

**GOVERNMENT OF GUAM
SOLID WASTE OPERATIONS FUND**

**(A GOVERNMENTAL FUND OF THE
GOVERNMENT OF GUAM)**

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

YEARS ENDED SEPTEMBER 30, 2011 AND 2010

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

Honorable Eddie Baza Calvo
Governor of Guam:

We have audited the financial statements of the Solid Waste Operations Fund and of those funds related to the Government of Guam Limited Obligation (Section 30) Bonds, 2009 Series A (the Funds) as of and for the years ended September 30, 2011 and 2010, and have issued our report thereon dated November 28, 2012. Our report includes an explanatory paragraph that the financial statements of the Funds are not intended to present the financial position and results of operations of the Government of Guam and a reference for the adoption of a new accounting standard. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

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

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

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

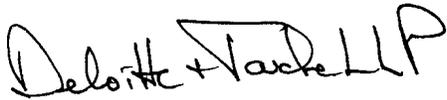
Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Funds' financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying Schedule of Findings and Responses as Finding No. 1.

We noted certain matters that we reported to management of the Funds in a separate letter dated November 28, 2012.

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

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

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

November 28, 2012

**GOVERNMENT OF GUAM
SOLID WASTE OPERATIONS FUND**

Schedule of Findings and Responses
Years Ended September 30, 2011 and 2010

Finding No. 1 - Procurement

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

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

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

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

- a. One item (ref. #P116R00001) for repairs and maintenance services of heavy equipment and light vehicles was procured through an invitation for bid. The bid and/or the award did not provide a minimum or maximum amount for the services. Further, subsequent amendments to the original purchase order (PO) increased the original PO amount from \$100,000 to \$700,000 during fiscal year 2011.
- b. One item (ref. DPW-SW-2004 003) initially awarded in 2004 had an original contract amount of \$1.3 million. Several amendments and change orders were added onto the original contract bringing the total contract amount to \$8.2 million as of September 30, 2011. Periodic assessments made, if any, to support continuation of the related services without the need for additional procurement procedures were not evident.
- c. For one contract related to temporary staffing, the relevant rationale/considerations supporting decision to obtain temporary staffing as against other possible options was not documented prior to the procurement of such services.

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

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

Recommendation:

- a. We recommend that for indefinite quantity services, an estimated minimum and maximum amount for the services be included in the award/purchase order/contract. Further, we recommend that indefinite quantity contracts be evaluated periodically (i.e. every six months) and such evaluation be documented.

**GOVERNMENT OF GUAM
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Schedule of Findings and Responses, Continued
Years Ended September 30, 2011 and 2010

Finding No. 1 – Procurement, Continued

Recommendation (Continued):

- b. We recommend that contracts spanning over an extended period be reviewed/evaluated periodically to determine if the services need to be subjected to additional procurement procedures. Further, we recommend that such review or evaluation be documented.
- c. We recommend that relevant considerations/rationale supporting procurement decisions be documented and such documentation be maintained in the procurement files.

Auditee Response and Corrective Action Plan:

- a. Management concurs that estimated minimum and maximums can be included in such procurements. However, such estimates should not be binding contractual provisions since these services are critical to the daily work of the Guam Solid Waste Authority (GSWA) and the need for the services is not always predictable.
- b. Management generally concurs that the practice recommended should be followed in most cases. However, this is the contract for design of the Layon Landfill. The initial design was completed before the Receivership was ordered. A design of this nature cannot legally be transferred to another contractor, therefore, the only options available to the Receiver were to continue to use the same contractor under this contract or abandon the design and all of the expense already incurred by the Government of Guam or continue it with the modification to the design needed to achieve compliance with the Consent Decree. In addition to the financial considerations involved, changing design firms would have caused a delay in opening the new landfill by 18 months to 2 years. This was simply not allowed under the Consent Decree or the practical limits of the capacity of the Ordot Dump.
- c. Management concurs that the procurement file in such matters should be documented. This is a contract with the Receiver to provide the personnel the Receiver needs to achieve the results required by the Consent Decree and the Orders of the District Court of Guam. Prior to entering the contract, the Receiver worked for months to obtain staffing through the personnel system of the Government of Guam. We were unable to reach a satisfactory result and, after consultation with the Attorney General, we hired staff under our authority granted in the District Court's Order appointing GBB as Receiver. The Attorney General of Guam advised that under Court's Order "If the Receiver deems it necessary to hire its own employees to handle Consent Decree matters on contract with other entities to handle Consent Decree matters, it can do so pursuant to and in compliance with Guam and federal laws."

The finding suggests that there were other options available. This is not accurate. After an exhaustive effort it was determined that there was no other option available to provide critical staffing to comply with the Consent Decree. The contract in question was bid and has proven to be very cost-effective. When the Receivership ends, Guam Solid Waste Authority will need to hire several additional positions to replace these temporary personnel. We estimate that the annual compensation will need to increase for this group of personnel by at least \$50,000 annually and that employee benefits will likely cost an additional \$190,000 per year. It is reasonable to infer that these savings have accrued to the benefit of GSWA for each year the contract has been in effect.

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Schedule of Findings and Responses, Continued
Years Ended September 30, 2011 and 2010

Finding No. 1 – Procurement, Continued

Auditee Response and Corrective Action Plan, Continued:

There were two reasons for the initiation of the personnel contract. The first was the immediate need for qualified workers. The Receiver needed to hire capable personnel quickly, and determined the Government of Guam could not provide such personnel within the required timeframe. The second reason resulted from a comparison of the annual cost of contracting for a worker through the temporary personnel agency versus the cost of hiring a Government of Guam classified employee. For a customer service representative (CSR) acquired through the temporary agency, as an example, the total annual starting cost is \$20,800. For a government worker doing the same job, the annual starting cost is \$26,753 (salary of \$19,974 plus benefits including retirement contribution of \$6,010, retired DDI of \$479, and Medicare tax of \$290). By engaging the services of the temporary agency GSWA, saved \$5,953 annually per CSR.

Auditor Response: GSWA management represents that it considered hiring full time employees as against obtaining temporary staffing. However, it is not evident that this option was considered prior to the procurement of such services as no documentation in support of the procurement decision is on file. We cannot find evidence that a cost benefit analysis was performed to support the decision that obtaining temporary staffing is the most advantageous and cost effective option under the circumstances. With the absence of sufficient documentation supporting procurement decisions, it is difficult to assess whether the services were obtained efficiently and economically and in accordance with Guam procurement regulations.