will use best efforts to be prepared for hearing within 60 days of a complete GPA filing under the terms of paragraph 6 above. PUC's administrative law judge, in his judgment, is authorized, to shorten the above 60 day period, for good cause shown by GPA.
15. GPA shall include a copy of this Order in every procurement package provided to interested bidders or proponents.
16. GPA shall include in the standard terms and provisions of every contract awarded by it a statement approved by the PUC certifying compliance with the terms of this Order.
17. GPA shall assign an individual to be responsible for carrying out all of the requirements of this protocol.
18. For each contract that has been approved by the PUC, GPA shall provide notification to the PUC one week before the final contract is executed and with the annual variance report required under this protocol a matrix shall be provided that shows the dates that the PUC approved the contract and the date the contract was executed.
19. For any project that is bid out by GPA and for which only one bid is received, GPA shall inform the PUC of this occurrence and shall support why it believes it should be permitted to enter the contract. GPA shall await specific PUC approval to enter such a contract. GPA shall undertake appropriate liaison procedures to maximize potential participation of bidders in any bidding process.
20. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
21. PUC's administrative law judge is authorized to interpret the meaning of

ATTACHMENT C

any provision of this order, in furtherance of the contract review process.

Dated this 26th day of May, 2007.

Terrence M. Brooks

Joseph M. McDonald

Edward C. Crisostomo

Jeffrey C. Johnson



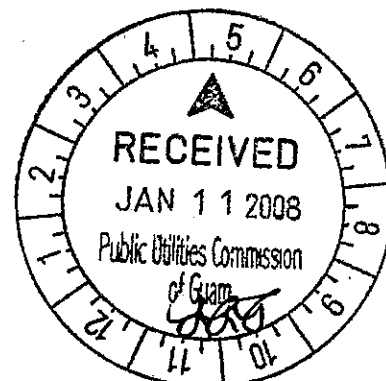
GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

January 11, 2008

ORIGINAL

Mr. Harry Boertzel
Administrative Law Judge
Public Utility Commission of Guam
Suite 401, GCIC Bldg.
Hagatna, Guam 96932



RE: GPA's Response to CGC's Proposed Amendment

Dear Judge Boertzel,

Pursuant to your letter of October 26, 2007, section 3e, GPA herewith submits its response to Georgetown Consulting Group's proposed amendments to the Contract Review Protocol for Guam Power Authority as referenced in their October 16, 2007 letter.

If you should have any questions, please contact me at 648-3225 or Graham Botha at 648-3203.

Sincerely,

JOAQUIN C. FLORES, P.E.
General Manager

Attachments

Cc: PUC Commissioners
CCU Commissioners
Georgetown Consulting Group – electronic copies
Mr. Randall V. Wiegand, Chief Financial Officer
Atty. Graham Botha, Esq., Staff Attorney

ATTACHMENT C

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
CONTRACT REVIEW PROTOCOL FOR
GUAM POWER AUTHORITY**

**ADMINISTRATIVE
DOCKET**

ORDER

Pursuant to its authority under 12 GCG Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Power Authority [GPA]:

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 - b) All capital items by account group, which in any year exceed 1,500,000 [3,000,000];
 - c) All professional service procurements in excess of \$1,500,000 [3,000,000];
 - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,500,000 [3,000,000] and any use of said funds;
 - e) Any contract or obligation not specifically referenced above which exceeds \$1,500,000 [3,000,000], not including individual contracts within an approved CIP or contract;
 - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
 - g) Any agreement to compromise or settle disputed charges for services by GPA, when the amount of the waived charges would exceed \$1,500,000 [3,000,000].
2. For contracts that involve the receipt by GPA of revenues or reimbursement of costs in excess \$1,500,000 [3,000,000], the following procedure will apply:
 - a) GPA is permitted to evaluate the contract without PUC approval;
 - b) Prior to entering into the contract, GPA will provide the following to PUC:
 - i. The Consolidated Commission on Utilities [CCU] resolution authorizing the contract.
 - ii. An affidavit from GPA management stating that the contract does not produce an increased revenue requirement with supporting

documentation.

iii. A narrative description of the contract.

- c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ has been made by GPA pursuant to subparagraph (b).
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 - c) For a multi-year procurement with fixed terms and fixed annual costs, GPA 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. Contracts whose annual prices have been adjusted from the contract for which the PUC gave approval shall be viewed as new contracts and subject to the contract review protocol. [GPA does not believe this is necessary. There is already a requirement to seek PUC approval in instances in which there is a 20% increase in the contract value. The proposed language would require even insignificant changes to be brought before the PUC]
 - d) For multi-year procurements with fixed terms and variable annual costs, GPA shall seek PUC approval of the procurement 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, GPA will file a cost estimate for the coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.
 - e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made ~~sufficiently in advance~~ a minimum of sixty (60) days of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.[GPA prefers not to include this language. GPA is currently reworking its internal procedures to allow for the annual contract review filing to be completed by June 1 rather than the September 15 requirement established by the PUC. This change would ensure there is ample review time for contracts going through the normal contract review process. However, GPA believes the PUC should allow for the ability to submit petitions for contract review

within a shorter time frame recognizing that action on a shorter time frame may be required from time to time as some business necessities cannot be easily forecast.]

5. In the event GPA receives only one bid for a procurement, which is subject to this contract review protocol, GPA shall obtain prior CCU approval of the prudence of accepting the single bid. GPA shall file with PUC the documentation regarding this CCU prudence review within ten days of CCU action. PUC reserves the authority, after monitoring this prudence review process to reconsider the need for additional regulatory oversight over single bid procurements. In addition, in the event GPA determines to award a contract after receiving only a single bid, GPA shall provide PUC with the determination made by GPA pursuant to section 3102(c) (1) of Chapter 2, Division 4, Title 2 of the Guam Administrative Rules and Regulations, relating to single bid procurements.
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7. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GPA shall initiate the regulatory review process through a petition, which shall be supported with the following:
 - a) A resolution from the Consolidated Commission on Utilities [CCU], which confirms that after careful review of the documentation described in subparagraph (b) below and upon finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GPA to proceed with the procurement, subject to regulatory review and approval.
 - b) The documentation on which CCU based its approval under subparagraph (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 and deadlines, and a justification of its need.
 - ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
 - iv. Cost estimates and supported milestones for the selected alternative.
 - v. The projected source of funding for the project with appropriate

justification and documentation.

- vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
8. If during any fiscal year, GPA desires to undertake a contract or obligation covered by paragraph 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 paragraph 6 above. GPA shall obtain PUC approval thereof before the procurement process is begun.
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10. GPA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by the Commission without prior PUC approval. In the event that GPA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
11. GPA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to its governing body.
12. GPA shall make no filing under the terms of this protocol less than 60 days before the beginning of the term of a renewed, extended or new contract. [See comments in 4e]
13. To the extent GPA submits a filing to PUC under this order which PUC staff believes is incomplete or deficient, it shall notify GPA and the PUC within 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.
14. PUC staff will use best efforts to be prepared for hearing within 60 days of a complete GPA filing under the terms of paragraph 6 above. PUC's administrative law judge, is authorized, in his judgment, to shorten the above 60 day period, for good cause shown by GPA.
15. GPA shall include a copy of this Order in every procurement package provided to interested bidders or proponents. [The way this is written would require this wording to be included for all projects including those under the PUC review level. Under the protocol, GPA receives authorization from the PUC in advance of the procurement. Thus, it would not make sense to include this Order in the package when the normative condition will be that the contract has already received approval from the PUC. This would be placing a burden on GPA's vendors for matters that should be between GPA and the PUC. GPA believes the PUC should acknowledge that the regulatory burden on GPA has been growing in recent years and there has been steady improvement in the quality of GPA responses and performance in meeting the regulatory burden. When the current

management team came into GPA there was virtually no infrastructure in place to ensure PUC filings were properly tracked and filed. Since that time, GPA has been developing this infrastructure to ensure PUC timelines are adhered to. GPA acknowledges that there have been problems in the past and present and GPA is taking steps to address those problems internally. GPA believes that passing the regulatory burden on to vendors would not be a constructive improvement.]

16. GPA shall include in the standard terms and provisions of every contract awarded by it a statement approved by the PUC certifying compliance with the terms of this Order. [Again, even contracts below the PUC threshold? GPA believes such a statement represents micromanagement.]
17. GPA shall assign an individual to be responsible for carrying out all of the requirements of this protocol. [It takes a variety of people with a variety of different skills to comply with this protocol. Can we say GPA shall assign an individual to monitor the compliance with the requirements of this protocol?]
18. For each contract that has been approved by the PUC, GPA shall provide notification to the PUC one week before the final contract is executed and with the annual variance report required under this protocol a matrix shall be provided that shows the dates that the PUC approved the contract and the date the contract was executed. [This seems like micromanagement also. GPA can understand that the PUC would be interested in reviewing large contracts that have the potential to impact rates, however, after the contract has been approved by the PUC, GPA does not understand why the PUC would be involved in the individual procurement steps. It appears that this may be a response to the problem we had with the Shell contract which was caused by a problem GPA had in handing off work from one attorney to another. GPA's position is that was an isolated incident and regulatory policy should not be made based on an isolated incident.]
19. For any project that is bid out by GPA and for which only one bid is received, GPA shall inform the PUC of this occurrence and shall support why it believes it should be permitted to enter the contract. GPA shall await specific PUC approval to enter such a contract. GPA shall undertake appropriate liaison procedures to maximize potential participation of bidders in any bidding process. [GPA believes this should be deleted. The PUC is supposed to have oversight supervision of rates. GPA believes that requiring special approval for contracts where a single bid is received would be an intrusion into the governing responsibilities that have been assigned by law to the Consolidated Commission on Utilities. These types of events are always scrutinized by the CCU at the time of their approval. GPA believes this item would produce unnecessary duplicative regulation.]
20. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
21. 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 26th day of May, 2007.
Terrence M. Brooks
Edward C. Crisostomo

Joseph M. McDonald
Jeffrey C. Johnson

[Note: GPA is in the process of restructuring the procedures for reviewing contracts internally. GPA believes it will be in a better position to suggest changes to the protocol after its management team has completed the process of re-evaluating the internal process for initiating, justifying, reviewing and obtaining approval for contracts within the agency. GPA's process will affect all contracts greater than \$100,000 and GPA desires that the PUC contract review protocol be able to be aligned with its internal contract review procedures. Therefore, GPA requests the PUC to defer changes to the contract review protocol until its internal contract review procedures are modified. GPA will make a filing on or before April 1, 2008 which will include a comprehensive list of changes required to bring the PUC contract review protocol into alignment with GPA's internal contract review procedures. (Because GPA is revising its procedures to allow for greater planning and greater scrutiny of its contract development processes, GPA believes the PUC will support any changes that arise out of this review and revision process.)]