

**Department of Public Works'
Landfill Design Contract**

Performance Audit

February 11, 2004 through December 31, 2007

**OPA Report No. 08-06
September 2008**



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OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Department of Public Works' Landfill Design Contract

Report No. 08-06, September 2008

The Department of Public Works (DPW) did not have controls to ensure that the landfill design contract, Project No. DPW-SW-2004 (003), was procured according to Guam procurement laws and regulations, or administered to comply with contract provisions and best practices. Specifically, because of minimal documentation, monitoring, training, and planning, the integrity of the procurement process cannot be ascertained. No independent government estimate exists to justify that DPW contracted for necessary services at a fair and reasonable price; DPW Solid Waste Management Division (SWMD) did not scrutinize contract invoices prior to approving payments; and contract funding resulted in DPW appropriation shortfalls.

In a February 2004 Consent Decree, the United States Environmental Protection Agency ordered the government of Guam to timely correct Clean Water Act violations or face penalties. The Consent Decree ordered the closure of the Ordot Dump and a new landfill draft plan. DPW's SWMD was tasked to ensure compliance with the Consent Decree.

In May 2005, a private engineering firm (Consultant) was awarded a \$1.3 million (M) contract for Tasks I and II to develop design plans, specifications, and estimates, as well as other supporting data for the new landfill. Concerns were raised by five senators after the contract grew to \$6.7M and was amended six times in 19 months to include Tasks III and IV.

Several of the senators' concerns were addressed in a separate review by the Office of the Attorney General (OAG) which found that: (1) DPW's planning the project in phases and tasks was not unusual; (2) the contract amendments did not violate the terms of the original contract or any procurement law; (3) construction of the temporary access road did not circumvent procurement law; and (4) DPW could use other funding sources available and does not necessarily need specific appropriation to open a new landfill. Our audit did not duplicate OAG's review.

Integrity of Procurement Process Cannot be Ascertained

We were unable to achieve our audit objective related to determining whether the landfill design contract was procured in compliance with Guam procurement laws and regulations because DPW did not maintain complete records of the procurement process as required by such laws and regulations. After an internal reorganization and staff turnover, procurement files were misplaced and were not available for our review. Therefore, we were unable to ascertain whether the Consultant was selected in a competitive environment. We did not find documentation, such as transmittals of the pre-proposal conference summary, an RFP addendum to all prospective bidders, and a copy of the sub-consultant's license to practice issued by the Professional Engineers Architects and Land Surveyors Board. Given the magnitude of the contract, controls over the custody of records should have been in place to preserve the integrity of the procurement process.

Lack of Independent Government Estimate

An independent government cost estimate is prepared by the government in advance and independent of the contractor's proposal. This estimate can serve as an objective baseline in evaluating the reasonableness of the Consultant's proposed price. Based on the negotiation memorandums we reviewed, DPW may have negotiated the Consultant's proposed contract price downward. However, we did not find an independent government estimate justifying the negotiated price was only for

necessary services priced fairly and reasonably. There was also no justification as to why the cumulative costs for Phase II (Amendments Nos. 2 through 6 totaling \$5.4M) exceeded the negotiated price of \$2.3M by \$3.1M or 135 percent.

Contract Invoices Not Scrutinized Before Payment

As of December 2007, progress payments approved by DPW and processed by DOA totaled \$4.2M to the Consultant. We tested 15 progress payments totaling \$3.5M and found that while duties were segregated, as suggested by best practices, DPW SWMD did not scrutinize the invoices to ensure that charges were accurate and reasonable. Additionally, we found that progress payments were processed without ensuring compliance with certain contract provisions, such as the application of a 10 percent retainage rate.

Contract Funding Requirements Resulted in DPW Shortfalls

The \$6.7M landfill design contract was not funded from the onset. We found that prior to BBMR's clearance, \$5M in intra-agency transfers were made to four of the five accounts tapped for funding the landfill design contract.

Of the \$5M transferred, \$3M came from other DPW divisions' salaries and benefits accounts. The remaining \$2M was transferred from the Director's Office contractual services account to pay the Consultant \$1.4M for a settlement agreement. The Consultant filed a claim against the government of Guam for work already done. In anticipation of the Governor's signature on Amendment No. 2, DPW authorized the Consultant to proceed on the scope of work. However, the Governor did not sign the amendment because funding could not be identified.

The funding transfers also affected other government of Guam agencies. The Governor exercised his transfer authority to alleviate DPW shortfalls by transferring \$917,000 in FY 2005 and \$637,000 in FY 2006. We did not find any Governor's transfers to DPW in FY 2007, but internal transfers to fund the contract continued.

Conclusion and Recommendations

Due to the government of Guam's failure to comply with the Consent Decree, federal receivership was appointed in March 2008. Our audit reviewed the period before the appointment of the Receiver. The Receiver was appointed to oversee DPW's SWMD and to perform all acts necessary to expeditiously comply with the Consent Decree. Although Consent Decree tasks will be carried out by a Receiver, we recommend DPW improve its process to award and administer contracts by adopting best practices, implementing internal controls, and providing guidance and training to staff. These recommendations can aide DPW in assuring contracts comply with procurement laws and regulations; contractors fulfill contract terms and conditions; and thorough documentation validating the accomplishment of objectives is secured and maintained. With the appointment of a Receiver, the deficiencies identified should be mitigated.

Lack of DPW Response

During our August 19th exit conference, the DPW Director indicated general concurrence with the draft report's findings and recommendations and that a response would be submitted by August 29, 2008. However, as of the date of this report, the OPA has not received a response. The Receiver generally concurred with our recommendation.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Contents

	Page
Introduction.....	1
Results of Audit	4
Integrity of Procurement Process Cannot be Ascertained	4
Lack of Independent Government Estimate	5
Contract Invoices Not Scrutinized Before Payments	6
Reasonableness of Consultant's Claims Could Not be Verified	7
Payments Processed Without Ensuring Compliance with Contract Provisions	8
Contract Funding Resulted in DPW Appropriation Shortfalls	9
Conclusion	11
Recommendations	12
Management Response and OPA Reply	13
Appendices:	
1: Classification of Monetary Impact.....	14
2: Audit Scope and Methodology.....	15
3: Prior Audit Coverage	16
4: Timeline of Events	17
5: Best Practices	18
6: Internal Control Procedures	21
7: Details of Funding Transfers	23
8: Status of Audit Recommendations	26



Introduction

This report presents the results of our performance audit of the Department of Public Works (DPW) design contract for the New Municipal Solid Waste Landfill Facility, Project No. DPW-SW-2004 (003). Our audit objectives were to determine whether the design contract was procured in compliance with applicable Guam procurement laws and regulations and was administered in compliance with contract provisions and best practices.

This audit was initiated at the request of five senators of the 29th Guam Legislature. During our audit, another senator approached the Office of the Attorney General (OAG) with questions about the contract. The OAG responded to those questions and found that (1) DPW's planning of the project in phases and by tasks was not unusual; (2) contract amendments did not violate the terms of the original contract or any procurement law; (3) construction of the temporary access road did not circumvent procurement law; and (4) DPW could use other available funding sources and did not need a specific appropriation to open a new landfill. The OAG's review addressed several of the concerns raised by the senators who approached OPA. Our audit did not duplicate OAG's review.

Refer to Appendices 2 and 3 for the scope, methodology, and prior audit coverage.

Background

On February 11, 2004, the government of Guam and the United States Environmental Protection Agency (U.S. EPA) signed a Consent Decree ordering the government of Guam to correct violations of the Clean Water Act in a timely manner or face penalties. The Consent Decree ordered the closure of the Ordot Dump and the termination of all discharges into the Lonfit River. The Consent Decree also ordered the opening of a new solid waste landfill and the development and implementation of recycling and hazardous waste strategies to reduce the volume of materials disposed in the landfill. The Consent Decree required a draft plan for the design, construction, and operation of the new landfill by August 4, 2005.

The Governor designated DPW as the entity to meet the requirements of the Consent Decree. Specifically, the Solid Waste Management Division (SWMD) within DPW was tasked to ensure compliance with the Consent Decree for the closure of the Ordot Dump and operation of a new landfill. SWMD is also responsible for providing a safe and healthy environment through the collection and disposal of trash, rubbish, and other debris on island.

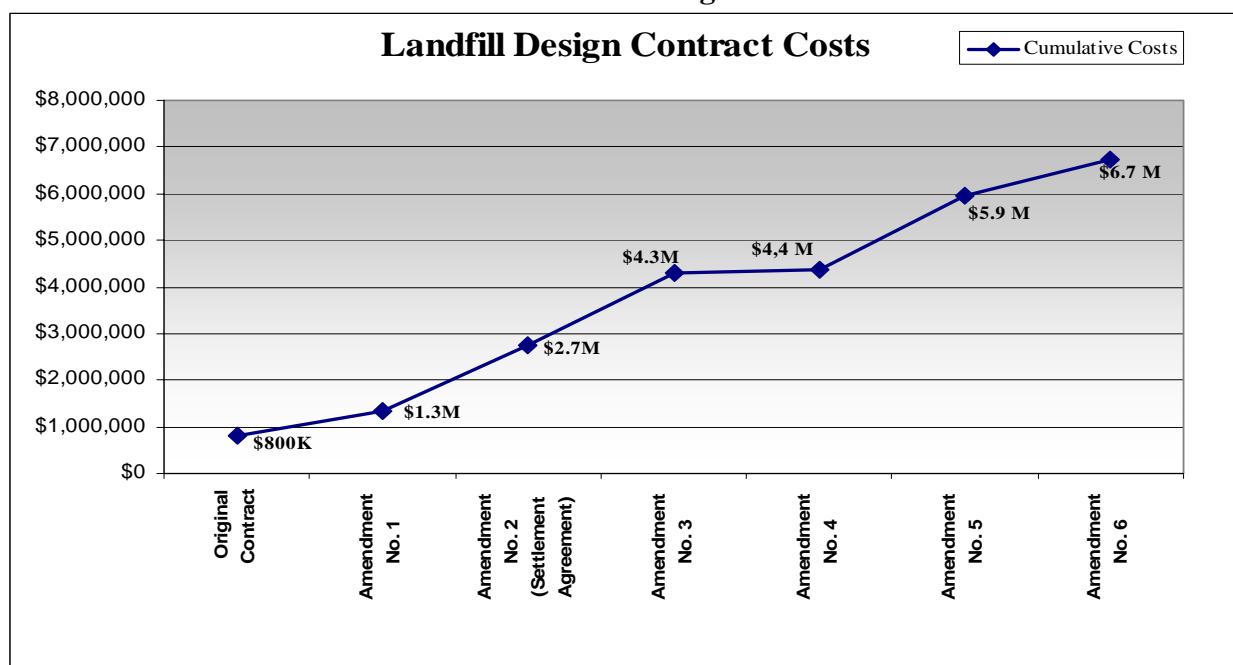
In May 2005, DPW contracted with a Consultant to provide



Image 1: Solid Waste Division Logo

environmental and engineering services for Phase I of the landfill design project. Phase I of the new landfill project was to cost \$1.3 million (M) and was divided into two tasks: \$800,000 for Task I (Site Survey and Investigations) and \$530,003 for Task II (40% Plans, Specifications, and Estimates (PS&E)). This original contract provided the government with an option to request the consultant to perform Phase II tasks. Phase II was also divided into two tasks: Task III (Pre-final PS&E) and Task IV (Final PS&E). As a result, the contract grew to \$6.7M, or 415% to include the scope of work (SOW) for Phase II. See Chart 1.

Chart 1: Cumulative Landfill Design Contract Costs



As of December 31, 2007, the Consultant was paid \$4.2M. See Table 1.

Table 1: Contract Amounts and Payments

Date signed by Governor	Agreement	Contract Amount	Payments as of 12/31/07
5/3/05	Original Contract	\$ 800,000	\$ 800,000
8/5/05	Amendment No. 1	530,003	530,003
Not signed	Amendment No. 2 (Settlement Agreement) ¹	1,410,950	1,410,950
6/12/06	Amendment No. 3	1,562,096	723,901
7/31/06	Amendment No. 4	64,968	9,967
9/13/06	Amendment No. 5	1,576,178	577,555
3/2/07	Amendment No. 6	790,348	130,260
Totals		\$6,734,543	\$4,182,636

¹ An advanced Notice to Proceed (NTP) was issued without the Governor's signature on the amendment. The Consultant filed a claim against the government of Guam for work performed under the NTP.

On March 17, 2008, due to the minimal progress in abiding by the mandates of the Consent Decree, the District Court of Guam appointed a Receiver to achieve the government's compliance with the Clean Water Act as set forth in the Consent Decree. According to the order, the Receiver shall assume all of the responsibilities, functions, duties, powers, and authority of the DPW SWMD, and any and all departments, or other divisions of DPW insofar as they affect the government of Guam's compliance with the Consent Decree. Our audit reviewed the period before the appointment of the Receiver.

For additional background, the timeline of events is outlined in Appendix 4.

Results of Audit

The Department of Public Works (DPW) did not have controls to ensure that the \$6.7M new landfill design contract (Project No. DPW-SW-2004 (003)) was (1) procured in compliance with applicable Guam procurement laws and regulations and (2) administered in compliance with contract provisions and best practices. Specifically, minimal documentation, monitoring, training, and planning allowed the following deficiencies to occur:

- The integrity of the selection of the Consultant for the landfill design contract cannot be ascertained. Because DPW did not maintain complete records of the procurement process as required by Guam procurement laws and regulations, we were unable to achieve our audit objective related to concluding whether the landfill design contract was procured in compliance with such applicable laws and regulations.
- DPW did not prepare an independent government estimate (IGE) to support and justify that the contract was negotiated for a fair and reasonable price.
- DPW Solid Waste Management Division (SWMD) did not scrutinize contract invoices prior to approving payments. We found that (1) the Consultant's claims could not be verified as reasonable, and (2) payments were made to the Consultant without ensuring compliance with the contract provisions.
- DPW did not ensure sufficient funds were available for the landfill design project. Since no appropriation was made to fund the landfill design contract, funding was secured through intra-agency transfers and the Governor's transfer authority.

To address these deficiencies and improve its contract award and administration process, we recommend DPW adopt best practices, implement internal controls, and provide guidance and training to those tasked with procurement and contract administration responsibilities. This may ensure that DPW contracts are procured in compliance with laws and regulations; contractors fulfill the requirements, terms, and conditions of their contracts; and proper documentation validates these objectives. See Appendix 5 for a detailed commentary on best practices and see Appendix 6 for internal controls.

Although the requirements of the Consent Decree now fall upon the Court-appointed Receiver, DPW can benefit from the recommendations listed above, to assure that other contracts are procured in accordance with procurement rules and regulations, at fair and reasonable prices, and in the best interest of the government of Guam.

Integrity of Procurement Process Cannot be Ascertained

To ensure that procurement decisions are justifiable and substantiated in accordance with relevant laws and policies, complete and accurate records should be maintained. Complete

and accurate records are also essential to maintain transparency, validate decisions, and account for proper use of public funds.

DPW did not maintain a complete procurement record for the new landfill design contract in accordance with Guam procurement laws and regulations. As a result, we were unable to obtain and examine sufficient evidence to ascertain whether the Consultant was selected competitively. Specifically, we did not find:

- Transmittals of the pre-proposal conference summary and Request for Proposal (RFP) addendum to all prospective bidders.
- A time-stamped proposal for one of the three proposals received.
- A copy of the sub-consultant's license to practice issued by the Professional Engineers Architects and Land Surveyors (PEALS) Board.²
- Copies of contracts between the selected engineering firm and all its sub-contractors.
- An independent government estimate of the costs for the scope of work to be performed.

Due to this finding, we questioned the original contract amount of \$1.3M. According to the Procurement Officer assigned to the project, an internal reorganization and significant staff turnover resulted in misplaced procurement files. To preserve the integrity of the procurement process, especially given the magnitude of the contract, controls over the custody of and access to records should have been in place.

We recommend DPW institute a standardized procurement filing system to ensure continuity of maintaining complete procurement records and monitoring of compliance with applicable procurement laws and regulations. A standard system will withstand changes to DPW structure, such as turnovers in personnel originally assigned to oversee projects.

Lack of Independent Government Estimate

Section V (d) of DPW's Engineer-Architect Services Procurement Procedures state that a detailed independent government estimate shall be prepared during the period the Department awaits the submission of the Engineer and Architect firm's proposal. The estimate shall be based on direct costs, indirect costs, overhead, and profit. It shall also be based on man-hours for the different disciplines (designers, principals, technicians, draftsmen, etc.) for each scope of work.

Contrary to DPW's procurement procedures, we did not find an independent government estimate to determine whether the negotiated contract price was only for necessary services at a fair and reasonable price. Instead, we found negotiation memorandums in the files,

²22 Guam Code Annotated (GCA) Chapter 32 provides that the practice of engineering, architecture, and land surveying shall be deemed a privilege granted by the territory through the PEALS Board, based on the qualifications of the individual as evidenced by his certificate of registration, which shall not be transferable.

which indicated that the Consultant's proposed price for Phase I tasks was reduced to \$1.3M and that DPW and the Consultant agreed to \$2.3M for Phase II tasks. No independent government estimate was provided to support these negotiated prices. Had DPW prepared an independent government estimate, they would have had an objective baseline in evaluating the reasonableness of the Consultant's proposed price. Furthermore, there was no documentation to justify why the cumulative costs of Phase II contracts (Amendments Nos. 2 through 6 totaling \$5.4M) exceeded the negotiated \$2.3M price by \$3.1M or 135 percent.

We recommend that DPW adheres to the requirements of its own policies and procedures and ensure that an independent cost estimate is developed for contracted architectural and engineering services. The government estimate serves to validate the reasonableness of the contracted costs for the scope of work. This estimate, along with all supporting documents, should be included in the procurement files.

Contract Invoices Not Scrutinized Before Payments

As of December 31, 2007, the Consultant was paid \$4.2M³ after the DPW SWMD and the Department of Administration (DOA) processed 21 progress payments and a settlement agreement. See Table 2.

Table 2: Processed Progress Payments as of December 31, 2007

Progress Pmt. No.	Items Tested	Payment Description	Pmt. Amt.	Period Ending Date of Invoice
1	✓	Original Contract	\$85,807	5/5/05
2	✓	Original Contract	\$310,478	6/10/05
3	✓	Original Contract	\$283,381	7/11/05
4	✓	Original Contract	\$84,562	8/11/05
5	-	Amendment No. 1	\$477,003	-
6	-	Retention – Amendment No. 1	\$53,000	-
7	✓	Retention – Original Contract/ Amend. No. 1	\$35,772	5/31/06
8	-	Amendment No. 4	\$23,337	-
9	-	Amendment No. 4	\$19,987	-
10	-	Amendment No. 4	\$8,828	-
11	✓	Amendment No. 3	\$165,336	8/25/06
12	✓	Amendment No. 3	\$151,980	11/30/06
13	✓	Amendment No. 3	\$22,277	2/28/07
14	-	Amendment No. 4	\$1,139	-
15	✓	Amendment No. 5	\$60,607	3/15/07
16	✓	Amendment No. 5	\$133,299	No invoice
17	✓	Amendment No. 3	\$55,863	No invoice
18	✓	Amendment No. 3	\$285,121	5/25/07
19	✓	Amendment No. 5	\$258,022	4/30/07
20	✓	Amendment No. 5	\$125,627	5/31/07

³This amount includes the settlement agreement payment relative to Amendment No. 2.

Progress Pmt. No.	Items Tested	Payment Description	Pmt. Amt.	Period Ending Date of Invoice
21	-	Amendment No. 6	\$130,260	-
-	✓	Amendment No. 2 (Settlement Agreement)	\$1,410,950	12/9/05
Total Payments			\$4,182,636	

We tested 15 progress payments totaling \$3.5M and found that progress payment requests were reviewed and approved by different individuals as suggested by best practices. However, SWMD did not scrutinize the invoices to ensure payments were reasonable for the work being claimed. Additionally, we found that progress payments were processed without ensuring compliance with contract provisions, such as the application of the 10 percent retainage rate and the enforcement of a payment deduction for the lack of the sub-consultants' certificates of payment.

Reasonableness of Consultant's Claims Could Not be Verified

We found no documentation in SWMD's files for basing the percentage rate of completion claimed in the Consultant's invoices or any certification that the percentage of work claimed was in fact performed and independently verified by SWMD personnel. There was no hourly breakdown or supporting timesheets provided to SWMD for individuals who performed the tasks claimed under each invoice. We also noted that there were no photographs of the work completed at various stages of the project. A digital camera would have served as a good tool to document inspections of fieldwork. As a result, we questioned \$2.1M.⁴

Additionally, SWMD did not review the Consultant's billing system to assure accuracy of the invoices submitted. Such a review would have allowed SWMD to resolve matters associated with the Consultant's invoices, including overpayments, lost interest, and cost allowability, if any, in a timely manner. For example, we found in one instance that the sub-consultant claimed a \$600 reimbursement for a one-night stay at a hotel in Honolulu en route to Guam. Although the claim exceeded the federal per diem rate of \$149 for lodging in Honolulu by \$451, or 203%, we found no evidence that SWMD questioned the claim.

We noted that progress meetings were held; progress reports were prepared by the Consultant; and design plans were reviewed by DPW, as well as by GEPA and U.S. EPA. However, in addition to these steps, a project schedule and a narrative of the work performed under each invoice should have been used to sufficiently monitor the Consultant's progress. This would also provide support for determining the reasonableness of the percentage of completion rate claimed by the Consultant. See Appendix 5 for Best Practices.

⁴ This amount is not included in the total questioned costs because the full value of the contract and amendments has been questioned in the previous sections. This amount is calculated based on total payments tested (\$3,469,083) less the amount paid on the settlement agreement as it has been determined by the courts to be a reasonable amount for the services rendered under Amendment No. 2 (\$1,410,950).

Payments Processed without Ensuring Compliance with Contract Provisions

The objective of contract administration is to ensure that the vendor and the government comply with the contract. There are two aspects involved:

- Quality assurance, which requires inspecting and documenting that the goods or services provided meet the quality standards set forth in the contract.
- Contract management, in which invoices are reviewed and approved, compliance with the terms and conditions of the contract is ensured, and modifications are made if needed and in the best interest of the government.

SWMD did not provide the necessary level of quality assurance and contract management to accomplish these project management objectives. We found lack of invoices to support claims, lack of documentation for satisfactory acceptance of work, retention amounts inconsistently applied, and sub-consultant certifications not provided as required in the contract.

Lack of Invoices

The contract required each progress payment request to be accompanied by invoices so that DPW could verify the amounts claimed. Of the 15 progress payments tested, two were approved by DPW and processed by DOA without invoices. These were progress payments No.16, for \$133,299, and No. 17, for \$55,863, totaling \$189,162.

Failure to Document Satisfactory Acceptance of Work

The full and final payment of \$35,772 was made for the scope of work under the original contract, but we found no documentation that all deliverables were received or evidence that all tasks were completed in accordance with the contract and satisfactorily accepted. DPW should have developed a checklist, or schedule of actions, the contractor was to perform and deliver satisfactorily prior to the Consultant receiving the full and final payment.

Inconsistent Retainage Amounts

Retainage refers to the portion of the contract payment that is withheld until the project is satisfactorily completed in accordance with contract terms.⁵ The amount retained is usually an agreed upon percentage in the contract terms and conditions. In this case, the contract specified a retention rate of 10 percent. SWMD and DOA did not ensure proper retention amounts were recorded. We found two instances in which the applied retention rate was less than 10 percent, amounting to \$44,229 being paid out prematurely. Furthermore, DOA and DPW paid the Consultant in full, despite the lack of evidence that all necessary work was completed satisfactorily.

Lack of Sub-consultant Certifications

SWMD did not maintain the required certifications of Consultant's payments to sub-contractors. Based on the provisions stated in the agreements, the Consultant was required

⁵ <http://www.businessdictionary.com>

to submit acknowledged Certificates of Payment from the sub-consultants. Failure to submit the certificate(s) of payment would result in a payment deduction to the Consultant equal to the amount that was due to the sub-consultant(s). We did not find any indication that payment request amounts were reduced for the failure to submit the certificates.

We could not reconcile the sub-consultants' invoices to Consultant's billing; therefore, we could not determine the amount that should have been withheld. This led us to inquire as to whether SWMD ever reviewed the Consultant's billing system for accuracy. DPW's Project Manager believed no review was needed. We disagree. By not reviewing the Consultant's billing system, especially in light of the lack of independent government estimates, DPW placed too much reliance on the Consultant and failed its due diligence to ensure that payments were reasonable for the work claimed. Procurement and internal control policies require due diligence on the government's part.

Effective contract administration ensures that payments to contractors are made for satisfactory products or work performed in accordance with the contract. We recommend DPW develop standard procedures for reviewing progress payments to contractors. These procedures should include specific direction to ensure that progress payments are made after qualified staff document satisfactory performance and acceptance of the work prior to payment. Retention processes between DPW and DOA should also be documented.

By not scrutinizing the Consultant's invoice claims for reasonableness and contract compliance prior to payment, DPW was exposed to a higher risk of paying more than what was fair and reasonable for the work performed under each invoice. The lack of contract management training contributed to the oversight and administration problems identified during the audit.

Contract Funding Resulted in DPW Appropriation Shortfalls

As previously stated, no appropriation was made to fund the landfill design contract and funding was secured through transfers. Without an independent government estimate, there was no assurance that the original contract price was reasonable. In fact, the contract cost grew from \$1.3M to \$6.7M.

We found that five accounts were identified for the funding of the contract: (1) Solid Waste Management – Contractual Services, (2) Director's Office – Contractual Services, (3) FY 06 Director's Office – Consent Decree Contractual Services, (4) FY 06 Compact Funds – New Solid Waste Landfill, and (5) FY 07 Director's Office – Consent Decree Contractual Services. Of these five accounts, four received a total of \$5M transfers before the Bureau of Budget and Management Research (BBMR) provided clearance for the new landfill design project. Of the \$5M transferred, \$3M affected the staff salaries and benefits in the five DPW divisions: the Director's Office, Building Permits, Bus Operations, Building Maintenance, and Transportation Maintenance. The remaining \$2M was originally intended for contractual services, but was transferred to pay the settlement agreement for Amendment No. 2.

In anticipation of the Governor's signature on Amendment No. 2, DPW authorized the Consultant to proceed on the scope of work. However, the Governor did not sign the amendment because funding could not be identified. The Consultant then filed a \$1.4M claim against the government of Guam for the work already done. The issue was settled by an agreement.

The lack of a specific funding source not only affected the operations of DPW's divisions, but other government of Guam agency accounts as well. To alleviate DPW appropriation shortfalls, the Governor exercised his authority and transferred \$917,000 in FY 2005 and \$637,000 in FY 2006. We did not find any Governor's transfers to DPW in FY 2007; however, DPW intra-agency transfers continued to fund the contract.

Although not exercised as of December 31, 2007, the Consultant's contract also allowed for optional tasks worth \$1.1M for which DPW did not certify that appropriation funds were available. These optional tasks include re-designing and packaging tasks, as well as preparing draft and final hydrogeologic reports not included in the scope of work.

The Solid Waste Operations Fund⁶ was established in 1998 to receive tipping fees for trash disposal and to provide for the solid waste landfill closure and post-closure costs. However, under its present fee structure, it is not sufficient to fund the new landfill. In OPA Report 07-08, DPW Commercial Tipping Fees, we found that the billing process was inefficient and we recommended that DPW aggressively pursue collecting from overdue commercial haulers. In addition, the Chief Judge of the District Court of Guam cited in her March 17, 2008 Order that not only is the lack of a consistent revenue stream from tipping fees a barrier to opening a new landfill, but also the lack of the government of Guam's financial commitment toward funding the Consent Decree projects.

⁶ A special revenue fund created by P.L. 24-272 in 1998.

Conclusion

Because DPW did not maintain complete records of the procurement process as required by Guam procurement laws and regulations, we were unable to achieve our audit objective related to concluding whether the landfill design contract was procured in compliance with such applicable laws and regulations. However, we have concluded that DPW did not establish controls to ensure integrity in the procurement of the Consultant.

In regards to the audit objective to determine whether the landfill design contract was administered in compliance with contract provisions and best practices, we conclude the following:

- DPW did not establish controls to ensure compliance with the contract terms before payments were made to the Consultant. We found that funding sources were not identified from the onset and the project had to be funded through transfers from other sources. Furthermore, no government estimate was in the files to provide assurance that the contract price was reasonable.
- Several procurement and administration matters require corrective action to ensure that contracts are awarded at reasonable costs, are in the best interest of the government, and are adequately controlled to prevent waste, abuse, fraud, and mismanagement.

Our recommendations to the DPW Director are designed to improve these deficiencies. With the appointment of a Receiver in March 2008, the deficiencies identified in this report should be mitigated.

The new landfill project is a monumental task of significance that required careful planning and oversight. Guidance through policies and procedures, as well as training, would have clarified roles and responsibilities in the procurement and contract administration of the landfill design contract. In addition, adherence to standardized procedures provides assurances, although not absolute, that management is meeting its objective and, in this case, meeting the mandates of the Consent Decree. Even in urgent situations, such as the landfill design project, DPW must take care to implement and consistently follow standard procedures and perform due diligence, otherwise objectives will not be met.

Recommendations

Recommendations to the DPW Director:

1. Institute a standardized procurement filing system to ensure continuity and facilitate monitoring of DPW procurements, and implement internal controls over the custody and access to records.
2. Enforce DPW's policy requirement of preparing a government estimate for architectural and engineering contracts.
3. Develop procedures for reviewing progress payments to contractors. DPW should adopt best practices and ensure procedures provide specific direction so that progress payments are made only after qualified staff document satisfactory performance and acceptance of the work.
4. Develop procedures for managing contract retainage fees, including the duties performed between DPW and DOA to ensure that work is satisfactorily completed before retention is paid out.
5. Provide procurement and contract administration training for appropriate staff.

Again, while the Receiver will carry out the tasks required by the Consent Decree, DPW can benefit from the recommendations we make here to assure that other contracts are procured in accordance with procurement rules and regulations, at fair and reasonable prices, and in the best interest of the government of Guam.

Recommendations to the Receiver:

6. Enforce retainage provisions of the contract and ensure that work is satisfactorily completed before authorizing payment of retention fees.

Management Response and OPA Reply

A draft report was transmitted to the DPW Director on August 15, 2008 for their official response. We met with the DPW Director and two representatives from the Receiver on August 19, 2008 to discuss the preliminary findings. A final draft report was transmitted to DPW and the Receiver on August 28, 2008.

On August 29, 2008, the Receiver submitted a response and concurred with our recommendation. The Receiver also stated:

From the first day of our work we have worked diligently to assure that all work under our supervision is satisfactorily completed, before authorizing payment of retention fees. This will continue to be our policy throughout our work with the Solid Waste Management Division.

I would also like to thank you for adding in the Conclusions and Recommendations section of the Executive Summary the clarification stating that “Our audit reviewed the period before the appointment of the Receiver.”

Lack of DPW Response

The DPW Director did not submit a response to our recommendations although he indicated during our August 19th exit conference that he would submit a response before August 29, 2008. During this meeting, the DPW Director generally concurred with the draft report’s findings and recommendations. He was particularly concerned with the lack of procurement files for the landfill design contract and stated that he will explore training opportunities for DPW staff on contract administration and procurement.

The legislation creating the Office of the Public Auditor requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will be contacting the DPW Director to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation shown by the Department of Public Works, the Department of Administration, the Office of the Attorney General, and the Bureau of Budget and Management Research.

OFFICE OF THE PUBLIC AUDITOR

Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1: Classification of Monetary Impact

Finding Area	Questioned Costs ⁷	Other Financial Impact
1 Integrity of Procurement Cannot be Ascertained		
Missing procurement file.	\$ 1,330,003	\$ -
2 Lack of Government Estimate	<u>\$ 5,404,540</u>	\$ -
Sub-total:	<u>\$ 6,734,543</u>	\$ -
3 Contract Invoices Not Scrutinized Before Payment		
A. Reasonableness of Consultant's Claims cannot be Verified		
No project schedule, Consultant narratives, or timesheets to support completion rates	\$ 2,058,133 ⁸	\$ -
Review of engineering firm's billing system	\$ -	\$ -
B. Payments Processed without Ensuring Compliance with Contract Provisions		
Lack of invoices	\$ 189,162 ⁹	\$ -
Satisfactory acceptance of work	\$ 35,772 ⁹	\$ -
Application and recording of retention	\$ 44,229 ⁹	\$ -
Certifications of payment by Sub-contractors	\$ -	\$ -
4 Contract Funding Resulted in DPW Shortfalls		
Transfers within DPW divisions	\$ -	\$ 917,000 ¹⁰
Governor's transfer authority	\$ -	\$ -
Total:	<u>\$ 6,734,543</u>	\$ -

⁷ These are unsupported costs that may be allowable. However, the accounting records or other documents available did not provide support for the costs.

⁸ Amount questioned is not included in total because it is already questioned in section 1 or 2 and is calculated based on total payments tested (\$3,469,083) less the amount paid on the settlement agreement as it has been determined by the courts to be a reasonable amount for the services rendered under Amendment No. 2 (\$1,410,950).

⁹Amount questioned is not included in the total because it is already questioned in section 1 or 2.

¹⁰ Although, there is a total of \$2,800,914 intra-agency transfers in FY 2005, \$917,000 was transferred to DPW via the Governor's transfer authority, which may have been a result of the intra-agency transfers to fund the contract. This amount is not included in total financial impact because the total contract cost has already been questioned.

Appendix 2: Scope and Methodology

The audit scope included a review of the environmental and services contract between the government of Guam and an engineering firm relative to Project No. DPW-SW-2004 (003) or Contract Number C050603180 and its amendments. During the audit, we found that procurement files were misplaced therefore, we reviewed related procurement documents that could be located. In addition, we reviewed invoices and other relevant documents from February 11, 2004 through December 31, 2007. The period reviewed was prior to the appointment of the Receiver, which occurred on March 17, 2008.

The audit was conducted at the Solid Waste Management Division within DPW in Tamuning, and the Department of Administration (DOA) Division of Accounts in Hagåtña, Guam. We conducted interviews with officials from DPW, DOA, and BBMR.

The methodology included gaining an understanding of the policies, procedures, applicable laws and regulations, and best practices relative to the procurement and contract administration of Contract Number C05060318 and its amendments. We identified prior audits and OPA hotline tips relevant to this engagement and included them in our assessments of the internal controls.

We examined payments made to the Consultant and performed substantive testing consistent with the audit objectives and examined applicable transaction records. We reviewed controls over the monitoring of invoices and data-entry of the information in the AS400 system at DOA.

We were unable to achieve our audit objective related to determining whether the landfill design contract was procured in compliance with Guam procurement laws and regulations because DPW did not maintain complete records of the procurement process as required by such laws and regulations.

Except as noted in the preceding paragraph, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 3: Prior Audit Coverage

Office of the Public Auditor (OPA)

In June 2000, OPA initiated a management audit of the Department of Public Works (DPW) and found that the Solid Waste Management (SWM) division did not segregate the duties between financial and management operations as the administrative official was the sole individual who authorized overtime schedules and payments. Of the 14 recommendations, none related to our audit objectives.

In August 2007, OPA conducted an audit of DPW's Commercial Tipping Fees and found that commercial tipping fees were not properly applied, billed, and collected. The findings in OPA Report No. 07-08 impact the Solid Waste Operations Fund (SWOF), which derives its revenues from tipping fees. In a March 17, 2008 Order, the Chief Judge of the District Court of Guam ordered DPW to provide a response to the recommendations of the report by February 14, 2008. Of the nine recommendations, five remain open. None of the recommendations related to our audit objectives.

Single Audit Reports

In the single audit reports of the government of Guam from fiscal years (FY) 2004 through 2006, the auditors identified that the SWOF received revenues of \$3.5M in FY 2004, \$5.9M in FY 2005, \$5.7M in FY 2006, and \$6.2M in FY 2007. In FY 2005 and FY 2007 the auditors identified \$13,000 and \$336,553 in questioned costs pertaining to DPW, none of which were identified for the SWM division.

Georgetown Consulting Group (GCG) Focused Audit Report and Recommendations

In August 2006, GCG issued its report of the SWM function. This report found that: (1) DPW's collection system is unable to handle current rate revenue levels much less the increased burden necessary to support the revenue bonds; (2) Substantial remedial action must immediately occur to enable DPW to bill and collect the revenue necessary to fund revenue bond requirements; and (3) If remedial action does not occur, DPW will not be able to bill and collect the rate revenues necessary to fund revenue bond obligations and this burden would fall, in part, on the General Fund. The revenue bond is needed to comply with the Consent Decree with the federal government, which requires GovGuam to: a) close the existing landfill; b) open and operate a new landfill; and c) undertake other solid waste remedial actions. As of the date of this report, it is unknown whether DPW addressed the recommendations.

GCG December 2006 Updated Findings Report

In January 2007, GCG provided updated findings based on a November 2006 visit. The SWOF is not among the various special funds specifically exempted from the Governor of Guam's transfer authority. The SWOF was identified as one of the funding sources for the new landfill design contract. As of the date of this report, it is unknown whether DPW addressed the recommendations.

Appendix 4: **Timeline of Events**

- ❖ **July 24, 1990** – U.S. EPA issued an administrative order to the Government of Guam requiring the cessation of discharges in accordance with a plan and schedule to be submitted to and approved by U.S. EPA.
- ❖ **September 19, 1997** – U.S. EPA requested DPW to obtain and submit to U.S. EPA certain data and information on the discharges from the Ordot Dump and the receiving water in accordance with specified deadlines.
- ❖ **February 11, 2004** – Government of Guam entered into a Consent Decree with U.S. EPA to settle U.S. EPA's lawsuit for violations of the Clean Water Act (CWA) due to discharge of polluted leachate from the Ordot Dump into the Lonfif River. The lawsuit was filed after 14 years of inaction by the government of Guam to comply with the terms and conditions of the administrative order and the request for information.
- ❖ **February 22~24, 2005** – Public announcement of the RFP for environmental and engineering services for the design of the new municipal solid waste landfill facility.
- ❖ **February 28, 2005** – Last day of additional inquiries for clarifications on the RFP or Scope of Work.
- ❖ **March 1, 2005** – Pre-proposal meeting held.
- ❖ **March 4, 2005** – Addendum to RFP issued.
- ❖ **March 9, 2005** – Proposals submission deadline, 4pm, Guam time.
- ❖ **March 24, 2005** – Consultant selected for Phase I.
- ❖ **May 3, 2005** – Effective date of the original contract for \$800,000, for engineering services for Task I of Phase I, 40% Plans, Specifications & Estimates (PS&E).
- ❖ **August 5, 2005** – Effective date of Amendment No. 1, for \$530,003, for engineering services for Task II of Phase I, 40% PS&E for the Grading and Layout of Refuse Area 1 and associated landfill facilities, including access road.
- ❖ **March 28, 2006** – Settlement Agreement was made between the government of Guam and the Consultant for \$1,410,950 for services performed and documents developed between October 24, 2005 and February 1, 2006 in response to Amendment No. 2 for Task III of Phase II, for which an NTP was given prematurely. Amendment No. 2 has been voided as a result of the settlement agreement.
- ❖ **June 12, 2006** – Effective date of Amendment No. 3 for \$1,562,096, for engineering services for Task IV of Phase II, Final PS&E incorporating the approved comments from the pre-final (100%) PS&E.
- ❖ **July 31, 2006** – Effective date of Amendment No. 4 for \$64,968, for engineering services for Task IV of Phase II, Final PS&E incorporating the approved comments from the pre-final (100%) PS&E.
- ❖ **September 13, 2006** – Effective date of Amendment No. 5 for \$1,576,178, for engineering services for Task IV of Phase II, Final PS&E incorporating the approved comments from the pre-final (100%) PS&E.
- ❖ **March 2, 2007** – Effective date of Amendment No. 6 for \$790,348, for incorporating the Value Engineering Study alternatives selected by DPW and GEPA into the final design of the Layon Landfill. Amendment No. 6 also identifies credits to Amendment Nos. 3 and 5, Part 1 for work deleted from the scope for the leachate discharge pipe line from the landfill to the Inarajan Wastewater Treatment Plant.
- ❖ **January 1, 2008** – The term of Amendment No. 6 shall continue until completion of all tasks in all amendments but no later than January 1, 2008, unless agreed to through an amendment.
- ❖ **March 17, 2008** – District Court Chief Judge appoints Federal Receiver to oversee solid waste management operations.

Appendix 5: Best Practices

Page 1 of 3

Organization of Procurement Function

Excerpted from “*An Elected Official’s Guide to Procurement*,” by Patricia C. Watt, published by the Government Finance Officers Association, Chicago, Illinois, 1995.

There are three, equally important stages in the procurement cycle. If an entity’s focus is simply on purchasing, with little attention paid to planning, scheduling, or contract administration, problems are certain to arise. The three stages are: (1) Planning and scheduling, (2) Source selection, and (3) Contract administration.

Lead responsibility for the three stages varies depending on the size and complexity of the government, and the way that procurement authority is delegated. Each office with a stake in procurement must be involved for the function to be effective. Budget, accounting, program, procurement, and legal staff must work together as a team.

Planning and scheduling: Planning is necessary in order to consolidate purchases and achieve economies of scale. Scheduling takes advantage of market cycles by anticipating the best time to buy. Departments that budget effectively estimate their need for commodities and services in advance. From these estimates, a purchasing schedule that takes into account and consolidates departmental needs can be created.

Source selection (purchasing): Program and procurement staff work closely to define what is to be bought; neither can do it alone. They develop specifications and scopes of work reflecting the program’s knowledge of its needs in delivering services and procurement’s knowledge of the market. After program and procurement staff decides on the appropriate purchase method and type of contract, procurement staff issues the solicitation and receives bids/offers. Procurement executes the contract and the goods/services are delivered in accordance to receiving procedures. This separation of duties is a fundamental aspect of government procurement.

Contract administration: Lead responsibility for contract administration falls on program personnel with the advice and support of procurement staff. Bills are approved and submitted for payment, and the quality of commodities and services is monitored and evaluated. If the program wishes to change the specifications or scope of services, it consults with procurement staff that has the authority to issue and negotiate a change order. If the program is dissatisfied with its purchase, then procurement staff forces corrective action by the vendor. When the contract is completed, the program staff “closes out” the work by, for example, recovering equipment from the vendor, completing an evaluation of the purchase, making sure all bills are paid and the purchase file is complete, and forwarding suggestions for improvements to procurement staff.

Appendix 5: Best Practices, Cont'd

Page 2 of 3

It is the duty of each jurisdiction's chief procurement official to review, thoughtfully and regularly, the utility of procurement statutes and to recommend periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.

To safeguard the procurement function, qualified and trained personnel should be employed and procedures should be established. In addition, the essential elements of procurement should revolve around the following:

- Authority: Persons taking procurement actions must have formal authorization to do so;
- Competition: Methods of selecting a provider of goods or services should be as competitive as possible and a competitive sealed bid or proposal should be used unless there are justifiable reasons for using another method;
- Documentation: All steps in the procurement cycle should be recorded in writing; and
- Compliance: Both the government and the contractor are legally required to adhere to the written commitments they make.

Contract Administration

Excerpted from "A Guide to Best Practices for Contract Administration," developed by the Office of Federal Procurement Policy, published in Washington, D.C., 1994.

Best Practices are defined as techniques that agencies may use to help detect and avoid problems in the acquisition, management, and administration of contracts. Best practices are practical techniques gained from practical experience. Here are just a few best practices that may be used to improve the contract administration process:

- Establish a well balanced training and certification program to prepare Contracting Officer's Technical Representatives (COTR) to perform the job and also strengthen contract administration.
- Define the relationship between the contracting officer and the COTR. A partnership is essential to establishing and achieving contract objectives because these two officials are responsible for ensuring that the contracting process is successful.
- Ensure that the COTR maintains a file that would contain the following: contract and any modifications, all contract correspondence, inspections, records, memos and conversations with the contractor, invoices/vouchers, COTR appointment letter, and trip reports.
- Develop a contract administration plan, which is essential for good contract administration because it provides a systematic structured method for the technical

Appendix 5: Best Practices, Cont'd

Page 3 of 3

representative to evaluate services and products that contractors are required to furnish. The plan can be simple or complex but must specify what the performance outputs of the statement of work are, and describe the methodology to conduct the inspections. The contract administration plan should contain a quality assurance surveillance plan, which focuses on the quality of the product delivered by the contractor.

- COTRs should perform a head count periodically, examine time cards and sign-in sheets, review overtime, and maintain spreadsheets to track direct costs and expenses for cost-reimbursement contracts.
- Documenting surveillance and monitoring are key to the contract administration process.
- Define roles and responsibilities of procurement, program, and finance officials with regard to review and approval of contractor invoices and vouchers.
- Review the first voucher in detail with the contractor so far as format and level of detail makes the second and subsequent vouchers easier to review and process.
- Ensure that payments are made to contractors that perform according to contract terms and conditions by monitoring contractor's performance through review of monthly reports, onsite visits, and surveillance reviews.
- Conduct a financial management review of the contractor's current invoices during contract performance at the contractor's location.

Based on discussions with the Receiver's Senior Project Engineer, the following was suggested to be typical procedures or best practice for the review of invoices:

- The combination of progress reports, progress meetings, deliverables, and the project schedule is the best measure for monitoring the progress of design services.
- If a recent progress report (within one week of the invoice) has not been prepared, a short narrative summary of the work performed for this invoice should be included.
- A review of the completeness of the project deliverables, such as plans and specifications, largely dictates the decisions of the DPW representative.

Appendix 6: Internal Control Procedures

Page 1 of 2

The following information is derived from “Auditing and Assurance Services,” 12th Edition, by Arens, Elder and Beasley, published by Pearson Education, Inc., New Jersey, 2008; “Standards for Internal Control in the Federal Government,” published by the U.S. Government Accountability Office, Washington, D.C., 1999; and “Fundamental Accounting Principles,” 15th Edition by Larson, Wild and Chiapetta, published by McGraw-Hill, Boston, Massachusetts, 1999.

Objectives of Internal Controls

Internal control is an integral part of management. It provides reasonable assurance that:

- (1) Operations and resources are used effectively and efficiently;
- (2) Financial reporting for internal and external use is accurate and reliable; and
- (3) All activity is in compliance with applicable laws and regulations.

Internal control is a series of steps, measures, and procedures developed and implemented by management to ensure, on an ongoing basis, that the organization’s mission, goals, objectives, and responsibilities are met.

While internal controls cannot guarantee perfection, they provide a discernable course for organizational activities, from start to finish, so that faults, weaknesses, and errors can be pinpointed and corrected; and the risk of fraud, waste, and abuse can be minimized.

Principles of Internal Control

Internal control policies and procedures vary from entity to entity, depending on the nature and size of the entity’s operations. However, certain fundamental principles of internal control apply to all entities. They are:

Establishment of responsibilities. Control is most effective when each task is clearly established and assigned to separate individuals.

Maintenance of adequate records. Good recordkeeping systems and practices help protect assets and ensure that employees use prescribed procedures. Reliable records are a source of information that directors and other appropriate officials can use to monitor the entity’s operations.

Separating recordkeeping from physical custody of assets. Those with custody and access to assets should be separate from those who maintain the records on the whereabouts and condition of those assets. This principle better protects assets against misuse, theft, or waste. At great risk, custodians and record keepers would have to conspire to steal assets and hide their crimes.

Appendix 6:
Internal Control Procedures, Cont'd

Page 2 of 2

Dividing responsibility for related transactions. Good internal control divides responsibility for a transaction, or a series of related transactions, between two or more individuals or departments. This is often called ‘separation of duties’ and it ensures that the work of one serves as a check on another.

Applying technological controls. The use of technological devices (i.e., accounting software or programs, cash registers, check protectors, time clocks, mechanical counters, and personal identification scanners) can improve internal control.

Performing regular and independent reviews. Management should review monthly financial reports of the agency’s operations. Independent reviews should be done by internal auditors or by someone not directly involved in operations. Independent reviews should be done periodically or on an unannounced basis. The entity should have external auditors test the agency’s financial records to determine whether they are presented fairly and in accordance with generally accepted accounting principles.

Insuring assets and bonding key employees. Assets should be adequately insured against loss, theft, and damage. Employees who handle cash and negotiable assets should be bonded. An employee is *bonded* when the entity purchases an insurance policy, or bond, against losses or theft by that employee.

These procedures minimize the risk of fraud and theft, as well as increase the reliability and accuracy of accounting records.

Limitations of Internal Control

All internal control policies and procedures have limitations. They are developed and instituted by people and often impact other people. Thus, the human element is a serious and potential source of limitations. Human error can occur through negligence, fatigue, misjudgment, confusion, fraud, or the blatant intent to outsmart internal controls for personal gain. Another important limitation is the cost-benefit principle. The costs of internal controls must not exceed their benefits. Directors must establish internal control policies and procedures with a net benefit to the entity.

Appendix 7:
Details of Intra-agency Funding Transfers **Page 1 of 3**

Transfers within DPW Divisions

Intra-agency transfers amounting to \$5M were made to four of the five accounts prior to BBMR clearance for the new landfill design project. See Table 3.

Table 3: Transfers to Fund Agreements

Agreement	Account Name	Contract Amount	DPW Fund Certification Date	BBMR Clearance Date	Transfer Date	Amount Transferred
Original Contract	Solid Waste Management Contractual Services	\$ 800,000	4/25/2005	4/29/2005	4/21/2005	\$ 800,000
Amendment No. 1	Director's Office Contractual Services	530,003	6/29/2005	7/27/2005	6/28/2005 7/22/2005 7/26/2005	913,600
Settlement Agreement	FY06 Director's Office-Consent Decree Contractual Services	1,410,950	3/28/2006	-	3/17/2006	2,000,000
Amendment No. 3	FY06 Director's Office-Consent Decree Contractual Services	1,562,096	6/6/2006	6/9/2006	-	-
Amendment No. 4	FY06 Director's Office-Consent Decree Contractual Services	64,968	-	7/25/2006	-	-
Amendment No. 5	FY06 Director's Office-Consent Decree Contractual Services	76,178	8/14/2006	8/29/2006	-	-
Amendment No. 5	FY06 Compact New Solid Waste Landfill	1,500,000	8/14/2006	8/29/2006	-	-
Amendment No. 6	FY07 Director's Office-Consent Decree Contractual Services	790,348	2/19/2007	2/13/2007	2/23/2007	1,300,000
Totals		\$6,734,543				\$5,013,600

Of the \$5M transferred, \$3M was originally intended for other DPW divisions' salaries and benefits and \$2M was for contractual services under the Director's Office.

Original Contract

On April 25, 2005, DPW certified fund availability from the Solid Waste Management contractual services account for the original contract. On April 21, 2005, \$800,000 was transferred from the Solid Waste Management salaries and benefits accounts prior to the April 25th certification and BBMR's clearance on April 29, 2005.

Amendment No. 1

On June 29, 2005, DPW certified fund availability from the Director's Office Contractual Services account for Amendment No. 1. A total of \$913,600 was transferred from the salaries and benefits accounts of several DPW divisions prior to DPW's June 29th certification and BBMR's clearance on July 27, 2005. See Table 4 for details.

Details of Intra-agency Funding Transfers Cont'd

Table 4: Amendment No. 1 Transfers

Transaction Date	Division	Object Class Description	Transaction Amount
6/28/2005	Transportation Maintenance	Regular Salaries/Increments	\$ 200,000
6/28/2005	Transportation Maintenance	Benefits	\$ 100,000
6/28/2005	Bus Operations	Regular Salaries/Increments	\$ 200,000
6/28/2005	Bus Operations	Benefits	\$ 200,000
6/28/2005	Building Maintenance	Regular Salaries/Increments	\$ 100,000
7/22/2005	Director's Office	Regular Salaries/Increments	\$ 72,191
7/22/2005	Director's Office	Benefits	\$ 20,557
7/22/2005	Building Permits	Regular Salaries/Increments	\$ 72,929
7/22/2005	Bus Operations	Regular Salaries/Increments	\$ 208,474
7/22/2005	Building Maintenance	Benefits	\$ 25,849
7/26/2005	Director's Office	Supplies & Materials	\$ (286,400)
Total			\$ 913,600

Settlement Agreement

In anticipation of the Governor's signature on Amendment No. 2, DPW authorized the Consultant to proceed with the scope of work. However, Amendment No. 2 was not signed by the Governor because funding could not be identified. As a result, the Consultant filed a \$1.4M claim against the government of Guam for work already done under DPW's premature NTP.

On March 28, 2006, DPW certified \$1.4M from the FY06 Director's Office-Consent Decree contractual services account. On March 17, 2006, \$2M was transferred from the Director's Office contractual services account.

Amendment No. 6

On February 19, 2007, DPW certified \$790,348 from the FY07 Director's Office-Consent Decree contractual services account for Amendment No. 6. On February 13, 2007, \$1.3M was transferred from the salaries and benefits accounts of the transportation maintenance and bus operations divisions. See Table 5.

Table 5: Amendment No. 6 Transfers

Transaction Date	Division	Object Class Description	Transaction Amount
2/13/2007	Transportation Maintenance	Regular Salaries/Increments	\$ 150,000
2/13/2007	Transportation Maintenance	Benefits	\$ 50,000
2/13/2007	Bus Operations	Regular Salaries/Increments	\$ 800,000
2/13/2007	Bus Operations	Benefits	\$ 300,000
Total			\$ 1,300,000

Details of Intra-agency Funding Transfers Cont'd

The DPW Budget Analyst at the BBMR explained that funds were moved from within DPW's other object classes, such as personnel and bus operations, because there was no specific appropriation for the Consent Decree.

Appendix 8:

Status of Audit Recommendations

	Audit Finding	Status	Addressee	Action Required
1	Integrity of procurement process cannot be ascertained.	Unresolved.	DPW	Provide the target date and the title of the official responsible for instituting a standardized procurement filing system to ensure continuity and facilitate monitoring of DPW procurements, and implement internal controls over the custody and access to records.
2	Lack of independent government estimates.	Unresolved.	DPW	Provide the target date and the title of the official responsible for enforcing DPW's policy requirement of preparing a government estimate for architectural and engineering contracts.
3	Contract invoices not scrutinized before payments.	Unresolved.	DPW	Provide the target date and the title of the official responsible for developing procedures for reviewing progress payments to contractors. DPW should adopt best practices and ensure procedures provide specific direction so that progress payments are made only after qualified staff document satisfactory performance and acceptance of the work.
				Provide the target date and the title of the official responsible for developing procedures for managing contract retainage fees, including the duties performed between DPW and DOA to ensure that work is satisfactorily completed before retention is paid out.
				Provide the target date and the title of the official responsible for providing procurement and contract administration training for appropriate staff.
		Resolved.	Receiver	No action required. Recommendation to enforce provisions of the contract and ensure that work is satisfactorily completed before authorizing payment of retention fees has been resolved.

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- Or visit us at the PNB Building, Suite 401
In Hagåtña

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