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Attorneys for Appellant
Morrico Equipment, LLC

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA: 13-015

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
MORRICO EQUIPMENT, LLC,)
Appellant.)
_____)
Docket No. OPA-PA-13-015
**APPELLANT’S MOTION TO ENFORCE
OPA DECISION RE: PURCHASE OF
BUCKET TRUCKS FROM MORRICO**

Morrico Equipment, LLC (“Morrico”), hereby moves the Public Auditor to enforce her January 24, 2014, Decision in the above-captioned appeal.

In its Decision, the Public Auditor ordered that “[s]hould GPA require and have the funding to procure additional bucket trucks in 2014 and 2015, it should exercise its options for those years under the IFB contract and procure them from Morrico.” *See*, January 24, 2014, Decision, p. 10. After this Decision, the GPA issued a notice of intent to award Morrico contracts for 2014 and 2015 for the 55’ bucket trucks at issue in the Invitation for Bid. The GPA never ordered any 55’ bucket trucks from Morrico to date. *See*, **Exhibit A**.

However, on September 15, 2015, GPA filed a petition with the Public Utilities Commission (“PUC”) to approve GPA’s FY2016 internally funded CIP ceiling cap. *See*, **Exhibit B**. In that petition, GPA had requested approval to purchase 3 55’ bucket trucks, as well as 3 65’ bucket trucks. On September 24, 2015, the PUC issued an Order on GPA’s petition and ordered that, with

respect to the bucket trucks, GPA was required to follow its Contract Review Protocol governing GPA purchases of more than \$1.5M. *See, Exhibit C.*

On November 20, 2015, GPA then filed its Petition for Contract Review with the PUC for approval of the bucket truck procurement. *See, Exhibit D.* In that petition, GPA attached the August 25, 2015, Consolidated Commission on Utilities (“CCU”), Resolution No.: 2015-42, approving GPA’s FY2016 budget. The PUC approved the petition on December 10, 2015, and authorized GPA to proceed with the procurement. *See, Exhibit E.* The PUC’s Order noted that GPA “seeks to procure 6 bucket trucks to replace 6 existing Bucket Trucks which range in age from 17 to 25 years.” *Id.* Thereafter, on December 17, 2015, GPA released GPA-011-16, a solicitation for 55’ and 65’ bucket trucks. *See, Exhibit F.*

Years ago, due to serious deficiencies of the GPA in complying with Guam procurement law, the PUC implemented a Contract Review Protocol (“Protocol”), for GPA which it is required to follow in all procurements in excess of \$1,500,000.00. The Protocol was amended in 2008. *See, Exhibit G.* In petitioning the CCU and the PUC for authority to proceed with the procurement, the GPA did not follow the Protocol.

Under paragraph 7(a) of the Contract Review Protocol GPA must first obtain a resolution from the CCU for the procurement “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.”

The Protocol further requires at paragraph 7(b) that “[t]he 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 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.”

As noted, to satisfy its responsibilities under the Protocol, GPA is required to present an analysis of any alternatives to the procurement authority it seeks. In its November 20, 2015, Petition for Contract Review to the PUC, the only alternative it discussed to the proposed procurement was “No Action.” *See*, Exhibit D, Transportation Heavy Equipment Bucket Trucks, Section II. GPA failed to advise either the CCU or the PUC that it was under a standing order from the Public Auditor to fulfill any needs it had for 55’ bucket trucks from Morrico.

GPA knew well prior to August, 2015, that it needed to replace bucket trucks. Given the lack of good faith it has illustrated in the IFB which led to this appeal, it is no stretch to believe that GPA simply did not want to purchase bucket trucks from Morrico and timed its purchase of bucket trucks to avoid that requirement. The GPA listed six trucks that were in disrepair. It also sent three bucket trucks to Saipan in August, 2015, to assist with Typhoon Soudelor clean up and reconstruction. It had budget reserves built into its 2015 budget which it could have used to purchase bucket trucks from Morrico as ordered by the Public Auditor.

The December 10, 2015, PUC Counsel Report noted GPA’s analysis that:

[I]t will not be economical to repair the existing bucket trucks, as they are for the most part beyond their useful lives. Over the past three years there have been substantial repair costs for these trucks in

an amount over \$150,000. Two of the bucket trucks were basically not used at all. One of the trucks was only used for 130 miles in 2015. The other three bucket trucks had mileage usage in 2015 ranging from 3225.8 to 1617.8.

See, **Exhibit H**, p. 2, paragraph 11. These bucket trucks did not suddenly fall into disrepair in August, 2015. GPA long knew that these trucks had to be replaced and was just waiting as long as it could in order to avoid purchasing them from Morrico.

Morrigo certainly expects GPA to plead poverty and that it had no funds to purchase bucket trucks from Morrico in 2015. Given its lack of good faith in this procurement, it should not be lent the benefit of any doubt. And, again, the reason why GPA was subjected to the Protocol in the first place was because of its long history of egregious breaches of Guam procurement law. See, **Exhibit I**, February 12, 2008, Administrative Law Judge Report, p. 1 (“Recent PUC orders recount GPA’s persistent violation of the Protocol.”).

Based on the foregoing, Morrigo respectfully requests that the Public Auditor enforce the January 24, 2014, Decision and order GPA to fulfill its current need for 55’ bucket trucks from Morrigo.

Dated this 31st day of December, 2015.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER
Attorneys for Appellant
Morrigo Equipment, LLC



GUAM POWER AUTHORITY

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

April 7, 2014

Mr. Torgun Smith
Executive Vice President
Morrico Equipment LLC.
197 Ypao Road
Tamuning, Guam 96913

**RE: NOTICE OF INTENT of RE-AWARD of INVITATION FOR BID NO.: GPA-064-11 for 55'
BUCKET TRUCKS**

Dear Mr. Smith:

Morrico Equipment LLC has been re-awarded the bid for 55' bucket trucks under IFB-GPA-064-11 for option years FY2014 and FY2015. The award of option years FY2014 and FY2015 is subject to funding and approval by the Consolidated Commission on Utilities.

In the event that an award is made a One Hundred Percent (100%) PERFORMANCE BOND, as specified in Section 12 of the General Terms and Conditions is required upon GPA exercising the Option Years.

Sincerely,


MR. JOAQUIN C. FLORES, P.E.
General Manager

1 **D GRAHAM BOTHA, ESQ.**

2 **Legal Counsel**

3 **Guam Power Authority**

4 **688 Route 15, Suite 302**

5 **Mangilao, Guam 96913**

6 **Ph: (671) 648-3203/3002**

7 **Fax: (671) 648-3290**

8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 **IN THE MATTER OF:**

10 **GPA DOCKET NO. 15-19**

11 **The Application of the Guam Power Authority**

12 **PETITION FOR CONTRACT REVIEW**

13 **to Approve the FY2016 GPA CIP Ceiling Cap**

14 **COMES NOW**, the GUAM POWER AUTHORITY (GPA), by and through its counsel
15 of record, D. GRAHAM BOTHA, ESQ., and hereby files GPA's Petition for the Public Utilities
16 Commission of Guam to review and approve GPA's FY2016 Internally funded CIP ceiling cap,
17 which consists of General Plant (\$12,067,780) and Engineering (\$0), for a total internal FY2016
18 CIP ceiling cap of \$12,067,780 as follows:

19 **BACKGROUND**

20 The Guam Power Authority is required by the Contract Review Protocol to file its
21 internally funded CIP ceiling cap for the upcoming fiscal year plus estimates for the subsequent
22 two fiscal years. The FY2016 budget, which includes internally funded CIP projects, was
23 approved by the Consolidated Commission on Utilities (CCU) at its meeting on August 25, 2015.
24 The FY2016 budget has internally funded CIP projects and consists of General Plant
25 (\$12,067,780) and Engineering (\$0). The total projected FY2016 budget for internally funded
26 CIP projects is \$12,067,780, and GPA is requesting that be approved as the FY2016 CIP ceiling
27 cap. The reason that specific Cabras plant CIPs are not included is because these projects were
28 included as part of the 2014 Bond projects.

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DISCUSSION


GPA hereby petitions the PUC, pursuant to the Contract Review Protocol for the Guam Power Authority to review and approve GPA's 2016 internal CIP ceiling cap of \$12,067,780. In support of this Petition, GPA hereby provides the PUC with the General Manager's letter to the PUC dated September 15, 2015, and attachments detailing the FY2016 CIP ceiling cap. Said letter and its exhibits are attached herein as Exhibit A and incorporated by reference herein as if fully set forth.

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CONCLUSION

The PUC should approve GPA's request to approve GPA's FY2016 Internally funded CIP ceiling cap, which consists of General Plant (\$12,067,780) and Engineering (\$0), with a total internal FY2016 CIP ceiling cap of \$12,067,780, as it is reasonable, prudent, and necessary.

RESPECTFULLY SUBMITTED this 15th day of September, 2015.


D. GRAHAM BOTHA, Esq.
GPA Legal Counsel



GUAM POWER AUTHORITY

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

September 15, 2015

Mr. Frederick Horecky, Esq.
Administrative Law Judge
Guam Public Utilities Commission
Suite 207, GCIC Building
414 West Soledad Avenue
Hagatna, GU 96932

Subject: GPA Docket No. 15-19 - Contract Review Protocol
RE: FY 16 CIP Ceiling Cap

Dear Judge Horecky:

In accordance with GPA Docket 15-19, the Guam Power Authority is requesting the Guam Public Utilities Commission's approval for FY 2016 internally funded CIP Ceiling Cap of \$12,067,780 without line extension projects (See Attachment 1).

On Thursday, August 25, 2015 the Consolidated Commission on Utilities - Board of Directors approved the FY 2016 GPA Budget on referenced Resolution #2015-42 (See Attachment 2)

Please do not hesitate to call Ms. Cora Montellano, Acting CFO at 648-3119 should you have any further questions or concerns regarding the aforementioned filing.

Sincerely,


John M. Benavente, P.E.
General Manager

cc: Ms. Cora Montellano, Acting CFO
Ms. Pamela Aguigui, CBO

GUAM POWER AUTHORITY **Attachment 1**
FISCAL YEAR 2016 PUC CEILING CAP REQUEST
GENERAL PLANT (CIP) APPROVED BUDGET (revised)

CAT.	DESCRIPTION	SECTION DIVISION	FY2016 APPROVED 08/25/15
107391	Fixed Asset Tagging machine and software	ACCOUNTING	\$ 25,000
107391	Desktop Computers	ACCOUNTING	\$ 20,000
107391	Folder/Sealer Machine - Backup	ACCOUNTING	\$ 19,000
107391	Laptop Computers	ACCOUNTING	\$ 7,600
107391	Folder/Sealer Machine for Payroll	ACCOUNTING	\$ 20,200
	TOTAL ACCOUNTING		\$ 91,800
107391	Laptop Computer	BOARD	\$ 3,500
107391	Recording Equipment	BOARD	\$ 1,500
	TOTAL BOARD		\$ 5,000
107391	Desktop Computers	BUDGET OFFICE	\$ 3,500
	TOTAL BUDGET OFFICE		\$ 3,500
107100	Replacement of unit 2 burner front system components	CABRAS 1&2	\$ 475,000
	TOTAL CABRAS 1&2		\$ 475,000
107390	Exterior shed w/cement flooring behind shop	CENTRAL MAINT	\$ 60,000
107391	Desktop Computers	CENTRAL MAINT	\$ 45,000
107393	Ice Machine	CENTRAL MAINT	\$ 30,000
107394	Hydraulic cylinder w/pump set (hydraulic ram) 1-20 ton cap.	CENTRAL MAINT	\$ 25,000
107394	4000 psi Water Blaster	CENTRAL MAINT	\$ 10,000
107394	15 amp Demolition Hammer (Jack Hammer)	CENTRAL MAINT	\$ 4,000
107396	48" Verticle Lathe Machine	CENTRAL MAINT	\$ 3,000
107396	Hydraulic Plate Roller	CENTRAL MAINT	\$ 1,500
	TOTAL CENTRAL		\$ 178,500
107391	Desktop Computers - Contracts Administrator & AO	CFO	\$ 8,000
107391	Desktop Computers - CFO, Comptroller, risk analyst	CFO	\$ 5,780
107391	Laptop - replacement for ACFO	CFO	\$ 3,800
	TOTAL CFO		\$ 17,580
107391	IBM1-Series Upgrade	COMPUTER SERVICE	\$ 352,000
107391	250 Microsoft Office 2013 Open License	COMPUTER SERVICE	\$ 150,000
107391	EMC Data Domain backup solution for GPWA Data Center	COMPUTER SERVICE	\$ 65,000
107391	2U Rack mount servers / Intel Xeon 2 Proc @2.4GHz / 128GB RAM / 3TB HDD (3 each)	COMPUTER SERVICE	\$ 60,000
107391	Intrusion Prevention/Detection solution	COMPUTER SERVICE	\$ 60,000
107391	Vmware vSphere v5.0 Enterprise Plus License (1 CPU) 8 each	COMPUTER SERVICE	\$ 40,000
107391	Cisco UCS B200 M3 2x Processor 16 core 192 Ram Xeon e5-2600 @ 2.2ghz (2 each)	COMPUTER SERVICE	\$ 38,000
107391	Core routers Cisco ASR 1001-X (2 each)	COMPUTER SERVICE	\$ 30,000
107391	Fiber Optic structured cabling for Data Center	COMPUTER SERVICE	\$ 14,000
107391	Copper Ethernet cable management for GBN building (DataCenter and Comm rooms)	COMPUTER SERVICE	\$ 12,000
107391	EMC SAN Hard Drives 7.2k rpm for storage expansion (for new VNX5300)	COMPUTER SERVICE	\$ 12,000
107391	Server Cabinet 42RMU (78x30x42) 3 each	COMPUTER SERVICE	\$ 12,000
107391	EMC SAN Hard Drives 10k rpm for storage expansion (for new VNX5300)	COMPUTER SERVICE	\$ 10,000
107391	Laptops (2 each)	COMPUTER SERVICE	\$ 6,000
107391	Multi purpose document shredder	COMPUTER SERVICE	\$ 4,000
	TOTAL COMPUTER SERVICE		\$ 865,000
107390	Camera Upgrade	CUSTOMER SERVICE	\$ 20,000
107391	Personal Computers	CUSTOMER SERVICE	\$ 30,000
107391	Tough Book	CUSTOMER SERVICE	\$ 24,000
107391	Headset (15)	CUSTOMER SERVICE	\$ 6,000
107391	PowerShred 485j Strip - Cut Shredder	CUSTOMER SERVICE	\$ 4,800
	TOTAL CUSTOMER SERVICE		\$ 84,800
107395	Thrermo and Pressure test equipment 310 sub-code	DIESEL PLANT	\$ 15,000
107394	Water Blaster	DIESEL PLANT	\$ 3,000
107398	Washer/Dryer	DIESEL PLANT	\$ 3,000

GUAM POWER AUTHORITY **Attachment 1**
FISCAL YEAR 2016 PUC CEILING CAP REQUEST
GENERAL PLANT (CIP) APPROVED BUDGET (revised)

CAT.	DESCRIPTION	SECTION DIVISION	FY2016 APPROVED 08/25/15
107397	Migration of the Data Circuits and AUL Circuits to Fadian	PSCC	\$ 6,000
107397	Migration of the MET Tower data link to Fadian	PSCC	\$ 5,000
107397	Migration of the Avaya System to Fadian	PSCC	\$ 4,000
	TOTAL P.S.C.C.		\$ 224,800
107391	L+G Advanced Grid Analytics	SPORD	\$ 750,000
107391	Strategist Upgrade to System Optimizer - additional equip.	SPORD	\$ 100,000
107391	Nostradamus (Software)	SPORD	\$ 100,000
107391	Nostradamus - additional equipment	SPORD	\$ 100,000
107391	Planning and Risk	SPORD	\$ 100,000
107391	ABB System Optimizer	SPORD	\$ 100,000
107391	Disk Storage (NAS or SANs for SPORD Data warehouse)	SPORD	\$ 50,000
107391	New Laptops	SPORD	\$ 24,000
107391	New Desktops	SPORD	\$ 16,000
107397	Tropos/ABB Network Extension	SPORD	\$ 360,000
	TOTAL SPORD		\$ 1,700,000
107353	SF Circuit (Type 115kV) Upgrades: H-606, H-302	SUBSTATION	\$ 196,000
107353	SF Circuit (Type 34.kV) Upgrades:	SUBSTATION	\$ 164,940
107353	Galvanized Transformer Radiator Fin Upgrades:	SUBSTATION	\$ 150,000
107353	Blade Disconnect Switch (Type 34.5kV, 2000 amp) Upgrades: 3 sets per year * 1 Set = 3 Line Disconnects	SUBSTATION	\$ 150,000
107353	Vacuum Circuit Breaker (Type 13.8kV Indoor) Upgrades: 3 ea per year	SUBSTATION	\$ 120,000
107353	FY-2015 Carry Over - (OP#21581) (34.5kV Circuit Breakers - Gas)	SUBSTATION	\$ 109,960
107353	Battery Bank and Charger Units with Accessories Upgrades: 3 per year	SUBSTATION	\$ 81,000
107353	Disconnect Switch (Type 34.5kV, 1200amp or 2000 amp) Upgrades: 3 each per year *1 Set = 3 Line Disconnect Switches, plus 3 Bus Disconnects	SUBSTATION	\$ 32,000
107353	Disconnect Switch (Type 13.8kV, 1200amp or 2000 amp) Upgrades: 2 each per yr. *1 Set = 3 Line Disconnect Switches, plus 3 Bus Disconnects	SUBSTATION	\$ 14,000
107353	15kV Disconnect/Fuse Compartment Assembly, FY 2016: Macheche	SUBSTATION	\$ 10,000
107390	Docking Station for the Mobile Substation at Apra Heights Substation - inclusive of all Civil Engineer fees, labor, materials and equipment	SUBSTATION	\$ 50,000
107390	Catchment Basins Constr: FY 2015: T-50 & T-51, FY 2016: T-50, FY 2017: Shop	SUBSTATION	\$ 40,000
107394	Oil Treatment Machine with Trailer (Heater De-Gasser), to include Training on practical use.	SUBSTATION	\$ 150,000
107395	Power Transformer Diagnostic System	SUBSTATION	\$ 75,000
107395	Sweep Frequency Response Analyzer, to include Training on practical use.	SUBSTATION	\$ 8,000
107395	Mega Ohmmeter [5kV]	SUBSTATION	\$ 7,750
107396	Tommy Lift System	SUBSTATION	\$ 8,000
	TOTAL SUBSTATION		\$ 1,366,650
107390	New Building at T&D Compound	T&D ADMIN	\$ 500,000
107390	Building Upgrades for T&D and M/R sections	T&D ADMIN	\$ 92,000
107391	AUTO Cad Program with License	T&D ADMIN	\$ 36,000
107391	Upgrade of Exterior Surveillance Camera System for T&D Building	T&D ADMIN	\$ 20,000
107391	Exterior Surveillance Camera System for Meter/Relay Building, Substation Warehouse 1 and 2	T&D ADMIN	\$ 20,000
107391	Computer Upgrades	T&D ADMIN	\$ 15,000
107391	Laptop Upgrades	T&D ADMIN	\$ 2,500
	TOTAL T&D ADMIN		\$ 685,500
107392	3each 65ft and 3each 55ft	TRANSPORTATION	\$ 1,700,000
107392	Crane 30 ton mobile crane	TRANSPORTATION	\$ 390,000
107392	Electric cars - PIO, SPORD	TRANSPORTATION	\$ 285,000
107392	Dump Truck	TRANSPORTATION	\$ 180,000
107392	Sports Utility Vehicle - (Accounting, Engineering, General Mgr, Planning & Reg, Diesel Pit, Gen Admin)	TRANSPORTATION	\$ 241,000

GUAM POWER AUTHORITY **Attachment 1**
FISCAL YEAR 2016 PUC CEILING CAP REQUEST
GENERAL PLANT (CIP) APPROVED BUDGET (revised)

CAT.	DESCRIPTION	SECTION DIVISION	FY2016 APPROVED 08/25/15
107392	4x4 Crew Cab Utility PU Truck - Central Maint	TRANSPORTATION	\$ 40,000
107392	Pick Up Truck - Diesel P/U, Engineering	TRANSPORTATION	\$ 80,000
107392	Digger/Derrick Truck - Overhead	TRANSPORTATION	\$ 190,000
107392	Lowboy Trailer 50-Ton (detachable gooseneck) - Overhead	TRANSPORTATION	\$ 110,000
107392	Back-Hoe (4x4) 4-in-1 Bucket (Front), 16" Bucket (Rear) - Overhead	TRANSPORTATION	\$ 65,000
107392	Equipment Trailer, 12-Ton (tow behind)	TRANSPORTATION	\$ 35,000
107392	Rock Breaker (Back-Hoe Implement)	TRANSPORTATION	\$ 16,500
107392	Pick-up Truck/4wd Extra Cab (2 ea) Safety	TRANSPORTATION	\$ 56,000
107392	Utility Truck w/tool bins (2 ea) - Water System	TRANSPORTATION	\$ 120,000
107392	Utility Van (2 ea) - Water System	TRANSPORTATION	\$ 70,000
107394	Heavy Equipment Lift	TRANSPORTATION	\$ 40,000
107394	3each Tool Box set	TRANSPORTATION	\$ 39,000
107394	Vehicle/Heavy Equipment Decontamination mat(Mobile)	TRANSPORTATION	\$ 14,000
107394	Heavy Equipment Scanner(Diesel)	TRANSPORTATION	\$ 11,000
107394	Automotive Scanner(Wireless)	TRANSPORTATION	\$ 9,000
107394	Pressure washer	TRANSPORTATION	\$ 7,000
107394	1each water blaster (Min 4,000psi)	TRANSPORTATION	\$ 4,500
	TOTAL TRANSPORTATION		\$ 3,703,000
107100	Underground Streetlight Reconstr (inclusive of materials, labor and equip)	UG	\$ 50,000
107100	Emergency Underground Reconstruction - Civil Work, Cable Replacement (inclusive of materials, labor and equipment).	UG	\$ 500,000
107394	OEL Interduct Multiple with Reel Trailer	UG	\$ 40,000
107394	Traffic Control Arrow Boards - Trailer Mounted	UG	\$ 14,200
107394	Protective Grounding Mat with Carrying Case	UG	\$ 1,500
107395	Cordless Multipurpose Phasing Tester Kit	UG	\$ 8,000
107395	5000V Digital/Analog Megohmmeter	UG	\$ 3,000
	TOTAL UNDERGROUND		\$ 616,700
107390	2 each Awning between Warehouse A&B. Main Warehouse and Warehouse C	WAREHOUSE	\$ 224,800
107390	Roof and Beam Dededo Supply Main Warehouse	WAREHOUSE	\$ 70,000
107390	Fencing of Pole Yard	WAREHOUSE	\$ 35,000
107390	Paving for Pole Yard	WAREHOUSE	\$ 30,000
107390	Fencing of Dededo Yard	WAREHOUSE	\$ 20,000
107390	Renovation of Cabras Supply Warehouse Office (1st)	WAREHOUSE	\$ 10,000
107390	Polyphatic paint for flooring at Cabras Supply Warehouse	WAREHOUSE	\$ 10,000
107390	Shutters for first floor of Cabras Supply	WAREHOUSE	\$ 5,410
107390	Aluminum doors	WAREHOUSE	\$ 5,000
107391	Personal Computers w/accessories	WAREHOUSE	\$ 7,000
107398	Camera Units (Dededo Supply Warehouse) safeguarding of matls.	WAREHOUSE	\$ 10,000
	TOTAL WAREHOUSE		\$ 427,210
107390	Renovation of Dededo Diesel Plant, remove of engines	WATER SYSTEM	\$ 80,000
107390	40kw generator	WATER SYSTEM	\$ 120,000
	TOTAL WATER SYSTEM		\$ 200,000
	GRAND TOTAL GENERAL PLANT CIP		\$ 12,067,780



**CONSOLIDATED
COMMISSION ON UTILITIES**

Guam Power Authority • Guam Waterworks Authority
P.O. BOX 2977 • Agaña, Guam 96932

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**GUAM CONSOLIDATED COMMISSION ON UTILITIES
RESOLUTION NO.: 2015-42**

**RELATIVE TO THE ADOPTION OF A BUDGET FOR THE GUAM POWER
AUTHORITY FOR FISCAL YEAR 2016**

WHEREAS, the Guam Power Authority is a Public Corporation of the Government of Guam; and

WHEREAS, Section 8117 of Chapter 8 of Title 12 of Guam Code Annotated authorizes the Consolidated Commission on Utilities (CCU) to adopt an annual budget for the Authority; and

WHEREAS, Section 6.11 of the GPA Bond Indenture Agreement requires the Authority to provide a copy of an approved budget to the Bond Trustee prior to the beginning of each fiscal year; and

WHEREAS, the General Manager of the Guam Power Authority has created and thoroughly reviewed the budget for Fiscal Year 2016 totaling \$391.651.260; and

WHEREAS, the General Manager has carefully scrutinized each line item of the budget and made substantial and significant reductions to the budget document as a whole to ensure that all budget expenditures are consistent with the strategic goals of the Authority; and

WHEREAS, the Consolidated Commission on Utilities has held a working session in which budget items were reviewed and discussed with the General Manager and his staff; and

1
2 **WHEREAS**, the CCU Commissioners noted that the budget provides funding of
3 Revenue Funded Capital Improvement Projects totaling \$17,983,133 and;
4

5 **NOW THEREFORE BE IT RESOLVED**, the following policy is adopted by
6 the Commission:
7

- 8 1. The Fiscal Year 2016 budget is based on a Non-Fuel Revenue forecast of
9 \$160,711,000 and a Fuel Revenue forecast of \$232,125,000. Total Operations
10 and Maintenance budget includes Labor costs of \$44,545,117; Non-Labor costs
11 of \$36,241,935, less Capitalized O&M of \$5,655,094 for total O&M Budget of
12 \$75,131,958; Independent Power Producers costs plus Debt Service of
13 \$40,172,000 Revenue Bond Debt Service of \$25,097,000 and revenue funded
14 Capital Improvement Projects of \$17,983,133. Therefore, the FY16 Budget of
15 \$391,651,260 (comprising of a Non- Fuel budget of \$159,526,260 plus a Fuel
16 Budget of \$232,125,000) is hereby adopted.
- 17 2. The authorized level of positions within the Authority shall be 510 FTEs
18 excluding the (20) personnel in the GPA Apprenticeship Program for FY2016.
- 19 3. The General Manager is authorized to transfer within O&M object codes an
20 amount not to exceed 10%, to inform the CCU of any transfer, and any transfer
21 above 10% requires CCU approval, with the exception that there shall be no
22 transfer into the personnel account.
- 23 4. The budget of \$1.6M for overtime in FY2016 shall be adhered to by the General
24 Manager and the Chief Financial Officer and shall require CCU approval to
25 increase the amount of the overtime budget.
- 26 5. The Revenue Funded Capital Improvement budget of \$17,983,133 is approved
27 and General Manager is authorized to petition the Public Utilities Commission
28 (PUC) for approval.
- 29 6. The General Manager's delegated contract approval authority remains at
30 \$250,000.

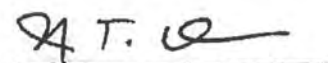
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RESOLVED, that the Chairman certifies and the Secretary attests to the adoption of this Resolution.

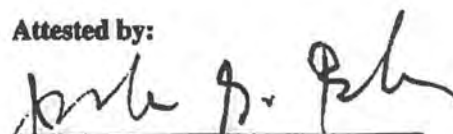
DULY AND REGULARLY ADOPTED NUNC PRO TUNC this 25th day of August 2015.

Certified by:



JOSEPH T. DUENAS
Chairperson
Consolidated Commission on Utilities

Attested by:



J. GEORGE BAMBA
Secretary
Consolidated Commission on Utilities

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SECRETARY'S CERTIFICATE

I, **George Bamba**, Secretary for the Consolidated Commission on Utilities do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted at a regular meeting by the members of Guam Consolidated Commission on Utilities, duly and legally held at a place properly noticed and advertised at which meeting a quorum was present and the members who were present voted as follows:

At said meeting said resolution was adopted by the following vote:

AYES: 5
NOES: 0
ABSENT: 0

Said original resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

SO CERTIFIED this 25th day of August 2015.



George Bamba

GEORGE BAMBA
Secretary
Consolidated Commission on Utilities



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GPA Docket 15-19
)
 The Application of the Guam Power)
 Authority to Approve the FY2016 GPA) ORDER
 CIP Ceiling Cap)
)
 _____)

INTRODUCTION

This matter comes before the Guam Public Utilities Commission [PUC] upon GPA’s Petition for Request for Approval of FY2016 GPA CIP Ceiling Cap.¹ Therein, GPA requests PUC approval of its FY2016 Capital Improvement Project Cap in the amount of \$12,067,780, which consists of General Plant (\$12,067,780) and Engineering (\$0).² The Guam Consolidated Commission on Utilities [CCU] has approved the FY2016 Capital Improvement Project Ceiling Cap requested by GPA.³

BACKGROUND

The Contract Review Protocol for the Guam Power Authority requires that GPA’s annual level (“cap”) of internally funded Capital Improvement Projects (“CIP”) be set by the PUC before November 15th of each fiscal year.⁴

The CIP Cap proposed for FY2016 is generally consistent, in terms of dollar amount, with the CIP Cap levels of prior years. The prior year cap levels were as follows:

- FY2014 Cap: \$7,363,110.
- FY2013 Cap: \$10,135,760.
- FY2012 Cap: \$13.581M.
- FY2011 Cap: \$5M.⁵
- FY2010 Cap: \$16,390,707.⁶

¹ GPA Petition for Contract Review (Application to Approve the FY2016 GPA CIP Ceiling Budget), GPA Docket 15-19, filed September 15, 2015.

² Id. at p. 1.

³ Guam Consolidated Commission on Utilities (CCU) Resolution No. 15-42, Relative to the Adoption of a Budget for the Guam Power Authority for Fiscal Year 2016, adopted August 25, 2015.

⁴ §1.F of the Contract Review Protocol, at p. 2.

⁵ PUC Order, GPA Docket 13-16, dated October 29, 2013, at pgs. 1-2.

⁶ PUC Order, GPA Docket 10-05, dated October 29, 2010, at pg. 1.

Order
The Request of GPA to
Approve FY2016 CIP Ceiling Cap
GPA Docket 15-19
September 24, 2015

The CIPs included within the Cap are for "general plant." The expenditures are for items including computers, office equipment, plant improvements and other miscellaneous items.⁷ GPA has listed all of the items, as well as approved cost of each, in Attachment A to the Petition. One of the items under Transportation is 3 65 ft. and 3 55ft. bucket trucks at a cost of \$1.7M. GPA will need to seek approval for procurement of such item under the Contract Review Protocol, as it exceeds the \$1.5M threshold.⁸

The Contract Review Protocol does not require that GPA provide justifications for the items listed under General Plant.⁹ Many of the items involve computer hardware and software upgrades for the various divisions within GPA. There are a number of items relating to plant and substation renovations and upgrades.¹⁰ The expenditures listed appear to be reasonable; purchase of the items indicated could reasonably be expected to lead to the maintenance and upgrading of GPA operations.

GPA Counsel indicates that what GPA has provided is a General Plant (CIP) Approved Budget; it has been the case that GPA does not always expend all amounts indicated in the budget for the stated items.¹¹

DETERMINATIONS

Based upon the recognition that the FY2016 general plant budget is consistent with that of prior fiscal years, and subject to GPA's ability to carry out the capital improvement projects using internally-funded dollars, the \$12,067,780 Ceiling Cap should be approved.

The PUC finds that GPA's FY2016 Internally funded CIP ceiling cap, consisting of general plant in the amount of \$12,067,780, should be approved. Such CIP cap is reasonable, prudent and in the interest of the ratepayers.

However, prior to expending the amount of \$1.7M for the bucket trucks, GPA should seek approval for procurement of such item under the Contract Review Protocol.

⁷ GPA Petition for Contract Review (Application to Approve the FY2016 GPA CIP Ceiling Budget), GPA Docket 15-19, filed September 15, 2015, Attachment 1.

⁸ Id. at Attachment 1; Contract Review Protocol at par. 1a).

⁹ Id.

¹⁰ Id.

¹¹ Phone conversation between GPA Counsel Graham Botha and PUC Counsel Fred Horecky, GPA Docket 15-19, September 15, 2015.

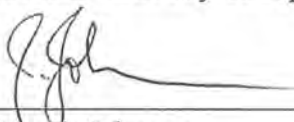
Order
The Request of GPA to
Approve FY2016 CIP Ceiling Cap
GPA Docket 15-19
September 24, 2015

ORDERING PROVISIONS


Upon consideration of the record herein, the Petition of GPA, and the presentation of Counsel, 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 GPA FY2016 internally funded CIP ceiling cap, which consists of General Plant, is approved in the amount of \$\$12,067,780.
2. The General Plant budget is consistent with prior budgets and appears reasonable; no prudency concerns are noted.
3. GPA shall file a complete reconciliation of the FY2015 expenditures on or before December 15, 2015, as required by the Contract Review Protocol.
4. Before GPA expends amounts for the bucket trucks at \$1.7M, it shall seek prior approval from the PUC for procurement authority.
5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 24th day of September, 2015.

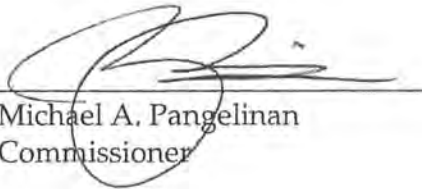


Jeffrey C. Johnson
Chairman



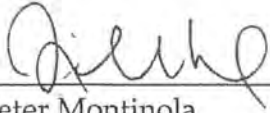
Rowena E. Perez
Commissioner

Joseph M. McDonald
Commissioner



Michael A. Pangelinan
Commissioner

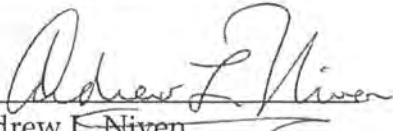
Order
The Request of GPA to
Approve FY2016 CIP Ceiling Cap
GPA Docket 15-19
September 24, 2015



Peter Montinola
Commissioner



Filomena M. Cantoria
Commissioner



Andrew E. Niven
Commissioner

1 **D GRAHAM BOTHA, ESQ.**
2 Legal Counsel
3 Guam Power Authority
4 688 Route 15, Suite 302
5 Mangilao, Guam 96913
6 Ph: (671) 648-3203/3002
7 Fax: (671) 648-3290



8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 IN THE MATTER OF:) **GPA DOCKET NO. 15-23**
10 The Application of the Guam Power Authority)
11 to Approve the Procurement of Bucket Trucks.) **PETITION FOR CONTRACT REVIEW**

12 **COMES NOW**, the GUAM POWER AUTHORITY (GPA), by and through its counsel
13 of record, D. GRAHAM BOTHA, ESQ., and hereby files GPA's Petition for the Public Utilities
14 Commission of Guam to review and approve GPA's request for approval of the Procurement of
15 Bucket Trucks, as follows:

16 **BACKGROUND**

17 The Guam Power Authority needs to procure six bucket trucks to replace six existing
18 bucket trucks which range in age from 17 to 25 years old. The CCU in Resolution 2015-42 has
19 approved GPA's request for approval of the procurement of six bucket trucks which are expected
20 to cost approximately \$1.7 million. The replacement of the bucket trucks are necessary to ensure
21 GPA has adequate bucket trucks for T&D operations.

22 **DISCUSSION**

23 GPA hereby petitions the PUC, pursuant to the Contract Review Protocol for the Guam
24 Power Authority, approved by the PUC, to review and approve the procurement of six
25 replacement bucket trucks which are expected to cost approximately \$1.7 million. In support of
26 this Petition, GPA hereby provides the PUC with Consolidated Commission on Utilities (CCU)
27 Resolution No. 2015-42, which authorizes the General Manager to proceed with the procurement
28

ORIGINAL

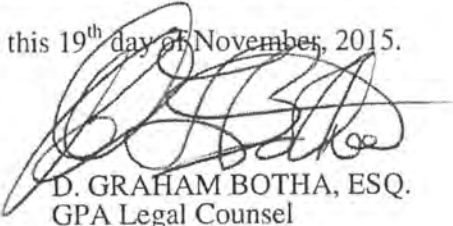
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of bucket trucks. Said resolution and its exhibits are attached herein as Exhibit A, and incorporated by reference herein as if fully set forth.

CONCLUSION

The PUC should approve GPA's request to proceed with the procurement of replacement bucket trucks. The replacement of the bucket trucks are necessary to ensure GPA has adequate bucket trucks for T&D operations, and is reasonable, prudent, and necessary.

RESPECTFULLY SUBMITTED this 19th day of November, 2015.



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel



**CONSOLIDATED
COMMISSION ON UTILITIES**

Guam Power Authority • Guam Waterworks Authority
P.O.BOX 2977 • Agaña, Guam 96932

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GUAM CONSOLIDATED COMMISSION ON UTILITIES

RESOLUTION NO.: 2015-42

**RELATIVE TO THE ADOPTION OF A BUDGET FOR THE GUAM POWER
AUTHORITY FOR FISCAL YEAR 2016**

WHEREAS, the Guam Power Authority is a Public Corporation of the Government of Guam; and

WHEREAS, Section 8117 of Chapter 8 of Title 12 of Guam Code Annotated authorizes the Consolidated Commission on Utilities (CCU) to adopt an annual budget for the Authority; and

WHEREAS, Section 6.11 of the GPA Bond Indenture Agreement requires the Authority to provide a copy of an approved budget to the Bond Trustee prior to the beginning of each fiscal year; and

WHEREAS, the General Manager of the Guam Power Authority has created and thoroughly reviewed the budget for Fiscal Year 2016 totaling \$391.651,260; and

WHEREAS, the General Manager has carefully scrutinized each line item of the budget and made substantial and significant reductions to the budget document as a whole to ensure that all budget expenditures are consistent with the strategic goals of the Authority; and

WHEREAS, the Consolidated Commission on Utilities has held a working session in which budget items were reviewed and discussed with the General Manager and his staff; and

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WHEREAS, the CCU Commissioners noted that the budget provides funding of Revenue Funded Capital Improvement Projects totaling \$17,983,133 and;

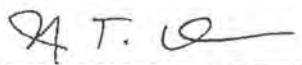
NOW THEREFORE BE IT RESOLVED, the following policy is adopted by the Commission:

1. The Fiscal Year 2016 budget is based on a Non-Fuel Revenue forecast of \$160,711,000 and a Fuel Revenue forecast of \$232,125,000. Total Operations and Maintenance budget includes Labor costs of \$44,545,117; Non-Labor costs of \$36,241,935, less Capitalized O&M of \$5,655,094 for total O&M Budget of \$75,131,958; Independent Power Producers costs plus Debt Service of \$40,172,000 Revenue Bond Debt Service of \$25,097,000 and revenue funded Capital Improvement Projects of \$17,983,133. Therefore, the FY16 Budget of \$391,651,260 (comprising of a Non- Fuel budget of \$159,526,260 plus a Fuel Budget of \$232,125,000) is hereby adopted.
2. The authorized level of positions within the Authority shall be 510 FTEs excluding the (20) personnel in the GPA Apprenticeship Program for FY2016.
3. The General Manager is authorized to transfer within O&M object codes an amount not to exceed 10%, to inform the CCU of any transfer, and any transfer above 10% requires CCU approval, with the exception that there shall be no transfer into the personnel account.
4. The budget of \$1.6M for overtime in FY2016 shall be adhered to by the General Manager and the Chief Financial Officer and shall require CCU approval to increase the amount of the overtime budget.
5. The Revenue Funded Capital Improvement budget of \$17,983,133 is approved and General Manager is authorized to petition the Public Utilities Commission (PUC) for approval.
6. The General Manager's delegated contract approval authority remains at \$250,000.

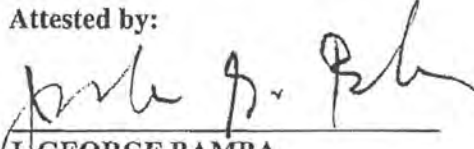
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RESOLVED, that the Chairman certifies and the Secretary attests to the adoption of this Resolution.

DULY AND REGULARLY ADOPTED NUNC PRO TUNC this 25th day of August 2015.

Certified by:


JOSEPH T. DUENAS
Chairperson
Consolidated Commission on Utilities

Attested by:


J. GEORGE BAMBA
Secretary
Consolidated Commission on Utilities

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SECRETARY'S CERTIFICATE

I, George Bamba, Secretary for the Consolidated Commission on Utilities do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted at a regular meeting by the members of Guam Consolidated Commission on Utilities, duly and legally held at a place properly noticed and advertised at which meeting a quorum was present and the members who were present voted as follows:

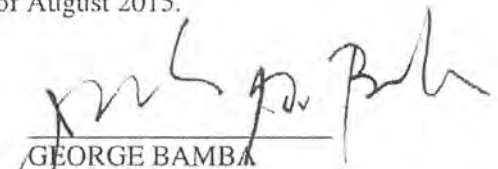
At said meeting said resolution was adopted by the following vote:

AYES: 5
NOES: 0
ABSENT: 0

Said original resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

SO CERTIFIED this 25th day of August 2015.





GEORGE BAMBA
Secretary
Consolidated Commission on Utilities



GUAM POWER AUTHORITY

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

Transportation Heavy Equipment Bucket Trucks

I. DESCRIPTION

Project Description:

GPA continues to manage and maintain its fleet of bucket trucks and has identified the need for 6 bucket trucks to replace and supplement GPA's existing fleet.

Project Schedule

Bids for this equipment will be issued by December 2015 with final delivery no later than August 2016.

Justification:

Capital investments in transportation are necessary to meet GPA mission requirements for power generation and delivery. These investments will supplement the existing fleet and replace certain equipment and vehicles beyond their useful life deemed not economical to repair. The new 55-foot and 65-foot bucket trucks will give the Authority's Transmission & Distribution personnel the capability and capacity to perform new installations to support customer growth and to maintain the overhead power system. The bucket trucks to be replaced have an average age of 20 years.

II. ALTERNATIVE

No Action. The alternative project will maintain the existing fleet. As equipment continues to age, operations will be impacted as GPA's response to corrective and preventive maintenance is delayed because of lack of sufficient equipment. Additionally, GPA will continue to spend on repair costs to maintain the aged fleet as best as possible with more downtime for equipment, and more labor and material expenses.

III. REVIEW OF SELECTED ALTERNATIVE

Replacement of equipment to meet power generation and delivery requirements is critical to sustaining operations. Accomplishing this project ensures the GPA fleet continues to support the GPA mission and issues are addressed before they have a negative impact to GPA operations, assets, and quality of service.

Cost-Benefit Analysis

The following table provides the costs and benefits afforded by completion of the project assuming a 15-year useful life. Avoided costs include anticipated repair costs of existing bucket trucks, loss revenue due to extended outages, and additional man-hours needed to complete jobs because of inadequate equipment.

1	Benefits (Avoided Service Interruption and Loss of Revenue)*	\$370,000.00
2	Costs	\$1,700,000.00
3	Total Project Cost (1+2)	\$2,070,000.00
4	Frequency of the event causing the damage (Years)	1
5	Frequency where mitigation would no longer be effective (Years)	15
6	Annual probable benefit if the mitigation is 100% effective (1/4)	\$ 370,000.00
7	Annual probable loss if the mitigation is not 100% effective (3/5)	\$ 138,000.00
8	Actual annual probable benefit from the mitigation (6-7)	\$ 232,000.00
9	Project Useful Life (years)	15
10	Present Value of \$1 per year for the project useful life @ 7%	\$9.11
11	Present Value of Future Benefits (8x10)	\$2,113,036.05
12	The Benefit Cost Ratio (11/2)	1.24

*Avoided costs included additional maintenance costs, extended outages, and decreased efficiency.

IV. **COST ESTIMATE**

6 Bucket Trucks \$ 1,700,000

V. **PROJECTED SOURCE OF FUNDING**

GPA CIP revenue funds will be used for this project.

Official#	Official(Discription)	Age	FY 2013	FY 2014	FY 2015	Total	2015 Usage(Miles)
2694	Bucket Truck(International)	17yrs	\$ 3,789.16	\$ 19,023.79	\$ 7,158.00	\$ 29,970.95	0.1
4660	Bucket Truck(IHC)	18yrs	\$ 10,821.86	\$ 13,375.48	\$ 84.00	\$ 24,281.34	130.7
5059	Bucket Truck(GMC)	25yrs	\$ 10,654.07	\$ 5,575.41	\$ 6,872.00	\$ 23,101.48	1617.8
1575	Bucket Truck(Kenworth)	22yrs	\$ 3,435.29	\$ 10,185.90	\$ 8,259.00	\$ 21,880.19	3225.8
2590	Bucket Truck(IHC)	21yrs	\$ 15,295.70	\$ 10,091.67	\$ 3,161.00	\$ 28,548.37	0
3957	Bucket Truck(IHC)	18yrs	\$ 4,219.04	\$ 5,102.12	\$ 16,365.00	\$ 25,686.16	2451.5
			\$ 48,215.12	\$ 63,354.37	\$ 41,899.00	\$ 153,468.49	7425.9

Down time(Days)	Status	Repair Assessment
237	Pending Salvage	platform rotational overhaul/Engine Weak
198	Pending Salvage	electrical and aerial systems/Body Work
51	Operational	high pod failure/Body Work/Door Hardware obsolete
44	Operational	body repairs, electrical system repairs
204	Pending Salvage	Complete aerial overhaul
8	Operational	Due for transmission replacement, aerial overhaul
742		



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 15-23
)
The Application of the Guam Power)
Authority to Approve the Procurement of) **ORDER**
Bucket Trucks.)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of Guam Power Authority ["GPA"] for PUC Review and Approval of GPA's Procurement of Bucket Trucks.¹

BACKGROUND

2. In GPA Docket 15-19, GPA sought approval of its FY2016 Capital Improvement Project Cap in the amount of \$12,067,780. Included by GPA as items in the CIP Budget Request were 3 65-ft. and 3 55-ft. Bucket Trucks at a cost of \$1.7M.²
3. The PUC approved the ceiling cap in the amount of \$12,067,780, but required GPA to seek approval from the PUC for procurement authority through the Contract Review Protocol before it expended the amounts for the bucket trucks of \$1.7M³
4. In accord with the prior PUC Order, GPA now seeks to procure 6 bucket trucks to replace 6 existing Bucket Trucks which range in age from 17 to 25 years.⁴
5. GPA submits that the replacement of the bucket trucks is necessary to ensure that GPA has adequate bucket trucks for T&D Operations.⁵
6. The Consolidated Commission on Utilities (CCU). in Resolution No. 2015-42, approved the CIP budget including the request for 6 bucket trucks.⁶

¹ GPA Petition Approval of the Procurement of Bucket Trucks, GPA Docket 15-23, November 19, 2015.

² PUC Order, Request of GPA to Approve FY2016 CIP Ceiling Cap, GPA Docket 15-19, dated September 24, 2015, at p. 3.

³ Id.

⁴ GPA Petition for Approval for the Procurement of Bucket Trucks, GPA Docket 15-23, filed December 19, 2015, at p.1.

⁵ Id.

⁶ GPA Petition for Approval for the Procurement of Bucket Trucks, GPA Docket 15-23, filed December 19, 2015, at pgs.1-2.

7. GPA submits that the PUC should approve its request to proceed with their procurement of replacement bucket trucks, as "the replacement of the bucket trucks is necessary to ensure GPA has adequate bucket trucks for T&D Operations, and is reasonable, prudent and necessary".⁷
8. PUC Counsel filed his Report herein on December 6, 2015.

DETERMINATIONS

9. GPA indicates that capital investments in transportation are necessary to meet its mission requirements for power generation and delivery. The 55-ft. and 65-ft. Bucket Trucks will give the Authority's Transmission & Distribution personnel the capability and capacity to perform new installations to support customer growth and to maintain the overhead power system.⁸
10. Based upon GPA's analysis, it will not be economical to repair the existing bucket trucks, as they are for the most part beyond their useful lives.⁹
11. Given the age of the existing trucks, they would require substantial repairs to be operational on an ongoing basis; although 3 of the trucks are presently "operational", they would also require substantial repairs.¹⁰
12. GPA has established that replacement of the bucket trucks is critical in sustaining operations to meet power generation and delivery requirements.¹¹
13. GPA's Cost-Benefit analysis indicates that there would be a beneficial cost-benefit ratio with the purchase of the new bucket trucks and replacement of the old trucks: a present value of future benefits in excess of \$2M over the assumed useful life of 15 years.¹²

⁷ Id. at p. 2.

⁸ Id.

⁹ Id.

¹⁰ Id at p. 4.

¹¹ Id.

¹² Id at p. 2.


14. GPA should ascertain and determine whether it may be able to garner some additional useful life for certain of the bucket trucks, official vehicles #1575 and #3957.¹³

ORDERING PROVISIONS

After review of the record herein, including GPA's Petition for Approval of the Procurement of Bucket Trucks, and the PUC Counsel Report, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. GPA's Petition to procure Bucket Trucks is approved.
2. GPA is authorized to expend the amount of \$1.7M for the bucket trucks.
3. GPA should ascertain and determine whether it may be able to garner some additional useful life for certain of the bucket trucks, official vehicles #1575 and #3957.
4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 10th day of December, 2015.



Jeffrey C. Johnson
Chairman



Rowena E. Perez
Commissioner




Joseph M. McDonald
Commissioner

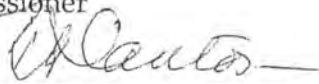


Peter Montinola
Commissioner

¹³ Id at p. 3.

Order
GPA's Procurement
of Bucket Trucks
GPA Docket 15-23
December 10, 2015


Michael A. Pangelinan
Commissioner



Filomena M. Cantoria
Commissioner


Andrew L. Niven
Commissioner



JOSEPH T. DUENAS
CCU Chairman



JOHN M. BENAVENTE, P.E.
General Manager

Telephone Nos. (671) 648-3054/55 or Facsimile (671) 648-3165

Accountability	Impartiality	Competence	Openness	Value
INVITATION FOR BID (IFB) NO.: <u>GPA-011-16</u>				
DESCRIPTION: <u>2016 Bucket Trucks</u>				

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, **one (1) original, in duplicate**, at the date and time for bid opening.

(XX) BID GUARANTEE (no less than 15% of total bid) May be in the form of;
(NOTE: Cashier's Check or Certified Check Refunds will be ONLY be made out to the name of the Bidder.)

Reference #11 on the General Terms and Conditions

- a. Cashier's Check or Certified Check
- b. Letter of Credit or
- c. Surety Bond – Valid only if accompanied by:
 1. Current Certificate of Authority issued by the Insurance Commissioner;
 2. Power of Attorney issued by the Surety to the Resident General Agent;
 3. Power of Attorney issued by two (2) major officers of the Surety to whomever is signing on their behalf.

() STATEMENT OF QUALIFICATION;

() SAMPLES;

(XX) BROCHURES/DESCRIPTIVE LITERATURE; (Shall provide detailed literature on items offered.)

(XX) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS – Affidavits must comply with the following requirements:

- a. The affidavit must be signed within 60 days of the date the bid is due;
- b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- c. First time affidavit **must** be an **original** – If copy, indicate Bid Number/Agency where original can be obtained.

(XX) NON-COLLUSION AFFIDAVIT;

(XX) NO GRATUITIES OR KICKBACKS AFFIDAVIT;

(XX) ETHICAL STANDARDS AFFIDAVIT;

(XX) WAGE DETERMINATION AFFIDAVIT;

(XX) RESTRICTIONS AGAINST SEX OFFENDERS AFFIDAVIT;

(XX) OTHER REQUIREMENTS:

A Guam Business License and/or Contractor's License with proof of Employer Identification Number (EIN) is not required in order to provide a proposal for this engagement, but is a pre-condition for entering into a contract with the Authority. Bidders MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act (www.wdol.gov). Additionally, upon award the successful bidder must provide to GPA the most recently issued Wage Determination by the US Dept. of Labor.

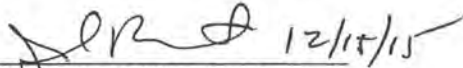
The reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid.

On this _____ day of _____, 2016, I, _____, authorized representative of _____ acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

Bidder Representative's Signature

INVITATION FOR BID

ISSUING OFFICE:
Guam Power Authority
Procurement Management Materials Supply
GPA Central Office, 1st. Floor
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913


JOHN M. BENAVENTE, P.E. DATE
General Manager

DATE ISSUED: December 17, 2015 BID INVITATION NO.: GPA-011-16
BID FOR: 2016 Bucket Trucks
SPECIFICATION: See Attached
DESTINATION: See Attached
REQUIRED DELIVERY DATE: 120 Calendar Days ARO

INSTRUCTIONS TO BIDDERS:
INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION
INCORPORATED IN: _____

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 2:00 P.M.,
Date: January 05, 2016 and shall be publicly opened. Bid submitted after the time and date specified above
shall be rejected. See attached General Terms and Conditions and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite
the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the
expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the
undersigned agrees that this bid remain firm and irrevocable within one hundred twenty (120) calendar days from the date
opening to supply any or all of the items which prices are quoted.

NAME AND ADDRESS OF BIDDER: _____ SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID: _____

AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM NO(S). AWARDED: _____

CONTRACTING OFFICER:

JOHN M. BENAVENTE, P.E. DATE
General Manager

NAME AND ADDRESS OF CONTRACTOR: _____ SIGNATURE AND TITLE OF PERSON

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY.	U/I	U/P:	T/P:
-----	-------------	------	-----	------	------

1.0	New Bucket Truck Model Over Center Articulating Material Handling Aerial Device 65 Feet Working Height. Must meet or exceed the following specifications in accordance with U.S. Department of Transportation requirements.	3	EACH	\$ _____	\$ _____
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SPECIFICATIONS:

Marking Requirements:
Comply / Non-Compliance
Deviations shall be reflected below:

A. BODY:

- A.1- Wheelbase: 108 inches minimum
- A.2- Cab to Axle: 180 inches minimum
- A.3- Air Conditioning System
- A.4- Lighting and Reflective Package that meets Federal Regulations.
- A.5- Electrical Horn Minimal
- A.6- Windshield Wipers

B. CHASSIS:

- B.1- New - 2016 Model minimum
- B.2- Six Cylinder, Diesel Engine, with a 250 Horsepower Minimum
- B.3- 1875CCA Battery and 130 amp Alternator Minimum
- B.4- Transmission shall be 4-Speed Automatic Minimum
- B.5- **GAWR: Gross Axle Weight Rating**
 - B.5.1- Front: 10,000 Pounds Minimum
 - B.5.2- Rear: 15,000 Pounds Minimum
- B.6- Full Air Brake System. Parking Brakes Shall be Air Operated
- B.7- Tires Shall be Mounted on Steel Rims; U.S. DOT Requirements
- B.8- To include One (1) Spare Tire
- B.9- Rear Pintle Hook with a Minimum Capacity of 10,000 lbs.
- B.10- Rings for Safety Chains at Both Sides of Pintle Hook
- B.11- Provide One Trailer Electrical 7-Wire Coupler Mounted at Rear Bumper Area
- B.12- Drain Valve for Air Tank

C. AERIAL UNIT:

- C.1- Over Center Articulating Material Handling Device Mounted Over the Rear Axle
- C.2- Working Height: 65 Feet Minimum
- C.3- Platform Bottom Height: 60 Feet Minimum
- C.4- **Lower Boom**
 - C.4.1- Insert Shall be of High Strength, Bi-Axial Epoxy Resin, Filament Wound and Could Withstand 69KV AC Rating
- C.5- **Upper Boom**

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY.	U/I	U/P:	T/P:
-----	-------------	------	-----	------	------

Marking Requirements:
Comply / Non-Compliance
Deviations shall be reflected below:

C.5.1- Shall be of High Strength, Bi-Axial Epoxy Resin
Filament Wound and Could Withstand 69KV AC Rating

C.6- **Platform:**

C.6.1- Two Man Fiberglass, 24" X 48" X 42" deep, 700 lbs.
Minimum Capacity. Includes Non-Skid Surfaces on
Access Steps

C.6.2- Polyethylene Liner with a 69KV AC Minimum Rating

C.6.3- Waterproof Cover with a Quick Lock and Release Latch

C.7- **Jib and Winch:**

C.7.1- Shall be articulating and extends to 96 inches minimum

C.7.2- Winch Minimum Load Capacity of 1,000 Pounds

C.7.3- 70 Feet of 1/2 or 7/16 Inch Braided Rope Minimum
with Eye Splice 1,000 Pounds Rated

C.8- **Controls:**

C.8.1- A Single Stick Control with Enabling Lever at
Platform to Control All Movements of Upper and
Lower Booms

C.8.2- Lower Control Lever for Upper and Lower Boom
Movements Located at Turntable to Include a Lever
to Override Upper Control Assembly

C.8.3- Engine Stop/Start Switch at the Platform

D. HYDRAULIC SYSTEM:

D.1- Visual Oil Level Indicator Mounted at Tank

D.2- 12 Volt Minimum Stowage System that can be
Controlled at Platform and Curbside Compartment

D.3- Power Take-Off Driven Pump

D.4- Hydraulic Tilt Cylinder for Platform

D.5- Auxiliary Tool Quick Disconnect Couplers at
Pedestal and Platform. Couplers Shall be Equipped
with Pressure Release Valves

E. STABILIZERS:

E.1- Provide Outtrigger Pad Holders.

E.2- Provide Four (4) Outtrigger Pads 24" X 24" X 2 1/4
Thickness Minimal

F. MISCELLANEOUS:

F.1- Operator's Manual

F.1.2- Body and Chassis Parts Manual

F.1.3- Aerial Unit Service Manual

F.1.4- Engine Troubleshooting Repair Manual

F.1.5- Aerial Unit Repair Manual

F.1.6- Engine Parts Manual

F.1.7- Aerial Unit Parts Manual

F.1.8- Complete Body and Chassis Wiring Diagrams

F.1.9- Completed Aerial Unit Wiring Diagrams

F.2- Provide All Warning, Safety, and Identification Decals
to Meet Federal Requirements

F.3- Provide All Warning and Safety Devices to Meet
Current Standards and Requirements

F.4- Provide Three Set of Keys for Ignition and Doors

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY. U/I	U/P:	T/P:
<p>Marking Requirements: Comply / Non-Compliance Deviations shall be reflected below:</p>				
F.5-	Provide Grounding Cable and Clamp, 65 Feet Long, 2/O 600V Insulated Copper Wire			
F.6-	Provide Line-Setting Ticket			
F.7-	Provide Heavy Duty Floor Mats			
F.8-	Provide Two Each Body Harness and Lanyards			
F.9-	Provide Engine Repair Manual			
F.10-	Provide Part Manual			
F.11-	Provide rust proofing			
<p>G. PRODUCT SUPPORT:</p>				
G.1-	Vehicle Shall be in Good Operating Condition without Protracted Down-Time. Identify on-Island parts On-Island Parts Availability and Service Facility. Provide Parts Listing and Availability of Parts on hand.			
G.2-	Operator Training: Proper operations and functions of all aerial controls. Training shall be by a Certified Instructor of the aerial Unit.			
G.2-	Technical/Service Training: Troubleshooting and Repairs of engine and electrical systems. Training shall be by a Certified Instructor of the Vehicle Unit .			
	NOTE: Upon completion of Training, a "Certificate of Completion" shall be issued to GPA Personnel.			
<p>H. WARRANTY:</p>				
H.1-	A 24-month Bumper to Bumper Warranty, to include scheduled maintenance, oil change and all updates inclusive of diagnostic and assessment.			
H.2-	Shall provide a manual listing of all warranties on entire vehicle. The warranty shall begin on acceptance date upon delivery. Present mileage shall be documented on the warranty booklet.			
H.3-	The warranty period shall be extended by adding the amount of time the vehicle spends for warranty repairs.			
<p>I. GUARANTEES:</p>				
I.1-	Dealer shall warrant the unit and all auxiliary equipment conforms to the proposed specifications and be free of defects from material, workmanship and title.			
I.2-	Vehicle must be DOT inspected and safety inspected.			
I.3-	Manufacturers brochures (original) shall be submitted and attached on bid submittal.			
I.4-	Vehicle shall be delivered to the Guam Power Authority Transportation compound with required documents. Documents shall consist of the original copies of the Bill of Sale, line-setting ticket, DOT and safety inspections, delivery checklist, and certification for rust proofing and others.			

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY.	U/I	U/P:	T/P:
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NOTE:

Notwithstanding the fact that this contract was written by one (1) party, it will be construed that it was written by two (2) parties.

DELIVERY REQUIREMENT:

120 Calendar Days ARO

Any delivery extension for this specific bid shall not be granted due to on-going and/or scheduled projects.

TO BE COMPLETED BY BIDDER:

MANUFACTURED BY: _____

MAKE: _____

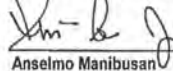
MODEL: _____

YEAR: _____

PLACE OF ORIGIN: _____

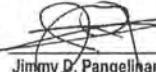
TIME OF DELIVERY AFTER RECEIPT OF PURCHASE ORDER: _____

Specifications Generated by:


12-14-15

 Anselmo Manibusan Date
 T&D Manager (A)

Specifications Reviewed by:


12-14-15

 Jimmy D. Pangellhan Date
 Fleet Support Service Manager

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY.	U/I	U/P:	T/P:
				Marking Requirements: Comply / Non-Compliance Deviations shall be reflected below:	
F.5-	Provide Grounding Cable and Clamp, 65 Feet Long, 2/O 600V Insulated Copper Wire				
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F.7-	Provide Heavy Duty Floor Mats				
F.8-	Provide Two Each Body Harness and Lanyards				
F.9-	Provide Engine Repair Manual				
F.10-	Provide Part Manual				
F.11-	Provide rust proofing				
G. PRODUCT SUPPORT:					
G.1-	Vehicle Shall be in Good Operating Condition without Protracted Down-Time. Identify on-island parts On-Island Parts Availability and Service Facility. Provide Parts Listing and Availability of Parts on hand.				
G.2-	Operator Training: Proper operations and functions of all aerial controls. Training shall be by a Certified Instructor of the aerial Unit.				
G.2-	Technical/Service Training: Troubleshooting and Repairs of engine and electrical systems. Training shall be by a Certified Instructor of the Vehicle Unit . NOTE: Upon completion of Training, a "Certificate of Completion" shall be issued to GPA Personnel.				
H. WARRANTY:					
H.1-	A 24-month Bumper to Bumper Warranty, to include scheduled maintenance, oil change and all updates inclusive of diagnostic and assessment.				
H.2-	Shall provide a manual listing of all warranties on entire vehicle. The warranty shall begin on acceptance date upon delivery. Present mileage shall be documented on the warranty booklet.				
H.3-	The warranty period shall be extended by adding the amount of time the vehicle spends for warranty repairs.				
I. GUARANTEES:					
I.1-	Dealer shall warrant the unit and all auxiliary equipment conforms to the proposed specifications and be free of defects from material, workmanship and title.				
I.2-	Vehicle must be DOT inspected and safety inspected.				
I.3-	Manufacturers brochures (original) shall be submitted and attached on bid submittal.				
I.4-	Vehicle shall be delivered to the Guam Power Authority Transportation compound with required documents. Documents shall consist of the original copies of the Bill of Sale, line-setting ticket, DOT and safety inspections, delivery checklist, and certification for rust proofing and others.				

INVITATION FOR BID NO.: GPA-011-16

Requisition No.: 28729

NO.	DESCRIPTION	QTY.	U/I	U/P:	T/P:
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NOTE:

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DELIVERY REQUIREMENT:

120 Calendar Days ARO

Any delivery extension for this specific bid shall not be granted due to on-going and/or scheduled projects.

TO BE COMPLETED BY BIDDER:

MANUFACTURED BY: _____

MAKE: _____

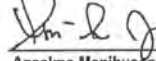
MODEL: _____

YEAR: _____

PLACE OF ORIGIN: _____


TIME OF DELIVERY AFTER RECEIPT OF PURCHASE ORDER: _____

Specifications Generated by:


12-14-15

 Anselmo Manibusan Date
 T&D Manager (A)

Specifications Reviewed by:


12-14-15

 Jimmy D. Pangalihan Date
 Fleet Support Service Manager



GUAM POWER AUTHORITY

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

Edward J.B. Calvo
Governor

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Raymond S. Tenorio
Lieutenant Governor

BID BOND

NO.: _____

KNOW ALL MEN BY THESE PRESENTS that _____, as

Principal Hereinafter called the Principal, and (Bonding Company), _____
A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are
Held firmly bound unto the Territory of Guam for the sum of _____ Dollars
(\$ _____), for Payment of which sum will and truly to be made, the said Principal and the said
Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description)

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall
enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or
bonds as may be specified in bidding or Contract documents with good and sufficient surety for the faithful
performance of such Contract Documents with good and sufficient surety for the faithful performance of such
Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event
of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the
Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid
and such larger amount for which the Territory of Guam may in good faith contract with another party to perform
work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this
obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this _____ day of _____ 2016.

(PRINCIPAL) (SEAL)

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS FOR SUPPORTING DOCUMENTS REQUIRED.

INSTRUCTION TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and Bids will be rejected.



GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAHAN
P O BOX 2977, AGANA, GUAM 96932-2977

SPECIAL PROVISION FOR MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

All Bidders/Offerors are required to submit a current affidavit as required below. Failure to do so will mean disqualification and rejection of the bid/rfp.

5 GCA §5233 (Title 5, Section 5233) states:

"Section 5233 Disclosure of Major Shareholders. As a condition of submitting a bid or offer, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid, or, that it is a not for profit organization that qualifies for tax exemption under the Internal Revenue Code of the United States or the Business Privilege Tax law of Guam, Title 12, Guam Code Annotated, Section 26203©. With the exception of not for profit organizations, the affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or offer and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying."

1. If the affidavit is a copy, indicate the BID/RFP number and where it is filed.
2. Affidavits must be signed within 60 days of the date the bids or proposals are due.

MAJOR SHAREHOLDERS OF DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)

HAGATNA, GUAM)

I, undersign, _____
(partner or officer of the company of, etc.)

being first duly sworn, deposes and says:

- 1. That the person who have held more than ten percent (10%) of the company's shares during the past twelve (12) months are as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total number of shares		_____

- 2. Persons who have received or are entitled a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid/rfp for which this Affidavit is submitted are as follows:

<u>Name</u>	<u>Address</u>	<u>Amount of Commission Gratuity or other Compensation</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: _____

Signature of individual if bidder/offeror is a sole Proprietorship; Partner, if the bidder/offeror is a Partnership Officer, if the bidder/offeror is a corporation.

Subscribe and sworn to before me this _____ day of _____,

20_____

Notary Public _____

In and for the Territory of Guam

My Commision expires _____.

NON-COLLUSION AFFIDAVIT

Guam)
)ss:
Hagatna)

I, _____ first being duly sworn, depose and say:
(Name of Declarant)

1. That I am the _____ of _____.
(Title) (Name of Bidding/RFP Company)
2. That in making the foregoing proposal or bid, that such proposal or bid is Genuine and not collusive or sham, that said bidder/offeror has not colluded, Conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham or to refrain from bidding or submitting a proposal and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid of affiant or any other bidder, or to secure any overhead, project or cost element of said bid price, or of that of any bidder, or to secure any advantage against the GUAM POWER AUTHORITY or any person interested in the proposed contract; and
3. That all statements in said proposal or bid are true.
4. This affidavit is made in compliance with Guam Administrative Rules and Regulations §§3126(b).

(Declarant)

SUBSCRIBED AND SWORN to me before this _____ day of _____, 2016.

)Seal(

Notary Public

NO GRATUITIES OR KICKBACKS AFFIDAVIT

AFFIDAVIT
 (Offeror)

TERRITORY OF GUAM)
)
 HAGATNA, GUAM)

SS:

_____, being first duly sworn, deposes and says:
 As the duly authorized representative of the Offeror, that neither I nor of the Offeror's officers, representatives,
 agents, subcontractors, or employees has or have offered, given or agreed to give any government of Guam
 employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with
 Offeror's proposal.

 Signature of Individual if Proposer is a Sole Proprietorship;
 Partner, if the Proposer is a Partnership;
 Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2016.

 Notary Public
 In and for the Territory of Guam
 My Commission Expires:

DECLARATION RE-COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

_____ hereby certifies under penalty of perjury:

- (1) That I am _____ (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

 Signature of Individual if Proposer is a Sole Proprietorship;
 Partner, if the Proposer is a Partnership;
 Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2016.

 Notary Public
 In and for the Territory of Guam
 My Commission Expires:



GUAM POWER AUTHORITY

ATURIDAT ILEKTRESEDAT GUAHAN
P O BOX 2977, AGANA, GUAM 96932-2977

SPECIAL PROVISIONS

Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

GCA 5 §5253(b) restricts the OFFEROR against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

Signature of Bidder Date

Proposer, if an individual;
Partner, if a partnership;
Officer, if a corporation.

Subscribed and sworn before me this _____ day of _____, 2016.

Notary Public



GUAM POWER AUTHORITY

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

Edward J.B. Calvo
 Governor

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Raymond S. Tenorio
 Lieutenant Governor

Accountability * Impartiality * Competence * Openness * Value

LOCAL PROCUREMENT PREFERENCE APPLICATION

Based on the law stipulated below, please place a checkmark or an "X" on the block indicating the item that applies to your business:

5GCA, Chapter 5, Section 5008, "Policy in Favor of Local Procurement" of the Guam Procurement Law states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintains an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- () (a) A licensed bonafide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, suing workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory for the Pacific Islands; or
- () (b) A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or
- () (c) A business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000.0) whichever is less, of supplies and items of a similar nature to those being sought; or
- () *(d) A service actually in business, doing a substantial business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or national of the Unites States, or persons who lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

- Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference only if the Government's requirement is for service. Service is defined Pursuant to 5 GCA Government Operations Subparagraph 5030 entitled DEFINITIONS under Chapter 5 of the Guam Procurement Law.

1. I _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the LOCAL PROCUREMENT PREFERENCE for Bid No.: GPA _____.
 By filling in this information and placing my signature below, I understand that the Guam Power Authority will review this application and provide me with a determination whether or not the 15% preference will be applied to this bid.
2. I _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No.: GPA _____.

 Bidder Representative Signature

 Date

NOTE:

Prospective Bidders not completing this form will automatically be not considered for Local Procurement Preference. Non-completion of this form is not a basis for rejection of the bid or proposal.

GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) And the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at the Guam Power Authority). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use
3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
7. **"ALL OR NONE" BIDS:** Unless otherwise allowed under this Solicitation, "all or none" bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

NOTE: By checking this item, the Government is requesting all of the bid items to be bid or none at all. **The Government will not award on an itemized basis.** Reference: Section 3-101.06 of the Guam Procurement Regulations.

8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Guam Power Authority in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. (GPR Section 3-202.03.3) **Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package.**
12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to the Guam Power Authority issued by any of the local Banks or Bonding Institution in the amount equal to One Hundred Percent (100%) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Chief

Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

- [X] 13. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
- [X] 14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 15. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
- [X] 17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - b) The compliance with all of the conditions to the Solicitation.
- [X] 18. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
- [] 19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- [X] 20. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
- [] 21. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- [] 22. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- [X] 23. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor

agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).

24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.
25. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the Guam Power Authority Dededo Warehouse at (671) 653-2073 and/or Guam Power Authority Cabras Warehouse at (671) 475-3319, at least twenty-four (24) hours before delivery of any item under this solicitation.
26. **BILL OF SALE:** Successful supplier shall render Bill of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
28. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
31. **GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
- b) **Guarantee of Other Type of Equipment:**
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
- c) **Compliance with this Section is a condition of this Bid.**
32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
36. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
37. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation

will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.

38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative towards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.
39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.
40. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be received by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.
41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101-09.1).
42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
43. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: _____ Title: _____

Address: _____ Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Guam Power Authority.

2. **PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - d) Bids for supplies or services other than those specified will not be considered. Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.

3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.

4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.

5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.

6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.

7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
 - a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3-202)
 - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.

8. **DISCOUNTS:**
 - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.

b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. **SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12 below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulations Section 3-202.12.2).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (P.L. 16-124), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (Guam Procurement Regulations Section 3-202.12.3).
13. **MULTI-STEP SEALED BIDDING:**
- a. It is defined as two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-step have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
 - b. In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
 - 1). only unpriced technical offers are requested in the first phase;
 - 2). priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
 - 3). the criteria to be used in the evaluation at those specified in the Special Provisions and the General Terms and Conditions;
 - 4). the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
 - 5). the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
 - 6). the service being procured shall be furnished generally in accordance with bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
 - c. **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
 - d. **EVALUATION OF UNPRICED TECHNICAL OFFERS.**
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
 - 1). acceptable;
 - 2). potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - 3). unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective

price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.

- e. Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.

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;
 - 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, 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.
 - 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

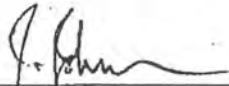
coming year of the procurement. GPA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.

- e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made a minimum of sixty days prior to 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:

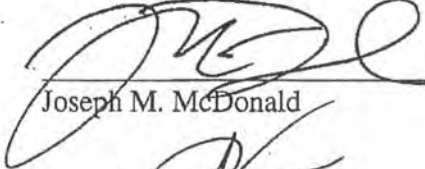
- i. A description of the project, including timeframes, time constraints and deadlines, and a justification of its need.
 - ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
 - iii. A detailed review of the selected alternative, which 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. 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.
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 this protocol. 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 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.
16. GPA shall assign an individual to be responsible for complying with the requirements of this protocol. PUC shall be informed of this assignment.
17. 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.
18. 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 Public Auditor and to the Attorney General for appropriate action.
19. 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 15th day of February, 2008.



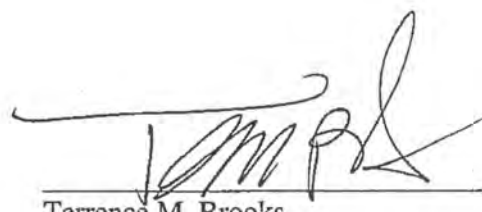
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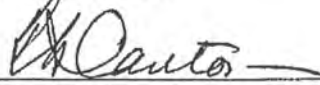
Joseph M. McDonald



Rowena E. Perez



Terrence M. Brooks



Filomena M. Cantoria



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 15-23
)
The Application of the Guam Power Authority to Approve the Procurement of Bucket Trucks.) PUC COUNSEL REPORT
)
)
)
_____)

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of Guam Power Authority ["GPA"] for PUC Review and Approval of GPA's Procurement of Bucket Trucks.¹

BACKGROUND

2. In GPA Docket 15-19, GPA sought approval of its FY2016 Capital Improvement Project Cap in the amount of \$12,067,780. Included by GPA as items in the CIP Budget Request were 3 65-ft. and 3 55-ft. Bucket Trucks at a cost of \$1.7M.²
3. The PUC approved the ceiling cap in the amount of \$12,067,780, but required GPA to seek approval from the PUC for procurement authority through the Contract Review Protocol before it expended the amounts for the bucket trucks of \$1.7M.³
4. In accord with the prior PUC Order, GPA now seeks to procure 6 bucket trucks to replace 6 existing Bucket Trucks which range in age from 17 to 25 years.⁴
5. GPA submits that the replacement of the bucket trucks is necessary to ensure that GPA has adequate bucket trucks for T&D Operations.⁵
6. In support of its Petition, GPA has provided the PUC with Consolidated Commission on Utilities (CCU) Resolution No. 2015-42, which approved the CIP budget including the request for 6 bucket trucks.⁶

¹ GPA Petition Approval of the Procurement of Bucket Trucks, GPA Docket 15-23, November 19, 2015.

² PUC Order, Request of GPA to Approve FY2016 CIP Ceiling Cap, GPA Docket 15-19, dated September 24, 2015, at p. 3.

³ Id.

⁴ GPA Petition for Approval for the Procurement of Bucket Trucks, GPA Docket 15-23, filed December 19, 2015, at p.1.

⁵ Id.

7. GPA submits that the PUC should approve its request to proceed with their procurement of replacement bucket trucks, as "the replacement of the bucket trucks is necessary to ensure GPA has adequate bucket trucks for T&D Operations, and is reasonable, prudent and necessary".⁷

ANALYSIS

8. The PUC previously approved funding for the 6 bucket trucks as part of the FY2016 CIP Budget, requiring only that GPA seek approval for the bucket trucks under the Contract Review Protocol prior to expending the amount of \$1.7M.⁸
9. GPA has identified the need for 6 bucket trucks to replace and supplement GPA's existing fleet. GPA would issue bids for this equipment by December 2015, with final delivery no later than August 2016.⁹
10. GPA indicates that capital investments in transportation are necessary to meet its mission requirements for power generation and delivery. The 55-ft. and 65-ft. Bucket Trucks will give the Authority's Transmission & Distribution personnel the capability and capacity to perform new installations to support customer growth and to maintain the overhead power system.¹⁰
11. GPA's analysis establishes that it will not be economical to repair the existing bucket trucks, as they are for the most part beyond their useful lives. Over the past three years there have been substantial repair costs for these trucks in an amount over \$150,000. Two of the bucket trucks were basically not used at all. One of the trucks was only used for 130 miles in 2015. The other three bucket trucks had mileage usage in 2015 ranging from 3225.8 to 1617.8.¹¹

⁶ GPA Petition for Approval for the Procurement of Bucket Trucks, GPA Docket 15-23, filed December 19, 2015, at pgs.1-2.

⁷ Id. at p. 2.

⁸ PUC Order, Request of GPA to Approve FY2016 CIP Ceiling Cap, GPA Docket 15-19, dated September 24, 2015, at p. 3.

⁹ GPA Petition for Approval and Procurement of Bucket Trucks, GPA Docket 15-23, filed November 19, 2015, "Transportation Heavy Equipment Bucket Trucks" and Cost-Benefit Analysis attached thereto.

¹⁰ Id.

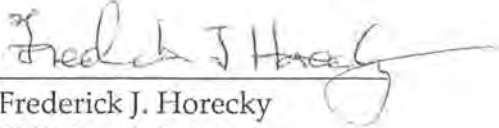
¹¹ Id.

12. Given the age of the existing trucks, the assessment is that all of them would require substantial repairs to be operational on an ongoing basis; although 3 of the trucks are presently "operational", they would also require substantial repairs.¹²
13. GPA has established that replacement of the bucket trucks is critical in sustaining operations to meet power generation and delivery requirements.¹³
14. The Cost-Benefit analysis also indicates that there would be a beneficial cost-benefit ratio with the purchase of the new bucket trucks and replacement of the old trucks: a present value of future benefits in excess of \$2M over the assumed useful life of 15 years.¹⁴
15. It may be, however, that GPA will be able to garner some additional useful life for certain of the bucket trucks, official vehicles #1575 and #3957. These vehicles appear to have provided GPA with at least some useful service in 2015 and may have additional useful life.¹⁵

RECOMMENDATION

16. Counsel recommends that the PUC approve GPA's Petition to procure Bucket Trucks.
17. GPA should be authorized to expend the amount of \$1.7M for the bucket trucks.
18. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 6th day of December, 2015.


Frederick J. Horecky
PUC Legal Counsel

¹² Id at p. 4.

¹³ Id.

¹⁴ Id at p. 2.

¹⁵ Id at p. 3.

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.

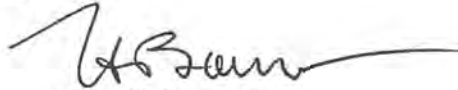
¹ See, for example: a) PUC May 26, 2007 Order, which considers among other things GPA's violation of the protocol regarding its Shell diesel fuel contract; b) PUC September 28, 2006 Order regarding GPA's RFO fuel contract with British Petroleum; c) PUC's February 2, 2006 Procurement Order regarding protocol 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 entered 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)
) 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 l(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, is authorized to 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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December 16, 1998

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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

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.

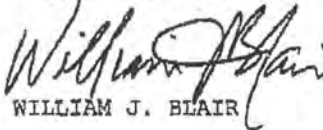
The only sanction specifically made available to the PUC is found in 12 GCA § 12020. That section provides that "any public utility violating or neglecting or failing in any particular way to conform to or comply with this Chapter or any lawful order of the Commission shall forfeit to the Public Utilities 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.

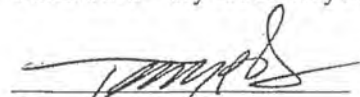
3. 2006 Deferred Payment Agreements.

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.

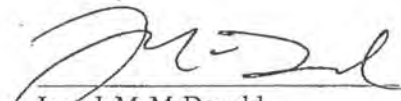
4. Amended Protocol.

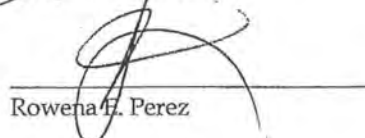
By Order dated October 27, 2005, PUC amended the contract review protocol applicable to Guam Waterworks Authority in order to incorporate a common review standard with CCU. This common standard, which was adopted by CCU on October 18, 2005, will facilitate an expedited and coordinated PUC review of regulated 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 F. 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.

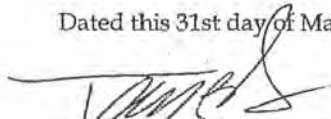
After careful review of the attachments hereto, after consultation with its administrative law judge and for good cause shown, the Guam Public Utilities Commission on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners hereby **FINDS AND ORDERS THAT:**

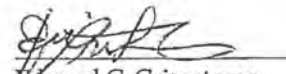
1. The transaction and the Agreements required prior PUC review and approval under 12 GCA 12004 and under PUC's contract review protocol. The transaction constituted a borrowing, which required PUC approval under section 1(d) of the protocol. Moreover, the \$4.6 million termination expenses, which GPA 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;

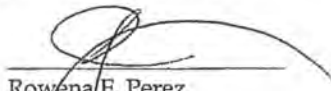
6. A copy of its Order shall be transmitted to the Consolidated Commission on Utilities with the recommendation that it institute governing controls to assure that both GPA and GWA strictly comply with the requirement of contract regulatory review, as contained in the protocols established by PUC.

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

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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.

ATTACHMENT A

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April 18, 2007

Harry M. Boertzel
Administrative Law Judge
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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.

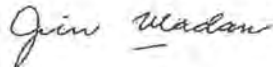
Another major concern to GCG is the lack of responses to recent GPA procurements, especially for supply of fuels. A basic premise underlying the Contract Approval Protocol is that once the PUC has conducted its prudence review and approved GPA proceeding with a particular procurement, the interests of 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.

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]:

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, 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.
 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]:

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 [3,000,000] 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 [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)].
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 [3,000,000] 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. [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.
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. 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.)]