

GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER



GENERAL SERVICES AGENCY PROCUREMENT OF CONSULTATION FOR GBHWC - CRIMINAL JUSTICE PROGRAM

PERFORMANCE AUDIT

June 1, 2020 through June 1, 2021

OPA Report No. 22-02

March 2022





**General Services Agency
Procurement of Consultation Services for GBHWC-Criminal
Justice Program**

**Performance Audit
June 1, 2020 through June 2, 2021**

**OPA Report No. 22-02
March 2022**

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Executive Summary
General Services Agency
Procurement of Consultation Services for GBHWC-Criminal Justice Program
OPA Report No. 22-02, March 2022

Our compliance audit of the General Services Agency's (GSA) procurement of expert consultant services to establish the Guam Behavioral Health and Wellness Center (GBHWC)-Criminal Justice Program found that the GSA generally complied with Guam procurement laws and regulations. However, we noted the following areas for improvement:

- The Chief Procurement Officer (CPO) rejected GBHWC's multiple requests for sole procurement while they provided supporting documents to justify this method, but the CPO has the authority to reject the sole source without documenting the reason; and
- GSA's use of the small purchase procurement method based on the dollar threshold amount of the service was allowed, but we noted potential preferential treatment given to the awarded vendor.

Although a vendor was awarded through the small purchase procurement, GBHWC refused to use the vendor because they felt that the vendor was not qualified to provide the service. Because this was a special professional service, GBHWC could have acted as the purchasing agency instead of GSA and utilized the competitive sealed bid procurement method by issuing a Request for Proposal (RFP) on their own.

CPO Had Discretionary Authority to Reject Sole Source Procurement

In August 2020, GBHWC submitted a requisition requesting for sole source procurement from GSA to award Vendor A with the following supporting documents:

- Compatibility Letter
- Sole Source Letter
- Price Quote
- Negotiation Letter from GBHWC
- Negotiation Letter Response from Vendor A

The CPO denied GBHWC's request stating the justification does not support the sole source request and instructed them to get at least three quotes.

In October 2020, GBHWC submitted two requisitions requesting sole source with the same supporting documents provided in their prior sole source request, and two additional quotes. The initial quote from Vendor A plus the two additional "no quote" responses could have sufficed for the CPO's instruction to get three quotes, as a "contract may be awarded without competition for a supply or service when there is only a single supplier." However, the sole source request was still rejected.

GSA complied with Guam Procurement with regards to GBHWC's sole source request, as the CPO has discretionary authority to reject the sole source in accordance with 2 GAR §3112. (b). However, as a best practice, it would be good to have documentation as to the reasoning for the rejection in the procurement record. This has heightened the need to look more into sole source procurement, as such, an audit on all GovGuam sole source procurement is part of OPA's 2022 Annual Audit Plan.

Small Purchase Procurement Showed Potential Preferential Treatment

After the continuous sole source request rejections, GBHWC submitted two requisitions (Q212300106 and Q212310068) to GSA to utilize the small purchase procurement method in February 2021. The reasoning for the small purchase was based on the dollar amount threshold for the services in accordance with 5 GCA §5213 and 2 GAR §3111. However, GSA should have instructed GBHWC to utilize the competitive sealed bid procurement method and issue a RFP in accordance with 2 GAR §3114; as this was for professional consulting services.

Instead, GSA issued two separate requests for quotations (RFQ) on March 2, 2021. RFQ#21000785 was for Consultant Services to develop an Implementation Plan for mental health treatment and services and RFQ#21001031 was for Consultant Services to develop an Implementation Plan for substance use treatment and services.

Although both RFQs were issued simultaneously, they each went through different paths to be awarded to Vendor B, which we found GSA generally complied with Guam procurement. However, the timing and inclusion of Vendor B appeared to show preferential treatment given by GSA. In the end, GBHWC refused to utilize services from Vendor B for RFQ#21000785 because they did not find Vendor B met the requirements needed. GSA ended up canceling RFQ#21001031 because they cited artificial division from RFQ#21000785, and instructed GBHWC to combine the two requisitions and issue an Invitation for Bid.

Conclusion and Recommendation

The Governor signed Executive Order (E.O.) No. 2020-21 in June 2020 mandating GBHWC and the Department of Corrections (DOC) to create a GBHWC-Criminal Justice Program. To establish the GBHWC-Criminal Justice Program, GBHWC needed an expert consultant to help them develop mental health services within the correctional system.

As a line agency, GBHWC sought the assistance of GSA to procure the consultant services first through sole source procurement and then through the small purchase procurement methods. Although GSA generally complied with Guam Procurement with the awarding of Vendor B, we noted improvements could have been made. In the end, the services from the awarded Vendor B were never used. GSA should have instructed GBHWC to utilize the competitive sealed bid procurement method through the issuance of an RFP after it rejected the sole source request and received the small purchase requisitions. In addition, GBHWC could have also ensured its staff is familiar with Guam Procurement by obtaining the mandated procurement training and certification to properly execute this procurement.

Because the procurement was for special professional consulting services and because GBHWC is the end-user who knows exactly what type of service is needed and who is qualified to perform the service, they instead could have acted as the purchasing agency and utilized the competitive sealed bid method in line with 5 GCA, Chapter 5, §5121. This would have also helped them properly evaluate the proposals to determine the most responsive and responsible bidder.

We would recommend that if GBHWC still needs the service, they should issue an RFP for the professional consultant services. During the audit exit meeting, GBHWC noted they are already working on an RFP.

Benjamin J.F. Cruz
Public Auditor



Introduction

This report presents the results of our compliance audit of the General Services Agency's (GSA) procurement of an expert consultant service for the Guam Behavioral Health and Wellness Center (GBHWC) in line with Executive Order (E.O.) No. 2020-21. We initiated this audit based on the concern of GBHWC regarding the procurement for expert consultant services for the GBHWC-Criminal Justice Program.

Our audit objective was to determine if GSA complied with Guam procurement laws and regulations for the acquisition of expert consultant services for the GBHWC-Criminal Justice Program. Our period covered is from June 2020 to June 2021. Appendix 1 and 2 details our audit objective, scope, methodology, and prior audit coverage.

Background

In June 2020, the Governor of Guam (Governor) signed E.O. No. 2020-21 for mental health, alcohol, and drug abuse rehabilitation program for inmates and detainees housed at the Department of Corrections (DOC). The Governor assigned GBHWC and DOC to work together to create this program known as GBHWC Annex (hereinafter referred to as the "GBHWC-Criminal Justice Program").

Accordingly, GBHWC will be guided by applicable Commission on Accreditation of Rehabilitation Facilities (CARF) standards for criminal justice programs and the National Commission on Correctional Health Care Standards for Mental Health Services in Correctional Facilities.

GBHWC provides mental health and substance abuse treatment to adults & children and develops privately funded community-based programs. GBHWC's role as a single state entity is to provide mental health services to the population of Guam either as a direct provider of services or contract services out and have a regulatory role.

To establish the GBHWC-Criminal Justice Program, GBHWC needed an expert consultant in developing mental health services within the correctional system. GBHWC sought the assistance of GSA by submitting requisitions to procure the consultant services first through sole-source procurement and then through the small purchase procurement methods. GSA is the central procuring arm of the Government of Guam (GovGuam) departments and agencies for supplies and services.

Guam Procurement Law and Regulation

The fundamental objective of government procurement is to provide departments and agencies with the goods and services they need to carry out their duties to the public efficiently and effectively. Procurement laws enshrined in the Guam Code Annotated (GCA) Title 5, Chapter 5, fulfill this in ways that:

- provide for increased public confidence in the procedures followed in public procurement;
- fair and equitable treatment of all persons who deal with the procurement system;
- foster effective broad-based competition within the free enterprise system; and
- safeguards the maintenance of a procurement system of quality and integrity.

Sections in the Guam Administrative Rules and Regulations (GAR) Title 2, Division 4, established application of the procurement laws and set authorities for participants to comply. The regulation includes procedures for procurement for professional services, small purchases, sole source procurement, and cancellation of Invitations for Bids (IFB) or Request for Proposals (RFP). Details of these sections follow below:

§2112. Authority to Contract for Certain Services and Approval of Contracts

- Any GovGuam entity, otherwise prohibited, may act as a purchasing agency and contract on its own behalf for the services of accountants, physicians, lawyers, dentists, and other professionals.

§3111. Small Purchases

- The CPO or the head of a purchasing agency may make small purchases for supplies or services between \$500 and \$25 thousand (K)¹. The procurement shall not be artificially divided to avoid using the other source selection methods. No less than three positive quotes from businesses shall be solicited, recorded, and placed in the procurement file. Award shall be made to the lowest responsible and responsive bidder.

§3112. Sole Source Procurement

- Contract may be awarded without competition for a supply or service when there is only a single supplier. The determination of sole source shall be in writing and made by the CPO or the head of a purchasing agency.

§3114. Competitive Selection Procedures for Services Specified in §2112

- Competitive selection procedures shall be used for all procurement of the services identified in §2112 in excess of \$5K.

See Appendix 3 for details of the sections related 2 GAR Division 4.

¹ 5 GCA §5213 shows the small purchase procurement amount is \$25,000 for supplies and services. It was increased from \$15,000 to \$25,000 by Public Law 34-35.

Results of Audit

Our compliance audit of GSA's procurement of expert consultant services to establish GBHWC's Criminal Justice Program found that GSA generally complied with Guam Procurement. However, we noted the following areas for improvement:

- (1) Although GBHWC provided sufficient documents to justify sole source procurement as the initial procurement method for the services, the CPO has the authority to reject it without documenting the reason for the rejection; and
- (2) GSA's use of small purchase procurement method based on the dollar threshold amount of the service was allowed, but we noted potential preferential treatment given to the awarded vendor.

Although a vendor was awarded through the small purchase procurement, GBHWC refused to use the vendor because they felt that the vendor was not qualified to provide the service. Because this was a special professional service, GBHWC could have acted as the purchasing agency instead of GSA and utilized the competitive sealed bid procurement method by issuing a RFP on their own.

CPO Had Discretionary Authority to Reject Sole Source Procurement

In August 2020, GBHWC submitted a requisition requesting for sole source procurement from GSA to award Vendor A with the following supporting documents:

- Compatibility Letter
- Sole Source Letter
- Price Quote
- Negotiation Letter from GBHWC
- Negotiation Letter Response from Vendor A

The CPO denied GBHWC's request stating the justification does not support the sole source request and instructed them to get at least three quotes.

In October 2020, GBHWC submitted two requisitions requesting sole source with the same supporting documents provided in their prior sole source request, and two additional quotes. The initial quote from Vendor A plus the two additional "no quote" responses could have sufficed for the CPO's instruction to get three quotes, as a "contract may be awarded without competition for a supply or service when there is only a single supplier." However, the sole source request was still rejected.

GSA complied with Guam procurement rules and regulations with regards to GBHWC's sole source request, as the CPO has discretionary authority to reject the sole source in accordance with 2 GAR §3112. (b). However, as a best practice, it would be good to have documentation as to the reasoning for the rejection in the procurement record. This has heightened the need to look more into sole source procurement, as such, an audit on all GovGuam sole source procurement is part of OPA's 2022 Annual Audit Plan.

See Appendix 4 for the complete Timeline of Events.

Small Purchase Procurement Showed Potential Preferential Treatment

After the continuous sole source request rejections, GBHWC submitted two requisitions (Q212300106 and Q212310068) to GSA to utilize the small purchase procurement method in February 2021. The reasoning for small purchase was based on the dollar amount threshold for the services in accordance with 5 GCA §5213 and 2 GAR §3111. However, GSA should have instructed GBHWC to utilize the competitive sealed bid procurement method and issue an RFP in accordance with 2 GAR §3114; as this was for professional consulting services.

Instead, GSA issued two separate requests for quotations (RFQ) on March 2, 2021. RFQ#21000785 was for Consultant Services to develop an Implementation Plan for mental health treatment and services and RFQ#21001031 was for Consultant Services to develop an Implementation Plan for substance use treatment and services.

Both RFQs issued required the consultant to meet the following:

1. worked with GBHWC in the past year (post/after the federal amended permanent injunction was vacated) providing consultation services for the Serious Mental Illness (SMI) and Substance Use Disorder (SUD) population
2. experience with criminal justice program; and
3. provided consultation services in other jurisdictions/states to develop behavioral health services within a correctional setting.

For the RFQ#21000785

On March 2, 2021, GSA issued the RFQ to five vendors. Only three out of the five responded, two of which responded with “no quote”. Vendor A, who GBHWC was initially requesting sole source procurement for, was still the only one to provide a positive quote. Up until this point, GSA had documentation to indicate they attempted to get more quotes, but still, only Vendor A could provide one.

A bid abstract and draft purchase order (P.O.) for Vendor A to provide the services was prepared to be awarded on March 15, 2021. However, it was rejected by the CPO with the instruction to specifically get a quote from Vendor B, who was never part of the initial five vendors GSA solicited quotes from.

On March 18, 2021, GSA solicited a quote from Vendor B and received a quote the same day indicating that Vendor B can provide the service at \$350. On March 23, 2021, Vendor B was then awarded the purchase order for services because they provided a lower quote than Vendor A, which was signed by the CPO on March 29, 2021. The timing and inclusion of Vendor B appear to show preferential treatment given to them to be a part of the procurement, with the award ultimately also being given to Vendor B.

See Appendix 4 for the complete Timeline of Events.

GBHWC Did Not Find Vendor B Met the Requirements and Consultant Service Was Never Utilized

On March 30, 2021, GBHWC emailed GSA saying the award to Vendor B was in error because Vendor B did not meet two of the three requirements, but did not specify which requirements.

On April 6, 2021, Vendor B emailed a memo to GSA confirming that they have met the three requirements and provided business and medical licenses, a license to practice psychology on Guam, and a Curriculum Vitae.

On April 7, 2021, GSA sent Vendor B's additional documentation to GBHWC to address their concerns regarding Vendor B not meeting the three requirements. GBHWC reviewed the additional documents and determined Vendor B only met two of the three, but still did not explain which of the two.

Also on April 7, 2021, GSA Buyer I emailed the CPO saying that GBHWC still wants to reject the P.O. for Vendor B and instead do sole source or ask for three additional qualified vendors through an RFQ. There was no additional correspondence in the procurement record beyond this date and Vendor B was never utilized by GBHWC to provide the service.

On April 16, 2021, the P.O. for Vendor B was canceled with the indication to combine two similar projects and do an IFB procurement method.

See Appendix 4 for the complete Timeline of Events.

For the RFQ#21001031

On March 2, 2021, GSA issued the RFQ to four vendors, however, on March 4, 2021, a revision was made to the RFQ relative to the quantity and unit of measure and a new RFQ was issued on March 19, 2021, to five vendors. Two new vendors who weren't included in the initial RFQ were added. Vendor A was also the only one to provide a positive quote.

On April 13, 2021, GSA returned the requisition to GBHWC indicating it was an artificially divided requisition from RFQ#21000785.

On May 12, 2021, GBHWC again requested for sole source procurement to award Vendor A, which was denied by the CPO again and on May 12, 2021, CPO instructed Buyer to issue an RFQ to Vendor B.

On May 12, 2021, Vendor B responded with a quote of \$350 per hour. A bid abstract was created showing Vendor B with the lowest quote in comparison to Vendor A.

On May 14, 2021, a P.O. was drafted for Vendor B but was rejected because of the requirement to correct the period of coverage and number of months on quantity.

No further action was indicated in the Procurement Record. See Appendix 3 for the complete Timeline of Events.

While GSA generally complied with the small purchase requirements, expert consultant services were still not utilized, mainly because GBHWC did not find the selected vendor to be qualified to provide the service. GSA, as the central procuring agency, should have instructed GBHWC to utilize the competitive sealed bid procurement method after it rejected the sole source request and received the small purchase requisitions. In addition, GBHWC could have also ensured its staff is familiar with Guam Procurement by obtaining the mandated procurement training and certification.

The procurement was for special professional consulting services and because GBHWC is the end-user who knows exactly what type of service is needed and who is qualified to perform the service, they instead could have acted as the purchasing agency and utilized the competitive sealed bid method in line with 5 GCA, Chapter 5, §5121. This would have also helped them properly evaluate the proposals to determine the most responsive and responsible bidder. We would recommend that if GBHWC still needs the service, they should issue a RFP for the professional consultant services.

Conclusion and Recommendations

The Governor signed E.O. No. 2020-21 in June 2020 mandating GBHWC and DOC to create a GBHWC-Criminal Justice Program. To establish the GBHWC-Criminal Justice Program, GBHWC needed an expert consultant to help them develop mental health services within the correctional system.

As a line agency, GBHWC sought the assistance of GSA to procure the consultant services first through sole source procurement and then through the small purchase procurement methods. Although GSA generally complied with Guam Procurement with the awarding of Vendor B, we noted improvements could have been made. In the end, the services from the awarded Vendor B were never used. GSA should have instructed GBHWC to utilize the competitive sealed bid procurement method after it rejected the sole source request and received the small purchase requisitions. In addition, GBHWC could have also ensured its staff is familiar with Guam Procurement by obtaining the mandated procurement training and certification to properly execute this procurement.

Because the procurement was for special professional consulting services and because GBHWC is the end-user who knows exactly what type of service is needed and who is qualified to perform the service, they instead could have acted as the purchasing agency and utilized the competitive sealed bid method in line with 5 GCA, Chapter 5, §5121. This would have also helped them properly evaluate the proposals to determine the most responsive and responsible bidder. We would recommend that if GBHWC still needs the service, they should issue a RFP for the professional consultant services.

Classification of Monetary Amounts

Finding Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
1. CPO Had Discretionary Authority to Reject Sole Source Procurement	\$ -	\$ -	\$ -	\$ -
2. Small Purchase Procurement Showed Potential Preferential Treatment	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ -	\$ -	\$ -

Management Response and OPA Reply

In February 2022, we provided a draft report to the management and staff of the GSA and GBHWC and held two separate audit exit conferences with them for their official response.

GSA generally agreed with the finding related to sole source procurement but disagreed with the finding that there was preferential treatment given to Vendor B. GSA stated that Vendor B has always been on the list of potential vendors to solicit quotes from and that it was GBHWC who attempted to place stringent specifications to eliminate competition. However, there was nothing in the procurement record to support these statements, and therefore the finding related to preferential treatment remains.

GSA also cited GBHWC for artificially dividing the procurement in the end and instructed GBHWC to issue an IFB, which is why they agreed with the recommendation that GBHWC should issue an RFP. This is something GSA as the central procuring agency for GovGuam should have instructed GBHWC after they rejected the sole source procurement and received the small purchase requisitions.

GBHWC generally agreed with the findings and recommendations and has noted they have already begun the process of issuing an RFP for the professional consulting services. GBHWC was reminded that it should ensure its staff is knowledgeable in Guam Procurement by taking the mandated procurement training and certification to properly execute this and future procurements.

See Appendix 6 and 7 for the management's response.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of implementing the recommendations, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. As such, we will be contacting GBHWC to provide target dates for the implementation of our recommendation.

We appreciate the cooperation given to us by the management and staff of GBHWC and GSA.

OFFICE OF PUBLIC ACCOUNTABILITY


Benjamin J.F. Cruz,
Public Auditor

Appendix 1:
Objective, Scope & Methodology

Our objective was to determine if the General Services Agency complied with Guam procurement laws and regulations for the acquisition of expert consultant services for the GBHWC-Criminal Justice Program.

Our scope procurement of expert consultant services in accordance with E.O. No. 2020-21. The period covered is from June 1, 2020 to June 1, 2021.

Audit Methodology:

To answer our objective, we interviewed GBHWC and GSA staff and management privy to the procurement of the expert consultant services and reviewed procurement records and Guam rules and regulations in relation to this.

We conducted this audit in accordance with the standards for performance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States of America. Those standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

Appendix 2: Prior Audit Coverage

OPA Report No. 17-05, General Services Agency Procurement Practices (Issued November 2017)

This audit found the following:

- Procurement Planning
 - GSA's efforts to consolidated similar purchases were not effective.
- Procurement of Goods and Services
 - In the test of 40 purchase orders, the audit found that:
 - Competitive sealed bids -- no exceptions found on GSA's procurement practices for the 11 purchase orders related to nine competitive sealed bid tested.
 - All methods other than competitive sealed bids -- GSA did not verify the validity of vendors' business licenses for all 29 purchase orders tested.
 - Small purchases -- procurement of office furniture was rushed and awarded based on telephonic quotes instead of written quotes.
 - Sole source -- no solicitation made for a vendor named on a federally funded project.
 - Emergency -- inconsistent application of emergency procurement regulations for telecommunication services and elderly meals.
- GSA does not have updated Standard Operating Procedures (SOP).

Relevant sections:

§2112. Authority to Contract for Certain Services and Approval of Contracts (Guam Procurement Act §5121 of Title 5).

(a) General Authority. For the purpose of procuring the services of accountants, physicians, lawyers, dentists and other professionals, any governmental body of this territory may act as a purchasing agency and contract on its own behalf for such services, subject to the provisions of the Guam Procurement Act, and these Regulations, but this subsection shall not authorize the procuring of such services where any given governmental body is otherwise prohibited from procuring such services.

(c) Approval of Contracts Generally. The Chief Procurement Officer, or his designee, or a procurement officer of an agency authorized to procure the services or supplies in question, as established in these Regulations, shall execute all contracts for the Government of Guam. The Chief Procurement Officer may approve standard form contracts or purchase orders and once such approval of the standard form is given, contracts or purchase orders made on such form may be executed without the further approval of the Chief Procurement Officer unless he has reserved such power of approval pursuant to the applicable Section of these Regulations.

§3111. Small Purchases.

(a) Application. In accordance with 5 GCA §5213 (Small Purchases) of the Guam Procurement Act, this Section is established for procurement of less than \$15,000 for supplies or services and less than \$50,000 for construction.

(b) Authority to Make Small Purchases.

(1) Amount. The Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency may use this Section if the procurement is to be less than \$15,000 for supplies or services and less than \$50,000 for construction. If these methods are not used, the other methods of source selection provided in 5 GCA §5210 (Methods of Source Selection) of the Guam Procurement Act and these Regulations shall apply.

(2) Delegation. Delegation of authority to make small purchases is provided for under §2105 (Delegation of Procurement Authority) of these Regulations.

(4) Available From One Business Only. If the supply, service, or construction item is available from only one business, the sole source procurement method set forth in §3112 (Sole Source Procurement) of these regulations shall be used even if the procurement is a small purchase as specified in Subsection 3111(b) of this Section.

(5) Division of Requirements. Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in 5 GCA §5210 (Methods of Source Selection) of the Guam Procurement Act and these Regulations.

(c) Competition for Small Purchases of Supplies or Services between \$500 and \$15,000.

(1) Procedure. Insofar as it is practical for small purchases of supplies or services between \$500 and \$15,000, no less than three positive written quotations from businesses shall be solicited, recorded and placed in the procurement file. Awards shall be made to the lowest responsible and responsive bidder.

(2) Records. The names of the business and authorized personnel submitting quotations to include the date and amount of each quotations shall be recorded and maintained as a public record.

(f) Small Purchases of Services Specified in §2112 (Authority to Contract and Certain Services and Approval of contracts) and §5108 (Architect-Engineer and Land Surveying Services) of these Regulations.

(1) Conditions for Use. If it is expected that the services of accountants, physicians, lawyers, dentists, architects, engineers, or land surveyors can be procured for less than \$15,000 and more than \$500, the methods specified in this Section may be used in lieu of the procedures specified in §3114 (Competitive Selection Procedures for Services Specified in §2112) and §5108 (Architect-Engineer and Land Surveying Services of these Regulations).

(2) Examination for Qualifications and Negotiations. Before contacting any person to perform the required services, the Procurement Officer shall examine any current statements of qualifications on file with the territory. Based on this examination, the Procurement Officer shall contact the most qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. If no current statements of qualifications are on file or the statements on file are inadequate to determine the most qualified firm, technical proposals or statements of qualifications shall be solicited. A minimum of three firms shall be considered unless there are only one or two qualified firms; in the latter case, the Procurement Officer shall make a written determination justifying the consideration of only one or two firms. A price or fee shall not be solicited until the most qualified firm is chosen and only the most qualified firm will be requested to submit a price. If after negotiations, a fair and reasonable price cannot be agreed to, negotiations will be terminated with such firm and negotiations begun with the next most qualified firm. The process shall continue until a contract can be negotiated at a fair and reasonable price to the territory.

§3112. Sole Source Procurement. A contract may be awarded for a supply, service, or construction item without competition when the provisions of this Section are met, provided that the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or their designee above the level of Procurement Officer determines in writing that there is only one source for the required supply, service, or construction item.

(a) Application. The provisions of this Section apply to all sole source procurement unless emergency conditions exist as defined in §3113 (Emergency Procurement) of these Regulations.

(b) Conditions for use of Sole source Procurement. Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) where a sole supplier's item is to be procured for resale;
- (4) where public utility services are to be procure;
- (5) where supplies are offered through bankruptcy or receivership sales, or other disposition at lower than prevailing market prices.

The determination as to whether a procurement shall be made as a sole source shall be made by the Chief Procurement Officer, the Director of Public Works, the head of a Purchasing Agency, or designee of such officer. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(c) Negotiation in Sole Source Procurement. The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(d) Record of Sole Source Procurement. For the purpose of complying with 5 GCA §5248 (Record of Procurement Actions Taken Under 5 GCA §5214 (Sole Source Procurement) and 5 GCA §5215 (Emergency Procurement)) of the Guam Procurement Act, a record listing all contracts made under sole source procurement shall be maintained for a period of five years. The record shall contain:

- (1) each contractor's name;
- (2) the amount and type of each contract;
- (3) a listing of the supplies, services, or construction procured under each contract; and

(4) the identification number of each contract file. A copy of such record shall be submitted to the Legislature on an annual basis. The record shall be available for public inspection.

§3114. Competitive Selection Procedures for Services Specified in §2112 (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations.

(a) Application. The provisions of this Section apply to every procurement of the services of accountants, physicians, lawyers, dentists, and other professionals as specified in §2112 (Authority to Contract for Certain Services and Approval of Contracts) of these Regulations.

(b) Conditions for use of Competitive Selection Procedures. Except as authorized under 5 GCA §5214 (Sole Source Procurement) or 5 GCA §5215 (Emergency Procurement) of the Guam Procurement Act, competitive selection procedures shall be used for all procurement of the services listed in §3114(a) (Application) in excess of \$5,000. Any procurement of such services not in excess of this amount may be procured in accordance with Section 3111 (Small Purchases) of this Chapter.

(c) Determination Required Prior to Use of Competitive Selection Procedures. For the purposes of procuring the services specified in §3114(a) (Application), any using agency of the territory may act as a Purchasing Agency except as otherwise provided by law. (The Purchasing Agency shall consult with the Chief Procurement Officer or a designee of such office when procuring such services). However, the Chief Procurement Officer may, in his or her discretion, procure services for a using agency when requested. In either case, the head of the using agency or a designee of such officer shall determine in writing, prior to announcing the need for any such services:

- (1) that the services to be acquired are services specified in §3114(a);
- (2) that a reasonable inquiry has been conducted, which shall include requesting the appropriate Personnel Services Department to report on the availability of such personnel, and the territory does not have the personnel nor resources to perform the services required under the proposed contract;
- (3) the nature of the relationship to be established between the using agency and the contractor by the proposed contract; and
- (4) that the using agency has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

**Appendix 4:
Timeline of Events**

Date	Event
June 17, 2020	Governor signs E.O. 2020-21, Relative to Addressing the Mental Health Drug, Alcohol, and Rehabilitation Needs of the Department of Corrections through the Establishment of the Guam Behavioral and Wellness Center Annex.
July 15, 2020	GBHWC inquired with Substance Abuse and Mental Health Services Administration (SAMHSA) representatives for recommended consultant and trainer. Vendor A was recommended.
August 12, 2020	GBHWC addressed a letter to CPO requesting to award purchase order to Vendor A via sole source procurement method for Requisition Q202310181 from August 15, 2020 to September 30, 2020.
August 15, 2020	GSA rejected P.O. P206A04833 related to GBHWC's request to award Vendor A. The rejection was based on insufficient justification to meet sole source procurement. GSA advised to issue RFQ to at least three vendors.
October 6, 2020	GBHWC addressed a letter to CPO requesting to award purchase order to Vendor A via sole source procurement method for Requisitions Q212310008 and Q212300021 from October 6, 2020 to December 31, 2020.
October 15, 2020	GBHWC issued an RFQ to two vendors; both could not meet the RFQ specifications.
October 30, 2020	GSA rejected P.O. P216A00308 and P216A00307 related to GBHWC's request for sole source and advised to solicit three quotes.
February 24, 2021	GBHWC addressed a letter to Department of Administration Director requesting to award purchase order to Vendor A via sole source procurement method for Requisitions Q212310068 and Q212300106 from March 1, 2021 to September 31, 2021.
March 2, 2021	GSA issued RFQs RFQ21000783 and RFQ21000785 relative to Requisitions Q212310068 and Q212300106, respectively, to Vendor A and three other vendors with response date no later than March 5, 2021. Revisions were made to RFQ21000783 related to quantity and unit of measure.
March 15, 2021	GSA rejected P.O. P216A02672 for Vendor A. CPO instructed to issue RFQ RFQ21000785 to Vendor B.
March 18, 2021	Vendor B responded to RFQ21000785 with a price quote.
March 23, 2021	Vendor B provided a price quote for RFQ21001031. Two other vendors responded with "No Quote."
March 29, 2021	GSA awarded P.O. P216A02672 relative to Requisition Q212300106 to Vendor B.

**Appendix 4:
Timeline of Events, continued**

March 30, 2021	GBHWC claimed P.O. P216A02672 was awarded to Vendor B in error. Accordingly, Vendor B did not meet three qualifications of the RFQ.
April 6, 2021	GSA received Vendor B's qualification, business license, license to practice psychology on Guam, and medical license for Vendor B's co-doctor.
April 13, 2021	GSA returned Requisition Q212310068 due to artificial division.
April 16, 2021	GSA canceled P.O. P216A02672 in entirety.
May 10, 2021	GBHWC addressed a letter to CPO requesting to award purchase order to Vendor A via sole source procurement method for Requisition Q212310068. GBHWC noted in the letter that only Vendor A is the only source for the required services.
May 12, 2021	CPO instructed to issue RFQ RFQ21001031 to Vendor B. Vendor B responded with a price quote lower than Vendor A's.
May 13, 2021	GSA drafted P.O. P216A03598 for Vendor B, but rejected due to period and probable change to quantity.
March 4, 2021	Vendor A responded a price quote with the attached curriculum vitae. Other vendors responded with "No Quote." GSA issued RFQ RFQ21001031 with the revisions made to RFQ21000783. RFQ21001031 was issued to Vendor A and four other vendors with response date no later than March 24, 2021.

**Appendix 5:
RFQ#21000785**

REQUEST FOR QUOTATION

BUYER : Pangan, Dennis B. - GSA
TELEPHONE: 475-1705 FAX NO.: 475-1727

Please respond as soon possible but no later than: 3/05/2021
Requisition Number: Q212300106 RFQ #: RFQ21000785
Date: 3/02/2021

VENDOR: R0099716
Phone (671
PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.

Quoted by Print/Signature: Quote Date: Phone Number:

** Delivery Date Required: The party making the foregoing bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 - 5801 and 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification.
** Delivery Date Offered:
Terms:
Prices good for: ___ Days
Therefore, under penalty of perjury, I certify that the facts stated above are true.
Signature Date:

- 1. Offering Recycle Products () YES () NO
 - 2. Offering Biodegradable Products () YES () NO
- Please separate your offer of recyclable and/or biodegradable products from regular products.

T H I S I S N O T A N O R D E R

ITEM	DESCRIPTION - OR EQUAL	QTY	UOM	UNIT PRICE	TOTAL PRICE	AVAILABILITY
1	CONSULTANT TO PROVIDE EXPERT CONSULTATION TO GBHWC AS PER GOVERNOR'S EXECUTIVE ORDER#202 20-21, FOR THE ESTABLISHMENT OF THE GBHWC ANNEX AT THE DEPARTMENT OF CORRECTIONS(DOC) TO DEVELOP AN IMPLEMENTATION PLAN FOR MENTAL HEALTH TREATMENT & SERVICES. WEEKLY CONSULTATION CALLS TO		58 HRS			

NOTE: The Government of Guam encourage offers of "EARTH FRIENDLY" products.
COMMITTED TO EXCELLENCE
CONTINUED ON NEXT PAGE

REQUEST FOR QUOTATION

BUYER : Pangan, Dennis B. - GSA
TELEPHONE: 475-1705 FAX NO.: 475-1727

Please respond as soon possible but no later than: 3/05/2021		Requisition Number: Q212300106 RFQ #: RFQ21000785	Date: 3/02/2021			
VENDOR: R0099716	PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.					
Phone (671)						
Quoted by Print/Signature:		Quote Date:	Phone Number:			
** Delivery Date Required:	The party making the foregoing bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 - 5801 and 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification.					
** Delivery Date Offered:	Therefore, under penalty of perjury, I certify that the facts stated above are true.					
Terms:	Signature _____ Date: _____					
Prices good for: _____ Days						
1. Offering Recycle Products () YES () NO 2. Offering Biodegradable Products () YES () NO Please separate your offer of recyclable and/or biodegradable products from regular products.						
THIS IS NOT AN ORDER						
ITEM	DESCRIPTION - OR EQUAL	QTY	UOM	UNIT PRICE	TOTAL PRICE	AVAILA- BILITY
	ASSESS: THE MENTAL HEALTH TREATMENT & SERVICES WITHIN THE GBHWC AND DOC FACILITATE STAKEHOLDER MEETING TO GATHER INFORMATION FROM VARIOUS PERSPECTIVES PRESENT CURRENT MENTAL HEALTH TREATMENT AND SERVICES OPTIONS UTILIZED WITHIN THE					

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COMMITTED TO EXCELLENCE
CONTINUED ON NEXT PAGE

**Appendix 5:
RFQ#21000785**

REQUEST FOR QUOTATION

BUYER : Pangan, Dennis B. - GSA
TELEPHONE: 475-1705 FAX NO.: 475-1727

Please respond as soon possible but no later than: 3/05/2021	Requisition Number: Q212300106 RFQ #: RFQ21000785	Date: 3/02/2021
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VENDOR: R0099716	PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.
Phone (673	

Quoted by Print/Signature:	Quote Date:	Phone Number:
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** Delivery Date Required:	The party making the foregoing bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 - 5801 and 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. Therefore, under penalty of perjury, I certify that the facts stated above are true. Signature _____ Date: _____
** Delivery Date Offered:	
Terms:	
Prices good for: _____ Days	

1. Offering Recycle Products () YES () NO
2. Offering Biodegradable Products () YES () NO
Please separate your offer of recyclable and/or biodegradable products
from regular products.

THIS IS NOT AN ORDER

ITEM	DESCRIPTION - OR EQUAL	QTY	UOM	UNIT PRICE	TOTAL PRICE	AVAILA- BILITY
	CORRECTIONAL SETTING. DISCUSS OPTIONS FOR DAILY MENTAL HEALTH TREATMENT PROGRAMMING IN THE GBHWC ANNEX DISCUSS OPTIONS FOR TRAUMA INFORMED CARE STRUCTURE. DISCUSS OPTIONS FOR CURRICULUM BASED PROGRAMS PRESENT IMPLEMENTATION PLAN PERIOD COVERED:					

NOTE: The Government of Guam encourage offers of "EARTH FRIENDLY" products.
COMMITTED TO EXCELLENCE
CONTINUED ON NEXT PAGE

**Appendix 5:
RFQ#21000785**

REQUEST FOR QUOTATION

BUYER : Pangan, Dennis B. - GSA
TELEPHONE: 475-1705 FAX NO.: 475-1727

Please respond as soon possible but no later than: 3/05/2021	Requisition Number: Q212300106 RFQ #: RFQ21000785	Date: 3/02/2021
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VENDOR: R0099716	[REDACTED]	PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.
Phone (671)	[REDACTED]	

Quoted by Print/Signature:	Quote Date:	Phone Number:
----------------------------	-------------	---------------

** Delivery Date Required:	The party making the foregoing bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 - 5801 and 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification.
** Delivery Date Offered:	
Terms:	
Prices good for: ____ Days	Therefore, under penalty of perjury, I certify that the facts stated above are true.
	Signature _____ Date: _____

1. Offering Recycle Products () YES () NO
2. Offering Biodegradable Products () YES () NO
Please separate your offer of recyclable and/or biodegradable products from regular products.

T H I S I S N O T A N O R D E R

ITEM	DESCRIPTION - OR EQUAL	QTY	UOM	UNIT PRICE	TOTAL PRICE	AVAILABILITY
	03/01-09/30/2021 Consultant must have worked with GBHC in the past year (post/after federal amended permanent injunction was vacated) providing consultation services for the SHI and SUD population; Consultant must have					

NOTE: The Government of Guam encourage offers of "EARTH FRIENDLY" products.
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CONTINUED ON NEXT PAGE

**Appendix 5:
RFQ#21000785**

REQUEST FOR QUOTATION

BUYER : Pangan, Dennis B. - GSA
TELEPHONE: 475-1705 FAX NO.: 475-1727

Please respond as soon possible but no later than: 3/05/2021	Requisition Number: Q212300106 RFQ #: RFQ21000785	Date: 3/02/2021
--	--	--------------------

VENDOR: R0099716 Phone (671)	[REDACTED]	PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.
Quoted by Print/Signature:	Quote Date:	Phone Number:

** Delivery Date Required:	The party making the foregoing bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 - 5801 and 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification.
** Delivery Date Offered:	
Terms:	Therefore, under penalty of perjury, I certify that the facts stated above are true. Signature _____ Date: _____
Prices good for: _____ Days	

1. Offering Recycle Products () YES () NO
2. Offering Biodegradable Products () YES () NO
Please separate your offer of recyclable and/or biodegradable products from regular products.

THIS IS NOT AN ORDER

ITEM	DESCRIPTION - OR EQUAL	QTY	UOM	UNIT PRICE	TOTAL PRICE	AVAILABILITY
	experience with the criminal justice program; Consultant must have provided consultation services in other jurisdictions/States to develop behavioral health services within a correctional setting.					

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COMMITTED TO EXCELLENCE



DEPARTMENT OF
ADMINISTRATION
DIPATTAMENTON ATMENESTRASION
DIRECTOR'S OFFICE
(Ufisinan Direktot)
Telephone (Telifan). (671) 475-1101/1250



February 18, 2022

Memorandum

Mr. Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Suite 401, PDN Building
238 Archbishop FC Flores Street
Hagatna, Guam 96910

Re: GSA Response to Draft Report on Procurement of Consultation Services for
GBHWC—Criminal Justice Program

This is GSA's response to the following statements raised by the OPA in the draft report:

1. We agree that the Chief Procurement Officer had discretionary authority to reject the requested sole source procurement. In this case, Agency's requirement did not justify the use to "sole source procurement"
2. Obtaining at least 3 quotes was done by GSA, does not prevent the acceptance of more quotes. In this case, GBHWC received one positive quotation and 2 no quotes. It is a standard practice of GSA to send out request 5 or more requests for quotes. In this case, GBHWC submitted one positive quotation and 2 "no-bids" and suggested that it met the requirements of law. However at GSA we attempt to get more that on a regular basis and as such, send out more quotations to those that we are aware do the same or similar service. Here, the buyer initial do know of other possible respondents to send out the request for quotation to and as such was willing to issue a purchase order to what he received. The CPO, when reviewing the procurement record, discovered that the buyer had not submitted the request for quotation to at least one further person who met the requirements and required that it be done so. That bidder submitted, met the qualifications and was awarded. GBHWC did not agree and attempted to say with out justifications that the bidder did not meet specification that they draft that were not open for competition.

3. We agree that GWHWC could do a "Request for Proposal", however, we caution that if they chose to go this route, that its specifications should not be tailored to one individual as this may lead to a protest, for not being too restrictive and not open for competition. Further, they seem to forget that "Local preference law" is still required in Requests for Proposals


ANITA T. CRUZ
Acting

Appendix 7: Guam Behavioral Health and Wellness Center Response

LOURDES A. LEON GUERRERO
Governor
JOSHUA F. TENORIO
Lieutenant Governor



**GUAM BEHAVIORAL
HEALTH & WELLNESS
CENTER**
790 Gov. Carlos G. Camacho Rd.
Tamuning, Guam 96913
TEL: (671) 647-5330
FAX: (671) 649-6948

THERESA C. ARRIOLA
Director
CARISSA E. PANGELINAN
Deputy Director

February 21, 2022

HONORABLE BENJAMIN F. CRUZ
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Guam Behavioral Health & Wellness Center Consultant Procurement Audit

Buenas yan Hafa Adai!

The Guam Behavioral Health & Wellness Center finds the draft audit report on the Procurement Consultation Services for GBHWC-Criminal Justice Program satisfactory and accepts it for final print.

Un Dangkolo Na Si Yu'os Ma'ase


THERESA C. ARRIOLA
Director

Appendix 8:
Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Actions Required
1	GBHWC Director	If GBHWC still needs the service, they should issue a Request for Proposal for the professional consultant services.	OPEN	Submit a corrective action plan.

GENERAL SERVICES AGENCY PROCUREMENT OF CONSULTATION FOR GBHWC – CRIMINAL JUSTICE PROGRAM Report No. 22-02, March 2022

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Christian Rivera, Auditor-in Charge
Jerrick Hernandez, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

To ensure public trust and good governance in the Government of Guam, we conduct audits and administer procurement appeals with objectivity, professionalism and accountability.

VISION

The Government of Guam is a model for good governance with OPA leading by example as a model robust audit office.

CORE VALUES

Objectivity

To have an independent and impartial mind.

Professionalism

To adhere to ethical and professional standards.

Accountability

To be responsible and transparent in our actions.

REPORTING FRAUD, WASTE, AND ABUSE

- Call our HOTLINE at 47AUDIT(472.8348)
- Visit our website at www.opaguam.org
- Call our office at 475.0390
- Fax our office at 472.7951
- Or visit us at Suite 401 DNA Building in Hagåtña

All information will be held in strict confidence.



Office of Public Accountability
Email: admin@guamopa.com
Tel: 671.475.0390
Fax: 671.472.7951
Hotline: 47AUDIT (472.8348)

