

STANDING COMMITTEE REPORT NO. 20-38

RE: T&C COMMITTEE

SUBJECT: PRESIDENT'S SUPPLEMENTAL REQUEST FOR THE
FIBER OPTIC PROJECT

NOVEMBER 02, 2017

The Honorable Wesley W. Simina
Speaker, Twentieth Congress
Federated States of Micronesia
Second Special Session, 2017

Dear Mr. Speaker:

Your Committee on Transportation and Communication held a public hearing on October 31, 2017, with the President's Office, the Secretary of the Department of TC&I, the Secretary of the Department of Justice and the Department of Finance and Administration. The hearing was chaired by Vice Chairman Alik L. Alik. The subject of the hearing, as detailed in the Notice of Public Hearing, was as follows:

President's Supplemental Request for the Fiber Optic Project

Present at the hearing to testify were the following: Mark DeOrio (FSMDTCI), Secretary Lukner Weilbacher (FSMDTCI), Aaron Warren (FSMDTCI), Redley Killion (OAE), Erick Paul (DFA), Leo Falcam Jr. (President's Office), Secretary Joses Gallen (DOJ), Rob Solomon, (DOFA), Soas Joan (DOFA) and Freddy Perman (FSMTC).

Testimony Presented by TC&I:

TC&I would like to clear the outstanding balance to be able to release additional funding for additional work. The President

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FIBER OPTIC PROJECT

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has not sought funding from alternate sources, because there is concern that could impact the "grant only" status of the FSM with the World Bank (WB). In order to receive grants, the FSM must demonstrate that there are no alternate sources of funding available.

The funding from Congress is reimbursable from the WB funds when they are released. The WB funds total \$47 million. The project has made financial agreements and contracts for services and supplies. The WB has released \$10 million with a one-time exception. Until all requirements are met, the WB has indicated they are not willing to release any additional funds.

The outstanding requirements for the disbursement of the WB funding are:

- a. hiring of the OAE CEO; and
- b. the IRUD

It is projected that these will both be completed within 6-8 weeks.

The OAE business plan has been approved by the WB and the IRUD has been agreed upon in principle, however there are some procedural walkthroughs of the facilities in each state that need to occur to evaluate the building facilities and how the buildings will be shared, including rights of access.

The \$15.5 million being requested (\$8 million already paid, \$7.5 million currently requested) is for past due invoices from NEC for the Yap/Chuuk project. In order to avoid the risk of paying penalties that may be currently accruing, the President is requesting the past due invoices be paid. As of September 13, 2017, the FSM is in default and may be accruing penalties. The FSM has received one notice of default, but no specific amounts have been provided by NEC regarding penalty and interest

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FIBER OPTIC PROJECT

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amounts. TC&I also pointed out that any penalties and interest that are charged and paid, are not reimbursable from the WB funds.

The Secretary offered a commitment to work on negotiating any penalties that may be billed in the future, but feels that they would have substantially more leverage to assist with this if the past due amounts are paid.

Testimony Presented from DFA:

The WB does not allow for borrowing against the project assets. Any such funds would not qualify for reimbursement from the WB. DFA shares the concern that the "grant only" status could be in jeopardy if funds were borrowed from other sources. If Congress's authorizes the payment of the \$7.5 million, this would ensure that the \$15.5 million would be reimbursable from the WB funds when they are disbursed. The \$15.5 million is the principle amount of the invoice for the Chuuk production of cable.

It is anticipated that there will be more invoices received before the end of the year. It is hoped that by paying the past due amounts before additional bills are received, this will be viewed as an act of good faith and the default notice will be off the table for the new invoices, thus avoiding additional penalties. The risk that DFA sees is that any bills received in the near future, may also be considered in default and could include interest and penalties.

DFA is confident that the WB requirements will be met by the end of the year and the full \$15.5 million will be repayable from the WB funds in January 2018. The President would like the project to move forward and by waiting 6-8 weeks for the WB disbursement, it will delay the project.

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Congress requested, and DFA provided assurances that they will provide current calculations by tomorrow.

Testimony Presented from Office of President:

The President met with high ranking NEC officials. They did not discuss penalties. NEC officials were made aware that Congress authorized the payment of \$8 million (this has since been paid to NEC).

The President indicated to NEC that he would seek assistance from Congress for additional payment towards the balance of the principle. Even though the \$8 million has been paid to NEC, it is believed that FSM is still considered in default based on the outstanding past due amount.

The president's office feels that the risk is substantial and that by reducing the debt that is currently in default, it will allow everyone to focus on the things that need to be completed to meet the WB requirements and get the WB funds disbursed.

Congress has provided support for the President's word and relationship with NEC by authorizing the previous payment of \$8 million. The President's office does not want to "use up" all the good faith that has been established. They want to continue to develop and maintain the positive relationship.

The President's desire is to dispose of the NEC debt quickly to put the government in a better position to continue to move things forward with the project.

Your committees thanked the witnesses for appearing and for providing the information.

Recommendations:

STANDING COMMITTEE REPORT NO. 20-38

RE: T&C COMMITTEE

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FIBER OPTIC PROJECT

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Based on the information provided at the hearing and upon discussion, the Committees feels that the goals as outlined by the stakeholders at the hearing can be met with the authorization of a payment of \$4 million. This should provide some leverage based on the good faith efforts on the part of the FSM government and should allow the project to continue to move forward without significant delay.

Respectfully submitted,

/s/ Victor V. Gouland
Victor V. Gouland, chairman

/s/ Alik L. Alik
Alik L. Alik, vice chairman

/s/ Florencio S. Harper
Florencio S. Harper, member

/s/ Ferny S. Perman
Ferny S. Perman, member

/s/ Dion G. Neth
Dion G. Neth, member

/s/ Wesley W. Simina
Wesley W. Simina, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member