



Guam Mass Transit Authority Procurement Issues

Investigative Letter Report

**OPA Letter Report No. 02-02
April 2002**

Distribution:

Governor of Guam
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April 2002

Honorable Felix P. Camacho
Chairman, Committee on Tourism, Transportation
and Economic Development
26th Guam Legislature

Dear Senator Camacho:

An investigation into certain procurement practices of the Guam Mass Transit Authority (GMTA) was initiated by the Office of the Public Auditor (OPA) based on your request of January 16, 2002. In your letter you acknowledged that although the allegations in question were not large, you were concerned because "they may be indicative of a more widespread problem within the authority." In July 2001, we issued our report on credit card abuse at GMTA.

Scope and Objective

The scope of our investigation was confined to the two allegations outlined in the January 16, 2002 letter plus a third allegation received by the OPA.

The objective of our investigation was to gather and analyze evidence to form a conclusion as to whether the evidence supports or does not support the allegations. The allegations were:

1. The selected vendor was allowed to submit a second bid in connection with a request for accounting services;
2. A contract for janitorial services was about to be awarded to a company that was not the lowest bidder; and
3. GMTA awarded and purchased 12R22.5 bus tires from a vendor with a higher price and not the lowest cost vendor.

Specific Findings and Conclusions

Allegation # 1:

A CPA firm provided accounting services during the first week of October 2001, and was paid \$400 on October 15, 2001. There was no written report for the accounting services rendered by the CPA firm.

Under Guam Procurement Regulations Section 3.204.03.1 for purchases of between \$500 and \$5,000, the agency is required to obtain three telephonic or written quotes in so far as practical. For small purchases of less than \$500, Section 3.204.05 states that the Chief Procurement Officer shall adopt operational procedures for obtaining adequate and reasonable competition with records to properly account for funds. The

procurement regulations for small purchases, do not address whether an agency may subsequently contact a vendor for a more competitive price for small purchases.

Professional services, on the other hand, are usually procured through a Request for Proposal (RFP). Proposals are reviewed to determine the most qualified Offeror. After the selection is made of the most qualified Offeror, the Agency may negotiate the fee with the selected Offeror.¹

Three CPA firms were requested to submit quotes. In the procurement file, we found one vendor submitted a quote for \$480, another vendor for \$400. We confirmed that the third vendor declined to submit a quote.

Testimony from GMTA staff indicated that there was an earlier quote from the selected vendor for a higher amount. The selected vendor also acknowledged that he initially submitted a bid for \$680 (8 hours @ \$85); but was subsequently contacted by the Acting General Manager to submit a more competitive quote. There is no record of the \$680 quote in the GMTA file.

The Acting General Manager acknowledged to OPA staff that he is a “good friend” of one of the principals of the selected firm. Further we learned that the Acting General Manager was listed as the Vice President of a business venture in which the principals of the selected firm were significant shareholders.

Conclusion:

Because there is no specific prohibition for an agency to negotiate a better price for purchases under \$500, there does not appear to be a violation of procurement regulations. This conclusion is supported by the fact that if the procurement transaction for accounting services had been conducted through a Request for Proposal, the agency would have been free to negotiate the price most advantageous to the government. There is no evidence that the relationship between the Acting General Manager and the selected CPA firm adversely affected the government. In fact, the Acting General Manager had obtained a better price.

Allegation # 2:

A Request for Quote (RFQ) was developed for janitorial services for the three-month period, January 2002 to March 2002. The scope of the janitorial services was not only for the cleaning of the GMTA administrative building but also for the cleaning of GMTA bus shelters. The changes to the specifications that accompanied the RFQ made by the Acting General Manager were mainly the deletion of janitorial services at the GMTA administrative building. These changes, however, were not incorporated into the RFQ that was sent out to prospective vendors.

The four quotes for janitorial services in file were as follows: 1) \$1,500; 2) \$1,600; 3) \$1,900; and 4) \$4,296.96 per month. The RFQ was cancelled, but there was no evidence in the file that a notice of cancellation was sent to the four vendors.

¹ GSA 3-207.05

GMTA subsequently requested the General Services Administration (GSA) to initiate the procurement for janitorial services for the eight-month period, February 2002 to September 2002. A total of eight vendors were solicited for quotes. Only six vendors responded. The six quotes were 1) \$1,700; 2) \$2,000; 3) \$4,243; 4) \$6,250; 5) \$7,251.20; and 6) \$7,395 per month.

Because GMTA had only budgeted \$1,200 per month for a total of \$9,600 for the eight-month period for the janitorial services, GMTA had not acted on the procurement at the time our audit fieldwork was completed.

Conclusion:

As of March 31, 2002, no contract for janitorial services has been issued by GMTA. Cleaning of the administrative office is being done by the staff, but bus shelters are not being cleaned.

Allegation # 3:

The specific allegation pertains to the purchase of 12R22.5 tires for Gillig buses. It was alleged that GMTA awarded and purchased 12R22.5 tires from a vendor with a higher price and not the lowest cost vendor.

We examined the procurement file for bus tires for fiscal years 2001 and 2002. We discovered that GMTA was utilizing Blanket Purchase Agreements (BPAs) to meet most of their tire needs. BPAs are basically "charge accounts" designed to meet repetitive needs of unidentified quantities of supplies and services.

A Request for Quotes (RFQ) to supply tires for one year was faxed to four local vendors. GMTA maintains a schedule of the quotations. Each time tires are needed, the lowest cost vendor is contacted first. If the lowest cost vendor has the tire in stock, the tires will be purchased from the lowest cost vendor. If the lowest cost vendor does not have the tires in stock, the second lowest cost vendor will be contacted, etc.

Three BPAs were set up in fiscal year 2001 with three vendors for \$14,500 each for a total of \$43,500. The cumulative purchases from the three vendors totaled \$31,403.90 for the fiscal year.

For fiscal year 2002, GMTA set up four BPAs in the following amounts: Vendor #1 for \$2,000; Vendor #2 for \$8,000; Vendor #3 for \$2,000 and Vendor #4 for \$5,000 for a total of \$17,000 in BPAs for tires.

The 12R22.5 tires were initially part of the BPAs issued in FY 2001. The lowest quote under the BPAs for 12R22.5 tires was \$273.00 per tire. GMTA subsequently solicited new quotes for fifty 12R22.5 tires from the same three vendors with BPAs. There was no explanation in the procurement file why the purchases of these tires were being separated from the other tire purchases.

The lowest quote under this separate solicitation was \$288 for the 12R22.5 tires, which was \$15 higher than under the BPAs. GMTA issued a purchase order for \$14,400 to the vendor with the lowest price for 12R22.5 tires. GMTA then amended the BPAs to

exclude the 12R22.5 tires after issuing the separate purchase order for the 12R22.5 tires. GMTA set up three BPAs @ \$14,500 each and one purchase order of \$14,400 or \$57,900 (\$14,500 x 3 + \$14,400). GMTA is arbitrarily dividing its tire requirements into separate Blanket Purchase Agreements and/or purchase orders in order to avoid the \$15,000 threshold which requires sealed bidding.

In FY 2001, GMTA purchased a bulk of fifty 12R22.5 tires from the selected vendor for a total of \$14,400 (50 tires @ \$288.00). In FY 2002, this vendor was not the lowest price vendor. We were advised, however, that purchases of 12R22.5 tires through March 31, 2002 were purchased from the lowest cost vendor.

Conclusion:

It appears that the evidence gathered does not support the allegation that the purchase of certain bus tires was procured from a vendor with a higher price and not the lowest cost vendor. However GMTA did not obtain the best price for these tires, as they were cheaper under the initial BPAs than in the subsequent separate purchase order.

Recommendations

According to procurement regulations governing the issuance of Blanket Purchase Agreements, 3-204.07, a BPA shall not be issued in excess of \$15,000. Pursuant to procurement regulations 3-202.06.2 Publication, this regulation states that purchases in excess of \$25,000 shall be publicized at least once and at least seven (7) days before the final date of submission of bids in a newspaper of general circulation on Guam or other appropriate public notice.

For FY 2001, GMTA arbitrarily selected four vendors to fax a Request for Quotations for its tire requirements for the year, then issued three BPAs. GMTA purchases of tires of \$31,403.90 were in excess of the \$15,000 limitation for Blanket Purchase Agreements. GMTA purchases of tires under BPAs and/or purchase orders totaling \$45,803.90 (\$31,403.90 plus \$14,400) were in excess of the \$25,000 requirement for publication of bids to the general public. GMTA should have followed the regulation 3-202.02 for purchases in excess of \$15,000, which requires sealed bidding.

For fiscal year 2002, four BPAs were established with four local vendors in varying amounts for a total \$17,000. GMTA must ensure that the cumulative purchases of tires under the four BPAs do not exceed \$15,000 otherwise it will again be in violation of procurement regulations pertaining to the use of BPAs.

We therefore recommend that GMTA accounting and purchasing staff develop a system of monitoring on a monthly basis to ensure that tires purchased under Blanket Purchase Agreements do not exceed \$15,000.

GMTA should annually assess its tire requirements. After our fieldwork was completed we learned that GMTA issued a separate purchase order for \$7,920 of tires in April 2002. GMTA's tire requirements for fiscal year 2002 have already exceeded \$15,000, which requires competitive sealed bidding and nearly at the \$25,000 level which

competitive bidding and notification to the general public by issuing separate Blanket Purchase Agreements and separate purchase orders.

We also recommend that GMTA not issue any more purchase orders during the remainder of fiscal year 2002 without going through competitive sealed bidding and a notice of publication to the general public.

We again recommend that the staff of GMTA receive further training in procurement regulations from the General Services Administration.

In our review of the procurement regulations, not just in this investigation but also in other audits, we find the regulations to be voluminous, difficult to comprehend and complex in nature. Reviews and interpretations are often laborious and conflicting.

We therefore recommend that the Administration and the Guam Legislature together with input from vendors jointly make a complete overhaul of the procurement laws and regulations toward simplification and consistency. We recognize that such a task would take tremendous time, effort and resources. Further, there is no significant penalty to serve as a deterrent for failure to follow procurement regulations; hence we see continued violations of the procurement laws and regulations.

The number one violation in substantially all audits is "procurement," whether they are financial audits, single audits, performance audits, or audits by the Department of Interior, Office of Inspector General. The long-term result of simplified and consistent procurement laws and regulations with appropriate penalties for violations would be immense.

Limitations of the Report

This report does not provide conclusions involving legal determinations. This report contains only evidentiary conclusions based on documentation available during our review. This report has been released to the Governor of Guam, the Speaker and members of the 26th Guam Legislature, the Director of Administration², the Acting General Manager of GMTA and the Attorney General of Guam. This report is a matter of public record and its distribution is not limited.



Doris Flores Brooks, CPA
Public Auditor

² Public Law 26-76, Section 23 passed March 13, 2002, abolished GMTA. All powers, duties, responsibilities and jurisdiction of the former GMTA were transferred to the Department of Administration.



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TWENTY-SIXTH GUAM LEGISLATURE

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January 16, 2002

Doris Brooks
Public Auditor
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PO Box 23084
GMF, Guam 96921

Received by Office of the
Public Auditor

01/16/02

1:37 PM

Dear Mrs. Brooks,

The Guam Mass Transit Authority has recently experienced problems with credit card abuse within the agency. As oversight chairman, I had hoped that the authority would be free of problems now that the credit card situation has been resolved; however, I was disturbed to learn that the GMTA Acting Director Eric Untalan may now be violating local procurement laws. I am writing to ask that you look into these allegations and determine if any laws have in fact been broken.

Though the amounts of money involved in these allegations are not large, they may be indicative of a more widespread problem within the authority. At a time when our economy is at a standstill and our government cannot even afford to pay tax refunds to our hardworking citizens, I find it completely unacceptable that a government office may be bypassing the procurement regulations to award contracts to favorites. This practice not only cheats taxpayers by wasting money on overpriced services, it hurts the business community and perpetuates the notion that government contracts only go to a favored few.

The first incident that has come to my attention involves a relatively small project for auditing services with three initial bid submissions. One of the bidders was apparently allowed to resubmit a bid after the initial submission. This second bid was allegedly lower than the contractor's initial bid, and also the new lowest bid and the winner of the contract. I am extremely disturbed by this allegation and the possibility that other, larger contracts may be handled in this manner.

The second situation involves an on-going procurement issue for janitorial services at the Guam Mass Transit Authority. There are accusations that this project may be awarded to a company that did not have the lowest bid and never requested a bid packet. In fact, the authority is accused of changing the request for proposal substantially so this company meets the specifications for the project. I am concerned that the authority may now have to pay more than necessary for inferior services because of these actions.

You demonstrated your commitment to eliminating fraud and abuse during your investigation of GMTA's credit card abuses, and I hope you will take this situation as seriously. I look forward to working with you on this matter and encourage you to call me or my staff should we be able to assist you in any way.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Camacho', with a long horizontal flourish extending to the right.

Felix P. Camacho

Cc: All Senators
GMTA Board of Directors



GUAM MASS TRANSIT AUTHORITY
(Atunat Transpohanian Guahan)
Government of Guam

January 16, 2002

The Honorable Felix P. Camacho
Senator
Twenty-sixth Guam Legislature

Received
Diana Sgo. 1-17-02

Dear Felix,

I have read a copy of your January 16, 2002 letter to the Public Auditor. I would like to address allegations made in your letter.

First, as acting general manager, I have not violated any procurement laws regarding the purchase of any goods or services for the agency, nor do I intend to do so. As a matter of fact, I made it a point to meet with Mr. Fred Santiago, Chief Procurement Officer, GSA, during my first several days on the job at GMTA. I did this because I understood that GMTA had suffered from poor management practices in the past. I wanted to make a point of communicating to the CPO that I intended to follow proper procurement procedure without exception. Additionally, I have called Mr. Santiago many times to clarify procurement issues on procedure and compliance. Please feel free to contact Mr. Santiago to verify this.

Second, for each and every contract for goods and services, including requisitions and purchase orders, I spent a significant amount of time with the staff verifying and reviewing the process by which these goods or services were procured and if indeed the people of our community, via our agency, were receiving the best value for their dollar. On several occasions I asked the staff to hold back on executing requisitions, purchase orders and contracts until they had double checked with vendors and with GSA to make sure we were being as frugal as possible with the public resources entrusted to us. Please feel free to verify this with the GMTA staff.

Third, during the first month of my employment with GMTA an RFP was issued to solicit for limited accounting services. I wanted an overview of our accounts and processes to be reviewed by an independent CPA immediately. Our goal was to ensure that there were no other problems or costly errors left unresolved by the previous management. GMTA received three bids for service and the contract was awarded to the lowest bidder. GMTA passed this review with no significant negative findings.

Fourth, to address your allegation regarding the janitorial service issue, I offer the following. In September of last year, the janitorial service contract expired. I reviewed the scope of service and trimmed a few of the unnecessary items in order to save money. These items included cleaning of the staff refrigerator, washing the staff dishes, emptying staff trashcans, and dusting staff desks. In my estimation these items are all luxuries which GMTA cannot afford neither do the staff nor I need these services in order to do our jobs, so I cut them from the scope of work on the requisition. This was an action that some of the staff members were not pleased with. Therefore, in order to offer leadership by example, I placed myself in charge of taking the trash out to the dumpster on a daily basis. I am still not too sure if the message is getting across, but I will not stop trying.

The staff persisted and without my knowledge and against my orders issued a requisition that included the items I earlier had omitted. I had a meeting with members of my staff who had committed this error and counseled them on why it is always important to trim unnecessary expenditures. I further offered counseling on the proper stewardship of public resources. I believe my words may have fallen on deaf ears since some members of the staff continued to demonstrate dissatisfaction with my decision.

In the following months, the janitorial service provided proved to be unsatisfactory. Bus shelters were not cleaned satisfactorily, nor were the general GMTA office spaces and bathrooms. This was not only my observation, but was brought to my attention by GMTA customers, staff, and Fleet Services, Inc. the operations contract service provider as well. Please feel free to verify this with my staff, or Fleet Services.

This being the case, I was considering awarding the janitorial contract to another bidder in order to improve the quality of work. After all, what economy is achieved by paying the cheapest price if the quality of the job is unacceptable?

Felix, if you or your staff had bothered to contact me regarding these allegations, or if you had taken the time to do the research to verify these issues, then each concern could have been answered honestly and directly in a manner that would have satisfied your scrutiny or that of the public.

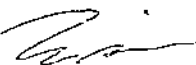
As I said to my staff during my first day on the job, our boss is not the governor, our boss is not any senator in the legislature. Our boss is each customer who steps onto any of our transit vehicles expecting service. I have always maintained an open-door policy. Any customer who wishes to talk with me to share a concern or voice a grievance is welcome. By the same token, any customer who wishes to ask how we run things here at GMTA, or how we are handling public money is welcome. I will offer only honest and direct answers to the public whom it is my privilege to serve.

I am disappointed that you did not extend me the professional courtesy of contacting me to discuss these matters. If you wished to make them public that would be your prerogative and it would have been fine with me. I have nothing to hide and I want to keep it that way. But let's present these concerns in the proper perspective.

On the other hand, I have approached your office on more than one occasion to present you with our plans for addressing problems and suggesting solutions for GMTA. I have only been able to meet with your chief of staff, which is not a problem as she is an intelligent and concerned individual. However, I thought you would take a personal interest in the activities of the authority. Am I to infer from the incendiary tone of your letter that you only wish to take the time to sensationalize possibly negative issues? Where is the letter from your office asking to meet to act on solutions or to work proactively in addressing problems?

At any rate, I am willing to work aggressively with you to implement solutions and proactively address problem areas before they become acute. I stand ready to meet with you at your earliest convenience.

Sincerely,
Guam Mass Transit Authority



Eric J. Untalan
General Manager