



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

# **AUDIT REPORT**

**PROCUREMENT ACTIVITIES,  
PORT AUTHORITY OF GUAM,  
GOVERNMENT OF GUAM**

**REPORT NO. 98-I-14  
OCTOBER 1997**



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20240

## MEMORANDUM

OCT - 7 1997

TO: The Secretary

FROM: Wilma A. Lewis  
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Procurement Activities, Port Authority of Guam, Government of Guam" (No. 98-I-14)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether the Port Authority's procurement activities: (1) were efficient and economical and were in compliance with applicable procurement laws and regulations and (2) enabled the Port Authority to obtain the best prices based on competitive procurement.

We found that the Port Authority: (1) did not conduct its procurement activities in compliance with procurement regulations or in an efficient and economical manner; (2) did not ensure that the best prices were obtained for competitive procurements; and (3) did not adequately maintain procurement records for all purchase orders issued and contracts awarded. These conditions occurred because the Port Authority had not developed adequate written procedures to ensure compliance with procurement regulations and had not developed procurement plans to facilitate the competitive procurement of goods and services. The Port Authority also had not developed written procedures to ensure that the Procurement Unit filed all purchase orders and contracts in a central and secure location and maintained accurate and complete logs for all purchase orders issued and contracts awarded. As a result, the Port Authority did not have assurance that full value was received for about \$1.6 million of the estimated \$6.3 million spent for goods and services during fiscal years 1994 and 1995, and in our opinion, it improperly spent \$42,641 of public funds for social events. In addition, since the Port Authority's controls over its purchase orders and contracts were inadequate, it had little assurance that expenditures made for the purchase of goods and services were valid.

Based on the response from the Port Authority to five recommendations, we considered one recommendation resolved and implemented and requested additional information for the other four recommendations. However, the Governor of Guam did not respond to the draft of this report; therefore, the one recommendation addressed to the Office of the Governor is unresolved.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Assistant Inspector General for Audits, at (202) 208-4252.

Attachment



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20240

OCT 7 1997

The Honorable Carl T.C. Gutierrez  
Governor of Guam  
Office of the Governor  
Agana, Guam 96910

Subject: Audit Report on Procurement Activities, Port Authority of Guam, Government of Guam (No. 98-I-14)

Dear Governor Gutierrez:

This report presents the results of our review of the Port Authority's procurement practices that occurred during fiscal years 1994 and 1995. The objective of the audit was to determine whether the Port Authority's procurement activities: (1) were efficient and economical and were in compliance with applicable procurement laws and regulations and (2) enabled the Port Authority to obtain the best prices based on competitive procurement.

We found that the Port Authority did not conduct its procurement activities in compliance with procurement regulations or in an efficient and economical manner. It also did not ensure that the best prices were obtained for competitive procurements. Specifically, the Port Authority: (1) did not provide documentation to support whether appropriate competitive procurement methods had been used; (2) split requisitions to obtain large dollar procurements without competitive sealed bids; (3) did not obtain the required number of price quotations for small purchases; and (4) inappropriately procured services for social events. In addition, the Port Authority did not adequately maintain procurement records for all purchase orders issued and contracts awarded.

These conditions occurred because the Port Authority had not developed adequate written procedures to ensure compliance with procurement regulations and had not developed procurement plans to facilitate the competitive procurement of goods and services. In addition, the Port Authority had not developed written procedures to ensure that the Procurement Unit filed all purchase orders and contracts in a central and secure location and maintained accurate and complete logs for all purchase orders issued and contracts awarded. As a result, the Port Authority did not have assurance that full value was received for about \$1.6 million of the estimated \$6.3 million expended for goods and services during fiscal years 1994 and 1995, and, in our opinion, it improperly expended \$42,641 of public funds for social events. In addition, since the Port Authority did not have adequate controls over its purchase orders and contracts, there was little assurance that expenditures made for the purchase of goods and services were valid.

To correct the conditions noted, we made five recommendations to the Chairman of the Port Authority Board of Directors. Specifically, we recommended that the Chairman direct the General Manager to: (1) develop and implement written procedures to ensure that noncompetitive procurement actions totaling \$5,000 or more are processed in

accordance with Guam procurement laws and regulations, including the requirement for written justification; (2) develop and implement written procedures to ensure that purchase requests are consolidated to the maximum extent possible; (3) enforce the Port Authority's Policy Memorandum 09-88, "Standard Operating Procedures for Procurement of Materials , " which requires three price quotations for small purchases; (4) develop and implement procurement plans to ensure that the Procurement Unit has sufficient lead time to process procurement requests in a competitive manner; and (5) develop and implement written policies and procedures to ensure that purchase orders and contracts are logged in promptly and properly and all procurement documents are filed and safeguarded. We also recommended that you, as the Governor of Guam, direct the Attorney General of Guam to take appropriate action for the Port Authority's improper use of government funds to pay for social functions.

On April 18, 1997, we transmitted a draft of this report to you, as Governor of Guam, requesting your comments by May 21, 1997. However, no request for an extension was received, and a response to the draft report has not been provided. Accordingly, this final report is being issued without the benefit of your comments, and Recommendation AS, which was addressed to you, is considered unresolved (see Appendix 3).

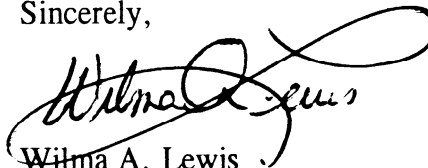
In its May 20, 1997, response (Appendix 2) to the draft report, the Port Authority indicated concurrence with all five recommendations addressed to that agency. Based on its response, we consider Recommendation A.3 resolved and implemented and request that the Port Authority provide additional information for Recommendations A. 1, A.2, A.4, and B. 1 (see Appendix 3).

The Inspector General Act, Public Law 95-452, Section 5(a)(3), as amended, requires semiannual reporting to the U.S. Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In view of the above, please provide a response, as required by Public Law 97-357, to this report by November 10, 1997. The response should be addressed to our North Pacific Region, 238 Archbishop F.C. Flores Street, Suite 807, Pacific News Building, Agana, Guam 96910. The response should include the information requested in Appendix 3.

We appreciate the assistance of Port Authority personnel in the conduct of our audit.

Sincerely,



Wilma A. Lewis  
Inspector General

cc: Acting Director, Bureau of Budget and Management Research



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20240

OCT 7 1997

Mr. Paul Souder  
Chairman, Board of Directors  
Port Authority of Guam  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925

Subject: Audit Report on Procurement Activities, Port Authority of Guam, Government of Guam (No. 98-I-14)

Dear Mr. Souder:

This report presents the results of our review of the Port Authority's procurement practices that occurred during fiscal years 1994 and 1995. The objective of the audit was to determine whether the Port Authority's procurement activities: (1) were efficient and economical and were in compliance with applicable procurement laws and regulations and (2) enabled the Port Authority to obtain the best prices based on competitive procurement.

We found that the Port Authority did not conduct its procurement activities in compliance with procurement regulations or in an efficient and economical manner. It also did not ensure that the best prices were obtained for competitive procurements. Specifically, the Port Authority: (1) did not provide documentation to support whether appropriate competitive procurement methods had been used; (2) split requisitions to obtain large dollar procurements without competitive sealed bids; (3) did not obtain the required number of price quotations for small purchases; and (4) inappropriately procured services for social events. In addition, the Port Authority did not adequately maintain procurement records for all purchase orders issued and contracts awarded.

These conditions occurred because the Port Authority had not developed adequate written procedures to ensure compliance with procurement regulations and had not developed procurement plans to facilitate the competitive procurement of goods and services. In addition, the Port Authority had not developed written procedures to ensure that the Procurement Unit filed all purchase orders and contracts in a central and secure location and maintained accurate and complete logs for all purchase orders issued and contracts awarded. As a result, the Port Authority did not have assurance that full value was received for about \$1.6 million of the estimated \$6.3 million expended for goods and services during fiscal years 1994 and 1995, and, in our opinion, it improperly expended \$42,641 of public funds for social events. In addition, since the Port Authority did not have adequate controls over its purchase orders and contracts, there was little assurance that expenditures made for the purchase of goods and services were valid.

To correct the conditions noted, we made five recommendations to you as Chairman of the Port Authority Board of Directors. Specifically, we recommended that you direct the General Manager to: (1) develop and implement written procedures to ensure that

noncompetitive procurement actions totaling \$5,000 or more are processed in accordance with Guam procurement laws and regulations, including the requirement for written justification; (2) develop and implement written procedures to ensure that purchase requests are consolidated to the maximum extent possible; (3) enforce the Port Authority's Policy Memorandum 09-88, "Standard Operating Procedures for Procurement of Materials," which requires three price quotations for small purchases; (4) develop and implement procurement plans to ensure that the Procurement Unit has sufficient lead time to process procurement requests in a competitive manner; and (5) develop and implement written policies and procedures to ensure that purchase orders and contracts are logged in promptly and properly and all procurement documents are filed and safeguarded. We also recommended that the Governor of Guam direct the Attorney General of Guam to take appropriate action for the Port Authority's improper use of government funds to pay for social functions.

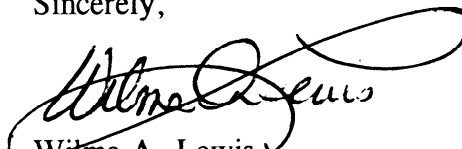
In its May 20, 1997, response (Appendix 2) to the draft report, the Port Authority indicated concurrence with the five recommendations addressed to that agency. Based on the response, we consider Recommendation A.3 resolved and implemented and request that the Port Authority provide additional information for Recommendations A. 1, A.2, A.4, and B. 1 (see Appendix 3). Since the Governor of Guam did not respond to the draft report, Recommendation A.5, which was addressed to the Governor, is considered unresolved.

The Inspector General Act, Public Law 95-452, Section 5(a)(3), as amended, requires semiannual reporting to the U.S. Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In view of the above, please provide a response, as required by Public Law 97-357, to this report by November 10, 1997. The response should be addressed to our North Pacific Region, 238 Archbishop F.C. Flores Street, Suite 807, Pacific News Building, Agana, Guam 96910. The response should include the information requested in Appendix 3.

We appreciate the assistance of Port Authority personnel in the conduct of our audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilma A. Lewis", with a large, flowing loop at the end.

Wilma A. Lewis  
Inspector General

cc: General Manager, Port Authority of Guam

# CONTENTS

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	Page
INTRODUCTION .....	1
BACKGROUND .....	1
OBJECTIVE AND SCOPE .....	1
PRIOR AUDIT COVERAGE .....	2
FINDINGS AND RECOMMENDATIONS .....	4
A. PROCUREMENT ACTIVITIES .....	4
B. PROCUREMENT RECORDS .....	13
APPENDICES	
1. CLASSIFICATION OF MONETARY AMOUNTS .....	15
2. PORT AUTHORITY RESPONSE .....	16
3. STATUS OF AUDIT REPORT RECOMMENDATIONS .....	29

# INTRODUCTION

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## BACKGROUND

On October 31, 1975, the Port Authority of Guam was established as a public corporation and an autonomous instrumentality of the Government of Guam by Title 12, Chapter 10, of the Guam Code Annotated. The Port Authority was established to provide for the needs of ocean commerce, shipping, recreational and commercial boating, and navigation for the Territory of Guam. The Port Authority is governed by a five-member Board of Directors, appointed by the Governor with the advice and consent of the Legislature. The Board is responsible for appointing a General Manager, who serves as the chief executive officer and is responsible for the Port Authority's maintenance, operations, and business affairs.

In accordance with Title 5, Part 1, Division 1, Chapter 5, of the Guam Code Annotated, the Department of Administration, General Services Agency, is responsible for procuring supplies and services for the Government of Guam and the Department of Public Works is responsible for procuring design and construction services. However, in accordance with Title 5, Section 5114, of the Guam Code Annotated, the Chief Procurement Officer of the General Services Agency authorized the General Manager of the Port Authority to purchase equipment, materials, and supplies directly from vendors, and the Director of Public Works authorized the General Manager to purchase design and construction services on a project-by-project basis.

The Supply Management Section of the Port Authority's Financial Affairs Department is responsible for executing procurements, maintaining supplies and inventories, and disposing of surplus property. The Supply Management Administrator heads the Section, which consists of three units: (1) the Procurement Unit, which is responsible for ensuring that the General Manager's delegation of procurement authority is safeguarded and for ensuring compliance with all applicable Federal and local procurement rules and regulations; (2) the Supply Unit, which is responsible for operating and maintaining the parts and supply warehouse; and (3) the Property Control Unit, which is responsible for establishing and maintaining **fixed** asset property inventory records.

## OBJECTIVE AND SCOPE

The objective of the audit was to determine whether the Port Authority's procurement activities: (1) were efficient and economical and were in compliance with applicable procurement laws and regulations and (2) enabled the Port Authority to obtain the best prices based on competitive procurement. The scope of the audit included a review of the Port Authority's procurement activities that occurred during fiscal years 1994 and 1995. If a problem was noted, we expanded our review to other periods as necessary. However, we could not determine the full extent of procurement activities for the audit period



because the Port Authority's records were not adequate to identify all purchase orders issued and contracts awarded.<sup>1</sup>

Audit work was performed at the Port Authority's Financial Affairs Department from November 1995 through August 1996. We obtained information regarding procurement activities and laws from Government of Guam officials at the Port Authority's Financial Affairs Department, Supply Management Section; the Department of Administration's General Services Agency; the Office of the Attorney General; the Bureau of Budget and Management Research; and the Office of the Public Auditor. To accomplish our objective, we reviewed purchase orders, contracts, procurements, correspondence, and accounting records maintained by the Supply Management Section of the Port Authority. We also reviewed applicable laws, regulations, circulars, and operating procedures related to procuring goods and contractual services.

The audit 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 Port Authority's internal controls related to procurement activities to the extent that we considered necessary to accomplish the audit objective. Significant internal control weaknesses were identified and are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

## **PRIOR AUDIT COVERAGE**

During the past 5 years, neither the U.S. General Accounting Office nor the Office of Inspector General has issued any audit reports concerning procurement activities of the Port Authority of Guam. A certified public accountant's audits of the Port Authority's financial statements for fiscal years 1990, 1991, 1992, and 1993 did not identify any internal control weaknesses. However, another certified public accountant's report on the Port Authority's financial statements for fiscal year 1994 included three internal control findings related to the Port Authority's procurement activities. Specifically, the report noted that: (1) one sole source procurement was not supported by a written justification; (2) receiving reports were not on file; and (3) small purchases did not have the required quotations from three vendors. The report did not contain a response from the Port Authority to these findings.

In addition, in July 1994, the Office of Internal Audit, Bureau of Budget and Management Research, issued the audit report entitled "Audit of the General Services Agency Delegation of Procurement Authority, Port Authority of Guam, October 1, 1989 to

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<sup>1</sup>See Finding B, "Procurement Records."

September 30, 1990. " The report stated that the Port Authority: (1) made duplicate payments on purchase orders; (2) allowed cumulative purchase amounts to exceed originally approved purchase order amounts; (3) did not adequately maintain the purchase order control logbook; (4) did not adequately maintain the vendor files; (5) did not cite the appropriate procurement authority on purchase orders; (6) did not conduct procurements competitively; (7) did not justify sole source procurements; and (8) did not submit required documentation to the General Services Agency for review prior to the issuance of notice of awards on bids exceeding \$10,000.

Our current audit disclosed deficiencies similar to those reported by the certified public accountant in the 1994 report on the Port Authority's financial statements and by the Office of Internal Audit, as discussed in the Findings and Recommendations section of this report.

## **FINDINGS AND RECOMMENDATIONS**

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### **A. PROCUREMENT ACTIVITIES**

The Port Authority of Guam did not conduct its procurement activities in accordance with procurement regulations or in an efficient and economical manner. It also did not ensure that the best prices were obtained from competitive procurements. Specifically, the Port Authority: (1) did not provide documentation to support whether appropriate competitive procurement methods had been used; (2) split requisitions to obtain large dollar procurements without competitive sealed bids; and (3) did not obtain the required number of price quotations for small purchases. In addition, the Port Authority inappropriately procured services for social events. These deficiencies occurred because the Port Authority had not developed adequate written procedures to ensure compliance with procurement regulations and had not developed procurement plans to ensure that the Procurement Unit had sufficient lead time to procure goods and services competitively. As a result, the Port Authority did not have full assurance that the best price was received for about \$1.6 million of the estimated \$6.3 million expended for goods and services during fiscal years 1994 and 1995, and public funds of **\$42,641** were, in our opinion, spent improperly for social events.

### **Contracts and Purchase Orders**

Title 5, Section 5001, of the Guam Code Annotated requires agencies “to **maximize** to the fullest extent practicable the purchasing value of public funds” and “to foster broad-based competition.” In addition, Title 5, Section 5210, of the Code states that “all territorial contracts shall be awarded by competitive sealed bidding” with only specifically stated exceptions, such as small purchases, sole source, emergency, professional services, and nonprofit corporations. Section 5216(c) of the Code states that purchasing agencies may use requests for proposals when procuring professional services, including architectural and engineering services. However, Section 5216(e) states, “The award shall be made to the offeror determined in writing by the head of the purchasing agency or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation determined to be fair and reasonable.” Section 3-202.02 of the Guam Procurement Regulations states, “Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction.” However, during the audit, the Port Authority did not provide written documentation to support that purchase orders and contracts were awarded in accordance with these requirements. This condition occurred because the Port Authority had not developed and implemented written procedures to ensure that the Port Authority complied with Guam procurement laws and regulations when making procurements. As a result, the Port Authority did not have full assurance that the best price was received for over \$1.4 million in purchases of \$5,000 or more.

We estimated that during fiscal years 1994 and 1995, the Port Authority processed at least **110 purchase orders and contracts of \$5,000 or more totaling approximately \$6.3 million.**<sup>2</sup> Based on our review of the Port Authority's procurement records for the 110 purchase orders and contracts, we determined that 38 procurements, totaling over \$1.4 million, were awarded without adequate documentation to support whether competitive procurement methods had been used. For example, on February 14, 1994, the Port Authority awarded, without adequate written justification of procurement methods, a contract totaling over \$709,000 to a local engineering firm to assist the prime consultant in the design of repairs to piers and wharfs damaged by an earthquake on August 8, 1993. In our opinion, the 6-month period from the date of the award of the prime contract (August 21, 1993) to the date of the award of the contract to the engineering firm would have afforded the Port Authority ample lead time **to** have awarded this contract competitively in accordance with Sections 5216(c) and 5216(e) of the Guam Code Annotated.

During the audit, neither the Port Authority's General Manager nor the Controller was able to provide written documentation of the procurement methods used for the 38 procurements. The Controller stated that for most contracts for professional services, such as engineering, the General Manager and the Board determined which consultants were qualified and awarded the contracts without going through any bidding process.

## **Small Purchases**

Title 5, Section 5213, of the Guam Code Annotated states that "procurement requirements shall not be artificially divided so as to constitute a small purchase," and Port Authority Policy Memorandum No. **09-88**, "Standard Operating Procedures for Procurement of Materials," requires procurement personnel to "obtain three price quotations" for small purchases under \$5,000. However, the Port Authority split procurement requisitions, we believe, to circumvent the requirement for competitive sealed bidding on large dollar procurements, and it processed small purchases without obtaining the required number of price quotations. These conditions occurred because: (1) the Port Authority had not developed written policies and procedures to ensure that requisitions were not artificially divided to avoid the bidding process and (2) the Procurement Unit did not comply with written operating policies that require three price quotations for small purchases (less than \$5,000). As a result, the Port Authority had little assurance that it received the best price for small purchases totaling \$164,000.

Based on our review of the purchase order logbooks maintained by the Procurement Unit, we determined that the Port Authority, during fiscal years 1994 and 1995, processed 2,823 purchase orders, each under \$5,000, totaling **\$2,896,052**. Of these purchase orders,

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<sup>2</sup>We were unable to determine the actual number and dollar amount of purchase orders and contracts issued because of the poor condition of the Port Authority's procurement records (see Finding B, "Procurement Records"). We reconstructed the number of purchase orders issued and contracts awarded from the purchase orders and sealed bid files and from listings of contracts that were provided by Port Authority officials.

we judgmentally selected and reviewed 57 purchase orders (from \$500 to \$5,000), totaling \$168,540, and determined that 42 purchase orders, totaling \$149,788, had been split, apparently to avoid the requirement to obtain competitive sealed bids for procurements of \$5,000 or more.

For example, on June 12, 1995, the Fleet Maintenance Section submitted a requisition to the Procurement Unit to purchase various replacement parts to repair a forklift. However, the Procurement Unit had split the \$14,531 requisition into four purchase orders. The former buyer acknowledged splitting the requisition and processing four purchase orders based on the justification that all of the items were not needed at the same time. However, we found that two purchase orders totaling \$3,848 and \$3,163 were dated June 22, 1995, and that the other two purchase orders totaling \$2,818 and \$4,702 were dated July 14, 1995. Therefore, we believe that one purchase order using competitive bidding procedures should have been processed.

We also found that the Port Authority did not obtain three price quotations when it made small purchases. Of the 57 purchase orders, totaling \$168,540, that we reviewed, we found that 1 purchase order, for \$1,200, was correctly processed as a sole source procurement and 19 purchase orders, totaling \$68,056, were processed with the required three price quotations. However, 21 purchase orders, totaling \$58,772, were processed with only two price quotations, and 16 purchase orders, totaling \$40,512, were processed with only one price quotation. The Procurement Unit's three buyers and a former buyer told us that they normally contacted three vendors for small purchases but that all three vendors did not necessarily provide price quotations. They stated that as long as one of the three vendors provided a quotation, the vendor with the lowest or the only quotation was awarded the purchase order. However, there was no documentation to support the efforts to obtain three quotations. Moreover, Port Authority Policy Memorandum No. 09-88 requires procurement personnel to "obtain" three price quotations, not simply to "contact" three vendors.

The Supply Management Administrator told us that the lack of procurement planning by the requesting sections resulted in many small purchases which could have been consolidated. The Supply Management Administrator further stated that the Procurement Unit did not have any system in place to detect and consolidate requisitions for like items. For example, the Port Authority issued three purchase orders on July 14, 1995, July 25, 1995, and July 27, 1995, to purchase three desktop computers for \$1,850, \$3,558, and \$2,584, respectively. In addition, two of these purchase orders were issued to the same vendor within a 3day period. In our opinion, these procurements could have been consolidated and processed using competitive methods if the Port Authority had developed and used annual procurement plans.<sup>3</sup> These procurement plans would have

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<sup>3</sup>Procurement plans should be prepared as part of the annual budget cycle and include a summary of the types and estimated quantities of goods and services that each branch of the Port Authority is expected to procure during the next fiscal year, thus allowing the Procurement Unit to prepare and process consolidated requisitions in sufficient time to allow for the use of competitive procurement methods.

provided the Procurement Unit sufficient lead time to process procurement requests, which would have fostered full and open competition and resulted in lower costs.

## **Social Events**

During fiscal years 1994, 1995, and 1996, the Port Authority used public funds to pay for social events primarily for the benefit of its employees. The social events included Christmas parties and Labor Day picnics. This condition occurred because the Port Authority's management said that it believed it was within the Port Authority's purview to authorize expenditures for such events. As a result, public funds of at least **\$42,641** were improperly spent for social events.

During its audit of the General Services Agency delegation of procurement authority to the Guam Airport Authority, the Office of Internal Audit, Bureau of Budget and Management Research, determined that the Guam Airport Authority had used public funds to pay for a yearend party for Airport Authority employees. Consequently, in an April 23, 1991, memorandum, the Director of the Bureau of Budget and Management Research requested that the Guam Attorney General provide an opinion on whether the expenditures were valid. The Director also attached a November 18, 1987, letter from the Airport Authority's legal counsel rendering an opinion that the Airport may sponsor such a party for employees and guests based on the powers delegated by the Legislature. In response to the Director's memorandum, the Guam Attorney General issued Informational Memorandum No. BBMR 91-0672 on July 1, 1991, which stated that the Airport's enabling legislation "does not support the proposition that such expenditures from public funds are legal" and that "without an expressed or implied grant of power from the Legislature, the costs of sponsoring such functions should not be paid from public funds."<sup>4</sup> The memorandum concluded that "office parties and celebrations should be supported, if at all, by employees' personal funds, not by public monies. "

The Supply Management Administrator and the Controller said that the General Manager was made aware of the Attorney General's memorandum but that he still approved the use of public funds for social events. We informed the General Services Agency's Chief Procurement Officer of the procurements made by the Port Authority for social events. The Chief Procurement Officer stated that these expenditures were "not proper" and that had he reviewed the transactions, he would not have approved them.

## **Recommendations**

We recommend that the Chairman, Board of Directors, Port Authority of Guam, direct the General Manager to:

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<sup>4</sup>The enabling legislation for the Port Authority of Guam does not contain any provisions that authorize the Port Authority to use public funds to sponsor social events.

1. Develop and implement written procedures to ensure that noncompetitive procurement actions totaling \$5,000 or more are processed in accordance with the requirements provided in Guam procurement laws and regulations, including the requirement for a written justification.

2. Develop and implement written procedures to ensure that purchase requests, including purchases of less than \$5,000, are consolidated to the maximum extent possible.

3. Enforce the Port Authority's Policy Memorandum 09-88, "Standard Operating Procedures for Procurement of Materials," which requires three price quotations for small purchases, and require documentation in support of efforts to obtain such.

4. Develop and implement procurement plans to ensure that the Procurement Unit has sufficient lead time to process procurement requests in a competitive manner.

We recommend that the Governor of Guam:

5. Direct the Attorney General of Guam to issue a formal legal opinion as to whether or not the use of Port Authority funds for employee social events is permitted by Guam law and, if it is found that such use of public funds is improper, to take appropriate legal action.

### **Port Authority of Guam Response and Office of Inspector General Reply**

In its May 20, 1997, response (Appendix 2) to the draft report, the Port Authority concurred with Recommendations 1-4 and, although Recommendation 5 was addressed to the Governor, it disagreed with that recommendation. Based on the response, we consider Recommendation 3 resolved and implemented and request additional information for Recommendations 1, 2, and 4 (see Appendix 3).

#### **Recommendation 1. Concurrence.**

**Port Authority of Guam Response.** The Port Authority stated, "In general, [it] awards all contracts over \$5,000.00 either through sealed bids or request for proposals as authorized by statute." The Port Authority also stated that, for the specific example cited in the finding, it used competitive procurement methods when it procured engineering services for the design of repairs to piers and wharfs damaged by an earthquake on August 8, 1993. To support its claim, the Port Authority provided copies of the request for proposal and correspondence relating to the selection of the engineering firm. The correspondence indicated that 14 firms had submitted bids to provide engineering services. Regarding the recommendation, the Port Authority stated that it would "review current policies and procedures to ensure that it is continuing to comply with all Guam laws and regulations applicable to the procurement of services pursuant to requests for proposals. " Finally, the Port Authority stated that personnel involved in the procurement process "will be indoctrinated to the updated policies and procedures. "

**Office of Inspector General Reply.** During the audit, we made numerous requests to Port Authority officials, including the General Manager, for the documentation relating to the procurement of engineering services and the other 37 procurements discussed in the finding. However, the documentation was not provided to us during the audit. On May 23, 1997, we contacted the Port Authority's Supply Management Administrator and again requested copies of the proposals, referred to in the response, submitted by the 14 engineering firms and the rating sheets prepared by the selection committee. The Supply Management Administrator stated that he would provide us the 14 proposals and rating sheets during a May 28, 1997, meeting at our office. However, during the meeting, the Supply Management Administrator did not provide us with any of the requested documents, stating that he "did not have the time to get the files from the CIP [Capital Improvement Projects] Coordinator." He also stated, "Sufficient information for what [we] need to know had been provided as attachments to the Port Authority's response to the draft report." However, in our opinion, the Port Authority has not provided sufficient information for us to determine whether or not proper procurement procedures were used. As of August 15, 1997, we had not received copies of the 14 proposals that the Port Authority said were submitted by engineering firms or the rating sheets used by the selection committee to select the firm that was awarded the contract. The Port Authority also had not provided us with documentation necessary for us to determine whether or not the other 37 procurements mentioned in the finding were conducted in accordance with competitive procurement requirements.

In its response to the draft report, the Port Authority also stated that in an April 25, 1997, letter to the Office of Inspector General, the Port Authority requested from our office "the specifics of [our] allegations" regarding the 38 contracts and purchase orders that were awarded noncompetitively but that "there has been no response to date. " However, on May 20, 1997, our Freedom of Information Act Officer, located in Washington, D.C., provided clearance to our Guam field office for it to provide information from our audit working papers to the Port Authority. Accordingly, we invited Port Authority officials to our office in Guam to review the audit working papers for the 38 contracts and purchase orders. On May 28, 1997, the officials visited our office, reviewed the audit working papers related to the 38 procurements that were questioned in the finding, and made a list of the 38 transactions. We believe that the information made available was sufficient to allow them to research the related procurement files at the Port Authority's offices. Moreover, we received no further requests for information.

Based on the Port Authority's response, we have made revisions to the report that we believe will clarify the issues regarding the 38 contracts and purchase orders which were processed without adequate supporting documentation of the procurement methods used.

Regarding the recommendation, the Port Authority needs to develop and implement written procedures to ensure that it complies with all applicable Guam laws and regulations when it processes procurement actions. Since the Port Authority indicated that its key procurement personnel would be "indoctrinated to the updated policies and procedures," we believe that the Port Authority has recognized the need to improve controls over its



procurement activities. Therefore, the Port Authority needs to provide the information requested in Appendix 3.

**Recommendation 2. Concurrence.**

**Port Authority of Guam Response.** The Port Authority stated that it will develop written procedures for “consolidating procurement[s] to avoid split procurement[s] and to ensure that written determinations justifying the necessity of split requisitions are made.”

**Office of Inspector General Reply.** Neither the Guam Code nor the Procurement Regulations authorize the splitting of requisitions, even if a written justification is provided. Therefore, the Port Authority needs to develop written procedures which ensure that requisitions are not artificially divided, under any circumstances, to avoid the use of competitive procurement methods. In addition, the Port Authority may want to consider developing the written procedures before it conducts the scheduled training mentioned in its response (page 7 of Appendix 2) so that Port Authority personnel can be made aware of the proper procedures. The Port Authority needs to provide the information requested in Appendix 3.

**Recommendation 3. Concurrence.**

**Port Authority of Guam Response.** The Port Authority said that, in accordance with applicable law, it routinely attempted to obtain three price quotations “insofar as it is practical for small purchases of supplies and services” but that it was not always possible for procurement personnel to obtain three price quotes “because of the lack of available vendors on Guam.” The Port Authority also stated that in some instances, it was necessary to accept the “first reasonable quotation in order to keep equipment operational.”

Regarding the recommendation, the Port Authority stated that procurement personnel will prepare written documentation when they are unable to obtain three quotations for small purchases.

**Office of Inspector General Reply.** We agree with the Port Authority’s statement that the Guam procurement regulations require only quotations from three businesses “insofar as it is practical.” However, during the audit, we identified instances in which documentation was not prepared to show whether or not attempts had been made to obtain three quotations. Based on the Port Authority’s response that procurement personnel will prepare such documentation for future small purchases, we consider the recommendation resolved and implemented.

**Recommendation 4. Concurrence.**

**Port Authority of Guam Response.** The Port Authority concurred with the recommendation.

**Office of Inspector General Reply.** Although the Port Authority concurred with the recommendation, it needs to provide the information requested in Appendix 3.

**Recommendation 5. Nonconcurrence.**

**Port Authority of Guam Response.** Although the recommendation was addressed to the Governor, the Port Authority indicated nonconcurrence with the recommendation and commented on the finding. The Port Authority's comments included various citations from the Guam Code Annotated regarding budgets, the expenditure of public funds, and case law from jurisdictions on the U.S. mainland. The Port Authority also stated that the current General Manager was provided with legal opinions of the legal counsel of the Port Authority's predecessor organization which "advised that [expenditures for employee social events] were valid" and "criticized the correctness of the Attorney General memorandum" we cite in the finding. The Port Authority also said that the Attorney General memorandum cited in the finding "was informational only and was not issued as an opinion of the Attorney General. "

However, the Port Authority stated that any employee of the Government of Guam "stands in a fiduciary relationship to the people of Guam in regard to the management of public money" and that employees "shall discharge their duties with respect to the management of public money solely in the interest of the people of the territory of Guam. " The Port Authority further stated, "Based on the applicable statutory and case law, it appears that there is no specific statute or case law which either allows or prohibits the expenditure of Port Authority funds for employee social events. " Finally, the Port Authority stated, "Arguably, as a self sustaining autonomous instrumentality of the government of Guam, the Port Authority is vested with more discretion than typical government entities which depend solely on legislative appropriation. "

With regard to the recommendation, which was addressed to the Governor, the Port Authority stated that it would "seek legislative clarification that the use of Port Authority funds for employee social events is an authorized expenditure. "

**Office of Inspector General Reply.** We do not agree that the Attorney General's memorandum cited in the finding is of no consequence because it was "informational only." The memorandum was issued as a formal document from the Attorney General's office and labeled as "Informational Memorandum No. BBMR 91-0672. " It stated that the then-Airport Authority's enabling legislation "does not support the proposition that [expenditures for employee social events] from public funds are legal" and that "without an expressed or implied grant of power from the Legislature, the costs of sponsoring such functions should not be paid from public funds." The Memorandum also indicates that there is no specific statute which allows or prohibits the Port Authority from using public funds to pay for social events.

We agree with the Port Authority that it has a fiduciary responsibility to the people of Guam to ensure that public funds are spent properly. After reviewing the various citations

included in the Port Authority's response, we could not find any citation which would indicate that the Port Authority was authorized to use public funds for employee social events. In addition, regardless of whether the Port Authority believes that it "is vested with more discretion than typical government entities," we believe that it still has, as a Government of Guam entity, a fiduciary responsibility to ensure that public funds are used properly. In our opinion, the use of public funds for employee social events (which included Christmas parties) is not a proper use of such funds. However, based on the Port Authority's response, we have revised the recommendation to state that the Governor should direct the Guam Attorney General to issue a formal legal opinion regarding the Port Authority's use of public funds to pay for social events.

Regarding the Port Authority's proposed plan of action for the recommendation, we believe that the plan is equivalent to seeking retroactive approval from the Guam Legislature for expenditures which, in our opinion, are contrary to the best interests of the Government and the people of Guam.

### **Governor of Guam Response and Office of Inspector General Reply**

The Governor of Guam did not respond to the draft report; therefore, Recommendation 5 is considered unresolved, and the Governor is requested to respond to the recommendation (see Appendix 3).

## **B. PROCUREMENT RECORDS**

The Port Authority did not adequately maintain procurement records for all purchase orders issued and contracts awarded. Title 5, Section 5249, of the Guam Code Annotated requires each procurement officer to maintain a complete record of each procurement. However, the central file for purchase orders did not have all of the purchase orders issued, and no central files were maintained for contracts awarded. In addition, we found that the manual logbooks maintained by the Procurement Unit did not have complete information on the purchase orders issued and that no logbook was maintained on contracts awarded. These conditions occurred because the Port Authority had not developed written procedures to: (1) ensure that the Procurement Unit **filed** all purchase orders and contracts in a central and secure location and (2) maintain accurate and complete logbooks for all purchase orders issued and contracts awarded. As a result, there was little assurance that expenditures for goods and services were accurately recorded and accounted for.

### **Purchase Orders**

The Procurement Unit recorded purchase order data in a logbook and used a central filing system in an unsecured area to store purchase orders and related supporting documents. Based on our comparison of entries made in the purchase order logbook and purchase orders stored in the central filing system, we determined that at least 143 purchase order files for fiscal year 1994 and 123 purchase order files for fiscal year 1995 were missing from the central files. In addition, the dollar amounts for these missing purchase orders had not been entered into the logbook in 135 instances for fiscal year 1994 and in 90 instances for fiscal year 1995. Port Authority officials could neither locate the missing purchase orders nor provide an explanation as to why the dollar amounts were not entered into the logbooks.

### **Contracts**

During the audit, we requested a complete listing of contracts awarded during fiscal years 1994 and 1995 because the Port Authority did not maintain a logbook and central **file** for contracts. Initially, the Port Authority Controller provided a list showing cumulative payments of **\$5,463,205** made to 36 contractors in fiscal year 1995 only. However, we found that the list was not accurate or complete. For example, at least nine payments, totaling **\$1,455,063**, were for prior year contracts, and five payments, totaling \$310,145, were for payments made on purchase orders and not contracts. Subsequently, the Port Authority's General Manager provided another list of 43 contracts, totaling **\$2,630,497**, for fiscal years 1994 and 1995. However, this list contained no dollar amounts for five contracts, and one contract (**\$24,000**) was a prior year (fiscal year 1991) contract.

## **Recommendation**

We recommend that the Chairman, Board of Directors, Port Authority of Guam, direct the General Manager to develop and implement written policies and procedures to ensure that purchase orders and contracts are entered into logbooks promptly and accurately and that all procurement documents are filed centrally and are safeguarded.

## **Port Authority of Guam Response and Office of Inspector General Reply**

In its May 20, 1997, response (Appendix 2) to the draft report, the Port Authority concurred with the recommendation, stating that "all security measures have been taken and completed to ensure that all files are safeguarded and protected. " However, the response did not: (1) address the development and implementation of written procedures to ensure that purchase orders and contracts are entered into the logbooks promptly and accurately and (2) provide written procedures showing the "security measures" that have been implemented. Accordingly, additional information is needed for the recommendation (see Appendix 3).

## CLASSIFICATION OF MONETARY AMOUNTS

<u>Finding Areas</u>	<u>Funds To Be Put To Better Use*</u>
A. Procurement Activities	
Contracts and Purchase Orders	\$1,429,275
Small Purchases	164,000
Social Events	<u>42,641</u>
Total	<u>\$1,635,916</u>

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\*Amounts represent local funds.



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May 20, 1997

VIA HAND DELIVERY

Mr. Waiter B. Haught  
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North Pacific Region  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF INSPECTOR GENERAL  
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Re: **Draft Audit Report Regarding Procurement Activities  
of the Port Authority of Guam; Assignment No. N-IN-GUA-008-96**

Dear Mr. Haught:

At the request of Mr. Inspector General William A. Lewis, this letter is forwarded to you to provide you with the Port Authority of Guam's response to the draft audit report dated April 1997 submitted by the United States Department of the Interior Office of Inspector General regarding the procurement activities of the Port Authority of Guam for the fiscal years 1994 and 1995.

I. COMPETITIVE SELECTION

A. Audit Report Finding

According to the draft audit report, the Port Authority failed to justify the use of noncompetitive procurement methods. As an example, the audit report cites a contract dated February 14, 1994 entered into between the Port Authority and Winzler & Kelly, a local engineering firm, to provide consulting services for the design of repairs to piers and other Port Authority facilities damaged by the August 8, 1993 earthquake.



Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 2

### **B. Port Authority Response**

While competitive sealed bidding is the preferred method of procurement source selection by government of Guam agencies, the Guam procurement law and regulations specify several exceptions to the general rule that competitive sealed bidding is the preferred method of procurement source selection. See, 5 G.C.A. 5210; Guam Procurement Regulations Section 3-202.02.

Government of Guam agencies are afforded more discretion in the procurement of professional services such as engineering services. For, example, 5 G.C.A. §5124 provides in pertinent part:

Unless otherwise ordered by regulation of the Policy Office, with approval of the Governor, the following supplies and services need not be procured through the General Services Agency or the Department of Public Works, but shall nevertheless be procured by the appropriate Purchasing Agency subject to the requirements of this Chapter and the regulations promulgated by the Policy Office:

(c) architect, engineering and land surveying services as defined in 05301 of this Chapter.

The Guam procurement statute also provides that certain services specified in 5 G.C.A. §5121 (a), including services for accountants, physicians, lawyers, dentists and other professionals are exempt from the competitive sealed bidding requirements. The services specified in 5 G.C.A. §5121 (a) are to be procured pursuant to the procedures for Request for Proposals as set forth in 5 G.C.A. §5216(b)-(e). 5 G.C.A. §5216(a).

Architect, engineering and land surveying services are defined in 5 G.C.A. §5301 as those professional services within the scope of the practice of architecture, engineering or land surveying as defined by the laws of Guam. In 5 G.C.A. §5302, the Policy Office is directed to promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. Further, such regulations must grant the Director of Public Works or the head of the purchasing agency responsible for carrying out the construction project, the discretion to select the appropriate method of construction contracting



Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 3

management for a particular project. 5 G.C.A. 5302(b) .

Section 5-201 .01.2 of the Guam procurement regulations adopted by the Policy Office, entitled Flexibility, states that:

It is intended that the Director of Public Works or the head of the Purchasing Agency, acting through the Procurement Officer, have sufficient flexibility in formulating the project delivery approach in a particular project to fulfill the territory s needs.

The Guam procurement statute specifically exempts the procurement of engineering services from the competitive bidding requirements of 5 G.C.A. 5210 by providing in 5 G.C.A. §5216(a) that "[s]ervices for architecture, engineering, construction, land surveying, environmental assessments and other such services shall be procured in accordance with Article 5 of this Chapter.

According to 5 G.C.A. §52116(b), persons engaged in providing the types of services specified in 5 G.C.A. §5121 may submit statements of qualifications and expressions of interest in providing the services in response to requests for proposals. See, also, Procurement Regulations Section 3-207.04. A purchasing agency is required to provide notice of the need for such services at least ten days prior to the date on which the proposals are due. Procurement Regulations Section 3207.05. The request for proposal must describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications. 5 G.C.A. §5116(c); Procurement Regulations Section 3-207.06.1. The head of a purchasing agency may conduct discussions with any offeror who has submitted a proposal to determine such offeror s qualification for further consideration. 5 G.C.A. §5116(d). Award of a contract for services shall be made to the offeror determined in writing by the head of the purchasing agency to be the best qualified based on the evaluation factors set forth in the request for proposal and negotiation of compensation determined to be fair and reasonable. 5 G.C.A. §5116(e); Procurement Regulations Section 3-207.06.2.

Please be assured that the Port Authority actively encourages all Port Authority staff and management to expend Port Authority funds in the most efficient and economical manner. The Port Authority also attempts to acquire all supplies and services at the best price and in compliance with all Guam procurement laws and

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 4

regulations.

The Port Authority believes that the procurement and award of the architectural and engineering consulting services contract to Winzler & Kelly was in compliance with all of the above described procurement laws and regulations. The Guam procurement law and regulations specifically exempt the procurement of certain services from the competitive sealed bidding requirements. Services such as architectural and engineering consulting services may be procured through requests for proposals rather than competitive sealed bidding. The Port Authority is also aware that the procedures used to procure these services are typical of other government of Guam agencies.

The contract awarded to the local engineering firm for architectural and engineering consulting services for the design of the repairs to the piers and other Port Authority facilities damaged by the earthquake was in fact procured through a validly issued Request for Proposal. Attached is the Request for Proposal issued by the Port Authority in October of 1993 for the architectural and engineering consulting services. Also attached is a memorandum dated October 26, 1993 to the "A/E Selection Committee Members from the CIP Coordinator which states that no fewer than fourteen (14) companies submitted responses to the Request for Proposal. Also attached is a memorandum dated December 13, 1993, in which the General Manager is informed that the A/E Selection Committee using a five criteria rating system selected the three top companies out of the total of fourteen companies that had responded to the Request for Proposal.

Only after months of evaluation by the A/E Selection Committee and months of negotiation with the best qualified offeror, did the Port Authority enter into the contract with THE best qualified offeror for the architectural/engineering services. Quite significantly, the final contract was also reviewed and executed as to form by the territory of Guam Attorney General's office. Thus, the Port Authority believes that it not only followed applicable requirements of the Guam procurement law and regulations, but also that the entire process was conducted in the spirit of competition to assure that the Port Authority received the best price for the services needed.

In reference to the other 38 procurements, you failed to cite how the Port awarded the contracts noncompetitively. On April 25, 1997, I sent you a letter requesting the specifics of your allegations. To date, as I understand, this request was forwarded to your head office and there has been no response as of yet. The one

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 5

example cited concerning Winzler & Kelly was clearly wrong. We are therefore unable to reply specifically to the allegation.

In general, the Port Authority awards all contracts over \$5,000.00 either through sealed bids or request for proposals as authorized by statute.

In reference to your footnote No. 2, pertaining to the poor record keeping of the Port, the procurement records are kept in accordance with 06707 of P.L. 6-64.

#### **C. Port Authority Plan of Action**

The Port Authority will review current policies and procedures to ensure that the Port Authority is continuing to comply with all Guam laws and regulations applicable to the procurement of services pursuant to requests for proposals. Key personnel involved in the procurement process will be indoctrinated to the updated policies and procedures. To the extent required by applicable Guam procurement laws and regulations, the Port Authority will ensure that all Port Authority procurement personnel make written determinations justifying the use of competitive requests for proposals.

For your information, the General Services Agency conducted procurement training on February 20, 1997. Key personnel involved in procurement attended the training session. Attached is a copy of the agenda.

The Port employee who will be responsible for monitoring this area is Mr. David Baleto, Supply Management Administrator.

## **II. SMALL PURCHASES**

### **A. Audit Report Finding**

The Inspector General's draft audit report stated that the Port Authority split procurement requisitions to circumvent the requirements for competitive sealed bidding on large dollar procurement acquisitions and processed small purchase procurement acquisitions without obtaining the required number of price quotations.

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 6

#### **B. Port Authority Response**

The Port Authority recognizes that the procurement of small purchases, established at \$5,000.00 for supplies and services and \$15,000.00 for construction, must be made pursuant to Guam Procurement Regulations Section 3-204. The Port Authority also acknowledges that the procurement requirements for small purchases shall not be artificially divided so as to constitute a small purchase. 5 G.C.A. 95213; Guam Procurement Regulation §3-204.02.5. The Port Authority also recognizes that if a small purchases is available from only one vendor then the sole source procurement method is required. Guam Procurement Regulation §3-204.02.4. Also, the head of a purchasing agency shall adopt operational procedures for making small purchases of \$500.00 or less. Guam Procurement Regulation Section 3-204.03.05. Finally, such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the purchasing agency. Id.

While the Port Authority's Policy Memorandum 09-88 may state that three price quotations should be obtained for small purchases, it is notable that Guam Procurement Regulation 03-204.03.1 provides:

Insofar as it is practical for small purchases of supplies or services between \$500 and \$5,000, no less than three businesses shall be solicited to submit written quotations or oral quotations that are recorded and placed in the procurement file. Awards shall be made to the business offering the lowest acceptable quotations. (Emphasis added).

Thus, the Guam procurement regulations require quotations from three businesses only "[i]nsofar as it is practical for small purchases of supplies and services. The Port Authority believes that attempts to obtain three quotations for small purchases are routinely made by Port Authority procurement personnel. However, because of the lack of available vendors on Guam, it is quite common that the Port Authority is unable to obtain three quotations from acceptable vendors. Further, although the supply or service is for a small dollar amount, occasionally the Port Authority is forced by necessity to respond to the first reasonable quotation in order to keep equipment operational. If equipment is non-operational the Port Authority ultimately incurs greater losses in public funds than it otherwise would incur

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 7

if delays were required in order to obtain three price quotations.

### **C. Port Authority Plan of Action**

Port Authority procurement personnel have been advised to maintain adequate written documentation to support procurement of small purchases. Specifically, Port Authority procurement personnel will develop procedures for consolidating procurement to avoid split procurement and to ensure that written determinations justifying the necessity of split requisitions are made. If procurement personnel are unable to obtain three quotations for small purchases then written documentation shall also be made. Finally, if only one vendor is available for a small purchase, then the sole source procurement method procedures are required.

The training of all key personnel in the procurement process will be conducted and completed by August 29, 1997. The responsible Port employee is Mr. David Baleto, Supply Management Administrator.

The safeguarding of all procurements documents has always been a concern of the Port. This has been corrected and all security measures have been taken and completed to ensure all files are safeguarded and protected. The area is now secured and only authorized personnel are permitted.

## **III. SOCIAL EVENTS**

### **A. Audit Report Finding**

The Inspector General's draft audit report states that the Port Authority inappropriately procured services for social events primarily for the benefit of Port Authority employees.

### **B. Port Authority Response**

#### **1. The Executive Budget Law**

The Executive Budget Law, 4 G.C.A. §§4101-4115 establishes a comprehensive system for government agency programs and financial management. However, under 4 G.C.A. §4115, the Port Authority is specifically exempted from the provisions of 4 G.C.A. §4113 and 4 G.C.A. 94114. 4 G.C.A. §4113 restricts the

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 8

**funding of new programs without funding appropriation. 4 G.C.A. §4114 states that "[f]unds other than appropriated funds may be used for the operation of a government program and activity provided, that the Legislature, by resolution, shall first give its approval to said programs or activity.**

## **2. Other Statutes Relating to Government Expenditures**

**In 1985, the Guam Legislature enacted Public Law 18-09 entitled Enforcement of Proper Government Spending which was subsequently recodified as 5 G.C.A. §§7101-7117. The Guam Legislature stated that it is the intent of the Guam Legislature that the government of Guam practice fiscal responsibility, and that the persons who spend the taxpayer's money follow the mandates of law in expending government funds. 5 G.C.A. 97101. Entities included within the scope of 5 G.C.A. §7101-7117 include autonomous boards, agencies and authorities of the government of Guam, the Guam Visitors Bureau to the extent that funds contributed or appropriated by the government of Guam are involved, and any other instrumentality, agency, bureau, or department of the government of Guam. 5 G.C.A. 97107.**

**In 5 G.C.A. 97102, entitled Standards Established for Handling Money, it is provided that:**

**Any officer, agent, contractor, or employee of the Executive Branch of the government of Guam who is charged with or assumes responsibility for the certification of availability of funds or the spending of money belonging to the territory of Guam, including the Governor and Lt. Governor of Guam, stands in a fiduciary relationship to the people of Guam in regard to the management of public money. Any such officer, agent, contractor, or employee of the Executive Branch shall discharge their duties with respect to the management of public money solely in the interest of the people of the territory of Guam. Any officer, agent, contractor, or employee shall discharge his duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.**

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 9

In 5 G.C.A. 022401 (a)(l), no officer or employee of the government of Guam, including the Governor of Guam, shall "[m]ake or authorize any expenditure from, or create or authorize any obligation under, any appropriation or fund in excess of the amount available thereon, or for other than an authorized purpose. For purposes of this statute, government of Guam includes all three branches, Executive, Legislature, and Judicial and officer includes, but is not limited to, directors and agency heads, judges, and members and attaches of the Legislature. 5 G.C.A. §22401 (d). Notably, the statute contemplates that government agencies will make expenditures for entertainment by stating that "[w]henver the terms \* contingent expenses or contingent fund are used in any appropriation act, they shall include, but not be limited to, entertainment expenses for official purposes. 5 G.C.A. 022407.

#### C. Procurement Laws and Regulations

The Guam Procurement Law applies to every expenditure of public funds irrespective of their source . . . by this Territory, acting through a government body, as defined herein, under any contract. 5 G.C.A. §5004(b). The term procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. " 5 G.C.A. §5030(o). The Chief Procurement Officer of the General Service Agency shall serve as the central procurement officer and is vested with all rights, powers, duties and authority relating to the procurement of supplies and services. 5 G.C.A. §5113(a); 5 G.C.A. §5120. However, the Chief Procurement Officer may delegate authority for procurement of supplies and services to designees or to any governmental body or official. 5 G.C.A. 05114.

#### D. Case Law Regarding Government Expenditures

There were no Guam court cases relating to the specific issue of whether the Port Authority or other Government of Guam agencies are authorized to expend funds for employee social events. However, case law from other jurisdictions does provide general guidance on this issue.

In general, the power to incur indebtedness or expenditures is a legislative power which is customarily delegated by the legislature to an executive branch agency. Seward County v. Aetna Life Insurance Co., 90 F. 222 (8th Cir 1898). The courts typically construe powers relating to incurring expenditures of public funds strictly so that only such powers as are expressly or impliedly granted by law are valid. Campbell v. Joint District 28-J, 704 F.2d 501 (10th Cir. 1993); In re Sims, 40

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 10

Fla 432, 25 So. 280 (1898).

Expenditures incurred by a government entity must be for an authorized purpose. Hodges v. Kauffman, 95 Cal.App 598, 273 P. 125 (1929); Joint Consolidated School District No. 2 v. Johnson, 163 Kan 202, 181 P.2d 504 (1947). All expenditures of public money must be for a public purpose as distinguished from a private purpose, unless the powers of a government entity are enlarged by law, The Liberty Bell, 23 F. 843 (1885). If the primary object of the expenditure of public funds is to promote a private end, the expenditure is illegal. Peacock v. Georgia Municipal Association, Inc., 247 Ga. 740, 279 S.E.2d 434 (8119 ); Castner v. Minneapolis, 92 Minn. 84, 99 N.W. 361 (1904). On the other hand, if the primary object is to advance a public purpose, it is immaterial that, incidentally, private ends may be advanced. Id.

A public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all or a substantial part of the public. Opinion of the Justices, 349 Mass. 794, 208 N.E. 2d 823 (1965); United States v. Town of North Bonneville, 94 Wash. 2d 827, 621 P.2d 127 (1980). Thus, the test for whether an expenditure is for a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public as distinguished from a remote or theoretical benefit. Id. A particular case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. Anderson v. Baehr, 265 SC 153, 217 S.E.2d 453 (1975); Pipestone v. Madsen, 287 Minn. 357, 178 N.W. 2d 594 (1980).

Applying these general principles, there is a split of authority in court cases involving whether a government entity may use public funds for such expenditures as celebrations, entertainment, sports and games. See, eg., Commonwealth v. Gingrich, 21 Pa. Super 286,290 (1888)(a public corporation cannot make a contract to provide entertainment for its citizens and guests); Black v. Detroit, 1 19 Mich. 571, 78 N.W. 660 (1905)(expenditures for banquets and dances not permitted); Sacramento Chamber of Commerce v. Stephens, 212 Cal. 607, 299 P. 728 (1884)(city charter provision allowing expenditures for entertainment of public guests, held permissive, not mandatory, and city was free to adopt any reasonable means therefor); Schieffelin v. Hyland, 236 N.Y. 254, 140 N.E. 689 (1921 )(Celebration of creation of greater New York was held a public purpose),



Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 11

Based on the applicable statutory and case law, it appears that there is no specific statute or case law which either allows or prohibits the expenditure of Port Authority funds for employee social events. Arguably, as a self sustaining autonomous instrumentality of the government of Guam, the Port Authority is vested with more discretion than typical government entities which depend solely on legislative appropriation. As a result, the power to use Port Authority funds for employee social events can be implied from the Port Authority's enabling statute.

In this case, the social events were employee gatherings for Christmas and Labor Day. During the Christmas events, the evenings were used to recognize the achievements of employees for the past year. Awards were presented to the employees during the event. The events were budgeted by the Port management and approved by the board of directors. The management and board felt that the functions improved employee morale, were in honor of the employees and had a legitimate public purpose. The same rationale and procedure applied to the Labor Day events.

Further, the current General manager was provided with the legal opinions of the then GIAA legal counsel which advised that such expenditures were valid. The same GIAA legal counsel also criticized the correctness of the Attorney General memorandum you cited to. It is noteworthy to point out that the Attorney General memorandum specifically stated that the memorandum was informational only and was not issued as an opinion of the Attorney General.

#### **C. Port Authority Plan of Action**

The Port Authority intends to seek legislative clarification that the use of Port Authority funds for employee social events is an authorized expenditure.

### **IV. RECOMMENDATIONS**

#### **A. Procurement Activities**

1 **IG Recommendation:** Develop and implement written procedures to ensure that noncompetitive procurement actions totalling \$5,000 or more are processed in accordance with the requirements provided in Guam procurement laws and regulations, including the requirement for a written justification.

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 12

**Port Response: Concur**

**2 IG Recommendation: Develop and implement written procedures to ensure that purchase requests, including purchases of less than \$5,000, are consolidated to the maximum extent possible.**

**Port Response: Concur**

**3 IG Recommendation: Enforce the Port Authority's Policy Memorandum 09-88, Standard Operating Procedures for Procurement of Materials, which requires three price quotations for small purchases, and require documentation in support of efforts to obtain such.**

**Port Response: Concur, but see §II B above.**

**4. IG Recommendation: Develop and implement procurement plans to ensure that the Procurement Unit has sufficient lead time to process procurement requests in a competitive manner.**

**Port Response: Concur**

**5 IG Recommendation: Direct the Attorney General to take appropriate action for the Port Authority's improper use of public funds for social functions.**

**Port Response: Do not concur for the reasons cited in Section III B above.**

**B. Procurement Records**

**IG Recommendation. We recommend that the Chairman, Board of Directors, Port Authority of Guam, direct the General Manager to develop and implement written policies and procedures to ensure that purchase orders and contracts are entered into log books promptly and accurately and that all procurement documents are filed centrally and are safeguarded.**

**Port Response: Concur.**

Mr. Walter B. Haught  
UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE INSPECTOR GENERAL

May 20, 1997  
Page 13

As is clearly evident, we are in agreement on almost all recommendations made by your office. Reasons being, we ourselves had discovered certain deficiencies in policy and the appropriate changes were made subsequent to those fiscal years examined in your audit. On those other recommendations made which have not been addressed, and which we concur, rest assured of the Board implementing the prescribed guidelines and/or policies.

Our thanks to your office for bringing these matters to our attention and the recommended solutions to those items.

It has always been the Port's position to comply with all procurement laws and policies not to circumvent or disregard the same.

Should you have any questions, please do not hesitate in contacting me.

Very truly yours,



PAUL SOUDER  
CHAIRMAN, BOARD OF DIRECTORS

cc: Governor of Guam  
Senator Cariotta Leon Guerrero  
William A. Lewis, IG  
Ail Board Members  
General Manager

[NOTE: ATTACHMENTS REFERRED TO IN THE PORT AUTHORITY'S LETTER HAVE NOT BEEN INCLUDED BY THE OFFICE OF INSPECTOR GENERAL.]

## STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
A.1	Management concurs; additional information needed.	The Port Authority should provide a target date for developing and implementing written procedures for processing noncompetitive procurement actions in accordance with Guam laws and regulations. When completed, a copy of the written procedures should be provided to our North Pacific Region.
A.2	Management concurs; additional information needed.	The Port Authority should provide a target date for developing and implementing written procedures for consolidating purchase requests to the maximum extent possible. When completed, a copy of the written procedures should be provided to our North Pacific Region.
A.3	Implemented.	No further action is required.
A.4	Management concurs; additional information needed.	The Port Authority should provide a target date and the title of the official responsible for developing and implementing procurement plans. When completed, a copy of the procurement plans should be provided to our North Pacific Region.
A.5	Unresolved.	The Governor of Guam should provide a response to the recommendation indicating concurrence or nonconcurrence. If concurrence is indicated, an action plan should be provided stating when the Attorney General will provide an opinion on the use of public funds for social functions. If nonconcurrence is indicated, reasons for the nonconcurrence should be provided.

Finding/Recommendation Reference	Status	Action Required
B.1	Management concurs; additional information needed.	The Port Authority should provide a target date and the title of the official responsible for developing and implementing written procedures for recording purchase order and contract data in the logbooks and for filing and safeguarding all procurement documents. When completed, a copy of the written procedures should be provided to our North Pacific Region.

**ILLEGAL OR WASTEFUL ACTIVITIES  
SHOULD BE REPORTED TO  
THE OFFICE OF INSPECTOR GENERAL BY:**

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