



OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Department of Public Works' Landfill Design Contract

Report No. 08-06, September 2008

The Department of Public Works (DPW) did not have controls to ensure that the landfill design contract, Project No. DPW-SW-2004 (003), was procured according to Guam procurement laws and regulations, or administered to comply with contract provisions and best practices. Specifically, because of minimal documentation, monitoring, training, and planning, the integrity of the procurement process cannot be ascertained. No independent government estimate exists to justify that DPW contracted for necessary services at a fair and reasonable price; DPW Solid Waste Management Division (SWMD) did not scrutinize contract invoices prior to approving payments; and contract funding resulted in DPW appropriation shortfalls.

In a February 2004 Consent Decree, the United States Environmental Protection Agency ordered the government of Guam to timely correct Clean Water Act violations or face penalties. The Consent Decree ordered the closure of the Ordot Dump and a new landfill draft plan. DPW's SWMD was tasked to ensure compliance with the Consent Decree.

In May 2005, a private engineering firm (Consultant) was awarded a \$1.3 million (M) contract for Tasks I and II to develop design plans, specifications, and estimates, as well as other supporting data for the new landfill. Concerns were raised by five senators after the contract grew to \$6.7M and was amended six times in 19 months to include Tasks III and IV.

Several of the senators' concerns were addressed in a separate review by the Office of the Attorney General (OAG) which found that: (1) DPW's planning the project in phases and tasks was not unusual; (2) the contract amendments did not violate the terms of the original contract or any procurement law; (3) construction of the temporary access road did not circumvent procurement law; and (4) DPW could use other funding sources available and does not necessarily need specific appropriation to open a new landfill. Our audit did not duplicate OAG's review.

Integrity of Procurement Process Cannot be Ascertained

We were unable to achieve our audit objective related to determining whether the landfill design contract was procured in compliance with Guam procurement laws and regulations because DPW did not maintain complete records of the procurement process as required by such laws and regulations. After an internal reorganization and staff turnover, procurement files were misplaced and were not available for our review. Therefore, we were unable to ascertain whether the Consultant was selected in a competitive environment. We did not find documentation, such as transmittals of the pre-proposal conference summary, an RFP addendum to all prospective bidders, and a copy of the sub-consultant's license to practice issued by the Professional Engineers Architects and Land Surveyors Board. Given the magnitude of the contract, controls over the custody of records should have been in place to preserve the integrity of the procurement process.

Lack of Independent Government Estimate

An independent government cost estimate is prepared by the government in advance and independent of the contractor's proposal. This estimate can serve as an objective baseline in evaluating the reasonableness of the Consultant's proposed price. Based on the negotiation memorandums we reviewed, DPW may have negotiated the Consultant's proposed contract price downward. However, we did not find an independent government estimate justifying the negotiated price was only for

necessary services priced fairly and reasonably. There was also no justification as to why the cumulative costs for Phase II (Amendments Nos. 2 through 6 totaling \$5.4M) exceeded the negotiated price of \$2.3M by \$3.1M or 135 percent.

Contract Invoices Not Scrutinized Before Payment

As of December 2007, progress payments approved by DPW and processed by DOA totaled \$4.2M to the Consultant. We tested 15 progress payments totaling \$3.5M and found that while duties were segregated, as suggested by best practices, DPW SWMD did not scrutinize the invoices to ensure that charges were accurate and reasonable. Additionally, we found that progress payments were processed without ensuring compliance with certain contract provisions, such as the application of a 10 percent retainage rate.

Contract Funding Requirements Resulted in DPW Shortfalls

The \$6.7M landfill design contract was not funded from the onset. We found that prior to BBMR's clearance, \$5M in intra-agency transfers were made to four of the five accounts tapped for funding the landfill design contract.

Of the \$5M transferred, \$3M came from other DPW divisions' salaries and benefits accounts. The remaining \$2M was transferred from the Director's Office contractual services account to pay the Consultant \$1.4M for a settlement agreement. The Consultant filed a claim against the government of Guam for work already done. In anticipation of the Governor's signature on Amendment No. 2, DPW authorized the Consultant to proceed on the scope of work. However, the Governor did not sign the amendment because funding could not be identified.

The funding transfers also affected other government of Guam agencies. The Governor exercised his transfer authority to alleviate DPW shortfalls by transferring \$917,000 in FY 2005 and \$637,000 in FY 2006. We did not find any Governor's transfers to DPW in FY 2007, but internal transfers to fund the contract continued.

Conclusion and Recommendations

Due to the government of Guam's failure to comply with the Consent Decree, federal receivership was appointed in March 2008. Our audit reviewed the period before the appointment of the Receiver. The Receiver was appointed to oversee DPW's SWMD and to perform all acts necessary to expeditiously comply with the Consent Decree. Although Consent Decree tasks will be carried out by a Receiver, we recommend DPW improve its process to award and administer contracts by adopting best practices, implementing internal controls, and providing guidance and training to staff. These recommendations can aide DPW in assuring contracts comply with procurement laws and regulations; contractors fulfill contract terms and conditions; and thorough documentation validating the accomplishment of objectives is secured and maintained. With the appointment of a Receiver, the deficiencies identified should be mitigated.

Lack of DPW Response

During our August 19th exit conference, the DPW Director indicated general concurrence with the draft report's findings and recommendations and that a response would be submitted by August 29, 2008. However, as of the date of this report, the OPA has not received a response. The Receiver generally concurred with our recommendation.

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