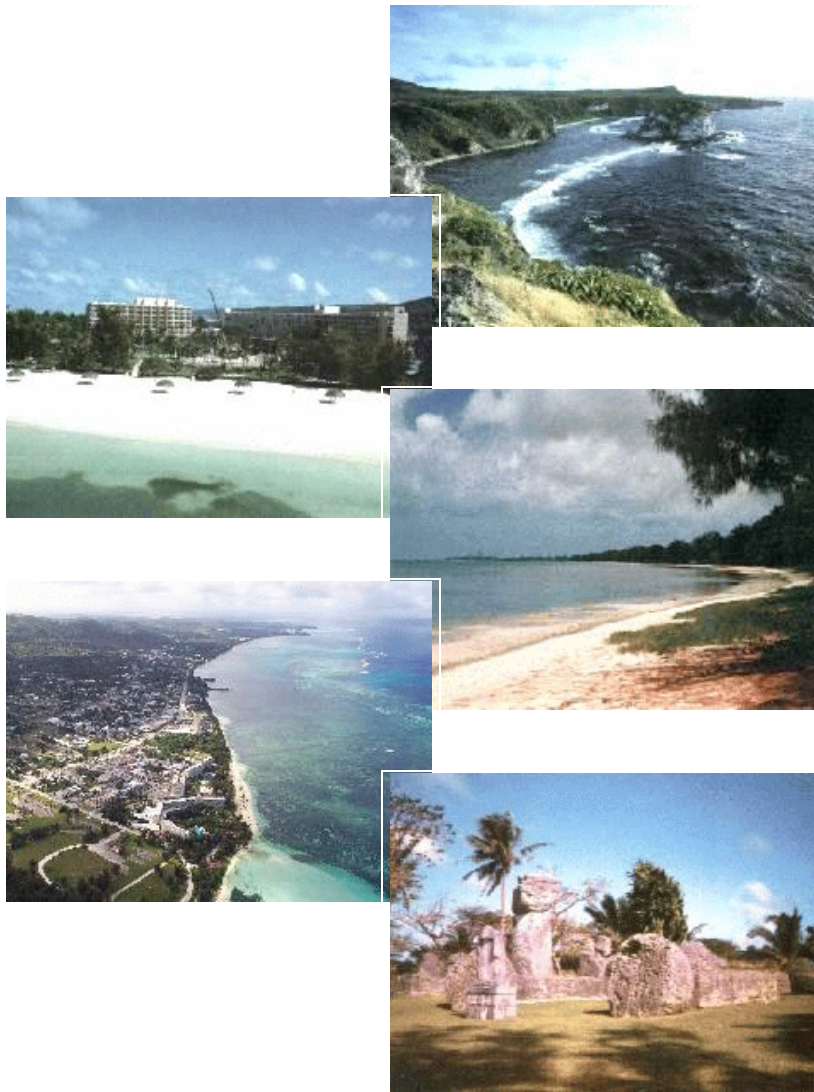




**U.S. Department of the Interior  
Office of Inspector General**

## **Audit Report**

### **Saipan Harbor Improvement Project Commonwealth Ports Authority Commonwealth of the Northern Mariana Islands**



**Report No. 2003-I-0073**

**September 2003**



## United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
1849 C Street, NW – Mail Stop 5341  
Washington, DC 20240

September 30, 2003

Mr. Jose Lifoifoi  
Chairman, Board of Directors  
Commonwealth Ports Authority  
P.O. Box 1055  
Saipan, MP 96950

Subject: Report on the Saipan Harbor Improvement Project, Commonwealth Ports Authority,  
Commonwealth of the Northern Mariana Islands (No. 2003-I-0073)

Dear Mr. Lifoifoi:

This report presents the results of our audit of the Saipan Harbor Improvement Project, Commonwealth Ports Authority.

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 28, 2003. The response should provide the information requested in Appendix 5 and should be addressed to me at the address above, with a copy to our Caribbean Field Office, Ron deLugo Federal Building – Room 207, St. Thomas, VI 00802.

Sincerely,

Roger La Rouche  
Assistant Inspector General for Audits

cc: Honorable Juan N. Babauta,  
Governor, Commonwealth of the Northern Mariana Islands  
Mr. Carlos Salas,  
Executive Director, Commonwealth Ports Authority

[ Page intentionally left blank ]




## United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
1849 C Street, NW – Mail Stop 5341  
Washington, DC 20240

September 30, 2003

### Memorandum

To: David B. Cohen - Deputy Assistant Secretary for Insular Affairs

From: Roger La Rouché - Assistant Inspector General for Audits 

Subject: Report on the Saipan Harbor Improvement Project, Commonwealth Ports Authority, Commonwealth of the Northern Mariana Islands (No. 2003-I-0073)

This report presents the results of our audit of the Saipan Harbor Improvement Project, Commonwealth Ports Authority.

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 28, 2003. The response should provide the information requested in Appendix 5 and should be addressed to me at the address above, with a copy to our Caribbean Field Office, Ron deLugo Federal Building – Room 207, St. Thomas, VI 00802.

[ Page intentionally left blank ]

# CONTENTS

## INTRODUCTION

Background .....	1
Objective and Scope .....	2
Prior Audit Coverage .....	3

## RESULTS OF AUDIT

Management of the Harbor Project.....	4
---------------------------------------	---

## RECOMMENDATIONS

.....	10
-------	----

## APPENDICES

1. Monetary Impact.....	13
2. Contract Modifications .....	14
3. Commonwealth Ports Authority Response.....	15
4. Office of Insular Affairs Response .....	28
5. Status of Recommendations.....	30

[ Page intentionally left blank ]

---

# INTRODUCTION

---

## BACKGROUND

In October 1981, Commonwealth Public Law 2-48 established the Commonwealth Ports Authority as a public corporation of the Commonwealth of the Northern Mariana Islands (CNMI) and defined the powers and duties of the Ports Authority. These powers and duties include the adoption and enforcement of rules and regulations for the operation of its ports. The Ports Authority was given responsibility for the operation, maintenance, and improvement of all airport and seaport facilities on the islands of Saipan, Tinian and Rota. A Board of Directors, which consists of seven members who are appointed by the Governor and serve 4-year terms, governs the Ports Authority.

The Saipan seaport consists of two docks (Baker and Charlie) that were built during World War II and were in a state of disrepair. The U.S. Department of the Interior recommended that new docks be constructed instead of trying to repair the existing facilities because the cost of repair would be approximately equal to the cost of constructing new docks.

To finance the construction of the Saipan Harbor, the Ports Authority received \$23.5 million from the U.S. Department of the Interior, which consisted of a \$10 million direct grant and \$13.5 million from covenant funds. The covenant funds were used by the Commonwealth Development Authority (CNMI's authorized agent) to secure revenue bonds. The proceeds of the bonds were loaned to public agencies to finance capital improvement projects. In addition, the Ports Authority obtained independent financing through the public issuance of two tax-exempt municipal bonds totaling \$56.3 million to finance a portion of the project. The total estimated project cost was \$50 million.

In January 1993, the Ports Authority competitively awarded the construction project to the lowest bidder and entered into a fixed-price contract totaling \$36 million. However, because of poor construction management and extensive delays, the project was not substantially completed until April 1999, costs had escalated to \$50 million as of September 30, 2000, and the Ports Authority continued to incur costs for unfinished jobs associated with the Saipan Harbor project.

The Office of Insular Affairs (OIA) has a Field Representative



stationed on Saipan. According to OIA's administrative manual, Chapter 3, Field Representatives have a number of grant monitoring responsibilities. These responsibilities include conducting quarterly surveys of the grant projects, investigating compliance with grant terms and conditions, advising OIA's Grants Manager to deny reimbursement of funds when it is determined that the insular government is not in compliance with grant terms and conditions, and working with the insular governments to assist in correcting deficiencies so reimbursement of expenditures may occur as quickly as possible.

## **OBJECTIVES AND SCOPE**

The objective of the audit was to determine whether the Ports Authority had (1) complied with applicable Federal and local laws and regulations in awarding the design and construction contracts; (2) administered the U.S. Department of the Interior grant in accordance with applicable laws and regulations; and (3) adequately monitored project operations. A secondary audit objective was to determine whether the Office of Insular Affairs, U.S. Department of the Interior had adequately fulfilled its grant oversight responsibilities. The scope of the audit included a review of the Ports Authority's project planning, procurement, and construction files, and Federal grant records from fiscal years 1998 through 2000 and other periods as appropriate. We also conducted physical inspections of the Saipan and Rota West harbors.

Our review was made, as applicable, 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.

As part of the audit, we evaluated the system of internal controls related to the management of the Saipan Harbor project to the extent we considered necessary to accomplish the audit objectives. Our review identified internal control weaknesses at the Commonwealth Ports Authority and the Office of Insular Affairs, U.S. Department of the Interior which are discussed in the Results of Audit section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

## **PRIOR AUDIT**

During the past 5 years, neither the U.S. General Accounting Office nor the Office of Inspector General has issued any reports

## **COVERAGE**

on the Commonwealth Ports Authority

# RESULTS OF AUDIT

## MANAGEMENT OF THE HARBOR PROJECT

We found that the Commonwealth Ports Authority did not effectively manage the Saipan Harbor project (Figure 1). Specifically, the Authority:

- ☐ Did not adequately analyze or justify contract change orders and incurred contract cost overruns totaling \$6.9 million.
- ☐ Entered into a noncompetitive contract for construction management services totaling \$3.3 million. The Office of Insular Affairs (OIA) was aware that the construction management contract was awarded without a formal bid, but did not intervene.
- ☐ Improperly used liquidated damages of \$980,000 from the Saipan Harbor project for a project on Rota.



**Figure 1.** Aerial view of the Saipan Harbor after completion of the improvement project.  
(Office of Inspector General photograph)

## **Change Orders of \$6.9 Million Awarded Without Competition**

The Ports Authority noncompetitively awarded nine construction change orders totaling \$6.9 million, increasing the original construction contract amount from \$36 million to \$42.9 million (see Appendix 2).

According to the grant terms and conditions, the grantee is required to follow the administrative requirements (referred to as the Common Rules) contained in the Code of Federal Regulations (43 CFR 12). The requirements for procurements which are financed with Federal funds are that Insular Areas follow “the same policies and procedures it uses for procurements from its non-Federal funds.” Both the CNMI’s and the Ports Authority’s procurement rules and regulations require competitive procurements. Part 1.2 of the Ports Authority’s Procurement Rules and Regulations states, “The underlying purposes and policies of these regulations are: . . . (c) to provide increased economy in Authority procurement activities and to maximize to the fullest extent practicable the purchasing value of Authority funds and (d) to foster effective broad-based competition within the free enterprise system.” Part 3.2(1) also states, “The purchase of all supplies and materials and all construction works, when expenditure exceeds \$25,000.00, shall be by contract let to the lowest responsible bidder.” Further, Part 1.4 of the Procurement Rules and Regulations states, “These regulations apply to every expenditure of Authority funds which are not subject to federal procurement regulations. . . . Nothing in these regulations shall be construed to prevent the Authority from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.”

Competition will generally result in lower costs. For example, in a December 12, 1996, letter to the Authority’s Executive Director regarding additional dredging to deepen the harbor from 35 feet to 40 feet, the construction manager recommended that “it may be worthwhile for CPA [Commonwealth Ports Authority] to call for competitive proposals as opposed to a change order.” The construction manager further stated, “The earlier example of the Baker Bay Modification [Change Orders 2 and 3] shows that CPA actually saved [money] by deleting specific items out of [Samsung Construction Co., Ltd.]’s contract and rebidding. In fact, on two occasions [Samsung]’s subsequent bid on work deleted from their contract ended up considerably lower than their price on the original bid.” However, the Ports Authority did not follow the construction manager’s recommendation.

The Code (43 CFR, Part 12.80(d)) also states that the grantee

must inform the Federal agency about “problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.” In addition, the grant terms and conditions required that the CNMI Government notify the Office of Insular Affairs immediately of any problems so that sufficient technical assistance could be provided to resolve the problems.

We found no documentation that the Ports Authority had attempted to notify OIA of the proposed construction change orders or requested technical assistance to perform cost analyses to determine whether the additional costs proposed by the construction contractor were fair and reasonable. Therefore, the Ports Authority did not have reasonable assurance that it had obtained the most economical price for the additional work performed because it did not ensure that all contract modifications were awarded competitively or otherwise determine that proposed costs were reasonable.

Finally, we noted a conflict between the construction contract provisions and the procurement requirements. Section 40-02(1) of the construction contract stated that the Contracting Officer was authorized to make alterations in the work, provided that the aggregate amount of the alterations did not change the total contract price by more than 25 percent, this contract provision contradicts the Authority’s policy that any expenditure over \$25,000 be done through competitive procurement. The Port Authority should not stipulate contract terms that conflict with grant-related requirements.

**Noncompetitive  
Construction  
Management Contract  
Awarded for \$3.3 Million**

The Ports Authority awarded a noncompetitive contract, totaling \$3.3 million, to Efrain Camacho Consulting Engineers, to provide construction management services for the Saipan Harbor project. As we previously noted, any contract resulting from the grant was required to be awarded on a competitive basis. Despite these requirements, we found that during a July 25, 1992 meeting, the Authority’s Board of Directors unanimously approved the selection of Camacho to provide construction management services for the Saipan Harbor project. Specifically, the minutes of the meeting state:

The Chairman felt that, since the Board has decided to award the Saipan Harbor Improvement Project to [a firm

that was later replaced], construction management be selected to oversee the project. The Chairman noted that Efrain Camacho Consulting Engineers has been meeting and providing CPA [the Authority] with technical assistance without a formal contract. The Board was provided with a copy of Mr. Camacho's fee proposal dated May 14, 1992.

According to the minutes of a November 27, 1992 board meeting, the former Executive Director stated, "It is an FAA [Federal Aviation Administration] requirement that CPA advertise for airport/seaport consulting for design and construction management services. The Request for Qualification is due on November 30." We believe, however, that this attempt at competition was simply after-the-fact justification to support a decision already made by the Board to award the construction management contract to Camacho. The minutes of the November 27, 1992 meeting also stated that a board member "emphasized that special consideration be given to those professionals who are actively helping CPA" and later "again stressed to the Board to remember the efforts and continuity of the professionals that are helping CPA." The minutes also noted that "in the interest of expediency, CPA had one firm do both A&E (architects and engineers) and CM (construction and management) services." These remarks, combined with those made at the July 25, 1992 board meeting, suggest that competitive procurement of the construction management services was not legitimately contemplated and that Camacho would be given preference because he was already performing work for the Authority.

Subsequently, on April 15, 1993, the Authority's Board of Directors repealed in its entirety Part 3.7 of the Authority's Procurement Rules and Regulations, which provided competitive selection procedures for professional, advisory, and technical services. Seven days later, the Authority entered into a noncompetitive \$1.5 million contract with Camacho. Consequently, there was no assurance that the Ports Authority received a fair and reasonable price for the construction management services. Additionally, there were nine amendments to the construction management contract, totaling \$1.8 million, which changed the scope of work and increased the total contract price to \$3.3 million.

Our review of board minutes for January 1993 through April 1993 revealed that no justification was given by the Board

of Directors as to why it repealed Part 3.7 of the Procurement Rules and Regulations. In addition, no documents were provided by the Ports Authority to show that it had obtained the approval of the grantor agency for the noncompetitive contract or that it had issued a request for proposals from other architectural/engineering firms. Further, in an October 15, 2001 document, the Authority's Board Secretary wrote that the repeal of Part 3.7 of the Procurement Rules and Regulations had been brought to the attention of the Authority's legal counsel and that the legal counsel had indicated that he did not know the reason why the Authority had repealed Part 3.7.

We interviewed the Authority's Executive Director, the Saipan Ports Manager, and a member of the current Board of Directors, all of whom stated that they were not aware that the previous Board had repealed the section of the Procurement Rules and Regulations related to professional, advisory, and technical services. The Board member who we interviewed also stated he did not agree with the method in which the construction management contract was handled by the previous Board. He stated that there appeared to be a lack of checks and balances where the construction manager was concerned. The Executive Director stated that he had not seen any documentation that the previous administration had issued requests for proposals or required a statement of qualifications from the construction management firm, and our review also did not disclose any such documentation. The Executive Director also stated that, in retrospect, the Ports Authority should have issued a request for proposals in order to ensure that the Authority was getting the best possible price, which is why he now requires that competitive proposals be submitted for professional service contracts.

**Office of Insular Affairs  
Did Not Intervene**

OIA's Federal Capital Improvement Projects Coordinator told us that although he had been aware of the problems and delays in completing the project, he had "moved on to other projects" once Interior funds were exhausted in 1994. In addition, the Projects Coordinator stated that "the Office of Insular Affairs does not get involved in the procurement selection of contractors." However, we found that in two of six inspections of the Saipan project conducted by the Projects Coordinator, he had identified that the construction management contract was awarded without a formal bid, which was contrary to Federal regulations. However, no action was taken to address the deficiencies. We believe that OIA should develop guidance to address deficiencies in

procurements made with grant funds.

**Use of Saipan Harbor  
Project Funds Totaling  
\$980,000 on Another  
Project Questionable**

The Ports Authority may have improperly used \$980,000 of \$1 million derived from liquidated damages paid by the construction contractor for construction delays in Saipan. The funds were used to pay costs claimed by the construction contractor for additional dredging work, equipment repairs, and various miscellaneous items related to a project to renovate the Rota West Harbor.

We found that the Ports Authority had not notified or obtained prior approval from OIA to use funds applicable to the Saipan Harbor improvement project for a project on Rota. OIA funded 47 percent (\$23.5 million of \$50 million) of the Saipan Harbor project. Consequently, we believe that OIA had a vested interest in \$460,600 (47 percent) of the \$980,000 value of construction work that was performed on Rota in lieu of liquidated damages. OIA should resolve the issue concerning the \$460,600. The Authority's Executive Director agreed that the liquidated damages should not have been used for the project on Rota because there were more urgent projects that needed to be done at the Saipan Harbor.



---

## RECOMMENDATIONS

---

### TO THE CHAIRMAN, BOARD OF DIRECTORS

We recommend that the Chairman of the Board of Directors instruct the Executive Director to:

1. Establish policies and procedures to ensure compliance with specified conditions of grant awards.
2. Reinstate the competitive procurement rules and regulations for professional, advisory, and technical service contracts related to Federal funds.

---

### TO THE DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS

We also recommend that the Deputy Assistant Secretary for Insular Affairs:

3. Develop policies and procedures for addressing deficiencies in procurements made with OIA grant funds.
4. Resolve the questionable use of liquidated damages applicable to the Saipan Harbor project for the project on Rota.

---

### COMMONWEALTH PORTS AUTHORITY RESPONSE

The response (Appendix 3) to the draft report from the Executive Director of the Commonwealth Ports Authority concurred with Recommendations 1, 2, and 3, and indicated that corrective actions would be taken. However, we request additional information for all three recommendations (see Appendix 5).

The response also recommended changes and clarifications to the report and expressed disagreement with our questioning of \$980,000 (of out of \$1.7 million) related to the Rota West Harbor.

---

### OFFICE OF INSPECTOR GENERAL REPLY

Based on the response from the Ports Authority, we modified the report as appropriate and clarified (1) the requirement of the grant terms and conditions that the Ports Authority use competitive procurement procedures and (2) the lack of competition with regard to construction contract modifications and the construction management contract.

Regarding the use of liquidated damages of \$980,000, we maintain our position that because OIA contributed a total of

\$23.5 million toward the cost of constructing the Saipan Harbor project, it has a vested interest in the disposition of the liquidated damages. Therefore, the Ports Authority should work with OIA to determine how to resolve this matter.

## **OFFICE OF INSULAR AFFAIRS RESPONSE**

The response (Appendix 4) to the draft report from the acting Director of Insular Affairs did not concur with two recommendations that were addressed to the Office of Insular Affairs. Based on the response and additional analysis, we have revised the two recommendations and request that the Deputy Assistant Secretary for Insular Affairs provide the information shown in Appendix 5. General comments from the acting Director's response are summarized in the following paragraph.

The response stated that OIA effectively uses available resources to monitor the use of grant funds and takes corrective action to recover grant funds that are used inappropriately, and that OIA was not required to monitor the Saipan Harbor project once the grant funds were exhausted. Regarding the contract for construction management, the response stated that the Commonwealth Ports Authority may have acted properly when it awarded the contract noncompetitively because Federal procurement regulations would not apply to the Authority. Finally, the response stated that OIA management officials were not included in the audit exit conference that was held on November 29, 2001.

## **OFFICE OF INSPECTOR GENERAL REPLY**

Regarding grant administration, the response stated specifically that "we do not understand the audit's conclusion that the Office of Insular Affairs retains an oversight role in the administration of the Port Project" where "Federal funds used in this project were fully expended by August 1994, six years prior to commencement of this draft audit." We note that construction of the project started in 1993 and ran into 2000. Funds from OIA were used to finance the construction. The fact that the Authority obtained all grant funds in fiscal year 1994 does not automatically signal that grant funds were used in accordance with the grant agreement. We believe that OIA should continue to monitor projects financed with Federal funds until the project is complete – thus assuring that Federal funds were used effectively.

In regard to procurement, the response correctly notes that the Code of Federal Regulations allows "States" (defined to include the Insular Areas) to use their own procurement procedures. We

have clarified in the report that both the CNMI's and the Ports Authority's procurement rules and regulations require the use of competitive procurement procedures.

We agree that OIA did not attend the audit exit conference. According to our records, on October 29, 2001, we called OIA's Federal Capital Improvement Projects Coordinator on Saipan to schedule an audit exit conference, and OIA headquarters personnel were also informed of the exit conference. In addition, the Projects Coordinator provided a copy of our preliminary draft report to OIA headquarters personnel prior to the audit exit conference. Therefore, we believe OIA management officials had ample opportunity to review the preliminary draft report and participate in the exit conference.

## APPENDIX 1 - MONETARY IMPACT

<b>FINDING AREAS</b>	<u>Questioned Costs</u>	<u>Funds To Be Put To Better Use</u>
Improper Use of Project Funds for Rota West Harbor	<u>\$460,600*</u>	<u>\$519,400</u>

\*This amount represents the Federal share (47 percent) of the value of work in lieu of liquidated damages that was improperly used on Rota.

## APPENDIX 2 - CONTRACT MODIFICATIONS

Change Order Number	Change Order Description	Change Order Amount
1	Steel sheet substitution, removal and disposal of underwater debris, waste oil and associated clean-up materials	\$ (25,000)
2	Baker Bay modification, demolition plan, and removal and disposal of underwater debris	187,823
3	Increased volume of work and materials associated with the Baker Bay modification, elimination of work from construction contract, and performance of community work at Managaha Island and Rota West Harbor	(1,953,249)
4	Deletion of dredging work at the turning basin, increased dredging at the entrance channel, and deletion of transit shed removal	(26,000)
5	Purchase of additional fenders, increased dredging work at entrance channel, decreased dredging and revetment work at Able Dock, extension of fire line protection, and increased filling work	388,034
6	Increased dredging work at entrance channel, turning basin and berth, above water disposal and filling, dredging work and improvements at Delta Dock, and deletion of dredging work at C-4 Berth	7,600,000
7	Additional dredging work at Rota West Harbor	741,327
8	Payment corrections	0
9	Deletion of upland disposal work	<u>(32,235)</u>
Total		<u>\$6,880,700</u>

# APPENDIX 3 - PORTS AUTHORITY RESPONSE



## COMMONWEALTH PORTS AUTHORITY

Main Office: SAIPAN INTERNATIONAL AIRPORT  
P.O. BOX 501055 • SAIPAN • MP 96950-1055  
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962  
E-Mail Address: cpa.admin@saipan.com Website: cpa.gov.mp

March 1, 2002

Office of the Inspector General  
U.S. Department of the Interior  
Pacific Field Office  
415 Chalan San Antonio, Suite 306  
Tamuning, Guam 96913

Attention: Arnold E. Van Beverhoudt, Jr.  
Audit Manager for Insular Areas

Dear Inspector General:

Subject: Draft Audit Report on the Saipan Harbor Improvement Project,  
Commonwealth Ports Authority, Commonwealth of the Northern  
Mariana Islands (Assignment No. N-IN-NMI-003-00-R)

The Commonwealth Ports Authority (CPA) of the Northern Mariana Islands (NMI) is submitting this response to the findings and recommendations contained in the draft audit report prepared by the Office of the Inspector General, U.S. Department of Interior, with respect to the Saipan Harbor Improvement Project ("the SHIP project") which was undertaken by CPA over the course of several years. The audit was performed at the request of CPA to determine, among other things, whether the SHIP project was carried out in accordance with applicable federal and local laws and regulations.

### I. The Draft Audit Report

The primary objectives of the audit were three-fold. First, the audit was performed to determine whether CPA complied with applicable federal and local laws and regulations with respect to the award of the design and construction contracts for the Project. Second, it was performed to determine whether the federal grant appropriated for the SHIP project was administered by CPA in accordance with applicable laws and regulations. Third, the audit was undertaken to determine whether CPA adequately monitored project operations.

A secondary objective of the audit was to determine whether the U.S. Department of the Interior, Office of Insular Affairs (OIA), fulfilled its "grant oversight responsibilities."

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 2

1. **Audit Findings and Conclusions.** The draft report found that the SHIP project was not effectively managed, resulting in “questioned costs” of \$11.9 million. It determined that change orders were not adequately analyzed by CPA’s Construction Manager (“CM”) that resulted in “cost overruns of \$6.9 million.” It also determined that the services for the construction administrator were contracted out for \$3.3 million, non-competitively and without authorization. The report also determined that \$1.7 million of the SHIP project funding was used by CPA for a non-SHIP project on Rota, which use was “improper.”

With respect to the audit’s secondary objective, the draft audit report found that OIA was aware that the CM contract was awarded without a formal bid, yet it did not take any corrective action. The report concluded that the management of the Project was “deficient.”

2. **The Audit Recommendations.** Based on the audit findings and conclusions, the draft report made several recommendations. First, the report recommended that CPA should establish policies and procedures to ensure compliance with specified conditions of the grant award. Second, the report recommended that CPA “reinstate” competitive procurement regulations with respect to the hiring of professional, advisory and technical services for federal funded projects. Third, the report recommended that CPA “advise” OIA of the questioned costs and either “resolve the questioned costs” or “arrange for repayment of the questioned costs.”

The audit report recommended to OIA that it should develop and implement project monitoring procedures to ensure: (a) that the terms of the project contract are followed and that price analyses for proposed change orders are performed; (b) that competitive bid procedures are followed and enforced; and (c) that grant funds are not used for other projects. It also recommended that OIA undertake “prompt and corrective” action whenever deficiencies in a project are identified.

## **II. Project Overview, Historical Background and Funding Sources**

1. **Overview of SHIP Project.** In order for CPA to respond meaningfully to the draft audit findings, conclusions and recommendations, it is necessary to provide an overview and historical background of the SHIP Project; its three (3) separate sources of funding; the original design and scope of work for the project; the subsequent expansion of

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 3

the scope of the SHIP Project; and the additional funding needed to accommodate such expansion. Only by giving an overview of the SHIP project and the subsequent changes made as work on the project progressed, could CPA provide a meaningful context for purposes of its response to the findings and recommendations contained in the draft report. CPA is asking the Office of the Inspector General to reassess some of its findings and recommendation and modify them as appropriate, in light of this response.

**2. The Original Project Design and Scope of Work.** It is important, if not critical, for purposes of the audit findings and recommendations, that the original scope of work for the SHIP Project be adequately described, as originally designed by the U.S. Army Corps of Engineers in the late 1980's. The original project design and scope of work were essentially: (a) to dredge the channel and turning basin at the Port of Saipan to a depth of minus 35 feet; (b) to expand and improve the existing Charlie Dock facility so that the terminal operations area would be increased from 8,600 square meters of dock space to 20,547 square meters; and (c) to lengthen the berthing space (for vessels to dock) from 514 linear feet to 1,431.68 linear feet. As work progressed on the Project, the Scope of Work was expanded, partly to take advantage of the dredged material that could be used to reclaim the land around Baker Dock at almost no additional cost to the project.

**3. Original Funding Sources For the Project.** Based on the original design, plans and specifications prepared by the U.S. Army Corps of Engineers, the engineer's estimated cost for the Project ranged from a low of \$35 million to a high of \$45 million. The original project design and scope of work was bidded out and subsequently awarded to Samsung, a South Korean construction firm which submitted the lowest bid for the project: at \$36 million. Samsung brought its dredger to Saipan to undertake the project. The project construction and channel dredging began on April 26, 1993.

Funding for the SHIP project came from three (3) different sources: (a) a \$10 million grant appropriation from the U.S. Congress, which grant was administered by the Department of the Interior (DOI), Office of Insular Affairs; (b) a \$13.5 million loan obtained by CPA from the Commonwealth Development Authority (CDA) Covenant \$702 CIP loan revolving fund, which loan is being repaid CDA over a period of 20 years, with interest assessed at the rate of five (5%) percent per annum; and (c) the balance of the Project cost funded by a seaport revenue bond issue floated by CPA. A total of \$22.5 million in seaport revenue bond was issued in 1995 (subsequently refinanced by a \$33.8 million revenue bond in 1998) by CPA, to fund not just the construction work, but also to pay for the cost of construction administration. These three sources constituted the basis for the original SHIP



Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 4

project funding.

The congressional funding of \$10 million was clearly subject to federal grant conditions and oversight responsibility by the Office of Insular Affairs, as the audit report concluded. It is not correct, however, to say that the \$13.5 million loan obtained by CPA from CDA, pursuant to a loan agreement entered into at arms-length, is similar in character as the \$10 million direct grant made by the U.S. Congress for the SHIP Project.

The character of the revolving fund loan obtained from CDA is simply that: a loan. The loan is derived from money given the CNMI under §702 of the Covenant, and is subject to conditions imposed on the CNMI Government with respect to the uses permissible, with respect to the required approval needed from the Department of the Interior, and with respect to any local matching fund required before the fund is used. Such "Covenant fund" money, however, is money that the CNMI Government is entitled to under the Covenant. Covenant §702 funds may be expended by the CNMI Government for CIP projects so long as the expenditure is in conformity with the Grant Pledge Agreement that was entered into with the U.S. Department of the Interior. The obligation to comply with the conditions of the Grant Pledge Agreement, however, lies with the CNMI Government and the Commonwealth Development Authority that administers such Fund. CPA is not privy to the Grant Pledge Agreement nor required to comply with the grant condition. Its role is simply that of a borrower obtaining a loan from a lending institution. CPA should not be faulted, say, if a condition of the Grant Pledge Agreement is not complied with by the grantee agency. Such responsibility lies with the Fund's administering agency, CDA.

The third source of funding for the SHIP Project was the seaport revenue bond proceeds that CPA realized from its 1995 Seaport Revenue Bond issue. This money is clearly not subject to Interior oversight or monitoring. CPA's only obligation with respect to the revenue bond proceeds is to its bondholders, pursuant to the seaport revenue bond indenture agreement.

Because the SHIP Project was funded by three (3) different sources: (a) a direct grant from the U.S. Congress; (b) a loan from CDA; and (c) the seaport revenue bond proceeds, the mixture of funding for the project apparently became a source of some confusion to the various players, as the project progressed. The respective roles of the parties, particularly with respect to project monitoring, oversight and reporting, were not clearly spelled-out by the parties from the beginning.

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 5

CPA assumed the lead role for the SHIP project, whose original design, plans and specifications were prepared by the U.S. Army Corps of Engineers (ACOE). The ACOE was originally intended to serve as the overall project CM, but this plan changed as CPA and ACOE mutually agreed to allow a private A&E firm staffed by professional engineers to perform such services.

The role of the U.S. Department of the Interior's Office of Insular Affairs was not clearly spelled out; and OIA assumed a passive role in the project, with respect to monitoring the progress of work, with respect to participating in the review of any proposed changes to the project, and in doing any cost analyses or price review. OIA apparently assumed the role of a fund-disbursing agency; such that, when the \$10 million congressional grant was completely disbursed, OIA took no further role in the project, particularly as subsequent changes were made and approved by CPA. The two federal agencies that had a role in the project, the Department of the Interior and the Army Corps of Engineers, dropped out of the picture a few years before the project was completed.

CPA agrees with the audit finding that OIA failed to assume an active role from the beginning; but CPA does not know the reasons why. In contrast, for example, the U.S. Federal Aviation Administration (FAA) has always taken a direct and active role in monitoring and reviewing the many FAA-funded projects in the CNMI, from commencement until completion of the project. FAA grant conditions are clearly spelled out and enforced by both CPA and the FAA. CPA constantly reports to the FAA on all FAA funded projects; and for any proposed changes to FAA-funded projects, FAA must approve the same.

**4. Changes to the SHIP Project as Work Progressed.** Work on the SHIP project, pursuant to the original design and scope of work prepared by the U.S. Army Corps of Engineers, which was contracted out for \$36 million, began in January of 1993. By the time the project, as expanded, was completed in April of 1999, the total project costs had reached \$49,176,994 million: \$1,730,125 for A&E design; \$2,498,698 for CM costs; and \$44,948,171 for construction costs. It is the changes in the scope of work and the associated increase in costs that are the subject of the OIG audit recommendations: (a) the absence of an adequate procedure for monitoring of the project by the grantor agency; (b) the absence of any independent review of proposed change orders for the project without the benefit of a cost/price analysis; and (c) the use of SHIP project funds for a non-SHIP project on Rota.

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 6

a. **The Dredging of the Port of Saipan Channel and Turning Basin.** The original project that was contracted out to Samsung for \$36 million was essentially: to dredge the channel and turning basin to a depth of minus 35-feet and to renovate and expand the existing Charlie Dock. By the time the SHIP project was completed in April of 1999, several major changes had been made to the original scope of work. The CPA Board decided, for example, that rather than paving the expanded Container Yard area, the \$5 million reserved for that purpose should be used to further dredge the channel and turning basin to a depth of minus 40-feet. At this depth, larger containerized, commercial vessels and larger U.S. military vessels, such as the U.S. Seventh Fleet's flagship, the *USS Blue Bridge*, could call on the Port of Saipan. Large commercial vessels and many military vessels have indeed called on the Port of Saipan over the past three (3) years. Had it not been for the additional dredging, it would not be impossible for the larger vessels to call on the Port of Saipan.

Another major change made to the original SHIP project's scope of work was the decision of the CPA Board to substantially expand and realign the new dock facility by reclaiming land not just between Charlie Dock and Baker Dock, but also between Able Dock and Baker Dock. Dredged materials, rather than being disposed upland (which is more costly) would instead be disposed between Able, Baker and Charlie Docks to reclaim the land between them. This major change in the project, referred to as the Baker Bay Realignment and Modification, resulted in a substantial lengthening in berthing space facility available at the Port of Saipan: from the originally proposed 1,432 linear feet to a much expanded 2,935 linear feet of berthing space, able to accommodate at least three (3) large vessels (military or commercial) at any given time. The Baker Bay Realignment and Modification was designed by EFC Engineers and approved by the ACOE.

In addition, the "reclaimed land" resulted in an additional 19.72 acres (79,850 square meters) of land to the port area, for use as a container yard, for terminal and stevedoring operation, and for warehouses. Under the original SHIP project, the total land area after project completion would have been only 11.23 acres (45,465) square meters which would have been a major constraint today on container yard requirements.

Applying essentially the same "unit cost" that was charged for the original scope of work, the price change reflected the additional work to be performed. Had CPA not taken advantage of the Samsung dredger while it was still on Saipan, it would have been much more expensive to further dredge the Port of Saipan in the future. The shipping cost alone for bringing the dredger from Korea to Saipan is roughly \$500,000. Round trip would cost \$1 million. The decision to dredge deeper from minus 35 feet to minus 40 feet was a "one-

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 7

time” opportunity to save future costs.

Further, the potential for the Port of Saipan serving as a transshipment port for other ports in Micronesia greatly increased because of the deeper channel that could accommodate larger containerized vessels and the increased land area at the port for use in storage of containers destined for other ports. Last year, a major U.S. shipping line indicated to CPA an interest in using the Port of Saipan for cargo transshipment purposes. Because of the uncertainty of the future of the garment industry in the CNMI after 2005, CPA has to begin looking for other sources of seaport revenue generation. The changes made to the original SHIP project would greatly assist in this respect.

**b. The Baker Bay Modification and Realignment Project Change Order.** This major change order substantially changed the face of the Port of Saipan dock facility. Several confluencing factors merged and formed the basis for this change order. First, there was a need to inexpensively dispose of the dredged materials from the channel dredging. It was much more expensive to dispose dredged material upland. By disposing the dredged materials to the area between Able, Baker and Charlie Docks, the reclaimed land would also form the basis for realigning Baker Dock with Able and Charlie Docks. The resulting realignment would increase the dock facility area, the length of the dock face for berthing purposes, the container yard area, the warehouse terminal area, and so forth. Part of the “cost” to CPA for this change order was the extension of the contract completion time by an additional 398 days. It was this additional 398 days in contract completion time that is referred to in Change Order No. 3 as “liquidated damages.” At \$5,000 liquidated damages for each day of delay in project completion, this translated to about \$1 million. It is not technically correct, however, to say that such sum is indeed “liquidated damages,” since the contract extension time was agreed to by Samsung and CPA long before the original contract completion date for the original scope of work had passed. The extension of time given had more to do with the agreement to realign and modify Baker Dock, so that ultimately the overall dock area, berthing space, and container yard would increase by roughly three-fold. Had this not been done, the Port of Saipan would be less than a third of its size today; and U.S. military vessels with underwater drafts of minus 35-feet would literally scrape the floor of the channel and turning basin, and not be able enter the harbor. The change orders made were, therefore, clearly of great benefit to the CNMI. The “time to act” was when the original SHIP project was going on. The board’s decision to make these changes was quite bold (if not risky), particularly because funding for the additional costs had to be identified. In the case of the additional dredging to minus 40-feet, the money came from the fund previously budgeted for the Container Yard paving project. The

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 8

remainder came from CPA refinancing its seaport revenue bond in 1998 and obtaining an additional \$4.8 million to complete the SHIP project.

**5. The “Final Product.”** Upon completion of the expanded SHIP project in April of 1999, the Port of Saipan now boasts the following:

- a. 2,935 linear feet of berthing space;
- b. Channel and turning basin dredged to minus 40-feet;
- c. Container Yard area of 8,872 square meters, or 95,500 square feet;
- d. 150-foot wide, paved corridor running the entire length of dock face for stevedoring and passenger terminal operations;
- e. Waterline system equipped with fire fighting capability;
- f. Nighttime floodlighting for terminal and stevedoring activities at night;
- g. Sewer line connection for vessel compressed holding tank (CHT) discharge system;
- h. A reserved dock space for oceangoing cruise liners;
- i. Security fence improvement.

The foregoing “final product” was definitely a substantial but very positive departure from the original scope of work and, while it was clearly much more expensive, in the long run, the decision to expand was, in retrospect, a wise decision that CPA does not regret. The original scope of work and the U.S. Army Corps of Engineer’s original design would have provided only 1,432 linear feet of berthing space, would have yielded only about one-third of the present space for the Container Yard, and the overall reclaimed land would have been only 5,052 square meters. The original design and the end product would have been obsolete in five (5) years. Further, the original dredging did not consider accommodating the larger oceangoing liners and U.S. military vessels. These vessels now regularly call on the Port of Saipan because of the CPA Board’s bold decision to dredge the channel and turning basin deeper to minus 40-feet. Like “The Road Not Taken,” the

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 9

changes made by CPA to the original project have made all the difference in the world.

### **III. CPA Response To Audit Findings and Recommendations**

1. **General Response to the Findings.** CPA agrees that the construction management firm should be hired competitively. All interested A&E firms should have been given the opportunity to submit a proposal to perform the construction administration for the Project, or to submit their statement of qualifications, be interviewed and thereafter for CPA to negotiate a fee with the firm most qualified to perform the CM. CPA did request for statement of qualifications and reviewed such submissions with the assistance of the ACOE.

2. **The "Cost Overruns."** With respect to the audit finding that there was a total of \$11.9 million in "questioned costs" due to the "ineffective management of the Project," we believe that this finding require further discussion and clarification. For example, the audit finding failed to describe with any detail the \$6.9 million of "cost overruns." The audit essentially "took exception [with] all 9 constructions change orders totaling \$6.9 million, which increased the original construction contract amount from \$36 million to \$42.9 million." Such blanket assertion is unfair, since it implies that all of the change orders were of no value to CPA. As we shall explain below, this implication is not entirely true. The final SHIP project product that CPA formally dedicated in 1999 was far superior and at greater value than the original design and scope of work.

The reason given by the audit report for taking exception with *all of the change orders* was that OIG "found no documentation that the Ports Authority had attempted to notify the grantor agency [OIA] of the proposed construction change orders or [had] requested technical assistance [from OIA] to perform cost analysis to determine whether the additional costs claimed by the construction contractor were fair and reasonable." Such finding, in light of the substantial improvements made to the original scope of work described in Part II above, is truly unfair. The additional improvements made under the various change orders were contracted out and negotiated on a "unit cost basis," and were reasonable and appropriate. The costs agreed to for the change orders were arrived at after review by CPA and its CM. The failure of OIA to monitor the progress of the SHIP project, and to review and analyze the proposed changes to the project, was not CPA's fault. In fact, CPA was not informed or aware of OIA's role, if any, at the time. As the grantor agency, OIA should have set forth from the beginning the specific conditions it requires to



Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 10

be met by CPA in terms of reporting on the progress of work and in participating in the analysis of any proposed changes to the project.

In fact, the additional \$6.9 million expended on the Project resulted in two major improvements to the original scope of work: (a) the dredging of the channel and turning basin to a depth of minus 40-feet; and (b) the substantial expansion of the dock premises from the original SHIP Project scope of work to what it is today, a 3-fold increase in dock area through a "land reclamation process" using the materials dredged from the channel and turning basin. Had these changes been done separately at a later date and with a different contractor, the additional cost, we believe, could have ended up being at least two times more expensive. The so-called "cost overruns" of \$6.9 million, therefore, is not cost overrun, where there is expenditure made with no real benefit running in favor of CPA. On the contrary, the expenditure of \$6.9 million resulted in added value and larger facility.

CPA, as noted earlier, agrees with the OIG audit finding that the contract for construction administration should have been procured on a competitive basis. CM contracts of such magnitude should be procured competitively so that the best-qualified firm is selected to manage the project, and the lowest price could be negotiated. CPA did request for statements of qualification and utilized the ACOE in reviewing qualification of the private A&E firm at the time. The \$3.3 million contract price awarded the firm selected to perform the construction administration and various design services was apparently based on ten percent (10%) of the total project cost. This cost covered certain design work and change orders that expanded the SHIP's scope of work.

Having stated this, however, CPA hastens to note that it does not completely agree with the audit findings' implication that the services provided by the CM that was hired was not satisfactory. The CM that was hired actually performed a fairly good job of monitoring the project to ensure compliance with the project plans and specifications. The only part where CPA may have failed was in giving the CM much leeway in directing the progress of work and in approving most of the proposed changes to the project. As owner of the project, CPA should have taken a more direct and active role in the project review and monitoring. Overall, however, CPA was (and is) generally satisfied with the services rendered by the CM, particularly in light of the final work product that resulted. The SHIP Project improvements that were made, in today's dollars, is clearly worth more than the \$42 million expended on the project.

With respect to the use of \$1.7 million of "SHIP project funds" to dredge the Rota

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 11

West Harbor, CPA wishes to clarify an apparent misconception as to the character of the \$980,000 in "liquidated damages" that derived from the SHIP project. This "figure" was arrived at based on the mutually agreed extension of the contract time for completion of the SHIP Project, by another 210 days. It was based on the liquidated damages figure of \$5,000 per day (had the project been delayed beyond the stated project completion date), minus the amount expended to clear the World War II underwater wrecks and debris near Managaha Island. Because the original SHIP Project completion date had not yet occurred when the 210-day extension was agreed to by CPA and Samsung, there were technically no liquidated damages owing CPA. In reality, therefore, there is nothing to apportion between CPA and OIA, because there was no actual liquidated damages suffered by CPA. But even if it is true that there was \$980,000 in liquidated damages owing CPA by the contractor for delaying the project completion beyond the time-frame specified in the contract, such money was spent for the dredging of the seaport of Rota, whose people have been suffering for years because their harbor sorely needed to be dredged deeper and made safe for vessel movement. The money, if any, was used for a public purpose. The apparent fault CPA committed was not informing OIA of the proposed use of this "bargained for" change order that was derived from the SHIP Project. As recommended by the draft audit report, CPA will relay this particular matter to OIA for review and consideration. It is CPA's hope that OIA would agree that the services rendered on Rota by the SHIP Project contractor was spent for a public purpose and, therefore, need not be reimbursed by CPA.

#### **IV. CPA's Position On The Recommendations Made By The Audit Report**

1. CPA agrees with the audit recommendation that CPA should establish policies and procedures to ensure compliance with specified conditions of a grant award. Specifically, such policy should set forth the roles, duties, and responsibilities of the grantor agency and grantee agency with respect to the use of federal grant funds; the project reporting and monitoring responsibilities; the review of all project change orders by both the grantor and grantee; the matter of grantor providing technical assistance; the need for grantor analysis of project costs/benefits; compliance with specified grant conditions; and so forth. To this end, CPA is respectfully requesting OIG for a copy of its standard policy and procedure on such matters, that CPA could use as a model.

2. CPA also agrees with the audit recommendation that, with respect to the



Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 12

procurement of technical, professional and advisory services, such services should be obtained competitively. To this end, CPA plans to reinstate its procurement regulations governing the competitive procurement of such services.

3. With respect to the audit finding as to the “questioned cost” of \$980,000 which was used to dredge Rota West Harbor, CPA will notify OIA of this expenditure of SHIP fund and will ask OIA to approve such expenditure even if technically it is not a part of the SHIP Project, since it was expended for CPA’s Rota seaport project, for the benefit of all the people of Rota. To the extent that the \$13.5 million received from CDA was a loan, the ratio technically owing by CPA is 10: 42.9 or 23%; and not 23.5 :42.9, or 47%.

4. CPA has no comment on the recommendation to OIA that OIA develop and implement a monitoring procedure for projects funded under grants administered by that federal agency. Neither does CPA have any comment on the audit recommendation that OIA take “prompt corrective action” whenever deficiencies in a project are identified.

## **V. Conclusion**

CPA wishes to take this opportunity to thank the Office of the Inspector General for conducting an audit review of the SHIP project. The recommendations are all well taken, and CPA has definitely benefited from the audit findings. In terms of overall expenditure, the SHIP Project is the largest government project ever undertaken in the history of the CNMI. The audit review, its findings and recommendations were done professionally. It is heartening to know that, although there were shortcomings with the Project, there was no violation of law committed by any party to the project. As the recommendations noted, the problem appear to lie more in terms of the absence of participation by the grantor agency, the failure of CPA to competitively procure the service of the construction administrator, and the failure of CPA to seek prior approval of the use of SHIP Project funds (services, actually) for another seaport project of CPA.

The absence of active participation by OIA in the project was a major contributing factor. The fact that the project was funded by three different sources also apparently contributed to the failure of CPA and OIA to consult with each other. Finally, the absence of a written plan setting forth the respective roles, duties, and responsibilities of CPA and OIA contributed to the absence of reporting and consultation between the two. Fortunately, however, the SHIP Project was completed to the general satisfaction of all,

Office of the Inspector General  
U. S. Department of the Interior  
Re SHIP Project  
Page 13

albeit the Project completion was delayed because of the change orders that were made, but which changes resulted in a larger, efficient and better port facility for CPA and the people of the CNMI.

If the staff of the OIG has any question regarding this response, please do not hesitate to contact us.

Sincerely,

COMMONWEALTH PORTS AUTHORITY



CARLOS H. SALAS  
Executive Director

cc: CPA Board of Directors  
CPA Executive Director

**Enclosures:**

# APPENDIX 4 - INSULAR AFFAIRS RESPONSE




## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

APR - 1 2002

### Memorandum

To: Arnold van Beverhoudt, Jr. - Audit Manager for Insular Areas

From: Nikolao Pula - Acting Director, Office of Insular Affairs 

Subject: Draft Audit Report on the Saipan Harbor Improvement Project, Commonwealth Ports Authority, Commonwealth of the Northern Mariana Islands (Assignment No. N-IN-NMI-003-00-R)

We appreciate the opportunity to respond to the draft audit concerning the Saipan Harbor Project. With regard to the recommendations made to the Office of Insular Affairs (OIA), we believe the Office effectively uses available resources in monitoring Federal grant funds to ensure that contract analysis is performed, competitive bid procedures are enforced and that grant funds are used only for purposes for which they are awarded. We also take corrective action to protect and recover funds when deficiencies are identified in the Commonwealth government's management of grants. Because we believe the recommendations in this audit do not reflect the current state of grant management, no specific changes in our practices are contemplated.

The draft audit raises a number of unique issues that merit serious discussion, even if they do not pertain directly to the recommendations made to the Office of Insular Affairs. Nevertheless, because OIA management officials were not part of the audit exit conference, when discussion of these matters would have been more timely, I will discuss them here.

First, we do not understand the audit's conclusion that the Office of Insular Affairs retains an oversight role in the administration of the Port Project. The Federal grant funds used in this project were fully expended by August 1994, six years prior to the commencement of this draft audit. It appears that only one of the findings in the draft audit took place during the time that Federal funds were being spent. The historical record of this project supports the conclusion that the Department of the Interior was to play a limited role on this project. The Congressional committee report on the harbor project noted an "expectation" that the Department of the Interior would "cooperate in the implementation of the (harbor) plan as developed by the Northern Marianas government with the assistance of the Army Corps of Engineers." This placed the Department third in the management hierarchy on this project. The Federal funds were a contribution to a much larger project managed and otherwise funded by the local government. Nevertheless, even with regard to the exception below, the Department fully monitored the project as it progressed through 1994.

As reported in the draft audit, direct oversight of the project ended when Federal funds were fully expended. This action reflects both our view of Federalism and management's choice to use limited grant monitoring resources elsewhere. We do not, therefore, accept the audit finding (recommendation) that the Federal government had a vested interest in local management decisions taken years later, including CPA's action in Rota.

Second, with regard to the one finding that was noted while Federal funds were extant, it is not apparent that the Board of the Commonwealth Ports Authority (CPA) acted improperly when it decided to award a noncompetitive contract for construction management. 43 CFR 12.76 says that when a State is procuring property and services under a grant, it will "follow the same policies and procedures it uses for procurements from its non-Federal funds." A "State" is defined in 43 CFR 12 as "any of the several States of the United States . . . or instrumentality of a State . . . ." As the draft audit itself has demonstrated, the CPA is an agency or instrumentality of the Commonwealth government, and has the authority to establish its own procurement rules.

Although the Port Authority board may have made a questionable decision, it appears that doing so did not violate Federal grant regulations. Although the draft audit cites a violation of 43 CFR 12.76(d)(4)(i)(C), the same regulation (at 43 CFR 12.76 (a)) says specifically that "other grantees and subgrantees will follow paragraphs (b) through (i) in this section." As an agency or instrumentality of the Commonwealth of the Northern Mariana Islands, the Board was not obligated to follow 43 CFR 12.76(d) by seeking authorization from the Department in order to award a noncompetitive contract.

We would appreciate your full consideration of our concerns before publication of the final audit.

## APPENDIX 5 - STATUS OF RECOMMENDATIONS

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
1 and 2	Management concurs; additional information requested.	Indicate the status of the recommendations and, for recommendations not yet implemented, provide a plan of action, including the target dates and the titles of the officials responsible for implementing the recommendations.
3 and 4	Unresolved.	Respond to the revised recommendations. If concurrence is indicated, provide a plan of action, including the target dates and the titles of the officials responsible for implementing the recommendations.

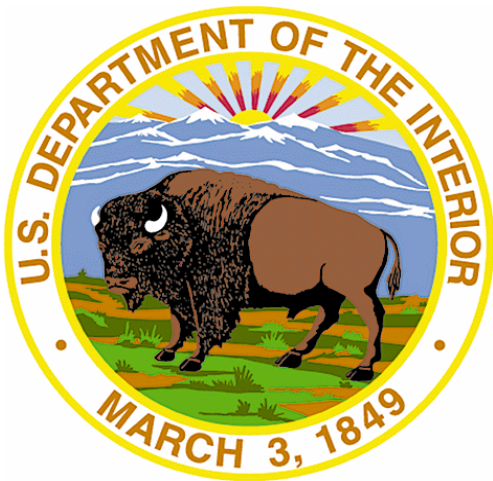
## How to Report Fraud, Waste, Abuse and Mismanagement

Fraud, waste, and abuse in government are the concern of everyone—Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and abuse related to Departmental or Insular Area programs and operations. You can report allegations to us by:

**Mail:** U.S. Department of the Interior  
Office of Inspector General  
Mail Stop 5341-MIB  
1849 C Street, NW  
Washington, DC 20240

**Phone:** 24-Hour Toll Free 800-424-5081  
Washington Metro Area 202-208-5300  
Hearing Impaired (TTY) 202-208-2420  
Fax 202-208-6081  
Caribbean Field Office 340-774-8300  
Hawaiian Field Office 808-525-5310

**Internet:** [www.oig.doi.gov/hotline\\_form.html](http://www.oig.doi.gov/hotline_form.html)



U.S. Department of the Interior  
Office of Inspector General  
1849 C Street, NW  
Washington, DC 20240

[www.doi.gov](http://www.doi.gov)  
[www.oig.doi.gov](http://www.oig.doi.gov)