



Office of the Attorney General of Guam

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April 13, 2016

OPINION MEMORANDUM

Ref.: GOV 16-0106

TO: Office of the Governor
FROM: Attorney General
SUBJECT: Payment of Settlements of Government Claims

This is in response to your letter dated February 11, 2016, requesting this Office's opinion on the following matter:

QUESTION/ANSWER

1. Can current year funds be used to pay a contractual claim against the government that arose during a prior fiscal year? YES.
2. Can a government claim be settled and paid if it is determined that the underlying procurement or contract award was not in accordance with requirements of procurement law? YES.

DISCUSSION

I.

The General Appropriations Act of 2016 (FY 2016 Appropriations Act) appropriates funds to pay for obligations incurred on or after October 1, 2015, but no later than September 30, 2016. PL 33-66:I:1. Therefore, current fiscal year appropriations cannot be used to pay prior year obligations. This is consistent with prior AG opinions in which we have stated that prior year obligations cannot be paid with current appropriations without legislative authorization.¹

We have stated also that the only exception to this restriction is for payment arising out of litigation. Current fiscal year funds can be used to pay a judgment or settlement arising out of litigation because a judgment or settlement creates a new or current obligation to pay, even though it may be based on facts that arose in a previous fiscal year.²

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¹ See Attorney General (AG) Opinions PUAG 89-0492, BBMR 89-0032, DOA 88-1854, and DOE 88-0025.

² See AG Opinions BBMR 89-0032 and DOA 88-1854.

The same rationale applies to a settlement of a claim against the government filed under 5 GCA Chapter 6, the Government Claims Act.³

A government claim, whether a tort claim or a contractual claim, becomes an outstanding current year obligation the date it has been settled by the Attorney General or the Governor as a recognition of the potential success against the government were the matter to go to court. The obligation to pay the claim arises when the government determines the claim is valid and agrees to pay it, even though the claim may be for an occurrence that happened in a previous fiscal year.⁴

Under the Government Claims Act, a claim can arise two years before the Attorney General determines whether the claim is valid and should be paid.⁵ It is not uncommon for the government claims process to extend beyond a current appropriations period by the time a claim is even filed, and more so, during the following investigation and settlement phases.

Settlement of these claims should not be hindered because the alleged activity underlying the claim occurred in a prior fiscal year. Such a strict interpretation of the statute is inconsistent with the intent of the Government Claims Act, which is to enable the government to conduct an adequate investigation of the merits of the claim and, if appropriate, to settle it without the expense of a lawsuit. See *Quan Xing He v. Government of Guam*, 2009 Guam 20 (citing *City of San Jose v. Superior Court*, 525 P.2d 701 (Cal. 1974)). Imposing an interpretation that limits valid resolution of potential litigation against the government, based on an appropriation accounting prohibition, would result in an unintended obstruction of the purposes of the Government Claims Act. See *Attorney General of Guam v. Carl T.C. Gutierrez et. al.*, 2011 Guam 10 ¶ 44 (“[T]he legislative intent [is] to discourage lawsuits where settlement is possible.”) Instead, the Government Claims Act supports resolution of obligations in different appropriation years.

For tort claims against government line agencies or the government of Guam in general, payment is mandated through the Government Claims Fund “in order of the date of approved settlement or final judgment.” 5 GCA § 6402(a). This statutory mandate to pay “in order of the date of approved settlement or final judgment” implies both a recognition of the government claims process that may span multiple fiscal years and the authority to pay such claims. Indeed, in the

³ A claim is a statement that something yet to be proved is true; the assertion of an existing right to payment or to an equitable remedy, even if contingent or provisional; or, a demand for money, property, or a legal remedy to which one asserts a right. See CLAIM, Black's Law Dictionary (10th ed. 2014). Therefore, a claim does not constitute an obligation until proven true or agreed to by the parties.

⁴ The Guam Supreme Court has stated that a *back-pay obligation* cannot be made into a current year obligation when accounting principles hold it to be an obligation of prior years. See *Limtiaco v. Guam Fire Dept.*, 2007 Guam 10 ¶ 71. However, *Limtiaco* also held that “[t]he Government Claims Act does not apply to claims arising under the merit system.” *Id.* at ¶ 74. Unlike in *Limtiaco* where the back-pay settlement at issue had been approved by the Civil Service Commission in a prior fiscal year, a claim filed under the Government Claims Act is not a current year obligation of the government until and unless the parties agree to a settlement.

⁵ The claimant has eighteen (18) months from the date a claim arises to file a government claim. 5 GCA § 6106(a). The Attorney General then has an additional six (6) months to investigate and evaluate the claim. 5 GCA §§ 6203-08.

FY 2016 Appropriations Act, the Legislature appropriated funds to the Government Claims Fund “for payment of approved government claims in Fiscal Year 2016.” P.L. 33-66:V:1(g)(4)). Thus, valid tort claims approved in the current fiscal year may be paid from the Government Claims Fund even if the claim arose or was filed in a previous fiscal year.

For contractual claims against the government, the Government Claims Act distinguishes between funds to pay claims arising from current fiscal year occurrences and claims arising otherwise (i.e., from prior year occurrences.) With respect to the former, 5 GCA § 6302 and §6402(b) provide that payments for contractual claims “shall be paid *from the funds certified for payment of the contract pursuant to the budget of the agency or appropriation against which the contract claim is made.*” Given that payment for such claims must be made “from the funds certified for payment of the contract[.]” *id.*, we believe these provisions apply to situations where the underlying contract is still valid and in effect in the same fiscal year when a claim arises, is filed, and resolved through settlement.

On the other hand, for those circumstances where the government claims process extends from one fiscal year into another and thus cannot be paid from “the funds certified for payment of the contract,” the Government Claims Act provides another mechanism to pay for such claims. Specifically, Title 5 GCA § 6404(a) states in relevant part that “[t]he annual budget recommendations for governmental operations . . . shall include an amount for each agency, line or autonomous, as the case may be, for payment of claims made pursuant to this Chapter and generated by the activities of such agency.”

“Where statutes relate to the same subject matter they must be read together and applied harmoniously and consistently.” *Guam v. Enriquez*, 2014 Guam 11, *cert. denied*, 135 S. Ct. 404, 190 L. Ed. 2d 293 (2014). Reading these statutory provisions together and applying them harmoniously and consistently, we believe § 6404(a) refers to a source of funds to pay contractual claims against the government that are distinct and different from the claims paid pursuant to § 6302 and § 6402(b). Whereas the latter provisions apply to claims settled and resolved in the current fiscal year in which they arose, the former applies to claims settled and resolved in a different fiscal year from when they arose.

From the foregoing, it is our opinion that a contractual claim against the government of Guam under the Government Claims Act becomes an obligation incurred in the fiscal year the government agrees to settle the claim. Furthermore, such settlements can be paid from appropriations of the agencies as a current year obligation from funds appropriated in the General Appropriations Act of that fiscal year pursuant to either 5 GCA §§ 6302 and 6402(b) or § 6404(a), depending on the circumstances of the case.⁶

⁶ With the authority to pay Government Claims Act contractual claims settlements with current year appropriations, agencies should be mindful of the prohibition on the expenditure of any money in settlement of a claim in excess of their appropriation by the Legislature for that purpose. *See* 5 GCA § 1303 and 4 GCA § 1404 (voiding any agreement made in violation of this requirement and subjecting criminal penalties to agency heads or certifying officers who knowingly agree to spend any money in excess of said allotments.)

II.

Government claims are reviewed by this office to determine whether the claim has merit and whether it lawfully can be paid. *See* 5 GCA § 6203. This review may include a claim wherein services were satisfactorily rendered and accepted by the government but where there may have been a problem with the underlying procurement or contract, or a lack thereof of either or both.

The overarching policy of sovereign immunity is to protect the government from unnecessary suits. *Pac. Rock Corp. v. Dep't of Educ.*, 2001 Guam 21 *citing* *Rustin v. Dist. of Columbia*, 491 A.2d 496, 501 n. 8 (D.C.1985) (“The very purpose of the doctrine of sovereign immunity is to protect the government from having to spend significant amounts of time litigating the merits of its policy decisions.”). Therefore, settlement of claims is consistent with public policy to discourage lawsuits where settlement is possible. *See* *Gutierrez*, 2011 Guam 10 at ¶ 44.; *see also* 5 GCA § 6206 cmt. (1993). As the Guam Supreme Court points out in *Gutierrez*, “It is the territory’s policy to resolve all [contract] controversies by mutual agreement without litigation.” *Id.* (quoting 2 GAAR § 9301(a)(1)) (brackets included in opinion).

Depending upon the facts and underlying circumstances, a procurement or contract found not in compliance with procurement law may warrant settlement if supported by law or persuasive legal theories that compel settlement in the determination of the Attorney General.

CONCLUSION

A claim against the government made pursuant to the Government Claims Act becomes an obligation incurred in the fiscal year the government agrees to settle the claim. Settlements of such claims may be paid as current year obligations from appropriations of the agencies made in the General Appropriations Act of that fiscal year.

A government claim may be settled and paid in cases where the underlying procurement or contract may be questionable, if it is determined that settlement is warranted to avoid litigation and is in the best interest of the government.


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