

**Government of Guam  
Emergency Executive Orders and  
Certificates of Emergency**

**Performance Audit  
April 9, 2003 through December 31, 2005**

**OPA Report No. 06-11  
October 2006**



OFFICE OF THE PUBLIC AUDITOR

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### EXECUTIVE SUMMARY

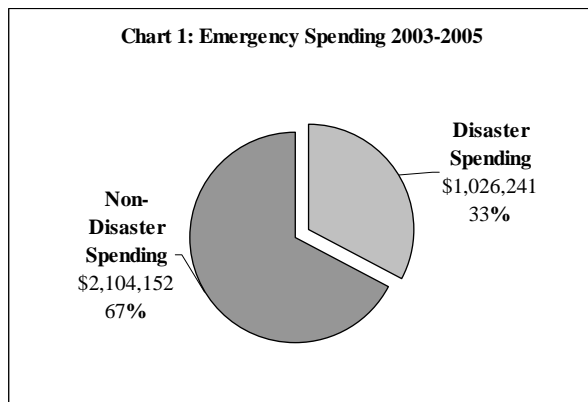
Government of Guam - Emergency Executive Orders and Certificates of Emergency  
Report No. 06-11, October 2006

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 vendor<sup>1</sup> 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 28<sup>th</sup> 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.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM  
Public Auditor

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



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# Contents

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	Page
<b>Introduction.....</b>	<b>1</b>
Background.....	1
<b>Results of Audit.....</b>	<b>3</b>
Emergency Spending through Executive Orders.....	5
Emergency Procurement through Executive Orders and Certificates .....	10
Emergency Re-location: Office of the Attorney General .....	13
<b>Conclusion .....</b>	<b>22</b>
<b>Recommendations.....</b>	<b>24</b>
<b>Management Response and OPA Reply .....</b>	<b>25</b>
<b>Appendices:</b>	
1: Classification of Monetary Impact .....	26
2: Scope and Methodology .....	27
3: Prior Audit Coverage.....	28
4: Emergency Executive Orders – April 2003 through December 2005 .....	30
5: State of California Categories of Emergency .....	39
6: Frequency of Emergency Procurement.....	40
7: Cost of Guam Public Transit System 27-Month Certificates .....	41
8: Office of Attorney General Timeline of Events .....	43
9: Office of Attorney General Response to OPA Inquiry .....	44
10:DOA Official Management Response .....	50



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# Introduction

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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. The audit was initiated (1) to monitor compliance with 5 G.C.A. § 22402, which requires emergency expenditures to be reported to the Guam Legislature and the Office of the Public Auditor (OPA), and (2) at the request of a Senator in the 28<sup>th</sup> Guam Legislature.

The objectives of our audit were to determine whether or not:

- Emergency Executive Orders and Certificates of Emergency were authorized in accordance with required rules and regulations.
- Emergency procurement purchases were in compliance with Guam procurement laws and regulations.
- Laws and regulations relative to emergency declarations were designed to promote an efficient use of government funds.
- Evidence supports allegations regarding restrictive bid specifications for the Office of Attorney General’s office rental related to emergency relocation.

The audit scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

## Background

### Executive Orders and Certificates of Emergency

The Governor of Guam may declare an emergency situation and approve the transfer of emergency funds and/or the use of emergency procurement, through an Executive Order (EO) or a Certificate of Emergency (Certificate).

Executive Orders declaring emergencies, may authorize the transfer of emergency funds and/or allow the use of emergency procurement, whereas, Certificates may only allow the use of emergency procurement.

Emergency fund transfers and emergency procurement are designed to assist government agencies faced with emergency situations such as disaster and non-disaster events, which can entail



**Image 1:** Tropical Storm Tingting dumped record breaking rains on Guam and caused extensive flooding and mudslides across the island. As a result, the Governor declared an emergency through an EO transferring emergency funds and authorizing emergency procurement in April 2003.

sudden and unexpected demands for high levels of funding, services, and materials.

Over the 33-month scope of our audit, from April 2003 through December 2005, the Governor of Guam issued 72 separate emergency EOs and Certificates, 35 EOs and 37 Certificates. EOs are issued when civil defense, public safety, and healthcare emergencies are identified, whereas Certificates are issued when threats to public health, welfare, or safety exist.<sup>1</sup>

Of the 35 emergency EOs issued, all but three (EO 2005-03 Guam Police Department operational needs, EO 2004-16 and EO 2004-18 Guam Public School System overtime authorizations) authorized emergency procurement, while only 18 authorized emergency fund transfers. All 37 Certificates authorized emergency procurement, as Certificates are not authorized to transfer money.

### **Emergency Fund Transfers authorized by Executive Order**

5 G.C.A. § 22402 authorizes the Governor to transfer up to \$250,000 from General Fund appropriations for emergencies. This authority was repealed by Public Law (P.L.) 26-01 in March 2001, but was restored in April 2003 by P.L. 27-06.

According to 5 G.C.A. § 22402, whenever the transfer authorization is used, “The Governor shall provide a written report of the expenditures of such funds and its SOURCE to the Guam Legislature and the Public Auditor within five (5) days of such transactions.”

### **Emergency Procurement authorized by Executive Order and Certificate of Emergency**

According to 5 G.C.A. § 5215, the Governor must approve the use of emergency procurement through a Certificate or an EO. The Governor shall declare an emergency and approve the use of emergency procurement via EO unless the Chief Procurement Officer (CPO), the Director of Public Works, or the head of the purchasing agency (i.e. the head of an entity) initiates a Certificate for the Governor’s approval.

Law requires that copies of approved Certificates be sent to the Speaker and the Governor prior to any award.

Emergency procurement authorized by EOs or Certificates are restricted to an amount of goods or supplies necessary to meet an emergency for the 30-day period immediately following the award of the emergency procurement.

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<sup>1</sup> 5 G.C.A § 22402 & 5 G.C.A. § 5215

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# Results of Audit

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We found that the laws and regulations that define conditions for emergencies for Executive Orders and Certificates of Emergency are broad and allow much latitude and discretion. This latitude has resulted in a trend of annual increases in the number of EOs and Certificates issued, which has increased costs to the General Fund and the use of emergency procurement from 2003 through 2005. Over the 33-month audit scope period from April 2003 through December 2005, 35 emergency EOs and 37 Certificates were issued.

Of the 35 EOs issued, 18 authorized the transfer of up to \$4.5 million in emergency funds to 11 different agencies. In reviewing these amounts, we found that:

- Only \$4 million was actually transferred, of which an estimated \$3.1 million was encumbered and expended, and \$443,000 remains encumbered but unexpended. Of the \$3.1 million expended and encumbered:
  - 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 which include school bus repair, overtime litigation, and agency operations.
- No expiration dates are set for the use of emergency funds. Of the \$4 million transferred, \$421,000 still remains in five emergency accounts. Several of these accounts have remained open for as long as 15 months.
- No funding sources were identified for emergency transfers as mandated; therefore, emergency transfers were financed directly from the General Fund and contributed to increasing the General Fund's deficit. FY 2005 emergency transfers increased the deficit by \$2.25 million.
- Mandated reports, which give an account of how emergency transfers are spent, were not submitted to the Office of the Public Auditor until requested.

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 had a complete listing or count of the Certificates issued. As a result, it was not possible to determine the total number of Certificates issued over the 33-month scope period, which hindered our review of the cost and nature of goods, supplies, and services procured via Certificates.
- Certificates duplicated the emergency procurement component of the emergency EOs and provided less accountability and transparency.

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.

In March 2005, the OAG obtained 20,000 sq. ft. of office space rent free, although \$1 was paid for processing. The office space was procured for a temporary 30-day period through emergency procurement as a result of the OAG's eviction from the Judicial Center in Hagatna.



In April 2005, the OAG had still not acquired a permanent office space. Using emergency procurement, they obtained the same office space for a second 30-day period and paid \$1.25 per sq. ft. for 20,000 sq. ft. or \$25,000 to the same vendor.

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. The vendor who responded was the same vendor who temporarily housed the OAG during the March and April 2005 emergency period.

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. Prior to occupying the temporary office space for both March and April, the OAG solicited vendors and prepared specifications, which described the requirements of the office space sought. 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.

These five specifications appeared to favor the location that the OAG currently occupied, and allowed the OAG to continue to operate without disruption in its current location.

In the review of the OAG's emergency procurement activity we were unable to obtain a legal opinion as to whether the acceptance of the \$1 rent was a gift in violation of 5 G.C.A. § 5630 (d), Favors to the Territory. Although the OAG could have provided a legal opinion on this matter, we determined that the OAG could not impartially express a formal opinion on the issues that involve the emergency re-location of their office.

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. However, these savings may have been higher had the bid not been restrictive and competition limited.

## Emergency Spending through Executive Orders

In the last three years, the cost and the number of emergency EOs have increased significantly on an annual basis. Of the 35 EOs issued, 18 EOs authorized the transfer of up to \$4.5 million from the General Fund for emergencies. See Table 1.

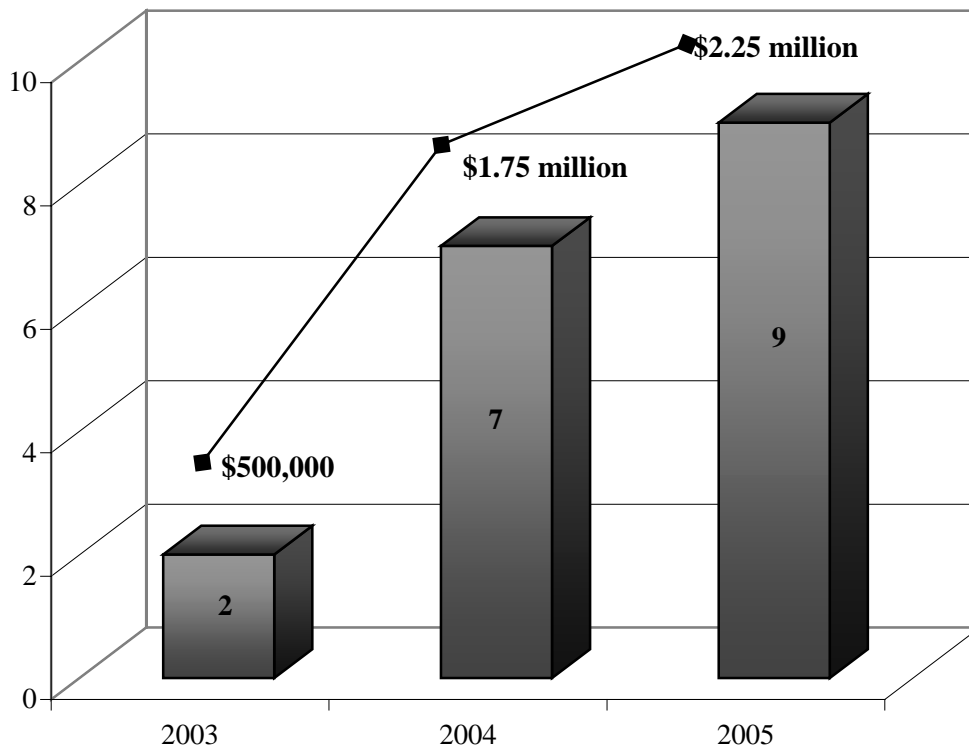
**Table 1: Emergency EOs (April 2003 – December 2005)**

<u>Calendar Year</u>	<u>No. of EOs issued</u>	<u>No. of EOs that authorized transfers</u>	<u>Amount of authorized transfers</u>
2003	7*	2	\$ 500,000
2004	9	7	\$1,750,000
2005	19	9	\$2,250,000
<b>TOTAL</b>	<b>35</b>	<b>18</b>	<b><u>\$4,500,000</u></b>

\* In 2003, 11 emergency EOs were issued. Of the 11, only seven were included in the scope since they were issued after the passage of P.L. 27-06 in April 2003.

Chart 1 illustrates that emergency transfers have increased by 350% from April 2003 to December 2005. Of the \$4.5 million, \$500,000 was authorized to be transferred from the General Fund in 2003. This increased by \$1.25 million in 2004, and another \$1.75 million in 2005. See Appendix 4 for a detailed listing of the 35 emergency EOs.

**Chart 1: Emergency EOs & Authorized Emergency Fund Transfers CY 2003-2005**



## General Fund Supports Emergency Funds

As required by law, the Governor must indicate “emergency fund sources” in corresponding expense reports each time an emergency is declared and emergency funds are transferred. These reports are to be submitted to the Guam Legislature and the OPA.

In our review of expense reports, we found that specific funding sources for emergency transfers were not disclosed. According to the Department of Administration (DOA) Acting Controller, emergency fund transfers were charged directly to the General Fund, without a specific funding source identified. The Controller explained that the government of Guam does not budget for emergencies; therefore entities that receive emergency transfers (allotments) also receive budget increases often amounting to the maximum \$250,000 per emergency occurrence or disaster. The government of Guam’s Basic Financial Statements for FY 2005 reflects budget increases for several entities as a result of emergency transfers.<sup>2</sup>

Without identified sources of funding, emergency transfers contributed to an increase in the operating deficit. In FY 2005, the General Fund deficit increased by \$30.4 million, of which \$2.25 million was due to unfunded emergency transfers.

### The Cost of Funding Emergencies

Although 18 EOs authorized \$4.5 million to be transferred from the General Fund, only \$4 million was actually transferred to emergency fund accounts by the Bureau of Budget and Management Research (BBMR), of which \$3.1 million was encumbered and expended. See Table 2.

**Table 2: Emergency Costs**

<u>Agency</u>	<u>E.O.</u>	<u>Funded Emergency</u>	<u>Authorized Transfer</u>	<u>Allocation</u>	<u>Encumbrances &amp; Expenditures as of 12 /31/05</u>
<b>Disaster Emergencies</b>					
<b>Office of Homeland Security<sup>3</sup></b>	2004-09	Fire at Solid Waste Hardfill	\$ 250,000	\$ 250,000	\$ 211,272
	2005-02	Tropical Storm Kulap	250,000	27,530	26,404
	2004-11	Tropical Storm Tingting	250,000	250,000	205,926
	2004-19	Typhoon Chaba	250,000	250,000	245,590
	2004-24	Typhoon Nock-Ten	250,000	250,000	239,277
	2005-30	Typhoon Nabi	250,000	250,000	97,771
<b>Subtotal</b>			<b>\$ 1,500,000</b>	<b>\$ 1,277,530</b>	<b>\$ 1,026,241</b>
<b>Non-Disaster Emergencies</b>					
<b>Dept. of Public Works</b>	2004-29	Southern High Gym repairs	250,000	250,000	249,371
	2003-30	School Bus Shortage '03	250,000	250,000	202,487
	2004-01	School Bus Shortage '04	250,000	250,000	161,641
<b>Subtotal</b>			<b>\$ 750,000</b>	<b>\$ 750,000</b>	<b>\$ 613,500</b>
<b>Guam Police Dept.</b>	2005-03	Insufficient operational funds	250,000	250,000	248,715

<sup>2</sup> See pages 94-100 of the FY 2005 government of Guam Basic Financial Statements.

<sup>3</sup> The Office of Homeland Security / Civil Defense tracks and disburses all emergency fund transfers for disasters, although EOs authorize these transfers for the Department of Military Affairs. See Appendix 4.

**Table 2: Emergency Costs**

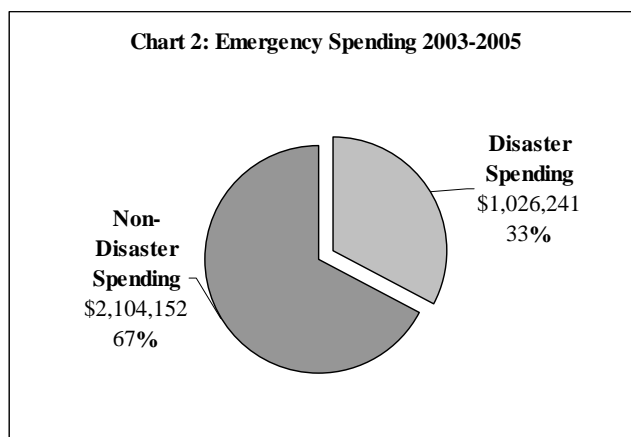
<u>Agency</u>	<u>E.O.</u>	<u>Funded Emergency</u>	<u>Authorized Transfer</u>	<u>Allocation</u>	<u>Encumbrances &amp; Expenditures as of 12 /31/05</u>
	2005-19	Overtime Litigation- AG vs. Chief of Police	250,000	250,000	149,312
		<b>Subtotal</b>	<b>\$ 500,000</b>	<b>\$ 500,000</b>	<b>\$ 398,027</b>
<b>Dept. of Corrections</b>	2005-20	Overtime Litigation- AG vs. Director of DOC	250,000	250,000	234,018
<b>Dept. of Integrated Services</b>	2005-29	Permanent Injunction	70,000	70,000	8,304
<b>Dept. of Mental Health</b>	2005-29	Permanent Injunction	180,000	180,000	179,978
<b>Dept. of Revenue and Taxation</b>	2003-26	Structural Damage to Tiyan Offices	250,000	200,000	11,295
<b>Guam Fire Department</b>	2005-21	Overtime Litigation- AG vs. GFD Fire Chief	250,000	250,000	7,489
<b>Guam Public School System</b>	2004-21	Water Shortages	250,000	0 *	197,510**
<b>Attorney General</b>	2005-04	Office relocation	250,000	250,000	204,032
<b>Office of the Governor</b>	2005-24	Legal Counsel for Maritime Cases	250,000	250,000	250,000
<b>TOTAL</b>			<b>\$4,500,000</b>	<b>\$3,977,530</b>	<b>\$ 3,130,393</b>

- Totals may not add up due to rounding.

\*GPSS did not receive the \$250,000 transfer authorized by 2004-21, but used existing funds to pay for expenses.

\*\*This amount could not be confirmed with the AS 400 since no emergency account was established and GPSS used existing funds to pay for expenses.

Of the \$3.1 million encumbered and expended, we found that an estimated \$1 million or 33% was spent on natural disasters and catastrophic events (i.e., typhoons, fires, etc.) while \$2.1 million or 67% was spent on non-disaster emergencies. See Chart 2.



Six emergencies were declared for the Office of Civil Defense / Homeland Security for natural disasters and catastrophic events in 2004 and 2005: two tropical storms, three typhoons, and one fire. This represented the bulk of emergency spending in 2004, but to a lesser extent in 2005. Civil Defense received a total of \$1.3 million for these six disasters, of which \$1 million was spent.

Of the non-disaster emergencies, several agencies received a total of \$2.7 million, of which \$2.1 million was spent. These emergencies were often called due to the lack of funds in agency budgets. They included:

- Three emergencies for the Department of Public Works (DPW) due to the shortage of school buses in 2003 and 2004 and for repairs made to Southern High School's gym in 2004. For these, DPW received \$750,000, of which \$613, 500 was spent.

- One emergency for the Guam Police Department (GPD) in 2005 due to the lack of funding for operational requirements, of which GPD received \$250,000 and spent \$248,715.
- Three emergencies for GPD, the Department of Corrections, and the Guam Fire Department due to lawsuits filed by the Office of the Attorney General for overtime payments in 2005. These resulted in transfers of \$250,000 for each agency, of which \$391,000 was spent.

These types of emergencies and others listed in Table 2 illustrate that in addition to natural disasters and catastrophic events, emergency funds can be used for a wide range of events to include school bus repair, overtime litigation, and operations, as long as they are enacted on the general criteria of being civil defense, public safety, or healthcare emergencies.<sup>4</sup>

In a review and comparison of emergency spending standards set at the state level, we found that California laws, unlike Guam laws, have designated levels of emergencies depending on severity and type to justify the transfer of any emergency appropriation or award of emergency assistance. See Appendix 5 for the state of California's categories of emergency.

In 1991, the U.S. Office of Management and Budget designated the following five criteria for determining the use of emergency funding/transfer<sup>5</sup>:

- (1) The expenditures are necessary;
- (2) The situation requiring the emergency appropriation was sudden;
- (3) The situation was unforeseen;
- (4) The need for the emergency appropriation was urgent; and
- (5) The situation requiring the emergency appropriation is not permanent.

In theory, these five criteria<sup>6</sup> would narrow the range of emergency designations making decisions about emergencies less subjective to strengthen budgetary discipline and control.

We recognize that a certain amount of flexibility should be afforded the Governor in non-disaster events, but we recommend the Guam Legislature require the Governor to seek legislative approval when money is requested for non-disaster related emergencies, to ensure that all transfers address only the most immediate emergencies.

### **No Expiration on Emergency Funds**

We found that there are no expiration dates set for the expenditure of emergency funds. Despite no expiry dates, several emergency accounts have not used the entire allotment, resulting in \$864,382 remaining in emergency accounts.

According to the DOA Acting Controller, EOs do not impose expiration dates on emergency funds, so expiration dates on emergency accounts are not required. As a matter of policy, DOA began placing expiration dates on emergency disaster accounts in FY 2005, so that emergency

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<sup>4</sup> 5 G.C.A. § 22402

<sup>5</sup> Source – U.S. Government Accountability Office / AIMD-00-174 Budget Enforcement Compliance Report

<sup>6</sup> These criteria are similar to those proposed in the Budget Enforcement Act of 1999 and those passed by the United States House and the Senate on April 13, 2000, for fiscal year 2001, in House Concurrent Resolution 290.

accounts would not remain open for extensive periods. The Acting Controller explained that emergency funds are meant to be used within the emergency period, so once an emergency has reasonably subsided, funds will no longer be encumbered or expended from the emergency account and all unrestricted balances will be returned to the General Fund. We applaud DOA's initiatives to set expiration dates. However, non-disaster emergency accounts are excluded in the application of these time limits.

In our review with the DOA Budget and Accounting Computerized Information System, commonly referred to as the AS400, we found that, of the 18 emergency accounts established by EOs that authorized emergency fund transfers, \$420,899 still remained in five non-disaster emergency accounts and \$443,483 was still encumbered in 12 non-disaster and disaster emergency accounts as of December 31, 2005. Several of these encumbrances and balances have remained outstanding for 18 and 15 months, respectively, instead of reverting to the General Fund. See Table 3.

**Table 3: Emergency Fund Balance and Encumbrances as of December 31, 2005**

<u>Agency</u>	<u>EO</u>	<u>Date</u>	<u>Funded Emergency</u>	<u>Allocation</u>	<u>Encumbered Amounts</u>	<u>Balance as of 12/31/05</u>
<b>Disaster Emergencies</b>						
<b>Office of Homeland Security</b> <sup>7</sup>	2004-09	6/7/04	Fire at Solid Waste Hard fill Facility	\$ 250,000	\$ 23,330	\$ -
	2004-11	6/27/04	Tropical Storm Tingting	250,000	46,224	-
	2004-19	8/22/04	Typhoon Chaba	250,000	23,165	-
	2004-24	10/19/04	Typhoon Nock-Ten	250,000	88,855	-
	2005-30	8/31/05	Typhoon Nabi	250,000	2,999	-
			<b>Subtotal</b>	<b>1,250,000</b>	<b>184,573</b>	<b>\$ -</b>
<b>Non-Disaster Emergencies</b>						
<b>Guam Police Dept.</b>	2005-03	2/16/05	Insufficient Operational Funds	250,000	3,354	-
	2005-19	5/18/05	Overtime litigation	250,000	880	100,688
			<b>Subtotal</b>	<b>500,000</b>	<b>4,234</b>	<b>100,688</b>
<b>Dept. of Public Works</b>	2004-01	1/2/04	School Bus Shortage	250,000	15,551	-
<b>Dept. of Corrections</b>	2005-20	5/18/05	Overtime litigation	250,000	-	15,982
<b>Dept. of Integrated Services</b>	2005-29	8/7/05	Permanent injunction	70,000	1,113-	61,696
<b>Dept. of Mental Health</b>	2005-29	8/7/05	Permanent injunction	250,000	15,030	22
<b>Guam Fire Dept.</b>	2005-21	5/18/05	Overtime litigation	250,000	-	242,511
<b>Attorney General</b>	2005-04	2/24/05	Office Relocation	250,000	26,156	-
<b>Office of the Governor</b>	2005-24	6/24/05	Legal Counsel for Maritime Cases	250,000	196,827	-
			<b>TOTAL</b>	<b>\$ 3,320,000</b>	<b>\$ 443,483</b>	<b>\$ 420,899</b>

- Totals may not add up due to rounding.

<sup>7</sup> The Office of Homeland Security / Civil Defense tracks and disburses all emergency fund transfers for disasters, although EOs authorize these transfers for the Department of Military Affairs. See Appendix 4.

We recommend DOA limit the life of an emergency account to a maximum of one year, with the initial six months to expend and encumber all funds and the second six months to liquidate any outstanding encumbrances. Further, we recommend that the account be closed and any unused funds or unliquidated encumbrances revert to the General Fund.

We recommend the Guam Legislature enact these time provisions and set expiration dates for expenditures of emergency funds.

### **Untimely Reporting of Emergency Expenses**

5 G.C.A. § 22402 requires that upon authorization of emergency fund transfers, the Governor shall “provide a written report of the emergency expenditures to the Legislature and the Public Auditor within five (5) days of such transactions.”

In October 2005, we requested emergency expense reports from the 11 agencies authorized to expend emergency fund transfers since no agency had remitted reports to the OPA. By April 2006, all 11 agencies reported on the amount of emergency funds received, encumbered, and expended. We did not determine whether the Guam Legislature received or similarly requested the expense reports.

As the severity and type of each emergency varies, five days does not allow sufficient time to report all transfers, expenditures, and reimbursements. Therefore, we recommend the Guam Legislature instead require quarterly reporting of emergency expenditures from the date of declaration, culminating in a final report 30 days after the account is closed, no later than one year after the date of declaration.

### **Emergency Procurement through Executive Orders and Certificates**

The Governor’s approval for the use of emergency procurement can be sought through a Certificate of Emergency or an Executive Order.

Once the Governor declares an emergency and approves all authorizations for emergency procurement, 5 G.C.A. § 5215 allows emergency procurement to commence, provided that procurement is made:

- With such competition as is practicable under the circumstances.
- With a procurement agent who must solicit at least three informal price quotations.
- With notice given to all contractors [from the qualified bid list<sup>8</sup> who have provided the needed supplies and services to the government within the preceding 12 months] awarding procurement to the firm with the best offer, as determined by evaluating cost and delivery time.<sup>9</sup>
- For goods and supplies limited to support the identified emergency for a 30-day period.

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<sup>8</sup> GSA annually compiles a qualified bid list to provide the names of vendors who have been solicited for services and products offering the lowest costs available. GSA holds bid lists for services and products such as telephone services, hotel venues, internet service, heavy equipment rental and vehicle repair.

<sup>9</sup> According to 5 G.C.A. §5215, this notice is only to be given “if time allows.”

## **Extended Emergency Procurement**

Of the 35 EOs and the 37 Certificates issued, 17 EOs and all 37 Certificates authorized and/or extended emergency procurement. Of these, 13 EOs, or 37%, allowed the extension of emergency procurement beyond the 30-day period. Of the 37 Certificates, 21 Certificates, or 57%, allowed the extension of emergency procurement beyond the 30-day period. These 21 Certificates were unique as they allowed a single agency (the Guam Public Transit System) to utilize emergency procurement on a month-to-month basis for more than 20 months.

See Appendix 6 for a table illustrating the frequency of emergency procurement.

In 2003, a local transit operator filed suit in the Superior Court of Guam and protested the operation, management, and maintenance contract of the Guam Public Transit System. As a result, DOA was prohibited by the Courts from awarding a contract prior to the final resolution of the protest, so contracts for the Guam Public Transit System were awarded on a month-to-month basis through emergency procurement.

The Court determined that monthly requests for emergency solicitations have saved substantial sums over the anticipated contract price, since each month the competitors know the previous month's contract price and adjust their offer. The costs of the temporary awards are shown in Appendix 7.

On March 30, 2006, the Supreme Court ruled that the operation, management, and maintenance of the Guam Public Transit System should have been procured using the competitive sealed bidding process instead of the Request for Proposal (RFP). The Supreme Court invalidated and cancelled the procurement because the procurement was not for professional services.

However, as of August 2006, DOA has not issued an Invitation for Bid for the public transportation contract. According to the DOA Deputy Director, a bid for the permanent award will not be issued until DOA finalizes its plan to upgrade and change the public transportation system. Among other things, they plan to add new routes to the system for greater island coverage.

Therefore, emergency Certificates allowing temporary 30-day contracts for the Guam Public Transit System will continue until the specifications for a new system are finalized and a bid is issued and awarded.

## **Certificates Not Reported**

5 G.C.A. § 5215 states that certified copies of all Certificates shall be sent to the Governor and the Speaker of the Guam Legislature prior to any award of emergency procurement.

In response to our requests for copies of these Certificates, we received two different sets from the Legislature and the Office of the Governor. In total, we received 37 Certificates. These 37 Certificates were transmitted by the Chief Procurement Officer, the Director of Administration, and the Directors of eight other line agencies and one autonomous agency.

We found that Certificates were difficult to track because they are not numbered, centrally filed, and recorded. As a result, it was not possible to determine:



- The total number of Certificates issued;
- How many agencies have issued Certificates;
- How frequently agencies have issued Certificates;
- The cost of goods, supplies, and services procured via Certificates;
- The nature of goods, supplies, and services procured, and whether they are considered reasonable and compliant with identified emergencies.

Despite that all Certificates could not be traced, the CPO does transmit an annual report of issued Certificates requested from line agencies to the Guam Legislature. Unlike the Certificates, EOs are numbered, recorded, and disbursed throughout the government, which helps ensure that authorizations to utilize emergency procurement are made public and held accountable.

We recommend that the Guam Legislature eliminate the use of Certificates because they duplicate the emergency procurement component given in EOs. Emergency procurement should exclusively be authorized through EOs, which are numbered and easily tracked.

### **Emergency Procurement Testing**

We tested 204 purchase orders (POs) from eight emergency accounts with total expenditures reported as exceeding \$200,000. We reviewed the POs to determine if the goods and services were procured as prescribed by law.<sup>10</sup> Overall, we found no major irregularities, as 201 of the 204 POs, adhered to prescribed procurement laws and regulations. Three POs totaling \$24,945 for the Office of the Attorney General (OAG) did not appear to be emergency purchases for office re-location and/or comply with emergency procurement criteria. These included:

- 1,000 decals (\$700)
- One water blaster (\$2,295)
- One security system (\$21,950)

The purchase of 1,000 OAG decals was not an emergency need, and the purchase of the security system and water blaster exceeded the 30-day time limit to support the identified emergency.

The security system was purchased in March 2005 for a building under a temporary 30-day lease, but included intercoms, sirens, cameras, and digital monitoring features; traits of a permanent structural installation. The vendor stated that the security system was installed in order to be “hard to manipulate and hard to damage.” “Cameras were installed to be steadfast.” Further, the CPO stated that the water blaster was purchased to clean the sidewalks of the building, since they were covered with mildew. This task could have been achieved through a rental service company, since the intent was for a one-time use to support the emergency re-location.

Both purchases were determined as not appropriate for the emergency period, since the OAG had not secured a permanent lease and the office space was temporary.

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<sup>10</sup> Of the 204 POs, 161 POs were authorized to utilize emergency procurement while 43 POs were restricted to normal procurement standards. All 204 POs utilized emergency fund transfers.

## **Emergency Re-location: Office of the Attorney General**

In May 2004, the Office of the Attorney General (OAG) received notice from the Administrator of the Courts, representing the Judicial Council of Guam, stating that the OAG failed to pay rent under a 1991 lease agreement, which expired on September 30, 1996. In May 2004, the OAG occupied 14,355 sq. ft. of space in the Judicial Building in Hagatna.

The Courts ordered the OAG to pay rent for the one-year period from June 2003 through May 2004 or vacate the leased premises by June 30, 2004. In subsequent months, the OAG filed numerous pleadings,<sup>11</sup> to have the Courts forgive the unpaid rent and to deny the Courts the right to occupy or take possession of the leased premises.

In a final judgment, the OAG was given a notice of eviction on January 10, 2005 and was ordered to vacate the Judicial Building by February 28, 2005. This notice only allowed the OAG, a major department with over 100 employees, to vacate the premises and re-locate within 49 days; a short time, given Guam's procurement regulations.

In a Declaration filed at the Superior Court of Guam on February 18, 2005 the Attorney General stated that the OAG had explored various contingencies to address the eviction issue to include discussions with the Legislature since May 2004. At the time of the eviction, the OAG declared that the office could not initiate the procurement of a new facility, since there was a lack of funding. The OAG, with no alternative space for lease and no additional funding, entered an emergency situation. See Appendix 8 for a complete timeline of events.

To mitigate the emergency, the Governor promulgated EO 2005-04 on February 24, 2005 and transferred \$250,000 in emergency funds and authorized emergency procurement for the rental of office space, to ensure that the OAG remained in operation.

On February 25, 2005 the Governor promulgated a second EO, EO 2005-05, and extended the authority granted in 2005-04 so emergency procurement could also be used for goods and services related to the emergency re-location. This authority was not included in the first emergency EO, which was for office space only.

On March 31, 2005, EO 2005-09 was issued. This EO extended the authority to utilize emergency procurement for a second 30-day period, since the OAG had not secured a permanent lease before the end of March. Guam procurement law restricts the emergency procurement of supplies<sup>12</sup> to a 30-day period.

### **March 2005 Emergency Procurement**

In response to Executive Order 2005-04, on February 28, 2005 the OAG transmitted a Request for Quotation (RFQ) to three vendors, soliciting informal quotations for temporary lease of office space. The RFQ stated that "The Attorney General is seeking a temporary home for its offices

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<sup>11</sup> Pleadings can be defined as every legal document filed in a lawsuit, petition, motion, and/or hearing, including complaint, petition, answer, demurrer, declaration and memorandum of points and authorities.–  
www.dictionary.law.com

<sup>12</sup> Under the procurement law, leases are considered supplies.

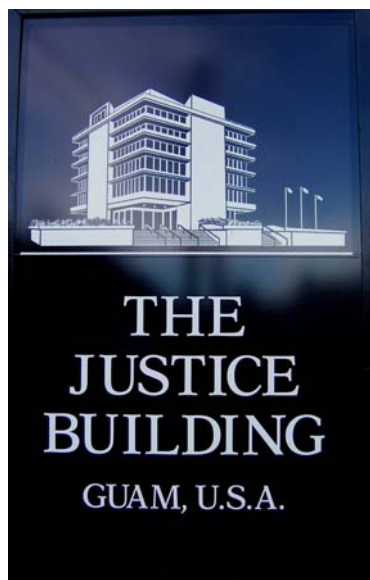
using emergency procurement while the regular procurement process for a permanent home is underway.” The request indicated that space would be occupied for a 30-day period.

Vendors who received the emergency RFQ on February 28, 2005 were only given several hours to respond, as quotes were to be submitted before the close of the business day. The solicited vendors responded and offered quotes illustrated in Table 4 below:

**Table 4: March 2005 Competitive Quotes**

<u>Vendor</u>	<u>Rent offered</u>	<u>Area offered</u>
<b>Vendor A</b>	\$ 2.00 per sq. ft.	19,565 sq. ft.
<b>Vendor B</b>	\$ 1.75 per sq. ft.	17,500 sq. ft. + an additional 2,500 sq. ft. in a couple of weeks
<b>Vendor C</b>	Rent Free	32,455 sq. ft.

Vendor C offered the OAG 30-day usage of a building “rent free.” As a result, Vendor C was awarded the temporary lease contract on March 1, 2005 for submitting the lowest quote and meeting all general requirements as requested by GSA and the OAG’s RFQ.



**Image 2:** The Justice Building was owned by Vendor C and first leased to the OAG in March 2005.

Prior to preparing the purchase order, GSA informed Vendor C to amend their free quote, as “they needed to have some figure to prepare the paper work to conclude the procurement.” On March 1, Vendor C followed GSA’s instructions and submitted an amended quote of \$1.00 per square foot. Vendor C submitted this quote in error and submitted a third and final quote of \$1 for the 32,455 sq. ft. of office space offered for the 30-day emergency period.

With this action, the OAG’s office sent a memorandum on March 1, 2005 to the Chief Procurement Officer (CPO) protesting the opportunity given to Vendor C “to modify its previous quotations.” The OAG further informed GSA that they “must accept the [first] offer of free rent as the lowest bid.”

GSA contended that “they needed to have some figure to prepare the paper work to conclude the procurement.” With no further argument, the OAG’s office submitted the requisition to GSA and a \$1.00 purchase order was processed.

### **Allegation**

A Senator of the 28<sup>th</sup> Guam Legislature requested that we determine whether or not the OAG’s free rent violated Guam’s Procurement Law. The Senator alleged that the OAG had received a “gift” of two months free rent from the owner of the seven-story Hagatna building that housed the OAG during the emergency re-location periods of March and April 2005. The Senator alleged that as result of the two months of rent-free occupancy, the OAG’s bid specifications for

the permanent lease, which described the requirements of the permanent office space sought, were tailored to exclude other interested landlords.

### **Analysis of \$1 Monthly Rent**

We were unable to obtain a legal opinion as to whether the acceptance of the \$1 rent from Vendor C was a gift in violation of 5 G.C.A. § 5630 (d), Favors to the Territory.<sup>13</sup>

Although the OAG could have provided a legal opinion on this matter, we determined that the OAG could not impartially express a formal opinion as the issue involved the emergency relocation of their office. Additionally, OPA legal counsel cited a conflict of interest, thus was precluded from advising OPA on this matter.

However, we did inquire with the OAG on the \$1 rent. The OAG took the position that the offer of free rent was a valid bid offer in response to the RFQ. The OAG further explained that “none of us in the government expected the offer of zero rent, and surely a bid was a first for the government ever.” See Appendix 9 for the OAG’s complete response to OPA’s inquiry.

The CPO also took the position that the \$1 offer was not considered a gift since a “cost was involved.” The CPO explained that vendors may offer whatever cost they like however low it may be.

### **April 2005 Emergency Procurement**

In response to EO 2005-09, on March 31, 2005 the OAG transmitted a second RFQ for the emergency lease of office space to the same three vendors. These vendors were again given one day to respond and all three responded. All specifications remained generally the same from the February 28, 2005 RFQ, absent the requirement for the premises to have a back-up power source. Their quotes are presented in Table 5.

**Table 5: April 2005 Competitive Quotes**

<b><u>Vendor</u></b>	<b><u>Rent offered</u></b>	<b><u>Area offered</u></b>
<b>Vendor A</b>	\$ 1.85 per sq. ft.	19,565 sq. ft.
<b>Vendor B</b>	\$ 1.75 per sq. ft.	17,500 sq. ft. + an additional 2,500 sq. ft. in a couple of weeks
<b>Vendor C</b>	\$1.25 per sq. ft.	32,455 sq. ft.

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<sup>13</sup> Favors to the Territory. A favor is anything, including raffle tickets, of more than de minimus value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

The 30-day emergency lease for April 2005 was awarded to Vendor C for the second month, as Vendor C offered the lowest price of \$1.25 per sq. ft.

Although Vendor C offered 32,455 sq. ft. on two separate occasions, the OAG only occupied 20,000 sq. ft. during the emergency periods of March and April. The rent for the month of April was \$25,000 at a cost of \$1.25 per sq. ft. for the occupancy of 20,000 sq. ft., compared to \$1 for the month of March for the occupancy of 20,000 sq. ft.

**Bid Selection**

On April 12, 2005, prior to the expiration of the OAG’s second month of the emergency lease, Invitation for Bid (IFB) No. GSA-022-05 was publicly advertised to solicit prospective bidders for the permanent lease of office space.

On April 26, 2005, the bid was closed and of the eight vendors who had picked up IFB No. GSA 022-05, only one vendor submitted a bid. The vendor who responded and received the award was the same vendor who temporarily housed the OAG during the March and April 2005 emergency periods.

According to 5 G.C.A. §5268 (a) “Specifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the Territory’s minimum needs.”

We evaluated the permanent lease specifications prepared in IFB No. GSA-022-05 and compared these with the temporary lease specifications issued during the emergency period, to determine if the permanent bid specification met this requirement.

In our review, we found six modifications in the areas of (1) location, (2) total area, (3) exclusive occupancy, (4) building type, (5) outside presentation area, and (6) vehicle service bay. See Table 6.

**Table 6: Comparison of Emergency Period and Permanent Bid Specifications**

Emergency Period	Specification	Permanent Bid
The office space must be in the Hagatna area; and the premises must be within a safe walking distance of the Judicial Center.	LOCATION	The office space must be in Hagatna and within a close distance to the local courts and Federal Courts, and preferably within a close distance to the Guam Police Department. <sup>14</sup>

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<sup>14</sup> IFB No. GSA-022-05: “Close distance” shall mean that the premises must be situated in a position to reach either Court in the shortest possible, time, either: for an average person at a reasonable pace taking no more than 10 minutes to reach the courthouse using sidewalks lining roads or by vehicle transportation in the shortest amount of time.

Emergency Period	Specification	Permanent Bid
The premises be approximately 20,000 <sup>15</sup> sq. ft. & be available for immediate occupancy.	TOTAL AREA	The total space required is an absolute minimum 31,000 sq. ft. However, bidders with a small margin for growth will be favored. The total area will be occupied in two phases. Phase One will require 20,000 sq. ft., and must be available for immediate occupancy. Phase Two requires approximately 11,000 sq. ft. <sup>16</sup>
No requirement.	EXCLUSIVE OCCUPANCY	The building to be leased may not have any other occupants or tenants. The OAG shall have exclusive occupancy and be the sole tenant in any building or buildings occupied.
No requirement.	BUILDING TYPE	The office space to be leased must be in a single building, and may be on more than one floor level. Multi-story buildings must have at least one stairwell and two (2) operational elevators, at least one of which should be configured to limited access to different floors by the Attorney General and his attorneys and investigators.
No requirement.	OUTSIDE PRESENTATION AREA	The premises must have an area for ceremonial events related to Government & Office functions. The larger the outside square footage, the more favorable.
No requirement.	VEHICLE SERVICE BAY	The premises must have a service bay facility so the personnel may perform minor work on government vehicles.

Of the six modifications, we concluded that five restricted the scope of competition and did not comply with 5 G.C.A. § 5268 (a), contributing to the lack of bidders for the permanent bid. These five restrictions included the (1) location (2) exclusive occupancy (3) building type (4) outside presentation area and (5) vehicle service bay requirements.

<sup>15</sup> 20,000 sq. ft. supported the office space for all OAG divisions re-located from the Court due to the eviction, to include 5,000 sq. ft. for storage space.

<sup>16</sup> IFB No. GSA-022-05: Phase 1 requires the initial lease of 15,000 sq. ft. for office space with an additional 5,000 sq. ft. for storage, absent the integration of the Child Support Enforcement Division (CSED). Phase 2 requires approximately 11,000 sq. ft. for integration of CSED.

The five specifications were either not included or modified from the emergency specifications. All appeared to be tailored to Vendor C’s building. The specification for increased space was not restrictive.

### Increased Space

All six divisions of the OAG occupied 24,700 sq. ft. of office space prior to the eviction, but the OAG requested a minimum of 31,000 sq. ft. after the eviction, an increase of 6,300 sq. ft. or 26%. The increase was mainly due to the request of additional storage space of at least 5,000 sq. ft. therefore, the 26% increase was a reasonable specification in the IFB.<sup>17</sup> See Table 7.

**Table 7: OAG Space Comparison**

	<u>Prior to Eviction</u>	<u>Emergency Period</u>	<u>Current Occupancy</u>
Office Space and Storage	14,355 sq. ft.	20,000 sq. ft.	20,000 sq. ft.
Child Support	10,345 sq. ft.	None requested*	11,000 sq. ft.
<b>TOTAL</b>	<b>24,700 sq. ft.</b>	<b>20,000 sq. ft.</b>	<b>31,000 sq. ft.</b>

\* The OAG’s Child Support Division was still under a lease, separate from the Judicial Center, during the emergency periods.

### Remarks from GSA and Other Vendors

GSA disagreed that the five specifications were restrictive. The Buyer Supervisor stated that they went back and forth on several drafts of the specifications with officials from the OAG to remove all restrictive and specific language within the bid.

In a memo submitted by the CPO to the Deputy Attorney General, on April 4, 2005, the CPO requested “for the removal of a specific paragraph” within the “Location” specification because the paragraph “appeared to be tailored to. . .” The memo further indicated the necessity to delete the restrictive paragraph “to avoid media publicity.” This memo was the only documentation we found confirming GSA’s attempt to remove restrictive language. No other documentation showed that other specifications were ever questioned.

In a meeting with the CPO, we questioned the rationale for allowing the specification that requested “Exclusive Occupancy.” The CPO explained that other landlords were contacted to determine if this requirement could be met before approving it. A second landlord met the requirement, so GSA allowed the specification to be included in the bid.

On March 9, 2006, we randomly contacted four of the vendors who picked up bids but did not submit a bid packet for the OAG’s lease. We asked each vendor to provide clarification or explanation as to why they did not submit a bid packet. Two vendors responded that the “bid was a farce”, since the “amenities were unrealistic to bid on” and the “bid looked like it was heading toward . . .” The other two stated that they could not offer “Exclusive Occupancy” or the total area requested.

<sup>17</sup> The OAG occupies the entire Justice Building, which is 32,455 sq. ft. but pays for only 31,000 sq. ft.

## Department of Revenue and Taxation Comparison



**Image 3:** DRT Office in Barrigada Heights

We compared the Department of Revenue and Taxation’s (DRT) office space bid with the OAG’s to determine if specifications were similar. In March 2005, DRT entered into a lease agreement for 50,094 sq. ft. of office space and storage for \$1.69 per sq ft.<sup>18</sup> or \$84,809 per month, following the award of this bid. The term of the lease is for 12 months with the option to extend annually until 2011.

DRT’s bid for office space was issued in July 2004, and eight prospective bidders acquired the bid package. Of the eight, three responded to DRT’s bid for office space.

We found seven comparable areas between the DRT and OAG bids. The dissimilarity of these areas confirmed that the OAG’s lease specifications were restrictive. See Table 8.

**Table 8: Comparison of Bid Specifications: DRT and OAG**

<b>DRT Permanent Bid</b>	<b>Specification</b>	<b>OAG Permanent Bid</b>
Preferential location is in the central part of Guam	LOCATION	The office space must be in Hagatna and within a close distance to the local courts and Federal Courts, and preferably within a close distance to the Guam Police Department.
Total office space must be no less than 41,770 sq. ft. inclusive of the waiting or reception area but not common area such as public and staff lavatories. Lavatories must be accessible to the disabled. See breakdown of office space per unit / division in sq. ft. attached.	TOTAL AREA	The total space required is an absolute minimum 31,000 sq. ft.. However bidders with a small margin for growth will be favored. The total area will be occupied in two phases. Phase One will require 20,000 sq. ft., and must be available for immediate occupancy. Phase Two requires approximately 11,000 sq. ft.

<sup>18</sup> Figure above is rounded – DRT agreed to pay an actual amount of One Dollar Sixty Nine and Three-Tenths Cents (US \$ 1.693) per sq. ft. of Floor Area, per month, for the Premises.



<b>DRT Permanent Bid</b>	<b>Specification</b>	<b>OAG Permanent Bid</b>
No requirement.	EXCLUSIVE OCCUPANCY	The building to be leased may not have any other occupants or tenants. The OAG shall have exclusive occupancy and be the sole tenant in any building or buildings occupied.
Parking stalls must be able to accommodate a minimum of 250 vehicles, which includes POV's, official vehicles, and public parking.	PARKING	No requirement.
No requirement.	OUTSIDE PRESENTATION AREA	The premises must have an area for ceremonial events related to Government & Office functions. The larger the outside square footage, the more favorable.
Option 1 - One building to house the entire DRT office which meets the 41,770 required office space.  Option 2 - Separate building to house the entire DRT office as long as they meet the 41,770 required office space.  Both options require operational escalators or elevators, which operate reliably during power outages, if office is not on ground floor.	BUILDING TYPE	The office space to be leased must be in a single building, and may be on more than one floor level. Multi-story buildings must have at least one stairwell and two (2) operational elevators, at least one of which should be configured to limited access to different floors by the Attorney General and his attorneys and investigators.
No requirement.	VEHICLE SERVICE BAY	The premises must have a service bay facility so the personnel may perform minor work on government vehicles.

DRT's specifications for office space were general in nature and non-restrictive. Unlike the OAG bid, no request for exclusive occupancy was made and competition was present as three of eight interested vendors responded to the bid.

The DRT bid was advertised in July 2004, nine months prior to the OAG's bid, which was advertised in April 2005. GSA could have used DRT's specifications as a guide in their evaluation of the OAG's bid specifications because they were more general and non-restrictive.

We recommend that GSA create a standard template for office lease to ensure that bid specifications are not restrictive.

## Cost and Space Comparison

We compared the cost per sq. ft. between the offices that the OAG formerly leased at the Judicial Center and a separate building with the office the OAG currently leases. See Table 9.

**Table 9: Rental Costs Comparison**

<u>Agency</u>	<u>Location</u>	<u>Approximate sq. ft.</u> <u>Leased</u>	<u>Cost per sq. ft.</u>	<u>Total Annual</u> <u>Cost</u>
<b>Total Rental Costs Prior to the Eviction</b>				
OAG Child Support Division	Hagatna	10,345 sq. ft.	\$2.57	\$319,040
OAG All Other Divisions	Judicial Center	14,355 sq. ft.	\$2.30	\$396,198*
	<b>Total</b>	<b>24,700 sq. ft.</b>	<b>\$2.44 (average)</b>	<b>\$715,238</b>
<b>Total Rental Costs Following the Eviction</b>				
OAG All Divisions	Justice Building <sup>19</sup>	31,000 sq. ft.	\$1.75	\$651,000
	<b>Difference (Opportunity Savings)</b>	<b>6,300 sq. ft.</b>	<b>\$0.69</b>	<b>\$64,238</b>

\* Annual rent for this amount was not paid to the Judicial Center.

Had the OAG stayed in its two previous locations and paid rent to the Judicial Center, the annual office rent would have been approximately \$2.44 per sq. ft. or \$715,238 annually for 24,700 sq. ft., compared to the current cost of \$1.75 per sq. ft. or \$651,000 annually for 31,000 sq. ft.. As a result of the relocation, the OAG has realized an opportunity savings of \$64,238 by paying \$651,000 rather than \$715,238 annually. These savings may have been higher had the bid not been restrictive and competition limited.

Additionally, the OAG occupies the entire Justice Building, which is 32,455 sq. ft. but pays for only 31,000 sq. ft. at \$1.75 per sq. ft., reducing the true cost to \$1.67 per sq. ft.

We further compared the amount of space per employee for the OAG and DRT by dividing the amount of sq. ft. occupied by the number of employees. We found that the OAG had 25 sq. ft. of space, or 9%, less space per employee than DRT. See Table 10.

**Table 10: Amount of Sq. Ft. Per Employee (OAG and DRT) as of 9/30/05**

<u>Agency</u>	<u>No. of Employees</u>	<u>Amount of Sq. Ft.</u> <u>Occupied</u>	<u>Amount of Sq. Ft.</u> <u>Per Employee</u>
OAG	116	32,455	280
DRT	164	50,094	305
		<b>Difference</b>	<b>25 sq. ft.</b>

Additionally, we found that the OAG's cost per sq. ft. of \$1.75 for 31,000 sq. ft. was only six cents more and within a reasonable range compared to DRT's cost per sq. ft. of \$1.69 for 50,094 sq. ft.

<sup>19</sup> The OAG's current location was renamed the Justice Building shortly after the final lease was awarded and issued.

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# Conclusion

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From April 2003 to December 2005, 18 EOs authorized the transfer of up to \$4.5 million dollars for local emergencies related to civil defense, public safety, and healthcare, in accordance with required rules and regulations. These transfers increased by \$1.25 million in 2004 and \$1.75 million in 2005, as the number of EOs authorizing transfers increased by seven, or 350%, from April 2003 to December 2005. These increases demonstrate the rising costs of funding emergencies.

Of the \$4.5 million authorized for transfer, \$4 million was transferred, while \$3.1 million was encumbered and expended. Of the \$3.1 million encumbered and expended, \$1 million or 33% was spent on natural disasters and catastrophic events (i.e., typhoons, fires, etc.) and \$2.1 million or 67% was spent on non-disaster related emergencies (i.e., overtime litigation, school gym repair, and public school water shortages). This demonstrates that emergency funds may address a wide variety of purposes, as the laws and regulations that define conditions for emergencies are broad and allow much latitude and discretion. As a result, the General Fund will continue to support emergency situations and increase the operating deficit, as emergency transfers are taken directly from the General Fund.

Overall, we found no major irregularities with emergency procurement, as 201 of the 204 POs tested and authorized by emergency EOs adhered to prescribed procurement laws and regulations.

Unlike EOs, Certificates were difficult to track because they were not numbered, centrally filed and recorded. As a result, it was not possible to determine the total number of Certificates issued over the scope period. This hindered our review of the cost and nature of goods, supplies, and services procured via Certificates.

In the review of the OAG's emergency procurement activity and permanent lease, evidence supported allegations regarding restrictive bid specifications for the OAG's permanent bid.<sup>[0]</sup>

The OAG's permanent bid specifications, which described the requirements of the office space sought, were tailored to exclude other interested landlords. The review revealed that five specifications were restrictive. These included the (1) location, (2) exclusive occupancy, (3) building type, (4) outside presentation area, and (5) vehicle service bay requirements. These five specifications were either new or altered from the emergency period and resulted in the lack of competition and a bid tailored to a single vendor. The awarded vendor was the same vendor who received the emergency contract for March and April 2005, so the restrictive bid allowed the OAG to continue to operate without disruption in its current location.

We were unable to obtain a legal opinion as to whether the acceptance of the \$1 rent from Vendor C was a gift in violation of 5 G.C.A. § 5630 (d), Favors to the Territory. OPA legal counsel cited a conflict of interest, thus was precluded from advising OPA on this matter.

The OAG could have provided a legal opinion on this matter, although we determined that the OAG could not impartially express a formal opinion on the issues that involve the emergency relocation of their office.

The OAG's final lease resulted in a savings of \$64,238. These savings may have been higher, had the bid not been restrictive and competition limited. 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. Additionally, the OAG does occupy the entire Justice Building, which is 32,455 sq. ft. but only pays for 31,000 sq. ft. at \$1.75 per sq. ft., reducing the true cost per sq. ft. to \$1.67.

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# Recommendations

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## **We recommend the Guam Legislature:**

1. Require the Governor to seek legislative approval when money is requested for non-disaster related emergencies, to ensure that all transfers address only the most immediate emergencies.
2. Impose time provisions for emergency funding, since there are no expiration dates for the expenditure of emergency funds.
3. Eliminate Certificates of Emergency because they duplicate the authorization given in EOs.
4. Require quarterly reporting of emergency expenditures, instead of the five-day reporting requirement from the date of declaration, culminating in a final report 30 days after the account is closed, and no later than one year after the date of declaration.

## **We recommend the Director of the Department of Administration:**

5. Pending the requirement by law, limit the life of an emergency account to a maximum of one year, with the initial six months to expend and encumber all funds and the second six months to liquidate any outstanding encumbrances. Further, that the account be closed upon reaching the fund limit and any unused funds or unliquidated encumbrances revert to the General Fund.
6. Require GSA to create a standard template for office lease to promote the development of bid specifications that are not restrictive or perceived to be restrictive.

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# Management Response and OPA Reply

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A draft report was transmitted in September 2006 to the Director of the Department of Administration (DOA) and the Speaker of the 28<sup>th</sup> Guam Legislature for formal response and to the Governor of Guam as a courtesy.

We met with the Director of DOA in September 2006 to discuss the transmitted draft. In October 2006, we received the DOA's official response. See response at Appendix 10.

In DOA's formal response they expressed concerns with our recommendation to impose time provisions for emergency funding although they did not indicate whether or not they concurred. DOA explained that they work closely with BBMR "in the establishment of accounts for both disaster and non-disaster related executive orders." Their goal is to support the intent of the emergency Executive Order, which addresses the emergency situation by coordinating their efforts "to ensure compliance of the executive order." DOA maintained that the emergency Orders "are meant to be used as a short-term authority – and if required, can be extended by a succeeding executive order."

No response was available from the Speaker of the 28<sup>th</sup> Guam Legislature.

The legislation creating the Office of the Public Auditor requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting the Director of DOA to establish target dates and title of the official responsible for implementing the recommendations. We will be contacting the Speaker and other members of the Guam Legislature to discuss whether legislation will be introduced pertaining to the four recommendations made.

We appreciate the cooperation shown by the staff of the Department of Administration, the General Services Agency, the Bureau of Budget and Management Research, and the Office of the Attorney General during our review.

This report does not provide conclusions involving legal determinations. This report contains only evidentiary conclusions based on documentation available during our review.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM  
Public Auditor

**Appendix 1:**  
**Classification of Monetary Impact**

Finding Area	Opportunity Savings	Cost Exceptions
1 Emergency Spending through Executive Orders	\$ -	\$ -
2 Emergency Procurement through Executive Orders and Certificates	\$ -	\$ 24,945
3 Emergency Re-Location: Office of the Attorney General	\$ 64,238	\$
<b>TOTAL</b> ( SAVINGS / QUESTIONED COSTS )	<b>\$ 64,238</b>	<b>\$ 24,945</b>

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**Appendix 2:**  
**Scope and Methodology**

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The scope of our audit included a review of the government of Guam's emergency declarations via Executive Order(s) or Emergency Certificate(s) for the 33-month period from April 9, 2003<sup>20</sup> through December 31, 2005. Other supporting documentation, such as expense reports, procurement documents, and other emergency documents provided by agency heads were reviewed.

The audit methodology included gaining an understanding of the policies, procedures, applicable laws and regulations pertaining to the government of Guam emergency declarations and procurement. We interviewed the Acting Controller of DOA, the Chief Procurement Officer of GSA, and the BBMR Deputy Director.

We selected 10 of the emergency EOs and tested 204 purchase orders authorized by the EOs to determine (1) reasonableness, (2) the extent of emergency procurements made without the benefit of competition, and (3) the extent of procurements made for goods and supplies to support an emergency in excess of 30 days.

We could not determine the total number of Certificates issued because they were not numbered centrally filed, and recorded. Therefore, we did not review any emergency certificates.

Our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. We included tests of records and other auditing procedures considered necessary under the circumstances. We evaluated the internal controls related to the execution of emergency executive orders and emergency procurement to the extent we considered necessary to accomplish our objective. Weaknesses identified in these areas are discussed in the Results of Audit section.

As a matter of full disclosure, the Public Auditor acknowledges that she owns stock in Vendor C.

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<sup>20</sup> This is the date the reporting requirement took effect for emergency declarations relative to emergency procurement passed by P.L. 27-06 on April 9, 2003.



**Performance Audits:****December 2004**

OPA Report No. 04-14, Performance Audit of the General Services Agency (GSA) Competitive Sealed Bidding, Emergency Procurement, and Sole Source Procurement Function, found that GSA did not comply with Guam procurement rules and regulations for purchases of goods and services. GSA did not obtain or document the required number of quotations for emergency purchases. These conditions occurred because GSA did not properly plan or monitor the effectiveness of the procurement methods and make the appropriate adjustments to the Guam procurement rules and regulations. Therefore, GSA was unable to assure that purchases were made in the government's best interest. As a result, \$110,187 in emergency purchases was unsupported.

**May 2005**

OPA Report No. 05-01, Legislative Mandate report on the Guam Fire Department (GFD) Emergency Procurement of Fire Trucks represents the results of our observation of the emergency procurement of two fire trucks by GFD and GSA. Pursuant to P.L. 27-99, passed June 25, 2004, OPA was designated as the observer for this procurement process. We found that P.L. 27-99 permitted GFD to purchase two fire trucks without conforming to standard procurement practices; thus, setting a precedent allowing emergency purchases to be obtained without following emergency procurement regulations. P.L. 27-99 may have immediately addressed GFD's need for fire trucks; however, the waiver of procurement regulations is not good procurement policy and should be discouraged. The report recommendations urged the Legislature to discontinue passing legislation that waives procurement regulations for any purchase. Even the Governor raised concern over the lack of procurement procedures in P.L. 27-99.

**Financial Audits:**

**FY 2003**

The FY 2003 Single Audit of the Guam Public School System (GPSS) reported a single finding relative to emergency procurement. Finding No. 03-11 tested 25 transactions, aggregating \$1,178,502. Of these transactions, two specifically referenced non-compliance with emergency procurement requirements.

In short, EO 2002-24, allowed emergency procurement procedures, but the allowable time frame authorizing emergency procurement had already lapsed when \$17,680 was spent. In a memo dated June 11, 2004, GPSS officials concurred with the audit finding and ensured that all emergency procurement actions would be processed in accordance with GPSS Procurement Regulations. Additionally, GPSS hired an administrator for the Procurement and Supply Management division in May 2004 to follow through with their corrective plan of action.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2003-14: 5/2/2003	Office of the Governor	Supertyphoon Pongsona - Severe typhoon damage to the Office of the Governor and Government House.	No transfer authorized.
2003-19: 5/29/2003	Department of Agriculture	District Court of Guam Civil Case No. 00-00060, concerning the designation of 8,000 acres of federal land on Guam as critical habitat. – The firm representing the government of Guam could no longer act as counsel to the government, and the OAG determined they could not provide specialized legal services on short notice.	No transfer authorized.
2003-21: 6/6/2003	Office of the Governor	Supertyphoon Pongsona – Severe typhoon damage to the Office of the Governor and Government House.	No transfer authorized.
2003-22: 7/3/2003	Office of the Governor	Supertyphoon Pongsona – Severe typhoon damage to the Office of the Governor and Government House.	No transfer authorized.
2003-25: 8/1/2003	Office of the Governor	Supertyphoon Pongsona - Severe typhoon damage to the Office of the Governor and Government House.	No transfer authorized.
2003-26: 9/3/2003	Department of Revenue and Taxation (DRT)	Several earthquakes and typhoons to include Supertyphoon Pongsona - Structural damage, to include: damaged roofing insulation, exposed cracks, water leaks, peeled off paint, mildewed and molded carpet.	\$ 250,000

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2003-30: 10/20/2003	Department of Public Works (DPW)	School Bus Shortage	\$ 250,000
2004-01: 1/2/2004	Department of Public Works (DPW)	School Bus Shortage	\$ 250,000
2004-09: 6/7/2004	Department of Military Affairs	Fire at the J & E Equipment Rental Solid Waste Hardfill Facility at Santa Cruz Drive Chalan Pago - Waiver of normal procurement procedures and additional funds needed to carry out all emergency functions to minimize and extinguish fire, and repair injury and damage resulting from fire.	\$ 250,000 <sup>21</sup>
2004-11: 6/27/2004	Department of Military Affairs	Tropical Storm Tingting - Waiver of normal procurement procedures and additional funds needed to provide emergency services relative to Tropical Storm Tingting.	\$ 250,000
2004-16: 7/29/2004	Guam Public School System	DOE school facilities in state of emergency - Government agencies responding to the Certificate of Emergency dated July 23, 2004 need to be paid and able to accrue overtime.	No transfer authorized.

<sup>21</sup> All emergency transfers authorized for the Department of Military Affairs, for disaster emergencies, are disbursed and tracked by the Office of Homeland Security / Civil Defense. This is illustrated in Table 2 and 3 of the report.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2004-18: 8/17/2004	Guam Public School System	DOE school facilities in state of emergency - Extension of EO No 2004-16	No transfer authorized.
2004-19: 8/22/2004	Department of Military Affairs	Typhoon Chaba - Waiver of normal procurement procedures and additional funds needed to provide emergency services relative to Typhoon Chaba.	\$ 250,000
2004-21: 8/28/2004	Guam Public School System	Water Shortages at various public schools. - To remedy water shortage issue, since schools identified in the Executive Order have low or no water pressure.	\$ 250,000
2004-24: 10/19/2004	Department of Military Affairs	Typhoon Nock-Ten - Waiver of normal procurement procedures and additional funds needed to provide emergency services relative to Typhoon Nock-Ten.	\$ 250,000
2004-29: 12/30/2004	Department of Public Works (DPW)	Numerous sanitary violations issued to Southern High School and the Department of Education. - Closure of the Southern High School gymnasium due to numerous and serious safety violations.	\$ 250,000

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-02: 1/15/2005	Department of Military Affairs	Tropical Storm Kulap - Waiver of normal procurement procedures and additional funds needed to provide emergency services relative to Tropical Storm Kulap.	\$ 250,000
2005-03: 2/16/2005	Guam Police Department (GPD)	Insufficient funds for the operational needs of the Guam Police Department - Phone lines will be disconnected and fuel for their vehicles will run empty affecting GPD's ability to rapidly respond to emergencies.	\$ 250,000
2005-04: 2/24/2005	Office of the Attorney General (OAG)	The OAG received notice from the Administrator of the Courts informing them that they were in default of their lease agreement for failing to pay rent. The OAG was ordered to pay rent or vacate the Judicial Building. - The OAG vacated the Judicial Building, and required assistance to obtain new office space.	\$ 250,000
2005-05: 2/25/2005	Office of the Attorney General (OAG)	EO 2005-04 did not clarify that moving expenses will also be incurred.	No transfer authorized.
2005-09: 3/31/2005	Office of the Attorney General (OAG)	Extension of EO No 2005-05	No transfer authorized.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-19: 5/18/2005	Guam Police Department (GPD)	Lawsuit filed by Attorney General suing the Chief of Police for failing to pay overtime payment. - Additional funds needed to assist with personnel costs and legal expenses incurred as a result of the Attorney General's lawsuit.	\$ 250,000
2005-20: 5/18/2005	Department of Corrections (DOC)	Lawsuit filed by Attorney General suing the Director of the DOC for failing to pay overtime payment. - Additional funds needed to assist with personnel costs and legal expenses incurred as a result of the Attorney General's lawsuit.	\$ 250,000
2005-21: 5/18/2005	Guam Fire Department (GFD)	Lawsuit filed by Attorney General suing the Fire Chief for failing to pay overtime payment. - Additional funds needed to assist with personnel costs and legal expenses incurred as a result of the Attorney General's lawsuit.	\$ 250,000
2005-24: 6/24/2005	Office of the Governor	Ongoing Government of Guam Maritime Cases - The government must procure legal representation prior to June 28, 2005 or have an important maritime case dismissed.	\$ 250,000
2005-27: 8/1/2005	Department of Corrections (DOC)	Lawsuit filed by Attorney General suing the Director of the DOC for failing to pay overtime payment - Extension of approval and continuous authorizations for emergency procurement created from the advent of events stated in EO No. 2005-20.	No transfer authorized.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-27: 8/1/2005	Department of Administration (DOA)	Lawsuit filed by Attorney General suing the Director of DOA and the Director of BBMR for failing to pay overtime payment. - Extension of EO No. 2005-20.	No transfer authorized.
2005-27: 8/1/2005	Bureau of Budget and Management Research (BBMR)	Lawsuit filed by Attorney General suing the Director of DOA and the Director of BBMR for failing to pay overtime payment. - Extension of EO No. 2005-20.	No transfer authorized.
2005-27: 8/1/2005	Guam Police Department (GPD)	Lawsuit filed by Attorney General suing the Chief of Police for failing to pay overtime payment. - Extension of EO No. 2005-19.	No transfer authorized.
2005-27: 8/1/2005	Guam Fire Department (GFD)	Lawsuit filed by Attorney General suing the Fire Chief for failing to pay overtime payment. - Extension of EO No. 2005-19.	No transfer authorized.
2005-29: 8/7/2005	Department of Mental Health and Substance Abuse (DMHSA)	Permanent Injunction in CV01-00041. - DMHSA is mandated to ensure that its department will be made safe, hazard free, and compliant with all mandates imposed by the Permanent Injunction in CV01-00041.	\$ 180,000
2005-29: 8/7/2005	Department of Integrated Services for Individuals with Disabilities (DISID)	Permanent Injunction in CV01-00041. - DISID is mandated to ensure that its department will be made safe, hazard free, and compliant with all mandates imposed by the Permanent Injunction in CV01-00041.	\$ 70,000



**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-30: 8/31/2005	Office of Homeland Security / Office of Civil Defense	Typhoon Nabi - Waiver of normal procurement procedures and additional funds needed to provide emergency services relative to Typhoon Nabi	\$ 250,000
2005-31: 9/6/2005	Department of Mental Health and Substance Abuse (DMHSA)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
2005-31: 9/6/2005	Department of Integrated Services for Individuals with Disabilities (DISID)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	Unused balance of the \$250,000 authorized by EO 2005-29.
2005-32: 9/27/2005	Guam Police Department (GPD)	Northwest Airlines Flight No. 074 accident - GPD emergency procedures and personnel were immediately activated to respond to the situation thereby necessitating the deployment of equipment, personnel, and overtime costs.	No transfer authorized.
2005-32: 9/27/2005	Guam International Airport Authority (GIAA)	Northwest Airlines Flight No. 074 accident - GIAA' emergency procedures and personnel were immediately activated to respond to the situation thereby necessitating the deployment of equipment, personnel, and overtime costs.	No transfer authorized.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-32: 9/27/2005	Guam Fire Department (GFD)	Northwest Airlines Flight No. 074 accident - GFD emergency procedures and personnel were immediately activated to respond to the situation thereby necessitating the deployment of equipment, personnel, and overtime costs.	No transfer authorized
2005-33: 10/3/2005	Department of Mental Health and Substance Abuse (DMHSA)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
2005-33: 10/3/2005	Department of Integrated Services for Individuals with Disabilities (DISID)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
2005-36: 11/14/2005	Guam Police Department (GPD)	Search for Sexual Predator - Identified sexual predator is considered armed and dangerous. His apprehension and arrest is vitally necessary for the safety and well being of the community.	No transfer authorized.
2005-38: 11/14/2005	Department of Mental Health and Substance Abuse (DMHSA)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.

**Appendix 4:  
Emergency Executive Orders – April 2003 through December 2005**

<b>Executive Order &amp; Date</b>	<b>Agency</b>	<b>Disaster – Emergency Issue</b>	<b>Amount Authorized</b>
2005-38: 11/14/2005	Department of Integrated Services for Individuals with Disabilities (DISID)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
2005-39: 11/16/2005	Department of Corrections (DOC)	Search for Sexual Predator - Authorization to procure goods and services necessary to respond appropriately to the search and apprehension of a sexual predator.	No transfer authorized.
2005-39: 11/16/2005	Guam Police Department (GPD)	Search for Sexual Predator - Authorization to procure goods and services necessary to respond appropriately to the search and apprehension of a sexual predator.	No transfer authorized.
2005-42: 12/19/2005	Department of Mental Health and Substance Abuse (DMHSA)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
2005-42: 12/19/2005	Department of Integrated Services for Individuals with Disabilities (DISID)	Permanent Injunction in CV01-00041. - Extension of EO No. 2005-29.	No transfer authorized.
<b>TOTAL</b>			<b>\$ 4,500,000</b>

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**Appendix 5:**  
**State of California Categories of Emergency**

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In the state of California categories of emergencies include<sup>22</sup> :

- Category A - Debris Removal
- Category B - Emergency Protective Measures
- Category C - Road System Repairs
- Category D - Water Control Facilities
- Category E - Buildings and Equipment
- Category F - Public Utility Systems
- Category G - Other (Parks, Recreational Facilities, etc.)

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<sup>22</sup> Chapter 15 – State Natural Disaster Assistance Act (NDAA) Program: Disaster Plan (California State)

## Appendix 6: Frequency of Emergency Procurement

Agency	Emergency Declared	Duration
Department of Agriculture	Marianas Audubon Society, et.al. vs. Gail Norton, et.al., concerning the designation of 8,000 acres of federal land on Guam as critical habitat.	30 days
Guam Public School System	DOE facilities are neither adequate nor prepared for the first day of school on August 17, 2004.	30 days
Office of Civil Defense	Fire at the J & E Equipment Rental Solid Waste Hardfill Facility at Santa Cruz Drive Chalan Pago	30 days
Guam Police Department	Insufficient funds for the operational needs of the Guam Police Department	30 days
Guam International Airport	Northwest Airlines Flight No. 074	30 days
Guam Police Department	Northwest Airlines Flight No. 074	30 days
Guam Fire Department	Northwest Airlines Flight No. 074	30 days
Department of Public Works	Sanitary violations issued to Southern High School	30 days
Bureau of Budget	Overtime Litigation - OAG vs. Director of BBMR	30 days
Department of Administration	Overtime Litigation - OAG vs. Director of DOA	30 days
Department of Public Works	School Bus Shortage 2003	30 days
Department of Public Works	School Bus Shortage 2004	30 days
Office of Civil Defense	Tropical Storm Kulap	30 days
Office of Civil Defense	Tropical Storm Tingting	30 days
Office of Civil Defense	Typhoon Chaba	30 days
Office of Civil Defense	Typhoon Nabi	30 days
Office of Civil Defense	Typhoon Nock-Ten	30 days
Guam Public School System	Water Shortages at various public schools.	30 days
Department of Corrections	Search for Sexual Predator	30 days
Department of Revenue and Taxation	Structural damage to Tiyan Offices	30 days
Office of the Governor	Ongoing Government of Guam Maritime Cases	30 days
Guam Police Department	Overtime Litigation - OAG vs. Chief of Police	60 days
Department of Corrections	Overtime Litigation - OAG vs. Director of DOC	60 days
Guam Fire Department	Overtime Litigation - OAG vs. GFD Fire Chief	60 days
Guam Police Department	Search for Sexual Predator	60 days
Office of the Attorney General	Office relocation due to eviction from the Guam Judicial Center	60 days
Office of the Governor	Office relocation due to severe damage to Adelup and Government House	120 days
Department of Integrated Services	Permanent Injunction in CV01-00041.	150 days
Department of Mental Health	Permanent Injunction in CV01-00041.	150 days
Department of Administration	Mass Transit Buses	27 months

**Appendix 7:**

**Cost of Guam Public Transit System 27-Month Certificates**

<b>Month / Year of Procurement</b>	<b>GMTA Route(s) (Para, Public, &amp; Demand) <sup>23</sup></b>	<b>Amount</b>	<b>Vendor Number</b>
Oct-03	Para Transit, Public Transit	\$ 609,377	F0096157
Nov-03			
Dec-03	Para Transit , Public Transit	397,350	F0096157
Jan-04	Para Transit, Public Transit	118,958	K3537201
Feb-04	Para Transit *	128,168	K3537201
Mar-04	Para Transit, Fixed	133,405	F0096157
Mar-04	Demand	82,620	K3537201
Apr-04	Para Transit	61,770	F0096157
Apr-04	Demand, Fixed	120, 595	K3537201
May-04	Demand, Fixed	120,665	K3537201
May-04	Para Transit	76,292	F0096157
Jun-04	Demand, Fixed	111,225	K3537201
Jun-04	Para Transit	67,405	F0096157
Jul-04	Demand, Fixed, Para Transit	193,327	F0096157
Aug-04	Demand, Fixed	109,086	F0096157
Aug-04	Para Transit	60,775	K3537201
Sep-04	Demand, Fixed	106,140	F0096157
Sep-04	Para Transit	55,380	K3537201
Oct-04	Demand, Fixed, Para Transit	137,718	F0096157
Nov-04	Demand, Fixed, Para Transit	134,631	F0096157
Dec-04	Demand, Para Transit	109,867	K3537201
Dec-04	Fixed	46,237	F0096157
Jan-05	Demand, Fixed, Para Transit	137,384	F0096157
Feb-05	Para Transit, Demand, Fixed	123,278	F0096157
Mar-05	Demand, Fixed, Para Transit	189,438	F0096157
Apr-05	Demand, Fixed, Para Transit	186,204	K3537201
May-05	Para Transit , Demand, Fixed	161,908	K3537201

- Totals may not add up due to rounding.

<sup>23</sup> Beginning in March 2004, the Guam Public Transit System consistently procured vendors to service three separate routes: the Para Transit, Demand and Fixed Routes.

Month / Year of Procurement	GMTA Route (Para, Public, & Demand) <sup>24</sup>	Amount	Vendor Number
Jun-05	Demand, Fixed, Para Transit	198,474	K3537201
Jul-05	Demand, Fixed, Para Transit	204,524	K3537201
Aug-05	Fixed, Para Transit	155,416	K3537201
Aug-05	Demand	74,358	F0096157
Sep-05	Demand, Para Transit	165,676	K3537201
Sep-05	Fixed	64,190	F0096157
Sep-05	Fixed	8,515	F0096157
Oct-05	Para Transit	97,856	K3537201
Oct-05	Demand, Fixed	143,838	F0096157
Nov-05	Demand, Fixed	143,179	F0096157
Nov-05	Para Transit	95,365	K3537201
Dec-05	Demand, Fixed	156,640	F0096157
Dec-05	Para Transit	128,700	K3537201
	<b>TOTAL</b>	<b>\$ 5,295,338</b>	

- Totals may not add up due to rounding.

<sup>24</sup> Beginning in March 2004, the Guam Public Transit System consistently procured vendors to service three separate routes: the Para Transit, Demand and Fixed Routes.

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**Appendix 8:  
Office of Attorney General Timeline of Events**

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<b>Date</b>	<b>Document / Event / Description</b>
<b>May 28, 2004</b>	<p><b>Notice to Terminate Tenancy</b></p> <p>The Administrator of the Courts serves the Office of the Attorney General (OAG) a Thirty (30) Day Notice to Terminate Tenancy demanding that the OAG vacate the premises as of June 30, 2004. The notice to terminate tenancy resulted from the OAG failing to pay rent under a lease agreement that expired on September 30, 1996.</p>
<b>December 30, 2004</b>	<p><b>Decision and Order Motion for Summary Judgment</b></p> <p>The Courts make the decision that as matter of law, the Judicial Council has the right to exercise authority as a Landlord over the Office of the Attorney General.</p>
<b>January 7, 2005</b>	<p><b>Temporary Restraining Order</b></p> <p>OAG requests that the Judicial Council be restrained from interfering with the peaceful use and enjoyment of the premises, which the OAG's office occupies at the Judicial Center, including parking stalls.</p>
<b>January 10, 2005</b>	<p><b>Final Judgment (Eviction Date) Decision Temporary Restraining Order</b></p> <p>Court agrees with OAG and grants restraining order against Judicial Council. But, also officially evicts the OAG's Office ordering them to leave by Feb. 28, 2005 for failure to pay rent. From Jan 10 to Feb. 28 the Judicial Council is restrained from bothering or interrupting the operations of the OAG's office.</p>
<b>February 1, 2005</b>	<p><b>Motion to Stay</b></p> <p>The OAG files a request for a stay, knowing that the office will be evicted for non-payment of rent, on the basis that the OAG's office will have no place to operate.</p>
<b>February 22, 2005</b>	<p><b>Decision and Order Motion to Stay</b></p> <p>A temporary stay is given to the OAG's office expiring (7) days from Feb. 22, 2005 or March 1, not reversing the eviction notice.</p>



FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:23AM P1



Office of the Attorney General

Douglas B. Moylan

Attorney General of Guam

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June 26, 2006

Ms. Theresa Gumataotao  
Office of the Public Auditor  
238 Archbishop Flores Street  
Hagatna, Guam 96910

Re: Procurement Issues Relative to Lease of Pedro's Plaza

Dear Ms. Gumataotao:

I am responding to your email questions of June 8, 2006 directed to Assistant Attorney General J. Basil O'Mallan III and relative to the above-referenced subject.

I will attempt to answer each of your specific questions, but I would also like to comment on the facts as you state them to be. I will quote from your email in bold print and then respond immediately after.

**In response to the February 28 RFQ, three interested vendors offered competitive quotes illustrated below:**

Vendor	Rent	Area for Lease
[REDACTED]	\$2.00 per sq. foot	19,565 sq. feet
[REDACTED]	\$1.75 per sq. foot	20,000 sq. feet
[REDACTED]	Rent Free	32,455 sq. feet

We disagree with your statement that the [REDACTED] offered 20,000 square feet. [REDACTED] expressly stated in his offer dated February 28, 2005 that, of the 20,000

FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:24AM P2

Letter to Ms. Theresa Gumataotao  
Office of the Public Auditor  
June 26, 2006  
Page 2 of 6 Pages

square feet he wished to offer, 2,500 square feet was not immediately ready, but could be made available "in a couple of weeks." Thus, he only had 17,500 square feet to offer. This was far below our requested square footage of "approximately 20,000 square feet" as stated in our letter to interested landlords. Anything less than a few hundred square feet of 20,000, or less than 5% of 20,000, would have been unacceptable because we would not have been able to house our entire operation displaced by the eviction from the Judicial Center. The difference offered by [REDACTED] was 12.5% less, and therefore, far from acceptable.

In addition, we absolutely required that the full premises be available for "immediate" occupancy, not a nebulous "couple of weeks" later as [REDACTED] offered. The AG's Office was literally homeless as of March 1, 2005 and could not have operated partially out of containers while waiting for the rest of [REDACTED] office space to open up.

Furthermore, [REDACTED] offered maintenance only for the common areas, whereas the specifications stated that maintenance for the entire area to be rented was required.

Hence, we never viewed [REDACTED] offer as being responsive to the specifications at all.

[REDACTED] offer, on the other hand, at 19,565 square feet would have been in the realm of acceptability in terms of size.

**Was the value of what the AG's Office received equal to \$1 or greater than?  
Overall, did the AG's Office consider the "free or reduced rent" to be a favor or gratuity as defined by 5 G.C.A. Section 5630(d)?**

If the value of the office space the AG's Office occupied for March 2005 depended upon the value of other properties comparable in location and other qualities at that time, then obviously the space had a value of at least \$1.00.

The AG's office always unequivocally considered the bid of free rent to be a valid bid offered in response to a valid request for office space.

Before looking at Section 5630(d), we need to recognize exactly what is under scrutiny here. It is the offer of free rent by [REDACTED] as a whole, to the AG's office as a whole and as a government agency. No one at [REDACTED] was acting as an individual. The offer was made by [REDACTED] and [REDACTED] was an agent of [REDACTED]. The offer was made to the AG's office as a whole, and no individual at the AG's office or GSA would have benefited on a personal level.

Section 5630(d) is couched in terms of benefits which are personal and which are given by individuals to receivers who are individuals. The giving of free rent had no meaning on a personal level to [REDACTED] nor to any employee of the AG's office or GSA. On the receiving end, the benefit of free rent only had meaning to the AG's office as a government agency.

FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:25AM P3

Letter to Ms. Theresa Gumataotao  
Office of the Public Auditor  
June 26, 2006  
Page 3 of 6 Pages

Furthermore, whether a genuine offer such as what [REDACTED] gave in response to our office's request for quotations may ever be considered as a favor or gratuity rather than a genuine offer which it was meant to be is questionable. A letter setting out specifications and requesting quotations was sent out to potential bidders. Three letters of quotation were received in response. How this scenario may be reclassified as a favor is mystifying. Section 5630(d) was not meant to cover genuine offers or bids, no matter how low the bids are. Any bid response which satisfies all the requirements is a valid bid.

Further, we estimated the possible monthly rent the AG's office could have paid for the building by multiplying the quotes submitted by [REDACTED] and the [REDACTED] with the square footage offered by [REDACTED]. Our calculations show:

[REDACTED] = \$2.00 x 32,455 sq. feet = \$64,910 per month  
[REDACTED] = \$1.75 x 32,455 sq. feet = \$56,796 per month

Further, [REDACTED] offered a quote in April the second month emergency procurement was allowed and paid \$40,568 for the month by charging \$1.25 per sq. foot for 32,455 sq. feet.

We requested "approximately 20,000 square feet" for the months of March and April 2005, and notwithstanding that [REDACTED] offered 32,455, we occupied only 20,000 square feet for the months of March and April 2005. Therefore, you are wrong to use 32,455 square feet in comparing what we might have paid to the two other bidders.

Our records show that for March 2005, we paid nothing for our occupancy, and that for April 2005, we paid \$25,000 to occupy exactly 20,000 square feet at \$1.25 per square foot.

Therefore, for whatever relevance your rent comparisons may have, at the least, the square footage figure should be 20,000 for March and April 2005, and not 32,455 square feet which is the full square footage of the building. We did not occupy the full building until October 1, 2005.

**In our research, 5 G. C. A. Section 22408 exclusively allows the Governor to accept donations of property from any individual or organization on behalf of the territory. Are there other provisions of law which allowed GSA or the AG's Office to accept the reduced rent offered by Bank of Guam?**

You are incorrect that, according to 5 G.C.A. Section 22408, only the Governor may accept donations on behalf of all government agencies. In fact, quite a few government agencies are individually authorized by their enabling legislation to accept donations of various kinds. However, the AG's Office and GSA do not have such individualized authority incorporated into their enabling legislation. Therefore, you are correct insofar as the AG's Office and GSA are concerned that the Governor must accept any gift to them on their behalf.

FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:25AM P4

Letter to Ms. Theresa Gimataotao  
Office of the Public Auditor  
June 26, 2006  
Page 4 of 6 Pages

On the same issue, your office prepared a separate memorandum dated March 1, 2005, addressed to the CPO stating that you disagreed with [REDACTED] opportunity "to modify its previous quotations" and further informed GSA that they "must accept the [first] offer of free rent as the lowest bid."

Do you consider the award based on a modified quote to be in error? Did the \$1 requisition resolve the error? Was there another remedy?

As explained to us by GSA when the emergency procurement for March was taking place, [REDACTED] quote for March of free rent could not be processed without a dollar figure attached to it, and hence, the \$1.00 figure was arrived at between GSA and [REDACTED]. The \$1.00 figure was never considered a modification by GSA. Although our office questioned the \$1.00 at that time as a modification, the explanation from GSA that zero rent could not be processed as a completed procurement satisfied us.

For the purposes of completing the procurement of space for March 2005, our office did provide GSA with a requisition for \$1.00 at GSA's request. We understand from DOA, however, that a \$1.00 payment for the month of March 2005 has never been paid over to [REDACTED] from our accounts, and we are not certain how GSA handled the requisition once it arrived at GSA.

Generally, bids for supplies (under the procurement law, leases are considered supplies) are awarded to the lowest bidder. Once bids (prices) are submitted and the deadline passes, the bids may not be changed. Any price changed after opening of bids is considered a late bid and untimely unless the modification "would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity." See 2 GAR Division 4 Section 3109(k).

There is no indication in the Guam Procurement Law that Section 3109(k) applies to emergency procurement. However, if it does apply, then GSA should have informed us to include in our letter requesting rent quotations that there was a minimum rent requirement. Of course, none of us in the government expected an offer of zero rent, and surely such a bid was a first for the government ever. Had GSA informed us, and had we included the minimum rent requirement in our letter, surely [REDACTED] would have submitted a responsive bid.

More specifically, the emergency procurement statute and regulation both require that the award go to "the best offer, as determin[ed] by evaluating cost and delivery time." See 5 G.C.A. Section 5215 and 2 GAR Division 4 Section 3114. In other words, in an emergency procurement, price is not the only factor in making a determination for award. Delivery time is an equally important factor to price. Therefore, once again, [REDACTED] bid was not acceptable because he could not offer the full space immediately.

In addition, our request letter indicated several other factors which must be satisfied. Extremely important was the walking distance between the building offered and the Judicial Center. Even

FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:26AM P5

Letter to Ms. Theresa Gumataotao  
Office of the Public Auditor  
June 26, 2006  
Page 5 of 6 Pages

if all three bidders had offered the same rent, the best offer would have been [REDACTED] because of its distance from the Judicial Center. With attorneys walking back and forth on a daily basis with their files between the AG's office and the courthouse, rain or shine, distance was an extremely important specification for consideration, all other things being equal.

However, even assuming that the \$1.00 figure was a modification, the emergency procurement procedures do not expressly indicate how to handle a modification. Therefore, we cannot view the \$1.00 figure as an error to the emergency procedure. GSA could have asked us to obtain three new quotes specifying the minimum rent requirement, but that would have been unnecessary and caused an unmanageable delay.

The bidder's register (the required log used to show times when bids have been picked up and dropped off by vendors) shows that [REDACTED] did not pick up a copy of the bid until after the bid was opened. Did your office receive a copy of the final bid from GSA? If so, could [REDACTED] have received a copy of the bid from your office?

So that there is no misunderstanding, I want to differentiate between the "specifications" and the "invitation to bid package." The specifications respecting an office lease describe the type of building desired by the agency and any specific terms of the lease covenants to be entered into. The specifications are usually drafted by the using agency. The invitation to bid package, on the other hand, is the entire set of documents provided to each bidder by GSA and includes the specifications of the building. The bid package also includes the procedure for the bid and all other general procurement related topics supplied to bidders.

Our office began drafting the specifications, and several different versions of the specifications for the lease went back and forth between our office and GSA. If your question is whether we ever had in our possession a copy of the finalized specifications, we probably did. However, at this point in time, it is difficult to determine with certainty which version in our possession is the final draft without comparing what we have with a formal finalized copy of the specifications from GSA.

At this time, we have not found a complete invitation to bid package in our possession.

You ask whether [REDACTED] could have received a copy of the "bid" from our office. To the best of our knowledge, although we may have had a copy of the finalized specifications, we do not believe we ever picked up or were ever provided with a full bid package from GSA. Therefore, we could not have given a full bid package to [REDACTED].

Mr. [REDACTED] at [REDACTED] who acted as a liaison for [REDACTED] on all matters relative to the building which we now occupy, has advised us that he went to GSA to pick up a copy of the invitation to bid package. He states that he did not bring a [REDACTED] check to pay for the package, and so ended up paying for the package using his personal check. He does not know why GSA did not log him in as having picked up a package. He further states that

FROM : AG'S OFFICE

FAX NO. : 472-2493

Jun. 26 2006 09:26AM P6

Letter to Ms. Theresa Gammataotao  
Office of the Public Auditor  
June 26, 2006  
Page 6 of 6 Pages

representatives of the OPA have already asked him these questions and that he has shown a copy of his personal check to those OPA representatives who asked.

We hope the foregoing helps you with your audit of these procurement matters. Please advise me personally if you have any further questions.

Sincerely,



**JOSEPH A. GUTHRIE**  
Deputy Attorney General  
Office of the Attorney General



Felix P. Camacho  
Governor  
Kaleo S. Moylan  
Lieutenant Governor

Department of Administration  
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Lourdes M. Perez  
Director  
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Deputy Director

October 4, 2006

Mrs. Doris F. Brooks  
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Suite 401, Pacific News Bldg.  
238 Archbishop Flores Street  
Hagatña, Guam 96910

Received by Office of the Public Auditor  
10/5/06 2:25 pm

Ref: Final Draft Report – Government of Guam Emergency Executive Orders

Dear Mrs. Brooks,

Hafa Adai! Upon review of the Final Draft Report, we would like to make the following comments on the section dealing with Emergency Executive Orders.

For disaster related circumstances (such as acts of nature – typhoons, earthquakes, etc.), executive orders are standard directives issued by the Governor to enable “temporary” waiver of existing policies and procedures in place for mandated laws due to unexpected emergencies or circumstances that arise. These executive orders are issued to provide authority for funding and manpower to mobilize government operations in order to assist the general public at the onset of emergencies.

As with other related matters, the Department of Administration, Division of Accounts, works closely with the Bureau of Budget and Management Research (BBMR) in the establishment of accounts for both disaster and non-disaster related executive orders. The Bureau provides guidance and assistance in the determination of the length of the period required to effectively complete the intent of the executive orders.

The 30-day limitation for these executive orders is a standard period. Executive orders are meant to be used as a short-term authority – and if required be can be extended by a succeeding executive order. For every executive order issued which involves some type of funding to address an emergency, there is a standard procedure of setting an expiration date. As a standard norm, an account is given an expiration date of 30-days from the day the executive order was signed and promulgated. This 30-day period is used because there is a section in most executive orders for emergencies that limit emergency procurement and expenditure of funds to 30-days.

Accounts established for non-disaster emergencies are sometimes extended beyond the 30-days period depending on the nature of the emergency. An example of this is – if an Executive Order was issued to address legal proceedings or to comply with an injunction, the period of time may require more than 30-days to complete. In these instances, DOA and BBMR coordinate their efforts to ensure compliance of the executive order.

Office of the Public Auditor  
Re: Final Draft Report – Government of Guam Emergency Executive Orders  
Page 2 of 2.  
October 4, 2006

The Division of Accounts is tasked to establish accounts as directed by executive order for emergency funding to allow procurement purchases and overtime for essential government personnel.

This standard 30-days period also discourages the abuse of emergency situations, which has been known to happen in the past.

Relative to the findings on GSA, specifically OPA's Final Draft Report on page 26 item no. 6, the following was provided by the Chief Procurement Officer:

GSA has since May 2006 established a log sheet for lease of office space acquired by the line departments and agencies beginning with Fiscal Year 2006. In addition, effective Fiscal Year 2007, GSA will assign control numbers for certificate of emergency approved by the Governor for the line departments and agencies of the Government of Guam.

We hope that the information provided herein is sufficient to answer the concerns of your office on this matter.

Should you have any questions or require further information, please contact me.

Sincerely,



LOURDES M. PEREZ  
DOA Director

*for*



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- Visit our website at [www.guamopa.org](http://www.guamopa.org);
- Call our office at 475-0390;
- Fax our office at 472-7951;
- Or visit us at the PNB Building, Suite 401  
In Hagåtña

**All information will be held in strict confidence.**