

# **GUAM ECONOMIC DEVELOPMENT AUTHORITY PROCUREMENT OF CONSULTANT SERVICES FOR NEW HOSPITAL DEVELOPMENT**

**Compliance Audit**

*March 14, 2014 through December 31, 2022*

**OPA Report No. 23-06**

**August 2023**





**Guam Economic Development Authority  
Procurement of Consultant Services for  
New Hospital Development**

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**Executive Summary**  
**Guam Economic Development Authority**  
**Procurement of Consultant Services for New Hospital Development**  
**OPA Report No. 23-06, August 2023**

Our compliance audit of the Guam Economic Development Authority's (GEDA) procurement of expert consultant services (Consultant) related to the new hospital development found the following noncompliance with Guam Procurement Law and Regulations:

1. GEDA did not make a written determination for the need of services prior to the issuance of the Request for Proposal (RFP) number RFP 14-008 (Solicitation for Multi-disciplinary professional services to assist with the research, development, planning, and implementation of economic initiatives and opportunities) as required by 2 Guam Administrative Rules (GAR) §3114 (c). The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after all bids were received and evaluated in April 2014 and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.
2. GEDA contends it executed an "Indefinite Delivery Indefinite Quantity" (IDIQ) type contract, which is not provided for in Guam Procurement Law and Regulations and contrary to the multi-term contract referenced in the RFP and the October 2014 written determination memorandum. GEDA also failed to fully comply with all requirements in 2 GAR §3121, Multi-Term Contracts.
3. GEDA utilized the Consultant services beyond the term of the contract indicated in the RFP, which was three years with two two-year options to extend. This would mean the contract should have been completed and a new RFP and contract issued by September 30, 2021. However, Task Order 8: Medical and Public Health Services Action Plan was issued on June 2, 2021, and is estimated to end on August 31, 2023, and Task Order 9 was issued on January 6, 2023, and is estimated to end on August 31, 2023. We determined expenses for Task Orders 8 and 9 totaling \$2 million (M) to be questioned costs.
4. GEDA did not have a specific "Notice of Intent to Award" in the procurement record, which was determined to be a minor informality.

Since the contract award, GEDA has expended a total of \$6.1M for nine task orders based on an RFP issued almost ten years ago. It is GEDA's understanding that they were utilizing an IDIQ contract, and that they could continue the use of the Consultant services indefinitely as long as there was a need and had funding. However, GEDA should have clearly defined the type of contract to be used in the RFP and ensured compliance with the RFP and all applicable procurement laws and regulations. Should GEDA still require the Consultant services, it needs to issue a new RFP immediately and ensure compliance with all applicable procurement laws and regulations.

### **GEDA Did Not Make a Written Determination for the Need of Services Prior to the Issuance of the Request for Proposal**

The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after bids were received in April 2014 and after they were evaluated and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.

According to 2 GAR §3114 (c), 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** that the services to be acquired are services specified in §3114 (a), that a reasonable inquiry has been conducted, the nature of the relationship to be established between the using agency and the contractor by the proposed contract, and 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.

In the procurement record, there was a written determination memorandum dated October 6, 2014 and signed by the Deputy Administrator at the time, who was the Acting Administrator. The memorandum stated that the furnishing of the long-term services is required to meet GEDA's needs and that a "Multi-Term Contract" will serve the best interest of GEDA to encourage effective competition. The memorandum also stated "to the best of my knowledge and belief, my predecessor in office made this same determination prior to publishing the referenced solicitation." However, we could not find any documentation in the procurement record to support the statement. Although a written determination was eventually documented, it was done well after the RFP was issued and therefore GEDA would be non-compliant with 2 GAR §3114 (c).

### **GEDA Contends It Utilized IDIQ Type Contract Which is Not Provided for in Guam Procurement Law and Regulations**

The RFP did not directly state the type of contract to be used as required by 2 GAR §3114(f)(1). The only reference to the type of contract was in section 2.6.2. Term of Contract, which stated "Offerors are referred to Section 3121(e) of the Guam Procurement Law and Regulations, the terms of which are incorporated herein." Section 3121(e) refers to "Multi-Term Contract", which GEDA never indicated was used for the Consultant Services. Even if GEDA had used a Multi-term contract, they did not fully comply with the requirements of 2 GAR §3121. GEDA also did not comply with 5 Guam Code Annotated (GCA) § 5237 (a), which states that "a contract for supplies or services may be entered into for a period of time deemed to be in the best interests of Guam **provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation** and funds are available for the first fiscal period at the time of contracting.

Instead, GEDA contends it utilized an IDIQ Contract, which they view as synonymous with a multi-year contract. However, there is nothing in the Guam Procurement Law and Regulations that provides for an IDIQ Contract. There is 2 G.A.R., Div. 4, Chap. 3, §3119(i), which allows for Indefinite Quantity contracts. Even if they used this type of contract, GEDA would still not have complied with Guam Procurement Law and Regulations as they lacked documentation that a review of the contract was conducted every six months since its effective date of August 14, 2014. GEDA believes that the updated Memorandum of Agreements (MOA) and active engagement with the Consultant sufficed this requirement. However, the Office of Public Accountability disagrees with this determination.

### **GEDA Utilized Consultant Services Beyond the Term of Contract Indicated in the RFP**

According to RFP 14-008, section 2.6.2. Term of Contract, “The term of the agreement shall be for a period of three (3) years with two two-year options to extend at the sole discretion of GEDA.”, which would mean that the Consultant services contract should have been completed and a new RFP issued before September 30, 2021 (going by fiscal year).

Task Order 8 started on June 2, 2021, and is estimated to end on August 31, 2023. Although it started within the scope of the RFP, the services continued beyond the scope. Task Order 9 started on January 6, 2023, and is estimated to end on August 31, 2023 which is beyond the scope of the contract term. GEDA believes that when they updated the MOAs with each new task order, it allowed them to change the scope period and extend beyond the RFP. However, as indicated in the “Scope of Services” for the initial contract, it states that “GEDA may require additional services not identified in the Scope of Services **yet within the scope of the solicitation.**” This means that regardless of the updated MOAs and new task orders, GEDA must still comply with the scope of the RFP. We determined expenses for Task Orders 8 and 9 totaling \$2M to be questioned costs.

In addition, 2 GAR §3102 (b) states that “the time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency determines in writing that it is not practical to award another contract at the time of such extension. Again assuming if GEDA used an indefinite quantity contract, they would still not have complied with this.

### **Lack of Specific “Notice of Intent to Award” Documentation is a Minor Informality**

GEDA lacked a specific “Notice of Intent to Award” written document in the procurement record. The reference document indicated in GEDA's compliance with the Office of the Attorney General of Guam’s (OAG) procurement checklist for the “Notice of Intent to Award” is only a memorandum that states the Consultant's ranking and a request for a fee proposal. GEDA also had documentation from their Board of Directors with the approval of the ranking. It is in GEDA’s understanding that the memorandum of ranking, the subsequent negotiation, and subsequent approval of the board in regards to the procurement was sufficient as the “Notice of Intent to Award”.

Although the elements of the reference document for the “Notice of Intent to Award” can lead one to speculate that the Consultant might be awarded the contract, it is still only a memorandum stating that the Consultant received the highest score during the evaluation process. There was no phrase that similarly states this is a “Notice of Intent to Award” document, which we believe can be categorized as a “minor informality”. GEDA should ensure a specific “Notice of Intent to Award” is properly given to the selected vendor and documented in the procurement record for future procurements.

### **Conclusion and Recommendations**

OPA found that GEDA was not in compliance with Guam procurement law and regulations, specifically for: (1) not making a written determination until after the RFP was issued, (2) executing an IDIQ type contract, and (3) utilizing the Consultant services beyond the scope of the RFP. As such, we make the following recommendation to GEDA:

1. Should they still require the Consultant services, we recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations.

In addition, if the Guam Legislature wants to provide for an IDIQ type contract, we suggest it amend the Guam Procurement Law and Regulations.

Lastly, we would like to remind GEDA management that anyone responsible for procuring goods, services, or construction must receive the mandated training and continuing education through the Guam Community College's Procurement Training and Certification Program or equivalent in order to comply with 5 GCA §5141.



Benjamin J.F. Cruz  
Public Auditor



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## Introduction

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This report presents the results of our compliance audit of the Guam Economic Development Authority's (GEDA) procurement of consultation services related to the new hospital development. This audit was requested by the Speaker of the 36<sup>th</sup> Guam Legislature, who requested an audit of the procurement for the "Consultant" for the proposed new hospital.

Our audit objective was to determine whether GEDA complied with Guam Procurement Law and Regulations for the acquisition of consulting services relative to the new hospital development, which is part of the Request for Proposal (RFP) 14-008, Procurement for Professional Multi-Discipline Consulting Services for the Research, Development, Planning, and Implementation of Economic Development Initiatives and Opportunities. The audit scope was from March 14, 2014 to December 31, 2022.

See Appendices 1 and 2 for the audit objective, scope, methodology and prior audit coverage.

### Background

GEDA is a public corporation (12 Guam Code Annotated (GCA) Chapter 50) created by enabling legislation on August 21, 1965, under Public Law (P.L.) 8-80 and amended by P.L. 26-76 to include the Department of Commerce. Under P.L. 8-80, GEDA has been given rather broad responsibility to the centralized direction, control and supervision of an integrated plan for the economic development of Guam. GEDA's mission is to develop a sound and sustainable economy through innovative programs that preserve and promote local culture, economic opportunities, and quality of life.

GEDA is statutorily mandated to assist with the development and implementation of an integrated program for and be a catalyst in the economic development of Guam.

### **Procurement for Professional Multi-Discipline Consulting Services for the Research, Development, Planning, and Implementation of Economic Development Initiatives and Opportunities**

On March 28, 2014, GEDA issued RFP No. 14-008, which solicited proposals from qualified individuals or firms to provide multi-disciplinary professional services to assist with the research, development, planning, and implementation of economic initiatives and opportunities. The selected Consultant must have the expertise in diverse areas that GEDA requires. The Consultant must be readily available to advise, support, and collaborate with GEDA and the Government of Guam in the focus areas such as: research, planning, administrative support, program management and support, project management, environmental consulting, Department of Defense (DoD) impact analysis, social and economic impact analysis, business planning and studies, enhancement of federal funding opportunities, and other professional advisory services as requested by GEDA. The Consultant will be providing services on a task order basis.

The RFP only had the scope of services for Task Order No. 1 (to complete and update the Hagåtña Master Plan), but “the decision to issue and award follow on Task Orders” is at the sole discretion of GEDA. The term of the agreement is for a period of three (3) years with two two-year options to extend at the sole discretion of GEDA. These Task Orders are subject to certain conditions, including, but not limited to: the availability of funds, satisfaction with the consultant’s work, successful negotiation of fee and scope of work for the follow-on work, and a determination that it is in the best interest of the government not to issue a new RFP for the follow-on work. The issuance of the additional Task Orders or the option to extend the term of the contract is not guaranteed, at the sole discretion of GEDA, and is not subject to agreement or acceptance by the Consultant.

**Task Order Scope of Services**

The selected Consultant will be expected to provide services to assist GEDA in carrying out its economic development statutory mandates, including, but not limited to:

**Figure 1: Expected Services to be Provided by the Consultant**

<b>Master and Strategic Planning</b>	<b>Economic Policy Advise</b>	<b>Land Use Planning and Zoning</b>	<b>Economic Impact Analysis</b>
<b>Urban Design</b>	<b>Fiscal/Financial Advisory Services (not bond related)</b>	<b>Environmental Impact Analysis and Assessment</b>	<b>Transportation and Infrastructure Assessments</b>
<b>Project Management</b>	<b>Research and Development</b>	<b>Public Information and Outreach</b>	<b>Department of Defense Impact Analysis and Assessment</b>

The above general services are refined for each Task Order issued, which are intended to provide an overview of the expertise and experience solicited under the RFP. The Consultant must demonstrate that they possess the capacity and capability to respond to the broad range of projects, challenges, and opportunities that need innovative solutions.

To date, there have been nine Task Orders issued. Since the contract award, GEDA has expended a total of \$6.1 million (M). See Table 1 for a description of the task orders and overall cost.

**Table 1: Task Orders Overall Cost**

Task Order	Description	Amount Paid to Consultant
1	Completion and Update of the Hagåtña Master Plan	\$ 997,572.00
2	Government of Guam Assistance and Support	\$ 313,525.00
3	Guam Cultural Repository	\$ 438,918.00
4	Public Services	\$ 306,518.00
5	Water/Wastewater Infrastructure Technical Support	\$ 299,975.00
6	Grants Management Capacity Building and Enhance Grant Performance	\$ 853,940.00
7	Financial Impact Assessment Study Update	\$ 893,433.90
8	Medical and Public Health Services Action Plan	\$ 1,584,000.00
9	Improving Guam Veterans Access to Medical and Public Health Services Grant Program	\$ 400,000.00 <sup>1</sup>
	<b>Total</b>	<b>\$ 6,087,881.90</b>

For the purposes of this audit, our main focus was related to Task Order 8: Medical and Public Health Services Action Plan. Task Order 8 was issued pursuant to Article 2 (Scope of Work) of the Contract by and between GEDA and the Consultant, which was entered into by both parties in October 2014. The Office of the Governor (OOG) issued a sub award for the funding of the task order, which was a federal grant awarded to the OOG by the Office of Local Defense Community Cooperation (OLDCC). See Appendix 4 for the timeline of procurement events and Appendix 5 for the checklist of procurement record.

#### **Task Order 8: Medical and Public Health Services Action Plan**

The objective of Task Order 8 is to prepare a Medical and Public Health Services Action Plan (MAP), with critical milestones, which will enhance and inform the Governor and Lt. Governor, as they lead the Government of Guam to strategically tackle the systemic medical and public health care challenges. A pressing issue is deciding the fate of Guam Memorial Hospital Authority (GMHA) as to whether it should be renovated or repaired by replacement. See Table 2 for the timeline for the medical and public health services action plan.

**Table 2: Medical and Public Health Services Action Plan Timeline**

Task Description	Consultant Timeline (2021 - 2022)	Deliverables (GEDA & Consultant)
Task 1: Medical Action Plan Final Work Plan	Mar 2021 - Apr 2021	Detailed schedule, milestones and data requirements will be outlined in the Final workplan. The workplan will also detail the initial information and data requirements needed for the start of the project. These requirements will be provided to the Community Defense Liason Office (CDLO) and stakeholders for collection.

<sup>1</sup> Grant Award in MOA for Task Order 9

<b>Task Description</b>	<b>Consultant Timeline (2021 - 2022)</b>	<b>Deliverables (GEDA &amp; Consultant)</b>
Task 2: Project Stakeholder Committee	Notional: Jun 2021, Sept 2021, Dec 2021, Mar 2022, Jun 2022	Electronic copy of the Stakeholder Meeting - meeting summaries, presentation materials (handouts, fact sheets, presentations, etc.), white papers, etc. The Stakeholder Committee and Governor's directions and decisions will be captured in decision memos for documentation.
Task 3: Guam Medical Services Delivery Plan Phase 1 Update	Apr 2021 - Sept 2021	<ul style="list-style-type: none"> <li>- Update of the 2012 report titled "Guam Medical Services Delivery Plan Phase 1: Medical Providers Baseline Assessment".</li> <li>- Medical Service Providers Inventory</li> <li>- Medical Services Providers Geographic Location GIS Layer(s)</li> <li>- Section of Delivery Plan - Existing Conditions and Trends</li> </ul>
Task 4: Review 2016 GMH Medical Task Force Report	Apr 2021 - Aug 2021	A Final Core White Paper concerning the validity of the assumptions, trends, and recommendations contained in the 2016 GMH Task Force Report and a PowerPoint presentation for the Governor and Lt. Governor to focus their attention on significant White Paper findings and the findings implication to the GMH Task Force Report. This report is intended for use by the Governor for decision making.
Task 5: Updated Final Needs Assessment Worksheets	May 2021 - Sept 2021	Final GMH Expansion Project Updated Needs Assessment Worksheets; the DPHSS Facility and Central Health Clinic updated project scopes; the Communicable Disease Public Health Analytical Laboratory, and Medical Health Care Campus Master Plan
Task 6: Reliability of ACOE Cost Estimates Report	Apr 2021 - Nov 2021	An Independent Third-Party Reliability Report of Army Corps of Engineers (ACOE) Report. The Reliability Report should clearly discuss the findings generated from the third-party review. Example relevant topics: Comparison of future GMH services against the ACOE costs of proposed improvements; ACOE recommendation on repair vs. relocation of GMH. Reliability Report.
Task 7: GMH and DPHSS Facilities White Paper	May 2021 - May 2022	A White Paper which shall include all analyses and recommendations. Consultant will provide a concept design/layout if reuse is considered.
Task 8: Underwriting Strategy	Aug 2021 - Jun 2022	Consultant in concert with GEDA and the Fiscal Team will develop up to two scenarios for consideration. The Consultant will provide if reasonable, options/alternatives for specific facilities.

Task Description	Consultant Timeline (2021 - 2022)	Deliverables (GEDA & Consultant)
Task 9: Medical Health Care Campus Master Plan	May 2021 - Jul 2022	All presentations and a Final Medical Health Care Campus Master Plan.
Task 10: In Progress Review Presentations (IPR)	Sept 2021 - May 2022	In Progress Review Presentations. The Deliverable shall consist of either IPR presentations or leave behinds (white paper, fact sheet, and In Progress Review Presentations (IRP) notes that document guidance/decisions, etc.). Other requirements include the Performance Based Contract (PBC) Consultant shall sign a Non-Disclosure Agreement. The Non-Disclosure Statement shall stipulate that any information provided in support of the project may not be utilized for other initiatives, until the information is made available in the public domain.

Numerous efforts have been undertaken since 2010 to secure funding to support investments in the medical and public health services infrastructure. In 2010, GovGuam pursued \$197M in funding through the Secretary of Defense (SECDEF) precursor initiative to the SECDEF Economic Adjustment Committee (EAC). In December 2012, the OOG commissioned the preparation of a Guam Medical Services Delivery Plan – Phase I, which provided an inventory and gap analysis of on-island health care services provided by both the public and private sectors. The Phase I used OLDC program of assistance. In 2014, the Department of the Navy completed and opened the new Nimitz Hill Naval Hospital. In 2015, Guam Regional Medical City (GRMC), the first private hospital opened on Guam. While GRMC Hospital possessed state of the art technology and brought additional capacity (hospital beds and new services) to Guam, GRMC experienced difficulties with hiring and retaining of qualified staff, which impacted the services GRMC could provide and ultimately GRMC’s financial position on island.

In 2019, the Governor requested the Army of Corps of Engineers to evaluate: the structural condition of Guam Memorial Hospital (GMH); the required improvements to upgrade the existing GMH; and a budget estimate so the Governor could make informed cost/benefit decisions. In 2020, the Department of Public Health and Social Services (DPHSS) facility in Mangilao was closed due to structural and environmental deficiencies.

Additionally, in 2020 the novel coronavirus disease (COVID-19) began affecting the island and uncovered major deficiencies in Guam’s medical and public health care systems. The number of acute care hospital beds was deemed insufficient for the projected number of potential symptomatic cases; testing capabilities were extremely limited while delays in obtaining results increased costs of quarantine as collected samples had to be sent off-island for analysis; contact tracing proved difficult and consumed scarce manpower; and stockpiled protective equipment was virtually nonexistent. Eventually, a temporary 150-bed DoD Expeditionary Medical Facility was established to accommodate potential military and civilian needs. However, with the onset of the typhoon season, the temporary medical facility was disestablished relocating some capacity to

hardened structures. Guam's relatively small size, isolation, climate, and other geographic characteristics together with its reliance on air and sea transportation for medical supplies, food, and other provisions highlight the challenges that need to be assessed and resolved to support American citizens outside the fifty United States.

### **Guam Procurement Law and Regulations**

All procurements of supplies and services shall, where possible, be made sufficiently in advance of the need for delivery or performance in order to promote maximum competition and good management of resources. Procurement laws enshrined in the GCA Title 5, Chapter 5, fulfill this in ways that: provide for increased public confidence in the procedures followed in public procurement; ensure the fair and equitable treatment of all persons who deal with the procurement system; foster effective broad-based competition within the free enterprise system; and provide safeguards for the maintenance of a procurement system of quality and integrity. A list of relevant sections follows below:

- **§5141. Training and Certification of Purchasing Personnel and Vendors**
- **§5237. Multi-Year Contracts**

Sections in the Guam Administrative Rules and Regulations (GAR) Title 2, Division 4, established the application of the procurement laws and set authorities for participants to comply. The regulation includes procedures for procurement for professional services, method of procurement, types of contracts, and RFP. A list of relevant sections follows below:

- **§2112. Authority to Contract for Certain Services and Approval of Contracts**
- **§3102. General Provisions – Extension of Time on Indefinite Quantity Contracts**
- **§3109. Competitive Sealed Bidding**
- **§3109. Competitive Sealed Bidding – Minor Informalities**
- **§3114. Notice of Award.**
- **§3114. Determination Required Prior to Use of Competitive Selection Procedures**
- **§3114. Request for Proposals – Contents**

See Appendix 3 for the full summary of all applicable Guam Procurement Law and Regulations.

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## Results of Audit

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Our compliance audit of the GEDA's procurement of expert consultant services (Consultant) related to the new hospital development found the following noncompliance with Guam Procurement Law and Regulations:

- (1) GEDA did not make a written determination for the need of services prior to the issuance of the RFP No. RFP 14-008 (Solicitation for Multi-disciplinary professional services to assist with the research, development, planning, and implementation of economic initiatives and opportunities) as required by 2 GAR §3114 (c). The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after all bids were received and evaluated in April 2014 and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.
- (2) GEDA contends it executed an IDIQ type contract, which is not provided for in Guam Procurement Law and Regulations and contrary to the multi-term contract referenced in the RFP and October 2014 written determination memorandum. GEDA also failed to fully comply with all requirements in 2 GAR §3121, Multi-Term Contracts.
- (3) GEDA utilized the Consultant services beyond the term of the contract indicated in the RFP, which was three years with two two-year options to extend. This would mean the contract should have been completed and a new RFP and contract issued by September 30, 2021. However, Task Order 8: Medical and Public Health Services Action Plan was issued on June 2, 2021, and is estimated to end on August 31, 2023, and Task Order 9 was issued on January 6, 2023, and is estimated to end on August 31, 2023.
- (4) GEDA did not have a specific "Notice of Intent to Award" in the procurement record, which was determined to be a minor informality.

Since the contract award, GEDA has expended a total of \$6.1M for nine task orders based on an RFP issued almost ten years ago. It is GEDA's understanding that they were utilizing an IDIQ contract, and that they could continue the use of the Consultant services indefinitely as long as there was a need and had funding. However, GEDA should have clearly defined the type of contract to be used in the RFP and ensure compliance with the RFP and all applicable procurement laws and regulations. Should GEDA still require the Consultant services, it needs to issue a new RFP immediately and ensure compliance with all applicable procurement laws and regulations.

### **GEDA Did Not Make a Written Determination for the Need of Services Prior to the Issuance of the Request for Proposal**

The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after bids were received in April 2014 and after they were evaluated and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.

According to 2 GAR §3114 (c), 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** that the services to be acquired are services specified in §3114 (a), that a reasonable inquiry has been conducted, the nature of the relationship to be established between the using agency and the contractor by the proposed contract, and 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.

In the procurement record, there was a Memorandum to Procurement File dated October 6, 2014, with the subject line “In re RFP 14-008; Written Determinations Pursuant to 2 Guam Admin. R. & Reg. §§3114(c), 3121”. The memo was signed by the Deputy Administrator at the time, who was the Acting Administrator and stated that the furnishing of the long-term services is required to meet GEDA’s needs and that a “Multi-Term Contract” will serve the best interest of GEDA to encourage effective competition. The memo also stated “The services required by the subject solicitation are those of a professional as contemplated by 5 Guam Code Ann. § 5121. Further, to the best of my knowledge and belief, **my predecessor in office made this same determination prior to publishing the referenced solicitation.**” However, we could not find any documentation in the procurement record to support the statement.

Although a written determination was eventually documented, it was done well after the RFP was issued and therefore GEDA would be non-compliant with 2 GAR §3114 (c). We recommend that GEDA ensure a written determination is done prior to announcing the need to procure for services to comply with Guam Procurement Law and Regulations.

### **GEDA Contends It Utilized IDIQ Type Contract Which is Not Provided for in Guam Procurement Law and Regulations**

The RFP did not directly state the type of contract to be used as required by 2 GAR §3114(f)(1), which states that the RFP shall contain at least the following information: (C) an estimate of when and for how long the services will be required; (D) the type of contract to be used. The only reference to the type of contract was in section 2.6.2. Term of Contract, which stated “Offerors are referred to Section 3121(e) of the Guam Procurement Regulations, the terms of which are incorporated herein.” Section 3121(e) refers to “Multi-Term Contract”, which GEDA never indicated was used for the Consultant Services. A multi-term contract is appropriate when it is in the best interest of the territory to obtain uninterrupted services extending over more than one fiscal period, where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

Even if GEDA had used a Multi-Term Contract, they did not fully comply with the requirements of 2 GAR §3121. GEDA also did not comply with 5 GCA § 5237(a), which states that “a contract for supplies or services may be entered into for a period of time deemed to be in the best interests

of Guam **provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation** and funds are available for the first fiscal period at the time of contracting.”

GEDA contends it utilized an IDIQ Contract, which they view as synonymous with a multi-year contract. According to the U.S. General Services Administration (GSA), IDIQ contracts provide for an indefinite quantity of services for a fixed time. They are used when the precise quantities of supplies or services that the government will require during the contract period cannot be determined. However, there is nothing in the Guam Procurement Law and Regulations that provides for an IDIQ Contract. GEDA should have clearly defined the type of contract to be used in the RFP and ensured compliance with the RFP and all applicable procurement laws and regulations.

There is 2 G.A.R., Div. 4, Chap. 3, §3119(i), which allows for Indefinite Quantity Contracts. Even if they used this type of contract, GEDA would still not have complied with Guam Procurement Law and Regulations as they lacked documentation that a review of the contract was conducted every six months since its effective date of August 14, 2014. Although GEDA has not implemented a six-month review in the past and since the initiation of this contract with the Consultant, they are open to formalizing a review process/procedure for all IDIQ contracts that they may enter into in the future.

GEDA believes that the updated Memorandum of Agreements (MOA) and active engagement with the Consultant sufficed this requirement. However, OPA disagrees with this determination. Should GEDA still require the Consultant services, we recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations.

#### **GEDA Utilized Consultant Services Beyond the Term of Contract Indicated in the RFP**

According to RFP 14-008, section 2.6.2. Term of Contract, “The term of the agreement shall be for a period of three (3) years with two two-year options to extend at the sole discretion of GEDA.”, which would mean that the Consultant services contract should have been completed and a new RFP issued before September 30, 2021 (going by fiscal year).

Task Order 8 started on June 2, 2021, and is estimated to end on August 31, 2023. Although it started within the scope of the RFP, the services continued beyond the scope. This project continued to have delays in the acquisition of information primarily as a result of the delays with the Consultant’s ability to come to Guam. One of the items involved bringing medical consultants to organize meetings with the medical staff of the GMHA. As stated earlier, the projects within Task Order 8 started in 2021 and were expected to be completed in the same year. However, the date was pushed back due to the addition of a project consisting of taking a deeper look into location and sight studies. When the Governor decided to start negotiating the lease with the U.S. Navy, some of the information that are included within Task Order 8 had to do with site studies that were contingent upon the results of the negotiation. According to GEDA, it is their going intention to terminate this contract and issue out a new RFP.

Task Order 9 started on January 6, 2023, and is estimated to end on August 31, 2023. The awarding and services for this Task Order went beyond the scope of the contract term. When GEDA was

awarded the grant for this task order, they believed that the turnaround time for it was so quick that they did not think they could issue a new RFP. Timeline-wise, they believed that they would miss the grant opportunity because the funds were made up of leftover monies from the OLDCC, which had an expiration date. This expiration date would precede GEDA's ability to issue out a new RFP and place a new contract so they decided to utilize the existing contract with the Consultant to continue the task order. It is in GEDA's intention to terminate the contract and start the process of creating a new RFP.

As mentioned in the previous finding, GEDA contends it utilized an IDIQ Contract, which they view as synonymous with a multi-year contract. GEDA believes that when they updated the MOAs with each new task order, it allowed them to change the scope period and extend beyond the RFP. However, as indicated in the "Scope of Services" for the initial contract, it states "GEDA may require additional services not identified in the Scope of Services **yet within the scope of the solicitation.**" This means that regardless of the updated MOAs and new task orders, GEDA must still comply with the scope of the RFP. We determined expenses for Task Orders 8 and 9 totaling \$2M to be questioned costs.

In addition, 2 GAR §3102 (b) states that "the time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency determines in writing that it is not practical to award another contract at the time of such extension." Again assuming if GEDA used an indefinite quantity contract, they would still not have complied.

If the Guam Legislature wants to provide for an IDIQ type contract, we suggest it amend Guam Procurement Law and Regulations.

#### **Lack of Specific "Notice of Intent to Award" Documentation is a Minor Informality**

Upon reviewing the documents for the completeness of GEDA's compliance with the Office of the Attorney General of Guam's (OAG) procurement checklist, we found that the reference document for the notice of intent to award is only a memorandum that states the Consultant's ranking and a request for a fee proposal. The memorandum also states that the ranking still requires approval from the GEDA Board of Directors. In the interest of expediting the work on Task Order 1, GEDA requested that the Consultant provide its fee proposal at the earliest time possible.

On May 7, 2014, GEDA created a document sent to the Consultant stating that their proposal had received the highest score during the evaluation process. The ranking still required approval from the GEDA Board of Directors. However, in the interest of expediting the work on the Hagåtña Restoration and Redevelopment Authority (HARRA) Task Order, GEDA requested that the Consultant submit its fee proposal for Task Order 1. The GEDA Board of Directors was expected to act on the evaluation team's recommended ranking at its May 15, 2014 meeting. Thereafter, the HARRA Board of Commissioners is expected to act upon Task Order 1, provided that an agreement is reached on the fee and scope. Therefore, GEDA hopes for the Consultant to provide its fee proposal at the earliest time possible.

On May 15, 2014, the Acting Administrator of GEDA sent a memo to the GEDA Board of Directors which stated GEDA staff recommends the GEDA Board of Directors approve the selection of the Consultant to carry out the services under the RFP 14-008 and authorize the Real Property Division to negotiate the terms and conditions of the master contract, along with the fee proposal to be submitted by the single Offeror for Task Order 1 to complete the HRRR Master Plan. This was approved by the Chairman of the Board of GEDA Board of Directors.

On June 19, 2014, the GEDA Board of Directors authorized the GEDA Acting Administrator to execute the contract between GEDA and the Consultant upon the final review of the contract by the legal counsel. The HRRR and GEDA staff had negotiated with the Consultant and reached an agreement on the scope of work, schedule, and fee.

On June 30, 2014, the Acting Administrator of GEDA sent a memo to the HRRR Board of Directors stating that during their May 2014 meeting, the GEDA Board of Directors approved the selection of the Consultant to perform the services requested under the Professional Multi-Discipline Consulting Services for the Research, Development, Planning, and Implementation of Economic Development Initiatives and Opportunities RFP.

GEDA did not have a “Notice of Intent to Award” documentation, which we determined to be a minor informality. It was to their understanding that the ranking letter, the subsequent negotiation, and the approval of the board in regards to the procurement was sufficient evidence for the “Notice of Intent to Award” documentation. Although the elements of the reference document for the notice of intent to award can lead one to speculate that the Consultant might be awarded the contract, it is still only a memorandum stating that the Consultant received the highest score during the evaluation process. There was no phrase that similarly states this is a “notice of intent to award” document. GEDA should ensure a specific “Notice of Intent to Award” is properly given to the selected vendor and documented within the procurement record for future procurements.

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## **Conclusion and Recommendations**

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As part of GEDA's mandate "to assist with the development and implementation of an integrated program for and be a catalyst in the economic development of Guam", they issued RFP 14-008 in March 2014. The RFP solicited proposals from qualified individuals or firms to provide multi-disciplinary professional services to assist with the research, development, planning, and implementation of economic initiatives and opportunities. Expert consultant services (Consultant) related to the new hospital development, which was the subject for this audit, was one of nine task orders associated with RFP 14-008.

We found that GEDA was not in compliance with Guam procurement law and regulations, specifically for: (1) not making a written determination until after the RFP was issued, (2) executing an IDIQ type contract, and (3) utilizing the Consultant services beyond the scope of the RFP. As such, we make the following recommendation to GEDA:

1. Should they still require the Consultant services, we recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations.

In addition, if the Guam Legislature wants to provide for an IDIQ type contract, we suggest it amend the Guam Procurement Law and Regulations.

Lastly, we would like to remind GEDA management that anyone responsible for procuring goods, services, or construction must receive the mandated training and continuing education through the Guam Community College's Procurement Training and Certification Program or equivalent in order to comply with 5 GCA §5141.

## Classification of Monetary Amounts

Finding Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
<b>1. GEDA Did Not Make a Written Determination for the Need of Services Prior to the Issuance of the Request for Proposal</b>	\$ -	\$ -	\$ -	\$ -
<b>2. GEDA Contends It Utilized IDIQ Type Contract Which is Not Provided for in Guam Procurement Law and Regulations</b>	\$ -	\$ -	\$ -	\$ -
<b>3. GEDA Utilized Consultant Services Beyond the Term of Contract Indicated in the RFP</b>				
<b>Task Order 8</b>	\$1,584,000	\$ -	\$ -	\$ -
<b>Task Order 9</b>	\$400,000	\$ -	\$ -	\$ -
<b>4. Lack of Specific “Notice of Intent to Award” Documentation is a Minor Informality</b>	\$ -	\$ -	\$ -	\$ -
<b>TOTAL</b>	\$1,984,000	\$ -	\$ -	\$ -

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## Management Response and OPA Reply

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The preliminary findings meeting (for discussion purposes only) was held on July 19, 2023. A draft report was then transmitted to GEDA on July 31, 2023. An exit conference was held on August 4, 2023 to discuss OPA's findings, conclusion, and recommendations.

In regards to the finding where GEDA did not make a written determination for the need of services prior to the issuance of RFP 14-008, GEDA stated that the OAG raised this concern in its review of the procurement file and GEDA's response, they included a Memorandum to address this concern. GEDA management underwent a number of changes since the issuance of the RFP and they were unable to ascertain the series of events surrounding the delayed determination of need accepted by the OAG. Moving forward, GEDA stated that their corrective action will be to issue a Determination of Need documentation in advance.

GEDA's response to the OPA initial finding of "GEDA executed an 'Indefinite Delivery Indefinite Quantity' (IDIQ) type contract, which is not provided for in the Guam Procurement Law and Regulations..." is that they still believe that the updated MOAs and active engagement with the consultant satisfied the requirement for a six-month review. However, as indicated in the "Scope of Services" for the initial contract, it states that "GEDA may require additional services not identified in the Scope of Services **yet within the scope of the solicitation.**" OPA still believes that regardless of the updated MOAs and new task orders, GEDA must still comply with the scope of the RFP. GEDA accepts OPA's recommendation to institute a formal evaluation every six months of parties engaged in similar types of contracts with the agency.

With the OPA finding regarding GEDA utilizing the Consultant services beyond the term of the contract indicated in the RFP, GEDA concurs that the RFP informs the contract, which was not the case in 2014. GEDA Management reiterated that all their active contract terms should mirror RFPs, discrepancies where it occurs should be addressed immediately, and corrective actions issued with the advice of their legal counsel.

GEDA generally concurs with the OPA's recommendation that a new RFP is to be issued should the Consultant services be needed and to defer to the Legislature to address whether IDIQ contracts are allowed to be used. However, GEDA disagrees with the OPA's statement concerning questioned costs. GEDA states that determining that the questioned costs arise via the RFP as opposed to the contract is where the agency and the OPA differ. OPA determined that the \$2M spent for Task Orders 8 and 9 to be questioned costs because they went beyond the scope of the RFP, which the OPA believes is sufficient information as the proper perspective for judging the prevalence of the questioned costs.



Benjamin J.F. Cruz  
Public Auditor

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**Appendix 1:****Objective, Scope and Methodology**

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Our audit objective was to determine whether GEDA complied with Guam Procurement Law and Regulations for the acquisition of consulting services relative to the new hospital development, which was part of RFP 14-008, Procurement for Professional Multi-Discipline Consulting Services for the Research, Development, Planning, and Implementation of Economic Development Initiatives and Opportunities.

Our audit scope was the procurement period from March 14, 2014 until December 31, 2022.

**Methodology**

To answer our objective, we interviewed GEDA staff and management privy to the procurement. We examined and reviewed the procurement records and Guam Procurement Law and Regulations. We also examined and reviewed all documents regarding the Task Orders under the MOA between the OOG and GEDA. For each RFP 14-008 document, our review included:

1. An evaluation of the proposals, contracts, procurement records, written determinations, and memorandum of agreements in correlation to Guam Procurement Law and Regulations and other rules and regulations
2. An evaluation of the total costs incurred for all Task Orders, specifically Task Order 8, which is the Medical and Public Health Services Action Plan that is related to the new hospital development
3. A summary of the Task Orders reflecting total funds used since the award date.

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

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**Appendix 2:****Prior Audit Coverage**

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**Office of Inspector General United States Postal Service Audit Report No. SM-AR-13-003 - Enterprise Technology Services Program**

Compared to the lack of competition under the Preferred Portfolio Partnering (PPP) program, the Enterprise Technology Services (ETS) program improved the Postal Service's level of competition. Specifically, we determined that Postal Service personnel competed 37 percent of task orders during fiscal years (FY) 2011 and 2012. However, the Postal Service does not have a system to track and measure competition. All task orders under this program are coded as competitive although some are not competed. Accurately tracking task orders would enable the Postal Service to correctly measure competition and identify areas for improvement.

Also, officials could improve controls over the award of task orders and associated modifications that were not further competed. Specifically, 59 percent of these actions, totaling \$71.5 million, did not have justification documenting why the task orders were awarded without further competition. Furthermore, officials did not document a formal management review and approval process for 14 percent of justifications, totaling \$5.7 million. In addition, Postal Service personnel did not always document technical analyses of price and technical proposals, which consists of the contracting officer (CO) working with subject matter experts to ensure proposed labor categories and rates are fair and reasonable. Management subsequently instituted corrective action to ensure documentation of technical analyses.

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**Laws, Rules, and Regulations**

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**Guam Code Annotated (GCA) Title 5, Chapter 5****§5141. Training and Certification of Purchasing Personnel and Vendors**

(b) Mandatory Certification and Continuing Education. Notwithstanding any provision of law or this Chapter and effective October 1, 2016, all government of Guam personnel tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction, including those employed by agencies with authority to conduct their own procurement, as well as any person within the Office of Public Accountability responsible for administering procurement appeals or auditing of the purchasing activities of the government of Guam, must receive the training and continuing education to the extent required under this Section and offered by the College in consultation with the Guam Procurement Advisory Council. A government of Guam employee who is required to receive the training may not participate in purchases by the employing agency *unless* the employee has received the required training or received equivalent training from a national association recognized by the College and the Guam Procurement Advisory Council, which count toward the continuing education requirements of this Section, as determined by the College, in consultation with the Guam Procurement Advisory Council.

**§5237. Multi-Year Contracts**

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of Guam provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) Determination Prior to Use. Prior to utilization of a multi-year contract, it shall be determined in writing: (1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and (2) that such a contract will serve the best interests of Guam by encouraging effective competition or otherwise promoting economies in Guam procurement.

**Guam Administrative Rules and Regulations (GAR) Title 2, Division 4****§2112. Authority to Contract for Certain Services and Approval of Contracts**

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.

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**Laws, Rules, and Regulations**

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**§3102. General Provisions – Extension of Time on Indefinite Quantity Contracts**

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency determines in writing that it is not practical to award another contract at the time of such extension.

**§3109. Competitive Sealed Bidding**

Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction.

**§3109. Competitive Sealed Bidding – Minor Informalities**

Minor informalities are matter of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the territory.

**§3114. Notice of Award.**

Written notice of award shall be public information and made a part of the procurement file.

**§3114. 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:

- that the services to be acquired are services specified in §3114(a);
- 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;
- the nature of the relationship to be established between the using agency and the contractor by the proposed contract; and
- 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.

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**Laws, Rules, and Regulations**

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**§3114. Request for Proposals - Contents**

The Request for Proposal shall be in the form specified by the Procurement Officer and contain at least the following information:

- (A) the type of service required;
- (B) a description of the work involved;
- (C) an estimate of when and for how long the services will be required;
- (D) the type of contract to be used;

**§3119. Type of Contracts - Definite Quantity and Indefinite Quantity Contracts**

An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, as ordered, that establishes unit prices of a fixed-price type. Generally, an approximate quantity is stated in the solicitation.

The contract may provide a minimum quantity the territory is obligated to order and may also provide for a maximum quantity that limits the territory's obligation to order.

Each indefinite quantity contract proposed to be entered into by the Chief Procurement Officer, the Director of Public Works, or the head of the purchasing agency indicating the rationale for using this type of contract and the reasons why another contract form will not suffice.

Such contracts will be reviewed every 6 months for a determination of the continued need for such a contract.

**§3121. Multi-Term Contracts**

A multi-term contract is appropriate when it is in the best interest of the territory to obtain uninterrupted services extending over more than one fiscal period, where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

The multi-term method of contracting is also appropriate when special production refers to production for contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled and the contractor shall be reimbursed the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered or services performed under the contract.

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**Appendix 4:****Timeline of Procurement Events**

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<b>Schedule of Events</b>	
<b>Date</b>	<b>Description</b>
March 28, 2014	RFP Issue Date
March 28, 2014	Published notice in newspaper of general circulation
March 28, 2014 - April 23, 2014	Procurement package (RFP) issued to bidders or offerors
April 4, 2014	Deadline for Receipt of Written Questions
April 4, 2014	Issuance of Answers to Written Questions (Including Addendum)
April 25, 2014	Proposal Due Date
April 25, 2014	List of Submission
May 7, 2014	Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
May 7, 2014	Notice of Intent to Award
August 15, 2014 - June 30, 2021	Task Order 1: Completion and Update of the Hagåtña Master Plan
October 6, 2014	Written Determination for Need of Services
November 12, 2014 - September 30, 2015	Task Order 2: Government of Guam Assistance and Support
November 12, 2014 - September 30, 2015	Task Order 3: Guam Cultural Repository
November 12, 2014 - September 30, 2015	Task Order 4: Public Services
November 12, 2014 - September 30, 2015	Task Order 5: Water/Wastewater Infrastructure Technical Support
October 23, 2019 - December 31, 2021	Task Order 6: Grants Management Capacity Building and Enhance Grant Performance
October 23, 2019 - December 31, 2021	Task Order 7: Financial Impact Assessment Study Update
June 2, 2021 - August 31, 2023	Task Order 8: Medical and Public Health Services Action Plan
January 6, 2023 - August 31, 2023	Task Order 9: Improving Guam Veterans Access to Medical and Public Health Services Grant Program

**Appendix 5:**  
**Checklist of Procurement Record**

Date	Description
March 28, 2014	RFP 14-008 For Professional Multi-Discipline Consulting Services For Research, Development, and Implementation of Economic Development Initiatives and Opportunities was advertised in Marianas Variety Guam Edition
October 6, 2014	Written Determination for Procurement (Memo to File)
August 6, 2014	Certification of Procurement Record by prior Deputy Administrator
September 5, 2014	Stamped Received by Office of Attorney General
October 8, 2014	Stamped Received by Office of Attorney General
March 28, 2014	RFP Issue Date
N/A	Scope of Services
March 28, 2014 - April 23, 2014	Log of Distribution of procurement package
None	Amendments to IFB or RFP, if any were issued
None	Logs of Distribution of amendments to RFP, but only if amendments were issues
None	Minutes or summary of pre-submission conferences, but only if conferences were held
None	Log of attendees of pre-submission conferences, but only if conferences were held
April 4, 2014	Written questions from bidder or Offerors, but only if questions were received
April 4, 2014	Written answers, but only if any questions were received
March 28, 2014 - April 4, 2014	Proof that written answers were provided to all potential bidders or Offerors, but only if questions were received
April 2, 2014, April 7, 2014, April 14, 2014, and April 23, 2014	Log of bids or registry of proposals received

## Checklist of Procurement Record

April 25, 2014	Each bid or proposal received
May 7, 2014	Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
May 7, 2014	Tabulation of evaluation or analysis (tabulations are not required by law but recommended)
May 7, 2014	Letters to bidders concerning outcome of bid; for Offerors, letters informing them of ranking and letter to best qualified Offeror inviting negotiations
May 7, 2014	Memorandum of evaluations and negotiations (only required for RFP's)
May 7, 2014	Notice of Intent to Award
April 8, 2014 - April 18, 2014	Any and all communications from or to anyone concerning any part of ITB or RFP
August 20, 2014	Contract, including all draft versions
None	Bid protests, if any, and responses thereto
October 6, 2014	Any determination required by law as may fit the circumstances
October 8, 2014	Procurement Review Checklist for Request for Proposals (RFP)

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**Description of Task Orders Issued**


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*Task Order 1*  
**Completion and  
 Update of the  
 Hagåtña Master  
 Plan**

The objective of Task Order No. 1 relates to the preparation of various plans for the Hagåtña Restoration and Redevelopment Authority (HRRA) including:

Update the Research Report which contains detailed information regarding infrastructure serving Hagåtña;

Update three alternative plans for presentation to the public and HRRA;

Update the Land Use Plan;

Establish a zoning code for Hagåtña;

Establish Design Guideline for development in Hagåtña;

Develop an implementation schedule;

Implement the Hagåtña River Flood Management Plan; and

Develop an organizational and sustainability plan for the HRRA

*Task Order 2*  
**Government of  
 Guam Assistance  
 and Support**

The primary goal of the Government of Guam Assistance and Support is to characterize and document the Government of Guam contributions that support the relocation of the USMC forces from Okinawa, Japan to Guam; which can be shared with the EAC for their consideration and use.

*Task Order 3*  
**Guam Cultural  
 Repository**

The primary goal of the analysis, planning, and programming phase is to inform the EAC deliberations and the development of the EAC Congressional report for Guam; and the development of a conceptual programmatic design of the Guam Cultural Repository, which will guide the \$12.0 million investment (or a portion thereof); which will ensure the investment is operationally and financially sustainable. The analysis will inform the collaborative working committee, a committee comprised of Federal and Government of Guam Agencies/Departments with relevant subject area expertise, which will enable the collaborative working committee to finalize an implementation plan that can be shared with the EAC for their consideration and use.

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**Description of Task Orders Issued**


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**Task Order 4**  
**Public Services**

The primary goal of the Public Services Planning and Programming Phase is to inform the EAC deliberations and the development of the EAC Congressional report for Guam; and the development of fiscally sound, sustainable, and effective mitigation measures and/or projects that are responsive to the Department of the Navy 2014 Draft Supplemental Environmental Impact Statement (SEIS). The planning and programming will inform the collaborative working committee, a committee comprised of Federal and Government of Guam Agencies/Departments with relevant subject area expertise, which will enable the collaborative working committee to finalize a Public Service Mitigation Plan that can be shared with the EAC for their consideration and use.

**Task Order 5**  
**Water**  
**Wastewater**  
**Infrastructure**  
**Technical**  
**Support**

The primary goal of the Water Wastewater Infrastructure Technical Support is to enable the Government of Guam to effectively and responsively represent its equities and requirements to the EAC member agencies; as the EAC deliberates on the outside the fence investments.

**Task Order 6**  
**Grants**  
**Management**  
**Capacity Building**  
**and Enhanced**  
**Grant**  
**Management**

Grant Management and Grant Performance have been systemic and persistent challenges for the Insular Areas, inclusive of the Territory of Guam. The Governor and Lt. Governor are proposing a more structured, tailored, and phased approach to tackle this persistent challenge. The Governor and Lt. Governor's tailored approach incorporates the following two major components: Grant Management Capacity Building and Grants Performance Enhancement.

**1) Grant Management Capacity Building**

Tactical Grant Management Training

Conducted on Guam, tailored to the Territory of Guam, and focused applied or hands on learning

Strategic Grant Management Training

Conducted on Guam and enhanced understanding on how to effectively leverage and integrate grants that lead to tangible outcomes

**2) Grants Performance Enhancement**

General Performance Training

Performance Mentoring

Technical resource and applied or hands-on technical assistance

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**Description of Task Orders Issued**

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*Task Order 7***Financial Impact  
Assessment Study  
Update**

The primary goal of this Task Order is to review and analyze the previous Government of Guam financial studies: 1) Projected Revenue Stream Analysis Report - July 2009; 2) Fiscal Impact Assessment Study (FIAS) - December 2010; 3) Joint Macro Fiscal Impact Assessment - February 2010; to produce a Government of Guam Financial Impact Assessment Study Update. The three financial studies were informed or shaped by the Department of the Navy July 2010 Guam and Commonwealth of the Northern Mariana Islands Marine Relocation Environmental Impact Statement (EIS)/Overseas EIS (OEIS); well in advance of the Navy June 2012 Supplemental Guam and Commonwealth of the Northern Mariana Islands Marine Relocation Supplemental EIS/OEIS.

*Task Order 8***Medical and  
Public Health  
Services Action  
Plan**

The objective of this task order is to prepare a Medical and Public Health Services Action Plan (MAP), with critical milestones, which will enhance and inform the Governor and Lt. Governor, as they lead the Government of Guam to strategically tackle the systemic medical and public health care challenges. A pressing issue is deciding the fate of Guam Memorial Hospital; whether it should be renovated or repaired by replacement.

*Task Order 9***Improving Guam  
Veterans Access  
to Medical and  
Public Health  
Services Grant  
Program**

The objective of this task order is to prepare a Guam Veterans Affairs Medical and Public Health Services Access Action Plan, with critical milestones, which will enhance and inform the Governor and Lt. Governor, as they lead the Government of Guam to strategically tackle the veterans' systemic medical and public health care access challenges.

# Guam Economic Development Authority Response

**LOURDES A. LEON GUERRERO**

*Governor of Guam  
I Magsa Hoga Guahan*

**JOSHUA F. TENORIO**

*Lt. Governor of Guam  
I Segundo Na Magsa Lahen Guahan*



**MELANIE MENDIOLA**

*Chief Executive Officer/Administrator  
Athãdi Esekutibu Ofisial/Atmenestradora*

**CARLOS P. BORDALLO**

*Deputy Administrator  
Sigundon Atmenestrador*

August 10, 2023

Mr. B. J. Cruz  
Public Auditor  
Office of Public Accountability  
Suite 401 DNA Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

Subject: Procurement of Consultant Services for New Hospital Development

Dear Mr. Cruz:

*Hafa Adai!*

This letter constitutes GEDA's management reply to your Preliminary Findings Report entitled "Guam Economic Development Authority – Procurement of Consultant Services for New Hospital Development." We would like to thank you and your staff for preparing this report which also includes the opportunity for GEDA to reply to the report's findings. This letter is GEDA's reply specifically to the sections on "Results of Audit" and "Conclusions and Recommendations" and also provides other information that GEDA deems appropriate for inclusion.

Two assumptions were evident in the report. The first is that an agency's Request for Proposals is more binding than the contract approved by the Office of the Attorney General and the Governor. The second assumption is that resolution of a procurement issue to the satisfaction of the Office of the Attorney General prior to contract execution does not withstand audit after contract execution. How these assumptions contribute to the OPA report are addressed below.

#### Results of Audit

1. "GEDA did not make a written determination for the need of services prior to the issuance of the Request for Proposal (RFP) number RFP 14-008 .... as required by Guam Administrative Rules (GAR) Section 3114(c)."

#### GEDA Response:

The Office of the Attorney General raised this concern in its review of GEDA's Procurement File received by the AG's Office on September 5, 2014. In response, GEDA included a

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## Guam Economic Development Authority Response

be completed within less than one year but was further extended due to land related issues that were a large determinant of the direction of the study. In addition, while Task Order 9 was issued after the purported "expiration" date in the RFP, but not carried through to the contract itself, Management made the decision, as the contract did not indicate an expiration, and the Memorandums of Understanding amendment was approved via the Attorney General, GEDA's legal counsel, and the Governor's Legal Counsel, that the agency was able to enter into such a contract. In this particular instance, the agency was preparing to issue a new RFP upon the completion of Task Order 8, however, the grant funding for Task Order 9 was expiring sooner than a new RFP process would allow. Given the contract and MOU's were seemingly in good order with the cumulative concurrence of GEDA legal, AG, and Governor's legal counsel, the agency moved forward.

To reiterate, management concurs that the RFP informs the contract, which was not the case in 2014. Management is fully aware going forward: 1) to ensure that all active contract terms should mirror RFPs and 2) discrepancies where this occurs should be addressed immediately and corrective actions issued on the advice of legal counsel.

4. "GEDA did not have a specific "Notice of Intent to Award" in the procurement record, which was determined to be a minor informality."

**GEDA Response:**

Finding No. 4 is mentioned on pages 9 and 12 as a minor informality so it is not addressed in detail in this management reply other than to say that the request for the highest-ranking offeror to submit its proposed fees was believed to have satisfied the requirement for a Notice of Intent to Award.

**Conclusions and Recommendations**

1. "Should GEDA still require the Consultant services, we (OPA) recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations."

**GEDA Response:**

GEDA concurs with the recommendation that a new RFP be issued should Consultant services be needed.

2. "If the Guam Legislature wants to provide for an IDIQ type contract, we recommend it amend the law to allow for it."

**GEDA Response:**

GEDA will defer to the legislature to address the need for legislation.



## Guam Economic Development Authority Response

**Additional Comments from GEDA Management**

Further, the OPA's report indicated \$2M for TO8 and TO9 to be "questioned costs" due to the inconsistency from the RFP to the contract and ultimate task orders. There is agreement as to the inconsistency between source documents, but determining that the questioned costs arise via the RFP as opposed to the contract is where the agency and the OPA differ.

Consistent across the RFP, contract, and all other source documents, including grant spending reports is the scope of work which is under master and strategic planning, project management, research and development, among others. We respectfully disagree with the OPA's statement concerning questioned costs.

Nevertheless, it is the view of management that audits no matter how painful are meant to make the agency better. We are pleased to comply with the recommendation to issue a new and improved RFP. In addition, we are fully aware to that there are a number of procurement practices in need of an update since at least 2014. We certainly appreciate the time spent of the OPA to prepare this report and respect your views accordingly.

Si Yu'us Ma'ase,



MELANIE MENDIOLA



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**Appendix 8:****Status of Audit Recommendations**

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<b>No.</b>	<b>Addressee</b>	<b>Audit Recommendation</b>	<b>Status</b>	<b>Action Required</b>
1	GEDA	Should GEDA still require the Consultant services, we recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations.	OPEN	Implement during the next RFP issuance.

# GUAM ECONOMIC DEVELOPMENT AUTHORITY PROCUREMENT OF CONSULTANT SERVICES FOR NEW HOSPITAL DEVELOPMENT Report No. 23-06, AUGUST 2023

## ACKNOWLEDGEMENTS

### ***Key contributions to this report were made by:***

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Jerrick J.J.G. Hernandez MA, CFE, CGAP, CICA, 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.

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