



EXECUTIVE SUMMARY

Government of Guam Procurement of COVID-19 Quarantine and Isolation Facilities OPA Report No. 21-06, July 2021

Our audit of the procurement of Coronavirus (COVID-19) quarantine and isolation facilities found that the initial emergency procurement conducted by the Office of the Governor (OOG) did not comply with Guam Procurement Law with the following deficiencies: (1) improper procuring authority, (2) conflict of interest with one of the awarded facilities, (3) incomplete procurement record, and (4) contract issues. Therefore, we questioned the total costs of \$3 million (M) for the initial procurement.

In two subsequent emergency procurements, the Government of Guam (GovGuam) rectified the first two deficiencies cited. They were conducted by the Guam Homeland Security/Office of Civil Defense (GHS/OCD) and administered by the General Services Agency (GSA), instead of OOG. However, they continued to have an incomplete procurement record and the services extended beyond the 30-day emergency procurement limit to as long as six months.

The Governor of Guam (Governor) issued an emergency declaration through Executive Order (E.O.) No. 2020-03. As a result, GovGuam spent over \$11.5M for the use of six hotels as quarantine and isolation facilities between March 2020 through December 2020 via emergency procurement. This does not include other COVID-19 related facilities procured and utilized by GovGuam (i.e., nurse lodging, homeless shelters, etc.). GovGuam should have utilized competitive sealed bidding procurement method by issuing an invitation for bid (IFB), instead of continuing to use emergency procurement for the use of quarantine and isolation facilities beyond May 2020.

Initial Emergency Procurement

Pursuant to Title 5 of the Guam Code Annotated (G.C.A.) § 5215, emergency procurement requires three things that:

- (1) It shall be made with such competition as is practicable under the circumstance;
- (2) The procurement agent must solicit at least three informal price quotations; and
- (3) The award [must go] to the firm with the best offer, as determined by evaluation cost and delivery time. We found several initial procurement issues to include improper procuring authority, conflict of interest with awarded hotel, incomplete procurement record, and contract issues.

In January 2020, the GHS Advisor was tasked to procure facilities for COVID-19 quarantine and isolation. However, the Governor tasked OOG Legal Counsel to take over the procurement in March 2020. OOG secured four facilities totaling \$2.5M. Table 1 shows the timeframe and contract amounts for quarantine and isolation facilities.

Table 1: First Procurement of Quarantine and Isolation Facilities

Hotel	Contract Issued	Contract End Date	Estimated Rooms ¹	Date of Utilization	Contract Amount
Hotel A	March 18, 2020	May 17, 2020	48	April 1, 2020 to September 1, 2020	\$ 292,800
Hotel B	March 18, 2020	March 28, 2020	103	March 18, 2020 to March 28, 2020	113,300
Hotel C	March 23, 2020	April 22, 2020	389	March 24, 2020 to May 16, 2020	1,205,900
Hotel D	March 18, 2020	May 17, 2020	144	March 24, 2020 to May 17, 2020	878,400
Total					\$2,490,400

¹ Flat rate of \$100 for each occupied and unoccupied room.

OOG Has No Proper Procuring Authority

Pursuant to 10 G.C.A. § 19403, the Governor has an “oversight” role of the public health emergency in the activation of the disaster response and recovery aspects of GovGuam, and the initiation of the emergency declaration directly appoints a primary “public health authority” (PHA) to respond to the emergency. As stated in E.O. 2020-03, the PHA is the Director of the Department of Public Health and Social Services (DPHSS) with the authorization to exercise all powers. By delegating OOG’s Legal Counsel to handle the procurement, it bypassed the procuring authority already provided to the DPHSS Director under the PHA and Guam Procurement Law, and the authority of GSA’s Chief Procurement Officer (CPO) also under Guam Procurement Law.

The OOG contends that it is within the Governor’s authority under the Organic Act and 10 G.C.A. Chapter 19 “Emergency Health Powers” to execute general supervision over GovGuam during a declared state of public health emergency. However, that authority shall not be in conflict with any Guam laws. In which, Public Law (P.L.) 16-124 specifically repealed the governor’s executive control of GovGuam procurement and transferred that authority to a centralized procurement comprised of the Policy Office, CPO, and Director of the Department of Public Works. In addition, the OOG’s justification for their procuring authority is inconsistent with prior treatment and practice of emergency procurement used in a public health state of emergency.

OOG Legal Counsel Conflict of Interest

It appears there was a potential conflict of interest having OOG’s Legal Counsel in charge of the initial procurement when their immediate family had a financial interest with one of the awarded hotels, which was publicized in local media articles. Hotel C’s mortgage was with a local bank that the OOG’s Legal Counsel was previously employed at and his immediate family is currently employed with and owns, which would be a conflict of interest as identified in 5 G.C.A. § 5628 (a) . Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

Incomplete Procurement Record

The procurement record for the initial COVID-19 quarantine and/or isolation facilities were incomplete as it lacked sufficient documentation to provide a complete history of the procurement in compliance with 5 G.C.A. § 5215. This included the request for quotations (i.e. solicitations local hotels) and the award of the procurement (i.e. selection of the local hotels). There is no clear indication in the procurement record with regards to who and how the decision to use these

facilities was made. Without a proper procurement record, it voids the mandated transparency and accountability in the procurement process.

Contracts Were Not in Conformance with E.O. and Guam Procurement Law

The contracts for Hotels A through D were not in conformance with the E.O. and 5 G.C.A. § 5215. Specifically, 1) the contracted dates exceeded the 30-day limit for emergency procurement; 2) renewal terms disregarded E.O. terms; 3) total rooms procured conflicted with the Governor’s requested requirement; and 4) the CPO’s authorized signature was missing.

It was the understanding of the OOG’s Legal Counsel that they were acting on behalf of the Governor, the E.O., and the Governor’s executive powers allowing them to fast track the procurement process and forego the missing items identified in the initial procurement record. However, by doing this, it undermined the integrity of the procurement process and led to non-compliance with Guam Procurement Law.

Subsequent Emergency Procurements

Due to the long-term COVID-19 pandemic state of emergency, GovGuam continued to use emergency procurement pursuant to 5 G.C.A. § 5215 under the Governor’s emergency declaration. GovGuam issued two successive procurements in May 2020 and August 2020. Unlike the initial procurement, GHS/OCD requested the two procurements instead of the PHA, and GSA administered it. This rectified the procuring authority and conflict of interests deficiencies cited in the initial procurement.

Second Emergency Procurement

The second procurement occurred in May 2020. GSA issued a Request for Quotation (RFQ) to 11 hotels from May 12 to 15, 2020. GSA received quotes from six of 11 hotels, and awarded P.O.s to two hotels (Hotel B and Hotel D) to be used as quarantine facilities for a total of \$300K. Hotel A continued to be an isolation facility through September 2020, based on GHS/OCD data, procurement records that were provided were incomplete. Due to the termination of the contract with Hotel B because they did not meet the basic terms of the agreement, additional RFQs to five hotels were issued on May 20, 2020. GSA received three quotes and awarded the P.O. to Hotel E to be used as an isolation facility for a total of \$300K. Table 2 below shows the timeframe and amounts paid to each hotel.

Table 2: Second Procurement of Quarantine and Isolation Facilities

Hotels	P.O. Issued	P.O. End Date	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel A	No record	No record	May 18, 2020 to July 19, 2020	No record	No record	No record
Hotel B	May 16, 2020	August 16, 2020	May 18, 2020 to May 23, 2020	98	Occupied: \$99/person Unoccupied: \$90	\$ 100,000
Hotel D	May 16, 2020	August 16, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person ² Unoccupied: \$65	200,000
	July 14, 2020	September 30, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person ² Unoccupied: \$66	1,500,000
Hotel E	May 27, 2020	August 16, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person ² Unoccupied: \$90	300,000

Hotels	P.O. Issued	P.O. End Date	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
	July 14, 2020	September 30, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person ² Unoccupied: \$90	2,600,000
	July 20, 2020	September 30, 2020	September 2, 2020 to continuous	48	Occupied: \$175/person ³ Unoccupied: \$90	50,000
Total						\$4,750,000

² \$30 for any additional person in room.

³\$50 for any additional person in room

On May 27, 2020, Hotel B’s P.O. was terminated for cause after it was determined that they did not meet the basic terms of agreement, which they protested and appealed. The appeal was settled and dismissed on August 28, 2020. Hotel B was used for six days, but received a settlement of \$50K (half of their awarded amount) for the termination of the P.O.

On September 1, 2020, GovGuam amended Hotel E’s P.O. indicating “early termination due to decision to consolidate quarantine facility to one venue.” Although Hotel D and Hotel E P.O.’s were set to expire on August 16, 2020, GSA initiated overlapping P.O.s to extend services. The extensions totaled \$4.2M.

Third Emergency Procurement with Extensions

GHS/OCD data indicated Hotel A continued as an isolation facility through September 1, 2020. However, 63 days passed with no P.O. for Hotel A. GSA issued a \$50 thousand (K) P.O. for Hotel A on July 20, 2020. No documentation was provided for the 63 days worth of hotel services.

On August 21, 2020, GSA issued RFQs to four hotels for the August to September 2020 timeframe. Only one hotel responded to this third procurement with a positive quote. On August 22, 2020, GSA awarded a \$200K P.O. to Hotel F. On October 1, 2020, GSA issued another \$200K P.O. to Hotel F to continue services indicated on the initial P.O. through December 31, 2020. Several amendments increased the original P.O. to \$2.2M. On December 31, 2020, GSA amended the P.O. extending services with Hotel F through January 31, 2021.

On October 1, 2020, GSA issued a \$500K P.O. for Hotel E to be used as an isolation facility through December 31, 2020. Figure 3 shows the procurement timeframe and the amounts paid to the procured quarantine and/or isolation facilities.

Table 3: Third Procurement of Quarantine and Isolation Facilities

Hotels	P.O. Issued	P.O. End	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel A	July 20, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$150/person Unoccupied: \$90	\$ 50,000
	August 28, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$175/person ³ Unoccupied: \$90	50,000
Hotel F	August 22, 2020	September 30, 2020	August 23, 2020 to September 30, 2020	300	Occupied: \$159/person Unoccupied: \$120	200,000
Hotel E	September 15, 2020	September 30, 2020	September 2, 2020 to December 31, 2020	150	Occupied: \$175/person ³ Unoccupied: \$90	500,000
	October 1, 2020	January 31, 2021	September 2, 2020 to December 31, 2020	150	Occupied: \$175/per person ³ Unoccupied: \$90	1,034,620

Hotels	P.O. Issued	P.O. End	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel F	October 1, 2020	January 31, 2021	October 1, 2020 to December 31, 2020	300	Occupied: \$159/person Unoccupied: \$120	2,200,000
Total						\$ 4,034,620

³\$50 for any additional person in room

Incomplete Procurement Record

There were noted improvements in the procurement record for the subsequent procurements conducted by GHS/OCD and GSA, namely the fact that RFQs were issued and responses were properly documented. However, it was incomplete and lacked sufficient documentation to provide a complete history of all the hotels procured in compliance with 5 G.C.A. § 5215. This included no procurement record documentation for 63 days of Hotel A services.

Use of Emergency Procurement Beyond 30-Day Limit

GHS/OCD and GSA used emergency procurement beyond the 30-day limit for the second and third procurements, which was also cited as a deficiency in the initial procurement. It was GHS’ understanding that since the emergency declaration was extended through E.O., they can continue using the current emergency procurement. P.L. 35-109 was passed on October 30, 2020, which increased the emergency procurement time limit from 30 days to 90 days. However, P.L. 35-109 is not applicable to the three procurements of quarantine and/or isolation facilities and GovGuam is still non-compliant with 5 G.C.A. § 5215.

Other Matters

We noted differences between contract amounts and disbursement amounts made to the hotels used as a quarantine and/or isolation facility. Most of the differences were increases as high as \$2.8M. There is nothing in the procurement record to show the reason for the increases beyond the contract value and changes in the occupied and unoccupied rates increasing the disbursements. In addition, the total number of rooms awarded fluctuated. There was no clear explanation in the procurement record to indicate the rationale for the minimum guaranteed number of rooms needed. We plan to look more into utilization and expenditures as part of the subsequent audit of COVID-19 quarantine and isolation facilities.

Conclusion and Recommendations

The COVID-19 pandemic was an unprecedented public health emergency, and while there appears to be misjudgments made, we must take the lessons learned in the experience and make necessary changes to improve future plans.

While emergency procurement was acceptable for the initial procurement of the quarantine facilities to use, GovGuam was working on procuring quarantine facilities as far back as January 2020. After three months of emergency procurement, GovGuam had sufficient information regarding room utilization rates and the long-term requirement for quarantine and isolation facilities to prepare and issue an IFB, instead of the extended use of emergency procurement.

Issuing an IFB would have provided better assurance that GovGuam received the lowest overall cost. Further, an IFB shows that the procurement process ensured the opportunity to compete and is open and fair to all those who chose to do business with the government, and not just a select

few. GovGuam stated that it plans to continue utilizing emergency procurement of the quarantine and/or isolation facilities. However, we recommend GHS/OCD and GSA prepare and issue an IFB instead.

The use of emergency procurement for the quarantine and isolation facilities and several other COVID-19 related expenses has raised the need for more accountability and transparency in the process. To this end, the Guam Legislature has introduced several legislations aimed at improving the process. Guam OPA will conduct several audits on these expenses to highlight additional areas of improvement needed.

OOG Management Response and Office of Public Accountability Reply

In OOG's official management response, the OOG disagreed with our audit findings and recommendations. In reply, generally, our audit findings and recommendations remained the same.

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor