



OFFICE OF THE PUBLIC AUDITOR

Guam Memorial Hospital Authority Procurement of Radiology Services and Equipment

Fiscal Year 2001

**Investigative Report
OPA Report No. 03-02
April 2003**

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Public Auditor Doris Flores Brooks said that some “red flag” indicators in Guam Memorial Hospital Authority Independent Auditors’ Report on Compliance and Internal Control for fiscal year 2001 have caused her to ask Attorney General Douglas Moylan to determine if any fraudulent activities have occurred. Because the purchases in question involved the use of federal funds, a copy of the report is also being provided to U.S. Attorney Frederick Black.

In the Compliance Report, Deloitte Touche Tohmatsu, the Hospital’s contracted auditor, cited 10 findings in which the Hospital was not in compliance with laws, regulations, or policies of the Hospital.

Two of the findings, 2001-03 and 2001-04, caused the Public Auditor to assign OPA staff to perform an additional review into procurements of radiology services and equipment as Hospital staff claimed that several of the questioned purchase orders cited in the findings were created as a result of a clause in the radiology contract.

Prior to the awarding of the radiology contract mentioned above, GMHA issued several requests for proposals for radiology services. On May 9, 2000, the Hospital Administrator sent a letter to their legal counsel requesting assistance in resolving matters brought forth by the Attorney General’s Office concerning those RFPs. The following is a chronology of events outlined by the Hospital Administrator to GMHA legal counsel.

- GMHA announced RFP 001-00 for Professional Radiology Services November 16, 1999, with a submission date of December 16, 1999.
- There was only one respondent to this RFP. Hospital management determined that the respondent failed to submit the required documents under Paragraph VI of the RFP. A letter of non-selection dated January 14, 2000, was sent to the respondent.
- On February 10, 2000, GMHA issued RFP 003-00 again for Professional Radiology Services with a submission date of February 22, 2000.
- There was again only one respondent to RFP 003-00, the same vendor who responded to RFP 001-00 and who was rejected in January 2000. On February 28, 2000, GMHA sent a letter of non-selection notifying him that his proposal was non-responsive and rejected based on Chapter 3-

401.02, Standards of Responsibility, GMHA Procurement Rules and Regulations.

- On March 14, 2000, GMHA issued RFP 007-00 with a submission date of March 28, 2000. There were no respondents to RFP 007-00.
- The Hospital extended the current radiology contract for three months beginning April 1, 2000, and terminating June 30, 2000, to avoid compromising radiology services at GMHA.

We requested a copy of GMHA legal counsel's response to the May letter, however, as of the issuance of this report the OPA had not received it.

On May 24, 2000, GMHA issued RFP 009-00 for radiology services with a submission date of June 14, 2000. There were two respondents to RFP 009-00. One respondent was the same vendor who had been rejected on his two previous submissions and the other was a new respondent. This second respondent's specialty is cardiology and not radiology, although in his proposal he identified two radiologists affiliated with him.

The OPA found no records at GMHA to indicate that the Hospital conducted a review of the two submissions to determine who was the most responsive Offeror of RFP 009-00. But on August 7, 2000, a contract for radiology services was entered into with the new respondent/cardiologist. The contract was signed by the respondent/cardiologist, the Governor of Guam (apparently as Hospital Administrator and Governor), the Attorney General approving the contract as to form¹, and the Hospital Controller certifying the availability of funds. All of the signatures were dated August 7, 2000. The Public Auditor said it appeared unusual that a contract could be reviewed by all those parties and signed on exactly the same date. The contract was signed at a time when the Governor of Guam had declared an emergency at the Hospital.²

The term of the radiology contract was for five years. The date written into the preamble of the contract was July 11, 2000. Documents at the Department of Revenue and Taxation indicated the respondent/cardiologist was incorporated on July 13, 2000. Thus, it appears that when it was determined that radiology services were required, rather than contacting existing vendors on Guam, the

¹ Under 5 GCA § 5150, "the Attorney General shall...when he approves contracts, determine not only the correctness of their form, but their legality. In making such a determination of legality, **he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out.** He may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of legality." [Emphasis added]

² From June 2000 through February 2001, the Governor of Guam signed 8 Executive Orders declaring the Hospital to be in a state of emergency, authorizing the procurement of goods and services under emergency procedures, and allowing hospital staff to receive a 25% pay adjustment. Each Executive Order provided the basis for the Governor to transfer \$250,000 (for a total of \$2,000,000) from other government sources to the Hospital.

Hospital began negotiating with a vendor who was not yet incorporated for business on Guam.

The Hospital responded to Findings 3 and 4 of the Compliance Report by stating that the procurements did, in fact, comply with the Guam Procurement Code because they were executed as emergency procurements. The Hospital's response did not satisfy the CPA firm and it does not satisfy the OPA.

Guam law states:

“Notwithstanding any other provision of this Chapter, the Chief Procurement Officer, the Director of Public Works, the head of the purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Policy Office; **provided that such emergency procurements shall be made with such competition as is practicable under the circumstances, and further provided that the procurement agent must solicit at least three (3) informal price quotations, if time allows must give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve (12) months,** and must award the procurement to the firm with the best offer, as determined by evaluating cost and delivery time. No emergency procurement or combination of emergency procurements may be made for an amount of goods or supplies greater than the amount of such goods and supplies which is necessary to meet an emergency for the thirty (30) day period immediately following the procurement.”³ [Emphasis supplied.]

There is no evidence to indicate the Hospital obtained three informal price quotations. Additionally, the contract term exceeded the 30-day time permitted for emergency procurements and there is no indication the Hospital made any attempt to contact the vendor who had submitted a responsive bid one month previously.

The OPA also noted a clause in the contract that allows the consultant to unilaterally purchase equipment on behalf of the Hospital without following Guam procurement regulations. Section 4.1(n) of the contract states:

“Based upon the assessment of the parties, the consultant is required to upgrade the existing equipment. The consultant agrees to purchase the equipment up front at its own expense, and agree to negotiate a time period for the repayment. The consultant shall, for the term of this contract, make periodic assessment of the

³ 5 GCA § 5215

services and equipment that are necessary to carry out the services required.”

Hospital staff advised the OPA that this is an unusual provision inasmuch as GMHA normally purchases equipment of this type directly from the manufacturers. When OPA staff visited the Department of Revenue and Taxation to research this issue, DRT staff pointed out that the vendor was licensed to provide “Medical Services” and not to provide goods and equipment.

Two months after the Hospital entered into the radiology contract, a purchase order was issued to the contracted cardiologist/radiologist for equipment totaling nearly \$1.2 million. The PO was later amended to reduce the quantities of some items. The final PO amount was \$633,789. In a Hospital file of the purchase order the OPA found a bid solicitation form with five vendor names. The contracted cardiologist/radiologist was the low bidder, but, surprisingly, the local manufacturer’s representative was not listed as one of the vendors contacted for a bid solicitation. Because the Hospital had an established relationship with the local manufacturer’s representative, it is surprising that the manufacturer’s representative was not contacted to submit a bid quotation for this equipment.

There was no explanation in the documents indicating why the equipment was purchased using the contracted cardiologist/radiologist as a middleman rather than purchasing the equipment directly from the manufacturer’s representative. It appears that this clause was created for the purpose of subverting the Guam Procurement Law.

Finding No. 2001-04 of the compliance report indicates that federal funds were used to purchase this equipment.

There were at least four other purchase orders for equipment purchased utilizing this clause in the radiology contract. The total of these four purchase orders was \$880,030. We found no documentation that any other vendors were contacted about the procurement of medical equipment and to submit a bid quotation.

In order to determine whether the contracted cardiologist/radiologist had marked up prices of equipment that it purchased on behalf of the Hospital, the OPA compared the amounts billed by the cardiologist/radiologist for the equipment to original manufacturers’ representative invoices obtained from other parties. We did this for all five-purchase orders issued to the cardiologist/radiologist. In most instances, the amount paid by the Hospital was supported by an invoice provided by the manufacturer’s representative and appears to be a simple pass through to the Hospital. However, the OPA found discrepancies in excess of \$64,000 indicating price mark-ups over the amounts invoiced by the manufacturer.

We also found that some of the equipment purchased by the Hospital under this clause was received up to ten months after the contract date. This exacerbates

the lack of compliance noted earlier with respect to the 30-day limit for goods and services to be received under emergency procurements.

A visit to the Hospital confirmed that the equipment was still in use and under the control of the Hospital. Hospital staff indicated the equipment has significantly enhanced the ability of the Hospital to service its customers. In fact, one employee said that he believed the equipment was responsible for saving the life of one patient.

Management Response

We discussed these matters with the Hospital Administrator who generally concurred with our findings.

Conclusion

It appears there were a number of abnormalities associated with the contract for radiology services, which was entered into by the Hospital on August 7, 2000:

- Lack of evaluation of May 2000 radiology proposals
- Preamble dates prior to cardiologist/radiologist incorporation date
- Contract signatures affixed on the same date
- Emergency procurement procedures not followed
- Equipment purchased under a clause in a radiology services contract
- \$64,000 markup of equipment purchased
- Local manufacturer's representative who was established vendor not given opportunity to bid on equipment purchases

Consequently, the Public Auditor is referring this matter to the Office of the Attorney General for a determination as to whether any of these events constitutes improper, if not fraudulent, acts.



Doris Flores Brooks, CPA
Public Auditor

Guam Memorial Hospital Authority

FY 2001 Report on Compliance
and Internal Controls

Findings 2001-03 and 2001-04

Report Issued by
Deloitte Touche Tohmatsu, LLP

GUAM MEMORIAL HOSPITAL AUTHORITY

Schedule of Findings and Questioned Costs September 30, 2001

Finding Number: 2001-03
Area: Procurement: Sole Source Method
CFDA #: N/A
Questioned Costs: \$0

Criteria:

In accordance with GMHA procurement rules and regulations 3-205, the GMHA administrator, or designee must determine in writing that conditions to justify sole source procurement have been met, including an analysis showing at least 10% in cost savings from non-Guam vendors.

Condition:

1. For 5 (or 20%) out of 25 purchase orders/contracts, the use of sole source procurement was approved in writing by the GMHA administrator. However, such approval document does not provide a rationale for the vendor selected for the following purchase orders:

<u>P.O. No.</u>	<u>Vendor No.</u>	<u>P.O. Amount</u>
21001761	8219	\$107,600
21002646	8159	\$365,000
21002648	8159	\$143,730
21003119	7569	\$359,216

2. Furthermore, vendor #7569 is not a Guam vendor, and there is no documentation on file of a cost-savings analysis.
3. Additionally, the contract signed with vendor number 8159 allows the vendor to unilaterally replace existing equipment without being subject to Government of Guam procurement rules and regulations and obligates GMHA to reimburse the vendor's replacement costs.

Cause:

There appears to be weak internal controls over the proper use of the sole source procurement method. Also, there appears to be frequent overriding of such internal controls by the GMHA administration in existence during FY2001.

Effect:

There is no known effect on the financial statements as a result of this condition; however, GMHA appears to be in noncompliance with GMHA procurement rules and regulations.

Recommendation:

The administrator should not approve requests for use of sole source procurement unless the rationale for vendor selection is stated on the request form or documented on file. Additionally, GMHA contracts should include clauses that subject vendors to Government of Guam rules and regulations.

GUAM MEMORIAL HOSPITAL AUTHORITY

Schedule of Findings and Questioned Costs September 30, 2001

Finding Number: 2001-03, Continued
Area: Procurement: Sole Source Method
CFDA #: N/A
Questioned Costs: \$0

Auditee Response and Corrective Action Plan:

In a letter provided to the auditors on November 6, 2002, the auditee provided the following response:

PO 21002646 & PO 21002648: This was considered the appropriate authority for these purchase orders. The purchase orders were to amend the original PO 20003681 decreasing the order for two (2) Radiologic and Fluoroscopic System to one (1) system each. The balance of funds after the decrease was used to procure the items on these purchase orders. These purchase orders were part of the upgrade on the existing equipment as executed in the contract on August 2000, Section IV, 4.1n. Since the Consultant was required to upgrade the existing equipment, the purchase order was appropriately awarded to the Consultant in accordance with the contract. Since the initial order was ordered under Chapter 3-206, Emergency Procurement, it would probably be suitable to cite 3-206 since these were amendments to the original order, maintaining consistency of the authorization.

Corrective Action: Determination must be made for citing proper authority for amendments to original purchase orders. To ensure consistency, assign proper authority to any subsequent orders related to the initial purchase order citing the same authority. Buyer Supervisor must adequately review all purchase orders prior to Supply Administrator's review and approval. Discuss any concerns on proper assignment of authorities with Assistant Supply Administrator.

GUAM MEMORIAL HOSPITAL AUTHORITY

Schedule of Findings and Questioned Costs September 30, 2001

Finding Number: 2001-04
Area: Procurement: Emergency Method
CFDA #: 15.875
Questioned Costs: \$1,224,089

Criteria:

In accordance with GMHA procurement rules and regulations 3-206 for emergency procurement, written rationale for the vendor selection shall be included in the contract file.

Condition:

For 4 (or 44%) out of 9 purchase orders/contracts, there is no written rationale for the selection of the following vendors:

	<u>P.O. #</u>	<u>Item</u>	<u>Vendor Number</u>	<u>Item Amount</u>
1.	20003681	Fluoroscopy Units (Legacy)	8159	\$ 633,789
2.	20003796	Image Reader	8159	71,800
		Imaging		94,400
		Image Reader, Fuji		46,500
		ID Terminal, Fuji		18,600
		Vidar Diagnostic		27,500
		Dicom Interface		12,500
3.	21001702	Cardiovascular Ultrasound	8188	219,000
4.	21002777	Radiologic & Fluoroscopic Upgrade	8159	100,000
				<u>\$ 1,224,089</u>

Cause:

There appears to be weak controls over ensuring that the written rationale for vendor selection in an emergency procurement is maintained on file.

Effect:

GMHA is in noncompliance with procurement rules and regulations 3-206 and OMB Circular A-133 procurement requirements. A questioned cost of \$1,224,089 exists.

Recommendation:

GMHA should strengthen internal controls to ensure that the responsible personnel document the rationale for selecting a vendor in an emergency procurement.

Auditee Response and Corrective Action Plan:

In a letter provided to the auditors on November 6, 2002, the auditee provided the following response:

GUAM MEMORIAL HOSPITAL AUTHORITY

Schedule of Findings and Questioned Costs September 30, 2001

Finding Number: 2001-04, Continued
Area: Procurement: Emergency Method
CFDA #: 15.875
Questioned Costs: \$1,224,089

Auditee Response and Corrective Action Plan, Continued:

PO 20003681 and 20003796: 3-206. Emergency Procurement. This paragraph cites that “a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file”. However, it further states that “the requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor’s declaration of an emergency situation by Executive Order if such order states that emergency procurement may be resorted to for the purposes of the Order”. This requirement was solicited as a Request for Proposal (RFP) as advertised on May 22, 2000. The submission date was 10:00 am, June 14, 2000. Two vendors submitted proposals which were opened on June 15, 2000. However, on September 2000, the purchase orders were prepared and executed under emergency procurement conditions Executive Order 2000-7, otherwise provisions of radiology services for GMHA would have been compromised. Although the procurement was executed under emergency conditions, it must be noted that 5 of 6 vendors responded to the price quotation solicitation and the award was subsequently awarded to Heart & Vascular Institute.

Note: Subsequent requirements solicited under the Request for Proposals process have been managed in accordance with procurement regulations. Materials Management department has ensured that the process is completed and all supporting documents are on file.

Corrective Action: Continue to maintain supporting documents on all Requests for Proposals.

PO 21001702: 3-206. Emergency Procurement. This paragraph cites that “a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file”. However, it further states that “the requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor’s declaration of an emergency situation by Executive Order if such order states that emergency procurement may be resorted to for the purposes of the Order”. It must be noted that a formal bid packet was prepared and is on file but the process was subsequently determined to be procured under emergency procurement. Two contractors submitted their price quotations and JMI Healthcare Services was the lowest bidder.

Corrective Action: Complete any formal bid process started and close out procurement procedures properly and accordingly. For future actions, obtain hard copy and place in file on who authorized procurement under emergency conditions and cancellation of the formal bid process.

PO 21002777: 3-206. Emergency Procurement. This paragraph cites that “a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file”. However, it further states that “the requirements for a written determination for the emergency shall be met if the procurements are being made on the basis of the Governor’s declaration of an emergency situation by Executive Order if such order states that emergency procurement may be resorted to for the purposes of the Order”. Given the fact that the original purchase order for the equipment replacement was awarded to Heart and Vascular Institute and since the Consultant was required to upgrade the existing equipment, the purchase order was appropriately awarded to the Consultant in accordance with the contract.

GUAM MEMORIAL HOSPITAL AUTHORITY

Schedule of Findings and Questioned Costs September 30, 2001

Finding Number: 2001-04, Continued
Area: Procurement: Emergency Method
CFDA #: 15.875
Questioned Costs: \$1,224,089

Auditee Response and Corrective Action Plan, Continued:

Note: Perhaps it was also appropriate to cited 3-206, Emergency Conditions, since the original orders were executed under this authority.

Corrective Action: To ensure consistency, assign the proper authority to any subsequent orders related to the initial purchase order citing the same authority. Buyer Supervisor must adequately review all purchase orders prior to Supply Administrator's review and approval. Discuss any concerns on proper assignment of authorities with Assistant Supply Administrator.

Auditor Response:

We do not dispute the use of emergency procurement due to the local emergency declaration. However, federal funds were used for this purchase. Federal regulations supercede the local emergency declaration. We have not been provided documents indicating the rationale for vendors selected. Therefore, this condition remains a finding and questioned cost.