OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Department of Parks and Recreation Paseo Stadium Lease Agreement
Report No. 06-18, December 2006

This report presents the results of our compliance audit of the Paseo Stadium Lease Agreement (Paseo lease) between the Department of Parks and Recreation (DPR) and the Guam Baseball Federation (GBF), a not-for-profit organization. The audit was initiated as a result of the Office of the Public Auditor Report No. 06-07, Follow-up Review of DPR's Unresolved Audit Recommendations, released in July 2006.

The Paseo lease was authorized by P.L. 27-27 in July 2003, which included a portion for checks and balances over Paseo Stadium-generated revenues and a tax credit program to encourage private sector involvement in the rehabilitation and maintenance of the government-owned stadium. In June 2004, the Legislature, through P.L. 27-95, approved the Paseo lease.

We found that DPR and GBF did not comply with the terms and conditions of the Paseo lease and P.L. 27-27. The DPR Director delegated his duty to manage and safeguard the Paseo Stadium entirely to the GBF Commissioner and failed to provide sufficient oversight over Paseo Stadium activities. The DPR Director did not monitor, certify, and approve the satisfactory completion of Paseo Stadium rehabilitation projects totaling $1,001,256. DPR did little to protect the Municipal Stadium Operations Fund (MSOF), a government account for Paseo Stadium revenues, against loss and misuse.

Without participation or oversight by DPR, GBF, on its own, selected only one company (Beneficiary) to benefit from tax credits for Paseo Stadium rehabilitation projects. No public announcement was made to invite other companies to participate in the tax credit program. The Beneficiary has been a major sponsor of the Guam Baseball League.

The Guam Economic Development and Commerce Authority (GEDCA), which was tasked to certify compliance with the lease agreement and contributors for tax credits, did not scrutinize $1,001,256 in expenditures. Instead, GEDCA relied on GBF's assertions. GEDCA contended that monitoring the procurement process is DPR's responsibility and that DPR should have adopted rules and regulations delineating its responsibilities for monitoring GBF's compliance as the lessee. The primary responsibility for compliance with Guam Procurement Laws on the Paseo Stadium tax credit expenditures rests with DPR. However, had GEDCA inquired whether Guam Procurement Laws were followed, further scrutiny of the Paseo Stadium tax credit may have occurred.

The $1,001,256 expenditures certified for tax credits were not spent according to the Guam Procurement Law as required by P.L. 27-27. Instead of advertising the projects, GBF selected vendors after requesting quotations from two or three. We found that in some instances, a summary of quotes was documented by the GBF Commissioner but the actual quotes submitted by the vendors were not. Among the major expenditures, for which tax credits were provided only to one company are:

- $364,990 to replace five light poles and repair restrooms, lockers and showers;
- $183,700 to renovate office space, concession stalls, a storage room, and other construction work; and
- $109,888 to replace underground cable, for electrical work and scoreboard renovation and wiring.

Other audit findings include:

- Of the $1,001,256 tax credit certificates authorized by GEDCA, $297,343 may have been over-applied, based on tax program annual limits, by DRT against the Beneficiary's excise taxes for July 2005 through June 2006. As of June 30, 2006, DRT applied $887,630 of tax credits against the Beneficiary's excise taxes and the remaining $113,626 has not yet been redeemed.
- The Beneficiary received tax credits for the $45,000 annual salary of the GBF Commissioner as the Diamond Keeper. The position was not properly procured and only four Board members, including the Commissioner, which did not constitute a quorum of the Board, were present when the Commissioner was appointed as Diamond Keeper. We also found no evidence documenting the basis for the $45,000 annual salary. The GBF Commissioner was not licensed as Diamond Keeper until almost a year after his appointment.
- GBF did not pay the required 50% of utilities for June 2005 to May 2006, estimated at $21,830 ($15,191 for water and $6,639 for power). GBF received $12,000 from the Beneficiary for this purpose in October 2005, but has yet to remit this payment to the government of Guam (DPR).
- GBF did not pay the required 4% of accrued gross revenues for annual rent by July 2005 and July 2006 to DPR. The July 2005 annual rent was $886.
- We projected $25,160 in revenue that was not deposited into the MSOF for the 2005 and 2006 baseball seasons.
- All 75 check disbursements totaling $61,814 were spent without authorization. Of this amount:
    - Forty-five checks totaling $50,116 did not have supporting receipts. Of these, five checks totaling $4,528 were made payable to "cash" and were co-signed and endorsed by the GBF Commissioner. Five other checks totaling $4,857 were made payable to the GBF Commissioner, who also co-signed the checks.
    - Nine checks totaling $5,767 were paid to GBF members for their services, possibly indicating preferential treatment.

Furthermore, the DPR Director and GBF Commissioner signed two amendments to the Paseo lease, which minimized DPR's involvement and oversight in the management of the MSOF and the Paseo Stadium, eliminated the termination and default clauses, and were inconsistent with P.L. 27-27. The amendments were made without the Governor's concurrence.

Other matters that came to our attention were that the DPR Employee Association profited from use of the Paseo Stadium, and that GBF failed to report 1099-MISC forms for $20,669 paid to individuals for CY 2004 and 2005.

OPA made seven recommendations, such as to the DPR Director to work with the Office of the Attorney General to determine viable options to either enforce or terminate the Paseo Stadium Lease Agreement, to the GEDCA Administrator to temporarily revoke $64,690 of the Beneficiary's tax credits until evidence of proper authorization and supporting receipts are provided by GBF, and to the Guam Legislature to ensure that clearly defined monitoring mechanisms are incorporated into all future tax credit programs.

We recognize the Legislature's authority to mandate tax credits for public goals and programs, but must point out that tax credits reduce government revenues. For future tax credit programs to produce intended results, checks and balances must be established and all entities involved must actively, effectively, and efficiently carry out the objectives of the program. The Paseo Stadium tax credit program was intended to rehabilitate the Paseo Stadium, but the tax credit program was poorly managed by DPR and was not scrutinized by GEDCA and DRT. Instead, the government of Guam essentially provided tax credits without review of their appropriateness and costs.

A draft report was transmitted to the DPR and DRT Directors, and the GEDCA Acting Administrator on December 13, 2006. GEDCA and DRT generally concurred with the recommendations. GEDCA agreed to suspend the Paseo Stadium tax credit program and temporarily revoke $64,690 of the Beneficiary's tax credits until evidence of proper authorization and supporting receipts are provided by GBF. DPR agreed to work with the Office of the Attorney General to determine viable options to either enforce or terminate the Paseo lease agreement. Although P.L. 27-27 requires that all revenues generated from the use of the Paseo Stadium be deposited into the MSOF, DPR did not agree that the DPR Employees Association should pay $542 to the MSOF because the funds were not misused.

Based on the responses from DPR, GEDCA, and DRT, there appears to be a lack of coordination between the three parties involved in the Paseo Stadium tax credit program. Below is a synopsis of the responses:

- DPR maintains the position that the facilitation and oversight of the tax credit program rests with GEDCA.
- GEDCA contends that had rules and regulations been adopted by DPR, there would have been no question in the $1,001,256 in expenditures for tax credits.
- DRT recognized that the tax credits authorized by GEDCA were used in excess of the amounts allowed by P.L. 27-27. Upon receipt of the Attorney General's opinion relative to the effective date of the tax credit, the Beneficiary will be informed that the tax credits were not used in accordance with the thresholds of P.L. 27-27, and that corresponding adjustments will be made.

DRT also acknowledged that weaknesses exist in the authorization of tax credits under the Paseo Stadium Lease Agreement with DPR, GEDCA, and DRT.

See Appendix 8, 9, and 10 for DPR, GEDCA, and DRT management responses, respectively.

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