OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAJOR PROCUREMENT AND MANAGEMENT ISSUES CONCERNING BOND PROCEED USE IN THE U.S. VIRGIN ISLANDS

This is a revised version of the report prepared for public release.

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

SEP 29 2017

To: Douglas Domenech
Assistant Secretary for Insular Areas

From: Mary Kendall
Deputy Inspector General

Subject: Management Advisory – Major Procurement and Management Issues Concerning Bond Proceed Use in the U.S. Virgin Islands
Report No. ER-IN-VIS-0015-2014-A

This report contains the results of the management advisory we issued as a result of our findings during an audit of the management of the U.S. Virgin Islands' Public Finance Authority (PFA) (Report No. ER-IN-VIS-0015-2014). During the audit, we identified poor procurement practices and major deficiencies in the management of projects paid for with bond proceeds. The magnitude of these deficiencies, which involved several Government of the Virgin Islands (GVI) agencies, warranted this advisory.

We reviewed 12 GVI capital improvement projects, valued at more than $25 million and financed with PFA-issued bond proceeds, and found serious procurement deficiencies and inconsistencies in how GVI's Department of Property and Procurement (DPP) solicited, evaluated, awarded, and administered contracts for these projects. Furthermore, we found that a GVI agency wasted valuable bond proceeds by purchasing potentially unusable land.

We made 10 recommendations to the GVI and the Virgin Islands Legislature and requested a response by July 31, 2017. Based on the responses, we consider seven recommendations resolved and implemented, two recommendations resolved but not implemented, and one recommendation unresolved.

The Office of Insular Affairs (OIA) is the U.S. Department of the Interior's coordinator for Federal policy and activities impacting insular area territories and governments. As such, we recommend that OIA monitor and track PFA's and the Legislature's efforts, including resolution and implementation of the recommendations contained in the attached management advisory.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, evaluation, and inspection reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 202-208-5745.

Attachment

OFFICE OF
INSPECTOR GENERAL
U.S.DEPARTMENT OF THE INTERIOR

SEP 29 2017

The Honorable Kenneth Mapp
Governor, U.S. Virgin Islands
No. 21-22 Kongens Gade
St. Thomas, VI 00802

The Honorable Myron D. Jackson
Senate President, U.S. Virgin Islands Legislature
P.O. Box 1690
St. Thomas, VI 00804

Subject: Management Advisory – Major Procurement and Management Issues Concerning Bond Proceed Use in the U.S. Virgin Islands
Report No. ER-IN-VIS-0015-2014-A

Dear Governor Mapp and Senator Jackson:

The U.S. Department of the Interior Office of Inspector General and the Office of the Virgin Islands Inspector General have completed an audit of the U.S. Virgin Islands Public Finance Authority (PFA) (Report No. ER-IN-VIS-0015-2014). During our audit, we uncovered poor procurement practices and major deficiencies in the management of projects paid for with bond proceeds; because of the magnitude of these deficiencies, which involved several Government of the Virgin Islands (GVI) agencies, we are reporting these findings to you in this letter.

We reviewed 12 GVI capital improvement projects, valued at more than $25 million and financed with PFA-issued bond proceeds, and found serious procurement deficiencies and inconsistencies in how GVI's Department of Property and Procurement (DPP) solicited, evaluated, awarded, and administered contracts for these projects. Furthermore, we found that a GVI agency wasted valuable bond proceeds by purchasing potentially unusable land.

We made 10 recommendations in this management advisory to improve procurement practices at DPP and other GVI agencies. If these recommendations are not implemented, GVI risks contributing to further mismanagement of bond proceeds, and thus will continue to waste millions of taxpayer dollars.

Procurement Deficiencies and Inconsistencies

According to its website, DPP "is committed to assisting government departments and agencies in their efforts to acquire goods and services by utilizing a procurement system or program that is fair, equitable, prompt, quality oriented, cost efficient and most importantly, law abiding." Our review of the 12 capital improvement projects, however, revealed that DPP has fallen far short of this commitment. For the projects we reviewed, DPP did not follow

procurement rules for competitively bidding construction contracts, guarantee that the evaluation and awarding process for contracts was fair, administer contracts in accordance with the Virgin Islands Code (V.I.C.), or plan projects carefully.

DPP Did Not Ensure Competitive Procurement for Construction Contracts

DPP's violation of procurement rules and regulations meant we could not verify that GVI has paid the most economical prices for its capital improvement projects. According to the V.I.C., purchases that exceed $50,000 must have a written contract (except in certain specific situations, such as emergencies), and the commissioner of DPP is responsible for securing competitive bids for GVI. DPP did not, however, enter into written contracts with seven vendors for renovations to the Government House building, nor did it competitively procure the vendors' services.

Furthermore, a former PFA executive director bypassed DPP's delegation as GVI's procurement arm when he awarded contracts to two of the seven vendors without DPP's involvement. The former executive director also awarded these two contracts without any evidence of competitive selection.

In addition, we were unable to determine whether DPP competitively procured a contractor for a separate project, the renovation of the historic Fort Christian on St. Thomas. Despite our numerous requests, officials with DPP and the Department of Public Works (DPW) did not provide sufficient procurement and contract documentation.

DPP's Contractor Selection Process Did Not Guarantee Equitable, Careful Evaluation or Awards

After reviewing contractor files at DPP, we found no assurance that DPP's contractor selection process was free from preferential treatment or that contracts were reviewed carefully to ensure the most economical awards. We found during our review that DPP did not use a formal ranking system for the construction contract selection process, nor did it document reasons for contract selection or verify claims made by the contractors in their bid documents. The following three examples illustrate the inadequacies of DPP's selection process, which leads us to question the process' overall integrity.

DPW Office Building Project. A DPP contract evaluation committee selected a St. Thomas construction company in April 2011 to renovate the DPW office building in St. Thomas, but the DPP evaluation committee members failed to complete and document the mandatory rating form, and the committee's report did not explain why or how it selected the winning contractor. A DPP staffer informed us that under the former gubernatorial administration, DPP did not use a formal ranking system to determine the most qualified bidder for construction contracts; this staffer also indicated that no meeting minutes had been recorded or written documentation prepared to support the contractor's selection.

In addition, a member of the evaluation committee for the DPW building project informed the committee during a meeting that one of the contractors under consideration was

also the contractor for his personal residence. After the committee's deliberation, this same contractor was awarded the contract. Although the committee member volunteered this information, he was not excluded from the evaluation committee; this raises concerns about his impartiality during the selection process. The DPW building project had cost overruns and was not built in accordance with the V.I.C. We discuss this project's issues in detail on p. 5. (See "Poor Planning and Other Issues Led to Significant Cost Changes and Uncertainty About Projects.")

Leonardo Trotman Drive Project. DPP did not award the Leonardo Trotman Drive road construction project to the lowest and more experienced bidder. Instead, the project was awarded to a contractor whose total bid was over $[redacted] higher. The procurement file had no documentation to support DPP's decision or its methodology for the selection. As the project progressed, costs for the initial contract increased from $2.3 million to $4.2 million. (We discuss project increases further on p. 5.)

Dorothea Fire Station Project. We examined a project DPP procured to renovate the Dorothea Fire Station and found multiple problems that could have been avoided if DPP had a functional selection process for contracts. A DPP official told us that DPP selected the project's original construction contractor based on the contractor's bid price and past performance (as recorded in the bid application), but we found that DPP did not verify that the contractor's assertions were correct or that past customers were satisfied with the contractor's performance. A member of the evaluation committee who reviewed the contract bid told us that some committee members were concerned about the contractor's experience, but the committee decided to "give him a chance" anyway.

The fire station project was plagued with problems due to this contractor's poor performance (see attachment for photos of poor construction). In the end, the contract was terminated, but only after the original contractor received payments totaling $1,072,345 (of which $49,240 was prepaid by GVI for construction materials and service the contractor never provided).

To rectify the construction problems and complete the project, DPP awarded a new contract for $1,097,715 to another contractor who had bid on the original project, and the new contractor eventually received payments totaling $1,134,266. This drove up the project's costs from the original $877,711 to $2,206,611. In the end, there were still issues with the quality of the building. We observed a leak at the base of the fire station's water supply cistern, which had caused mold to grow in the firefighter's sleeping quarters, as well as masonry hallway walls that were not laid straight (see photos in attachment).

A background check by DPP staff members would have revealed that the [redacted] of the firm that won the original contract had previously pled guilty to obtaining money under false pretenses and had been sentenced to 48 months in prison in February 1995; this information may have prevented GVI from contracting with his firm at all. In addition, if DPP had researched the original contractor's assertions in the bid application and checked his references for past problems, some of which are a matter of public record, the evaluation committee could have made a more informed decision. Even if DPP had still selected the original contractor, having

this information could have prompted DPP (and DPW, the agency tasked with managing the project) to be more vigilant in its oversight of the contractor.

Contracts Were Not Administered in Accordance With the V.I.C.

One of the projects we reviewed did not have an adequate funding source as required by 31 V.I.C., Chapter 23, Subsection 233. This section states that before issuing a contract, DPP must have a certified funding source equal to the contract amount; we found, however, that a funding certification for only $800,000 was approved for the initial $905,916 contract for the DPW building project. Supplemental contracts and change orders were later issued for the project, increasing the total cost to $1,631,227, but we could not find funding certifications for these changes either. Without an adequate certified funding source, there is a risk that projects will not be fully funded, which in turn places their completion (and taxpayer dollars) at risk.

We also found inconsistencies in how DPP and the Magen's Bay Authority guaranteed contractors' performance through performance bonds. DPP's "Process Overview & Guide" defines a performance bond as the surety furnished by a contractor to guarantee the completion of the contract's requirements within its original period and any approved extensions. Performance bonds are important because they guarantee quality and timely completion of a contractor's work. Under the V.I.C., contractors are required to submit performance bonds, but some have not done so. For example, we found one contractor that received a $2.3 million contract was required to submit a performance bond for 25 percent of the contract amount, but two other contractors that received contracts of $993,673 and $905,916 were not required to submit bonds. We also noted other project files that contained no evidence that DPP was meeting its responsibility for ensuring that performance bonds or sureties had been paid.

We found still more inconsistencies in the performance bond the Magen's Bay Authority required from the contractor for an improvement project at the Smith Bay Park beach. Our review revealed that the Authority issued a contract and notice to proceed 2 months before securing the performance bond—and after PFA had already paid out $153,682 for work conducted on the project. Furthermore, the Authority authorized PFA to reimburse the contractor $20,000 for closing costs associated with the performance bond. These actions violated contract terms and the V.I.C., which the Authority provided us with as their procurement guidelines, especially since performance bonds are direct costs for contractors and GVI should not reimburse them.

Furthermore, the same contractor that renovated the DPW office building and the Smith Bay Park project also worked on the Turnbull Library we discuss in our audit report (Report No. ER-IN-VIS-0015-2014). In the case of the library, this contractor did not submit a bond at all.

The importance of requiring a sufficient performance bond was apparent during our review of the Dorothea Fire Station construction project discussed on p. 3. The original contractor paid a bond of 10 percent of the initial $877,711 contract. According to a former Virgin Islands Fire Service official, this amount was applied to payments to the new contractor. The bond amount was not enough, however, to cover the costs of correcting the original

contractor's errors and completing the construction, and GVI had to enter into the $1,097,715 contract with the new contractor.

Poor Planning and Other Issues Led to Significant Cost Changes and Uncertainty About Projects

In our review of 12 GVI construction projects, we found that contract costs for four projects had increased by almost $6 million:

- In June 2011, the DPW building project started at $458,605 for the demolition, construction, and painting of one segment of the building. By the time the project was finished, however, its costs had ballooned by 433 percent to $2,445,296 and the entire building had been renovated. We also noted that the DPW building was renovated without conforming to V.I.C. requirements for accessibility to people with disabilities (see attachment).

- In April 2009, DPP awarded the $877,711 contract for the construction of the Dorothea Fire Station project, but the project's cost escalated to $2,206,611 (a 151 percent increase) due to the necessary remedial work.

- In March 2012, the Leonardo Trotman Drive project started at $2,329,990 but accumulated an additional $1,910,150 in costs due to a supplemental contract and 10 change orders. The total amount spent on the project as of April 2015 was $4,240,140, an increase of 82 percent.

- The Smith Bay Park project started at $1,707,575 but increased by 3 percent to $1,756,994 through five change orders.

We also found one construction project for which procurement costs went down over the course of the project. Although construction of the Coki Point Boardwalk was completed in three phases and had a total of six change orders, the project's costs decreased from $1,474,903 to $1,425,118.

In addition, we found that contracts for the DPW building project did not have definitive scopes of work that would clarify expected construction deliverables. For example, while other contracts we reviewed specified how many doors were to be replaced, the unit costs for the new doors, and the square footage of areas to be painted, the DPW contracts included only a monetary total for these items. With no way to verify that the correct number of doors had been purchased or that the walls had been painted, it would be difficult to monitor the contractor's performance and construction materials.

Wasted Bond Proceeds

A GVI agency, the Virgin Islands Housing Finance Authority, wasted $3.1 million on potentially unusable land when it purchased two parcels of land on St. John for an affordable housing development. Our review of the purchases disclosed features in the parcels that may

mean they cannot be used for their intended purpose. We also found that each of the properties were appraised several times, with vastly different values for the properties each time, meaning GVI cannot be certain the best price was paid for the land. Moreover, we found that the Authority purchased the parcels despite internal opposition to the purchases and concerns about the housing project's viability.

Conclusion and Recommendations

During our audit, we identified poor procurement practices, to include inequitable selection and noncompliance with the V.I.C., and major deficiencies in the management of projects paid for with bond proceeds. We made 10 recommendations to help the GVI address the identified deficiencies. If the GVI does not immediately implement our recommendations, its limited financial resources remain at significant risk for fraud, waste, and mismanagement.

We issued a draft version of this advisory to the Governor of the U.S. Virgin Islands and the U.S. Virgin Islands Legislature for response (see Attachments 2, 3, and 4).

Of the 10 recommendations we made, we addressed 9 recommendations to the Governor of the U.S. Virgin Islands, who designated the Department of Property and Procurement (DPP) and the Department of Public Works (DPW) to respond. DPP and DPW did not address our recommendations with concur, non-concur, or partially concur responses. We evaluated the responses and considered seven recommendations resolved and implemented, one recommendation resolved but not implemented, and one recommendation unresolved (see Attachment 5).

We addressed one recommendation to the Legislature, which stated that it will take action to implement our recommendation. We considered this recommendation resolved but not implemented (see Attachment 5).

We will refer all 10 recommendations to the Assistant Secretary for Insular Affairs to track implementation.

We recommend the Governor of the U.S. Virgin Islands direct DPP to:

1. Ensure that the commissioner of property and procurement adheres to all applicable laws when procuring construction services.

   DPP Response
   GVI and DPP have implemented several policies and procedures that address the concerns outlined in the report. The DPP commissioner is required by law to comply with the provisions of 31 V.I.C., Chapter 23 § 231 to 251, Title 31 of the Virgin Islands Rules and Regulations, and Executive Order No. 477-2016, which requires competitive bids for construction projects. DPP is currently updating its *Procurement Overview and Guide*, which will be distributed to all user agencies by December 31, 2017. The guide will reinforce procurement policies set forth in 31 V.I.C., Chapter 23.

DPW Response
No response was required from DPW.

OIG Reply
We consider this recommendation resolved and implemented.

2. Document and maintain in procurement files that all construction services are competitively procured, and include justification for the selection.

DPP Response
The deputy commissioner of procurement currently oversees the procurement process. Construction contracts are procured in accordance with Title 31, Chapter 23, §§ 231-251 of the V.I.C.. The lowest responsive responsible bidder is awarded a contract based on information supplied in the contractor's response to the invitation for bids. A complete contract file is comprised of invitations for bids, contractor responses, the evaluation committee report and recommendation, the awarded contract, contract payments, and change orders.

DPW Response
DPW will maintain procurement and construction files.

OIG Reply
We consider this recommendation resolved and implemented.

3. Ensure all participating members on construction evaluation committees are objective by avoiding even the appearance of favoritism.

DPP Response
DPP has established written procedures and assigned qualified staffers to the evaluation committees in both districts. The "Bid/RFP Evaluation Rules and Procedures" form ensures that the awarding process is fair and impartial to all bidders. The outcomes of the evaluation committees are reviewed by the DPP deputy commissioner and approved by the DPP commissioner.

DPW Response:
DPW will ensure that all of its employees who could potentially serve on an evaluation committee submit a full disclosure statement before any proceedings and recuse themselves in the event of an appearance of a conflict of interest.

OIG Reply
We consider this recommendation resolved and implemented.

4. Use and document the standardized selection-committee rating form for competitive selection of all construction contracts.

DPP Response
When using the invitation for bid procurement method, bidders respond to specific itemized requirements. DPP procures construction contracts under this method using itemized bid sheets. Therefore, the standardized selection-committee rating form is not required. DPP uses the standardized selection-committee rating form when the request for proposal procurement method is used.

DPW Response
DPW will ensure the standardized selection-committee rating form is included on DPW's checklist of documents for each project package. DPW will also ensure it uses the form whenever it is involved in competitive selections.

OIG Reply
We consider this recommendation unresolved because DPP is not following its own documented procedures.

5. Verify qualified project bidders' claims concerning past performance, work experience, financial condition, and other relevant factors.

DPP Response
DPP verifies bidders' claims regarding past performance and work experience during the evaluation and selection process. It is mandatory that DPW, the engineering arm of the GVI, sit on the evaluation committee for construction projects. Because the vast majority of previous work would include Government-funded projects, DPP is in a unique position to verify and evaluate bidders' claims during the evaluation and selection process. The DPP Deputy Commissioner oversees this standard process.

DPW Response
DPW will require project managers to submit contractor performance evaluation reports to DPP at predetermined intervals to judge overall contractor performance on projects and ultimately assist in the contractor evaluation process.

OIG Reply
We consider this recommendation resolved and implemented.

6. Require that all construction and capital improvement projects funded through bond proceeds be administered and processed through GVI's procurement path.

DPP Response
All construction and capital improvement projects funded through bond proceeds for the Executive Branch of the GVI fall under the purview of DPP, and all procurement must align with the required processes. The DPP deputy commissioner oversees advertisements for solicitation.

DPW Response
No response was required from DPW.

OIG Reply
We consider this recommendation resolved and implemented.

7. Avoid entering into contracts with contractors that have not submitted performance bonds.

DPP Response
DPP requires that all construction projects are guaranteed. Under local law, specifically 31 V.I.C., Chapter 23, § 236a, "The Preferred Bidders Act," acceptable forms of bid alternatives are available to qualifying preferred bidders in the territory. Therefore, DPP cannot avoid entering into contracts with contractors who have failed to provide performance bonds when the contractor has supplied an acceptable form of bond alternative.

DPW Response
No response was required from DPW.

OIG Reply
We consider this recommendation resolved and implemented. We acknowledge that the V.I.C. provides alternative guarantee for preferred bidders. We found, however, that of the 12 construction projects we reviewed, DPP did not enforce traditional performance bonds or any type of alternative guarantees in 3 instances. DPP must enforce performance bonds or alternative guarantees available to preferred bidders to recover costs or losses if a contractor fails to perform.

8. Establish a policy to determine bonding amounts based on contractors' risk.

DPP Response
DPP will work with DPW to develop a policy that identifies the factors required to determine a contractor's level of risk and the associated bond amounts based on that level of risk. DPP's assistant commissioners will oversee the development of this policy before December 31, 2017.

DPW Response
No response was required from DPW.

OIG Reply
We consider this recommendation resolved but not implemented.

9. Develop and implement policies and procedures for adequate planning prior to soliciting bids for construction contracts. This should include ensuring that architectural plans and specifications are completed, all required tasks are clearly defined and included in the proposed scope of construction work, and realistic cost estimates are developed before issuing bid solicitations.

DPP Response
DPP currently has built-in checks and balances to ensure adequate planning before soliciting bids for construction contracts. GVI agency heads must submit a signed justification letter requesting formal advertisement for projects that also includes specifications and drawings approved by DPW, an in-house cost estimate approved by DPW, a valid purchase order, and a project time schedule. DPP will not advertise a construction project unless these minimum requirements are met.

DPW Response
Projects developed by design consultants require the consultants to provide professional liability insurance. Contract modifications are a necessary part of the construction process and DPW cannot possibly foresee all increases. DPW will, however, be vigilant in the administration of all design and construction projects.

OIG Reply
We consider this recommendation resolved and implemented

In addition, we recommend that the Virgin Islands Legislature:

10. Amend 31 V.I.C., Chapter 23, § 236a(c & d) to include minimum thresholds for performance bonding requirements for preferred bidders to limit GVI's exposure to loss if the contractor does not perform.

Virgin Islands Legislature Response
The 32nd Legislature will be crafting the necessary legislation to address this recommendation.

OIG Reply
We consider this recommendation resolved but not implemented.

If you have any questions as you review this report, please contact me at 202-208-5745 or Virgin Islands Inspector General Steven van Beverhoudt at 340-774-3388.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

Sincerely,

Mary L. Kendall
Deputy Inspector General
U.S. Department of the Interior

Steven van Beverhoudt
Virgin Islands Inspector General

Attachments

Attachment 1: Site Photos Showing Construction Deficiencies

Figure 1. (Source: OIG.)

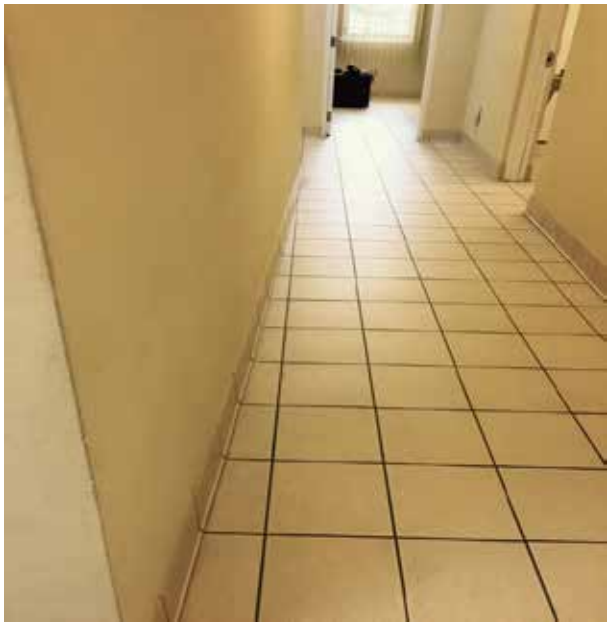

Figure 2. (Source: OIG.)

During our June 2015 site visit to the Dorothea Fire Station to observe the results of the $2.2 million renovation, we saw a leak at the base of the fire stations' water supply cistern, which had caused mold to grow in the firefighters' sleeping quarters on the other side of the wall (see Figure 1). We also observed that one of the walls in the hallway was crooked (see Figure 2).

Figure 3. (Source: OIG.)

When we visited the DPW office building, which had been renovated at a cost of nearly $2.9 million, we observed that it did not conform to V.I.C. requirements that it be fully

accessible to people with disabilities. The building has two parking spaces for people with disabilities. We noted a small wheelchair ramp in one of the spaces, but a car parked in either space would block it (see Figure 3; note the ramp at the upper right of the image). In addition, there was no access aisle between the spaces, so if both spaces were occupied, a person using a wheelchair or other mobility aid would not be able to get out of his or her car.

We also noted that the two-story building had no elevator, thus preventing individuals with disabilities from accessing the second floor, nor did it have a button-activated entrance.

Attachment 2: DPP Response to the Management Advisory

The DPP response begins on page 15.

Department of Property&Procurement
Government of the United States Virgin Islands
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MEMORANDUM

To: The Honorable Kenneth E. Mapp
Governor, USVI

Thru: Emile A. Henderson, III, Esq.
Chief Legal Counsel, Office of the Governor

From: Lloyd T. Bough, Jr., Commissioner

Date: August 24, 2017

Re: U.S. Department of the Interior – Office of the Inspector General's Management Advisory – Report No. ER-IN-VIS-0015-2014-A: Major Procurement and Management Issues Concerning Bond Proceed us in the U.S. Virgin Islands

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The Inspector General's audit report (Report No. ER-IN-VIS-0015-2014) ("Report") outlined several deficiencies to be addressed by the Department of Property and Procurement.

The Government of the Virgin Islands ("GVI" or "Government") and the Department of Property and Procurement ("DPP" or "the Department") have implemented several policies and procedures, and reinforced existing policies that address the concerns outlined in the Report. On October 1, 2015, the Department published Policy No. 012016 that was issued to all Government agencies. The purpose of this policy was to reinforce guidance, promote awareness and ensure consistency throughout the GVI with processes and procedures that are consistent with the Virgin Islands Code and the Department of Property and Procurement guidelines. DPP further reinforced the publication of these policies by providing training seminars to user agencies.

Additionally, DPP has established written procedures and assigned qualified staffers to the evaluation committee in both districts. The outcome of those evaluations are then reviewed by the Deputy Commissioner of Procurement who has the authority to act in accordance with the policy. The Deputy Commissioner then forwards the evaluations along with any recommendations to the Commissioner for approval.

The Department is in the final phase of updating its Procurement Overview and Guide which will be published on the Department's website and distributed to all user agencies before the end of the first quarter of Fiscal Year 2018. The revised guide will reinforce the policies and procedures of the Department of Property and Procurement which are based on the requirements of Title 31, Chapter 23 of the Virgin Islands Code, and the Virgin Islands Rules and Regulations and Executive Order No. 477-2016, dated March 2, 2016.

The Government of the Virgin Islands thanks the Department of the Interior – Office of the Inspector General for the opportunity to respond to the draft Report and we submit the following responses to the noted deficiencies within the Report:

1. *DPP did not Ensure Competitive Procurement for Construction Contracts*

GVI's Response:

This deficiency is based on the assertion that the Government failed to enter into written contracts with seven vendors for renovations to Government House and the auditors were unable to verify whether the renovation of Fort Christian on St. Thomas was competitively procured. Without additional information, the Department is unable to verify or refute the allegations regarding the seven projects which were procured without competition.

The renovation of Fort Christian was solicited through RFP No. 011-2014(C). Three companies responded to RFP No. 011-2014(c), two of which were deemed non-responsive. A contract was negotiated with the lone responsive bidder.

2. *DPP's Contractor Selection Process did not Guarantee Equitable, Careful Evaluation or Awards*

GVI's Response - DPW Office Building, Leonardo Trotman Drive Project, Dorothea Fire Station

The above deficiency is based on the assertion that: (i) a formal ranking system for the construction contract selection process; (ii) reasons for selection of a particular contractor were not documented; and (iii) claims made by contractors in their bid documents were not verified. However, based on DPP's review of the projects reviewed hereunder, the Request for Proposals (RFP) process was utilized and not the Invitation for Bids process. The RFP process allows for negotiation with the bidders and under that process the proposal which offers the best value and which is most advantageous to the Government is selected for the negotiation. During the time period in question, the RFP process was used for the negotiation of construction contracts, the standard rating forms utilized for professional services contracts are not used, because there was an itemized bid sheet. The RFP for construction was utilized so that costs could be negotiated. It is a requirement that the reasons for recommending a particular bidder are listed and more detailed explanations are required in the Evaluation Committee's report.

The Report indicates that the Leonardo Trotman Drive Project was not awarded to the lowest and more experienced bidder, the selected contractor's bid was $[redacted] higher, the file did not

contain documentation to support the selection of this contractor and the contract price increased from $2.3 million to $4.2 million.

First, please note that this project was advertised through the RFP process and not the IFB process. Under the RFP process the Government selects the contractor whose proposal presents the best value and is most advantageous to the Government, lowest quoted price does not always equal best value. Further, while the Report alleges the project was not awarded to the more experienced bidder, the Report does not explain its definition of experienced or the factors used to determine that there was in fact a more experienced bidder which was not awarded the contract. The prices in a construction project are likely to change for a number of reasons, to include inflation and unforeseen site conditions. In this instance RFP-0016-2011 included a base price unit bid and an alternate bid schedule. The steep increase in price resulted primarily because the Government called for items on the alternate bid schedule.

The original contract price noted in the Report for the Dorothea Fire Station is for demolition only and that number did not include the price for construction of a new fire station. However, the experience with the original contractor for the Dorothea Fire Station will not be repeated due to thorough analysis and evaluation procedures. The Government advertised the project again in 2012 through RFP-0019-2012. There were two responses and one was deemed not responsive. The Government negotiated a contract with the lone responsive bidder and while that was coincidentally the other bidder on the original solicitation, the contract was not awarded to this entity by default. This project was re-advertised, and the contractor was selected in accordance with the Department rules and regulations.

3. *Contracts were not administered in accordance with the V.I.C.*

GVI's Response

The Government of the Virgin Islands is fully cognizant of the risks associated with failing to verify an adequate funding source during the contracting process and before the Government is obligated. Therefore, with the issuance of Executive Order No. 477-2016, it is absolutely mandatory for an adequate funding to be identified before the execution of any contract or change order.

With respect to any inconsistencies identified through the use of performance bonds, please recognize the provisions of the Virgin Islands Preferred bidders' Act, codified in Title 31, Chapter 23, Section 236a, allows for other forms of project guarantees in lieu of bonds for contractors who qualify as preferred bidders. In addition, this statutory provision allows for a cap of 25% of the contract price for the performance bond, if that method of guarantee is utilized. Preferred Bidders can also use cash escrow accounts or lines of credit to secure performance among other methods.

4. *Poor Planning and other Issues Led to Significant Cost Changes and Uncertainty about Projects*

GVI's Response

The Report indicates that after reviewing twelve construction projects, four of the projects had increased costs. As indicated earlier, the prices in a construction project can change for a number of reasons, including unforeseen circumstances. The Department is cognizant that proper planning will help alleviate some but not all issues related to price. For example the increase in contract price for the Leonardo Trotman Drive Project resulted from two factors: (i) price inflation and unforeseen circumstances and (ii) the solicitation for this project contained an alternate bid, for additional options or alternate methods. During the course of construction, the Government called for items in the alternate bid. An increase in the contract amount of $1.3M was covered by a supplemental contract for the items ordered on the alternate bid schedule. In addition, although there were ten change orders associated with the project five of those change orders were for time, with no increase in the price of the project.

In addition, the Government of the Virgin Islands offers the following responses to the recommendations contained in the Report:

Recommendation No. 1

Ensure that the Commissioner of Property and Procurement adheres to all applicable laws when procuring construction services.

GVI Response

The Commissioner of the Department of Property and Procurement is required by law to comply with the provisions of Title 31, Chapter 23, Sections 231-251 and Title 31 of the Virgin Islands Rules and Regulations and Executive Order No. 477-2016 and competitive bids are required for construction projects. In addition, all contracts, including construction contracts must be reviewed and approved for legal sufficiency by Department of Justice, a part of that review includes ensuring the procurement process is followed in accordance with the law and all contracts are subject to the approval of the Governor. Therefore, the contract review process contains inherent checks and balances to ensure the Commissioner of Property and Procurement is following the procurement laws. This is the current practice.

Recommendation No. 2

Document and maintain in procurement files that all construction services are competitively procured, and include justification for the selection.

GVI Response

Construction contracts are to be procured through the requirements of Title 31, Chapter 23, Sections 231-251 and the regulations thereunder. The lowest responsive responsible bidder is

awarded the contract based on the information supplied in the contractor's response to the Invitation for Bids. A complete file to include the Invitation for Bids, Responses thereto from Contractors, the Evaluation Committee's report and recommendation and the contract with the selected contractor, and all contract payments and change orders are mandatory components of the contract file. The Deputy Commissioner of Procurement will oversees this process. This is the current practice.

Recommendation No. 3

Ensure all participating members on construction evaluation committee are objective by avoiding even the appearance of favoritism.

GVI Response

All voting members of the evaluation committee must execute the "Bid/RFP Evaluation Rules and Procedures" which is a form to ensure that:

- No personal interest or relationship exists with bidders, including business or financial ties. If any such relationship exists, it must be declared to the Committee Chairperson prior to participation in the evaluation process.
- No member shall have personal contact with any vendors. Any such contact shall be strictly through the Commissioner of Property and Procurement or his designee.
- No personal gifts and/or gratuities shall be accepted from prospective bidders.
- All committee deliberations will be kept in confidence.
- Evaluations performed will be fair and impartial.
- All competitive bidders will be granted equal consideration.
- A recommendation will be made that will be in the best interest of the Government of the Virgin Islands, one that is fair and impartial to all bidders.

Recommendation No. 4

Use and document the standardized selection committee rating form for competitive selection of all competitively procured and include justification for the selection.

GVI Response

Construction projects are procured through the use the Invitation for Bids, which requires bidders to respond to specific itemized requirements. The lowest responsive and responsible bidder is selected. Because construction contracts are procured using itemized bid sheets, a standard selection committee rating form is not required. The referenced form is used during the Request for Proposals process, which does not utilize itemized bid sheets. The Deputy Commissioner of Procurement oversees the procurement of construction projects. This is the current standard practice.

Recommendation No. 5

Verify qualified project bidders' claims concerning past performance, work experience, financial condition, and other relevant factors.

GVI Response

Bidders' claims regarding past performance, and work experience are verified during the evaluation and selection process. It is mandatory that the Department of Public Works, the Government's engineering arm sits on the evaluation committee for construction projects. Since the vast majority of previous work would include Government-funded projects, the Department of Property and Procurement is in a unique position to verify and evaluate bidders' claims during the evaluation process. The Deputy Commissioner of Procurement oversees this process. This is the standard current practice.

Recommendation No. 6

Require that all construction and capital improvement projects funded through bond proceeds be administered and processed through the GVI's procurement path.

GVI Response

All construction and capital improvement projects funded through bond proceeds for the Executive Branch of the Government of the Virgin Islands fall under the purview of the Department of Property and Procurement and all procurement must align with the required processes. There are no exceptions to this process. All construction projects require advertisement and advertisement of projects for the Executive Branch can only occur through the Department of Property and Procurement. The Deputy Commissioner of Procurement oversees advertisements for solicitation.

Recommendation No. 7

Avoid entering into contracts with contractors that have not submitted performance bonds.

GVI Response

It is a standard requirement of the Department of Property and Procurement that all construction projects are guaranteed. Under local law, specifically Title 31, Chapter 23, Section 236a, the Preferred Bidders Act, there are acceptable forms of bid alternatives available to qualifying preferred bidders in the Territory. Therefore, DPP cannot commit to avoiding entering into contracts with contractors who have failed to provide performance bonds, when an acceptable form of bond alternative has been supplied. Under existing local law, traditional performance bonds are merely one form of project guarantee. The Deputy Commissioner of Procurement oversees this process.

Recommendation No. 8

Establish a policy to determine bonding amounts based on contractors' risk.

GVI Response

The Department of Property and Procurement will work in conjunction with the Department of Public Works to develop a policy to determine the factors to be considered in determining a contractor's level of risk and the associated bond amounts based on the risk level. The Assistant Commissioners of DPP will be responsible for overseeing the development of this policy before the end of the first quarter in FY2018.

Recommendation No. 9

Develop and implement policies and procedures for adequate planning prior to soliciting bids for construction contracts. This should include ensuring that architectural plans and specifications are completed, all required tasks are clearly defined and included in the proposed scope of construction work, and realistic cost estimates are developed before issuing bid solicitations.

GVI Response

The above recommendation is part of the Department's basic requirements for advertising a construction project and there are built-in checks and balances to ensure the above requirements are met. In order for an Executive Branch Department to procure a construction project, that department is required to submit to the Department of Property and Procurement a signed justification letter from the Agency Head, requesting formal advertisement of a specific project. This request must be accompanied by:

- Specifications and drawings approved by the Department of Public Works;
- An in-house cost-estimate, i.e. scope of work/bid sheet, stamped by the Department of Public Works Division of Engineering along with a blank bid sheet;
- A valid purchase order that is at least equal to the engineers estimate of the project or a letter from the Public Finance Authority stating the specific project name and funding amount available for the project; and
- The total completion time of the project.

A construction project will not be advertised unless the above minimum requirements are met. This is an ongoing practice and is overseen by the Department's Deputy Commissioner of Procurement.

Recommendation No. 10

Amend 31 V.I.C. Chapter 23 § 236a(e) & (d) to include minimum thresholds for performance bonding requirements for preferred bidders to limit GVI's exposure to loss if the contractor does not perform.

GVI Response

DPP is of the opinion that upon developing the policy identified in Recommendation No. 8 for determining contractor risk level and associated bond requirements, the issue of protecting the GVI against loss will be simultaneously addressed.

Conclusion

The Department of Property and Procurement takes the findings of the subject Report very seriously and is on a continued mission to ensure effective, efficient and compliant procurement procedures for the Government of the Virgin Islands. We are encouraged by our course of action over the past few years and the Government's commitment to transparent and fair procurement. In consideration of the recommendations above and the actions we have taken thus far and will continue to take, this Department will procure and award contracts in a fair and consistent manner to the benefit of the Government and the People of the Virgin Islands.

Attachment 3: DPW Response to the Management Advisory

The DPW response begins on page 24.

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

DEPARTMENT OF PUBLIC WORKS
8244 Sub Base
St. Thomas, U.S. Virgin Islands 00802

OFFICE OF
THE COMMISSIONER

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August 24, 2017

Honorable Kenneth E. Mapp
Governor of the U.S. Virgin Islands
Office of the Governor
21-22 Kongens Gade
Charlotte Amalie, VI 00802

Re: Draft Management Advisory – Major Procurement and Management Issues Concerning Bond Proceed Use in the U.S. Virgin Islands Report No. ER-IN-VIS-0015-2014-A

Dear Governor Mapp:

I have conducted a review of the Inspector Generals' audit and provide the following recommendations and responses to the findings pertaining directly to the Department of Public Works:

(1.) The deficiencies outlined in the report in reference to the renovation of the DPW building are duly noted; specifically, the reference to the building not being completely ADA compliant. In the short term, DPW will be conducting re-striping of the parking area to more clearly identify the ADA parking areas to ensure adequate clearance for physically challenged individuals. Further, a complete assessment of the facility will be conducted to determine what is required to bring the building into full compliance.

(2.) To address the issue of integrity, DPW will insist and ensure that all of its employees who could potentially serve on an evaluation committee recuse him/herself if situations could appear to be a conflict of interest.

(3.) In direct response to the Inspector Generals' recommendations, I provide the following matrix:

	OIG's Recommendation	DPW's Response
1	Ensure that the commissioner of property and procurement adheres to all applicable laws when procuring construction services	No comment
2	Document and maintain in procurement files that all construction services are competitively procured, and include justification for the selection.	DPW will keep all construction related files. Copies of procurement files will also be maintained.

3	Ensure all participating members on construction evaluation committees are objective by avoiding even the appearance of favoritism	DPW will insist and ensure that all of its employees who could potentially serve on an evaluation committee submit a full disclosure statement prior to any proceedings and subsequently, recuse him/herself if situations could appear to be a conflict of interest.
4	Use and document the standardized selection-committee rating form for competitive selection of all construction contracts	DPW will ensure that this rating form is included on our checklist of documents which DPW will create for each project package and ensure that it is utilized at every competitive selection that DPW is a part of.
5	Verify qualified project bidders' claims concerning past performance, work experience, financial conditions, and other relevant factors.	DPW project managers will be required to submit contractor performance evaluation reports. These reports will be submitted to DPP at pre-determined intervals to judge contractor overall performance on projects and ultimately assist in the contractor evaluation process.
6	Require that all constructions and capital improvement projects funded through bond proceeds be administered and processed through GVI's procurement path.	No comment
7	Avoid entering into contracts with contractors that have not submitted performance bonds	No comment
8	Establish a policy to determine bonding amounts based on contractors' risk	No comment
9	Develop and implement policies and procedures for adequate planning prior to soliciting bids for construction contracts. This should include ensuring that architectural plans and specifications are completed, all required tasks are clearly defined and included in the proposed scope of construction work, and realistic cost estimates are developed before issuing bid solicitations.	DPW currently adheres to the policies and procedures. Projects developed by Design Consultants require the consultants to provide Professional Liability Insurance (Errors and Omissions). Unfortunately, Contract Modifications are a necessary part of the construction process and the Department cannot possibly foresee all increases. However, DPW will be vigilant in the administration of all design and construction projects in order to limit the government's exposure.
10	Amend 31 V.I.C., Chapter 23 § 236a (c & d) to include minimum thresholds for performance bonding requirements for preferred bidders to limit GVI's exposure to loss if the contractor does not perform.	DPW concurs with this recommendation and also suggests that along with minimum thresholds, project complexity be considered as part of the decision making process in determining bonding requirements for preferred bidders.

In closing, I trust the information provided herein will prove beneficial and I remain available to assist in any way possible.

Sincerely,

Nelson Petty, Jr., P.E.
Acting Commissioner

Attachment 4: The Legislature's Response to the Management Advisory

The Legislature's response begins on page 28.

Legislature of the Virgin Islands

CAPITOL BUILDING, P.O. BOX 1690
ST. THOMAS, U.S. VIRGIN ISLANDS 00804
(340) 774-0880

The Honorable
Myron D. Jackson
President, 32nd Legislature

August 11, 2017

Ms. Mary L. Kendall
Deputy Inspector General
U.S. Department of the Interior
Via E-mail: ais_report@doioig.gov

Mr. Steven van Beverhoudt
Virgin Islands Inspector General
Via E-mail: svanbeverhoudt@viig.org

Dear Ms. Kendall and Mr. van Beverhoudt:

My review of Report No. ER-IN-VIS-0015-2014 and ER-IN-VIS-0015-2014-A reveals the following recommendations for the Legislature of the Virgin Islands:

1) Amend the legislation that created the PFA to prohibit PFA from paying expenses unrelated to its mission.
2) Amend the legislation that created the PFA to stop PFA from administering construction contracts for GVI and to require all construction and capital improvement projects funded through bond proceeds be administered and processed through the GVI's central procurement path.
3) Amend the legislation that created the PFA to provide a greater level of legislative scrutiny and public disclosure of day- to- day operations, such as ensuring the Board of Directors is impartial and requiring accountability for bond proceeds and budgetary funds through periodic reports.
4) Amend 31 V.I.C., Chapter 23 §236a (c & d) to include minimum thresholds for performance bonding requirements for preferred bidders to limit VI's exposure to loss if the contractor does not perform.

By this letter I advise you that the 32d Legislature will be crafting the necessary legislation to address the four recommendations enumerated above.

Sincerely

Myron D. Jackson
Senate President

Attachment 5: Recommendation Status

Recommendation	Status	Action Required
1	Resolved and Implemented	No further action is required.
2	Resolved and Implemented	No further action is required.
3	Resolved and Implemented	No further action is required.
4	Unresolved	The referenced policy requires that "[e]ach member of the Evaluation Committee shall independently complete the selection committee rating form." The guide does not make provisions for the substitution of an itemized bid sheet instead of a rating form. Please provide OIA with evidence that DPP will use the selection rating form in all instances. We will refer this recommendation to OIA to track implementation.
5	Resolved and Implemented	No further action is required.
6	Resolved and Implemented	No further action is required.
7	Resolved and Implemented	No further action is required.
8	Resolved but Not Implemented	Please provide OIA with established policy that identifies the factors to consider when determining a contractor's level of risk and the associated bond amounts based on that level of risk. We will refer this recommendation to OIA to track implementation.
9	Resolved and Implemented	No further action is required.
10	Resolved but Not Implemented	Please provide OIA the amended legislation that provides minimum thresholds for performance bonding requirements for preferred bidders. We will refer this recommendation to OIA to track implementation.

Report Fraud, Waste, and Mismanagement

Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to departmental or Insular Area programs and operations. You can report allegations to us in several ways.

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