



BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:)
 REVIEW OF \$2 MILLION)
 USDA DIRECT LOAN)
_____)

PAG DOCKET 15-03
ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG”) on May 5, 2015, whereby PAG requests review and approval of a \$2 million United States Department of Agriculture Rural Development (“USDA”) Community Facility Direct Loan (hereinafter referred to as the “USDA Direct Loan”) for the purchase of several pieces of critical cargo handling and maintenance equipment. In particular, the USDA Direct Loan will be used for the acquisition of eight (8) terminal yard tractors; a telescopic boom lift (126 feet); a compact articulated boom lift (33 feet); an industrial street sweeper; two (2) portable dual operation welding machines; and four (4) five-ton forklifts.

BACKGROUND

A. \$2 Million Direct Loan

Back in 2006, the USDA approved a total of \$14 million for PAG’s purchase of gantry cranes.¹ In 2012, PAG purchased gantry cranes for \$12 million, leaving a balance of \$2 million.² In 2013, PAG expressed its interest in utilizing the \$2 million with the USDA in a June 13, 2013 letter and requested that the loan be used for the purpose of acquiring critical

¹ Petition, p. 1.

² Petition, p. 1.

equipment.³ In June 2013, PAG and USDA worked to reprogram the loan for the purchase of such equipment.

On August 8, 2014, PAG's Board of Directors issued Resolution No. 2014-12, which approved the terms and conditions of the USDA Direct Loan for the amount of \$2 million, as well as the terms and conditions contained in the Second Amendment to the Letter of Conditions related to the loan. On May 13, 2015, PAG's Board of Directors again approved the terms and conditions of the USDA Direct Loan through approval of the Fourth Amendment to the Letter of Conditions related to the USDA Direct Loan, and therefore authorized PAG to execute the loan documents.⁴

DISCUSSION

A. Regulatory Review

Under 12 G.C.A. §12004, the PUC must expressly approve any contractual agreements or obligations which could increase PAG's rates and charges. In addition, under PAG's Contract Review Protocol, "[a]ll externally funded loan obligations . . . in excess of \$1,000,000" "shall require prior PUC approval under 12 G.C.A. § 12004."⁵⁶

B. Promissory Note

Based on the Promissory Note, the following is a summary of the terms of the USDA Direct Loan. The subject loan shall be for a principal amount of \$2 million, and shall bear interest at a rate of 3.5% per annum.⁷ The first payment shall be due on June 5, 2015, in a monthly amount of \$26,880.00.⁸ The term of the loan is seven (7) years.⁹

³ PAG Resolution No. 2015-03, p. 1 (May 13, 2015).

⁴ PAG Resolution No. 2015-03, p. 1 (May 13, 2015).

⁵ Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

⁶ Renumbered as 12 G.C.A. § 12105.

⁷ Promissory Note, p. 1.

⁸ Promissory Note, p. 1.

⁹ Promissory Note, p. 1.

C. Fourth Amended Letter of Conditions

Based on the “Fourth Amendment” to the Letter of Conditions, prior to any disbursements from the Supervised Bank Account (by the Bank of Guam), PAG will furnish copies of appropriate documentation, such as bills of sale, purchase order requests, and certificates of title.¹⁰ In addition, all disbursements from the Supervised Bank Account shall require USDA approval.

With respect to security, according to the Letter of Conditions, USDA will take a First Lien position covering all equipment, including certificates of title ownership covering any and all vehicles, purchased by the loan proceeds.¹¹ And again, repayment of the loan shall be over the course of seven (7) years, with an interest rate of 3.5%, which provides for a monthly payment of \$26,880.00.¹²

D. Security

As discussed above, based on the draft Security Agreement and Assignment of income and Assessments Related to the Port Authority of Guam Operations, in consideration of the \$2 million loan, PAG will assign a security interest to USDA in all PAG’s income and assessments related to its operations. A Uniform Commercial Code-Financing Statement also reflects such an assignment.

E. Board Resolution

Pursuant to Resolution No. 2015-03, PAG’s Board of Directors approved the terms and conditions of the loan with USDA for \$2 million, and thereby authorized PAG to execute the Fourth Amendment to the Letter of Conditions in order to close the loan.

¹⁰ See, e.g., Fourth Amendment to the Letter of Conditions, p. 1 (Apr. 21, 2015).

¹¹ Fourth Amendment to the Letter of Conditions, p. 1 (Apr. 21, 2015).

¹² Fourth Amendment to the Letter of Conditions, p. 1 (Apr. 21, 2015).

F. Funding Source

According to PAG, repayment for the debt service has been budgeted into PAG's FY2015 operations budget.¹³

RECOMMENDATION

Based on the documentation provided by PAG, the ALJ recommends that the PUC authorize PAG to enter into the USDA Direct Loan agreement. The terms and conditions contained in the Promissory Note, the Fourth Amendment to the Letter of Conditions, along with the corresponding assignment of interest, appear commercially reasonable and not unduly burdensome. Repayment of the loan is scheduled over a period of seven (7) years, with an interest rate of 3.5%, and a monthly payment of \$26,880.00.¹⁴ In addition, the ALJ further finds that the purchase of the cargo handling and maintenance equipment appear essential to PAG's operations.

Accordingly, based on the record in the instant docket, and for the other reasons set forth herein, the ALJ recommends that the PUC approve the USDA Direct Loan and authorize PAG to enter into the USDA Direct Loan agreement.

Dated this 26th day of May, 2015.



JOEPHET R. ALCANTARA
Administrative Law Judge

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¹³ Petition, p. 1.

¹⁴ Fourth Amendment to the Letter of Conditions, p. 1 (Apr. 21, 2015).