



PORT OF GUAM
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Eddie Baza Calvo
Governor of Guam
Ray Tenorio
Lieutenant Governor

**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, July 26, 2012**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 11:45 a.m., Thursday, July 26, 2012. Present at the meeting were:

Daniel Tydingco, Chairman
Michael Benito, Vice Chairman
Shelly Gibson, Board Secretary
Eduardo Ilao, Member
Mary C. Torres, General Manager
Anisia B. Terlaje, Deputy General Manager
Atty. Mike Phillips, Legal Counsel

Absent was Board member Christine Baleto. Also present were Juan Muna/Steve Terlaje-AM Insurance; John Dennett/Maggie Cruz-Tristar; Wayne Baumunk-Coral Reef Marine Center and Port Management staff.

II. APPROVAL OF MINUTES

a. **June 28, 2012:** The General Manager recalled that relative to b. Insurance Brokerage Services, under old business, page 4, the Board had authorized management to proceed with issuing the insurance coverage for fiscal year 2013 through an open bid procurement process using the General Services Agency, and that a review of the existing brokers contract be made to determine whether an amendment is necessary. She said the minutes should have reflected these board directives. The General Manager also noted for the record that information was provided to the Board at the previous meeting relative to the carrier rating requirement.

The Vice Chairman made motion to approve the minutes of June 28, 2012 subject to Board directive authorizing the General Manager to proceed with the bid issuance of the insurance specifications for fiscal year 2013 inclusive of reviewing all relative insurance services provided to the Port such as with the brokers agreement and risk management contract to determine any proposed amendments is necessary. Motion was seconded by Mr. Ilao and was unanimously approved.

III. PUBLIC COMMENT

a. **Public Comment:** *"My name is Joseph Cruz and I am a netter down at boat basin. Port Authority has implemented a ruling that there's no netting down at boat basin – understood. But I am a fisherman, there's a season of fish I'm trying to catch is mackerel. Last year when the new season started and you guys implemented the law of 'no netting', and I've asked, I've always asked an area to please for me to catch that fish with my net, but they said – you can't. On your Harbor Master last year what happened is his brother-in-law John Tedtaotao went down there, all that school of mackerel – a boat load guys and I questioned him. I brought him down there and I questioned him – you said it is illegal to net, so what are you going to do with that net that's out there and that fish that's inside that net. Apparently, nothings done. I question harbor patrol about that. Is it illegal to net, he said yes, so what is going to be done because you know the fish is inside that net, the net is down. Nothing, he was let go. Four months ago sir, I netted that fish because your Harbor Master broke his own rule and didn't do anything about that boat load. Four months ago I caught one bucket of fish down there and I ended up in jail, one-half days. In jail for one bucket of fish and I'm trying to feed my family. Now I'm patiently waiting because according to the Harbor Master, he said they were working on an area for us to net, but nothing has been done, until now, still nothing has been done. I'm asking, I'm pleading with you guys – please give me a chance."*

The Chairman appreciates the frustration and concern being expressed, but understands that the Harbor Master and Port Police Chief are to enforce the marina rules and regulations due to safety concerns. However, in the meantime, management is looking into the possibilities of arranging a seasonal fishing for local fishermen. The General Manager said in addressing the concern for the seasonal and cultural harvest fishing, management is looking at creating a special event for permitting, while preserving the safety rules and regulations with regard to the traversing of vessels as mandated by the U.S. Coast Guard. Additionally, management is initiating the Triple A process to review the marina rules and regulations for possible revision. The General Manager assured that every effort is being made to address the concern of the community and to fast track this event hopefully by next month and once the plan is in place a public outreach on this special event will be made.

Mr. Cruz understood that current situation is no netting at any marina, yet he said there is one fisherman who is still netting at the port harbor, namely Mr. Tony Diaz. Mr. Cruz said this concern was expressed to the Harbor Master as to why Mr. Diaz continues to be allowed to net when it is illegal and in turn was told because there are no complaints being made. Mr. Cruz expressed that it is the rule of the Port that there is no netting at any marina, so there should be no netting at all until such time that it is permitted. The Chairman asked the General Manager to look into the concern with the Harbor Master and Port Police Chief.

b. **Employee Comment:** Mr. John B. Santos, Operations Manager announced that a new foreign vessel, namely Swire, will be calling port next month.

c. **PAGGMA Association:** Mr. John B. Santos, PAGGMA President commended the port employees and volunteers for their hard work in building the liberation parade float and mentioned that the Liberation Day luncheon was a success. He said the association will be gearing up for the next event which is the Labor Day picnic and port week festivities.

IV. OLD BUSINESS

1. **Financial Report:** The financial report for the month of June 2012 was presented to the Board for information. Ms. Gibson requested that the Board receive the fiscal year 2013 budget by next month for review.

2. **Insurance Report:** The insurance report for the month of June 2012 was presented to the Board for information.

Watts Construction

Although the matter of Watts Construction has been resolved, this particular claim is specific to considering paying legal fees. Mr. Juan Muna, AM Insurance understands that discussions were further made on this matter and that the underwriters have maintained their prior views regarding coverage for the costs incurred and is offering \$30K in contribution towards the insured cost expenditure on legal fees. Mr. Muna said if this amount is acceptable to the Board, the process to collect the funds will commence and the Port will receive the funds shortly thereafter. The Board members agreed to accept the \$30K recover cost on legal fees.

3. **Procurement Report:** The General Manager said Request for Proposal PAG-012-002 Training and Certification Service for Maritime Terminal Operations went through the competitive procurement process and as a result Island Certs was selected as the most qualified and highest ranked offeror. It is now being requested for Board to approve the award to Island Certs.

Mr. Ilao made motion to approve the award for RFP PAG-012-002 Training and Certification Service for Maritime Terminal Operations and related areas to Island Certs, seconded by Ms. Gibson. Motion was unanimously approved.

The 2-year competitive procurement plan was provided to the Board for information. With respect to the insurance renewal, the Chairman advised the General Manager to send a letter to the Director of the Department of Administration, courtesy copy to the Chief Procurement Officer, General Services Agency pressing upon the urgency to issue the insurance bid. The Chairman also advised Legal Counsel to look into whether procurement on professional services that is federally funded in excess of the \$1M threshold requires the Public Utilities Commission review.

The General Manager presented the procurement contract summary update and brought the members attention to the Risk Management services. She mentioned that this professional service expires the end of this month; however, there is an option that can be exercised for renewal. Ms. Gibson suggested that contracts the Port has engaged within the last year is still current, but other contracts that is due for an option needs to be revisited.

The Vice Chairman asked clarity on the process of renewal options. Ms. Gibson said the Port has procurement authority over professional services and construction services wherein

renewal options may be considered. The acquisition of goods and services is under the purview of General Services Agency.

The Chairman commented for those contracts due to expire he was more inclined to have those services bid out. The General Manager expressed concern if it is the desire of the Board to rebid all professional service contracts due to expire, she said in this particular instance with regard to the Risk Management services due to expire end of this month, the Risk Manager is actively engaged in assisting the Port in facilitating critical issues of golf pier. The General Manager said if the direction is to not exercise the renewal option for another year, then all communication ceases. She asked for Board guidance and direction with respect to the renewal options. The Chairman said there is rhyme and reason to multi-year contracts with options to renew; however, if the initial contract was written in a way where it was improper and renders it fatally flawed from the outset, then there is a concern.

The Vice Chairman asked Legal Counsel reviewing the list of contracts and their scope of services would options to renew be similar to his findings of the insurance brokerage services. The Chairman stated until Legal Counsel has had the opportunity to review the contracts he would not be able to provide an opinion at this time. The Vice Chairman suggested as oppose to ceasing existing contracts up for renewal, all contracts undergo legal review, starting with the most pressing ones and ensure it complies with the law. And if it is in compliant, he suggested management should have the discretion to exercise those respective options; however, contracts of concern will be brought back to the Board. The Chairman asked that Legal Counsel be provided a copy of the risk management contract for review. As to management discretion on exercising the renewal options, the Chairman expressed there should first be a thorough review of those contracts because if it is faulty and flawed from the beginning it is concerning. With that being said, the Vice Chairman proposed for each individual contract with renewal options, starting with the most pressing, it undergo legal review prior to Board approval. The Chairman agreed, with the exception of legal counsel's contract and asked management to provide the Board a copy for review.

Without further discussion, the Vice Chairman made motion for contracts with renewal options undergo legal review for Board approval and on the matter of the Risk Management services that such contract is extended on an interim basis through the end of this fiscal year 2012. Motion was seconded by Ms. Gibson and was unanimously approved.

4. **Commercial Property Division Report:** Without objections, the Board recognized the presence of Mr. Wayne Baumunk, Coral Reef Marine Center. Mr. Baumunk said his interest is the development of Agat marina. He presented information and brought the Board's attention to the minutes of April 7, 2011 which identifies repair work to be done at Agat marina and inquired on the status. Mr. Glenn B. Nelson, Commercial Manager said the Port was fortunate to receive funds from U.S. Fish & Wildlife in the amount of \$253K specific to Agat marina; however, the challenge being faced in developing a new facility for docks A, B, C and D will cost upwards of \$700K each to replace. He mentioned the Port is putting together a capital program to better define and improve the Agat marina facilities. At this time, however, there are no concrete plans nor is there a scope of work at the moment to deconstruct that facility. Mr.

Nelson complimented Mr. Baumunk with the idea of removing dock B to enable more space in between docks which the Port may consider. Mr. Baumunk said as a resident of Guam since 1969, he has experienced that any boat under 25 foot generally is taken out of the water in between usage as the owners take it home, so there is no sense to have any docks 25 foot or less. He mentioned that boat owners paying for dock space have 50 to 60 foot boats; but there is no capacity for those boats at the marina. So by doing away with dock B will allow for these type boats to dock and generate more revenue for the Port.

Mr. Nelson said the Port conducted an alternative management regime study which establishes the business model to facilitate proper marina management. Although the study has been completed, it has yet to be adopted by the Board. He said perhaps this is an opportunity to revisit that document. The Vice Chairman asked whether the \$253K is for a specific use or can it be applied to other repair projects at Agat marina. Mr. Nelson said it was the Port's goal to receive those funds, purchase the materials and perform repair work; however, it evolved to the point where the Port is being asked to provide a specific scope on how those funds are to be spent which would require a bid issuance. He expressed in dealing with such a small amount of monies against an extensive repair work is a bit complicated. The question was posed to the Department of Agriculture's Fish & Wildlife on whether the Port can use these funds and be afforded the flexibility to perform repair work on the docks. Their initial action was it could be done; however, again, specifications were needed. With that, the challenge is to prepare the scope of work to identify what the plan is. After some discussion, Mr. Nelson requested that further communication be made offline with Mr. Baumunk with regard to the developments of Agat marina. There were no objections.

The Commercial Property Division Report dated July 24, 2012 was provided to the Board for information. The Chairman asked the status of KM&T. The General Manager said since the previous board meeting, representatives of KM&T re-introduced their proposal to the Board. As noted in this report, on July 29, 2011 the Port gave KM&T a letter of authorization to conduct survey, site boring and engineering studies to support their revised proposal and also provided a copy of the site topo map back in December 21, 2011. The General Manager said KM&T has yet to provide pending items, such as a revised site of the project and a financial proposal to the Port which is required as part of the application on available property areas. She recalled that at the last meeting with KM&T held at legal counsel's office, it was mentioned to them that Port counsel will draft a letter to refresh the Port's position as there was a point of contention from the Port's previous counsel. This will bring this issue current as she understands there to be a change in the partners, the considerations and the scope of work. Legal Counsel recalled that KM&T's contention was that they did not have the official form. The General Manager said all documents required for submission is listed on the Notice of Available Areas application.

RECESS

At this time, the members agreed to recess the meeting for lunch. The meeting recessed at 12:55 p.m.

RECONVENED

The members reconvened the meeting at 1:05 p.m.

Properties continued:

Ms. Gibson asked the status of Tristar relative to the scheduled pigging. Legal Counsel said he spoke with Tristar's legal counsel and it is tentatively scheduled for September 2012. The Chairman asked whether there is a schedule in place. Mr. John Dennett, Program Manager (Agility/Tristar) said once the schedule is in place it will be provided to the Board.

5. **PUC Matters:** For Board's information, the General Manager presented a letter dated July 24, 2012 addressed to the Administrative Law Judge for Public Utilities Commission (PUC) requesting an extension to October 22, 2012 on the reports required by the Port. Those include: 5 year tariff rate plan; management review; upgrade to the marina facilities; and financing plan Phase I-A and Phase I-B. She mentioned a response has yet to be provided by PUC.

Relative to the Crane Sales Contract, the General Manager understands that the PUC's consultant, Slater & Nakamura, requested for a two week extension on their assessment of the Port's docket. The Chairman took notice PUC consultants is leaning towards recommending purchase of two cranes as oppose to the 3 plus 1 as negotiated by the Port team and crane owners and is not sure if the consultants fully understand what took place during negotiations. Mr. Jose B. Guevara, Financial Affairs Controller said Slater & Nakamura is pushing to complete a draft by August 9, 2012 at which time the Port will have an opportunity to review and provide comment. He said a conference call will be arranged once the draft is completed.

6. **GEDA RFP for SLE Loan:** The General Manager recalled that at the previous meeting the Board had approved to proceed with GEDA on the commercial lending institution for the proposed financing of the Port's service life extension repairs on the Port's wharf in the amount up to \$10M. It was also suggested should there be any residual funds, it be applied to acquiring a financial management system. The General Manager understands that the financial management system is critical to Port needs, and in line with that and looking at the critical needs of the Port, it was determined also there is a need to replace current yard equipment. She requested portion of those residual funds be used to acquire yard equipment as well. The members had no objections.

7. **Port Modernization Program-Implementation Plan:** The General Manager said the technical development team is progressing very well. The two task orders received concurrence from the Project Oversight Team which consists of the demolition of warehouse 2 and retrofit of CFS warehouse. MARAD has given the notice to proceed for these task orders. The Port will also be signing off on a Memorandum of Understanding with Guam Environmental Protection Agency that will address all the environmental concerns and remediation work. Anticipated date of bid issuance is November 2012.

8. **Amendment Request – Office of Economic Adjustment Grant:** The General Manager asked for Board's authorization to submit a memorandum to the Governor's Chief of Staff requesting to amend one of the Office of Economic Adjustment's (OEA) grant, specifically GR0706-11-12 Owner's Agent Engineer (OAE) Support Services for purposes of adjusting the

scope of services; the performance period; the priority of authorized tasks; and the total funding assistance. The General Manager reminded the Board this discussion was addressed during its meeting with Mr. Gary Kuwabara, OEA on July 12, 2012. She said there is a link between this amendment and the commitment to extending the contract for OAE as it is tied into the management of this grant award. It was also mentioned by Mr. Kuwabara then it was necessary to consider that the Board commit to that simultaneously as one cannot occur without the other. The Chairman asked how does this impact what the Board had already approved previously on their service contract up to the end of this fiscal year in the amount of \$300K plus. The General Manager said currently the contract term expires February 13, 2013 and this amendment would extend OAE's performance period to December 31, 2013; with one more option year up to February 17, 2014 for closeout.

The Vice Chairman recalled the \$300K was funded by the Port and would take OAE services up to September 2012. He asked whether the extension to go beyond this would be through federal funds. The General Manager said the funding source would be a combination of Port funds and federal funds; Port's share being approximately \$800K. At this time, the Board members agreed to defer this item for time to further digest this matter.

9. **PAG-GFT Contract:** The General Manager said a letter has been prepared by Legal Counsel requesting guidance from the Attorney General regarding exclusive recognition granted to the Guam Federation of Teachers for Port Operations and Maintenance employees. She said her specific question was with regard to 2 GAR Administration, Section 5110(b), Duration of Recognition, which is also cited in legal counsel's memo. However, she requested that further elaboration be made in order to seek clarification as a collective bargaining agreement has yet to be reached. Those questions include: is GFT still recognized; is there a requirement for Department of Administration and the fifty percent threshold. Legal Counsel said the attachments include the entire DOA package, the Governor's certification and his legal opinion to the Board. The General Manager said the inquiry that speaks to 2 GAR Administration, Section 5110(b) was left out and felt that such question should be posed. Legal Counsel agrees it is part and parcel and that if for some reason an agreement was not entered into it voids the representation, would then be a reason. Also, the Attorney General's office might find other reasons. He said there should not be a problem including special reference or a specific question. The Chairman advised the General Manager to work with Legal Counsel on this matter.

V. NEW BUSINESS

a. **Possible USDA and ANZ meetings:** The Chairman understands the Port will be meeting with ANZ representatives tomorrow and asked that the Board's concerns be expressed relative to ANZ's conditional requirements on other financial institutions.

b. **Port Week Activities:** Mr. John B. Santos, Chairman of the Port Week Committee announced that Port Week 2012 is slated for October 15-19, 2012 celebrating 37 years of serving as Guam's Lifeline. He mentioned to assist in the success of Port Week, several committees will be established to take lead on a variety of functions and activities to include the

Opening Ceremony, Grand Finale and other numerous sporting events. In line with this, Mr. Santos requested approval of a budget of \$20,000.00. He stated as practiced in prior years, PAGGMA Association will handle the disbursement of funds to the committees. A financial report accounting for such funds will be submitted to the Finance division.

Ms. Gibson made motion to authorize the General Manager to allocate Port funds of up to \$20,000.00 to fund Port Week 2012 festivities, seconded by Mr. Ilao. Motion was unanimously approved.

c. **Annual ATOSSCOM Membership Meeting:** The General Manager said the Port Authority is a member of and serves as the Board Secretary to the Association of Transportation Operators Stevedores Shipping Companies of Micronesia (ATOSSCOM). The Secretary serves to assist the association by providing logistical support, site training and administrative support. Request is now being made to allow Mr. John B. Santos, Operations Manager to attend this meeting.

Ms. Gibson made motion to approve travel request for Mr. John B. Santos, Operations Manager to attend the Annual Association of Transportation Operators Stevedores Shipping Companies of Micronesia (ATOSSCOM) Membership meeting tentatively scheduled for August 2012. Motion was seconded by the Vice Chairman and was unanimously approved.

d. **FY2012 FEMA National Preparedness Symposium August 7-9, 2012 Washington DC:** The General Manager said the Port has been invited to attend the annual FEMA National Preparedness Symposium that serves as a forum for increased information sharing and best practices. The symposium will also focus on grant policy updates; presidential policy directives; state/regional threat and hazard identification risk assessment and is 100% federally funded. Request is now being made to allow for five port representatives from the divisions of planning (2), procurement, finance and operations that has a direct first hand on disaster preparedness and response.

Ms. Gibson said in looking at the individuals identified and the direct nature of this symposium, the Port has a list of its first responders assessment team, and wondered why a representative from Engineering and Maintenance were not listed as participants. The General Manager mentioned with the most recent exercises held, these individuals essentially took the lead. Ms. Gibson said she would like to see a representative from Engineering or Maintenance participate and perhaps replace one individual from the Planning Division. The Vice Chairman was not opposed to the list as presented. Mr. Ilao felt that it should be management's discretion to determine who best will benefit from this symposium for the Port. The Chairman asked the General Manager to take into consideration the concerns of Ms. Gibson.

Mr. Ilao made motion to approve travel request for five port personnel to attend FY2012 FEMA National Preparedness Symposium slated for August 7-9, 2012 in Washington, DC. Motion was seconded by the Vice Chairman and was unanimously approved.

e. **2012 Annual APIPA Conference (Public Auditors), August 20-24, 2012**

Palau: The General Manager said the Association of Pacific Island Public Auditors will be sponsoring the 2012 Annual Conference in Koror, Palau. Request is now being made for Mr. Guevara to attend this conference to assist him in meeting the requirements of his Certified Government Financial Manager (CGFM) certification program. Ms. Gibson noticed that portions of the funding source would be through the 2007 Homeland Security Grant. She asked whether the reprogramming of such funds is specific to training. Mr. Jose G. Javellana, planning division said these are remaining funds from the container yard lighting project and the requirements from FEMA is to expend all the grants; thereby approving the reprogramming of such funds to support this travel. Ms. Gibson asked whether there was any consideration to use those funds for equipment, such as radios or night vision goggles. Mr. Javellana said the radios will be addressed in the 2008 grant and understands that night vision goggles are high ticket items. He assured the members that continuous communications are made with division heads on their equipment needs and possible acquisition through these types of grants.

Mr. Ilao made motion to approve travel request for Mr. Jose B. Guevara to attend the 2012 Annual Association of Pacific Island Public Auditors Conference on August 20-24, 2012 held in Palau, seconded by the Vice Chairman and was unanimously approved.

f. **Incident Response Terrorist Bombings Training, August 7-10, 2012 New**

Mexico: The General Manager said this is a reoccurring training and request Board approval to authorize travel.

Ms. Gibson made motion to approve travel request for port representatives of Port Police, Harbor Master and Planning to attend the Incident Response to Terrorist Bombing training in Socorro, New Mexico scheduled for August 7-10, 2012. Motion was seconded by Mr. Ilao and was unanimously approved.

VI. EXECUTIVE SESSION

RECESSED: Meeting recessed at 1:50 p.m.

RECONVENED: The meeting reconvened at 1:55 p.m.

At this time, the Board went into executive session. Executive Session ended at 2:00 p.m. The Board is now back in regular meeting session.

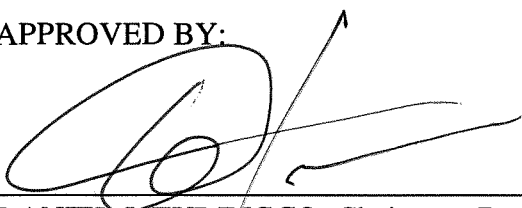
Items addressed in executive session includes: Guam YTK and GFT.

VII. ADJOURNMENT

There being no further business to discuss, it was moved by Ms. Gibson and seconded by the Vice Chairman to adjourn the meeting at 2:00 p.m. The motion was unanimously passed.


MARY MICHELLE GIBSON, Board Secretary, Board of Directors

APPROVED BY:


DANIEL J. TYDINGCO, Chairman, Board of Directors

