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From: Speaker's Office <speaker@guamlegislature.org>
Sent: Thursday, July 16, 2020 8:44 AM
To: Clerks Office
Cc: Rennae Meno
Subject: M&C Fwd: OPA Report No. 20-04, Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses
Attachments: 20-04 Executive Summary.pdf; OPA Report No. 20-04.pdf; Email-OPA Report No. 20-04.pdf

07-15-20	4:21 PM	07-15-20	Report No. 20-04, Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses.*	Office of Public Accountability	35GL-20-2010

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
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---------- Forwarded message ---------
From: **Andriana Quitugua** <aquitugua@guamopa.com>
Date: Wed, Jul 15, 2020 at 4:21 PM
Subject: OPA Report No. 20-04, Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses
To: Speaker Barnes <speaker@guamlegislature.org>
Cc: Clariza Roque <croque@guamopa.com>

Hafa Adai Speaker Barnes,

Pursuant to P.L. 21-122, Section 1, Chapter 19 § 1909 (j), herein attached is OPA Report No. 20-04, Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses. Please refer to the attachments for your copy:

1. Executive Summary
2. OPA Report No. 20-04

Please contact Audit Supervisor Clariza Roque at 475-0390 ext. 211 or Auditor-in-Charge Andriana Quitugua at ext. 203 for any questions or concerns that you may have.

Best Regards,

Andriana U.C. Quitugua, **CFE**
Accountability Auditor
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OPA Report No. 20-04, Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses

1 message

Andriana Quitugua <aquitugua@guamopa.com> Wed, Jul 15, 2020 at 4:19 PM
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Cc: Clariza Roque <croque@guamopa.com>

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35GL-20-2010
Speaker Tina Rose Muña Barnes

Best Regards,

Andriana U.C. Quitugua, CFE
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2 attachments

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

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

- Discussed and decided on the hiring of the *former* General Manager in their December 2012 executive session;
- Were inconsistent in the ratification[1] of the *former* General Manager's pay adjustments as well as the *former* Deputy General Managers' pay adjustments; and
- Did not conduct a formal performance evaluation for the *former* General Manager in 2018.

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

Former General Manager's Hiring Discussed/Decided during PAG Executive Session
According to 5 GCA §8111(a), under no circumstances shall a public agency hold an executive or closed meeting to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions must be held in a public meeting and minutes shall be kept and open to the public. Also, 5 GCA §8111(d) requires that all voting must be held in a public meeting and minutes shall be kept and open to the public.

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

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

Former Deputy General Managers' Pay Adjustments Not Ratified
Throughout their employment, the *former* General Manager conducted formal performance evaluations of the *former* Deputy General Manager of Administration and Finance and *former* Deputy General Manager of Operations and Maintenance. The PAG Board of Directors approved the *former* Deputy General Managers' performance evaluations presented by the *former* General Manager. While we believe that the *former* Deputy General Managers' pay adjustments were

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

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

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

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

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

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

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

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

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

Conclusion

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

Benjamin J.F. Cruz
Public Auditor

Port Authority of Guam Unclassified Employees' Pay Raises and Bonuses

Performance Audit
October 1, 2011 through September 30, 2019

OPA Report No. 20-04
July 2020

Doc. No. 35GL-20-2010.*

Port Authority of Guam
Unclassified Employees' Pay Raises and Bonuses

Performance Audit
October 1, 2011 through September 30, 2019

OPA Report No. 20-04
July 2020

Distribution via E-Mail:

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Conclusion

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

Benjamin J.F. Cruz
Public Auditor

Introduction

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

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

Our audit objectives were to determine whether:

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

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

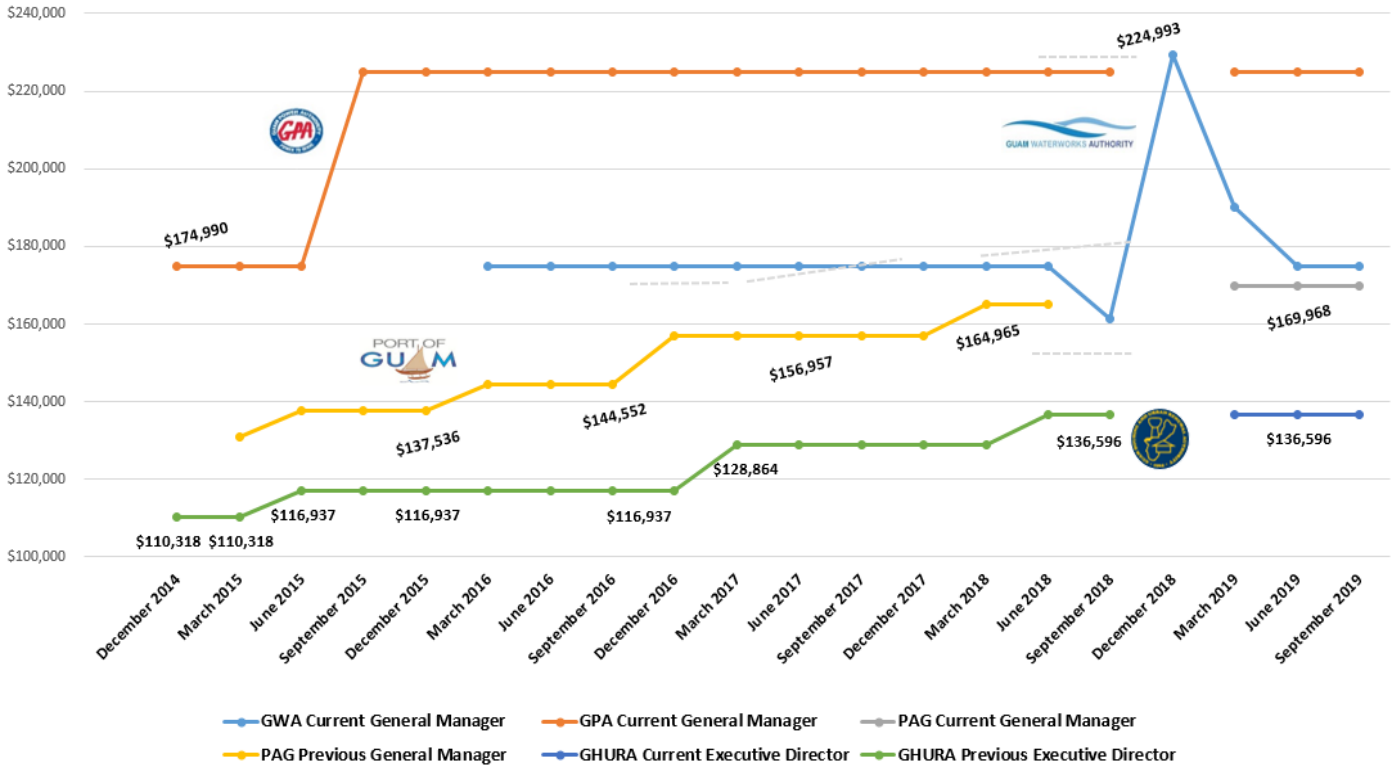
Background

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

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



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



Port Authority of Guam

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

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

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

Open Government Law

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

- §8111(a) – Under no circumstances shall a public agency[2] hold an executive or closed meeting[3] to discuss salaries, salary levels, or salary adjustments of any employee or officer. All such discussions or decisions must be held in a public meeting[4] and minutes shall be kept and open to the public.
- §8111(d) – Under no circumstances shall a public agency vote on any matter before it during an executive or closed meeting. All voting must be held in a public meeting and minutes shall be kept and open to the public.
- §8113 – The minutes of every meeting of each public agency shall be promptly and fairly recorded, shall be open to public inspection, and shall include but not be limited to a record of all motions, proposals, and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call.
- §8115(b) – Each member of a public agency who attends a meeting of a public agency where action is taken in violation of the Open Government Law, with knowledge of the fact that the meeting is in violation thereof, is guilty of a *misdemeanor*.

Performance Reviews of Agency Heads

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

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

Policy on Performance Evaluation for General Manager and Deputy General Manager

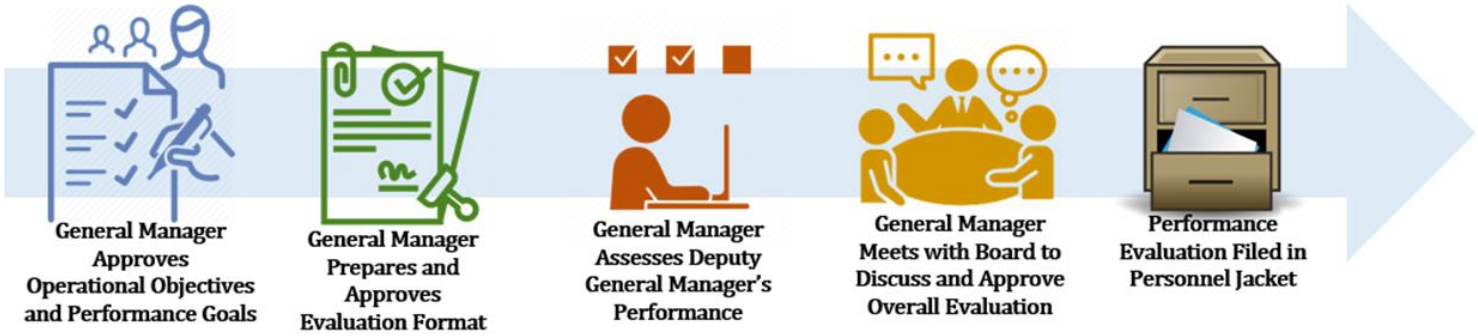
The PAG Board of Directors formulated its internal processes and procedures pertaining to the General Manager and Deputy General Managers' performance evaluations. Refer to Figure 2 and Figure 3 for an illustration of PAG's performance evaluation processes.

[2] Public agency includes any board, commission or comparable unit of government, any of whose members are elected, appointed by the Governor or by the Legislature.
[3] Closed meeting or sometimes referred as executive session/meeting.
[4] Public meeting or sometimes referred as regular session/meeting.

Figure 2: Process of Performance Evaluation for General Manager



Figure 3: Process of Performance Evaluation for Deputy General Managers



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

Results of Audit

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

- Discussed and decided on the hiring of their *former* General Manager during their December 2012 executive session;
- Were inconsistent in the ratification[5] of the *former* General Manager's pay adjustments as well as the *former* Deputy General Managers' pay adjustments; and
- Did not conduct a formal evaluation of the *former* General Manager's performance in 2018 unlike prior years.

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

PAG's Compliance with the Open Government Law

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

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

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

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

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

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

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

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

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

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

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

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

Table 1: Former General Manager's Pay Adjustments

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

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

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

Former Deputy General Managers' Pay Adjustments Not Ratified

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

Table 2: Former Deputy General Managers' Pay Adjustments

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

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

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

Performance Reviews of Agency Heads

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

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

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

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

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

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

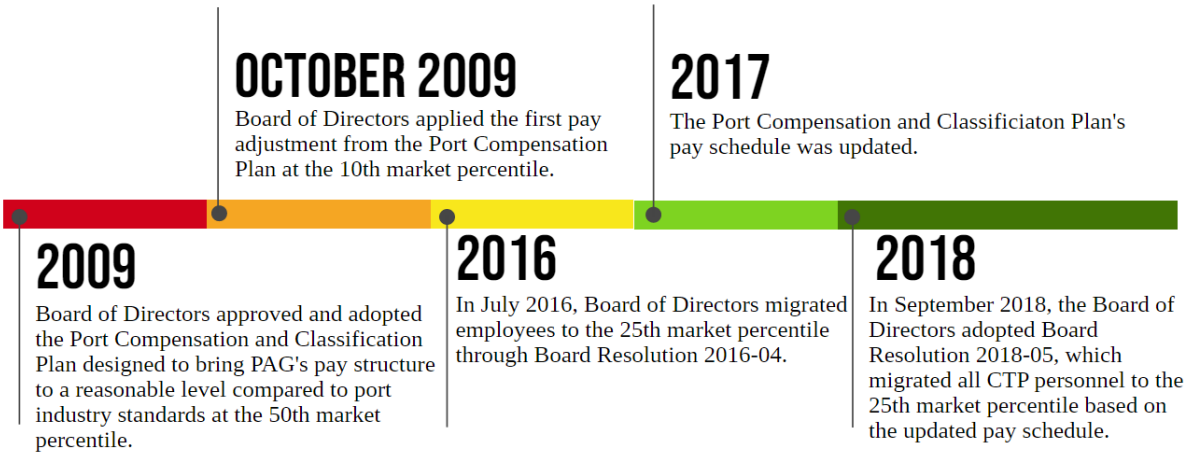
Furthermore, PAG's policy on the performance evaluation for the General Manager requires the Board of Directors to discuss and approve the General Manager's overall evaluation in its executive session. This was not in line with 5 GCA §8111(d), which states that a public agency vote on any matter should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

Other Matters

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

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

Figure 4: History of Port Compensation and Classification Plan



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

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

Authority	Benchmark Position	25th - Market Percentile									
		Structural Adjustment - MIN					Structural Adjustment - MAX				
		Base Salary	Hourly	Grade	Step	Sub Step	Base Salary	Hourly	Grade	Step	Sub Step
PAG	Deputy GM Administration & Finance	129,073	62.05	Q	3	C	134,314	64.57	Q	4	C
PAG	Deputy GM Operations & Maintenance	134,314	64.57	Q	4	C	139,768	67.20	Q	5	C
PAG	General Manager (PAG)	158,533	76.22	R	6	C	164,970	79.31	R	7	C

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

Classification of Monetary Amounts

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

Management Response and OPA Reply

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

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

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

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

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

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

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

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

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

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

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J. F. Cruz
Public Auditor

Appendix 1:
Objective, Scope, & Methodology

Our audit objectives were to determine whether:

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

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

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

Methodology

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

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

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

Appendix 2:
Prior Audit Coverage

OPA Report No. 19-09, GPA and GWA Unclassified Employees' Pay Raises and Bonuses
From FY 2015 through FY 2019, the Consolidated Commission on Utilities (CCU) did not comply with the Open Government Law when it discussed and decided on employees' salaries and bonuses during their executive meetings. Specifically, we found that the:

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

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

OPA Report No. 14-05, Government of Guam Merit Bonus Program
From fiscal years 2009 to 2013, the Government of Guam spent $12.6 million in retroactive merit bonus payments for over 4,200 employees. Specifically, we found:

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

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

Policy on Performance Evaluation for General Manager

FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

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BOARD POLICY MEMORANDUM NO. 09-03

To: Division Heads	Subject: Policy on Performance Evaluation for General Manager
Approved by the Board of Directors on: February 18, 2009	Revision Date:
Approved by: MONTE D. MESA, Chairman, Board of Directors	

I. **REFERENCE:** Title 5, Guam Code Annotated, Government Operations, Chapter 43, Boards & Commissions, Article 2, Performance Evaluation of Agency Heads, was enacted by Public Law 27-20.

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

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

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

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

IV. **PURPOSE OF THE EVALUATION:**

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

The Port Authority of Guam, Jose D. Leon Guerrero Commercial Port is an Equal Employment Opportunity Employer.
Complaints of discrimination should be sent to the Human Resources Division.

B. Recognize positive performance and delineate areas that need focus and/or strengthening.

C. Establish a basis for retaining the General Manager.

V. PERFORMANCE GOALS:

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

VI. PROCEDURE

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

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

B. The Board will prepare the evaluation format for the General Manager, including measures of performance and operational objectives. The Board will approve the evaluation format.

C. The Board members will assess the General Manager's performance in a narrative format. Questions to be addressed include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment: Performance Evaluation Form

Policy on Performance Evaluation for Deputy General Manager

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Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

BOARD POLICY MEMORANDUM NO. 09-04

To: Division Heads	Subject: Policy on Performance Evaluation for Deputy General Manager
Approved by the Board of Directors on: MARCH 26, 2009	Revision Date:
Approved by: MONTE D. MESA, Chairman, Board of Directors	

I. **REFERENCE:** Title 12, Chapter 10, Section 101101(c) authorizes the Board of Directors to employ and compensate under the terms and conditions fixed by at the pleasure of the Board for the Deputy General Manager position. Prior to the enactment of Public Law 29-113, which prohibits the creation of new unclassified positions, the Deputy General Manager position was one of several unclassified positions established by Civil Service Commission.

Title 5, Guam Code Annotated, Government Operations, Chapter 43, Boards & Commissions, Article 2, Performance Evaluation of Agency Heads, was enacted by Public Law 27-20.

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

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

II. **GENERAL POLICY:** It is the intent of the Board of Directors and general policy to extend the application of the law to the Deputy General Manager position as stated in Section 10111(c) of Title 10, Chapter 12 of the Guam Code Annotated. The written performance evaluation for the Deputy General Manager position be also conducted in line with the timeline required in Title 5, Guam Code Annotated and will be presented by the General Manager for discussion with the Board in Executive Session.

The Port Authority of Guam, Jose D. Leon Guerrero Commercial Port is an Equal Employment Opportunity Employer.
Complaints of discrimination should be sent to the Human Resources Division.

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

IV. PURPOSE OF THE EVALUATION:

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

B. Recognize positive performance and delineate areas that need focus and/or strengthening.

C. Establish a basis for retaining the Deputy General Manager.

V. PERFORMANCE GOALS:

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

VI. PROCEDURE

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

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

B. The General Manager will prepare the evaluation format for the Deputy General Manager, including measures of performance and operational objectives. The General Manager will approve the evaluation format.

C. The General Manager will assess the Deputy General Manager's performance in a narrative format. Questions to be addressed include:

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

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

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

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

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

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

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

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

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

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

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

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

Attachment: Performance Evaluation Form

Excerpts of Executive and General Session Minutes

September 26, 2013 Executive Session

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

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

January 03, 2014 Special Meeting

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

January 30, 2015 General Session

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

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

January 29, 2016 General Session

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

Excerpts of Executive and General Session Minutes

July 25, 2016 General Session

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

December 21, 2016 General Session

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

February 27, 2018 General Session

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

August 28, 2018 General Session

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

PAG Management Response

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

June 30, 2020

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

Dear Mr. Cruz,

Buenas yan Hafa Adai! This letter is to provide management's response to the Office of Public Accountability's draft performance audit findings of the Port Authority of Guam's Unclassified Employees' Pay Raise and Bonuses covering a period beginning October 2011 through September 2019, and provides the following objectives:

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

Furthermore, this draft performance audit uncovered the following findings:

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

And, provides the following recommendations:

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

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Complaints of discrimination should be sent to the Human Resources Division.

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

Management acknowledges the following:

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

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

Relative to this draft performance audit's findings that the former general manager's salary was inconsistent with the Port's authorized pay scale: I sent you a letter on June 24, 2020 explaining that since the former general manager's salary, along with the salaries of 183 Port employees were outside the 25th market percentile at the time it went into effect on September 16, 2018, were above the 25th market percentile, the board and management granted a 3% increase regardless of whether they have exceeded the maximum step of the pay grade implementation range, as long as the employee did not exceed Step 20 of that pay grade. This was done in order for these employees to be able to avail themselves of the annual increments provided by the Port's personnel rules and regulations. And, theoretically, since the manner in which the Port's migration was adopted according to lawful board action and subsequently adopted statutorily should be deemed lawful, determined moot and excluded from the scope of this draft performance audit.

Relative to this draft performance audit's finding that discussion on the cost of the Migration of CTP Personnel to the 25th Market Percentile was held in working sessions: I am providing you with a copy of a Civil Service Commission (CSC) Order for a Post Audit on Case No: 19-PA03. This CSC Order "ruled 5 to 0 that the Port complied with the Rules and Statutes in implementing the new pay scale according to the resolutions of the Port Authority of Guam's Board, and ordered the Port to provide the requested document's by Monday, September 30, 2019." Again, since how the Migration of CTP Personnel to the 25th Market Percentile was upheld by the CSC, according to Post Audit on Case No: 19-PA03, I am respectfully requesting that you render this finding satisfied and removed as a possible audit finding.

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

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

PAG Management Response

And, finally, with respect to this draft performance audit's recommendation that the Port Authority of Guam Board of Directors apply the market-based compensation model pay scale for all CTP employees be omitted simply because of CSC Order, specifically Post Audit on Case No: 19-PA03, wherein the CSC ruled that the Port complied with the Rules and Statutes in implementing the new pay scale.

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

Very truly yours,

RORY J. RESPICIO
General Manager

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:	**POST AUDIT CASE NO.: 19-PA03**
CIVIL SERVICE COMMISSION, [redacted] **Employee,** **vs.** **PORT AUTHORITY OF GUAM, Management.**	**ORDER AFTER HEARING**

This matter came before the Civil Service Commission (Commission) September 26, 2019, for an Investigation Report Hearing. Commissioners present were Chairman Luis R. Baza, Vice-Chairman Juan K. Calvo, Commissioner Priscilla T. Tuncap, Commissioner John Smith, and Commissioner Emilia F. Rice. Deputy General Manager, Administration and Finance, [redacted] and [redacted] represented the Port Authority of Guam (Port).

Commission staff read the Investigation Report regarding its investigation into the recent implementation of the Market Percentile and Pay Grade Schedules. The report found that the Port had not provided all the documents needed to complete the investigation. Port representative [redacted] advised the Commission they were making a

good faith effort to find the documents. The Commission also noted that the 180-day time limit to act runs out October 7, 2019.

The Commission voted 5 to 0 that the Port had complied with the Rules and Statutes in implementing the new pay scale pursuant to the resolutions of the Port Authority of Guam's Board, and ordered the Port to provide the requested documents by Monday September 30, 2019.

SO ORDERED THIS 10th **day of** October **2019.**

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

(absent)
CATHERINE GAYLE
Commissioner

EMILIA F. RICE
Commissioner

PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

June 27, 2019

INTER-OFFICE MEMORANDUM

TO: [redacted] Deputy General Manager Admin/Finance

FROM: [redacted] General Manager

SUBJECT: Internal Review – Compensation Plan Budget

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

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

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

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

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

June 26, 2019 PAG Board Meeting

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

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time to review the packet. This pause also gives us the opportunity to reconstruct how this compensation plan was adopted by the PAG Board without any PAG Board appropriation to fund it. In our financial highlights, we noted that PAG's FY2019 budget only reflected the prior year's actual salaries and benefits for full-time employees plus the projected pay increments of $1.0 million. We further stated that PAG's FY2019 budget did not allocate monies for the migration of current employees into the updated pay schedule, which is estimated to be over $1.7 million.

Summary

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

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

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

Si Yu'os Ma'ase!

Cc: Deputy General Manager, Operations
Financial Affairs Controller

Appendix 7:
Status of Audit Recommendations

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

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

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

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

MISSION STATEMENT

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

VISION

The Government of Guam is a model for good governance with OPA leading by example as a model robust audit office.

CORE VALUES

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

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- **Call our HOTLINE at 47AUDIT (472-8348)**
- **Visit our website at www.opaguam.org**
- **Call our office at 475-0390**
- **Fax our office at 472-7951**
- **Or visit us at Suite 401, DNA Building in Hagåtña**

All information will be held in strict confidence.