



PORT AUTHORITY OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
GOVERNMENT OF GUAM

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FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

June 21, 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina' Trenta Na Liheslaturan Guahan
155 Hesler Place
Hagatna, Guam 96910

30-10-0558
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/21/2010
Time 4:13pm
Received by [Signature]

Dear Speaker Won Pat:

Pursuant to Public Law 30-100 relative to the Jose D. Leon Guerrero Commercial Port of Guam Master Plan Update 2007 Report, transmitted herewith is the Port Authority of Guam's Report to the Legislature, which presents the status of our efforts to secure commitments for grants and similar funding, and provides recommendations in moving forward with PAG's modernization plans.

This report will be presented to you and your colleagues during the Information Briefing, scheduled for 6:30 p.m., June 22, 2010, at the Guam Legislature Public Hearing Room.

We are looking forward to apprising you of our efforts and recommendations that will position the Port to efficiently handle the increased cargo movement during the various phase of the Guam build-up, while ensuring the continued delivery of imports not only for the island of Guam, but throughout the entire Western Pacific Region.

Seneramente,
[Signature]
Monte Mesa
Chairman

2010 JUN 22 AM 8:15

Enclosures

- cc: Senator Thomas C. Ada, Chairperson, Committee on Utilities,
Transportation, Public Works & Veterans Affairs
Board of Directors
General Manager
DGM, Interim
Chief Planner

GUAM LEGISLATURE
REPRODUCTION/MAIL ROOM
DATE: 6/22/10
TIME: 8:00 AM [1PM
RECEIVED BY: [Signature]

2028

Port Authority of Guam
Report to the Legislature
Pursuant to Public Law 30-100

June 22, 2010



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1.0 Introduction & Legislative Background

This report is being submitted to the Speaker of the 30th Guam Legislature pursuant to the requirements of Section 2 of Public Law 30-100 amending Section 4 of Public Law 30-57.

1.1 Public Law 30-57 Approval of Master Plan Update 2007 Report

In accordance with Guam law, on August 3, 2009, Port Authority of Guam (PAG) prepared and submitted an Implementation Plan, a Financial Plan and Economic Impact Statement (Report to the Legislature Pursuant to 5 GCA Chapter 9 § 9301) to the Legislature for approval of its Master Plan for modernization of PAG's Public Cargo Terminal (PCT). The plan for modernization of the PCT was based on a phased approach consistent with the availability of Federal Funding and PAG Financing of the program and demand as follows.

Phase I

Stage 1A	Completion of Upland Efficiency Improvements
Stage 1B	Berth Rehabilitation, Security and Acquisition of cranes & additional equipment
Phase II	Construction of a new Berth F7 and Yard Expansion after the 20 year planning horizon

The plan for the source of capital for the Stage 1A (hereinafter called Phase I-A) improvements was based on the following.

Phase I-A Sources of Capital Anticipated in August 2010 Amount

Federal Funding:

ARRA U.S. Department of Transportation TIGER Grant	\$50.0 Million
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PAG Loan Financing:

USDA Community Facility Direct Loan	\$25.0 Million
ANZ Bank (USDA Community Facility Guaranteed Loan)	\$25.0 Million
ANZ Bank 2009 Equipment Loan	\$3.5 Million
Equipment Loan	\$1.0 Million

TOTAL CAPITAL	\$104.5 Million
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Guam would apply for and compete for the ARRA TIGER Grant. It was anticipated that grant awards would be announced in December 2009.

Stage 1B (hereinafter called Phase I-B) which was estimated to require an additional some \$107 Million would be completed after the Phase I-A improvements are finished. Specific sources of capital for Stage 1B were not identified but would have to come from either Federal grants and appropriations or a Capital Recovery Charge to be paid by the DOD for the facilities improvements made in order to handle the surge in cargo due to the military program.

On September 11, 2009, the Guam Legislature passed Bill 178-30 approving Phase 1 of the Jose D. Leon Guerrero Commercial Port Master Plan Update 2007 Report with the stipulation that PAG report back to the Guam Legislature if the ARRA Department of Transportation TIGER Grant was not awarded to Guam. It was signed into law by the Governor on September 11, 2009 and enacted as Public Law 30-57.

1.2 Public Law 30-100 Amending Public Law 30-57

On February 18, 2010, PAG learned that the U.S. Department of Transportation did not award the TIGER Grant to the PAG. Accordingly PAG reported back to the Guam Legislature and briefed them on its intent to identify funding for some \$50 Million from alternate Federal sources.

On March 1, 2010 the Guam Legislature passed Bill No. 333-30, enacted as Public Law 33-100 which directed PAG to continue to seek the \$50 Million Federal funding needed for Phase I-A, prescribed

alternatives for the modernization program in the event that funding was not available and also directed that PAG report back to the Speaker of the House by June 2010.

This is a report to the Speaker of the Guam Legislature in accordance with the requirements outlined in the legislation and duplicated herein as follows:

Section 1. Legislative Findings and Intent:

On September 14, 2009, the Jose D. Leon Guerrero Port Authority of Guam (PAG) submitted its application for \$50M of ARRA/TIGER grant funds, an amount representing approximately fifty percent (50%) of the funding required for Phase 1-A of the PAG Port Modernization Plan (Plan). On February 18, 2010, the PAG learned that its application for the ARRA/TIGER grant was not favorably considered. Additionally, the failed ARRA/TIGER grant application has jeopardized the availability of a USDA loan, which would have provided the other fifty percent (50%) of required funding for the Phase 1-A of the Plan. Notwithstanding the recent outcomes, modernization of the PAG remains to be an imperative in order to meet the projected demands for port services over the next decade. In the event that grants and similar funding sources do not become available, the PAG must proceed with the modernization efforts to enable the efficient flow of goods into and out of Guam.

Section 2. Section 4 of Public Law 30-57 is hereby amended to read as follows:

Section 4. The Port Authority of Guam (PAG) shall immediately initiate research to identify potential Federal grants and similar funding sources and shall initiate necessary discussions and communications to secure funding needed for the modernization of the PAG. The PAG shall report to the Speaker of the Legislature no later than June 2010 on (1) the status of its efforts to secure commitments for grants and similar funding and (2) its recommendation(s) in moving forward with PAG's modernization plans which include, but are not limited to, the scaling back of modernization plans that would address organic growth capacity requirements and funded through debt that is within the PAG's ability to pay, estimated to be about Fifty-four Million Five Hundred Thousand Dollars (\$54,500,000), and which shall include the acquisition, either through purchase or lease to own, of at least two (2) Gantry Cranes. Such cranes shall be acquired no later than December 31, 2012, pursuant to the Guam Procurement Law and not through the use of a Task Order to any existing contract. If the PAG secures a grant, and the USDA Loan or other comparable loan, then Phase I-A shall proceed along with the acquisition of at least two (2) Gantry Cranes. Such cranes shall be acquired no later than December 31, 2012, either through purchase or lease to own, pursuant to Guam Procurement Law and not through the use of a Task Order to any existing contract. No other loan or additional rate increase may be requested for funding of the Master Plan by PAG without an executed Capital Recovery Charge agreement, as discussed in Part 3.3.3 of the Revised August 3, 2009 Report, and specifically in the Financial Plan.

2.0 Status of Efforts for Funding Port Modernization Phase I-A

2.1 Government of Guam/PAG Pursuit of Commitments for \$50 Million in Federal Funding

Upon learning that the ARRA TIGER Grant application described in Section 1.0 was not favorably considered by the U.S. Department of Transportation, Government of Guam and PAG initiated several activities in pursuit of alternative funding sources.

2.1.1 Statement of Environmental Impact on JGPO DEIS

On February 18, 2010, PAG prepared and submitted comments to the Joint Guam Program Office (JGPO) documenting the significant deleterious environmental impacts on the Port facilities related to the Draft EIS (DEIS) for the JGPO military program on Guam if the Port facilities were not improved. PAG submitted the document prior to the deadline for public comment stipulated in the JGPO DEIS document. This was followed in March 2010 by a presentation in Guam to representatives of the "White House Council on Environmental Quality" which was reviewing comments on the JGPO DEIS by environmental agencies and the public.

2.1.2 Meeting with JGPO Director General David Bice

On or around February 18, 2010 the Board and the Management of PAG met with General David Bice, Director of JGPO at the Port offices. General Bice expressed JGPO's disappointment at the fact that PAG was not granted the ARRA TIGER grant and assured PAG that JGPO would work to identify alternative sources of funding. This was followed in March with a letter from General Bice addressed to PAG Management and confirming its commitment for continued pursuit of alternative sources of Federal funding.

2.1.3 Coordination with DOD Representatives for Alternate Sources of Federal Funding

PAG directed its Owners Agent/Engineer consultant (OAE) to coordinate information with JGPO representatives to help the military investigate other sources of surplus Fiscal Year 2010 U.S. Department of Defense (DOD) funding. PAG and its consultant also worked with other DOD agencies as requested to provide information and data to address alternatives for funding according to their requirements.

2.1.4 GovGuam Meetings with Federal Officials

Governor Felix Camacho travelled to Washington DC and together with Congresswoman Madeleine Z. Bordallo met with a number of Federal officials including Deputy Defense Secretary William J. Lynn. Presentations were made on the status of the Port funding at an Economic Adjustment Committee group meeting in Washington DC attended by key Federal funding agencies. Guam's position on the need for Federal participation of the Port was clearly communicated during these meetings. They also had meetings at the Whitehouse with military and interior department officials.

2.1.5 Letters from OMB, the President, and DOD for Transfer of up to \$50 Million to PAG Enterprise Fund

On April 5, 2010, U.S. Office of Management & Budget (OMB) wrote to the President Barack Obama who transmitted a letter to the Speaker of the U.S. House of Representatives, requesting amendments to the FY 2010 proposals in the FY 2011 for authority to "*allow the Department of Defense (DOD) to transfer up to \$50 million of funds that will expire in FY 2010 to the Department of Transportation's Maritime Administration (MARAD) for improvements to the Port of Guam*". This was followed with a request from Deputy Defense Secretary Lynn to the Chairmen of the Senate and House Committees on Armed Services and Appropriations requesting their support for requested amendments. See Appendix A for copies of these documents.

2.1.6 Congressional Markup of Supplementary Bill Legislation

A copy of the Press Release from the Senate Committee on Appropriations dated May 13, 2010 (See Appendix B, Page 2 of Press Release) shows that the language required to provide the authority to

transfer \$50 Million into the Port of Guam Improvement Enterprise Fund (PAG Enterprise Fund) has been included in the Senate version of this pending bill. Recent indications from Congresswoman Bordallo's office indicate that the bill is scheduled to be voted on prior to the end of the Fiscal Year in September 2010.

2.1.7 USDA Community Facility Loan Financing Status

Weekly conference calls have been conducted by PAG Management and Staff and JGPO representatives to track the status of and maintain the availability for the USDA loans until alternate funding sources were identified. USDA staff in Honolulu and Guam has confirmed USDA's readiness to obligate the \$50 Million in Community Facility Direct and Guaranteed loans as soon as the DOD funding is transferred to the Port Enterprise Fund. PAG has confirmed in their discussions with ANZ Bank their readiness to execute the Guaranteed Loan portion of the above as soon as USDA authorizations are executed and in place.

2.2 Updated Sources of Capital for Phase I-A Improvements

PAG reports to the Speaker of the Guam Legislature that the following updated funding and financing have been identified for proceeding with the Phase I-A improvements in Federal Fiscal Year 2011.

Phase I-A Sources of Capital

Federal Funding:

DOD Funding to be transferred to the PAG Enterprise Fund	\$50.0 Million
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PAG Loan Financing:

USDA Community Facility Direct Loan	\$25.0 Million
ANZ Bank (USDA Community Facility Guaranteed Loan)	\$25.0 Million
ANZ Bank 2009 Equipment Loan	\$3.5 Million
Equipment Loan	\$1.0 Million

TOTAL CAPITAL	\$104.5 Million
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After confirmation is received from Washington DC that the DOD funding has indeed been transferred to the PAG Enterprise Fund under the control of MARAD, PAG anticipates executing the loan agreements with the USDA and ANZ Bank for the PAG financed portions of the project. For the \$1.0 million loan, PAG expects to issue an RFP in the near future.

It is noted that the total PAG financing portion of \$54.5 Million will be consistent with the provisions of Public Law No. 30-57.

3.0 Recommendations and Status of PAG Modernization Program

3.1 Intent to Proceed with Phase I-A per Public Law 30-100

As described in Section 2.0 above, it is anticipated that Federal legislation will be passed to permit the transfer of DOD Funding to the PAG Enterprise Fund by September 30, 2010. It is also anticipated that the funds will be made available and transferred by DOD shortly thereafter. Upon confirmation of these events, PAG will be in position to execute the loan agreements with the USDA and ANZ Bank as described in Section 2.0.

Consistent with the documentation in Appendices A, B and D, since a "good faith" process has been mobilized and set in motion in Washington DC for providing the Federal funding for Phase I-A, PAG has maintained the momentum established subsequent to the Public Law 30-57 and prior to the amendment of Section 4 of Public Law 30-57. At the same time, PAG has not, and continues to recommend against, expending valuable resources on developing an alternate approach that includes "scaling back of modernization plans" at this time.

PAG recommends that if it cannot confirm that the DOD Funding has been made available to the PAG Enterprise Fund by September 30, 2010, that it then commences to expend the resources needed to develop a "*scaled back modernization plan*" and report back to the Speaker of the Guam Legislature no later than December 31, 2010.

Upon execution of the agreements for access to the expected capital, and in accordance with the provisions of Public Law 30-100, PAG plans to proceed with the Phase I-A improvements. Details of the Phase I-A improvements are presented below in Section 3.2.

3.2 Summary Description of Phase I-A per the Approved Master Plan

The capital funds described in Section 2.2 will be utilized for the following expenditures.

- Detail Engineering Design & Specifications of Terminal Facilities
- Construction & Delivery of Terminal Facilities
- Construction Management & Program Management
- Maritime Administration expenses for administration of Enterprise Funds
- Procurement, installation & commissioning of Cargo Handling Equipment and Terminal & Gate Operating Systems and hardware.
- Guam GRT taxes

The above capital will be made available to PAG for use on the improvements described below. Some of the facilities, equipment and systems will serve as collateral for repayment of PAG loans.

- Demolition & Site Preparation
- Reconfigured Cargo and Break-bulk Terminals
- Site Expansion
- Buildings (new, expanded or reconfigured)
- Terminal Paving
- Power, Lighting & Electrical
- Site Utilities
- Security infrastructure for equipment to be installed in Phase I-B

- Cargo Handling Equipment consisting of Top Loaders, Side Picks, Yard Tractors, Yard Trailers and Lift Trucks
- Terminal and Gate Operating Systems
- Truck & Vehicle Entrance Gates

More specific descriptions of facilities, equipment and systems to be put in place using these sources of capital are defined in the following documents that PAG staff and OAE have completed or will finalize shortly.

- Preliminary Design Requirements Report & 30% Facility Design Drawings, work on which is currently in progress with completion scheduled for July 2010
- Terminal Development and Operations Plan Report, Completed in March 2010

Note that the capital excludes grants (see Section 3.8) utilized by PAG for OAE services for defining the Program Requirements for the Phase I-A portion of the modernization program.

3.3 Status of Acquisition of Cranes per Provisions of Public Law 30-100

Public Law 30-100 stipulates that "...Phase I-A shall proceed along with the acquisition of at least two (2) Gantry Cranes..." and "...Such cranes shall be acquired no later than December 31, 2012, either through purchase or lease to own, pursuant to Guam Procurement Law and not through the use of a Task Order to any existing contract".

In a May 20, 2010 PAG Board of Directors meeting, the Board approved for management to proceed in the procurement process of acquiring brand new gantry cranes and allowing for alternate proposals for refurbished cranes.

PAG has constituted a staff team consisting of operations, procurement, finance and other disciplines to start work on the process of procurement that can comply with the provisions of Public Law 30-100. The approved Master Plan programmed acquisition of cranes in Phase I-B as outlined in the "*Report to the Legislature Pursuant to 5 GCA Chapter 9 § 9301*". Accordingly, the PAG Board and Management will seek to identify the form of funding or lease that can comply with the requirements of Public Law 30-100 for acquisition of this equipment in Phase I-B and in compliance with the timeframe as indicated in the law.

3.4 MARAD Role & PAG Enterprise Fund

Appendix C presents a copy of the Memorandum of Understanding (MOU) executed between the PAG, MARAD and the Government of Guam effective December 8, 2008. Appendix B also includes a copy of the Federal Legislation passed in October 2008, "*Public Law No. 110-417, Section 3512*" which designates MARAD as the administrator of the PAG Enterprise Fund into which Federal Funding would be transferred for Port of Guam Improvements. The MOU describes the responsibilities of MARAD and PAG during execution of the modernization program.

PAG's responsibilities embrace establishing the "*PROGRAM REQUIREMENTS*" including the capacity, type and form of facilities and define the functional, operational, quality, performance and engineering standards and benchmarks for the PROGRAM and retaining of a professional engineering firm as its Owner's Agent. MARAD's role involves delivery of work according to the PROGRAM REQUIREMENTS established by PAG. MARAD has informed PAG that it has executed a contract with a Program Management Team (PMT) in order to move forward with program execution.

All capital placed in the PAG Enterprise fund will be administered by MARAD in accordance with Federal procurement and administrative rules and regulations. PAG is formulating protocols for the extent and the basis for contribution of loan financing sums for use by MARAD for execution and delivery of the Terminal Facilities to PAG.

3.5 Status of Performance Management Contract (PMC) Solicitation

The Port issued solicitation RFP No. PAG -010-003 in order to put in place a "*Performance Management Contract for the Management of Cargo Terminal Operations and Maintenance of Cargo Handling*"

Equipment at its Public Cargo Terminals. The selection and award of a contract will be executed under Guam's procurement laws.

It is anticipated that a Performance Management Contract Provider (PMCP) would be selected and a contract awarded for management of the terminal either before or during execution of the Phase I-A project improvements. The RFP solicits potential PMCP firms to provide investments in Port cargo handling equipment, terminal operations management systems, and other items directly related to cargo handling operations. It has yet to be determined what level of investment will be offered, may be feasible and incorporated into a final PMCP contract.

3.6 Cargo Handling Equipment and Systems Purchases

In 2009 PAG began acquisition of the cargo handling equipment for the modernization program using the loan listed in Section 2.0 as "ANZ Bank 2009 Equipment Loan". Cargo handling equipment to the extent of this loan limit has already been procured by PAG. Additional cargo handling equipment, terminal operating systems and gate operating systems will be placed into service either through additional purchases or by contract agreement with the PMCP. The capital needed for these items have been included in the sums listed in Section 2.2.

3.7 Other PAG Capital Improvements for Implementing Phase I-A

PAG will perform certain other capital improvements to support the modernization Phase I-A improvements. These include clearing, grading and surface preparation for a chassis yard east of the existing container yard, upgrade of its accounting system and other related office systems. PAG also wishes to relocate the cruise vessel service to Hotel Wharf for the intermediate term subject to satisfactory resolution of the legal proceedings underway with the current tenant. The expenses related to these items are not included in the Phase I-A capital budget.

3.8 Grant Funding for Phase I-A Definition of Program Requirements

Since April 2008, GovGuam and PAG have worked with a number of Federal Agencies to support PAG's efforts for defining the elements of the modernization program and establish the "Program Requirements". The following is a list of agencies that have provided grants and funding to support PAG's efforts to move the program forward from the April 2008 release of the Master Plan Update 2007 Report to the program's current status.

Port Modernization Grants for Project Definition Studies

Grant Number	Project Title	Federal or Local Agency	Award Amount
Guam-CIP-2009-1	Preliminary Engineering and Environmental Studies for the Modernization of the JDLG Commercial Port	Department of Interior Office of Insular Affairs (DOI OIA)	\$2,000,000
Guam-CIP-2009-3	JDLG Port Modernization Engineering Analyses and Consultations	Department of Interior Office of Insular Affairs (DOI OIA)	\$1,000,000
GR0706-08-02-08-01	Implementation Plan(MOU Sub-Grantee)	Office of Economic Adjustment (OEA) DoD	\$476,166
07-79-06339 Economic Adjustment	Port Expansion and Modernization Planning	DOC EDA	\$2,000,000
GR0706-09-04	Guam Military Complex – Port Fact Finding	Office of Economic Adjustment (OEA) DoD	\$2,000,000
GR0706-09-08	Port Terminal Preliminary Design, Performance Management Service Benchmarks and Legislative Approval	Office of Economic Adjustment (OEA) DoD	\$975,000

Grand Total For Modernization \$8,451,166

Note that Grant No. 07-79-06339 was transferred to the PAG Enterprise Fund administered by MARAD by EDA and has not as of this writing been utilized for defining Program Requirements.

3.9 Designation as Strategic Port

On September 14, 2009, the Military Surface Deployment and Distribution Command designated the Port of Guam as the United States' 16th commercial Strategic Seaport. The letter from General Duncan J. McNabb to the Secretary of Transportation is presented in Appendix D. General McNabb reiterates the fact that while this does not guarantee federal funding for port improvements, it does underscore the need for funding for infrastructure improvements.

**Appendix A OMB, President, and DOD Letters on Port of Guam
Funding**



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

THE DIRECTOR

April 5, 2010

The President
The White House

Submitted for your consideration is an amendment to the Fiscal Year (FY) 2010 proposals in your FY 2011 Budget. The amendment is for the Departments of Defense and Transportation and is described in more detail in the enclosure.

This request would provide the authority for the Department of Defense to transfer up to \$50 million of funds that will expire in FY 2010 to the Department of Transportation Maritime Administration's Port of Guam Improvement Enterprise Fund for capital improvements to the Port of Guam. The Port modernization is critical to national security, as the Port's operational capacity must be increased to meet the requirements of the on-going military construction program for the realignment of U.S. Marine Corps forces from Japan to Guam. The proposed total budget authority for FY 2010 in the FY 2011 Budget would not be affected by this amendment.

In addition, this transmittal contains a FY 2010 proposal for the Legislative Branch. As a matter of comity between branches, appropriations requests of the Legislative Branch are transmitted without change.

Recommendation

I have carefully reviewed this request and am satisfied that it is necessary at this time. Therefore, I join the heads of the affected Departments in recommending you transmit this proposal to the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Oszag".

Peter R. Oszag
Director

Enclosure

THE WHITE HOUSE

WASHINGTON

April 5, 2010

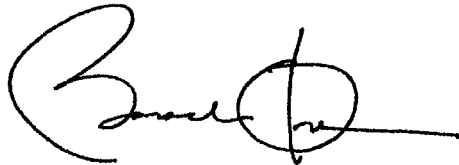
Dear Madam Speaker:

I ask the Congress to consider the enclosed amendment to Fiscal Year (FY) 2010 proposals in my FY 2011 Budget. In particular, I am requesting authority to allow the Department of Defense to transfer up to \$50 million of funds that will expire in FY 2010 to the Department of Transportation's Maritime Administration for improvements to the Port of Guam. Modernization of the Port is a critical prerequisite for the military construction program supporting the realignment of U.S. Marine Corps forces from Japan to Guam, a part of the overall U.S. strategy for military forces in the Pacific region.

In addition, this transmittal contains a FY 2010 proposal for the Legislative Branch. As a matter of comity between branches, appropriations requests of the Legislative Branch are transmitted without change.

The details of this amendment are set forth in the enclosed letter from the Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in black ink, appearing to be "Barack Obama", written over a circular stamp or mark.

The Honorable Nancy Pelosi
Speaker of the
House of Representatives
Washington, D.C. 20515

Enclosure

FY 2010 Supplemental Proposal in the FY 2011 Budget

Agency: DEPARTMENT OF DEFENSE

Heading: GENERAL PROVISIONS

Estimate #3 Submitted
March 24, 2010, Page: 11

FY 2011 Budget
Appendix Page: 1362

FY 2010 Pending
Supplemental Request: ---

Proposed Amendment: Language

FY 2010 Revised
Supplemental
Request: ---

(In the appropriations language under the above heading, insert the following new section immediately following section 12:)

SEC. 13. (a) Notwithstanding any other provision of law, from funds available to the Department of Defense, the Secretary of Defense may transfer an amount not to exceed \$50,000,000 to the Port of Guam Improvement Enterprise Fund established by section 3512 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417): Provided, That funds transferred under this section shall be merged with and available for obligation for the same time period and for the same purposes as the appropriation to which transferred: Provided further, That only funds that would otherwise expire at the end of fiscal year 2010 and that are appropriated to the Department of Defense in this Act or any prior appropriation act may be transferred: Provided further, That these funds may be transferred by the Secretary of Defense only if he determines such amounts are required to improve facilities, relieve port congestion, and provide greater access to port facilities: Provided further, That no amounts may be transferred from amounts that were designated by the Congress as an emergency requirement or as appropriations for overseas deployments and other activities pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

(b) Any amounts transferred pursuant to this section shall be available to the Secretary of Transportation, acting through the Administrator of the Maritime Administration, to carry out under the Port of Guam Improvement Enterprise Program planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities.

(c) The transfer authority in this section is in addition to any other transfer authority available to the Department of Defense.

FY 2010 Supplemental Proposal in the FY 2011 Budget

(d) The Secretary shall, not fewer than five days prior to making transfers under this authority, notify the congressional defense committees in writing of the details of any such transfer.

This provision would enable the Department of Defense to provide funding to the Department of Transportation's Port of Guam Improvement Enterprise Fund for the planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities. Section 3512 of the FY 2009 National Defense Authorization Act (Public Law 110-417) designated the Department of Transportation's Maritime Administration (MARAD) as the lead Federal agency for all aspects of the Port of Guam Improvement Enterprise Program and established the Port of Guam Improvement Enterprise Fund. MARAD provides oversight and management for all Federal and non-Federal contributions to the Port of Guam modernization effort through the Enterprise Fund.

The provision would authorize the transfer of up to \$50 million of funds made available to the Department of Defense that will expire in FY 2010 to MARAD for the purposes of funding capital improvements to the Port of Guam, including critical modernization and repair. The Port of Guam's capabilities are critical to national defense as demonstrated by the U.S. military's reliance on this port to ship goods and supplies to military bases located on Guam. The Port was designated a "strategic port" in September 2009 and port modernization will benefit both the military and commercial activities and enable the Port to fulfill its role in handling increased cargo volumes during periods of military deployment. In addition, the Port of Guam's throughput requirement will significantly increase in the near term because of construction-related supplies, materials, and equipment that must be shipped through the Port to support the construction efforts associated with the U.S. Marine Corps relocation to Guam.

The proposed total budget authority for FY 2010 in the FY 2011 Budget would not be affected by this amendment.



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APR - 5 2010

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am requesting your support for the amendment recently transmitted by the President to the FY 2010 proposals in the FY 2011 President's Budget.

This specific amendment provides the authority for the Department to transfer up to \$50 million to the Department of Transportation's Port of Guam Improvement Enterprise Fund. Capital improvements to the Port are critical to national defense as demonstrated by the U.S. military's reliance on this port to ship goods and supplies to military bases located on Guam. Additionally, the Port improvements serve as a necessary requirement in advance of military construction efforts supporting the realignment of U.S. Marine Corps forces from Japan to Guam. Another key benefit afforded by this provision is the opportunity for matching loan funding, both direct and guaranteed, from the Department of Agriculture.

We are postured to provide any additional information on this provision should you need it. I am sending a similar letter to the Chairmen and Ranking Members of the other congressional defense committees.

cc:
The Honorable John McCain
Ranking Member





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APR - 5 2010

The Honorable Ike Skelton
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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cc:
The Honorable Howard P. "Buck" McKeon
Ranking Member





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APB - 5 2010

The Honorable Daniel K. Inouye
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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This specific amendment provides the authority for the Department to transfer up to \$50 million to the Department of Transportation's Port of Guam Improvement Enterprise Fund. Capital improvements to the Port are critical to national defense as demonstrated by the U.S. military's reliance on this port to ship goods and supplies to military bases located on Guam. Additionally, the Port improvements serve as a necessary requirement in advance of military construction efforts supporting the realignment of U.S. Marine Corps forces from Japan to Guam. Another key benefit afforded by this provision is the opportunity for matching loan funding, both direct and guaranteed, from the Department of Agriculture.

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cc:
The Honorable Thad Cochran
Ranking Member





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APR -5 2010

The Honorable David R. Obey
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am requesting your support for the amendment recently transmitted by the President to the FY 2010 proposals in the FY 2011 President's Budget.

This specific amendment provides the authority for the Department to transfer up to \$50 million to the Department of Transportation's Port of Guam Improvement Enterprise Fund. Capital improvements to the Port are critical to national defense as demonstrated by the U.S. military's reliance on this port to ship goods and supplies to military bases located on Guam. Additionally, the Port improvements serve as a necessary requirement in advance of military construction efforts supporting the realignment of U.S. Marine Corps forces from Japan to Guam. Another key benefit afforded by this provision is the opportunity for matching loan funding, both direct and guaranteed, from the Department of Agriculture.

We are postured to provide any additional information on this provision should you need it. I am sending a similar letter to the Chairmen and Ranking Members of the other congressional defense committees.

cc:
The Honorable Jerry Lewis
Ranking Member



Appendix B Congressional Markup of Supplementary Bill

(Refer to Exhibit A of Appendix C for language on Port of Guam Improvement Enterprise Fund)



U.S. Senate Committee on Appropriations

PRESS RELEASE

For Immediate Release: Thursday, May 13, 2010

Contact: (202) 224-7363

Highlights of FY 2010 Supplemental Chairman's Mark

<u>Total Discretionary:</u>	\$45.4 billion, Equal to the President's Request
<u>Total Mandatory:</u>	\$13.4 billion, Equal to the President's Request
<u>Bill Total:</u>	\$58.8 billion, Equal to the President's Request

Summary

The Senate Appropriations Committee today marked up H.R. 4899, providing emergency supplemental appropriations for Fiscal Year 2010. The Chairman's mark, which is equal to the President's request, provides funding for ongoing military operations in Afghanistan and Iraq, including funding to support the addition of 30,000 military personnel to Afghanistan. The Chairman's mark includes \$2.8 billion to support relief efforts related to the devastating earthquake in Haiti.

The Committee provides \$5.1 billion for disaster recovery and to help communities prepare for future events. In addition, the Committee has identified rescissions and savings within the Administration's request to address many natural disasters for which the President did not request additional funds. More than 40 counties in Tennessee were underwater a week ago. Rhode Island suffered through a once in 500 year storm in March, a disaster was proclaimed by the President in January for fisheries in Alaska, tornadoes have tormented the Midwest and South, yet no funds have been requested to offset the enormous cost of cleanup and reconstruction for the states and communities which have suffered. In total, the Committee has provided more than \$400 million to address the disaster related shortfalls in the Administration's request.

The bill also provides \$13.4 billion in mandatory funding for the Department of Veterans Affairs, as requested, for disability compensation to Vietnam veterans to implement a recent decision by the VA to expand the number of illnesses presumed to be related to exposure to Agent Orange.

Department of Defense: \$33.45 billion (including \$656.8 million for Milcon)

The bill:

- Provides \$33.45 billion, (including \$656.8 million for Milcon) in new discretionary spending authority for the Department of Defense
- Fully funds the addition of 30,000 military personnel in Afghanistan
- Provides \$500 million in additional general transfer authority
- Includes \$924.5 million to acquire and sustain high priority intelligence, surveillance and reconnaissance initiatives
- Provides an additional \$616 million to cover fuel shortfalls identified by the Department of Defense
- Redirects funds to initiate solutions for four Joint Urgent Operational Needs Statements: Very Low Collateral Damage Weapon Mk 82, SOCCENT ISR Payloads, Marine Corps Unmanned Aerial Systems Resupply, and Explosive Ordnance Disposal Team equipment

Military Personnel: **\$1.8 billion**

- Provides \$1 billion to address the Army's revised mobilization assumptions

Operation and Maintenance: **\$24.6 billion**

- Provides \$2.6 billion for the Afghanistan and \$1 billion for the Iraq Security Forces Funds to train and equip Afghan and Iraqi Security Forces and assist their governments in assuming greater responsibility for their nation's security
- Fully funds key readiness programs critical to prepare forces for combat operations and other missions: OPTEMPO flying hours and steaming days, depot maintenance, training, spare parts, and base operations
- Includes funding for approved and announced additional units to support the troop expansion into Afghanistan. These include one-time costs to establish facilities and theater infrastructure as well as increased support contracts for new force levels
- Provides \$50 million to the Department of Defense to transfer to the Port of Guam Improvement Enterprise Fund within the Department of Transportation to improve facilities, relieve port congestion and provide greater access to port facilities
- Provides \$72.5 million to the Navy for emergency flood repairs

Procurement: **\$4.9 billion**

Aircraft

- Adds funds to replace two Army battle loss helicopters
- Provides additional funds for ballistic protection of Army helicopters in Afghanistan
- Funds the replacement of Navy helicopters lost in combat operations

- Fully funds 5 MC-12 Liberty aircraft for the Air Force
- Adds funds to buy ground stations and fully outfit MQ-8 UAVs for the Central Command area of responsibility

Vehicles/Force Protection

- Provides \$1.1 billion for MRAPs
- Fully funds Special Operations Command’s requirement for additional protective equipment
- Fully funds additional Army counter-IED jamming devices and upgrades
- Adds funds to improve Army’s automated biometric identification capacity
- Fully funds the Army’s Ground Standoff Mine Detection System
- Provides funds for the Army Base Expeditionary Targeting and Surveillance System
- Fully funds Army physical security systems (vehicle and personnel scanners)
- Fully funds Army Counter Rocket, Artillery and Mortar Systems
- Provides funds for the Army Mine Protection Vehicle Family program
- Approves a Marine Corps request to redirect \$144 million to procure urgently needed lightweight mine rollers, Improved Recovery Vehicles, Assault Breacher Vehicles, and field medical equipment

Military Construction

- \$656.8 million for military construction in Afghanistan to support ongoing operations, \$127.5 million above the request.

Federal Emergency Management Agency (FEMA): \$5.1 billion

The bill includes \$5.1 billion for the FEMA Disaster Relief Fund, as requested by the President. The request is necessary to pay for known costs for past disasters, such as Hurricanes Katrina, Rita, Ike, and Gustav, the Midwest floods of 2008, and the California wildfires and for needs that emerge from new disasters. Absent approval of the emergency supplemental request, FEMA estimates that the Fund will be exhausted in June. When the Fund runs out of money, FEMA will no longer be able to pay claims for Presidentially-designated disasters – old or new.

State, Foreign Operations: \$6.18 billion

The FY10 Supplemental budget request for State and Foreign Operations totals \$6.18 billion in Budget Authority.

Diplomatic and Consular Programs. The Administration requested \$1.87 billion for State Department operations for Afghanistan, Pakistan, Iraq, and Haiti. The Committee provides \$1.32 billion for these purposes.

Afghanistan. The Administration requests \$1.78 billion to continue reconstruction and law enforcement programs in Afghanistan. The Committee recommends \$1.48 billion for these programs, which is \$298 million below the request, and includes language requiring determinations and reports by the Secretary of State on transparency, corruption, and consultation with local communities and civil society. Additional funding is provided for women's justice programs, the Afghan Civilian Assistance Program, and watershed reforestation.

Pakistan. The Administration requests \$344 million in economic, law enforcement, and military assistance for Pakistan. The Committee recommends a total of \$349 million, of which \$259 million is for social and economic support programs and activities, including \$10 million for the Pakistan Civilian Assistance Program.

Iraq. The Administration requests approximately \$517 million for one-time start-up costs to transition the training of the Iraqi police program from the Department of Defense to the Department of State. The Committee recommends \$450 million for the start-up costs and an additional \$200 million for implementation, management and security costs. The Committee continues existing matching requirements on U.S. assistance for Iraq.

Haiti. The Administration requests \$893 million for humanitarian, economic, reconstruction, law enforcement and peacekeeping costs for Haiti following the January 12, 2010 earthquake. The Committee recommends \$913 million for these purposes under the Economic Support Fund and International Narcotics Control and Law Enforcement headings, and includes language requiring determinations and reports by the Secretary of State on transparency, corruption, involvement of local communities and civil society. The Committee recommends \$10 million for persons with disabilities, \$5 million for development of a plan for free public education, and additional funds for watershed restoration, shelter, and cash for work programs.

Additional assistance for Haiti is provided as follows:

- **International Disaster Assistance.** The Administration requests \$350 million for International Disaster Assistance to respond to humanitarian emergencies in Haiti. The Committee supports this request but believes it is insufficient to meet expected needs in Haiti and globally, and recommends a total of \$465 million.
- **Department of the Treasury Programs in Haiti.** The Administration requests \$219.8 million to cancel existing debts owed by Haiti and for technical assistance to the Haitian government to strengthen its public financial systems. The Administration also requested the authority to use \$40 million from the Heavily Indebted Poor Countries Trust Fund for Haiti debt relief and the authority to transfer up to \$120 million to the Department of the Treasury for contributions to the Multi-Donor Trust Fund for Haitian Reconstruction. The Committee supports these requests.

- The Administration requested \$84.5 million for urgent Embassy security, construction, and maintenance costs in Haiti, including housing for permanent U.S. direct hires. The Committee recommends \$79 million.
- The Administration requested \$96.5 million for increased peacekeeping assessments in FY10 and FY11 for the UN mission in Haiti. The Committee recommends this amount.

Dept. of Veterans Affairs:

\$13.4 billion (mandatory)

\$13.4 billion in mandatory funding for the Department of Veterans Affairs, as requested, for disability compensation to Vietnam veterans to implement a recent decision by the VA to expand the number of illnesses presumed to be related to exposure to Agent Orange.

Appendix C MARAD Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
GOVERNMENT OF GUAM, PORT AUTHORITY OF GUAM
AND
THE U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION**

This MEMORANDUM OF UNDERSTANDING (hereinafter, "MOU") by and between the Government of Guam, Port Authority of Guam (hereinafter "PAG") and the U.S. Department of Transportation, Maritime Administration (hereinafter "Maritime Administration"), collectively, ("PARTIES"), outlines the responsibilities of each party with respect to facilitating the modernization and expansion of the Jose D. Leon Guerrero Commercial Port.

WHEREAS ninety percent of all commerce for Guam comes through the Jose D. Leon Guerrero Commercial Port;

WHEREAS the Jose D. Leon Guerrero Commercial Port has not been significantly modernized since it was constructed in the 1960's;

WHEREAS the United States Government and the Government of Japan initiated and intensified consultations on respective security and defense policies in December 2002, which included discussions about the Outer Western Pacific Islands;

WHEREAS on July 11, 2006 the U.S. Pacific Command released the "Guam Integrated Military Development Plan;"

WHEREAS the Department of Defense's military realignments and force structure build-up proposed for the island of Guam will require a significant increase in through-put capacity at the Jose D. Leon Guerrero Commercial Port;

WHEREAS the April 23, 2006 Alliance Transformation Realignment between the United States Government and the Government of Japan envisions the military construction to begin in 2010;

WHEREAS the PARTIES executed a Memorandum of Understanding on May 26, 2008 which subsequently expired on September 30, 2008;

WHEREAS the President of the United States signed into law on October 14, 2008, Public Law 110-417, Section 3512, the National Defense Authorization Act for 2009 which designates the Maritime Administration as the lead federal agency for the "Port of Guam Improvement Enterprise Program;

WHEREAS the Governor of Guam and the Government of Guam recognize the critical role the Jose D. Leon Guerrero Commercial Port plays in the lives of the citizens of Guam, the Micronesian Islands and the strategic importance the Port plays to the security of the United States;

THEREFORE, the Government of Guam, the PAG, and the Maritime Administration, agree it is mutually beneficial to execute this MOU, and agree as follows:

- I. PURPOSE:** This MOU outlines the responsibilities of the PARTIES with respect to: a) implementing the Port of Guam Improvement Enterprise Program in accordance with the Port Master Plan Update 2007 ("Master Plan"); and b) working collaboratively with the Department of Defense and National Port Readiness Network (i.e., Department of Homeland Security, Northern Command, U.S. Transportation Command, and Surface Deployment Distribution Command) on the designation of the Jose D. Leon Guerrero Commercial Port as a Strategic Port. The combined efforts are hereinafter called "the PROGRAM".

The PAG has determined that the modernization of the Jose D. Leon Guerrero Commercial Port is required to:

- a) Improve the Port, adequately plan and implement Capital Improvement Programs to bring the Port to world class standards for the benefit of the Territory of Guam;
 - b) Improve the Port as a Transshipment hub for the region, for the benefit of the citizens of Micronesia (Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands); and
 - c) Increase the capacity of the Port to support the expected increase in cargo as a result of the Guam Build-up.
- II. AUTHORITY:** This MOU is made pursuant to the authority contained under the Merchant Marine Act of 1936, as amended (46 U.S.C. 50101 et seq.), Public Law 110-417 Section 3512, a copy of which is attached hereto as Exhibit A, and 12 Guam Code Annotated Chapter 10.
- III. OBJECTIVES:** It is the objective of this MOU that the PARTIES will establish working relations and assign responsibilities that leverage the expertise and experience of the PARTIES toward the facilitation of the modernization, expansion, and transformation of the Jose D. Leon Guerrero Commercial Port. The PARTIES' intention is that this MOU will benefit the PAG, the users of the Jose D. Leon Guerrero Commercial Port, the United States and its military, and the citizens of Guam on the PAG's efforts on the planning, development, and construction of their infrastructure needs.

The relationship and responsibilities established herein shall facilitate efficient and timely completion of the PROGRAM undertaken through this MOU with the following Port Modernization Objectives in ranking order of priority within the Port Master Plan framework:

1. Correct the deteriorated structural, utility and infrastructural facility deficiencies and upgrade said facilities to modern safe standards.
2. Execute the modernization program while maintaining levels of service to port users without disruption or deterioration of service levels.
3. Perform the modernization program activities in a fashion that prevents loss of cargo throughput levels including both local and transshipment service.

4. Modernize port equipment, cargo handling and other operational systems to standards equivalent to those in comparable, modern mainland and Asian container and break-bulk cargo ports.
5. Perform the modernization program with phasing and scheduling consistent with the above to achieve anticipated Port capacity requirements.

In consideration of the above objectives and the sense of urgency related to the PROGRAM, PAG wishes to begin execution of the PROGRAM with a minimum of disruption and delay and complete it in a timely fashion.

Within the parameters of this MOU, and to the extent authorized by law, the PARTIES and their authorized agents or representatives shall work cooperatively with each other and ensure coordination of efforts for successful administration of federal and non-federal funds made available for the PROGRAM.

IV. PAG RESPONSIBILITIES:

1. The development of all facilities, elements and components of the PROGRAM shall be performed as approved by PAG and PAG shall be the final decision-maker on the PROGRAM components, sequencing and their standards of performance and quality and on their adequacy or inadequacy for meeting its needs and the objectives outlined in Section III.
2. The PAG shall establish the overall and specific PROGRAM requirements (PROGRAM REQUIREMENTS) including the capacity, type and form of facilities to be integrated into the PROGRAM consistent with PAG's funding and financing framework, objectives for serving its constituencies, and timelines for completion.
3. The PAG shall define the functional, operational, quality, performance and engineering standards and benchmarks for the PROGRAM for use by the Maritime Administration for completion and delivery of the PROGRAM.
4. The PAG in collaboration with the Maritime Administration will develop an implementation plan ("IMPLEMENTATION PLAN") to guide the completion of the PROGRAM. The implementation plan shall be developed consistent with the objectives outlined in Section III and with due deliberation of the environmental concerns, permitting, design/engineering, construction, funding availability, financing and schedule considerations for the PROGRAM.
5. Coordinate the requirements of Guam governmental agencies related to the PROGRAM.
6. Coordinate local Public Outreach and Communications efforts to build awareness and consensus for the PROGRAM amongst key local stakeholders, including the Port Users, citizens of the Territory of Guam, and regional transshipment users of the Port.

7. Contract the services of a professional engineering firm to serve as an owner's agent whose purpose will be to assist the PAG in managing the ongoing port operations in conjunction with the various construction efforts under this PROGRAM.
8. To the extent authorized by law, the PAG will:
 - A. Execute documentation, as deemed necessary, that will enable the Maritime Administration to request interagency funding transfers of all identified "Port of Guam Improvement Enterprise Fund" amounts received by other Federal agencies from present and future annual Congressional Appropriations for the PROGRAM.
 - B. The PAG and other entities, at their own discretion, may elect to provide additional funding under this MOU.
 - C. Review and authorize as appropriate the disbursement of PROGRAM funding maintained by the Maritime Administration for activities to support the PROGRAM.
 - D. Designate primary PAG points of contact for coordination with the Maritime Administration's designated contacts for management of PROGRAM activities.

V. MARITIME ADMINISTRATION RESPONSIBILITIES:

1. To the extent the Maritime Administration is authorized by law as the lead federal agency for this PROGRAM, the Maritime Administration will:
 - A. Subject to the availability of funding, engage in contracts with third parties to complete the PROGRAM in accordance with the PROGRAM REQUIREMENTS and the IMPLEMENTATION PLAN.
 - B. Contract the services of a Program Management Team ("PMT") which will oversee all aspects of the PROGRAM including program management, environmental documentation, engineering and design, and construction for delivery of the PROJECT in accordance with the PROJECT REQUIREMENTS. The PMT shall also be responsible for the development and upkeep of detailed engineering drawings and specifications, schedules, budget, contract activity and execution plans (EXECUTION PLANS) based on the PROGRAM REQUIREMENTS and the IMPLEMENTATION PLAN.
 - C. Provide federal oversight of all work performed by the PMT firm during execution of PROGRAM activities and take any and all remedies, if necessary, to ensure satisfactory performance and maintain compliance with PROGRAM REQUIREMENTS.
 - D. Coordinate with other Federal agencies that receive annual Congressional appropriations that are appropriated for the Port of Guam Improvement Enterprise Program.

- E. Consult with the Port Authority of Guam General Manager or its designated point of contact for the PROGRAM, on all meetings and efforts related to the PROGRAM, and provide periodic status reports to the Port, including quarterly reports on all deposits to and expenditures from the Port of Guam Improvement Enterprise Fund.
- F. As lead Federal agency for the PROGRAM, coordinate National Environmental Policy Act ("NEPA") requirements, obtain all Federal permits required for the PROGRAM, and work with the Port Authority of Guam to obtain necessary permits to begin program construction in accordance with applicable timelines.
- G. Designate primary Maritime Administration points of contact for day-to-day management of PROGRAM activities.
- H. Collaborate with and assist PAG in developing the IMPLEMENTATION PLAN for the PROGRAM.
- I. Obtain approval from the PAG of all facility and equipment designs, drawings and specifications prior to solicitation of contracts for performance of the work. Additionally, the PAG may, at its discretion, have representation on all contract evaluation and selection boards prior to contract awards. All PAG representatives participating on such boards shall execute a non-disclosure agreement, the terms of which will be specified and provided by MARAD.
- J. Provide transparent and unimpeded access to all material, information, meetings, construction work and activities related to PMT activities and subcontracts related to the PROGRAM and assist PAG in monitoring compliance with the PROGRAM REQUIREMENTS.
- K. Develop and execute all financial documents as required for the transfer to and administration by the Maritime Administration of Federal and non-federal amounts received and released by the Government of Guam or the PAG for PROGRAM activities.
- L. As legally appropriate, MARAD will provide and transfer resources necessary to support the PROGRAM.
- M. Adhere to all applicable Federal laws, including regulations and guidance on funding appropriations, acquisitions, and grants (e.g. Federal Acquisition Regulations and Office of Management and Budget Circulars) and local regulations, as applicable, in the execution of the PROGRAM.
- N. Obligate and disburse funding for the PROGRAM oversight, program management, environmental studies and analysis, the NEPA process, permitting, design, engineering, construction, or rehabilitation pursuant to PROGRAM requirements, including being responsible for all financial reporting requirements

consistent with grant or funding obligations and all funding compliance requirements related to or associated with the PROGRAM.

VI. GOVERNMENT OF GUAM RESPONSIBILITIES:

1. To the extent authorized by law, the Government of Guam will:
 - A. Ensure Government of Guam departments, instrumentalities, entities and agencies collaborate with and provide specialized expertise expeditiously, as appropriate, to the PARTIES, in support of the PROGRAM.
 - B. Consult, coordinate, and cooperate with other elected and non-elected officials to further the purpose of the MOU and PROGRAM, as applicable.

VII. SHARED RESPONSIBILITIES OF THE PARTIES:

1. Cooperate with other local and federal agencies and organizations to further the purpose of this PROGRAM, as applicable.
2. Meet to review PROGRAM development and the partnership, as necessary.
3. Coordinate with each other prior to the release of any public information (including media releases) that pertain to activities performed under this MOU.

VIII. GENERAL PROVISIONS:

1. This MOU does not obligate the PARTIES to spend funds not specifically appropriated or allocated for the PROGRAM. PAG may seek re-programming of excess funds away from the PROGRAM subject to approval of the provider of said excess funds.
2. All Port improvements undertaken and realized through the efforts employed in relation to this MOU are the sole and exclusive property of the PAG.
3. The PARTIES agree to work collaboratively towards achieving the goals and objectives established in this MOU and the IMPLEMENTATION PLAN.

IX. TERM, TERMINATION AND AMENDMENT:

1. This MOU becomes effective when signed by the PARTIES and shall remain effective until:
 - A. A termination date agreed to by mutual agreement, or
 - B. A termination date specified in a written notice by one party sent to the other parties at least 90 days in advance of that termination date, or

C. Successful completion of the PROGRAM as mutually agreed by both PARTIES.

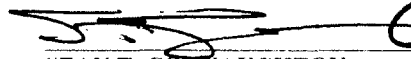
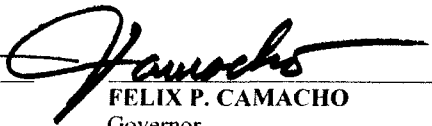
2. To the extent authorized by law, in the event of a termination of this MOU, all present and future funds appropriated or otherwise made available for the PROGRAM shall become under the exclusive control and administration of the PAG for use in furtherance of the PROGRAM. All work product, including plans, technical specifications, blue prints, reports, funding requests, and related documents, arising out of this MOU and PROGRAM shall become the exclusive and sole property of the PAG.
3. The PARTIES may propose amendments to this MOU in writing at any time and such amendments shall become effective upon written approval of the PARTIES.

X. MOU INTERPRETATION:

The PARTIES will construe the terms of this MOU pursuant to the provisions set forth in paragraph II.

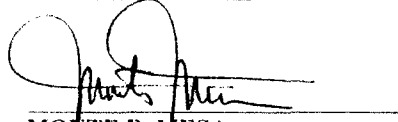
XI. ADOPTION:

The following officials, having reviewed the terms contained herein, concur with, and hereby approve this MOU:

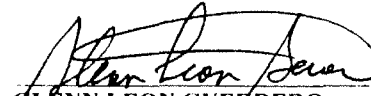
 SEAN T. CONNAUGHTON Maritime Administrator Maritime Administration	 FELIX P. CAMACHO Governor Territory of Guam
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Date: 12/08/08

Date: 11/26/08

 MONTE D. MESA Chairman, Board of Directors Port Authority of Guam
--

Date: 11/24/08

 GLENN LEON GUERRERO General Manager Port Authority of Guam
--

Date: 11/21/08

EXHIBIT A: Public Law 110-417 Section 3512

<< 48 USCA § 1421r >>

SEC. 3512. PORT OF GUAM IMPROVEMENT ENTERPRISE PROGRAM.

SEC. 3512. PORT OF GUAM IMPROVEMENT ENTERPRISE PROGRAM.

- (a) In General- The Secretary of Transportation, acting through the Administrator of the Maritime Administration (in this section referred to as the `Administrator'), may establish a Port of Guam Improvement Enterprise Program (in this section referred to as the `Program') to provide for the planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities.
- (b) Authorities of the Administrator- In carrying out the Program, the Administrator may--
- (1) receive funds provided for the Program from Federal and non-Federal entities, including private entities;
 - (2) provide for coordination among appropriate governmental agencies to expedite the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects carried out under the Program;
 - (3) provide for coordination among appropriate governmental agencies in connection with other reviews and requirements applicable to projects carried out under the Program; and
 - (4) provide technical assistance to the Port Authority of Guam (and its agents) as needed for projects carried out under the Program.
- (c) Port of Guam Improvement Enterprise Fund-
- (1) ESTABLISHMENT- There is established in the Treasury of the United States a separate account to be known as the `Port of Guam Improvement Enterprise Fund' (in this section referred to as the `Fund').
 - (2) DEPOSITS- There shall be deposited into the Fund--
 - (A) amounts received by the Administrator from Federal and non-Federal sources under subsection (b)(1);
 - (B) amounts transferred to the Administrator under subsection (d); and
 - (C) amounts appropriated to carry out this section under subsection (f).
 - (3) USE OF AMOUNTS- Amounts in the Fund shall be available to the Administrator to carry out the Program.

(4) ADMINISTRATIVE EXPENSES- Not to exceed 3 percent of the amounts appropriated to the Fund for a fiscal year may be used for administrative expenses of the Administrator.

(5) AVAILABILITY OF AMOUNTS- Amounts in the Fund shall remain available until expended.

(d) Transfers of Amounts- Amounts appropriated or otherwise made available for any fiscal year for an intermodal or marine facility comprising a component of the Program shall be transferred to and administered by the Administrator.

(e) Limitation- Nothing in this section shall be construed to authorize amounts made available under section 215 of title 23, United States Code, or any other amounts made available for the construction of highways or amounts otherwise not eligible for making port improvements to be deposited into the Fund.

(f) Authorization of Appropriations- There are authorized to be appropriated to the Fund such sums as may be necessary to carry out this section

Enacted October 14, 2008

Appendix D Strategic Port Designation



UNITED STATES TRANSPORTATION COMMAND
388 SCOTT DRIVE
SCOTT AIR FORCE BASE, ILLINOIS 62225-6357

17 September 2009

MEMORANDUM FOR SECRETARY OF TRANSPORTATION *Mr. Secretary*
SECRETARY OF THE NAVY
UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY & LOGISTICS
VICE CHAIRMAN, JOINT CHIEFS OF STAFF
COMMANDER, US PACIFIC COMMAND

FROM: TCCC

SUBJECT: Guam Designated Strategic Port

1. On Monday, 14 Sep 2009, the Military Surface Deployment and Distribution Command designated the Port of Guam as the United States' 16th commercial Strategic Seaport. As I discussed with Deputy Maritime Administrator Matsuda this week, I view this designation as a great opportunity for Guam and an operational advantage for the United States. The Port of Guam will be a vital intermodal conduit for the deployment of forces and associated supplies to the Pacific theater.
2. Over the years, Guam has evolved from a logistics support base to a forward deployed strategic military asset. In the near future, Guam will experience growth in the total number of U.S. military forces, including approximately 8,000 U.S. Marines, over 600 U.S. Army Soldiers, and their dependents. This expansion will not only benefit the Department of Defense, but will provide economic growth for the island and the Marianas Region.
3. To support this growth, the port will need to upgrade its cargo handling equipment and facilities. I realize that Strategic designation does not guarantee federal funding for port improvement, but it does underscore the need for funding for infrastructure improvement. A modernized port will provide additional deployment options for our forces forward and greater flexibility to support humanitarian assistance and disaster relief missions in the Pacific theater. Thus, I strongly support efforts to modernize the port to accommodate mission requirements. I also request the Department of Transportation consider the expansion of mission at Guam and the potential for further growth as important factors as they weigh grants and stimulus funding for critical transportation infrastructure improvements.
4. I look forward to working with you as we collectively work to improve Guam's port infrastructure in support of PACOM, our other COCOMs, and our warfighters.

YR
Duncan J. McNabb
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General, USAF
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cc:
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