

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

§ 8191. Private Sector Assistance Agreement (PSAA) Procurement Process.

(a) *Bids only.* The Commonwealth Utilities Corporation (herein “CUC”) shall not enter into any form of performance management contract, franchise agreement, or private sector assistance agreement unless the agreement is awarded pursuant to an invitation to bid except as provided in this section. No such contract shall be awarded pursuant to a request for proposals (RFP) unless the Attorney General certifies, under penalty of perjury, that (1) the RFP is the most appropriate procurement tool for a specific form of PSAA, and (2) such RFP complies with all CUC procurement regulations, CNMI and federal laws. All RFP, excepting renewable energy projects in paragraph (b) below, shall be subject to the provisions of this section.

(b) *Renewable energy projects.* Renewable Energy Projects shall be exempt from all the provisions of this section. Renewable energy projects are any projects that do not use as their main source of power generation fossil fuels, including but not limited to oil, coal or natural gas, but instead use power generating forces including but not limited to wind, solar, geothermal, biomass or nuclear battery. All that shall be required by persons seeking business with CUC as renewable energy project contractors shall be submitting requests for proposal under established Commonwealth procurement regulations. For the purposes of this article, renewable energy projects are limited to private sector assistance agreements where a private renewable energy firm sells or manages renewable energy power or assets to or on behalf of CUC. An independent power producer (IPP) selected for renewable energy project via the RFP process shall not be considered an “eligible customer-generator” as defined under 4 CMC § 8531 and shall not be subject to the rate or compensation limitations of 4 CMC § 8539(a). Under this paragraph, renewable energy projects shall in no case be interpreted to include the sale, management, franchise, concession, build/operate/transfer, build/operate/own, independent power producer contract, contract for a public utilities cooperative or full privatization of any oil consuming CUC asset.

(c) *Public documents.* A CUC invitation to bid and its attachments, including any form of performance management contract or franchise agreement or private partnership for its services and operations as described below, shall be and remain a public document and shall be posted for review and downloading, without charge, on a website maintained by CUC.

(d) *Private sector assistance agreements.* CUC may procure private sector assistance under a private sector assistance agreement (“PSAA”). A PSAA is limited to:

- (1) A performance management contract (PMC) by which CUC may privatize the generation of its electrical power for a limited term not to exceed five years;

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

(2) A concession or franchise agreement by which CUC transfers a utility service, including the related required capital investment, to the private sector for a limited term not to exceed 25 years;

(3) A contract for a public utilities cooperative;

(4) A build/operate/transfer (BOT) contract;

(5) Build, Operate, Own (BOO) Contract;

(6) A contract for an independent power producer (IPP); or

(7) Full privatization of CUC as follows: notwithstanding any provision of law to the contrary, the full privatization of CUC's electric power generation operation is authorized;

(e) *Authority.* CUC shall procure such private sector assistance under its procurement regulations (set forth in the Commonwealth Register, Volume 29, No. 06; June 18, 2007), as amended by CUC from time to time thereafter, and as modified by PL 17-34. No other procurement regulations shall apply.

(f) *Limitation of bid.* With respect to a PSAA procured pursuant to subsection (d)(1)-(7) of this section, the invitation for bids shall include a condition that such PSAA shall establish a renewable energy portfolio standard of at least fifty percent (50%) of its net electricity sales within seven years of the PSAA, if such a standard has not yet been met by CUC, notwithstanding subsection 6 CMC § 8522 as amended by Public Law 15-87.

(g) *Pre-qualification of Bidders.* If the PSAA process requires a pre-qualification of bidders, then a private business entity that is licensed in the Commonwealth and, for at least ten years, has been engaged in business that is closely related to the utility for which the invitation for bid is being published, is hereby deemed qualified to submit a sealed bid. This subsection shall not be construed to preclude entities that are not pre-qualified to submit a sealed bid pursuant to this section.

(h) *PUC review.*

(1) Any PSAA award shall not be final unless the Public Utilities Commission (herein "PUC") approves it under 4 CMC §§ 8452, 8453, or 8454 within 42 days.

(2) No contract shall be awarded to any contractor who is not already permitted in a U.S. or international jurisdiction, or who has not operated a major source of emission in accordance with U.S. Environmental Protection Agency (EPA) regulations for at least five years.

(3) The involvement of PUC in a CUC PSAA under this article is limited to the process described in 4 CMC § 8403(e).

(i) All PSAA procurement shall be subject to 1 CMC § 7404

Source: PL 16-17 §§ 3 and 6, modified; amended by PL 17-34 § 2 (March 10, 2011), modified.

Commission Comment: The Commission modified this section pursuant to 1 CMC § 3806(c), (d) and (e). Public 16-17 was enacted by override on October 1, 2008. In addition to the code amendments set forth in this chapter and

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

severability, savings clause and transition provisions (see comment to 4 CMC § 8111), PL 16-17 contained the following:

Section 1. Short title. This Act may be cited as the “CUC Private Sector Partnership Act of 2008.”

Section 2. Findings and purpose. The Sixteenth Northern Marianas Commonwealth Legislature finds that the people of the Commonwealth demand and deserve, at the earliest possible time, reliable power at affordable rates delivered by an efficient, well-managed utility service. To achieve this goal, the Commonwealth Utilities Corporation (CUC) requires an infusion of funds. A source of funding may be available through CUC’s issuance of public utility revenue bonds or through the private sector and other funding sources that are independent of the depleted coffers of the Commonwealth government.

The Legislature further finds that Commonwealth ratepayers deserve a utility that delivers high quality power on a 24/7 basis at reasonable prices, whose operations are open and transparent, whose books are balanced, whose audits are clean, and whose operations are reviewed by an independent regulator. Further, Commonwealth investors deserve a utility that can and will meet their future power, water, and wastewater needs in a reliable manner with stable and affordable rates. Commonwealth employees deserve a utility run by skilled managers supervising a highly trained local workforce with good morale, competitive compensation, and excellent training opportunities for personnel enhancement and certification to ensure the availability of the skilled work force required for the operation and maintenance of the utilities. Commonwealth power consumers deserve a utility that can procure materials and supplies, including spare parts and professional services, in a flexible, timely, and cost-effective manner. Commonwealth citizens deserve an environmentally friendly utility service committed to cost effective green power generation. Finally, Commonwealth taxpayers deserve a utility whose operation does not require public subsidies, but rather one that enhances taxpayers’ jobs, finances, and economic security.

The Legislature further finds that the Commonwealth and CUC are far from achieving these goals. Residents and businesses alike are suffering from outages, unreliable power and increasing rates. Tourists and investors are discouraged from pursuing their activities in the Commonwealth. The Commonwealth’s economy is in a tailspin, and the current power crisis is accelerating that tailspin. The lack of affordable; reliable, and continuous power from a professionally managed utility creates an imminent threat to the health, safety, and welfare of the people of the Commonwealth. The water and waste treatment facilities, which require power, may fail to function safely and as needed; public safety facilities and equipment may not function when required; the healthcare facilities may become paralyzed; businesses, particularly those operating hi-tech equipment and those requiring air conditioning for their tourist custom-

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

ers, may be unable to operate efficiently or at all. Finally, large power consumers, such as hotels and shopping centers that ordinarily would buy power from CUC and contribute to the overall costs of the system, must generate their own power at a much higher cost per kilowatt hour.

The Legislature further finds that more than two-thirds of CUC's revenue (about \$75 million per year of CNMI ratepayers' funds) goes directly offshore to pay for the foreign oil required to run CUC's generators, instead of flowing through the CNMI economy. The continuing problems with CUC's equipment and finances are causing a collapse of overburdened consumers' family finances and threaten to cause a collapse of the Islands' power, water, and sewer infrastructures-an emergency that the Commonwealth must avoid. Recovery is possible, but requires the assistance and support from the private sector. The Commonwealth and CUC must commit themselves to implementing successful models of public-private sector partnerships. These models range from privatization of management through performance management contracts, as undertaken in Guam, to privatization of an entire utility service regulated by a public utilities commission, as is common in the 50 states. By taking advantage of one or more of these models, the Commonwealth and CUC can draw on outside financing and expertise from the private sector to meet – and resolve – the power crisis. Based on the foregoing, the Legislature finds and declares that this Act is a necessary and proper use of its legislative authority under Article II of the Commonwealth Constitution.

The Legislature further finds that the Board of CUC should be restored its normal managerial powers, as was the case prior to Executive Order 2006-4. Section 9 is a re-enactment of the CUC statute that takes into account numerous public laws passed beginning in the 13th Legislature.

The Legislature finally finds that CUC's previous efforts to privatize portions of its services or to procure alternative energy resources have been largely unsuccessful because CUC has failed to solicit these contracts through the process of sealed competitive bids from pre-qualified bidders. The use of the RFP system (requests for proposals) injects into the process an unacceptable element of subjectivity, and as a result participants in the process lack confidence in it and tend to file protests against the content of the requests or the procedures for evaluating them. These protests have been largely successful and have delayed the procurement of essential goods and services. This Act shall authorize the full privatization of CUC; provided that any private entity that acquires CUC shall pay a total of not less than two hundred fifty million dollars (\$250,000,000.00) in cash or in a combination of cash and equivalent infrastructure improvements, and provided further that any acquisition shall be for a period of not less than forty (40) years.

The Legislature intends that this Act be read, to the fullest extent possible, consistently with Public Law 16-2.