

**General Services Agency
Procurement Practices**

**Compliance Audit
October 1, 2015 through September 30, 2016**

**OPA Report No. 17-05
November 2017**



General Services Agency Procurement Practices

**Compliance Audit
October 1, 2015 through September 30, 2016**

**OPA Report No. 17-05
November 2017**



Distribution:

Governor of Guam
Lt. Governor of Guam
Speaker, 34th Guam Legislature
Senators, 34th Guam Legislature
Chief Procurement Officer, General Services Agency
Director, Department of Administration
Director, Bureau of Budget and Management Research
Guam Media via E-Mail

Table of Contents

1. Executive Summary	1
2. Identification of the Auditing Standards in Performing the Work.....	3
3. Description of the Subject Matter and the Scope of Audit.....	3
4. Description of the Audit Criteria.....	4
5. Explanation and Reasoning for the Methods Used.....	4
6. Audit Findings.....	5
a. Poor Procurement Planning	5
b. Competitive Sealed Bids Appropriately Carried Out.....	11
c. Inappropriate Award for One Small Purchase	11
d. Validity of Business Licenses Not Verified.....	12
e. Inconsistencies in Emergency Procurements	13
f. No Solicitation Made for a Vendor Named on Federally-Funded Project.....	15
g. Outdated Standard Operating Procedures	17
h. Other Matters	18
h.1 - Avoid Considering a “No Quote” Response on the Three Quote Requirement	18
h.2 - Inquire with Vendor Reason for Not Submitting a Bid	19
h.3 - Conduct Internal Annual Quality and Completeness Assessment of Procurement Records.....	20
7. Conclusions.....	21
8. Recommendations and Implementations Status	21
9. Management Response and OPA Reply	22
Appendix 1 – GSA Reply.....	23
Appendix 2 – Survey Results	31

1. Executive Summary

Background of Audited Entity

The General Services Agency (GSA) administers a centralized procurement program for supplies and services for the Government of Guam's (GovGuam) line agencies and the Port Authority of Guam. GSA, a division within the Department of Administration (DOA), is headed by the Chief Procurement Officer (CPO), a classified position that handles 46 agencies/departments. Title 5, Chapter 5 of the Guam Code Annotated (GCA) and Title 2, Division 4 of the Guam Administrative Rules and Regulations (GAR), collectively known as Guam Procurement Law and Regulations, provide the legal authority and guidance for GovGuam's procurement. In fiscal year (FY) 2016, GSA processed 6,575 Purchase Orders (PO) totaling to \$51.9 million (M). Of the total, 6,209 POs worth \$13.3M (or 26%) individually amounted to \$15,000 and below.

Reason for Audit, Objective, Scope, and Approach

The audit was conducted as the Office of Public Accountability's (OPA) participation in the International Organization of Supreme Audit Institutions (INTOSAI) Development Initiative (IDI) and Pacific Association of Supreme Audit Institutions' (PASAI) Cooperative Procurement Audit Program. The program called for a compliance audit performed in accordance with International Standards of Supreme Audit Institutions (ISSAI) 4000, *Compliance Audit Standards*. This report followed the prescribed format by ISSAI 4000, which differs from OPA's standard format for performance audits.

The objectives of the audit were to determine whether during FY 2016, GSA complied with Guam Procurement Law and Regulations to:

1. Properly plan all procurements of supplies and services to promote maximum competition and good management of resources.
2. Properly procure goods and services through methods of source selection: competitive sealed bids, small purchases, blanket purchase agreements, sole source, or emergency.

We also incorporated relevant best practices for government procurement. Our scope included POs issued in FY 2016. Our determination of GSA's compliance with Procurement Law and Regulations was based on a sample of 40 POs.

Key Audit Findings

Procurement Planning

While GSA made efforts to consolidate similar purchases, such efforts were not effective. Although agencies are ultimately responsible for their procurement needs, GSA is also responsible for those procurements because the agencies have no say over how procurement is processed.

Procurement of Goods and Services

Our testing of 40 POs revealed the following:

- Competitive sealed bids – No exceptions found on GSA's procurement practices for the 11 POs related to nine competitive sealed bids tested.

- All methods other than competitive sealed bids – GSA did not verify the validity of vendors’ business licenses for all 29 POs 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.

We also found that GSA does not have updated Standard Operating Procedures (SOP).

Conclusion and Recommendations

We concluded that GSA’s practices on:

- Procurement planning did not comply with Guam Procurement Law and Regulations;
- Competitive sealed bids did comply with Guam Procurement Law and Regulations based on 11 POs related to nine competitive sealed bids tested; and
- Small purchases, sole source, and emergency procurements did not comply with Guam Procurement Law and Regulations based on 29 POs tested.

We recommended that the CPO:

- 1) Strengthen relationships with using agencies through focused trainings, timely communication, and outreach.
- 2) Document and monitor effectiveness of GSA’s planning efforts.
- 3) Seek operational support from the DOA Director to address GSA’s high turnover.
- 4) Implement an approval limit to fully delegate certain procurements.
- 5) Obtain the Attorney General’s guidance on processing procurements with pending appeals.
- 6) Challenge agencies’ requests for sole source on federally funded requisitions and require documentation for vendor solicitation.
- 7) Formally update SOPs.

Our recommendation for the DOA Director to update vendors’ business license information in the AS400 has been implemented.

The CPO disagreed with all our findings in this report, including previous OPA findings, and has consistently disagreed with most procurement findings in 8 of the 10 past GovGuam Single Audit Reports. Although the DOA Director is accountable for the department, Guam Procurement Law and Regulations places procurement responsibilities with the CPO. This arrangement leaves little to no oversight of the CPO’s actions, who therefore is not accountable for continuous disagreements with audits. We encourage the Legislative Committee Chairperson on Procurement Reform to revisit this structure and consider the appropriateness of this model for GovGuam.

2. Identification of the Auditing Standards in Performing the Work

We conducted this audit in accordance with generally accepted government auditing standards. 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.

We also conducted our audit in accordance with the International Standards of Supreme Audit Institutions. The audit was based on ISSAI 4000, *Compliance Audit Standards*. These standards also 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.

3. Description of the Subject Matter and the Scope of Audit

The subject matter for this audit is the procurement practices of GSA related to planning and sourcing activities for FY 2016. Through this audit, we examined whether GSA complied in all material respects with the criteria drawn from the Guam Procurement Law and Regulations in procuring goods and services. Procurement of construction is under the purview of the Director of Public Works and therefore not included in our audit scope.

Specifically, our audit addressed the following main audit questions:

- a) Did GSA's procurement planning practices meet the requirements of Guam Procurement Law and Regulations?
- b) Did GSA's competitive sealed bids, small purchases, blanket purchase agreements, sole source, and emergency procurement practices comply with Guam Procurement Law and Regulations?

The procurement source selections included in this audit were as follows:

- a) Competitive sealed bids – through Invitation for Bids (IFB) applicable to purchases in excess of \$15,000;
- b) Blanket Purchase Agreements (BPA) – used for repetitive needs that could not be properly identified as to the quantity and type, capped at \$15,000 for supplies or services;
- c) Sole source – not permissible unless a requirement is available from only a single supplier, does not have dollar value limit;
- d) Emergency procurement – used when there exists a threat to public health, welfare, or safety under emergency conditions, does not have dollar value limit, but requires solicitation; and
- e) Small purchases – used for purchases between \$500 and \$15,000 not falling in other source selections identified herein.¹

¹ On August 7, 2017, Public Law 34-35 amended the small purchases limit not to exceed \$25,000 for supplies and services. This change did not affect our audit since our audit scope is FY 2016 (from October 1, 2015 to September 30, 2016).

4. Description of the Audit Criteria

The criteria used in this compliance audit were derived from the following:

- 1) Chapter 5, Title 5 GCA, also known as the Guam Procurement Law;
- 2) Division 4, Title 2 GAR, also known as the Guam Procurement Regulations; and
- 3) Relevant best practices on government procurement.

The criteria were discussed with the CPO, in which we received no disagreements as they were taken from established laws and regulations.

5. Explanation and Reasoning for the Methods Used

We conducted the audit based on the information provided by GSA and the documents inspected at its premises, such as GSA's planning circular, using agencies' procurement plans, IFBs, POs, and other supporting procurement records. We gained an understanding of GSA's procurement processes. We also sent surveys to using agencies through email to obtain performance feedback on GSA's centralized procurement function.

The schedule of all POs issued in FY 2016 provided to us did not contain the methods of source selection. Therefore, we generated our samples based on PO amounts. Representative POs were selected through stratification, and a combination of random and judgmental sampling for detailed compliance testing with the established criteria. We tested 40 POs that consisted of:

- 11 IFBs
- 13 small purchases between \$500 and \$15,000
- 6 BPAs
- 6 sole source procurements
- 4 emergency procurements

We believe that the POs tested were sufficient to conclude on the overall compliance to the applicable procurement law, rules and regulations, and best practices.

We also reviewed prior OPA performance audit reports and the external auditor's past 10 Single Audit reports (FY 2007 through FY 2016) for any areas found relevant to this compliance audit, especially as they pertain to GSA procurement.

The CPO was interviewed to verify and clarify information already obtained. All the audit findings identified were discussed with the CPO, and her comments were obtained and incorporated where appropriate. We thank the CPO and staff of GSA for their cooperation in this compliance audit.

6. Audit Findings

a. Poor Procurement Planning

Criteria:

Title 5 GCA §5010 states that all procurements of supplies and services shall, where possible, be made sufficiently in advance of need for delivery or performance to promote maximum competition and good management of resources.

The requirement to properly plan procurements supports two primary purposes of the government procurement law:

- 5 GCA §5001(b)(5) to provide increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the territory, and
- 5 GCA §5001(b)(6) to foster effective broad-based competition within the free enterprise system.

Condition:

GSA's Current Procurement Planning Mechanism is Not Effective

GSA tries to facilitate GovGuam's procurement planning by issuing an annual circular, which requires all line agencies to submit their procurement plans in order to "save government funds through the bulk buying process." GSA issued Circular No. 2016-003 on January 7, 2016 for the FY 2016 annual procurement plans, more than one quarter into FY 2016. The deadline for agencies' submissions was a month later.

Based on our interview with the CPO, this annual planning circular is not effective. The procurement plan submissions we saw were not detailed and did not include dates of when goods and services are needed by those agencies. In fact, some of the agencies would just submit the budget template that was submitted to the Bureau of Budget Management and Research during the annual budget process. Although agencies are ultimately responsible for their respective procurement needs, GSA is responsible for GovGuam's overall purchasing. The agencies have no say over how procurement is processed at GSA.

Despite the circular's ineffectiveness, GSA has identified on its own, opportunities to obtain economies through bulk purchasing. However, an analysis of savings was not documented. For example, in FY 2016, GSA consolidated purchases, such as pharmaceutical supplies, rental of trash bin/containers and pick up services, medication, copier paper, office supplies, hotel venues, promotional items, etc. These items were procured through competitive sealed bids and initiated based on GSA's past knowledge and experience but not through the agencies' annual procurement plans. For these bulk purchases, vendors were awarded Indefinite Quantity Contracts, a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered.

Causes:

(1) Lack of Emphasis on Procurement Planning

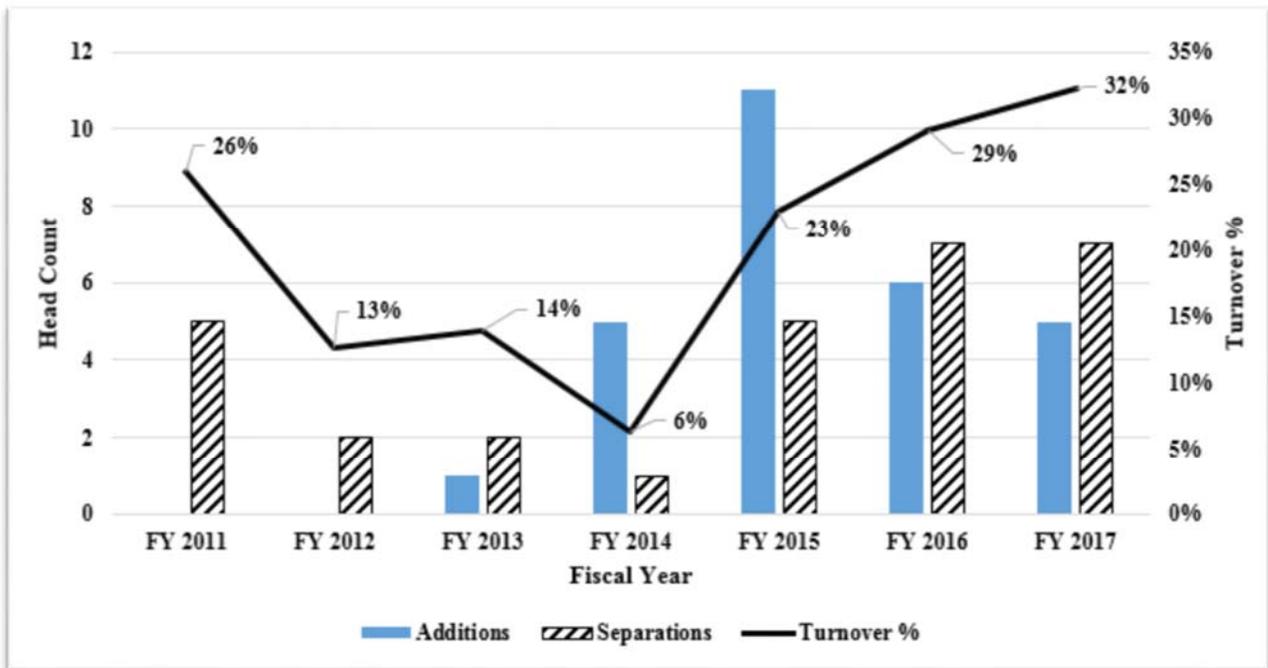
The CPO’s position is that the agencies are ultimately responsible for their procurement planning. As a result, GSA does not place enough emphasis on GovGuam procurement planning as evidenced in the annual planning circular it sends to the agencies, which is vague and does not provide clear and useful guidance on what a procurement plan should look like.

(2) Inadequate Personnel at GSA

The CPO believes that the planning deficiencies are caused by an inadequate staff resources. The CPO indicated that in as much as they want to emphasize procurement planning, it is very difficult without an adequate personnel. According to the CPO, she spends most of her time with various daily tasks, including detailed review or final approval of POs. She sometimes acts as a Buyer just to fill the gaps. To ensure checks and balances, she delegated her PO approval authority to the Procurement Advisor and the Buyer Supervisor for instances wherein she acted as the detailed reviewer or the Buyer. We did not note any approval matrix/limit wherein the CPO can fully delegate the review and approval for purchases below a certain threshold to other personnel. At some point, the CPO participates in all POs being processed at GSA.

Our analysis of GSA’s manpower revealed significant increases in GSA’s employee turnover rate since FY 2014 from 6% to its highest of 32% as of FY 2017. There were 28 additions and 29 separations between FY 2011 and FY 2017, leaving 21 employees as of September 30, 2017. Of the 21 employees, eight are limited term appointments. See Graph 1.

Graph 1.GSA’s Employee Additions, Separations, and Turnover Rate



Buyers, in particular, had 10 additions and 11 separations between FY 2011 and FY 2017, with employment as short as 9 months and as long as 5 years. Buyers deal directly with daily procurement at GSA. According to the CPO, employees are either sick or leave because they cannot sufficiently perform their duties.

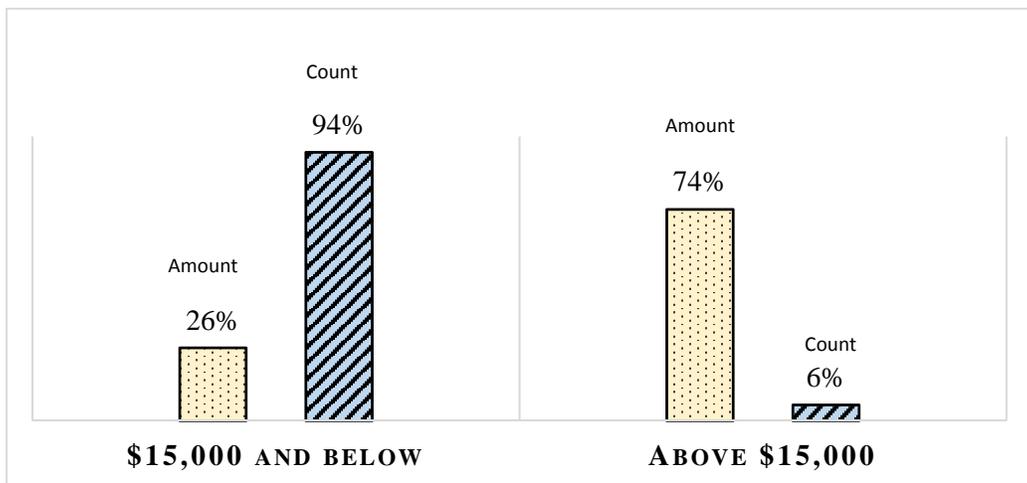
Effects:

GSA’s procurement planning practices did not meet the requirements of Guam Procurement Law and Regulations. Therefore, GovGuam may not be getting the “best value” on its purchases as evidenced by the large count of small purchases. This puts a strain on GSA’s limited resources, especially during peak months between August and October, and in turn frustrates using agencies.

(1) Most Procurements Amounted to \$15,000 and Below – Indication of Lack of Consolidation

Of the 6,575 POs issued in FY 2016 totaling \$51.9M, 6,209 POs, or 94%, were for procurements of \$15K and below. However, these amounted to only 26%, or \$13.3M, of the \$51.9M total dollar value. On the other hand, POs above \$15K constituted for 6% of the total number of POs issued in FY 2016, but amounted to \$38.6M or 74% in terms of dollar value of purchases. See Graph 2.

Graph 2. FY 2016 PO Amount vs. PO Count



A PO amounting to \$15K and below is presumed to have been procured through small purchases or BPA. Although the small purchase method and BPA are simpler ways of obtaining goods and services that do not require much planning, based on our 29 samples, we estimated that it could take more than 5 weeks to issue a PO from requisition. Moreover, the prices obtained in small purchases may not be the best value because bulk purchase savings are not realized.

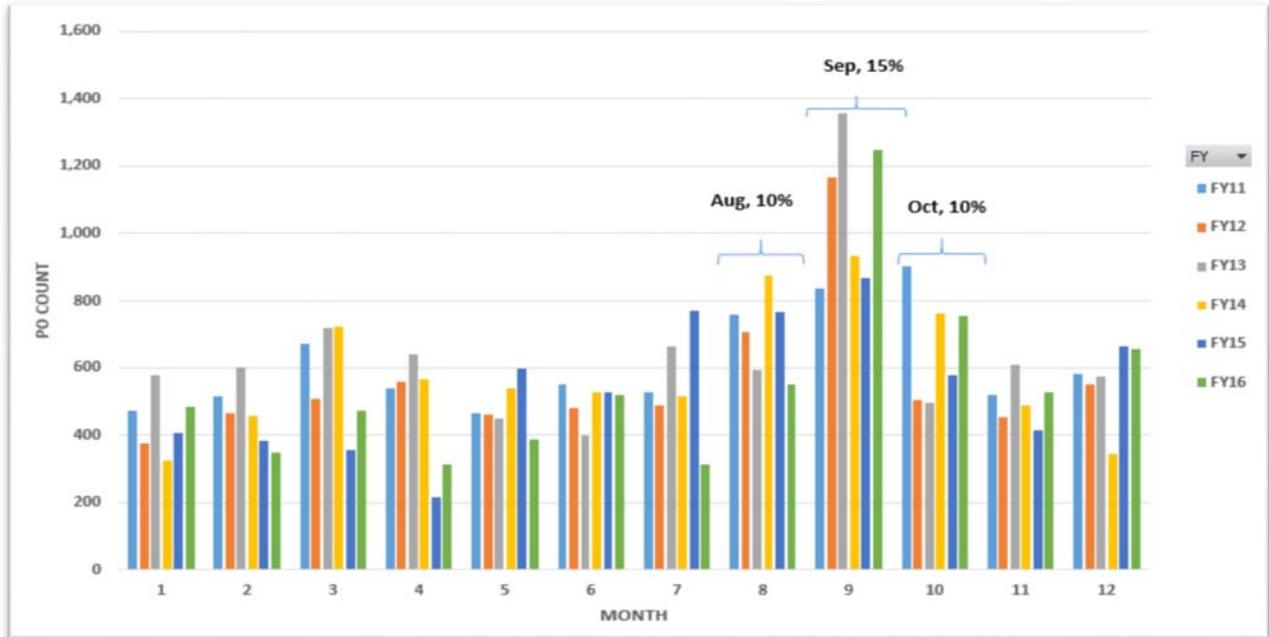
In OPA’s prior audit on GSA’s Small Purchase Procurement (OPA Report No. 11-12 issued in December 2011), OPA found that there were continuous increases in small purchase procurements from FY 2008 through FY 2010. The failure to plan purchasing for line agencies and consolidate procurement of recurring items led to artificial division, POs exceeding the \$15K small purchase limit, and agency noncompliance with procurement regulations. At that time, the former DOA Director and CPO contended that purchases of similar items from individual agencies could be

awarded individually as small purchases. OPA disagreed with this contention, as it does not consider consolidation of similar items. GSA should not just process requisitions received from agencies, but more importantly, focus on annual planning that produces maximum value of GovGuam’s limited resources.

(2) Most POs Issued Between August through October – Indication of Poor Planning

Of the total POs issued annually from FY 2011 to FY 2016, September averaged the highest count in POs issued at 15%, followed by August and October each averaging 10%. The remaining months averaged only 7% of the total POs processed. See Graph 3.

Graph 3. Number of PO Processed from FY 2011 to FY 2016



The CPO stated that agencies tend to wait towards year-end to fully spend their available budgets. The data corroborate this perception as we noted that 10% of POs were processed in August, and by September, the final month of the fiscal year, PO processing increased to 15%. This is more than double the rate for the remaining months. October is still high at 10%, possibly to avert agency lapses from prior fiscal year and continuing appropriations such as rents, contractual services, etc., according to the CPO.

The high PO issuance from August to October might signify inefficiencies in those months, which further stresses GSA resources. This workload could be distributed to the rest of the months through proper planning.

A procurement system is efficient when it spends the least amount of resources in the process of purchasing what is needed. If the GSA Buyers are overworked, however, such a system could become more expensive if the Buyers fail to obtain the best prices.²

² 2011 Desiderata: Objectives for a System of Government Contract Law by Steven L. Schooner

(3) Frustration Expressed by Using Agencies on Procurement Planning

We surveyed 19 agencies for comments on GSA's procurement planning as follows:

“Given that GovGuam agencies/departments are ultimately responsible for their annual procurement plans, please describe or comment how GSA assists your agency in achieving smooth processing of purchases throughout each fiscal year (or at least for FY 2016).”

We received 10 responses with the majority having expressed frustrations about how GSA currently handles their procurement needs. The only positive response received was that GSA, for the very first time, provided training on the IFB process, which helped that using agency correctly prepare the paperwork without constant back and forth.

Examples of the frustrations expressed by the agencies include:

- Lost funds due to unprocessed requisitions.
- Agency receiving only small fraction of their requests, as well as too many delays on various requests.
- Wasted agency manpower for preparing annual plans based on GSA Circular, but was not followed by GSA.
- GSA is wasting its manpower for re-doing solicitations when agency already prepared the solicitation prior to submitting requisitions to GSA.
- Little to no communication with/from GSA throughout the procurement process, and no assistance received on procurement planning.
- GSA's shortage of staff has made it difficult for the agencies to meet their daily procurement needs.

Refer to Appendix 2 for full survey results.

Recommendations:

GSA should reinforce centralized procurement that will focus on annual planning. Because GSA is better able to carry out competitive sealed bids, the CPO should develop planning methods that allow GSA to identify as many opportunities as possible in order to maximize savings realized through this method.

(1) GSA to Strengthen Relationships with Using Agencies Through Focused Trainings, Timely Communication, and Outreach

We believe that the CPO should participate more in strategic planning, oversight and management of GovGuam's procurement functions, rather than on a transactional level. Now that GovGuam agencies received, or are receiving procurement trainings as required by 5 GCA §5141, it is a good time for GSA to conduct focused trainings for agencies under its purview as to the practical application of the Guam Procurement Rules and Regulations.

The focused trainings should include how to process procurements smoothly, and with emphasis on proper planning. GSA should provide guidance, including formats if possible, on how agencies can accomplish their annual procurement plans in a way that is relevant to GSA's

procurement consolidations. GSA should also clarify if agencies are required to solicit vendors and if so, to what extent.

GSA should immediately address their communication issues with the agencies, including acknowledging emails and returning calls. In the same way, agencies ultimately being responsible for their procurement plans, should be more proactive in communicating to GSA their needs, as well as sending their requisitions early. GSA, in turn, should ensure that needs are timely addressed. More outreach by the CPO on a one-on-one basis with department heads and assigned procurement officers would be beneficial to establish rapport.

(2) *Document and Monitor Effectiveness of Planning Efforts*

GSA should establish detailed planning and review procedures to measure success (e.g. cost savings, resource utilization, etc.), as well as identify planning weaknesses.

(3) *Seek Operational Support from DOA Director*

The CPO should discuss with the DOA Director, who is the administrative head for the Department, GSA's operational concerns and the support required to develop and implement strategies to address high turnover and limited staff resources. High employee turnover could be an indicator of inaccurate job descriptions, insufficient job skill requirements, lack of appropriate employee training, salary disparities with other agencies, or poor and ineffective leadership style.

(4) *Implement Approval Limit to Fully Delegate Certain Procurements*

For efficiency, GSA should implement an approval limit that defines what requisitions should undergo the CPO's review. For example, the CPO does not need to be involved in the processing of requisitions below \$15,000, unless it is a sole source or emergency procurement.

GSA Response:

GSA disagreed with the finding and stated that the 5 GCA §5010 "Policy in Favor of Planned Procurement" made no mention that the CPO is the individual responsible to plan for the needs of the government. GSA takes a proactive approach and issues circulars to remind the department/agency heads to comply with 5 GCA §5010. GSA is in no position to plan for the needs of any one department/agency, that planning rests with the appointing authority.

OPA Response:

We agree that each agency is responsible for planning their individual procurement needs. However, as the centralized procurement function for GovGuam, GSA has the capability to consolidate agencies' procurement needs to obtain the best value with limited government resources, which is more than just processing requisitions. We acknowledged that GSA was able to consolidate some purchases based on past experience and knowledge, and not because of the agencies' submissions of their plans. This indicates that the "proactive approach" of issuing circulars is not effective. Hence, our finding remains, as we believe that GSA can do more than just issuing circulars and processing requisitions.

b. Competitive Sealed Bids Appropriately Carried Out

Our 11 PO samples related to 9 IFBs totaling at least \$3.3M, and consisted of equipment leases, portable bleachers, pharmaceutical items, property insurance, furniture, air conditioning units, marine watercraft, and transportation services. We tested against selected criteria contained in the following Procurement Law and Regulations and found no exceptions on GSA's practices for carrying out these competitive sealed bids:

- 5 GCA §5008 – Policy in favor of local procurement
- 5 GCA §5211 and 2 GAR §3109 – Competitive sealed bidding
- 5 GCA §5212 and 2 GAR §3102(f) – Bid security and performance bond requirement for contractors
- 5 GCA §5220 – Publication of IFB documents on the agency's website
- 5 GCA §5230 – Responsibility of bidders and offerors
- 5 GCA §5249 – Record of procurement actions
- 5 GCA §5250 – Certification of record
- 5 GCA §5267 – Publication of source of specifications
- 5 GCA §5268 – Salient features

We identified some best practices that GSA should utilize to promote more transparency in procurement records. Refer to items h.1 and h.3, *Other Matters*, for OPA's comment on some best practices.

GSA Response:

GSA agreed with the finding.

c. Inappropriate Award for One Small Purchase

Criteria:

Title 2 GAR §3111(c)(1) requires that no less than three positive written quotations from businesses shall be solicited, recorded, and placed in the procurement file.

Condition:

For 1 of the 29 (or 3%) small purchases sampled, a PO amounting to \$5,544 was signed on August 31, 2016 based on telephonic quotes. The written quotes from vendors were only received in September 2016. The record showed that the requisition from the using agency was sent to GSA on August 16, 2016. GSA obtained telephonic quotes on August 31, 2016, and noted that the written vendor quotes will follow.

Cause:

The PO was rushed and signed without written quotes from the vendors because the federal funding was expiring on August 31, 2016, the date the PO was signed. Ultimately, the finding was due to poor procurement planning.

Effect:

GSA was in noncompliance with 2 GAR §3111(c)(1). No questioned cost exists as the PO amount agreed with the subsequent written quotation received from the selected vendor.

Recommendation:

Refer to Recommendation on Poor Procurement Planning.

GSA Response:

GSA disagreed with the finding and stated that the procurement records showed that the written quotations were received by GSA in a timely manner.

OPA Response:

Our inspection of the procurement records showed that written solicitations were received after August 31, 2016, the date the PO was signed and approved, therefore our finding remains.

d. Validity of Business Licenses Not Verified

Criteria:

Title 5 GCA §5008 states that all procurement of supplies and services shall be made from among businesses licensed to do business in Guam and that maintain an office or other facility in Guam. Title 5 GCA §70115 provides that all licenses shall be issued on an annual basis and, regardless of when issued, shall expire one year after the date for which issued or renewed.

Condition:

OPA learned that verification of valid vendors' business licenses is not being done for small purchases, blanket purchase agreements, sole source, and emergency procurements.

Cause:

GSA relies solely on GovGuam's AS400 financial management system's vendors list maintained by DOA. GSA assumed that the vendor's business license is valid when the vendor's code appeared on the system. However, DOA Division of Accounts requires a valid business license only during the initial establishment of the vendor number, or if the vendor is updating their information in the AS400. Neither DOA, nor GSA, perform an annual verification of business license renewals.

Effect:

The neglect in ensuring that vendors have valid business licenses violates 5 GCA §5008 requirement. Therefore, GSA might be conducting business with unlicensed vendors.

Recommendation:

The DOA Division of Accounts should annually update vendors' business licenses within the AS400 system. This recommendation was implemented during the audit finalization through a Memorandum dated October 2, 2017 from the DOA Director requesting all vendors to provide their most current business licenses.

GSA Response:

GSA disagreed with the finding. It is GSA's understanding that the DOA Division of Accounts does its quality assurance on the updating of vendor licenses annually.

OPA Response:

This finding was directed to and discussed with the DOA Director who acknowledged the Division of Accounts' responsibility to annually update vendors' business licenses in the AS400.

e. Inconsistencies in Emergency Procurements

Criteria:

According to 5 GCA §5215, an emergency procurement is authorized when there exists a threat to public health, welfare, or safety under emergency conditions. No emergency may be made for an amount of goods or supplies greater than the amount of such goods and supplies, which is necessary to meet an emergency for the 30-day period immediately following the procurement.

Title 2 GAR §3113 required documentation for emergency procurement is as follows:

- 1) Procurement agent must solicit at least three informal price quotations, if time allows, and award the procurement to the firm with the best offer.
- 2) A written determination of the basis for the emergency and the selection of the particular contractor shall be included in the procurement file. The written determination shall be met if there was an Executive Order from the Governor of Guam.
- 3) Without an Executive Order, there should be a certification made under penalty of perjury by the requesting department or agency. Certified copies of this certification shall be sent, prior to award, to the Governor and Speaker of the Legislature. The certificate shall contain:
(a) a statement of facts giving rise to the emergency; (b) the factual basis of the determination that an emergency procurement is necessary; and (c) a statement that emergency procurement is not being used solely for the purpose of avoidance of the Guam Procurement Law and Regulations.

The Governor of Guam must approve, in writing, all authorizations for emergency procurements.

Condition:

Guam Procurement Law and Regulations were not consistently applied for 2 of the 4 (or 50%) emergency procurements tested. These 2 emergency procurements were specifically issued for procurements pending court decisions for appeals – one for telecommunication services and the other for elderly meals.

In FY 2016, \$404K of the \$1.3M (or 31%) in emergency procurements pertained to monthly telecommunication services resulting from six procurement appeals filed at OPA in 2012 for IFB No. GSA-IFB-064-11. The certification of emergency was signed on September 30, 2013 by the Governor of Guam and is effective until the appeals are resolved in the courts. The procurement was further appealed to Superior Court in March 2013, and finally to Supreme Court in May 2017.

Emergency procurement for congregate and home-delivered meals for the elderly nutrition program was the subject of two procurement appeals filed at OPA in 2016 for IFB No. GSA-IFB-010-14 and appealed to the Superior Court in November 2016.

We noted the following inconsistencies:

- GSA solicited three quotations for the emergency procurement of elderly meals. However, it did not solicit the required three quotations for the emergency procurement of telecommunication services. Our PO sample amounting to \$521.22 was issued for the October 2015 telecommunication services based on a solicitation made in September 2014 from only one vendor.
- GSA issued a 90-day certification of emergency procurement for the elderly meals. In contrast, GSA issued a blanket certification (until appeal is resolved) for the telecommunication services. Both certifications exceeded the 30 days limit; however, POs for both are being issued on a monthly basis.
- GSA did not obtain the using agency's required certification made under penalty of perjury to justify GSA's written determination of emergency procurement for the elderly meals. However, the using agency's certification was obtained for the telecommunication services.

Cause:

Emergency Procurement Law and Regulations do not always apply to procurements that are pending decisions on appeal and are not necessarily emergencies by nature. Guam Procurement Law and Regulations lack guidance on how to procure goods, supplies, and services when the initial solicitations are stayed. Procurement stays are often lengthy and extend considerably beyond 30 days.

In the case of telecommunication services, it is not practical to solicit every 30 days from vendors where infrastructure from the existing vendor already exists and there is uncertainty on the duration of the contract. This is evident as GSA cited an opinion from the Attorney General dated

August 30, 1994, concluding that the 30-day limitation applies only to emergency procurement of goods or supplies, not services.

In this regard, GSA limits emergency purchases to 90 days for services as an internal practice, but did not do so for telecommunication services.

Effect:

There is no assurance in obtaining the best value even during procurements with pending appeals. Because of GSA's inconsistencies, there are opportunities for current vendors to continue providing services over other possible vendors while appeals are ongoing.

Recommendations:

The CPO should immediately seek written guidance and clarification from the Attorney General whether emergency Procurement Law and Regulations are applicable to procurements pending appeals. If so, the emergency procurements should be consistently applied. Other guidance should be sought for procurements pending appeals that are not emergencies by nature and should spell out, at the minimum, how solicitations will be made, limits on duration, necessary approvals, and reporting requirements.

The CPO could also attempt to lift stays as provided by 5 GCA §5425(g) provided the CPO, with the using agency and Attorney General's concurrence, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the Territory. This determination requires the Public Auditor's or Court's approval.

GSA Response:

GSA disagreed with the finding. A copy of the request for emergency procurement and Certificate of Emergency were provided. There is a blanket certificate of emergency until such time the court cases are resolved.

OPA Response:

The stated documents were provided only after our exit meeting. The audit report was updated accordingly to reflect that submission. However, such submissions do not remove the fact that GSA is inconsistently applying emergency Procurement Law and Regulations for procurements with pending appeals. Therefore, our finding remains.

f. No Solicitation Made for a Vendor Named on Federally-Funded Project

Criteria:

Title 2 GAR §3112(b) states that sole source procurement is not permissible unless a requirement is available from only a single supplier. 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.

Condition:

For 1 of 6 (or 17%) sole source procurements tested, there was no written determination on file to demonstrate that there is only one source for the required services. GSA's Interoffice Memorandum template indicated that this was "Direct to/Publisher/Only Source available at the time the services are needed/Only Distributor/Agent," and referred to the project narratives regarding the required services of which the vendor was already named.

We verified with the using agency that the vendor was named in the grant because the service is a highly specialized field and the vendor was the only expert they knew of at that time. There was no documentation on how the vendor was selected. The grantor later approved the project in its totality.

Cause:

GSA does not require vendor solicitation documentation from the using agency for approved grants with pre-selected vendors. According to the CPO, once the grantor approves the project narratives, the named vendor is deemed to have been vetted by the federal grantor to be the expert(s) on a particular field. If the grantor does not question the selected vendor, GSA considers the selected vendor to be appropriate and satisfies the use of sole source method. The CPO further stated that there are cases when the grantor questions the selected vendor and the agency would be asked to solicit further.

Effect:

GSA did not comply with 2 GAR §3112(b) and cannot assure that other vendors could not have provided the services required at a better value.

Recommendation:

The CPO should challenge agencies' requests for sole source on federally funded requisitions by requiring documentation of the vendor solicitation or express authorization from the grantor. Simply naming the vendor on the grant documents does not warrant sole source selection. Sufficient documentation to justify sole source procurement should include express authorization from the Federal awarding agency in response to a written request from the non-Federal agency as required in Title 2 US Code of Federal Regulations Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) § 200.320(f)(3).

GSA Response:

GSA disagreed with the finding. Based on the using agency, if GSA fails to follow the stipulation on the approved grant document, the department may be subject to loss of funds. Therefore, it is the understanding of GSA that the grantor reviews and determines the appropriateness of the grant application submitted by the department for approval.

OPA Response:

GSA should not depend on just the grantors' review process. Title 5 GCA §3112(b) is clear that any sole source request by a using agency should be accompanied by an explanation as to why no

other vendor will be suitable or acceptable to meet the need. A documentation to this effect should be in the procurement file.

g. Outdated Standard Operating Procedures

Criteria:

Title 5 GCA §5113(b) states that the CPO may adopt operational procedures governing the internal functions of their procurement operations.

Condition:

We learned that the last approved SOP was made effective in November 2003 when the CPO took her office at GSA, nearly 14 years ago.

Cause:

With the volume of work and other daily real-time needs at GSA, updating the SOP has become less of a priority. However, with the recent implementation of the OnBase system, the CPO mentioned that SOPs are now being updated as to the current processes. Completion of the formally written SOP is expected by mid 2018.

Effect:

One of the using agencies commented in our survey that GSA should revisit its SOPs. Another agency commented that GSA staff appear to differ on what their requirements are, which translates to the inconsistent application of GSA procurement practices.

Recommendation:

Formally update SOP. Well-written SOPs provide a way to communicate and apply consistent standards and practices within the organization. SOPs can save time by avoiding mistakes, reduce training costs, ensure consistent results, empower the workforce, and support quality goals. Updating GSA's SOPs is particularly important with the enactment of Public Law 34-05 in May 2017 relative to the periodic audit of each GovGuam agencies' SOPs and requiring such procedures to be posted on the respective agencies' websites.

GSA Response:

GSA disagreed with the finding. As stated during our discussion, we have updated some SOPs, but not for the entire processes.

OPA Response:

GSA provided documentations on "work-in-progress" SOPs only after the exit meeting. We retain our finding that SOPs are outdated until a formal updated SOP is submitted.

h. Other Matters

This section includes discussion on improvements GSA can make to further promote the underlying purposes of Guam Procurement Law and Regulations, which among other things, are to maximize the purchasing value of public funds, foster effective broad-based competition, and increase public confidence in government procurement.

h.1 - Avoid Considering a “No Quote” Response on the Three Quote Requirement

In 10 of 23³ (or 43%) sampled purchases, a “No Quote” response from a vendor was considered a quote. RFQs were sent to three or more vendors, however only one or two vendors offered price quotes, and the rest responded with “No Quote”. This means that a GSA Buyer has no choice but to choose the only vendor who provided a dollar quote, or choose between the only two vendors who provided dollar quotes, as the case may be. This poses a risk of abuse by soliciting from a favored vendor, as well as from vendors who would normally respond with “No Quote.” See Table 1.

Table 1. Sampled “No Quote” Responses

PO Number	Description	Quote 1	Quote 2	Quote 3
P166A00022	Monthly car rental	\$1,041.00	No Quote	No Quote
P166E00270*	Remove and replace 30 ton British thermal unit air conditioner	50,352.85	\$115,520.00	No Quote
P166A03420	Complete removal, overhaul, update of 4R75 transmission	2,499.00	No Quote	No Quote
P166A03423	Vehicle maintenance on ambulance	593.75	No Quote	No Quote
P166A04868	Monthly preventative maintenance for office ID badge-in system	600.00	2,000.00	No Quote
P166A04995	Renovation and relocation of bus transits	14,975.00	56,323.04	No Quote
P166A05378*	Office furniture	5,544.00	970.00	No Quote
P166A05546	17.5 cubic feet refrigerator	4,170.00	5,544.00	No Quote
P166A06305	Disassembly of office systems to storage	3,850.00	No Quote	No Quote
P166E00327**	Congregate meals for the Elderly Nutrition Program	81,900.00	104,013.00	No Quote

* Formal priced quotes were received after PO was issued.

** Made via emergency procurement.

This is of particular concern because of the rather large amount of samples we found with “No Quote.” However, we also found in 8 of the 23³ (or 35%) sampled small purchases, more than three quotations were solicited. This was GSA’s attempts to try to increase competition beyond the three-quote requirement of the procurement law by soliciting from 5 to 6 vendors.

For small purchases, 2 GAR §3111(c)(1) requires that no less than three positive written quotations from businesses shall be solicited, recorded, and placed in the procurement file. The plain language of the regulation does not require GSA to actually receive three positive quotations; it must only solicit and record the results in the procurement file.

³ Excluding competitive sealed bids and sole sourced POs.

The CPO emphasized that small businesses in Guam usually cannot afford to transact with the government because it normally takes 120 days for invoices to be paid. Further, the CPO indicated that some vendors are dismayed with GovGuam’s liquidated damages clause, which charges vendors ¼ of 1% per day for delayed deliveries when the vendors are also uncertain as to the availability of goods and services from their end.

While GSA is meeting the minimum requirement of three positive written quotations, we encourage that it strive further to obtain at least three positive written quotations with dollar values rather than settling for “No Quote” responses.

GSA disagreed with this suggestion and stated that it does its very best to acquire three price quotations by soliciting from at least 5 to 6 vendors. While we acknowledge that GSA tries to obtain more than three quotes, this should be done consistently at all times, and positive quotes with dollar values should be obtained as a best practice.

h.2 - Inquire with Vendor Reason for Not Submitting a Bid

For 4 of 11 (or 36%) sampled IFBs which were advertised, we noted that there were vendors who picked up the bid packet from GSA, but never submitted bids. We did not find documentation indicating whether GSA inquired why these vendors did not submit bids. On Table 2, the bidder in sample numbers 1 and 3 was the same vendor later awarded the contract. There are risks of collusion, price fixing among prospective bidders, market concentration dominated by a few major players, and markets involving standardized products or common product substitution. There is also the risk of protests if there are issues with the procurement unknown to GSA.

Table 2. Comparison of Vendor Pick-up vs. Actual Bid Submission

Sample Number	No. of Vendor Pick-Up	No. of Actual Bidder(s)	Non-Submitting Vendor(s)
#1	3	1	2
#3	4	1	3
#19	4	3	1
#23	3	2	1

The CPO mentioned that they do inquire with some vendors, but not all the time.

We suggest that GSA standardize the process to inquire with prospective bidders on why they did not submit a bid and document this in the record. Making this extra effort would help assess whether there are any concerns that should be clarified or corrected before an award. It is also a way to get inputs on how to improve future competitive bids.

GSA disagreed with this suggestion and stated that it calls prospective bidders to inquire why they did not submit a bid. During field work, the CPO mentioned that such inquiry was done only occasionally. OPA suggests that inquiry with possible vendors, and documentation of such inquiry, be done consistently at all times.

h.3 - Conduct Internal Annual Quality and Completeness Assessment of Procurement Records

Title 5 GCA §5249 requires that each procurement officer shall maintain a complete record of each procurement. This requirement supports a primary purpose of government procurement law at 5 GCA §5001(b)(8), which is to require public access to all aspects of procurement and protect the integrity of the procurement process.

The issue of incomplete procurement records sometimes appears in OPA procurement appeals. Procurement records should be able to speak on their own without further inquiry with any GSA personnel. During our initial inspection, we observed that there were relevant files and documentation missing from some of the procurement records. We experienced long waiting times before documents were finally provided and queries were answered. By not supporting the decisions of a procurement, the risk of not maintaining and assuring integrity in the procurement process, particularly in a protest or appeal, is present.

At the end, GSA was able to provide most of the documents in question, except for items or matters described in the findings noted above. GSA explained that their transition to the OnBase system in mid FY 2016 slowed down their procurement processes because scanning and labeling the files created added work for the employees. However, during our recent meeting with GSA, we observed that GSA adapted to OnBase. In fact, their internal procurement processing flow is being integrated with OnBase such as the online approvals and documentation within GSA. According to the CPO, they are still perfecting the use of OnBase and anticipate the full system implementation by mid 2018.

Even with the full implementation of OnBase system, we still suggest that GSA conduct an internal annual quality review of a sample of procurement records to determine its compliance with Guam Procurement Law and Regulations, as well as with adopted best practices. This will enable GSA to assess first-hand the quality of its procurement records. This annual assessment, including the detailed procedures to be performed, may be included in the SOP currently being developed by GSA.

GSA disagreed with the suggestion and stated that with the OnBase system, as well as its review and approval process, the Buyers approve the abstract wherein it indicates, “I certify that the foregoing statement of informal quotation is true and correct and prices charged are just, fair and reasonable, and the best obtainable for the described below.”

OPA believes that despite full automation, GSA should conduct an internal annual quality review and completeness assessment as a best practice to confirm whether its automated process is in place.

7. Conclusions

We concluded that GSA’s practices on:

- Procurement planning did not comply with Guam Procurement Law and Regulations;
- Competitive sealed bids did comply with the Guam Procurement Law and Regulations based on 11 POs related to nine competitive sealed bids tested; and
- Small purchases, sole source, and emergency procurements did not comply with the Guam Procurement Law and Regulations based on 29 POs tested.

8. Recommendations and Implementations Status

Please refer to the Recommendation portion within each Audit Finding above for detailed narratives of the following recommendations.

Recommendations	Addressee	Status	Action(s) Required
1) Strengthen relationships with using agencies through focused trainings, timely communication, and outreach.	CPO	Ongoing	Report on outreach efforts and focused trainings held.
2) Document and monitor effectiveness of GSA’s planning efforts.	CPO	Open	Report on detailed procurement planning mechanisms, and report on effectiveness of such planning measures.
3) Seek operational support from DOA Director to address issues of high turnover and insufficient staff resources.	CPO	Ongoing	Report on detailed actions taken to address issues of high turnover and insufficient manpower, including progress on those actions.
4) Implement an approval limit to fully delegate certain procurements.	CPO	Open	Report on approval limits, unless incorporated in the SOP.
5) Obtain written guidance from the Attorney General on whether emergency Procurement Law and Regulations are applicable to procurements with pending appeals, as well as how to process the necessary documents.	CPO	Open	Revisit updated findings presented based on documentations provided after the draft report was transmitted. Report on guidance sought from the Attorney General.

Recommendations	Addressee	Status	Action(s) Required
6) Challenge agencies' requests for sole source on federally funded requisitions. Require documentation as to solicitation or how a vendor was selected.	CPO	Open	Report that all sole source procurements had solicitations, including supporting documentation.
7) Formally update SOPs.	CPO	Ongoing	Provide copy of formally issued SOPs.
8) Update vendor business licenses within AS400 system.	DOA Director	Closed	This recommendation has been implemented as of report issue date.

9. Management Response and OPA Reply

A draft report was transmitted to the following parties on October 2 and 3, 2017:

1. CPO,
2. DOA Director, and
3. A Senator in the 34th Guam Legislature who is the Chairperson for Committee on Environment, Land, Agriculture, and Procurement Reform.

In October 2017, we met and briefed the above parties on the transmitted draft report findings and recommendations.

The CPO disagreed with all of our findings in this report. Her responses were incorporated within the findings sections. Due to the subsequent submissions of documents, we made some changes to the draft report. We also restructured the elements of the findings for clarity. See Appendix 1 for the CPO's response.

We received no disagreements on the draft report during our exit meeting with the DOA Director. The DOA Director agreed to annually update vendors' business licenses within the AS400 system. This recommendation has been implemented as of the date of this report.



Doris Flores Brooks, CPA, CGFM
Public Auditor
November 30, 2017

We included in this Appendix only the main body of the CPO’s response. The attachments will be made available to the public upon official request to OPA.

<p>Eddie Baza Calvo Governor</p> <p>Christine W. Baletto Director Dept. of Administration</p>		<p>GENERAL SERVICES AGENCY (Ahensian Setbision Hinirat) Department of Administration 148 Route 1 Marine Corps Drive, Piti, Guam 96915 Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217</p>	<p>Ray Tenorio Lieutenant Governor</p> <p>Vincent P. Arriola Deputy Director Dept. of Administration</p>
---	---	---	--

October 13, 2017

Doris Flores Brooks
Public Auditor, DPA, CGFM
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RE: DRAFT COMPLIANCE AUDIT REPORT – PART I PROCUREMENT PRACTICES

Dear Ms. Brooks:

Thank you for meeting with us on October 10, 2017. It was a pleasure to meet with you again together with your team Ms. Yuka Hechanova, Edlyn Dalisay, and Frederick Jones. The following is the response to the audit findings:

6a. Poor Procurement Planning

GSA disagrees with finding. The 5 GCA §5010 “Policy in Favor of Planned Procurement” made no mention that the Chief Procurement Officer is the individual responsible to plan for the needs of the government. GSA, takes a proactive approach, and issues circulars to remind the department/agency heads to comply with 5 GCA §5010. GSA is in no position to plan for the needs of any one department/agency, that planning rest with the appointing authority. Therefore, we disagree with the comment that: “GSA is presently not capable of carrying out the requirements of 5 GCA§5010.

On page 5 6a.1 you acknowledged that in FY 2016 GSA was able to consolidate purchases such as pharmaceutical supplies, rental of trash bin/containers and pick up services, medication, copier paper, office supplies, hotel venues, promotional items, etc. Therefore, it is evident that even with the failure of the departments/agencies to properly plan their needs in advance, GSA continues to comply with the requirement of 5 GCA §5001(b)(5)(6), by consolidating purchases, as you noted on page 5 a.1 paragraph 3 which states in part: “...GSA was able to consolidate purchases...”

It should be noted that your statement on page 5 first paragraph wherein it stated in part: “GSA is presently not capable of carrying out” contradicts the statement on the same page under a.1 the third paragraph which stated in part: “...GSA was able to consolidate purchases...”

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY

BY: JMB

DATE: 10-16-17

COMMITTED TO EXCELLENCE TIME: 5:00 AM PM

In fact, my comment on planned procurement is supported by your office. Based on the evaluation sheet (rating sheet) it noted 6 criteria. On item #5 it stated in part: “Given that GovGuam agencies/departments are ultimately responsible for their annual procurement plans” (Refer to Attachment 1)

6a.1 GSA’s Current Procurement Planning Mechanism is Not Effective

Again, we disagree with finding. As you noted on page 5 6a.1 on paragraph 3 GSA was able to consolidate purchases such as pharmaceutical supplies, rental of trash bin/containers and pick up services, medication, copier paper, office supplies, hotel venues, promotional items, etc. These items were procured through competitive sealed bids and were initiated based on GSA’s past knowledge and experience and not through the agencies submission of their annual procurement plans. Again, based on your finding, it is noted that GSA is able to consolidate purchases based on its knowledge and experience of some of the reoccurring needs of the departments/agencies not through submission of the annual procurement plan.

6a.2 Small Purchases as Most Utilized Source Selection Method is Inefficient

We disagree with finding. If the request is less than the \$15k threshold and the commodities are different then what is inefficient about the process. The procurement statute and regulations established a threshold for small purchases less than \$15k. Again, based on GSA’s review of the request(s) submitted by the departments/agencies if the items are of the like, GSA will consolidate the request(s) and issue a formal solicitation. Attached is a spreadsheet that indicates based on the 30 sampled purchase orders you will notice that the commodities are different and therefore GSA is unable to consolidate the request(s). (Refer to Attachment 2)

In addition, the Legislature recognizes the effectiveness of small purchase since they have recently approved to increase the threshold for small purchase from less than \$15k to now less than \$25k. (Refer to Attachment 3)

6a.3 Most POs Issued from August through October Due to Poor Planning

We disagree with finding. GSA issued GSA Circular No. 2016-009 dated May 09, 2016 to remind departments/agencies with the established procurement deadlines as we approach the fiscal year end. Again, GSA based on our records strives to continue in its effort to be proactive by issuing circulars as a reminder to all departments/agencies to plan their purchases in advance. It shall be noted that the poor planning does not rest with GSA but with the departments/agencies. (Refer to Attachment 4)

Again, my comment on planned procurement is supported by your office. Based on the evaluation sheet (rating sheet) it noted 6 criteria. On item #5 it stated in part: “Given that GovGuam agencies/departments are ultimately responsible for their annual procurement plans”

6a.4 Frustration Expressed by Using Agencies on Procurement Planning

We disagree with finding. Again, the 5 GCA §5010 “Policy in Favor of Planned Procurement” made no mention that the Chief Procurement Officer is the individual responsible to plan for the needs of the government. GSA, in a proactive approach, issues circulars to remind the department/agency heads to comply with 5 GCA §5010. GSA is in no position to plan for the needs of any one department/agency, that planning rest with the appointing authority.

Based on the overall rating for GSA on how effective and efficient is GSA, in terms of assisting the agency in their procurement needs, GSA was rated “Average”. With the shortage of procurement staff, maintaining an “Average” rating is evident that GSA is doing its best in accommodating the needs of the departments/agencies. (Refer to Attachment 1)

6a.5 Prior OPA Reports

We disagree with finding. Based on the OPA Report No. 11-12 issued in December 2011, GSA disagreed with the finding and attached a spreadsheet to support the reason for disagreeing.

6b. Competitive Sealed Bids Appropriately Carried Out

We agree with finding. Based on the recommendation on best practices, GSA provided Invitation for Bid (IFB) files to Ms. Edlyn Dalisay during the field audit process wherein GSA does periodically call prospective bidders to inquire the reason for not submitting a bid. Due to the shortage of staff we are unable to call for every single IFB. Therefore, the recommendation noted on this draft report is already being undertaken by GSA. (Refer to Attachment 5)

6c. Inappropriate Award for Small Purchase

We disagree with finding. GSA solicited three written request for quotations, however, due to the expiration of federal funds, GSA followed up via telephone and the vendor response was they can provide the quotation now and a written quotation to follow as soon as possible. The procurement records showed that the written quotations were received by GSA in a timely manner.

6d. Validity of Business License

We disagree with finding. The Division of Accounts, under the Department of Administration controls the vendor listing for GSA. Therefore, it is understood by GSA that the Division of Accounts does its quality assurance on the updating of vendor licenses annually.

6e. Loopholes in Laws and Regulations on Emergency Procurements

We disagree with finding. The 2 of 4 (or 50%) sampled emergency purchases did comply with the laws and regulations on emergency procurement. It is evident based on the decision of the appeal one of the appeals was a settlement between GSA and the appellant and GSA was successful on the other appeal.

6e.1 Telecommunication Services

We disagree with finding. Attached is a copy of a request for emergency procurement submitted by the acting Chief Technology Officer and a copy of a Certificate of Emergency approved by the Governor of Guam. The certification stated in part: "...until a resolution of the court cases." Therefore, there is a blanket certificate of emergency until such time a resolution of the court cases. (Refer to Attachment 6)

6e.2 Elderly Nutrition Program

We disagree with finding. Pursuant to 5 GCA §5215 states in part "...no emergency may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the 30-day period immediately following the procurement." Based on the opinion issued by the Office of the Attorney General it is up to the Chief Procurement Officer to decide on the length of time for services under emergency procurement. Attached is a copy of an opinion issued by the Office of the Attorney General dated August 30, 1994, whether the statute also applies to services. (Refer to Attachment 7).

While we agree with the finding regarding the perjury statement it does not fully explain what occurs within the process. For example, time constraint (when GSA receives the emergency request from the department); forwarding for the certification of emergency for approval by the Governor; soliciting to at least (3) vendors; etc...we agree that we inadvertently left out the perjury statement on the certification.

6f. No Solicitation Made for a Vendor Named on Federally-Funded Project

We disagree with finding. Based on the using agency, if GSA fails to follow the stipulation on the approved grant document, the department may be subject to loss of funds. Therefore, it is the understanding of GSA that the grantor reviews and determines the appropriateness of the grant application submitted by the department for approval.

As per our discussion on October 10, 2017, there are instances wherein the grantor will indicate that the vendor named is only a suggestion or a recommended vendor. If the approved grant document is written indicating that the vendor named is only a recommended or suggested source, and the department argues that the grant application indicates the vendor name to be awarded, GSA will instruct the department to validate or confirm with the grantor agency that they approve to award the purchase order to that

particular vendor via email or a written correspondence. GSA will not proceed with the award until the grantor confirms the requests of the department, otherwise GSA will solicit.

6g. Outdated Standard Operating Procedures

We disagree with finding. As stated during our discussions, we have updated some standard operating procedures, but not for the entire processes. I confirmed that we will be completing the entire update on or before mid FY 2018. Attached are some of the SOPs that were updated as our systems improved. (Refer at Attachment 8)

6h.1 Avoid Considering a “No Quote” Response on the Three Quote Requirement

We disagree with comment. To avoid considering a “No Quote” response and to acquire a three price quote response. As you stated in part on page 13 paragraph 2 “...more than three requests for quotation were solicited. This was GSA’s attempt to try to increase competition beyond the three-quote requirement of the procurement law by soliciting from five to six vendors.” Therefore, it is evident, based on your review that GSA does its very best to acquire three price quotation by soliciting from at least five or six vendors. Again, based on inquires made to several vendors as to why they do not want to submit a quotation to GSA, the response we receive from vendor, is that they do not want to do business with the government because of the delay in vendor payments.

6h.2. Inquire with Vendor Reason for Not Submitting a Bid

We disagree with comment. Currently, GSA does randomly call prospective bidders to inquire why they did not submit a bid. Therefore, as per my discussion with the field auditors we extracted procurement files to show that GSA does call on occasion to inquire why prospective bidders do not submit bids. We do not understand why this comment remains on this report since GSA has shown evidence that this is currently being undertaken. (Refer to Attachment 5)

6h.3. Conduct Internal Annual Quality and Completeness Assessment of Procurement Records

We disagree with comment. Currently, with the OnBase System, GSA through its review and approval process, the buyers approve the abstract wherein it indicates “I certify that the foregoing statement of informal quotation is true and correct and prices charged are just, fair and reasonable, and the best obtainable for the described below.”

In addition, based on the automated procurement process with the OnBase System fully in place, GSA has provided a copy of the automated process cycle to the field auditors during the field work. The automated procurement process will not allow the buyers to proceed with a purchase order if only 2 quotations were received; the automated procurement system has a status “Ready to PO” that indicates to the buyer that 3 responses was received for a request; if the procurement is for a sole source and the buyer fails to attach the inter-office memorandum the system will not allow the buyer to approve the abstract without

the attachments in order to continue to the next step of the process which is the purchase order file; etc...

7. Conclusions

- We disagree with comment. Again, the 5 GCA §5010 “Policy in Favor of Planned Procurement” made no mention that the Chief Procurement Officer is the individual responsible to plan for the needs of the government. GSA, in a proactive approach, issues circulars to remind the department/agency heads to comply with 5 GCA §5010. GSA is in no position to plan for the needs of any one department/agency, that planning rest with the appointing authority.

In fact, my comment on planned procurement is supported by your office. Based on the evaluation sheet (rating sheet) it noted 6 criteria. On item #5 it stated in part “Given that GovGuam agencies/departments are **ultimately** responsible for their annual procurement plans”

- We agree with comment.
- We disagree with comment. As you stated in part on page 13 paragraph 2 “....more than three requests for quotation were solicited. This was GSA’s attempt to try to increase competition beyond the three-quote requirement of the procurement law by soliciting from five to six vendors.” Therefore, it is evident, based on your review that GSA does its very best to acquire three price quotation by soliciting from at least five or six vendors. We have to agree that businesses are not required to submit a price quotation.

Again, GSA solicited three written request for quotations, however, due to the expiration of federal funds, GSA followed up via telephone and the vendor response was they can provide the quotation verbally and a written quotation to follow as soon as possible. The procurement records showed that the written quotations were received by GSA in a timely manner.

9. Recommendations To GSA:

- a) Reinforce GovGuam’s centralized procurement that will focus on annual planning.

Response: We disagree with recommendation. GSA is able to carry out both competitive sealed bids and small purchases.

Seek Operational Support from DOA.

Response: This recommendation is currently being undertaken by GSA.

Implement Approval Limit to Fully Delegate Certain Procurements.

Response: We disagree with recommendation. Until adequate classified procurement personnel is in place, we can then begin to delegate with **confidence** the minimum threshold for supervisor.

Conduct Focused Trainings for the Agencies.

Response: This recommendation is currently being undertaken by GSA. In addition, GSA currently authorizes the departments/agencies to get one price quotation for budgetary purpose. As discussed during our meeting on October 10, 2017, it is very difficult for the procurement staff to respond to their emails and phone calls in a timely manner, however the staff does respond. Each buyer is assigned sometimes 6 to 7 departments depending on the number of buyers we have at any given time. GSA is able to monitor effectiveness and review procedures to measure success on cost savings, resource utilization, etc., as well as identify weaknesses if we have adequate staff.

- b) Challenge agencies' request for sole source on federally funded requisitions. Required documentation as to solicitation or how a vendor was selected.

Response: This recommendation is currently being undertaken by GSA. As per our discussion on October 10, 2017, there are instances wherein the grantor will indicate that the vendor named is only a suggestion or a recommended vendor. If the approved grant document is written indicating that the vendor named is only a recommended or suggested source, and the department argues that the grant application indicates the vendor name to be awarded, GSA will instruct the department to validate or confirm with the grantor agency that they approve to award the purchase order to that particular vendor. GSA will not proceed with the award until the grantor confirms the requests of the department, otherwise GSA will solicit.

- c) Obtain written guidance from Attorney General on how to process emergency procurement with pending appeals. Also, clarify the 30-day requirement for emergency procurement of services.

Response: This recommendation has been done by GSA. Attached is a copy of an opinion issued by the Office of the Attorney General dated August 30, 1994. In addition, on August 28, 2017 GSA requested guidance on the on-going telecommunication court case with the Office of the Attorney General. Attached is a copy of the respond dated August 28, 2017. (Refer to Attachment 7)

- d) Implement best practices, such as: (a) obtain at least three vendor quotes with dollar value for small purchases; (b) inquire with vendor and document the reason for not submitting a bid for competitive sealed bids; and (c) conduct internal annual quality and completeness assessment of procurement records.

Response: These recommendations are already being undertaken by GSA.

- e) Formally update SOPs.

Response: This recommendation is on-going and to be completed on or before mid FY2018.

It was with great pleasure working with your team namely: Ms. Yuka Hechanova, Ms. Edlyn Dalisay, and Mr. Frederick Jones. If you should need any clarification based on our response please do not hesitate to contact me at 475-1715.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

No. of Agencies Responded: 13 out of 19

<p>Please rate on a scale of 1 to 10 (10 being the highest or most favorable) your level of customer satisfaction in relation to:</p> <p>Purchase Order (PO) No.: P166AXXXXXX PO Date: XX/XX/XX Description: XXX Agency/Department: XXX</p>	<p><u>Rating (1 to 10)</u></p> <p><i>Numbers are average from responses received</i></p>
<p>1. Product satisfaction – Did the goods and/or services delivered by the selected vendor meets the agency’s requirement? <i>(Rating of 1 could mean extreme dissatisfaction such that goods had to be returned or complaints were made on the quality of services, while rating of 10 could mean extremely satisfied)</i></p>	<p>8</p>
<p>2. Timeliness – Were the goods and/or services delivered in a timely manner? <i>(Rating of 1 could mean delivery was made well passed the agency’s deadline, while rating of 10 could mean delivery was made well in advance)</i></p>	<p>7</p>
<p>3. Communication – Has there been an open and professional communications between your agency and the GSA personnel who handled this purchase order? <i>(Rating of 1 could mean extreme dissatisfaction with GSA personnel, while rating of 10 could mean extreme satisfaction with GSA personnel)</i></p>	<p>6</p>
<p>4. Overall rating for GSA – How effective and efficient is GSA in terms of assisting your agency in your procurement needs? <i>(This is your overall rating for GSA, not just for the identified PO)</i></p>	<p>5</p>

5. Given that GovGuam agencies/departments are ultimately responsible for their annual procurement plans, please describe or comment how GSA assists your agency in achieving smooth processing of purchases throughout each fiscal year (or at least for FY 2016).
(From 13 agencies, three did not provide comment on this inquiry – see page 2 of 3 for detailed responses)

6. Please provide for any recommendations you may have in terms of how GSA can improve its procurement function for GovGuam, or at least for your agency.
(From 13 agencies, three did not provide comment on this inquiry – see page 2 of 3 for detailed responses)

	#5 Comment on How GSA Assisted in Annual Procurement Plan	#6 Agency Recommendations to GSA
1	GSA awards PO to the vendors of their choice, despite the agency’s solicitation of three price quotes.	<ul style="list-style-type: none"> - GSA should honor the lowest quote vendor that the agencies submit to GSA based on the agency’s solicitation. In this way, PO will be processed faster. GSA is wasting time for redoing another solicitation.
2	<p>In FY 2016, agency had requisitions that were not processed by GSA. Because of this, there was about \$30K lost funds in FY 2016 that the agency had to reprocess in FY 2017.</p> <p>The required submission of annual procurement plan is a waste of time for it is not being followed by GSA.</p>	<ul style="list-style-type: none"> - Hire more GSA Buyers. - Revisit the process where only the CPO can release the PO because it take months before the PO is actually released. - GSA should be more proactive. They require all agencies to acknowledge their emails but agencies do not get the same treatment. - Ensure timelines are met, especially those related to federal grants. - Someone has to step in at GSA to find out what is the major problem why processing requisitions takes very long.
3	In FY 2016, agency had requisitions that were not processed by GSA despite early submissions.	<ul style="list-style-type: none"> - Consistent attention to agency’s needs is a key. - Revisit processes from start to finish. There are disconnects. - Identify bottlenecks that need to be filled in for more timely processing and efficiency. - Hire more staff sufficient to the number of agencies under its purview. Identify workloads to provide quality services to agencies, thereby attaining best value for government’s money.
4	GSA is hard to contact to make a follow up.	<ul style="list-style-type: none"> - Meet PO issuance timeline and respond to calls/emails.
5	On a rare instance, an urgent requisition is done immediately. However, regular requests have not been smooth. This is an ongoing challenge for the agency for several years which appears to be the norm at GSA. GSA’s shortage of staff has made it difficult for the agency to meet its daily procurement needs.	<ul style="list-style-type: none"> - Hire additional staffs. - Have an open communication. Responses have been slow despite numerous follow-ups, leaving urgent requests at standstill. - Process documents within a reasonable time. The delays in the requisitions have caused increased direct payments, lost federal grants, and lapses in local funds. - Revisit GSA’s Standard Operating Procedures. Specifically on the three quotes requirement for small purchases. Implement a timeframe for vendors to respond or consider that vendor a “no quote/unresponsive” as a “positive quote”.

	#5 Comment on How GSA Assisted in Annual Procurement Plan	#6 Agency Recommendations to GSA
6	GSA held the first training on IFB process which helped the agency process correct documents without the constant back and forth.	<ul style="list-style-type: none"> - Timely process requisitions. Otherwise, local funds and federal grants are not utilized well. - Alert agency for returned requisitions. - Allow vendors to obtain goods from vendors instead of GSA Tenda. Many times, vendors offer cheaper prices and better quality.
7	No comment on how GSA assisted in annual procurement plan.	<ul style="list-style-type: none"> - Meet PO issuance timeline and respond to calls/emails.
8	The agency received only a small fraction of its requisitions and still waiting for several needed goods and services. The agency staff had to advance money for one of the needed services and was only paid back after a lot of chasing. Agencies’ requisitions are mostly federally funded and is tired of reporting why it did not complete the project.	<ul style="list-style-type: none"> - GSA should provide clear directions/instructions on what exactly it allows or disallows. GSA staffs appear to have differing ideas on what the requirements are. - GSA staff should have a work objective on what and how much needs to be accomplished. - Be more proactive in communicating with agencies as to concerns on the requisition. Do not wait for a follow up from the agency only to find out there are issues. Agency does not need to follow up each time to ensure completion. If this is the case, then process is not working. - Agency welcomes the opportunity to sit down with GSA personnel and see how communication and PO processing can be improved.
9	No comment on how GSA assisted in annual procurement plan.	<ul style="list-style-type: none"> - Hire more GSA staff and improve on communication.
10	Agency received no assistance to achieve smooth processing of purchases.	<ul style="list-style-type: none"> - Hire permanent qualified personnel that can assist agencies in timely manner. GSA has a high employee turnover. There is no continuity because employees are on a temporary basis and not knowledgeable on procurement process.



**General Services Agency
Procurement Practices
OPA Report No. 17-05, November 2017**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Frederick Jones, Audit Staff
Edlyn Dalisay, CPA, Auditor In-Charge
Yukari Hechanova, CPA, CIA, CGFM, CGAP, CGFM, Audit Supervisor
Doris Flores Brooks, CPA, CGFM, Public Auditor

MISSION STATEMENT

**To ensure public trust and assure good governance,
we conduct audits and administer procurement appeals,
independently, impartially, and with integrity.**

VISION

**The Government of Guam is the model for good governance in the Pacific.
OPA is 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.