



July 25th, 2013

Joanne Marie S. Brown
General Manager
Port Authority of Guam
1026 Cabras Highway Suite 201
Piti Guam 96915

Re: Port Authority of Guam Legal Services

Dear Ms. Brown,

Thank you for your timely response to my Freedom of Information Act request regarding the Port Authority of Guam's (PAG) legal services contract with the law firm of Philips & Bordallo and its related billing.

As an initial matter, I was quite surprised by the level of redaction in response to my FOIA request. Based on my experience and understanding the attorney-client privilege does not generally extend to attorney billing records. This is simply because attorney billing records usually do not contain confidential client communications. Please provide me with a detailed explanation why you feel the voluminous redactions are appropriate

My office has taken the liberty of compiling the 21 invoices, 19 invoice certifications, and 18 checks included in your 400-page FOIA response. This information has been consolidated into the spreadsheet report accompanying this letter and referenced herein. After reviewing the spreadsheet-based iteration of the FOIA response you provided, I compared that information with the "Financial Statements and Additional Information and Independent Auditors' Report, September 30th 2012 and 2011", issued by Deloitte on February 15, 2013.

The results of my office's comparison were as follows:

| FOIA: Fiscal Year (Rollup based on Services Dates in Invoices) | FOIA: Invoice Total (By Billing Period) | FOIA: Sum of Checks Issued (By Invoice Period) | Independent Audit Total | FOIA Response vs. Single Audit |
|--|---|--|-------------------------|--------------------------------|
| FY 2011 | \$73,942.18 | \$73,942.18 | \$445,854.00 | \$371,911.82 |
| FY 2012 | \$431,886.16 | \$431,876.16 | \$299,222.00 | -\$132,654.16 |
| FY 2013 | \$193,806.80 | \$132,768.55 | | |
| Grand Total | \$699,635.14 | \$638,586.89 | | |

Presumably the disparity between our rollup of legal services (shown in your FOIA response) and the legal services costs reported for FY 11 in the Single Audit may be attributable to the amounts paid to prior legal counsel, Lujan and Aquigui, who I understand may have been

retained for a portion of FY 2011 . What is not clear is to what the FY 12 discrepancy may be attributed

I am forced to ask if PAG has additional legal counsel. Absent that scenario, the available explanations for the disparities listed above are few and far between. If additional counsel was employed during FY 11 and FY12, please provide me with a copy of the contract(s) with the firm in question. Also, please also provide the invoices that Deloitte used to arrive at the sums cited above.

In addition I am puzzled by how PAG was able to close the books on FY 2012 when:

1. There are seven (7) invoices for legal services performed in FY 2012 that were submitted and paid for after January 31, 2013?
2. The last date Mary Torres certified for PAG legal services was May 7, 2012.
3. The next invoice certified after the last invoice that Mary Torres approved for payment was February 1, 2013.
4. There were 238 Days between performance of the legal services and the invoices for legal services submitted and certified by PAG.
5. The sum of 2012 invoices paid after January 31, 2013, was \$270,965.
6. The total invoice amounts paid for FY 2012 Services was \$431,876 but 62.8% of this billing amount was invoiced and paid after January 31, 2013.

Below is a detailed account of the legal services billing periods, the invoice amounts, the invoice submission dates and the duration between service period and date that invoices were submitted and paid for by PAG.

| FOIA: Billing Period | FOIA: Invoice Submission Date | FOIA: Days Difference: Service Dates vs. Invoice Submission and Payment Dates | FOIA: Amount of Invoice and PAG Check Issued |
|-----------------------|-------------------------------|---|--|
| April-May 2012 | 1/31/2013 | 305 | \$57,038.95 |
| May-June 2012 | 1/31/2013 | 244 | |
| May-12 | 2/19/2013 | 294 | \$20,617.50 |
| June-12 | 3/18/2013 | 290 | \$35,650.00 |
| July-12 | 4/2/2013 | 275 | \$30,490.00 |
| August-12 | 4/12/2013 | 254 | \$65,417.50 |
| September-12 | 5/16/2013 | 257 | \$61,751.91 |
| October-12 | 5/30/2013 | 241 | \$66,895.35 |
| December-12 | 6/28/2013 | 209 | |

To clear up any confusion I have per the results of the analysis detailed above, please provide explanations to the following questions:

1. How was PAG able to close its FY2012 ledgers with over \$270,000 in additional legal fees not submitted or paid?
2. Why were seven (7) invoices submitted an average of nine (9) months following their associated service dates, considering that previously the average period between service dates and invoice submissions was less than 30 days?
3. Why didn't the previous director receive invoices for 62% of the billing amount for legal services when she was at the Port for all of FY 2012?

When attempting to perform further due diligence on the Port's finances, I visited the PAG website to find the PAG Budgets for FY 2011, FY 2012 and FY 2013. My intention was to review PAG costs associated with legal services but I was unable to locate those budgets.

Therefore, please provide my office with the following:

1. The Board-approved Budgets for FY 2011, FY 2012 and FY 2013.
2. The Board Minutes or Resolutions adopting those Budgets.
3. Approved and effective dates for those Budgets.
4. Highlighted content related to the approved Budget for Legal Counsel Services. If the Board passed a Supplemental Budget, please provide a copy of it.
5. Copies of the "Legal Counsel/Services" ledger for FY 2011, FY 2012 and FY 2013.


To ensure that we are current and that we are comparing apples to apples in relation to dates and totals please also provide us with:

1. Updated payment status and payment amount for invoice #11619 for December 2012 services totaling \$65,873.20.
2. The most current invoices, PAG invoice certifications, and PAG checks made to Phillips and Bordallo for the legal services performed, billed and/or paid for, from January to June 2013. This last request is essentially extending the documentation requested in our previous FOIA to include 2013.

This is the Government's budget season; therefore, your expeditious attention to my inquiry is greatly appreciated. The aforementioned information and associated records/documents requested may be submitted to me electronically at senator@senatorbjcruz.com.

Thank you for your cooperation. I look forward to your prompt response.

Sincerely,


Benjamin J.F. Cruz

MARY C. TORRES

277 Chalan Santo Papa
Hagatna, Guam 96910
671-777-0000

February 6, 2019

Transmitted Electronically and via Hand Delivery

Ms. Connie Jo Shinohara
Deputy Manager of Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

RE: Further comments in connection with the practices of the Law Firm of Phillips & Bordallo, P. C. as attorneys for the Port Authority of Guam

Dear Ms. Shinohara:

Thank you for allowing me to provide additional information for your review and consideration. In my last correspondence to you, I described in great detail the ethical miscarriage committed by the Phillips Firm during their investigation of the 2012 workers compensation claim.

While these violations provide sufficient cause for alarm, they are merely symptoms of a larger problem that began long before my tenure at the Port and will continue so long as the Law Office of Phillips and Bordallo, P.C. remains its counsel.

In all fairness to the aggrieved parties and the general community of Guam, I believe your task force cannot conduct an objective review of the “Port 7” cases without an overall examination of the Phillips Firm’s long history of questionable practices in the name of the Port’s “best interests.”

A Panoply of the Absurd

The Law of Parsimony is a logical principle that says the simplest explanation is usually the correct one. Unfortunately, for the Phillips Firm and many of the Port’s previous management, logic was simply not their forte.

Rather than believe that Ms. Meno—a woman who had never been subjected to any prior discipline at the Port; a woman who, just one week before her notice of adverse action, was awarded a Certificate of Achievement by the Port’s own Board of Directors; a woman who had earned the Port’s Marketing Division a MagPro award—had indeed suffered a work injury as she

claimed, management chose to concoct a ‘conspiracy theory’ so absurd one would have to be a contortionist to navigate the mental gymnastics required to believe it.¹

Consider it for a moment. Why would every single one of these employees—many of whom had long-term employment and a dedicated history of service to the Port—risk everything to collectively fabricate a work injury requiring back surgery, with most of the \$70,000 earmarked for doctors and hospitalization? What exact benefit would each of them gain that could possibly surpass the loss of their jobs, livelihood, reputation, and the prospect of criminal prosecution?

While the Phillips Firm publicly portrayed Ms. Meno’s extension of leave in Hawaii to be a form of vacation, if this indeed were the grand conspiratorial exercise counsel represented it to be, why not give the alleged the credit to dream a bit bigger than a simple claim requiring back surgery at the nearest U.S. facility? The great lengths these supposed schemers would go for very little gain requires an excessive suspension of disbelief.

Nonetheless, to this day, though the statute of limitations to press criminal charges has since expired, the Port’s counsel maintains that these employees were involved in criminal conduct, and that the facts exist to prove it. And yet, no law enforcement body, local or federal, has seen it fit to hand down a single indictment against any member of the Port 7. No criminal charges were brought despite the urging of then Board Chairman Dan Tydingco to his brother, Phil Tydingco, then-Chief Prosecutor of the Attorney General’s Office, and Joanne Brown’s relentless and unabashed efforts to get Attorney General Elizabeth Barrett-Anderson to prosecute the port employees. You should feel free to contact former AG Barrett-Anderson who mentioned to me Ms. Brown’s persistence and obstinacy when she indicated to Ms. Brown that there would be no criminal prosecutions.

Still, as incredulous as this conspiracy sounds, it pales in comparison to the repeated failure of the Port to properly assess and manage the Port 7 cases.

The “Tail that Wags the Dog”

We all know that attorneys have an obligation to provide advice that is in the best interests of their client. But as sworn officers of our legal system, they are also subject to ethical rules and standards—and for good reason. Zealously appealing rulings for no substantial purpose other than to embarrass or violate the legal rights of third persons or furthering factually unfounded positions

¹Again, it should be noted that Attorney Bell himself stated that Ms. Meno should be examined by an independent medical examiner, and that such action was needed in order to expedite her treatment as quickly as possible. He later followed up this statement explaining that it was unfortunate that Ms. Meno had to undergo the review and **that it was everyone’s intent that she get the medical care that she needs as quickly as possible and to make everything right.**

are not only clear violations of the Guam Rules of Professional Conduct, they are classic demonstrations of the “tail wagging the dog.”

In this instance, the Port’s tail has wagged the agency to the tune of millions of dollars. For the past seven years, the Port has racked up \$6 million in legal fees and may be liable for \$3.2 million in back wages and fees—all over a \$70,000 worker’s compensation claim. On top of this, there have been court judgments handed down to include reinstatement of employment rights, repayment of back wages and benefits, and payment of attorneys’ fees.

Based on testimony provided to the Legislature by Port Board members, there has been no evaluation of the cost benefit associated with fighting these cases, nor any risk assessment, litigation management, or management assessment.² This complete disregard for common business practice, or just plain common sense, begs the question: **Is it Phillips’s interest or the Port’s interest that are paramount when his firm engages in such legal tactics?**

An initial litigation risk assessment if done properly, becomes the business plan for the litigation and is reviewed and revised as more facts become available. It provides a metric against which settlement opportunities and the cost of further litigation can be evaluated. The value of this process is to implement disciplined case management and rigorous case evaluation. Such a process results in: (1) significant reductions in the overall coast of litigation including payouts and attorney fees and expenses; (2) improved ability to evaluate the performance of counsel; (3) improved ability to settle disputes creatively; and (4) improved ability to make informed settle or litigate decisions. Unfortunately, the Port did none of this, and I’m glad you are undertaking this review and evaluation.

Potential Bill Padding

I asked the above question myself on several occasions during my short term at the Port—specifically when it came to the approval of billing invoices. While I approved only a few billing invoices, most of which were for matters performed before I assumed employment, my initial scrutiny toward the documents Legal Counsel submitted resulted in their failure to provide any additional billings for the remainder of my term.

A later examination of the invoices submitted by the Law Office of Phillips and Bordallo revealed a number of obvious problems that you should be aware of, as they did not appear to

²At the Legislature’s confirmation hearing for two Port board members held in June 2016, I asked the former Deputy Manager in charge of Finance Management if anyone at the Port was evaluating the cost benefit associated with fighting these cases, and specifically if anyone at the Port is doing risk assessments, litigation management or mitigation assessments. Ms. Maria Taitano testified that she does not. I further inquired if the Board convened executive sessions for purposes of deciding such legal matters—to which the current chairman of the Board, Mr. Frank Santos, testified at his legislative confirmation hearing that legal matters are decided by the General Manager and Legal Counsel.

fairly reflect the basis on which the attorney's charges had been determined. At worst, the charges indicate that the Phillips Firm was, and may still be, padding their invoices. At best, they demonstrate an inefficient expenditure of public funds.

A. Block Billing and Vague or Insufficient Descriptions

The first set of questionable practices involved the use of block billing and vague or insufficient descriptions—raising suspicions about whether all the work claimed was actually accomplished or whether it was necessary and cost efficient. This is important because, when public funds are being expended, attorney bills must be carefully scrutinized.

Courts have frowned upon and disallowed attorneys from engaging in such practices. See *Sonia S. Chan, ABA Formal Opinion 93-379: Double Billing, Padding and Other Forms of Overbilling, 9 Geo. J. Legal Ethics 611, 617-18 (1996)*

Such practices also raise more important underlying ethical issues:

“These ethical questions, including attorney deception, the conflict between the client's needs and the attorney's economic interests, hindrances to expediting litigation and efficiency and risks of an attorney abusing his discretion, therefore, should be carefully examined.” *Id* at 614; *see also Douglas R. Richmond, For A Few Dollars More: The Perplexing Problems of Unethical Billing Practices by Lawyers, 60 S.C. L. Rev. 63, 81 (2008)*

B. Exorbitant Number of Very Long Days

The second concern regarding these invoices were the exorbitant number of very long days. While there were numerous days where the billable hours for multiple lawyers exceeded 10 hours in a day—even though no trial days were involved—amazingly, and contrary to the laws of time and space, **one Phillips bill included billing by a single attorney of more than 24 hours in a day.**

For example, on November 27, 2012, Attorney John Bell individually billed more than 24 hours for that day. By the time I exposed it—forcing Phillips to correct the invoice—the bill was already certified and paid by the Port. Moreover, in the months of September and October 2012 alone, there were 35 instances where the billable hours for a single attorney were 10 or more hours and 17 more instances where the billable hours for a single attorney were nine or more hours. This should serve as a strong indication that Phillips was likely padding the billing invoices. See *Gerald*

*F. Phillips, Time Bandits: Attempts by Lawyers to Pad Hours Can Often Be Uncovered by A Careful Examination of Billing Statements, 29 W. St. U. L. Rev. 265, 279 (2002).*³

Unfortunately, these bills were not submitted on a timely basis as Phillips submits invoices sometimes more than 10 months after the services were first rendered. Needless to say, this delay in submitting invoices complicates and makes more difficult the determination of whether the expenditure of public funds on Phillips is cost efficient, necessary, reasonable, or compensable. See *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Tofflemire* 689 N.W.2d 83 (2004).⁴

C. Use of Quarter Billing

Finally, paragraph 3.1 (b) of the Agreement between Phillips and the Port [Exhibit A of my correspondence dated January 25, 2019] specifically requires that Phillips shall bill in time increments of six minutes or one-tenth of an hour. Phillips instead consistently billed in quarter hour increments which was expressly contrary to his Agreement. Such conduct is disfavored because there is a greater likelihood overbilling will result. See, e.g., *Cambridge Toxicology Group, Inc. v. Exnicios*, 495 F.3d 169, 181-82 (5th Cir. 2007) (reducing the attorney's award because he used quarter-hour billing and consistently rounded up his time); *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (“[T]he hours were inflated because counsel billed a minimum of [fifteen] minutes for numerous phone calls and e-mails that likely took a fraction of the time.”); *Republican Party of Minn. v. White*, 456 F.3d 912, 920 (8th Cir. 2006) (“We agree that quarter-hour increment billing is less reliable than tenth-hour billing and risks bill inflation.”). See also *Douglas R. Richmond, For A Few Dollars More: The Perplexing Problems of Unethical Billing Practices by Lawyers*, 60 S.C. L. Rev 63.

Conclusion

It has been said that the unvarnished truth is more valuable than the political convenience of a polite lie. Seven years ago, I did the politically inconvenient because I believed it was necessary to expose the truth and make all facts known regarding the handling of my termination and the continued disposition of the Port 7.

While this political vendetta gone awry must end—the greater injustice to the people of Guam is the continued pilferage of the Port's coffers by your Legal Counsel. In addition to the

³ Exorbitant number of very long days suggest that the law firm might have been padding the billing statements. Few of us can work twelve to sixteen hours a day for several consecutive days. The senior partner tried to camouflage this by billing 8.30, 8.50 and 8.80 hours. In fact, the partner billed fifty-three times in increments in excess of one hour, and twenty-eight percent of these instances were for more than eight hours.

⁴Use of “block and summary” system of billing, in which bills were not prepared until several months after services were performed, leading to questionable level of accuracy for the bills, violated attorney disciplinary rules prohibiting conduct prejudicial to administration of justice and conduct adversely reflecting on fitness to practice law.

Ms. Shinohara
Comments in Connection with Phillips Firm Practices
February 6, 2019

questionable practices I have laid out here, I have attached listing, together with court judgments and rulings of the Civil Service Commission in the matters of employees Jose B. Guevara III, Francine T. Rocio, Josette Javelosa, Frances Arriola Cepeda, Leonora V. Leon Guerrero, Bernadette Meno, and Vivian Leon.

Had the Port's board considered a proper and necessary risk assessment of the various cases involving the Port 7, had they not turned a blind eye to the ill-gotten exorbitant billing practices of their Legal Counsel, or had they simply been smarter than their tail—perhaps we would not have reached this point where new management finds it necessary to review the legitimacy of these cases.

Congratulations again on your new position at the Port and thank you for your consideration.

Sincerely,

Mary C. Torres

Mary C. Torres
277 Chalan Santo Papa
Hagatna, Guam 96910

July 31, 2013

Mr. Leonardo R. Rapadas
Attorney General of Guam
Office of the Attorney General
287 West O'Brien Drive
Hagatna, Guam 96910

Re: Improper Payments to Phillips and Bordallo, P.C

Dear General Rapadas:

As you know, the AG has broad authority to investigate and prosecute claims and perform other duties required by law. Under 5 GCA 5 30109(f), the AG must "[be diligent in protecting the rights and properties of the government of Guam." See 5 GCA 5 30109(f). The Supreme Court of Guam in *Attorney General of Guam vs. Gutierrez* 2011 Guam 10 made clear that the Attorney General has standing under its common law or statutory powers to sue to recover government funds spent contrary to law and without proper authority. Fiscal responsibility and proper expenditure of government funds are important public interests which need to be protected.

Accordingly, I respectfully request that the Attorney General's Office obtain judgments and hold personally responsible those individuals who disbursed government funds to Phillips and Bordallo, P.C. ("Phillips") without proper authority, illegally and contrary to law. A detailed explanation of why the payments made to Phillips, purportedly in accordance with their Agreement with the Port Authority of Guam effective May 4, 2011 (the "Agreement"), were without proper authority and illegal are set forth below. I was the former General Manager of the Port and stand ready to assist in any manner possible. If you make a decision not to proceed against those individuals responsible, I ask that you please notify me within 30 days after the receipt of this letter.

The Agreement originally approved by the Attorney General's Office expressly provides in section 3.7 that "[t]he total of the compensation, costs and expenses earned, incurred or paid under this Agreement shall not exceed \$499,999 [and] If the amount earned, incurred or paid under the agreement reaches \$499,999, then a new contract must be procured before additional work is performed". Establishing the original contract amount of \$499,999 was intentional because the Port wanted to avoid having the Attorney General act as the legal advisor during all phases of the solicitation or procurement process. 5 GCA § 5150 requires that whenever any solicitation or award is estimated to result in an award of Five



Hundred Thousand Dollars (\$500,000) or more, the Attorney General *shall* act as legal advisor during *all* phases of the solicitation and the Port wanted to proceed without the Attorney General's oversight ¹.

The Attorney General did not have any role in this particular Procurement, which was designated as Request for Proposal No. PAG-011-002. Although the Attorney General approved the Agreement as to form when the contract was executed, the Attorney General was not involved during all phases of the procurement process. The declaration of the Procurement and Supply Manager of the Port, Alma Javier, in connection with this Procurement, executed under penalty of perjury, confirms and certifies that the procurement was not estimated to result in an award of \$500,000 or more. Ms. Javier reconfirmed the limit on the contract amount in the November 28, 2012 Regular Meeting of the Board of Directors of the Port Authority. She informed the Board at that meeting that the total contract amount could not exceed \$499,999 and in accordance with the provisions of the contract, a new contract had to be procured before additional work was performed. (See Minutes attached as Exhibit 1) Therefore she requested that the Board authorize management to issue a solicitation package for legal services by December 2012, with evaluation and negotiations by January 2013 and final award by February 2013. While serving as General Manager I also informed the Board of this procurement contract limitation on more than one occasion and there are emails which will evidence my communications to the Board.

The Port's position regarding the limit on the Contract Amount being \$ 499,999 was reaffirmed by Ms. Javier at the Legislative Informational Hearing on March 5, 2013. The Port's Management also suggested at this hearing they would not make any payments that would exceed \$499,999.

Notwithstanding the limit on the contract amount, information recently provided by the Port pursuant to a FOIA request shows that the payments to Phillips for services rendered through December 2012 totaled \$698,734.04, which is \$198,733 above the cap of \$499,999 provided by contract. (See Exhibit 2) This was done without a new contract being procured, in contravention of the Professional Service Agreement and in excess of the total amounts budgeted for FY 2012 and FY 2013 combined. ² The expenditures in excess of \$499,999 were made without proper authority, illegally and contrary to law and the Attorney General should seek to recover such funds and hold those individuals responsible for making these payments personally responsible.

I fully realize that a First Amendment to Professional Services Agreement effective April 4, 2013, deleting the cap set forth in Paragraph 3, was executed by you, the Port and Phillips but I have to assume that neither Phillips nor the Port provided you full and complete information surrounding the original procurement when they sought the First Amendment. I am confident that if you were aware the original

¹ Although many have speculated that keeping the Attorney General out of the process was important to ensure the contract was "given" to Phillips to compensate for his representation of Governor Edward B. Calvo in *Gutierrez v. Guam Election Comm'n (Calvo)* 2011 Guam 3, I have no independent verifiable information in this regard.

² Interestingly Phillips himself opined that Port Management is without authority to expend funds "in excess of amounts appropriated." (See letter from Phillips dated October 19, 2012 attached as Exhibit 3). Although Phillips is obviously mistaken in his letter since Port funds are not appropriated, it later became apparent that he meant to refer to expenditures in excess of the amounts approved by the Board in its annual budget.

procurement did not comply with the requirements for solicitations estimated to result in an award of Five Hundred Thousand Dollars (\$500,000) or more, then you would likely not have signed the First Amendment which lifted the cap³. The actual solicitation reflects the Port did not comply with the requirements imposed by the procurements laws when the award is estimated to result in an award of Five Hundred Thousand Dollars or more and it is difficult to envision how the First Amendment could be consistent with procurement laws and “cure” or modify the original procurement’s solicitation for a contract not to exceed \$499,999⁴. You may wish to consider revoking your approval if it given without full disclosure by the Port *especially since Phillips has yet to bill the Port for services rendered after the effective date of the Amendment*⁵.

Assuming that the Agreement was lawfully amended in accordance with the procurement laws to authorize an award of more than \$ 500,000, the expenditures in excess of \$500,000 would still be without proper authority, illegal and contrary to law. Pursuant to its authority under 12 G.C.A. § 12004, the Guam Public Utilities Commission (the “PUC”) has the authority to identify and review contracts and obligations of the Port Authority of Guam. In an Order dated June 20, 2011 the PUC required that all professional services contracts in excess of \$1,000,000 shall require prior PUC approval. This Order makes clear that the term of a contract will include all options for extension or renewal and with regard to multiyear contracts, one must examine whether the total costs over the entire procurement term exceed the threshold review. (See PAG Docket 09-01 Order dated June 20, 2011 attached as Exhibit 4). The Phillips Agreement is for a one year term with three automatic extensions of 1 year each. Legal fees paid to Phillips for services rendered from May 2011 to December 2012 (a 20 month period) totaled nearly \$700,000 so over the entire contract (48 months) Phillips would be expected to receive nearly \$1,700,000. PUC approval of this contract would have been required and the Port has not filed any application with the PUC for approval of the Professional Services Agreement.

Even if the immediately described legal impediments to making the payments to Phillips were somehow removed, the payments made before April 4 2013 in excess of \$499, 999 are still without proper authority, illegal and contrary to law. The First Amendment which deletes Paragraph 3.7 setting forth the fixed amount of the contract as \$499,999 is only effective as of April 4, 2013 so services performed and

³ The Acting Financial Affairs Controller for the Port certified the availability of funds in the First Amendment even though the amount that the Port is now obligated to pay to Phillips is not known (and unlimited) since the Agreement as amended deleted the contract limit contained in 3.7. Normally one would expect to see a certification of an established contract amount or certification that payments will be made *subject* to the availability of funds. Query whether her certification of an unknown and unlimited amount even complies with the law.

⁴ Obviously the Port’s interpretation that a contract procured under \$500,000 (made without AG oversight) could later be amended to result in an award of more than \$500,000 (which requires AG oversight) cannot withstand scrutiny because the result would obviate and make meaningless the dictates that that the Attorney General “act as legal advisor during all phases of the solicitation or procurement process.” Advocating for this conclusion would also result in bad precedent for the Attorney General and undermine the power of the Attorney General.

⁵ As Exhibit 2 indicates, as of June 28, 2013 Phillips has only billed for services through December 31, 2012, a six month lag.

“ compensation , costs, and expenses earned , incurred or paid” before this date are still subject to the cap of \$499,999 established in the original contract .

The payments made to Phillips for services rendered through December 2012 were more than \$698,000, nearly \$200,000 in excess of the pre- amendment cap of \$499,999. This amount does not even include payments yet to be made for services rendered for January through April 4, 2013, the effective date of the amendment. Clearly any payments in excess of \$499,999 for services before April 4, 2013 would be without proper authority and illegal and those individuals responsible for authorizing and making such payments should be held liable. It is unlikely you were aware when you executed the amendment that Phillips, who was more than 8 months behind in his billings, would use the amendment as purported “legal cover” to legitimize the subsequent payments that were attributable to services performed before the amendment.

I recognize that Phillips and the Port may now contend that \$499,999 contract limit on compensation earned, incurred or paid under the Agreement is not really a total contract limit but instead merely a per annum limit. Under this theory, Phillips believes the contract contained automatic extensions of three additional periods’ years, so they could earn up to \$1,999,996 over the life of the contract without exceeding the cap. Such an interpretation is contradictory to the plain unambiguous language of Section 3.7 of the Agreement. Their actions also belie such an interpretation since the Port (i) did not originally conduct the procurement as one that could result in an award of over \$500,000 (ii) did not seek PUC approval as would be required and (ii) represented that the contract limit was \$499,999. Even more telling is the Port General Manager has publicly stated that “the Board removed the cap but only budgeted the \$499,000 for the current fiscal year”. (See PDN article attached as Exhibit 5) This begs the question of why the First Amendment was necessary at all if there was a legitimate interpretation that pursuant to the Agreement the \$499,000 cap was applicable to each year and not the entire contract amount.

Even if one accepts the implausible argument that the Agreement originally set a cap of \$499,999 per year and that cap was deleted in April 2013, it is more than likely that a portion of the amounts due to Phillips for 2013 will still be without proper authority and if paid be illegal and contrary to law. This is because the fees earned and payments made from April 2012 to December 2012 already total \$463,872.66 without accounting for fees earned in January through March 2013. The Port should be immediately warned that any payments in excess of \$ 499,999 for the year before the Amendment was effective will be without proper authority, illegal and contrary to law even if the \$499,999 limit is deemed a per annum limit.

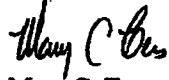
I have only laid out the reasons why the disbursements made to Phillips were without proper authority, illegal and contrary to law and did not at all delve into any of the questionable billing practices of Phillips such as block billing, vague or insufficient descriptions of legal services rendered, use of quarter billing in violation of the Agreement or exorbitant numbers of very long days, including where one attorney bills the Port for more than 24 hours in a day. Such billing practices raise far more serious problems that warrant further investigation and action, but discussion of these issues would be too protracted for this already long letter. I would be happy to meet with you or investigator to provide additional details in this regard. Finally I wish to emphasize that I have complete confidence in your fairness, impartiality and

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dedication to upholding the law and in protecting the property of the Government of Guam. I will be happy to cooperate with you and with investigators from your office in the investigation of this matter.

Thank you.

Respectfully,

A handwritten signature in cursive script, appearing to read "Mary C. Torres".

Mary C. Torres

Attachments

