



# GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN  
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COPY

January 11, 2008

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.)]