

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
Informational Briefing/ Oversight Hearing / Roundtable Hearing


STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Education, Air Transportation, and Statistics, Research, and Planning	Informational Briefing	Guam International Airport Authority (GIAA)	2/7/19 10:00 a.m.	3/26/19 4:52 p.m.	



OFFICE OF VICE SPEAKER TELENA CRUZ NELSON

CHAIRPERSON OF THE COMMITTEE ON
EDUCATION, AIR TRANSPORTATION, AND STATISTICS, RESEARCH, AND PLANNING
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN | 35th GUAM LEGISLATURE

March 22, 2019


The Honorable Régine Biscoe Lee
Chairperson, Committee on Rules
I Mina'trentai Singko na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, Guam 96910

2019 MAR 26 PM 4:52

RE: Committee Report on Informational Briefing on Guam International Airport Authority (GIAA)

Håfa Adai Chairperson Lee:

Transmitted herewith is the Committee Report on the Informational Briefing on Guam International Airport Authority.

Sincerely,


Vice Speaker Telena C. Nelson

RECEIVED

MAR 22 2019

4:30 PM

COMMITTEE ON RULES



OFFICE OF VICE SPEAKER TELENA CRUZ NELSON

CHAIRPERSON OF THE COMMITTEE ON
EDUCATION, AIR TRANSPORTATION, AND STATISTICS, RESEARCH, AND PLANNING
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN | 35th GUAM LEGISLATURE

COMMITTEE REPORT

INFORMATIONAL BRIEFING

on

**Guam International Airport Authority
(GIAA)**

by Vice Speaker Telenia C. Nelson



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

First Notice of Informational Briefing: 10 a.m. Thursday, Feb. 2, 2019

Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Wed, Jan 30, 2019 at 4:25 PM

To: phnotice@guamlegislature.org, tom.ada@guamairport.net, nick@kuam.com, Jean Arriola <jeana@guamairport.net>, juliette.gillham@guamairport.net, Peter Mesa <pmesa@guamlegislature.org>, Bernice Rivera <bernice.rivera@guamlegislature.org>, jorge.guerrero@tsa.dhs.gov

January 29, 2019

MEMORANDUM

To: All Senators, Media, and Stakeholders

From: Vice Speaker Telena Nelson, Chairperson

Subject: **First Notice of Informational Briefing: Thursday, February 7, 2019 at 10:00 a.m.**

Buenas yan Håfa A dai! Please be advised that the Committee on Education, Air Transportation, and Statistics, Research, and Planning will be conducting an informational briefing on Thursday, February 7, 2019 in the Legislature's Public Hearing Room on the following:

10:00 a.m. Informational Briefing

- **Guam International Airport Authority: Construction Project of the Third-Floor for the International Passenger Arrivals, Court Decision Ruling on the Lawsuit Between Lotte Duty Free and Duty Free Shoppers Guam**

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services or for more information on this briefing, please contact the Office of Vice Speaker Telena Nelson via email senatortcnelson@guamlegislature.org or call 989-7696.

Senseramente,

Telena Cruz Nelson
Vice Speaker

--
The Office of Vice Speaker Telena Cruz Nelson

Committee on Education, Air Transportation, and Statistics, Research, and Planning

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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GIAA - 1st Notice of Informational Briefing 020719.pdf

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OFFICE OF VICE SPEAKER TELENA CRUZ NELSON

CHAIRPERSON OF THE COMMITTEE
ON EDUCATION, AIR TRANSPORTATION, AND STATISTICS, RESEARCH, AND PLANNING
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Senseramente,

Telena Cruz Nelson
Vice Speaker



Second Notice of Informational Briefing: 10 a.m. Thursday, February 7, 2019

1 message

Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Mon, Feb 4, 2019 at 9:25 AM

To: tom.ada@guamairport.net, Jean Arriola <jeana@guamairport.net>, juliette.gillham@guamairport.net, Peter Mesa <pmesa@guamlegislature.org>, Bernice Rivera <bernice.rivera@guamlegislature.org>, nick@kuam.com, phnotice@guamlegislature.org

February 4, 2019

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-
The Office of Vice Speaker Telena Cruz Nelson

Committee on Education, Air Transportation, and Statistics, Research, and Planning

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35th Guam Legislature

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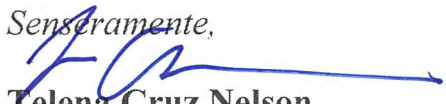
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Senscramente,


Telena Cruz Nelson
Vice Speaker

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I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN | 35th GUAM LEGISLATURE

Informational Briefing

Guam International Airport Authority

February 7, 2019

AGENDA

1. Call to Order
2. Opening Remarks/Announcements
3. Guam International Airport Authority Powerpoint Presentation
4. GIAA –
 - Structural Upgrade & Concourse Isolation (International Arrivals)
 - i. Work Orders
 - ii. Change Orders
 - DFS vs. GIAA Lawsuit
 - i. Main Concessionaire Agreement
 - ii. Mama Bear Agreement
 - iii. Arbitration/Litigation Documents
5. Open Discussions
6. Closing Remarks
7. Adjournment



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Wednesday, February 7, 2019 | 10:00 a.m. | Public Hearing Room

Informational Hearing: Guam International Airport Authority: Construction Project of the Third-Floor for the International Passenger Arrivals, Court Decision Ruling on the Lawsuit Between Lotte Duty Free and Duty Free Shoppers Guam

NAME	AGENCY OR ORGANIZATION	CONTACT	ORAL TESTIMONY	WRITTEN TESTIMONY
Rhonda Fraguanday	GIATA	482-1366	NONE	
FRANK SANTOS	TMC	688-9622	NONE	
JEAN ARRIOLA	GIATA	646-0300	NONE	
J.-G. Janeluna	PIAA	646-0700	NONE	
Ricardo Duenas	GIATA	6898233	NONE	
John Rios	GIATA	642 4628		
VICTOR J. CRUZ	GIATA	642 4455	NONE	

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910
Tel: (671) 989-7696 | Email: senatortcnelson@guamlegislature.org

INTERNATIONAL ARRIVALS CORRIDOR



Q & A

Thomas C. Ada
Executive Manager

ASIA PACIFIC
INTERNATIONAL
AIRPORT
GUAM



INTERNATIONAL ARRIVALS CORRIDOR

RECOVERY PLAN

- ❑ Minimize response time to RFI's EFC's, Submittals and PCO's
- ❑ Maintain active dialogue between GIAA, BCC,CM, and PCAS Team
- ❑ Construction Contractor to Submit Recovery Plan
- ❑ Minimize time extensions to reduce overhead costs, estimated to be about \$10k per day

INTERNATIONAL ARRIVALS CORRIDOR

BACKGROUND

ORIGINAL DESIGN OF CONCOURSE (1998 Expanded Terminal)

☐ Open Concourse

- Arriving and Departing passengers
- Easy Access to Retail, Food and Beverage, and Passenger Service Amenities



INTERNATIONAL ARRIVALS CORRIDOR

PROCUREMENT HISTORY

Construction

- IFB issued (May 2015) Bid cancelled and re-issued (August 2016)
- No. of Bidders:
 - 23 Firms obtained IFB packages
 - 3 Firms submitted Bids
- Bid price range: \$95.9M to \$109.1M
- Contract awarded to Black Construction Corporation (December 14, 2016)

INTERNATIONAL ARRIVALS CORRIDOR

- ☐ BACKGROUND
- ☐ PROJECT OBJECTIVE
- ☐ PROJECT OVERVIEW
- ☐ PROCUREMENT
- ☐ CONTRACT COST AND FUNDING
- ☐ PROJECT TIMELINE
- ☐ RECOVERY PLAN

INTERNATIONAL ARRIVALS CORRIDOR

PROCUREMENT HISTORY

Design

- RFP solicitation issued (Nov. 20, 2013)
- No. of Prospective Offerors:
 - 18 firms obtained RFP packages
 - 8 firms responded and submitted proposals
- Contract Awarded to E&A Engineers (Jan. 15, 2014)
- Contract Cost: \$7.4M

INTERNATIONAL ARRIVALS CORRIDOR

PROCUREMENT HISTORY

Post Construction Award Services (PCAS)

- Contract Awarded to E&A Engineers (January 15, 2014)
 - Stipulated in Design contract

- Contract Cost: \$5.1M (to date)

INTERNATIONAL ARRIVALS CORRIDOR

CONTRACT COST SUMMARY (to date)

	Original		
	Contract Cost	Cost-to-date	Overrun
<input type="checkbox"/> Design:	\$ 5.6M	\$ 7.7M	37.5%
<input type="checkbox"/> Construction:	\$ 96.9M	\$ 98.7M	1.9%
<input type="checkbox"/> PCAS:	\$ 5.1M	\$ 5.1M	0%
<input type="checkbox"/> Construction Mgmt:	\$ 3.8.M	\$ 6.3M	65.8%
<input type="checkbox"/> TOTAL COST:	\$ 111.4M	\$117.8M	5.7%

<input type="checkbox"/> Proposed change orders	\$12M
<input type="checkbox"/> Contract completion date	Sept. 13, 2019
<input type="checkbox"/> Expected Completion date	July 9, 2020



ALANSON D. WONDAT INTERNATIONAL AIRPORT GUAM
www.guamairport.com

INTERNATIONAL ARRIVALS CORRIDOR

PROCUREMENT HISTORY

Construction Management

- RFP solicitation issued (February 2, 2015)
- No. of Proposers:
 - 27 Firms obtained RFP packages
 - 11 Firms submitted Proposals
- Contract awarded to SSFM Int'l (April 8, 2015)
 - \$3.8M
 - Current \$6.3M with CO

INTERNATIONAL ARRIVALS CORRIDOR

PROJECT DEVELOPMENT & COST

- ❑ 2016 Construction Bid Solicitation Issued
 - Bids Result Range \$97- \$110M
 - Contract Awarded at \$97M

INTERNATIONAL ARRIVALS CORRIDOR

Funding Sources

2013 Revenue Bonds	FAA Grants	Total
\$96,108,007	\$21,685,448	\$ 117,793,455

INTERNATIONAL ARRIVALS CORRIDOR

CONCEPTUAL WALK-THROUGH

INTERNATIONAL
ARRIVALS CORRIDOR



A.B. WON PAT
INTERNATIONAL
AIRPORT
GUAM



INTERNATIONAL ARRIVALS CORRIDOR

ORIGINAL CONTRACT COST

		COST	%
<input type="checkbox"/>	Design:	\$ 5.6M	5.0
<input type="checkbox"/>	Construction:	\$ 96.9M	87
<input type="checkbox"/>	PCAS:	\$ 5.1M	4.6
<input type="checkbox"/>	Construction Mgmt:	\$ 3.8M	3.4
<input type="checkbox"/>	TOTAL COST:	\$ 111.4M	100
<input type="checkbox"/>	NTP Issued:	March 1, 2017	
<input type="checkbox"/>	Contract Completion Date:	Sept. 13, 2019	

INTERNATIONAL ARRIVALS CORRIDOR

PROJECT OBJECTIVE

- ❑ Project Necessary to Assure Air Travel Safety and Security
 - 2012 Master Plan
 - Meet TSA mandates and regulations
 - Enhance the efficiency of inbound and outbound passenger processing
 - Increase service capacity for passengers in the concourse

INTERNATIONAL ARRIVALS CORRIDOR

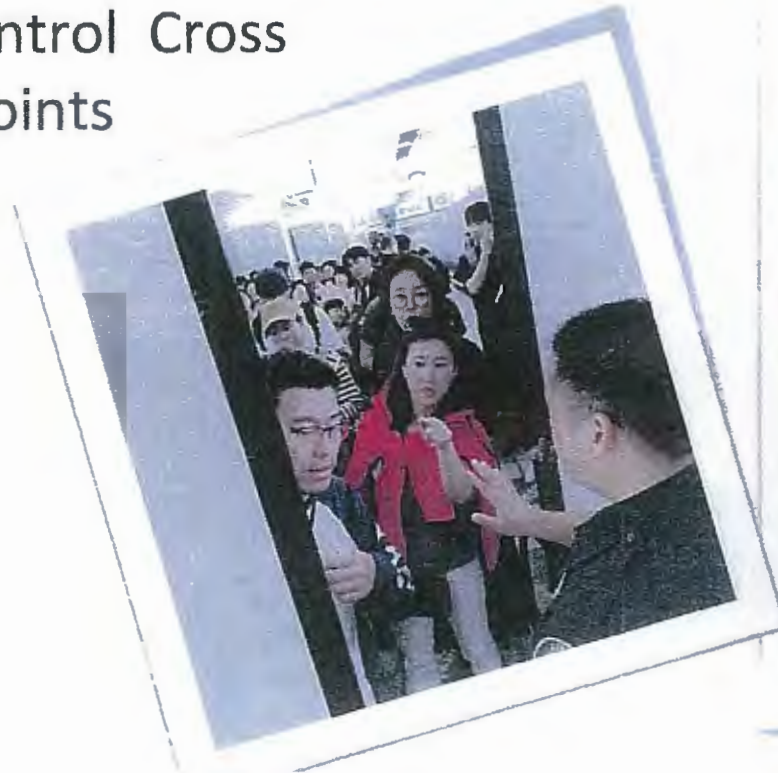
PROJECT DEVELOPMENT & COST

- ❑ Physical Planning
 - 2012 GIAA Master Plan
 - Construction of Concourse
 - \$54M ROM Estimated
- ❑ Financing Plan
 - 2013 Bond Issue
- ❑ Design-Bid- Build

INTERNATIONAL ARRIVALS CORRIDOR

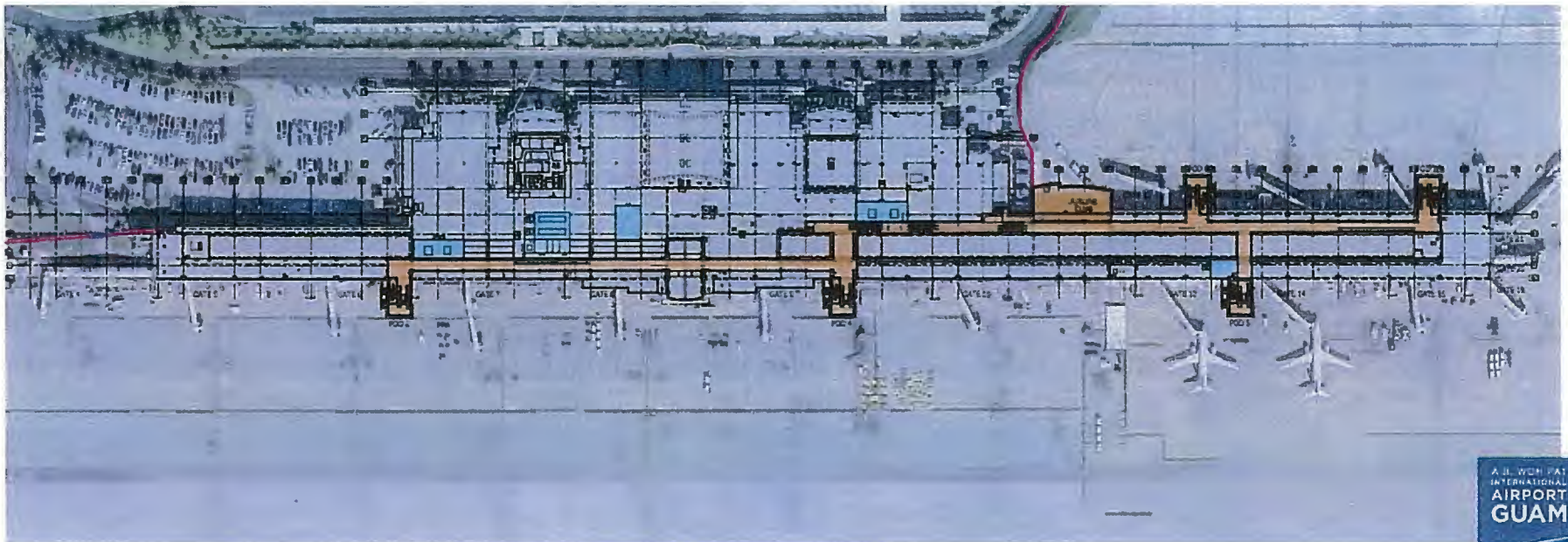
BACKGROUND

- Personnel Hired to Monitor the Partitions and Control Cross Over Points



INTERNATIONAL ARRIVALS CORRIDOR PROJECT OVERVIEW

- Third Floor Corridor is most feasible solution



INTERNATIONAL ARRIVALS CORRIDOR

BACKGROUND

BACKGROUND

- ❑ Post 9-11, TSA mandated Separation of TSA and non-TSA Screened Passengers
 - IAW Aviation Security Act 2001

INTERNATIONAL ARRIVALS CORRIDOR

BACKGROUND



TSA deems the
Interim
Measure to be
Deficient



INTERNATIONAL ARRIVALS CORRIDOR



A PROJECT OVERVIEW

INTERNATIONAL ARRIVALS CORRIDOR

BACKGROUND

- ❑ Present
Interim
Measure of
Gray,
Portable
Partitions





The only direction is **UP!**

INTERNATIONAL ARRIVALS CORRIDOR

Informational Hearing

Vice- Speaker Telen C. Nelson

Chair, Committee on Education, Air Transportation and Statistics, Research and Planning
35th Guam Legislature





OFFICE OF VICE SPEAKER TELENA CRUZ NELSON

CHAIRPERSON OF THE COMMITTEE ON
EDUCATION, AIR TRANSPORTATION, AND STATISTICS, RESEARCH, AND PLANNING
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN | 35th GUAM LEGISLATURE

I. OVERVIEW

The **Committee on Education, Air Transportation, and Statistics, Research and Planning** convened a informational hearing on **the Guam International Airport Authority (GIAA)** on **Thursday, February 7, 2019 at 10:00 AM** in *I Liheslatura's* Public Hearing Room to discuss the Guam International Airport Authority Construction Project of the Third-Floor for the International Passenger Arrivals, Court Decision Ruling on the Lawsuit Between Lotte Duty Free and Duty Free Shoppers Guam

Public Notice Requirements

Public Hearing notices were disseminated via **e-mail** to all senators and all main media broadcasting outlets on **Tuesday, January 30, 2019** (5-Day Notice), and again on **Friday, February 4, 2019** (48-Hour Notice).

Senators Present

Vice Speaker Telena C. Nelson, Chairperson
Senator Amanda L. Shelton, Vice Chairperson of Education
Senator Sabina Flores Perez, Committee Member
Senator Mary C. Torres, Committee Member
Senator Louise B. Muña

II. SUMMARY OF TESTIMONY & DISCUSSION

The **informational briefing** was Called-to-Order at **10:12 AM**.

Vice-Speaker Telenia Nelson convened the informational briefing at 10:12 a.m. on February 7, 2019 and introduced the senators present. The purpose of this Informational Briefing is to help the Committee and the general public understand the challenges and setbacks regarding the Guam International Airport Authority's (GIAA) position with their current capital improvement project of the international arrival corridor and the recent lawsuit with Duty-Free Shoppers Guam. The hearing will also address the budgetary constraints imposed on GIAA. Further, I'd like to just recognize those who are here today - Mr. Frank Sanchez, Miss Jean Arriola, Miss Rolenda Faasuamalie, Mr. Javellana, Mr. Ricardo Duenas, Mr. John Rios, Mr. Victor Cruz, and the Executive Manager Senator Tom Ada. As Chairperson for the Air Transportation Committee, I'm dedicated on ensuring that GIAA is in a position of continuing its efforts in increasing awareness of travel requirements as mandated by the Federal Aviation Administration (FAA) and remaining in compliance with the Transportation Security Administration as well as providing reliable airport services to the residents of Guam tourists and key relations with domestic and international partners we will focus but the overall picture will be on the priority of GIAA's capital improvement projects set forth to meet the regulatory requirements of FAA and maintaining excellent airport services while examining GIAA's cost, control measures, and budget. I understand that GIAA has encountered hurdles on the international arrival corridor project and the scheduled completion time has lapsed. We'd like to know if any of these hurdles have been remedied or an action plan was implemented in addition to the major construction hurdles. We would like to understand your position of the lawsuit with the duty-free shoppers based on the covenants between the main concessionaire agreement and the "Mama Bear" agreement. I understand that the documents pertaining to the construction contract and lawsuit were received last week and this week. Our committee members may not have had the chance to review them thoroughly, so for my colleagues, there are copies of the scope of work change orders, work orders concessionaire agreements, arbitration, and litigation documents that have been included inside your packets. I'd now like to open the floor to Mr. Ada. I believe he has a presentation for the Guam International Airport Authority.

Executive Manager Tom Ada, Guam International Airport Authority: Thank you, Madam Chair and thank you, senators for taking the time to join us here to give us this opportunity to discuss some of the issues that the airport is working on right now. With me, of course, is the Chairman of the Board Mr. Ricardo Duenas. I'll defer to him for now for opening remarks, and after that, we can go ahead and start with the presentation.

Chairman Ricardo Duenas, Guam International Airport Authority: Thank you Madam Chairman and senators. As Tom mentioned, we appreciate this opportunity to come before you and provide some information and clarification on some of the issues that have come to light during the past few weeks regarding the third-floor international third-floor corridor and some ongoing litigation that the airport hasn't been involved in over the last few years. The inception of the international air corridor arrivals corridor was prompted by the TSA following the 9/11 attacks which in turn increased security was mandated for all U.S. airports at that time. There was no funding that was put in place for this mandate. For a number of years, going all the way back to 2001, the airport has not had the ability to find the funding for this urgent and this crucial project. It wasn't until the specialty travel concession with Lotte Duty-Free that went out in, I believe, 2013. The funds from that contract which was substantially higher than any contract that we ever had with any of the operators in history. The airport provided the funding so that we could move forward with this project and so the two are sort of tied into each other. In the one is the funding and then of course, the construction is the result, so it's very important that everyone understands the need for four. There's not just from a security standpoint but also from the perspective of enhancing our visitor experience when they first get into Guam and providing not just a safe but also a pleasant experience when they go through the airport. We do have a presentation that Senator Ada will be walking us through. Then once we're done, with any questions you have, we have our team here to provide any detailed information that you have.

Executive Manager Ada: Thank you very much, Mr Chairman. So Madam Chair, if you'll allow me, it would probably take just 10-15 minutes to go through this and it provides some graphics that I think will help to kind of give a better understanding of the project.

Executive Manager Ada delivered a presentation that has been appended to this committee report.

Executive Manager Ada: With that, we can go ahead and open it up for whatever questions you may have. If it's a technical question that requires the answers from the engineers, then we'll have somebody from that division to come up and respond.

Vice-Speaker Nelson: Thank you, Mr. Ada. The change orders that occurred first of all, what type of contract is this? Is this a time-and-material contract or is this a lump sum kind of contract, fixed price?

Executive Manager Ada: I'll have Mr. (Victor) Cruz respond to that. He's our engineering supervisor.

Engineering Supervisor Victor Cruz, Guam International Airport Authority: The project is a time and materials, meaning that as a contractor completes segments of the project, he can submit a billing for whatever has been completed so it's sort of a time and materials type of contract.

Vice-Speaker Nelson: In the slides, you put up the cost of change orders, so I think those \$12M in the proposed change orders - What is that? Has any change orders been approved or have, through this duration, have there been change orders executed and what are some of those change orders?

Victor Cruz: Those change orders are our proposed change orders which they're still under review by the construction managers and verified. A lot of them, it has to do with like, what was mentioned earlier about site conditions, things that needed RFI's to be answered by the design of record, so those are just proposed. They still have to be vetted out and negotiated and discussed with the contractor before it's finalized and interns in and executed as, so it's roughly showing a \$12M price on them, but that could drop based on the negotiations and then vetting output whatever the work.

Vice-Speaker Nelson: Can you explain a little bit more to the public what a time-and-material contract, the general explanation of what it really is?

Victor Cruz: The time-and-material is what a contractor come, we'll start up front working on the project and then based on the time-and-materials of him ordering materials, he would start on the project and he would bill us. After those have been put in place, so the construction manager will monitor what has been put in and verify all those materials and make sure that equates to a dollar figure for what he's put in based on the contract amount and then they would submit their billing on it

Vice-Speaker Nelson: So there's a flexibility in the contract where costs can increase or cost can decrease?

Victor Cruz: No, well it could increase, but it depends on the site conditions but that is closely monitored on what is per contract and what's to be built based on the contract, so they will monitor that cost and try to make sure we contain that provided there is no site conditions that differ that may cause more material or additional material that's

required, so when they do a retrofitting of the column or a beam and if it requires more steel, then that material would increase the cost.

Vice-Speaker Nelson: Who did the RFP or request for bid (invitation to bid)?

Victor Cruz: It was invitation to bid, so it comes in as a lump sum, but (I'm speaking) more toward the actual construction and how that portion comes in, but it's a lump sum bid.

Vice-Speaker Nelson: So how did it go from lump sum to time-and-material?

Victor Cruz: It's based on progress payments and that's what I was alluding to. As the work goes on, progress submit payment is submitted based on that but it's not like a time-and-material; it's based on work in progress.

Executive Manager Ada: With the A&E design that is developed, that A&E goes into great detail as to materials that will be needed and the construction contractor then will basically add up how much those materials are (going to) cost, how much labor, and then their bid price is going to be based on that analysis. So in the case of Black Construction, they came up with \$96.7M. Did you want to add to that? Santos is the airport consultant that assist in these matters.

Frank Santos: (Victor) actually corrected himself that the project is an invitation for a bid with a lump sum price determination for award. The time and material portion is really for the progress payments on a monthly basis, so then the construction manager tracks the materials that are either installed or undistributed materials that are on-hand with proof of payment. Those are the items that the airport can reimburse the contractor for. I think there's also a 10% retention of whatever the contractor has expended remains with the airport as a guarantee at the end of the project.

Vice-Speaker Nelson: Are there any other change orders in the past that have been approved and what it entailed?

Executive Manager Ada: There have been four change orders that have been vetted and approved so far, so we still got the other twelve that is undergoing review.

Vice-Speaker Nelson: What is the cost of the four change orders?

Frank Santos: Approximately \$1.8M.

Vice-Speaker Nelson: (Do) any of the proposed change orders even have anything to do with the H-2B state that we are in?

Frank Santos: No ma'am.

Vice Speaker Nelson: Are we anticipating anything to arise from the challenges that we are having in this area?

Frank Santos: Where the (labor) issue came about was during the bid process where there were issues at that time, only three bidders out of eleven that submitted bids and a lot of it has to be with labor. Black Construction has a lot of local labor, so their prices are at a premium or two bidders are the same

Vice-Speaker Nelson: So, the Board approves these change orders?

Executive Manager Ada: So the construction contractor, Black Construction will submit the proposed change order. The construction manager will review those. It will also be vetted by the designer of record A&E and then ultimately, a decision is made as to whether the proposed change order will be accepted or as presented or with modifications and then that gets presented to the airport for final approval. So the way that's set up right now is the Executive Manager is the contract officer and has ultimate approval or disapproval for proposed change orders.

Senator Louise Muna joined the panel. Senator Nelson opened the floor for her colleagues to ask questions.

Senator Sabina Perez: I have a question regarding the RFP for design. To what extent would the specifications helped to minimize the change orders?

Executive Manager Ada: First of all, with what I think we're funding a lot is at this point, what was originally on the design does not exactly match up with the site conditions. Like I said earlier, sometimes, there's a part of the construction that requires the installation of a brace and the design when it was looked at, it as just, there was no infrastructure on that in that ceiling and when they opened up the ceiling they actually found all kinds of wire cables in there, so that's going to require some additional work to relocate those cables and whatnot, and that's where the additional change orders could come in to adapt to those actual conditions. Part of the problem is that the as-builts, what actually exists behind those walls, not a lot of that was available; it was lost during Typhoon Paka, and so at the time then, I think there were was a requirement that we

were not going to be, we're going to be doing non-destructive inspection of the structure itself so we can't be breaking down walls to verify if in-fact what infrastructure is behind that. So, certain assumptions have to be made and then at the time of construction, we're finding out that some of those don't match up.

Senator Sabina Perez: When I look at the change orders, one of them is for \$360,000 and it covers IT design and other things. To what extent is a company looking for the lowest cost for these items?

Executive Manager Ada: Those change orders, when it comes in from the contractor, actually makes its best. We don't go bidding out those change orders so that's where the construction manager comes in and they use their best estimate as to whether it would really cost that much or if the proposed changes are necessary and that's why that vetting process goes on, and so the fact that the contractor certain changes at certain costs doesn't mean that's what it will be because you'll have different engineers looking at it and they may have different solutions, so there's an opportunity to lower that cost, so that's where the vetting process, but they won't go and bid it out. It's not going to be bid out.

Vice-Speaker Nelson: Was there an opportunity to lower the cost of the previous change orders?

Executive Manager Ada: I would imagine just through that vetting process that is undertaken by the construction manager in your design of record.

Vice-Speaker Nelson: Was there an opportunity to lower the cost of the change order?

Frank Santos: The previous four changes were vetted. Two of them are actually for special testing because we're dealing with steel building, so we have testing that's done at the factory, a U.S. factory with the steel was fabricated then there's also daily testing with steel here on Guam. Those were based on industry costs from specialized inspectors.

Senator Mary Camacho Torres: With regard to the construction management services, there was a variance that was noted of 65% upward adjustment and cost, and I took it that that's not any cause for alarm. Is that your position? Because it seems of all the price increases, that was the most stark of the construction management services, do you care to comment? Just for typical variances, is that a typical type of upward adjustment?

Frank Santos: The CM serves, the construction managements services was - the initial amount was for a certain timeframe, so the additional amount was to carry on that same work scope up through September of 2019.

Senator Mary C. Torres: I noticed that the term of the contract was for twenty-nine months, so that then accounts for that.

Frank Santos: Yes.

Senator Mary C. Torres: That makes sense because my next question is that something that's going to be adjusted and amended in the agreement and whether that was going to result in an additional cost, so it's already been factored in through September 2019, so that makes sense.

Senator Louise Muña: Good morning. My apologies for the delay. I might have missed something, but my questions are what is the main reason for the delay of the construction. Is there a specific reason why there are delays?

Victor Cruz: A lot of the delays, like what was mentioned earlier that there in the design phase, we didn't allow the designer to go and just open up all of the different parts of the building. So what's happening is during the construction phase, the site conditions are differing from what was anticipated in the design, so a lot of that is coming back for based to RFIs for clarifications by the design of records, so a lot of existing utilities that are in the area or conditions to the structure that may - what was anticipated in the design for a certain type of bracing, some adjustments have to be made so that's where the difference is happening at.

Executive Manager Ada: So, I think a lot of the delays also can be attributed to the fact that when the contractor is out there and he encounters a situation that's different from what the drawings show, then they put in a request for information from the designer of record from the original architectural engineer. Sometimes, the response time is not as quick as we would like it to be. There have been some requests for information that has taken over a hundred days, not exactly sure why it took that long, but sometimes, it takes that long, so as a result the contractor tries to fill that void as best as he can by possibly then undertaking other tasks but cannot proceed with that particular task until the designer of record comes back. Then when we have submittals, the contractor may come up with a solution with a design that still has to go back to the designer of record to be reviewed to make sure that if we make this kind of solution, we're not going to be weakening something else in the structure so it's a lot of that interaction that takes

place, but the way we're addressing that is to really put that sense of urgency, and I sit in, for example, as the contracting officer, and I take the time. Half the time, I don't understand what these guys are saying, but I know that it doesn't fit well with me. When something comes up and they say, "Okay, let's meet next week", "No we're (going to) meet tomorrow"

Senator Louise Muña: Well \$10,000 a day, it's important. So, it shows that you have FAA grants to recover the excess cost because you went from \$97M to \$118M, and this is to date, so is there opportunity to obtain more grants because there obviously is going to be more costs because there is going to be more delay. So do we have opportunity for more grants to complete to the project?

Frank Santos: Yes, Senator. We're actually working with the FAA on using our what we call our annual entitlements which are based on the number of passengers in payment classes that we have. Normally it averages about \$4.5M a year and based on our latest discussions with them, we're trying to get those entitlements up through 2024, so as a reimbursement also.

Senator Louise Muña: My final question, with all the construction and the delays, there is an obvious effect on the vendors right, is there a plan in place to maybe help the vendors or assist them in this process while the construction is going on?

Executive Manager Ada: So, it's going to be chaotic up at the airport over the next number of months until this place is completed, this project is completed. So the one most affected is the Lotte concession there, even the food court, and in the case of the Lotte concession, there has been agreements reached to try and where certain areas have to be shut down to try and provide them with alternative spaces, and we also recognize that because of the construction that's going on, it may have a negative impact on the sales and so there's been some concessions made in terms of possibly reducing their rent for a certain period of time, so the airport recognizes that; they have sat down and met with a concessionaire to be able to try and mitigate it as much as possible.

Senator Louise Muna: thanked Executive Manager Ada.

Senator Amanda Shelton: Can you just explain how the construction management is chosen? I'm assuming it's not internal, right, you're contracted out?

Executive Manager Ada: Correct. It's contracted out, so it was issued as a request for proposal. I did show when the RFP solicitation was issued. There were 27 firms that actually picked up packages, 11 firms submitted proposals, and ultimately, the firm SSFM International was awarded the contract.

Senator Amanda Shelton: Then, the \$5.1M for the post construction award service - if the proposed change orders are approved at \$12M or any amount that's approved, will this post construction award service cost also increase or will that remain the same till the end?

Executive Manager Ada: So the way the post-construction award service is priced out, it assumes a certain number of man-hours for various engineering disciplines, so they assume that we're going to be needing 50 hours of mechanical engineering time, and that's priced out at a certain amount per hour, and I can only assume that if we exhaust those hours, they will be coming in for change orders.

Senator Amanda Shelton: thanked Executive Manager Ada for his response.

Vice Speaker Nelson: I understand that there is also a list of capital improvement projects that the airport was looking at doing, but had to put them on hold because of the cost increase to this third-floor corridor, so can you just tell us what the capital improvement projects that you had to have put on hold because of this cost?

Executive Manager Ada: So when the airport went out to the bond market, there was actually three projects that it had listed to fund, and that was the third-floor corridor, parking garage, there was the commuter terminal I believe it was. Those projects plus several other small ones, and I'm sure they could probably go into that - what we have to do is to defer those projects so that we can reallocate the money to the third-floor project, I think as a result of having to defer some of those projects are actually excellent candidates for public-private partnerships, so for example, the public garage construction that is a prime candidate for public-private partnership, the airport will lease out the property for a dollar a year for the next thirty years or whatever in principle, this is how it works. In principle, it's like the Simon Sanchez High School, right, so the property was leased out for a dollar. The developer comes in and uses their money to build the structure and in this case, then the developer is guaranteed that the availability of the property for the next 30 years time that will be sufficient to recover the investment that has been made, regulations will have to be put in, you can't be charging through the nose for parking fees and whatnot, but that's an excellent candidate for

public-private partnerships, and I think that's one way to address those projects; there are other projects on the list.

Frank Santos: The additional projects be are there that reflect renew and replacement. Our terminal is now over twenty years old. We did, two years ago, replace our air conditioning system, you might recall the news stories before of how warm the terminal was, so through ESCO, an energy services contract, we replace all our air conditioning system, but we have other devices, conveyance devices, the escalators moving walks, elevators that need to be replaced those were part of the program. We have furniture that needs to be replaced or added on, the flooring at the terminal, we wanted to replace that. We have additional loading of bridges that we were forecasting to replace, but we spent more on trying to get one or two or three more years of life onto them through maintenance. So those projects, and we do plan to put out an another master plan update not this year, but at the beginning of next year, that will identify other requirements. The airports funding or debt service requirements in the year 2023 gets reduced substantially, so there's an opportunity there for the airport to seek additional funds outside of anything that we can do with the public-private partnerships.

Vice Speaker Nelson:: Thank you. Do any of the capital improvement projects that were put on hold impact safety or FAA regulations and requirements?

Frank Santos: I'm not aware of anything with FAA, but we do have plans to refurbish, replace our fire protection system. One of the change orders is the fire alarm panel, but it's part because we increase the size of the building the panel needed to be are ready to accommodate the initial areas, so we just decided to change the whole panel and that was included as one of the change orders to Black Construction.

Senator Mary C. Torres: Mr. Santos, as you're talking about the CIP projects, with the third-floor corridor, that then opens up a lot of the spaces that at one point were retail spaces or spaces for services. Is part of the plan also including some of those revenue-generating models within the areas that are now vacant spaces?

Frank Santos: Absolutely, senator. It opens up those areas now for revenue generation.

Senator Mary C. Torres: Okay because it's concerning when there's discussion also about the impact of construction theoretically on sales and the need to reduce the fees and the rental fees and not from the main concessionaire now, so as we're talking about how we're reducing, I'm also thinking about what I remember to be the plan to make it

fully functional and serviceable with a lot of amenities available, so I'm glad to hear that that's ongoing as part of the construction that you have the use of the now vacant and dormant space for consideration. I'd be interested to see what you have on that at another time.

Senator Sabina F. Perez: I'm just a little uncomfortable all these change orders and why wasn't it caught with the RFP for the design. Is there a way to hold that company accountable for that?

Frank Santos: I'll answer that. A lot of the changes are what we call errors and omissions. Senator Ada brought up the fact that we did the non-destructive design, so in other words, we did not allow the designer to open up all the roofs or the ceilings and the columns to expose what was behind there, so everything was based on construction drawings that occurred back in the 90s, so with that in mind, the only time the contractor we see what's back there is when the contractor reaches the area what we call a holding area that they now can open up; it's safe for the public, safe for the passengers and safe for the employees, then we see what's there and then the contractor, or we record what's the actual conditions, then things change and again, this is a steel building, so if you change an area in this facility, it has an effect on the rest of the building. You see the terminal as one but actually, it's nine separate building structurally so we try to handle each building at a time phasing it in so to answer your questions, we don't consider the changes that are in front of us right now as what we call error and omissions by the designer.

Discussion on the third-floor corridor concluded.

Vice Speaker Nelson: Mr. Ada, we'd like to move forward with the Lotte and DFS. I believe you have something prepared.

Executive Manager Ada: I would just like to make a couple of salient points. One is, I would like to discuss about the importance of the law, a concession contract that's in place right now. The importance of that to the bigger scheme of things, the airport, and then I just want to give an overview of the two litigation pieces that are currently in motion - one is the procurement dispute between the airport and duty-free and then the recent arbitration award that was made to duty-free. With respect to the importance of the Lotte concession contract, I think to put in perspective, the airport's annual revenue amounts to about sixty million dollars a year. The revenues that's generated, by the Lotte concession amounts to about fifteen million dollars a year. That's 25% of the total revenues, so that's a significant amount in the revenue picture of the airport. The annual

debt service of the airport to pay off the bonds that it has outstanding is approximately twenty-four million dollars a year, and I would say that about forty percent of that is funded by the Lotte revenues, so from that perspective, that Lotte concession is very important to the airport and must be protected. That revenue source must be protected as much to the extent that we can. There are currently two litigations that are in play. One is the Lotte GIAA concession contract. Just a little bit of background shows there that the request for proposal for the concession contract was issued back in July of 2012. In April of 2013, a contract was awarded and it was awarded to Lotte. Almost immediately after that, in April, the first protest came out and then it was followed by a series of protests by Duty Free. Finally, on February 2nd, 2018, the first judgement came out from the court in favor of Duty Free. On February 5, 2018, the airport filed an appeal to the Supreme Court. Of this, the judgements that have been made and then finally, April 9, 2019, oral arguments are scheduled before the Supreme Court, so then this whole dispute has stretched out over a period, of going on six years now. The premises for the dispute are really threefold. One, that the solicitation method that was used was improper. The court, well duty-free, when they filed their objections, indicated that the use of the competitive proposal, the RFP was the improper solicitation method and instead should have been the invitation for bid, so that was one of the premises for the dispute. The other premise for the dispute was the airport's failure to adopt and promulgate concession and lease criteria by regulation pursuant to Public Law 21-2. Finally, there was a number of technical procurement violations that DFS pointed out as that the airport failed to adhere to such as maintaining and certifying complete procurement records and implementation of an automatic stay. On February 2, 2018, the Superior Court came out with its decision in its order and basically there were three points to that court action. One is the court said that the airport's RFP should be voided, and we should set aside the contract that has been entered into, but then in the next paragraph, the court says but in the public interest, the public interest will be best served as flawed remains as the Duty Free concession operator. So these very points, you would find in the court documents, then the third point was the court orders the airport to abide by the terms of the current specialty retail concession agreement. So after this order came out, the airport filed an appeal to the Supreme Court, and finally on April 9, 2019, the oral arguments are scheduled before the Supreme Court, so that's where we are at with the procurement disputants. I would have to say that because the matter is before the courts, it really would not be prudent on our part, I think to discuss any more than what's we've extracted from the court documents because anything we say can and will be, could be used against this. I will say this though as a closing note on the procurement dispute is that there's been no finding that airport officials acted unethically or in a bias manner and to the protests were based on technical violations that were raised for the first time, almost a year after the airport had issued its RFP and

do not justify avoiding the contract, so that's the litigation regarding the procurement dispute related to the overstay of duty-free in their concession space and the rent that is the rent that is due from that.

Vice Speaker Nelson: That's the Mamabear space?

Executive Manager Ada: The Mamabear space, the Mamabear space is the one where the carabao used to be when you first come in, just as you pass TSA and the liquidated damages that arise from the overstate and the actions that the airport took to recover the overdue rent. It drew down on a city bond, so just as a background, this dispute stated in December 5, 2013. That was when the airport then to collect on this overdue rent and the liquidated damages drew down on a letter of credit on the city bond, and it drew down 2.1 million dollars and then a year later, DFS filed a claim pursuant to the Government Claims Act. Finally, fast forward a lot of legal maneuvers and whatnot, September 2018, the matter finally comes before the court. Then on December 26, the court issues a decision in an order. The premise of the dispute basically is four points, one, the duty-free lease expired on March 2011, and it overstayed until July of 2013, the airport claimed liquidated damages according to what is called the Mamabear contract for the overstay in the amount of 2.1 million dollars. The airport drew that amount from a consolidated bond or line of credit which there was 3.9 million in that line of credit. DFS argued that the airport could only draw down \$250,000 at a time. At that rate, it would take nine draw-done transactions for the airport to be able to recover that back-due rent and the overdue rent and the liquidated damages, so ultimately, it came before an arbitration board, and the arbitration board awarded DFS 2.3 million dollars, 1.9 million basically the arbitration boards at airport returned back 1.9 million dollars, \$388,000 for attorney fees and \$85,000 in costs and interests. The Superior Court affirmed the tribunal awarded and when that occurred, then the airport filed an appeal regarding this award, filed it to the Supreme Court on January 23, 2019. So that matter is before the courts also, and I would respectfully ask, we really would not be prudent for us to comment any further on the matter.

Vice Speaker Nelson: Thank you, Mr. Ada. The tribunal award, does that include the six percent per annum since 2013?

Executive Manager Ada: Yes, the represents the costs and interest.

Vice Speaker Nelson: So what would be that amount?

Executive Manager Ada: The breakdown that I was able to get from the tribunal document award itself was \$85,000 in costs and interest; \$380,000 for attorney fees and then 1.9 million to be returned back to the performance bond

Vice Speaker Nelson: Then there is also the tribunal total of \$152,772, is that correct? Well, I just wanted to ask - who is the attorney that who's hiring the attorney, is the airport hiring the attorney or is it Lotte hiring the attorney to represent them in this litigation.

Ricardo Duenas: On this arbitration litigation in this airport counsel; they represent us. Lotte has no involvement in the arbitration.

Vice Speaker Nelson: Who's the airport's counsel?

Ricardo Duenas: Calvo, Fisher, and Jacobs. They've been the airport's counsel for a number of years.

Vice Speaker Nelson: Since when?

Ricardo Duenas: It predates me, but... possibly eight to ten years.

Vice Speaker Nelson: What is the current cost of attorney fees that the airport has paid? Is it airport paying the attorney fees or is it Lotte paying the attorney fees?

Ricardo Duenas: It's the airport that's paying the attorney's fees. Lotte does not indemnify the airport for any legal cause other than the procurement lawsuit which is -

Vice Speaker Nelson: What does that mean?

Ricardo Duenas: The procurement lawsuit is a lawsuit between the airport and DFS regarding the award of the travel and speciality travel concession, so that is the only lawsuit that Lotte has an agreement to reimburse the airport for legal fees. All other legal fees for all other matters are borne by the airport.

Vice Speaker Nelson: so this particular case with the tribunal award is paid by the airport. Does Lotte in anyway reimburse the airport?

Ricardo Duenas: Lotte is not involved in that lawsuit at all.

Vice Speaker Nelson: How much has this cost the airport so far?

Ricardo Duenas: I believe it's in the neighborhood of about six hundred thousand to date, keeping in mind this lawsuit goes back to 2015.

Vice Speaker Nelson: So what's the number that they've been throwing out? That \$35 or \$45 million dollars have been spent in legal fees.

Ricardo Duenas: I think what people are making reference to is in the litigation between the Guam airport and the duty-free, duty-free shoppers, there that's a procurement protest litigation that they undertook way these through the airport to try to avoid the award of the concession to Lotte, so that's separate.

Vice Speaker Nelson: So that procurement protest, Lotte reimburses the airport?

Ricardo Duenas: Under the contract that was negotiated, when the award for the concession was executed, there was a provision in there that any lawsuits arising out of that procurement action will be defended by the airport and any legal fees arising that will be reimbursed to the airport by Lotte.

Vice Speaker Nelson: So you have these mediation term sheets and an addendum, can you explain what the initial mediation terms and then explain the change in addendum?

Ricardo Duenas: Okay, the mediation term sheets arose because there was a situation when Judge Martinez first issued his judgement in February of 2018, and part of his decision was that it required the airport honor and adhere to the conditions of the existing contract. Although he determined that it was void, he said that the airport, in the interests of the public, we should continue to honor the contract until such time as a new concession is put out for bid. That put the airport in the situation where we were at and had the responsibility to honor the contract, but it put no responsibility on Lotte Duty Free to honor the contract, so in effect, Lotte Duty Free was, it technically was operating with no contract and the reasons for that is because the judge did not state a decision. When he issued a decision in February, we put on an issue, an immediate motion requesting that the judge stay the decision subject to an appeal of the Supreme Court. A stay was not issued until I believe May or June of 2018, so in that intervening time period, it created a situation where technically, Lotte didn't have a contract, and they had the opportunity if they opted to walk away from the contract, one of the things that concerned was we knew that Lotte had a big investment in the airport's concession.

They had reportedly reported to the airport that they had lost money on it and also the legal fees that were accruing on that litigation were climbing, so there was a procurement. This is just for the procurement action, so there was a concern at that time Lotte could walk away from the contract and then we're also entering in the construction period where their revenue stream would be impacted further by the ongoing construction of the third-floor corridor, so we entered into a negotiated mediation in order to address some of the issues that came up because of that decision. One of the things that arose from that was given the situation of not having a contract technically.

Vice Speaker Nelson: So is Lotte still operating under no contract?

Ricardo Duenas: No, during the mitigation process, they affirmed their commitment to stay at the airport under the contract. They also waived any right to any claim on any legal fees that had been incurred and paid to date and going into the future.

Vice Speaker Nelson: So you're saying that Lotte is agreeing that if they do lose this case, this procurement case, the case is under that mitigation term -

Ricardo Duenas: They will not come back to the airport and hold then responsible for those legal fees

Vice Speaker Nelson: Saying "you owe me this money because we didn't prevail" -

Ricardo Duenas: In the event that we were to lose the appeal and then we also gave them some rent concessions because of that and because of the impending construction included in the mitigated term sheet was a provision that provided for additional concessions to be negotiated for any additional construction impact that were not anticipated during that negotiation so on the second territory, the addendum to the term sheet after going through our evaluation of the construction progress and the schedule, we did, there was an identification of additional impacts to their operations resulting on the construction, and so the addendum was to address those cost that they would incur or those that loss of income and that came in the form on a negotiated formula to handle all interruptions of business during the construction period to standardize it.

Vice Speaker Nelson: so does the addendum supersede the initial -

Ricardo Duenas: It doesn't supersede the initial MTS, it's an addendum to the MTS.

Vice Speaker Nelson: Okay, so a modification but there are still things that stand, the initial mediation terms.

Ricardo Duenas: Those are in place.

Vice Speaker Nelson: Is it the Board's decision to continue to pursue the appeal?

Ricardo Duenas: The appeal on the arbitration?

Vice Speaker Nelson: Yes.

Ricardo Duenas: The appeal on the arbitration, and I know that you know we have to tread lightly on some of the discussions as far as legal matters go, but as far as what's already on the record, we do have an award that was issued by the arbitration panel, and we do have an affirmation from the lower court upholding that decision from the arbitration panel which we currently have on appeal with the Supreme Court of Guam. One of the issues that we looked at and we went through, and we looked at it from a business perspective as far as what is that decision (going to) cost the airport and what is the cost of pursuing further litigation in that matter, and one of the intervening issues that we felt had great weight was that in the arbitration panel level and at the Superior Court level when they looked at the decision, they never took into account the issue of whether DFS actually owed that rent or not. Their decision was based solely on 'did we properly draw down on that letter of credit' and then we draw down the proper amount; they never opined that or they never even addressed the issue that yes, there is back rent that's owed and there is back rent that was not being paid, and the airport went through an act and exercised their rights under the letter of credit. We took the money out of that, so the issue was the manner of how the amount that was taken at the time, the manner, and the amount that we took, and there's arguments on both sides. The airport is confident that the opinion of the arbitration panel was flawed for searching for a number of regions and number of those arguments were not really addressed at the lower court, and we feel that once those are brought up at the Supreme Court level, that we will prevail in that action as well.

Vice Speaker Nelson: So is it the board -- are they the deciding factor?

Ricardo Duenas: Yes. The Board did make the decision to pursue the appeal on that matter.

Vice Speaker Nelson: And who were the members of the board during that procurement contract that you are doing now?

Ricardo Duenas: The members of the board was myself as Chairman, Kathy Sgro was Vice Chairman, then Directors Bic Sobti, Lucy Alcorn, Martin Gerber... there were two other board members that were conflicted from that decisions, and so we're still going to appeal. GIAA is still going to appeal the tribunal ward. That's our current course of action.

Vice Speaker Nelson: And the expense that the airport has paid for, specifically for this litigation, the tribunal award is \$600,000 flat?

Ricardo Duenas: That's correct.

Vice Speaker Nelson: Okay, and what about that six percent per annum, and is that in the tribunal award? So, there will be a six percent annum interest?

Ricardo Duenas: If we fail in our appeal.

Vice Speaker Nelson: And in your board meeting minutes on January 3, you have resolution number 1921 and it says that the Board hereby authorizes the authority to issue payment to Calvo, Fisher, and Jacob LLP for the general matters legal fees incurred in November 2018 in excess of the monthly cap in the amounts of \$40,905 and for general legal matters incurred in December 2018 in excess of the monthly cap in the amount of \$105,024.18, so that's like \$145,000, is this specifically for the tribunal case?

Ricardo Duenas: No, I believe that's for a combination of issues, and we need a lot. The airport is involved in a number of legal matters that we are billed for on a monthly basis. We do have a contract with our legal counsel. We do have a cap, and then anything that goes beyond that cap has to be approved by the board, so from time to time, depending on the matters that are coming before the courts for different litigation issues, we do go over that cap on occasion, and when we do, the Board will approve - we review the billings and approve or disapprove the amount over the cap.

Vice Speaker Nelson: So what of the amount if that tribunal?

Ricardo Duenas: I'd have to go back and check that, but also, keep in mind -

Vice Speaker Nelson: Is there any of this, in this amount for procurement?

Ricardo Duenas: There possibly, there would be some amounts of their procurement, our agreement on the procurement with Lotte, the DFS action, yes, there may be some amounts in there, our agreement on indemnification with Lotte is with Lotte, so when the legal fee, the bills come in, we are still responsible for paying legal counsel, so yes, there may be some amounts in there that are being paid that would be subject to reimbursement from Lotte in the future. They're usually there the following month or so.

Vice Speaker Nelson: Okay, and how do they do the reimbursement, how does the reimbursement get paid? Is it like through the letter of credit or is through a discounted rate?

Ricardo Duenas: They actually remit payment to the airport for reimbursement.

Vice Speaker Nelson: called for questions from her colleagues.

Senator Sabina F. Perez: Looking back at the process, being that procurement reform is one of your specialties, what ways can we improve the process as far as procurement in this case?

Executive Manager Ada: Resurrect Bill 156. I think if you take a look at that bill, which was worked on for five different terms, and each time, address various concerns, I think it's right to resurrect that and reintroduce it because in there, it incorporates the experiences that have been gained over a number of years with OPA and the appeals that they've had to deal with, and a lot of those, a lot of that experience and knowledge that has been gained has actually incorporated in that bill, so to answer your question, I think that's where you would find a lot of the changes that needs to be made.

Senator Sabina F. Perez: Can you explain the elements of that bill?

Executive Manager Ada: No, seriously. The current procurement law is really very one-sided. To give you an example, so when an award is made, and a bidder wants to feel that a protest is needed, that bidder has 14 days to file a protest, but then after that protest has been filed, the government does not have any time limit as to when it has to get back and make a decision, whether it's going to reject that protest or agree with it, so that then it can go to the next level of the administrative appeal process to go up to the OPA, so conceivably, then if I protest, the government can sit on it, and you'll never elevate to the OPA. The procurement reform bill that was entertained in the 34th legislature requires that the government respond back I believe within 30 days so that

then a decision can be made whether it's going to go up to the OPA or not, there was also proposals as to how to expedite a decision at the appellate level at the Court.

Senator Mary C. Torres: Chairman Duenas, you mentioned that the loss of revenue by Lotte as a direct result of the construction, can you clarify how the construction had a direct correlation to a decline in sales for Lotte?

Ricardo Duenas: Actually, it's an ongoing situation as a sequence construction proceeds down the line from the terminal, it will affect certain stores that are being operated by Lotte Duty Free because it will require the construction part, our process requires that the ceilings and the columns are opened up, and they're retrofitted and reinforced to support the construction of the third floor and because of that, a number of boutiques, also what they call the Heritage Area which is I think part of the Mamabear area, those will be required to close down. So, we've been working with them over the past year to keep them informed our our construction schedule, so they know what to expect as far as what areas will be closed off. We've also looked at trying to mitigate the impact by offering them alternate space in other areas where they can continue sales.

Senator Mary C. Torres: Now you're speaking prospectively.

Ricardo Duenas: That's right. I mean, they're there. I mean obviously that construction has begun more than about a year ago, and I think we'll be continuing for at least another year, and so there has been some impact of them to date, and we have some in other areas that will impact them over the next six months, and we've been working with them to keep them apprised of when those are (going to) be closed down for how long, and we've tried to work with the contractors and with the designers to estimate the areas and the number of days each area will be closed down, so they can adjust their operations accordingly.

Senator Mary C. Torres: My point in bringing it up is from a passenger's perspective, a person who uses the airport, it is not apparent that the construction has impacted my use of the airport in any way. For example, passenger numbers continue to increase despite the construction. I'm not aware of any delays that I've experienced as a passenger either coming or going as a result of the construction, and I also, aside from a late-night flight that I recently took where the Mamabear shop was closed but perhaps that was a matter of timing as opposed to a construction-related cost, so when you say that there has been a decline in revenue, and it ties in with that, I find it hard to believe, at this point, because I'm not aware of any areas of the boutique that have already closed, so I think the correlation between the construction and a decline in sales

perhaps is not directly aligned at this present time. That's the point that I'm making is that you speak, and I understand exactly what you're talking about, but I believe that is a prospective consideration as opposed to a real-time occurrence, a real-time effect of construction, so I think we need to make those two distinctions because we're talking about increasing the cost of construction which the repayment of the debt is tied directly into the concessionaire revenues going down, so I think, at this point, it's not so clear that they're hand-in-hand, and there's cause for alarm because as we're looking at increasing the cost of the construction, there will need to be a guaranteed revenue stream or at least some indication that the revenue stream is going to be sufficient or as I alluded to earlier that other revenue-enhancing models are there to mitigate where the projects revenues from this exclusive concession error is falling short of projections, so I guess it's a balancing act for all of us, but I think when we discussed that balancing act, and we track the progress of the airport, we have to be very clear about what is the direct correlation to the construction as opposed to just a business projection that didn't meet its mark. They're two distinct things.

Ricardo Duenas: there are two sides of the equation. You're correct. As far as the impact on their operations, there is a real loss of square footage space that will affect them as the construction continues on, so yes, there will be actual floor space that they're losing for a certain period of time. How that translates into a loss of revenue on their side remains to be seen. They've also taken mitigating actions on their side as far as how can they prop up sales if they're (going to) lose that space how, how can they relocate so they're working hard to preserve their revenue stream as well, and so when we went into that agreement, we recognize that they are going to be losing physical space for a certain period of time, and that's an actual real economic loss to them, and so that's where we negotiated a formula to calculate how that impact would affect their rent and it becomes a budgetary issue where we look at it, and we try to estimate it as much as possible, and then we've also taken action and in an agreement with them to try to advertise those costs over a longer period of time so that it's not a large impact for a short period of time, and we spread it out, so it eases the burden on our budget and then also on, although there is a loss because of those concessions to the airport's revenue, we're still within what we projected as far as the adjustments to what we call our minimum annual rent equations, and so we've been able to spread that out over a number of fiscal years over a larger period of time, diminish the impact financially to us.

Senator Mary C. Torres: I want to congratulate the airport on doing some diligence and some risk assessment in looking at the cost-benefit of all the legal actions that you're taking that is in stark contrast to what your other transportation model is doing with regard to the Port. You're doing exactly what they didn't do, and I congratulate you for

having the good business sense to manage it the way that it ought to be managed in terms of projects, and that's why we are all concerned about. We certainly are looking forward to finally having a third-floor corridor and addressing the issues of the inbound passenger segregation, but we also, as users, and this being our main industry and source of income to the island, we want to support you and ensure that we actually meet the project within a reasonable time and that all things considered are considered so that we do in fact have a method to repay and to continue to maintain the airport not only in terms of usability, but in terms of safety, the way that it has been operated, so you have our support. We congratulate you, but I just want to point out that I appreciate that you're looking out for the business and the revenue and the risk assessments that are so vital to these government agencies when it comes to litigation and expenses and the exposure. Si Yu'os Ma'åse'.

Vice Speaker Nelson: Thank you, Senator Torres. In the mediation term sheet, there's a section here that regards to the rent, and it's states GIAA agrees to waive \$175,000 per month of Lotte's rent obligation commencing on May 1, 2018 for a period of 24 months or as may be extended by the parties if necessary pursuant to good-faith discussions in the event GIAA is unsuccessful in its appeal and the protest litigation and Lotte is required to vacate the premises prior to expiration of the ten-year term of the concession agreement, then this rent waiver shall continue until Lotte vacates the premises. What is the purpose of this \$175,000 waiver?

Ricardo Duenas: The \$175,000 waiver was one of the concessions that we negotiated as far as what the impact would be for the initial construction period. That was during the first MTS.

Vice Speaker Nelson: When did you (see) in the construction period that it would impact Lotte?

Ricardo Duenas: I think we began to see impact of 2018, and it was (going to) move forward for what we thought was for another six or seven months, that total impact we negotiate it to be 175 over 24-month period to correspond with the construction, what we thought the construction period would be with extensions, with the delays and everything, so that was one of the ways we were trying to reduce the impact on each fiscal year, so that rather than it coming in and one, two or three months, whether the actual impacts were occurring that we would amortize it out over a period of time to lessen the blow on our financial situation. Well, if we had to take 175,000 over 24 months is about two million dollars, if we had to charge that off during the actual

construction periods, it would be concentrated in one area, and it would affect our cash flow positions

Vice Speaker Nelson: And then the agreement to waive the payment of percentage rent if any for the period of April 2018 through September 2018, what was the purpose of that?

Ricardo Duenas: That was part of negotiated concession. We came up with a dollar amount, and we tried to find ways to mitigate it over into in a couple of different ways so that impact would be spread over a larger period of time.

Vice-Speaker Nelson thanked Executive Manager Ada and congratulated him on his new position and also thanked the employees of the airport. She convened the informational hearing at 11:52 a.m.



OFFICE OF VICE SPEAKER TELENA CRUZ NELSON

CHAIRPERSON OF THE COMMITTEE ON
EDUCATION, AIR TRANSPORTATION, AND STATISTICS, RESEARCH, AND PLANNING
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN | 35th GUAM LEGISLATURE

III. FINDINGS & RECOMMENDATIONS

The Committee on Education, Air Transportation and Statistics, Research and Planning hereby reports on the informational briefing of Guam International Airport Authority (GIAA).