



OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Guam Fire Department Emergency Procurement of Fire Trucks
Pursuant to Public Law 27-99
Report No. 05-01, May 2005

This summary represents the results of our observation of the emergency procurement of two fire trucks by the Guam Fire Department (GFD) and General Services Agency (GSA). Pursuant to Public Law (P.L.) 27-99, the Office of the Public Auditor (OPA) was designated as the observer for this procurement process. Our objective, as an observer, was to determine whether GFD's procurement request and GSA's procurement process were conducted with due diligence.

In December 2003, the GFD Chief (Chief) requested and received an emergency declaration for the purchase of three fire trucks. In two days, the emergency purchase was awarded to Mid-Pacific Far East for \$734,913. Morrico Equipment Corporation (Morrico), another local fire truck distributor, protested the emergency purchase and a lawsuit followed.

In March 2004, the Superior Court of Guam issued a preliminary injunction (Civil Case No. CV0152-04) in favor of Morrico and GSA was enjoined from taking any actions to procure the fire trucks. The court further found that "the written determination of emergency by the Guam General Services Agency and the Guam Fire Department dated December 31, 2003, failed to comply with requirements of 5 G.C.A. §5425 for the procurement of Fire Trucks in this case and any actions taken in furtherance of the procurement is void pursuant to §5425(g)." To date, there have been no further proceedings on this case.

In June 2004, the Chief testified on Bill 295, which would appropriate \$600,000 and waive procurement requirements for the emergency purchase of fire trucks. In his written testimony, the Chief did not disclose the preliminary injunction. Bill 295 was signed by the Governor and became Public Law 27-99; however, the Governor raised concern on Public Law 27-99 that GFD and GSA lacked guidance to make the necessary procurement because it waived all methods of procurement.

In September 2004, GSA issued requests for quotation for the purchase of fire trucks to three local vendors: Mid-Pacific Far East, International Equipment of Guam, and Morrico. GSA allowed only four days for the three vendors to respond to over 100 pages of specifications. Mid-Pacific Far East was the only vendor to submit a price proposal in the four-day time period allotted.

In October 2004, GSA awarded Mid-Pacific Far East a purchase order for \$551,944 for the purchase of two fire trucks.

From our observations, we determined the following:

- The Chief's testimony to the Legislature on Bill 295 should have disclosed the Court's preliminary injunction prohibiting the first attempt of an emergency purchase of fire trucks.
- Four days for vendors to respond to over 100 pages of specifications was unreasonably short.
- GSA should have taken a more active role in ensuring that an independent procurement process and review was conducted.
- Price comparisons from other sources, such as the Federal GSA should have been obtained.

GFD has not been provided a consistent source of funding to replace fire trucks and ambulances. Because of this lack of consistent funding, GFD has had to resort to emergency requests whenever the number of fire trucks and ambulances are precariously low. The passage of P.L. 27-99 permitted GFD to purchase two fire trucks without conforming to standard procurement practices, thus, setting a precedent allowing emergency purchases to be obtained without following emergency procurement regulations.

It is unknown whether the Legislature would have passed Bill 295, had the Chief disclosed the relevant information surrounding the court injunction. By failing to disclose this information the Chief was less than forthright. P.L. 27-99 may have immediately addressed GFD's need for fire trucks; however, the waiver of procurement regulations is not good procurement policy and should be discouraged. Further, P.L. 27-99 may be viewed as an intrusion upon judicial decision-making and judicial independence since it voided the court's preliminary injunction, possibly undermining the separation of powers among the three branches of government.

We recognize the Government of Guam's current financial difficulty, unless a consistent funding source is provided to GFD for the purchase of necessary emergency vehicles and equipment, GFD will continue to resort to emergency requests for these purchases.

We urge the Legislature to discontinue passing legislation that waives procurement regulations of any purchase. Even the Governor raised concern over the lack of procurement procedures in P.L. 27-99. We recommend that GFD develop a 5-year and 10-year capital replacement plan and submit the plans to the Legislature to ensure that GFD receives the needed funding for the purchase, maintenance and upkeep of its emergency vehicles and equipment.

The Chief and the CPO disagreed with our reference to brand name specifications, which we have modified in our report. The CPO disagreed with five other areas of our report; however, we did not change our statements. See Attachment 4 for our response to those areas of disagreements.



Doris Flores Brooks, CPA, CGFM
Public Auditor