



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

**MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF DIRECTORS
Tuesday, June 5, 2012**

I. CALL TO ORDER

There being a quorum, the special meeting of the Board of Directors was called to order at 11:50 a.m., Tuesday, June 5, 2012. Present at the meeting were:

Daniel Tydingco, Chairman
Michael Benito, Vice Chairman
Shelly Gibson, Board Secretary
Eduardo Ilao, Member – *Telephonic Participation*
Christine Baleto, Member
Mary C. Torres, General Manager
Atty. Mike Phillips, Legal Counsel

Absent was Ms. Anisia B. Terlaje, Deputy General Manager. Also present were Guam Legislature Vice Speaker Benjamin Cruz, Senator; Jimmy Camacho-Senator Tom Ada's office; Alan Searle-Port's Compensation Study Consultant and Port Management staff.

Before proceeding with the agenda items, the Chairman recognized the presence of member Ilao participating via teleconference. There were no objections.

The Chairman said it was brought to the attention of the Board and Management that the May 15, 2012 Special Board meeting was not adequately noticed to the public pursuant to the Open Government Act. In order to ensure actions taken in this meeting are in compliance with the Open Government Act, the items will be re-presented for Board approval.

II. OLD BUSINESS

1. **Crane Negotiations:**
 - a. **Approval of Sales Agreement**
 - b. **Approval of Interim Maintenance Agreement**

The General Manager presented the Board with an executive summary dated June 5, 2012 relative to the acquisition of gantry cranes pursuant to Public Law 31-145. The law authorized the Port to enter into negotiations with Matson & Horizon for the specific purpose of acquiring or lease-to-own one (1) or more of the POLA gantry cranes. She requested for Board to ratify the terms and conditions of the Final Sales Agreement of Guam Cranes and the Interim

Agreement for Crane Maintenance. Upon ratification by the Board, she said the documents will be transmitted to the Public Utilities Commission for review and disposition.

Mrs. Baleto asked whether a bullet list has been finalized indicating completed repairs of those recommended by the consultant. The General Manager said the sales agreement provides an exhibit D that lists critical repair items of the cranes. Mr. John B. Santos, Operations Manager said aside from what is listed in the exhibit, staff is also working on a 'punch list' that will identify other repairs.

At this time, the Chairman welcomed comments from the general public. Vice Speaker Benjamin Cruz said he had just received the Final Crane Valuation Report this morning dated May 2012 and wondered whether this was provided to the crane negotiation team prior to making their final recommendation to the Board at its May 15th meeting, although such meeting has been rendered void due to noticing requirements as earlier mentioned by the Chairman.

The Vice Speaker said the final valuation report indicates if two cranes are purchased at \$4M each, the remaining \$6M need to be used on correcting deficiencies to bring it up to standard. This was based on the assumption the \$14M USDA loan will be utilized. He expressed concern what is being proposed is acquiring 3 to 4 cranes, resulting in no funding for repairs. The report also did not take into account the valuation of box charges over the last several years. The Chairman said the concerns expressed were considered by the crane negotiation team and management and they noted there would be sufficient funds for the repairs of all four cranes. The General Manager mentioned the negotiation team considered all requirements in determining the price which included the review of data, records, information from several sources, financials from Matson/Horizon, investment records, data from previous solicitations, and condition reports from experts. She stated several other factors considered were: price comparisons of new crane and used crane; limited financial resources, debt-ceiling mandate; operational impacts and wharf space requirements; Matson/Horizon operation and maintenance cost; Port's operation and maintenance cost upon acquisition; reconciliation of Matson/Horizon initial investment records; Matson/Horizon crane surcharge of \$125 per container; investment recovery and debt service payments.

The Chairman said when the sub-consultant Casper & Phillips finalized the report, they did not have all the information from Matson/Horizon. The Vice Speaker inquired whether the draft crane valuation report was used when a decision was made on May 15th. The Chairman reiterated that the sub-consultant did not have the benefit of looking at all of the proprietary data and information, and Matson/Horizon had subsequently furnished to the crane negotiation team and management such information which addressed all associated costs borne by them.

Without further discussion, the Vice Chairman made motion to ratify the Sales Agreement of Guam Cranes and Spare Parts and the Interim Agreement for Crane Maintenance, seconded by Mrs. Baleto. In calling for the vote, all those who voted in favor of the motion were the Chairman, the Vice Chairman, Director Ilao and Director Baleto. Ms. Gibson abstained. The motion on the floor was approved by a majority vote.

Resolution No. 2012-05 Crane Acquisition & Interim Maintenance Agreement

Mrs. Baleto made motion to approve Resolution No. 2012-05 relative to the approval of the crane acquisition and interim maintenance agreement of the Port Authority of Guam, seconded by the Vice Chairman. In calling for the vote, all those who voted in favor of the motion were the Chairman, the Vice Chairman, Director Ilao and Director Baleto. Ms. Gibson abstained. The motion on the floor was approved by a majority vote.

2. **Resolution No. 2012-04A – Tariff Crane Surcharge:** The General Manager presented Resolution No. 2012-4A relative to the approval of the tariff crane surcharge of the Port Authority of Guam for Board consideration. The Chairman mentioned that the \$125 crane surcharge is currently being assessed by Matson onto its users. He said the Port is also seeking authority from the Public Utilities Commission to assess similar surcharge upon acquisition of the POLA cranes; additionally this will apply to foreign carriers. He asked how much is estimated for the carriers. The General Manager said the foreign carriers are approximately 20% of users which will be new revenue. The Chairman asked what the crane surcharge would be used for. The General Manager mentioned to recoup investment; a pledge for a loan the Port is seeking to acquire cranes; servicing the debt; maintenance and repair; and a funding source to purchase replacement (new) cranes 15-20 years from now. The tariff crane surcharge is a condition to closing the loan with USDA and lending institution demonstrating not only the Port's financial position, but the ability to pay as well.

At this time, due to conference call failure, member Ilao was disconnected from the meeting. The members proceeded with the motion.

Mrs. Baleto made motion to approve Resolution No. 2012-04A relative to the approval of the tariff crane surcharge of the Port Authority of Guam, seconded by the Vice Chairman. In calling for the vote, all those who voted in favor of the motion were the Chairman, the Vice Chairman and Director Baleto. Ms. Gibson abstained. The motion on the floor was approved by a majority vote.

At this time, attempts were made to connect with member Ilao. Director Ilao now part of the meeting.

3. **Program Management Manual:** The General Manager presented the program management manual for Board consideration. The manual was created to prepare all stakeholders during the development of Phase 1A project plan and the utilization of the port enterprise fund. It also works as a guide for the Technical Development Team and Projects Oversight Team relative to relationship roles and expectation. All considerations and comments of the parties have been incorporated into the manual. She indicated the team acknowledges the protocol manual as a living document that is subject to change, therefore, recommended Board adoption. Mr. Ilao agreed and said during the working session all parties concurred that changes can be made where necessary. The Vice Chairman asked whether the integrity of the document is intact. Mr. Ilao replied positively.

The Vice Chairman made motion to adopt the Program Management Manual, seconded by Mrs. Baletto. In calling for the vote, all those who voted in favor of the motion were the Chairman, the Vice Chairman, Director Ilao and Director Baletto. Ms. Gibson opposed. The motion on the floor was approved by a majority vote.

4. **PAG-GFT Contract:** The General Manager said Legal Counsel had provided an agreement between the Port Authority and the Guam Federation of Teachers (GFT) for Board consideration, however, she requested for more time to review this matter. The General Manager stated in review of Port files it revealed there may be some unfinished business with Department of Administration (DOA). The Chairman said the issue has languished with DOA for over two years and because of their non-action, the Board established a negotiation committee comprised of Legal Counsel, Operations Manager, Maintenance Manager and Harbor Master to move this matter forward. The General Manager understands there is a fundamental question that has yet to be answered by DOA and felt it to be significant which is whether GFT union has the eligibility as a collective bargaining agent with the Port. The Chairman recalled that counsel rendered an opinion addressing that concern back in November 2011. Legal Counsel said the methodology used was if somebody wanted to decertify a union, the petition involved must come from the employees, there are no exceptions. He stated there is one of two paths that need to be followed: management petitions the Governor and present unfair labor practices for example or the employees' petition, but management cannot petition. He said GFT was recognized and certified by the then-Governor Felix Camacho as the union representing port employees. Legal Counsel mentioned it is very clear with regard to the procedures for not going forward.

The General Manager recommended this matter be deferred until next Board meeting. She shared with the members that upon meeting with DOA last week on personnel matters, separate from GFT discussions, but having known this item would be a matter of discussion in today's meeting, inquired with DOA as to why this has not been addressed since 2010. The Port then received a letter from DOA this morning indicating it is still under review and will seek guidance from the Attorney General's office. The Chairman did not object to deferring Board action until their next meeting, but he mentioned this matter will not sit idle waiting for DOA's feedback after two years has already gone by. The Chairman advised the General Manager to be debriefed by the negotiation committee members.

5. **Contract Award: Hagatna Marina Docks A and B Pile Extension:** Ms. Gibson made motion to approve the award to BME & Sons, Inc. in the amount of \$96,230.00 for Design/Build IFB No. PAG-CIP-012-003 GDP Marina Dock A & B Pile Extension, seconded by the Vice Chairman. Motion was unanimously approved.

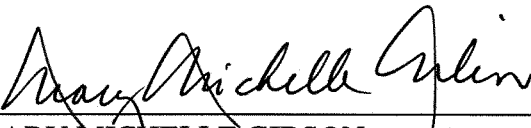
6. **Contract Award: Hagatna Marina Dock C Repairs:** The Vice Chairman made motion to approve the award to Black Construction Corporation in the amount of \$278,700.00 for Design/Build IFB No. PAG-CIP-012-004 GDP Marina Dock C Repairs. Motion was seconded by Ms. Gibson and was unanimously approved.

III. DISCUSSION

1. **Public and Employee Comments:** The Chairman thanked Board and management for their great work during the visit of US DOT Secretary Ray LaHood on May 26, 2012. The General Manger said the meeting and tour of port facilities were successful. Secretary LaHood had the opportunity to see the facilities first hand and came to appreciate the challenges the Port faces. He also made a commitment to partner with the Port to help bring the facilities to a service level sufficient for Guam and port operational needs. Secretary LaHood sensed that the Port had a keen desire to work with MARAD and to move the port modernization program forward. He indicated if all stakeholders continue to work together, the Port may be able to realize additional opportunities for discretionary funding in the future to help bring port facilities to where it needs to be. Mrs. Baleto commended management and staff for doing an excellent job. It was very well organized and the presentation of the Port tour conducted by Mr. Santos greatly contributed to Secretary LaHood's understanding of Port challenges in its operations.

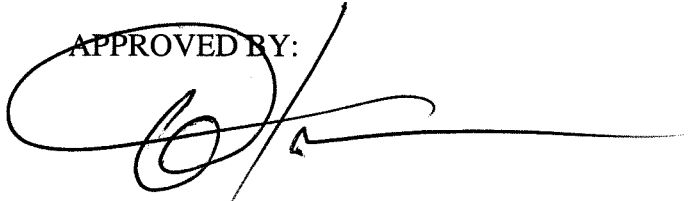
IV. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairman and seconded by Ms. Gibson to adjourn the meeting at 12:45 p.m. The motion was unanimously passed.



MARY MICHELLE GIBSON, Board Secretary, Board of Directors

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

