



OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Superior Court of Guam
Judicial Building Fund
October 1, 1999 through September 30, 2004

The Judicial Building Fund (JBF) was established by Public Law 17-82 in December 1984 to plan, construct, furnish, and equip a new Judicial Building. Revenues include all income and interest income received by the Courts for the filing of documents or imposition of fines, and from rental income paid by tenants occupying the Judicial Building. The JBF is under the stewardship of the Judicial Council of Guam. Some of our findings include:

1. **Non-compliance with Judiciary procurement regulations.** The Superior Court did not competitively procure and/or maintain adequate supporting documentation for the procurement of capital outlay, supplies and services totaling \$999,730. Sole source procurement without public notification was utilized for 61% of the transactions reviewed.
2. **Non-Approval of JBF expenditures by the Judicial Council.** With the exception of a May 2002 approval, the Judicial Council did not approve JBF expenditures through “a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council” prior to FY 2004.
3. **Budget over-expenditures.** Over the past five years, JBF expenditures exceeded various line item budget levels approved by Rural Development. In FY 2004, JBF expenditures exceeded the approved Rural Development budget by \$176,550. Court officials did not seek prior approval from Rural Development, as required, to reprogram line item categories within a fiscal year and among fiscal years. The expenditures reported to Rural Development did not correspond to the audited expenditures reported in the annual financial audits of the Government of Guam for fiscal years 2000, 2001, and 2002.
4. **Non-compliance with reporting requirement.** The Judicial Council did not submit to the Legislature an annual accounting of JBF revenues and expenditures with its annual budget request as required by law.
5. **Discretionary procurement of lobbying services.** The audit disclosed that \$564,039 was spent from local appropriations to lobby a Congressional measure regarding Guam’s judiciary. Although the JBF was not utilized to pay for the lobbying, neither the Superior Court nor the Supreme Court solicited request for proposals. Unlike the Executive Branch, the Judiciary’s procurement policy allows for discretionary procurement of professional services and does not require advertisement regardless of the amount.
 - The Superior Court paid \$479,000 to lobby against the measure. The Superior Court hired Howard Hills for “legal research and advisory consultation.” Howard Hills was the conduit to pay lobbyist Jack Abramoff. According to Howard Hills, of the \$479,000 he received, \$324,000 was transferred to Jack Abramoff’s firm.

- Four individuals signed the contract with Howard Hills. In contrast, the series of change orders that increased the projected cost from \$20,000 to \$120,000, then to \$479,000, were signed only by Howard Hills and the former Administrative Director of the Superior Court.
 - Howard Hills' payments consisted of an initial \$20,000 retainer paid in 1998, 47 \$9,000 payments paid from February 2001 to July 2002, and one \$36,000 paid in May 2001. Procurement by sealed bid was required for purchases over \$10,000 under the Prior Procurement Policy. It appears that Howard Hills was paid in \$9,000 increments to circumvent the sealed bid requirement.
 - The Superior Court did not issue IRS Form 1099-MISC despite having paid Howard Hills \$20,000 in 1998, \$108,000 in 2001 and \$351,000 in 2002.
 - The lobbying registration filed by Greenberg Traurig, LLP, Jack Abramoff's firm, named Howard Hills and not the Superior Court, as its client.
- The Supreme Court paid \$85,039 to two firms to lobby in favor of the measure.
- A detailed billing submitted by the first firm indicated that services had commenced prior to the signing of the contract. Charges totaling \$2,311 were performed two months before a Purchase Order (PO) was approved. The PO amount was increased by \$4,349 from the original amount of \$4,000 to \$8,349. However, services were rendered prior to the adjustment, and the adjustment date coincided with the date on the check for \$4,349. This firm was paid \$8,349. We found no lobbying registration filed by this firm.
 - A \$30,000 PO was processed for the lobbying services provided by McClure, Gerard & Neuenschwander's. This firm was paid \$76,690, or \$46,690 more than was indicated in the PO. The registration filed by McClure, Gerard & Neuenschwander identified the Supreme Court as its client.

6. **Unrealized rental revenues.** The Superior Court leased a portion of the old Superior Court building for \$1 annually to the I Inetnon I Emplehao I Kotte (SCOG Employees Association), which in turn sublet it to concessionaires from November 1992 to January 2005. The SCOG Employees Association earned \$245,553 that could have been earned by the Superior Court.

A preliminary draft report was transmitted to the Judiciary on November 16, 2005. We met with Judiciary officials on November 22, 2005 to discuss the preliminary draft. As a result of the meeting, subsequent revisions to the preliminary draft were made. A final draft report was transmitted to the Judiciary on December 2, 2005 for its official response. On December 13, 2005, the Administrator of the Courts (Administrator) submitted a 24-page response indicating concurrence with four of our five recommendations. The Administrator concurred with recommendations 1, 2, 4, and 5, and disagreed with recommendation 3. In addition, the response contained extensive comments to the various findings. A synopsis of management's response and OPA reply follows:

Disagreement with Recommendation 3

The Administrator disagreed with the recommendation to revise its current procurement regulations to include maintaining a list of qualified professionals. According to the response, “a list of those professionals willing to offer their services to the Judiciary is already informally maintained.” Our recommendation to maintain a formal list of professionals (vendors) selected through request for proposals provides the Judiciary with a useful tool for encouraging competition and ensuring that professional services are procured with fairness and equity.

Discussion of Findings

- 1. Non-compliance with Judiciary procurement regulations.** The Administrator’s response acknowledged that proper documentation was not maintained for various procurement transactions tested during the audit, and that while the solicitation process is often bypassed for those procurements, the purchases were made “in the best interest of the Judiciary.” Although the Administrator was in agreement that complete and written documentation be maintained for each procurement file, the response noted that there is no requirement for the Purchasing Officer to document a decision to bypass the procurement process for small purchases. We emphasize the importance of adequate written documentation to provide an audit trail and the rationale for procurement decisions. As such, the procurement files should speak for themselves.
- 2. Non-approval of JBF expenditures by the Judicial Council.** The response stated that while the Judicial Council did not approve JBF expenditures, all expenditures “received the written approval of the lender, Rural Development, as required.” It is the Judiciary’s position that the Statement of Budget, Income and Equity reports submitted to Rural Development are tantamount to approval. No other documentation indicating written approval by Rural Development other than the Rural Development letters of concurrence/non-concurrence with proposed budget amounts and one approval increasing a line item budget was provided to us.
- 3. Budget over-expenditures.** The Administrator stated that the \$176,550 reported as over-expenditure for fiscal year 2004 was inaccurate. He claimed that they did not exceed their fiscal year 2004 budget and that reprogramming funds among line item categories within a fiscal year and among fiscal years was common practice. He also pointed out that Rural Development has neither communicated that such practice was inappropriate nor imposed any sanction for this practice. However, the Administrator’s position is inconsistent to that of Rural Development. An Area Specialist stated that Rural Development must approve any reprogramming in writing.
- 4. Non-compliance with reporting requirement.** The response contended that the Judiciary provided the Legislature with financial statements and that the Legislature has never indicated that the Judiciary failed to comply with this reporting requirement. The Administrator stated that, “the Judiciary will cause to be prepared, even at additional expense, full statements of accounts of all money received and expended out of JBF accounts for annual transmittal to the Legislature.” The requirement of law is to submit current financial information as audited financial information can be at least one to two years old at the time of the budget submission. Our recommendation calls for the

submission of unaudited accounting of revenues and expenditures, which can be generated from the Judiciary's financial management system at no extra cost.

5. **Discretionary procurement of lobbying services.** The Administrator suggested that we may have erroneously miscalculated the payments to Howard Hills by adding two voided checks and have misrepresented the amounts in our analysis. The purported miscalculation is not a result of the voided checks, which were originally included in the schedule for illustration purposes only and did not affect the total payments. The Administrator did not include the initial \$20,000 retainer fee in his calculation. The voided checks were subsequently eliminated from the schedule.
6. **Unrealized rental revenues.** The response contended that leasing a portion of the former Superior Court to the Employees Association for \$1 annually had several non-monetary benefits such as improving employee morale. However, because of the sublease the Superior Court lost the opportunity to earn \$245,553 in rental revenues.
7. **Complicated method of allocating revenues.** The response noted that employees involved in the process of allocating JBF revenues are aware of the proper procedures. However, the process, though instilled among the employees, should be documented to ensure accuracy and consistency.

Although a user-friendly format describing each fee, the amount, and the apportionment of each fee between the JBF and other funds was created and disseminated to employees, we noted that "the SOP is still in draft form and does not require the approval of the Judicial Council." As the new schedule is a modification, the draft SOP should be finalized, approved by the Judicial Council, and disseminated to all personnel involved in the allocation and collection of revenues.

8. **Use of JBF to Supplement Court Operations.** The response stated that although it appeared that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation, it has always sought Rural Development approval. However, Rural Development has informed the Judiciary in writing that, "[t]he judicial building fund (JBF) can not be used to relieve the local government's responsibility in meeting its operating expenses."

See Appendix 14 for the Administrator's 24-page response.



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