



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

REGULAR MEETING OF THE BOARD OF DIRECTORS
Jose D. Leon Guerrero Commercial Port
Wednesday, November 24, 2021
Virtual Board Meeting
3:00 p.m.

A G E N D A

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
 1. October 21, 2021 – Regular Board Meeting
- III. PUBLIC COMMENTS:
 - a. Public Comments
 - b. Employee Comments
 - c. PAGGMA Association
- IV. GENERAL MANAGER'S REPORT (deferred to Old/New Business Items)
- V. OLD BUSINESS
- VI. NEW BUSINESS
 1. Employee Incentive Event – Thanksgiving & Christmas
 2. Board Resolution No. 2021-32 Relative to the untimely death of Mr. Joel P. Evaristo from the Jose D. Leon Guerrero Commercial Port
 3. Board Resolution No. 2021-33 Relative to the untimely death of Mr. Joseph F. Leon Guerrero from the Jose D. Leon Guerrero Commercial Port
 4. Board Resolution No. 2021-34 Relative to directing the General Manager to exercise authority to take any and all administrative and/or criminal actions necessary pursuant to OAG Opinion dated November 9, 2021 re Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam
- VII. ADJOURNMENT



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**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, October 21, 2021**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 3:02 p.m., Thursday, October 21, 2021. Present at the meeting were:

Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Board Member
Rory J. Respicio, General Manager
Dominic G. Muna, Deputy General Manager, Operations
Luis R. Baza, Deputy General Manager, Admin/Finance
Atty. Christine K. Claveria, Port Staff Attorney

Also present was Port Staff.

II. APPROVAL OF MINUTES

1. **September 22, 2021 – Regular Board Meeting.** Director Koki made motion to approve the minutes of September 22, 2021, subject to correction. The motion was seconded by the Vice Chairman and was unanimously passed.

III. PUBLIC COMMENTS

- a. **Public Comments:** None.
- b. **Employee Comments:** None.
- c. **PAGGMA Association:** Mr. Steve Muna, PAGGMA President mentioned that the association is working towards ideas in celebrating the upcoming holidays for the employees and will be shared with the Board at next month's meeting. The Chairman expressed that with the coming holidays – Thanksgiving and Christmas, the Board supports any event for the port employees.

IV. GENERAL MANAGER'S REPORT

1. **Port's COVID-19 vaccination Dashboard**
 - Fully vaccinated: 337 or 98% of 345 Port employees
 - Additional Port employees who received their 1st dose: 6 (Note: *If these 6 employees receive their 2nd dose, then the Port will be at 99% of Port employees vaccinated.*)

2. **Recent Port Employee Testing Positive for COVID-19.** On September 28, 2021, Management was notified that two more employees had tested positive for COVID-19. Both employees are fully vaccinated. The first employee tested positive this past weekend, and the Port's Contact Tracing Team identified one other employee who was exposed. That employee has since tested negative for COVID-19. With the second employee who tested positive, there were 19 close contacts identified, and results came back negative for all exposures.
3. **Port Hosts Vaccination Clinic.** On October 19, 2021, and in conjunction with the Department of Public Health and Social Services, and the Guam Army National Guard, we hosted a Vaccination Clinic for all employees, port users and members of the public. Hours of operation were from 8am-4pm, in front of the former Port Clinic office. All vaccines were made available for anyone eligible, and booster shots were also available based on the eligibility criteria established by DPHSS. This is the third Vaccination Clinic that the Port Authority of Guam has hosted.
4. **General Manager's Notes for YTD Finances, as of September 30, 2021.** We are providing the following summary:

REVENUES AND CARGO THROUGHPUT:

- The Port's Total YTD Operating revenue for September 2021 is \$56.0 million, 0.5% or \$269K higher than the YTD September FY21 budget projection of \$55.8M and 2.5% or \$1.4 million higher than FY20 September actuals of \$54.7 million.
- The total number of containers handled as of September 2021 is 86,794, which is 1.9% or 1,651 containers higher than last year's September 2020 total of 85,143.

OPERATING EXPENSES:

- Overall YTD Operating expense, as of September 30, 2021 is \$48.8M, which is 8.6% lower than the YTD budget as of September of \$53.4M, or \$4.2M in YTD cost avoidances.

OVERTIME EXPENSE AND DIRECT LABOR REVENUE:

- Overtime YTD for Divisions involved in Operations is \$1,390,650, which is 8.0% or \$102K higher than YTD overtime budget of \$1,288,092. The overtime for the month of September resulted in a decrease of 17% or \$21K compared to August, from \$125K in August to \$104K in September.

Direct Labor reimbursement is \$3.3M, which is 0.8% or \$26K higher than the FY21 budget of \$3.2M.

Here is the breakdown:

Direct Labor Revenue:	\$3,286,004
Operations Overtime:	\$1,390,650
Variance:	\$1,895,354

YTD OPERATING REVENUES MINUS YTD EXPENSES

- Operating revenues minus operating expenses resulted in an operating income of \$7.2 million. The final result for the month of September is a net income of \$3.8M, after deducting net of Other Income/Expense totaling to a -\$3.4 million. The September Net Income is higher by 70.4% or \$1.6 million.

Note: -\$4.7M is net balance of Other Income and Expense which is composed of Interest Income, Interest Expense, Federal Reimbursements, Federal Expenses, Retirees COLA, Supplemental, Medical and Dental, and Other NonOperating Income & Expenses.

Other Financial Highlights, as of September 30, 2021:

- The debt service ratio as of September is 1.81. This is 45% higher than the Bond Indenture Debt service ratio requirement.
- Days Cash on Hand is 932 days, which is 86% or 432 days higher than the 500 days requirement of Moody's Rating agency.

DEBT SERVICE RATIO - SEPTEMBER 2021

Projected Annual Debt Service Coverage	1.81
Debt Service Coverage Requirement	1.25
Variance	0.56
% Above the Indenture Requirement	45%

5. **Board Appointment to the Port Board of Directors.** On August 26, 2021, Governor Lou Leon Guerrero appointed Dr. Judith P. Guthertz to fill the seat of former Board member Anthony P. Chargualaf, whose term has expired. A virtual confirmation hearing was held on October 19, 2021. The status of Dr. Guthertz confirmation is still before the Committee.
6. **Port Week – Celebrating 46 Years.** This week marks the anniversary of the Port Authority of Guam providing 46 years of service to the island community, and its neighboring islands. In commemorating our Port, a virtual Proclamation and Legislative Resolution signing was held on October 18, 2021 recognizing the achievements and milestones of the Port; and more importantly, recognizing the backbone of this agency - the employees who work around the clock to keep goods and supplies flowing from our docks to the community and the accomplishments we all made this past year as a team. We also premiered a series of virtual

events throughout the week: flag raising, parade of trucks, progress in the pandemic, our voices, tribute to our fallen COVID hero Henry San Nicolas, Port Users Group greetings, and Board and management greetings. And finally, the virtual employee awards ceremony will be held this afternoon at 4pm. *Biba Port Strong! Biba Port Authority!*

7. **Guidance on Annual Leave Accrual.** Policy Memorandum 2021-GM02 was issued to the port employees as a reminder to them to keep track of their annual leave to avoid forfeiture of excess leave at the end of the fiscal year. Also, to ensure that such leave does not result in the discontinuance or disruption of the Port's operations.

To assist in this policy:

- Employees are primarily responsible for submitting advance requests for annual leave.
 - Supervisors shall develop a schedule of annual leave for employees under their supervision by the end of the first quarter of each fiscal year.
 - Payroll section shall prepare and furnish a list of those employees whose annual leave balance is 320 hours or more to each division head on a quarterly basis.
 - Division heads shall then meet with affected employees and advise them of their accrued leave status.
8. **Port Safety Officers Respond to Report of Oil Spill.** On September 23, 2021, there was an oil spill incident that occurred on F3 dockside. At the time of the incident, Black Construction employees were loading construction materials and equipment onto a barge that was intended for a project in Diego Garcia. The oil spill was from a Smithbridge crane they were using to load the cargo. The Smithbridge crane operator told authorities that heavy rain caused the oil to flow onto the docks and spill into the water. An Oil Spill Response Team from OSROCO worked with Smithbridge and the barge agent Marianas Steamship Agency to clean up the spill. Absorbent materials were deployed on the dockside and in the water to contain and clean up the oil spill. Operations were temporarily halted to allow the U.S. Coast Guard and Port Safety Division to inspect the site, and cleanup of the oil spill has been completed.
 9. **Fire Engulfs AR Sunriser Canteen/Catering Restaurant.** Guam Fire Department (GFD) responded to a fire that broke out at the AR Sunriser Canteen/Catering Restaurant on September 24, 2021, and battled the blaze for several hours. According to fire officials and safety officials, nobody was injured in the fire. As a result of the fire, we sent a notice to the restaurant owner to immediately cease the restaurant operation and vacate the premises. GFD representatives held a meeting with the Port Police, Occupational Safety and Health, and Commercial staff on September 30, 2021, to brief them on the preliminary outcome of their investigation. According to GFD, the fire may have started in the ceiling, tripping the breaker, and the building's structure is unsafe.

GFD also informed us that AR Sunriser had 'fiddled' with the electricity to allow power in the building. We immediately terminated this month-to-month lease. We also informed Ms.

Amelia S. Raz, the owner of AR Sunriser Canteen/Catering, to restore the property to a clean and orderly condition. And that not doing so will cause her to pay 100% of all costs incurred by the Port.

We also recently learned after the fire that this canteen sits directly on top of three fuel lines. We notified the fuel petroleum company that owns the fuel pipeline assets and demanded an explanation of how a full-service kitchen can operate on top of three fuel lines. They informed us they had requested prior Port management to relocate the canteen because of the proximity of their fuel lines and the danger their operation poses to life and property if these fuel lines caught fire.

Tristar Terminals Guam, Inc. owns the fuel lines running under the canteen. Tristar General Manager KK Vikraman responded to me in an email by stating the following:

“When we raised this issue with the earlier management of relocating this canteen, we were told no. We were under the impression that will be relocated during port expansion, since parking area was supposed to occupy that area as per the initial master plan. I am sorry to mention that even one of the excuses mentioned by the person earlier to you was that, “that canteen’s lumpia is so famous, even the judges from the court is their customer. We even asked for the DPW permit or any documents to show that the building was legally constructed. Later another port official admitted that was a makeshift cafeteria and later they encroached over the pipeline area.”

10. **Joint Program - 797 Engineer Vertical Construction Company.** An MOU was adopted by the Port Board at its August 2021 meeting. This MOU establishes the framework for the 797 EVCC to complete the miscellaneous construction project on Port property and related facilities during their Battle Assembly and Annual Training, which is voluntary on their part.

We would like to recognize and extend an appreciation on their efforts in the Operation, Demolition and Debris Removal held on October 16, 2021 at Port Beach and WH1-Bay 6 areas. There were 40 Army Reservists that provided cleanup efforts, providing their military vehicles and heavy equipment, such as three dump trucks, two backhoes, and one skid loader. Tasks completed for this project were:

- Fifteen truckloads of demolished debris materials from Warehouse #1 were safely and successfully transferred to the disposal site at the former Hawaiian Rock Quarry.
- Demolition of the Port Beach Pavilion and the BBQ Structure during the low tide was accomplished.

11. **Global Supply Chain Backlog.** I spoke to Bernie Valencia from Matson, and she said they are not experiencing any shipping delay or the same situation other carriers are experiencing on the West Coast. She said that Matson has their docks in Oakland and Long Beach that they own and operate. However, she did say there is still concern with what is happening inland with the truckers. In our case, ships are still arriving on time, and the Port remains

100% operational. It is crucial to think about what is happening on the West Coast. Cargo ships are backlogged for as long as the eye can see, and how this situation can happen at the Port Authority of Guam if we do not forge ahead with our Port Modernization Plan and timely replacement of aging gantry cranes.

12. Grant Awards and Ongoing Grant Submissions:

- **Fuel Pipeline Connectivity Project.** On October 7, 2021, a kick-off meeting was held with EDA Project Officer Britany MacFarlane to discuss the next steps for this project. Topics discussed included an overview of the grant program, essential documentation and tasks to be completed prior to the start of construction, and programmatic and financial reporting timelines.

Project Cost Estimate: \$3,016,363.00
Grant Award: \$2,413,091.00 (80% Cost Share)
PAG Share: \$603,272.00 (20% Cost Share)

- **Department of Agriculture Grant (DoAG).**

- **Harbor of Refuge (HOR).** Issuance of IFB tentatively set for FY2022 1st quarter.

Grant Award: \$776,684.50
FWS Share: \$621,347.60 (75% Cost Share)
PAG Share: \$155,336.90 (25% Cost Share)

- **Agat Marina Dock B and Public Boat Ramp Repairs.** The MOU was concurred by Governor Leon Guerrero on September 6, 2021. Conditional NTP approved by US FWS and DoAG on September 16.

Next Steps:

- 1) Approval of Post Award Amendment Project Period: 10/01/2019 through 09/30/2022.
- 2) Creation of Account.
- 3) Requisition Entry.
- 4) Planning and Engineering will submit procurement documents in preparatory for the procurement meeting.
- 5) Procurement Planning Meeting with stakeholders.
- 6) Issuance of IFB, Tentative timeline - Q2 FY2022.

Grant Award:

\$512,759.00 (Dock B Repairs)
40,000.00 (Agat Marina's Boat Ramp Bumpers Repair)

- **Gantry Crane Acquisition.**
 - **USDA Direct Loan.** RFP for Banking Services anticipated to be submitted on or before November 15, 2021.
 - **EDA Grant.** EDA grant application has been revised for submission under EDA's Public Works Program which is a different program than its Disaster Supplemental Program (initial funding source that the application was to be submitted). The Port has requested guidance on EDA's policy on its Buy American provision.
 - **FEMA BRIC Grant Application.** The Planning Division will be working with GHS/OCD on the submission of its comprehensive Port wharves repair and upgrades for the upcoming FY2022 BRIC program. The application period opened on September 30, 2021 with a submission deadline of January 28, 2022.
 - **MARAD Marine Highway Program.** As soon as the FY2022 application period opens, the Planning Division will engage equipment project development meetings with the Maintenance and Operations Divisions to develop its first equipment acquisition project for submission.
 - **Office of Local Defense Community Cooperation (Formerly Office of Economic Adjustment – OEA).** PUC approved the Port's petition to award the OAE contract to WSP on September 30, 2021. The Procurement Division is currently processing the contract and purchase order to WSP.
 - **EPA Diesel Emissions Reduction Act (DERA) Program.** The Port is working with US EPA and Guam EPA representatives to move this program forward. There are separate funding streams for the DERA Program: 1) State award to GEPA with the Port as a subgrantee (GEPA/Port co-share), and 2) Insular Affairs DERA grant program (100% US EPA funded).
 - **USDOT Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Program.** Status Quo, MARAD has not published its award notification. The Port's investment amount is \$22,427,496.00 (Cost Share: Fed 80%/Port 20%).
13. **Port Revenue Bonds Project Status.** As of October 18, 2021, the attachment provides information on the status of the revenue bond projects that consist of rehabilitation of hotel wharf, golf pier repairs and improvements, waterline replacement/relocation, EQMR building, and warehouse 1 repair/upgrades, new admin annex building, and other priority projects.

V. OLD BUSINESS

There were no old business discussed.

VI. NEW BUSINESS

1. **Employee Incentive Event – Port Week.** The General Manager mentioned that in celebration of Port Week 46th Anniversary, a luncheon event took place today for the employees. Aside from the general public and port employees who were present, we appreciated the presence of the Board Chairman, Governor Lou Leon Guerrero and Lt. Governor Joshua Tenorio for joining the event as well. At this time, Board approval is being requested to authorize the transfer of funds under the Port Incentive Awards account in the amount of \$10,000 to PAGMA Association who will handle the disbursement of funds allotted for the Port Week activities. Any unused funds will be transferred back to the Port Authority. A financial expense report will be submitted to the Finance division.

Director Koki made motion to authorize the transfer of funds under the Port Incentive Awards account in the amount of \$10,000 to PAGMA Association, seconded by Director Harris. Motion was unanimously approved.

Board Resolution Nos. 2021-12 thru 2021-31. The General Manager requested Board action on Resolution Nos. 2021-12 thru 2021-31 relative to commending and congratulating the named retirees with the Port Authority of Guam, as presented. Director Harris made motion to approve Resolution Nos. 2021-12 thru 2021-31 relative to commending and congratulating the named port employees as presented on their retirement with the Port Authority of Guam. Motion was seconded by the Vice Chairman and was unanimously approved.

2. **Abandoned Derelict Vessel Removal Project (Executive Order 2020-42); Funding Request.** The General Manager mentioned that as reported to the Board on prior meetings, planning efforts on the part of the Guam Environmental Protection Agency, Bureau of Statistics and Plans, the Department of Agriculture, Guam Power Authority and the Port Authority of Guam, have been made on the Abandoned Derelict Vessel Removal Project that is in line with Executive Order 2020-42. He stated that eleven vessels were determined to be abandoned in the harbor. Nine out of eleven are located at the GPA property, while the remaining two vessels are on Port property. The General Manager further mentioned that through a memorandum of agreement, GPA and the Port Authority had agreed that GPA will undertake the procurement of disposal services and that both GPA and Port will bear the funding source for the disposal services at \$100K each, which EPA believes is adequate for the disposal work. However, should the project cost exceed \$200K, GPA and EPA will address the shortfall and ensure the project's completion. The Old Hawaiian Rock area has been identified as the site to temporarily store the ADV vessels.

With the opportunity to take part in this program and dispose of ADV vessels impacting our navigational waters, Board approval is hereby being requested to approve \$100K for this project. Director Koki made motion to approve \$100,000 for the Abandoned Derelict Vessels Project per Executive Order 2020-42, seconded by the Vice Chairman. Motion was unanimously approved.

3. **Invitation for Bid No. PAG-CIP-021-011 Design Building to Replace 3 Each Metal Gate Booths with Extended Concrete Structure.** The General Manager presented executive summary IFB-PAG-CIP-021-011 wherein seven (7) firms obtained IFB packets, while only two (2) companies participated in the bid opening. During the bid opening process, it was determined that the responsible and responsive bidder was Pacific Federal Management, Inc. with a bid amount of \$159,557.00 to replace 3 each metal gate booths. This procurement bid process has been reviewed by Port counsel and is now being brought before the Board for contract award approval.

Director Koki made motion to approve the award to Pacific Federal Management, Inc. for IFB-PAG-CIP-021-011 for the design building to replace 3 each metal gate booths with extended concrete structure. Motion was seconded by the Vice Chairman and was unanimously approved.

VII. ADJOURNMENT


There being no further business to discuss, it was moved by Director Koki and seconded by the Vice Chairman to adjourn the meeting at 3:32 p.m. The motion was unanimously passed.



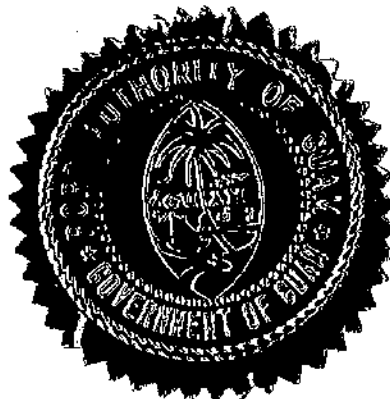
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Date: 2021.11.29 10:08:39
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ISA MARIE C. KOKI, Board Secretary
Board of Directors

APPROVED BY:



FRANCISCO G. SANTOS, Chairman
Board of Directors





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Joshua F. Tenorio
Lieutenant Governor

General Manager's Report for Board of Directors
November 24, 2021

1. Port's COVID-19 vaccination Dashboard

- Fully vaccinated: 341 or 98% of 345 Port employees
- Additional Port employees who received their 1st dose: 2 (Note: *If these 2 employees receive their 2nd dose, then the Port will be at 99% of Port employees vaccinated.*)

2. Port Kicks Off CCTV and Access Control Systems Project. On November 22, 2021, a Kick-off meeting was held for the replacement of the Port's CCTV and Access Control Systems. In this meeting, I signed the Notice to Proceed for California Pacific Technical Services (CalPac) to begin the work with a project amount of \$1,221,418.00. This project is for acquiring, installing, and upgrading the Port's CCTV and Access Control Systems to enhance maritime and security screening and monitoring. It is being funded through a combination of Port and USDHS/FEMA PSGP and U.S. Department of Transportation (DOT) Maritime Administration (MARAD) Grant Cooperative Program funds.

Our progress at the Port continues with this crucial project which will help ensure we protect our Port and our borders. This work being done is in line with Governor Lou Leon Guerrero and Lt. Governor Josh Tenorio's commitment to modernize our Port and protect our borders. The Port will ensure that the Guam Customs and Quarantine Agency receives full access to the CCTV system. By giving Customs full access to our CCTV systems they will be able to view at their own time and in their own control room so that their critical operations for drug surveillance and interdiction remain unimpeded. The installation of the Port's CCTV and Access Control Systems is anticipated to be completed by June of next year.

3. MOU on Procedures for Independent Investigations. On November 10, 2021, I along with Acting Port Police Chief Jesse Mendiola, attended a Memorandum of Understanding signing ceremony at the Office of Attorney General. The MOU provides for an independent and impartial review of matters involving the use of deadly force by law enforcement officers or where an independent investigation and review would be in the public interest. Back in May 2021, the Port Authority was extended an invite by the Attorney General's office to participate in the groundwork in developing standard procedures for an independent investigation. The Guam Police Department was also made part of this initiative.

4. **General Manager's Notes for YTD Finances, as of October 31, 2021.** We are providing the following summary:

REVENUES AND CARGO THROUGHPUT:

- The Port's Total YTD Operating revenue for October 2021 is \$4.9 million, 5.5% or \$254K higher than the YTD October FY22 budget projection of \$4.6M.
- The total number of containers handled as of October 2021 is 8,026, which is 13.6% or 958 containers higher than last year's October 2020 total of 7,068.

OPERATING EXPENSES:

- Overall YTD Operating expense, as of October 31, 2021 is \$3.7M, which is 13.3% lower than the YTD budget as of October of \$4.3M, or \$576K in YTD cost avoidances.

OVERTIME EXPENSE AND DIRECT LABOR REVENUE:

- Overtime YTD for Divisions involved in Operations is \$162,334, which is 48.0% or \$58K higher than YTD overtime budget of \$103,957.

Direct Labor reimbursement is \$327K, which is 19% or \$52K higher than the FY21 budget of \$275K.

Here is the breakdown:

Direct Labor Revenue:	\$327,296
Operations Overtime:	<u>\$162,334</u>
Variance:	\$162,962

YTD OPERATING REVENUES MINUS YTD EXPENSES

- Operating revenues minus operating expenses resulted in an operating income of \$1.5 million. The final result for the month of October is a net income of \$630K, after deducting net of Other Income/Expense totaling to a -\$910K. The October Net Income is higher by 226% or \$436K.

Note: -\$910K is a net balance of Other Income and Expense which is composed of Interest Income, Interest Expense, Federal Reimbursements, Federal Expenses, Retirees COLA, Supplemental, Medical and Dental, and Other NonOperating Income & Expenses.

Other Financial Highlights, as of October 31, 2021:

- The debt service ratio as of October is 3.31. This is 164% higher than the Bond Indenture Debt service ratio requirement of 1.25.
- Days Cash on Hand is 974 days, which is 95% or 474 days higher than the 500 days requirement of Moody's Rating agency.

DEBT SERVICE RATIO - OCTOBER 2021

Projected Annual Debt Service Coverage	3.31
Debt Service Coverage Requirement	1.25
Variance	2.06
% Above the Indenture Requirement	164%

5. **Port Awarded \$17.9 Million in USDOT Maritime Administration (MARAD) Grant.** The U.S. Department of Transportation's Maritime Administration (MARAD) announced on November 21, 2021 that it has approved the Port Authority of Guam's Rebuilding America Infrastructure with Sustainability and Equity (RAISE) grant application in the amount of \$17.9 Million. The project, estimated at \$22 Million, will upgrade wharves F1 through F6 to support ship-to-shore gantry crane operations. It will specifically address sheet piles and concrete cap spallings at the face of the port's F2, F3, F4, and F6 wharves as well as the deteriorating structure of F1 Fuel Pier. This initiative will ensure the sustainability of Guam's vital port infrastructure, securing the island's capacity to continue to receive over 90% of all imported goods.

This proposed project was initially submitted to FEMA's FY2020 Building Resilient Infrastructure and Communities (BRIC) Hazard Mitigation Grant Program (HMGP). Because the project was more than just a mitigation initiative and although favorably rated, it was not awarded. With the belief that this project was in the best interest of the Port, the entire island as a whole, and the entire Pacific Region, we resubmitted the initiative to the FY2021 RAISE Grant Program on July 2021, making pertinent

revisions to localize and comply with MARAD's stringent grant requirements and conditions.

Governor Lou Leon Guerrero made a statement in saying "We are pleased and grateful that MARAD continues to recognize the PAG's efforts to improve the Jose D. Leon Guerrero Commercial Port of Guam to address the expectations of organic growth and its strategic importance to the ongoing military buildup. As the 'Tip of the Spear' in the Western Pacific, the viability of the Port is paramount to sustaining the Department of Defense's operational effectiveness and mission readiness in the region."

The Lt. Governor, Joshua F. Tenorio pointed out that "This is consistent with the Governor and Board's direction in utilizing federal funds to meet our island's needs first and foremost. Investment in port infrastructure is a vital component of the Governor's strategy for economic recovery and the creation of more private sector jobs. By taking advantage of all federal grant opportunities, we can speed up this investment and bring more federal dollars into the local economy."

Our vibrant partnership with MARAD has been a critical component of our modernization program and the aggressive long overdue project funded under this Program supports the necessary upgrades that will further enhanced the Port's core capabilities and resiliency.

6. **Port Allotted \$15 Million in American Rescue Plan Funds.** On November 23, 2021, Governor Lou Leon Guerrero announced that the Port will receive \$15 million from the American Rescue Plan (ARP) funds. This will fund the Port's capital projects and the shortfall on the bond projects. By funding the Port capital projects, this will free up the Port's reserve fund and allow the Port to purchase one brand new gantry crane.

7. **Grant Awards and Ongoing Grant Submissions:**

- **Fuel Pipeline Connectivity Project.** The Strategic Planning Division has submitted essential documents and tasks to EDA that are required prior to the start of construction. In addition, an initial meeting with CIP/Engineering was conducted to share EDA's project requirements as well as to review the proposed design. Engineering will update the design and work on the A&E Design Scope.

Project Cost Estimate: \$3,016,363.00

Grant Award: \$2,413,091.00 (80% Cost Share)

PAG Share: \$603,272.00 (20% Cost Share)


- **Department of Agriculture Grant (DoAG).**
 - **Harbor of Refuge (HOR).** Planning Division has coordinated with the Procurement Division for the issuance of the IFB. Anticipated announcement - January 2022.

Grant Award: \$776,684.50
FWS Share: \$621,347.60 (75% Cost Share)
PAG Share: \$155,336.90 (25% Cost Share)
 - **Agat Marina Dock B and Public Boat Ramp Repairs.** Procurement Planning meeting with PAG stakeholders pending A.G. and SAAG review/comment period scheduled during calendar year 1st quarter with the tentative issuance of an IFB during the 2nd quarter.

Grant Award: \$512,759.00 (Dock B Repairs)
\$40,000.00 (Agat Marina's Boat Ramp Bumpers Repair)
- **Gantry Crane Acquisition.**
 - **USDA Direct Loan.** RFP for Banking Services coordination meeting with Finance Division has been postponed and anticipated to be rescheduled during the first week of December 2021.
 - **EDA Grant.** The Port's STS Gantry Crane revised grant application to EDA is anticipated to be submitted on January 2022. The Port has requested guidance on EDA's policy on its Buy American provision and currently awaiting guidance.
- **MARAD Marine Highway Program.** A coordination meeting between Planning, Operations, and Maintenance Divisions was held on Tuesday, Nov. 23rd to review the Port's Project Designation's proposed equipment acquisition program. The group will prioritize its FY2022 funding request to the Marine Highway Program.
- **Office of Local Defense Community Cooperation (Formerly Office of Economic Adjustment - OEA.** WSP has submitted its SOW and Cost Proposal to the Port. After review, the Planning Division recommended minor verbiage revisions for WSP's correction.

- **EPA Diesel Emissions Reduction Act (DERA) Program.** The Port Team has identified and completed the requirements for the 4 tractors that will be replaced and will be working with GEPA to move towards procurement.
8. **Port Revenue Bonds Project Status.** As of November 22, 2021, the attachment provides information on the status of the revenue bond projects that consist of rehabilitation of hotel wharf, golf pier repairs and improvements, waterline replacement/relocation, EQMR building, and warehouse 1 repair/upgrades, new admin annex building, and other priority projects.

Respectfully submitted,


Rory J. Respicio
General Manager

**2018 Port Revenue Bonds Status Report
As of November 22, 2021**

Bond Project	Total Award Amount	Total Draw Down	Total Remaining Balance	PROCUREMENT IFB/RFP/PO Number	Status
Rehabilitation of "H" Wharf (Federal Share & Port Share)	\$10,000,000.00 \$13,774,255.00	\$0.00 \$683,038.27	\$10,000,000.00 \$12,891,216.73	PO No. 15332-OF for Coral Relocation at Roadway Reconstruction issued on 10/27/2021, via Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for Q&C due on 11/19/2021 at 4:00 P.M. Bid submittals due 12/13/2021 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval. PO No. 17043-OF for \$2,249,945.54 awarded to GHJ Inc. for CM Services. Change Order No. 1 PO No. 17159-OF for \$198,140.16 Approval of Change Order No. 2 on 10/07/2021, PO No. 17416-OS for \$18,670.13 Approval of Change Order No. 3 on 10/21/2021, issuance of PO pending for \$15,414.88	Rebid of the Construction Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction issued on 10/27/2021, via Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Bid submittals due 12/13/2021 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval.
Golf Pier Repairs and Improvements	\$2,000,000.00	\$354,876.53	\$1,645,123.47	RFP No. 2019-02: A&E Design for \$484,030.17 awarded to NC Macario	Bid closing AMENDED TO READ AS 11/29/2021 at 2:00 P.M. Anticipated Completion Date: 09/2022
Waterline Replacement and Relocation	\$6,000,000.00	\$277,801.71	\$5,722,198.29	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	Bid closing AMENDED TO READ AS 11/25/2021 at 2:00 P.M. Anticipated Completion Date: 12/2022
EQMR Building Repairs and Upgrades	\$3,628,800.00	\$395,333.19	\$3,233,466.81	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	IFB-PAG-CJP-021-010 issued 11/03/2021 Pre-Bid / Site Visit was held on 11/12/2021 at 11:00 A.M. Q&C deadline due 11/18/2021 at 4:00 P.M. Bid Submission due 11/30/2021 at 2:00 P.M. Anticipated Completion Date: 12/2022
Warehouse 1 Repairs	\$2,000,000.00	\$395,333.19	\$1,604,666.81	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	Bid opening held on 11/19/2021 at 2:00 P.M. Four (4) vendors submitted proposals. Anticipated Completion Date: 12/2022
Other Priority Projects - Repair of F-1 Fuel Pier - Repair of F-3, F-4, F-5, and F-6 waterfront facilities - Upgrade of the Port's IT system and integration of TOS	\$4,980,745.00	\$0.00	\$4,980,745.00		1. The PAG was awarded funding by the USCOT for the repair of multiple deficiencies, including including sheet pile and concrete cap spalling, at F1 through F6. The total project cost is \$22,427,496.00 with a total of \$17,941,997.00 in federal funding. 2. TOS upgrade work anticipated to begin next fiscal year. Maintenance and support solutions are currently going through the procurement process. Safety modules have been completed. Job costing is still ongoing.
Other Priority Projects - EnterpriseOne Financial Management System	\$2,500,000.00	\$1,550,329.31	\$949,670.69		
New Admin. Annex Building	\$10,445,000.00	\$0.00	\$10,445,000.00		Three draft layout options for the Admin Building has been completed by the PAG's O&E and is being reviewed by Management. No decision on which option has been selected as of this report. Status Quo.
Grand Total	\$55,328,800.00	\$3,856,712.20	\$51,472,087.80		



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

November 22, 2021

MEMORANDUM

TO: Board of Directors

FROM: Rory J. Respicio, General Manager 

SUBJECT: Employees Incentive Event – Thanksgiving & Christmas

Hafa Adai! In celebration of this year's holiday season, planning and coordination has been made with the Port Authority of Guam Goodwill and Morale Association (PAGGMA) on luncheon festivities for the Thanksgiving and Christmas holidays. As part of the employee incentive program, the celebration is to recognize and extend our gratitude to the port employees for their continued efforts, hard work and dedication throughout the year.

It is therefore being respectfully requested for Board approval to authorize the transfer of funds under the Port Incentive Award account in the amount of \$15,000.00 to PAGGMA Association who will handle the disbursement of funds for these events.

A financial expense report will be submitted to the Finance Division that accounts for the expenditures of these events. Any unused funds will be remitted back to the Port Authority.

For your information, the final close-out for 2021 Port Week Events was at \$6,986.04. PAGGMA Association has since filed with the Finance Division and remitted back to the Port the amount of \$3,013.96 of unused funds.

I am available for any questions you may have.

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member



Resolution No. 2021-32

**RELATIVE TO HONORING THE LIFE AND SERVICE OF PORT
AUTHORITY OF GUAM EMPLOYEE JOEL P. EVARISTO AND
EXTENDING OUR HEARTFELT DEEP SYMPATHY AND
CONDOLENCES TO THE BEREAVED FAMILY MEMBERS**

**BE IT RESOLVED BY BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO
COMMERCIAL PORT:**

WHEREAS, Mr. Joel P. Evaristo was employed in a private sector as an Air-conditioning Mechanic and HVAC Technician for 12 years prior to his employment with the Port Authority of Guam; and

WHEREAS, Mr. Evaristo began his employment as a public servant with the Port on July 19, 2021 as an Electrician I; and

WHEREAS, the Jose D. Leon Guerrero Commercial Port and the entire community of Guam lost a valued member on November 10, 2021 with the untimely death of Mr. Evaristo; and

WHEREAS, Mr. Evaristo was a Front-liner Hero and will be remembered for his initiative and dedication to his family, friends and the Port Strong Family; now therefore be it

RESOLVED, that the Board of Directors on behalf of the employees and management of the Jose D. Leon Guerrero Commercial Port recognize and acclaim the public service Mr. Evaristo gave to the people of Guam and extends its heartfelt deep sympathy and sincere condolences to his spouse, Mrs. Liza M. Evaristo and his children Justin, Marcus, Nico, Jordy and Kaai; and be it further

RESOLVED, that the Chairman certifies to, and the Secretary attest to, the adoption hereof and that copies of the same be transmitted to his spouse Mrs. Liza M. Evaristo and his children Justin, Marcus, Nico, Jordy and Kaai.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 24th DAY OF NOVEMBER, 2021.**

FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

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ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM



BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member



Resolution No. 2021-33

**RELATIVE TO HONORING THE LIFE AND SERVICE OF PORT
AUTHORITY OF GUAM EMPLOYEE JOSEPH F. LEON GUERRERO
AND EXTENDING OUR HEARTFELT DEEP SYMPATHY AND
CONDOLENCES TO THE BEREAVED FAMILY MEMBERS**

**BE IT RESOLVED BY BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO
COMMERCIAL PORT:**

WHEREAS, Mr. Joseph F. Leon Guerrero began his employment as a public servant with Guam Telephone Authority on April 1992 and separated in June 1995; and

WHEREAS, Mr. Leon Guerrero was employed with the Port Authority of Guam during the period of November 1997 to August 2010 and held positions as a Maintenance Custodian, Equipment Operator II and Mobil Equipment Dispatcher; and

WHEREAS, the Port reemployed Mr. Leon Guerrero as a Mobil Equipment Dispatcher on January 2011 and was promoted to a Planner-Work-Coordinator in April 2016 and Transportation Supervisor in December 2017; and

WHEREAS, Mr. Leon Guerrero upheld the highest level of integrity by carrying out his responsibilities with respect and value for fellow employees and Port customers and performed his duties in an outstanding manner; and

WHEREAS, the Jose D. Leon Guerrero Commercial Port and the entire community of Guam lost a valued member on November 15, 2021 with the untimely death of Mr. Leon Guerrero; and

WHEREAS, Mr. Leon Guerrero was a Front-liner Hero and will be remembered for his initiative and dedication to his family, friends and the Port Strong Family; now therefore be it

RESOLVED, that the Board of Directors on behalf of the employees and management of the Jose D. Leon Guerrero Commercial Port recognize and acclaim the public service Mr. Leon Guerrero gave to the people of Guam and extends its sincere condolences to his spouse, Mrs. Marjorie P. Leon Guerrero and his children Jermiah, Jaeleen and Jude; and be it further

RESOLVED, that the Chairman certifies to, and the Secretary attest to, the adoption hereof and that copies of the same be transmitted to his spouse Mrs. Marjorie P. Leon Guerrero and his children Jermiah, Jaeleen and Jude.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 24th DAY OF NOVEMBER, 2021.**

**FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

**ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

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BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member



Resolution No. 2021-34

RELATIVE TO DIRECTING THE GENERAL MANAGER TO EXERCISE AUTHORITY TO TAKE ANY AND ALL ADMINISTRATIVE AND/OR CRIMINAL ACTIONS NECESSARY PURSUANT TO OAG OPINION DATED NOVEMBER 9, 2021 RE REQUEST FOR OPINION ON RETROACTIVE SALARY ADJUSTMENTS FOR FORMER MANAGEMENT AT THE PORT AUTHORITY OF GUAM

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on July 15, 2020, the Office of Public Accountability ("OPA") released OPA Report No. 20-04, relative to Unclassified Employees' Pay Raises and Bonuses at the Port Authority of Guam ("PAG"), after receiving a request from the Office of the Attorney General ("OAG") to review potential violations of the Open Government Law in relation to employee compensation within autonomous agencies; and

WHEREAS, the OPA, in a similar matter, requested that the OAG review pay increase adjustments given to former and current executives of another Government of Guam autonomous agency, to determine whether any upward payments were made in violation of Guam laws prohibiting retroactive compensation; and

WHEREAS, on February 9, 2021, the PAG asked the OAG to review legality of certain salary adjustments for former PAG management from 2012 through 2018; and

WHEREAS, on November 1, 2021, the OAG issued an Opinion Memorandum that directly addressed the Port's inquiry regarding the validity of the pay adjustments in question, to wit: "Do the pay adjustments . . . constitute evidence of an illegal retroactive salary adjustment under Guam law?" See *Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors*, Op. Att'y Gen. No. OPA 20-0375 (Nov. 1, 2021); and

WHEREAS, on November 9, 2021, the PAG received the Opinion Memorandum issued by the OAG in response to the PAG's request for Opinion on Retroactive Salary Adjustments of Former Management at the PAG, wherein the OAG enclosed the GHURA Opinion and directed PAG Legal Counsel to determine the validity and legality of the PAG Board of Directors' ("BOD") past actions with respect to former General Managers Joanne Brown's salary adjustments and best practices moving forward; and

WHEREAS, Title 4 GCA § 2103.14 provides, "[n]o unclassified employee or officer of the government of Guam may receive a retroactive pay increase unless specifically authorized by statute." See 4 GCA § 2103.14 (Retroactive Pay); and

WHEREAS, Title 4 GCA § 6218.1 further provides, "[w]henever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, whether or not autonomous, receives an increase in pay resulting from step increase, pay range increase, promotion or any other cause, such increase in pay shall not be retroactive from the date of its authorization unless so specified by law. Any person who authorizes a pay raise which is retroactive in violation of this Section shall be guilty of a misdemeanor." See 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raise); and

WHEREAS, based on PAG in-house legal review, and with the guidance provided by both the OPA's Performance Audit and the OAG's Opinion Memorandum, it appears that salary adjustments for former PAG General Manager Joanne Brown were applied retroactively in violation of Title 4 GCA § 2103.14 (Retroactive Pay) and Title 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raises).

WHEREAS, it is the duty of the General Manager to ensure the protection of ratepayer funds, particularly with regard to the misuse and misappropriation of public funds; and


WHEREAS, the PAG must confirm and calculate any and all retroactive payments resulting from any and all salary adjustments to the former PAG management from December 2012 through December 2018, and seek any and all administrative and/or criminal actions necessary pursuant to the OAG's Opinion Memorandum and Guam law; and

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, hereby directs the PAG General Manager to exercise authority to take any and all administrative and/or criminal actions necessary pursuant to OAG Opinion dated November 9, 2021 re Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam

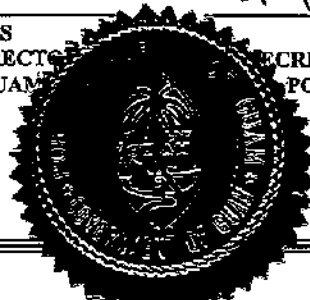
RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof.

PASSED AND ADOPTED BY A MAJORITY VOTE BY THE BOARD OF DIRECTORS THIS 24th DAY OF NOVEMBER, 2021.


FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM


ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

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PORT OF GUAM
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

November 22, 2021

MEMORANDUM

TO: Board of Directors

FROM: Rory J. Respicio, General Manager 

SUBJECT: **AG Opinion re Retroactive Salary Adjustment for Former Management at the Port Authority of Guam (Ref. PAG21-0111 Nov. 9, 2021)**

Hafa Adai! On November 9, 2021, the Port Authority of Guam (“PAG”) received the Opinion Memorandum issued by the Office of the Attorney General of Guam (“OAG”) in response to the PAG’s request for Opinion on Retroactive Salary Adjustments of Former Management at the Port Authority of Guam. On November 1, 2021, the OAG issued an Opinion Memorandum that directly addressed the Port’s inquiry regarding the validity of the pay adjustments in question, to wit: “Do the pay adjustments . . . constitute evidence of an illegal retroactive salary adjustment under Guam law?” See *Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors*, Op. Att’y Gen. No. OPA 20-0375 (Nov. 1, 2021). In their letter to the PAG, the OAG enclosed the GHURA Opinion and directed PAG Legal Counsel to determine the validity and legality of the PAG Board of Directors’ past actions with respect to former General Manager Joanne Brown’s salary adjustments and best practices moving forward.

On July 15, 2020, the Office of Public Accountability (“OPA”) released OPA Report No. 20-04, relative to Unclassified Employees’ Pay Raises and Bonuses at the PAG. The OPA’s audit was initiated after receiving a request from the OAG to review potential violations of the Open Government Law in relation to the employee compensation within autonomous agencies. Because it was beyond the scope of the audit, the OPA did not conduct their audit with respect to whether the salary raises violate the laws prohibiting retroactive compensation. Thus, the PAG asked the OAG to review the raises in order to determine if they comply with the Guam law.

After thorough review of both the OPA Performance Audit and the OAG’s Opinion Memorandum, as well as the relevant laws and authorities, PAG Staff Attorney conducted an in-house legal review to determine whether the former PAG GM was paid retroactive salary adjustments from December 2012 through December 2017, in violation of Guam law. Based on the Staff Attorney’s review, and with the guidance provided by the OPA and OAG, it is clear that salary adjustments for former PAG General Manager Joanne Brown were *applied retroactively in violation of Title 4 GCA § 2103.14 (Retroactive Pay) and Title 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raises)*, thus deemed illegal.

Memo to Board of Directors

Subject: AG Opinion re Retroactive Salary Adjustment for Former Management at the PAG

November 22, 2021

Page 2 of 3

Title 4 GCA § 2103.14, governing Retroactive Pay provides, “[n]o unclassified employee or officer of the government of Guam may receive a retroactive pay increase *unless specifically authorized by statute.*” 4 GCA § 2103.14 (emphasis added). Further, Title 4 GCA § 6218.1 states:

Whenever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, whether or not autonomous, receives an increase in pay resulting from *step increase*, pay range increase, promotion or any other cause, **such increase in pay shall not be retroactive from the date of its authorization unless so specified by law.** Any person who authorizes a pay raise which is retroactive in violation of this Section shall be guilty of a *misdemeanor*.

See Title 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raise) (emphasis added).

Thus, the law is clear: Guam law **prohibits retroactive pay** unless expressly authorized by statute. Here, the authority for salary increments for classified employees under the Port’s Personnel Rules and Regulations is the certification of a satisfactory performance evaluation. See Port Authority R. & Regs. 6.302 and 7.008. Similarly, Title 5 GCA Chapter 43 Article 2 provides that governing boards for all agencies must issue performance reviews of the Chief Executive selected for that agency six (6) months after appointment, and every twelve (12) months thereafter. See 5 GCA §§ 43202 and 43203. There is however, *no authority* for the PAG General Manager (“GM”) nor the Deputy General Managers (“DGM”) to receive retroactive pay increases. While Title 4 GCA § 6202 entitles classified employees to an anniversary increment that cannot be annulled in the event that a performance evaluation or increment certification is delayed, Section 6202 *does not apply to unclassified/exempt employees.* See 4 GCA § 6202. Consequently, absent statutory authority similar to Title 4 GCA § 6202, any salary increment for the PAG GM or DGMs can only be paid prospectively from the date of the pay authorization. See OPA 20-0375 at p. 2.

According to the OPA’s Performance Audit, from the former GM’s hiring in December 2012 until her retirement in January 2019, the former GM received nine (9) pay adjustments in total. Of the nine (9), seven (7) were given due to formal performance evaluations, and two (2) were provided as a result of PAG’s Compensation and Classification Plan or PAG BOD action. See OPA Report No. 20-04 at p. 8. The OPA’s Performance Audit also recommended that the PAG BOD “consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.” See OPA Report No. 20-04 at p. 9. However, the OAG, in their Opinion Memorandum, provided that “[w]hile this may be best practice the [PAG BOD] should adopt ‘going forward,’ absent an explicit statute or other regulation mandating [BOD] ratification, nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.” See OPA 20-0375 at p. 6. Thus, the PAG BOD’s failure to ratify the upward adjustments to the former PAG GM’s salary does not make the adjustments itself illegal. Nonetheless, so long as the adjustments were paid *prospectively* from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with the law.

Memo to Board of Directors

Subject: AG Opinion re Retroactive Salary Adjustment for Former Management at the PAG

November 22, 2021

Pgae 3 of 3

Upon further review of the personnel actions at issue and corresponding documents, the following actions appear to suggest that several salary adjustments for the former PAG GM were applied retroactively.

Notification of Personnel Action Form	Effective Date	Authorized Date	Reason for Adjustment
NPA 20-13 dated December 14, 2012	December 14, 2012	December 10, 2012	BOD Emergency Meeting (Dec. 10, 2012)
NPA 106-13 dated April 23, 2013	December 10, 2012	April 15, 2013	Adjustment – Performance Evaluation (Apr. 15, 2013)
NPA 23-13 dated December 20, 2012	December 19, 2012	December 19, 2012	BOD Regular Meeting (Dec. 19, 2012)
NPA 107-13 dated April 23, 2013	December 19, 2012	April 15, 2013	Adjustment – Performance Evaluation (Apr. 15, 2013)
NPA 05-14 dated October 11, 2013	June 19, 2013	October 11, 2013	Performance Evaluation (Sept. 25, 2013)
NPA 142-14 dated January 21, 2014	December 19, 2013	January 6, 2014	Performance Evaluation (Jan. 6, 2014)
NPA 89-15 dated May 13, 2015	December 19, 2014	May 7, 2015	Performance Evaluation (May 7, 2015)
NPA 57-16 dated February 4, 2016	December 19, 2015	January 29, 2016	Performance Evaluation (Jan. 29, 2016)
NPA 384-17 dated January 9, 2017	December 19, 2016	December 21, 2016	Performance Evaluation (Dec. 21, 2016)
NPA 160-18 SI dated February 6, 2018	December 19, 2017	February 27, 2018	Performance Evaluation (Feb. 27, 2018)
NPA 370-2018 dated September 24, 2018	September 16, 2018	September 16, 2018	BOD Resolution No. 2018-05
NPA 82-19 dated January 2, 2019	January 4, 2019	January 4, 2019	Retirement

As the current General Manager, it is my duty to ensure the protection of ratepayer funds, particularly when misuse of those funds is brought to my attention. Thus, I am respectfully requesting your approval of Board Resolution No. 2021-34, which directs me to exercise the authority to take any and all administrative and/or criminal actions necessary pursuant to OAG Opinion dated November 9, 2021 re Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam.

I am available for any questions you may have. *Si Yu'os Ma'ase.*



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

November 18, 2021

LEGAL MEMORANDUM

TO: Rory J. Respicio, General Manager

FROM: Christine K. Claveria, Port Staff Attorney

SUBJECT: Request for Legal Review – AG Opinion re Retroactive Salary Adjustments for Former Management at the Port Authority of Guam (Ref. PAG21-0111 Nov. 9, 2021)

Hafa Adai!

As per your request, I have reviewed the Opinion Memorandum issued by the Office of the Attorney General of Guam (“OAG”) dated November 9, 2021 in response to the Port Authority of Guam’s (“PAG” or “Port”) Request for Opinion on Retroactive Salary Adjustments of Former Management at the Port Authority of Guam. On November 1, 2021, the OAG issued an Opinion Memorandum that directly addressed the Port’s inquiry regarding the validity of the pay adjustments in question, to wit: “Do the pay adjustment . . . constitute evidence of an illegal retroactive salary adjustment under Guam law?” *See Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors*, Op. Att’y Gen. No. OPA-0375 (Nov. 1, 2021). This legal memorandum will follow the specific guidance provided in the OAG’s Opinion Memorandum to analyze the validity and legality of the pay increments at issue and the prior Board’s actions with respect to the former PAG General Manager’s salary adjustments.

DISCUSSION

Title 4 GCA § 2103.14, governing Retroactive Pay provides, “[n]o unclassified employee or officer of the government of Guam may receive a retroactive pay increase *unless specifically authorized by statute.*” 4 GCA § 2103.14 (emphasis added). Further, Title 4 GCA § 6218.1 states:

Whenever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, whether or not autonomous, receives an increase in pay resulting from *step increase*, pay range increase, promotion or any other cause, **such increase in pay shall not be retroactive from the date of its authorization unless so specified by law.** Any person who authorizes a pay raise which is retroactive in violation of this Section shall be guilty of a *misdemeanor*.

See Title 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raise) (emphasis added).

The law is clear: Guam law **prohibits retroactive pay** unless expressly authorized by statute. Here, the authority for salary increments for classified employees under the Port's Personnel Rules and Regulations is the certification of a satisfactory performance evaluation. See Port Authority R. & Regs. 6.302 and 7.008. Similarly, Title 5 GCA Chapter 43 Article 2 provides that governing boards for all agencies must issue performance reviews of the Chief Executive selected for that agency six (6) months after appointment, and every twelve (12) months thereafter. See 5 GCA §§ 43202 and 43203. There is however, **no authority** for the PAG General Manager ("GM") nor the Deputy General Managers ("DGM") to receive retroactive pay increases. While Title 4 GCA § 6202 entitles classified employees to an anniversary increment that cannot be annulled in the event that a performance evaluation or increment certification is delayed, Section 6202 **does not apply to unclassified/exempt employees**. See 4 GCA § 6202. Consequently, absent statutory authority similar to Title 4 GCA § 6202, any salary increment for the PAG GM or DGMs can only be paid prospectively from the date of the pay authorization. See OPA 20-0375 at p. 2.

I. FORMER PAG GENERAL MANAGER WAS PAID RETROACTIVE SALARY ADJUSTMENTS FROM DECEMBER 2012 THROUGH DECEMBER 2017 IN VIOLATION OF GUAM LAW.

In July 2020, the Office of Public Accountability ("OPA") issued Report No. 20-04 setting forth its findings of a performance audit relative to Unclassified Employees' Pay Raises and Bonuses at the PAG from October 1, 2011 through September 30, 2019. The audit focused specifically on the former PAG General Manager and former Deputy General Managers. While not within the scope of the audit, the dates provided in Table 1 suggest that several salary adjustments for the former PAG GM were applied **retroactively**.

Table 1: Former General Manager's Pay Adjustments

Date of Personnel Action Form	Period Covered	Reason for Adjustment
04/23/2013	Effective 12/10/2012	Adjustment – Performance Evaluation (Former)
04/23/2013	Effective 12/19/2012	Adjustment – Performance Evaluation (Former)
10/11/2013	12/19/2012 to 06/18/2013	Performance Evaluation
01/21/2014	12/19/2012 to 12/19/2013	Performance Evaluation
05/13/2015	12/19/2013 to 12/19/2014	Performance Evaluation
02/04/2016	12/19/2014 to 12/19/2015	Performance Evaluation
10/25/2016	N/A	Board Resolution 2016-04
01/09/2017	12/19/2015 to 12/18/2016	Performance Evaluation
02/06/2018	12/19/2016 to 12/18/2017	Performance Evaluation
09/24/2018	N/A	Board Resolution 2018-05

See OPA Report No. 20-04 at p. 8 (Former General Manager's Pay Adjustments).

According to the OPA's report, from the former GM's hiring in December 2012 until her retirement in January 2019, the former GM received nine (9) pay adjustments in total. Of the nine (9), seven (7) were given due to formal performance evaluations, and two (2) were provided as a result of PAG's Compensation and Classification Plan. See OPA Report No. 20-04 at p. 8. This

opinion will analyze and determine the validity of each pay adjustment made for the periods covering December 2012 through December 2017.

a) December 10, 2012 - First Pay Adjustment

Personnel Action No. 20-13 (“PA 20-13”) dated December 14, 2012, effectuated the appointment of former PAG GM, then Deputy General Manager, to Acting General Manager with a Pay Range and Salary of Q-4B \$101,870.00 per annum, *effective December 10, 2012*. This action was approved by the PAG BOD in their emergency meeting of December 10, 2012. Thereafter, an adjustment was made to PA 20-13 in Personnel Action No. 106-13 (“PA 106-13”) dated April 23, 2013, which corrected the Pay Range and Salary from Q-4B \$101,870.00 to Q-6C \$111,414.00 per annum. PA 106-13 covered the period effective December 10, 2012, as contained in PA 20-13. According to the OPA Report, justification for the adjustment was due to the former GM’s outstanding performance evaluation dated April 15, 2013, which entitled her to an additional 3-substep increase. See 12 GCA § 10111(c) (“Notwithstanding any other provision of law, the manager . . . shall be within the unclassified service . . . and shall be hired, compensated and employed under the terms and conditions fixed by and at the pleasure of the Board.”).

Here, assuming that the pay adjustment was supported by a performance evaluation, so long as the adjustments were paid prospectively from the date of their authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). In this case, PA 106-13 dated April 23, 2013, if supported by the performance evaluation accepted and approved by the PAG BOD, **set the effective date of the salary adjustment as early as April 15, 2013**. In other words, the PAG BOD’s certification of the performance evaluation on April 15, 2013, authorized the salary adjustment for the former PAG GM from Q-4B \$101,870.00 to Q-6C \$111,414.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 106-13 covered the period effective December 10, 2012*, as contained in PA 20-13. Thus, any retroactive payment of the salary increment authorized on April 15, 2013, is in clear violation of Guam law.

b) December 19, 2012 – Second Pay Adjustment

Personnel Action No. 23-13 (“PA 23-13”) dated December 20, 2012, changed the title of former PAG GM from Deputy General Manager, then Acting General Manager, officially to General Manager with a Pay Range and Salary of R-4A \$114,982.00 per annum, *effective December 19, 2012*. This action was approved by the PAG BOD in their regular meeting of December 19, 2012. Thereafter, an adjustment was made to PA 23-13 in Personnel Action No. 107-13 (“PA 107-13”) dated April 23, 2013, which corrected the Pay Range and Salary from R-4A \$114,982.00 to R-4D \$118,467.00 per annum. PA 107-13 covered the period effective December 19, 2012, as contained in PA 23-13. According to the OPA Report, justification for the adjustment was due to the former GM’s outstanding performance evaluation dated April 15, 2013, which entitled her to an additional 3-substep increase. See 12 GCA § 10111(c), supra.

Again, assuming that the pay adjustment was supported by a performance evaluation, so long as the adjustments were paid prospectively from the date of their authorization as indicated

in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). Similar to the First Pay Adjustment, pursuant to PA 106-13, PA 107-13 dated April 23, 2013, if supported by the performance evaluation accepted and approved by the PAG BOD, **set the effective date of the salary adjustment as early as April 15, 2013**. In other words, the PAG BOD’s certification of the performance evaluation on April 15, 2013, authorized the salary adjustment for the former PAG GM from R-4A \$114,982.00 to R-4D \$118,467.00 per annum, **prospectively from that date**. However, as aforementioned, *PA107-13 covered the period effective December 19, 2012*, as contained in PA 23-13. Thus, any retroactive payment of the salary increment authorized on April 15, 2013, is in clear violation of Guam law.

c) December 19, 2012 – June 18, 2013

Personnel Action No. 05-14 (“PA 05-14”) dated October 11, 2013, effectuated the pay adjustment of the former PAG GM from R-4D \$118,467.00 to R-6A \$124,510.00 per annum, **effective June 19, 2013**. Justification for PA 05-14 resulted from a Performance Evaluation dated September 25, 2013, signed by both the former PAG Board Chairman and former PAG GM on October 11, 2013, and October 8, 2013, respectively. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). The PAG BOD did not ratify this pay adjustment.

The OPA’s report recommends that the PAG BOD “consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.” See OPA Report No. 20-04 at p. 9. However, the OAG, in their Opinion Memorandum, provided that “[w]hile this may be best practice the [PAG BOD] should adopt ‘going forward,’ absent an explicit statute or other regulation mandating [BOD] ratification, nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.” See OPA 20-0375 at p. 6. Thus, the PAG BOD’s failure to ratify the upward adjustments to the former PAG GM’s salary does not make the adjustments itself illegal.

Nonetheless, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). Here, PA 05-14 notes that such pay adjustment is justified by the corresponding performance evaluation. Although the performance evaluation is dated September 25, 2013, the PAG Board Chairman did not sign or approve the evaluation until October 11, 2013. Thus, **the certification of the performance evaluation on October 11, 2013, authorized the salary adjustment** for the former PAG GM from R-4D \$118,467.00 to R-6A \$124,510.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 05-14 covered the period effective June 19, 2013*. Thus, any retroactive payment of the salary adjustment authorized on October 11, 2013, is in clear violation of Guam law.

d) December 19, 2012 – December 19, 2013

Personnel Action No. 142-14 (“PA 142-14”) dated January 21, 2014, effectuated the pay adjustment of the former PAG GM from R-6A \$124,510.00 to R-7B \$130,861.00 per annum,

effective December 19, 2013. Justification for PA 142-14 resulted from a Performance Evaluation dated January 6, 2014, signed by both the former PAG Board Chairman and former GM the same day. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). On January 6, 2014, the PAG BOD adopted the former PAG GM's Performance Evaluation, which was posted and made public on the PAG's website. The PAG BOD however, did not ratify this pay adjustment.

Again, the OPA's report recommends that the PAG BOD "consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis." See OPA Report No. 20-04 at p. 9. However, the OAG, in their Opinion Memorandum, provided that "[w]hile this may be best practice the [PAG BOD] should adopt 'going forward,' absent an explicit statute or other regulation mandating [BOD] ratification, nothing prohibits an employee's pay to be adjusted solely by the standard form of personnel action." See OPA 20-0375 at p. 6. Thus, the PAG BOD's failure to ratify the upward adjustments to the former PAG GM's salary does not make the adjustments itself illegal.

Nonetheless, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 ("nothing prohibits an employee's pay to be adjusted solely by the standard form of personnel action."). Here, PA 142-14 notes that such pay adjustment is justified by the corresponding performance evaluation. The performance evaluation was signed by the PAG Board Chairman on January 6, 2014 and adopted by the PAG BOD the same day. Thus, **the certification of the performance evaluation on January 6, 2014, authorized the salary adjustment** for the former PAG GM from R-6A \$124,510.00 to R-7B \$130,861.00 per annum, **prospectively from that date.** However, as aforementioned, *PA 142-14 covered the period effective December 19, 2013.* Thus, any retroactive payment of the salary adjustment authorized on January 6, 2014, is in clear violation of Guam law.

e) December 19, 2013 – December 19, 2014

Personnel Action No. 89-15 ("PA 89-15") dated May 13, 2015, effectuated the pay adjustment of the former PAG GM from R-7B \$130,861.00 to R-8C \$137,536.00 per annum, **effective December 19, 2014.** Justification for PA 89-15 resulted from a Performance Evaluation, which did not indicate a "Date of Review", but was signed by both the former PAG Board Chairman and former PAG GM on May 7, 2015. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). On May 7, 2015, the PAG BOD adopted the former PAG GM's Performance Evaluation, which was posted and made public on the PAG's website. The PAG BOD however, did not ratify this pay adjustment. See OPA 20-0375, supra.

Again, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 ("nothing prohibits an employee's pay to be adjusted solely by the standard form of personnel action."). Here, PA 89-15 notes that such pay adjustment is justified by the corresponding performance evaluation. The performance evaluation was adopted by the PAG BOD on May 7, 2015. Thus, **the certification of the performance evaluation on May 7, 2015, authorized the salary adjustment** for the former PAG GM from R-7B \$130,861.00 to R-

8C \$137,536.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 89-15 covered the period effective December 19, 2014*. Thus, any retroactive payment of the salary adjustment authorized on May 7, 2015 is in clear violaton of Guam law.

f) December 19, 2014 – December 19, 2015

Personnel Action No. 57-16 (“PA 57-16”) dated February 4, 2016, effectuated the pay adjustment of the former PAG GM from R-8C \$137,536.00 to R-9D \$144,552.00 per annum, **effective December 19, 2015**. Justification for PA 57-16 resulted from a Performance Evaluation. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). On January 29, 2016, the PAG BOD adopted the former PAG GM’s Performance Evaluation, which was posted and made public on the PAG’s website. The PAG BOD however, did not ratify this pay adjustment. See OPA 20-0375 at p. 6, supra.

Once again, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). Here, PA 57-16 notes that such pay adjustment is justified by the corresponding performance evaluation. The performance evaluation was adopted by the PAG BOD on January 29, 2016. Thus, **the certification of the performance evaluation on January 29, 2016, authorized the salary adjustment** for the former PAG GM from R-8C \$137,536.00 to R-9D \$144,552.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 57-16 covered the period effective December 19, 2015*. Thus, any retroactive payment of the salary adjustment authorized on January 29, 2016, is in clear violaton of Guam law.

g) December 19, 2015 – December 18, 2016

Personnel Action No. 384-17 (“PA 384-17”) dated January 9, 2017, effectuated the pay adjustment of the former PAG GM from RR-5A \$149,345.00 to RR-6B \$156,963.00 per annum, **effective December 19, 2016**. Justification for PA 384-17 resulted from a Performance Evaluation signed by the former PAG BOD Vice Chairman. On December 21, 2016, the PAG BOD adopted the former PAG GM’s Performance Evaluation, which was posted and made public on the PAG’s website. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). The PAG BOD however, did not ratify this pay adjustment. See OPA 20-0375 at p. 6, supra.

Nonetheless, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). Here, PA 384-17 notes that such pay adjustment is justified by the corresponding performance evaluation. The performance evaluation was adopted by the PAG BOD on December 21, 2016. Thus, **the certification of the performance evaluation on December 21, 2016, authorized the salary adjustment** for the former PAG GM from RR-5A \$149,345.00 to RR-6B \$156,963.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 384-17 covered the period effective December 19, 2016*. Thus, any

retroactive payment of the salary adjustment authorized on December 21, 2016, is in clear violation of Guam law.

h) December 19, 2016 – December 18, 2017

Personnel Action No. 160-18 SI (“PA 160-18 SI”) dated February 6, 2018, effectuated a salary increment of the former PAG GM from RR-6B \$156,963.00 to RR-7C \$164,970.00 per annum, *effective December 19, 2017*. PA 160-18 SI did not indicate that it was justified or supported by a corresponding performance evaluation. However, on February 27, 2018, the PAG BOD adopted the former PAG GM’s Performance Evaluation, which was posted and made public on the PAG’s website. See PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager). The PAG BOD however, did not ratify this pay adjustment. See OPA 20-0375 at p. 6, *supra*.

Again, so long as the adjustment was paid prospectively from the date of authorization as indicated in the personnel action forms, then the compensation was in compliance with law. See OPA 20-0375 at pp. 6-7 (“nothing prohibits an employee’s pay to be adjusted solely by the standard form of personnel action.”). Here, it appears that PA 160-18 SI was effectuated without a performance evaluation. However, a performance evaluation was conducted and adopted by the PAG BOD on February 27, 2018. Thus, **the certification of the performance evaluation on February 27, 2018, authorized the salary increment** for the former PAG GM from RR-6B \$156,963.00 to RR-7C \$164,970.00 per annum, **prospectively from that date**. However, as aforementioned, *PA 160-18 SI covered the period effective December 19, 2017*. Thus, any retroactive payment of the salary adjustment authorized on February 27, 2018, is in clear violation of Guam law.

i) September 24, 2018 – Personnel Action

Personnel Action No. 370-2018 (“PA 370-2018”) dated September 24, 2018, effectuated a salary adjustment of the former PAG GM from RR-7C \$164,970.00 to RR-8B \$169,977.60 per annum, *effective September 16, 2018*. PA 370-2018 was generated as a result of the PAG’s Compensation and Classification Plan. See PAG Board Resolution No. 2018-05 (relative to the Port Compensation and Classification Plan). However, there is no record of a performance review for the former PAG GM for 2018 as required by law. See 5 GCA §§ 43202 and 43203; see also PAG Board Policy Memorandum No. 09-03 (Policy on Performance Evaluation for General Manager).

The OPA, in its performance audit, found: “[a]lthough a pay adjustment was received in 2018, the Board of Directors did not conduct a formal evaluation of the former General Manager’s performance period covering December 2017 through December 2018. Based on 5 GCA § 43202, governing boards for all agencies must issue performance reviews of the Chief Executive selected for that agency . . . every 12 months thereafter that the Chief Executive is retained by the Governing Board. As a result, *we questioned PAG’s basis for providing the former General Manager a pay increase for that period.*” See OPA Report No. 20-04 at pp. 9-10.

Accordingly, although there is no record indicating that the PAG BOD conducted a formal performance evaluation as mandated by Title 5 GCA Chapter 43 Article 2 to justify the basis for the pay adjustment, the PAG BOD approved the Port's 2018 Compensation and Classification Plan authorizing the pay adjustment in PA 370-2018. Further, Personnel Action No. 82-19 ("PA 82-19") dated January 2, 2019, effectuated the former PAG GM's retirement indicating the same at a Pay Range and Salary of RR-8B \$169,968.00 per annum, effective January 4, 2019 C.O.B. Thus, any pay adjustments made effective September 16, 2018, were justified by PAG Board Resolution No. 2018-05. However, any retroactive payment of the salary adjustment authorized on September 16, 2018, if found, would violate Guam law.

II. FORMER GENERAL MANAGER'S HIRING DISCUSSED/DECIDED IN EXECUTIVE SESSION.

Guam's Open Government Law ("OGL") is codified in Title 5 GCA Chapter 8, which establishes the general policy that the formation of public policy and decisions is public and shall not be conducted in secret. Title 5 GCA § 8111 provides that "[u]nder no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. All discussions or decisions must be held in a public meeting and minutes shall be kept and open to the public." 5 GCA § 8111(a). Further, the OGL states that "[u]nder no circumstances shall a public agency vote on any matter before it during an executive or closed meeting." *Id.* at 8111(d). Finally, "[e]ach member of a public agency who attends a meeting of a public agency where action is taken in violation of the Open Government Law, with knowledge of the fact that the meeting is in violation thereof, is *guilty of a misdemeanor.*" 5 GCA § 8115(b).

The OPA, in its performance audit, found that the PAG BOD discussed and decided on the hiring of the former PAG GM in its December 19, 2012 executive session, then announced their decision in their regular session. OPA Report No. 20-04 at p.7. An excerpt of the PAG BOD decision, cited in the OPA's report, went as follows:

"Board Secretary agreed to make the motion and Vice Chairman agreed to second the motion in the general session. Legal Counsel advised that the matter may be discussed, but the vote won't count in the executive session. The general session reconvened. Board Secretary motioned that the Acting General Manager be designated as the General Manager for PAG. Vice Chairman seconded. There was no objection or discussion and the motion carried."

See *id.*; see also PAG BOD Minutes, Section VIII (Dec. 19, 2012) (designating former PAG GM as the permanent GM of the PAG effective December 19, 2012).

The OPA concluded that the PAG generally complied with the OGL relative to personnel matters however, found that the BOD discussed and decided on the hiring of the former PAG GM in its executive session. Nonetheless, the OPA acknowledged that the BOD motioned and approved the hiring of the former GM once the general session reconvened. See OPA Report No. 20-04 at pp. 1, 7. In this case, there was a clear violation of the OGL when the PAG BOD discussed the hiring of the former PAG GM in its executive session. However, it appears that because the matter

was decided and voted on once the regular session reconvened, the OPA did not opine further. See id.

I trust the foregoing is responsive to your specific questions regarding Opinion Memorandum issued by the Office of the Attorney General of Guam (“OAG”) dated November 9, 2021 in response to the Port Authority of Guam’s (“PAG” or “Port”) Request for Opinion on Retroactive Salary Adjustments of Former Management at the Port Authority of Guam. Please let me know should you have any questions or wish to discuss this matter more. *Si Yu’os Ma’ase!*



Christine K. Claveria
Port Staff Attorney



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Hon. Leevin Taitano Camacho
Attorney General of Guam

November 9, 2021

Rory J. Respicio
General Manager
Port Authority of Guam
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925

Subject: Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam (Ref. PAG 21-0111)

Dear General Manager Respicio:

This is in response to your February 9, 2021 request for opinion on the legality of certain salary adjustments for former Port Authority of Guam (PAG) General Manager Joanne Brown from 2012 to 2018.

Your request included a copy of the Office of Public Accountability (OPA) Report No. 20-04, "*Port Authority of Guam Unclassified Employees' pay Raises and Bonuses – Performance Audit October 1, 2011 through September 30, 2019.*" in which the OPA noted *inter alia* an "[i]nconsistency in the [r]atification of the [f]ormer General Manager's [p]ay [a]djustments." Your threshold question was "Do the pay adjustments . . . constitute evidence of an illegal retroactive salary adjustment under Guam law?"

Last week, this office issued an Opinion Memorandum that addresses directly the issues you raise regarding the validity of the pay adjustments in question. See *Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors*, Op. Att'y Gen. No. OPA-0375 (Nov. 1, 2021).

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Letter to Port Authority of Guam
Re: Request for Opinion on Retroactive Salary Adjustments
for Former Management at the Port Authority of Guam
Ref: PAG 21-0111
Page 2 of 2

With the specific guidance provided in the enclosed Opinion Memorandum, we believe that you and the Port's Board of Directors, with the able assistance and advice of PAG Legal Counsel, will be able to determine the validity and legality of the Board's past actions with respect to the former General Manager's salary adjustments and best practices moving forward.

Sincerely,



KARL P. ESPALDON
Deputy Attorney General

Enclosure

cc: Board of Directors, Port Authority of Guam
Legal Counsel, Port Authority of Guam



Office of the Attorney General of Guam

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Hon. Leevin Taitano Camacho
Attorney General of Guam

November 1, 2021

OPINION MEMORANDUM

Ref: OPA 20-0375

TO: Chairman, GHURA Board of Commissioners

FROM: Attorney General

SUBJECT: Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors

This Opinion Memorandum is provided in response to a request from Public Auditor Benjamin J.F. Cruz received on September 23, 2020, to review pay increase adjustments given between 2013 and 2019 to the former and current Executive Directors and Deputy Directors of the Guam Housing and Urban Renewal Authority (GHURA).

QUESTION AND SHORT ANSWER

Were the upward pay adjustments received by the former and current GHURA Executive Directors and Deputy Directors after 2013 made in compliance with applicable laws and regulations?

Yes. However, board action is needed to ensure the proposed pay increments for the Executive Director and Deputy Director for the period between January 11, 2019 to January 10, 2020 is effective no earlier than September 11, 2020.

DISCUSSION

Guam law prohibits retroactive pay unless expressly authorized by statute. Based on our review, the authority for a salary increment under the GHURA Personnel Rules and Regulations is the certification of a satisfactory performance evaluation. There is, however, no statutory authority for the Executive Director or Deputy Director of GHURA to receive a retroactive pay increase. As set forth below, any

salary increment for the Executive Director and Deputy Director can only be paid prospectively from the date that the Board certifies a satisfactory performance evaluation.

1. Guam Law Prohibits Retroactive Payments to Employees.

Unless authorized by statute, and regardless of the justification, government of Guam employees are prohibited from receiving salary increases that are paid retroactively from the date of authorization.

4 GCA § 2103.14. Retroactive Pay. No unclassified employee or officer of the government of Guam may receive a retroactive pay increase unless specifically authorized by statute.

and

4 GCA § 6218.1. Prohibition on Retroactive Pay Raise. Whenever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, whether or not autonomous, receives an increase in pay resulting from *step increase*, pay range increase, promotion or *any other cause*, such increase in pay shall not be retroactive from the date of its authorization, unless so specified by law. Any person who authorizes a pay raise which is retroactive in violation of this Section shall be guilty of a misdemeanor.

2. The salary increments received by the Executive Director and Deputy Director in September 2020 cannot be paid retroactively from the date of authorization.

On May 28, 2019, the Office of Public Accountability (OPA) received a request from the Office of the Attorney General (OAG) to review potential violations of the Open Government Law in relation to unclassified employee compensation within the government's autonomous agencies. In September 2020, the OPA issued Report No. 20-05 setting forth its findings of a performance audit conducted on upward pay adjustment raises given to GHURA's unclassified employees, specifically the Executive Directors (ED) and the Deputy Directors (DD).¹ Because it was beyond the original scope of the audit, the OPA did not perform any audit procedures with respect to whether the salary raises violate the laws prohibiting retroactive

¹ In addition to GHURA, the OPA also reviewed and issued performance audits on Guam Power Authority and Guam Waterworks Authority (OPA Report No. 19-09) and on the Port Authority of Guam (OPA Report No. 20-04).

Opinion Memorandum
Re: Pay Raises Granted to Former and Current GHURA
Executive Directors and Deputy Directors
Ref: OPA 20-0375
Page 3 of 11

compensation and has asked the Attorney General to review the raises in order to determine if they comply with the laws.

The OAG requested a response from GHURA as part of its review. GHURA's legal counsel submitted a letter to the OAG on April 13, 2021, arguing that salary increments proposed in June 2020 for the current ED and DD are not retroactive because they are based upon performance and further, that they are payable after the ED and DD's January employment anniversary dates.

According to the OPA's report, in September 2020 the GHURA Board of Commissioners (BOC) approved an upward pay adjustment for the current ED and DD as a result of their annual performance evaluations for the period covering January 2019 through January 2020.² Both the current ED and DD were hired in January 2019, which means that January 2020 was their one-year employment anniversary date.

These raises appear supported by the certification of performance evaluations as required by Rule 6.302 of the GHURA personnel rules which provide that "no action will be taken to adjust the employee's pay" if a performance report is not received:

GHURA Personnel Rule 6.302. Salary Increment - Procedure. Employees (inclusive of classified and unclassified/exempt³) entitled to an increment increase shall be based on an annual review of performance as outlined in Chapter 7. . . . The compensation plan is adopted by the Board of Commissioners. The detailed procedures have been delegated to the Executive Director and are subject to certification of funds and modification by the Board of Commissioners. The salary increment substep table can be found in a shared and accessible network drive for all employees.

The salary increment will be granted upon certification by the Executive Director that satisfactory service has been rendered for the performance rating period preceding such increase.

When a Division Head determines that a particular employee shall not be granted a salary increment, the Division Head shall

² OPA Report No. 20-05 at p. 10 (Subsequent Event Disclosure).

³ Unclassified/exempt employees like the ED and DD are generally not covered by the GHURA Personnel Rules "unless otherwise identified." See GHURA PRR § 1.100(B). Rule 6.302 is one of those "otherwise identified" rules.

Opinion Memorandum
Re: Pay Raises Granted to Former and Current GHURA
Executive Directors and Deputy Directors
Ref: OPA 20-0375
Page 4 of 11

notify the Executive Director of such denial prior to the employee's anniversary date. If the Executive Director does not receive a performance report or a notification of denial of an employee's salary increment, no action will be taken to adjust the employee's pay.

GHURA Personnel Rules and Regulations (PRR) (ver. Dec. 12, 2012) (emphasis added).

It appears that the Board certified the performance evaluations for the ED and DD on September 11, 2020, and approved the request to proceed with the processing of personnel actions.⁴

As discussed above, under Guam law increments cannot be paid retroactively for any time before the authorization unless specifically authorized by statute. Title 4 GCA § 6202 provides, "Every classified employee in Pay Grades A through V shall be entitled to one step salary increment for satisfactory performance. Employees at Steps 1 through 6 shall be entitled to an increment after twelve (12) months of satisfactory performance."⁵ A classified worker's entitlement to an anniversary increment under 4 GCA § 6202 is a statutory mandate that cannot be annulled in the event that a performance evaluation or increment certification is somehow delayed. Section 6202, however, does not apply to unclassified/exempt employees.

In the absence of the statutory authority similar to 4 GCA § 6202, increments for exempt and unclassified employees such as the ED and DD can only be paid prospectively from the date of the pay authorization. In this case, the Board's certification of the performance evaluations on September 11, 2020 authorized the salary increase for the ED from \$153,479 to \$159,498 and the DD from \$106,985 to \$111,244 prospectively from that date.

However, in this case the Notification of Personnel Action attached to the Board minutes set the effective date of the salary increment for both the ED and DD as their anniversary hire date of January 11, 2020. This is not specifically authorized by statute. The personnel action, which formalizes a salary increment, can be effective as of the date of authorization. However, any retroactive payment of the salary increment authorized on September 11, 2020 would violate Guam law.

⁴ Minutes from GHURA Board of Commissioners Regular Scheduled Meeting, September 11, 2020 (last accessed Oct. 26, 2021).

⁵ 4 GCA § 6202 (emphasis added).

3. The Pay Increases Authorized from 2013 to 2018 appear to comply with applicable laws and regulations.

The OPA's audit found that between 2013 and 2018, GHURA's former executive managers received several salary raises.

Former Executive Director's Pay Increases (2013 to 2018).

According to Table 1 of the OPA's Report No. 20-05, between 2013 and 2018, the former GHURA Executive Director (ED) received six pay increases after his initial hiring in January 2013:⁶

Table 1: Former Executive Director's Pay Adjustments

Date of Personnel Action Form	Period Covered	Reason for Adjustment
03/05/2013	Effective 02/21/2013	Board Resolution FY2013-014
06/24/2014	01/15/2013 to 01/14/2014	Performance Evaluation
07/20/2015	01/15/2014 to 01/14/2015	Performance Evaluation
12/16/2016	01/15/2015 to 01/14/2016	Performance Evaluation
02/06/2017	01/15/2016 to 01/14/2017	Performance Evaluation
04/12/2018	01/15/2017 to 01/14/2018	Performance Evaluation

The first pay increase in Table 1 was authorized on February 21, 2013, (approximately one month after the ED was hired) when the GHURA BOC passed Resolution No. FY2013-14 to raise the former ED's starting salary from \$100,071 to \$106,075.⁷ According to the resolution, the increase was applied "*prospectively*" from the authorization date of February 21, and presumably became effective two weeks later when the personnel action was issued on March 5, 2013.⁸

Because the former ED's first pay increase to his starting salary was prospective and not retroactive, the first pay increase did not violate the laws prohibiting retroactive pay raises. The pay increase was also otherwise in compliance

⁶ OPA Report No. 20-05 at p. 8, Table 1.

⁷ OPA Report No. 20-05 at p. 22, Appendix 4 (BOC Resolution No. FY2013-14 dated Feb. 21, 2013) ("Whereas, the Human Resources Division recommends that the initial slotting for the Executive Director's position for 2013 *be adjusted prospectively* to start at \$106,075 per annum. . . .")

⁸ *Id.*

Opinion Memorandum

Re: Pay Raises Granted to Former and Current GHURA

Executive Directors and Deputy Directors

Ref: OPA 20-0375

Page 6 of 11

with the law at 12 GCA § 5103(g) which allows the GHURA BOC to establish the compensation of the Executive Director.⁹

The remaining five pay increases shown in the OPA's Table 1 between 2014 and 2018 were implemented through the issuance of a personnel action form, although not memorialized in a GHURA BOC resolution as was the first increase.

For example, on June 24, 2014, the former ED received a second pay increase which covered his service and performance for the preceding performance period of January 15, 2013 to January 14, 2014.

And on July 20, 2015, he received a third pay increase that covered his service and performance for the preceding period of January 15, 2014 to January 14, 2015.

According to the OPA's report, the pay increases given between 2014 and 2018 were justified and supported by a performance evaluation report as is required by GHURA PRR 6.302. The OPA's concern appears to be that the increases were implemented through the execution of a personnel action form and were never formally ratified by the GHURA Board at a meeting:

While we believe that these pay adjustments were justified as supported by the evaluation forms, the Board of Commissioners did not ratify these pay adjustments during their general sessions.¹⁰

The OPA's report recommends that the GHURA BOC "consistently ratify all pay adjustments for GHURA unclassified employees on a going-forward basis."¹¹ While this may be best practice the GHURA BOC should adopt "going forward," absent an explicit statute or other regulation mandating BOC ratification, nothing prohibits an employee's pay to be adjusted solely by the standard form of personnel action. Therefore the GHURA BOC's failure to ratify the upward adjustments to the former ED's salary between 2014 and 2018 does not make the adjustments illegal.

///

⁹ 12 GCA § 5103(g) ("The Board may employ an Executive Director of the Authority who shall serve at the pleasure of the Board, technical experts, such other officers, agents and employees, permanent and temporary, as it may deem necessary, and shall determine their qualifications, duties, tenure and compensation.")

¹⁰ OPA Report No. 20-05 at p. 9.

¹¹ OPA Report No. 20-05 at p. 10.

Finally, the OPA's report did not make any finding as to whether the five pay increases between 2014 and 2018 were made prospectively or retroactively, and there are no copies of the relevant personnel action forms or check stubs available that would assist in this determination. Because the pay increases were supported by a performance evaluation, as long as the adjustments were *paid prospectively from the date of their authorization* as indicated in the personnel action forms, then the compensation was in compliance with law.

4. The Former Deputy Director's Pay Increases (2016 to 2018).

The former GHURA Deputy Director (DD) was initially hired in May 2016. In 2018, he received a pay increase that covered the two-year period between May 30, 2016 and May 30, 2018:¹²

Table 3: Former Deputy Director's Pay Adjustments

Date of Personnel Action Form	Period Covered	Reason for Adjustment
06/8/2016	Effective 05/30/2016	Board Resolution FY2016-026
08/20/2018	05/30/2016 to 05/29/2017	Performance Evaluation
08/20/2018	05/30/2017 to 05/30/2018	Performance Evaluation

The two pay increases were justified by performance evaluations approved by the former ED but again, were not ratified by the GHURA BOC:

Like the former Executive Director's performance evaluations, none of the former Deputy Director's performance evaluations were discussed and approved by the Board of Commissioners. While we believe that these pay adjustments were supported by evaluation forms, the Board of Commissions did not ratify these pay adjustments during their general sessions.¹³

As with the former ED's compensation, although it is ideal that the GHURA BOC approve the compensation of its top executives, including the DD, there is no law requiring BOC approval in order for the compensation to become effective.

¹² OPA Report No. 20-05 at p. 9, Table 3.

¹³ Id.

Opinion Memorandum
Re: Pay Raises Granted to Former and Current GHURA
Executive Directors and Deputy Directors
Ref: OPA 20-0375
Page 8 of 11

Moreover, the increments would be in compliance with law as long as they were paid going forward from their authorization date of August 20, 2018.

5. The Current Executive Director's Pay Increases (2019).

On August 24, 2018, the FY2019 budget appropriations act was enacted as Public Law 34-116. In addition to other cost-cutting measures, P.L. 34-116 placed a freeze on all government salary increments payable between October 1, 2018, and September 30, 2019. The law specifically states that upon the ending of the freeze, the payment of increments cannot be retroactively applied:

P.L. 34-116-XIII (Administrative Provisions, Part I). *****

Section 3. Salary Increments Freeze. Notwithstanding any other provision of law, rule or regulation, there shall be a freeze on all salary increments, promotions, reclassifications, merit bonuses, and any other upward pay adjustment, which shall take effect October 1, 2018 and *shall remain in effect through September 30, 2019*. . . Upon the lifting of such salary increments and merit bonus freeze, the payment of increments or merit bonuses shall not be retroactively applied and shall only be prospectively paid.

In anticipation that the salary freeze would end as scheduled on September 30, 2019,¹⁴ the GHURA BOC met on July 8 and authorized a restoration of the frozen increments. The GHURA BOC additionally authorized a new pay schedule granting an across-the-board, one-step pay increase to all GHURA employees. The GHURA BOC's actions were later memorialized in its written Resolution No. FY2019-018 dated July 29, 2019.

The current ED was originally appointed to his position on January 11, 2019.¹⁵ In the same year, the ED received two salary increases: the first on October 21, 2019, justified as being part of the restoration of the FY2019 salary increments; the second on December 23, 2019, justified as part of the one-step pay shift given to all employees:¹⁶

¹⁴ P.L. 34-116's freeze on the FY2019 salary increments was not renewed after it was lifted on September 30, 2019. See, Gov. Lourdes Leon Guerrero's transmittal letter to P.L. 35-36 (FY2020 appropriations law) dated Sept. 4, 2019.

¹⁵ GHURA BOC Resolution No. 2019-007 (Jan. 11, 2019).

¹⁶ OPA Report No. 20-05 at p. 9, Table 2.

Table 2: Current Executive Director Ratified Pay Adjustments

Date of Personnel Action Form	Beginning Salary	Salary Increment	Reason for Adjustment
01/15/2019	N/A	\$ 136,596	Appointment, BOC Resolution No. FY2019-007
10/21/2019	\$ 136,596	\$ 144,792	GHURA restored FY 2019 salary increments, BOC Resolution No. FY2019-018
12/23/2019	\$ 144,792	\$ 153,479	One-step pay shift to GHURA's new pay schedule, BOC Resolution No. FY2019-018

A. The first pay increase restoring the frozen FY2019 salary increments can only be paid forward from September 30, 2019, and not retroactively back to any date prior.

Under the clear language of P.L. 34-116, the GHURA BOC's restoration of the frozen salary increments cannot be applied retroactively to *any* upward pay adjustments earned in FY2019, regardless of reason or justification.

Therefore, to be in compliance with the law, the current ED's first pay increase could have only been applied prospectively, beginning October 21, 2019 (date of Personnel Action). It could not have been applied retroactively to January 11, 2019 (date of appointment); to July 8, 2019 (date of BOC meeting authorizing restoration); or to July 10, 2019 (date of former ED's initial six-month performance under 5 GCA § 43202¹⁷).

B. The second pay increase resulting from the one-step pay shift can only be paid forward from September 30, 2019 and not retroactively to any date prior.

The current ED's second pay increase was approved December 23, 2019. The adjustment was made as part of a new pay schedule authorized by the GHURA BOC at its July 8, 2019 meeting. The new pay schedule implemented an across-the-board, one-step pay shift for all GHURA employees.

GHURA Personnel Rules 5.101 and 5.103 authorize the GHURA BOC to establish and implement a pay schedule strictly for the "Housing & Community Development operations and certified, technical and *professional positions*" (emphasis added). According to Rule 5.101, "compensation for all other positions, shall remain consistent with compensation plans and pay schedules as determined by law."

¹⁷ OPA Report No. 20-05 at p. 11 (In July 2019, the GHURA BOC conducted the current ED's required 6-month performance review for the period covering January to July 2019).

A one-step pay shift for the ED would be allowed under the Rules because the ED position is a professional position for which the BOC has authority to establish compensation. A salary increase paid forward from the ending of the increment freeze on September 30, 2019 would be allowed under P.L. 34-116. The personnel action form indicates that the adjustment became effective on December 23, 2019, after the freeze ended. Therefore, as long as the second pay increase was paid forward from December 23, 2019, the increase was in compliance with the law.

6. The Current Deputy Director's Pay Increases (2019).

The current Deputy Director was hired in January 2019 at a salary of \$87,260. The following month in February 2019, the DD received a pay adjustment "to correct her salary to \$100,930."¹⁸ The correction was ratified by the BOC through Resolution No. FY2019-008.

Table 4: Current Deputy Director Ratified Pay Adjustments

Date of Personnel Action Form	Beginning Salary	Salary Increment	Reason for Adjustment
01/15/2019	N/A	\$ 87,260	Appointment; BOC Resolution No. FY2019-008
02/13/2019	\$ 87,260	\$ 100,930	Adjusted to correct salary; BOC Resolution No. FY2019-010
12/23/2019	\$ 100,930	\$ 106,985	One-step pay shift to GHURA's new pay schedule; BOC Resolution No. FY2019-018

The issuance of a "correction" by the GHURA BOC implies that it made a mistake when the DD was hired and that from the start, her salary should have been established at \$100,930 and not \$87,260. Given the GHURA BOC's authority under 12 GCA § 5103(g) to employ and determine the compensation of those officers whom it deems proper, the correction of its initial mistake with respect to the DD's compensation is probably not the type of upward pay adjustment intended to be covered by the salary increment freeze imposed by P.L. 34-116. Therefore, the DD's corrected salary adjustment was likely not in violation of law.

On December 23, 2019, the current DD received a second pay increase as a result of the BOC's one-step pay shift. As with the executive director position, a deputy director position is a professional position. Even though the pay shift was authorized by the GHURA BOC at its meeting on July 8, 2019, the increment freeze did not end until September 30, 2019, and therefore no adjustment attributable to

¹⁸ OPA Report No. 20-05 at p. 10, Table 4.

Opinion Memorandum
Re: Pay Raises Granted to Former and Current GHURA
Executive Directors and Deputy Directors
Ref: OPA 20-0375
Page 11 of 11

the pay shift can be applied retroactively to any date before September 30, 2019. Assuming that the second pay adjustment was paid from the date of the personnel action form on December 23, 2019, then the pay adjustment would not violate the laws against retroactive compensation.

CONCLUSION

Unless authorized by statute, and regardless of the justification, government of Guam employees are prohibited from receiving salary increases that are paid retroactively from the date of authorization.

Salary increments for the current Executive Director and Deputy Director based upon their performances between January 2019 and January 2020 can only be paid prospectively from the authorization date of September 11, 2020 and not retroactive from any date prior. Any retroactive payment is prohibited by Guam law.

The upward salary adjustments given to the GHURA former Executive Director and Deputy Director between 2013 and 2018 were justified by performance evaluations as required by GHURA PRR 6.302. Although not formally ratified by the GHURA BOC, the adjustments do not violate any laws as long as they were paid forward from the date of authorization as shown on the relevant personnel action forms.

Finally, because of the salary increment freeze imposed by P.L. 34-116 throughout the entirety of FY2019, no pay increases may be given for any reason to the current ED or DD that would upwardly compensate them for services performed between the time of their appointment in January 2019 to the end of the freeze on September 30, 2019.

We request confirmation that any payments of the proposed salary increments for the current Executive Director and Deputy Director for the period between January 2019 and January 2020 were made in compliance with this opinion and Guam law.


LEEVIN TATANO CAMACHO
Attorney General



PORT OF GUAM

ATURIDATI PUETTON GUAHAN

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway, Suite 201, Piti, Guam 96925

Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445

Website: www.portguam.com



Lourdes A. Leon Guerrero

Governor of Guam

Joshua E. Tenorio

Lieutenant Governor

February 16, 2021

The Honorable Leevin T. Camacho
Attorney General of Guam
Office of the Attorney General of Guam
287 West O'Brien Drive
Hagatna, Guam 96910

RE: Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam

Dear Attorney General Camacho:

Upon review of the attached documents (Attachment 1), I respectfully submit this request for a legal opinion from your office.


On July 15, 2020, the Office of Public Accountability (OPA) released OPA Report No. 20-04 (Attachment 2), relative to Unclassified Employees' Pay Raises and Bonuses at the Port Authority of Guam (PAG). While not within the scope of the audit, the dates provided in Tables 1 and 2 of this report suggest that several salary adjustments for the former PAG management were applied retroactively. A basic review of the attached documents, or personnel actions, indicates the same.

As you and I both know, 4 GCA § 2103.14 ("Retroactive Pay") clearly states:

"No unclassified employee or officer of the government of Guam may receive a retroactive pay increase unless specifically authorized by statute."

Lest the prior management believed that they were somehow exempt from this clear prohibition, 4 GCA § 6218.1 ("Prohibition on Retroactive Pay Raises") further eliminates any uncertainty, stating, in part:

"Whenever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, **whether or not autonomous**, receives an increase in pay resulting from step increase, pay range increase, promotion or any other cause, such increase in pay shall not be retroactive from the date of its authorization, unless so specified by law."

 RECEIVED 2/16/21
OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATION @720

Letter to Hon. Leevin T. Camacho

RE: Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam

February 16, 2021

Page 2

Closer inspection of these documents will reveal that these retroactive increases occurred multiple times—some during the very months your predecessor condemned these actions when conducted by the previous administration. The following tables were taken from the OPA Report.

Table 1: Former General Manager’s Pay Adjustments

Date of Personnel Action Form	Period Covered	Reason for Adjustment
04/23/2013	Effective 12/10/2012	Adjustment – Performance Evaluation (Former)
04/23/2013	Effective 12/19/2012	Adjustment – Performance Evaluation (Former)
10/11/2013	12/19/2012 to 06/18/2013	Performance Evaluation
01/21/2014	12/19/2012 to 12/19/2013	Performance Evaluation
05/13/2015	12/19/2013 to 12/19/2014	Performance Evaluation
02/04/2016	12/19/2014 to 12/19/2015	Performance Evaluation
10/25/2016	N/A	Board Resolution 2016-04
01/09/2017	12/19/2015 to 12/18/2016	Performance Evaluation
02/06/2018	12/19/2016 to 12/18/2017	Performance Evaluation
09/24/2018	N/A	Board Resolution 2018-05

Table 2: Former Deputy General Managers’ Pay Adjustments

Employee	Date of Personnel Action Form	Period Covered	Reason for Adjustment
DGM – Administration and Finance	03/16/2016	07/01/2015 ~ 12/31/2015	Performance Evaluation
	08/15/2016	07/01/2015 ~ 06/30/2016	Performance Evaluation
	10/11/2017	07/01/2016 ~ 07/01/2017	Performance Evaluation
	08/31/2018	07/01/2017 ~ 07/01/2018	Performance Evaluation
DGM – Operations and Maintenance	11/25/2015	03/01/2014 ~ 08/31/2014	Performance Evaluation
	11/25/2015	03/01/2014 ~ 02/28/2015	Performance Evaluation
	08/12/2016	03/01/2015 ~ 02/28/2016	Performance Evaluation
	09/28/2017	03/01/2016 ~ 02/28/2017	Performance Evaluation
	07/26/2018	03/01/2017 ~ 02/28/2018	Performance Evaluation

In his report, the OPA found that the pay adjustments for the former General Manager and former Deputy General Managers were generally not ratified by the PAG Board of Directors (“Board”). From the former General Manager’s hiring in December 2012 until her resignation in

Letter to Hon. Leevin T. Camacho

RE: Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam

February 15, 2021

Page 3

January 2019, the former General Manager received a total of nine (9) pay adjustments. Of the nine (9) pay adjustments, only two (2) of those pay adjustments were ratified by the Board. Further, the OPA found that all of the pay adjustments provided to the former Deputy General Managers were given based on performance evaluations conducted by the former General Manager. Although the Board approved the former Deputy General Managers' performance evaluations, the Board never ratified the pay adjustments of the former General Managers.

Thus, based on the foregoing, it appears that majority of these pay adjustments were approved by prior management without ever being presented to the Board for ratification. The OPA has continually recommended throughout the report that the Board ratify all pay adjustments for PAG unclassified employees. Accordingly, I am of the position that the prior PAG management purposely failed, or at the very least, neglected, to present these pay adjustments to the Board.

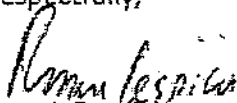
I accept that there may be a myriad of explanations for these retroactive pay raises. But we cannot allow the existence of a double standard simply because prior management failed to follow the law. As General Manager, I am compelled to ensure the protection of ratepayer funds, particularly when potential misuse of those funds is brought to my attention. I therefore pose the following inquiries to your office:

1. Do the pay adjustments outlined in the documents attached, constitute evidence of an illegal retroactive salary adjustment under Guam law?
2. If so, does the law require that the amounts be repaid or that the individual responsible face criminal proceedings?
3. Does any of the conduct cited in OPA Report No. 20-04 constitute conduct worthy of investigation or prosecution by your office?

I trust that you will do right by the public we mutually serve and act on this matter expeditiously.

I look forward to your response.

Respectfully,


Rory J. Respicio
General Manager

20-13	12-10-12	12-10-12	\$201,070.00		Approved by the BOD, in their emergency meeting of 12-10-12
106-13 (Adj) (sal)	04-23-13	12-16-12	\$214,414.00	9.35%	Corrects PANs. 20-13 from \$101,870.00-513,414.00
29-13	12-20-12	12-19-12	\$214,982.00	9.20%	Approved by the BOD, in their regular meeting of 12-19-12
107-13 (Adj) (sal)	04-23-13	12-20-12	\$110,476.00	9.03%	Corrects PANs. 23-13 from \$114,902.00-5118,467.00
05-14	10-11-13	06-19-13	\$124,510.00	5.09%	Pay Adjustment is entitled as a result of her performance appraisal
142-14	1-21-14	12-19-13	\$139,061.00	5.10%	Pay Adjustment is entitled as a result of her performance appraisal
89-15	5-13-15	12-19-14	\$137,536.00	5.10%	Pay Adjustment is entitled as a result of her performance appraisal
57-16	02-04-16	12-19-15	\$144,552.00	5.10%	Pay Adjustment is entitled as a result of her performance appraisal
37-17	10-25-16	10-01-16	\$199,394.00	3.31%	Pay Adjustment is entitled as a result of her performance appraisal
344-17	01-09-17	12-09-16	\$156,963.00	5.10%	Approved by the BOD in their regular meeting at 6-24-16
160-18	02-06-18	12-19-17	\$164,978.00	5.10%	Pay Adjustment is entitled as a result of her performance appraisal
370-18	09-24-18	09-16-18	\$169,977.60	3.04%	Waiting Period 12-19-16 to 12-18-17 Approved by the BOD in their regular meeting of 08-28-18.

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO. ED-19

1. NAME JOANNE M. S. BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 01-02-19
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THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) RETIREMENT (SERVICE) (Full-Time Employee)	6. EFFECTIVE DATE 01-04-19 C.O.B.	7. LEGAL AUTHORITY PUBLIC AUTHORITY 15-27
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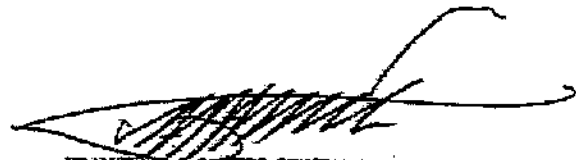
FROM		TO
GENERAL MANAGER	8. POSITION TITLE	
RR-53 \$169,968.00 PER ANNUM	9. PAY RANGE AND SALARY	
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	
GENERAL MANAGER'S OFFICE	11. DIVISION	
	12. SECTION	
Employee No. 1870		

13. FROM: 100	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO:		

16. HEALTH INS. (YES OR NO) YES	17. DENTAL INS. (YES OR NO) YES	18. LIFE INS. (YES OR NO) YES	19. RETIREMENT (YES OR NO) YES (DB)	20. SOCIAL SECURITY (YES OR NO) NO
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21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST-AUDIT BY THE CIVIL SERVICE COMMISSION.

A LUMP SUM PAYMENT SHALL BE MADE FOR ANY ACCRUED ANNUAL LEAVE TO THE EMPLOYEE'S CREDIT.



FRANCIS M. SANTOS, CHAIRMAN, BOARD OF DIRECTORS
22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

PORT AUTHORITY OF GUAM
Jose D. Leon Guerrero Commercial Port
1025 Cabra Highway, Suite 201
Fiti, Guam 96915

NOTIFICATION OF PERSONNEL ACTION
DIVISION: 101

370-2018

NAME OF EMPLOYEE	D-O-B	SSNO	DATE
BROWN, JOANNE M.	[REDACTED]	[REDACTED]	09/24/18

NATURE OF ACTION : 028
EFFECTIVE DATE : 09/16/18
POSITION TITLE : General Manager

FROM


TO

DIVISION : General Manager's Office
POSITION : General Manager
PAY GRADE/STEP: RR 7C
ANNUAL SALARY : \$164964.80
HOURLY RATE : \$79.31

DIVISION : General Manager's Office
POSITION : General Manager
PAY GRADE/STEP: RR 8B
ANNUAL SALARY : \$169977.50
HOURLY RATE : \$81.72

HEALTH : DENIAL : LIFE : SOCIAL SECURITY: RETIREMENT:

REMARKS : Approved by the board of directors in their regular meeting of August 28, 2018.


JOANNE M.S. BROWN
GENERAL MANAGER

cc: Employee, Personnel Folder, Payroll, Retirement, Civil Service Commission
Chronological, Budget

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO.- 150-18 SI

1. NAME JOANNE M.S. BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 2-06-18
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THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) SALARY INCREMENT	6. EFFECTIVE DATE 12-15-17	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-87
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FROM	TO
GENERAL MANAGER	GENERAL MANAGER
RR-55 \$156,963.00 PER ANNUM	RR-70 \$164,570.00 PER ANNUM
PORT AUTHORITY OF GUAM	SAME
GENERAL MANAGER'S OFFICE	SAME
Employee No. 187D	

7. FROM:	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS
TO:		

16. HEALTH INS. (YES OR NO)	17. DENTAL INS. (YES OR NO)	18. LIFE INS. (YES OR NO)	19. RETIREMENT (YES OR NO)	20. SOCIAL SECURITY (YES OR NO)
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21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST-AUDIT BY THE CIVIL SERVICE COMMISSION.

WAITING PERIOD 12-15-16 TO 12-15-17


FRANCISCO G. SANTOS, CHAIRMAN, BOARD OF DIRECTORS
22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

POSTED
1/16/17

NOTIFICATION OF PERSONNEL ACTION

NO. 384-17

1. NAME JOANNE MS BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 01-09-17
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THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) PAY ADJUSTMENT (Full-Time Employee)	6. EFFECTIVE DATE 12-19-16	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-87
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FROM		TO
GENERAL MANAGER	8. POSITION TITLE	GENERAL MANAGER
RR-5A \$148,345.00 PER ANNUM	9. PAY RANGE AND SALARY	RR-5B \$155,968.00 PER ANNUM
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	SAME
GENERAL MANAGER'S OFFICE	11. DIVISION	SAME
	12. SECTION	

Employee No. -1870

13. FROM: 100	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO:		

16. HEALTH INS. (YES OR NO)	17. DENTAL INS. (YES OR NO)	18. LIFE INS. (YES OR NO)	19. RETIREMENT (YES OR NO)	20. SOCIAL SECURITY (YES OR NO)
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21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST AUDIT BY THE CIVIL SERVICE COMMISSION.

PAY ADJUSTMENT IS ENTITLED AS A RESULT OF HER PERFORMANCE APPRAISAL.

[Signature]
CASCAS A. CALVO, VICE CHAIRMAN, BOARD OF DIRECTORS
22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

PORT AUTHORITY OF GUAM
Jose D. Leon Guerrero Commercial Port
1026 Cabra Highway, Suite 201
Piti, Guam 96915

NOTIFICATION OF PERSONNEL ACTION
DIVISION: 102

37-2017

NAME OF EMPLOYEE	D-O-B	SSNO	DATE
BROWN, JOAQUIN M.	[REDACTED]	[REDACTED]	10/25/16

NATURE OF ACTION : 028
EFFECTIVE DATE : 10/01/16
POSITION TITLE : General Manager

FROM TO

DIVISION : General Manager's Office	DIVISION : General Manager's Office
POSITION : General Manager	POSITION : General Manager
PAY GRADE/STEP: 2 9D	PAY GRADE/STEP: RR 5A
ANNUAL SALARY : \$144560.00	ANNUAL SALARY : \$149344.00
HOURLY RATE : \$69.50	HOURLY RATE : \$71.80

HEALTH : DENTAL : LIFE : SOCIAL SECURITY: RETIREMENT:

REMARKS : Approved by the board of directors in their regular meeting of July 25, 2016.


FELIX H. PANGELINAN
ACTING GENERAL MANAGER

cc: Employee, Personnel Folder, Payroll, Retirement, Civil Service Commission
Chronological, Budget

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

POSTED

NO. 57-16

1. NAME JOANNE M.S. BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 02-04-16
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THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) PAY ADJUSTMENT <i>(Full-Time Employee)</i>	6. EFFECTIVE DATE 12-19-15	7. LEGAL AUTHORITY PUBLIC AUTHORITY 15-87
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FROM		TO	
GENERAL MANAGER	8. POSITION TITLE	GENERAL MANAGER	
R-8C \$137,536.00 PER ANNUM	9. PAY RANGE AND SALARY	R-9D \$144,552.00 PER ANNUM	
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	SAME	
GENERAL MANAGER'S OFFICE	11. DIVISION	SAME	
Employee No. 1870	12. SECTION		

16. FROM: 100	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO:		

18. HEALTH INS. (YES OR NO)	17. DENTAL INS. (YES OR NO)	16. LIFE INS. (YES OR NO)	19. RETIREMENT (YES OR NO)	20. SOCIAL SECURITY (YES OR NO)
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21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST AUDIT BY THE CIVIL SERVICE COMMISSION.


PAY ADJUSTMENT IS ENTITLED AS A RESULT OF HER PERFORMANCE APPRAISAL.

[Signature]
FRANCISCO G. SANTOS, CHAIRMAN, BOARD OF DIRECTORS
22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

GOVERNMENT OF GUAM
 PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO. - 28-13

1. NAME JOANNE M. BROWN		2. DATE OF BIRTH [REDACTED]		3. SOCIAL SECURITY NO. [REDACTED]		4. DATE 12-20-12	
THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:							
5. NATURE OF ACTION (Use Standard Terminology) EXEMPTED APPOINTMENT (Full-Time Employee)				6. EFFECTIVE DATE 12-19-12		7. LEGAL AUTHORITY PUBLIC AUTHORITY 19-87	
FROM				TO			
8. POSITION TITLE GENERAL MANAGER		9. PAY RANGE AND SALARY R-4A \$114,982.00 PER ANNUM		10. DEPARTMENT OR AGENCY PORT AUTHORITY OF GUAM		11. DIVISION GENERAL MANAGER'S OFFICE	
12. SECTION							
Employee No. 1570							
1. FROM: TO: 100		14. POSITION CLASSIFICATION () NEW () VIDE				15. ADDRESS [REDACTED]	
16. HEALTH INS. (YES OR NO) YES		17. DENTAL INS. (YES OR NO) YES		18. LIFE INS. (YES OR NO) YES		19. RETIREMENT (YES OR NO) YES (DB)	
						20. SOCIAL SECURITY (YES OR NO) NO	
21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST-AUDIT BY THE CIVIL SERVICE COMMISSION.							
APPROVED BY THE BOARD OF DIRECTORS, PORT AUTHORITY OF GUAM, IN THEIR REGULAR MEETING OF DECEMBER 18, 2012.							
 DANIEL S. TYDINGCO, CHAIRMAN, BOARD OF DIRECTORS 22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE							

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO.- 20-13

1. NAME JOANNE M. BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 12-14-12
-----------------------------------	--------------------------------	--------------------------------------	----------------------------

THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) EXEMPTED APPOINTMENT (Full-Time Employee)	6. EFFECTIVE DATE 12-10-12	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-57
--	--------------------------------------	---

FROM	TO
5. POSITION TITLE DEPUTY GENERAL MANAGER	
9. PAY RANGE AND SALARY Q-4B \$101,870.00 PER ANNUM	
10. DEPARTMENT OR AGENCY PORT AUTHORITY OF GUAM	
11. DIVISION GENERAL MANAGER'S OFFICE	
12. SECTION	


Employee No. 1870

FROM:	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO: 500		

6. HEALTH INS. (YES OR NO) YES	17. DENTAL INS. (YES OR NO) YES	18. LIFE INS. (YES OR NO) YES	19. RETIREMENT (YES OR NO) YES (DB)	20. SOCIAL SECURITY (YES OR NO) NO
---	--	--	--	---

1. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST AUDIT BY THE CIVIL SERVICE COMMISSION.

APPROVED BY THE BOARD OF DIRECTORS, PORT AUTHORITY OF GUAM,
IN THEIR EMERGENCY MEETING OF DECEMBER 10, 2012.


DANIEL P. TYDINGCO, CHAIRMAN, BOARD OF DIRECTORS
 22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

GOVERNMENT OF GUAM
 PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO. 28-15

1. NAME JOANNE MS BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 5-13-15
-----------------------------------	--------------------------------	--------------------------------------	---------------------------

THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) PAY ADJUSTMENT (Full-Time Employee)	6. EFFECTIVE DATE 12-19-14	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-57
---	--------------------------------------	---

FROM		TO
GENERAL MANAGER	8. POSITION TITLE	GENERAL MANAGER
R-75 \$130,851.00 PER ANNUM	9. PAY RANGE AND SALARY	R-80 \$157,536.00 PER ANNUM
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	SAME
GENERAL MANAGERS OFFICE	11. DIVISION	SAME
	12. SECTION	


Employee No. 1870

13. FROM:	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO:		

16. HEALTH INS (YES OR NO)	17. DENTAL INS (YES OR NO)	18. LIFE INS (YES OR NO)	19. RETIREMENT (YES OR NO)	20. SOCIAL SECURITY (YES OR NO)
---------------------------------	---------------------------------	-------------------------------	---------------------------------	--------------------------------------

21. REMARKS THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES AND REGULATIONS AND IS SUBJECT TO POST-AUDIT BY THE CIVIL SERVICE COMMISSION.

PAY ADJUSTMENT IS ENTITLED AS A RESULT OF HER PERFORMANCE APPRAISAL.



FRANCISCO G. SANTOS, CHAIRMAN, BOARD OF DIRECTORS
 22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

FORM 216
REVISED 8/21/54

GOVERNMENT OF GUAM
PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

NO. - 142-14

1. NAME JOANNE MS BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 01-21-14
-----------------------------------	--------------------------------	--------------------------------------	----------------------------

THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) PAY ADJUSTMENT <i>(Full-Time Employee)</i>	6. EFFECTIVE DATE 12-19-13	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-87
--	--------------------------------------	---


FROM		TO	
GENERAL MANAGER	8. POSITION TITLE	GENERAL MANAGER	
R-6A \$124,510.00 PER ANNUM	9. PAY RANGE AND SALARY	R-7B \$130,261.00 PER ANNUM	
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	SAME	
GENERAL MANAGER'S OFFICE	11. DIVISION	SAME	
Employee No. 1870	12. SECTION		

FROM: 100	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
TO:		

16. HEALTH INS. (YES OR NO) YES	17. DENTAL INS. (YES OR NO) YES	18. LIFE INS. (YES OR NO) YES	19. RETIREMENT (YES OR NO) YES (DB)	20. SOCIAL SECURITY (YES OR NO) NO
---	---	---	---	--

21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST AUDIT BY THE CIVIL SERVICE COMMISSION.

PAY ADJUSTMENT IS ENTITLED AS A RESULT OF HER PERFORMANCE APPRAISAL.


FRANCISCO G. SANTOS, CHAIRMAN, BOARD OF DIRECTORS
 SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

GOVERNMENT OF GUAM
 PORT AUTHORITY OF GUAM

NOTIFICATION OF PERSONNEL ACTION

RA-1 00-15

1. NAME JOANNE MS BROWN	2. DATE OF BIRTH [REDACTED]	3. SOCIAL SECURITY NO. [REDACTED]	4. DATE 10-11-15
-----------------------------------	--------------------------------	--------------------------------------	----------------------------

THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT:

5. NATURE OF ACTION (Use Standard Terminology) PAY ADJUSTMENT <i>(Full-Time Employee)</i>	6. EFFECTIVE DATE 06-19-15	7. LEGAL AUTHORITY PUBLIC AUTHORITY 13-27
--	--------------------------------------	---

FROM		TO	
GENERAL MANAGER	8. POSITION TITLE	GENERAL MANAGER	
R-4D \$118,467.00 PER ANNUM	9. PAY RANGE AND SALARY	R-6A \$124,510.00 PER ANNUM	
PORT AUTHORITY OF GUAM	10. DEPARTMENT OR AGENCY	SAME	
GENERAL MANAGER'S OFFICE	11. DIVISION	SAME	
	12. SECTION		

Employee No. 1870	14. POSITION CLASSIFICATION () NEW () VICE	15. ADDRESS [REDACTED]
--------------------------	---	---------------------------

16. HEALTH INS. (YES OR NO) YES	17. DENTAL INS. (YES OR NO) YES	18. LIFE INS. (YES OR NO) YES	19. RETIREMENT (YES OR NO) YES (DB)	20. SOCIAL SECURITY (YES OR NO) NO
---	---	---	---	--

21. REMARKS: THIS ACTION IS SUBJECT TO ALL APPLICABLE LAWS, RULES, AND REGULATIONS AND IS SUBJECT TO POST AUDIT BY THE CIVIL SERVICE COMMISSION.

PAY ADJUSTMENT IS ENTITLED AS A RESULT OF HER PERFORMANCE APPRAISAL.



DANIEL J. TYDINGCO, CHAIRMAN, BOARD OF DIRECTORS
 22. SIGNATURE (OR OTHER AUTHENTICATION) AND TITLE

NOTIFICATION OF PERSONNEL ACTION
FCN 2-7-5 (D)

PORT AUTHORITY OF GUAM
Government of Guam
(ADJUSTMENT)

NAME OF EMPLOYEE JOANNE MS BROWN	DIVISION-SECTION GENERAL MANAGER'S OFFICE	111-12 Payroll Number [REDACTED]
--	---	---

This action (XX) corrects () cancels in its entirety () amends Notification of Personnel Action Number 106-12
dated 04-23-13 in the case of above named employee as follows:

TO READ:

Q-6B \$111,414.00 P/A
Q-4B \$101,870.00 P/A

INSTEAD OF:

Q-6C \$111,414.00 P/A
Q-4B \$101,870.00 P/A

DANIEL J. TYBINGCO, CHAIRMAN, BOARD OF DIRECTORS	DATE 05-06-13
---	-------------------------

Distribution: Original-Employee; Yellow-Personnel File; Green-Payroll; White-Retirement Division; Blue-Chronological

NOTIFICATION OF PERSONNEL ACTION
FORM 24-S (D)

PORT AUTHORITY OF GUAM
Government of Guam
(ADJUSTMENT)

[Handwritten signature]

NAME OF EMPLOYEE JOANNE MS BROWN	DIVISION-SECTION GENERAL MANAGER'S OFFICE	107-13 Payroll Number [REDACTED]
--	---	---

This action () corrects () cancels in its entirety () amends Notification of Personnel Action Number 23-13

dated 12-20-13 in the case of above named employee as follows:

No. 9 PAY RANGE AND SALARY:

TO BEAD: R-4D \$118,457.00 E/A

INSTEAD OF: R-4A \$114,982.00 E/A

[Handwritten signature]
DANIEL J. VEDRIZZO, CHAIRMAN, BOARD OF DIRECTORS

DATE
04-23-13

Distribution: Original-Employee; Yellow-Personnel File; Green-Payroll; White-Retirement Division; Blue-Chronological

NOTIFICATION OF PERSONNEL ACTION
FCN 24-S (D)

PORT AUTHORITY OF GUAM
Government of Guam
(ADJUSTMENT)

106-13


NAME OF EMPLOYEE	DIVISION/SECTION	Payroll Number
JOANNE MS BROWN	GENERAL MANAGER'S OFFICE	[REDACTED]

This action (correct) (cancel in its entirety) (amends Notification of Personnel Action Number 20-13

dated 12-14-12 in the case of above named employee as follows:

NO. 9 PAY RANGE AND SALARY:

TO READ: Q-6C \$111,414.00 P/A
INSTEAD OF: R-4B \$101,870.00 P/A

 DANIEL J. TYDINGCO, CHAIRMAN, BOARD OF DIRECTORS	DATE 04-22-13
---	------------------

Distribution: Original-Employee; Yellow-Personnel File; Green-Payroll; White-Retirement Division; Blue-Chronological



EXECUTIVE SUMMARY

Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses Report No. 20-04, July 2020

Our audit of the Port Authority of Guam (PAG) unclassified employees' pay raises and bonuses found that the PAG Board of Directors generally complied with the Open Government Law. We did not find any bonuses given to unclassified employees in our review of executive and general session minutes as well as personnel action forms. However, we found that the Board of Directors:

- Discussed and decided on the hiring of the *former* General Manager in their December 2012 executive session;
- Were inconsistent in the ratification¹ of the *former* General Manager's pay adjustments as well as the *former* Deputy General Managers' pay adjustments; and
- Did not conduct a formal performance evaluation for the *former* General Manager in 2018.

We also found that the discussion on the migration to the PAG compensation plan's 25th market percentile took place during working sessions that were not open to the public.

Former General Manager's Hiring Discussed/Decided during PAG Executive Session

According to 5 GCA §8111(a), under no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions must be held in a public meeting and minutes shall be kept and open to the public. Also, 5 GCA §8111(d) requires that all voting must be held in a public meeting and minutes shall be kept and open to the public.

PAG generally complied with the Open Government Law relative to personnel matters. However, we found that the Board of Directors discussed and decided on the hiring of the *former* General Manager in its executive session. We acknowledge that the Board of Directors motioned and approved the hiring of the *former* General Manager once the general session reconvened.

Inconsistency in the Ratification of the Former General Manager's Pay Adjustments

From the *former* General Manager's hiring in December 2012 until her retirement in January 2019, the *former* General Manager received nine pay adjustments in total. Of the nine pay adjustments provided to the *former* General Manager, seven were due to formal performance evaluations and two pay adjustments were as a result of PAG's Compensation and Classification Plan. While the Board of Directors ratified the October 2016 and September 2018 pay adjustments, the *former* General Manager's pay adjustments from October 2013 through February 2018 were not ratified.

Former Deputy General Managers' Pay Adjustments Not Ratified

Throughout their employment, the *former* General Manager conducted formal performance evaluations of the *former* Deputy General Manager of Administration and Finance and *former* Deputy General Manager of Operations and Maintenance. The PAG Board of Directors approved the *former* Deputy General Managers' performance evaluations presented by the *former* General Manager. While we believe that the *former* Deputy General Managers' pay adjustments were

¹ "Ratify" means to approve or sanction formally (<https://www.merriam-webster.com/dictionary/ratify>).

justified through formal performance evaluations, the PAG Board of Directors did not ratify these adjustments.

No Record of Performance Review for Former PAG General Manager in 2018

Although a pay adjustment was received in 2018, the Board of Directors did not conduct a formal evaluation of the *former* General Manager's performance for the period covering December 2017 through December 2018. Based on 5 GCA §43202, governing boards for all agencies must issue performance reviews of the Chief Executive selected for that agency six months after appointment of the Chief Executive and every 12 months thereafter that the Chief Executive is retained by the Governing Board. As a result, we questioned PAG's basis for providing the *former* General Manager a pay increase for that period.

Discussion on the Cost of the Migration of CTP Personnel to the 25th Market Percentile in Working Sessions

Public Law 30-43 authorized PAG to implement a market-based compensation model that would aid in the attraction and retention of Certified, Technical, and Professional (CTP) personnel. According to PAG, there were 172 employees that were below the 25th market percentile implementation range and 183 employees that were above the 25th market percentile implementation range. The Board of Directors and Management granted a 3% increase to the 183 employees. This action granted employees to exceed the maximum step of their respective position's pay grade implementation range, as long as the employee did not exceed Step 20 of that pay grade.

The Board of Directors complied with the Open Government Law when they discussed and voted on the approval and adoption of Board Resolution 2018-05. However, they violated the spirit of the law when discussions on the cost of migrating employees to the plan's 25th market percentile took place during working sessions that were not open to the public.

Except for the vote on the matter, there was no other discussion involving the Port Compensation and Classification Plan and the 25th market percentile migration. A former Board Member confirmed that there were two other meetings held to discuss the plan and the migration prior to the August 28, 2018 general session. These sessions were held with PAG staff and not open to the public. PAG noted that the Board of Directors' practice of conducting working sessions not open to the public no longer exists.

Further, the public was not aware of how much PAG would spend to migrate CTP personnel to the 25th market percentile. In Resolution 2018-05, there was no mention of any fiscal impact nor was this fiscal impact provided in the FY 2019 Budget. PAG's FY 2019 budget was approved without any regard to the full implementation of the 2018 Classification and Compensation Plan.

Conclusion

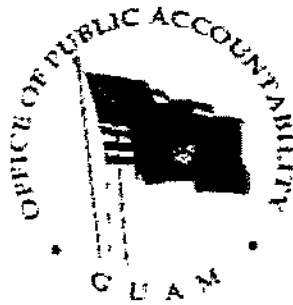
The Open Government Law states that the people do not yield their individual rights to the public agencies, which serve them. As a result of this audit, we recommended PAG Board of Directors consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.

Benjamin J.F. Cruz
Public Auditor

Port Authority of Guam Unclassified
Employees' Pay Raises and Bonuses

Performance Audit
October 1, 2011 through September 30, 2019

OPA Report No. 20-04
July 2020



**Port Authority of Guam
Unclassified Employees' Pay Raises and Bonuses**

**Performance Audit
October 1, 2011 through September 30, 2019**

**OPA Report No. 20-04
July 2020**

Distribution via E-Mail:

Governor of Guam
Lieutenant Governor of Guam
Speaker, 35th Guam Legislature
Senators, 35th Guam Legislature
Chairperson, Port Authority of Guam Board of Directors
Director, Department of Administration
Director, Bureau of Budget and Management Research
Controller, Superior Court of Guam
Guam Media



Table of Contents

Executive Summary.....	1
Introduction.....	3
Background.....	3
Results of Audit.....	7
PAG's Compliance with the Open Government Law.....	7
<i>Former General Manager's Hiring Discussed/Decided during PAG Executive Session</i>	7
<i>Inconsistency in the Ratification of the Former General Manager's Pay Adjustments</i>	8
<i>Former Deputy General Managers' Pay Adjustments Not Ratified</i>	9
Performance Reviews of Agency Heads.....	9
<i>No Record of Performance Review for Former PAG General Manager in 2018</i>	9
Other Matters.....	10
<i>Discussion on the Cost of the Migration of Certified, Technical, and Professional Personnel to the 25th Market Percentile in Working Sessions</i>	10
Conclusion.....	13
Classification of Monetary Amounts.....	14
Management Response and OPA Reply.....	15
Appendices:	
1: Objective, Scope & Methodology.....	16
2: Prior Audit Coverage.....	17
3: Performance Evaluation for General Manager.....	18
4: Performance Evaluation for Deputy General Manager.....	22
5: Excerpts of Executive and General Session Minutes.....	26
6: PAG Management Response.....	28
7: Status of Audit Recommendations.....	35



EXECUTIVE SUMMARY

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The Board of Directors complied with the Open Government Law when they discussed and voted on the approval and adoption of Board Resolution 2018-05. However, they violated the spirit of the law when discussions on the cost of migrating employees to the plan's 25th market percentile took place during working sessions that were not open to the public.

Except for the vote on the matter, there was no other discussion involving the Port Compensation and Classification Plan and the 25th market percentile migration. A former Board Member confirmed that there were two other meetings held to discuss the plan and the migration prior to the August 28, 2018 general session. These sessions were held with PAG staff and not open to the public. PAG noted that the Board of Directors' practice of conducting working sessions not open to the public no longer exists.

Further, the public was not aware of how much PAG would spend to migrate CTP personnel to the 25th market percentile. In Resolution 2018-05, there was no mention of any fiscal impact nor was this fiscal impact provided in the FY 2019 Budget. PAG's FY 2019 budget was approved without any regard to the full implementation of the 2018 Classification and Compensation Plan.

Conclusion

The Open Government Law states that the people do not yield their individual rights to the public agencies, which serve them. As a result of this audit, we recommended PAG Board of Directors consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.

Benjamin J.F. Cruz
Public Auditor



Introduction

This report presents the results of our performance audit of the Port Authority of Guam (PAG) unclassified employees' pay raises and bonuses. We initiated the audit after we received a request from the Attorney General's Office to review potential violations of the Open Government Law in relation to the employee's compensation within autonomous agencies.

We analyzed the staffing patterns of 16 autonomous agencies and focused on agencies with significant or frequent increases in pay between October 1, 2014 and September 30, 2019. The Guam Power Authority (GPA), Guam Waterworks Authority (GWA), PAG, and Guam Housing and Urban Renewal Authority (GHURA) had the most significant pay increases. This audit is Part B of the autonomous agencies unclassified employees' pay raises and bonuses audit series and will report on PAG. Part A was issued in December 2019 and reported on GPA and GWA. A report for GHURA will be issued in a separate audit report. Based on our risk analysis, we widened our period of review for PAG from October 1, 2011 through September 30, 2019.

Our audit objectives were to determine whether:

1. Pay raises and bonuses granted to unclassified employees complied with applicable laws (Open Government Law and/or Prohibition on Bonus Pay for Unclassified Employees); and
2. Performance reviews were conducted for agency heads.

The objectives, scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

Background

There are 16 autonomous agencies within the Government of Guam (GovGuam). Title 12 of the Guam Code Annotated (GCA) lists 12 autonomous agencies, while the remaining four were created through public laws passed by the Guam Legislature.

Of the 16 autonomous agencies analyzed, four agencies were included in the audit scope – GPA, GWA, PAG, and GHURA. These agencies showed both substantial and frequent pay increases for their respective agency heads since fiscal year (FY) 2015. Refer to Figure 1 for details.

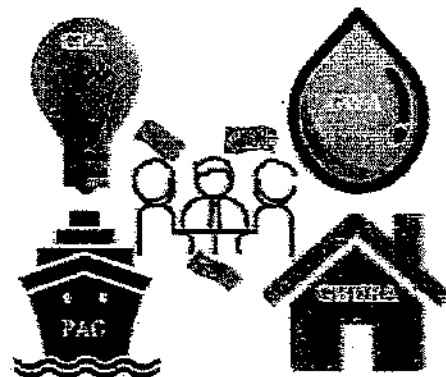
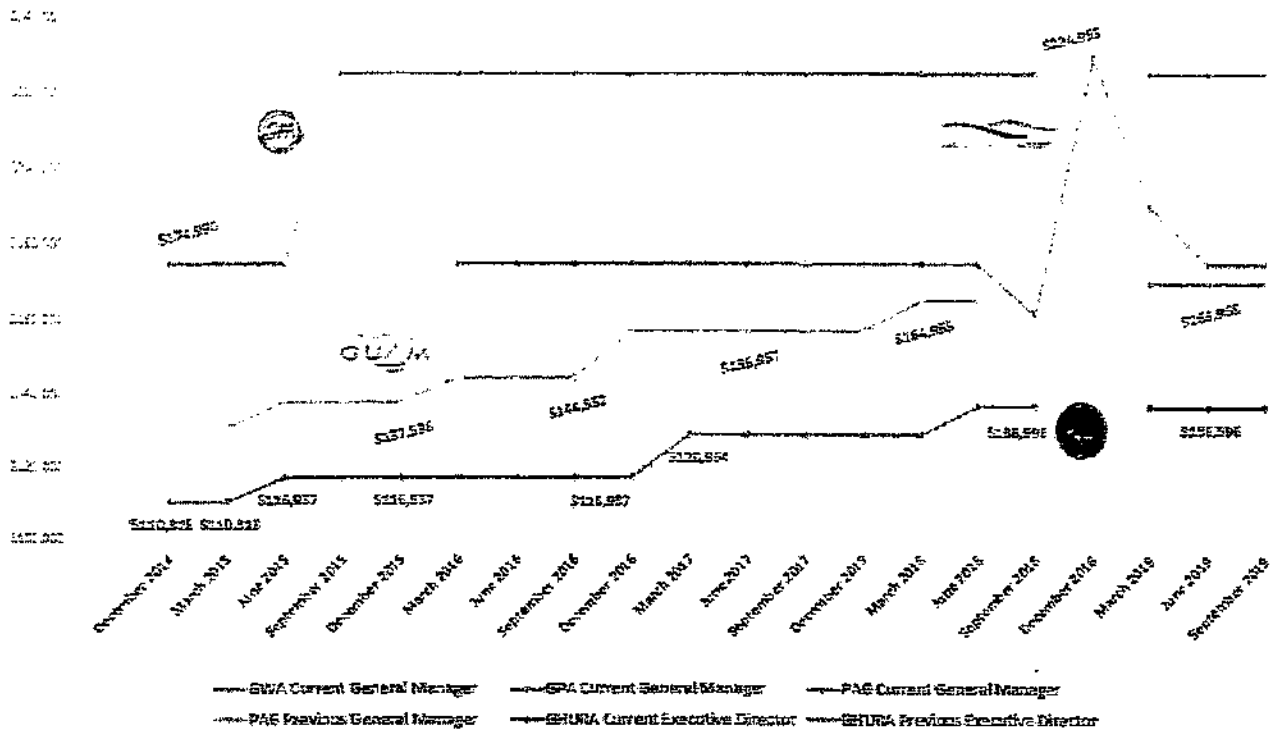


Figure 1: GPA, GWA, PAG, and GHURA Agency Head Compensation Comparison



Part Authority of Guam

PAG was established as a public corporation and an autonomous agency of GovGuam in October 1975 through Public Law (P.L.) 13-87. Title 12 GCA §10102 deemed that PAG provides the needs of ocean commerce, shipping, recreational and commercial boating, and navigation of the territory of Guam.

PAG is directed by five board members appointed by the Governor of Guam with the advice and consent of the Guam Legislature. The Board of Directors provide and establish policies and directives pertaining to the planning, promotion, development, construction, operation, and maintenance of the PAG facilities.

The Board of Directors appoint the General Manager and Deputy General Manager who are responsible for maintenance, operation and development of PAG, and the agency's business affairs. From October 1, 2011 through September 30, 2019, there were at least ten unclassified PAG employees that included four General Managers and six Deputy General Managers. These numbers included employees who separated and were replaced by another unclassified employee. These executive positions included the General Manager, Deputy General Manager of Operations and Maintenance, and Deputy General Manager of Administration and Finance, who serve at the pleasure of the Board of Directors.

Open Government Law

Title 5 GCA Chapter 8 created the Open Government Law to declare a policy that the formation of public policy and decisions is public and shall not be conducted in secret. The people of Guam do not yield their individual rights to the public agencies, which serve them. The people insist on remaining informed so that they may retain control over the instruments they created. Provisions are contained under §§ 8111, 8113, and 8115.

- §8111(a) – Under no circumstances shall a public agency² hold an executive or closed meeting³ to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions or decisions must be held in a public meeting⁴ and minutes shall be kept and open to the public.
- §8111(d) – Under no circumstances shall a public agency vote on any matter before it during an executive or closed meeting. All voting must be held in a public meeting and minutes shall be kept and open to the public.
- §8113 – The minutes of every meeting of each public agency shall be promptly and fairly recorded, shall be open to public inspection, and shall include but not be limited to a record of all motions, proposals, and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call.
- §8115(b) – Each member of a public agency who attends a meeting of a public agency where action is taken in violation of the Open Government Law, with knowledge of the fact that the meeting is in violation thereof, is guilty of a *misdeemeanor*.

Performance Reviews of Agency Heads

Title 5 GCA Chapter 43 Article 2 required Governing Boards to conduct and publish performance reviews of Agency Heads. Provisions are contained in §§ 43202 and 43203.

- §43202 – The Governing Boards of all agencies, instrumentalities, or entities shall issue performance reviews of the Chief Executive selected for that agency six (6) months after appointment of the said Chief Executive and every twelve (12) months thereafter that the Chief Executive is retained by the Governing Board. Each performance review shall document the Chief Executive's performance, accomplishments, and the respective Governing Board's reasons for retaining the said Chief Executive.
- §43203 – The performance reviews required under this Act shall be made public and the availability of these reviews shall be published by the respective Governing Boards issuing the aforementioned reviews by newspaper of general circulation or by radio or television, which is reasonably calculated to provide notice of the facts it announces to the public at large and posted on the agency, instrumentality, or entity's website.

Policy on Performance Evaluation for General Manager and Deputy General Manager

The PAG Board of Directors formulated its internal processes and procedures pertaining to the General Manager and Deputy General Managers' performance evaluations. Refer to Figure 2 and Figure 3 for an illustration of PAG's performance evaluation processes.

² Public agency includes any board, commission or comparable unit of government, any of whose members are elected, appointed by the Governor or by the Legislature.

³ Closed meeting or sometimes referred as executive session/meeting.

⁴ Public meeting or sometimes referred as regular session/meeting.

Figure 2: Process of Performance Evaluation for General Manager

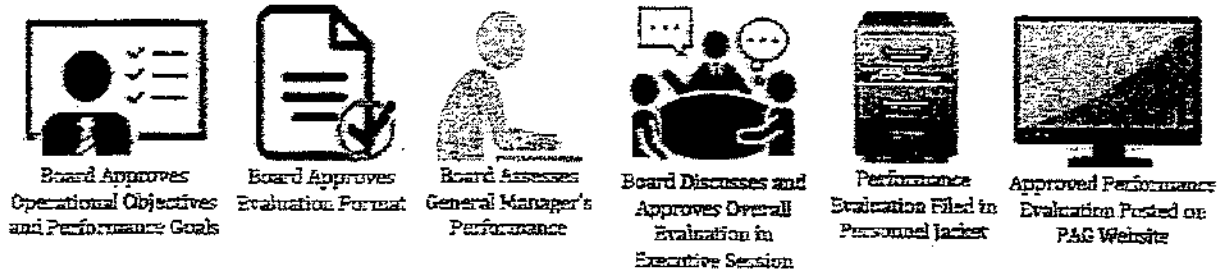


Figure 3: Process of Performance Evaluation for Deputy General Managers



See Appendix 3 and Appendix 4 for PAG's policies on the performance evaluations for the General Manager and Deputy General Managers.

Results of Audit

Our audit of the PAG unclassified employees' pay raises and bonuses found that the PAG Board of Directors generally complied with the Open Government Law. We did not find any bonuses given to unclassified employees in our review of executive and general session minutes as well as personnel action forms. However, we found that the Board of Directors:

- Discussed and decided on the hiring of their *former* General Manager during their December 2012 executive session;
- Were inconsistent in the ratification⁵ of the *former* General Manager's pay adjustments as well as the *former* Deputy General Managers' pay adjustments; and
- Did not conduct a formal evaluation of the *former* General Manager's performance in 2018 unlike prior years.

We also found that the discussion of the migration to the PAG compensation plan's 25th market percentile took place during working sessions that were not open to the public.

PAG's Compliance with the Open Government Law

Title 5 GCA §8111(a) requires that "under no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. *All such discussions or decisions must be held in a public meeting and minutes shall be kept and open to the public.*" 5 GCA Chapter 8 §8111(d) states that "under no circumstances shall a public agency vote on any matter before it during an executive or closed meeting. *All voting must be held in a public meeting and minutes shall be kept and open to the public.*"

Former General Manager's Hiring Discussed/Decided during PAG Executive Session

In our inspection of PAG's executive session minutes from October 1, 2011 through September 30, 2019, we did not find any discussions or decisions relating to salary, salary levels, or salary adjustments of any employee or officer within PAG. However, we found that the Board of Directors discussed and decided on the hiring of the *former* General Manager in its December 19, 2012 executive session. We observed that the PAG Board of Directors discussed and agreed on the matter in its executive session, then announced their decision in their regular session. An excerpt of the Board of Directors decision went as follows:

"Board Secretary agreed to make the motion and Vice Chairman agreed to second the motion in the general session. Legal Counsel advised that the matter may be discussed, but the vote won't count in the executive session. The general session reconvened. Board Secretary motioned that the Acting General Manager be designated as the General Manager for PAG. Vice Chairman seconded. There was no objection or discussion and the motion carried."

We acknowledge that the Board of Directors motioned and approved the hiring of the *former* General Manager once the general session reconvened.

⁵ "Ratify" means to approve or sanction formally (<https://www.merriam-webster.com/dictionary/ratify>).

Inconsistency in the Ratification of the Former General Manager's Pay Adjustments

In our review, we identified three circumstances when PAG initiated a salary adjustment to an unclassified employee:

1. After an annual performance evaluation;
2. As a structural adjustment after a compensation study by an independent firm using market data in the same industry; or
3. By Board of Directors' preference, which may include appointment to an acting capacity.

From the *former* General Manager's hiring in December 2012 until her retirement in January 2019, the *former* General Manager received nine pay adjustments in total. Of the nine pay adjustments provided to the *former* General Manager, seven were given due to formal performance evaluations, while two pay adjustments were provided as a result of PAG's Compensation and Classification Plan.

When the *former* General Manager was hired, her starting salary was \$114,982. However, in April 2013, the *former* General Manager received a pay adjustment to correct her starting salary to \$118,467. According to PAG, this adjustment was due to the *former* General Manager's outstanding performance evaluation dated April 15, 2013 from her former employer, which entitled her to an additional 3-substep increase.

While the Board of Directors ratified the October 25, 2016 and September 24, 2018 pay adjustments, the *former* General Manager's pay adjustments from April 2013 through February 2018 were not ratified. Refer to Table 1 for the details.

Table 1: Former General Manager's Pay Adjustments

Date of Personnel Action Form	Period Covered	Reason for Adjustment
04/23/2013	Effective 12/10/2012	Adjustment – Performance Evaluation (Former)
04/23/2013	Effective 12/19/2012	Adjustment – Performance Evaluation (Former)
10/11/2013	12/19/2012 to 06/18/2013	Performance Evaluation
01/21/2014	12/19/2012 to 12/19/2013	Performance Evaluation
05/13/2015	12/19/2013 to 12/19/2014	Performance Evaluation
02/04/2016	12/19/2014 to 12/19/2015	Performance Evaluation
10/25/2016	N/A	Board Resolution 2016-04
01/09/2017	12/19/2015 to 12/18/2016	Performance Evaluation
02/05/2018	12/19/2016 to 12/18/2017	Performance Evaluation
09/24/2018	N/A	Board Resolution 2018-05

The Board of Directors formally conducted and approved the evaluations of the *former* General Manager's performance for the periods covering December 2012 through December 2017. While the Board of Directors followed its performance evaluation policy in conducting and approving the *former* General Manager's evaluations, only one of the evaluations that were given as a result of the *former* General Manager's performance was ratified. In their February 27, 2018 general session, the Board of Directors formally approved the *former* General Manager's performance evaluation for the period covering December 2016 through December 2017. Refer to Appendix 5 for an excerpt of the February 27, 2018 general session minutes.

The performance evaluation forms indicate the following statement to support the Board of Directors' consensus on each employee's evaluation: "*The General Manager and the Board of Directors have met, discussed and agreed to the above initiatives as measurable deliverables for the performance cycle.*" While we believe that these pay adjustments were justified as supported by the evaluation forms, the Board of Directors did not ratify these pay adjustments during their general sessions as a result of the performance evaluations.

Former Deputy General Managers' Pay Adjustments Not Ratified

In our inspection of the Personnel Action Forms, all of the pay adjustments provided to the *former* Deputy General Manager of Administration and Finance and *former* Deputy General Manager of Operations and Maintenance were given based on their performance evaluations. Refer to Table 2 for details.

Table 2: Former Deputy General Managers' Pay Adjustments

Employee	Date of Personnel Action Form	Period Covered	Reason for Adjustment
DGM – Administration and Finance	03/16/2016	07/01/2015 ~ 12/31/2015	Performance Evaluation
	08/15/2016	07/01/2015 ~ 06/30/2016	Performance Evaluation
	10/11/2017	07/01/2016 ~ 07/01/2017	Performance Evaluation
	08/31/2018	07/01/2017 ~ 07/01/2018	Performance Evaluation
DGM – Operations and Maintenance	11/25/2015	03/01/2014 ~ 08/31/2014	Performance Evaluation
	11/25/2015	03/01/2014 ~ 02/28/2015	Performance Evaluation
	08/12/2016	03/01/2015 ~ 02/28/2016	Performance Evaluation
	09/28/2017	03/01/2016 ~ 02/28/2017	Performance Evaluation
	07/26/2018	03/01/2017 ~ 02/28/2018	Performance Evaluation

The *former* General Manager formally conducted the performance evaluations of the *former* Deputy General Managers during their employment with PAG. In following their process, the PAG Board of Directors approved the *former* Deputy General Managers' performance evaluations presented by the *former* General Manager. Although we believe that the *former* Deputy General Managers' pay adjustments were justified through formal performance evaluations, there was no formal motion made in the general sessions that ratified the pay adjustments of the *former* Deputy General Managers.

We recommend that the PAG Board of Directors consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.

Performance Reviews of Agency Heads

No Record of Performance Review for Former PAG General Manager in 2018

Although a pay adjustment was received in 2018, the Board of Directors did not conduct a formal evaluation of the *former* General Manager's performance for the period covering December 2017 through December 2018. Based on 5 GCA §43202, governing boards for all agencies must issue performance reviews of the Chief Executive selected for that agency six months after appointment of the Chief Executive and every 12 months thereafter that the Chief Executive is retained by the Governing Board. A performance evaluation of the Chief Executive is not necessary if the

Governing Board does not retain the Chief Executive in the 12-month period, unless the Governing Board wants to document why the Chief Executive will not be retained.

Although they did not conduct a formal evaluation of the *former* General Manager in 2018, we found that the PAG Board of Directors followed their internal policy when they conducted the formal evaluation of the *current* General Manager's performance. Other than the General Manager, the Deputy General Managers also serve at the pleasure of the Board of Directors. The Deputy General Managers also have documented performance evaluations in line with PAG's internal policy.

Aside from pay adjustments, the PAG Board of Directors should ensure that a formal evaluation of the General Manager's performance is conducted at least once a year. As a result, we questioned PAG's basis of providing the *former* General Manager with a pay increase for that period.

In order to promote accountability, PAG should be consistent in following its internal policies to ensure necessary procedures were followed to encourage fairness amongst its internal stakeholders.

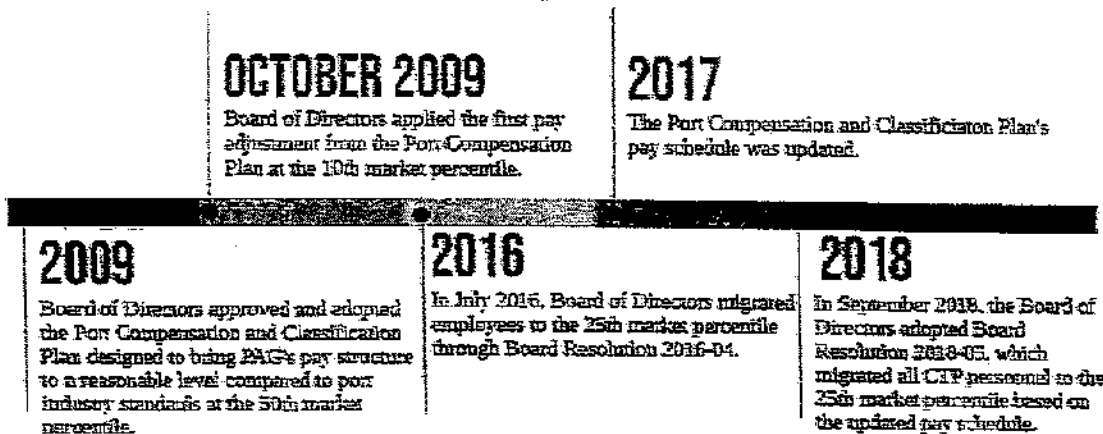
Furthermore, PAG's policy on the performance evaluation for the General Manager requires the Board of Directors to discuss and approve the General Manager's overall evaluation in its executive session. This was not in line with 5 GCA §8111(d), which states that a public agency vote on any matter should not be held in an executive or closed meeting. As such, the PAG Board of Directors should ensure its policies are in line with applicable laws and regulations before its implementation.

Other Matters

Discussion on the Cost of the Migration of Certified, Technical, and Professional (CTP) Personnel to the 25th Market Percentile in Working Sessions

P.L. 30-43 authorized PAG to implement a market-based compensation model that would aid in the attraction and retention of CTP personnel. Through 12 GCA §10114(a), the personnel rules and regulations were adopted and applied to all PAG positions. See Figure 4 below for the history of the Port Compensation and Classification Plan.

Figure 4: History of Port Compensation and Classification Plan



The adoption of the resolution was made during the PAG Board of Directors' August 28, 2018 general session. See Figure 5 for an excerpt of the Port Compensation and Classification Plan for Unclassified Employees at the 25th market percentile.

Figure 5: Port Compensation and Classification Plan Excerpt (25th Market Percentile)

Authority	Benchmark Position	25 th Market Percentile									
		Structural Adjustment - MIN					Structural Adjustment - MAX				
		Base Salary	Hourly	Grade	Step	Sub Step	Base Salary	Hourly	Grade	Step	Sub Step
PAG	Deputy Chief Administration & Finance	124,000	6.48	C	5	4	144,270	6.87	C	6	4
PAG	Deputy Chief Operations & Maintenance	124,274	6.57	C	5	4	144,544	6.96	C	6	4
PAG	Senior Manager SAC	124,548	6.66	C	5	4	144,818	7.05	C	6	4

According to PAG, there were 172 employees below the 25th market percentile implementation range and 183 employees above the 25th market percentile implementation range. The Board of Directors and Management granted a 3% increase to the 183 employees. As a result, these employees were allowed to exceed the maximum step of their respective position's pay grade implementation range, as long as the employee did not exceed Step 20 of that pay grade.

The Board of Directors complied with the Open Government Law when they discussed and voted on the approval and adoption of Board Resolution 2018-05 relative to the Port Compensation and Classification Plan. However, they violated the spirit of the law when discussions on the cost of migrating employees to the plan's 25th market percentile took place during working sessions that were not open to the public. Title 5 GCA §8111(a) requires public agencies to discuss salaries, salary levels, or salary adjustments of any employee or officer to be held in a public meeting and minutes shall be kept and open to the public.

In our review of the August 28, 2018 general session minutes, the Board of Directors decided on the adoption of Board Resolution 2018-05 as follows:

"Vice Chairman made a motion relative to approving and adopting Resolution No. 2018-05 which is the updated pay schedule of the Port Authority of Guam Compensation and Classification Plan, seconded by Board Secretary. Motion was unanimously approved."

Except for the vote on the matter, there was no other discussion involving the Port Compensation and Classification Plan and the 25th market percentile migration. A former Board Member confirmed that there were two other meetings held to discuss the plan and the migration prior to the August 28, 2018 general session. These sessions were held with PAG staff and not open to the public. PAG noted that the Board of Directors' practice of conducting working sessions not open to the public no longer exists.

According to PAG, the migration of CTP personnel to the 25th market percentile was upheld or endorsed by the Civil Service Commission (CSC). Pursuant to CSC Case No. 19-PA03 Order after Hearing, "the Port complied with the Rules and Statutes in implementing the new pay scale pursuant to the resolutions of the Port Authority of Guam's Board." However, as these working

sessions included cost discussions, the public was not aware of the cost PAG would spend to migrate CTP personnel.

In addition, PAG noted that Board Resolution 2018-05 had no mention of any fiscal impact nor was this fiscal impact provided in the PAG FY 2019 Budget, which was approved without any regard to the full implementation of the 2018 Classification and Compensation Plan. According to PAG, approximately \$1.3M was spent in order to follow this migration.

The Open Government Law states that the people of Guam do not yield their individual rights to the public agencies which serve them. The people insist on remaining informed. The Board of Directors should be more transparent in terms of what aided their decision to approve the migration.

Conclusion

Our audit of the PAG unclassified employees' pay raises and bonuses found that the PAG Board of Directors generally complied with the Open Government Law. We did not find any bonuses given to unclassified employees in our review of executive and general session minutes as well as personnel action forms. However, we found that the Board of Directors:

- Discussed and decided on the hiring of their *former* General Manager in their December 2012 executive session;
- Were inconsistent in the ratification of the *former* General Manager's pay adjustments as well as the *former* Deputy General Managers' pay adjustments; and
- Did not conduct a formal evaluation of the *former* General Manager's performance in 2018 unlike prior years.

We also found that the Board of Directors discussed their decision to approve the migration of CTP personnel to the PAG compensation plan's 25th market percentile during working sessions that were not open to the public.

The Open Government Law states that the people do not yield their individual rights to the public agencies, which serve them. As a result, we recommended that the PAG Board of Directors consistently ratify all pay adjustments for PAG unclassified employees on a going forward basis.

Classification of Monetary Amounts

Finding Description		Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
1	PAG's Compliance with the Open Government Law	\$ -	\$ -	\$ -	\$ -
	Former General Manager's Hiring Discussed/Decided during PAG Executive Session	\$ -	\$ -	\$ -	\$ -
	Inconsistency in the Ratification of the Former General Manager's Pay Adjustments	\$ -	\$ -	\$ -	\$ -
	Former Deputy General Managers' Pay Adjustments Not Ratified	\$ -	\$ -	\$ -	\$ -
2	Performance Reviews of Agency Heads	\$ -	\$ -	\$ -	\$ -
	No Record of Performance Review for Former PAG General Manager in 2018	\$ -	\$ -	\$ -	\$ -
3	Other Matters	\$ -	\$ -	\$ -	\$ -
	Discussion on the Cost of the Migration of CTP Personnel to the 25 th Market Percentile in Working Sessions	\$ -	\$ -	\$ -	\$ -
	Totals	\$ -	\$ -	\$ -	\$ -

Management Response and OPA Reply

In June 2020, we transmitted a draft report to the PAG Board of Directors and met with PAG's management to discuss the findings and recommendation. In July 2020, we met with the Attorney General and Oversight Chairperson of the 35th Guam Legislature.

In PAG's management response, PAG's General Manager generally agreed with our findings. PAG responded as follows:

1. Management Response: Former General Manager's Salary Inconsistent with PAG's Authorized Pay Scale

The General Manager explained that for the 183 employees above the 25th market percentile implementation range, the Board of Directors and Management granted a 3% increase regardless of whether they have exceeded the maximum step of the pay grade implementation range, as long as the employee did not exceed Step 20 of that pay grade.

OPA Reply: Based on PAG's response, the finding was satisfied.

2. Management Response: Discussion on the Cost of the Migration of CTP Personnel to the 25th Market Percentile in Working Sessions

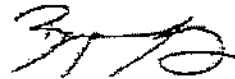
The General Manager explained that a CSC Order for a Post Audit on Case No. 19-PA03 was conducted. The Order "ruled 5 to 0 that the Port complied with the Rules and Statutes in implementing the new pay scale according to the resolutions of the Port Authority of Guam's Board."

OPA Reply: Title 5 GCA §8111(a) requires public agencies to discuss salaries, salary levels, or salary adjustments of any employee or officer to be held in a public meeting and minutes shall be kept and open to the public. The Board of Directors held working sessions to discuss the cost of the migration to the 25th market percentile that were not open to the public. In addition, the August 28, 2018 general session minutes noted the vote, but it did not follow any discussion of the compensation plan. As a result, this finding remains.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the recommendations, and to endeavor to complete the implementation of the recommendations no later than the beginning of the next fiscal year. We will be contacting the Guam Legislature to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation and assistance from the staff and management of PAG.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J. F. Cruz
Public Auditor

Appendix 1:

Objective, Scope & Methodology

Our audit objectives were to determine whether:

- 1) Pay raises and bonuses granted to unclassified employees complied with the applicable laws (Open Government Law and/or Prohibition on Bonus Pay for the Unclassified Employees); and
- 2) Performance reviews were conducted for the agency heads.

This audit commenced as Part B of a two-part audit series on autonomous agencies unclassified employees' pay raises and bonuses. We looked into 16 autonomous agencies' staffing patterns from October 1, 2014 to September 30, 2019. We focused on agencies that had significant or frequent increases in pay between October 1, 2015 and September 30, 2019. Part A reported on GPA and GWA, and was issued in December 2019. This audit will report on PAG. A report for GHURA will be issued in a separate audit report.

We made our observations and inquiries between June 2019 and April 2020.

Methodology

To accomplish our objective, we performed the following pertaining to PAG's unclassified employees' pay raises and bonuses:

- Identified and reviewed applicable laws and rules and regulations, prior audits, and internal policies.
- Met with PAG officials to gain an understanding of the pay raises and bonuses.
- Requested and reviewed the listing of unclassified employees in the executive level.
- Reviewed PAG staffing patterns to check for an influx in the unclassified employees' salaries.
- Inspected unclassified employees' performance evaluations.
- Reviewed and verified unclassified employees' pay increases in their Personnel Action Forms, and the basis for the pay increases.
- Listened to audio recordings of the executive meetings.
- Inspected executive session, special meeting, and general session minutes.
- Reviewed PAG's compensation plans.

We conducted our audit in accordance with the standards for performance audits contained in Government Auditing Standards issued by the Comptroller General of the United States of America. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2:

Prior Audit Coverage

OPA Report No. 19-09, GPA and GWA Unclassified Employees' Pay Raises and Bonuses

From FY 2015 through FY 2019, the Consolidated Commission on Utilities (CCU) did not comply with the Open Government Law when it discussed and decided on employees' salaries and bonuses during their executive meetings. Specifically, we found that the:

- CCU violated P.L. 33-123 when it gave bonuses to certain unclassified employees after February 2016;
- After the Attorney General's (AG) April 23, 2019 opinion, most unclassified employees returned the voided salaries and bonuses provided by the CCU at its November 27, 2018 executive meeting, at the net amounts instead of the gross amounts;
- CCU did not conduct performance evaluations for GPA and GWA General Managers;
- CCU hired the former GWA Chief Financial Officer under a contract, but CCU and GWA could not provide the contract or procurement documents related to the employment; and
- Salary levels of GPA and GWA unclassified employees were inconsistent with CCU authorized pay range.

We recommended: (1) AG to provide an opinion on each of the salary levels, adjustments, and bonuses made to unclassified employees that were effective between October 2013 and January 2019; (2) CCU to consult with GPA and GWA's Payroll Specialists as to how employees should return the salary increments and bonuses; (3) AG to provide an opinion on how the employees should return the void salary increments and bonuses; and (4) CCU to consistently apply the agency-wide adopted pay scale.

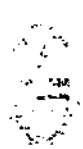
OPA Report No. 14-05, Government of Guam Merit Bonus Program

From fiscal years 2009 to 2013, the Government of Guam spent \$12.6 million in retroactive merit bonus payments for over 4,200 employees. Specifically, we found:

- Advice from agencies' respective legal counsels reflected differences of opinion relating to the statute of limitations for merit bonuses. As a result, periods of performance review entitled to retroactive merit bonus amongst agencies ranged from 3 to 23 years.
- Some agencies calculated a merit bonus off of the employee's current salary, not the increment salary, while some agencies did vice versa.
- Overall ratings terms used in agency performance evaluation forms varied and resulted in employees receiving merit bonuses if the rating given was interpreted to be equivalent to "superior". In instances where performance evaluations did not have a "superior" rating, the highest possible rating was considered equivalent to "superior" for merit bonus purposes.

OPA recommended that Department of Administration (DOA) follow through and submit their assessment and policy no later than September 30, 2015, but not without first seeking clarification on the merit bonus law from the Attorney General. In October 2017, the former Public Auditor decided that this recommendation be closed as it was not implemented and no follow-up will be done by DOA.


Policy on Performance Evaluation for General Manager



FELIX R. CANACHO
Governor of Guam

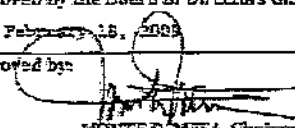
MICHAEL W. CRUZ
Acting Governor

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BOARD POLICY MEMORANDUM NO. 05-03

To: Division Heads	Subject: Policy on Performance Evaluation for General Manager
Approved by the Board of Directors on: February 15, 2008	Revision Date:
Approved by:  MONTE D. MESA, Chairman, Board of Directors	

I. **REFERENCE:** Title 5, Guam Code Annotated, Government Operations, Chapter 22, Boards & Commissions, Article 2, Performance Evaluation of Agency Heads, was enacted by Public Law 27-20.

Message: The above referenced law required the Board of Directors to issue performance reviews of the General Manager six (6) months after appointment and every twelve (12) months thereafter that the General Manager is retained by the Board. Each performance review shall document the General Manager's performance, accomplishments, and the Board of Directors reasons for retaining the General Manager.

The law also requires that the performance reviews shall be made public and the availability of these reviews shall be published by the Board of Directors by newspaper of general circulation or by radio or television which is reasonably calculated to provide the notice of the facts it announces to the public at large.

II. **GENERAL POLICY:** It is the general policy of the Board of Directors that a written performance evaluation of the General Manager will be completed by the timeline required in Title 5, Guam Code Annotated. Each evaluation will be presented and discussed by the Board in Executive Session.

III. **PURPOSE:** Recognizing the sound management practice of regular communication and feedback to the General Manager regarding his/her work performance, the purpose of this policy is to establish guidelines for formal performance evaluations of the General Manager.

IV. **PURPOSE OF THE EVALUATION:**

A. Develop a mutual understanding of responsibilities and operational objectives that helps communicate the Board's expectations to the General Manager.

The Port Authority of Guam, Joaquin B. Leizaola Commercial Port, Guam, is an Equal Opportunity Employer.
Commitment to Diversity and Inclusion in the Service of the Community.

Policy on Performance Evaluation for General Manager

Board Policy Memorandum No. 09-03

Page 2

Subject: Policy on Performance Evaluation for General Manager

- B. Recognize positive performance and delineate areas that need focus and/or strengthening.
- C. Establish a basis for retaining the General Manager.

V. PERFORMANCE GOALS:

When the Board employs a new General Manager, performance goals will be agreed upon at the beginning of employment. Establishing performance goals will be part of each annual process. A brief review should be conducted approximately halfway through the performance period to ensure that goals are still appropriate by the Board.

VI. PROCEDURE

- A. The Board shall approve the statement of responsibilities, operational objectives and performance goals, which will be agreed upon at the beginning of the General Manager's employment. Responsibilities defined in the Port's enabling act for the General Manager shall serve as a framework for the statement of responsibilities and a baseline for future evaluations.

The establishment of operational objectives and performance goals will be part of each annual process. The Board may conduct a brief review with the General Manager halfway through the performance period to ensure that the objectives and goals are still appropriate.

- B. The Board will prepare the evaluation format for the General Manager, including measures of performance and operational objectives. The Board will approve the evaluation format.
- C. The Board members will assess the General Manager's performance in a narrative format. Questions to be addressed include:

1. In what areas of responsibility have there been improvements in performance?
2. What areas have been neglected or performed poorly?
3. In what areas have there been no changes?
4. Progress toward meeting operational objectives shall be taken into account in assessing the General Manager's performance in each area of responsibility.
5. For each area of responsibility, does the Board have confidence in the General Manager's job performance in this area? Why or why not?

Additional questions may be specified by the Board as part of the evaluation.

Policy on Performance Evaluation for General Manager

Board Policy Memorandum No. 09-02

Page 3

Subject: Policy on Performance Evaluation for General Manager

In addition, the Board will rate the General Manager using a single overall rating on the following scale:

A = Exceptional performance	B = Superior Performance
C = Average Performance	D = Acceptable Performance
E = Needs Improvement	

The General Manager's progress towards meeting operational objectives should be measured primarily by evaluating how well the job has been done, and not primarily in terms of what specific activities have been undertaken.

The Board recognizes that some areas of the General Manager's responsibilities cannot be directly evaluated by the Board. For example, Board members often cannot directly evaluate the effectiveness of the General Manager's supervision of employees. Nevertheless, since Board members' assessments are to be based primarily on the results of the General Manager's work, rather than on the methods of work, it will often be possible to evaluate areas of work that have not been directly observed. Board members may, however, decline to evaluate any aspect of the General Manager's work for which they are unable to make an informed judgment.

Upon receipt and completion of the Evaluation Form, individual Board members shall complete and submit the form directly to the Board Chairman or his designee. The Board Chairman, or his designee, shall be responsible for summarizing all evaluation narratives and scores.

The Board shall meet in Executive Session to discuss and approve:

1. The overall evaluation and individual factors of performance in each area of responsibility; and
2. The evaluation format, including areas of responsibility, objectives and measures for the upcoming rating period.

The individual evaluation forms shall be used to reach a consensus for the overall evaluation and evaluation of each area of responsibility, and shall be transmitted by the General Manager following the development of the overall evaluation by the Board. If a consensus cannot be reached, the range of ratings should be reported without identifying the Board members responsible for the rating.

Following this meeting, the Board Chairman, or his/her designee, shall be responsible for preparing the final evaluation document and submit a copy to each Board member in advance of the time set for the performance evaluation conference with the General Manager.

Policy on Performance Evaluation for General Manager

Board Policy Memorandum No. 09-02

Page 4

Subject: Policy on Performance Evaluation for General Manager

The Board of Directors shall meet with the General Manager to review the performance evaluation and reach a preliminary agreement about the areas of responsibility, objectives and measures for the upcoming rating period. The General Manager may within 30 days of meeting with the Board submit a written response to the performance evaluation. A copy of the response shall be submitted to each Board member and the original response filed with the original performance evaluation.

The final evaluation form, signed by the Board Chairman and General Manager, along with any written responses shall be maintained in the official personnel jacket. The evaluation shall be confidential within legal limits. Once the final evaluation is completed, the Board Chairman shall discard all working drafts used to prepare the final evaluation form.

- VII. PUBLICATION OF PERFORMANCE REVIEWS: It shall be the responsibility of the Personnel Services Administrator to prepare the necessary notifications for advertisement of the General Manager's overall evaluation rating by the Board of Directors upon completion of the review. Such notification shall be made through newspapers of general circulation, or by radio or television and posted on the Port's website.

Attachment: Performance Evaluation Form

Policy on Performance Evaluation for Deputy General Manager

Subject: Policy on Performance Evaluation for Deputy General Manager
 Page 2
 Policy Memorandum No. 04-04

III. **PURPOSE:** Recognizing the sound management practice of regular communication and feedback to the Deputy General Manager regarding his/her work performance, the purpose of this policy is to establish guidelines for formal performance evaluation for such position.

IV. **PURPOSE OF THE EVALUATION:**

- A. Develop a mutual understanding of responsibilities and operational objectives that helps communicate the General Manager's expectations to the Deputy General Manager.
- B. Recognize positive performance and delineate areas that need focus and/or strengthening.
- C. Establish a basis for retaining the Deputy General Manager.

V. **PERFORMANCE GOALS:**

The General Manager will establish performance goals for the Deputy General Manager to be agreed upon at the beginning of employment. Establishing performance goals will be part of each annual process. A brief review should be conducted approximately halfway through the performance period to ensure that goals are still appropriate by the General Manager.

VI. **PROCEDURE**

- A. The General Manager shall approve the statement of responsibilities, operational objectives and performance goals, which will be agreed upon, at the beginning of the employment for the Deputy General Manager. Responsibilities defined in the job specifications established by Civil Service Commission shall serve as a framework for the statement of responsibilities and a baseline for future evaluations.

The establishment of operational objectives and performance goals will be part of each annual process. The General Manager may conduct a brief review with the Deputy General Manager halfway through the performance period to ensure that the objectives and goals are still appropriate.

- B. The General Manager will prepare the evaluation format for the Deputy General Manager, including measures of performance and operational objectives. The General Manager will approve the evaluation format.
- C. The General Manager will assess the Deputy General Manager's performance in a narrative format. Questions to be addressed include:

Policy on Performance Evaluation for Deputy General Manager

Subject: Policy on Performance Evaluation for Deputy General Manager
Page 3
Policy Memorandum No. 06-04

1. In what areas of responsibility have there been improvements in performance?
2. What areas have been neglected or performed poorly?
3. In what areas have there been no changes?
4. Progress toward meeting operational objectives shall be taken into account in assessing the Deputy General Manager's performance in each area of responsibility.
5. For each area of responsibility, does the General Manager have confidence in the Deputy General Manager's job performance in this area? Why or why not?

Additional questions may be specified by the General Manager as part of the evaluation.

In addition, the General Manager will rate the Deputy General Manager using a single overall rating on the following scale:

- | | |
|-----------------------------|----------------------------|
| A = Exceptional performance | B = Superior Performance |
| C = Average Performance | D = Acceptable Performance |
| E = Needs Improvement | |

The Deputy General Manager's progress towards meeting operational objectives should be measured primarily by evaluating how well the job has been done, and not primarily in terms of what specific activities have been undertaken.

Upon receipt and completion of the Evaluation Form, the General Manager shall complete the form and shall be responsible for summarizing all evaluation narratives and scores.

The General Manager shall meet with the Board of Directors to discuss and approve:

1. The overall evaluation and individual factors of performance in each area of responsibility; and
2. The evaluation format, including areas of responsibility, objectives and measures for the upcoming rating period.

Following this meeting, the General Manager shall be responsible for preparing the final evaluation document and a time set for the performance evaluation conference with the Deputy General Manager.

Policy on Performance Evaluation for Deputy General Manager

Supern. Policy on Performance Evaluation for Deputy General Manager
Page 4
Policy Memorandum No. 05-04

The General Manager shall meet with the Deputy General Manager to review the performance evaluations and reach a preliminary agreement about the areas of responsibility, objectives and measures for the upcoming rating period. The Deputy General Manager may within 30 days of meeting with the General Manager submit a written response to the performance evaluation. A copy of the response shall be submitted to General Manager and the original response filed with the original performance evaluation.

The final evaluation form, signed by the General Manager and Deputy General Manager, along with any written responses shall be maintained in the official personnel jackets. The evaluation shall be confidential within legal limits. Once the final evaluation is completed, the General Manager shall discard all working drafts used to prepare the final evaluation form.

- VII. PUBLICATION OF PERFORMANCE REVIEWS: It shall be the responsibility of the Personnel Services Administrator to prepare the necessary notifications for advertisement of the Deputy General Manager's overall evaluation rating by the General Manager upon completion of the reviews. Such notification shall be made through newspapers of general circulation, or by radio or television and posted on the Port's website.

Attachment: Performance Evaluation Form

Excerpts of Executive and General Session Minutes

September 26, 2013 Executive Session

At this time, the Board went into executive session at 1:00 p.m. Executive session ended at 1:25 p.m. The Board is now back in regular meeting session.

Item(s) addressed in executive session includes: General Manager performance evaluation.

January 03, 2014 Special Meeting

5. Port General Manager Evaluation: The Chairman asked that the General Manager's evaluation be forwarded to him.

January 30, 2015 General Session

11. Performance Evaluation – General Manager: The Vice Chairman expressed that the General Manager's performance is exceptional. He mentioned that through her leadership and collaborative effort with Port Administration and Operation divisions, she has and continues to aggressively move the Port forward with not only the modernization projects, but other capital improvement projects as well. He commended the General Manager for a tremendous job well done. The Chairman shared the same sentiments and is impressed with the performance of the General Manager and will continue to support management endeavors. Mr. Kennaghan expressed that coming on board as a Board member and having worked closely with the Port is an amazing organization to be a part of and shared the same sentiments expressed.

There were no objections on the Chairman formalizing the performance evaluation of the General Manager.

January 29, 2016 General Session

6. Performance Evaluation – General Manager: The Vice Chairman expressed that the General Manager has done a tremendous job as evident not only with the audit report, but the port modernization program and has no issues with an exceptional performance evaluation rating. The Chairman shared the same sentiments and congratulated the General Manager for a job well done.

Excerpts of Executive and General Session Minutes

July 25, 2016 General Session

6. **Resolution No. 2016-04 Compensation Plan:** Without objections and at this time, the members recognized the presence of Port Consultant [REDACTED] to address the compensation plan. [REDACTED] thanked the members and provided a presentation on the cost summary in migrating PAG to the 50th marketing percentile (2008) or 25th market percentile (2014) which includes regression analysis and structural adjustment cost. Director [REDACTED] made motion to approve Board Resolution No. 2016-04 relative to approving and adopting the updated pay schedule of the Port Authority of Guam compensation and classification plan. The motion was seconded by the Vice Chairman and was unanimously approved.

December 21, 2016 General Session

4. **General Manager Performance Evaluation:** The DGMA mentioned that the Board Chairman has completed the performance evaluation of the Port General Manager. There were no issues or concerns.

February 27, 2018 General Session

5. **General Manager Performance Evaluation:** The Board of Directors expressed appreciation of the outstanding work performed by the General Manager. Director [REDACTED] made motion to accept the performance evaluation of the General Manager [REDACTED] seconded by the Vice Chairman. Motion was unanimously approved.

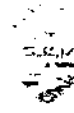
August 28, 2018 General Session

3. **Resolution No. 2018-05 Compensation Plan:** The Vice Chairman made motion relative to approving and adopting Resolution No. 2018-05 which is the updated pay schedule of the Port Authority of Guam Compensation and Classification Plan, seconded by Director [REDACTED]. Motion was unanimously approved.

PAG Management Response



PORT OF GUAM
 PRESIDENT: FORTUNO SAGAYAN
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Louder A. Leon Guerrero
 Governor of Guam
 Jovita P. Tenorio
 Lieutenant Governor

June 30, 2019

Honorable Benjamin J.F. Cruz
 Public Auditor
 Office of Public Accountability
 Suite 401, DNA Building
 158 Archbishop Flores Street
 Hagåtña, Guam 96910

Dear Mr. Cruz:

Buenos dias Hafa Adai! This letter is to provide management's response to the Office of Public Accountability's draft performance audit findings of the Port Authority of Guam's Unclassified Employees' Pay Raise and Bonuses covering a period beginning October 2017 through September 2018, and provides the following objectives:

- To determine whether Pay raises and bonuses granted to unclassified employees complied with applicable laws (Open Government Law and/or Prohibition on Bonus Pay for Unclassified Employees); and
- Performance reviews were conducted for agency heads.

Furthermore, this draft performance audit uncovered the following findings:

- Former General Manager's Hiring Discussed Decided during Executive Sessions;
- Inconsistent in the Ratification of the Former General Manager's Pay Adjustments;
- Former Deputy General Managers' Pay Adjustments Not Ratified;
- No Record of Performance Review for Former General Manager in 2018;
- Former General Manager's Salary was Inconsistent with Authorized Pay Scale; and
- Discussion on the Migration of CIP Personnel to the 25th Market Percentile in Working Sessions

And provides the following recommendations:

- That the Port Authority of Guam Board of Directors ratify all pay adjustments for Port Authority of Guam employees on a going-forward basis; and
- That the Port Authority of Guam Board of Directors apply the market-based compensation model pay scale for all CIP employees.

PAG Management Response

Letter 1917
 1311 North Aiea Boulevard, Suite 100, Honolulu, Hawaii 96810
 June 24, 2020
 Page 2 of 7

Management's Discussion on the Draft Performance Audit's Findings

Management acknowledges the following:

- That the Former General Manager's hiring was discussed and decided during Executive Sessions, which is a violation of 5 GCA §8111(a);
- The inconsistency in the Ratification of the Former General Manager's pay adjustments;
- That the Former Deputy General Managers' Pay Adjustments were not ratified; and
- That there is no record of a Performance Review for the Former General Manager in 2018.

Management provides its response to the two remaining findings, namely, one, that the former general manager's salary was inconsistent with the Port's authorized pay scale. And, two, that discussion on the cost of the Migration of CTP Personnel to the 25th Market Percentile was held in working sessions.

Relative to this draft performance audit's findings that the former general manager's salary was inconsistent with the Port's authorized pay scale: I sent you a letter on June 24, 2020 explaining that since the former general manager's salary, along with the salaries of 183 Port employees were outside the 25th market percentile as the time it went into effect on September 16, 2018, were above the 25th market percentile, the board and management granted a 5% increase regardless of whether they have exceeded the maximum step of the pay grade implementation range, as long as the employee did not exceed Step 20 of that pay grade. This was done in order for these employees to be able to avail themselves of the annual increments provided by the Port's personnel rules and regulations. And, theoretically, since the manner in which the Port's migration was adopted according to lawful board action and subsequently adopted statutorily should be deemed lawful, determined moot and excluded from the scope of this draft performance audit.

Relative to this draft performance audit's finding that discussion on the cost of the Migration of CTP Personnel to the 25th Market Percentile was held in working sessions: I am providing you with a copy of a Civil Service Commission (CSC) Order for a Post Audit on Case No: 19-PA05. This CSC Order ruled 5 to 0 that the Port complied with the Rules and Statutes in implementing the new pay scale according to the resolutions of the Port Authority of Guam's Board, and ordered the Port to provide the requested documents by Monday, September 30, 2019. Again, since how the Migration of CTP Personnel to the 25th Market Percentile was upheld by the CSC, according to Post Audit on Case No: 19-PA05, I am respectfully requesting that you render this finding satisfied and removed as a possible audit finding.

Management's Discussion on the Draft Performance Audit's Recommendations

Management respectfully is requesting reconsideration to the recommendation that the Port Authority of Guam Board of Directors ratify all pay adjustments given that pay adjustments for the Port's employees are individually tied to their annual increment based on their performance evaluation. This process is ultimately determined by the employee's supervisor, division head, and ultimately the general manager. I want to request that this recommendation be amended to provide that the Port Authority of Guam Board of Directors approve only the hiring, pay raises and pay increments of the general manager and deputy general managers, and shall be discussed and voted on in a duly noticed public meeting and minutes shall be kept open to the public according to 5 GCA §8111(d).

PAG Management Response

Date: 11/11/11
To: Honorable Chairperson of the Compensation Committee, City of Los Angeles
From: RORY J. RESPICIO
Page: 3 of 3



and finally, with respect to this draft performance audit's recommendation that the Port Authority of Long Beach Board of Directors apply the market-based compensation model pay scale for all CTF employees re-omitted simply because of CMC Order, specifically Port Audit of Case No. 09-0459, wherein the CMC ruled that the Port complied with the Rules and Statutes in implementing the new pay scale.

Thank you for allowing management to respond to this draft performance audit. I am hopeful that you will agree with our management's responses provided herein and will amend this draft performance audit fully, taking into account our responses. *Si Dios me ayuda!*

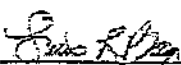
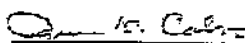
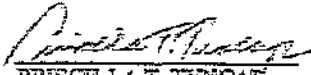

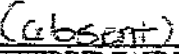
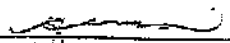
Very truly yours,


RORY J. RESPICIO
General Manager

PAG Management Response

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>CIVIL SERVICE COMMISSION</p> <p>BEFORE THE GUAM CIVIL SERVICE COMMISSION BOARD OF COMMISSIONERS</p>   <p>IN THE MATTER OF:</p> <p>CIVIL SERVICE COMMISSION, ██████████</p> <p>Employee,</p> <p>VS.</p> <p>PORT AUTHORITY OF GUAM, Management.</p> <p>POST AUDIT CASE NO.: 19-PA05</p> <p>ORDER AFTER HEARING</p> <p>This matter came before the Civil Service Commission (Commission) September 26, 2019, for an Investigation Report Hearing. Commissioners present were Chairman Luis E. Boza, Vice-Chairman Juan K. Galva, Commissioner Priscilla T. Tancap, Commissioner John Smith, and Commissioner Emilia F. Rice. Deputy General Manager, Administration and Finance, ██████████ and ██████████ represented the Port Authority of Guam (Port).</p> <p>Commission staff read the Investigation Report regarding its investigation into the recent implementation of the Market Percentile and Pay Grade Schedules. The report found that the Port had not provided all the documents needed to complete the investigation. Port representative ██████████ advised the Commission they were making a</p> <p>ORDER AFTER HEARING <i>Civil Service Commission vs. Port Authority of Guam</i> ██████████ Post Audit Case No.: 19-PA05</p>
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PAG Management Response

1	good faith effort to find the documents. The Commission also noted that the 180-day time	
2	limit to an runs out October 7, 2019.	
3	The Commission voted 5 to 0 that the Port had complied with the Rules and Statutes	
4	in implementing the new pay scale pursuant to the resolutions of the Port Authority of	
5	Guam's Board, and ordered the Port to provide the requested documents by Monday	
6	September 30, 2019.	
7	SO ORDERED THIS <u>10th</u> day of <u>October</u> 2019.	
8		
9	 LUIS R. BALA Chairperson	 JEAN K. CALFO Vice-Chairperson
10		
11	 PRESCELIA T. TUNCAF Commissioner	 JOHN SMITH Commissioner
12		
13		
14	 CATHERINE GAYLE Commissioner	 EMILIA F. RICE Commissioner
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22		
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24	ORDER AFTER HEARING Civil Service Commission vs. Port Authority of Guam [REDACTED]	Page 2 of 2
25	Port Audit Case No. 15-PAGE	

PAG Management Response



PORT OF GUAM
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Lourenço Antonio Guerrero
 Governor of Guam
 Josema S. Tenorio
 Lieutenant Governor

June 27, 2019

INTER-OFFICE MEMORANDUM

TO: [REDACTED] Deputy General Manager Admin Finance

FROM: [REDACTED] General Manager

SUBJECT: Internal Review - Compensation Plan Budget

Hope Adams: This memorandum is to request that you conduct an internal audit of the manner in which the 2018 Compensation and Classification Plan was presented to the Port Authority of Guam (PAG) Board when it was adopted. Specifically, I am requesting that your internal review encompass the financial documents presented by past PAG management, and to determine how a gross oversight occurred wherein over \$1.7 million was not budgeted for PAG's FY2019.

Comparison of 2009 Classification and Compensation Plan Adoption versus 2018 Classification and Compensation Plan Adoption

I reviewed the PAG Board of Directors' meeting minutes of August 27, 2009 and September 24, 2009 when the PAG first implemented its classification and compensation plan versus the PAG Board's meeting minutes of August 28, 2018 when the PAG Board approved the resolution adopting the updated classification and compensation pay schedule. Suffice it to say, there are such differences in the approach used to addressing the financial impact of this pay plan.

In 2009, prior management at that time explained to the PAG Board in detail how the revenues and savings through expenses from that prior fiscal year would support the implementation of the compensation plan through a financial plan. Consequently, an adjustment was made to PAG's FY2010 budget at the time the plan was approved by the PAG Board.

In 2018, however, the PAG Board only approved a resolution adopting the updated pay schedule of the Compensation and Classification Plan. In that resolution there was no mention of any fiscal impact, nor was this fiscal impact provided for in the current FY 2019 budget. In that same meeting, PAG's FY2019 budget was also approved without any regard to the full implementation of the 2018 Classification and Compensation Plan.

June 26, 2019 PAG Board Meeting

At the PAG Board meeting yesterday, we presented PAG's FY2019 mid-year budget for their review. This agenda item was tabled because PAG Director [REDACTED] requested for more

PAG Management Response

Item: 2018-14 [REDACTED] Internal Review
 Date: 07/10/19
 Page: 2 of 2

time to review the matter. This pause did give us the opportunity to reassess how the compensation plan was adopted by the PAG Board without any PAG Board appropriation as found in our financial reporting. We noted that PAG's FY2019 budget only reflected the prior year's annual salaries and benefits for full-time employees plus the projected pay increments of \$1.0 million. We further noted that PAG's FY2019 budget did not allocate monies for the migration of current employees into the updated pay schedule, which is estimated to be over \$1.7 million.

Summary

In light of the above, I am requesting that you conduct an internal review of the following:

1. Why the 2018 Classification and Compensation Plan was presented to the PAG Board without any financial plan detailing its fiscal impact; and
2. Determine the gaps in past management's failure to budget for the implementation of the 2018 Classification and Compensation Plan in PAG's FY2019 Budget.

The findings of your internal review should be made available upon completion, and a formal presentation made to the PAG Board in the upcoming July 9, 2019 board meeting. Surely, this information will be helpful as the PAG Board deliberates on the mid-year budget proposal. More importantly, your findings will determine if this matter was a gross oversight or a deliberate attempt by past management to mislead the PAG Board, and our island's ratepayers.

BT FW'z k6' nse!

CC: Deputy General Manager, Operations
 Financial Affairs Controller

Appendix 7:

Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1.	PAG Board of Directors	Consistently ratify all pay adjustments for PAG unclassified employees on a going-forward basis.	OPEN	Please provide target date and title of the official(s) responsible for implementing the recommendation.



Port Authority of Guam
Unclassified Employees' Pay Raises and Bonuses
Report No. 20-04, July 2020

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Amacris Legaspi, CGFM, Auditor-in-Charge
Andriana Quitugua, CFE, Auditor-in-Charge
Clariza Roque, CGFM, CGAP, CICA, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

To ensure public trust and good governance in the Government of Guam,
we conduct audits and administer procurement appeals,
with objectivity, professionalism, and accountability.

VISION

The Government of Guam is a model for good governance
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CORE VALUES

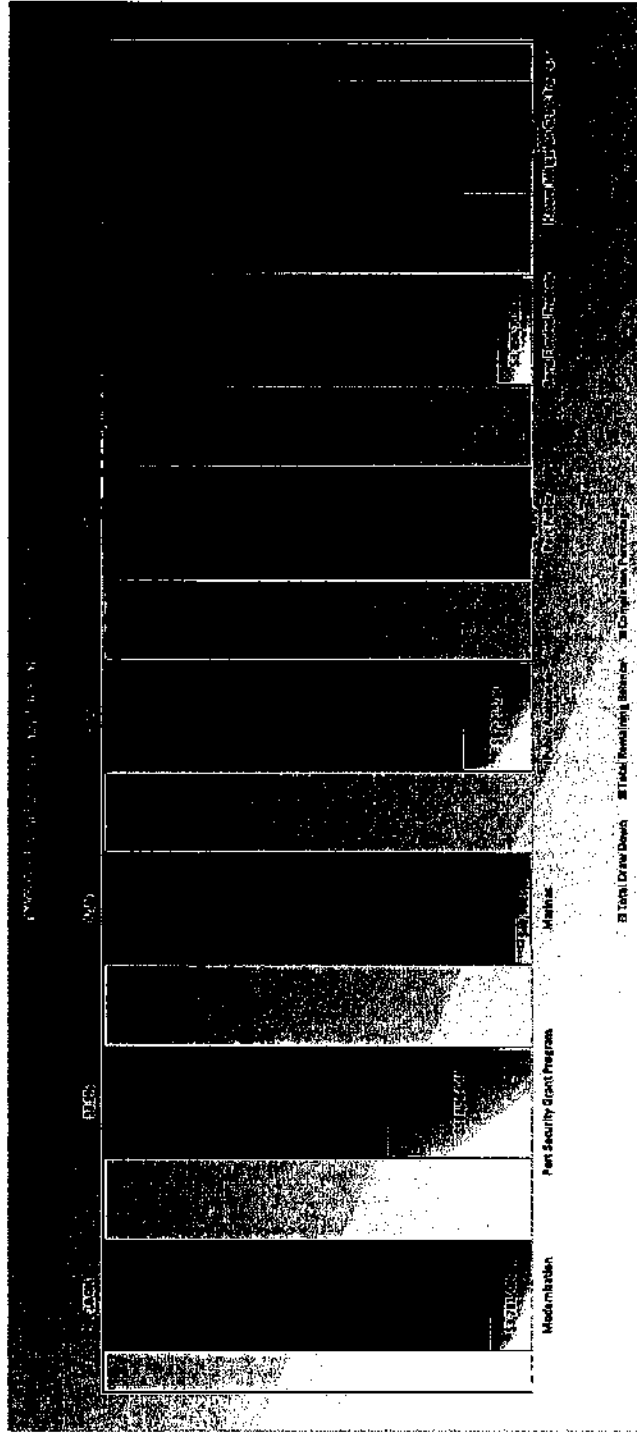
Objectivity: To have an independent and impartial mind.
Professionalism: To adhere to ethical and professional standards.
Accountability: To be responsible and transparent in our actions.

REPORTING FRAUD, WASTE, AND ABUSE

- Call our HOTLINE at 47AUDIT (472-8348)
- Visit our website at www.opaguam.org
- Call our office at 475-0390
- Fax our office at 472-5351
- Or visit us at Suite 401, DNA Building in Hagatña

All information will be held in strict confidence.

FY 2021 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of November 22, 2021



Grant Program	Total Award Amount	Total Draw Down	Total Draw Down	Total Remaining Balance	PROCUREMENT JRS/RFI/PO Number	Status
Modernization DTMAS1G1600007 - Rehabilitation of "H" Wharf	\$37,718,402.00	\$3,781,424.32	\$33,936,977.68	\$10,000,000.00	PO No. 17043-OF for \$2,249,945.54 awarded to GH D Inc. Change Order No. 1, PO No. 17189-OF for \$198,160.16 Approval of Change Order No. 2 on 10/07/2021, PO No. 17415-OS for \$18,670.13 Approval of Change Order No. 3 on 10/21/2021, issuance of PO pending for \$15,414.88	Rebid of the Construction Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction issued on 10/27/2021, via Guam FMH and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for O&C due on 11/19/2021 at 4:00 P.M. Bid submittals due 12/19/2021 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval.
GR882-18-01 - Owner's Agent Engineer Support Services	\$900,000.00	\$899,932.63	\$66.37			Pending grant close out.
GR882-19-04 - 2020 Master Plan Update	\$1,600,000.00	\$709,970.14	\$890,029.86			WSP conducted site visits/meetings on Guam from August 2-5, 2021. The 2020 Master Plan update continues to progress through the collaboration between Management, Port Division Heads, and the Port's O&E on the following initiatives: 1) Completion of the draft Customs Inspection Facility Feasibility Study, 2) RSM Study - goal is information integration between and amongst carriers, the PUGS, Customs, and the PAG, 3) Tariff Simplification - streamlining and refining PAG rates and services, 4) STS Crane Procurement Support, 5) PAG/GPA collaboration on proposed Liquefied Natural Gas (LNG) capability at the Port, 6) Crane Demolition - removing of Gantry 2 and 3, Mobile Harbor Crane and Rubber Tyred Gantry (RTG) cranes, and 7) Solar Power Feasibility Study - PAG effort to utilize solar energy to reduce PAG dependence on GPA Island power.
GR882-21-08 - PAG Construction Technical Oversight Services	\$1,500,000.00	\$0.00	\$1,500,000.00	\$1,500,000.00	P.O. No. 17424-OS for \$1,500,000.00	PUC approval obtained on September 30, 2021, meeting. Randall Urzalki, WSP USA, Inc. signed contract agreement on October 20, 2021. Purchase Order signed on November 10,

**FY 2021 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of November 22, 2021**

Grant Program	Total Award Amount	Total Draw Down	Total Remaining Balance	PROCUREMENT # / IFB / RFP / PO Number	Status
F19AF01-199 - Guam Fisheries Development: Construction of Agat Marina's Dock B	\$512,759.00	\$0.00	\$512,759.00		The MOU was concurred by the Honorable Governor of Guam on September 6, 2021. Conditional Notice to Proceed approved by U.S. FWS and DOI on September 16, 2021. Next Steps: 1) Procurement Planning Meeting with stakeholders, pending. 2) AS and SAGE review/comment period. 3) Issuance of IFB. Tentative timeline - Q2 FY2022.
F19AF01-210 - Repair of Agat Marina's Boat Ramp Bumpers	\$40,000.00	\$0.00	\$40,000.00		See above line item.
Port Security Grant Program	\$1,664,484.00	\$563,554.41	\$1,100,929.59		
EMW-2017-P1-00177-501 - Maintenance and Sustainment Contract for Prime Power Generators	\$179,550.00	\$110,933.13	\$68,616.87	Year 1 - PO No. 16208-OS for \$75,207.00 Pacific Unlimited Inc. Year 2 - PO No. 16988-OS for \$75,207.00 Pacific Unlimited Inc.	Project completed on January 31, 2021. PAG will be submitting a budget modification request to FEMA for use of remaining grant funds toward the overall sustainment of the Port's generators and acquisition of critical parts for repair/replacement of generator components.
EMW-2017-P1-00177-501 - Refurbishment and Hardening of Load Center Buildings Housing Prime Power Generators	\$184,469.00	\$155,060.94	\$29,408.06	PO No. 16150-OF for \$314,450.00 to Murphy Enterprises Inc.	Project completed on August 2018. PAG will be submitting a budget modification request to FEMA for use of remaining grant funds toward the overall sustainment of the Port's generators and acquisition of critical parts for repair/replacement of generator components.
EMW-2017-P1-00177-501 - US Coast Guard Multi Agency National Association of State Boating Law Administrators (NASBLA) Training for Port Police	\$56,250.00	\$42,675.00	\$13,575.00		Project completed on August 2018. PAG will be submitting a budget modification request to FEMA for use of remaining grant funds toward the overall sustainment of the Port's generators and acquisition of critical parts for repair/replacement of generator components.
EMW-2018-P1-00441-501 - IDEN Technology Redundant Interoperable Communications System Monthly Service	\$94,944.00	\$68,781.76	\$26,162.24		Connect sold all its assets to ITE. ITE is now the service provider and support entity for the Port's IDEN Technology push to talk radios. Services ongoing.
EMW-2018-P1-00441-501 - Maintenance and Sustainment Contract for FEMA-acquired AS&E ZBV Backscatter X-Ray Van	\$195,669.00	\$75,982.66	\$120,286.34	PO No. 16217-OF - American Science & Engineering 70,724.00.	Received DOA-registered MOA on October 3, 2021 from Guam Customs. Invoices paid for Jan-August 2021 services. Pending reimbursement from Guam Customs (25% local share) for services from May-August.
EMW-2018-P1-00441-501 - Replacement CCTV System Existing Analog Cameras with Digital IP Cameras	\$160,867.00	\$10,720.92	\$150,146.08	IFB-PAG-003-21	The PUC-approved PAG's petition to award the contract to CalPac on September 30, 2021. Planning and Procurement developed a revised Schedule of Values to reflect and differentiate the funding sources for the project. Said revision was approved by CalPac management on a meeting held with Planning and Procurement POCs on Friday, Oct. 15, 2021. Notice to Proceed issued during kick-off meeting held on Nov. 16, 2021. Pending delivery of Generator arrived on Oct. 7, 2021. Pending delivery of Automatic Transfer Switch (ATS). Procurement of above-ground day tank completed with award going to Bagley Enterprises. In addition to issuing a purchase order to Bagley, another purchase order will be issued to Triples for the day tank's shipment from LA to Guam.
EMW-2021-P1-00230-501 - Acquisition & Installation of Prime Power Generator & Components for Load Center 3	\$226,484.00	\$0.00	\$226,484.00	PO No. 17697-05 - Caterpillar, Inc. \$208,607.00	An Environmental and Historical Preservation (EHP) Review is required for this project. The Port eventually completed and submitted the EHP to FEMA on Friday, Oct. 15, 2021. The Port provided supporting documentation on Nov. 16, 2021. In response to a request for additional information from FEMA.
EMW-2021-P1-00230-501 - Acquisition of Vessel Tracking/Radar Intrusion System	\$201,250.00	\$0.00	\$201,250.00		

**FY 2021 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of November 22, 2021**

Grant Program	Total Award Amount		Total Draw Down	Total Remaining Balance	Procurement #/RF/RF/PO Number	Status
	EMW-2021-PU-00290-S01 - Acquisition of Transportation Worker Identification Credentialing (TWIC) System	EMW-2021-PU-00290-S01 - Acquisition of Transportation Worker Identification Credentialing (TWIC) System				
Public Assistance 4398DR - Typhoon Mangkunt #66352	\$530,517.50	\$87,713.14	\$442,804.36			An Environmental and Historical Preservation (EHP) Review is required for this project. The EHP was actually completed and submitted the EHP to FEMA on Friday, Oct. 15, 2021. The Port provided supporting documentation on Nov. 22, 2021. In response to a request for additional information from FEMA, Project is ongoing.
Port Police P122-03-03PPD - Operation A'dai He'Heo	\$20,000.00	\$0.00	\$20,000.00			The FY 2022 Project Agreement was signed by the PAG. Once the document has obtained all signatures, the Office of Highway Safety will look to issue an ATP.
Bond Funded Projects New Administration Building	\$45,328,000.00	\$3,856,712.10	\$41,471,287.90			Three draft layout options for the Admin Building has been completed by the PAG's CAE and is being reviewed by Management. No decision on which option has been selected as of this report. Status Quo.
Waterline Replacement and Relocation	\$6,000,000.00	\$277,801.71	\$5,722,198.29			Bid closing AMENDED TO READ AS 11/26/2021 at 2:00 P.M. Anticipated Completion Date: 12/2022
ECMR Building Repairs and Upgrades	\$3,628,800.00	\$895,333.19	\$3,253,466.81			IFB-PAG-CIP-021-010 issued 11/09/2021 [Pre-Bid / Site Visit was held on 11/22/2021 at 11:00 A.M. Q&C Deadline due 11/18/2021 at 4:00 P.M. Bid Submission due 11/30/2021 at 2:00 P.M. Anticipated Completion Date: 12/2022
Warehouse 1 Repairs and Upgrades	\$2,000,000.00	\$395,333.19	\$1,604,666.81			Bid opening held on 11/19/2021 at 2:00 P.M. Four (4) vendors submitted proposals. Anticipated Completion Date: 12/2022
Golf Pier Repairs and Improvements	\$2,000,000.00	\$354,876.53	\$1,645,123.47			Bid closing AMENDED TO READ AS 11/29/2021 at 2:00 P.M. Anticipated Completion Date: 09/2022
Rehabilitation of "H" Wharf (Port Share)	\$19,774,255.00	\$883,088.27	\$12,891,216.73			Field of the Construction Rehabilitation of H-Wharf and Highway 13 Roadway Reconstruction issued on 10/27/2021, via Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for Q&C due on 11/19/2021 at 4:00 P.M. Bid submittals due 12/13/2021 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval.
Other Priority Projects	\$4,980,745.00	\$0.00	\$4,980,745.00			1. The PAG was awarded funding by the USDOOT for the repair of multiple deficiencies, including including shear pile and concrete cap spalling, at F1 through F6. The total project cost is \$22,427,496.00 with a total of \$17,941,997.00 in Federal funding. 2. TOS upgrade work anticipated to begin next fiscal year. Maintenance and support solutions are currently going through the procurement process. Safety modules have been completed. Job costing is still ongoing.
Hazard Mitigation Grant Program Fendering System Hardening Project	\$603,689.00	\$0.00	\$603,689.00			Grant application submitted. Pending review by Federal Agency. M&A costs listed at \$30,148.92.
Warehouse 1 Hardening Project	\$359,415.00	\$0.00	\$359,415.00			Grant application submitted. Pending review by Federal Agency. M&A costs listed at \$19,292.06.
Grand Total	\$87,434,551.50	\$8,339,306.47	\$79,095,245.03			

PORT AUTHORITY OF GUAM
CONTRACT SUMMARY UPDATE

No.	Consultant/Vendor	Type of Service	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments/Notes)
PROFESSIONAL SERVICES									
1	A1 - Guam WEBZ	Web Development, Hosting, Support and Maintenance Svcs	IFB-002-20	IT	3 years w/2 1-yr options	04/01/2020 to 03/31/2023 w/ 2 1-yr options	03/31/25	03/31/23	Fees based on rates
2	AM Insurance	Insurance Coverages	GSA/PAG-020-17	Finance	5 years	10/01/2017 to 09/30/2022	09/30/22	09/30/21	Premium based
3	AM Insurance	Workers Compensation Coverages	IFB-PAG-008-19	Finance/Safety	3-years	3/20/20 to 3/19/23	03/19/23	03/19/23	
4	Matson	PMC for Gantry Cranes	RFP-020-005	EQMR	5 years with options to 20 years	11/05/21 to 11/05/26		11/05/26	\$200K per annum
5	Bank of Guam	Banking Services	RFP 020-004	Finance	5 years	5/14/21 to 5/13/26	05/14/26	05/14/26	
6		Management and Operations of Golf Pier	RFP-PAG-021-002	Commercial	5 years				Currently under committee evaluation for scoring
7	OMEGA Safety	OSHA Training & Certification Services for Maritime Terminal Operations	RFP-017-003	Human Resources	3yr w/ 2-1yr options NTE 5 years	8/13/2018 to 8/13/2021	08/13/23	08/13/22	
8	Pacific Human Resources, Inc.	Drug Free Workplace Program	RFP-020-003	Human Resources	Initial 3yr term with 2 add'l one year options, not to exceed 5 yrs	06/15/20 to 6/14/2023	06/15/25	06/15/23	
9	Milo Appraisals	Real Estate Appraisal Services	RFP-021-004	Commercial	3yrs w/ 2 option	10/06/21 to 10/05/24	10/05/26	10/05/24	Task Order based
10	TakeCare dba: FHP	Medical Examination Services	RFP-017-002	Human Resources	3 yr. w/ 2 options NTE 5 years	9/21/17 to 9/20/20	09/20/22	09/20/22	
11	Trident Cross LLC.	Underwater Assessment & Inspection Services	IFB/PAG-006-20	Harbor/Mstr	1 Year	08/20/20 to 08/19/21	08/19/21	IDIQ - Indefinite Quantity Bid	\$24,894.00
12	Tristar Terminal Guam	M & O of F-1 Fuel Pier Facility	RFP-019-004	Commercial	5 years	04/01/21 to 03/31/26	04/01/21	03/31/26	
13	Deloitte & Touche	Annual Independent Audit Services	RFP-018-003	Fiscal	FY18, FY19, FY20, w/ 1yr Option	FY18, FY19, FY20, w/ 1yr Option	12/31/2022	12/31/2021	Final Contract year
14	WSP USA Inc.	OAE - Owner Agent Engineer	RFP-021-003	Planning	2 yr w/ 3 options NTE 5 yrs	10/22/21 to 10/21/23	10/22/26	10/21/23	
15	N.C. Macario & Associates	A/E Design and Consulting Services Golf Pier	RFP 019-002	Engineering	3 years w/2 1 yr options	11/20/19 to 11/19/22	11/19/2024	11/20/2022	\$484K

PORT AUTHORITY OF GUAM
CONTRACT SUMMARY UPDATE

No.	Consultant/Vendor	Type of Service	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments / Notes)
16	N.C. Macario & Associates	A/E Design and Consulting Services EQMR, Warehouse No.1, Waterline Relocation	RFP 019-003	Engineering	3 years w/2 1 yr options	02/05/20 to 02/04/23	2/5/2025	2/5/2023	\$1,406,427.48
17	GHD	Construction Management Services	RFP 020-002	Engineering	Initial 2 years with 3 add'l One year options not to exceed 5 yrs	3/15/21 to 3/14/23	3/15/2025	3/15/2023	Contract signed 3/15/2021
CONSTRUCTION CONTRACTS									
No.	Consultant/Vendor	Type of Service	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments / Notes)
1	Propacific Builders	Repairs Crack and Spalling at CFS Building	IFB -21-004	CIP	180 days from NTP	currently ongoing			
2	Guam Shipyard	Design Demolition of 5 inoperable Port Cranes and One Barge at F-6	MS IFB 021-002	CIP/EQMR	100% Performance, Labor and material Bonding received, PO and NTP issued 9/10/21	410 calendar days			\$2,573,155.00
3	Guam Shipyard	Supply and Install of Fendering system at F-3	IFB 021-001	CIP	243 calendar day from NTP				\$297K NTP was issued
4	Cal Pac	Installation of CCTV Surveillance sys and ACS control replacement	IFB 003-21	Planning/CIP	Formulating Contract Agreement	210 days from NTP			\$1.2 million
5	Pro Pacific Builders Corp.	Replacement of 125 each Receiver Receptacles	IFB -21-007	CIP	Currently in Cost Negotiation				\$643,065.00
6	Pacific Federal Management Inc.	Design Build and Replacement Of 3 Metal Gatebooths	IFB-0021-11	CIP	Pending PFM signature on Contract and PO.	275 days from NTP			\$457,557.00

**Port Authority of Guam
Active Project Status
Engineering Division**

As of November 22, 2021

Fact Sheet No. 109

Project:	A/E Services for Golf Pier Repair
Project No.:	RFP-PAG-019-002
Project Amount:	\$484,017.13
Amount Paid to date	\$354,876.53 remaining balance of \$129,140.00 is to be paid as post design services.
Funding Source:	PAG Bonded Project
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed to Designer	January 6, 2020
Design Completion:	Performed within 6 months (July 5, 2020)
Work Status:	Related documents such as Drawings, Specifications, Scope, Bid Schedule, Requisition Process, Determination of Need Letter were completed and were submitted to the Procurement as IFB Documentation.

Project	Golf Pier Repair and Improvements (Construction Phase)
Project No.:	IFB -PAG-CIP-021-006
Project Amount:	TBD
Amount Paid to date:	None
Funding Source:	PAG Bonded Project
Contractor:	TBD.
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TDB.
Work Status:	On November 12, 2021, the scheduled bid opening produced no bid submittals. On November 17, 2021 PAG Procurement received a request for Information from one bidder and on November 22, Procurement received the response from the CIP/Engineering Division. The revised bid opening date is scheduled on November 29, 2021 at 2:00 PM CHST.

Project:	A/E Services EQMR, WH I, Bldgs. & Relocation of PAG WaterLine (Design Phase)
Project No.:	RFP-PAG-019-003
Project Design Fees:	\$1,406,427.48
Amount Paid to date:	\$1,187,186.76, Remaining Balance of \$219,240.72 is to be paid as post design services for all three design projects.
Funding Source:	PAG Bonded Projects
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed to Designer:	February 17, 2020
Project Completion:	8 months (October 16,2020 was the initial deadline. However, due to COVID, POP was extended to December 4, 2020) Project design was completed by December 4, 2020.
Work Status:	when the bid documents including drawings, specifications, summary scope of work, determination of need, bid schedule, and the cost estimate were submitted to the Procurement Division.

Project Warehouse I Building Upgrades (Construction Phase)
Project No.: IFB (TBD)
Project Amount: IFB-PAG-CIP-021-009
Amount Paid to date: None
Funding Source: PAG Bonded Project
Contractor: TBD.
Designer: N.C. Macario and Associates
Construction Manager: TBD
Notice to Proceed: TBD
Project Completion: TDB.
Work Status: On November 19, 2021 at 2:00 P.M. four bidders submitted their bids with the lowest bidder at \$4,800,000 and the highest bidder at \$7,932,000. Procurement Division is currently evaluating the submitted bids for further processing.

Project EQMR Building Upgrades (Construction Phase)
Project No.: IFB-PAG-CIP-021-010
Project Amount: TBD
Amount Paid to date: None
Funding Source: PAG Bonded Project
Contractor: TBD.
Designer: N.C. Macario and Associates
Construction Manager: TBD
Notice to Proceed: TBD
Project Completion: TBD
Work Status: Bid submittal/opening date is currently scheduled for November 30, 2021.

Project PAG Waterline Replacements (Construction Phase)
Project No.: IFB-PAG-CIP-021-005
Project Amount: TBD
Amount Paid to date: None
Funding Source: PAG Bonded Project
Contractor: TBD.
Designer: N.C. Macario and Associates
Construction Manager: TBD
Notice to Proceed: TBD
Project Completion: TBD
Work Status: Bid opening is currently scheduled for November 26, 2021 at 2:00 P.M. PAG Board Room.

Project: New Administration Building
Project No.: TBD
Project Amount: TBD
Amount Paid to date: None
Funding Source: PAG Bonded Project-Pending
Contractor: TBD
Construction Manager: TBD
Notice to Proceed: TBD
Project Completion: TBD
Work Status: Pending funding source

Project: Supply and Installation of New 24 Ea. Cylindrical Fendering System at F-3 and
 10 Ea. New Rubber Leg Arch Fender at Wharf F-4 thru F-6
Project No.: IFB. -PAG-CIP – 021-001
Project Amount: \$298,259.00
Amount Paid to date: None
Funding Source: FEMA and PAG
Contractor: Guam Ship Yard (Guam Industrial Services Inc.)
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: June 10, 2021
Project Completion: February 10, 2022
Work Status: As of November 22 2021, and according to the contractor, the required fendering materials
 have not yet arrived on the island. Timely completion of this project using originally
 earmarked funds is becoming more challenging as the FEMA Grant portion will expire on
 April 30, 2022 according to the Planning Division.

Project: Harbor of Refuge Pump Station and Installation of Wastewater Ejector Pump
Project No.: TBD
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: Dept. of Agriculture Fish and Wildlife Boating Infrastructure Grant
Contractor: TBD
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: TBD
Project Completion: TBD
Work Status: PAG Procurement is to advertise for an IFB by the November 30, 2021.

Project: Harbor of Refuge Installation of Mooring Blocks
Project No.: TBD
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: Dept. of Agriculture Fish and Wildlife Boating Infrastructure Grant
Contractor: TBD
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: TBD
Project Completion: TBD
Work Status: PAG Procurement is to advertise for an IFB by the November 30, 2021.

Project: Rehabilitation of H-Wharf and Access Road (Construction Phase IFB)
Project No.: Rebid IFB-PAG-022-002
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: Tiger Grant and PAG Revenue Bond
Contractor: TBD
Construction Manager (CM): GHD Engineering
Notice to Proceed: TBD
Project Completion: TBD
Work Status: The September 8, 2021 scheduled bid opening produced no bidders. The re-bid is
 scheduled for December 13, 2021 at 2:00 PM.

Project: Repair of Concrete Spalling in CFS Building
Project No.: IFB-PAG-CIP-021-004
Project Amount: \$197,700
Amount Paid to date: \$64,189.44
Funding Source: PAG 2021 Budget
Contractor: ProPacific Builders Corporation (PPBC)
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: July 14, 2021
Project Completion: January 14, 2022
Work Status: On November 17, 2021, ProPacific submitted an alternate material to repair the concrete spalls at the CFS Building due to supply chain issues surrounding the initially approved materials.

Project: Supply and Install Automatic Turnstile Gate Entrance at the Port Police
Project No.: RFQ-PAG-021-008
Project Amount: \$79,989.00
Amount Paid to date: N/A
Funding Source: PAG Internally Funded Projects 2021 Budget
Contractor: Top Builders, LLC
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: May 10, 2021
Project Completion: November 10, 2021 or (180 calendar days)
Work Status: Top Builders requested a time extension that extends the POP by approximately one month to December 10, 2021.

Project: Installation of Dock "B" Aqat Marina
Project No.: TBD
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: Dept. of Interior, Dept. of Agri. Fish and Wildlife, DOA/WR and PAG 2021 Budget Share
Contractor: TBD
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: TBD
Project Completion: TBD
Work Status: PAG Procurement Division should enter into an IFB advertisement shortly.

Project: Spot Corrosion Removal/Paint Repair of Mobile Pipelines
Project No.: RFQ-PAG-021-009-CIP
Project Amount: \$46,800.00
Amount Paid to date: \$16,332.75
Funding Source: PAG
Contractor: RDE Construction
Construction Manager: PAG Engineering
Notice to Proceed: July 2, 2021
Project Completion: October 2, 2021
Work Status: On October 15, 2021, final inspection was conducted by PAG Engineering, Mobil Personnel and RDE Construction. All punch list items were corrected and agreed that project is 100 % completed.

Project: Installation of Canopy Fronting Building Maintenance Bay
Project No.: IFB No. PAG-CIP-021-008
Project Amount: \$92,000.00
Amount Paid to date: N/A
Funding Source: PAG Budget 2021
Contractor: Pro Pacific Builders
Construction Manager: PAG Engineering,
Notice to Proceed: August 31, 2021
Project Completion: March 2, 2022
Work Status: Despite repeated requests by the PAG CIP/Engineering, On November 22, 2021. PAG Engineering requests an update status of the 100% design. PPBC is unable to produce the final design to date.

Project: Replacement of 125 Each Reefer Outlets Receptacles
Project No.: IFB No. PAG-CIP-021-007
Project Amount: \$350,000
Amount Paid to date: N/A
Funding Source: PAG Budget 2021
Contractor: PRO PACIFIC Builders
Construction Manager: PAG Engineering
Notice to Proceed: TBD
Project Completion: TBD
Work Status: PAG Procurement is currently in communication with ProPacific builders to commence price reduction negotiation.

Project: Emergency Demolition of an Interior Double CMU Partition Walls/Columns along
Gridline #7 between Bays 6 and 7 of Warehouse 1
Project No.: Req. No. 19676 OR
Project Amount: \$38,990.00 + \$80,000.00 Change Order No.1
Amount Paid to date: \$105,516.00
Funding Source: PAG 2021 Budget
Contractor: Valcon Guam LLC
Construction Manager: PAG Engineering/CIP Division
Notice to Proceed: July 15, 2021
Project Completion: Extended to October 08, 2021
Work Status: Final inspection was conducted on November 18, 2021. Project close-out documentation is currently progressing.

Project: Remove/Replace 3 Each Metal Gate Booths with Reinforced Concrete Structures
Project No.: IFB-PAG-CIP-021-011
Project Amount: \$159,557.00
Amount Paid to date: N/A
Funding Source: PAG CIP
Contractor: Pacific Federal Management
Construction Manager: PAG Engineering
Notice to Proceed: TBD
Project Completion: TBD
Work Status: Procurement is awaiting bonding by the contractor.

Project: Installation of the 569 KVA Generator, ATS and Fuel Storage Tank at LC-3
Project No.: TBD
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: 2019 FEMA Port Security Grant Program
Contractor: TBD
Construction Manager: PAG Engineering
Notice to Proceed: TBD
Project Completion: April 30, 2022
Work Status: Engineering/Planning/Facility are to sign the revised scope of work and submit to Procurement

Project: Design Build to Repair the Northside Catwalk by the Agat Marina Boat Ramp
Project No.: TBD
Project Amount: TBD
Amount Paid to date: N/A
Funding Source: PAG Budget 2022
Contractor: TBD
Construction Manager: Port Engineering/CIP Division
Notice to Proceed: TBD
Project Completion: 180 Calendar Days
Work Status: Submitted to Planning Division for E1 JDE requisition entry for an IFB.

Project: Design, Demolition, Removal & Proper Disposal of 5 Inoperable Cranes and Optional Removal/Disposal of one Barge YFN 816
Project No.: IFB. -PAG-CIP – 021-002
Project Amount: \$2,573,155
Funding Source: PAG
Contractor: Guam Ship Yard "GSY" (Guam Industrial Services Inc.)
Construction Manager: TBD
Notice to Proceed: September 13, 2021
Project Completion: October 18, 2022
Work Status: Preliminary Demolition and Disposal Plan unsealed and unsigned was submitted to PAG on October 19, 2021. PAG Engineering conducted its review of the preliminary plans and issued draft of the deliverables to be submitted by the GSY on November 23, 2021.

Port Authority of Guam
Operations Division Report
October 2021

I. **OVERVIEW**

Vessel Calls	19
Cans Handled	8,330
Special Service(s)	77

a. **Productivity**

Vessel Op	Avg NMPH	TOP GANG	M/Hr
Matson			
Domestics	24.8	6	32.2
Feeder			
MSA			
Barges	16.1	1	17.7
Kyowa, Candor	12.2	4	29.5
Ambyth			
Mariana/Triton	0.0	0	0.0
MELL			
Kotas	18.9	3	22.1
APL			
Herodote/Saipan	21.3	1	30.9

b. **Equipment Status**

As of : 11/01/2021	ON HAND	UP	RM	Repair
GANTRYs	3	3		
TOP LIFTERS	9	4		5
20T FORKLIFT	2	2		
10T FORKLIFT	4	2		2
5T FORKLIFT	8	5		3
TRACTORS	23	15		8

II. **YEAR TO DATE**

a. Vessels_YTD 19

b. Can_Cnt YTD

October	FY21		FY22		Variance	
	I	E	I	E	I	E
Local	2811	2791	3075	3440	9%	23%
TS	538	679	483	549	-10%	-19%
TSMT	82	167	268	211	227%	26%
TTL	3431	3637	3826	4200	12%	15%

FY-21 WORK INJURY REPORT
 (01/01/21 to 12/31/21)

<u>Divisions</u>	<u>*Lost-time</u>	<u>**Recordable</u>	<u>*** Refused Treatment</u>
Stevedoring	3	0	2
Transportation	0	0	2
Terminal	0	0	0
EQMR	1	0	0
Port Police	<u>0</u>	<u>0</u>	<u>2</u>
Total	4	0	6

Work Injury Summary for this reporting period: 11/17/2021

Total Injuries for FY-21 to date: 10–Injury

4– Lost-time
 0– Recordable
 6– Refused Medical Attention

Last disabling work injury was on: 10/20/21

Number of days since last disabling work injury: 28-days

Note: PAG best record was 222 days or 7 months w/o a disabling work injury

*Lost-time = If an employee was injured on the job and medical doctor sent him/her home, his/her injury is considered a lost-time.

**Recordable = If an employee was injured on the job and medical doctor treated him/her and released him/her back to work on the same day (Recordable because of medical charges).

***Refused Medical Attention: Filed WC Forms 201 & 202 for record purposes only.