

BOARD OF DIRECTORS

Dorothy P. Harris, Chairperson

Conchita S.N. Taitano, Vice Chairperson

Fe R. Valencia-Ovalles, Board Secretary



Resolution No. 2024-13

RESOLUTION TO AUTHORIZE THE GENERAL MANAGER TO ISSUE A PROCUREMENT SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP TO MANAGE, OPERATE, AND MAINTAIN THE GOLF FUEL PIER, FOXTROT FUEL PIER 1, AND AREA A FUEL TANK FARM, SUBJECT TO LEGISLATIVE AND GOVERNOR APPROVAL AS PROVIDED FOR HEREIN.

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

WHEREAS, Section 10404 of the Port Authority of Guam's Enabling Act, codified in Title 12, Guam Code Annotated, Chapter 10, authorizes the Board of Directors to enter into public-private partnerships through performance management contracts for various Port operations, provided that all processes outlined in Article 4 of Chapter 10 are followed; and

WHEREAS, the 2019 Transition Report issued by Governor Lourdes A. Leon Guerrero and Lieutenant Governor Joshua Tenorio referenced the Jose D. Leon Guerrero Commercial Port as the hub of Micronesia due to its role in transshipping goods, including fuel, through Guam to neighboring islands; and

WHEREAS, the report discussed the need for rehabilitation repairs to the Golf Fuel Pier and Foxtrot Fuel Pier 1, based on post-seismic assessments and damage sustained by these piers, as well as the storage fuel tanks located at Area A on Cabras Island; and

WHEREAS, the Port's Master Plan Update projected liquid bulk cargo to increase from 6.96 million barrels in 2013 to 8.42 million barrels by 2033, with petroleum companies assessing the island's current storage capacity to accommodate this growth; and

WHEREAS, petroleum companies prefer storage tanks to be situated near the fuel piers to enable quicker transshipment of fuel onto vessels; and

WHEREAS, on May 23, 2023, Typhoon Mawar, a Category 4 storm with wind speeds of up to 155 miles per hour and gusts estimated at 190 miles per hour, made direct landfall on Guam, causing significant damage; and

WHEREAS, the typhoon caused Guam Shipyard's floating cranes (YD223 and YD120) to break loose, with YD223 grounding at Golf Fuel Pier and YD120 grounding near Foxtrot 1, resulting in further damage to the piers; and

WHEREAS, Golf Fuel Pier is also used by Cementon to offload cement products into their silos adjacent to the pier; and

WHEREAS, in October 2023, conditional assessments by Port Engineering staff and Owner Agent Engineers consultants determined that Golf Fuel Pier sustained severe damage, rendering it structurally unsound and unusable; and

WHEREAS, the assessment report found that while Foxtrot Fuel Pier 1 sustained serious damage, it could be used with certain restrictions, including reduced berthing velocities and limits on large vessels; and

WHEREAS, the estimated engineering cost to repair Golf Fuel Pier is \$15,636,974, while replacing it would cost \$82,959,868; and

WHEREAS, the estimated cost to repair Foxtrot Fuel Pier 1 is \$3,567,940, while replacement would cost \$64,286,061; and

WHEREAS, discussions with the Federal Emergency Management Agency (FEMA) identified Golf Fuel Pier as critical infrastructure, essential for delivering fuel and cement to Guam's community; and

WHEREAS, FEMA's preliminary cost estimates for repairs significantly differed from the Port's assessments, leading Governor Leon Guerrero to request a review by FEMA Region IX's Administrator, emphasizing the importance of resolving the cost discrepancy and considering Hazard Mitigation funding; and

WHEREAS, it has been over a year since any repair work has been undertaken on Golf Fuel Pier, forcing petroleum companies to collaborate with the Foxtrot Fuel Pier 1 manager to install fender systems for safe berthing, while smaller vessels are fueled at waterfront piers via tanker trucks, and cement operations are rerouted through ISO tanks; and



WHEREAS, the annual revenue that the Port generates from throughput at Golf Pier and Foxtrot Fuel Pier 1 will not be sufficient to cover the annual debt service, management fees for fuel pier, and operational costs associated with the repairs and improvements to these facilities, making it necessary to seek this kind of common-sense business model for the Port; and

WHEREAS, governments worldwide have increasingly partnered with the private sector to deliver infrastructure projects, including energy, power, communication, transport, and water, due to the efficiencies, resource availability, and advanced technologies that private sector partnerships offer; and

WHEREAS, public-private partnerships (PPP) have been successfully implemented by other Government of Guam autonomous agencies, such as the Guam Power Authority and Guam Waterworks Authority; and

WHEREAS, the Port currently operates with only one working fuel pier, which poses a critical risk to its resiliency in both local and regional fuel supply operations. This limitation affects the Port's ability to support military readiness, civilian fuel demands, and emergency responses in the event of disruptions; and

WHEREAS, the regional geopolitical tensions further highlight the strategic importance of ensuring uninterrupted fuel supply to Guam and the neighboring islands, underscoring the need for resilient and upgraded infrastructure; and

WHEREAS, addressing this vulnerability through the Port Readiness Plan and the proposed long-term public-private partnership is essential to ensure the sustainability and security of the island's fuel supply; and

WHEREAS, the Port Readiness Plan, currently being developed by WSP (the Port's Owner Agents) in collaboration with the Port, is aimed at determining the necessary investments by the Department of Defense, MARAD, and other federal partners such as the US EPA to prepare the Port for the military readiness program, commercial growth, and long-term sustainability—all in defense of national security. The plan addresses critical infrastructure needs, including the replacement of 40-year-old gantry cranes, rehabilitation of wharves and facilities, and the alignment of military and civilian fuel demands to ensure sustained operations. These findings will also be foundational in building the public-private partnership model for public scrutiny, ensuring transparency and accountability throughout the process; and

WHEREAS, the support and coordination with the Joint Region Marianas, the Department of Defense (DoD), U.S. Indo-Pacific Command (INDOPACOM), and other relevant military stakeholders is critical for aligning the Port's fuel operations with national defense priorities, particularly within the Indo-Pacific region; and

WHEREAS, with the upcoming military build-up, it is crucial for the Port to explore solutions to repair its fuel piers and increase fuel storage capacity to ensure uninterrupted fuel operations for Guam and the Micronesian region; and

WHEREAS, private activity bonds provide a viable financing tool to support public-private partnerships for infrastructure projects by offering tax-exempt bond financing, which reduces the cost of capital for private partners, thereby enhancing the financial viability of large-scale investments. These bonds have been successfully utilized in similar infrastructure projects, encouraging greater private sector participation while maintaining public oversight and ownership of critical assets. By offering lower interest rates, private activity bonds attract private investment and reduce the financial burden on public resources, ensuring that essential improvements, such as the repair of fuel piers and expansion of fuel storage capacity, are completed efficiently, fostering long-term economic growth and stability for Guam and the region; and

WHEREAS, the support of the Governor, Lieutenant Governor, and the Guam Economic Development Authority (GEDA) is essential for pledging private activity bonds as part of this proposal to ensure that the necessary capital is secured for the fuel piers' repairs and improvements, and the General Manager is hereby requested to actively seek their support to include private activity bonds as a critical component of the financing package; and

WHEREAS, the General Manager of the Port is directed to continue aggressively pursuing all available programmatic funds from FEMA for damages sustained at Golf Fuel Pier and Foxtrot Fuel Pier 1 from Typhoon Mawar, as these additional funds will enhance the financial viability of the public-private partnership package by reducing the overall capital burden and contributing to a more favorable financial outcome for the Port; and

WHEREAS, during the repair and upgrade process, mitigation plans will be established to ensure the continuity of fuel supply for both civilian and military needs, minimizing disruptions to operations during construction; now therefore, be it

RESOLVED, the Board of Directors authorizes the General Manager to explore and pursue the benefits of issuing a procurement solicitation for a public-private partnership to manage, operate, and maintain the Port's fuel piers—specifically, Golf Pier, Foxtrot Fuel Pier 1, and the fuel tank farm at Area A. The solicitation shall include, but not only limited, to the following parameters:



1. Scope of Services:

- The solicitation will include day-to-day operations, maintenance of the piers and tank farm, and necessary capital improvements to enhance infrastructure and meet future demands. The operator must comply with industry safety and environmental standards, including maritime and fuel handling regulations.

2. Evaluation:

- Proposals will be evaluated on experience in managing similar facilities, financial stability, cost-effectiveness, and the ability to deliver high standards of service. The evaluation will also consider safety records, environmental compliance, technical capability (including the use of advanced technology), a collaborative partnership approach with public entities, and emergency response capabilities to handle natural disasters or operational disruptions.

3. Legal, Environmental, and Safety Compliance:

- The operator must comply with all applicable local, federal, and international laws, regulations, and standards, including but not limited to maritime, environmental, safety, and labor laws, as well as any rules and regulations enforced by the Guam Public Utilities Commission (PUC), where applicable. The operator must demonstrate expertise in implementing and maintaining comprehensive safety protocols, particularly in fuel handling and port operations, and must have a proven track record of compliance with environmental and safety regulations. In addition, the operator must adhere to any relevant international standards or agreements to which the U.S. is a party, such as those set by the International Maritime Organization (IMO) or international environmental treaties. Any agreements under this public-private partnership must ensure full compliance with all legal obligations, including those policies regulated by the PUC.

4. Port Ownership of Assets Remains Port Assets:

- The public-private partnership must ensure that the Port retains full ownership of all fuel piers, fuel tank farms, and related assets. These assets will remain the property of the Port before, during, and after the partnership. Any agreements made will strictly pertain to the management, operation, and maintenance of these assets without transferring ownership or proprietary rights to private entities.

5. Local and Regional Economic Benefits and Support for Military Readiness:

- Proposals should include a comprehensive plan to provide local and regional employment opportunities, skills training for the workforce, and economic benefits to the Guam community and the broader Micronesian region. This plan should align with the Port's long-term goals of sustainability, regional development, and support for critical infrastructure necessary for both civilian and military fuel needs. Proposals are encouraged to prioritize the use of local and regional contractors, vendors, and suppliers to maximize the economic impact on Guam's small businesses and neighboring islands. Additionally, fostering innovation through partnerships with educational institutions or training programs will help build local capacity, strengthen regional economic ties, and ensure the long-term viability of the workforce. This approach will contribute not only to Guam's economy but also support military readiness and promote shared growth across the region.

6. Statutory Process:

The General Manager must comply with one of the following options for the solicitation and execution of a long-term lease for the Port's fuel piers and related facilities:

6(a) Compliance with Existing Law:

The solicitation and resulting contract will comply with § 5127 of Subarticle C, Article 2, Chapter 5, Division 1, Title 5 of the Guam Code Annotated, which governs the commercial leasing of public real property and related facilities.

This statute includes the following provisions:

- **Public Real Property and Related Facilities:** No commercial contract, lease, permit, or license for the use of public real property and related facilities by any non-governmental person or entity shall be solicited, negotiated, entered into, or made for a term in excess of five (5) years, inclusive of any extension, option, or renewal.
 1. Any contract, lease, permit, or license made, renewed, or extended in violation of this law shall become void upon the fifth (5th) anniversary of the making of such contract, lease, permit, or license.
 2. This limitation does not apply to residential and agricultural leases to beneficiaries under the Chamorro Land Trust.
 3. Any such contract, lease, permit, or license shall mean a "lease of real property" and not the lease of supplies as that term is used in § 5030(u) of this Chapter.
- **Exceptional Term Contracts:** The Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency may solicit a contract for a term longer than otherwise allowed by this Section (an "Exceptional Term Contract").
 1. Prior to soliciting any Exceptional Term Contract, *I Maga'låhi* (the Governor), or in the case of an autonomous agency, the Board of Directors, must make a written Determination of Need justifying by a quantifiable sum the Exceptional Term Contract, specifying the full term, inclusive of extensions, options, and renewals.
 2. No Exceptional Term Contract shall be solicited unless a Determination of Need is obtained from *I Maga'låhi* (the Governor) or, in the case of an autonomous agency, the Board of Directors.
 3. A written Determination of Need shall be valid for two (2) years or until an Exceptional Term Contract is executed to fill the stated need, whichever comes first.



- **Legislative Approval:** Following the Determination of Need, the contract must be transmitted to *I Liheslaturan Gudhan* for legislative approval or disapproval within sixty (60) calendar days. A public hearing must also be conducted during this review period.

6 (b) Exploration of Legislative Alternatives:

The General Manager is authorized to explore the possibility of seeking the Governor’s support or a Senator’s sponsorship to introduce legislation, following the approach taken with the adoption of the Cementon lease under Public Law 30-209, enacted on December 13, 2010, which allowed for a 20-year lease with a 10-year extension option. This new legislation would authorize a long-term lease for the Port’s fuel piers and related facilities, providing flexibility in managing the lease while bypassing the complexities and limitations of § 5127 of Subarticle C, Article 2, Chapter 5, Division 1, Title 5 of the Guam Code Annotated. The objective is to ensure operational efficiency, sustainability, and long-term economic benefit for the Port; and be it further

RESOLVED, that the General Manager is further authorized to seek the support of the Governor, Lieutenant Governor, and the Guam Economic Development Authority (GEDA) to pledge private activity bonds as part of this package, to help finance the necessary capital improvements for the Port’s fuel piers and fuel tank farm operations; and be it further

RESOLVED, that the General Manager is directed to continue pursuing all funds owed from FEMA and any relevant insurance claims, ensuring that any additional financial recovery will enhance the overall public-private partnership package, providing the Port with a more favorable financial position; and be it further

RESOLVED, that the public-private partnership solicitation will be structured to encourage competition by considering separate bids for each fuel pier, Golf Pier and Foxtrot Fuel Pier 1, ensuring that no single entity gains monopolistic control over the Port’s critical fuel infrastructure. In the event that one company is awarded both piers, strict performance, transparency, and regulatory oversight provisions will be included to mitigate risks of dominance and ensure operational efficiency; and be it further

RESOLVED, that the General Manager shall ensure that the public-private partnership process remains transparent and open for public scrutiny, including publishing relevant documents, providing regular updates, and facilitating public engagement where necessary, to ensure community trust and accountability, and be it further

RESOLVED, the Board of Directors authorizes the General Manager to issue a procurement solicitation for a public-private partnership to manage, operate, and maintain the Port’s fuel piers—specifically, Golf Pier, Foxtrot Fuel Pier 1, and the fuel tank farm at Area A—with the authority to choose between the statutory process outlined in 6(a) or explore legislative alternatives as outlined in 6(b), provided that either process will only be entered into if fully compliant with all applicable laws and regulations. The General Manager shall provide periodic updates to the Board on the progress of the procurement process, subject to the parameters outlined in this resolution, and be it further

RESOLVED, that the Chairperson certify to, and the Secretary attest to, the adoption of this resolution, and that copies of this resolution be sent to the Governor of Guam, the Lieutenant Governor of Guam, the Administrator of the Guam Economic Development Authority, the Legislative Oversight Chairperson, and other relevant stakeholders, as necessary.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 26th DAY OF SEPTEMBER, 2024.

DOROTHY P. HARRIS
CHAIRPERSON, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

FE R. VALENCIA-OVALLES
BOARD SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

