

**General Services Agency  
Competitive Sealed Bidding, Sole Source,  
and Emergency Procurement Functions**

**Performance Audit**

**OPA Report No. 04-14  
December 2004**



OFFICE OF THE PUBLIC AUDITOR

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## EXECUTIVE SUMMARY

Competitive Sealed Bidding, Sole Source, and Emergency Procurement Functions  
Government of Guam, General Services Agency  
Report No. 04-14, December 2004

The General Services Agency (GSA) was created to support governmental departments by providing effective and efficient procurement, increasing public confidence, fostering broad-based competition, and providing safeguards for the total quality, integrity, and maintenance of a procurement system. A Chief Procurement Officer (CPO) oversees the purchases of goods and services of over 40 line agencies and reports directly to the Director of Administration (DOA).

During our audit, we found that GSA did not comply with Guam procurement rules and regulations for purchases of goods and services in excess of \$15,000. Specifically, GSA:

- Cited “existing territorial contracts” for 45 purchase orders (POs), totaling \$2.5 million, for goods and/or services in excess of \$15,000 that did not undergo the competitive sealed bidding process.
- Authorized payments of \$5.1 million on two expired “existing territorial contracts” to a local vendor for the government-wide lease/purchase of copier machines and continued to award POs to this vendor despite the fact that the contracts had expired in September 1999.
- Did not independently verify the justification of 6 sole source purchases, totaling \$699,825, which we determined not to be sole sourced.
- Lost a savings of \$53,700 for the purchase of 20 police vehicles procured as sole source because they did not conduct an independent verification of the price and specifications of the vehicles.
- Ratified \$4.1 million, or 331 POs, for unauthorized purchases as high as \$694,591 after the fact. Government agencies received goods and services prior to issuing purchase orders, thereby violating proper procurement procedures.
- Did not consistently document three required price quotations for emergency purchases totaling \$129,125.
- Paid \$14,575 more than necessary for heavy equipment rental when the purchase was not awarded to the lower bid.
- Did not maintain adequate procurement records, automate procurement activities, and perform periodic assessments of their procurement performance.

These conditions occurred because GSA did not properly plan or monitor the effectiveness of the procurement methods and make the appropriate adjustments to the Guam procurement rules and

regulations. We determined GSA is not meeting its overall mission to provide effective and efficient procurement services, and is unable to assure that purchases worth \$15.3 million fostered broad-based competition and were made in the government's best interest.

To correct these deficiencies, we made several recommendations:

- Immediately discontinue leasing and/or purchasing equipments under the two expired copier bids and the lease of motor vehicles, and issue invitations for bid (IFB) to solicit for these types of procurement.
- Discontinue the practice of utilizing "existing territorial contracts" and begin to plan and execute invitation for bids for all procurement.
- Independently verify the rationale for sole source purchases, solicit certification letters from vendors to warrant that they are the sole provider of specific goods and/or services, and eliminate the use of GSA's standardized sole source determination form.
- Immediately notify agencies that unauthorized procurements will no longer be ratified unless it is determined in writing by the CPO to be in the government's best interest, and develop and implement enforcement procedures for handling unauthorized procurements.
- Document the required number of quotations, award emergency purchases to the best offeror, and establish a qualified bidder's list to expedite emergency procurement.
- Regularly review the procurement process, make recommendations to modify statutes, and apply best practices to enhance the efficiency and effectiveness of GSA's overall procurement process.
- Ensure that a complete history of each procurement is documented in the respective procurement files.
- Amend 2 G.A.R. § 3109(d) to specify a minimum 15-day advertisement and bidding time requirement, and remove 2 G.A.R. § 3109(f)(2), which only requires a 7-day advertisement, since it conflicts with 2 G.A.R. § 3109(d).
- Initiate the automation of the procurement process to include developing a purchase order numbering system that appropriately classifies the procurement methods used (i.e. small purchases, BPA, sole source, and competitive sealed bidding) and develop the current website to post invitations for bid and/or requests for quotes.
- Pursue the debarment and/or suspension of vendors and perform periodic customer surveys.

The General Services Agency CPO generally concurred with the audit findings and recommendations.



Doris Flores Brooks, CPA, CGFM  
Public Auditor



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## Introduction

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This report represents the results of the audit of the General Services Agency's (GSA) competitive sealed bidding process (for purchases in excess of \$15,000) and other procurement-related activities. The audit was completed as part of the overall review of GSA's procurement function. Our audit objectives were to determine whether GSA had provided fair and open competition for purchases in excess of \$15,000 and whether procurement activities, such as competitive sealed bidding, sole source, and emergency purchases were in compliance with Guam procurement laws and regulations. The scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

### Background

Title 5, Guam Code Annotated (G.C.A.), Section (§) 5110 created GSA, a division of the Department of Administration (DOA). GSA is responsible for providing centralized procurement and warehousing activities for the Government of Guam. GSA's mission is to:

- Support governmental departments by providing effective and efficient procurement and increasing public confidence,
- Maximize the purchasing value of public funds,
- Foster effective, broad-based competition, and
- Provide safeguards for the total quality, integrity, and maintenance of a procurement system.



**Image 1:** The General Services Agency (exterior view) located at Piti.

GSA consists of a Chief Procurement Officer (CPO)<sup>1</sup> who oversees the purchases of goods and services of over 40 line agencies and reports directly to the Director of Administration, two buyers and nine administrative staff. GSA's operating budgets were \$835,117 and \$708,711 for fiscal years (FY) 2002 and 2003, respectively.

The Guam Procurement Law (Title 1, G.C.A., Chapter 5) and the Guam Procurement Regulations (Title 2, G.A.R., Division 4) provides major guidance for the government's procurement of goods and services. The last amendments to the Guam Procurement Regulations, established in November 1984, were adopted in 1999. A detailed description of the requirements for competitive sealed bidding, sole source, and emergency procurement can be found in Appendix 4.

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<sup>1</sup> 5 G.C.A. § 5111

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## Results of Audit

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We found that the General Services Agency (GSA) did not comply with Guam procurement rules and regulations for purchases of goods and services in excess of \$15,000. Specifically, GSA (1) improperly used “existing territorial contracts” and authorized payments on expired bids, (2) did not perform independent verifications to warrant sole source justifications, and (3) ratified unauthorized procurements after the fact. Additionally, GSA did not obtain or document the required number of quotations for emergency purchases. These conditions occurred because GSA did not properly plan or monitor the effectiveness of the procurement methods and make the appropriate adjustments to the Guam procurement rules and regulations. Therefore, GSA was unable to assure that purchases were made in the government’s best interest. As a result, (1) \$6 million was improperly paid for existing territorial contracts, of which purchases worth \$2.5 million did not undergo the competitive sealed bidding process, (2) \$5.1 million in unauthorized payments was made on expired contracts for the lease of copier machines, (3) \$4.1 million in unauthorized payments was ratified after the fact, (4) \$129,125 in emergency purchases were unsupported, of which \$14,575 more than necessary was paid for heavy equipment rental when the purchase was not awarded to the lower bidder, and (5) \$699,825 in sole source purchases was not justified, which included a loss in savings of \$53,700 for the purchase of police vehicles.

Further, GSA did not (1) maintain adequate procurement records, (2) automate procurement activities, and (3) perform periodic assessments of their procurement performance. These conditions occurred because GSA did not utilize customer surveys to evaluate its performance and has not initiated a plan to automate procurement activities, which would enable public and business communities to access GSA procurement activities online, broaden competition, and increase GSA efficiency. Thus, GSA is not meeting its overall mission to provide effective and efficient procurement services.

### **Promote Competition Through the Competitive Sealed Bidding Process**

Pursuant to 5 G.C.A. § 5210, all territorial contracts shall be awarded by competitive sealed bidding.<sup>2</sup> Additionally, government procurement officers should utilize the best practices outlined by the U.S. Government Accountability Office (GAO)<sup>3</sup> and EPIQ Systems, Inc.<sup>4</sup> These best practices include reviewing the government’s rules and regulations, regularly updating and establishing criteria to compare bids in advance, and documenting reasons for vendor selection. See Appendix 5 for a list of procurement best practices.

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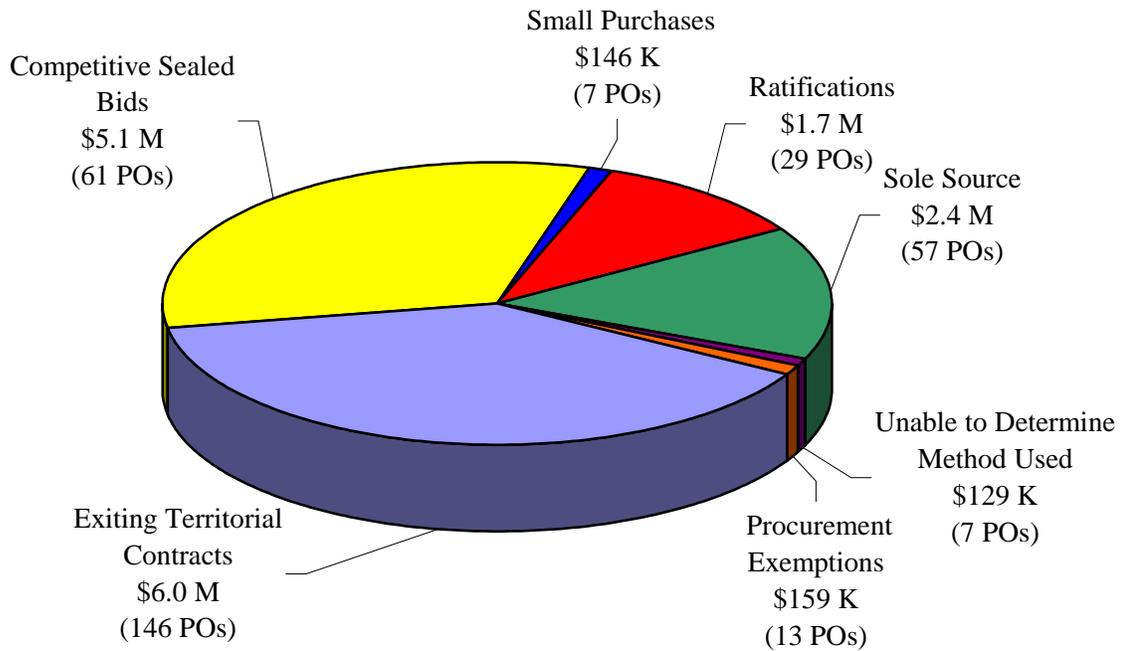
<sup>2</sup> Exceptions include small purchases, sole source, emergency, professional services (accountants, physicians, lawyers, dentists, and other professionals), and procurement from non-profit corporations.

<sup>3</sup> GAO-04-870 Best Practices: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement.

<sup>4</sup> Procurement best practices from <http://www.epiqtech.com/e-procurement-Government.htm>.

GSA processed 320 purchase orders (POs),<sup>5</sup> totaling \$15.6 million, for goods and services in excess of \$15,000 for 24 Government of Guam agencies from October 1, 2001 through June 30, 2003 (see Appendix 6). We classified the 320 POs based on the types of procurement method used by GSA, as illustrated in Chart 1. Our analysis showed that GSA did not routinely utilize the competitive sealed bidding process. In fact, only 61 POs<sup>6</sup> (19%), totaling \$5.1 million, were processed using competitive sealed bids. Meanwhile, 239 POs (75%) totaling \$10.2 million were procured using other methods, 13 POs (4%) totaling \$158,502 were exempted, and 7 purchase order files (2%) totaling \$129,492 were missing.

**Chart 1: Procurement Methods for Purchases in Excess of \$15,000**



GSA personnel stated they were not aware that the competitive sealed bidding process is the preferred procurement method for purchases larger than the small purchase threshold. The current CPO confirmed that it was a common practice in the past to use other procurement methods in lieu of competitive sealed bids and informed OPA that GSA is currently in the process of issuing more competitive sealed bids for the procurement needs of the Government of Guam.

We judgmentally tested 8 POs, totaling \$111,942, citing the competitive sealed bidding process. Although we did not find significant deficiencies with these POs, we did identify record management problems, which are discussed in the Maintain Better Records Management section of this report.

<sup>5</sup> 61 POs, totaling \$2.4 million, were already questioned in the Performance Audit on GSA's Blanket Purchase Agreements Procurement Function (OPA Report 04-08).

<sup>6</sup> 6 POs totaling \$155,581 were already questioned in the Performance Audit on GSA's Blanket Purchase Agreements Procurement Function (OPA Report 04-08).

It should be the responsibility of the CPO to regularly review the procurement statutes and make recommendations to modify or improve the statutes to enhance the efficiency and effectiveness of the procurement process.<sup>7</sup> A full and competitive process allows for procurement objectives, such as maximizing the government’s purchasing power through effective broad-based competition and a system of total quality and integrity, to be met by GSA. By utilizing the competitive sealed bidding process, GSA would ensure that active steps are taken to receive as many bids as possible. Generally, the more bids there are, the lower the prices are likely to be. We recommend that GSA regularly review the procurement process, make recommendations to modify statutes, and apply best practices to enhance the efficiency and effectiveness of GSA’s overall procurement process.

### **Improper Use of “Existing Territorial Contracts”**

2 G.A.R. § 3111(b)(3) requires that all supplies and services, which may be obtained under current territorial contracts, be procured under such agreements in accordance with the terms of such contracts. GSA personnel explained that a territorial contract is a contract between the Government of Guam and a vendor that is entered into based on the evaluation of an invitation for bid (IFB) or a request for proposal (RFP). An existing territorial contract is a contract that has been entered into in a prior year and has been extended into the current fiscal year based on the provisions set forth in the contract. However, the use of “existing territorial contract” is only authorized for small purchases of \$15,000 and below.

Contrary to these requirements, GSA processed 146 POs, totaling \$6 million, utilizing “existing territorial contract” for goods and/or services in excess of \$15,000. Of the 146 POs, 45 POs, totaling \$2.5 million, did not undergo the competitive sealed bidding process. We also found the following during our review:

- **Lease/Purchase of Copier Machines.** From January 2000 through June 2003, GSA made unauthorized payments, estimated at \$5.1 million,<sup>8</sup> on two expired existing territorial contracts to a local vendor to provide for lease/purchase of copier machines “government-wide” and continues to award POs to this vendor despite the fact that the contracts for the two bids had expired in September 1999.

Our review of the procurement files disclosed that the bids were initially awarded for \$20,000 each in 1995. The contract terms were for an “indefinite quantity” for a period of one year with an option to renew for three additional years. We determined that the bids were vague and open-ended because



**Image 3:** Leased photocopier machine.

<sup>7</sup> An Elected Official’s Guide to Procurement by Patricia C. Watt.

<sup>8</sup> This figure is a conservative amount based on the maximum 90-day extension allowed on an indefinite quantity contract. See Appendix 2 for further detail.

they were extended beyond the maximum 90-day extension limit on an “indefinite quantity” contract, as established by 2 G.A.R. § 3102(b).<sup>9</sup> We also determined that the files lacked pertinent supporting documentation of GSA’s option to renew for the additional three years or whether GSA had properly monitored and/or evaluated the various price increases and product substitutions submitted by the vendor (see Appendix 7).

We concluded that because GSA did not properly monitor and/or perform an evaluation of these procurement contracts, GSA circumvented the preferred method of competitive sealed bidding by continuing to award these lucrative contracts to this particular vendor. We considered the payments made from January 2000 through June 2003 to this vendor, totaling \$5.1 million, improperly authorized.

- **Lease of Rental Vehicles.** From October 2001 through June 2003, GSA processed 6 POs, totaling \$55,050, citing “existing territorial contract” for the Hawaii Medical Referral Office, a division of the Office of the Governor, for the lease of vehicles from an off-island vendor. The POs were issued to cover the cost of the “lease agreement of vehicle(s)” and were to be renewed “annually not to exceed 24 months.” However, we were unable to locate any lease agreements during our review of the procurement files. Subsequent interviews with DOA personnel indicated they were also unable to locate any contractual agreements for this procurement. Additionally, GSA personnel stated they were uncertain whether the competitive sealed bidding process was utilized for this procurement or how long the Hawaii Medical Referral Office had been conducting business with this particular vendor. Thus, we considered the payments totaling \$55,050 to this vendor to be unsupported.

The above examples of the use of “existing territorial contracts” demonstrate that the government may not have maximized the full purchasing value of public funds. Therefore, we concluded that GSA improperly utilized the “existing territorial contract” for 146 POs, totaling \$6 million, of which 45 POs, totaling \$2.5 million, did not undergo the competitive sealed bidding process. The current CPO acknowledges that the citation of existing territorial contracts has been a frequent practice used by her personnel and agreed to discontinue this practice by utilizing multi-term contracts<sup>10</sup> instead. The use of multi-term contracts will ensure competition in the procurement process.

To correct these deficiencies, we recommend GSA (1) immediately discontinue leasing and/or purchasing equipments under the two expired contracts and leasing motor vehicles, (2) immediately issue invitations for bid (IFBs) to solicit for the government-wide lease and/or purchase of copier machines and the lease of vehicles for the Hawaii Medical Referral Office, and (3) discontinue the practice of utilizing “existing territorial contracts,” determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements.

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<sup>9</sup> An indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less.

<sup>10</sup> 2 G.A.R. § 3121.

## Sole Source Justifications Not Independently Verified

Pursuant to 2 G.A.R. § 3112, sole source is permissible only if the requirement is available from a single supplier, the CPO shall determine in writing that there is only one source, and in cases of reasonable doubt, competition should be solicited. Additionally, it is good business practice to include a certification from the vendor, on company letterhead, that the goods and services are available only through a single supplier.<sup>11</sup>

From October 2001 through June 2003, GSA processed 57 POs,<sup>12</sup> totaling \$2.4 million for sole source purchases. We reviewed 6 POs, totaling \$699,825, to determine whether GSA independently verified the justifications submitted by the requesting agencies to warrant the sole source procurement. Our review of the procurement files for all 6 POs disclosed that GSA utilized the standard sole source determination form. However, we determined that only the option of “only distributor/agent” would meet the sole source criteria (see Appendix 4 for conditions to use sole source), while all others would not warrant sole source procurement. Therefore, this standard form is insufficient and improper because it does not allow GSA to independently verify the agencies’ sole source justification.

For example, the use of the option of “only source available at the time materials were needed” is not a valid sole source justification, since delivery time alone is not a basis for determining sole source procurement.<sup>13</sup> The use of this option indicates poor planning on the part of the requesting agency and GSA’s reliance on the agency to provide the sole source rationale.

CF/1p  
9/17/02

**GENERAL SERVICES AGENCY**  
(Aghensian Setbision Hinirat)  
 Department of Administration  
 Government of Guam  
 148 Route 1 Marine Drive, Piti, Guam 96915  
 Tel: 477-8836-8 • Fax Nos: 472-4217/4207

DATE: SEPTEMBER 17, 2002

INTEROFFICE MEMORANDUM

TO: File

FROM: Buyer

SUBJECT: Request for Sole Source Procurement and Determination  
 Reference: Requisition No.: Q022900130 Dtd.: 8/15/02

Based on our review of this document, the sole source method of procurement is justified as follows:

Direct to  Publishers;  Only source available at the time the materials/services are needed;  only distributor/agent.

Local solicitations are negative;  No Bid;  No Response.

Federal Contract Procurement.

Award was based on the compatibility and replacement of parts.

Items, equipment or materials are standard and uniform to the government.

Others (s): \_\_\_\_\_

In view of the above, we have determined that the request by DEPARTMENT OF LAND MANAGEMENT for the procurement of \_\_\_\_\_ has meet the test for sole source as stated in source procurement is in the best interest of the Government of Guam and the taxpayers of Guam.

Submitted by: *[Signature]*

APPROVED  
 DISAPPROVED

\_\_\_\_\_  
 CHIEF PROCUREMENT OFFICER, ACTING

**Image 4:** Sample GSA standard sole source determination form.

<sup>11</sup> Procurement Manual, Procurement Types: Sole Source from the Mississippi Department of Information Technology Services.  
<sup>12</sup> These sole source purchases were discovered during our testing of other purchase orders. GSA’s current purchase order numbering system does not identify POs procured through sole source.  
<sup>13</sup> Public Procurement Manual, State Procurement Office Honolulu, Hawaii June 1998.

GSA personnel informed us that the steps taken to verify sole source justifications were not documented in writing because it would be very time-consuming. Additionally, GSA did not require a certification from the vendor that they are the sole supplier of the goods and services to supplement sole source justification.

By simply relying on the sole source determination form, GSA has not effectively fostered broad-based competition or promoted economy and efficiency for the \$699,825 of goods and services purchased. Therefore, we determined this amount to be a cost exception. Other examples include:

- **Purchase of Police Vehicles.** On December 13, 2001, GSA processed two sole source POs, totaling \$457,000, for the purchase of 20 police vehicles. The vehicles cost \$22,850 each. Our review of the procurement files disclosed that the former GPD Chief recommended the sole source method because there was only one authorized local vendor that could order and sell this particular model based on GPD’s specifications.

We determined that these specifications, which implied a “brand name,” were restrictive; thus, excluding all other possible vendors. This practice of specifying a “brand name” should be discouraged because it inherently prohibits competition and violates Guam procurement regulations, which require that all specifications shall seek to promote overall economy, encourage competition, and shall not be unduly restrictive in satisfying the Territory’s needs.<sup>14</sup> We also found that a quotation had been obtained from the Federal General Services Administration (Federal GSA) for the same make and model for \$20,165 each, a price difference of \$2,685<sup>15</sup> per vehicle. GSA initially processed purchase orders to the Federal GSA, but the POs were subsequently voided without any explanation. GSA personnel stated that they were not aware of why the POs were voided since the GSA buyer responsible for this procurement had retired.



**Image 5:** Police vehicles parked outside the former Tamuning Police Station.

Because GSA did not conduct an independent verification as to the price and specifications submitted by GPD, we concluded that GPD could have saved \$53,700 had they purchased the vehicles through Federal GSA.

- **Purchase of Renovation/Furniture Upgrade.** On September 23, 2002, the Department of Agriculture submitted a requisition, totaling \$35,246, for the purchase of office furniture to GSA who, in turn, processed two POs in the amounts of \$19,760 and \$13,549. Our review of the procurement files disclosed that the buyer had arbitrarily decided to split the original requisition by issuing two sole source POs. According to Department of Agriculture

<sup>14</sup> 5 G.C.A. § 5265.

<sup>15</sup> This figure was derived by subtracting \$20,165 from \$22,850.

personnel, they were surprised that GSA used sole source and issued split POs. The GSA buyer responsible for issuing this procurement stated that she issued the procurement as a sole source because the items were purchased through the Federal GSA and processed split POs because different types of furniture were procured. However, we determined that the rationale provided by the GSA buyer did not support the sole source purchase nor warrant that the purchase be split. Of the \$33,309 allocated for this purchase, \$17,789 had been paid as of June 30, 2003. We considered this payment a cost exception because GSA circumvented the competitive sealed bidding process.

Guam procurement laws and regulations generally discourage the use of sole source, and in cases of reasonable doubt, competition should be solicited. GSA, however, relied exclusively on the requesting agencies' rationale without independently verifying the justifications. We concluded that the justifications used to support sole source procurement were not warranted because they lacked sufficient facts to prove that the goods and services were unique and only available through a single supplier.

To correct these deficiencies, we recommend GSA (1) conduct independent verifications of all sole source purchases and adequately document the procurement process to illustrate that efforts were made to solicit competition, (2) solicit certification letters from vendors to warrant that they are the sole provider of specific goods and/or services, and (3) eliminate the use of GSA's standardized sole source determination form, because by nature, the form limits GSA from conducting its own independent verifications.

Effective November 2003, the current CPO has been requiring a certification letter from the vendors/manufacturers to signify that their business is the only supplier for particular goods and/or services.

### **Ratification of Unauthorized Purchases**

2 G.A.R. § 9106 (a)(i) states that the CPO may either ratify, terminate, or cancel a contract to comply with the law, if after an award, it is determined in writing that the solicitation or the award of the contract is in violation of the law. 2 G.A.R. § 9106(c)(3) requires that the CPO determine in writing that it is in the territory's best interest to terminate or amend, ratify, and affirm the procurement. 5 G.C.A. § 5010 adds that all procurements of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources.

From October 1, 2001 through June 30, 2003, GSA identified 331 POs, totaling \$4.1 million, where government agencies had received goods and services prior to issuing a purchase order. The agencies had either directly obtained goods and/or services from the vendors or had exceeded their authorized amounts and were subsequently requesting an increase. The purchases, ranging from as low as \$10 to as high as \$694,591, were made without following the proper procurement procedures. GSA had subsequently prepared the purchase orders retroactively, ratified the purchases, and consequently authorized their payments.

For example, on April 21, 2003, GSA processed a purchase order, totaling \$694,591, for the Office of Civil Defense (OCD) to purchase specialized emergency equipment for terrorism preparedness. Our review of the procurement file disclosed that this procurement was a result of approximately two years of aggressive campaigning to improve OCD's emergency management capabilities. OCD personnel stated that they tried to obtain price quotes from two local vendors in order to comply with local procurement laws; however, there were no written correspondences supporting this statement within the procurement file. Due to the significant amount and the length of time taken to purchase these items, we determined that OCD had ample time to plan and undergo the competitive sealed bidding process to include advertisement of this procurement, which would ensure that competition was made available and that the best prices were obtained. Therefore, we concluded the amount of \$694,591 as a cost exception.



**Image 6:** Office of Civil Defense Logo.

While GSA had identified these unauthorized procurements, the frequency of ratifying such purchases suggests a lack of planning and adherence to procurement regulations. In these instances, we could not determine whether GSA had ensured that the ratified purchases maximized public funds.

According to GSA personnel, agencies were verbally notified of these unauthorized procurements and were required to submit written justifications why such purchases would warrant ratification. We found that GSA had not consistently notified agencies in writing of their procurement violation(s) nor maintained written justifications submitted by agencies violating this procedure. We believe that a verbal notification to violating agencies is not sufficient to prohibit this practice from recurring. Without proper planning, agencies will overrun their budgets and the government will incur unnecessary costs. Unless GSA establishes more stringent enforcement procedures, these agencies will continue to violate the procurement law and GSA will continue to ratify these purchases after the fact.

To correct this deficiency, we recommend GSA (1) immediately notify agencies that unauthorized procurements will no longer be ratified unless it is determined in writing by the CPO to be in the government's best interest and (2) develop and implement enforcement procedures for handling unauthorized procurements, such as notifying vendors that the government will not pay for goods and services without a valid purchase order.

The current CPO took initial steps to correct this situation by issuing (1) a circular in October 2004 regarding unauthorized transactions and (2) a public notice in November 2004 informing vendors that if they provide goods and services without an approved PO or contract, they must first go through the Government Claims Act<sup>16</sup> or the government will not process their request for payment.

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<sup>16</sup> 5 G.C.A. § 22506.

## Comply with Emergency Procurement Regulations

Pursuant to 5 G.C.A. § 5215, at least three informal price quotations must be solicited for emergency purchases and emergency procurement must be awarded to the best offeror. Although the law does not require GSA maintain a qualified bidder's list, utilizing such a tool will enhance competition and ensure that all interested vendors are notified when the government wishes to engage in trade.<sup>17</sup>

In July and December 2002, Guam was devastated by two major typhoons, Typhoon Chata'an and Supertyphoon Pongsona. From July 2002 through February 2003, GSA processed 362 POs totaling \$1.7 million in emergency purchases, ranging from heavy equipment rentals, fuel, safety equipment, office space leases, medical supplies, and radio rental. We judgmentally selected 33 emergency POs, totaling \$527,870, and found that none of the POs were processed outside the emergency procurement period. Of the 33 POs, we found 13 POs, totaling \$129,125, that did not have three informal solicited price quotes documented in the procurement files. This condition occurred because GSA had not been consistent in documenting the required three quotes needed for the emergency purchases. According to GSA personnel the required quotes were not documented because of time constraints. Below are examples of emergency purchases that were improperly procured.

- **Heavy Equipment Rental.** GSA processed a purchase order in the amount of \$18,838 for Civil Defense to a local vendor for the rental of backhoe equipment. Our review of the procurement files revealed that GSA had obtained two quotations in the amount of \$18,920 and \$4,263. We determined that one vendor had quoted almost three times less than the other vendor, yet GSA had awarded the PO to the higher vendor. We were unable to locate any written explanation as to why the emergency procurement was not awarded to the best offeror. We concluded that the government could have saved \$14,575<sup>18</sup> had GSA awarded the PO to the best offeror.



**Image 7:** Sample of backhoe equipment.

- **Purchase of Pharmaceutical Medications.** On February 10, 2003, GSA processed a purchase order for various pharmaceutical medications totaling \$20,215. Our review of the procurement file found that GSA had not solicited any quotations and did not indicate whether other vendors were contacted. Because the file lacked the required information for an emergency purchase, we were unable to determine whether the best offeror was selected. As a result, the emergency procurement of \$20,215 was unsupported.

<sup>17</sup> An Elected Official's Guide to Procurement by Patricia C. Watt.

<sup>18</sup> This amount was derived by subtracting \$4,263 from \$18,838.

Because GSA did not obtain and document the required number of quotations and utilize a qualified bidder's list for emergency purchases, GSA did not foster competition and ensure that the government received the best offer. Therefore, we concluded that \$110,288 in emergency purchases was unsupported.

To correct these deficiencies, we recommend GSA (1) document the required number of quotations, (2) document award of emergency purchases to the best offeror, and (3) establish a qualified bidder's list to be used to help expedite the procurement process and assure the best possible price for the government during an emergency.

## **Maintain Better Records Management**

Procurement documents are solicitations, offers, contracts, and amendments. The written documentation of all steps in the procurement cycle is one of the essential elements of procurement requirements found in state and local laws.

During our review of procurement files, we found that GSA did not maintain complete procurement histories nor perform periodic assessments of their procurement performance. We also found that the time requirement to advertise IFBs a minimum of 7 days conflicts with the other time requirement to advertise a minimum of 15 days. These conditions occurred because GSA had not (1) initiated a plan to automate procurement activities, (2) utilized customer surveys to evaluate its performance, and (3) reviewed or updated procurement regulations for consistency since 1999. These actions would enable public and business communities to access GSA procurement activities online, broaden government competition, and increase GSA efficiency. Thus, GSA is not meeting its overall mission to provide effective and efficient procurement services.

## **Lack of Procurement History**

5 G.C.A. § 5249 requires each procurement officer to maintain a complete record of each procurement. Further, 5 G.C.A. § 5249(b) requires the written documentation of all internal and external communication within each procurement file.

We tested 73 POs, totaling \$4.6 million, and found that GSA consistently lacked pertinent procurement documentation, such as internal and external communications, analyses of vendor bids, and the rationales for determining and awarding the best offeror within the procurement files. Additionally, the Government of Guam Single Audits from FY 1999 through FY 2003 have continually identified the lack of procurement history as a significant deficiency, yet there has been no considerable improvements made to correct this deficiency.<sup>19</sup>

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<sup>19</sup> Approximately \$994,086 or 80% of all FY 2003 Questioned Costs pertained to deficiencies in procurement.

## Conflict in Bidding Time Requirements

2 G.A.R. § 3109(d) requires a minimum of 15 days bid time unless a shorter bid time is deemed necessary and determined in writing, while 2 G.A.R. § 3109(f)(2) requires procurement in excess of \$25,000 be advertised at least once and at least 7 days before the final date of bid submission.

Of the tested purchase orders, 16 POs, totaling \$1.5 million, referred to bids; however, we found that the application of the bidding time requirement was inconsistent as the bidding time ranged as short as 7 days to as long as 17 days, as illustrated in Table 1.

**Table 1: Inconsistent Application of Bidding Time Requirement**

Bidding Time	Number of POs Tested	Total Payments
7 days	2	\$ 1,226,371
8 days	2	11,875
11 days	1	62,689
13 days	2	67,202
15 days	6	100,067
17 days	3	46,316
<b>Total</b>	<b>16</b>	<b>\$ 1,514,520</b>

In 7 of the 16 POs tested, we were unable to locate written justification as to why GSA had required a shorter bid time. Therefore, we concluded that GSA had not provided ample time to perspective bidders in order to prepare a bid package when using a shorter bid time than the minimum 15-day requirement. As a result, the government may not have received the best price for \$1.4 million.<sup>20</sup>

The requirement to advertise an invitation for bid (IFB) at least 7 days before the opening date of the bids conflicts with the minimum 15-day bidding time requirement. Additionally, 5 G.C.A. § 5211(c) does not specify a reasonable time for advertisement and bidding time prior to bid opening. The shorter bid times give rise to claims of bias or favoritism in the selection process, which could be made against the government due to the conflicting time requirements of these regulations; thus, undermining the integrity of the procurement process and the public's trust.<sup>21</sup>

Although the Governor signed P.L. 27-119 in December 2004, which would establish the "Government of Guam Procurement Review Committee" to comprehensively evaluate and provide recommendations on Guam's procurement process, there were no additional funding nor resources allocated to ensure the success of the implementation of reforming the Guam procurement laws and process.

To correct these deficiencies, we recommend that GSA (1) ensure that all pertinent documentations are located within the respective procurement files, (2) amend 2 G.A.R. § 3109(d) specify a minimum 15-day advertisement and bidding time requirement to ensure that potential bidders are allowed ample time to respond to IFBs, and (3) remove 2 G.A.R. §

<sup>20</sup> \$1.4 million was derived by subtracting \$146,383 from \$1,514,520.

<sup>21</sup> Procurement best practices from <http://www.epiqtech.com/e-procurement-Government.htm>.

3109(f)(2), which requires a minimum of 7 days, since it conflicts with 2 G.A.R. § 3109(d), which requires a minimum of 15 days.

### **Lack of Automated Procurement Activities**

In general, automation can significantly enhance the efficiency and effectiveness of procurement activities by minimizing paper use, capturing data for management reports, eliminating duplicative activities, and storing historical data to base future procurement decisions.<sup>22</sup>

Our overall review of GSA's procurement activities identified that the present manual numbering system does not classify the type of procurement method utilized, because according to the current CPO, it has always been set up that way. Our review of GSA's present website found that it does not have the capabilities to communicate with the business community and post procurement announcements, such as invitation for bids (IFBs) and/or request for quotes (RFQs).

GSA records disclosed that the August 1991 vendor debarment listing has not been updated; thus, it is apparent that GSA has not taken any action to debar or suspend vendors in the past 13 years. Although there has been an increase in procurement fraud, GSA personnel stated they were not aware of any recent debarment and/or suspension of vendors. In 2002, a former Government of Guam official and several contractors were convicted in Federal court of bid rigging and bribery charges.

Continuing to maintain such manual records of procurement activities, such as procurement history files, and the inability to track best offerors and/or debarred contractors limit GSA's effectiveness.

In today's procurement environment, GSA can meet its overall mission to provide effective and efficient procurement and move into the 21<sup>st</sup> century by developing and expanding procurement services by utilizing available technology. Initiating an automated procurement system will enable GSA to (1) maintain a listing of all contracts made under sole source and emergency procurement and generate an annual report to be submitted to the Legislature, as mandated by 5 G.C.A. §§ 5248(a) and (b) and (2) track vendors who have been debarred from participating in procurement activities. GSA should also consider expanding its website capabilities to broaden competition.

To correct these deficiencies, we recommend GSA (1) initiate the automation of the procurement process for ease of report generation to be used for future procurement decisions and planning, (2) develop a purchase order numbering system to appropriately classify procurement methods used (i.e. small purchases, BPA, sole source, and competitive sealed bidding), and (3) coordinate with DOA's Data Processing to develop the existing GSA website with the capabilities to communicate with the business community and post IFBs and RFQs. Additionally, we recommend GSA pursue the debarment and/or suspension of vendors who are not complying with procurement regulations stipulated in 5 G.C.A. § 5426.

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<sup>22</sup> An Elected Official's Guide to Procurement by Patricia C. Watt.

The DOA Director and the current CPO indicated that the full automation of the procurement process is included in the current Financial Management Improvement Plan (FMIP) through the assistance of the U.S. Department of Interior. Effective June 2004, the first step to the automation of the procurement process is the implementation of the computerized preparation of purchase orders.

## **Improve Performance through Customer Surveys**

Procurement performance is measured through customer satisfaction, which can be assessed through periodic surveys. A periodic survey is a tool that can be utilized by GSA to help determine the degree of GSA's procurement performance and generate ideas for improvement.<sup>23</sup>

We sent survey questionnaires to 55 Government of Guam agencies to determine their assessment of GSA's procurement function. Of the 47 responses received, 18 were from autonomous agencies, who are delegated procurement authority, thus were excluded. The responses from 29 line agencies were used to provide feedback on GSA's services and to solicit suggestions for improving procurement performance. Additionally, the agencies commented on GSA's performance that (1) the turn around time in processing purchase orders is approximately 4 to 6 weeks due to long paper trails, and (2) GSA personnel lack knowledge of office procedures, were inconsistent in applying procurement regulation, and unresponsive to departments' needs, i.e. the inability to provide information to agency personnel's inquiries. A detailed description of the questionnaire can be found in Appendix 9.

While most of the respondent agencies were generally satisfied with GSA's performance and services, we recommend that the CPO (1) perform periodic customer surveys and apply best procurement practices as tools to improve GSA's overall procurement process and (2) consider comments made in the Procurement Survey Results, such as ensuring that all personnel are trained in expediting the purchase order process, office procedures, and procurement regulations.

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<sup>23</sup> An Elected Official's Guide to Procurement by Patricia C. Watt.

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## Recommendations

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### **We recommend the Chief Procurement Officer of the General Services Agency:**

1. Regularly review the procurement process, make recommendations to modify statutes, and apply best practices to enhance the efficiency and effectiveness of GSA's overall procurement process.
2. Immediately discontinue leasing and/or purchasing equipments under the two expired bids and the lease of motor vehicles, issue invitations for bid (IFB) to solicit for the government-wide lease and/or purchase of copier machines and the lease of vehicles for the Hawaii Medical Referral Office, discontinue the practice of utilizing "existing territorial contracts," determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements.
3. Conduct and adequately document independent verifications as to the validity of sole source procurement activities to illustrate that efforts were made to solicit competition, solicit certification letters from vendors to warrant that they are the sole provider of specific goods and/or services, and eliminate the use of GSA's standardized sole source determination form, because by nature, the form limits GSA from conducting its own independent verifications.
4. Immediately notify agencies that unauthorized procurements will no longer be ratified unless it is determined in writing by the CPO to be in the government's best interest and develop and implement enforcement procedures for handling unauthorized procurements, such as notifying vendors that the government will not pay for goods and services without a valid purchase order.
5. Document the required number of quotations, award emergency purchases to the best offeror, and establish a qualified bidder's list to be used to help expedite the procurement process and assure the best possible price for the government during an emergency.
6. Ensure that all pertinent documentations are located within the respective procurement files, amend 2 G.A.R. § 3109(d) to specify a minimum 15-day advertisement and bidding time requirement to ensure that potential bidders are allowed ample time to respond to IFBs, and remove 2 G.A.R. § 3109(f)(2), which requires a minimum of 7 days, since it conflicts with 2 G.A.R. § 3109(d), which requires a minimum of 15 days.
7. Initiate the automation of the procurement process, develop a purchase order numbering system that appropriately classifies the procurement methods used (i.e. small purchases, BPA, sole source, and competitive sealed bidding), and coordinate with DOA's Data Processing to develop the present GSA website with the capabilities to communicate with the business community and post procurement announcements, such as invitations for bid and/or requests for quotes.

8. Pursue the debarment and/or suspension of vendors who are not complying with procurement regulations stipulated in 5 G.C.A. § 5426.
9. Perform periodic customer surveys and consider comments made in the Procurement Survey Results, such as ensuring that all personnel are trained in expediting the purchase order process, office procedures, and procurement regulations.

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## **Management Response and OPA Reply**

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We provided a draft audit report to the Director of the Department of Administration and the Chief Procurement Officer (CPO) of the General Services Agency for review and comment.

In her response, the CPO generally concurred with the findings and recommendations of the report (see Appendix 10). Although the CPO addressed and indicated her plan of actions on a majority of the recommendations, we request that CPO provide additional information indicated in Appendix 11.

The legislation creating the Office of the Public Auditor requires agencies to submit an action plan to implement audit recommendations within six months after report issuance. Accordingly, our office will be contacting GSA to provide the target date and title of the official responsible for implementing the recommendations.

We appreciate the cooperation shown by the Department of Administration and the General Services Agency.

### **OFFICE OF THE PUBLIC AUDITOR**



Doris Flores Brooks, CPA, CGFM  
Public Auditor

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**Appendix 1**  
**Classification of Monetary Amounts**

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<u>Finding Area</u>	<u>Unsupported Costs</u>	<u>Cost Exceptions</u>
A. Promote Competition through the Competitive Sealed Bidding Process		
Improper Use of “Existing Territorial Contract”	\$ -	\$ 9,019,456
Sole Source Justification Not Independently Verified	\$ -	\$ 699,825
Ratification of Unauthorized Purchases	\$ -	\$ 4,107,806
B. Comply with Emergency Procurement Regulations	\$ 110,287	\$ 18,838
C. Maintain Better Records Management		
Lack of Procurement History	\$ -	\$ -
Conflict of Bidding Time Requirements	\$ 1,368,137	\$ -
Lack of Automated Procurement Activities	\$ -	\$ -
D. Improve Performance through Customer Surveys	\$ -	\$ -
<b>Total:</b>	<b><u>\$ 1,478,424</u></b>	<b><u>\$13,845,925</u></b>

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## Appendix 2

### Objective, Scope, and Methodology (Page 1 of 2)

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The objectives of our audit were to determine whether GSA had provided fair and open competition of purchases in excess of \$15,000 and whether procurement activities, such as competitive sealed bidding, sole source, and emergency purchases were in compliance with Guam procurement laws and regulations. The scope of our audit was an analysis of POs in excess of \$15,000 and emergency purchase orders issued by GSA from October 1, 2001 through June 30, 2003. Our review did not include a review of construction contracts for the Department of Public Works and procurement activities of the Department of Education. Due to the purchase order numbering scheme, we could not readily detect which POs in excess of \$15,000 were issued as a result of competitive sealed bidding or other procurement methods; thus, we physically verified all POs in excess of \$15,000 to determine the type of procurement method cited.

We visited the Department of Administration, General Services Agency, Office of Civil Defense, Guam Fire Department, Guam Police Department, Department of Public Health and Social Services, Department of Labor, Department of Agriculture, and Department of Land Management to conduct interviews with applicable officials and personnel to review records pertaining to procurement activities.

The audit methodology included gaining an understanding of the policies, procedures, applicable laws, and best practices as illustrated in the GAO reports *Competitive Sourcing: Greater Emphasis Needed in Increasing Efficiency and Improving Performance* and *Best Practices: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement*, An Elected Official's Guide to Procurement, and an article by EPIQ Systems Inc. pertaining to GSA's procurement activities. We also sent out survey questionnaires to 55 Government of Guam agencies to determine their assessment of the GSA's procurement function.

We determined that the GSA processed a total of 10,744 POs, totaling \$34.1 million,<sup>24</sup> from October 2001 through June 2003. We judgmentally selected and tested the following to determine compliance with applicable Guam procurement laws and regulations:

- 6 sole source POs, totaling \$699,825;
- 33 emergency POs, totaling \$527,870; and
- 34 POs for purchases of goods and services in excess of \$15,000, totaling \$3.4 million.

Of the estimated \$5.1 million paid on two expired bids cited in this report, we could not determine the reliability of the total payment of \$2.6 million recorded in the AS400 for FY 2001 as transactions during this period were recorded in the defunct Oracle system and may not have been completely transferred into the AS400. In addition, the estimated amount of \$333,564 paid in FY 2000 were derived by taking the total payments in FY 2000 divided by 12 months and multiplied by 9 months to obtain a conservative amount based on the maximum 90-day extension allowed on an indefinite quantity contract for the two expired bids.

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<sup>24</sup> Of the 10,744 POs, 320 POs (\$15.6 million) were processed for purchase of goods and services in excess of \$15,000, while 362 POs (\$1.7 million) were processed for emergency purchases.

Our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Accordingly, we obtained an understanding and performed an evaluation of internal controls of the procurement process at General Services Agency. We included tests of records and other auditing procedures that were considered necessary under the circumstances.

Internal control weaknesses were identified and are discussed in the Results of Audit section of the report.

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## Appendix 3

### Prior Audit Coverage

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We reviewed the following prior audit coverage of the procurement practices of the Government of Guam.

#### Office of the Public Auditor (OPA)

**November 2003** OPA issued *Office of the Attorney General's (OAG) Child Support Enforcement Program* (OPA Report 03-09), which identified that two of the contracts for Child Support Enforcement projects were procured without competition and the contracts were extended without assessing performance in previous contracts. Total contractual cost through 2004 for both APASI and the SDU is expected to be \$14.4 million. Further, the Federal Office of Child Support Enforcement approved sole source procurement of such services based on the rationale of the previous attorney general.

**December 2003** *Guam Fire Department's (GFD) Enhanced 911 Emergency Reporting System Fund* (OPA Report 03-10) identified a consulting contract that was awarded with no explanation to justify the selection of the consultant. The consultant was paid \$166,000 for the 27 months of the contract. Further, the consultant was paid for 24 months of service in which an extension was signed after the work was completed.

**March 2004** OPA issued *General Services Agency Small Purchases Procurement Function* (OPA Report 04-05), where the auditors identified that 10,747 purchase orders or 95% issued from October 1, 2001 through June 30, 2003 were for small purchases, totaling more than \$25 million. The audit also identified the lack of planning and competition, possible artificial division of purchases and preferential selection of vendors, and missing procurement documentation. These deficiencies led to questionable procurement practices.

**July 2004** OPA issued *General Services Agency Blanket Purchase Agreements (BPA) Procurement Function* (OPA Report 04-08), which identified improper and excessive procurement of food for the Department of Corrections (DOC), where a single vendor was awarded \$2.5 million or 70% of the total \$3.5 million food purchases. The FY 2002 average cost to feed inmates in U.S. correctional facilities was \$2.00 compared to the \$9.05 to feed inmates in DOC. The audit also identified that the Department of Public Health and Social Services, issued BPAs aggregating \$137,120, despite the fact that the contracts were rejected by Attorney General's Office. Further, the report identified 20 BPAs, totaling \$388,225, that did not have price quotes and lacked running purchase totals, leading to the over issuance of five POs totaling \$130,697.

#### Single Audit Reports

The Single Audit Reports of the Government of Guam for fiscal years 1999 through 2003 identified repeat findings related to government procurement. The total questioned costs of unsupported procurement were \$8,018,366, \$4,270,754, \$898,239, \$2,362,022, and \$994,086 for FY 1999, 2000, 2001, 2002, and 2003, respectively. Majority of these findings were due to the lack of significant procurement history.

**Competitive Sealed Bidding**

5 G.C.A. § 5211 requires all contracts to be procured using the competitive sealed bidding method except as provided under small purchases, sole source, emergency, and professional services. Thus, procurement of supplies or services greater than \$15,000 must undergo competitive sealed bidding.

- An invitation for bid (IFB) outlining the instructions and purchase information is used to initiate this type of procurement [5 G.C.A. § 5211(b)].
- IFBs are required to be mailed or furnished to an adequate number of bidders to secure competition [2 G.A.R. § 3109(f)(1)].
- The CPO has authority to decide when the procurement will be initiated and the time for response to the solicitation [2 G.A.R. § 3103(a)(2)].
- Procurement in excess of \$25,000 must be publicized at least once and at least seven days before the final date of bid submission [2 G.A.R. § 3109(f)(2)].
- A minimum of 15 days shall be provided unless the procurement officer determines that a shorter time is necessary [2 G.A.R. § 3109(d)].
- Any partnership or corporation is required to submit an affidavit, which lists each major shareholder who has held more than ten percent of the outstanding interest or shares [2 G.A.R. § 3109(e)(3)(E)].
- Each bid shall be time-stamped, but not opened, and shall be stored in a secure place until the time and date set for bid opening [2 G.A.R. § 3109(l)(1)].
- No late bid, withdrawal, or modification will be considered unless received before contract award [2 G.A.R. § 3109(k)(2)].
- Bids are opened publicly in the presence of one or more witnesses. In addition, information deemed appropriate shall be recorded at the time of bid opening [2 G.A.R. § 3109(l)(2)].
- If only one responsive bid is received, an award may be made to the single bidder if the price submitted is fair and reasonable [2 G.A.R. § 3102(c)(1)].
- A solicitation is cancelled only when there are compelling reasons to believe that the cancellation is in the territory's best interest [2 G.A.R. § 3115(b)].
- The reasons for cancellation or rejection shall be part of the procurement file and shall be available for public inspection [2 G.A.R. § 3115(d)(3)].
- Bids will be evaluated to determine which bidder offers the lowest cost to the territory [2 G.A.R. § 3109(n)(4)].
- The contract is awarded to the lowest and most responsive bidder whose bid meets the criteria set forth in the IFB [2 G.A.R. § 3109(n)(1)].
- A record showing the basis for determining the successful bidder shall be made part of the procurement file [2 G.A.R. § 3109(p)].
- A written notice of award is sent to the successful bidder; and for procurement over \$25,000, each unsuccessful bidder shall also be notified of the award [2 G.A.R. § 3109(q)].

### **Sole Source Procurement**

Pursuant to 2 G.A.R. § 3112, sole source procurement is permissible only if the requirement is available from a single supplier. In addition, the CPO shall make a written determination for the sole source, and in cases of reasonable doubt, competition should be solicited. Conditions to use sole source include the following:

- Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- Where a sole supplier's item is needed for trial use or testing; or
- Where public utility services are to be procured.

### **Emergency Procurement**

Emergency procurement regulations under 5 G.C.A. § 5215 stipulates emergency procurement is authorized when there is a threat to public health, welfare, or safety... provided that: (1) the procurement agent must solicit at least three informal price quotations; (2) must award procurement to the firm with the best offer, as determined by evaluating cost and delivery time; (3) no emergency procurement shall be made greater than the amount of goods and services necessary to meet the emergency for the 30-day period; and (4) a written determination of the basis for the emergency or the Governor's declaration of an emergency through issuance of an Executive Order, which should be included in the file.

### **Procurement Records**

5 G.C.A. § 5248 requires that the CPO shall maintain a record of procurement actions taken under sole source and emergency procurement to include the (1) contractor's name, (2) amount and type of each contract, and (3) a listing of supplies, services, and construction procured under each contract for a minimum period of five years to be submitted to the Legislature annually. Additionally, according to 5 G.C.A. § 5249, each procurement officer is to maintain a complete record for each procurement. The procurement files should contain sufficient documentation to provide a complete history of the procurement to include all communication, external and internal. The file should include:

- Bid solicitation,
- Copy of advertisement (required for purchases over \$25,000),
- If advertisement is less than 15 days, documentation why the 15 days was not used,
- Record of prospective bidders who picked-up bid packages,
- Record of bidders who submitted completed bid packages,
- If there is only one responsive bidder, an analysis shall be made as to the reasonableness of the bidder's price,
- If less than three bidders, documentation as to what efforts were made to secure at least three bidders,
- Analysis and evaluation of all bids submitted,
- Analysis of the successful bid and why this bidder was selected,
- Notice of award to the successful bidder(s),

- Notice of non-award to unsuccessful bidders if the IFB is over \$25,000,
- After award is made to the successful bidder, copies of the contract and all purchase orders shall be included in the procurement files, and
- Running total of all purchase orders issued under the specific bid.

**Government Claims Act**

5 G.C.A. § 22506 indicates that claims for interest penalties, which a government agency has failed to pay, may be filed according to the statutes governing contract disputes with the Government of Guam.

**Vendor Debarment and Suspension**

5 G.C.A. § 5426 indicates that after reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CPO, after consultation with the using agency and the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The CPO shall also have authority to suspend a person from consideration for award of contracts if there is probable cause for such debarment.

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## Appendix 5

### **Procurement Best Practices**

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#### **Government Accountability Office (GAO)**

The U.S. Government Accountability Office (GAO) Report-04-367, *Competitive Sourcing: Greater Emphasis Needed in Increasing Efficiency and Improving Performance*, outlined principles to guide federal sourcing including policies that should:

1. Support agency missions, goals, and objectives;
2. Be consistent with human capital; practices designed to attract, motivate, retain, and reward high-performing workers;
3. Create incentives and processes that foster high-performing, efficient, and effective organizations;
4. Be based on clear, transparent, and consistently applied processes;
5. Ensure that competitions are conducted fairly, effectively, and efficiently;
6. Ensure that competitions involve a process that considers both quality and cost factors; and
7. Provide accountability in all sourcing decisions.

The U.S. GAO Report GAO-04-870, *Best Practices: Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement* defined the benefits of conducting a spend analysis, which permits the organization to review how much they are spending each year, what was bought, from whom it was bought, and who purchased it. A spend analysis also allows for the establishment of lower-cost consolidated contracts. The following are five key processes and efforts that organizations adopt that enable them to conduct an effective and current spend analysis:

1. Automation - automatically compile data
2. Extraction – collect essential data from various internal systems
3. Supplemental Information – seek additional information from other sources
4. Organization – review data to ensure accuracy and completeness
5. Analysis and Strategic Goals – use standard reporting and analytical tools

#### **EPIQ Systems Inc.**

Additionally, an article by EPIQ Systems Inc., a national leader in the market for fiduciary management and administration systems, indicated that government purchasers need to follow specific best practices to ensure that goods and services they procure meet the desired standards. One of those practices is to regularly review and update the procurement rules and regulations so that regulations do not hinder procurement activities.

**Appendix 6**  
**Purchase Orders in Excess of \$15,000 for FY 2002 and 2003<sup>25</sup>**

Agency	FY 2002		Nine Months Ended June 2003		Grand Total	
	# of POs	Payment	# of POs	Payment <sup>26</sup>	# of POs	Payment
Bureau of Planning	-	\$ -	1	\$ 18,705	1	\$ 18,705
Customs & Quarantine	4	108,573	2	49,687	6	158,260
Department of Administration	3	129,172	9	1,613,563	12	1,742,735
Dept. of Agriculture	3	58,001	5	4,315	8	62,316
Department of Corrections	33	1,789,227	20	967,915	53	2,757,142
Department of Education	1	19,210	-	-	1	19,210
Department of Integrated Services for Individuals with Disabilities	-	-	1	-	1	-
Department of Labor	1	28,224	-	-	1	28,224
Department of Land Management	7	259,635	5	111,715	12	371,350
Department of Law	5	92,536	4	74,701	9	167,236
Department of Mental Health and Substance Abuse	3	39,695	1	-	4	39,695
Department of Military Affairs	8	207,101	6	800,890	14	1,007,991
Department of Public Health & Social Services	23	562,661	37	777,647	60	1,340,309
Department of Public Works	25	658,149	26	3,430,678	51	4,088,828
Dept. of Revenue & Taxation	10	302,528	13	438,998	23	741,526
Department of Youth Affairs	1	25,181	2	13,465	3	38,646
General Services Agency	16	1,504,771	14	222,599	30	1,727,370
Governor's Office	4	120,965	-	-	4	120,965
Guam Educational Telecom Corporation	1	39,787	-	-	1	39,787
Guam Election Commission	2	34,282	-	-	2	34,282
Guam Environmental Protection Agency	2	20,361	3	131,718	5	152,079
Guam Fire Department	-	-	2	10,186	2	10,186
Guam Police Department	13	765,652	3	136,500	16	902,152
Guam Public Library	-	-	1	25,665	1	25,665
<b>TOTAL</b>	<b>165</b>	<b>\$ 6,765,711</b>	<b>155</b>	<b>\$ 8,828,949</b>	<b>320</b>	<b>\$ 15,594,660</b>

<sup>25</sup> The figures include sole source purchase orders.

<sup>26</sup> All purchases in excess of \$15,000, as indicated in the actual purchase orders, were reviewed, not the payment amount.

Appendix 7

**1995 Lease/Purchase of Copier Machines Bid Analysis**

**Bid GSA-035-95<sup>27</sup>**

Item #	Lease Term (Months)	Original Price/ Month	Nov. 1996 (FY 1997)			Oct. 1997 (FY 1998) <sup>28</sup>			June 1998 (FY 1998) <sup>29</sup>			Aug. 2000 (FY 2000)		
			Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)
1.1	36	856.94	899.99	43.05	5.0%	899.01	(0.98)	(0.1%)	-	-	-	-	-	-
	48	742.38	779.00	36.62	4.9%	783.11	4.11	0.5%	-	-	-	-	-	-
	60	-	-	-	-	-	-	-	892.00	n/a	n/a	892.00	n/a	n/a
1.1A	36	468.22	491.00	22.78	4.9%	-	-	-	-	-	-	-	-	-
	48	375.48	394.00	18.52	4.9%	-	-	-	-	-	-	-	-	-
2.1 (Basic)	36	100.26	105.93	5.67	5.7%	113.75	7.82	7.4%	113.75	-	-	113.75	-	-
	48	88.90	93.00	4.10	4.6%	91.22	(1.78)	(1.9%)	91.22	-	-	91.22	-	-
2.1 (Alt.)	36	100.26	100.26	-	-	100.26	-	-	100.26	-	-	100.26	-	-
	48	88.90	88.90	-	-	88.90	-	-	88.90	-	-	88.90	-	-
3.1	36	1,218.61	1,279.99	61.38	5.0%	1,218.00	(61.99)	(4.8%)	1,218.00	-	-	1,218.00	-	-
	48	1,040.09	1,092.00	51.91	5.0%	1,040.09	(51.91)	(4.8%)	1,040.09	-	-	1,040.09	-	-

**Bid GSA-067-95**

Item #	Lease Term (Months)	Original Price/ Month	Nov. 1996 (FY 1997)			July 1997 (FY 1997)			Oct. 1997 (FY 1998)			July 1999 (FY 1999)		
			Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)	Price/ Month	Variance	% Increase (Decrease)
1.1	36	438.57	460.00	21.43	4.9%	460.00	-	-	460.49	0.49	0.1%	460.49	-	-
	48	376.26	395.00	18.74	5.0%	395.00	-	-	413.70	18.70	4.7%	413.70	-	-
2.1	36	123.18	129.00	5.82	4.7%	129.00	-	-	143.19	14.19	11.0%	143.19	-	-
	48	137.95	144.00	6.05	4.4%	144.00	-	-	128.65	(15.35)	(10.7%)	128.65	-	-

<sup>27</sup> Product substitutions are highlighted.

<sup>28</sup> In October 1997, the vendor informed GSA that item 1.1A of bid GSA-035-95 will no longer be available.

<sup>29</sup> In June 1998, the vendor informed GSA that that the machine offered as item 1.1 in bid GSA-035-95 will no longer be available and will be replaced with another machine that required a 60-month lease term.

Appendix 8

**Emergency Purchase Orders for FY 2002 and 2003**

Agency Name	FY 2002		Nine Months Ended June 2003		Grand Total	
	# of POs	Payment	# of POs	Payment	# of POs	Payment
Civil Service Commission	-	\$ -	2	\$ 468	2	\$ 468
Department of Labor	2	5,581	12	40,518	14	46,098
Department of Military Affairs	106	264,589	2	4,351	108	268,939
Department of Revenue & Taxation	1	-	-	-	1	-
Department of Integrated Services for Individuals with Disabilities	1	189	-	-	1	189
Department of Administration	2	1,871	118	815,022	120	816,893
Department of Corrections	-	-	1	-	1	-
Department of Public Health & Social Services	26	23,844	3	13,334	29	37,178
Department of Public Works	42	244,932	18	201,044	60	445,976
Department of Youth Affairs	1	2,940	1	311	2	3,251
Guam Environmental Protection Agency	2	1,774	-	-	2	1,774
Guam Fire Department	5	7,925	4	15,040	9	22,965
Guam Police Department	13	5,861	-	-	13	5,861
<b>Grand Total:</b>	<b>201</b>	<b>\$ 559,505</b>	<b>161</b>	<b>\$ 1,090,087</b>	<b>362</b>	<b>\$ 1,649,592</b>

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**Appendix 9**

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**Procurement Survey Results**

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1. *What is GSA's role in your agency's procurement process?*

- To act on behalf of the agency's buyer when bidding for supplies, equipment, and capital outlay.
- To review requisitions and process the agency's purchase orders to ensure that the agency is in compliance with both the Federal and Local Procurement Regulations
- GSA plays 100% in several agencies' procurement process.
- GSA advertises bids for bulk purchases of vehicles, equipment and supplies, and has access to vendors who may have lower prices on certain items.

2. *Is your agency subject to the Guam Procurement Regulations?*

YES	NO	N/A
26	1	2

3. *Has your agency adopted any supplemental procurement procedures?*

YES	NO	N/A
6	18	1

4. *Are you satisfied with GSA's procurement process?*

YES	NO	N/A
12	16	1

5. *Please rate the services received from GSA.*

Excellent	Satisfactory	Fair	Unsatisfactory	N/A
2	15	5	6	1

6. *What are the benefits that GSA provides for your agency?*

- Provides much needed assistance in expediting documents needed to procure services or parts and supplies, as well as guidance through the procurement process and protection of the integrity of the procurement process.
- Securing the lowest prices at the requested quality of goods. Great for gasoline purchasing.
- Maintains permanent record files and centralized purchasing control.

7. *Recommendation and/or Additional Comments.*

- Update the GSA Procurement Regulations and distribute to each agency, as this will keep the agencies abreast with the procurement procedures. All buyers should be subject to abide with the same rules and regulations with no exceptions.
- GSA must do some planning in carrying out its workload efficiently. Increase manpower by filling vacancies, and personnel should be GSA permanent staff and not staff that are loaned from various agencies. GSA should encourage the use of federal GSA contracts whenever possible, as these contracts have already been bid and negotiated and could save the Government of Guam a significant amount of money.
- Good customer service; always willing to help out with issuing supplies ordered.
- Turn around in processing POs is excessive, around 4-6 weeks. The paper trail at GSA seems to be too long and involves too many people. Encumbrances are not posted in a timely manner to include amendments. Set a standard procedure in processing purchase orders based on the urgency.
- Lack of knowledge of the office procedure. Proper training in office procedures and customer service is needed. Often, the attitude when dealing with GSA is an adverse one instead of one of "How can we help you purchase what you need?"
- Communications through telephone is difficult due to no answer. GSA should be more responsive to the departments' needs as GSA is unable to provide information when inquiring.

Appendix 10  
**GSA Management Response (Page 1 of 8)**

Felix P. Camacho  
Governor

Lourdes M. Perez  
Director



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam  
148 Route 1 Marine Drive, Piti, Guam 96915  
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Kaleo S. Moylan  
Lt. Governor

Joseph C. Manibusan  
Deputy Director

December 23, 2004

Ms. Doris Flores Brooks  
Public Auditor, CPA, CGFM  
Office of the Public Auditor  
Suite 401, Pacific Daily News Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

12/28/04 3:40PM  
Received by Office of the  
Public Auditor

Dear Ms. Brooks:

Hafa Adai! This is our response to your final draft report of General Services Agency (GSA) Competitive Sealed Bidding, Sole Source, and Emergency Procurement Functions. The audit was completed as part of the overall review of GSA's procurement function. The following is the response to the audit findings:

**Finding 1: Competitive Sealed Bidding Process**

• **Records management problems**

I agree with this finding.

**Corrective action taken**

The current Chief Procurement Officer (CPO) recognized that there was a problem and immediately took action prior to the audit finding by the office of the OPA.

On May 10, 2004, (Refer to Exhibit A), GSA issued a memorandum to all Autonomous and Line departments/agencies to submit procurement files for blanket purchase agreements issued for FY'03.

The mission is for GSA to prepare an analysis report based on historical data for consolidation of **commonly** used goods/services within the government of Guam and to consolidate bids for such requirements.

On October 2004 GSA successfully awarded the bid for medication and pharmaceutical supplies to support the needs of the government of Guam.

COMMITTED TO EXCELLENCE

**Finding 2: Improper Use of "Existing Territorial Contracts"**

- **Lease/Purchase of Copier Machines**

I agree with the improper use of "Existing Territorial Contracts". However, the use of "Existing Territorial Contracts" has been a practice since the 1990s and continued into the 2000s.

**Corrective action taken**

Effective November 17, 2003, GSA discontinued the so-called "Trade-In" procedure whenever the lease term is to expire. GSA has implemented a new procedure wherein the Buyer will issue a request for quotation utilizing the specifications provided by the departments/agencies to at least three (3) vendors.

If GSA receives a positive quotation from any of the (3) vendors, GSA will evaluate the price submitted with the competitive pricing of the General Services Administration (GSA Federal Contract) to calculate the 10% preference in utilizing the method of Subsection 5221 of the 5GCA U.S. Government.

If the GSA Federal Contract Pricing is still lower with the 10% preference, GSA will award utilizing this method for lease of copier machines to the U.S. Government. If the local vendor is within the 10% preference and meets all the requirement of the request GSA will issue a bid solicitation for such requirement.

- **Lease of Rental Vehicles**

I agree with this finding.

**Corrective action taken**

The current CPO recognizes that there was a problem on this matter and immediately took action on September 2004.

GSA issued Invitation for Bid No. GSA-048-04 on September 14, 2004, for lease of eight (8) Passenger Van for the Hawaii Medical Referral Office. Five (5) prospective bidders acquired packages, however, no bids were received at the time of bid opening. GSA is in the process of re-soliciting this requirement and will send copies of the bid packages off-island to Hawaii and Los Angeles with the assistance of the Medical Referral Office to provide copies of bid packages to the various car rental companies in these particular locations.

GSA will advise the Medical Referral Office to remind the companies that all bids shall be received by GSA on or before the time specified for bid opening.

**Finding 3: Sole Source Justifications Not Independently Verified**

I agree with this finding.

**Corrective action taken**

The current CPO recognizes that there was a problem on this matter and immediately took action effective November 17, 2003. GSA has issued a Standard Operating Procedure for the utilization of Sole Source Procurement. (Refer to Exhibit B)

In addition, GSA has revised the Standard Form for Request for Sole Source Procurement and Determination to include items 1-5 of the SOP, effective December 27, 2004. (Refer to Exhibit C)

**Finding 4: Ratification of Unauthorized Purchases**

I agree with this finding.

**Corrective action taken**

GSA issued circular No. 2005-01 (Refer to Exhibit D) dated October 4, 2004, regarding procurement violations by departments/agencies that any procurement violations transacted after receipt of this notice will no longer be ratified by GSA. On October 2004 a notice was published in the Pacific Daily News (Refer to Exhibit E) to remind vendors that they should not be providing services/goods to the government of Guam without an approved purchase order or contract.

**Finding 5: Comply with Emergency Procurement Regulations**

I agree with this finding.

**Corrective action taken**

Effective November 17, 2003, for all emergency requests the buyer issues requests for quotations to at least three (3) vendors for the goods/services required; the buyer will prepare an abstract to indicate the prices submitted by the (3) or more vendors; if the fax machines are inoperable the buyer will note on the abstract that the prices were obtained through telephonic quotations, who they spoke to, the date and availability of such requirement; if award is made to a higher vendor due to delivery requirement it will be noted on the abstract. In other words, the procurement files are properly documented effective November 17, 2003.

## **RECOMMENDATIONS**

### **Response to Recommendation**

#### **Recommendation #1**

Regularly review the procurement process, make recommendations to modify statutes, and apply best practices to enhance the efficiency and effectiveness of GSA's overall procurement process.

#### **Response:**

I agree with this recommendation. However, the current CPO recognizes there was a problem with this matter and immediately took action as of May 10, 2004 prior to the issuance of this recommendation.

#### **Action taken**

In addition, on May 10, 2004, GSA issued a memorandum to all Autonomous and line departments/agencies to submit FY'03 Blanket Purchase Agreements to analyze for consolidation of goods/services for the government of Guam.

#### **Recommendation #2**

Immediately discontinue leasing and/or purchasing equipments under the two expired bids and the lease of motor vehicles, issue invitations for bid (IFB) to solicit for the government-wide lease and/or purchase of copier machines and the lease of vehicles for the Hawaii Medical Referral Office, and discontinue the practice of utilizing "existing territorial contracts," determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements.

#### **Response:**

I agree with this recommendation. However, the current CPO recognizes there was a problem with this matter and immediately took action on December 9, 2003, prior to the issuance of this recommendation.

**Action taken**

On September 14, 2004, GSA issued Invitation for bid for lease of vehicles for the Hawaii Medical Referral Office, however, there was no participation. GSA is in the process of re-issuing the IFB for this requirement. GSA will be forwarding copies of the IFB to the Medical Referral Office off-island for distribution of bid packages.

Effective November 17, 2003, GSA seized the automatic copier upgrades that automatically renews the lease terms for 60 months period. GSA issues request for quotations for any new requirement for lease of copier machines.

**Recommendation #3**

Conduct and adequately document independent verifications as to the validity of sole source procurement activities to illustrate that efforts were made to solicit competition, solicit certification letters from vendors to warrant that they are the sole provider of specific goods and/or services, and eliminate the use of GSA's standardized sole source determination form, because by nature, the form limits GSA from conducting its won independent verifications.

**Response:**

I agree with this recommendation. However, the current CPO recognizes that there was a problem with this matter and immediately took action on November 17, 2003 prior to the issuance of this recommendation.

**Action taken**

Effective November 17, 2003, GSA issued a procedure for the utilization of Sole Source Procurement.

**Recommendation #4**

Immediately notify agencies that unauthorized procurements will no longer be ratified unless it is determined in writing by the CPO to be in the government's best interest and develop and implement enforcement procedures for handling unauthorized procurements, such as notifying vendors that the government will not pay for goods and services without a valid purchase order.

**Response:**

I agree with this recommendation. However, the current CPO recognizes that there was a problem and took action on October 4, 2004.

**Action taken**

GSA issued circular No. 2005-01 dated October 4, 2004, regarding procurement violations by departments/agencies that any procurement violations transacted after receipt of this notice will no longer be ratified by GSA. On October 2004 a notice was published in the Pacific Daily News to remind vendors that they should not be providing services/goods to the government of Guam without an approved purchase order or contract.

**Recommendation #5**

Document the required number of quotations, must award emergency purchases to the best offeror, and establish a qualified bidder's list to be used to help expedite the procurement process and assure the best possible price for the government during an emergency.

**Response:**

I agree with this recommendation.

**Action taken**

Effective November 17, 2003, GSA ensures that abstracts is a mandatory part of the procurement file and that all communications regarding the procurement of such requirement is fully documented on the abstract form whether it relates to delivery, price, or non-payment issues. In addition, GSA also ensures that request for quotations are solicited to at least (3) vendors if possible and that has provided the type of services or goods within the last twelve months period.

**Recommendation #6**

Ensure that all pertinent documentations are located within the respective procurement files, amend 2 G.A.R. Subsection 3109(d) specify a minimum 15-day advertisement and bidding time requirement to ensure that potential bidders are allowed ample time to respond to IFBs, and remove 2 G.A.R. Subsection 3109(f)(2), which requires a minimum of 7 days since it conflicts with 2 G.A.R. Subsection 3109(d), which requires a minimum of 15 days.

**Response:**

I agree with this recommendation for consistency within the Procurement Regulations.

**Recommendation #7**

Initiate the automation of the procurement process, develop a purchase order numbering system that appropriately classifies the procurement methods used (i.e. small purchases, BPA, sole source, and competitive sealed bidding), and coordinate with DOA's Data Processing to develop the present GSA website with the capability to communicate with the business community and post procurement announcements, such as invitations for bid and/or requests for quotes.

**Response:**

I agree with this recommendation.

However, full automation of the procurement process is included in the current Financial Management Improvement Plan (FMIP) through the assistance of the U.S. Department of Interior. Effective June 2004, GSA has implemented the computerized preparation of purchase orders. A tentative schedule for completion of the fully automated procurement system is July 2005.

**Recommendation #8**

Pursue the debarment and/or suspension of vendors who are not complying with procurement regulations stipulated in 5 G.C.A. Subsection 5426.

**Response:**

I agree with this recommendation however, the current CPO recognizes that there was a problem with this matter and immediately took action on May 28, 2004 prior to the issuance of this recommendation.

**Action taken**

Effective May 28, 2004, GSA issued a memorandum to DOA Controller, (Refer to Exhibit F) took the initiative to issue Notice of Default letters to vendors that are not meeting the delivery requirement as stated on the purchase orders issued to their company. GSA monitors vendor performance and also advises departments/agencies that GSA must be kept informed regarding any unsatisfactory services by the vendor in order for GSA to properly discipline the vendors for unsatisfactory performance after consultation with the Office of the Attorney General.

**Recommendation #9**

Perform periodic customer surveys and apply best procurement practices as tools to improve GSA's overall procurement process and consider comments made in the Procurement Survey Results, such as ensuring that all personnel are trained in office procedure; and procurement regulations and expediting the purchase order process.

**Response:**

I agree with this recommendation however, the current CPO recognizes there was a problem with this matter and immediately took action on December 9, 2003. (Refer to Exhibit G)

**Action taken**

Effective December 9, 2003, GSA has established Standard Operating Procedures for requisition processing timelines to improve the efficiency and effectiveness of GSA's overall procurement process.

Effective July 2004, a procurement training was conducted for all procurement staff. Quarterly procurement training will be conducted regularly.

GSA will continue to improve the processes and to uphold the integrity within the procurement activities of this government.

Sincerely,

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

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## Appendix 11

# Status of Audit Recommendations

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Finding/ Recommendation Reference	Status	Action Required
1	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for the implementation of procurement best practices.
2	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for issuing invitation for bids (IFBs) for copier machines. In addition, provide a copy of the published IFB for the lease of vehicles for the Hawaii Medical Referral Office.
3	Management concurs; additional information needed.	Provide a copy of an actual letter sent to a vendor asking them for a sole source certification letter and the vendor's response.
4	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for developing and implementing enforcement procedures for handling unauthorized procurements.
5	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for establishing a qualified bidders' list to be used to help expedite the procurement process during an emergency.
6	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for ensuring that all pertinent documents are located within the procurement files. In addition, provide a copy of the amended regulation of 2 G.A.R. § 3109(d) to specify a minimum of 15-day advertisement and bidding time requirement and remove 2 G.A.R. § 3109(f)(2), which requires a minimum of 7 days.
7	Management concurs; additional information needed.	Provide a copy of the FMIP report illustrating action plans towards automation of the procurement process, which includes developing GSA's current website.
8	Management concurs; additional information needed.	Provide a copy of the most current vendor debarment and/or suspension listing.
9	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for conducting periodic customer surveys.