



OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

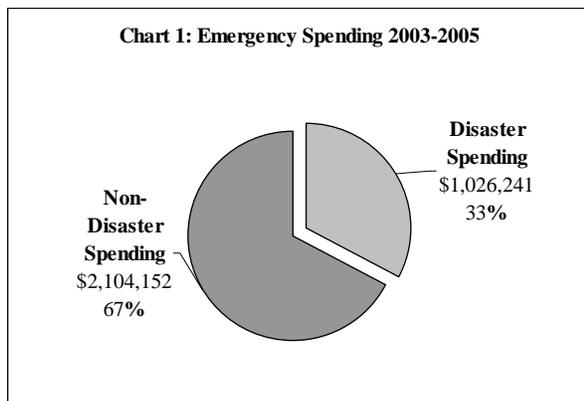
Government of Guam - Emergency Executive Orders and Certificates of Emergency
Report No. 06-11, October 2006

This report represents the results of our performance audit of the government of Guam's emergency Executive Orders and Certificates of Emergency for the 33-month period from April 2003 through December 2005.

We found that the laws and regulations that define conditions for emergency Executive Orders (EO) and Certificates of Emergency (Certificates) are broad and allow much latitude and discretion. This latitude has resulted in a trend of annual increases in the number of emergency EOs and Certificates issued which has increased costs to the General Fund and the use of emergency procurement. No funding source was identified for emergency transfers as mandated; therefore, emergency transfers were financed directly from the General Fund causing a further increase in the General Fund deficit. Unfunded FY 2005 emergency transfers increased the deficit by \$2.25 million.

Emergency Executive Orders

In the last three years, the cost and the number of emergency EOs have increased significantly. Of the 35 emergency EOs issued during this three-year period, 18 EOs authorized the transfer of up to \$4.5 million from the General Fund. Of the authorized \$4.5 million, only \$4 million was actually transferred. Of this amount, an estimated \$3.1 million was encumbered and expended:



➤ 33%, or \$1 million, was spent for disaster related emergencies including natural disasters and other catastrophic events, and

➤ 67%, or \$2.1 million, was spent for non-disaster related emergencies including school bus repair, overtime litigation, and agency operations.

We found that mandated reports of how emergency transfers are spent were not submitted until requested, and no expiration dates are set for the use of emergency funds. Of the \$4 million transferred, \$443,000 remains encumbered, and \$421,000 remains unencumbered and unexpended in five

emergency accounts. Several of these accounts have remained open for as long as 15 months.

Certificates of Emergency

In reviewing the 37 Certificates, we found that:

- Certificates were difficult to track because they are not numbered, centrally filed, and recorded.
- Neither the Legislature nor the Governor's Office had a complete listing of the Certificates issued, which limited the scope of our review of the cost and nature of goods, supplies, and services procured via Certificates.
- Emergency Certificates duplicate the emergency procurement component of the emergency EOs and provide less accountability and transparency.

Emergency Procurement Activities

In the review of the Office of the Attorney General's (OAG) emergency procurement activity and bid invitation for permanent lease, we found that evidence supported allegations of restrictive bid specifications.

On April 12, 2005, GSA advertised a bid invitation for the permanent lease of office space for the OAG. The bidder's register reported that of the eight vendors who picked up a bid package, only one vendor responded and submitted a bid.

In March and April 2005, the OAG obtained temporary office space through emergency procurement as a result of the OAG's eviction from the Judicial Center in Hagatna. Prior to occupying the temporary office space, the OAG solicited vendors and prepared specifications, which described the requirements of the office space sought. We determined that the specifications of the permanent bid were tailored to exclude other interested landlords, unlike the specifications issued during the emergency periods of March and April. In the permanent bid, five specifications were restrictive and were either new or altered from the emergency period. The five specifications included the (1) location, (2) exclusive occupancy, (3) building type, (4) outside presentation area, and (5) vehicle service bay requirements.

The only vendor¹ who responded and received the bid award was the same vendor who received the emergency contracts for March and April 2005, therefore the restrictive bid allowed the OAG to limit competition and continue to operate in its current location.

Had the OAG stayed in its two previous locations and paid rent to the Judicial Center, it would have spent approximately \$2.44 per sq. ft. or \$715,238 annually for 24,700 sq. ft, compared to \$1.75 per sq. ft. or \$651,000 annually for 31,000 sq. ft. of office space in the Justice Building. As a result, the OAG received an opportunity savings of \$64,238. These savings may have been higher, had the bid not been restrictive and competition limited.

Recommendations

Four recommendations to the Guam Legislature were to (1) eliminate the use of Certificates, (2) impose time provisions for the use of emergency funds, (3) amend the five-day reporting requirement to quarterly reporting, and (4) require the Governor to seek legislative approval when money is requested for non-disaster related emergencies.

Two recommendations to the Department of Administration (DOA) were to (1) limit the life of an emergency account to a maximum of one year and (2) require GSA to create a standard template for office lease to ensure non-restrictive bid specifications.

A draft copy of this report was transmitted to the Speaker of the 28th Guam Legislature and the Director of DOA for formal response, and a courtesy copy was transmitted to the Governor. In DOA's formal response they expressed concerns with the recommendation to impose time provisions for emergency funding, although they did not indicate whether or not they concurred. See DOA's formal response at Appendix 10. No response was available from the Speaker.

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Doris Flores Brooks, CPA, CGFM
Public Auditor

¹ As a matter of full disclosure, the Public Auditor acknowledges that she owns stock with the awarded vendor.