

**U.S. Department of the Interior
Office of Inspector General**

Audit Report

Professional Service Contracts Government of the Virgin Islands



No. 2002-I-0046

September 2002



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Caribbean Regional Office
Federal Building, Room 207
St. Thomas, Virgin Islands 00802

September 30, 2002

Honorable Charles W. Turnbull
Governor of the Virgin Islands
No. 21 Kongens Gade
Charlotte Amalie, Virgin Islands 00802

Subject: Audit Report "Professional Service Contracts, Government of the Virgin Islands"
(No. 2002-I-0046)

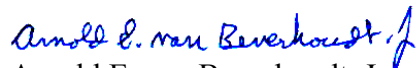
Dear Governor Turnbull:

This report presents the results of our audit of administration of professional service contracts by the Government of the Virgin Islands.

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the U.S. Congress. In addition, the Office of Inspector General provides audit reports to the Congress.

Please provide a response to this report by November 25, 2002. The response should provide the information requested in Appendix 5 and should be addressed to our Caribbean Regional Office, Federal Building - Room 207, Charlotte Amalie, Virgin Islands 00802.

Sincerely,


Arnold E. van Beverhoudt, Jr.
Regional Audit Manager

cc: Commissioner of Property and Procurement

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EXECUTIVE SUMMARY

Award and Administration of Professional Service Contracts Inadequate

During fiscal years 2000 and 2001, the Virgins Islands Government issued 388 professional services contracts for approximately \$100 million. The award and administration of these contracts was not adequate to protect the Government's interests. For example, the Government:

- ' Paid \$1 million during a 3-year period to a firm which did not have a contract.
- ' Awarded contracts non-competitively without written justifications for the actions.
- ' Awarded contracts without evidence that funding was available to pay the full contract costs.
- ' Allowed contractors to begin work before contracts were awarded.
- ' Awarded contracts to firms which were not licensed to do business in the Virgin Islands.
- ' Allowed retirees from the Virgins Islands Government to receive both retirement annuities and contract payments in violation of Virgin Islands law.
- ' Failed to monitor contractor performance and overpaid contractors.

Recommendations and Response from the Government of the Virgin Islands

We made ten recommendations to the Governor of the Virgin Islands to enforce or implement procedures to address the deficiencies discussed in the report. We received a response to the ten recommendations from the Commissioner of Property and Procurement who agreed with all ten recommendations. We requested additional information on actions to be taken to implement the recommendations.

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INTRODUCTION

BACKGROUND

The Virgin Islands Code (3 V.I.C. § 218) makes the Department of Property and Procurement (Property and Procurement) responsible for providing the Government of the Virgin Islands with "an economical and efficient system for the procurement and supply of all property and non-personal services." Accordingly, the Commissioner of Property and Procurement is the Government's primary contracting officer. The Government's procurement laws are also contained in the Virgin Islands Code (31 V.I.C. Chapter 23).

The Virgin Islands Rules and Regulations, which interpret and apply the laws contained in the Code, require that contracts for the purchase of goods and services be awarded on the basis of competitive sealed bids whenever feasible. When contracting for professional services and in instances when the use of sealed bids is not feasible, contracts may be awarded by competitive negotiation or, if the goods or services are available from only one source, by direct negotiation with the vendor. In June 2001, Property and Procurement issued a manual entitled "The Procurement Process: How to Do Business With The Department," which outlines the procurement procedures, including sample forms.

OBJECTIVE AND SCOPE

The objective of the audit was to determine whether the Government (1) awarded professional service contracts in accordance with the procurement requirements of the Virgin Islands Code and the Virgin Islands Rules and Regulations, (2) adequately monitored the performance of professional service contractors, and (3) paid contractors in accordance with contract provisions.

Property and Procurement issued 212 professional service contracts totaling \$43.6 million during fiscal year 2000 and 176 professional service contracts totaling \$57.1 million during fiscal year 2001. However, Property and Procurement had only one staff member (stationed on St. Thomas) available to process professional service contracts. The scope of the audit included a review of the professional service contracts awarded during fiscal years 2000 and 2001, and other periods as appropriate.

To accomplish our audit objective, we interviewed officials and reviewed procurement files and payment documents at the

Department of Property and Procurement, the Department of Finance, and selected operating agencies of the Government.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. The "Standards" require that we obtain sufficient, competent, and relevant evidence to afford a reasonable basis for our findings and conclusions.

As part of our audit, we evaluated the internal controls related to the procurement of professional services, the monitoring of contractor performance, and the payment of contractor invoices to the extent we considered necessary to accomplish the audit objective. Internal control weaknesses identified are discussed in the Results of Audit section of this report. The recommendations, if implemented, should improve the internal controls in these areas.

PRIOR AUDIT COVERAGE

During the past 5 years, the Office of Inspector General did not issue any reports on professional service contracts of the Government of the Virgin Islands. However, in June 1989 we issued the audit report "Professional and Consulting Services, Government of the Virgin Islands" (see Appendix 2).

RESULTS OF AUDIT

CONTROL OF CONTRACTING INADEQUATE

The Department of Property and Procurement (Property and Procurement) was not able to effectively control the contracting for professional services by Government executive agencies. As a result, those agencies regularly violated procurement requirements.

Payments of About \$1 Million Made Without a Contract

During fiscal years 1998 to 2001, a vendor provided computer services to the Department of Public Works and 11 other Government agencies. The agencies paid approximately \$1 million for these services although the vendor did not have a contract with the Government or a Virgin Islands business license.

At the Department of Public Works, the vendor was paid a monthly fee of \$4,950 to provide services such as purchasing computer hardware and software, maintaining the computer network and telephone system, and providing other computer-related consulting services. During the 4-year period, the vendor was paid \$375,153 for these services (which included the purchase price of computer hardware and software). The Commissioner of Public Works told us that the vendor had already been providing services to the Department when he assumed his position, and he was surprised to learn that the vendor did not have a contract with the Department. The Commissioner further stated that the Department had experienced major problems with the quality of the vendor's services, including problems with the vendor double billing for work performed, "sabotaging" the Department's computer network, locking employees out of the network, and providing used rather than new computer equipment.

Our review of the contract registers at the Property and Procurement disclosed that the vendor did not have a contract with Public Works or any of the other 11 Government agencies. Our review of records at the Department of Licensing and Consumer Affairs also disclosed that the vendor was not issued a business license until June 2001. Despite these factors, a review of vendor payment records in the Government's financial management system disclosed that during fiscal years 1998 to 2001, the vendor received payments from 12 Government agencies (including Public Works) totaling \$1,019,791. Of that amount \$266,283 represents Federal funds.

The hiring of this vendor for extensive consulting work valued at more than \$1 million, without any record of competition and without a written contract, violated the procurement requirements of the Virgin Islands Code (31 V.I.C. Chapter 23). For example, the Code requires that contracts for goods or services valued at more than \$5,000 be in writing and be awarded on the basis of competitive procurement procedures, and that vendors and contractors have valid business licenses. We have referred this matter to our Office of Investigations.

Justification for Noncompetitive Contracts Was Lacking

Procurement regulations established by Property and Procurement require that a letter of justification be submitted by any agency that bypasses Property and Procurement and negotiates a contract of more than \$5,000. The justification letter should describe the need for the contract and the method of selecting the contractor, justify the sole-source procurement, and identify the source of funding for the contract.

We reviewed a sample of 70 contracts from both fiscal years totaling \$24.3 million. Of the 70 contracts reviewed, 59 should have been awarded through the competitive procurement process. However, we found that only 6 of these 59 contracts were competitively awarded. Further, of the 53 contracts that were not competitively awarded, the files for 35 contracts did not contain letters justifying the lack of competition. For example:

- ' In October 1998, the Department of Public Works awarded a \$125,000 contract for garbage removal services. There was no justification letter in the contract file from Public Works explaining the need for the contract, the method or justification for selecting the contractor, and the source of funding for the contract.
- ' In August 2001, the Office of the Governor awarded a \$35,000 contract for cultural dance instruction. A letter to the Commissioner of Property and Procurement that was contained in the contract file simply noted that the contract was attached, stated the reason for the contract, and requested approval and processing of the contract. The letter did not mention the method of selecting the contractor or the proposed funding source for the contract.
- ' In December 1999, the Department of Education awarded a \$216,372 contract for construction services during the period of June 1997 to February 2000. A letter to the

Commissioner of Property and Procurement that was contained in the contract file only stated the scope of the contract and the nature of the services to be performed. Because this was a construction contract, the competitive bidding process should have been used to procure the construction services.

Because adequate justification letters were not provided for a majority of the contracts reviewed, there was no assurance that professional service contracts were being awarded in accordance with the competitive and other procurement requirements. Therefore, there was no assurance that the Government received the best services available and at the most advantageous prices.

We believe that Property and Procurement should strictly enforce the procurement laws and regulations and ensure that operating agencies adhere to the established procurement procedures. In that regard, Property and Procurement's control over the Government's procurement activities should be strengthened to authorize the Commissioner of Property and Procurement, as the Government's duly authorized contracting official, to be the last person to approve/sign contracts. To that end, the procurement process should be further revised so that the Department of Justice's legal reviews take place before proposed contracts are approved/signed by the Commissioner of Property and Procurement. Also, consideration should be given as to the necessity of the Governor also approving/signing all contracts. For example, if the Governor approved/signed only contracts of special concern, most contracts could be considered officially executed upon the signature of the Commissioner of Property and Procurement. The Commissioner would then be in a better position to enforce compliance with the procurement laws and regulations by refusing to approve contracts that were not in compliance.

**Contracts Awarded
Without Evidence that
Funding was Available**

The Virgin Islands Code (31 V.I.C. § 233) states, "The Commissioner of Property and Procurement shall not issue any order for delivery on a contract or open market purchase unless the request for purchase bears certification that there is to the credit of the department, office, board, institution or other agency concerned a sufficient unencumbered apportionment of its appropriation balance, in excess of all unpaid obligations, to defray the amount of such order." Based on this requirement, contracts sent to Property and Procurement for processing should be accompanied by a Miscellaneous Encumbrance Document showing that funds

have been have set aside to pay contract costs. However, we found that Property and Procurement allowed Government agencies to enter into 8 contracts totaling \$4.6 million for which funds had not been set aside and 16 other contracts totaling \$13.3 million for which the funds set aside were not sufficient to meet the full contract amounts. For example:

- ' In January 2001, the Department of Justice entered into a \$4.3 million contract for development of a system for child support enforcement in the Virgin Islands. However, the contract file did not contain any evidence that funds had been set aside to pay the contract cost.
- ' In August 2000, the Department of Human Services entered into a \$3.8 million contract for services to maintain, enhance, and support a client benefit system. However, the contract file contained evidence of available funds totaling only \$39,000, or just over 1 percent of the total contract cost.
- ' In April 1999, the Department of Justice entered into a \$83,744 contract for the services of a Special Assistant Attorney General. The contract files at Property and Procurement did not have any information regarding this contract. Similarly, contract information from the Department of Justice did not include any evidence that funds had been set aside to pay the contract cost.
- ' In August 2001, the Office of the Governor entered into a \$35,000 contract for services to provide dance instruction in traditional and cultural dances at five public schools in the Virgin Islands. An encumbrance document contained in the contract file indicated that the encumbrance had been canceled, and there was no other information to show that funds had been set aside to pay the contract cost. Another document indicated that a nonprofit organization for which the contractor worked was paid in April 2001 (4 months before execution of the contract).

In all 24 instances of contracts without documentation of adequate sources of funding, there was no indication that Property and Procurement had returned the contracts to the user agencies to obtain proper documentation of funding or had otherwise requested such documentation. We also noted that all 24 contracts were approved for legal sufficiency by the Department of Justice despite the missing or insufficient funding documentation. We believe that Property and

Procurement should discontinue the practice of approving contracts when there is an insufficient encumbrance to pay for the services that are being contracted. In our opinion, this practice undermines the financial integrity of the Government of the Virgin Islands by establishing contractual obligations in cases where sufficient funds might not be available to pay contract costs.

**Payments of \$4.6 Million
Made Before the Related
Contracts Were Fully
Executed**

Professional service contracts contain a clause which states that the effective date of the contract is the date the contract is executed by the Governor of the Virgin Islands. However, we found that contractors were allowed to start work on 31 contracts before the contracts were executed by the Governor. For 28 of those 31 contracts, payments totaling \$4.6 million were made to the contractors before the contracts were fully executed. For example:

- ' In July 2000, the Department of Public Works awarded a \$320,000 contract for the maintenance of wastewater facilities. The contract was signed by the Governor on July 17, 2000 and, according to contract provisions, the effective period was from the date of the Governor's signature to 30 days thereafter (or August 16, 2000). However, Addendum I to the contract listed 117 invoices (all dated from February 3, 1997 to December 14, 1999) that were to be paid under the contract. Therefore, it appears that the contract was simply a pro-forma method of paying the contractor for work that had been performed as long as 3 years prior without a contract. The contractor subsequently received payments totaling \$315,839.
- ' In October 1999, the Department of Human Services hired a contractor to provide residential rehabilitative services to adolescents in the Virgin Islands. The contract was signed by the Governor on March 3, 2000, or 5 months after the contractor had started work under the contract. The contractor eventually received payments totaling \$807,544 for work performed during the period of October 1999 to February 2000.
- ' In August 2001, the Office of the Governor hired a contractor to provide a comprehensive report about primary health care for indigent school children in the Virgin Islands. The contract was signed by the Governor and officially became effective on August 30, 2001 - just 1 day before the August 31, 2001 end date stated in the contract.

Prior to August 30, 2001, the contractor had already been paid \$3,803 for work performed under the contract during the period of June 13, 2001 to July 6, 2001.

We found that it was common for Government agencies to allow professional service contractors to perform work before their contracts were prepared and fully executed. A Government official told us that about 50 percent of the professional service contracts that are sent to Property and Procurement are for services that have already been provided by the contractors. Property and Procurement officials also stated that the lengthy procurement process and a lack of proper documentation by the user agencies contributed to this problem. We believe that the Commissioner of Property and Procurement should explore options to streamline the procurement process and discontinue the practice of allowing contractors to perform and be paid for services before their contracts have been fully executed. In addition to being a violation of the Virgin Islands Code (31 V.I.C. § 236), which requires that contracts for more than \$5,000 be in writing, the existing practice put both the Government and contractors at risk in the event of a breach of contract by the other party or a disagreement concerning the provisions of the unexecuted contracts.

Contracts Were Awarded to Vendors Who Did Not Have Valid Business Licenses

The Virgin Islands Code (31 V.I.C. § 236(g)) requires that all bidders for contracts with the Government have a valid license issued by the Department of Licensing and Consumer Affairs to do business in the Virgin Islands. We found that, of the 70 files reviewed, 9 contractors did not have valid business licenses. In addition, one contractor had a valid business license, but not for the type of service he was providing under contract with the Government.

Contracts Awarded to Government Retirees for Periods in Excess of the Grace Period Allowed by Law

The Virgin Islands Code (3 V.I.C. § 706(c)) provides that "any member [of the Government Employee Retirement System] receiving a service retirement annuity who reenters the service of the Government may continue to receive his annuity while in receipt of salary from the Government, either by appointment or on a contractual basis, for a period of time not to exceed 75 days. At the end of such period, the service retirement annuity shall be canceled and the member shall thereupon again become a contributor to the system." During our review, we found that three retirees received professional service contracts and provided services under those contracts for periods of more than

75 days, but still received their retirement annuities from the Government Employees Retirement System. Specifically:

- ' An employee of the Department of Justice retired on March 31, 2000 and had a \$12,000 contract to provide professional services to the Department for a period of 75 days, beginning on August 2, 2000. However, based on invoices submitted by the retiree, the retiree provided services under the contract from August 2, 2000 to January 31, 2001, or for a total of 182 days. The individual continued to receive an annuity during this period.
- ' An employee retired on December 31, 1998 and had a \$6,840 contract with the Department of Education to provide training, technical assistance, and monitoring of nutrition programs during the period of October 2, 2000 to December 29, 2000, or a total of 88 days. The retiree continued to receive an annuity during this period.
- ' Another employee retired on October 31, 1994 and had a \$60,000 contract with the Department of Public Works to provide consulting services for a period of 2 years, beginning in July 2001. The retiree continued to receive an annuity during this period.

Officials of the Government Employees Retirement System stated that they were not notified when Government retirees received professional service contracts with the Government. We believe that the Property and Procurement, the Government Employees Retirement System, and the Department of Finance should develop procedures to ensure that the Retirement System is notified when Government retirees are awarded contracts or paid under contracts for periods exceeding 75 days.

Federal Regulations Disregarded in the Use of Federal Surplus Property

In March 2001, the Department of Public Works awarded a contract to turn control over an item of Federal surplus property to a for-profit company located in the British Virgin Islands. The contract allowed the company to repair, maintain, and operate a Mobile Reverse Osmosis Water Production Unit (ROWPU) in the British Virgin Islands as part of a 3-year for-profit venture. The U.S. General Services Administration had donated the ROWPU to the Government of the Virgin Islands in 1998 to be used as a water desalination barge.

Two memorandums, dated June 29, 1995 and July 27, 1995, from the General Services Administration stated that because the

ROWPU was more than 50 feet in length and cost more than \$5,000, its use was subject to special terms and conditions and it must be used by the Government of the Virgin Islands for at least 5 years before it could be disposed of. In November 1999, the Commissioner of Property and Procurement wrote to the Commissioner of Public Works informing him that the General Services Administration had advised that the ROWPU was subject to special restrictions until July 2003 and was not to be used as part of a for-profit venture even if such activity was undertaken by the Government of the Virgin Islands.

On March 1, 2001, Property and Procurement's attorney wrote to the Commissioner stating that the proposed contract may breach the conditions under which the ROWPU was given to the Government. As a result, the Commissioner of Property and Procurement returned the contract to the Department of Justice without approval. However, in a March 5, 2001 letter to the Commissioner of Property and Procurement, a Department of Justice official stated that the proposed contractor would be serving as an asset for the Government by maintaining, repairing, and operating the ROWPU and that the proposed contract did not violate the terms of the agreement between the General Services Administration and the Government of the Virgin Islands. Based on this letter, the Commissioner of Property and Procurement approved the contract on March 6, 2001, and it was signed by the Governor on March 7, 2001.

The existence and nature of the contract was publicized at a Legislative hearing on April 4, 2001, and a few days later it was publicly disclosed that the contractor was related to a high-ranking Government official. Following public criticism, the contract was canceled and the Government ordered the barge returned to the Virgin Islands. The contract stipulated that the agreement may be terminated by either party with not less than 90 days notice in writing to the other, except in the event of an emergency. At such termination all accounts were to be adjusted and the contractor credited for its capital infusion into the project. The contractor submitted invoices for reimbursement of expenses incurred to make the ROWPU barge operable totaling \$75,000. Property and Procurement officials stated that they forwarded the invoices to the Commissioner of Public Works with a recommendation that they be paid. As a result of not following the Federal requirements regarding the handling of surplus property, the Virgin Islands Government incurred unnecessary costs totaling \$75,000.

**MONITORING OF
CONTRACTOR
PERFORMANCE AND
PAYMENT NOT
SUFFICIENT**

The Government did not adequately monitor the performance of professional service contractors and the accuracy of payments to contractors.

We interviewed officials at operating agencies of the Government to determine whether the agencies had implemented procedures to monitor contractor performance. Of the 70 contracts included in our sample, we found that 35 contracts had been adequately monitored and we eliminated 6 contracts from our review because the contracts either had not been fully executed or had been canceled. Of the 29 remaining contracts, 24 contracts were not being monitored because such procedures had not been established by the user agencies, and we could not evaluate 5 contracts because sufficient information was not available at the user agencies. For example:

- ' Two responsible officials at the Department of Justice had no knowledge of a contract to inspect and test the fire alarm system at the adult correctional facility on St. Thomas. One of the officials commented that the Government could not have entered into such a contract because a key component of the alarm system to be tested was not operational at the time when the contract was effective. The official contacted us a few days after our initial audit interview and stated that he arranged for the contractor to inspect the alarm system and that the contract would be effective the date of the inspection. However, the contract had already expired and the contractor was paid for services that may or may not have been rendered.
- ' The Department of Education had a contract with a school in the United States to provide rehabilitative services for a student. Education officials stated that periodic site visits to the school were never performed, and the only visit made was when the student was first placed at the school.

The Government of the Virgin Islands should implement procedures to ensure that the performance of all contractors is monitored regularly. Such procedures would ensure that the contractors were satisfactorily performing the services for which they were being paid.

**Five Contractors
Overpaid by \$130,000**

We reviewed payment records for 57 of the 70 professional service contracts in our sample. (For various reasons, the other 13 contracts did not have any payments made at the time of our review.) A total of 317 payments totaling \$16.4 million were

made against the 57 contracts reviewed. Of that amount, we noted that five contractors had been overpaid a total of \$130,000. For example:

- ' In October 1998, the Department of Public Works hired a contractor to perform garbage removal services for an amount of "not to exceed" \$125,000. However, the payments processed against the contract totaled \$186,350, or \$61,350 above the maximum contract amount. The \$61,350 included a duplicate payment of \$2,700 for the period of December 28, 1998 to January 2, 1999 and \$4,480 in differential pay that was not provided for in the written contract. With regard to the differential pay, we found that, although the contract specified a billing rate of \$540 per day, the contractor billed Public Works and was paid at a rate of \$680 per day for weekends. Public Works officials told us that the \$680 weekend rate was verbally agreed between the two parties. However, because the contract was over \$5,000, all provisions should have been included in the written contract, not in an unofficial verbal agreement. During our review, we further noted that the contractor had a second, identical contract with Public Works covering the same services and time period and under the same terms and conditions as the first contract. Public Works officials were unaware of the existence of duplicate contracts and stated that the first contract, which was not formally executed until March 2000, was issued to pay the contractor for services that had already been provided.
- ' In May 1999, the Department of Public Works entered into another contract for garbage removal services for an amount "not to exceed" \$65,000. However, the payments processed against the contract totaled \$114,375, or \$49,375 in excess of the maximum contract amount.
- ' In May 2000, the Department of Tourism entered into a \$659,800 contract for design and development of an official tourism web site. Payments under the contract included an allowance of \$22,300 for contract-related travel expenses. However, Tourism officials did not have documentation to support the amount of travel expenses actually incurred by the contractor. Based on our inquiry, the contractor provided travel receipts totaling \$9,160 and agreed to refund Tourism for the unused \$13,140 balance of the travel allowance.

Overpayments on professional service contracts could have been avoided if Government agencies had adequately monitored payments against the contracts to ensure that they did not exceed the maximum contract amounts and were in accordance with contract provisions and adequately supported.

RECOMMENDATIONS

TO THE GOVERNOR OF THE VIRGIN ISLANDS

We recommend that the Governor of the Virgin Islands:

1. Issue a directive to all Executive Branch agency heads directing them to ensure that they adhere to the established procurement laws and regulations when contracting for professional services.

We also recommend that the Governor of the Virgin Islands direct the Commissioner of Property and Procurement to:

2. Revise the procurement process so that the Commissioner of Property and Procurement, as the Government's duly authorized contracting officer, be the last Government official to approve/sign contracts. In revising the procurement process, have the Department of Justice perform its legal review of proposed contracts prior to their submission to Property and Procurement, and requiring the Governor's signature only on contracts of special significance.

3. Strictly enforce the procurement laws and regulations and ensure that operating agencies adhere to the established procurement laws and regulations when awarding professional service contracts.

4. Discontinue the practice of allowing contractors to perform and be paid for services before their contracts have been fully executed.

5. Discontinue the practice of approving contracts when there are insufficient encumbered funds to pay for the services that are being contracted or when the contractors do not have the appropriate business licenses.

6. Develop, jointly with the Government Employees Retirement System and the Department of Finance, procedures to ensure that the Retirement System is notified when Government retirees are awarded contracts or paid under contracts for periods that exceed the 75-day grace period allowed by law.

7. Implement procedures to ensure that, in the event surplus Federal property is donated to the Government, that such

property is used in accordance with applicable Federal requirements.

8. Implement procedures to ensure that the performance of all contractors is monitored regularly to ensure that they satisfactorily perform the services for which they were contracted and paid.

9. Implement procedures to ensure that payments to contractors are monitored to ensure that they are in accordance with contract provisions, do not exceed maximum contract amounts, and are supported by adequate documentation.

10. Recover overpayments of \$130,000 that were made to contractors.

AUDITEE RESPONSE

The draft report was issued on May 31, 2002 and a response was requested by July 15, 2002. At the request of Government officials, the response due date was extended to August 15, 2002. On August 19, 2002, we received, from the Office of the Governor, a response dated July 15, 2002 (Appendix 3) that was prepared by the Commissioner of Property and Procurement. The Commissioner's response concurred with all ten recommendations and provided additional information in support of the recommended actions.

**OFFICE OF
INSPECTOR GENERAL
REPLY**

Although the Commissioner of Property and Procurement concurred with all ten recommendations, the response did not provide information as to whether the Governor would support efforts by the Commissioner to require operating agencies to comply with procurement requirements. We believe that without direct support from the Governor, it is unlikely that the Commissioner of Property and Procurement would be in a position to require compliance by operating agencies. Additionally, we changed Recommendation 10 to require the recovery of the overpayments to contractors of \$130,000. Therefore, a response to Recommendation 10 is needed. Also, Recommendation 1 requires a response from the Governor, and Recommendations 2 through 9 need a plan of action from the Commissioner for implementing the recommendations. Therefore, we have requested additional information for the ten recommendations (see Appendix 4).

APPENDIX 1 - MONETARY IMPACT

FINDING AREAS	Funds To Be Put To Better Use*	Questioned Costs	
		Unsupported Costs*	Cost Exceptions*
Contract Procurement			
Use of Federal Property	\$75,000		
Contract Monitoring & Payment			
Payments Without Contract		\$1,019,791	
Contract Overpayments			\$130,000
Totals	<u>\$75,000</u>	<u>\$1,019,791</u>	<u>\$130,000</u>

* Amounts represent local funds.

APPENDIX 2 - PRIOR AUDIT REPORTS

OFFICE OF INSPECTOR GENERAL REPORT

The June 1989 audit report "Professional and Consulting Services Contracts, Government of the Virgin Islands" (No. 99-88) stated that Government agencies did not follow established regulations for the procurement of professional and consulting services. Specifically, agency officials negotiated and awarded noncompetitive contracts without adequate justification. As a result, Government agencies (1) processed 165 procurement actions, for \$18 million, without adequate competition and therefore had no assurance that these services were acquired at fair and reasonable prices; (2) expended almost \$200,000 for overpriced, undelivered, unusable, or duplicated services; (3) incurred excessive construction costs of almost \$1 million; and (4) failed to recover about \$52,000 in amounts due from contractors. Our current audit also disclosed that the Government did not always follow the established procurement regulations.

APPENDIX 3 - RESPONSE TO DRAFT REPORT

GOVERNMENT OF
THE UNITED STATES VIRGIN ISLANDS

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DEPARTMENT OF PROPERTY AND PROCUREMENT



OFFICE OF
THE COMMISSIONER

July 15, 2002



STX, Tel.: (340) 773-1561
Fax: (340) 773-0996
STT, Tel.: (340) 774-0828
Fax: (340) 777-9587

Honorable Charles W. Turnbull
Governor of the Virgin Islands
Office of the Governor
Kongens Gade 21-22
Charlotte Amalie
St. Thomas, Virgin Islands 00802

Re: ***Draft Audit Professional Service Contracts***

Dear Governor Turnbull:

This letter is in response to the Draft Audit submitted by Arnold van Beverhoudt of the Office of the Inspector General. The purpose of this audit was to determine whether the Government (1) awarded professional service contracts in accordance with the procurement requirements of the Virgin Islands Code and the Virgin Islands Rules and Regulations, (2) adequately monitored the performance of professional service contractors, and (3) paid contractors in accordance with contract provisions. This audit was done for Professional Contracts issued during fiscal years 2000 and 2001.

The Department of Property & Procurement is governed by Title 31, Chapter 23, §231 – 251 of the Virgin Islands Code. However, Title 31 § 239 a4 as it pertains to open market purchases specifically states, that purchases and contracts may be negotiated without formal advertising if “the purchase is for professional services; Provided that such services shall be procured by competitive negotiation, wherever practicable.” The method for procuring professional services for the Virgin Islands Government is solicited by a Request for Proposals (RFP), such contracts are used by profit and non-profit businesses engaging in rendering diversified services for the Government. The RFP is advertised to ensure competitive bidding and policy. After this process, the most responsive, responsible bidder is selected.

The Department of Property & Procurement, unless a repeal of Title 31, §239 a 4 is considered by the Legislature, loses its oversight ability to monitor and recommend changes. The Departments and Agencies alike, reference this specific section of the code as legal authority to procure professional services.

There are 10 recommendations outlined by the Inspector General, and I offer my comments for your information and guidance in response thereto.

*Honorable Governor Turnbull
Re: Response to Draft Audit – Professional Contracts
July 15, 2002
Page 2 of 5*

RECOMMENDATIONS

Issue a directive to all Executive Branch Agency Heads directing them to ensure that they adhere to the established procurement laws and regulations when contracting for professional services.

1. We concur that the Governor should issue a directive to all Executive Branch Agency Heads directing them to ensure that they adhere to the established procurement laws and regulations when contracting for professional services. Attached is a sample directive which we have drafted for your consideration.

The Virgin Islands Code establishes the Commissioner of Property and Procurement as the primary contracting officer of the Government. The Code requires procurements to be conducted by competitive sealed bids, except as provided by Section 239. This section provides exceptions where procurements do not have to be made by sealed bidding. It provides for a method of procurement known as “negotiation”, where contract award may be made on the basis of a combination of price and technical considerations. In appropriate cases, negotiated procurements may be non-competitive. If a non-competitive procurement is warranted, the agency must furnish supporting justification.

Nothing in Section 239 grants authority to agency heads to award contracts for professional services. That authority is vested exclusively with the Commissioner of Property and Procurement. In the past, we have advised agency heads that the Department of Property and Procurement will not approve professional service contracts that do not conform to the Virgin Islands Code.

Revise the procurement process so that the Commissioner of Property and Procurement, as the Government’s duly authorized contracting officer, is the last Government official to approve/sign proposed contracts. In revising the procurement process, consideration should be given to having the Department of Justice perform its legal review of proposed contracts at an earlier stage in the process and requiring the Governor’s signature only on contracts of special significance.

2. We concur that the procurement process be revised so that the Department of Justice performs its legal review of proposed contracts prior to presenting them to the Commissioner of Property and Procurement for signature. The Commissioner of Property and Procurement, as the Government’s duly authorized contracting officer, is the last Government official needed to approve/sign proposed contracts. Except for contracts of special concern, we do not believe that it is necessary for the Governor to co-sign the contracts.

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Strictly enforce the procurement laws and regulations and ensure that operating agencies adhere to the established procurement laws and regulations when awarding Professional Service Contracts.

3. We concur that the procurement laws and regulations be enforced strictly. This will ensure that operating agencies adhere to the established procurement laws and regulations when awarding Professional Service Contracts. We believe that the practice of issuing "Confirming Orders" be restricted severely. We view Confirming Orders as the Governor's ratification of unauthorized contractual commitments. Confirming Orders must not be used to circumvent the statutory requirements regarding competition, justification, and authorization to make contractual commitments.

The Department held a conference entitled "The Procurement Process: How to do Business with Property and Procurement". At the conference, we emphasized the correct method of awarding professional services contracts.

Discontinue the practice of allowing contractors to perform and be paid for services before their contracts have been executed.

4. We concur that the practice of allowing contractors to perform and be paid for services before their contracts have been executed be discontinued, except in the case of public exigencies. The Department of Property and Procurement does not authorize contractors to begin work without a contract. If a user agency has done so and the services have been accepted, a letter of justification is transmitted to the Department of Justice, and a Confirming Order is requested. As indicated above, we do not support the concept of Confirming Orders and have worked diligently to preclude the need for them.

Discontinue the practice of approving contracts when there are insufficient encumbered funds to pay for the services that are being contracted or when the contractors do not have the appropriate licenses.

5. We concur that the practice of approving contracts when there are insufficient encumbered funds to pay for the services that are being contracted, or where the contractors do not have the appropriate licenses, should be discontinued. The Virgin Islands Code states that the Commissioner of Property and Procurement is precluded from making an award unless there is an encumbrance voucher certifying the availability of funds to pay for the award. Similarly, the Code requires the Commissioner to require prospective contractors to certify that they are licensed to do business in the Virgin Islands. If a User Agency does not indicate that funds have been encumbered to pay for the services, the Department of Property and Procurement will not process the contract for award. Further, the Department will not award a contract to a firm that does not have an appropriate business license. Under

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my tenure, the Department has never approved a contract without verifying encumbrances and current licenses.

Develop, jointly with the Government Employees Retirement System and the Department of Finance, procedures to ensure that the Retirement System is notified when Government retirees are awarded contracts or paid under contracts for a period that exceed the 75-day grace period allowed by law.

6. We concur that the Government Employees Retirement System and the Department of Finance develop procedures to ensure that GERS is notified if government retirees are awarded contracts or paid under contracts for a period that exceeds the 75-day grace period allowed by law. Payments for services are processed and approved by the User Agency and transmitted to the Department of Finance for payment. The Department of Property and Procurement is not involved in the payment process, although the Department would be pleased to assist the Department of Finance and GERS to develop the recommended procedures.

Implement procedures to ensure that, in the event surplus Federal Property is donated to the Government, that such property is used in accordance with applicable Federal requirements.

7. We concur that Surplus Federal Property donated to the Government be used in accordance with applicable federal requirements. This is the responsibility of the User Agencies which are the recipients of the surplus property. The Department of Property and Procurement could take the responsibility of monitoring User Agencies use of surplus property by requiring periodic accountings of the property.

Implement procedures to ensure that the performance of all contractors is monitored regularly to ensure that they satisfactorily perform the services for which they were contracted and paid.

8. The Government has a structure that is designed to ensure that the performance of all contractors is monitored regularly, and that they satisfactorily perform the services contracted for and paid. The Department of Public Works is the statutorily designated contract monitor for public works projects. The User Agencies are responsible to monitor the performance of the contracts the Department of Property and Procurement awards on their behalf. The Department of Property and Procurement will not recommend that the Department of Finance process payment to contractors unless the Department of Public Works or appropriate User Agency has indicated that the contractor has performed acceptable work.

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Implement procedures to ensure that payments to contractors are monitored to ensure that they are in accordance with contract provisions, do not exceed maximum contract amounts, and are supported by adequate documentation.

9. We concur that payments to contractors be monitored to ensure that they are in accordance with the contract provisions, do not exceed maximum contract amounts, and are supported by adequate documentation. We believe that User Agencies, the Department of Finance, and the Department of Property and Procurement are jointly responsible to ensure that contract payments in excess of the contract amount are not processed. User Agencies should not initiate, the Department of Property and Procurement will not process, and the Department of Finance must not pay invoices in excess of the contract amount. In no case will the Department of Property and Procurement process invoices for payment unless the Department of Public Works or appropriate User Agency has indicated that the contractor has performed acceptable work.

Investigate the circumstances under which a vendor was hired by 12 Government agencies and the quality of the services provided to determine if criminal charges warranted against the vendor or any Government officials who hired him under circumstances that violated the Virgin Islands Code.

10. The Department of Public Works should investigate this matter further to determine the circumstances for the hiring of this vendor and the violations charged. The Division of Procurement has no file(s) for the contractor, or any indication from which contract they were hired. **The Department of Finance should not have issued payment without a fully executed contract.**

I trust this letter will serve as guidance in your response to the Office of the Inspector General's "Draft Audit Response".

Sincerely,



Marc A. Biggs
Commissioner

MAB/WTC/OM/mso

cc: Mr. Arnold van Beverhoudt, Jr., Office of the Inspector General
Mrs. Juel T.R. Molloy, Chief of Staff, Office of the Governor
Mr. Randolph Latimer, Assistant Commissioner, Department of Property & Procurement
Ms. Olga Meyers, Deputy Commissioner, Department of Property & Procurement

MEMORANDUM

TO: Executive Branch Agency Heads

FROM: Governor

SUBJECT: Confirming Orders for Professional Services

I direct that all Executive Branch Agency Heads adhere to the established Procurement laws and regulations when contracting for professional services.

The Virgin Islands Code establishes the Commissioner of Property and Procurement as the primary contracting officer of the Government. The Code requires the Commissioner of Property and Procurement to conduct procurements by competitive sealed bids, except the Commissioner is authorized to conduct procurements for professional services by negotiation. In negotiated procurements, awards may be made on the basis of a combination of price and technical considerations. If a non-competitive procurement is warranted, the agency must furnish supportive justification. The Code does not authorize agency heads to award contracts in excess of \$5,000.

Confirming Orders in the past have been made to ratify unauthorized contractual commitments by agency heads. In the future, contracts for professional services for over \$5,000 must be awarded by the Commissioner of Property and Procurement. Confirming Orders ordinarily will not be made, and the requirements regarding competition, justification, and authorization to make contractual commitments must be followed. The use of Confirming Orders shall be restricted to unusual and compelling circumstances.

APPENDIX 4 - STATUS OF RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
1 to 9	Management concurs; additional information required.	Provide a plan of action for implementation of the recommendations that states the specific corrective action to be taken and includes the target date and title of the official responsible for implementing each recommendation.
10	Unresolved.	Provide a response to the recommendation.

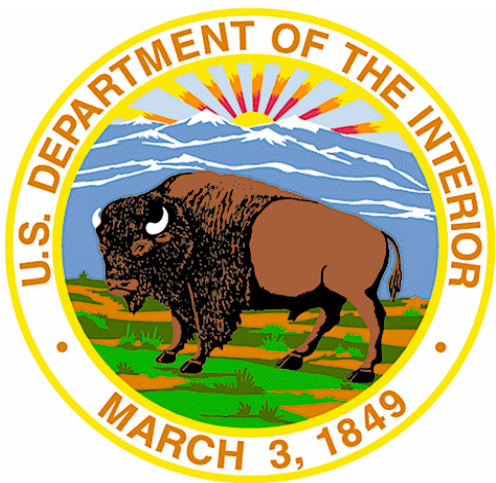
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