



**A.B. WON PAT**  
INTERNATIONAL AIRPORT AUTHORITY, GUAM  
ATURIDAT PUETTON BATKON AIREN GUAHAN ENTENASIONAT

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**MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING**  
**3:00 p.m., Thursday, March 28, 2013**  
**GIAA TERMINAL CONFERENCE ROOM #3**

**1. CALL TO ORDER AND ATTENDANCE**

Chairman Francisco G. Santos called the A.B. Won Pat International Airport Authority, Guam (GIAA) regular meeting to order at 3:06 p.m. The presence of Directors is noted as follows: Jesus Q. Torres, Vice Chairman, Rosalinda A. Tolan; Martin J. Gerber; Edward G. Untalan, and Lucy M. Alcorn. Also present were Charles H. Ada II, Executive Manager, Peter Roy Martinez, Deputy Executive Manager, Carlos P. Bordallo, Acting Comptroller, Frank R. Santos, Business and Financial Consultant, Janalynn C. Damian Esq., and Michael A. Pangelinan Esq., Legal Counsel. The Chairman welcomed the presence of Airport Tenants, stakeholders, and members of the public who are noted in a sheet made as an attachment to the minutes.

**2. APPROVAL OF AGENDA**

Vice Chair Torres made motion to approve the agenda as presented, seconded by Director Tolan; motion carried.

**3. APPROVAL OF MINUTES**

**A. February 28, 2013 Board Regular Meeting**

Director Untalan made motion to approve the minutes, subject to correction, seconded by Director Alcorn; motion carried.

**4. CORRESPONDENCE**

Chairman called upon Executive Manager to present any correspondence. The Executive Manager informed the Board that in January 2013 the Federal Aviation Administration (FAA) received a letter at the Honolulu Airports District Office regarding allegations in reference to GIAA's Lease Agreement with Pac Air and its operations. Executive Manager went on to say that GIAA has been in extensive discussion with the FAA regarding this issue. In closing, the Executive Manager informed the Board that a letter dated March 27, 2013 was received stating that GIAA did not violate any federal regulations, and the matter is now considered closed.



AMERICAN ASSOCIATION  
OF AIRPORT EXECUTIVES



**NASAO**  
National Association of State Aviation Officials



Copies were provided for the Board's information.

## **5. MATTERS FOR BOARD RATIFICATION/APPROVAL**

### **A. Approval of Award for Specialty Retail Concession Multi Concepts RFP No. GIAA010-FY12**

Chairman Santos disclosed for the record that there have been some media reports relating to the trip to Korea for the inaugural flight of Jeju Air in September 2012, that both the Chairman and Director Tolan attended. Although there were statements of supposed gifts received by the Chairman and Director, he stated that he did not believe there were any ethical violations. However, to avoid the appearance of any wrong doing, and to maintain the public's confidence and integrity of the solicitation process, the Chairman chose to abstain from participating in any discussions or votes relating to this particular RFP. The Chairman requested the item be chaired by Vice Chair Torres. At this time, Director Tolan also chose to abstain and removed herself from any discussion or vote on this item. As there were no objections from the members, the meeting proceeded with Vice Chairman Torres presiding.

Acting Chairman Torres called for an open discussion regarding the RFP. Legal Counsel, Michael A. Pangelinan informed the Board that after the two Directors abstained, there is still a quorum of four (4) Directors for today's meeting. The Board's By-Laws refer to Robert's Rules of Order to determine how a Board will pass an agenda item, and states that a majority vote will pass an agenda item. The By-Laws also state that the Chairman of the meeting shall only vote if the vote could affect the outcome. Board members discussed and reiterated the voting process and the number of votes needed to pass the agenda item. Director Untalan suggested the Board proceed with the Executive Managers presentation before discussing voting numbers in depth.

Executive Manager informed the Board that the Airport issued a Request For Proposal seeking a qualified concessionaire to develop, construct and operate a high quality specialty retail concession at the main passenger terminal featuring branded merchandise products using exciting and innovative marketing and merchandising techniques to enhance the terminal environment and to appeal to the traveling public. The RFP was advertised in the Pacific Daily News July 19, 23, and 25, 2012; and in the Marianas Variety July 19, 23, and 30, 2012. The deadline to submit proposals was originally September 21, 2012 but was extended to October 17, 2012 due to an amendment to the RFP. The Manager reported that eight (8) firms obtained RFP packages, however only four (4) firms submitted proposals before the established deadline. To maintain the confidentiality requirement of the procurement law, each of the proposers were randomly assigned a letter designation. An evaluation committee was established, and as a result of the tabulation of scores, the order of ranking is as follows:

1. Proposer 'A'
2. Proposer 'D'
3. Proposer 'C'
4. Proposer 'B'

Management requests that the Board of Directors approve the ranking results of the highest ranked proposer, being proposer 'A', and that proposer 'A' be awarded the Specialty Retail Concession Agreement. Acting Chairman Torres called for any Board member that would like to comment or discuss the RFP that the Executive Manager presented. Director Untalan inquired about the random letter designation, to which Legal Counsel Damian responded that the letter designation was in the order of how the proposals were received. Director Untalan asked how it was handled afterwards, and was the evaluation committee and Executive Manager aware of the results? Ms. Damian responded stating yes, the Executive Manager was aware of the evaluation results. Director Untalan went on to ask if there was a third party that assisted the evaluation committee with conducting a review of the financial analysis. The Executive Manager's response was yes, there was a third party that assisted, and it was an off-island consultant. Director Untalan inquired if the off-island consultant gave a recommendation or just provided an analysis? The Executive Manager informed the Board that there was no recommendation, purely analytical. Discussion followed with Acting Chairman Torres questioning the assignment of the random letter designation, leaving the names of the proposers confidential. He stated that the Airport has never done this before, and found the process to be questionable.

At this time, a recess was suggested. Director Untalan made motion to recess and convene the regular meeting after the recess, seconded by Director Alcorn; motion carried. The Board recessed at 3:54 p.m.

After recess, the regular meeting convened at 4:11 p.m.

Director Untalan stated he would like to make a motion that the item be tabled, so that Legal Counsel may be able to review all of the matters that were raised accordingly, seconded by Director Alcorn. Discussion followed with Mr. Pangelinan informing the Board that Counsel would like to do an analysis and come up with a recommendation on how to proceed with this matter. As there were no further discussions, the motion was duly carried.

- B. Approval of Board Resolution No. 13-02: Extension of the Agreement for Legal Services with Calvo Fisher & Jacob LLP and the Agreement for Legal Services with Teker Torres & Teker**

The Executive Manager stated that item (B) is a Board Resolution relative to consenting to the Extension of the Agreement for Legal Services with Calvo Fisher & Jacob (Legal

Counsel) and Teker Torres & Teker now known as Torres Law Group (Conflict Counsel). Agreements were entered into with both firms in May 2010. Director Tolan inquired on the number of Conflict Counsels providing services to GIAA. Executive Manager replied stating there are currently two (2) Conflict Counsels providing services, Attorney Tom Fisher and Torres Law Group. Ms. Arriola also added that Torres Law Group is on a one (1) year contract and only handle particular matters; unless Conflict Counsel, Tom Fisher has a conflict, in which case Torres Law Group will then provide services. Director Tolan made motion to approve Board Resolution No. 13-02, which extends the term of the Agreement for Legal Services between GIAA and Calvo Fisher & Jacob, LLP for a period of year, commencing on March 23, 2013; and the Agreement for Legal Services between GIAA and Torres Law Group, commencing on March 1, 2013. The motion was seconded by Director Gerber; motion carried.

**C. Ratification of Disbursements**

Vice Chair Torres made a motion to ratify payments above the \$50,000.00 threshold made to vendors for the period of February 27, 2013 – March 26, 2013, seconded by Director Untalan; motion carried.

**6. OLD BUSINESS**

**A. Executive Manager's Report**

The Executive Manager presented brief reports on various issues and announcements relating to Airlines, System Upgrades and a number Legislative Issues, to include Bill 60-32; an act to create the "Made in Guam" business incubator program within the GIAA. The incubator program gives opportunities to small businesses to provide "Made in Guam" products at the Airport. The Executive Manager reported that some concerns were raised regarding Bill 60-32, which he had transmitted to Senators and the Oversight Chairman. He went on to state that written testimony will be provided by GIAA during the Public Hearing scheduled for the upcoming Monday. Vice Chair Torres requested for a copy of the written testimony.

The Executive Manager announced that a representative from FAA's Airport District Office will be meeting with Management and Division Heads on April 15 and 16, 2013 to discuss project updates and general compliance. Also, scheduled for April 29, 2013 FAA will conduct their annual certification inspection of Guam Airport facilities; along with reviews of re-certifications, record-keeping and documentation, there will also be inspections of the airfield, runways, aprons and safety areas.

The Manager reported that under the LEO Reimbursement Program, GIAA was awarded \$1,051,200.00 to fund three (3) years of services. Effective April 1, 2013, approximately \$350,000.00 per year for Airport Police services at the TSA checkpoint.

**B. Financial Report**

For the Board's information, Carlos P. Bordallo, Acting Comptroller presented the financial report as of February 28, 2013. Director Gerber noted the 80.8% increase over the budgeted amount for the Net Revenues from Operations and commended the Comptroller for the report.

**C. Legal Counsel's Report**

Legal Counsel recommended that discussions regarding litigation matters be reported during Executive Session. The Board had no objection.

**D. Tenant Matters**

No Tenant Matters reported.

**E. Status on Capital Improvement Programs**

Mr. Frank Santos presented the UDO analysis, reporting that the Airport received approval to advertise for Phase 2 of the Runway Rehabilitation Project. A Notice to Proceed is expected to be issued for the Noise Mitigation Project in April 2013, which will be another twenty-eight homes to be sound-proofed. Mr. Santos reported that "Grant Season" is approaching and from May – June GIAA will be working with the FAA with regard to what grants to anticipate for Fiscal Year 2013. Mr. Santos informed the Board that GIAA has been working with GEDA regarding the proposed bond refunding and he will provide a detailed report at the next regular Board meeting. Director Tolan inquired on the Air-conditioning systems and installation, if it was completed. Mr. Santos replied, stating that it is expected to be completed by May 2013.

**7. NEW BUSINESS**

No New Business presented.

**8. EXECUTIVE SESSION**

The Chairman announced that the Board will recess and convene Executive Session after the recess. Vice Chair Torres made motion to recess and convene Executive Session after the recess, seconded by Director Tolan; motion carried. The Board recessed at 4:42 p.m.

Chairman Santos called Executive Session to order at 4:59 p.m. Executive Session adjourned at 5:10 p.m., at which time the Board reconvened the regular meeting.

**9. PUBLIC COMMENTS**

The Chairman called upon any public member wishing to make comments. There was no response.

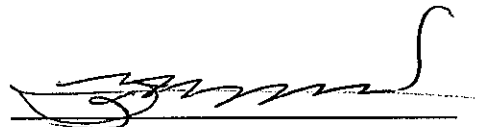
**10. ADJOURNMENT**

The Chairman announced that the next regular meeting is scheduled for Thursday, April 25, 2013. Director Untalan made a motion to adjourn the meeting, seconded by Director Tolan; motion carried. The meeting adjourned at 5:14 p.m.

Respectfully submitted,

  
Amanda O'Brien-Rios  
Board Secretary

APPROVED:

  
FRANCISCO G. SANTOS  
Chairman of the Board

05/01/13  
Date

Attachment



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## **BOARD OF DIRECTORS REGULAR MEETING**

**3:00 p.m., Thursday, March 28, 2013**

**Terminal Conference Room No. 3**

### **AGENDA**

1. Call to Order and Attendance
2. Approval of Agenda
3. Approval of Minutes
  - A. February 28, 2013 Regular Meeting
4. Correspondence
5. Matters for Board Ratification/Approval
  - A. Approval of Award for Specialty Retail Concession Multi Concepts RFP No. GIAA010-FY12
  - B. Approval of Board Resolutions No. 13-02 and 13-03: Extension of the Agreement for Legal Services with Calvo Fisher & Jacob, LLP (Legal Counsel), and Teker Torres & Teker (Conflict Counsel)
  - C. Ratification of Disbursements
6. Old Business
  - A. Executive Manager's Report
  - B. Financial Report
  - C. Legal Counsel's Report
  - D. Tenant Matters
  - E. Status of Capital Improvement Programs
7. New Business
8. Executive Session
9. Public Comment(s)



AMERICAN ASSOCIATION  
OF AIRPORT EXECUTIVES



**10. Adjournment**





A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM

BOARD OF DIRECTORS REGULAR MEETING

3:00 P.M., THURSDAY, MARCH 28, 2013

GIAA TERMINAL CONFERENCE ROOM #3

SIGN IN SHEET

	<u>PRINT NAME</u>	<u>COMPANY/AGENCY</u>
1.	G. PEREZ	LEADING EDGE
2.	L. FRITZ	FRITZ & ASSOC.
3.	Tony Stark	Loftic
4.	STUBZ PARK	LOTTE.
5.	A. COOK	LIGHTFOOT.
6.	THOMAS KIM	LOTTE
7.	Jim Beightley	DPS.
8.	Joann Camacho	DPS
9.	Mindy Agnon	KUAM
10.	Mike Pargher	CFJ
11.	Samuel Ramirez	CFJ
12.	John Amick	GIAM
13.	Sandra Silverio	JRDE
14.	Joey Santos	Estee Lauder companies
15.	RAWLON MANTAWONA	CABOT MANTAWONA
16.	CEsar CABOT	CABOT MANTAWONA
17.	Steve Bu	DPS
18.	VICTOR J. CRUZ	GIAM
19.	FRANK P. TAITANO	GIAM

20.	QUINCY -	CIAA - CPS
21.	J. JAVELANA	GIAA
22.	Jerich Salan	PDN
23.	Jermaine Alorta	Legislature
24.	MONTE MESA	GPD
25.	BILL BLAIR	BSTN
26.	P. Faasulac	CIAA Mktg
27.	Benny A. BAZA	ARFF
28.	Beraldrine Castillo	MV6000
29.	MARIA CRISTOBAL	ISLA
30.	ERISA CRISTOBAL	ISLA
31.	ANN PAUTISIA	ACCT.
32.	Bruce L. Hayes	CBN
33.	Karin T Perry	VOG
34.	Sarah	CFJ
35.	Carlos Bordello	GIAA
36.	CHARLES H. ADAM	GIDA
37.		
38.		
39.		
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42.		
43.		
44.		

# Police officers plead not guilty in Blue House case

## Court jurisdiction debated

By Geraldine Castillo  
geraldine@mvguam.com  
Variety News Staff

TWO police officers implicated in the Blue House Lounge prostitution and kidnapping case yesterday pled not guilty to a set of new charges contained in a third superseding indictment in Superior Court.

Guam Police Department Officers David Manila and Anthony Quenga appeared for an arraignment before Magistrate Judge Alberto Tolentino and waived a reading of the indictment, pleading not guilty to the charges and requesting a jury of 12, discovery, and for grand jury proceedings to be provided.

Their co-defendant Blue House owner Song Ja Cha, however, declined to enter a

plea due to a pending appeal in the Supreme Court of Guam.

Because of issues raised between Cha's defense counsel Jeffrey Moots and lead prosecutor Assistant Attorney General Nelson Werner, the judge scheduled a continued arraignment hearing for Cha on March 27 at 1 p.m.

"What will happen is the court — as to Miss Cha — will delay the arraignment for one week. This will allow the court to do a little more research on the issue," Tolentino said.

"As to the two gentlemen — Mr. Quenga and Mr. Manila — the court will proceed with the arraignment on the third superseding indictment. The court believes that the appeal as to Miss Cha does not affect the government's ability to go



Guam Police Department Officer David Manila appeared for an arraignment before Magistrate Judge Alberto Tolentino. Matt Weiss / Variety

forward with the superseding indictment against you," Tolentino told the two officers.

### Jurisdiction Issues

According to Moots, because Cha has a pending appeal in the Supreme Court, the lower court has no jurisdiction to take a plea from the defendant.

The interlocutory appeal, filed by Cha's attorney F. Randall Cunliffe, challenged Judge Anita Sukola's denial of a motion for dismissal on grounds of double jeopardy.

Sukola, who is hearing the case, recently denied several

motions to dismiss filed by the defendants. The interlocutory appeal is an appeal to the high court of a ruling by the lower court that was made before the conclusion of a trial.

Moots argued that the appeal in Supreme Court takes the case from Superior Court's custody.

Werner disagreed, stating that while the prosecution was aware of the interlocutory appeal, a motion to stay in the lower court was required.

"No motion to stay was filed," he told the court. "And therefore it's our position

that we have jurisdiction to proceed with the superseding indictment."

Apart from the continued arraignment for Cha, all defendants are scheduled to return to court on April 1 for a status hearing before Sukola. All remain behind bars.

### Charges

Cha and Officers Quenga and Manila now face a total of 17 charges in the third superseding indictment which include kidnapping, felonious restraint, compelling and promoting prostitution, criminal sexual conduct, criminal intimidation, and official misconduct, among others.

The alleged crimes committed by the defendants in the case occurred in a period between April 2006 and January 2008 and lists up to 10 female victims who were subjected to prostitution at the Blue House Lounge.


A third police officer previously named in the case, Mario Laxamana, pleaded guilty last week and agreed to fully cooperate with prosecutors as well as testify when his co-defendants go to trial. Laxamana pleaded guilty to felonious restraint as a third-degree felony and official misconduct as a misdemeanor while prosecutors agreed to dismiss the remaining charges.

## GWIB PUBLIC NOTICE

The Guam Workforce Investment Board will hold its Regular Monthly Meeting on **Thursday, March 28, 2013 at 4:00 p.m.** at the GDOL/AHRD Conference Room, 3rd floor, GCIC Building in Hagåtña.

For more information, or for individuals needing special accommodations, please contact Joleen Santos or Marie Marín at 300-4585/4581 or email joleen.santos@gdol.guam.gov

This ad is paid with government funds by the Agency for Human Resources Development.



### GUAM

ECONOMIC DEVELOPMENT AUTHORITY  
*Accelerated Development Through Smart Growth*


#### NOTICE OF REGULAR BOARD MEETING


The Guam Economic Development Authority (GEDA), a public corporation, will be its Regular Board of Directors meeting on **Thursday, March 28, 2013 at 1:30 p.m.** in the GEDA conference room located in Suite 311, 5th Floor, International Trade Center (ITC) Building, 590 South Marine Corps Drive, Tamuning, Guam.

Persons requiring special accommodations should contact GEDA's ADA coordinator, Mr. George Bamba, at 647-4332 ext. 120 or gbamba@gueda.net.

/s/ Henry J. Tulliano  
Acting Administrator

This ad was paid for with GEDA's General Fund





### PUBLIC NOTICE

The Board of Directors of the A.B. Won Pat International Airport Authority, Guam (GIAA) will convene its Regular Board meeting on **Thursday, March 28, 2013 at 3:00 p.m.** in Terminal Conference Room No. 3. In addition to regular matters, pursuant to 5 G.C.A. §811(c)(2), Executive Session will be held to discuss pending litigation to which GIAA is a party. Parking is available in the Public Parking Lot.

*For special accommodations or agenda items, please call the Board Office at 642-4717/18.*

(This ad paid for by GIAA)

## DeSoto defense wants more time to review 456 pages of documentation

By Geraldine Castillo  
geraldine@mvguam.com  
Variety News Staff

MURDER suspect Chad Ryan DeSoto appeared briefly in Superior Court yesterday for a trial setting, but the hearing was continued to next month, allowing more time for his attorney to go over hundreds of pages of discovery documents pertinent to his case.

DeSoto's attorney, Public Defender Eric D. Miller, informed the court that he received a disk of discovery, which includes police reports and grand jury proceedings. However, he said he still needed to go over the material with DeSoto.

"We have received a disk of discovery. I do not know yet if it's all of it, [but] we certainly have received a lot of it," Miller told Judge Anita Sukola.

In response, Sukola told Miller to make sure he has gone over all information with his client.

Miller said he hasn't had the opportunity yet to go over the



Murder suspect Chad Ryan DeSoto appeared briefly in Superior Court yesterday for a trial setting. Matt Weiss / Variety

discovery with his client due to the high volume of documents, which amounted to 456 pages.

"It's a lot of material, your honor. It's on a disk. I know it's hundreds of pages," he said. "We filed motion for discovery but we need a chance to review what we have, so far before we determine what else we're going to need."

Meanwhile, Sukola informed the present prosecutor, Assistant Attorney General Jesse Nasis, that she expected the assigned prosecutor, Assistant Attorney General Gerald Henderson, to be available at the next court

hearing.

The 21-year-old DeSoto is scheduled to return to court for another trial setting on April 10 at 10 a.m.

DeSoto is being held on \$3 million bail in connection with the Feb. 12 Tumon attack that left three Japanese tourists dead and 11 others injured.

He pled not guilty by reason of mental illness to three counts of aggravated murder and 11 counts of attempted aggravated murder, both as first-degree felonies and attached with special allegation of possession and use of a deadly weapon.

Marianas Variety-Guam Edition is circulated by home and office delivery, consignments, and vending machines throughout Guam, as mail delivery to the Federated States of Micronesia, the Marshall Islands, South Pacific, Hawaii, Japan and the continental U.S. Daily coverage can also be read from our website [www.mvguam.com](http://www.mvguam.com).

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## More visitor traffic anticipated with Seafix's warship repair certification

By Raquel C. Bagnol  
raquel.bagnol@mvariety.com  
Variety News Staff

SAIPAN — Seafix Inc., a company that specializes primarily in ship repair and maintenance in Micronesia, is anticipating an increase in visitor traffic in the following months following the award they got to repair visiting U.S. military vessels and warships.

In an interview with Variety, Seafix Inc. GM Mark R. Blackburn said the exclusive Boat Repair Agreement issued by the Military Sealift Command/Ship Support Unit Guam is seen to increase not only visitor traffic but also revenue.

Blackburn said the U.S. navy has lots of choices on where to go for Rest and Recreation but they get lots of A-1 feedback from those who have been here. "If they realize they can come for R&R and get some needed maintenance at the same time, it would make Saipan more attractive," Blackburn said.

He said that to clarify earlier reports, Seafix Inc. has been working with the government vessels like all the preposition ships on Saipan since they started business for the last 18 years, providing industrial assistance and maintenance work.

"The vessels that are being referred to in the ABR are the military vessels or war ships that visit the islands for rest and

recreation," he said.

He said the ABR award is another highlight in the Seafix milestone and accomplishments, after over three years of working to meet all the requirements and standards of the U.S. military.

Blackburn said Seafix Inc. did repairs on the USS Cowpens as a test model during the audit for quality assurance.

"The quality control/assurance people from the navy flow in here and witnessed all our procedures and paperwork and everything that we do, and saw that we fit seamlessly with the standards of the U.S. navy," Blackburn said.

He said that was the final qualifying factor before they were awarded the ABR.

"We had been audited by several groups of from the navy who checked our capabilities, procedures, financial capability and everything else," Blackburn said.

The award is a reward for years of renewed capabilities and continued improvement of Seafix's Quality Management System as the only American Bureau of Shipping certified to provide ship repair and industrial assistance on Saipan, a release Blackburn provided to the Variety staff.

Seafix Inc. is an affiliate company of the Ambyth Group of Companies. For more information visit [www.seafix.net](http://www.seafix.net).

## Navy, House discuss increased CNMI buildup

By Emmanuel E. Trediano  
emmanuel.trediano@mvariety.com  
Variety News Staff

SAIPAN — Two officials of the U.S. Navy met last week with House representatives to discuss additional military buildup in the CNMI.

But Adm. Tilghman D. Payne, commander of the Joint Region Marianas of the U.S. Pacific Command, said the proposed action to provide more training sites in the islands "has nothing to do" with North Korea's recent threat to attack U.S. military facilities in Guam and Japan.

Payne was accompanied by

Defense coordinating officer and political military advisor Roy N. Tsutsui in a meeting with lawmakers at the House chamber at 10 a.m. Thursday last week.

They presented Pentagon's proposed action to "establish a series of ranges and training areas within the CNMI to meet unfilled unit-level and combined-level military training requirements in the Western Pacific."

The purpose is to "reduce existing and anticipated joint training deficiencies for Pacific Command and its service components in the

Western Pacific."

Payne and Tsutsui said the military has identified Tinian and Pagan as only possible locations for combined and unit-level training.

Payne told reporters that these proposals are just part of the continuing dialogue between the NMI Legislature and the Defense Department. It is an interaction between the military and our community.

In separate interview, Senate Floor Leader Ray N. Yumul said the Senate welcomes the military buildup here, knowing there be will economic activities that come with it.

## Army base workers in Marshall Islands face layoffs

By Giff Johnson  
For Variety


MAJURO — Workers at a missile testing range in the Pacific are facing job losses as U.S. government budget "sequestration" cutbacks begin hitting home 7,000 miles from Washington D.C.

The U.S. ambassador to the

Marshall Islands briefed President Christopher Loeak and other elected leaders earlier this week on the possibility that 15 percent of the Marshall Islands workforce at the Reagan Test Site on Kwajalein Atoll could lose their jobs.


"One hundred and thirty (job cuts) is the number on

the table," Foreign Minister Phillip Muller said Thursday following a briefing by U.S. Ambassador Thomas Armbruster. There are currently about 900 Marshall Islands workers at the base. American workers are also expected to be affected by the funding cutbacks.



### GUAM

ECONOMIC DEVELOPMENT AUTHORITY  
Aturidat Ilektesedat Guahan




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Persons requiring special accommodations should contact GEDA's ADA coordinator, Mr. George Bamba, at 647-4332 ext. 120 or [gbamba@guameda.net](mailto:gbamba@guameda.net).

/s/ Henry J. Taltano  
Acting Administrator  
This ad was paid for with GEDA's General Fund



The Honorable  
**EDDIE B. CALVO**  
Governor




The Honorable  
**RAY TENORIO**  
Lt. Governor

## PUBLIC NOTICE

The Board of Directors of the A.B. Won Pat International Airport Authority, Guam (GIAA) will convene its Regular Board meeting on **Thursday, March 28, 2013 at 3:00 p.m.** in Terminal Conference Room No. 3. In addition to regular matters, pursuant to 5 G.C.A. 5811(c)(2), Executive Session will be held to discuss pending litigation to which GIAA is a party. Parking is available in the Public Parking Lot.


For special accommodations or agenda items, please call the Board Office at 642-4717/18.

(This ad paid for by GIAA)



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Telephone Nos. (671) 648-3054/55 or Facsimile (671) 648-3165




#### ADVERTISEMENT

### INVITATION FOR BID

This notice is paid for by the GUAM POWER AUTHORITY EXTERNAL FUNDS  
Public Law 26-12


BID NO.	DUE DATE	TIME	DESCRIPTION
GPA-038-13	03/21/2013	2:00 P.M.	New Transmission and Distribution Steel Pole

Bid package may be picked up at the GPA Procurement Office, 1st Floor, GPA Central Office, 1911 Route 16, Harmon, Guam 96911 or downloaded from GPA website: [www.guampowerauthority.com](http://www.guampowerauthority.com). All interested firms should register with our GPA's Procurement Division to be able to participate in the bid. Please call our office at (671) 648-3054 / 3055 to register. Registration is required to ensure that all "Amendments and Special Reminders" are communicated to all bidders throughout the bid process.



### GUAM POWER AUTHORITY

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#### ADVERTISEMENT

### INVITATION FOR BID

This notice is paid for by the GUAM POWER AUTHORITY REVENUE, CIP, & O&M FUNDS  
Public Law 26-12

BID NO.	DUE DATE	TIME	DESCRIPTION
GPA-034-13	04/11/2013	2:30 P.M.	Indefinite Quantity Contract for Concrete Poles, 35' and 45'
GPA-037-13	04/11/2013	2:00 P.M.	SFG Gas Recovery Machine
GPA-041-13	04/11/2013	3:00 P.M.	Local Courier Services

Bid packages may be picked up at the GPA Procurement Office, 1st Floor, GPA Central Office, 1911 Route 16, Harmon, Guam 96911 or downloaded from GPA website: [www.guampowerauthority.com](http://www.guampowerauthority.com). All interested firms should register with our GPA's Procurement Division to be able to participate in the bid. Please call our office at (671) 648-3054 / 3055 to register. Registration is required to ensure that all "Amendments and Special Reminders" are communicated to all bidders throughout the bid process. Procurement Instruction are posted on the Authority's website at <http://www.guampowerauthority.com/procurement/index.html>

**MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING**  
**3:00 p.m., Thursday, February 28, 2013**  
**GIAA TERMINAL CONFERENCE ROOM #3**

**I. CALL TO ORDER AND ATTENDANCE**

Chairman Francisco G. Santos called the A.B. Won Pat International Airport Authority, Guam (GIAA) regular meeting to order at 3:07 p.m. The presence of Directors is noted as follows: Jesus Q. Torres, Vice Chairman, Rosalinda A. Tolan; Martin J. Gerber; Edward G. Untalan; and Lucy M. Alcorn. Also present were Charles H. Ada, Executive Manager, Peter Roy Martinez, Deputy Executive Manager, Carlos P. Bordallo, Acting Comptroller, Frank R. Santos, Business and Financial Consultant, and Janalynn C. Damian Esq., Legal Council. The Chairman welcomed the presence of Airport Tenants, stakeholders, and members of the public who are noted in a sheet made as an attachment to the minutes.

**II. APPROVAL OF AGENDA**

Vice Chair Torres made motion to approve the agenda as presented, seconded by Director Tolan; motion carried.

**III. APPROVAL OF MINUTES**

**A. January 29, 2012, Board Regular Meeting**

Director Alcorn made motion to approve the minutes, subject to correction, seconded by Vice Chair Torres; motion carried.

**IV. CORRESPONDENCE**

No correspondence presented.

**V. MATTERS FOR BOARD RATIFICATION/APPROVAL**

**A. Approval of TSA Other Transaction Agreement**

Mr. Frank Santos presented a request for Board's approval of the TSA Other Transaction Agreement. He stated it is a grant agreement from TSA, in the amount of \$444,000.00. Mr. Santos explained that there are two parts to the agreement involving the baggage screening; the first part is Recapitalization, the replacement of two machines for a

newer model; the second part is Optimization, the relocation of the checked baggage screening pods. TSA has agreed to fund both up to 30%. The amount of \$444,000.00 was derived from a proposal by Siemens, the manufacturer of the baggage systems currently in use. Mr. Santos stated there are also two parts to the request; the TSA Other Transaction Agreement and the approval of the selection of Siemens to perform the work, also adding that Siemens is the company that did the design work for the "In-line" project which fell through because of funding issues. After some discussion on the positive impact the Recapitalization effort will bring, Vice Chair made motion to approve the TSA Other Transaction Agreement, seconded by Director Tolan; motion carried.

**B. Approval of Award for Residential Sound Insulation Phase 2A – IFB No. GIAA-C02-FY13**

The Executive Manager presented a summary of the Invitation For Bid for the above noted project. The project is phase 2 under the Noise Mitigation Program, with an objective of providing noise reduction to those homes mostly affected by aircraft operations. Of the fourteen (14) firms/individuals that purchased bid packages, six (6) firms submitted bid proposals before the submission deadline of February 5, 2013. Management recommended that the Board approve the contract award of \$1,787,324.04 to Nippo Corporation who has been determined to have met the standards of responsibility and responsiveness outlined in the Guam Procurement Regulations. Janalynn Damian, Legal Counsel, made a disclosure for the record that the item be referred to Conflict Counsel as Calvo Fisher & Jacob LLP represent two (2) of the bidders. Director Tolan made motion to approve management's recommendation to authorize the contract award to Nippo Corporation, seconded by Vice Chair Torres; motion carried.

**C. Ratification of Disbursements**

Vice Chair Torres made a motion to ratify payments above the \$50,000.00 threshold made to vendors for the period of January 30, 2013 – February 22, 2013, seconded by Director Gerber; motion carried.

**VI. OLD BUSINESS**

**A. Executive Manager's Report**

The Executive Manager presented updates on various matters concerning airlines, including an announcement of Japan based airline, Skymark commencing services with charter flights. The flights are planned to start during March 14 – 23. The key element to Skymark's service is to operate during non-peak hours.

The Manager reported on the Airports part in returning families and the deceased back to Japan after the tragic attack of tourists in Tumon in February. Executive Manager noted the assistance provided by GIAA Marketing and Airport Police who worked closely with GVB, GPD and the Governor's Office from February 14 – 18.

The Executive Manager announced the Pacific Asia Travel Associations' (PATA's) recent nomination of GIAA's Executive Manager, Charles H. Ada II to the PATA Board, which was accepted by Mr. Ada. The nomination will now be ratified at the PATA Annual Summit from April 25 – 28. Another upcoming event also announced was the 8<sup>th</sup> Airports Council International (ACI) Asia-Pacific Regional Assembly, Conference and Exhibition which will be held in Phuket, Thailand from April 22 – 25. A delegation from GIAA led by Deputy Executive Manager, Peter Roy Martinez, Director Gerber, and two (2) Marketing staff will be in attendance at the Conference.

The Manager reported that GIAA and GEDA presented a 'Credit Update' briefing to a contingent from Standard & Poor's on February 6, 2013 in preparation of the Airport's plan to refinance the 2003 Bonds. Director Untalan was in attendance for the briefing and informed the Board that he thought the presentation went rather well, staff and Management did an excellent job and provided a wealth of information to the group that represented Standard & Poors.

**B. Financial Report**

For the Board's information, Carlos P. Bordallo, Acting Comptroller presented the financial report as of January 31, 2013.

Vice Chair Torres inquired about the Airport Police having an adequate number of vehicles to operate appropriately, and explained that now would be the perfect time to request as the budget allows for it. The Chairman stated that he would rather see a golf cart in front instead of a patrol vehicle, and went on to suggest that Chief Robert Camacho request for two to three golf carts.

**C. Legal Counsel's Report**

Legal Counsel recommended that discussions regarding litigation matters be reported during Executive Session. The Board had no objection.

**D. Tenant Matters**

No Tenant Matters reported.

**E. Status on Capital Improvement Programs**

Mr. Frank Santos presented the UDO analysis.

**VII. NEW BUSINESS**

No New Business presented.

The Chairman announced that the Board will recess and convene Executive Session after the recess. Vice Chair Torres made motion to recess and convene Executive Session after the recess, seconded by Director Untalan; motion carried. The board recessed at 4:03 p.m.

**VIII. EXECUTIVE SESSION**

Chairman Santos called Executive Session to order at 4:14 p.m. Executive Session adjourned at 4:30 p.m.

**IX. PUBLIC COMMENTS**

The Chairman called upon any public member wishing to make comments. There was no response.

**X. ADJOURNMENT**

Director Untalan made a motion to adjourn the meeting, seconded by Director Tolan; motion carried. The meeting adjourned at 4:35 p.m.

Respectfully submitted,

Amanda O'Brien-Rios  
Board Secretary

APPROVED:

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FRANCISCO G. SANTOS  
Chairman of the Board

---

Date

Attachment





P.O. Box 8770  
Tamuning, GU 96931

Tel: (671) 646-0300  
Fax: (671) 646-8823

[www.guamairport.com](http://www.guamairport.com)

March 15, 2013

Mr. Ron Simpson  
Manager, Airports District Office  
Federal Aviation Administration  
300 Ala Moana Blvd.  
Room 7128  
Honolulu, Hawaii 96250

Hafa Adai Mr. Simpson:

Thank you for opportunity to respond to and clarify some concerns which have been raised in regard to GIAA. Mr. Ysrael makes a number of general allegations and false assumptions in his comments. This letter will respond with specific facts. In particular, we are responding to the list of items numbered 1 through 25 which was sent to us by Mr. Juan Reyes. Going through these items, we found that they would best be addressed by grouping related items together, so our response is categorized under the subject headings as follows:

- 1) The Pac Air Ground Lease Agreement and Terms
- 2) The Customs and Quarantine Sublease
- 3) Rental Valuation
- 4) Tax-related Inquiries
- 5) Leases to Non-Aeronautical Tenants
- 6) Airport Security

Despite these categories, our answers to these inquiries should be taken as a whole, as some concerns may touch on more than one category. We will continue to identify the individual queries based on their number in the list from Mr. Reyes. We will first address the concerns raised regarding the Pac Air Ground Lease Agreement and Terms:

#### **I. THE PAC AIR GROUND LEASE AGREEMENT AND TERMS**

*(1) Unusual for a lease to be amended four different times, all conditions beneficial to the lessee and detrimental to GIAA and on the conditions of the lease, e.g. cost of the improvements to be made.*

The business decision to amend the lease was made by GIAA Board of Directors based on the best information and opportunity at the time the agreements



were made. Analysis of the actual terms of the Ground Lease Agreement and Amendments is stated below.

The Ground Lease Agreement between the A.B. Won Pat International Airport Authority and Pac Air Properties, LLC was entered into on October 31, 2006 ("Ground Lease"). The First Amended and Restated Ground Lease Agreement ("First Amended Agreement,") required Pac Air to spend Twenty-Five Million Dollars (\$25,000,000.00), on agreed-upon capital improvements to the leased space, instead of the Five Million Dollars required by the original Ground Lease. In return, the rent for the construction period was deferred for five years (not waived), with a specific schedule for repayment. The term of the original Ground Lease was thirty (30) years, and Pac Air was permitted to obtain a 10 year extension (maximum two times) for each additional 2.5 million dollars spent over its obligated \$5,000,000 investment. The First Amended Agreement, §2(A), changed this by extending the lease term to fifty years from thirty years. The First Amended Agreement also provided GIAA with the right to approve subleases under the Ground Lease Agreement (See First Amended Agreement §6).

Other alterations made by the The First Amended Agreement include a requirement that Pac Air reimburse GIAA for costs of seeking remedies under the agreement in case of termination through Pac Air's default, while clarifying the definition of default under the Agreement. (First Amended Agreement §23C-D). Finally, it places any mortgage or encumbrance "subject and subordinate to" GIAA's bond indentures and the rights of the bondholders. CITE

After the First Amended Agreement, the parties entered into The Second Amended and Restated Ground Lease Agreement ("Second Amended Agreement"). The difference between the Second and the First Amended Agreement is that the Second Amended Agreement clarified that the rent was payable on a monthly basis and corrected the payment schedule, in accordance to the lease terms. The terms themselves remain the same.

The Third Amended and Restated Ground Lease Agreement ("Third Amended Agreement") is largely the same as the First and Second, but was entered when Customs desired to move to the new Pac Air Cargo Facility from its location on a less desirable part of the Airport Property in Tiyan. Because Customs had an existing tenant relationship with GIAA, and the payment methodology had already been set up for GIAA to receive rental payments from Customs, it was decided by the parties that it would be most efficient for Customs to maintain its tenant relationship with GIAA, and for GIAA to sublease the property from Pac Air in order to provide Customs with space in the facility. This would allow GIAA to continue to receive rent revenues from Customs as well, in support of its mandate to be self-sufficient. Therefore, the Third Amended Agreement provides for GIAA to enter three separate 5-year subleases in the completed facility: one of 7,500 ft<sup>2</sup> for \$1.50 per square foot per month; one of 7500 ft<sup>2</sup> for the accommodation of Guam Customs

and Cargo Inspections, which was already housed in a less-desirable part of the Tiyan facility, for \$3.05 per square foot per month; and one of 17,500 Square feet, also to accommodate Customs and Cargo Inspections, built to suit their needs, for \$2.60 per square foot per month, with an additional \$0.49 per square foot per month to be paid back for the construction of the Customs facility.

The Fourth Amended and Restated Ground Lease clarified the language in the agreement regarding Pac Air's obligations under GIAA's security requirements, including security directives and FAA regulations. It extended these duties of compliance to Pac Air's agents, employees and invitees.

***(2) Did it meet the minimum Twenty-Five Million Dollar (\$25,000,000.00) investment?***

Under the terms of the Ground Lease Agreement §71(i), Pac Air must provide GIAA with certification of the Twenty-Five Million Dollars (\$25,000,000.00) spent on the project, setting forth the development and construction costs, with details of all the component costs. Pac Air provided and GIAA reviewed and accepted its certification as set forth in the Agreement. The certification was for investment in excess of \$27 Million, and FAA is in possession of a copy of this certification.

***(3) Was extending the lease terms from 30 years to 50 years with an optional ten more years, for a total of 60 years, in violation of existing law, of 40 years?***

Guam has passed laws which place limitations on lease durations. For example, 12 G.C.A. §1105 deals with GIAA powers generally and limits GIAA to a forty (40) year maximum on leases with the Government of Guam and the United States. However, with respect to lease terms with private entities, there is not restriction on the airport. Thus, 12 GCA 1005 does not apply to the lease agreement between Pac Air and GIAA.

Airport counsel has addressed this issue and confirmed the Airport's authority to enter into leases in excess of 40 years. In addition to the above statute, Counsel has also found authority at 12 GCA 1203 which grants GIAA the power to "... (f) Improve, construct or reconstruct, lease, furnish or refurnish, use, repair, maintain, control, sell or dispose of its property, including any buildings, structures, lighting equipment and all other equipment and facilities necessary therefor; and notwithstanding any other provision of law, make and enter into contracts, leases and permits for the use of airport facilities and properties for airport purposes, and visitor related activities, and make and enter into airline agreements, without prior approval of I Liheslaturan Guahan, " Thus, the Pac Air lease term does not violate Guam law.

***(15) GIAA agrees in the ground lease to "delay" all ground rents for 5 years. So, after GIAA spent considerable time and money developing a business (salaries***

***of the various GIAA employees involved in leasing ground) and legal fees, no income for 5 years.***

Before the Pac Air Lease, the land was vacant and not utilized. GIAA furthered its mission statement by having Pac Air lease and develop the land. GIAA had envisioned an integrated cargo building long before Pac Air's proposal. Pac Air assumed all of the financial risk of the development. A rent deferral is a small and reasonable incentive to capture an improvement worth over Twenty-Five Million Dollars (\$25,000,000.00). The deferral of rent is the cost of doing business and achieving GIAA's goal in that regard. The rental payments have been deferred for five (5) years, with the deferral period ending and payment of the deferred rental commencing in September 2014, in addition to the monthly rent due from Pac Air.

***(16) After Pac Air completes the enormous Air Cargo building (way beyond any rational need), GIAA then begins a series of "amendment to the Ground lease" to provide various forms of subsidies to PacAir.***

There were several factors considered in determining the ultimate size of the cargo facility, including a proposed runway extension, U.S. Department of Transportation air cargo service exemptions, and the anticipated Guam Military Buildup. The Board is tasked with envisioning the needs for GIAA not only at present, but for decades in the future. After considering all variables, Pac Air determined that it would be most efficient and least expensive to build one facility of the present size, rather than building in phases to increase the size of the facility in the future. This could be analogized to the development of large hotels in the Tumon area of Guam; initially this was seen as a needless waste, flooding the market; but the investment paid off in the long run. Now, tourists to Guam are turned away during peak seasons, because there are not enough hotel rooms to accommodate them all. The criticism of flooding the market was proven wrong. Likewise, to determine the size of the air cargo facility based on current needs rather than the needs of the future would be shortsighted, inefficient and wasteful. The financial risk in developing the facility was all Pac Air's, and as discussed in item (1) above, it is inaccurate to characterize the Ground Lease Amendments as "subsidies" to Pac Air. At present, the facility is around 60% occupied.

***(17) GIAA agrees to "guarantee" a portion of PacAir's construction loan. In exchange for this "guarantee", GIAA has the privilege of leasing some 15,000 square feet of cargo area for \$1.50 per square foot per month. There is no evidence the airport guaranteed any portion of the loan.***

The Ground Lease agreement, §7I(2), provided that GIAA would "consider" providing up to \$4million in loan guarantee for Pac Air to aid in financing the construction of the cargo facility, but this provision was never implemented and GIAA never guaranteed any loans to Pac Air, so GIAA never acquired the right to lease space under that provision. Therefore, this is a moot issue.

***(21) Next, GIAA "directly" leased some 15,000 square feet of cargo area for its "maintenance department". Again, the rent was in the \$1.50 range which is at least double the rent outside. Again, the lease was via an "amendment" to the Ground lease. No bidding***

GIAA leased 7500 square feet of cargo facility space for its maintenance department, not 15,000 square feet. GIAA's maintenance department had previously been working out of a loading dock in the basement level of the terminal building, which was inadequate and an inefficient use of Airport resources. When the new facility was completed, management decided to consolidate the maintenance department and move it into a more appropriate space.

## **II. THE CUSTOMS AND QUARANTINE SUBLEASE**

***(10) Where is the RFP from GIAA when they went out and leased '32,500 sq. ft". of space, that resulted in a monthly rental expenditure of \$80,000 to Pac Air which was sub-leased back to Customs and Quarantine.***

No RFP was required for Customs' relocation to the Pac Air building. Customs was already a tenant of GIAA's air terminal and south Tiyan property when it elected to relocate to the new Pac Air facility. Under the Agreement, GIAA was given a sublease of the property, for the purpose of accommodating the needs of Customs. That property was sub-subleased to Customs and Quarantine, and that sub-sublease was approved by both the Guam Attorney General and the Governor of Guam. As discussed above, the parties entered into this lease arrangement because of the existing relationship between Customs and GIAA. It benefits GIAA to have the lease revenue from Customs, and it benefits Customs to maintain its tenant relationship with GIAA rather than going through the process of developing a new payment method with PacAir.

***(12) and (13) Space in these new buildings was rented back to GIAA for \$1.50 and \$3.60 per square foot, monthly, without benefit of a RFP. Outside warehouse space, in the open market, is available at the rate of \$0.50 cents monthly rental per square foot. Why was the Guam Customs and Quarantine Lease entered into via a sub-lease with GIAA, rather than a direct lease with the Lessor? Was it to avoid THE NEED OF AN RFP (Request for Proposal), or the scrutiny by the Legislature and the public?***

This is inaccurate, as can be seen by reference to the Agreement and Sublease documents. As stated above, there was no requirement for an RFP.

The GIAA Board of Directors and Executive Manager approved the sublease rate for the second 7,500 square foot space, and the 17,500 square foot space for \$3.05, and \$3.09 per square foot per month, respectively; GIAA then sub-subleased

the space to Customs, as provided in the sublease agreement, for \$3.57, and \$3.57 per square foot, per month, respectively, for the first five years, dropping to \$2.60 for each for the next five years; thus, the rent is basically a pass-through minus an administrative fee charged for Customs by GIAA. The rental rates were a result of negotiations between Customs and GIAA, taking into account the tenant fit-out costs for Pac Air upgrades to the rental space. Rent is collected by the Airport in accordance with 5 GCA 73145 and 73146.

Mr. Ysrael asserts that other warehouse spaces is available for \$0.50 per square foot per month in other areas of Guam. GIAA cannot confirm whether warehouse space exists on Guam for \$0.50/ft<sup>2</sup>, but even assuming it to be true for the sake of argument, it is not relevant to the Pac Air Cargo Facility. The Pac Air Cargo facility is not general warehouse space; it is a fully improved Cargo Facility at the Guam International Airport. The \$0.50 suggested rental amount does not take this into account. The original Ground Lease Agreement rental price was determined according to an appraisal, and finalized after a solicitation of interest.

Rental rates for subleasing space in the facility vary on a lease-by-lease basis, depending on the amount of fitting out required of Pac Air by the tenant. Clearly, if space is available elsewhere for \$.50/square foot, then there is no unfair competition with private entities in the Guam market.

***(18) and (19) how much space does Guam Customs really need? Are they incurring space unnecessarily just so GIAA can provide a subsidy to Pac Air for their disastrous business decision? Though there is a "lease agreement" between Guam Customs and GIAA, the GIAA to Pac Air deal is part of an "amendment to Ground Lease". This is all internal. There has been no evaluation of "fair rents" through a public bidding process.***

GIAA entered the lease at Customs' request pursuant to Customs' needs. Before the present arrangement, Customs was leasing two barracks in South Tiyan from GIAA consisting of approximately 32,000 square feet. Due to facility conditions and space requirements, Customs elected to relocate in whole to the terminal and the Pac Air facility. Customs is required to be located on airport property.

No other appropriate space exists at the airport that meets Customs' requirements.

***(25) Where is the RFP from GIAA when they went out and leased '32,500 sq. ft'. of space, that resulted in a monthly rental expenditure of \$80,000?***

As stated above, there was no similar space available at or near the airport to meet the needs of GIAA. Also as stated above, an RFP was never required. Airport

management made the decision to rent the space to be more responsive to its clientele and mission statement.

### **III. RENTAL VALUATION**

#### ***(7) Land rental lease is below fair market value.***

The land rental lease rate was determined based on an appraisal and entered into with the approval of both parties, after a solicitation of interest for the development of the facility. Though the initial Appraisal was for a thirty-year lease term and the actual lease was later amended to be extendable for up to 50 years, the original Appraisal also accounted for an extended term by increasing the rental amount by 10% every 5 years, which is a standard real estate practice on Guam. See Second Amended Agreement, Exhibit C.

#### ***(8) Rental back to GIAA is higher than prevailing fair market value.***

Where GIAA is in a tenancy arrangement, as a landlord it is required to get no less than fair market value. In this case, the tenancy agreement is agreeable to all parties, and Customs does not agree that it is paying a rate in excess of a fair market value for the building, the location, and other advantages therein.

***1. In my opinion, some ground leases, have been entered into for a monthly rental of \$0.04 cents per square foot, lower than prevailing Fair Market Value, and that these rental payments were deferred, interest free, and paid back on installments basis, fully paid up on the fifteenth (15) year of the lease agreement.***

The Airport board of Directors views this agreement in its entirety, and rent is stated in annual terms and paid in monthly payments over the term of the lease. Pac Air expects to recoup its investment, and the Airport is expected to get the benefit of an integrated Air Cargo Facility.

### **IV. TAX-RELATED INQUIRIES**

***(9), (14), and (24). Leases were entered into in direct competition with tax paying entities. GIAA does not pay real estate taxes, income taxes, or Gross Receipts Taxes on its revenues.***

This is true, but it is not a violation any law or regulation. The legislature granted GIAA a tax-exempt status in order for GIAA to be able to raise revenue and operate in a self-sufficient manner. Pursuant to this legislative mandate, GIAA has entered into lease- and sub-lease agreements. GIAA is not unique among Government of Guam instrumentalities; the Guam Economic Development Authority and the Ancestral Lands Commission, for example, also enter into commercial lease

agreements. As an enterprise fund, GIAA can earn revenue and incur expenses without being subject to local taxes. GIAA is required to be self-sustaining and is granted the power to improve its facilities and enter into contracts and leases. Under its Grant Assurances, it is required to do so. Pac Air and the subtenants, on the other hand, are not beneficiaries of GIAA's exemption. They are subject to the same taxes as any other private enterprise on Guam.

## **V. LEASES TO NON-AERONAUTICAL TENANTS**

### ***(4) Sub-leases to non-airport related activities, (Social Security Services).***

Pac Air has subleased space to non-aviation tenants, but this is not a violation of law, FAA Grant Assurances or lease terms, and no aviation-related tenant has been denied space.

The Ground Lease Agreement, §1A, requires subleases for certain specified air-transportation-related activities set forth in Exhibit "B" to the agreement. It also provides, however, that subleases for other activities may be entered into with GIAA's written consent. GIAA has consented to all existing subleases. Most of the present Pac Air facility's tenants were GIAA tenants before the facility was built; only a limited number of Federal Agencies, such as the Social Security Administration, moved from other locations. No tenant with airport-related business has ever been turned away from subleasing in the facility, and there remains vacant space available to any aviation-related tenant who desires the property.

***(22) Pac Air leasing space to non-airport related entities. As you point out, the FAA wants to see maximum utilization of Airport assets. However, these rents are going to PacAir, not GIAA.***

The statement above presumes that GIAA gathers no benefits from its relationship with Pac Air. In fulfilling its mission statement, GIAA entered into the tenancy agreement to develop an integrated air cargo facility, and this has now been done. The Ground Lease Agreement gives aviation-related tenants preference in the cargo building, and reserves to GIAA the authority to veto any lease by withholding its consent. There is still vacant space in the facility, and no aviation-related tenant has ever been turned away in favor of a non-aviation-related tenant.

GIAA has acquired the asset and at present, GIAA is accruing \$259,200.00 in deferred annual rental income from Pac Air, and is receiving \$1,024,200.00 in rental income from Customs, while paying Pac Air \$1,058,400.00 for rental space. These numbers will dramatically increase to the positive in September 2014, when GIAA begins receiving monthly rent and deferred rent from Pac Air.



***(23) GIAA made its deal in the very beginning, a low ground rent based on the promise that the facility would be used for Airport related activities.***

This is inaccurate and does not reflect the terms of the Ground Lease Agreement. As discussed above, the Ground Lease agreement provides for non-aviation-related subleases with GIAA's approval, and the approval shall not be withheld unreasonably. This is an agreement that benefits both GIAA and Pac Air as previously stated.

## **VI. AIRPORT SECURITY**

***(5) and (6) where is airport security at risk, when the public can now come to the air cargo building to visit non-airport related activities? Where is the security to the Federal Offices, when a car or truck can come up to the cargo building to unload and it can carry explosives?***

The Pac Air Facility and all tenants are included in GIAA's general security requirements, and a perimeter fence separates the Air Operations Area (AOA). There is no general access to the AOA from the Pac Air facility nor is there direct access to the AOA from the mezzanine level.

The Airport Security Program includes three levels of security: The first relates to Air Operations Area (AOA) access, which is under airport security and requires a SIDA badge for access. The second level of security is at the tenant level. Tenants may either use the airport SIDA system or develop their own method of restricting access within their space, but non-SIDA-badge-carrying tenant affiliates will not be permitted access to the AOA area. The third security level is at the gatehouse, which monitors access to the parking area. The entire facility can be placed on lockdown in the event of a general or specific threat.

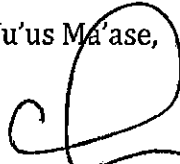
The Fourth Amendment to the Ground Lease Agreement requires that "LESSEE shall comply with and conform its use of the Premises to Lessor's Airport Security Program, Security Directives and Emergency Amendments and FAA regulations (collectively, "Security Requirements")." The Airport Security Program meets Federal TSA requirements, and is subject to FAA and TSA inspection.

## **VII. CONCLUSION**

GIAA's lease, as amended, with Pac Air for the cargo facility is fair, reasonable, and non-discriminatory and not in violation of any leases term nor any Guam or federal law, regulation or any policy established by the Board of Directors. The FAA has recognized that compatible land uses include such entities as motels and hotels, restaurants, shipping agencies, aircraft related industries, industries that benefit from access to the airport and provide a broad range of services and conveniences for the customers of the Airport. The tenants of Pac Air are there with the

knowledge and consent of GIAA. Compatible land use is an evolving dynamic and the Airport is a good neighbor of the Guam community. It does not solicit tenants for Pac Air nor has it ever refused aeronautical or airport-related tenants nor displaced any; rather, the present arrangement has allowed GIAA to get sustainable use out of its land which was previously undeveloped land. This is consistent with GIAA's mission statement and mandates under Guam Law and the FAA grant assurances.

Si Yu'us Ma'ase,

A handwritten signature in black ink, appearing to be 'Charles H. Ada, II', written over a horizontal line.

**Charles H. Ada, II**  
**Executive Manager**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Western-Pacific Region  
Airports Division

300 Ala Moana Blvd., Rm. 7-128  
P. O. Box 50244  
Honolulu, Hawaii 96850-0001  
Tel: (808) 541-1232  
Fax: (808) 541-3566

March 27, 2013

Mr. Charles H. Ada, II  
Executive Manager  
A. B. Won Pat International  
Airport Authority, Guam  
P. O. Box 8770  
Tamuning, Guam 96931

Dear Mr. Ada:

We are replying to the allegations communicated to our office regarding the lease agreement between the Guam International Airport Authority and PacAir for the construction and operation of a new cargo building at Guam International Airport. The following report discloses the results of our investigation into the allegations made in a series of E-mails we received during January and February 2013.

### **Introduction**

This matter was brought to the attention of the Federal Aviation Administration (FAA) Honolulu Airports District Office based on the informal complaint filed in accordance with the FAA Investigative and Enforcement Procedures, Title 14 Code of Federal Regulations (CFR) Part 13.1.

Mr. Alfred C. Ysrael and Mr. Michael Ysrael (Complainants) have filed an informal complaint pursuant to Title 14 CFR Part 13.1 against the Guam International Airport Authority (GIAA) owner, sponsor, and operator of Guam International Airport, the United States Territory of Guam (GUM or Airport).

The Complainants allege the GIAA engaged in questionable leasing and rate setting practices with regard to the air cargo facility at GUM, which may represent acts or omissions that do not comply with the requirements of the Sponsor Grant Assurances.

With respect to the allegations presented, in consideration of the specific circumstances at the Airport, and based on the evidence of record, the FAA finds GIAA is not currently in violation of its federal obligations with respect to Grant Assurances. The FAA's decision in this matter is based on applicable federal law and FAA policy and the review of the statements and supporting documentation submitted by the parties to the complaint.

### **Complainant**

Messrs. Alfred and Michael Ysrael are residents of Guam. Mr. Michael Ysrael was a former member of the GIAA Board of Directors. Neither is presently a tenant or officer at Guam International Airport.

### **Issues**

The FAA analyzed the following allegations as presented to us by the Complainants to determine if any non-compliance with the grant assurance exists.

1. The GIAA executed the original lease with PacAir for a low ground rent so the cargo building could be used for airport related activities.
2. A lease agreement with PacAir was amended four different times incorporating provisions that were beneficial to PacAir and detrimental to GIAA. For example,
  - GIAA subsidizes PacAir by paying rent to PacAir for space in the cargo building.
  - Rent is deferred and repaid in installments over 15 years without interest.
  - GIAA expended resources to promote and execute the development of the new cargo center.
  - Space in the cargo building was subleased to GIAA at excessive rental rates.
  - GIAA sub-subleased space to Customs.
3. The lease term was extended from 30 to 50 years. Including the 10-year option, the full term of the lease was increased to a total of 60 years. Under Guam law, leases greater than 40 years are illegal.
4. GIAA allowed subleasing the PacAir cargo building to non-aeronautical tenants such as the Social Security Administration.
  - PacAir leases space to tenants, some of which are non-aviation businesses. PacAir, rather than GIAA, collects these rents.
5. A security risk exists because pedestrians and vehicles have access to the cargo building when they visit the facility.
6. The rental rate for the land is below fair market value.
  - Rental rate that GIAA pays to PacAir is more than fair market value.
  - Rental rate of \$0.04 monthly per square foot for ground leases is lower than fair market value.
  - Rental rate for warehouse space elsewhere in Guam is \$0.50 monthly per square foot.
  - GIAA pays a rate that exceeds fair market value for subleased space in the cargo building for its maintenance department in order to subsidize PacAir.
7. Lease in the cargo building represents direct competition with tax paying entities.
  - GIAA does not pay real estate taxes, income taxes, or gross receipts taxes.
  - GIAA is competing with tax paying entities when it consummates leases on the airport.

8. Requests for proposals were not used to solicit bids for spaces occupied by Customs.
9. GIAA agreed to provide loan guarantees to PacAir for a portion of a construction loan.
10. Customs may be leasing more space than needed, which results in higher rental payments to PacAir.
11. GIAA leased 32,500 square feet of space and spent \$80,000 in the process.

### **Applicable Federal Law and FAA Policy**

The federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a disclosure meant to explain the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and the enforcement of Airport Sponsor Assurances.

#### ***The Airport Improvement Program***

Title 49 U.S.C. § 47101, *et seq.*, provides for federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

#### ***Airport Sponsor Assurances***

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. The FAA considers it inappropriate to provide federal assistance for improvements to

airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Certain FAA grant assurances apply to the circumstances set forth in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers*; (2) Grant Assurance 19, *Operation and Maintenance*; (3) Grant Assurance 22, *Economic Nondiscrimination*; (4) Grant Assurance 23, *Exclusive Rights*; and (5) Grant Assurance 24, *Fee and Rental Structure*.

#### **Grant Assurance 5, Preserving Rights and Powers**

Grant Assurance 5, *Preserving Rights and Powers* (Grant Assurance 5), requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of the AAIA, 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."

#### **Grant Assurance 19, Operation and Maintenance**

Grant Assurance 19, *Operation and Maintenance* (Grant Assurance 19), requires the owner of an airport developed with federal assistance to operate and maintain a safe airport at all times. The owner will not permit any activity that would interfere with the airport purpose of the facility. Grant Assurance 19 deals with safety and implements the provisions of 49 U.S.C. § 47107(a)(7) and requires that the airport and facilities on or connected with the airport be operated and maintained in a safe manner.

#### **Grant Assurance 22, Economic Nondiscrimination**

Grant Assurance 22, *Economic Nondiscrimination* (Grant Assurance 22), requires the owner of any airport developed with federal grant assistance to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

*...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Grant Assurance 22(a)]*

*...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Grant Assurance 22(h)]*

*...may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [Grant Assurance 22(i)]*

### **Grant Assurance 23, Exclusive Rights**

Grant Assurance 23, *Exclusive Rights* (Grant Assurance 23), implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

*...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public.*

*...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...*

*...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.*

### **Grant Assurance 24, Fee and Rental Structure**

Grant Assurance 24, *Fee and Rental Structure* (Grant Assurance 24), requires the owner of an airport developed with federal assistance to make the airport as self-sustaining as possible. Grant Assurance 24 implements the provisions of 49 U.S.C. § 47107(a)(13) and requires that the airport owner maintain a schedule of charges for use of facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection. It also requires the airport owner to undertake reasonable efforts when entering into new and revised agreements establishing rates, charges, and fees to make the airport as self-sustaining as possible under the circumstances existing at the airport.

### **The FAA Airport Compliance Program**

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. FAA Order 5190.6B sets forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance Program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations.

#### **FAA Enforcement Responsibilities**

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

#### **Analysis and Discussion**

For the most part, the allegations describe decisions made by GIAA that led to actions or omission that concerned the two Complainants. However, the complaint did not describe how and which grant assurances were being violated as a result of GIAA's decisions. The above grant assurances were selected for review because they provide a standard against which to compare the allegations and are the ones that more commonly cause compliance problems for airport owners.

1. Allegation: The GIAA executed the original lease with PacAir for a low ground rent so the cargo building could be used for airport related activities.

FAA Analysis: The record shows that GIAA entered into the original lease and used a professional appraisal to determine the fair market value (FMV) of the leased property based on a proposed use that included both aviation and non-aviation users.



Conclusion: It would appear that GIAA exercised due diligence to plan and execute a lease for the airport property. GIAA did not compromise its rights and powers by soliciting and executing the lease. (Grant Assurance 5) The FAA concludes that there is no grant assurance violation.

2. Allegations: A lease agreement with PacAir was amended four different times incorporating provisions that were beneficial to PacAir and detrimental to GIAA. For example,

- GIAA subsidizes PacAir by paying rent to PacAir for space in the cargo building.
- Rent is deferred and repaid in installments over 15 years without interest.
- GIAA expended resources to promote and execute the leases for the new cargo center.
- Space in the cargo building was subleased to GIAA at excessive rental rates.
- GIAA sub-subleased space to Customs.

FAA Analysis: GIAA made decisions to amend the lease agreement several times and changed the terms and conditions of the lease considerably. In doing so, GIAA exercised its management discretion and prerogative. The FAA cannot replace its own decision for that of the airport sponsor. GIAA has the ability to make good and bad decisions. The quality of a decision does not determine whether or not it complies with the grant assurances. Although critics may deride an airport sponsor's decisions, the decisions may not actually conflict with the grant assurances because even bad decisions may not violate a grant assurance. A decision must cross the line into noncompliance and actually violate the grant assurances before they can be found to be noncompliant by the FAA.

Conclusion: Grant Assurance 24 directs GIAA to make the airport available on reasonable terms for aeronautical uses. Grant Assurance 24 directs GIAA to make the airport as self-sustaining as possible. The assurances do not describe the specific means that GIAA should follow to make the airport available and self-sustaining. Although the criticism alleges that GIAA's decisions were imprudent, imprudence alone is not a violation of the grant assurances. Therefore, we must conclude that they were not a violation of the grant assurances.

3. The lease term was extended from 30 to 50 years. Along with the 10-year option, the full term of the lease was increased to a total of 60 years. Under Guam law, leases greater than 40 years are illegal.

FAA Analysis: In accordance with Grant Assurance 22, the airport must be made available on reasonable terms without unjust discrimination to all classes of aeronautical activities. GIAA was negotiating with PacAir for a new airport cargo facility. Furthermore, GIAA and PacAir apparently considered the new term to be reasonable in view of the other changes to the lease agreements. Furthermore, GIAA provided information to indicate that the lease with PacAir, although greater than 40 years, is not a violation of Guam law.

Conclusion: The FAA cannot speculate whether or not GIAA could have negotiated better terms and conditions. At the time of the negotiations, the terms and conditions were deemed reasonable by the parties. As a result, The FAA concludes that there is no grant assurance violation.

4. GIAA allowed subleasing the PacAir cargo building to non-aeronautical tenants, such as the Social Security Administration.

- PacAir leases space to tenants, some of which are non-aviation businesses. PacAir, rather than GIAA, collects these rents.

FAA Analysis: Both the appraisal and the lease agreement anticipated that the cargo building would be used for aviation and non-aviation activities. The appraisal estimated FMV based on the contemplated use of the building for both aviation and non-aviation tenants. It was also expected that existing airport tenants might relocate to the new facility form elsewhere on the airport. The lease was drafted and the building was built to accommodate the space needs of these different airport groups. Apparently, some off-airport tenants chose to move to the cargo building, such as the Social Security Administration. It appears that the building has ample space, so it can accommodate extra tenants from off the airport without displacing any airport or aeronautical tenants.

Conclusion: The FAA cannot speculate why the Social Security Administration, or any other off-airport entity, relocated to the airport cargo building. The decision to include non-aeronautical tenants in the cargo building is not necessarily improper if the right conditions and approval exist, as they do in this case. Per Grant Assurance 19, non-aviation uses should not interfere with aeronautical uses of the airport. The FAA would not object to leasing of available space to the Social Security Administration at FMV if there is vacant space available in the building that can be used to accommodate aeronautical tenants that might need space in the future. Since the FAA is not objecting to the non-aviation tenants, the FAA concludes that there is no grant assurance violation.

5. A security risk exists because pedestrians and vehicles have access to the cargo building when they visit the facility.

FAA Analysis: GIAA reports that controls are in place to keep unauthorized people from entering the airfield, so GIAA is complying with Grant Assurance 19. The FAA enforces Title 14 Code of Federal Regulations Part 139.329 and 335 and requires that airport owners maintain an effective program to keep pedestrians and vehicles away from the airfield. The Transportation Security Administration (TSA) maintains regulations limiting access to the secured areas of the airport. GIAA is subject to inspections by both the FAA and TSA to ensure these regulations are being enforced. The FAA has not detected any violations of these safety standards during our inspections at GUM.

Conclusion: The FAA concludes that there is no grant assurance violation.

6. Rental rate for the land is below FMV.

- Rental rate that GIAA pays to PacAir is more than FMV.
- Rental rate of \$0.04 monthly per square foot for ground leases is lower than FMV.
- Rental rate for warehouse space elsewhere in Guam is \$0.50 monthly per square foot.
- GIAA subleases space in excess of market rates in the cargo building for its maintenance department to subsidize PacAir.

FAA Analysis: The planning done for the cargo center included a professional appraisal to determine the FMV of the airport property. The application of the Grant Assurance 24 to leases for airport property requires that the following standards be used: Aeronautical users must be charged *reasonable rates*, which allow certain flexibility in the rate setting process depending on the specific airport circumstances and the terms of the deal. Non-aeronautical users must be charged *fair market value* rates that are best established using an appraisal.

It is true that the subleasing arrangement of the amended leases has complicated the relationships between landlord and tenants. We are not evaluating the merits of this arrangement. The fact is that GIAA has allowed non-aviation uses of the cargo building, both as landlord and subtenant,

which should be subject to FMV rental rates. Therefore, the FMV standard is appropriate to the existing airport circumstances that exist in the cargo building. Under the master lease, PacAir is subject to a ground rent, which is based on a reasonable standard. As the master tenant, PacAir is entitled to seek a return on its investment and is charging what it considers to be FMV. GIAA has chosen to pay the rental rate that PacAir imposed. Therefore, the two parties have agreed on the rate they consider to be FMV.

As specified in Grant Assurance 22, GIAA made the airport available for an aeronautical activity. GIAA and PacAir negotiated and agreed to rental terms and rates. As explained in the FAA policy, *Policy Regarding Airport Rates and Charges*, airport sponsors have substantial discretion in establishing airport fees and rates structures. The FAA does not set fee levels. The FAA will not generally challenge a fee that is low and prevents a sponsor from recovering its full costs unless the shortfall is unreasonably shifted to another aeronautical group or user. Furthermore, the FAA will not generally investigate fees set by agreement unless it can be shown that its terms and conditions violate a grant assurance, for example, an agreement that grants an exclusive right in violation of Grant Assurance 23. It is assumed the parties to the agreement exercised their due diligence when agreeing to the terms of the agreement and the specific rental rates.

Conclusion: In view of the circumstances, the FAA concludes that there is no grant assurance violation.

7. The lease for the cargo building represents direct competition with tax paying entities.

- GIAA does not pay real estate taxes, income taxes, or gross receipts taxes.
- GIAA is competing with off-airport tax paying entities when it executes on-airport leases.

FAA Analysis: It is true that public entities and local government agencies may not be subject to certain local taxes for land they own and control. The FAA does not consider the tax exemption to be a compliance problem with airport leases. This is standard practice for local governments on the United States mainland and in its Territories. However, one may wish to consider if public agencies paid taxes of their own property, they would have to pass these costs along to the users and taxpayers.

Conclusion: The FAA concludes that tax issue does not violate the grant assurances.

8. Requests for proposals (RFP) were not used to solicit bids for spaces occupied by Customs.

FAA Analysis: GIAA reported that there is no local requirement to use RFP's to lease space at the airport. When making the airport available for aviation uses, per Grant Assurance 22, FAA policy does not specify that RFP's are mandatory. The FAA does recommend the use of RFP's when airport space is limited. Use of an RFP helps to avoid the appearance of favoritism or conflict of interest in the selection process. Since RFP's are not mandatory, there is no compliance problem.

Conclusion: The FAA concludes that there is no grant assurance violation.

9. GIAA agreed to provide loan guarantees to PacAir for a portion of a construction loan.

FAA Analysis: GIAA reported that no loans were ever guaranteed. Therefore, there is no issue with a loan guarantee.

Conclusion: The FAA concludes that there is no grant assurance violation.

10. Customs may be leasing more space than needed, which results in higher rental payments to PacAir.

FAA Analysis: The FAA cannot speak for Customs or formulate an opinion regarding its space requirements. This is a local government matter.

Conclusion: The FAA concludes that there is no grant assurance violation.

11. GIAA leased 32,500 square feet of space and spent \$80,000 in the process.

FAA Analysis: GIAA explained that it could not reconcile this statement with the actual square feet being leased and the actual amount of rental payments being paid because the allegation does not match the actual figures. Therefore, there is no response to this allegation, although information offered elsewhere in this document does respond to issues dealing with rental space and costs.

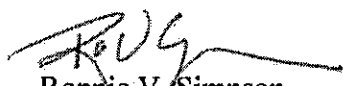
Conclusion: The FAA concludes that there is no grant assurance violation.

### **Final Determination**

We have given consideration to all the concerns expressed by the Complainants and have concluded that GIAA's decisions did not result in acts or omissions that represent non-compliance with the grant assurances. While it is true that reasonable people may disagree with decisions made by GIAA, its decisions may not result in a violation of any grant assurance. Within the range of decisions that airport sponsors can make, whether satisfactory or not, the FAA takes an interest in correcting decisions that do not comply with the grant assurances. If a decision does not violate the grant assurances, the FAA does not have authority to intercede to change it. It is GIAA's governing body that is empowered to monitor the actions and decisions of airport management to ensure they are prudent, comply with the law, and safeguard the airport's financial interest.

Unless there is new evidence to demonstrate that GIAA has violated specific grant assurances, the Honolulu Airport District Office considers this matter closed.

Sincerely,



Ronnie V. Simpson  
Manager, Honolulu Airports District Office

cc:

Mr. Alfred Ysrael  
Mr. Michael Ysrael

**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM  
BOARD OF DIRECTORS RESOLUTION NO. 13-02**

**RELATIVE TO THE  
EXTENSION OF THE AGREEMENT FOR LEGAL SERVICES WITH CALVO FISHER  
& JACOB LLP AND THE AGREEMENT FOR LEGAL SERVICES WITH  
TEKER TORRES & TEKER NOW KNOWN AS TORRES LAW GROUP**

**WHEREAS**, an Agreement for Legal Services was entered into on May 5, 2010, by and between the ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM ("GIAA") and Calvo Fisher & Jacob LLP ("CFJ") (the "CFJ Agreement"); and

**WHEREAS**, an Agreement for Legal Services was entered into on May 5, 2010, by and between the ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM ("GIAA") and Teker Torres & Teker now known as Torres Law Group ("Torres") (the "Teker Agreement"); and

**WHEREAS**, the CFJ Agreement provides for a term of one year with four options to extend for a period of one year each, not to exceed a total contract period of five years with GIAA approval; and

**WHEREAS**, the Teker Agreement provides for a term of one year with four options to extend for a period of one year each, not to exceed a total contract period of five years with GIAA approval; and

**WHEREAS**, the Board of Directors has determined that GIAA continues to require the services of CFJ and that it is in the best interests of GIAA to extend the term of the CFJ Agreement for an additional one year period commencing on March 23, 2013, under the same terms and conditions as set forth in the CFJ Agreement.

**WHEREAS**, the Board of Directors has determined that GIAA continues to require the services of Torres and that it is in the best interests of GIAA to extend the term of the Torres Agreement for an additional one year period commencing on March 1, 2013 under the same terms and conditions as set forth in the Torres Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Directors of GIAA hereby extends the term of the CFJ Agreement for an additional one year period commencing on March 23, 2013, under the same terms and conditions as set forth in the CFJ Agreement; and

**BE IT FURTHER RESOLVED**, that the Board of Directors of GIAA hereby extends the term of the Torres Agreement for an additional one year period commencing on March 1, 2013, under the same terms and conditions as set forth in the Torres Agreement.

**DULY AND REGULARLY ADOPTED BY THE BOARD OF DIRECTORS OF THE  
ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM AT THE  
MARCH 28, 2013 REGULAR BOARD MEETING.**

\_\_\_\_\_  
**FRANCISCO G. SANTOS, Chairman**

\_\_\_\_\_  
**ROSALINDA A. TOLAN**

\_\_\_\_\_  
**JESUS Q. TORRES**

\_\_\_\_\_  
**MARTIN GERBER**

\_\_\_\_\_  
**LUCY ALCORN**

\_\_\_\_\_  
**EDWARD G. UNTALAN**

**ATTEST:**

\_\_\_\_\_  
**AMANDA RIOS, Board Secretary**



**BOARD APPROVAL OF DISBURSEMENTS**  
**February 27, 2013 - March 26, 2013**  
**Ratified by the Board of Directors on**  
**March 28, 2013 Regular Meeting**

<b>Payee</b>	<b>Amount</b>	<b>Purpose</b>	<b>Date Approved</b>
Aircraft Service International Group	\$87,054.09	Outbound Baggage System for Jan 2013	2/27/2013
Government of Guam Retirement Fund	\$147,252.76	Payroll Employee & Employers Contribution for PPE 02/23/13	2/28/2013
BEJESS Enterprises Inc. DBA: GEMCCO	\$80,949.79	CIP - AIP65 Electrical (Power Hardening Phase 2)	3/6/2013
DB's Builders	\$52,242.66	Terminal Water Distribution System	3/6/2013
Treasurer of Guam	\$76,278.24	FY13 Supplemental Benefits	3/7/2013
J.J. Global Services	\$92,669.68	Janitorial Services for the month of January and February 2013	3/7/2013
Government of Guam Retirement Fund	\$146,188.29	Payroll Employee & Employers Contribution for PPE 03/09/13	3/14/2013
Pac Air Properties LLC	\$88,200.00	Rental Space Lease	3/15/2013
Morrison Equipment	\$226,899.00	Purchase Rescue/Tow Vehicle	3/15/2013
Aircraft Service International Group	\$89,074.40	Outbound Baggage System for Feb 2013	3/19/2013
Propacific Builder Corporation	\$108,422.82	CIP - AIP65 Replace/Upgrade Apron Area Ramp Light System	3/20/2013
Continental Micronesia	\$225,371.22	Loading Bridge Maintenance	3/20/2013
Sumitomo Mitsui Construction Co. Ltd.	\$672,286.64	CIP - ILS 6L24R AIP7/478	3/25/2013
E&A Engineers	\$81,224.01	CIP - Code Upgrade & Survey Mapping	3/25/2013
Guam Power Authority	\$533,821.84	Power	3/26/2013
<b>TOTAL:</b>	<b>\$2,707,935.44</b>		



## **Executive Manager's Report GIAA Board of Directors Meeting March 28, 2013**

### **AIRLINE ISSUES**

#### **CHARTER FLIGHTS**

##### **Delta**

Delta will be increasing operations between Japan and Guam for Golden week as follows:

- Nagoya/ Guam - Service increases from 7 to 9 weekly from May 2 through 6, 2013.
- Osaka Kansai/ Guam - Service increases from 7 to 9 weekly from May 2 through 6, 2013
- Tokyo Narita /Guam - 1 of 3 daily service will be operated by Airbus A330-300 instead of Boeing 757 from April 26 through May 6, 2013.

Delta regular operations are three daily flights from Tokyo to Guam, one daily flight from Osaka to Guam, and a daily flight from Nagoya to Guam.

##### **Skymark**

Skymark, a Japanese domestic airline, commenced service with nine charter flights that operated March 14 through 23, 2013 on the NRT/GUM route utilizing B738 aircraft with a 177-seat capacity, adding 1,593 seats in this 9-day period. The charters were unique in operating during non-peak hours with Skymark's arrival at 7:35pm and departure at 9:40am. Speculation within the industry is that Skymark may be positioning itself to join SkyTeam, of which Delta Air Lines is a member airline.

##### **EVA Air**

EVA Air operated 5 additional round trip charter flights to their twice-weekly scheduled flights on the TPE/GUM route between March 17 and 23, utilizing A330 aircraft with a 252 seat capacity. With the inclusion of Taiwan to not only the Guam CNMI Visa Waiver Program, but extended to the U.S. Visa Waiver Program, Guam has become an increasingly convenient and preferred destination for Taiwan travelers with direct flights to Guam serviced by EVA Air and China Airlines.

#### **TICKET COUNTER CONSTRUCTION**

Ticket counter construction is underway in the West ticket lobby. Six passenger check-in counter positions are planned to accommodate increased demand and anticipated new market entrants.

#### **FIDS/BIDS System Upgrades**

Interim upgrades to the FIDS/BIDS system will begin with the replacement of monitors and system software updates which will include access to the system to all airlines and staff as well as remote user capabilities. The current system software is 16 years old, and the modification or upgrade will tie into all electronic signage at gates, baggage information monitors, and Flight Information Display units. The replacement monitors are 42" LEDs, which are 16 inches larger than current monitors for enhanced visibility.



**Executive Manager's Report**  
**GIAA Board of Directors Meeting**  
**March 28, 2013**

**LEGISLATIVE ISSUES**

**Bill 60-32**

An act to create the "*Made in Guam*" business incubator program within the Antonio B. Won Pat Guam International Airport Authority; to authorize the promulgation of rules and regulations for the program; to provide incentives for eligible businesses; and, to provide sources of funding for the program.

**Bill 55-32**

An act relative to transfer of the a tract of land currently leased to South Pacific Petroleum Corporation from the Guam International Airport Authority to the Chamorro Land Trust Commission.

**Bill 52-32**

An act relative to the transfer of autonomous agency revenues to the autonomous agency collections fund. This pertains to the \$875k annual assessment on GIAA, PAG, and GPA for use of general fund services, uncollected since 1985 to present, and to the future, be null and void.

**Bill No. 29-32**

An act relative to Competitive Equalization Act on the leasing of Government of Guam property. This bill would require all income received from commercial land leases made by autonomous agencies and public entities to be assessed business privilege taxes, and that all improvements made on these commercial leased properties be assessed real estate taxes.

**Bill 69 -32**

An act to relative to the duration of commercial leases for public real property and related facilities. This bill seeks to establish a five (5) year standard for the duration of leases, inclusive of extension and renewal options.

**FAA Visit**

Representatives from FAA's Airport District Office will be meeting with Management and Division Heads on April 15 and 16, 2013 to discuss AIP project updates and general compliance. FAA's annual certification inspection of Guam Airport facilities is scheduled for April 29, 2013. Training, annual re-certifications, self inspections, documentation and record-keeping will be reviewed, along with the airfield, runways, aprons and safety areas.

**TSA**

TSA has awarded the Airport Authority of \$1,051,200.00 to fund 3 years services under its LEO Reimbursement Program. This programs approximately \$350K a year for Airport Police services at the TSA checkpoint, and is effective April 1, 2013.

**PROCUREMENT**

**IFB for Custodial Maintenance**

Announced:	January 25, 2013
Pre Bid:	February 6, 2013 10:00am
Submission Deadline:	March 29, 2013 2:00pm

**Executive Manager's Report  
GIAA Board of Directors Meeting  
March 28, 2013**


**ANNOUNCEMENTS**

- Career Day Presentations – Airport Police Patrol and K9 Units, along with ARFF firefighters, were guest speakers at Untalan Middle School for Career Day, on March 22, 2013.
- Special Olympics Volunteers – Airport Police officers and recruits volunteered to support the Special Olympics held Saturday, March 23, 2013 at the Okkodo High School campus.
- GIAA's ARFF Division will be supporting United's Annual Plane Pull with a firetruck display/standby and EMT support for the event.
- A Si Yu'us Ma'ase to all GIAA employees, airlines and tenants for their support and participation in our Annual Gupot Chamorro fiesta held last Thursday in the East Ticket Lobby. We also thank all the volunteers for their coordination and set up for the weekly meriendas for our visitors in the first two weeks of March.

March 26, 2013

**MEMORANDUM**

**To:** Mr. Francisco G. Santos  
Chairman  
GIAA Board of Directors

**From:** Carlos Bordallo   
Acting Comptroller

**Subject:** Operating Results - Revenues and Expenses as of  
February 28, 2013

Attached herewith is GIAA's Operating Results Report for the month ending February 28, 2013. This report summarizes the Budgeted versus Actual Revenues and Expenses for the month and year-to-date results ended February 28, 2013.

The key operating results for 5 month(s) of FY 2013 ending February 28, 2013 - (in \$000's) are:

CATEGORY	YEAR-TO-DATE				FORECAST FOR FULL YEAR-FY13	
	Budget FY 13 Y-T-D	Actual FY 13 Y-T-D	% Variance Budget vs. Actual		Actual Y-T-D + Remaining FY 13 Budget	% Variance Budget vs. Estimate for Full Year
			Y-T-D Current Month	Y-T-D Last Month		
Total Signatory Revenues	\$11,342.5	\$12,319.1	8.6%	7.8%	\$28,298.9	3.6%
Total Concession Revenues	\$4,642.5	\$4,580.0	-1.3%	1.2%	\$10,795.7	-0.6%
Total PFC's	\$2,490.0	\$2,761.1	10.9%	13.7%	\$6,246.5	4.5%
Total Other Revenues	\$6,454.6	\$6,470.4	.2%	8.9%	\$15,148.7	.1%
Total Operating Revenues	\$24,929.6	\$26,130.6	4.8%	7.4%	\$60,489.8	2.0%
Total Operating Expenses	\$18,336.2	\$14,208.9	-22.5%	-25.3%	\$36,315.1	-10.2%
Net Revenues from Operations	\$6,593.4	\$11,921.7	80.8%	123.0%	\$24,174.7	28.3%
Non-Operating Expenses	\$250.0	\$195.4	-21.8%	-30.5%	\$445.4	-10.9%
Other Available Moneys/other sources of funds	\$2,004.7	\$1,803.5	-10.0%	-0.0%	\$4,582.1	-4.2%
Net Debt Service Coverage	1.22	1.94	59.2%	87.4%	1.69	21.5%

Page 2 - Operating Results as of February 28, 2013

Year-to-date Total Signatory Revenues for the month ending February 28, 2013 are above Budgeted revenues by **8.6%**. Signatory revenue estimates are based on projections submitted by Signatory airlines and adopted in the annual budget.

Year-to-date Total Concession Revenues are below budget estimate by **-1.3%** and Passenger Facility Charges are above budget estimates by **10.9%**.

Year-to date Total Other Revenues, inclusive of non-signatory and non-airline revenues, are above the budget estimate by **.2%**.

Year-to-date Total Operating Revenues Actual of **\$26.1M** is **4.8%** above the budget estimate of **\$24.9M**.

Year-to-date Total Operating Expenses are below budget by **-22.5%** from budget. Components of this line item include a **-11.5%** decrease in Personnel Service, a **-27.7%** decrease in Contractual Services, a **-44.0%** decrease in Materials & Supplies and a **-100%** decrease in Equipment/Furnishings from budgeted amounts for these respective categories.

The actual year-to-date Net Revenues from Operations of **\$11.9M** reflects an increase of **80.8%** over the year-to-date budgeted amount of **\$6.6M**.

Finally, our year-to-date results for Debt Service Coverage is at **1.69** versus the requirement of **1.25**.

Should you have any questions, please contact me at your convenience.

Attachments

cc: Board of Directors  
Executive Manager  
Deputy Executive Manager  
Frank R. Santos, Expansion  
Division Heads

CALVO FISHER &amp; JACOB LLP

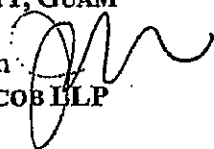
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**RECOMMENDATION OF COUNSEL**

**TO:** Board of Directors  
ANTONIO B. WON PAT INTERNATIONAL  
AIRPORT AUTHORITY, GUAM

**CC:** Mr. Charles H. Ada II  
Executive Manager  
ANTONIO B. WON PAT INTERNATIONAL  
AIRPORT AUTHORITY, GUAM

**FROM:** Janalynn Cruz Damian   
CALVO FISHER & JACOB LLP

**DATE:** March 20, 2013

**SUBJECT:** Executive Session

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Pursuant to 5 G.C.A. § 8111(c)(1), I hereby recommend that the Board of Directors of GIAA conduct an Executive Session at the next regularly scheduled Board meeting to discuss pending or threatened litigation to which GIAA is or may be a party.