



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, June 28, 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, June 28, 2012. Present at the meeting were:

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

Also present were Tressie Word-EA Engineering, Thelma Hechanova-OCCAM Solutions; David Babauta-GFT; Jimmy Camacho-Senator Tom Ada's office; Lea Leon Guerrero-CNT; AnnMarie Muna-AM Insurance; William Blair/Al Tsutsui-KM&T; PB/OAE-Jeff Peck; Nick Captain-Captain & Associates and Port Management staff.

II. APPROVAL OF MINUTES

- a. **May 22, 2012:** Mrs. Baleto made motion to approve the minutes of May 22, 2012 subject to correction. The motion was seconded by Ms. Gibson and was unanimously passed.
- b. **June 5, 2012:** Mrs. Baleto made motion to approve the minutes of June 5, 2012 subject to correction, seconded by Ms. Gibson. Motion was unanimously passed.

III. PUBLIC COMMENT

- a. **Public Comment:** None.
- b. **Employee Comment:** None.

c. **PAGGMA Association:** Mr. John B. Santos, PAGGMA President mentioned that the association is preparing for Liberation Day as well as the float.

IV. COMMUNICATIONS

1. **Letter to KM&T / Cement Plus Corporation dated June 14, 2012 regarding M1 Area Piled Wharf and Pier Development:** The General Manager mentioned that representatives of KM&T are present and requested they be given the opportunity to reintroduce the project to the Board as the composition of the Board and management has changed since their proposal was first made to the Port in 2010. At this time, Mr. Al Tsutsui presented the Board with the site development plan and briefly explained the proposed project of the M1 area piled wharf and pier development project. He said the company has met with NAVFAC regarding this project and is coordinating also with U.S. Coast Guard to avoid any encroachment on the property line. He requested for the topography map from the Port. Mrs. Vivian C. Leon, Corporate Services Manager recalls that information having been provided, but will check the records.

Without objections, Mr. William Blair, KM&T legal representative said because of the change in Administration, Port Board of Directors and management, Mr. Tsutsui and the developers are wondering whether this project development is still consistent with what the Board views in moving forward with rather than spending effort, time and resources if it is not. The Chairman said having understood communications have been made with management and sufficient information has been provided to KM&T to comfortably move forward on submitting information required for consideration by the Board; although he noted that nothing precludes any other developer or company to express interest in Port properties. Mr. Blair understood the company has filed an application with the Port. In reviewing the files, the General Manager said there are some pending items and will resume correspondence with KM&T.

At this time and without objections, item under new business - Certificate of Appreciation – Negotiation Team was entertained.

3. **Certificate of Appreciation – Negotiation Team:** As a result of Public Law 30-57 relative to crane negotiation, recognition was made to the following negotiation team for their dedication, commitment and hard work, namely: Nick Captain, Lea Leon Guerrero, Mary Torres, John Santos, Ernie Candoleta, Alma Javier, Jojo Guevara. Although not present at this time, Messrs. Greg Perez and Frank Shimizu were commended as well.

The members proceeded back to the agenda items.

2. **Letter to MARAD dated June 14, 2012 regarding Seismic Risk Analysis report for Berths F-4 & F-6:** The General Manager said the Port provided a response to MARAD dated June 14, 2012 formally acknowledging Port's acceptance of the seismic risk analysis report prepared by MARAD which will be included as part of the implementation program.

V. OLD BUSINESS

1. **Financial Report:**

a. **Mid-Year Budget:** Mr. Jojo B. Guevara, Financial Affairs Controller reported on the mid-year review to the Board. The following were addressed: proposed mid-year review; anticipated end-of-year; federal reimbursements; salaries and benefits; revenues; equipment; and contractual general expense.

The Chairman noticed the staffing pattern and asked whether 'vacant' positions indicated are to be approved as well or is there a general freeze on all hires of port positions. The General Manager said at the present time what the Port is attempting to do is to arrive at a net positive position by the end of the year; hence there is a need to identify areas that can be held off. What is being proposed to the Board is to exercise fiscal restraints with regard to positions that are not impacting the operations or compliance of the port. So those critical positions that are identified as impacting the operations or compliance will be filled as needed, but any other positions will be held off until Fiscal Year 2013 budget. Mrs. Baleto questioned why the Assistant Harbor Master position is being budgeted for the full year. Mr. Guevara clarified that although the annual income is shown on the budget, the amount of \$5K plus also shown is the remainder amount for this fiscal year.

The Vice Chairman asked the status of the Assistant Maintenance Manager and Assistant Operations Manager positions the Board had recently created. The General Manager reminded the Board although the creation was approved, filling of such positions were subject to the availability of funds and without any impact to the existing vacant FTE positions that being Assistant Harbor Master and Assistant Port Police Chief. Management is identifying funds in Fiscal Year 2013 for the two newly created positions. The Chairman advised management to revisit the staffing pattern, look at the funding sources and determine what the critical needs of those positions are and report back to the Board in the next few days.

Mrs. Baleto made motion to approve the proposed mid-year budget with the exception of the position in question. Motion was seconded by Mr. Ilao and was unanimously approved.

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

a. **Watts Construction:** Although the matter of Watts Construction has been resolved, this particular claim is specific to considering paying legal fees. Ms. Annmarie Muna, AM Insurance mentioned that after having addressed this matter further with the underwriters, there is the likelihood of the Port recovering up to \$30K on legal fees.

b. **Insurance Brokerage Services:** The General Manager apprised the Board that the insurance brokerage services comes to term on September 2012 and inquired whether the option can be exercised up to 5 years or is it the direction to procure its own insurance cover. The Chairman asked legal counsel for the requirement under the procurement law. Legal Counsel

recalls that the Legislature included procurement of insurance as “goods and services” under the auspices of the Guam Procurement Act under General Services Agency. The key requirement is whether the Port does it itself or hires somebody to do it, the procurement law must be followed. He stated the insurance policy specifications has to be through a bidding process, it cannot be informal nor any alternative method.

The General Manager posed several options for Board consideration: exercise the option to extend the brokers contract for an additional year; terminate the contract; or have it expire on its own this September 2012 and proceed to procure a brokerage contract or direct procurement of insurance through IFB method. Legal Counsel said if there is no alternative method, then the procurement law applies and must be put out to bid. He said the process by which the insurance service was acquired previously is incorrect. The Chairman clarified with legal counsel whether it is permissible to exercise the option for extensions or was the whole procurement defunct. Legal Counsel said if the purpose was to not utilize the procurement rules and regulations because, for example, the broker is going to perform that process for the Port, so therefore the procurement rules and regulations do not apply, then the contract is invalid and has an illegal purpose. If that was not the purpose and it just happened that way, then obviously that is a different answer. Legal Counsel said it really depends on what the purpose of the contract is for.

Without objections, Mrs. Alma B. Javier, Procurement Manager said the brokerage service qualifies under ‘other professional services’ of the procurement law through a request for proposal. The Port solicited the professional services of a broker to not only obtain the quotes from other insurance coverage, but also to administer the whole insurance program, management of the claims, insurance market studies and so forth. Legal Counsel said its more than likely the results is the same if the broker obtains quotes from other insurance coverage, but that does not mean the law was followed because the Port did not put out a bid for that purpose. After some discussion, the Chairman advised the General Manager to review the primary purposes and provisions of the contract with legal counsel.

RECESS

At this time, the members agreed to recess the meeting for lunch. The meeting recessed at 1:15 p.m.

RECONVENED

The members reconvened the meeting at 1:30 p.m.

3. **Port Modernization Program – Implementation Plan:** The General Manager said the Technical Development Team had approved two task orders—demolition of Warehouse 2 and retrofit of CFS Warehouse which was concurred by the Project Oversight Team. These task orders will be put out for bid and hopefully be awarded by the end of the year.

4. **Tiger Grant 2012 Announcement Awards:** The General Manager said the 2012 Tiger IV program received 703 grant applications, while U.S. DOT awarded only 47 projects, with only 8 on ports. The grant applications came from all 50 States, U.S. territories,

and the District of Columbia. Unfortunately, the Port of Guam was not amongst the recipients selected to receive grant funding.

5. **Service Life Extension/GEDA RFP for SLE Loan:** The General Manager said GEDA is prepared to issue the Request for Proposal No. 12014 for a lending institution not to exceed \$15K which is being presented to the Board for approval. She reminded the Board in prior communications with MARAD, they were of the position and represented to the Port that it would be best to proceed with a separate funding source and to treat the maintenance and repair, and cathodic protection projects separate from the port modernization program.

The Chairman inquired about the \$5M that MARAD had alluded to for the F5 repairs which would determine whether the amount from the lending institution would be \$10M or \$15M. The General Manager recalled that the service life extension was contemplated in Phase 1A; however, the \$5M was not included in the itemized breakdown and only referenced upland work. She mentioned that in MARAD's correspondence confirms that there is no \$5M set aside in the Phase 1A scope of work summary description of the port modernization implementation breakdown as prepared by their PMT-EA.

The Vice Chairman made motion to approve the issuance of the Request for Proposal No. 12014 for a 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, seconded by Ms. Gibson. The motion was unanimously approved.

The Chairman asked the General Manager to work with GEDA to look into adding miscellaneous items that would include port capital improvement projects critically needed and perhaps a financial management system in the event there are remainders from the \$10M.

6. **USDA Meeting:** The Chairman asked whether ANZ and USDA are in sync with the Port relative to the acquisition of the cranes. The General Manager replied positively.

7. **Crane Surcharge:** The General Manager informed the Board that the Port filed a petition with the Public Utilities Commission (PUC) on June 18, 2012 to review and approve the sales agreement for gantry cranes and spare parts and have also enclosed the interim agreement for crane maintenance. The Port is expecting PUC action of the sales agreement and interim crane maintenance on July 30, 2012. She also mentioned that a public notice on the crane surcharge at \$105.00 has been issued.

8. **Procurement Plan:** Mrs. Javier mentioned that the Performance Management Contract package has been completed and is currently with legal counsel for review as he is designated as the Special Assistant to the Attorney General for any procurement that would conceivably reach the threshold of \$500K in the procurement process pursuant to law. Mrs. Javier asked whether management can proceed with the PMC advertisement. The members had no objections.

9. **PAG-GFT Contract:** Tabled, until the next meeting.

10. **Cabras Marine Corporation – Proposed Port West Gate Access:** The General Manager said the Port received a letter dated April 13, 2012 from Cabras Marine relative to the proposed port west gate access and had provided three items for Port consideration in an attempt to build their administration building.

- Setback for the easement. Initially, the Port had required a certain easement to warehouse 1; however, management met and was able to reconcile this matter so that the need to accommodate the footprint of Cabras' administration building is not compromised. This matter has been resolved.
- Water flow for fire protection. Cabras proposed to install water tanks and booster pumps for purposes of their sprinkler systems. As the water supply system is under the purview of Guam Waterworks Authority (GWA), it can be recommended to Cabras to proceed with their plan to meet their fire suppression requirements in discussions with GWA. The Port will assist wherever necessary.
- Condition of F2 pier. Cabras requests for drawings, records or studies of the pier that they could rely on to determine the integrity of the wharf or would they need to conduct tests prior to putting in their investment. Ongoing discussion continues on this item.

The General Manager said the Port continues to work with Cabras to help facilitate the construction project of their new administration building.

11. **APP 99th Annual Conference, July 18-21, 2012:** Ms. Gibson reminded the Board about the Port co-hosting the APP 99th Annual Conference and requested funding consideration to support other incidentals needed for the welcoming reception, companion package as well as the liberation parade which includes decorations, ditty bags, refreshments, supplies and materials. The amount being requested is up to \$5K to help support these necessary items.

Mrs. Baleto made motion to approve up to \$5,000.00 for purposes of the Association of Pacific Ports 99th Annual Conference to be held on July 18-21, 2012, seconded by the Vice Chairman. Motion was unanimously approved.

VI. NEW BUSINESS

1. **New Carrier Outreach:** The Chairman said he receives queries on whether the Port is taking any endeavors to solicit another carrier to call port of Guam which is probably an idea management should look into.

2. **Approval of Contract for Independent Audit Services:** Mrs. Javier requested for Board to approve the contract award for the annual independent audit services contract to Deloitte & Touche. Deloitte & Touche has been determined to have met all the requirements set forth in the RFP and is consistent with the procurement regulations.

Mrs. Baleto made motion to approve the contract award for the Request for Proposal PAG-012-001 Annual Independent Audit Services contract in the amount of \$42K annually for fiscal years 2012-2015, plus an additional \$1K for each \$1M in federal grant expenditures in excess of the base level of \$4M to Deloitte & Touche. Motion was seconded by Mr. Ilao and was unanimously approved.

4. **2012 Homeland Security Awards:** The General Manager proudly announced that Mr. Joe Javellana, Planning Division was presented with the 2012 Urban Areas Security Initiative (UASI) Outstanding Manager of the Year award at the annual National UASI Homeland Security Conference held recently in Columbus, Ohio. The Board members and all present congratulated Mr. Javellana for a job well done.

VII. 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 2:05 p.m. The motion was unanimously passed.


MARY MICHELLE GIBSON, Board Secretary, Board of Directors

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

