

**Department of Public Works
Procurement of Capital Improvement Projects**

**Performance Audit
October 1, 2006 through September 30, 2009**

**OPA Report No. 10-07
November 2010**



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EXECUTIVE SUMMARY
Department of Public Works' Procurement of Capital Improvement Projects
Report No. 10-07, November, 2010

The Department of Public Works (DPW) is the entity authorized to procure construction projects on behalf of the line entities of the government of Guam. From fiscal years (FY) 2007 to 2009, DPW expended \$25.9 million (M) for 566 Capital Improvement Projects (CIPs). Our audit of DPW's CIP procurement during this period revealed projects totaling \$16.1M were not procured in accordance with the Guam Procurement Law and the Procurement Regulations; specifically: (1) preferential selection of 10 contractors who received \$14.1M (54%) of the \$25.9M in awarded projects; (2) 262 CIPs totaling \$6.6M were not advertised; (3) emergency procurement was used to circumvent the competitive sealed bid process, including the \$199,200 purchase of eight sports utility vehicles from a contractor who is not an authorized automotive dealer; (4) documentation was missing for procurements totaling \$10.5M; and (5) \$226,926 in routine maintenance work was contracted as CIPs and the top five contractors received \$121,539 or 54%. These conditions occurred due to conflicting advertising requirements, artificial division of procurement, poor planning, and inadequate training of CIP personnel.

Preferential Selection of Contractors

According to the Guam Contractors License Board, some 957 contractors were licensed to conduct business from FY 2007 to FY 2009. Of the 76 contractors, the top 10 received 184 CIPs totaling \$14.1M, 54% of the \$25.9M. We found that DPW does not have a suspension and debarment listing and thus has no way to identify contractors who should be barred from doing business with the government. DPW continually awards projects to contractors who performed poorly.

CIPs Totaling \$6.6M Not Advertised

We found that conflicting advertising requirements resulted in the awarding of 86 unadvertised CIP contracts, each costing more than \$25,000 and totaling \$5M. The Procurement Law, Title 5, Guam Code Annotated (G.C.A), requires projects over \$25,000 to be advertised at least once and at least seven days prior to a bid submission deadline. The Procurement Regulations, Title 2, Division 4, Guam Administrative Rules and Regulations (G.A.R.), require *all* CIP procurements regardless of amount to be advertised for at least three separate days before the deadline. An Engineer Supervisor told us that projects are often divided into smaller purchases to make soliciting price quotes easier. As a result, 262 projects were artificially divided to avoid advertisement, the sealed bid process was circumvented, and 25 contractors were paid \$6.6M. One contractor received 38 purchase orders totaling \$460,430 for the tie-down and reinforcement of air condition units at different schools. These purchases were not advertised.

Emergency Procurement Used to Circumvent Advertisement

DPW listed 90 emergency CIP procurements totaling \$5.8M. We found an unlisted project for \$113,415. Of these Emergency and Sole Source procurements, we tested 11 projects ranging from \$28,000 to \$223,000 and totaling \$1.4M. Nine projects totaling \$1M took 76 to 255 days to complete, far exceeding the 30-day emergency period. The reasons cited for the setbacks included

shipment delays, incorrect material order, poor planning, and inclement weather. Based on the type of work and lengthy completion time, emergency procurement was inappropriate for the nine projects but used simply to circumvent the procurement process.

Missing Procurement Documentation

We reviewed 67 files totaling \$10.5M. The files were disorganized and did not conform to 29 G.A.R. Section § 1111's standardized filing requirements. Procurement documentation, such as rationales for awarding bids, bid analyses, and internal and external communications, were lacking. For example, the files of five emergency projects totaling \$868,213 contained no determination of emergency. The government of Guam Single Audits over the past 10 years has consistently identified the lack of complete history of the procurement and proper documentation as a significant deficiency, yet no measurable improvements have been made.

Routine Maintenance Work Contracted as CIPs

We found 93 CIP procurement files which appeared to be for routine maintenance work awarded to 25 contractors. Each purchase was for less than \$5,000, but totaled \$226,926 all together. Since routine maintenance is an on-going need, blanket purchase agreements (BPAs) for such would be more efficient and cost effective.

Poor Control Environment

CIP personnel told us that they had no formal procurement training and were simply carrying out the practices of their predecessors. We also learned that DPW's CIP procurement process is hampered by a lack of teamwork and communication breakdown, and staff resistance to change. A Management Analyst's recommendations for improvement were negatively received by CIP staff.

Recommendations

We recommend the DPW Director: (1) immediately prohibit the division of projects as a way to bypass the procurement process and ensure that projects of similar scope that are collectively anticipated to cost in excess of \$25,000 be advertised; (2) consider revising the 29 G.A.R. §§ 1160 and 1167 to be consistent with the advertising requirements in 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2); (3) designate the Chief Planner to review all CIP procurements up to a predetermined threshold and the Chief Engineer to review all those in excess of the threshold; (4) utilize BPAs for routine maintenance work and other small projects; (5) implement the standardized filing requirements of 29 G.A.R. § 1111; (6) establish a suspension and debarment list based on the contractors' past performances and using agency feedback; and (7) provide all CIP personnel with construction procurement training.

In his official response, the DPW Director "embraced" the audit and concurred with all the audit findings and recommendations. See Appendix 8 for the DPW's response.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the result of our audit of the Department of Public Works' (DPW) Procurement of Capital Improvement Projects (CIP) from October 1, 2006 to September 30, 2009. During this period, DPW awarded 566 projects aggregating \$25.9 million (M).

Our objective was to determine whether capital improvement projects were awarded fairly, in open competition, and in compliance with procurement laws and regulations. Our scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

DPW has authority under Title 5 of the Guam Code Annotated (G.C.A.) to contract capital improvement and construction projects for the line entities of the government of Guam. The procedures governing this authority are found in Title 5, Chapter 5, the Guam Procurement Law. DPW's Director serves as the central procurement officer and is responsible for establishing and maintaining programs for the inspection, testing, and acceptance of construction projects, as well as for preparing, issuing, revising, and monitoring project specifications. The Director may obtain expert advice and assistance in the development of specifications or may delegate the authority to the agency requiring the CIP.¹ Appendix 4 details the current CIP procurement process.

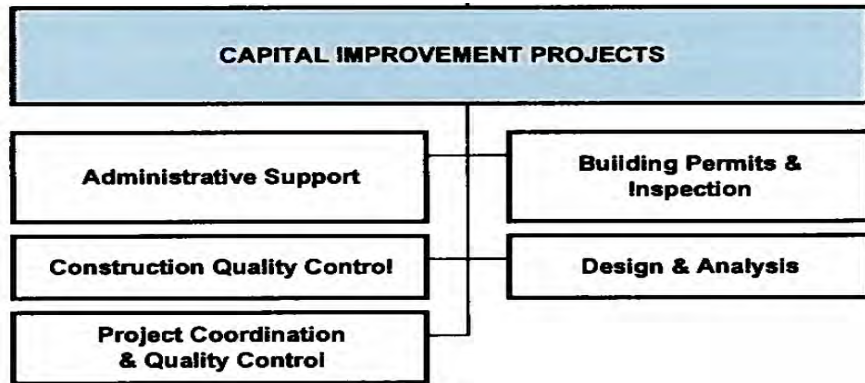
The Procurement Regulations are detailed in Title 2 of the Guam Administrative Rules and Regulations (G.A.R.).

DPW's CIP Regulations can be found in Title 29 of G.A.R. Title 29 G.A.R. § 1102(a) defines CIPs as the construction of new public facilities or the improvement by construction of extensions, additions, utilities or other systems to existing facilities. Normal facilities maintenance does not qualify as capital improvement.

DPW's CIP Division is responsible for all "vertical" assets, including but not limited to the construction, maintenance, and repair of government buildings (specifically those of the line agencies and as required by the Guam Legislature). DPW's Chief Engineer oversees the CIP and the Highway divisions. DPW's Chief Planner manages the five sections of the CIP Division: (1) Design and Analysis (D&A), (2) Administrative Support (Fiscal), (3) Construction Quality Control (CQC), (4) Project Coordination and Quality Control (Contracts Administration), and (5) Building Permits and Inspections.² See CIP organizational chart below.

¹ 5 G.C.A. §§ 5113(a), 5262(b), and 5264.

² The Building Permits and Inspections Section was not part of our review in this audit.



Current law requires projects in excess of \$25,000 to be offered publicly for bid in a periodical of general circulation at least once and at least seven days prior to bid submission deadline.³ The GAR requires CIP bid invitations to be advertised no less than three separate days within the bid period.⁴

³ 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2).

⁴ 29 G.A.R. §§ 1160 and 1167.

Results of Audit

DPW did not consistently comply with Guam Procurement Law and Regulations to ensure fair and open competition. We found: (1) preferential selection of 10 contractors who received \$14.1M (54%) of the \$25.9M in awarded projects; (2) 262 CIPs totaling \$6.6M were not advertised; (3) emergency procurement was used to circumvent the competitive sealed bid process, including the \$199,200 purchase of eight sports utility vehicles from a contractor who is not an authorized automotive dealer; (4) documentation was missing for procurements totaling \$10.5M; and (5) \$226,926 in routine maintenance work was contracted as CIPs and the top five contractors received \$121,539 or 54%. Conflicting advertising requirements, artificial division of procurement, poor planning, and inadequate training of CIP personnel allowed these conditions to occur.

Preferential Selection of Contractors

According to the Guam Contractors License Board, an average of 957 licensed contractors conducted business between fiscal years 2007 and 2009. Of these, only 76 or 8% won government of Guam CIPs. We recognize that not all licensed contractors would be interested in bidding for projects due to the financial constraints of the government of Guam, but we found that DPW awarded 566 CIPs totaling \$25.9M to only 76 contractors. The project costs ranged from \$142 to \$1.4M. See Table 1 for stratification of projects.

Table 1: CIP Stratification

DOLLAR AMOUNT RANGE	TOTAL AMOUNT	%	# OF CIPs	%
Less than \$5,000	\$ 226,925	1%	93	17%
\$5,000 - \$24,999	\$ 3,600,126	14%	290	51%
\$25,000 - \$49,999	\$ 3,199,824	12%	84	15%
SUBTOTAL, LESS THAN \$50,000	\$ 7,026,875	27%	467	83%
\$50,000 - \$99,999	\$ 3,465,358	13%	47	8%
\$100,000 - \$499,999	\$ 9,714,002	38%	46	8%
\$500,000 or more	\$ 5,681,513	22%	6	1%
SUBOTAL, \$50,000 AND ABOVE	\$ 18,860,873	73%	99	17%
TOTAL	\$ 25,887,748	100%	566	100%

Of the 76 contractors, the top 10 received 184 CIPs totaling \$14.1M, 54% of the \$25.9M. These contractors received projects ranging in cost from \$941,034 to \$2.4M. See Table 2 below for more details. Of the 76, 21 contractors received 456 CIPs totaling \$17.6M, averaging about 22 projects each. The other 55 contractors received 110 CIPs totaling \$8.3M, averaging about two projects each. Contractor #1, for example, won 37 CIPs collectively worth \$2.4M. Contractor #4 received one CIP worth \$1.4M. Contractor #14 received 58 CIPs totaling \$803,746.

Table 2: Top 10 Contractors' Award Amounts and # of CIPs

CONTRACTOR #	TOTAL AWARD AMOUNT	% OF TOTAL AWARD AMOUNT	# OF CIPS	% OF CIPS	# OF CIPS NOT ADVERTISED	TOTAL AWARD AMOUNTS OF CIPS NOT ADVERTISED
1	\$ 2,436,075	9%	37	7%	6	\$ 1,354,047
2	\$ 2,103,774	8%	13	2%	1	\$ 49,160
3	\$ 1,602,516	6%	47	8%	9	\$ 885,693
4	\$ 1,435,020	6%	1	0%	0	\$ -
5	\$ 1,386,980	5%	38	7%	5	\$ 178,456
6	\$ 1,097,500	4%	9	2%	1	\$ 132,000
7	\$ 1,064,924	4%	9	2%	4	\$ 147,865
8	\$ 1,042,477	4%	12	2%	5	\$ 205,351
9	\$ 973,166	4%	1	0%	0	\$ -
10	\$ 941,034	4%	17	3%	5	\$ 197,179
SUBTOTAL, TOP 10 CONTRACTORS	\$ 14,083,466	54%	184	33%	36	\$ 3,149,751
OTHER 66 CONTRACTORS	\$ 11,804,283	46%	382	68%	50	\$ 1,893,667
TOTAL, 76 CONTRACTORS	\$ 25,887,749	100%	566	100%	86	\$ 5,043,418

We found that some contractors continued to win projects despite their poor performance because DPW does not have or maintain a suspension and debarment listing.⁵ The department has no way of knowing which contractors are approved for government projects and which are banned. An Engineer Supervisor indicated that contractors who previously performed jobs for DPW usually maintained contact and inquired about any available projects.

For example:

- In September 2006, Contractor #8 was awarded \$765,000 to design and construct emergency generator, shelters, and tanks at five public schools. The contractor failed to complete the project but was not penalized and was instead awarded two more projects: one for \$21,147 in April 2007 and another for \$29,995 in December 2007.
- In August 2007, Contractor #10 was awarded \$186,876 to install typhoon shutters at seven schools. We tested the project at Harry S. Truman Elementary and found that the 90-day timeframe for completion was exceeded by 219 days. Despite the poor performance, the contractor was awarded another \$704,158 in December 2007 to install typhoon shutters at nine other schools.

⁵ 5 G.C.A. § 5231 states that prospective suppliers may be prequalified for particular types of supplies, services, and construction. In addition, 5 G.C.A. § 5426 states that the Director of Public Works, after consultation with the Using Agency and the Attorney General, shall have authority to debar or suspend a person from consideration for award of contracts if there is probable cause.

We recommend the DPW Director assign the Chief Engineer to establish a contractors' suspension and debarment list based on performance history and feedback from the CIP using agencies, in accordance with 5 G.C.A. § 5426.

262 CIPs Totaling \$6.6M Not Advertised Due to Artificial Division

Our review of the procurement law and regulations revealed conflicting requirements for advertising procurement solicitations. Specifically:

- 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2) require Invitation for Bids (IFBs) for projects in excess of \$25,000 be advertised in a periodical of general circulation at least once and at least seven days prior to the submission of bids.
- 29 G.A.R. §§ 1160 and 1167 state that CIPs shall be procured through advertisements of bids at least three separate days within the bid period.

Although the rules and regulations require public bid solicitations for projects over \$25,000, we found 86 CIPs each over \$25,000 and totaling \$5M that were not advertised. See Table 2 for details.

A DPW Supervisor explained that projects are divided into smaller purchases for ease of commencing the project without a lengthy approval process.⁶ Of the 76 contractors, 25 were issued more than one project of similar nature on the same day or within a short time period, thereby circumventing the competitive sealed bid process. Individually, most of the awarded projects were less than \$25,000 and not required to be advertised, but collectively, they amounted to \$25,000 or more and therefore should have been advertised. As a result, the 262 projects totaling \$6.6M were artificially divided in violation of 5 G.C.A. § 5213. See Appendix 5 for these projects. Some instances noted include:

- Between June and December 2006, Contractor #14 was awarded 39 projects totaling \$501,280 for hazard mitigation in various village streets. We found no evidence that the projects were advertised.
- From May 3 to 8, 2007, Contractor #17 was awarded 38 projects totaling \$465,140 for tie-down and reinforcement of air condition units at various schools. These projects were not advertised.
- On September 29, 2006, Contractor #18 was awarded five purchase orders totaling \$407,847. Five purchase orders totaling \$199,200 were for the emergency procurement of eight sport utility vehicles. Delivery took between 140 and 255 days to complete. Based on the timeframe and the nature of the purchase, the purchase appears to be an abuse of emergency procurement. The Office of Public Accountability (OPA) received a hotline tip regarding this matter.
- On May 2, 2007, Contractor #5 was awarded six \$21,600 purchase orders totaling \$129,600 for roof hardening at six schools. These projects were not advertised.
- On August 21, 2006, Contractor #12 received a \$41,600 purchase order to renovate the police department's building in Tiyan. The contractor received another two purchase orders totaling \$48,973 in December 2006, as well as a purchase order for \$22,875 in

⁶ However, this practice is contrary to the law as 5 G.C.A. § 5213 states that procurement requirements shall not be artificially divided so as to constitute a small purchase.

March 2007 and another for \$8,650 in May 2007 for additional costs. Altogether, the project totaled \$122,098, but the various parts were kept under \$25,000 and were not advertised.

- On June 18, 2007, Contractor #39 was awarded two emergency projects totaling \$91,888 (\$42,444 and \$49,444) for Emergency Flood Control at two schools. The projects were completed in January and December 2008, respectively.

Given the cost to advertise, it may not be practical to require all CIPs regardless of amount to be advertised. Therefore, we recommend that the DPW Director direct the Chief Planner to consider revising 29 G.A.R. §§ 1160 and 1167 to be consistent with the advertisement requirements of 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2). We also recommend the Director immediately prohibit the practice of artificially dividing projects as a way to bypass the procurement process and designate the Chief Planner or designee to ensure that projects of similar scope and collectively anticipated to cost more than \$25,000 be advertised in accordance with 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2).

Emergency Method Used to Circumvent Advertisement

Title 5 G.C.A. § 5215 and 2 G.A.R. § 3113 state that no combination of emergency procurements may be made for the amount of goods, supplies, or services greater than necessary to meet the emergency or within 30 days immediately following the procurement. In addition, 5 G.C.A. § 5010 states that when possible all procurements be made sufficiently in advance of delivery or performance to promote maximum competition and good management of resources.

DPW CIP personnel provided a listing of 90 CIP emergency procurements totaling \$5.8M. We noted that one of the projects totaling \$113,415 was listed as part of small purchases. We tested 11 procurements totaling \$1.4M (5% of the \$25.9M) and found awards ranging from \$28,000 to \$223,000 and citing five Executive Orders (EO).

EO #2006-22 was cited in three purchase orders totaling \$403,295. The EO only authorized emergency procurement of “goods and services to restore, reconstruct, and repair bridges and roads.”

- A \$215,140 purchase order for the installation of drainage overflow, specifically identified in the EO, took 126 days to complete or 96 days beyond the law’s requirement.
- Two purchase orders totaling \$188,155 were used to procure eight SUVs.⁷ A DPW memo dated October 20, 2006 indicated that the significant increase in bid price was triggered by the urgency of the project and the limited design and construction time line. The purchase orders and requisition files are misleading because they specifically state, "Installation of 36” diameter RCP drainage overflow (Design-Build)" and that they are to pay for "8 EACH- Equipment, 2007 SUVs issued due to Executive Order No. 2006-22 State of Emergency Declaration." Delivery of the vehicles took between 140 and 255 days. We question the procurement because the EO did not authorize the purchase of vehicles and Contractor #18 is not an authorized automotive dealer.

⁷ Based on our analysis, there were a total of five purchase orders totaling \$199,200 issued for the purchase of the eight SUVs, but only three were part of our testing selection.

EO #2008-10 was cited in two purchase orders totaling \$60,381. The EO authorized the procurement of any goods and services identified by the Federal Receiver as necessary to enforce the terms of the Consent Decree (Civil Case No. 02-00022) and for operation of DPW's Solid Waste Management Division. Since the Division's equipment and services were in need of immediate upgrade and repair, emergency procurement was necessary. Both purchase orders were for "emergency repairs" at DPW's Packer Shop. The repairs took between 103 and 120 days to complete.

EO #2008-13 was cited in five purchase orders totaling \$868,213. The EO authorized government agencies and instrumentalities to assist in repairing Department of Education (DOE) schools "to avoid endangering the health and safety of our island's children when GPSS opens its schools on August 12, 2008."⁸

- Four projects totaling \$683,063 were for roof repairs and waterproofing at Agueda Johnston Middle, George Washington High, Inarajan Middle, and P.C. Lujan Elementary schools. These projects commenced in mid- to late-July 2008 and took between 36 and 173 days to complete.
 - Agueda Johnston Middle School's roof repairs were completed August 20, 2008 or six days after the commencement of classes.
 - Roof repairs at P.C. Lujan Elementary were the last to be completed, which was on January 5, 2009, nearly five months into the school year.
- One project for \$185,150 was for the installation of panic doors at Marcial Sablan Elementary, Oceanview Middle, F.Q. Sanchez Elementary, Inarajan Elementary, Inarajan Middle, M.U. Lujan, Talofoto Elementary, and Merizo Elementary schools. The project was delayed due to an incorrect shipment and was not completed until February 19, 2009.
- None of the projects were completed before the start of classes, but schools were allowed to open while the emergency work was underway.

EOs #2009-01 and 2009-02. A purchase order for \$113,415 was issued for both the emergency and sole source procurement installation of a vehicle weigh scale at the Ordot Solid Waste Facility. The project took 76 days to complete. EO #2009-01 was issued on January 2, 2009 and EO #2009-02 was issued on February 2, 2009. Both cited a continuing state of emergency at DPW's Solid Waste Management Division and had the same wording as EO #2008-10 issued on June 7, 2008. A memo on file instructed DPW to award the scale's installation to the supplier. The project file contained no evidence that DPW verified the reasonableness of the installation price or why the scale's purchase and installation were done separately.

Of the 11 CIP procurements tested, nine totaling \$1M exceeded the 30-day emergency timeframe and took from 76 to 255 days to complete. The reasons cited for the setbacks included shipment delays, incorrect material order, and inclement weather. Based on the type of work and lengthy completion time, we concluded that emergency procurement was utilized simply to circumvent the procurement process.

⁸ The Department of Education was formerly called the Guam Public School System (GPSS).

Construction work involves extensive planning. As a best practice, we urge the DPW Director to consider requiring all government of Guam agencies to submit to DPW an annual list of construction needs for planning CIP procurement.

Missing Procurement Documentation

The law requires procurement officers to maintain complete records of procurement transactions, to include all written documents and internal and external communication in each file.⁹ Additionally, emergency procurement requires documentation of the emergency, the goods and services needed to address it, and the basis for which the contractor was selected.¹⁰ DPW CIP regulations even prescribe a standardized filing system for organizing and maintaining CIP procurement files.¹¹ See Appendix 6 for the types of documents required in CIP procurement files.

We tested 67 files totaling \$10.5M and found them disorganized. All lacked documents such as bid analyses, rationales for awarding the best bidder, and internal and external communications. The files were not consistent with one another and were not kept according to the standardized filing system. We found the following deficiencies:

- 17 projects totaling \$238,380 had no evidence of bid evaluation or rationale for contractor selection;
- 5 emergency procurement projects totaling \$868,213 had no documentation for written determination of emergency or the authorizing executive order;
- 17 projects totaling \$187,275 were missing affidavits, such as the major shareholders and non-collusion affidavits (see Appendix 7 for sample affidavits);
- 9 projects totaling \$4,778,772 were missing bid opening attendance sheets;
- 8 projects totaling \$4,724,772 were missing the receipt time of all bid submittals;
- 8 projects totaling \$4,724,772 were missing the notice of award to unsuccessful bidders;
- 4 projects totaling \$450,000 were missing the distribution record for bid amendments;
- 45 projects totaling \$5,267,667 were missing records of meeting, communications, and audio recordings of negotiations;
- 21 projects totaling \$205,739 did not indicate the bid period (from the availability of bid documents to bid opening); and
- The only RFP for \$973,166 that was tested did not have all the relevant procurement documentation, such as the record of submitted proposals (Register of Proposals) and each consultant's detailed resume.
- Our findings are similar to those from the government of Guam Single Audits since 1998, in which extend auditors expressed repeatedly concerns over the lack of procurement history at DPW.

None of the purchase orders had expiration dates, but did specify delivery time. Expiration dates can be used to monitor when funds expire.

⁹ 5 G.C.A. § 5249.

¹⁰ 5 G.C.A. § 5215.

¹¹ 29 G.A.R. § 1111.

Prior to FY 2005, all project documents were filed in one area within the CIP Division. For reasons unknown to CIP personnel, management split the filing among three supervisors: the Contracts Administration Engineer Supervisor kept the records of the procurement or “project” process; the CQC Engineer Supervisor recorded the construction progress until the closeout process; and the Contracts Administration Management Analyst kept the payment files. According to the supervisors, we were provided all the files in their respective possession; if certain documents were missing, they did not have them. Every file tested was missing some documents. It was not until we conducted our review that the Chief Planner was made aware of this condition. We recommend the Director instruct the Chief Planner or designee to implement the prescribed standardized filing system in 29 G.A.R. § 1111, to include table of contents and checklist.

Routine Maintenance Work Contracted as CIPs

Blanket purchase agreements (BPAs), as described in 2 G.A.R. § 3112.1, offer a simpler method of filling recurring services, supply needs and construction. By establishing “charge accounts” with prequalified sources, BPAs work best for procuring supplies and services when and as required. BPAs preclude the need to issue numerous purchase orders for the goods and services that vary by type, quantity, and delivery time.¹² They provide for equal distribution of purchases among at least three different contractors whenever possible. BPA purchases cannot exceed \$50,000 for construction.¹³

In addition, prospective suppliers may be prequalified for particular types of supplies, services, and construction.¹⁴

Based on our analysis of the CIP contracts, 93 projects totaling \$226,926 appear to be for routine maintenance work and do not qualify as CIPs. Each was procured for less than \$5,000. The projects were awarded to 25 vendors, of which the top five won \$121,539, or 54%, of the total award. Refer to Table 3 for details.

Table 3: Top 5 Contractors with Projects Less than \$5,000 Each

	CONTRACTOR #	TOTAL AWARD AMOUNT	% OF AWARD AMOUNT	# OF PROJECTS	% OF PROJECTS
1	12	\$ 30,409	13%	14	15%
2	11	\$ 27,614	12%	13	14%
3	5	\$ 25,531	11%	11	12%
4	14	\$ 20,013	9%	5	5%
5	34	\$ 17,973	8%	7	8%
	SUBTOTAL, 5 CONTRACTORS	\$ 121,540	54%	50	54%

¹² 2 G.A.R. § 3112.12(a).

¹³ 2 G.A.R. § 3112.13.

¹⁴ 5 G.C.A. § 5231.

CONTRACTOR #	TOTAL AWARD AMOUNT	% OF AWARD AMOUNT	# OF PROJECTS	% OF PROJECTS
SUBTOTAL, OTHER 20 CONTRACTORS	\$ 105,386	46%	43	46%
TOTAL, 25 CONTRACTORS	\$ 226,926	100%	93	100%

We recognize that routine maintenance work is necessary, but find that DPW’s individual procurement for projects less than \$5,000 is inefficient. For example:

- Contractor #57 was awarded \$3,595 to replace doors at the Department of Agriculture. Door replacement does not qualify as CIP.
- Contractor #76 was awarded \$534 to provide maintenance and repairs at the Yigo multi-purpose gym. Maintenance work does not qualify as CIP.
- Contractor #26 was awarded \$2,736 to provide maintenance and repair at the Astumbo Fire Station. Despite the amount, this project was advertised. Maintenance is not CIP.

CIP personnel procure an average of 189 projects per year, but do not use BPAs or have a list of prequalified contractors from which to select for maintenance work or other small projects. Instead, they use a bid invitation template for all procurements. BPAs would be more efficient and beneficial. CIP personnel should be able to screen contractors through BPA advertisements before the end of each fiscal year and to compile a list of prequalified contractors for the new fiscal year. The list could include the types of work the contractors can perform and their prices. BPAs can be used when numerous orders are anticipated and dependable contractors are identified from past experience.¹⁵

We recommend the Director direct CIP personnel to develop and use a prequalified contractor list, establish a process for determining when BPAs should be used, and utilize BPAs for routine maintenance work and other small projects pursuant to 2 G.A.R. § 3112.1 and 5 G.C.A. § 5231.

Poor Control Environment

Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties. In addition, management should ensure that skill needs are continually assessed and that the organization is able to maintain a workforce with required skills necessary to achieve organizational goals.¹⁶

Our interviews with CIP personnel revealed several management issues that adversely affect operations and morale. We learned that the procurement staff lack formal training; that they rely on entrenched practices, and are resistant to change.¹⁷ The staff does not have an SOP (standard operating procedure) for CIP procurement and merely continue the practices of their

¹⁵ 2 G.A.R. § 3112.12(d).

¹⁶ U.S. Government Accountability Office’s Standards for Internal Control in the Federal Government, November 1999.

¹⁷ Although government procurement training is not always available, a non-profit organization offered some procurement training as recently as July and August 2010, but no DPW CIP personnel attended.

predecessors. They process small procurements by following the pattern of past purchases. For large contracts, they learn from experience and from the Attorney General's refusal to approve incomplete or incorrectly filed documents. A Management Analyst's recommendations to improve the procurement process were negatively received.

Communication and teamwork in the division are almost nonexistent. CIP personnel told us they communicate with each other only as needed. This was evident during our review. For example:

- In December 2006 CQC informed Contracts Administration that the renovation of the CQC office by in-house maintenance had to stop because the crew was called to work at Government House. The CQC staff tried to work in their building, but found it difficult. The CQC Supervisor asked Contractor #30, who was already renovating parts of DPW's Building B, to continue the CQC's renovation. The contractor did so and billed DPW \$9,000. The CQC Supervisor admitted to the mistake of improperly engaging the contractor and the Contracts Administration Supervisor determined that the violation of the procurement law was unintended and recommended ratifying the contract as a remedy. The misstep could have been avoided if communication between the division supervisors had been better.
- The Chief Engineer says he spends 90% of his time with the Highway Division, which funds his salary, and only 10% with CIP. As DPW's only licensed engineer, he is heavily relied upon to provide expert construction advice. He is required to review all procurement files and ensure the CIPs were procured in fair and open competition and in compliance with the Guam Procurement Law and the Regulations. In effect, he is a monitoring control in the procurement process. Although he approved the 67 CIPs we tested, we found such deficiencies as the lack of advertisement and procurement history, and insufficient evidence of fair and open competition in all the files.

Given the Chief Engineer's workload, it is unrealistic to expect an exacting review of all CIP procurement. On the other hand, the Chief Planner is responsible for managing the CIP Division and its five sections. Therefore, we recommend the Director delegate the Chief Planner or a designee to review CIP procurements up to a predetermined threshold and the Chief Engineer to review those in excess of the threshold. We also recommend the Director provide CIP personnel with the proper training so that they can be knowledgeable, confident, and better able to ensure fair and open competition in compliance with the Guam Procurement Law and the Guam Procurement Regulations.

Conclusion and Recommendations

As the agency authorized to undertake construction projects for the government of Guam, DPW procured 566 CIPs totaling \$25.9M between fiscal years 2007 and 2009. We tested 67 projects totaling \$10.5M and found that DPW did not consistently comply with the Guam Procurement Law and Regulations to ensure fair and open competition in the government procurement process. Specifically, we found: (1) preferential selection of 10 contractors who received 54% or \$14.1M of the \$25.9M total awarded; (2) 262 CIPs totaling \$6.6M were not advertised; (3) \$1M in emergency procurement was used to circumvent advertisement; (4) \$10.5M with missing procurement documentation; and (5) \$226,926 in routine maintenance work contracted as CIPs.

These conditions occurred because there were conflicting advertising requirements, artificial division of procurement, poor planning, and inadequate training of CIP personnel.

To correct these deficiencies, we recommend the following to the DPW Director:

1. Direct CIP personnel to immediately cease the practice of artificially dividing projects and designate the Chief Planner or designee to ensure that projects of similar scope that are collectively anticipated to cost in excess of \$25,000 be advertised in accordance with 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2);
2. Direct the Chief Planner or designee to consider revising 29 G.A.R. §§ 1160 and 1167 to be consistent with the advertisement requirements of 5 G.C.A. § 5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2);
3. Delegate the Chief Planner or designee to review all CIP procurement up to a predetermined threshold and require the Chief Engineer to review all CIP procurement in excess of the threshold;
4. Direct CIP personnel to develop and use a prequalified contractors list, establish a process to determine when BPAs are to be used, and utilize BPAs for routine maintenance work and other small projects pursuant to 2 G.A.R. § 3112.1 and 5 G.C.A. § 5231;
5. Direct the Chief Planner or designee to implement the standardized filing system prescribed in 29 G.A.R. § 1111, to include a table of contents and checklist;
6. Assign the Chief Engineer to establish a contractors' suspension and debarment list based on performance history and feedback from the CIP using agencies, in accordance with 5 G.C.A. § 5426.; and
7. Provide all CIP personnel with construction procurement training so that they are knowledgeable, confident, and better able to ensure fair and open competition in compliance with the Guam Procurement Law and the Guam Procurement Regulations.

Management Response and OPA Reply

We met with the DPW's CIP Division Chief Planner and Chief of Engineer on October 8, 2010 to discuss the audit findings. A final draft report was transmitted to the DPW on October 14, 2010 for their official response.

On November 3, 2010, we met with the DPW Director and the Chief Planner to discuss the audit findings and recommendations. The Director and Chief Planner agreed with the audit findings and recommendations in this meeting. On November 4, 2010, the DPW Director submitted a response (See Appendix 8) which concurred with all the audit findings and recommendations. DPW also issued a request to the Attorney General's office for legal interpretation and resolution on the conflicting procurement requirement on advertisement. See Appendix 8 for the DPW's response.

The legislation creating the Office of Public Accountability 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 Department of Public Works to provide the target date and title of the official(s) responsible for implementing the recommendation. In the interim, DPW has decided to advertise all procurement solicitation in excess of \$25,000 at least twice over the procurement period without compromising integrity.

We appreciate the cooperation shown by the Department of Public Works, the Department of Administration, and the various using agencies contacted for this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Impact

FINDING AREA	QUESTIONED COSTS ¹⁸
1 Preferential Selection of Contractors DPW awarded 566 CIPs to only 76 contractors during FY2007 to FY2009.	\$ -
2 262 CIPs Totaling \$6.6M Not Advertised Due to Artificial Division CIPs were artificially divided in violation of 5 G.C.A. § 5213.	\$ 5,670,005 ¹⁹
3 Emergency Method Used to Circumvent Advertisement CIPs were completed within 76 to 255 days, exceeding the 30-day emergency period authorized under 5 G.C.A. § 5215.	\$ 1,045,558
4 Missing Procurement Documentation All procurement files reviewed were insufficient, disorganized, inconsistent, and did not comply with 29 G.A.R. §1111's standardized filing system.	\$ 9,152,710 ²⁰
5 Routine Maintenance Work Contracted as CIPs CIPs procured below \$5,000 were for routine maintenance work, not the construction of a CIP.	\$ 204,350 ²¹
6 Poor Control Environment Procurement process is ineffective due to lack of formal training, communication breakdown, resistant to change, and lack of teamwork.	\$ -
Total Questioned Cost:	\$ 16,072,622

¹⁸ Cost questioned because of (a) an alleged violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; (b) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or (c) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

¹⁹Total questioned cost was \$6,602,303. To prevent double counting, we removed \$939,302, of which \$894,018 and \$38,280 were already included in *Emergency Method Used to Circumvent Advertisement* and *Routine Maintenance Work Contracted as CIPs*, respectively.

²⁰ Total questioned cost was \$10,467,873. To prevent double counting, we removed \$1,315,163, of which \$269,605 and \$1,045,558 were already included in *262 CIPs Totaling \$6.6M Not Advertised Due to Artificial Division* and *Emergency Method Used to Circumvent Advertisement*, respectively.

²¹ Total questioned cost was \$226,926. To prevent double counting, we removed \$22,576, which was already included in *262 CIPs Totaling \$6.6M Not Advertised Due to Artificial Division*.

Appendix 2:**Audit Scope and Methodology**

The scope of our audit encompasses all DPW construction procurement from October 1, 2006 through September 30, 2009 (FY 2007 through FY 2009).

Our methodology included:

- Gaining an understanding of the policies, procedures, applicable laws and regulations pertaining to the DPW's procurement of construction projects;
- Identifying prior audits and OPA hotline tips relevant to this engagement;
- Interviewing the Chief of Engineer, Chief Planner, Engineer Supervisor for Contracts Administration, Engineer Supervisor for Construction Quality Control, Management Analyst IV for Fiscal and Contracts, and several Construction Quality Control Inspectors to understand DPW's CIP procurement process;
- Interviewing a Department of Administration General Accounting Supervisor and Management Analyst to understand the CIP payment process;
- Interviewing pertinent personnel at the Department of Education, Department of Corrections, and Mayor's Council of Guam to gain an understanding of the using agencies' satisfaction with the DPW CIP procurement process;
- Obtaining an understanding and performing an evaluation of the internal controls of the DPW's procurement of construction projects; and
- Judgmentally selecting a sample of 67 projects totaling \$10.5M, which were tested under the following methods:
 - 36 CIPs totaling \$488,895 under small purchases requirements;
 - 10 CIPs totaling \$5,751,938 under competitive sealed bidding requirements
 - 11 CIPs totaling \$1,445,304 under sole source and emergency procurement requirements.
 - 10 CIPs totaling \$2,781,736 under 5 G.C.A., 2 G.A.R., and 29 G.A.R. advertising requirements
 - Performed data analysis on 262 CIPs totaling \$5,670,005 is to determine artificial division

We conducted this audit in accordance with the standards for performance audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives 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**

Government of Guam Single Audits

The Government of Guam Single Audits from FY 1998 through 2009 have continually identified the lack of procurement history as a significant deficiency for various government agencies. A significant deficiency means that a possibility of noncompliance with a federal program requirement will not be prevented or detected by an entity's internal controls. DPW is among those government agencies with repetitive procurement findings.

The table below illustrates seven procurement-related findings specific to DPW with \$2,821,001 in questioned costs from FY1998 through FY2009.

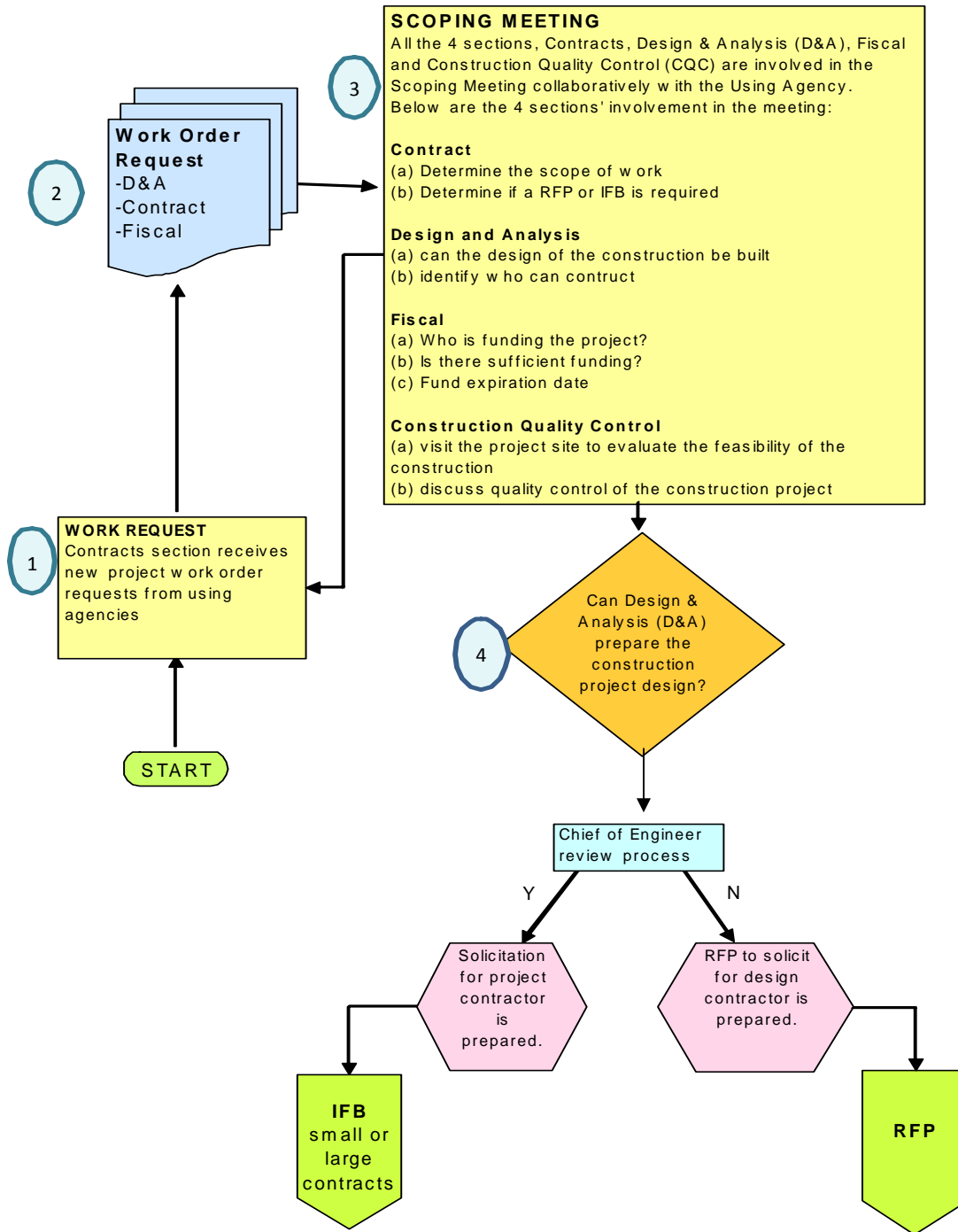
FISCAL YEAR	FINDING NUMBER	FINDING	QUESTIONED COSTS
1998	98-25	No written rationale for vendor selection	\$ 1,239,987
	98-98	No significant procurement history on file	\$ -
2002	02-02	No significant procurement history on file	\$ 606,732
	02-12	No written rationale for vendor selection & no written determination for shorter bid period	\$ 369,584
2003	03-09	No significant procurement history on file; Insufficient rationale for selected vendor; Work performed by vendor prior to procurement; and Competitive procurement procedures were not followed	\$ 410,790
2007	07-05	Insufficient procurement documents to demonstrate open competition	\$ 80,274
	07-07	Insufficient procurement documents to demonstrate open competition & No procurement file	\$ 113,634
TOTAL			\$ 2,821,001

OPA Performance Audits

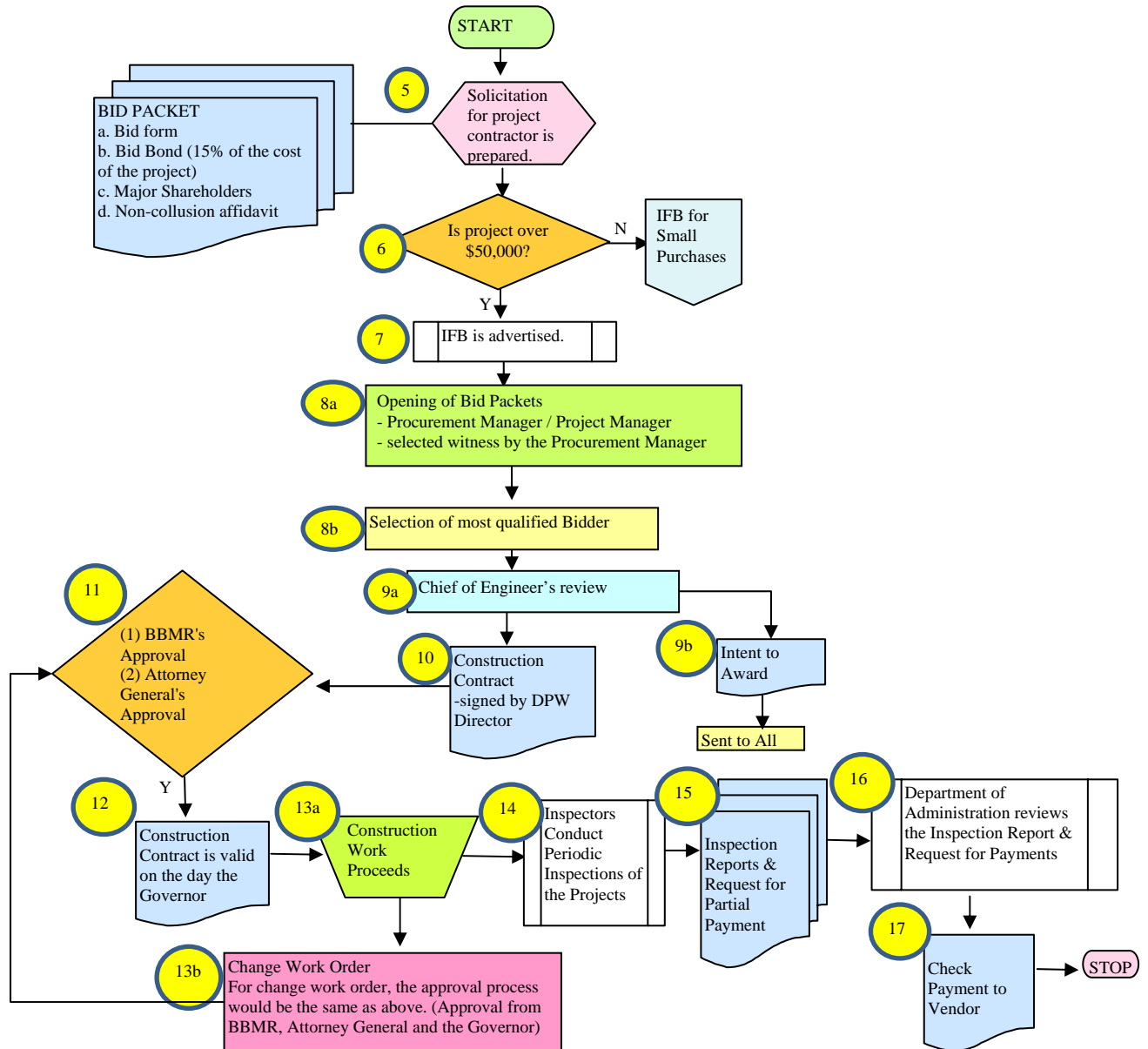
In September 2008, the Office of Public Accountability issued OPA Report No. 08-06, Performance Audit of the Department of Public Works' Landfill Design Contract. This audit found that DPW did not have controls to ensure that the landfill design contract was procured according to Guam procurement laws 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 did not scrutinize contract invoices prior to approving payments; and contract funding resulted in DPW appropriation shortfalls.

**Appendix 4:
CIP Procurement Process**

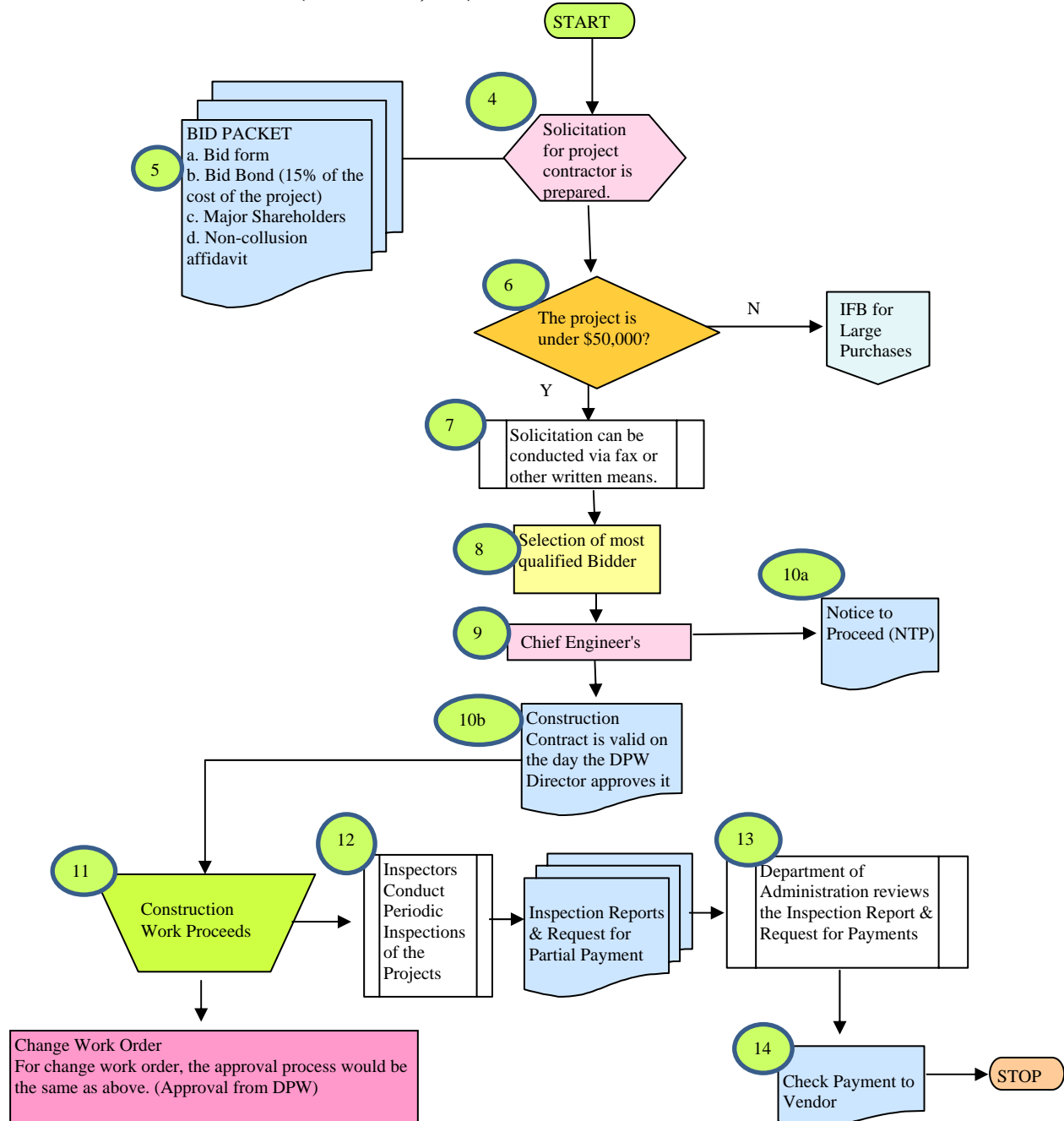
Based on our walkthrough discussions with DPW CIP personnel, we prepared the following flowcharts to illustrate the CIP procurement process:



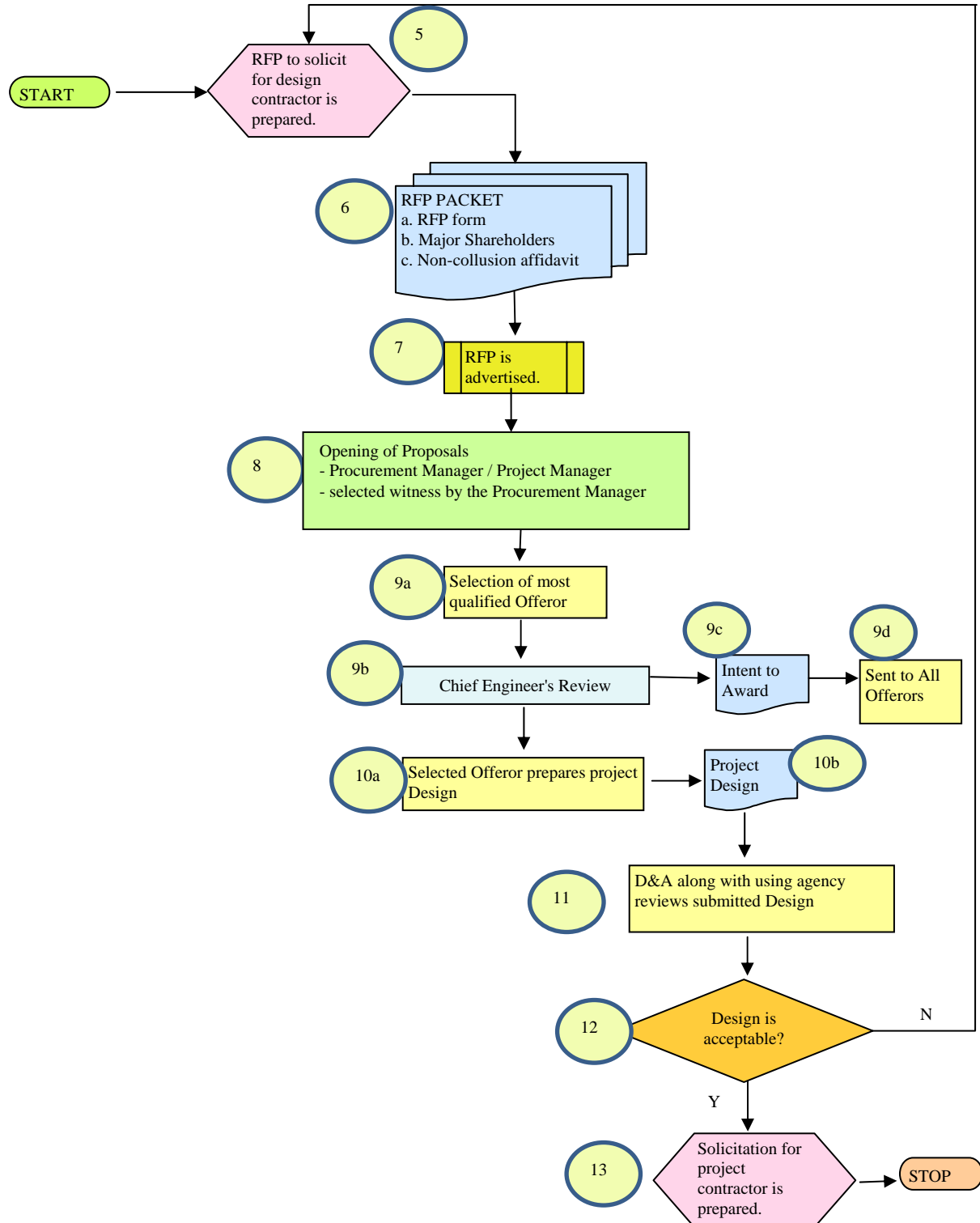
IFB for Large Contracts (\$50,000 and above)



IFB for Small Contracts (below \$50,000)



RFP



Appendix 5:

Artificially Divided Projects

	CONTRACTOR #	PROJECT COUNT	TOTAL AWARD AMOUNT	ARTIFICIAL DIVISION COUNT	% OF COUNT	SUM OF ARTIFICIALLY DIVIDED PO AMOUNT	% OF AMOUNT
1	3	47	\$ 1,602,516	43	16%	\$ 807,150	12%
2	10	17	\$ 941,034	14	5%	\$ 681,962	10%
3	14	58	\$ 803,746	48	18%	\$ 611,668	9%
4	17	40	\$ 498,380	38	14%	\$ 460,430	7%
5	2	13	\$ 2,103,774	7	3%	\$ 454,525	7%
6	16	8	\$ 521,497	6	2%	\$ 427,883	7%
7	12	42	\$ 876,629	16	6%	\$ 389,055	6%
8	11	31	\$ 898,258	6	2%	\$ 367,992	6%
9	31	16	\$ 362,404	8	3%	\$ 259,910	4%
10	5	38	\$ 1,386,980	11	4%	\$ 249,969	4%
11	26	14	\$ 261,272	11	4%	\$ 243,975	4%
12	25	5	\$ 268,192	3	1%	\$ 233,605	4%
13	27	3	\$ 253,346	2	1%	\$ 223,346	3%
14	18	7	\$ 461,062	5	2%	\$ 199,200	3%
15	21	8	\$ 384,900	5	2%	\$ 187,430	3%
16	23	10	\$ 311,472	2	1%	\$ 172,101	3%
17	1	37	\$ 2,436,075	16	6%	\$ 121,500	2%
18	34	15	\$ 152,383	5	2%	\$ 94,312	1%
19	39	5	\$ 184,910	2	1%	\$ 91,888	1%
20	7	9	\$ 1,064,924	3	1%	\$ 76,557	1%
21	42	3	\$ 73,143	3	1%	\$ 73,143	1%
22	32	12	\$ 170,105	5	2%	\$ 63,590	1%
23	20	4	\$ 414,007	2	1%	\$ 52,000	1%
24	45	3	\$ 53,996	2	1%	\$ 42,058	1%
25	30	13	\$ 179,995	2	1%	\$ 33,644	1%
	SUBTOTAL, 25 CONTRACTORS	458	\$16,665,001	262	100%	\$ 6,602,303	100%
	OTHER, 51 CONTRACTORS	108	\$ 9,222,748	0	0%	\$ -	0%
	TOTAL, 76 CONTRACTORS	566	\$25,887,749	262	100%	\$ 6,602,303	100%

29 G.A.R. § 1111 prescribes the following documentation requirements to be included in all CIP procurement files:

1. One project file shall be divided into the separately initiated and maintained Planning and Design Phase & Bid and Construction Phase.
2. Planning and Design Phase will have the following file categories:
 - a. Administration will have the following two file headings and documents within shall be arranged in chronological order:
 - i. File A
 1. Certified Work Request/Public Law
 2. Project Cost Breakdown (Schedule A)
 3. Project Implementation Program (Scheduling)
 4. Consultant Selections
 5. Negotiations
 6. Consultant Contracts and Scope of Services
 7. Invoices and Payments
 8. Bid Documents and Analysis (if re-design becomes necessary)
 - ii. File B
 1. General Correspondence
 2. Administrative Meetings
 3. Status Reports
 - b. Planning, Design, and Production will have the following three file headings and documents within shall be arranged in chronological order:
 - i. File A
 1. Approvals
 2. Correspondence and Meetings with Consultants
 - ii. File B
 1. Project Surveys (topo and boundary or ROW)
 2. Soils and Site Investigations
 3. Facilities Program
 4. Schematics (or Preliminary Alignment)
 5. Design Development (or Final Alignment)
 - iii. File C
 1. Construction Documents (Final)
 2. Specifications (Final)
 3. Cost Estimates (Final)
3. Bid and Construction Phase will have the following file categories:
 - a. Administration will have the following three file headings and documents within shall be arranged in chronological order:

- i. File A
 - 1. Public Law or Certified Work Request
 - 2. Project Probable Construction Cost Breakdown (Schedule A)
 - 3. Construction Program
- ii. File B
 - 1. General Correspondence
 - 2. Administrative Meetings
- iii. File C – Bid and Contract
 - 1. Bid Advertisement
 - 2. Prebid Conference
 - 3. Bid Addenda
 - 4. Bid Tabulation (results of Bid Opening)
 - 5. Bid Bonds
 - 6. Bid Analyses
 - 7. Negotiations (if appropriate)
 - 8. Intent of Award
 - 9. Contract (with Performance and Payment Bonds)
 - 10. Change Orders
 - 11. Contract Termination (BOD or Final Inspection and Release of Claims)
 - 12. Warranty
- b. Construction will have the following four file headings:
 - i. File A
 - 1. Arrangements for Preconstruction Conference
 - 2. Notice to Proceed
 - 3. Schedule of Values
 - 4. Construction Progress Chart
 - 5. Payment Estimates
 - ii. File B - Submittal (shop drawings, operating manuals, samples, etc.)
 - iii. File C - Filed Inspection Reports
 - iv. File D - Material Testing and Special Reports

MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)
) ss:
HAGATNA, GUAM)

I, the undersigned, _____, being first (a partner or officer of the company, etc.) duly sworn, deposes and says:

- 1. That the persons who have held more than ten percent (10%) of the company's shares during the past twelve months are as follows:

Table with 3 columns: Name, Address, Percentage of Shares Held. Includes a row for 'Total Number of Shares:'.

- 2. Persons who have received or are entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the bid for which this Affidavit is submitted are as follows:

Table with 3 columns: Name, Address, Amount of Gratuity or Other Compensation.

Further, affiant sayeth naught.

Date: _____

Signature or individual if bidder is a sole proprietorship; Partner, if the bidder is partnership; Officer, of the bidder is a corporation.

Subscribed and sworn to before me this ____ day of _____, 20____.

By: _____
Notary Public _____
In and for the Territory of Guam
My commission expires: _____

NON-COLLUSION AFFIDAVIT

AFFIDAVIT

(Prime Bidder)
TERRITORY OF GUAM)
)ss.
AGANA, GUAM)

_____, being first duly sworn

That he/she is _____
 (a Partner or Officer of the Firm of, etc.)

The party making the foregoing bid affirms that such bid is genuine and not collusive or sham, that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Government of Guam or any person interested in the proposed contract; and that all statements in bid are true.

Signature of: Dated _____
Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

Subscribed and sworn to before me this
____ day of _____, 20____.

NOTARY PUBLIC
My commission expires: _____

Appendix 8:
Management's Response



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



Andrew S. Leon Guerrero

Director
Jesse Garcia
Deputy Director

RECEIVED	
OFFICE OF PUBLIC ACCOUNTABILITY	
DATE:	<u>11/4/10</u>
TIME:	<u>3:10</u>
BY:	<u>mwj</u>

November 4, 2010

Doris Flores Brooks
Public Auditor
Office of the Public Auditor

Subject: Draft Audit Report – Dept. of Public Works (DPW) Procurement of Capital Improvement Projects (CIP)

Hafa Adai Ms. Brooks,

I wish to thank you for giving us this opportunity to respond to the aforementioned draft report. DPW embraces this audit, its findings and recommendations, as CIP shall be guided accordingly. We further recognize the noted accomplishments as the findings and recommendations of this audit shall:

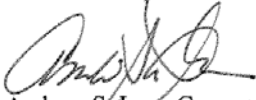
- Assist the CIP management in the effective discharge of its daily responsibilities through the furnishing to management of the analysis, recommendations, and additional information concerning the audit activities reviewed;
- Insure the CIP consistency with the Guam Code Annotated (G.C.A.) and the Guam Administrative Rules and Regulations (G.A.R.), reference the Government Operations on Construction Procurement.
- Encourage the CIP's review of its operational procedures to ascertain whether results are consistent with established objectives and goals and whether the procedures are carried out as planned;
- Provide CIP with recommendations dealing with financial, operational, and compliance improvements;
- Provide the determinations of CIP's overall system of internal control thus ensuring the adequateness, effectiveness, efficiency, and functionality of each CIP activity;

We have carefully reviewed your report and considered each of the recommendations. Please find delineated our management's response to the recommendations in consideration of our Plan of Corrective Action.

I wish to apprise you of our absolute concurrence and in exercising my authority as the DPW Director, shall direct CIP to immediately adopt the recommendations as proposed on the audit report as submitted.

We would like to acknowledge the audit team and thank them for their patience and diligence displayed throughout this significant process.

Senseramente!

 11/4/10
Andrew S. León Guerrero
Director

Attachment:

- DPW Plan of Corrective Action
- Memo to AG, Request for Legal Interpretation and Resolution
- Memo to Div. of Engineering
- DPW FY2011 Invitation For Bid/Contracts
- DPW Organization Chart
- DPW CIP-Vertical Procurement Flow Chart

THE DEPARTMENT OF PUBLIC WORKS PLAN OF CORRECTIVE ACTION

Recommendation #1

Direct CIP personnel to immediately cease the practice of artificially dividing projects and designate the Chief Planner or designee to ensure that projects of similar scope that are collectively anticipated to cost in excess of \$25,000, be advertised in accordance with 5 G.C.A. §5211(c) and 2 G.A.R. §§3109(d) and (f)(2).

Management's Response:

DPW will immediately discontinue the practice of dividing work request and collectively combine all similar/like projects with an anticipated cost of \$25,000.00. We will prepare combined projects for bid process and award to the lowest responsive responsible bidder whose bid meets the requirements and criteria as set forth in "Invitation For Bid" and in accordance with 2 GAR §3108 and 29 GAR §§ 1160 through 1183.

Recommendation #2

Direct the Chief Planner or designee to consider revising 29 G.A.R §§ 1160 and 1167 to be consistent with the advertisement requirements of 5 G.C.A. §5211(c) and 2 GAR §§ 3109 (d) and (f) (2).

Management's Response:

DPW has addressed the conflicting procurement advertisement requirement to the Office of the Attorney General of Guam, (Attachment 1). In the interim until the legal interpretation and resolution on the requirement for procurement advertisements rendered by the Office of the Attorney General, DPW will publicize in a newspaper media of local circulation in the area pertinent to the procurement, on the 4th day and five (5) days before the final date of submission of bids, thereafter.

Procurement period for less than fifteen (15) days will be determined in writing by the procurement officer and made a part of the bid document and will be advertised at least once (1) within the procurement period.

Recommendation #3

Delegate the Chief Planner or designee to review all CIP procurement up to a predetermined threshold and require the Chief Engineer to review all CIP Procurement in excess of the threshold.

Management's Response:

Reference to memorandum dated February 22, 2010, the Director has directed the Chief Planner to oversee the operations CIP, (Attachment 2).

Recommendation #4

Direct CIP personnel to develop and use a prequalified contractor's list, establish a process to determine when BPA's are to be used , and utilize BPA's for routine maintenance work and other small projects pursuant to 2G.A.R. § 5231.

Management's Response:

Routine maintenance work and other small projects:

- (a). Routine maintenance work. Work request and/or requisitions for routine maintenance work(normal maintenance of existing public facilities) shall be returned back to the using agency to be procured under General Service Agency (GSA).
- (b). Other small projects: Under the purview of CIP, construction of new public facilities, or projects which improves by construction of extensions, additions, utilities or other systems, any existing public facility will be reviewed for procurement of construction service. CIP will be guided by the methodology for the procurement of small projects, 2 G.A.R. §3111. CIP will establish a threshold of \$25,000.00 for small projects until such time that the decision for Request for Legal Interpretation and Resolution have been received from the Office of the Attorney General.
- (c). Blanket Purchase Agreement (BPA): Unless agency submits a work request for establishment of BPA for routine, recurring services for construction, then CIP will be the "sub-grantee" and will be responsible for the proper use funds. Otherwise, CIP will not encumber funds for the expenditure of another using agency's request for recurring service and supply needs and construction for normal maintenance of existing public facilities.

Recommendation # 5

Direct the Chief Planner or designee to implement the standardized filing system prescribed in 29 G.A.R. § 1111, to include a table of contents and checklist.

Management's Response:

CIP shall immediately conform to 29 G.A.R. §111 1 on the implementation of project filing procedures and shall designate a central location for all storage of all projects. Additionally, CIP has established a spreadsheet, recording all bids in a sequential numbering system, (Attachment 3).

DPW will review all procurement activities in FY2010, and assemble documents as prescribed in 29 G.A.A. §111 1.

Recommendation #6 Assign the Chief Engineer to establish a contractor's suspension and debarment list based on performance history and feedback from the CIP using agencies, in accordance with 5 G.C.A. §5426.

Management's Response:

DPW shall follow the guidelines on 2 G.A.R. § 9102, for the issuance of suspension and/or debarment of contractors, and in accordance to 5 G.C.A. §5426, Authority to Debar or Suspend. The Chief of Engineer will maintain contractor's suspension/debarment listing for review of past performance and to be used as a reference in awarding of future CIP projects.

Recommendation # 7

Provide all CIP personnel with construction procurement training so that they are knowledgeable, confident and better able to ensure fair and open competition in compliance with the Guam Procurement Act and the Guam Procurement regulations.

Management's Response:

Although, funding was not appropriated in FY2011 for off-island training for CIP personnel, CIP shall conform to 5 G.C.A., Guam Procurement Law, 2 G.A.R., Division 4 – Procurement Regulations and 29 G.A.R., Public Works for processing of procurement activities.

CIP will aggressively seek on-island procurement training through the Office of the Public Auditor, Dept. of Administration Training and Development and other agencies offering training in procurement.

CONCLUSION:

In an effort to restore the integrity on the processing of procurement activities for construction services for the Territory of Guam, CIP will launch the functionality of the Project Coordination and Quality Control Section (PCQC) as identified on the May 2007 Department of Public Works Organization Chart for the Engineering and Construction Divisions, (Attachment 4). The PCQC section shall manage the Contracts section of the Capital Improvement Projects (CIP) through oversight of individual projects from the initial concept through final construction. Primary objective of the PCQC Section shall ensure that all procurement for capital improvement projects shall comply with local and federal statutes to include timely submission of reporting requirements. Inclusive of the tasking of the PCQC is to direct the planning, development, coordination and execution of contracts in accordance to contract terms and conditions.

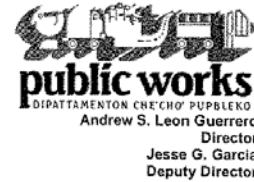
The Project Coordination and Quality Control Section shall report directly to the CIP Chief Planner.

Appendix 8:
Management's Response



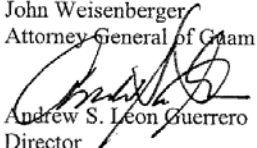
The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



MEMORANDUM

To: John Weisenberger
Attorney General of Guam

From:  11/4/10
Andrew S. Leon Guerrero
Director

Subject: Request For Legal Interpretation and Resolution

Buenas Yan Hafa Adai!

The Office of the Public Auditor (OPA) conducted a Performance Audit of the Department of Public Works (DPW) procurement of Capital Improvement Projects-Vertical. As a result of the audit, the OPA revealed conflicting requirements for advertising procurement solicitations, specifically:

- 5 G.C.A. §5211(c) and 2 G.A.R. §§ 3109(d) and (f)(2) require IFBs for projects in excess of \$25,000 to be advertised in a periodical of general circulation at least once and at least seven days prior to the submission of bids.
- 29 G.A.R. §1167 states that an invitation to bid for each project shall be advertised in a newspaper or periodical of general circulation for not less than three (3) separate days within the bid period.

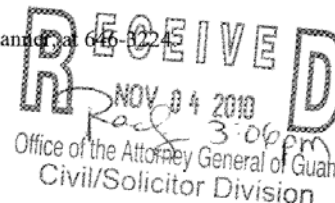
Additionally, 2 G.A.R. §3111(d) allows for procurement of construction between \$500 and \$50,000 to be guided by §3111 (c)(1), whereas, no less than three positive written quotations from businesses shall be solicited, recorded and placed in the procurement file. Moreover, the above aforementioned G.A.R.'s do not address the issue of procurement advertisement for bids with shorter timeline than the minimum 15 days requirement within the bid period nor bid bond requirement since the threshold is up to \$50,000.00.

DPW seeks your immediate attention to the above conflicting procurement requirement on advertisement and henceforward, to establish guidelines on the solicitation of procurement activities in accordance to statute. In the interim, without compromising the integrity of the procurement process and given the cost to advertise, DPW will advertise all procurement solicitation in excess of \$25,000.00 at least twice (2x) over the procurement period.

Furthermore, please advise of any updates to the "Checklist For Attorney General Review of Procurement Contracts", REF: GOV-07-0854 dated January 10, 2008.

If you have any questions, please contact Ms. Josephine U. Torres, Chief Planner at 646-1224.

Cc: Office of the Public Auditor



Appendix 8:
Management's Response

Page 7 of 16



The Honorable
Felix P. Camacho
Governor

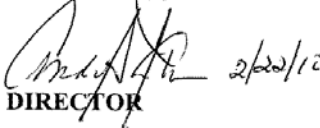
The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



Andrew S. Leon Guerrero
Director

MEMORANDUM

TO: Division Managers, Section Heads and Employees

FROM:  2/22/10
DIRECTOR

SUBJECT: Division of Engineering – Highways /Capital Improvement Projects

Hafa Adai!

Effective February 23, 2010, Mr. Ramon B. Padua, P.E., will assume the duties and responsibilities as the Chief Engineer for the Division of Engineering, Highways –Horizontal.

Although Ray will be assigned to the Division of Engineering Highways – Horizontal, his duties shall also extend to the Division of Engineering, the Capital Improvement Projects – Vertical - based on a 10% performance ratio.

As the only DPW engineer with a "professional engineering" (P.E.) certificate, Ray's professional competence will address and oversee P.E. concerns warranting this level of proficiency as requested by CIP Engineering – Verticals.

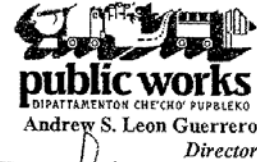
Your cooperation and support is solicited to ensure Mr. Padua's smooth transition

Appendix 8:
Management's Response



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



public works
DIPARTAMENTON CHE'CHO' PUPBLEKO
Andrew S. Leon Guerrero
Director

[Handwritten signature]
2/23/10
JCC *[initials]*
AOF *[initials]*

MEMORANDUM

TO: Division Managers, Section Heads and Employees

FROM: *[Handwritten signature]* 2/22/10
DIRECTOR

SUBJECT: Division of Engineering – Highways /Capital Improvement Projects

Hafa Adai!

Effective February 23, 2010, Ms. Josephine U. Torres, Chief Planner will direct and oversee the operations of the Division of Engineering, CIP-Verticals.

In line with this responsibility Ms. Torres shall assess the technical engineering matters within the section and render the decision to coordinate and organize the referral of the CIP engineering concerns requiring the attention of the Professional Engineer (P.E.), Mr. Ramon B. Padua, DPW Chief Engineer.

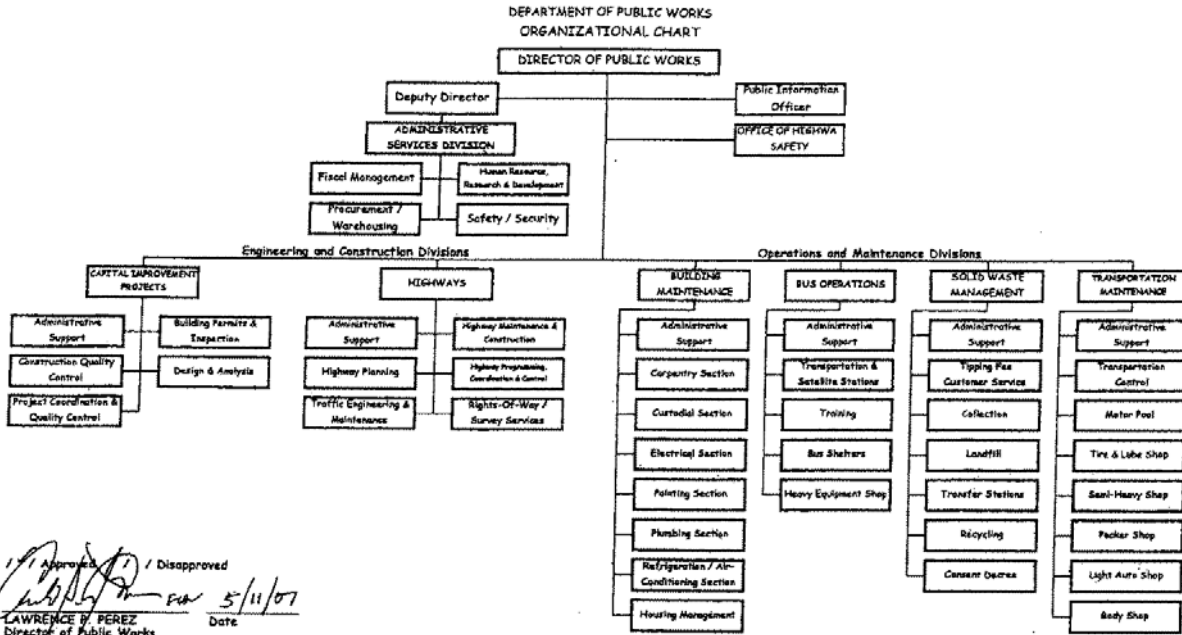
Please extend your cooperation and support to Ms. Torres as she takes on this added function.

DEPARTMENT OF PUBLIC WORKS
DIVISION OF ENGINEERING CAPITAL IMPROVEMENT PROJECTS - VEHICULAR
FY2011 Invitations For Bid / Contracts

WORK REQUEST INFORMATION				INVITATION FOR BID / CONTRACT INFORMATION				PROJECT DESCRIPTION				PROJECT NO.				AWARD				REMARKS			
No.	DATE	AGENCY	Request / Work Order / Project No.	Regulation / Work Order	Invitation For Bid No.	ACCOUNT NO.	ACCT EXP	CONTRACT NO.	CONTRACT EXPENSE	CONTRACTOR	PROJECT DESCRIPTION	PROJECT NO.	AWARD AMOUNT	Change Order	DATE COMPLETE	REMARKS							
1																							
2																							
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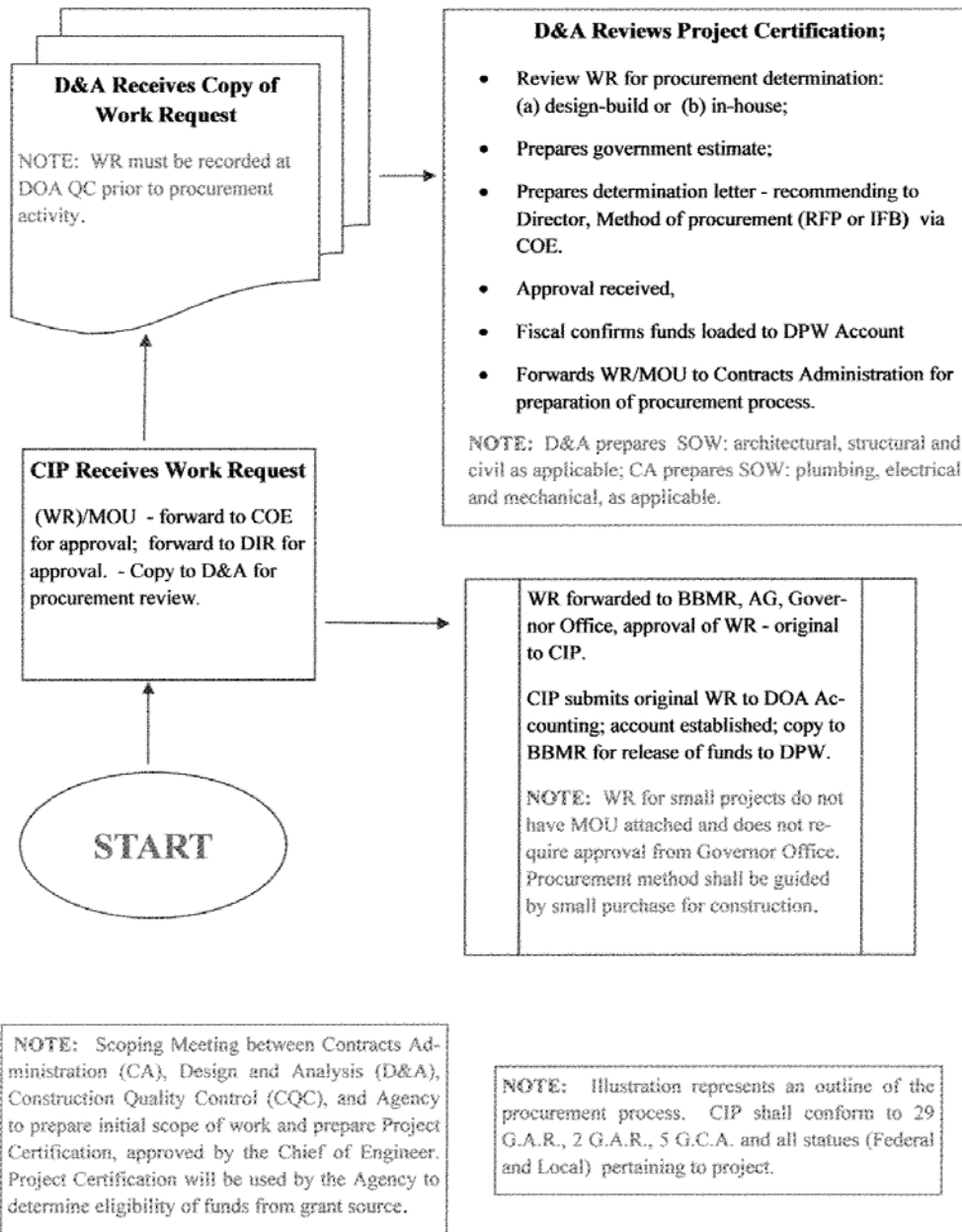
Appendix 8:
Management's Response

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**DEPARTMENT OF PUBLIC WORKS -
 CAPITAL IMPROVEMENT PROJECTS - VERTICAL
 DESIGN AND ANALYSIS (D&A)**

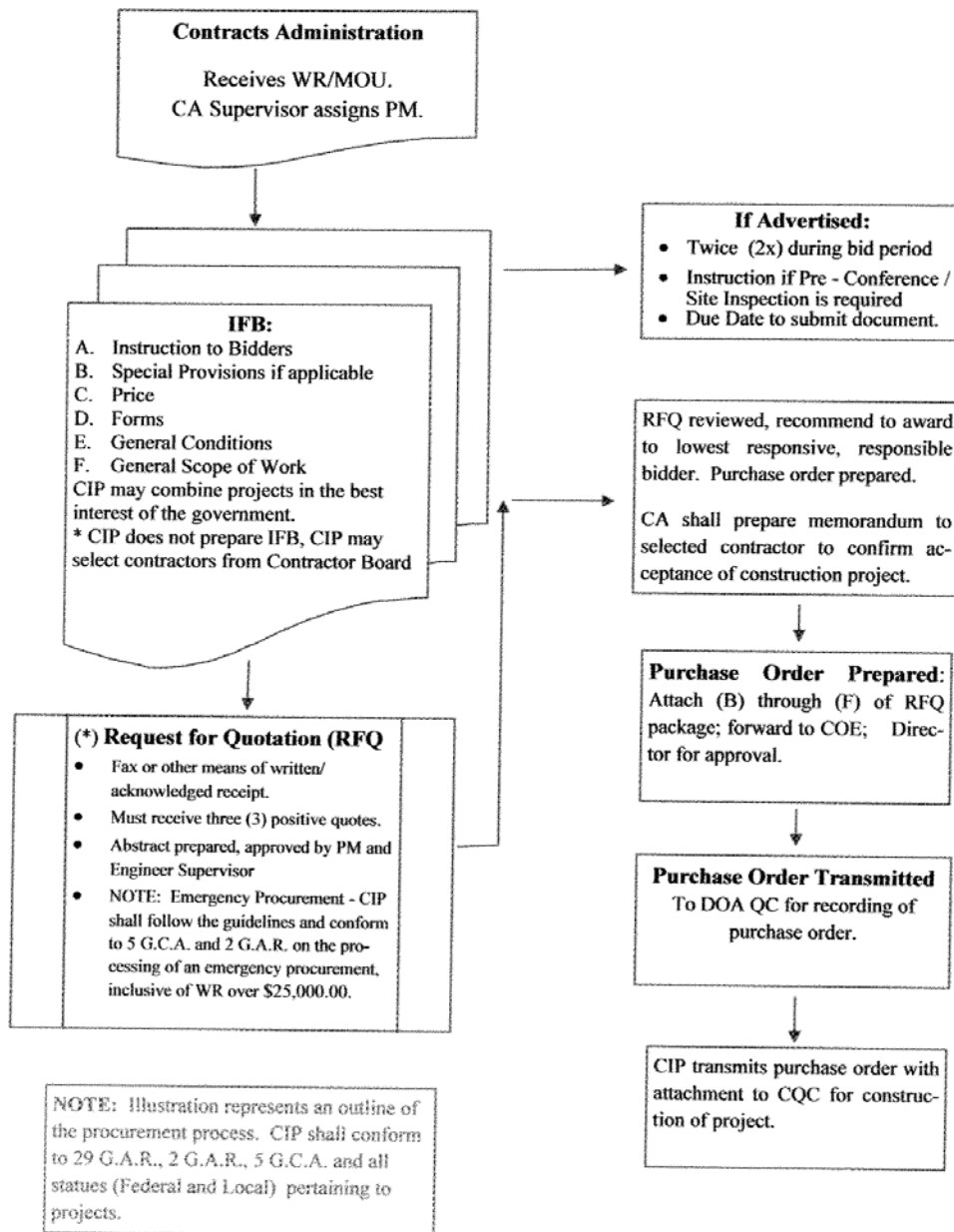
PROCUREMENT ACTIVITY



CIP Procurement Flow Chart: Page 1 of 5 Pages

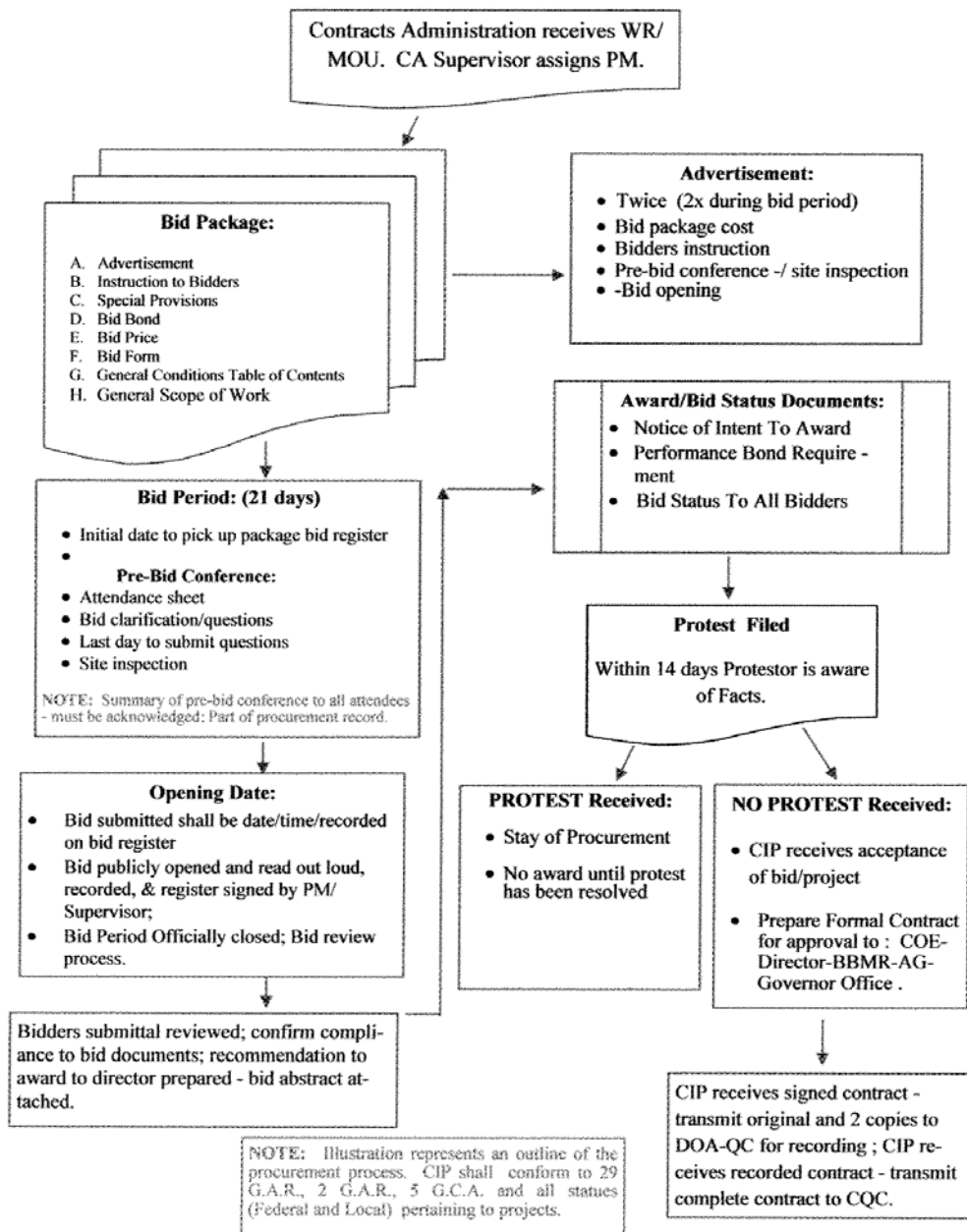
**DEPARTMENT OF PUBLIC WORKS -
 CAPITAL IMPROVEMENT PROJECTS - VERTICAL
 CONTRACTS ADMINISTRATION**

PROCUREMENT FLOW CHART - Below \$25,000.00



**DEPARTMENT OF PUBLIC WORKS -
 CAPITAL IMPROVEMENT PROJECTS - VERTICAL
 CONTRACTS ADMINISTRATION**

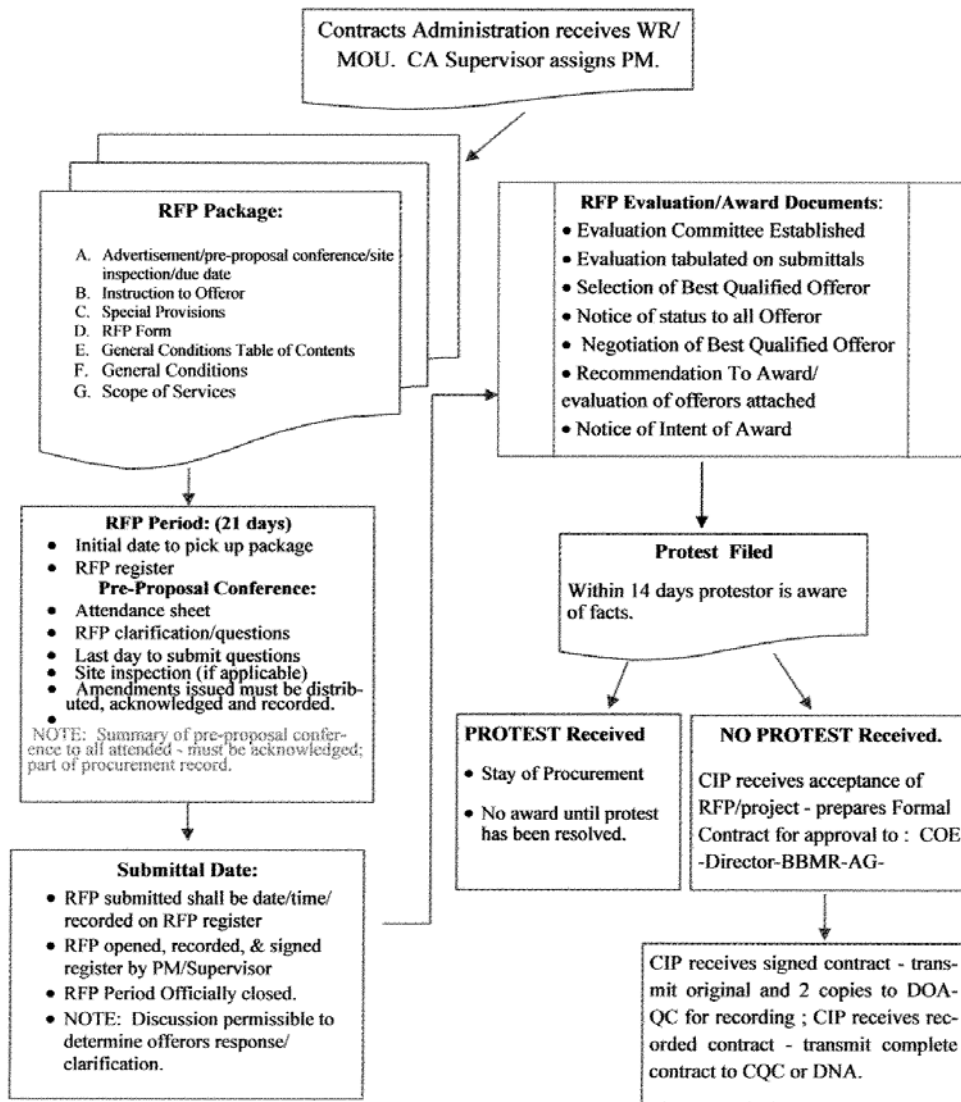
PROCUREMENT FLOW CHART - Above \$25,000.00



CIP Procurement Flow Chart: Page 3 of 5 Pages

**DEPARTMENT OF PUBLIC WORKS -
 CAPITAL IMPROVEMENT PROJECTS - VERTICAL
 CONTRACTS ADMINISTRATION**

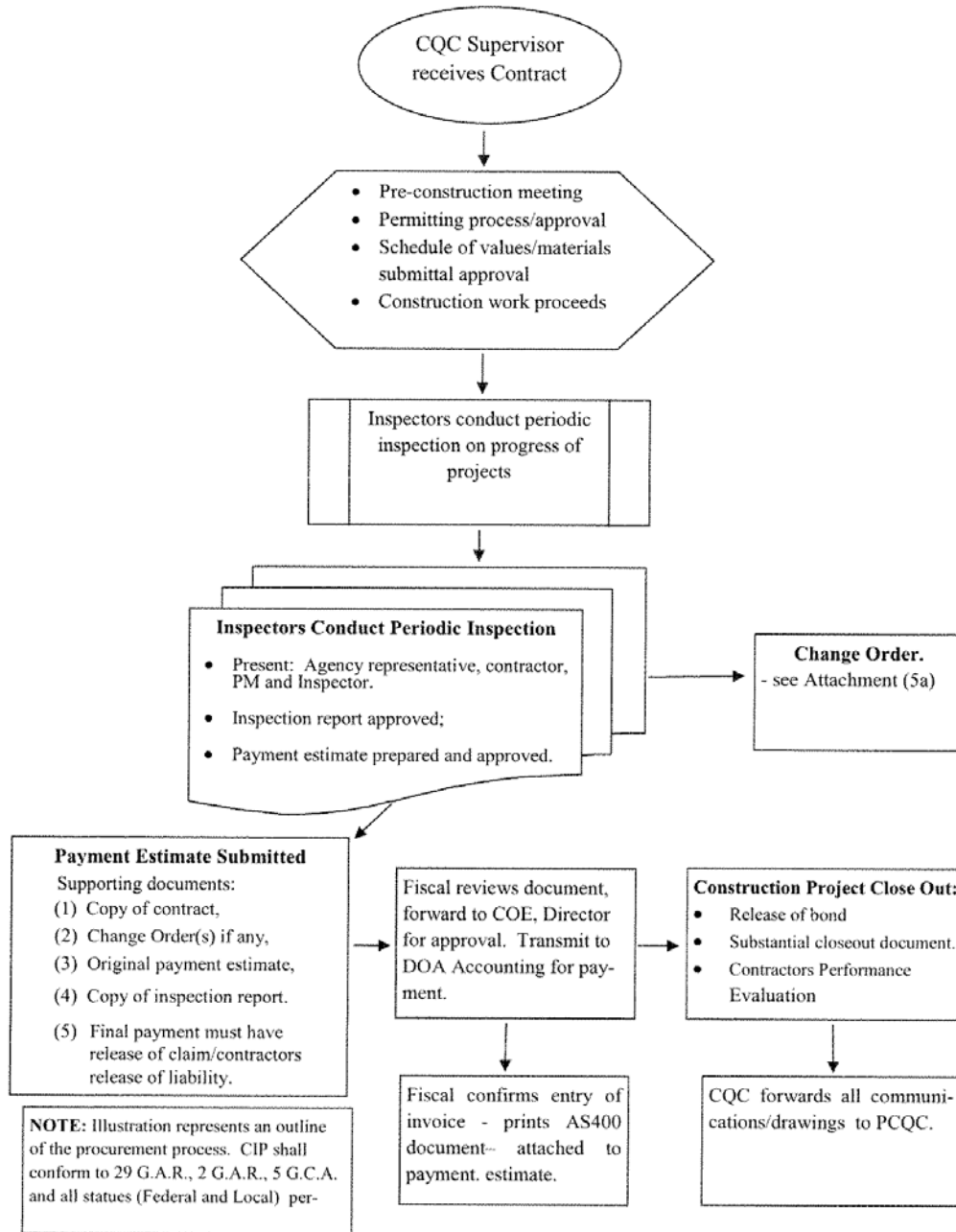
PROCUREMENT FLOW CHART - Request For Proposal (RFP)



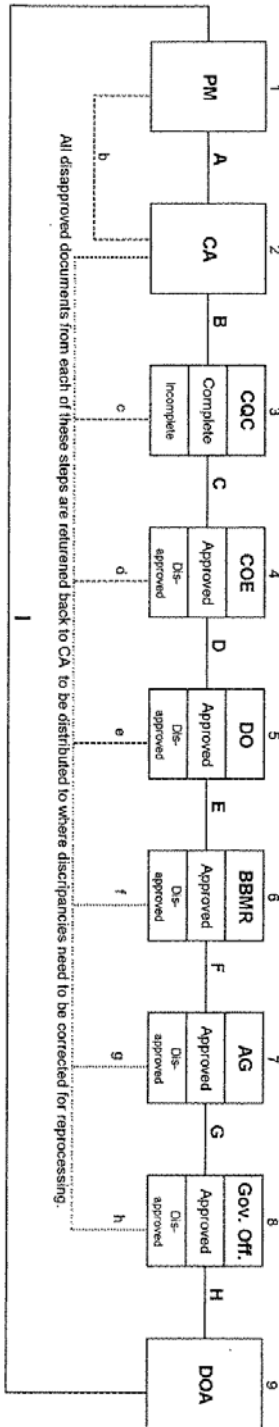
NOTE: Illustration represents an outline of the procurement process. CIP shall conform to 29 G.A.R., 2 G.A.R., 5 G.C.A. and all statues (Federal and Local) pertaining to projects..

**DEPARTMENT OF PUBLIC WORKS -
 CAPITAL IMPROVEMENT PROJECTS - VERTICAL
 CONTRACTS ADMINISTRATION**

PROCUREMENT FLOW CHART (Construction Activity)



DEPARTMENT OF PUBLIC WORKS
FLOW CHART OF CIP'S CHANGE ORDER PROCESS



5(a)

Legend:

- AG ... Atty. General's Office
- BBMR ... Bureau of Budget and Mgt. research
- CA ... Contracts Administration
- CO ... Change Order
- COE ... chief of Engineer
- COCC ... Construction Quality Control
- DO ... Director's Office
- DOA ... Dept. of Administration (Contract Section)
- PM ... Project Manager

Steps:

- 1 **A.** Project Manager forwards completed CO with supporting documents to CA, for review.
- 2 **B** from CA completed documents are forwarded to COC to secure all needed requirements
- 3 **C** from COC, completed documents are handcarried to DO for signature and approval
- 4 **D** Signed CO documents are forwarded to BBMR for their review and approval
- 5 **E** Approved CO documents are sent to AG's Office for review and approval
- 6 **F** Approved CO documents with AG's signatures, are forwarded to Governor's Office for his review and approval
- 7 **G** CO documents approved and signed by the Governor is forwarded to DOA for recording.
- 8 **H** After DOA's recording of contract, the CO is returned back to PM for distribution of copies to the contractor parties involved.

PLEASE NOTE:

Flow of this process as shown is assumed that all documents are complete and all necessary approvals from authorized parties are obtained or secured. The Management Analyst is responsible for the handling and following-ups of all documents to all these entities during this process.

Supporting Documents: are (1) copy of contract and for previous approved Change Order(s); (2) Memo/documentation from using Agency and contractor agreeing with impending changes and/or (3) negotiated price to original contract; (4) inspection report.



Department of Public Works
Procurement of Capital Improvement Projects Division
Report No. 10-07, November 2010

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Rodalyn Marquez, Audit Supervisor
Gopinath Ramakrishnan, Audit Staff
Joy Bulatao, Audit Staff
Doris Flores Brooks, CPA, CGFM, Public Auditor

MISSION STATEMENT

To improve the public trust,
we audit, assess, analyze, and make recommendations
for accountability, transparency, effectiveness, efficiency, and economy
of the government of Guam
independently, impartially, and with integrity.

VISION

Guam is the model for good governance in the Pacific.

CORE VALUES

Integrity Independence Impartiality
Accountability Transparency

REPORTING FRAUD, WASTE, AND ABUSE

- Call our HOTLINE at 47AUDIT (472-8348)
- Visit our website at www.guamopa.org
- Call our office at 475-0390
- Fax our office at 472-7951
- Or visit us at Suite 401, DNA Building in Hagåtña;

All information will be held in strict confidence.