

**GOVERNMENT OF GUAM
SOLID WASTE FUNDS**

**(GOVERNMENTAL FUNDS OF THE
GOVERNMENT OF GUAM)**

**INDEPENDENT AUDITORS' REPORT ON
COMPLIANCE AND ON INTERNAL CONTROL**

YEAR ENDED SEPTEMBER 30, 2012

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Honorable Eddie Baza Calvo
Governor of Guam:

We have audited the financial statements of the Solid Waste Operations Fund and of those funds related to the Government of Guam Limited Obligation (Section 30) Bonds, 2009 Series A (Solid Waste Funds or the Funds) as of and for the year ended September 30, 2012, and have issued our report thereon dated September 9, 2013. Our report includes explanatory paragraphs that the financial statements of the Funds are not intended to present the financial position and results of operations of the Government of Guam, a reference for the correction of an error, and a reference for a material uncertainty. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of the Funds is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the Funds' internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Funds' internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Funds' internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined previously.

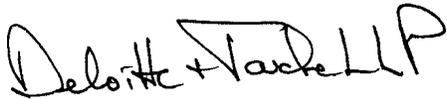
Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Funds' financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying Schedule of Findings and Responses as item 2012-1.

We noted certain matters that we reported to management of the Funds in a separate letter dated September 9, 2013.

The Funds' response to the findings identified in our audit are described in the accompanying Schedule of Findings and Responses. We did not audit the Funds' response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the management of the Funds', the Office of Public Accountability of Guam, federal awarding agencies, pass-through entities, the cognizant audit and other federal agencies and is not intended to be and should not be used by anyone other than those specified parties. However, this report is also a matter of public record.

A handwritten signature in black ink that reads "Deloitte + Touche LLP". The signature is written in a cursive, stylized font.

September 9, 2013

**GOVERNMENT OF GUAM
SOLID WASTE FUNDS**

Schedule of Findings and Responses
Years Ended September 30, 2012

Finding No. 2012-1 - Procurement

Criteria: A complete record of procurement actions and decisions should be maintained.

The Government of Guam Procurement Regulations specifically provide for the following:

- Chapter 3 Section 3119 (i)(2), provides the following relating to indefinite quantity contracts: “Generally, an approximate quantity is stated in the solicitation. The contract may provide a minimum quantity the territory is obligated to order and may also provide for a maximum quantity that limits the territory’s obligation to order. The rationale for using indefinite quantity contracts and the reasons why another contract form will not suffice should be indicated. Indefinite quantity contracts will be reviewed every six months for a determination of the continued need for such a contract.”

Condition: During tests of compliance with procurement regulations, the following were noted:

- a. One item (ref. #SWMD002-10) for repairs and maintenance services of heavy equipment and light vehicles was procured through an invitation for bid and was awarded in October 2010. The bid and/or the award did not provide a minimum or maximum amount for the services. Further, subsequent amendments to the original purchase order (PO) increased the original PO amount from \$100,000 to \$900,000 during fiscal year 2012.
- b. One item (ref. DPW-SW-2004 003) initially awarded in 2004 had an original contract amount of \$1.3 million. Several amendments and change orders were added onto the original contract bringing the total contract amount to \$8.2 million as of September 30, 2012. Periodic assessments made, if any, to support continuation of the related services without the need for additional procurement procedures were not evident.
- c. For one contract awarded in October 2009 related to temporary staffing, the relevant rationale/considerations supporting decision to obtain temporary staffing as against other possible options was not documented prior to the procurement of such services.
- d. Relevant documentation such as memos or equivalent indicating the history of procurement as well as rationale of the contractor/vendor selection for two items relating to contract services was not available.
- e. One item (ref. RECEIVER SW-09-05) awarded in December 2009 had an original contract amount of \$857,750. Two amendments for additional tasks were added onto the original contract bringing the contract total to \$2,572,102. Relevant justification or analyses why no further procurement procedures were necessary for the change orders were not available.

Cause: The cause of the above conditions is incomplete documentation to demonstrate full compliance with applicable procurement requirements.

Effect: The effect of the above condition is the potential negative perceptions associated with noncompliance with Guam procurement regulations.

**GOVERNMENT OF GUAM
SOLID WASTE FUNDS**

Schedule of Findings and Responses, Continued
Years Ended September 30, 2012

Finding No. 2012-1 – Procurement, Continued

Recommendation:

- a. We recommend that for indefinite quantity services, an estimated minimum and maximum amount for the services be included in the award/purchase order/contract. Further, we recommend that indefinite quantity contracts be evaluated periodically (i.e. every six months) and such evaluation be documented.
- b. We recommend that contracts spanning over an extended period be reviewed/evaluated periodically to determine if the services need to be subjected to additional procurement procedures. Further, we recommend that such review or evaluation be documented.
- c. We recommend that relevant considerations/rationale supporting procurement decisions be documented and such documentation be maintained in the procurement files.

Prior Year Status: Noncompliance with applicable procurement rules and regulations was reported as a finding in the audit of the Government of Guam Solid Waste Operations Fund for 2011.

Auditee Response and Corrective Action Plan:

- a. Management concurs that estimated minimum and maximums can be included in such procurements. However, such estimates should not be binding contractual provisions since these services are critical to the daily work of the Guam Solid Waste Authority (GSWA) and the need for the services is not always predictable.
- b. Management generally concurs that the practice recommended should be followed in most cases. However, this is the contract for design of the Layon Landfill. The initial design was completed before the Receivership was ordered. A design of this nature cannot legally be transferred to another contractor, therefore, the only options available to the Receiver were to continue to use the same contractor under this contract or abandon the design and all of the expense already incurred by the Government of Guam or continue it with the modification to the design needed to achieve compliance with the Consent Decree. In addition to the financial considerations involved, changing design firms would have caused a delay in opening the new landfill by 18 months to 2 years. This was simply not allowed under the Consent Decree or the practical limits of the capacity of the Ordot Dump.
- c. Management does not concur. These contracts for personnel are not GSWA Contracts. They are contracts between the Receiver and the contractor and are authorized under the authority granted to the Receiver in the Court's Order dated March 17, 2008.
- d. Management does not concur. These contracts for personnel are not GSWA Contracts. They are contracts between the Receiver and the contractor and are authorized under the authority granted to the Receiver in the Court's Order dated March 17, 2008.

**GOVERNMENT OF GUAM
SOLID WASTE FUNDS**

Schedule of Findings and Responses, Continued
Years Ended September 30, 2012

Finding No. 2012-1 – Procurement, Continued

Auditee Response and Corrective Action Plan: Continued

- e. Management does not concur. This procurement was for a highly qualified consultant to provided technical assistance services for groundwater quality monitoring activities for the Layon Municipal Solid Waste Landfil (Layon Landfill) in compliance with the Consent Decree (Federal Court Case CV02-0022). The contract calls for an initial two (2) – year period commencing from the date of Contract signing with an option to extend the Contract for up to two (2) additional two-year periods at the same terms and conditions. The option to renew will be based on the Receiver’s (on behalf of the Government need) future need for technical assistance, completion of Consent Decree tasks, and the evaluation of performance of the Consultant during the previous year (s) of service. Projects/tasks outside the primary responsibility of the Consultant may be added at the Government’s discretion upon written agreement (e.g., email of the Consultant to perform additional projects/tasks). The Consultant shall provide the service at the fees stated in the Cost Proposal, unless otherwise agreed in writing. The additional services were based on regulatory requirements as they evolved through the construction process and were documented in task orders properly executed as required by the contract.

Auditor Response: The Guam Procurement Law applies to every expenditure of public funds and requires that a complete record of procurement actions and decisions be maintained. With the absence of sufficient documentation supporting procurement decisions, it is difficult to assess whether the services were obtained economically, efficiently, effectively and in a manner in which the purchasing value of public funds is maximized to the fullest extent practicable.

**GOVERNMENT OF GUAM
SOLID WASTE FUNDS**

Unresolved Prior Year Findings
Year Ended September 30, 2012

Unresolved Prior Year Findings

As of September 30, 2012, the status of all audit findings included in the Schedule of Findings and Responses as of September 30, 2011 is as follows:

Finding No. 2011-1 – Not corrected. See corrective action plan to Finding No. 2012-1.