EXECUTIVE SUMMARY
Guam Economic Development Authority's Qualifying Certificate Program
OPA Report No. 13-02, August 2013

Our audit of the Guam Economic Development Authority (GEDA)'s Qualifying Certificate (QC) Program revealed: (1) the total financial impact (foregone tax revenues versus economic benefit to Guam) of the QC program is unknown; (2) QCs awarded to the insurance industry are more generous and are awarded regardless of the economic impact to the Government of Guam (GovGuam); (3) a tax benefit may have been granted to an ineligible QC beneficiary; and (4) tax benefits were not processed in accordance with law. These conditions occurred because: GEDA did not develop a reliable and complete database and did not utilize QC program statistics; part of QC's law intent was to establish Guam as a financial/insurance center for the Pacific; GEDA did not verify whether beneficiaries met certain requirements; the Department of Revenue and Taxation (DRT) processed applications without independent review and verification; and both GEDA and DRT were untimely in their review of beneficiary compliance to QC terms and application of tax benefits.

Once deemed eligible, GEDA provides a QC applicant the maximum tax benefits allowed under law. Of the 23 QC beneficiaries in existence, we tested six and determined that GovGuam provided tax benefits of at least $21.7 million (M) from 2008 to 2011. Tax information for some of these six beneficiaries was incomplete due to missing information from DRT. The tax benefits consisted of $15.4M in income tax rebates, $6M in Gross Receipt Tax (GRT) abatements, and $358 thousand in real property tax abatements. By industry, of this $21.7M, the lion's share (78% or $17.1M) of the tax benefits were granted to the insurance QC beneficiaries. In its September 2011 audit report, the Department of the Interior, Office of Inspector General, concluded, and we concur, that the Legislature granted GEDA sufficient flexibility to decide the terms and conditions of QCs and did not limit GEDA to only grant QCs for the maximum allowable level of tax benefits. However, it has been GEDA's practice to grant the maximum benefits under the law. Additionally, GEDA management stated that despite their opposition, the QC law was expanded to include domestic insurance beneficiaries.

Financial Impact of QC Program is Unknown

Despite the QC program being in effect for nearly 50 years, we could not determine the positive or negative financial impact of the QC program due to GEDA and DRT's unverifiable and incomplete database. Specifically, we found that: (1) GEDA did not independently verify certain information provided by QC beneficiaries; (2) GEDA has yet to provide us access to the database to enable us to verify information from source documents; and (3) GEDA and DRT did not collaborate to compile information on the amount of forgone tax revenues as a result of issuing QCs. Under the current administration, GEDA is now in the process of developing QC-related statistics.

GEDA also indicated that the amount of forgone taxes should come from DRT due to the confidential nature of taxes and DRT's responsibility of authorizing the amount of tax benefits. For the six beneficiaries tested, we independently compiled tax data but were unable to reconcile with the DRT-provided data. DRT was unable to provide 2011 income tax returns for Beneficiary 3 and 5. DRT was unable to provide Beneficiary 1 and 2's GRT returns from February to March, May, and July to December 2011.

QCs Awarded to Insurance Industry Regardless of Economic Impact to GovGuam
The QC law provides generous tax benefits to the insurance industry than other industries we reviewed. This includes the ability for their QCs to be automatically renewed for an additional 20 years if found to be in good standing. Despite the development of an economic model and the results calculated by such model, GEDA stated that they could not prevent an eligible applicant from receiving all tax benefits allowed by law. For example, GEDA calculated one QC to provide \$6.4M in taxes over a 20-year period; however, the forgone tax revenues to GovGuam over the same period amounted to \$101.6M, for an economic loss of \$95.2M. A moratorium on the QC program from 2007 to 2008 reflected the need for improvements on the existing provisions of the program. Although the moratorium was lifted, some issues on the QC law such as the automatic renewal clause for insurance QC beneficiaries remained unaddressed. As stated earlier, GEDA management opposed the amendment to include domestic insurance beneficiaries.

Ineligible Benefit May Have Been Granted to a QC Beneficiary
GEDA and DRT staff may have granted a tax benefit to an insurance QC beneficiary not in accordance with law. We found GEDA authorized a 100% rebate to this beneficiary although its policies were not issued through a licensed broker. We also found DRT processed the rebate without independent verification of whether the beneficiary was entitled to receive such benefit. This occurred due to lack of oversight and understanding of the benefit requirements by GEDA and DRT.

Tax Benefits Not Processed in Accordance with Legal Requirements
As much as \$9.1M of income tax rebates were incorrectly applied by QC beneficiaries and \$5.5M in GRT taxes were exempted instead of abated. We found no evidence that DRT verified such amounts. Specifically, income tax rebates were used as off-sets and GRTs were exempted without DRT's certification or authorization as required by laws and regulations. These deficiencies are attributed to no cash in the Income Tax Rebate Fund; GEDA and DRT's untimely review; and DRT's lack of monitoring and review.

Conclusion and Recommendations
To improve the QC program's effectiveness, we recommend: (1) GEDA and DRT collaborate to compile, analyze, and post data on the QC program; (2) the Governor, the Legislature, and the GEDA and DRT Directors to revisit the QC law for elimination of the application of QCs to the domestic insurance industry; and (3) DRT, as the tax administrator, to perform its own due diligence in determining the appropriate tax benefits of eligible QC beneficiaries.

DFBrooks

Doris Flores Brooks, CPA, CGFM
Public Auditor