

**BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION**

**CONTRACT REVIEW PROTOCOL FOR** )  
**THE COMMONWEALTH UTILITIES** ) **DOCKET 09-01**  
**CORPORATION** )  
)

**ORDER**

Pursuant to its authority under 4 CMC § 8409[d], the Commonwealth Public Utilities Commission (CPUC) establishes the following protocol to identify and review regulated contracts and obligations of the Commonwealth Utilities Corporation (CUC):

1. The following CUC contracts and obligations shall require prior CPUC approval under 4 CMC § 8409[d], **which shall be obtained before the publication of the procurement, including, but not limited to, an Invitation to Bid or Request for Proposals:**
  - a) All capital improvement projects (CIP) in excess of the review threshold, 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 the review threshold.
  - c) All professional service procurements in excess of the review threshold.
  - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of the review threshold and any use of said funds.
  - e) Any contract or obligation not specifically referenced above, which exceeds the review threshold, not including individual contracts within an approved CIP or contract.
  - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which CPUC shall establish on or before November 15 of each fiscal year.
  - g) Any agreement to compromise or settle disputed charges for services by CUC, when the amount of the waived charges would exceed the review threshold.

- h) Any divestiture of capital in excess of the review threshold; provided however that the sale or disposal of current inventory shall be exempt from this requirement.
  - i) The review threshold shall be \$350,000.
- 2. For contract that involves the receipt by CUC of revenues or reimbursement of costs in excess of the review threshold, the following procedure will apply:
  - a) CUC is permitted to evaluate the contract without CPUC approval;
  - b) Prior to entering into the contract, CUC will provide the following to CPUC:
    - i. An affidavit from CUC management stating that the contract does not produce an increased revenue requirement with supporting documentation.
    - ii. A narrative description of the contract.
  - c) The contract will be deemed approved unless rejected by CPUC within 35 days after an adequate filing [as determined by CPUC's hearing examiner] has been made by CUC pursuant to subparagraph (b).
- 3. CUC shall file details of any emergency procurement, which is authorized by a gubernatorial declaration of emergency, within three days after it is executed. 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 procurement exceeds 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, CUC must obtain CPUC approval if the total costs over the entire procurement term exceed the review threshold. No additional CPUC review shall be required after the initial review process.
  - d) For multi-year procurements with terms and variable annual costs, CUC shall seek CPUC 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, CUC will file a cost estimate for the coming year of the procurement. CUC shall seek CPUC approval in the event procurement subject to this paragraph should exceed 125% of the aggregate cost approved by CPUC.
  - e) Unless for good cause shown, any petition for CPUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide CPUC with reasonable time to conduct its review.
- 5. In the event CUC receives only one bid for a competitive procurement, which is

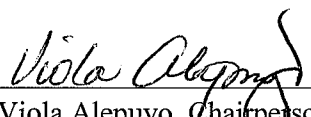
subject to this contract review protocol, CUC shall provide the CPUC with justification as to why the procurement should be approved and a certification from the CUC governing body approving the procurement. Unless the CPUC staff recommends disapproval within 14 days, the contract approval will not be disturbed.

6. On or before September 1 of each year, CUC will use best efforts to submit to CPUC 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, CUC shall file information equivalent to that submitted to its governing body for these items. Contracts which are part of a project or budget approved by CPUC pursuant to this paragraph shall be deemed approved under this protocol.
7. With regard to any contract or obligation (procurement), which requires CPUC approval under this Order, CUC shall initiate the regulatory review process through a petition, which shall be supported with the following:
  - a) 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, CUC 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 CPUC for approval of such contract or obligation, which shall contain the information required in paragraph 6 above. CUC shall obtain CPUC approval thereof before the procurement process is begun.
9. CUC shall, on or before December 1 of each year, file a report on the contracts and obligations approved by CPUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by CPUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and in-service or completion dates.
10. CUC shall not incur expenses for CPUC approved contracts and obligations in excess of 25% over the amount authorized by CPUC without prior CPUC approval. In the

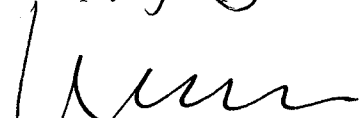
event that CUC estimates that it will exceed the CPUC approved level of expenditures by more than 25%, it shall submit to CPUC the revised estimate and full explanation of all additional cost.

11. CUC shall file with CPUC monthly financial reports within seven days of presentation of monthly financial reports to its governing body.
12. To the extent CUC submits a filing to CPUC under this order which CPUC staff believes is incomplete or deficient, it shall notify CUC and the CPUC within 14 days thereof with specific indication of the alleged incompleteness or deficiency.
13. CPUC staff will use best efforts to be prepared for hearing within 49 days of a complete CUC filing under the terms of paragraph 6 above. CPUC's hearing examiner is authorized, in his judgment, to shorten the above 49 day period, for good cause shown by CUC.
14. CPUC's hearing examiner is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.
15. Definitions. As used in this order:
  - a. "Days" means calendar days.
  - b. "Filing" or "Writing" includes by electronic means.
  - c. "Published" or "Publication" means communication outside of CUC by writing, electronic media, word of mouth, or other means.
16. Transition. Any contract, project, or budget which has been published for procurement purposes as of the date of the Stipulation for this Order shall not be subject to this Protocol.

Dated this 19<sup>th</sup> day of December 2008.

  
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Viola Alepuyo, Chairperson

  
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Kimberlyn King-Hinds

  
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Kyle Calabrese