

**Department of Parks and Recreation
Paseo Stadium Lease Agreement**

**Performance Audit
June 1, 2004 through June 30, 2006**

**OPA Report No. 06-18
December 2006**



OFFICE OF THE PUBLIC AUDITOR

**Department of Parks and Recreation
Paseo Stadium Lease Agreement**

**Performance Audit
June 1, 2004 through June 30, 2006**

**OPA Report No. 06-18
December 2006**

Distribution:

Governor of Guam
Speaker, 28th Guam Legislature
Senators, 28th Guam Legislature
Director, Department of Parks and Recreation
Acting Administrator, Guam Economic Development and Commerce Authority
Director, Department of Revenue and Taxation
Director, Department of Administration
Attorney General of Guam
Director, Bureau of Budget and Management Research
U.S. Department of Interior
Office of Inspector General – Pacific Field Office
Guam Media via E-Mail



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.



Doris Flores Brooks, CPA, CGFM
Public Auditor



OFFICE OF THE PUBLIC AUDITOR

Contents

	Page
Introduction.....	1
Background.....	1
Results of Audit.....	3
Only One Company Benefited From Paseo Stadium Tax Credits.....	5
Questionable Use of the Tax Credit Program.....	9
Insufficient DPR Monitoring of Compliance Over Paseo Stadium Lease	12
Questioned Paseo Stadium Lease Amendments.....	16
Other Operational Matters	19
Conclusion	20
Recommendations.....	21
Management Response and OPA Reply	22
Appendices	
1: Classification of Monetary Impact	24
2: Audit Scope and Methodology	25
3: Prior Audit Coverage.....	26
4: MSOF and GBF Financial Activity.....	27
5: Compliance with Provisions of Paseo Lease Agreement	29
6: Procedures for Reporting MSOF Disbursements and Income.....	30
7: Individuals Not Issued Form 1099-MISC	31
8: DPR Management Response	32
9: GEDCA Management Response	38
10: DRT Management Response	40
11: Status of Audit Recommendations	41



OFFICE OF THE PUBLIC AUDITOR

Introduction

This report presents the results of our audit of the Paseo Stadium Lease Agreement (Paseo lease) between the Department of Parks and Recreation (DPR) and the Guam Baseball Federation (GBF). The audit was initiated as a result of OPA Report 06-07, the follow-up review of DPR's Unresolved Audit Recommendations released in July 2006, in which we saw a decline in Paseo Stadium revenues as a result of the Paseo lease.

The audit objectives were to determine whether (1) DPR and GBF and other applicable entities were complying with the Paseo Stadium Lease Agreement and applicable laws and regulations; (2) DPR provided sufficient oversight over the lease agreement activities; and (3) the related tax credit program was properly managed.

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

Background

Public Law (P.L.) 12-209 created the Department of Parks and Recreation to manage Guam's parks and recreational facilities and oversee the historic preservation in Guam.¹ DPR is divided into three divisions: the Parks Division, Recreation Division, and Historic Resources Division. The DPR Director's duties include the management of the department's divisions.

The Paseo Stadium is a Territorial Recreational Facility under the purview of DPR. It was originally built in 1955 as a wooden structure and rebuilt in concrete in 1981.

The Guam Baseball Federation (GBF)² is a tax-exempt, not-for-profit organization³ representing and governing the sport of baseball on Guam. The GBF establishes the rules and regulations for the various leagues and fosters training programs for youth and adults. Its 11-member Board of Directors selects the Commissioner, Vice-Commissioner, Secretary, and Treasurer to manage day-to-day operations.

On January 5, 2003, P.L. 26-166, which authorized the lease of the stadium to GBF, was signed by the out-going Governor in the last day of his term. We noted that the law was

¹ Codified in Chapter 77 of Title 21 of the Guam Code Annotated.

² Formerly known as the Guam Major Baseball League. Renamed as Guam Baseball Federation in 1986.

³ Not-for-profit status was obtained from the Department of Revenue and Taxation (DRT) in 1992.

authored by an out-going Senator of the 26th Legislature who is now the GBF Commissioner.

In July 2003, the 27th Legislature, through P.L. 27-27, repealed and reenacted sections 2, 3, 4, and 5 of P.L. 26-166. The new law upheld the DPR lease to the GBF, but stipulated the establishment of a Municipal Stadium Operations Fund (MSOF), a checking account into which all stadium-generated revenue would be deposited, and from which all stadium expenditures would be paid. GBF was allowed to retain no more than 25% of stadium revenues, but not to exceed \$25,000 per year. The retained funds are considered “exempted funds” and are not part of the MSOF.

P.L. 27-27, Section 3(h) required the GBF to submit annual audited financial statements and subjected all revenues and expenditures from the lease agreement to the scrutiny of the Office of the Public Auditor (OPA). Failure to submit the statements to the DPR Commission and OPA was grounds for automatic termination of the lease agreement. Additionally, the law subjected all expenditures for tax credits for the stadium to the Guam procurement laws.

P.L. 27-27 also provided tax incentives to encourage private sector involvement in the upkeep of the stadium. Individuals, corporations, and companies that contribute toward the rehabilitation, development, and maintenance of the Paseo Stadium are entitled to receive tax credits against their excise taxes. The responsibility to certify compliance with the lease agreement and applicable provisions was given to the Guam Economic Development and Commerce Authority (GEDCA). The Department of Revenue and Taxation was given the responsibility to determine tax credits for contributors.



Image 1: The Paseo Stadium in Hagåtña after major improvement projects were made.

Under the terms of P.L. 27-27, the DPR Director, GBF Commissioner, Attorney General, and the Governor of Guam signed the Paseo lease in June 2004. The Legislature approved the lease through P.L. 27-95, as required by P.L. 27-27.

Results of Audit

We found that DPR and GBF did not comply with the terms and conditions of the Paseo Stadium Lease Agreement and P.L. 27-27. The DPR Director delegated his duty to manage and safeguard the Paseo Stadium entirely to the GBF Commissioner. The DPR Director also did not monitor, certify, or ensure satisfactory completion of stadium rehabilitation projects totaling \$1,001,256. Without sufficient DPR oversight, the GBF was allowed to completely manage the stadium's rehabilitation. Our review found that:

- Over \$1 million in Paseo Stadium rehabilitation projects were not procured in accordance with the Guam Procurement Law. Instead of advertising projects in excess of \$25,000, GBF selected vendors after requesting for quotations from two or three. Major expenditures include:
 - \$237,294 to replace five light poles and fixtures;
 - \$183,700 to repair and replace damaged panel and underground cable, and renovate a scoreboard and wiring;
 - \$127,696 to paint the stadium, install non-skid coating, and repair vents, restrooms, lockers, and shower rooms;
 - \$73,664 to repair and replace damaged electrical distribution equipment and underground cables; and
 - \$72,105 for grass re-seeding of the diamond infield and outfield, including 12 months' maintenance, herbicides, and fertilizers.
- Only one company was selected to benefit from the tax credits for stadium projects. No public announcement was made to invite other companies to participate in the tax credit program. It should be noted that this selected company has been a major sponsor of the Guam Baseball League.
- GEDCA did not scrutinize the tax credit program and relied on GBF's assertions that contributions were received and projects were completed. Had GEDCA inquired whether Guam Procurement Laws were followed, further scrutiny of the Paseo Stadium tax credit may have occurred. Of the \$1,001,256 tax credit certificates GEDCA authorized to the one company selected to benefit from the tax credits, \$297,343 may have been over-applied against the beneficiary's excise taxes from July 2005 through June 2006. Discrepancies we noted include:
 - 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 found no evidence documenting the Board's basis for the \$45,000 annual salary.

- Despite receiving a \$12,000 payment from the Beneficiary for utility costs in October 2005, GBF has yet to make payments totaling \$21,830 (\$15,191 for water and \$6,639 for power) to DPR for its 50% share of the total utility costs incurred by the Paseo Stadium from June 2005 to May 2006.
- GBF did not pay the required 4% of accrued gross revenues to DPR for its 2004 and 2005 annual rent due by July 2005 and July 2006, respectively. The 2005 annual rent was \$886.
- Although the 2005 season started in February, the MSOF was not opened until June 2005. We projected revenues amounting to \$25,160 were not deposited into the MSOF for the 2005 and 2006 baseball seasons.
- DPR did not independently safeguard the MSOF, a government account, against loss and misuse. Disbursement checks totaling \$61,814 were not reviewed and authorized by the DPR Director. We tested 75 disbursement checks and found that:
 - Forty-five checks totaling \$50,116 did not have supporting receipts or other documentation. 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 of GBF members.
 - Though not allowed under the Paseo lease, \$21,338 from MSOF ticket sales and concessions were used to make 474 cash payments for stadium maintenance and GBF related activities (i.e. game announcers, cashiers, and statisticians).
- DPR did not monitor the acquisition and use of \$63,832 of equipment (i.e., aerator, grass mower, field groomer, and turf utility vehicle) acquired by GBF through donations for tax credits. The equipment are essentially government property and is at risk of misuse and loss.

Furthermore, the DPR Director and GBF Commissioner made two amendments to the Paseo Lease Agreement without the Governor’s concurrence⁴. The amendments were inconsistent with P.L. 27-27, minimized DPR’s oversight and involvement in the management of the Paseo Stadium and MSOF, and eliminated the termination and default clauses.

⁴ 21 GCA §60114(c) provides: “[a]ll leases shall be executed by the Governor, attested by the Lieutenant Governor and be approved as to form by the Attorney General.

Only One Company Benefited From Paseo Stadium Tax Credits

Section 4 of P.L. 27-27 authorized GEDCA to certify “tax credits against excise taxes levied... not to exceed the aggregate amount of all contributors collectively... [t]he Director of the Department of Revenues and Taxation shall determine the allocation of the aggregate annual tax credits between contributors.” The DPR Director and the GBF



Image 2: Paseo Stadium during the 2006 baseball season.

Board are to approve the contributors entitled to the credits.

Although the law states that tax credits are to be available to all contributing entities, we found that between December 2004 and June 2006, only one contributor (Beneficiary) was endorsed for tax credits. The GBF Commissioner, who made the selection alone, admitted that no public announcement was made to invite other companies to participate in the Paseo Stadium tax credit

program. We found no evidence of a public announcement of the Beneficiary’s selection to receive the Paseo Stadium tax credits. As of June 30, 2006, GEDCA certified 30 tax credits totaling \$1,001,256 for the Beneficiary without the required approval of the DPR Director.

The GBF Commissioner verbally contacted three companies to participate in the tax credit program. When contacted by OPA, one company confirmed that they were approached but declined to participate. The second company did not respond to our inquiry. The third company is the Beneficiary.

The Beneficiary was able to offset, on a dollar-for-dollar basis, against its excise taxes on alcoholic beverages⁵ and other related excise taxes. Of this amount, DRT has applied \$887,630 of tax credits against the Beneficiary’s excise taxes. The Beneficiary has not yet redeemed the remaining \$113,626 in authorized tax credits.

Guam Procurement Laws Not Followed

Pursuant to P.L. 27-27, Section 4(e), donations expended by the tax credit beneficiaries for the Paseo Stadium rehabilitation and maintenance are subject to Guam procurement laws. The procurement laws require written solicitations for procurements less than \$15,000, Invitations for Bids (IFB) for procurement in excess of \$15,000, and public notice for procurement in excess of \$25,000.⁶

⁵ 11 G.C.A. § 26302

⁶ 2 G.A.R. § 3111, 5 G.C.A. § 5211, 2 G.A.R. § 3109

We found no evidence that these requirements were met. The GBF Commissioner and the project manager, who is also a GBF Board member, handled procurements and managed rehabilitation projects without reviews by DPR and GEDCA. As a result, there is no evidence of assurance that the Paseo Stadium rehabilitation projects were awarded fairly and at the best price, and whether the converted tax credits could have been lower. The lone tax credit Beneficiary paid \$1,001,256 to 11 other vendors for 17 Paseo Stadium project classifications. Of this total, \$64,690 was paid to GBF. See Table 1 for projects and costs.

Table 1: Summary of Vendors Paid for Paseo Stadium Rehabilitation And Beneficiary's Tax Credits⁷

Vendor Number	Total Amount	Total %	Project Number	Project Amount	Project Classification
1	\$ 364,990	36%	2	\$ 237,294	Replace five light poles and fixtures
			none	127,696	Repair work of the Paseo Stadium (facilities painting, hand railing repair, installation of non-skid coating, vents, restrooms, locker and shower rooms)
2	183,700	18%	6	183,700	Repair and replace damaged panel and underground cable, and renovate scoreboard and wiring
3	109,888	11%	4	73,664	Repair and replace damaged electrical distribution equipment and underground cables
			13	36,224	Purchase of electrical parts for repair of scoreboard and electrical work
4	77,650	8%	14	40,000	Infield renovation, including pitching mound
			9	37,650	Outfield renovation, including the warning track
5	72,105	7%	1	72,105	Grass re-seeding of outfield and infield, plus 12 months maintenance, herbicides, and fertilizers
6	64,690	6%	none	57,000	Annual salary (\$45,000) of Diamond Keeper plus 50% of utilities estimated at \$1,000 per month x 12 months (\$12,000)
			none	5,496	Purchase of playing field, bull pen bases, and pitching plates
			11	2,194	Purchase of bush cutter & water blaster
7	55,832	6%	3	44,228	Purchase of a grass mower and a field groomer for lawn maintenance
			10	11,604	Purchase of a Jacobsen Aerator & 3 vertical cut implement blades for Jacobsen riding mower

⁷ Project number 7 was omitted from Table 1 because it pertained to Paseo Stadium insurance coverage, which was not authorized for tax credits. Projects with no number were counted as one project.

Vendor Number	Total Amount	Total %	Project Number	Project Amount	Project Classification
8 ⁸	25,451	3%	5	25,451	Purchase of public address system
9	21,225	2%	8	21,225	Installation and materials for 10 A/C units for offices and concession stalls
10	17,725	2%	12	17,725	Installation of irrigation piping system
11	8,000	1%	3	8,000	Purchase of maintenance turf utility vehicle
TOTAL: \$1,001,256 100%					

Of the 17 project classifications, eight vendors were awarded 11 projects exceeding the \$25,000 procurement law threshold to invite bids. Unadvertised projects awarded to Vendor 1, the highest paid vendor, totaled \$364,990. Of this amount, \$237,294 was spent to replace five of the stadium’s eight field lights.⁹

Vendors 9 and 10 were awarded two projects exceeding \$15,000, the required cost threshold for a public bid solicitation. Such a solicitation should contain instructions and information to bidders, bid submission requirements, purchase descriptions, and evaluation factors. We found that GBF simply faxed quotation requests to two or three vendors. In some instances, a summary of quotes was documented by the GBF Commissioner, but the actual quotes submitted by the vendors were not documented.

The Guam Procurement Law also requires potential bidders to submit a business license.¹⁰ However, we found that Vendor 11 was not licensed to sell the \$8,000 turf utility vehicle. Again, we noted that the DPR Director was not involved in these projects and had allowed the GBF to manage the Paseo Stadium rehabilitation projects solely on its own.

Tax Credit Program Lacked Scrutiny

P.L. 27-27 required GEDCA to certify participants’ compliance with the GBF Master Plan, the Paseo lease agreement and applicable provisions. However, upon the advice of legal counsel, GEDCA limited its responsibility to reviewing the Beneficiary’s tax credit application form, its current business license, bylaws, and copies of checks for the rehabilitation projects.

According to GEDCA, not all “participants” are parties to the tax credit program, but rather are applicants for tax credits for their contributions to the Paseo Stadium projects. 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. As such, GEDCA’s rules and regulations did

⁸ The principals of this company are related to the principals of the tax credits Beneficiary.

⁹ We noted that the Federal Emergency Management Agency provided \$167,200 for the repair of the remaining three field lights damaged by Typhoon Pongsona in 2002.

¹⁰ 5 G.C.A. §5008

not require scrutiny of the project expenditures' compliance with the Guam Procurement Law.¹¹

GEDCA refers to the Paseo Master Plan that was not approved by the Parks and Recreation Commission, for project reference. We found that GBF managed, without sufficient oversight, the Paseo Stadium rehabilitation and undertook projects that were not competitively procured. We also noted that GBF's notarized project completion certificate was issued by a GBF Board Director. No other entity was involved in the certification of projects.

To illustrate the degree of review GEDCA could have applied, we compared GEDCA's Qualifying Certificate (QC) program with the Paseo Stadium tax credit program. Unlike the Paseo Stadium tax credit program, where GEDCA merely processed the certification of tax credits, the QC program has a meticulous screening process for eligibility. The requirements include:

- The submission of an applicant's application form, comprehensive business plan, marketing plan, 20-year projections, balance sheet, and income statements;
- A public notice of the company's application for a QC in a newspaper of general circulation;
- A public hearing;
- A preliminary and final case analysis;
- A credit Review Committee meeting wherein division managers deliberate and analyze the application and provide recommendation; and
- Legal counsel preparation of the QC, which is routed to the applicant, Attorney General, Department of Revenue and Taxation, and the Governor for signature.

GEDCA contended that their responsibilities were limited to processing the Beneficiary's tax credits. However, we disagree with this contention. We acknowledge that 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. In our opinion, GEDCA did not scrutinize the tax credit program and relied on GBF's assertions that contributions were received and projects were completed.

All government of Guam entities have a fiduciary responsibility to ensure that resources committed to their care are safeguarded and used efficiently and economically, and in accordance with the law. Therefore, GEDCA could have mirrored the Paseo Stadium tax credit program with its QC program to independently scrutinize expenditures and ensure that the law was followed before authorizing the tax credits.

¹¹ GEDCA was authorized to establish rules and regulation governing the implementation of tax credits, P.L. 27-27, Section 4(a).

DRT Not Aware of Tax Credit Limitations

P.L. 27-27, enacted on July 8, 2003, limits tax credits applied against excise taxes not to exceed the aggregate amount of \$500,000 annually for the first two years after enactment of P.L. 27-27 and \$100,000 annually for five subsequent years, or \$1.5 million in tax credits to be applied to no more than 50% of the contributor's monthly excise taxes. The law also allows for tax credits exceeding the yearly thresholds to be applied in subsequent tax years.

As of June 30, 2006, GEDCA issued 30 tax credit certificates to the Beneficiary for its expenditure of \$1,001,256 for stadium rehabilitation projects. However, DRT may not have applied the tax credits in accordance with the law.

The first year following enactment of P.L. 27-27 was July 2003 through June 2004. No tax credits were applied during this period, thus \$500,000 in tax credits was not utilized. Hence, the Beneficiary may only be able to redeem \$1 million of the \$1.5 million tax credits. In the second year, July 2004 through June 2005, \$490,287 of the \$500,000 limit was applied. However, in the third year, July 2005 through June 2006, when the limit dropped to \$100,000, DRT applied \$397,343 of tax credits. We estimate that tax credits of \$297,343 may have been over-applied during the third year (Table 2).

Table 2: GEDCA Authorized and DRT Applied Tax Credits

Period	P.L. 27-27 Threshold	GEDCA Authorized Tax Credits	DRT Applied Tax Credits	Potential DRT Over Applied Tax Credits
July 2003 ~ June 2004	\$ 500,000	\$ -	\$ -	\$ -
July 2004 ~ June 2005	500,000	557,583	490,287	-
July 2005 ~ June 2006	100,000	443,673	397,343	297,343
July 2006 ~ June 2007	100,000	-	-	-
July 2007 ~ June 2008	100,000	-	-	-
July 2008 ~ June 2009	100,000	-	-	-
July 2009 ~ June 2010	100,000	-	-	-
July 2010 ~ June 2011	-	-	-	-
TOTAL:	\$1,500,000	\$ 1,001,256	\$ 887,630	\$ 297,343

We informed the DRT Director of this matter and asked whether the tax credits were applied in accordance with P.L. 27-27. The Tax Compliance Supervisor responded that they need time to review the matter. We also referred this matter to the Attorney General for an opinion on the effective implementation date of the Paseo Stadium tax credit program in accordance with P.L. 27-27. As of the issuance date of this report, he Attorney General has yet to respond to our request,

Questionable Use of the Tax Credit Program

Tax credits provide a dollar-for-dollar reduction against taxes owed, resulting in a reduction of tax collections. In contrast, charitable deductions are subtracted from gross incomes, thereby reducing taxable amounts. For example, based on a corporate tax rate of 34%, a company that makes a \$2.9 million tax-deductible charitable donation will

incur the same tax liability as a company that donates \$1 million as a tax credit. Hence, tax credits are generally more valuable to taxpayers because they constitute a dollar-for-dollar offset against the tax, but more costly to the government, which collects less revenue.

The FY 2005 government of Guam audited financial statements reported government the deficit at \$344 million, up by \$30.4 million from the FY 2004 deficit of \$313.6 million. The growing deficit is the cumulative result of General Fund expenditures exceeding General Fund revenues over the years. In light of our government’s mounting deficit and other financial difficulties, the Legislature may want to re-evaluate the benefits of allowing tax credits.

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 available to fund other programs and distort the government’s spending priorities. For future tax credit programs to produce intended results, checks and balances must be established and all parties involved must actively, effectively, and efficiently carry out the objectives of the program. The Paseo Stadium tax credit program was intended to rehabilitate the stadium, but was poorly managed by DPR and not scrutinized by GEDCA and DRT. Specifically, DPR delegated its duty to manage and safeguard the Paseo Stadium entirely to GBF, and DRT may have over-applied \$297,343 against the Beneficiary’s excise taxes.

As a result, the government of Guam essentially provided tax credits without diligent scrutiny, and independent review of their appropriateness and costs. The GBF, a non-governmental entity, was given free reign, not only to procure and supervise stadium rehabilitation projects entirely on its own, but also to select a single Beneficiary of the Paseo Stadium tax credit program at a cost of \$887,630 in applied tax credits and \$113,626 in future tax credits.

The Beneficiary received tax credits for \$64,690 that was paid to the GBF in three checks to purchase bullpen bases, pitching plates, a bush cutter, a water blaster, and to pay utilities and the Diamond Keeper’s annual salary (See Table 3, Vendor 6). Of these checks, we found that check numbers 37904 and 38547, totaling \$62,496, were deposited into the GBF and GBF Administrative Services checking accounts, respectively. We could not determine whether check No. 38548, for \$2,194, was deposited to a GBF or MSOF account.

Table 3: Checks Made Payable to the GBF

Check Date	Check Number	Check Amount	Description
26-Apr-05	37904	\$ 5,496	Purchase of playing field bull pen bases & pitching plates
31-Oct-05	38547	57,000	Annual salary (\$45,000) of diamond keeper/administrator per lease agreement between GBF and DPR plus 50% of utilities estimated at \$1,000 per month x 12 months (\$12,000)
31-Oct-05	38548	2,194	Purchase of bush cutter and water blaster
TOTAL:		\$ 64,690	

Check No. 38547, in the amount of \$57,000, was donated on October 31, 2005. It included \$12,000 for utility payments, but GBF has not used this money to pay utilities as intended. The remaining \$45,000 paid for the annual salary of a Diamond Keeper.

GBF Commissioner as the Diamond Keeper

The Paseo Stadium Master Plan calls for GBF to hire a Diamond Keeper to oversee the maintenance of the Paseo Stadium. The following is a timeline of the events related to the appointment of the GBF Commissioner as the Diamond Keeper:

- October 24, 2005: The GBF Commissioner requested \$57,000 from the Beneficiary for the annual salary of a Diamond Keeper (\$45,000), and 50% of Paseo Stadium utilities (\$12,000).
- October 31, 2005: The Beneficiary issued check No. 38547 in the amount of \$57,000 to the GBF.
- November 1, 2005: According to GBF Board minutes, the GBF Commissioner was appointed Diamond Keeper.
- November 4, 2005: Check No. 38547 was deposited into the GBF Administrative Services account.
- November 14, 2005: As Diamond Keeper, the GBF Commissioner received the first biweekly paycheck of \$1,875, which he co-signed. By June 30, 2006, the GBF Commissioner received \$33,720.

We repeatedly asked the GBF Commissioner and Secretary for all GBF Board minutes, but received no response. It was not until the issue of the Diamond Keeper position was raised did the GBF Commissioner produce the Board minutes for November 1, 2005 – the date of the supposed appointment. The GBF bylaws state that a book of minutes of all meetings shall be maintained, and that the minutes should include the time, place, and participants. The November 1, 2005 minutes did not indicate the number of GBF members present or whether there was a quorum. The GBF's bylaws state that a majority of the Board is required to make any decisions. The Articles of Incorporation filed on March 6, 2006 name 11 GBF Board members, thereby making six members as a majority.¹² The November 1, 2005 minutes mentioned the names of four Board members, of which one was the GBF Commissioner. Two Board members later confirmed that the appointment did occur. Contact information for the third Board member was not provided. Based on the lack of information provided for in the minutes, the validity and appropriateness of the decision to appoint and pay the GBF Commissioner as Diamond Keeper is questionable.

Neither GEDCA nor DPR were aware that the GBF Commissioner was appointed Diamond Keeper. We also noted that the GBF Commissioner did not obtain a business license for Administrative and Diamond Keeper services until October 2006, nearly a

¹² The number larger than half the total-www. Dictionary.com

year after his appointment and only after we requested to review his business license. Further, we found no evidence documenting the basis for the \$45,000 annual salary.

As part of our review, we assessed whether the Diamond Keeper's \$45,000 salary was reasonable by comparing it to the salaries and job descriptions of two comparable positions from the Department of Administration: Grounds Maintenance Supervisor and Laborer Crew Leader. Both DOA positions offer mid-range annual salaries of \$26,453 to \$37,315.¹³

The GBF Commissioner's involvement in his appointment as Diamond Keeper is clearly a conflict of interest, especially since the position was not competitively procured in accordance with the Guan Procurement Law, which would have required candidates to have a valid business license and would have set a competitive salary range. Instead, the GBF Commissioner requested the salary from the Beneficiary. Had GEDCA or DPR diligently monitored the tax credits, the \$45,000 Diamond Keeper salary might have been called into question.

We also found that GBF did not report \$7,500 of the Diamond Keeper's salary for CY 2005 to DRT in Form 1099-MISC. Refer to **Failure to Issue Form-1099 MISC** for details.

Temporary Revocation of Tax Credits

We recommend that GEDCA temporarily revoke the \$64,690 tax credits given to the Beneficiary until GBF provides evidence of: (1) proper authorization for the \$45,000 Diamond Keeper salary; (2) payment to the government of Guam (DPR) for the \$12,000 utilities; and (3) supporting receipts for the \$7,690 for purchase of various baseball equipment, bush cutter and water blaster. See Table 3 for payment details.

As discussed in the following section, the GBF accounts were not adequately managed in accordance with the Paseo lease as expenditures were not duly authorized and revenues were not fully collected and documented. Therefore, the risk for undeposited revenues and misappropriation of funds is high.

Insufficient DPR Monitoring of Compliance Over Paseo Stadium Lease

The Paseo lease was designed to include checks and balances between the lessee (GBF) and the lessor (DPR) to ensure that the Paseo Stadium is managed in the best interest of the public. The lease provisions require filing financial reports, securing an insurance policy, and specifying uses of the Paseo. The lease also gives DPR the authority to enforce the lease terms through default and termination clauses.

GBF did not comply with a significant number of the terms and conditions of the lease as discussed below.

¹³ Pay Grade F, step 10 (mid-range) and step 20 (high range).

Noncompliance with Lease Agreement Provisions

The lease has at least 10 main provisions addressing rent, insurance, use of premises, Stadium Master Plan, building code, utility payments, MSOF, audit of fund, quarterly financial statements, and semi-annual reports to the Legislature. See Appendix 5 for a complete listing.

The following are the significant areas of non-compliance that we noted:

1. Rent

- a. GBF did not pay DPR the required 4% of accrued gross revenues for its 2004 and 2005 annual rent due by July 2005 and July 2006, respectively. The 2005 annual rent was \$886.¹⁴
- b. The amount for 2004 was not determined because there was no activity. The first tax credit expenditure for stadium rehabilitation did not occur until December 2004.

2. Insurance Policy

- a. According to insurance agents we consulted, the Paseo Liability Insurance Policy did not contain property damage, fire, and extended coverage as required. In addition, there is insufficient coverage for the Paseo valued at \$592,000.¹⁵
- b. DPR is not jointly protected against vandalism, malicious mischief.
- c. DPR is not named as an insured agent.
- d. GBF improperly used \$306 of MSOF funds to pay for the 2006 insurance policy that should have been paid from GBF funds.
- e. DPR did not review and approve the insurance policy acquired by GBF for the Paseo.

3. Utilities

- a. Despite receiving \$12,000 in October 2005 from the tax credit Beneficiary for utilities, GBF has yet to make its payment for 50% of the stadium's June 2005 through May 2006 utility cost or \$21,830 (\$15,191 for water and \$6,639 for power).
- b. Despite the lease provision that all Paseo Stadium utility charges be shared equally between DPR and GBF, DPR continues to pay Paseo utilities in their entirety.

¹⁴ The 2005 MSOF audit showed \$22,158 in revenues. Thus, 4% of this amount, or \$886, was due for 2005 rent by July 30, 2006.

¹⁵ The insurance agent did not provide an amount of appropriate coverage for the Paseo Stadium.

4. Reports

- a. GBF has not submitted the required semi-annual reports to the Legislature.
- b. GBF has not submitted quarterly financial statements to DPR, including unaudited financial statements, profit & loss statement, and a balance sheet of the MSOF.

5. Audit

- a. GBF did not engage the 2004 MSOF audit.
- b. The 2005 MSOF audit was provided to OPA and the Legislature in June 2006, three months after the March 15th deadline, but not to the Governor as required in the lease.

Failure to Follow MSOF Revenues and Disbursements Checks and Balances

P.L. 27-27 authorized the GBF to establish the Municipal Stadium Operations Fund (MSOF), a checking account to deposit and account for all Paseo-generated revenues. The MSOF shall be used for Paseo maintenance, improvements, and operations.

The Paseo lease outlined a system to manage the MSOF revenues and expenditures to ensure that the DPR Director and the GBF are parties to all transactions. For example, the DPR Director is to approve all expenditure requests and GBF is to provide copies of signed checks to the DPR Director. Refer to Appendix 6 for the detailed procedures. Despite these provisions, the DPR Director abdicated his responsibility entirely to the GBF.

The GBF maintains three bank accounts: the GBF, GBF Administrative Services, and MSOF. We reviewed all three accounts and found that funds intended for the MSOF were commingled with the other GBF accounts.¹⁶ We also found that MSOF revenues and expenditures were not accounted for in accordance with the Paseo lease; expenditures were not duly authorized; revenues were not fully collected and documented; and financial activities were not recorded, documented, or monitored by DPR.

DPR's lack of monitoring and involvement resulted in an estimated \$25,160 of undeposited MSOF revenues and \$61,814 of unauthorized MSOF expenditures.

The GBF Commissioner informed us that the DPR Director did not ask for the required documents and reports and did not provide guidance on the procedures. The procedures for reporting revenue include four basic steps and reporting disbursement includes six steps outlined in Appendix 6.

¹⁶ We tested all 41 deposits from the three GBF checking accounts totaling \$188,413 because of the risk of commingling Paseo revenues with those of GBF.

Unaccounted and Undeposited Revenue

GBF did not open the MSOF checking account until five months after the start of the 2005 baseball season. As such, only part of the 2005 revenues may have been deposited. Although 70 games were held between June 2005 and June 2006, only eight deposits were made into the MSOF.

We projected that \$25,160 from ticket sales, concession rentals and billboard sales was not deposited into the MSOF, as required. Of this amount, GBF used \$21,338 in cash payments for stadium maintenance and GBF related activities (i.e. game announcers, cashiers, and statisticians).

Our projection entailed comparing amounts from GBF’s cash collection reports per game to actual deposits recorded in the MSOF bank statements detailed in Appendix 4. Our review was limited due to GBF’s lack of supporting documents for income sources, such as pre-numbered receipts, and relied instead on GBF’s cash collection reports per game. As such, the projected undeposited revenue of \$25,160 could conceivably be higher due to DPR’s lack of oversight and GBF’s lack of records over cash receipts.

Table 4: GBF Cash Collection Report Per Game vs. MSOF Bank Statement Deposits

Baseball Season	GBF Revenue Report	Bank Statements Deposit	Undeposited Revenue
2005	\$ 17,372 ¹⁷	\$ 3,000	\$ 14,372
2006	29,591	18,803	10,788
TOTAL:	\$ 46,963	\$ 21,803	\$ 25,160

Unauthorized and Unsupported Disbursements

We tested 75 MSOF check disbursements totaling \$61,814 and found that the DPR Director did not review any of them. All the checks were signed by GBF members. Of the 75 checks:

- Forty-five checks totaling \$50,116 did not have supporting receipts or other documentation. 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.
- Five checks totaling \$6,846 from the MSOF should have been paid from GBF account. The checks were for umpire services (\$1,320), Diamond Keeper salary (\$3,720), Paseo Stadium insurance policy (\$306), and annual tax credit processing fee to GEDCA (\$1,500).
- Nine checks totaling \$5,767 were paid to GBF members for the following:

¹⁷ The \$2,194 October 2005 donation from the tax credit Beneficiary was included.

- A GBF Board member was paid \$1,500 for a riding mower and field equipment.
- A GBF Board member was paid \$1,000 for architectural services.
- A GBF volunteer was paid \$1,740 for billboard sales commissions and \$1,527 for other various jobs at Paseo Stadium.

We will refer this matter to the Office of the Attorney General for a determination of whether legal action is warranted for these unauthorized and unsupported disbursements.

Among the receipts provided by the GBF Commissioner, we found 45 totaling \$735 for meals between February 2005 and May 2005. According to the GBF Commissioner, these meals were provided to volunteers and work release inmates who assisted in the maintenance of the Paseo Stadium. However, there was no documentation that the meals were provided to volunteers. When contacted by OPA, the Department of Corrections confirmed that inmates under the work release program assisted in the Paseo Stadium maintenance.

Consequently, \$61,814 from the MSOF, a government account, was spent in noncompliance with provisions of the lease agreement. The continued absence of DPR’s involvement and oversight poses a high risk of undeposited revenues for the MSOF, noncompliance with the lease provisions, as well as fraud and abuse.

Paseo Stadium Equipment

We also found that DPR did not monitor the acquisition or use of equipment valued at \$63,832 acquired by GBF through donations for tax credits.

The equipment, an aerator, grass mower, field groomer, and turf utility vehicle, is essentially government property and is at risk of misuse and loss.



Image 3: Equipment procured by GBF through the Paseo tax credits program, and housed in the stadium.

Questioned Paseo Stadium Lease Amendments

Section 41 of the Paseo lease stipulates that “...any modification of the lease shall be binding only if evidenced in writing signed by the DPR Director and GBF Commissioner...” The DPR Director, GBF Commissioner, Attorney General, and the Governor of Guam signed the original Paseo lease.

The DPR Director and GBF Commissioner signed two amendments to the Paseo lease. The first amendment, signed March 3, 2005, relinquished responsibility of the MSOF to GBF and removed the termination and default clauses. The second amendment, signed on September 27, 2006, significantly minimized GBF’s annual rent and afforded options to comply with lease provisions. The GBF Commissioner confirmed that he made sure

Section 41 was included in the lease because he intended to modify the lease provisions. We found 19 other significant modifications.

We noted that the first amendment, which removed the termination clause for noncompliance on March 3, 2005, was signed 12 days before GBF was required to submit the MSOF audited financial statements on March 15th. See Table 5 for details.

Table 5: Significant Modifications to the Paseo Lease Agreement

	Provision	Lease Section	Paseo Stadium Lease Agreement (June 2004)	#1 Amendment to Paseo Lease Agreement (March 2005)	#2 Amendment to Paseo Lease Agreement (September 2006)
1	Rental	3	GBF to pay annual rent of 4% of accrued gross revenue per year, not to exceed \$4,000.	No Change.	GBF to pay annual rent of \$1 per year, commencing January 1, 2005.
2	Public Liability Insurance	8a	DPR shall approve the policy of liability insurance. If GBF does not pay insurance premiums within 30 days of due date, GBF shall be in default of the lease.	Provisions Removed.	Provisions Removed.
3	Public Liability Insurance	8b	All public liability policies shall name DPR as an additional insured or loss payee. GBF shall deliver to DPR on the anniversary of the lease each year proof of insurance, and failure to do so shall be considered default by GBF.	Provisions Removed.	Provisions Removed.
4	Use of Premises	9	If GBF uses the stadium for any purpose other than allowed in the lease, then GBF shall be in default.	Provision Removed.	Provision Removed.
5	Use of Premises	9c	All advertising revenues shall be deposited into the MSOF.	Provision Removed.	Provision Removed.
6	Use of Premises	9g	All revenues collected from user or sponsorship fees shall be deposited into the MSOF.	Provision Removed.	Provision Removed.
7	Compliance with Building Code	10d	GBF to obtain all necessary approvals and permits for improvements to the Paseo.	No Change.	Provision Removed.
8	Establishment of Fund	12a	GBF and the DPR Director shall be co-custodians of the MSOF in accordance with existing procedures established by the Department of Administration.	GBF shall be the custodian of the MSOF in accordance with existing procedures established by the Department of Administration. This change is inconsistent with P.L. 27-27, Section 3.	GBF shall be the custodian of the MSOF. This change is inconsistent with P.L. 27-27, Section 3.
9	Deposit of Revenues	12b	All stadium revenues , to include monetary contributions, collected by GBF shall be deposited promptly into the MSOF.	Stadium revenues collected by the sole and exclusive use of GBF shall be deposited into the MSOF.	All stadium revenues collected by GBF shall be deposited into the MSOF.
10	Quarterly Financial Statements	12e	GBF shall submit to DPR on a quarterly basis unaudited financial statements.	GBF shall submit to DPR on a semi-annual basis of a calendar year unaudited financial statements.	GBF may submit to DPR on a semi-annual basis of a calendar year unaudited financial statements.

	Provision	Lease Section	Paseo Stadium Lease Agreement (June 2004)	#1 Amendment to Paseo Lease Agreement (March 2005)	#2 Amendment to Paseo Lease Agreement (September 2006)
11	Audit of the Fund	12f	GBF shall cause the MSOF, including any exempted revenues, to be audited. The audit shall be completed no later than March 15 of each year.	GBF shall cause the MSOF, including any exempted revenues, to be audited. The audit shall be completed no later than March 15. Initial calendar year shall be 2005, and any revenues generated prior to 2005 shall be part of the 2005 annual audit.	GBF may cause the MSOF, including any exempted revenues, to be audited. The audit may be completed no later than March 15 of each year. Initial calendar year shall be 2005.
12	Audit of the Fund	12f	If GBF does not submit an audited financial statement of the MSOF to the DPR Commission and OPA by March 15th of any year, the lease is automatically terminated.	Provision Removed. This change is inconsistent with P.L. 27-27, Section 3.	Provision Removed. This change is inconsistent with P.L. 27-27, Section 3.
13	Procedures for Disbursements	13a	GBF Commissioner shall prepare a Preliminary Spending Report for all expenditure requests to be approved by the DPR Director.	GBF Commissioner shall prepare a Preliminary Spending Report for all expenditure requests to be approved by the GBF Board of Directors.	GBF shall prepare a Preliminary Budget for all expenditure requests to be approved by GBF Board of Directors.
14	Procedures for Disbursements	13a	GBF Commissioner shall prepare a Spending Voucher for the expenditure request.	Provision Removed.	Provision Removed.
15	Procedures for Disbursements	13a	GBF Commissioner shall submit a copy of the signed check to the DPR Director.	GBF Commissioner shall submit a copy of the signed check to the GBF Board of Directors.	GBF Commissioner may submit a copy of the signed check to the GBF Board of Directors.
16	Procedures for Reporting Income	13b	GBF Commissioner shall report all income to the DPR Director.	GBF Commissioner shall report all income to the GBF Board of Directors.	No Change.
17	Procedures for Reporting Income	13b	GBF Commissioner shall submit a copy of all Collection Reports to the DPR Director.	GBF Commissioner shall submit a copy of all Collection Reports to the GBF Board of Directors.	No Change.
18	Procedures for Reporting Income	13b	GBF Commissioner shall provide a copy of all monthly statements of the MSOF to the DPR Director.	GBF Commissioner shall provide a copy of all monthly statements of the MSOF to the GBF Board of Directors.	GBF Commissioner shall make available a copy of all monthly statements of the MSOF to the GBF Board of Directors.
19	Procedures for Reporting Income	13b	DPR Director shall reconcile all financial documents to ensure that the MSOF is all times in compliance with the lease terms and applicable laws.	GBF Treasurer shall reconcile all financial documents to ensure that the MSOF is at all times in compliance with the lease terms.	No Change.

As a result of these amendments, the critical checks and balances in the Paseo lease agreement were effectively eliminated. More significantly, the DPR Director's abdication of responsibility and the GBF Commissioner's increased control of the MSOF and the Paseo Stadium appear contrary to the intent and objectives of PL 27-27. We have referred this matter to the Attorney General for an opinion on the validity of the

amendments, enforceability of the original terms of the lease, and the possibility of a formal nullification of the amendments.

Other Operational Matters

Certain other matters unrelated to our audit objectives came to our attention during our audit. These include questionable use of the stadium and failure to properly report miscellaneous income.

Questioned Use of the Paseo

P.L. 27-27 requires all revenues generated from the use of the Paseo Stadium or its premises to be deposited promptly into the MSOF. We found that in July 2005, the GBF Commissioner allowed the DPR Employees Association to use the Paseo in exchange for two riding mower belts valued at \$58. In turn, the DPR Employees' Association (DPREA) collected the \$600 Paseo usage fee from the 2005 Pacific All-Star Paintball Tournament, making a profit of \$542. This amount was not deposited into the MSOF.

Our November 2001 investigative audit of DPREA (OPA Report No. 01-03) disclosed that DPR employees diverted over \$67,000 of DPR fees into DPREA bank accounts for personal purposes. We recommended that the DPR Director conduct a review to determine if the fees were, in fact, used for personal purposes. We recommend that the DPR Director cause the DPR Employees Association to pay the MSOF \$542.

Failure to Issue Form 1099-MISC

Federal law mandates that Form 1099-MISC, Miscellaneous Income,¹⁸ be issued to any individual who derives at least \$600 in services (including parts and materials) or other income payments in a calendar year. Forms 1099-MISC are reported to the Department of Revenue and Taxation.

The Commissioner claimed that GBF only issued Form 1099-MISC for umpire services, and not to all individuals who were paid \$600 or more. For calendar years 2004 and 2005, we estimated that \$20,669¹⁹ in individual earnings were not reported on Forms 1099-MISC to DRT and may have resulted in lost income tax revenues. See Appendix 7 for details. This matter has been referred to DRT for review and disposition.

¹⁸ 26 U.S.C. § 6041

¹⁹ Inclusive of the GBF Commissioner's bi-weekly salary of \$7,500 as the Diamond Keeper for CY 2005.

Conclusion

While, management is responsible for establishing and maintaining internal controls (checks and balances) to ensure that the organization's objectives are achieved in the most effective and efficient manner, and that applicable laws and regulations are complied with, all government employees have a fiduciary duty to ensure programs are executed as intended, and resources are utilized so as to minimize the potential for waste, fraud and mismanagement. For this, checks and balances are essential.

With the enactment of P.L. 27-27, DPR was tasked with oversight of the Paseo Stadium Lease Agreement and to monitor compliance with its provisions. The law also authorized tax credits against excise taxes to corporations and companies making up-front contributions toward the rehabilitation of the Paseo Stadium.

The Paseo Stadium tax credit program was intended to rehabilitate the stadium, but our audit findings disclosed that the DPR Director did not act to ensure that the government-owned Paseo Stadium was managed efficiently and failed to monitor compliance with the terms of the lease agreement and the tax credit program. We also found that GEDCA did not scrutinize the tax credit program and DRT may have over-applied \$297,343 against the Beneficiary's excise taxes.

The GBF, a non-governmental entity, took full advantage of this monitoring vacuum. Without sufficient DPR involvement and oversight, the GBF, on its own, selected only one company to benefit from Paseo Stadium tax credits in the sum of \$887,630 for applied tax credits and future tax credits of \$113,626. GBF alone procured and supervised the rehabilitation projects of the Paseo Stadium, and committed the government of Guam to \$1,001,256 of expenditures with no assurance as to the reasonableness and competitiveness of the purchases.

We found that P.L. 27-27 was implemented solely by the GBF with no assurance that the government of Guam and the public's interests were represented. Further, the continued absence of DPR's oversight over the MSOF poses a high risk of misuse of funds, undeposited revenues, and abuse. As a result, the government of Guam essentially provided tax credits without diligent scrutiny and independent review of their appropriateness and costs.

DPR did make several attempts to address lease agreement violations. However, this effort was not initiated until November 2005, 17 months after the lease was signed. The DPR Director wrote letters to the GBF Commissioner and assigned staff to monitor compliance, but he was unable to provide records of any regular inspection. The DPR Director informed us that he did not terminate the lease, despite GBF's noncompliance, because there was "success from the lease and [he] would like to work with GBF to move forward" in resolving the issue. DPR monitoring is essential to ensure compliance with the lease provisions, all transactions are properly authorized, and revenues are deposited.

Recommendations

Recommendations to the DPR Director:

1. Work with the Office of the Attorney General to determine viable options to either enforce or terminate the Paseo lease agreement.
2. Cause the DPR Employees Association to pay the MSOF \$542.

Recommendations to the Guam Legislature:

3. Ensure that clearly defined monitoring mechanisms are incorporated into all future tax credit programs. Assign GEDCA the responsibility to be the oversight authority to monitor all parties in the tax credit program and mirror future tax credit program with GEDCA's Qualifying Certificate program, which will independently scrutinize expenditures and ensure that the law was followed before authorizing the tax credits.
4. Transfer authority of the MSOF to the Department of Administration, require GBF to deposit all Paseo revenues into the MSOF, require all disbursements be made by Department of Administration, and provide for any procurement to be made through the General Services Agency.

Recommendation to the GEDCA Administrator:

5. Incorporate procedures into the current rules and regulations to ensure that expenditures for tax credits are procured according to the Guam Procurement Law with the involvement of DPR.
6. Temporarily revoke \$64,690 of the Beneficiary's tax credits until evidence of proper authorization and supporting receipts are provided by GBF.

Recommendation to the DRT Director:

7. Ensure that staff is aware of the requirements of applicable public laws that affect tax credit programs, independent of GEDCA.

Management Response and OPA Reply

We met with the DPR Director on October 4, 2006, the GEDCA Acting Administrator on October 13, 2006, and the DRT Tax Examination Supervisor on October 2, 2006 to discuss the preliminary findings. On December 13, 2006, a draft report was transmitted to the Directors of the Department of Parks and Recreation and the Department of Revenue and Taxation, and the Acting Administrator of the Guam Economic Development and Commerce Authority for official responses. On December 21, 2006, we met with the DPR Director to discuss the draft report. See Appendix 8 for DPR, GEDCA, and DRT management responses.

On December 27, 2006, the DPR Director submitted an official response concurring with one of two recommendations. The Director stated that if any public announcement was required to invite companies to participate in the tax credit program, the facilitation of the tax credit program rests with GEDCA, not DPR. However, we emphasize that Section 4 of P.L. 27-27 requires the DPR Director to approve the companies making contributions towards the Paseo Stadium rehabilitation.

The DPR Director did not concur with our recommendation to require the DPR Employees Association to pay a Paseo Stadium usage fee of \$542 into the MSOF. The DPR Director claimed that they are entitled to the funds because the funds were not misused. We uphold our recommendation because P.L. 27-27 requires that all revenues generated from the use of the Paseo Stadium be deposited into the MSOF, not the DPR Employees Association.

On December 27, 2006, the GEDCA Acting Administrator responded that they will suspend the Paseo Stadium tax credit program until DPR adopts rules and regulations to monitor GBF's compliance as lessee. GEDCA will then require certification from DPR that expenditures were made in accordance in Guam Procurement Law in addition to GBF's compliance with the lease agreement. GEDCA also agreed to temporarily revoke \$64,690 of the Beneficiary's tax credits until evidence of proper authorization and supporting receipts are provided by GBF.

On December 26, 2006, the DRT Director responded that 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 credits, the Beneficiary will be informed that the tax credits were not granted in accordance with the thresholds of P.L. 27-27, and corresponding adjustments will be made to correct the excess tax credits.

Based on the responses from DPR, GEDCA, and DRT, there appears to be a lack of coordination and communication among the entities since each had indicated that the responsibilities for the tax credit program rests with the other. DPR contends that GEDCA is responsible for the program and GEDCA claims that the responsibility for

monitoring Paseo Stadium expenditures belongs to DPR. DRT acknowledged weaknesses with all three agencies and indicated that they will work with GEDCA to ensure consistency in the interpretations of the applicable public laws.

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 DPR, GEDCA, and DRT to establish target dates and title of the official responsible for implementing the recommendations.

We appreciate the cooperation shown by the Department of Parks and Recreation, Guam Economic Development and Commerce Authority, and Department of Revenue and Taxation.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1: Classification of Monetary Impact

Finding Area	Cost Exception	Unrealized Revenues
1 Only One Company Benefited From Paseo Tax Credits		
Guam Procurement Laws Not Followed	\$ 1,001,256	\$ -
Tax Credit Program Lacked Diligent Scrutiny	\$ -	\$ -
DRT Not Aware of Tax Credit Limitations	\$ -	\$ -
2 Questionable Use of the Tax Credit Program		
GBF Commissioner as the Diamond Keeper ²⁰	\$ -	\$ -
Temporary Revocation of Tax Credits ²¹	\$ -	\$ -
3 Insufficient DPR Monitoring of Compliance over Paseo Lease		
Noncompliance with Lease Agreement Provisions	\$ -	\$ 22,716 ²²
Failure to Follow MSOF Revenues and Disbursements Checks and Balances	\$ 61,814	\$ 25,160
4 Questioned Paseo Stadium Lease Amendments	\$ -	\$ -
5 Other Operational Matters		
Questioned Use of the Paseo	\$ -	\$ 542
Failure to Issue Form 1099-MISC	\$ -	\$ -
TOTAL:	\$ 1,063,070	\$ 48,418

Notes:

- Cost Exception are expenditures that are unauthorized and improper based on legal criteria.
- Unrealized Revenues are funds that could have been collected as additional revenues if corrective actions had been taken.

²⁰ The \$45,000 paid to the Diamond Keeper is included in the \$1,001,256 already questioned.

²¹ The \$64,690 paid by the Beneficiary to GBF are included in the \$1,001,256 already questioned.

²² \$886 accounts for the rent and \$21,830 for the 50% Paseo utilities.

Appendix 2:

Audit Scope and Methodology

The audit scope included a review of the Paseo Stadium Lease Agreement, as well as applicable public laws, rules and regulations. Checking accounts, related bank documents, disbursements, and other relevant documents for the period of June 1, 2004 through June 30, 2006 were also examined.

The audit was conducted at the Department of Parks and Recreation office in Agana Heights, Guam and at the Guam Baseball Federation's office in the Paseo Stadium in Hagåtña. We interviewed the DPR Director, the GBF Commissioner, the GEDCA Acting Administrator, GEDCA's Compliance Supervisor, and officials from the Department of Revenue and Taxation.

Our methodology included gaining an understanding of the applicable public laws, policies, procedures, and regulations pertaining to the Paseo Stadium Lease Agreement and the MSOF. We performed analytical reviews of the lease provisions, performed substantive testing consistent with the audit objectives, and examined applicable transaction records. We also reviewed controls over cash transactions (i.e. receipts and disbursements) and the controls over the procurement of goods and services. Additionally, we conducted an onsite assessment of the Paseo. Our revenue review was limited by GBF's lack of supporting documents of income sources and pre-numbered receipts. Hence, our projection entailed comparisons of amounts listed in GBF's cash collection reports per game with actual deposits recorded in the MSOF bank statements.

We determined that the GBF maintained three checking accounts: GBF, GBF Administrative Services, and the MSOF. We tested all 41 deposits totaling \$188,413 from the three GBF accounts to determine if MSOF funds were commingled and if all revenues generated from the Paseo were deposited into the MSOF. In our review of the accounts, we determined that 75 disbursements totaling \$61,814 were MSOF-related. We tested all 75 disbursements to determine whether they were duly authorized, recorded, and documented.

We also determined that as of June 2006, GEDCA certified 30 tax credits totaling \$1,001,256 for the sole private contributor for the Paseo Stadium rehabilitation and maintenance. As of June 2006, DRT applied \$887,630 tax credits against sole private contributor's monthly excise taxes.

During this review, matters unrelated to our audit objectives that came to our attention, were classified as "Other Operational Matters."

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. Accordingly, we obtained an understanding and performed an evaluation of the internal controls of the Municipal Stadium Operations Fund and lease agreement compliance. We included tests of records and other auditing procedures considered necessary under the circumstances. Weaknesses in internal control were identified and discussed in the Results of Audit section of this report.

Appendix 3: Prior Audit Coverage

We reviewed the following prior audits related to the Department of Parks and Recreation and Paseo Stadium. Discussions of pertinent areas are included.

Office of the Public Auditor (OPA)

November 2001 OPA's Investigative Report on the Department of Parks and Recreation Employees Association (DPREA) covering the period of January 1, 1998 to June 30, 2001 (OPA Report No. 01-03) found that an employee collected \$3,200 in DPR fees for personal use, and that \$67,000 in fees intended for the DPR Revolving Fund was diverted into DPREA bank accounts and used for personal purposes. These findings were referred to the Attorney General, which then pursued a charge of misapplication of entrusted funds as a misdemeanor against the DPR employee who took the fees for personal use. The employee entered into a plea agreement in April 2005 and was ordered to pay a \$1,000 fine plus court costs. The employee was also barred from future employment with the government of Guam.²³ The DPR Director did not conduct a review to determine if \$67,000 intended for the DPR Revolving Fund was in fact used for personal purposes.

May 2002 OPA's Performance Audit on the DPR Revolving Fund (OPA Report 02-03), covering the of October 1, 1999 to March 31, 2001, cited internal control deficiencies such as lack of monitoring, receipt issuance and record keeping. A determination of the accuracy of DPR's collection of stadium revenues from the GBF could not be made because there were no reliable game schedules and revenue reports on file at DPR. Further, the records available for review were very limited.

July 2006 OPA's Review of DPR's Unresolved Audit Recommendations (OPA Report 06-07), covering the period of July 1, 2001 to December 31, 2005, was a follow-up on the status of the recommendations identified in the OPA reports 01-03, 02-03, and 02-07. The review found no substantial change in the control and oversight of the DPR Revolving Fund. The former and current directors and commissioners did not implement OPA recommendations. As a result, we saw wide fluctuations in DPR revenues, as well as an overall decline of \$19,980 from \$150,585 in FY 2001 to \$130,605 in FY 2005. In particular, we saw that Paseo Stadium fees declined by 97%, from \$16,048 in FY 2001 to \$510 in FY 2005.

²³ Criminal Case No. CF453-03

Appendix 4:
MSOF and GBF Financial Activity

Municipal Stadium Operations Fund

	Statement Date	Beginning Balance	Receipts	Disbursements	Ending Balance
CY 2005	June 9 2005 - June 14 2005	\$ -	\$ 3,000.00	\$ -	\$ 3,000.00
	June 15 2005 - July 14 2005	3,000.00	-	2,908.15	91.85
	July 15 2005 - August 14 2005	91.85	-	-	91.85
	August 15 2005 - Sept. 14 2005	91.85	-	-	91.85
	Sept. 15 2005 - Oct. 16 2005	91.85	-	-	91.85
	Oct. 16 2005 - Nov. 14 2005	91.85	-	-	91.85
	Nov. 15 2005 - Dec. 14 2005	91.85	-	-	91.85
	Dec. 15 2005 - Jan. 16 2006	91.85	-	-	91.85
	TOTAL CY 2005:		\$ 3,000.00	\$ 2,908.15	
CY 2006	Jan. 17 2006 - Feb. 14 2006	\$ 91.85	\$ 4,877.99	\$ 1,084.89	\$ 3,884.95
	Feb. 15 2006 - Mar. 14 2006	3,884.95	1,875.00	5,235.29	524.66
	Mar. 15 2006 - April 16 2006	524.66	7,170.00	3,480.72	4,213.94
	April 17 2006 - May 14 2006	4,213.94	3,005.00	4,157.83	3,061.11
	May 15 - June 14 2006	3,061.11	1,875.00	2,343.53	2,592.58
	TOTAL as of June 2006:		\$ 18,802.99	\$ 16,302.26	
GRAND TOTAL:			\$ 21,802.99	\$ 19,210.41	

Guam Baseball Federation Administrative Services

	Statement Date	Beginning Balance	Receipts	Disbursements	Ending Balance
CY 2005	Nov. 4 2005 - Nov. 30 2005	-	57,000.00	9,475.00	47,525.00
	Dec. 1 2005 - Dec. 31 2005	47,525.00	-	3,750.00	43,775.00
	TOTAL CY 2005		\$ 57,000.00	\$ 13,225.00	
CY 2006	Jan. 1 2006 - Jan. 31 2006	\$ 43,775.00	\$ -	\$ 3,770.00	\$ 40,005.00
	Feb. 1 2006 - Feb. 28 2006	40,005.00	7,600.00	3,835.55	43,769.45
	Mar. 1 2006 - Mar. 31 2006	43,769.45	-	5,781.96	37,987.49
	April 1 2006 - April 30 2006	37,987.49	-	1,931.17	36,056.32
	May 1 2006 - May 31 2006	36,056.32	-	3,750.00	32,306.32
	June 1 2006 - June 30 2006	32,306.32	-	5,779.48	26,526.84
	TOTAL as of June 2006		\$ 7,600.00	\$ 24,848.16	
GRAND TOTAL:			\$ 64,600.00	\$ 38,073.16	

Guam Baseball Federation

Statement Date		Beginning Balance	Receipts	Disbursements	Ending Balance
CY 2004	June 22 2004 - July 21 2004	\$ 17,938.25	\$ 850.00	\$ 15,046.60	\$ 3,741.65
	July 22 2004 - Aug. 22 2004	3,741.65	3,550.00	7,214.00	77.65
	Aug. 23 2004 - Sep. 21 2004	77.65	-	-	77.65
	Sep. 22 2004 - Oct. 21 2004	77.65	-	-	77.65
	Oct. 22 2004 - Nov. 21 2004	77.65	-	-	77.65
	Nov. 22 2004 - Dec. 21 2004	77.65	300.00	100.00	277.65
	Dec. 22 2004 - Jan. 23 2005	277.65	16,500.00	9,395.17	7,382.48
	TOTAL CY 2004		\$ 21,200.00	\$ 31,755.77	
CY 2005	Jan. 24 2005 - Feb. 21 2005	\$ 7,382.48	\$ 21,700.00	\$ 8,114.24	\$ 20,968.24
	Feb. 22 2005 - Mar. 21 2005	20,968.24	8,089.80	16,238.94	12,819.10
	Mar. 22 2005 - Apr. 21 2005	12,819.10	4,850.00	8,225.75	9,443.35
	Apr. 22 2005 - May 22 2005	9,443.35	5,496.17	5,511.16	9,428.36
	May 23 2005 - June 21 2005	9,428.36	850.00	10,070.00	208.36
	June 22 2005 - July 21 2005	208.36	9,441.72	8,165.00	1,485.08
	July 22 2005 - Aug. 21 2005	1,485.08	2,000.00	3,135.00	350.08
	Aug. 22 2005 - Sep. 21 2005	350.08	-	10.00	340.08
	Sep. 22 2005 - Oct. 23 2005	340.08	-	-	340.08
	Oct. 24 2005 - Nov. 21 2005	340.08	-	-	340.08
	Nov. 22 2005 - Dec. 21 2005	340.08	-	-	340.08
	Dec. 22 2005 - Jan. 22 2006	340.08	4,250.00	1,743.42	2,846.66
	TOTAL CY 2005		\$ 56,677.69	\$ 61,213.51	
CY 2006	Jan. 23 2006 - Feb. 21 2006	\$ 2,846.66	\$ 20,850.00	\$ 18,180.32	\$ 5,516.34
	Feb. 21 2006 - Mar. 21 2006	5,516.34	2,480.00	3,040.00	4,956.34
	Mar. 22 2006 - April 23 2006	4,956.34	-	3,965.00	991.34
	April 24 2006 - May 21 2006	991.34	-	-	991.34
	May 22 2006 - June 21 2006	991.34	802.76	15.00	1,779.10
	TOTAL as of June 2006		\$ 24,132.76	\$ 25,200.32	
GRAND TOTAL:			\$ 102,010.45	\$ 118,169.60	

Appendix 5: Compliance with Provisions of Paseo Lease Agreement

Lease Section	General Area	Specific Requirement	Default Provision	Termination Provision	Compliance
1	3 and 4	Rent GBF is required to pay 4% of accrued gross revenues/year; not to exceed \$4,000 ²⁴ . 1st payment – due July 30, 2005 (Year #1 Rent payment) 2nd payment – due July 30, 2006 (Year #2 Rent payment)	19a	19c	No
2	8	Insurance GBF shall procure at its own cost and expense a policy of comprehensive liability insurance, a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsements. DPR shall approve the policy of comprehensive liability insurance.	19b	19b	No
		GBF shall pay the insurance premiums within 30 days of due date (June 8th every year).	8a	19c	Yes
		GBF shall name DPR as additional insured or loss payee in the policy, and entitled to recover for any losses occasioned to it, its servants, agents and employees.	19b	19c	No
		GBF shall deliver proof of insurance on the anniversary date of the lease each year (June 8) to DPR.	8b	19b	No
3	9	Use of Premises GBF shall use Paseo only for managing (schedule games), maintaining, operating, and improving the municipal baseball facility and failure to do so results in default. GBF shall maintain the playing field, lighting, and building, regularly dispose the trash, and cut, trim or mow the grass. GBF may sell billboard and all revenues shall be deposited into MSOF.	9	19b	No
4	10a	Stadium Master Plan GBF shall cause the Master Plan to undergo a public hearing, and shall not be final until approved by the Legislature.	19b	19b	Yes
5	10d	Compliance with Building Code All improvements or alterations and alterations by GBF shall be in compliance with any building code or regulations. GBF obtain all necessary approvals and permits for the construction of the improvements.	19b	19b	No
6	11	Utility Payments Breakdown of utility (power and water) payments: Year 1: June 04 - May 05: DPR pays all Year 2: June 05 - May 06: DPR and GBF split 50/50 Year 3: June 06 and forward: GBF pays all.	19b	19b	No
7	12a	Establishment of MSOF GBF and DPR Director shall be the custodians of the MSOF.	19b	19b	No
8	12e	Quarterly Financial Statements GBF shall submit to DPR Quarterly Financial Statements to include unaudited financial statements, Profit and Loss Statement, and a Balance Sheet.	19b	19b	No
9	12f	MSOF Audit At the end of each calendar year, GBF shall cause the MSOF to be audited. The audit is due by March 15 of every year and copies are to be submitted to the DPR Commission, OPA, Speaker, and Governor.	19b	12f	No
	Exempted Fund Audit At the end of each calendar year, GBF shall cause the Exempted Fund to be audited, which is due by March 15 of every year.	19b	19b	N/A	
10	12g	Semi-Annual Reports to the Legislature GBF shall submit to Legislature semi-annual reports of the improvement costs to the Paseo using the MSOF or funds from other sources than the tax credits authorized in P.L. 27-27. Reports are due every June and December.	19b	19b	No

²⁴ Annual rent to be paid July 30 of every year. Last year's rent of the lease is due on July 30, 2054- after the expiration.

Appendix 6: Procedures for Reporting MSOF Disbursements and Income

Section 13(a): Procedures for Disbursements of the MSOF

1. The GBF Commissioner shall prepare a Preliminary Spending Report for all expenditure requests.
2. The DPR Director shall approve the Preliminary Spending Report if the expenditure is in accordance with the terms of the lease or law.
3. Upon approval of the Preliminary Spending Report, the GBF Commissioner shall prepare a Spending Voucher for the expenditure request.
4. The GBF Commissioner shall certify the availability of funds for all expenditure requests of the Spending Voucher.
5. The GBF Commissioner shall prepare a check for all disbursements and obtain the two required signatures on the check.
6. The GBF Commissioner shall submit a copy of the signed checks to the DPR Director.

Section 13(b): Procedures for Reporting Income of the MSOF

1. The GBF Commissioner shall prepare individual Collection Reports for all income sources or events.
2. The GBF Commissioner shall submit copies of all Collection Reports to the DPR Director.
3. The GBF Commissioner shall provide to the DPR Director a copy of all monthly statements of the MSOF.
4. The DPR Director shall reconcile all financial documents as soon as they are received to ensure compliance with the terms of the lease and law.

NOTE: These procedures were directly obtained from the June 2004 Paseo Stadium Lease Agreement.

Appendix 7:
Individuals Not Issued Form 1099-MISC

Calendar Year	Number of Individuals	Total Amount
2004	1	\$1,080
	1	674
2004 Subtotal:	2	1,754
	1	7,500
	1	2,775
	1	1,980
	1	1,500
2005	1	1,440
	1	1,100
	1	1,000
	1	1,000
	1	620
2005 Subtotal:	9	18,915
CY 2004 and 2005 Total:	11	\$20,669



Felix P. Camacho
Governor

Kaleo S. Moylan
Lt. Governor

Department of Parks and Recreation
Dipattamenton Plaset Yan Dibuetsion
Government of Guam
490 Chalan Palasyo
Agana Heights, Guam 96910
Director's Office: (671) 477-6296/7
Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/9
Guam Historic Resources Division: (671) 475-6294/5



Thomas A. Morrison
Director

Gregory A. Mantanane
Deputy

December 27, 2006

MEMORANDUM

TO: Doris Flores Brooks, CPA, CGFM
Public Auditor

FROM: Director

SUBJECT: **AUDIT RESPONSE – DEPARTMENT OF PARKS AND RECREATION
PASEO STADIUM LEASE AGREEMENT DECEMBER 2006**

This memo is in response to issues raised in the draft audit memorandum for the 2006 audit of the Paseo Stadium Lease Agreement. We appreciate the time that you and your staff spent reviewing the Paseo Stadium Lease Agreement, in regards to this audit as well as your evaluation and recommendations. We have listed below the issues from your memorandum directed at DPR and our responses. Also attached is our response to your recommendations. Please let us know if you need any additional information.

Findings: 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 inappropriately delegated his duty to manage and safeguard the Paseo Stadium entirely to the GBF Commissioner and failed to provide sufficient oversight over Paseo 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.

Response. DPR was deficient in Administrative and Technical Support Personnel during the onset or the signing of the lease in July of 2004. During this time, the Paseo Stadium was not in complete operation and still undergoing plans for major repairs from Typhoon Pongsona. To properly manage & safeguard the Paseo Stadium lease, the

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

DATE: 12/27/06

TIME: 3:30 pm

BY: [Signature]

DPR Director attempted to fill the appropriate administrative and technical personnel, accomplishing this effort in August of 2005.

Consequently the Department worked diligently to recover and enforce the requirements of the lease. Our emphasis has been primarily on getting supporting financial documents from Municipal Stadium Operations Fund (MSOF). The enforcement challenges in recovering or obtaining information from the Guam Baseball Federation (GBF) have been, and remain, considerable.

Findings: The OPA has concluded that the GBF, on its own, selected only one company (Beneficiary) to benefit from tax credits for Paseo Stadium projects and that no public announcement was made to invite other companies to participate in the tax credit program. The OPA also concludes that this process was carried out by the GBF without the participation or oversight by DPR.

Response: DPR maintains the position that the facilitation of the tax credit program, to include a public announcement, if so required, as well as overall oversight of the tax program rests with the Guam Economic Development and Commerce Authority.

Findings: The DPR Director and GBF Commissioner signed two amendments to the lease, without the Governor's concurrence, that 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.

Response: The DPR made such amendments within the confines of the "Modification" clause contained in the lease agreement. However, the DPR does agree with the Office of the Public Auditor's statement on this issue regarding the Governor's concurrence to the amendments made. Therefore, DPR has not worked with the amended lease and has deemed it invalid.

Findings: GBF did not pay the required 50% of utilities for June 2005 to May 2006, estimated at \$21, 830., of which \$15, 191. is for water and \$6,639. is for power. However, GBF received \$12,000. from beneficiary for this purpose in November 2005.

Response: DPR has reconciled the proper billing and will be sending an invoice to the GBF no later than December 27, 2006 to cover the entire amounts from years 2005 to 2006. DPR will be transferring completely the power bill account under the GBF effective January 2007. We had mention in meetings with your staff that there is just "one" meter that services the entire Paseo de Su Sane Park which includes the Paseo Stadium making it difficult to invoice the GBF. We will work to find a feasible solution to install a new water meter primarily for the purpose of servicing the Paseo Stadium.

Findings: GBF did not pay the required 4% of accrued gross revenues for annual rent for July 2005 and July 2006 to DPR. The July 2005 annual rent was \$886.

Response: The DPR did request payment for the rent due for the Paseo Stadium directly from the GBF Commissioner, however DPR had to reject the payment. The payment was not coming from a GBF account and not remit the exact amount. The DPR is in the process of reconciling a rent amount to be paid by the GBF for years 2004 to 2006.

In summary the Department of Parks, Recreation and Historic Preservation shares and acknowledges the concerns raised by the Office of the Public Auditor, and is fully committed to do what is necessary to address each recommendation and ensure public confidence in this important Government Agency.


THOMAS A. MORRISON

Attachment

CC: Hon. Felix P. Camacho, Governor of Guam
Hon. Mark Forbes, Speaker, 28th Guam Legislature

Response to Audit Findings – Department of Parks, Recreation & Historic Preservation - December 2006

RECOMMENDATION: (As contained in the Audit)	RESPONSE	PROGRESS REPORT
<p>1. <i>Work with the Office of the Attorney General to determine viable options to either enforce or terminate the Paseo lease agreement.</i></p>	<p>Department of Parks, Recreation & Historic Preservation concurs with this recommendation.</p>	<p>Department of Parks, Recreation & Historic Preservation has sent a memo to the Office of the Attorney General dated August 16, 2006 requesting legal assistance with the lease provisions & governing laws. (See attachment)</p> <p>The department is requesting the Office of the Attorney General's guidance on the next step to remain within the enabling law & provisions of the lease & salvaging the agreement.</p>
<p>2. <i>Cause the DPR Employees Association to pay the MSOF \$542</i></p>	<p>Department of Parks, Recreation & Historic Preservation does not concur with this recommendation.</p>	<p>The Department of Parks, Recreation & Historic Preservation regards this recommendation as misdirected. The DPR Employees Association engaged in a transaction with the GBF for the use of the facility for an association activity to raise funds. The funds were intended and in fact used for the Association sponsored employees' Christmas Party in December 16, 2005. The DPREA use of the facility was through a MOU between the GBF Commissioner and the DPREA president, without any involvement by DPR. The fees and procedures were set and agreed upon by the GBF Commissioner and the DPREA. The funds raised were not used for personal purposes nor gain and totally directed toward the DPREA function. Will DPREA forever be held accountable for the actions of past officers' who no longer are with the Department?</p>



Felix P. Camacho
Governor

Kaleo S. Moylan
Lt. Governor

Department of Parks and Recreation
Dipattamenton Plaset Yan Dibuetsion
Government of Guam
490 Chalan Palasyo
Agana Heights, Guam 96910
Director's Office: (671) 477-6896/97
Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/89
Guam Historic Resources Division: (671) 475-6294/95/72
Facsimile: (671) 477-2822



Thomas A. Morrison
Director

Gregory A. Matanane
Deputy Director

16 August 2006

COPY

MEMORANDUM

TO: Attorney General
CC: Office of the Public Auditor
FROM: Director
SUBJECT: Request for Assistance
RE: PASEO LEASE AGREEMENT

This is to respectfully request for legal assistance with the Paseo Lease Agreement and enforcement of the lease provisions as well as with governing laws. The lease was executed on June 8, 2004 between the Department of Parks and Recreation, Government of Guam and the Guam Baseball Federation. The DPR has identified the following discrepancies of non-compliance with Agreement requirements:


1. Rental Payments – §4, page 2 - No remittance to date
2. Quarterly Financial Reports – § 12 (e), page 11 – no submittals to date – due on the 20th day of month following each quarter
3. Audit of the Fund - §12(f), page 12 – Calendar 2004, no submittal; Calendar 2005, submitted June 26, 2006 – due on March 15, 2006
4. Semi-Annual Reports to the Legislature - §12(g), page 12 – non-submittal to date
5. Public Liability and Property Damage Insurance §8, page 4 – Expired on 7 March 2006; no renewal submitted

Notice letters have been transmitted to the GBF Commissioner regarding the compliance deficiencies but the only response was on June 26, 2006 per item 3 above, with all other items remaining outstanding. We have maintained a professional attitude making numerous reminders regarding agreement requirements that needed to be complied with.

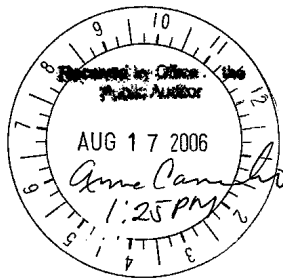
Therefore, the DPR is requesting for the Attorney General's guidance and assistance on the next step to remain within the enabling law and provisions of the lease and salvaging the agreement.

Appendix 8:
DPR Management Response

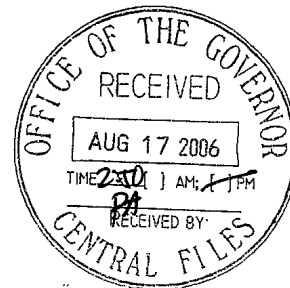
Your prompt assistance and support in this request is greatly appreciated. For further information, please contact Mr. Jose Quinata, Jr., Chief Planner, at 475-6296/7 or myself at the same contact numbers.


THOMAS A. MORRISON

Cc: Governor of Guam
Speaker, 28th Guam Legislature



Office of the Speaker
MARI RUBES
Date: 8/17/06
Time: 1:45
Rec'd by:
Print Name: Liz Rubes



Appendix 9: GEDCA Management Response

Page 1 of 2

Dec-27-2006 04:30pm From-GUAM ECONOMIC DEVELOPMENT AGENCY +6716472000 T-553 P.002/003 F-580

Governor
Felix P. Camacho

Aturidad Inadilanton



Ikunumihan Guahan

Lieutenant Governor
Kateo S. Moylan

December 27, 2006

Doris Flores-Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 401, Pacific Daily News Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RE: Draft Report of the Performance Audit for the Department of Parks and Recreation ("DPR") Paseo Stadium Lease Agreement

Dear Ms. Brooks:

As we discussed further with respect to your Executive Summary as well as our response to your office on December 22, 2006, we have provided the following for consideration:

The Guam Economic Development and Commerce Authority (GEDCA), which was tasked to certify compliance with the lease agreement and contributors for tax credits assisted the Department of Parks and Recreation (DPR) in the preparation of its rules and regulations which would require DPR to monitor the project and the Guam Baseball Federation's (GBF) compliance in its capacity as lessee and the use of the contributions provided under the statute. Had these rules and regulations been adopted, there would have been no question in the \$1,001,256 in expenditures for tax credits as it relied on the certification of the project manager. GEDCA has agreed that the program will be suspended until such rules are adopted by DPR ensuring their role in monitoring the expenditures in accordance with the Guam Procurement Law. GEDCA following the adoption of such rules, will also require certification that such expenditures were made in accordance with the law in addition to the GBF's compliance with the lease agreement as certified by the lesser.

In addition with respect to the revocation of the \$64,690, we will revoke the contributions based on the OPA's report. We will also advise the GBF that until such time proper authorization and supporting receipts are provided by the GBF.

Guam USA ~ The Ultimate Destination

ITC Building • Suite 511 • 590 South Marine Drive • Tamuning, Guam 96913 • (671)617-4332 • Fax (671)619-4146 • E-mail: help@geda.guam.net
www.investguam.com


**Appendix 9:
GEDCA Management Response**

Page 2 of 2

Dec-27-2006 04:31 pm From-GUAM ECONOMIC DEVELOPMENT AGENCY +6716472000 T-553 P.003/003 F-680

In closing, we recommend that the above proposals and suggestions be reviewed by our respective attorneys for compliance purposes.

Sincerely,



Andreas (Andy) Jordanou
Acting Administrator

Cc: Calvo & Clark, LLP

Appendix 10: DRT Management Response



Dipáttamenton Kontribusiyan yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guáhan

FELIX P. CAMACHO, Governor Maga'láhl
KALEO S. MOYLAN, Lt. Governor Tíhente Gubetnadador

ARTEMIO B. ILAGAN, Director Directot
JOHN P. CAMACHO, Deputy Director,
Sigundo Directot

26 DEC 2006

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 104, Pacific News Building
238 Archbishop Flores
Hagatna, Guam 96910

RECEIVED

DATE: 12/26/06 A 9:37 am

Re: Transmittal of Final Draft on the Department of Parks and Recreation's (DPR)
Performance Audit of the Paseo Stadium Lease Agreement

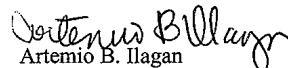
Dear Mrs. Brooks:

This is in response to your letter dated December 14, 2006 along with the Final Draft Report and the Executive Summary presenting the results of your review of the DPR's Paseo Stadium Lease Agreement. First of all, we also agree that we recognize the Legislature's authority to mandate tax credits for public goals and programs, but we also agree that the very same tax credits reduce government revenues and distort the government's spending priorities.

Secondly, we recognize that the tax credits authorized by the Guam Economic Development and Commerce Authority (GEDCA) were used in excess of the amounts allowed by Public Law 27-27. Upon receipt of the Attorney General's Opinion relative to the effective date of the tax credit program, the beneficiary of the tax credits will be informed that the tax credits were not used in accordance with the thresholds of Public Law 27-27, and that the corresponding adjustments will be made to correct the excess tax credits.

Lastly, we recognize the fact that weaknesses exist regarding the authorization of tax credits under the Paseo Stadium Lease Agreement with the Department, DPR and GEDCA. GEDCA generally verifies if any beneficiary is compliant with the requirements of the tax credits and subsequently approves the tax credit and authorizes the Department to allow any beneficiary to apply tax credits against the beneficiary's corresponding tax liability. Currently, the Business Privilege Tax Branch is responsible for monitoring the tax credit claims. Unfortunately, personnel and equipment shortages are hindering the regular operations of the Branch. Whether we hire staff or have a shift in personnel tasks and duties, the Department will be more cognizant of the requirements of public laws that affect tax credit programs and try to work closely with GEDCA to ensure that we consistent in our interpretations of the applicable public laws.

Sincerely,


Artemio B. Ilagan

Post Office Box 23607, Guam Main Facility, Guam 96921 • Tel. / Telfon: (671) 635-1817/9 • Fax / Faks: (671) 633-2643

Appendix 11: Status of Audit Recommendations

Finding/ Recommendation Reference	Status	Action Required
1	Management Concurs; additional information needed.	DPR to provide supporting documentation of correspondences and communication with the Office of the Attorney General to determine viable options to either enforce or terminate the Paseo lease agreement.
2	Unresolved.	DPR to provide supporting documentation of payment of \$542 from the DPR Employees Association to the MSOF.
3	Unresolved.	Provide a public law that clearly defines monitoring mechanisms incorporated into future tax credit programs. Assign GEDCA the responsibility to be the oversight authority to monitor all parties in the tax credit program and mirror future tax credit program with GEDCA's Qualifying Certificate program, which will independently scrutinize expenditures and ensure that the law was followed before authorizing the tax credits.
4	Unresolved.	Provide a public law transferring authority of the MSOF to the Department of Administration, require GBF to deposit all Paseo revenues into the MSOF, DOA to make all disbursements, and provide for any procurement to be made through the General Services Agency.
5	Management Concurs; additional information needed.	GEDCA to provide supporting documentation of procedures in the current Paseo tax credit program rules and regulations to ensure that expenditures for tax credits are procured according to the Guam Procurement Law.
6	Management Concurs; additional information needed.	GEDCA to provide supporting documentation indicating the temporary revocation of \$64,690 of the Beneficiary's tax credits until evidence of proper authorization and supporting receipts are provided by GBF.
7	Management Concurs; additional information needed.	DRT to provide supporting documentation indicating that staff is aware of the requirements of applicable public laws that affect tax credit programs, independent of GEDCA.

Do you suspect fraud, waste, or abuse in a government agency or department? Contact the Office of the Public Auditor:



- Call our HOTLINE at 47AUDIT (472-8348);
- Visit our website at 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.