

# FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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## **BY ELECTRONIC MAIL**

August 6, 2021  
Dr. Carlos Mellado López  
Secretary  
Department of Health

Re: SETA, Inc 2012-DS0647

Dear Secretary Mellado López:

In accordance with the contract review policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA (the “Policy”), we have reviewed the proposed amendment to the contract between the Department of Health (the “Department”) and Servicios Avanzados en Tecnología, Inc. (the “Proposed Amendment”).

After reviewing the Proposed Amendment, the FOMB concludes “Approved with Observations”. Observations related to the Proposed Amendment are set forth in Appendix A attached hereto.

Our review is solely limited to the compliance of the Proposed Amendment with the applicable fiscal plan and no other matters. For the avoidance of doubt, the review performed by the FOMB does not cover a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local. In addition, the FOMB has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Amendment or the original contract must be submitted to the FOMB for review and approval **prior to execution**.

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was conducted. In addition, during the course of our review, we may receive information which we may refer to the relevant authorities.

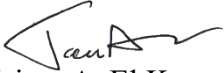
Dr. Carlos Mellado López

August 6, 2021

Page 2 of 2

This letter is issued only to the Department and solely with respect to the Proposed Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaime A. El Koury', with a stylized flourish at the end.

Jaime A. El Koury  
General Counsel

## **APPENDIX A**

(Page A-1)

SERVICIOS ESPECIALIZADOS EN TECNOLOGIA AVANZADA “SETA”, INC. –  
DEPARTMENT OF HEALTH

### **Fiscal Plan Alignment**

This review covers the proposed amendment to the contract 2015-DS0951 between the Department of Health (the “Department”) and Servicios Avanzados en Tecnología, Inc. (“SETA”) (the “Proposed Amendment”).

The original contract had a term from January 1, 2015 until June 30, 2016 and contemplated the provision of (i) 8 Respiratory Therapy Personnel, (ii) one Medical Director, and (iii) one Respiratory Therapy Director for the Dr. Ramón Ruiz Arnau University Hospital, a dependency of the Department (the “Hospital”), at a cost of \$264,000.00.

The contract has since been amended 10 times, thereby extending its term until June 30, 2021 and raising the maximum payable amount to **\$3,432,264.00**. However, we note that the contract was automatically extended an **eleventh** time until **July 31, 2021**, in accordance with Circular Letter OSG-2021-013/OGP-014-2021/PRITS 2021-03 (the “Circular Letter”), via which the Office of Management and Budget (the “OMB”) issued a temporary extension authorization until July 31, 2021 to certain eligible “basic utility contracts” (such as medical services) submitted to the OMB on or before June 30, 2021. Notwithstanding, we note that this automatic extension was submitted for the FOMB’s consideration on **July 8, 2021**, well after the commencement of its term, in violation of the FOMB’s Contract Review Policy.

The Proposed Amendment, on the other hand, extends the term from **August 1, 2021** until **June 30, 2022** and raises the maximum payable amount by **\$528,000.00** accordingly<sup>1</sup>. The Proposed Amendment shall be covered by **Special Revenue Funds** allocated in the following accounts:

**571-071-0000-006-2022 (PRIFAS); E1290-571-071-2105-06B-2022 (PS8.4) = \$422,400.00**

**571-071-0000-783-2000 (PRIFAS); E1290-571-071-2105-06M-2000 (PS8.4) = \$105,600.00**

The Department has certified that the funds required for payments under the Proposed Amendment are allocated in the corresponding accounts. As such, the FOMB’s review indicates that the Department has sufficient budgeted funds in Fiscal Year 2022 to cover the cost of the Proposed Amendment, as of the date of this letter. However, this determination does not consider the extent to which total available funds will be subsequently encumbered by the Department throughout the Proposed Amendment’s term. Consequently, we rely on the Department’s budget certification for the purposes of this review. In the event that the Proposed Amendment causes the Department to exceed its budget, it must find savings in other areas to cover any overbudgeted amounts and request a reapportionment of any identified funds to the FOMB, in order to ensure compliance with the Certified Budget for Fiscal Year 2022

Finally, we take this opportunity to point out that, as with the previous automatic extension, the Department did not submit the Proposed Amendment in a timely manner, instead submitting it on August 5, 2021, **after repeated follow ups from the FOMB**, potentially putting at risk the

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<sup>1</sup> This increase contemplates the period covering July 1, 2021 until June 30, 2022, to account for the automatic extension.

## **APPENDIX A**

(Page A-2)

services rendered under the Proposed Amendment. We take this opportunity to remind the Department that the FOMB's Contract Review Policy **clearly states** that "[i]n the case of proposed amendments to existing contracts, the Commonwealth or covered instrumentality, as applicable, must submit the required documentation within a minimum of **30 calendar days prior to the proposed execution date of such amendment**" (emphasis added).

The FOMB is deeply concerned with the Department's **repeated failure** to comply with the FOMB's Contract Review Policy. This repeated failure, in turn, constitutes a violation of Sections 204(b) and 104(c) of PROMESA. Consequently, please be advised that the FOMB may exercise its powers granted to it under PROMESA to enforce compliance with the Policy and may take such actions as it considers necessary to remedy any non-compliance, consistent with Sections 104(c), 104(k), and 204(b)(5) of PROMESA.

The Department is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submissions Questionnaire) and to request a re-review of this contract should any changes occur.

*This contract review was conducted on the basis of information submitted by the Department of Health. The FOMB has not independently verified the information included in the submission. Should the FOMB become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.*