
Management Audit of Guam Visitors Bureau

A Report to the
Governor, the
Judiciary and
the Legislature
of the Government
of Guam



Performance Audit of the Guam Visitors Bureau

SUMMARY

The Guam Visitors Bureau (Bureau) was reorganized by Public Law 17-32 as a public, non-profit membership corporation to promote; tourism, Guam's visitor industry, local interest, and participation at all levels of the visitor industry. The Bureau also promotes local cultural activities for residents, and it promotes and assists in the development of adequate tourist facilities and attractions. The Bureau is guided by policies established and developed by its Board of Directors. The General Manager oversees daily operations with the support of Administration, Marketing, and Research divisions.

The objectives of our audit were to determine whether: (1) off-island promotional trips were adequately planned, reasonable and prudent, and included only the most appropriate staff and others to participate in the events; (2) the Bureau complies with Government of Guam procurement regulations when awarding and administering contracts; (3) the Bureau's accounting system supports budget and other management reporting needs; (4) internal controls are installed to adequately account for appropriated and membership funds.

Our review showed that: (1) large groups of people representing the Bureau travel frequently; (2) the Bureau does not exercise prudence when traveling to participate in promotions; (3) the Board's participation in marketing trips increases costs; (4) the Bureau's contracts are not adequately reviewed and properly approved to protect the integrity of the competitive bidding system; and (5) the Bureau entered into a contract where there was no bona-fide need; (6) the Bureau has habitually incurred and authorized expenditures of funds in excess of the amount available; (7) the Bureau used pseudo encumbrance practices; and (8) the Bureau's Japan Office maintained a petty cash fund with an unreasonably large amount.

We concluded that the Bureau's Board of Directors should focus on strategic planning and let the marketing division plan and execute off-island promotional trips. We also concluded that the Bureau should follow Government of Guam's procurement regulations. We further concluded that the Bureau should install an accounting system to control the budget, general ledger, and project accounts. Subsidiary ledgers should also be used to enhance project accounting.

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December 22, 2000

**The Governor of Guam
Speaker of the Guam Legislature
Presiding Judge of the Superior
Court of Guam
Agana, Guam 96910**

Dear Governor, Speaker and Presiding Judge:

Pursuant to the Guam Code Annotated Title 1 Chapter 19, Section 1909, as amended by P.L. 25-42, the Office of the Public Auditor submits its report concerning the management audit of the Guam Visitors Bureau for fiscal years 1997, 1998, and 1999. This report consists of introduction, findings, and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "A. J. Sonny Shelton", with a long horizontal line extending to the right.

**A. J. Sonny Shelton
Acting Public Auditor**

**Enclosure
OPA-102-12-00**

INTRODUCTION

BACKGROUND

The Guam Visitor's Bureau (Bureau) was established in 1970 through Executive Order 70-24 as a non-profit corporation, with 80% of its operational budget funded by the government, and 20% from membership dues and in-kind contributions. In 1983 Public Law 17-32 reorganized the Bureau as a public, non-profit membership corporation to promote tourism, Guam's visitor industry, and to promote local interest and participation at all levels of the visitor industry. The Bureau also promotes local cultural activities for residents, and it promotes and assists in the development of adequate tourist facilities and attractions. The Bureau is guided by policies established and developed by its Board of Directors. The General Manager oversees daily operations with the support of Administration, Marketing, and Research divisions.

OBJECTIVE AND SCOPE

The objectives of our audit were to determine whether: (1) off-island promotional trips were adequately planned, reasonable and prudent, and included only the most appropriate staff and others to participate in the event; (2) the Bureau complies with Government of Guam procurement regulations when awarding and administering contracts; (3) the Bureau's accounting system supports budget and other management reporting needs; (4) internal controls are installed to adequately account for appropriated and membership funds.

We reviewed the Bureau's mission, organization, operational policies and procedures encompassing travel, contracts, accounting, and other records for the period covering fiscal years 1997, 1998, and 1999. The Bureau received Government appropriations of \$11.0M, \$19.8M, and \$15.4M for fiscal years 1997, 1998, and 1999 respectively. Visitor arrivals were approximately 3.7M during this period.

Our performance audit was conducted from August 8, 2000 to October 6, 2000 in accordance with generally accepted government auditing standards. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. Fieldwork was performed at the Bureau.

PRIOR AUDIT COVERAGE

The Public Auditor has not issued any prior audit reports on the Bureau's operations. A management audit was conducted by an independent public accounting firm, and a report was issued in August 1992.

Off-Island Promotional Travel Should Be Restricted

The Guam Visitors Bureau (Bureau) Board of Directors (Board) approves all travel for the Bureau. The Board and Standing Committee members accompany the Bureau's marketing staff abroad on many marketing promotional trips. The Bureau's General Manager (GM) and the Deputy General Manager (DGM) also travel with the marketing staff frequently. The Bureau spent approximately \$142,000 during fiscal years 97, 98, and 99 for Board/Committee members and GM/DGM travel abroad. The Bureau also spent more than \$640,000 for off-island travel during this period.

Section 9113 (d) of Title 12 Guam Code Annotated (GCA) specifies that as a condition to receiving any funds appropriated to the Bureau by the Legislature, the Bureau shall agree to abide by the off-island travel rates and regulations applicable to Government of Guam employees.

The Number Of Travelers Should Be Limited

During the past few years travel for Government of Guam employees has been restricted. However, this has not been the case at the Bureau. We reviewed approximately 315 travel authorization documents that were approved for fiscal years 97, 98 and 99. We found that large groups of people representing the Bureau travel frequently, particularly to Japan even though the Bureau has a branch office there, that is adequately staffed, and funded for annual operating expenses of approximately \$7.0M. For example, a promotional trip to Japan in 1998 cost approximately \$42,000 and consisted of 50 travelers including 13 Board/Committee members, the GM, DGM and the Special Assistant to the GM. Another trip to Japan in FY99 cost approximately \$26,000 and consisted of 24 travelers including the DGM, the Special Assistant to the GM, and three Board members.

Prudence Should Be Exercised When Selecting Promotional Events

In addition to traveling in large groups, the Bureau did not exercise prudence when traveling to other locations to participate in promotional activities. For example, for fiscal years 97, 98, and 99 the Bureau spent more than \$23,000 for travel to the "Sapporo Ice Festival" in Sapporo, Japan. Besides being a promotional event, Sapporo also hosts an annual "snow carving contest". Guam's contingent consisted of the GM, a Board member, four "Ice Carvers" and Miss Guam. No marketing staff was included in the group, although the marketing department is responsible for the development and implementation of the Bureau's promotional activities abroad. The Bureau also spent about \$20,000 in fiscal years 97 and 99 to send a group to participate in the Foreign Correspondents Club Guam Friendship Golf Tournament in Hong Kong. The group consisted of the GM, two Board/Committee members, 10 PIC entertainers and one marketing staff. The Bureau also travels to other locations abroad to participate in various events such as, a diving exposition in Singapore, conferences in Manila and Cebu, P.I., and the Chamorro Music festival in the United States. The Bureau's travel abroad should be necessary, and properly planned to derive the maximum benefit, and also to show compliance with the spirit and intent of the official Government travel policy.

Furthermore, the Bureau's marketing and research staffs should develop a method to effectively and objectively measure benefits anticipated and received from promotional trips.

The Board's Control and Participation In Marketing Trips Increases Costs

The Marketing department is responsible for the development and implementation of the bureau's promotional activities abroad, with designated staff having jurisdiction over specific market regions. Nevertheless, the Board controls all facets of the program in Guam and abroad. Although they were hired to manage the day-to-day operations of the Bureau, the GM and DGM are also intimately involved in the marketing program abroad. While reviewing the Bureau's Travel records for fiscal years 97, 98 and 99, we found that approximately 95 separate trips were made. We also found that one or more Board or Committee members participated in 34 trips, and that the GM, DGM, and Special Assistant to the GM participated in 18, 15, and 6 trips respectively. Having Board or Committee members and the GM staff on marketing promotional trips is redundant and has resulted in more than \$140,000 of additional travel expenses.

The Board's activism and the GM's and DGM's presence at marketing promotional events abroad increased travel costs. The Board has delegated the authority for day-to-day operations to the GM; however, it still controls the day-to-day marketing operations. The Board approves the budget, expenditures, travel, promotional programs and program implementation. The Board's duty is to shape strategy, scrutinize the marketing program development process, and plan its implementation. However, we found that when it comes to marketing promotions, there is no clear distinction between the role of the Board and that of management. Again, we re-iterate that travel costs could be reduced if the Board provides oversight, planning and strategic insights and avoids micro-managing market promotions. Further reductions in travel costs could be realized if the GM and DGM curtail travel abroad. We understand that the primary mission of the Bureau is to promote Guam overseas, and that this cannot be accomplished without travel to and within primary markets. However, the Bureau should exercise reasonableness and prudence in ensuring that marketing teams consist of the absolute minimum numbers of travelers necessary to accomplish the mission.

The Bureau is bound to comply with Government of Guam travel regulations and statutory restrictions because it uses appropriated Government funds to pay for travel. Even if it did not use Government funds, in austere times such as these it should comply with the letter of the law, its spirit and intent, which is to reduce government spending.

Contract Award and Enforcement Process Need Improvement

The GVB (Bureau) awards and administers its own contracts. Contracts are executed for GVB by the GM or Acting GM. The Bureau does not comply with the Guam Procurement Regulations, and it has not promulgated its own. Bureau contracts are not signed by the Governor, and there are no other signatures on the contracts to show that they are reviewed by the Attorney General or the Bureau's Board of Directors.

Article 6 Section 22601 of Title 5 GCA specifies that all contracts shall, after approval of the Attorney General, will be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon approval of the Governor. Furthermore, Section 22602 specifies that a copy of any contract under which a payment may be made shall be submitted to the Department of Administration for filing, recording and registration. GSA Procurement Regulations 2-112 (b) specifies that no contract for the services of legal counsel in the Executive Branch shall be executed without the approval of the Attorney General. The Bureau is included under the Executive Budget Act; therefore it is bound to follow the procurement regulations applicable to the Executive branch.

The Bureau budgeted for the following contractual services in FY99:

<u>TITLE</u>	<u>AMOUNT (\$)</u>
General Administration*	785,221
Research	445,000
International Marketing Pacific	78,000
International Marketing Asia	1,926,005
International Marketing North America	300,000
Japan Operations	7,790,591
Total Contractual	<u>\$11,324,817</u>

*Includes legal services such as retainer fee, preparation of legal opinions, position papers, and legal advice

Contracts Should be Adequately Reviewed and Approved

Contracts awarded by the Bureau should be adequately reviewed and properly approved to protect the integrity of the competitive bidding system, and to assure fairness. We reviewed all contracts awarded by the Bureau for fiscal years 97, 98, and 99. We found that the Bureau did not comply with Government of Guam GSA Procurement Regulations and its failure to follow proper procurement procedures resulted in at least two questionable contracts being awarded. For example, the integrity and fairness of the award and enforcement of the Tumon and Agana Bay Beach Cleaning and Maintenance Contract is questionable. This formal contract was made and entered into (without specific board approval) with JJ Moving Service Inc. (JJ) for work to commence on July 13, 1998 and end on December 31, 1999. JJ had been performing the work for 13 months (on a month to month basis) prior to the award. An Engineering Services firm, Belanger & Associates Inc. (ZBA) was hired to conduct the bidding process, analyze contractor technical proposals, recommend award, and to provide quality assurance to ensure contractor performance. Six companies submitted bids and technical proposals, which were assessed and analyzed by ZBA. Based on their analysis ZBA made a written recommendation (December 31, 1997) to the Bureau's GM that the lowest bidder,

Peterra, Inc. should be awarded the contract. No action was taken on this recommendation. Tourist Attraction Fund (TAF) Committee Meeting Minutes of January 12, 1998 show that ZBA submitted a revised bid analysis on January 8, 1998, and recommended that JJ be awarded the contract. According to the minutes ZBA explained that the change in their recommendation was based on JJ's revised bid (\$85,000 lower than previous bid). Again, according to the minutes JJ's revised bid was unsolicited. The other bidders were not given an opportunity to revise their bids.

The Beach Cleaning Contract is also not being managed properly. The contract was initially managed by ZBA on a one year \$96,000 contract. ZBA provided inspection and quality assurance services. However, their contract ended in December 1998, and they provided services until March 1999, when DPR assumed responsibility for inspection and quality assurance for \$2,600 monthly. DPR's tenure was short-lived and they stopped providing contract management services in September 1999. Although the Beach Cleaning contract is still in effect there is no contract management. The Bureau directed the contractor to inspect his own work and provide a weekly progress report.

Attorney General Must Approve All Contracts For Legal Counsel

Despite the prohibition on executing contracts for legal counsel without the approval of the Attorney General, the Bureau executed one with its legal counsel in response to his unsolicited proposal. On May 12, 1997 the Board legal counsel requested that a new contract be entered into to take effect in January 1997. The previous contract for legal counsel had expired on October 1, 1992. The Board's legal counsel had been working for five years on an expired contract prior to requesting a new contract in 1997.

Government of Guam Retirement Benefits Should Not Be Given To Contractors

The Board executed a contract on August 17, 1997 for personnel services. The contract provides the contractor with the standard Government of Guam retirement benefits given to non-contract employees. This is contrary to Title 4 GCA Section 2103.16 which specifies that the executive branch and the autonomous agencies and instrumentalities of the Government of Guam may contract for the independent services of any retired employee (contractor is not a retired Government of Guam employee) of the Government of Guam, who shall not receive thereunder the standard Government of Guam retirement benefits given non-contract employees.

Contracts Should Be Entered Into Only When A Bona-fide Need Exists

The Bureau should only enter into contracts when there is a bona-fide need for the products or services. On July 9, 1998 the Bureau entered into an agreement with K. GOLD INC., a Philippine corporation (this is a continuation of a contract started in October 1996) to: (1) represent GVB (individually and on behalf of GEDA) in carrying out marketing activities in the Philippines; (2) to serve as a medical referral office for those Guam patients and their families who travel to the Philippines for medical purposes; (3) to serve as a liaison office for GVB (individually and on behalf of GEDA)

in promoting Philippine investment in Guam; and (4) to process, through the Office of the Governor, applications from residents of the Philippines for entry into Guam without a visa. GVB agreed to pay a monthly retainer fee of \$8,000 and to reimburse K. GOLD for all its reasonable expenses incurred in fulfilling its obligations under this agreement. The agreement also provided that GVB shall conduct an annual evaluation of K. GOLD's performance during each year of the term of the agreement.

We reviewed the contract file and interviewed the Bureau's Marketing manager concerning the agreement. We were told that all documentation related to the agreement was in the file, however, we did not find any evidence that evaluations of GOLD's performance were conducted. We also reviewed monthly activity reports provided by GOLD for fiscal years 97, 98, and 99. We found that the office received 333 visitors (an average of 9 visitors per month during the three-year period). Percentages of visitors for the Bureau, and the Guam Medical Referral Office (GMRO), were 48 and 44 percent respectively. About 8 percent of the visitors were related to GEDA. We also found that 2,641 phone calls were received (an average of 73 per month) during the three-year period. Percentages of phone calls for the Bureau and the GMRO were 48 and 46 percent respectively. About 5 percent of the calls were for GEDA. Due to GVB's inability to attract Philippine tourists (about 6,500 annually), we doubt that there is a bona-fide Bureau need for the liaison office in the Philippines. We also doubt that the liaison office's manager activity justifies the three-year retainer fees of \$288,000 plus reimbursements for expenses.

Bureau Is A Public Corporation Funded With Appropriated Funds

Section 9102 of Title 12 GCA created the Bureau as a public corporation. The majority of funds received by the Bureau (80%) are appropriated from the Tourist Attraction Fund. Therefore, the Bureau is bound to follow the Government of Guam rules and regulations governing the use of these funds. Board minutes of February 25, 1999 show that a Board member asked the legal counsel whether the Bureau falls under the Government of Guam procurement laws and its entity. The minutes show that legal counsel stated that the Bureau is a public corporation. Counsel also stated that the Bureau is bound to follow the procurement regulations as dictated by the Legislature for the Executive budget. In the same minutes, the Board chairman also explained to the Board that the Bureau is a corporation bound by Government of Guam laws.

Proper Management and Use of Funds

The Guam Visitors Bureau (Bureau) is a public non-stock/non-profit corporation organized for the purpose of promoting the visitors industry in Guam in a manner it deems appropriate. Eighty percent of the Bureau's budget is funded from the Tourist Attraction Fund and twenty percent is funded from membership dues and in-kind contributions. Funds are the mainstay of a business or corporation to conduct operations. A business or corporation must properly manage and utilize funds in order to achieve its goals.

Mandated Regulations for Local Expenditures

Chapter 22, Article 4, Section 22401 of Title 5 GCA, Illegal Expenditures, specifies that no officer or employee of the Government of Guam, including the Governor of Guam shall: (1) Make or authorize any expenditures from or authorize any obligation under any appropriation or fund in excess of the amount available therein, or for other than an authorized purpose; (2) Commence, continue, or proceed with any operational activity, construction, improvement, contract, or obligation without an appropriation or fund for the payment thereof; or after any such appropriation or fund is exhausted; and (3) Involve the Government of Guam in any contract or other obligation, for the payment of money for any purpose, in advance of the appropriation made for such purpose.

Chapter 14, Article 1, Section 4101, of Title 5 GCA defines Certifying Officers as the Chief Executive Office of a department, establishment or agency or the Government of Guam, including the Legislature, Executive and Judicial Branches and all autonomous and semi-autonomous agencies, who shall be responsible for determining and certifying legality of the disbursement of public funds.

Unauthorized Spending

The Bureau has continually developed impressive projects to carry out its mission of promoting tourism in Guam. The Marketing and the Community Programs Divisions have done extremely well as demonstrated by well-written project plans that have contributed to the increasing number of visitors to Guam. Program managers are enthusiastic about their work in tourist promotions. However, the Bureau has habitually incurred and authorized expenditures of funds in excess of the amount available. In addition, the Bureau has continually committed and implemented projects without appropriation of funds for the payment of the obligations. Furthermore, the Bureau has proceeded to implement projects in advance of appropriations thereby obligating the Government of Guam for the payment of money. These are violations of Title 5 GCA, Chapter 22, Article 4, Section 22401.

The Bureau's Income Statements showed the excess of revenues and expenditures. For fiscal year 1997, \$1,779,398 (over expenditures); Fiscal year 1998, \$443,787 under expenditure; and fiscal year 1999, \$4,517,646 (over expenditures). The overall over expenditures for the three (3) fiscal years is \$5,853,257. The revenues included appropriations from the Tourist Attraction Fund, membership contributions, gains or losses on foreign exchange, consumption tax refund from the Japan Government, interests and other income. The projects, in many cases, were over and under expended.

Also, we reviewed the individual income statements for FY97, FY98, and FY99 of the (10) committees and the Bureau's general administration. We analyzed every project in each committee and listed the expenditures over \$1,000; expenditures over the budget and expenditures in excess of authorized budget; and expenditures without or in advance of appropriation. For example, Japan Marketing and Operations in FY99, had total expenditures in excess of authorized budget of \$4.3M. This included the Winter

Campaign, excess of \$914,265, Summer Campaign, excess of \$383,821, Advertising excess of \$274,149, Logistic Support, excess of \$288,119. Overall over and un-funded expenditures for FY99 was \$4.8M, as follows:

Administration, Marketing and Community Programs

Bureau's General Administration	\$225,188
Japan Marketing & Operations	4,380,443
Korea Marketing & Operations	92,522
Taiwan Marketing & Operations	9,500
Philippine Marketing & Operations	36,570
North American Mktg. & Operations	27,844
Research Committee	13,428
Community Development	4,663
Cultural Heritage	31,511
Tourism Industry Relations	12,224
Hongkong Mktg. & Operations	<u>0</u>
Total	\$4,833,893

The Bureau's General Administration consistently made expenditures that were not funded. For example Vision 2001 Project was implemented for (3) years without funding and expenditures for Fiscal Years 97, 98 and 99 were \$114,786, \$49,954 and \$52,763, respectively. In FY97, the Latte Stone Project was not budgeted and expenditures were \$575,000. Similarly, in FY98 the Renovation and Upgrade 2 project expenditures of \$390,152 were not funded. The Bureau requested for the appropriation of funds but it proceeded with the project even without the needed funds. Thus, creating the obligation in advance of the appropriation in violation of Title 5 GCA, Chapter 22, Article 4, Section 2204. This article specifies that no officer or employee of the government of Guam, including the Governor shall involve the Government of Guam in any contract or obligation for payment of money in advance of appropriation made for such purpose. Subsequently, in FY99 \$1.5M was appropriated for the renovation and upgrade project 2. Moreover, we noted that the Japan Marketing projects in FY99 that were expended but not funded totaled \$2.3M; as follows:

<u>Project Title</u>	<u>Amount</u>
Guam Challenge Golf Series	\$26,822
Guam Spring Campaign	2,150,761
Incentive Program	78,278
World Travel Fair - Tokyo	<u>97,494</u>
Total	\$2,353,355

The Bureau requested the Guam Legislature to appropriate funds for the Guam Spring Campaign but the appropriation failed. Despite this, the Bureau implemented the project

even though the availability of funding was uncertain. In addition, we found that the budget for the Summer Campaign Program was consistently over spent in Fiscal Years 97, 98 and 99 in the amounts of \$1,546,192; \$2,510,529; \$383,821, respectively.

Commitment of Funds

Accounting Standards defines encumbrances in government accounting as commitments related to unfilled contracts for goods and services including purchase orders. The purpose of encumbrance accounting is to prevent further expenditures of funds in light of commitments already made. At year-end, encumbrances still open are not accounted for as expenditures and liabilities but, rather, as reservations for fund balance.

Pseudo Encumbrances

We found that the Bureau has issued/prepared orders purportedly to encumber funds. This is contrary to generally accepted accounting standards and best business practices. We sampled eighteen (18) purchase orders in the total amount of \$1.9M and found that they were either issued to the projects such as Guam Summer Campaign, Travel Agent Support Fund, or ET AL as the vendors or contractors. In addition, the purchase orders were not certified for funds available.

Improved Encumbrance Accounting Practices

The Bureau has been using pseudo encumbrance practices and these have resulted in excess expenditures and non-funded expenditures. Purchase orders are contracts to purchase equipment, materials, supplies and services. Purchase orders must be properly executed to indicate the names of vendors/contractors with descriptions of the items purchased. The contracted amount must be shown on the purchase orders or contracts and certified as to fund availability to pay for the obligation. We found that the Bureau is using pseudo encumbrances in order to reserve funds.

Membership Fund Overspent

Executive Order 70-24 specified that the Bureau would have 80% of its operational budget funded by the government, and 20% would be matched by membership with cash or in-kind contributions. The cash from membership dues, and contributions is used for a myriad of purposes, and activities; such as, car lease payments, membership Christmas parties, receptions, and hospitality expenses, staff Christmas party, and for Japan travel, food supplies for membership meetings, appreciation for senators, membership solicitation expenses, purified water, and for the "Cash Envelope".

We found that the membership funds were over spent. The Bureau continued to use the funds even after membership revenues, including interest earned, were exhausted. We are unable to determine the rationale for these spending practices. The Bureau maintains the membership fund under an interest bearing account with the First Hawaiian Bank,

Account 59-101-1213. Review of the membership fund statements indicated the funds were over or under spent as follows:

<u>Membership Funds</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>
Dues collected	\$83,275	\$62,850	\$55,700
Interests Earned	<u>728</u>	<u>468</u>	<u>228</u>
Total	\$84,003	\$63,318	\$55,928
Expenses	<u>90,090</u>	<u>87,018</u>	<u>54,237</u>
(Over) Under Expenditures	(\$6,087)	(\$23,700)	(\$1,691)

The listings of membership dues collected, as well as the in-kind contribution reports were not reconciled with the accounting records.

Proper Establishment of Petty Cash Fund

The Bureau has been maintaining a "cash envelope" purportedly as the office petty cash fund. However, we determined that a petty cash fund was never formally established, with a fixed amount authorized. Accounting standards consider the petty cash fund as the minimal amount of money kept on hand by business entities to meet small expenditures such as postage, taxi fares, purchase of urgently needed supplies of minor amounts that recur regularly or involve numerous transactions. Payment by check in such cases would result in delay, annoyance, and excessive expense of maintaining the records. The fixed amount of the fund consists of total currency left and the receipts or vouchers for the expenditures made. The fund is periodically reimbursed, usually monthly. Fund transactions are randomly verified.

On August 30, 2000, our verification of the fund showed cash on hand of \$82.83, and receipts of \$227.90, for a total of \$300.73. The purpose of our verification was only to determine total cash, and receipts on hand as there was no Petty Cash Fund established with the set amount. We did not find any previous fund verification. It appears that this fund was generated through the membership fund account.

Japan Petty Cash Fund Not Reasonable

The Bureau's Japan Office has been maintaining a petty cash fund with an unreasonably large amount. This fund is being utilized for administrative and promotion expenditures. The amount that the Bureau's Board of Directors approved was set at \$18,000. This is contrary to the intent of a Petty Cash Fund. In our review of the Bureau's Japan Office Petty Cash Fund Expenditures Report from November 1997 through August 1999, we found several items that should have been paid by check as they were not of an urgent nature. For example, personnel benefits, commuter passes for employees, and per diem. Furthermore, items that can be procured on open purchase, and billable were paid by petty cash. For example, subscription to Japan Times, golf participation fees, carrier

forwarding charges for Jata materials, Japan Railway fees, DHL and Sagawan Kyubin carrier services, telephone and communications services monthly charges from Nihon Telecom, CSK Network System, Nihon Digital Communications, KDD and NTT; hotel accommodations (Takanawa Prince Hotel) airline tickets from JTB, plant lease from Kokosai Florist, maintenance & repair of printer, purchase of office supplies (Echo Supply), carrier forwarding charges from Yamada Unyu, seminar charges, Janitorial Fees, Visa Card Membership and purchase of humidifier. We sampled sixteen (16) vouchers with single payments over \$1,000; the majority of them were for personnel benefits and per diem, rail tickets, telephone and forwarding charges. The (16) vouchers amounted to \$21,980.54.

There were no established petty cash expenditures reporting periods. Paid petty cash vouchers were being accumulated unnecessarily to the point where the cash was already exhausted. We found reports covering 10, 20, 25, and 30-day expenditures. We also found a 61-day period report. In the seven (7) petty cash expenditure reports, we determined that the average disbursement, based on total vouchers paid, averaged 50% for personnel benefits in administrative while the per diem and non per diem averaged 54% in promotions and 26% in administrative. There were four (4) reports with disbursements over \$18,000 each. Period February 11 – March 10, 1998 (30 days) \$20,344.69; Period June 1 - July 31, 1998 (61 days) \$29,664.23; August 1 – August 31, 1998 (31 days) \$28,644.59, and June 21 – July 20, 1999 (30 days) \$20,022.93, total of \$98,676.44. Also, we noted numerous vouchers for single disbursements over \$500.00 that should have been paid by check. Furthermore, the (23) petty cash expenditure reports indicated the average amount disbursed was \$12,263.66.

We were unable to determine the frequency of petty cash replenishments. However, we found two (2) replenishments to the petty cash fund with Asahi Bank Ltd. Check SE00856 dated Sep 16, 1988 for \$18,407.30, and another check SE00884 dated December 22, 1998 for \$17,173.30. Sometimes the Petty Cash Fund is exhausted even beyond the amount set before the replenishment check is requested. Petty Cash fund replenishment should be as often as necessary. This was not done in this instance. Also, we examined seven (7) of the Bureau's Japan Petty Cash vouchers, and they showed that the receiver of the money is also the petty cash custodian. This is contrary to the best of business practices, and is contrary to accounting internal control standards for cash. Further, we did not find any record of petty cash fund verification.

Proper Management of Funds is Vital

The Bureau's continued commitment of funds in excess of appropriation and in advance of appropriation is due to conscious management decisions to deviate from the mandated requirements for local expenditures as specified in Title 5 GCA, Chapter 22, Article 4. We determined that the Bureau's organizational arrangement is weak and that the line of communication between departments is poor or not always maintained. The Bureau's Board of Directors approved the budgets for planned projects and the General Manager (GM) is required to first certify that funds are available for those purposes. Project Managers should ensure availability of funds by communicating with the Accounting

Division to obtain project-funding information. Conversely, the Bureau's Accounting Division is responsible for raising a "red flag" regarding the funding status of any specific project. We recognize that the time element is essential in order to participate in the various marketing activities and events, at different areas and places, at scheduled times to promote tourism in Guam. But, funding should be sought and obtained before the obligation is incurred. Certification that funds are available should be received before the project is implemented. The Bureau's General Manager is responsible for determining and certifying legality of the disbursement of public funds, as specified in Title 5 GCA, Chapter 22, Article 4, Section 22401. The Bureau believes that since it is a public corporation, certification of funds is not required. Regardless, the Bureau is operating with public funds and despite allotment delay management must exert vigorous follow-up efforts to obtain the release of funds before incurring obligations.

Appropriate Accounting Controls

The absence of appropriate controls for accounting of funds appropriated to the Bureau's different marketing projects and community programs do not provide current and relevant financial data. The accounting function is responsible for administration of project accounting and budgets, and maintenance of budgets for departments. However, the Bureau does not maintain subsidiary accounting ledgers for the departmental budgets. We believe that with the subsidiary control, information on the project fund status could be readily available so that necessary action can be taken early, thereby avoiding illegal expenditures that are in excess of funding, as well as, expenditures not appropriated or expenditures in advance of appropriation as specified in Title 5 GCA, Chapter 22, Article 4. Continual monitoring of budgets for the departments should be maintained by periodic reconciliation between project manager records, and accounting records. We noted that appropriations are specific to each committee, and the Bureau may not transfer funds between committees. However, the Bureau may transfer funds between projects in a committee, but this was not consistently done. Finally, the Bureau's GM should certify the availability of funds for all projects to be implemented.

Adequate Written Policies and Procedures Needed

The Bureau does not have adequate written policies and procedures covering the establishment and use of petty cash funds. In addition, it lacks written internal accounting policies and procedures. Moreover, written policies, and procedures relating to the Membership Fund Account is lacking.

The Petty Cash Fund policies and procedures should include the amount authorized to establish the Cash Fund. The purchases through Petty Cash shall be governed by the urgency of need, small item purchase, and purchases requiring cash payment due to no open credit account with the Bureau. The maximum amount purchased from the Fund should be stipulated. The custodian of the fund should be designated and documentation prescribed for disbursement, and replenishment of the fund. We believe that with the established policies and procedures, the \$18,000 petty cash fund could be drastically reduced to a reasonable amount to meet the daily operational urgent needs of the Japan

Bureau. Arrangement should be made with vendors for any regular services and supplies purchased and are billable monthly. Among them are lease of copier and supplies, courier services, telecom services and others. Approved purchase orders that are certified for availability of funds must be issued to cover the obligations. We recognize that Japan Bureau is not a signatory to checks. Nevertheless, payments can be made by the Guam Bureau. Timely payments can be accomplished with proper planning and utilization of courier services for the timely deliveries of documents for quick processing and payments.

The Guam Bureau "Cash Envelope" should be properly established as a Petty Cash Fund with written policies and procedures, and a set amount authorized.

The Membership Fund Account is an unrestricted account. However, it is a part of the Bureaus matching operation fund per Executive Order 70-24. Therefore, it must be properly managed and used. Policies and procedures should be written relating to the types of expenditures from the account.

RECOMMENDATIONS:

1. We recommend that the Board delegate authority for approving marketing promotion trips to the GM.
2. We recommend that the GM limit the number of travelers going to the same destination to the absolute minimum necessary to complete the mission.
3. We recommend that the GM ensure that there is a bona-fide need for the Bureau to participate in a marketing event off-island before approving travel.
4. We recommend that the Board limit member travel on marketing trips abroad.
5. We recommend that the GM ensure that the marketing and research staffs develop a method to effectively and objectively measure benefits anticipated and received from off-island promotional trips.
6. We recommend that the Bureau comply with the Government of Guam GSA procurement regulations for awarding and administering contracts.
7. We recommend that the GM promulgate standard operating procedures for awarding and administering Bureau contracts.
8. We recommend that the GM ensure that the Bureau has a bona-fide need for goods or services before entering into contracts.
9. We recommend that the Board review all contracts before award, and document the review in Board Minutes.
10. The General Manager complies with the provisions of Title 5 GCA, Chapter 22, Article 4, Section 22401, Illegal Expenditures.
11. The General Manager complies with the provisions of Title 4 GCA, Chapter 14, Article 1, Section 14101, Certifying Officers defined.
12. The General Manager follows proper and sound government encumbrance accounting.
13. The General Manager writes the policies and procedures for the establishment, and use of Petty Cash Fund, and ensures the intent of the "Petty Cash Fund" is followed.
14. The General Manager takes appropriate action to reduce the \$18,000 petty cash fund to a reasonable level that will satisfy the urgent needs of Japan Bureau on daily basis.

15. The General Manager discontinues the “Office Cash Envelope”, and instead establishes Office Petty Cash Fund.
16. The General Manager writes the policies, and procedures for the use of the Membership Fund. And, also write the policies and procedures for accounting office operations.

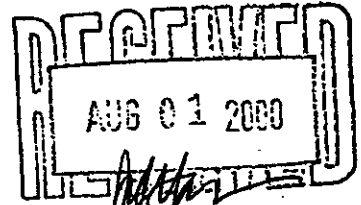
RESPONSE OF THE AFFECTED AGENCY

Guam Visitors Bureau’s response to the draft audit report, although, submitted beyond the deadline is attached.



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

July 31, 2000



Recd by: Regina Lirio
Secretary

Mr. James Nelson
General Manager
Guam Visitors Bureau
P.O. Box 3520
Tamuning, Guam 96932

Dear Mr. Nelson:

In accordance with Public Laws 21-122 and 25-42, the Office of the Public Auditor is mandated to conduct audits of all departments, offices, corporations, authorities, and agencies of all branches of the Government of Guam including autonomous agencies and instrumentalities. In this regard, our office will be conducting a management audit of Guam Visitors Bureau for the period of the last three fiscal years but which may encompass additional periods if deemed necessary.

As such, we have scheduled an entrance conference with you and your designated personnel for 10:00 a.m., Tuesday, August 8, 2000 at which time we will call on you at your offices. I will be attending this conference along with Mr. Lester Kuykendall, Mr. Al Erguiza, and Mr. Ernesto Sales, auditors with our office who will be conducting the audit. At the time of our meeting, please provide the following:

1. Budgets for fiscal years 1997, 1998, and 1999
2. Personnel Staffing Pattern
3. Organizational and Functional Charts
4. Reports - Monthly, Quarterly and Annually
5. Board Minutes for FY's 1997, 1998, and 1999
6. Responses to audit findings from FY 1997 to present

Your assistance and cooperation in this undertaking is much appreciated. Should you have any questions or concerns during this audit, please feel free to call me.

Sincerely,

A.J. Sonny Shelton
Acting Public Auditor

DRAFT

12/06/00
Francis P. Cruz



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
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December 6, 2000

Mr. James E. Nelson III
General Manager, Guam
Visitors Bureau
401 Pale San Vitores Rd.
Tumon, Guam 96921

Re: Draft Audit Report of Guam Visitors
Bureau (GVB)

Dear Mr. Nelson:

Attached for your review and response is a **DRAFT** audit report of Guam Visitors Bureau (GVB), covering Fiscal Years 1997, 1998, and 1999. I ask that you submit your response, if any, within **TEN (10)** days of your receipt of this draft. Your response will be duly included in the final report.

I must remind you that this report is in **draft form** and may not be released or provided to the media or others either in whole or in part. Access to this draft audit report should be limited to those assisting in preparing your response and such personnel made aware of these restrictions. Public release of the **final report**, when completed, will be made solely by our office.

Should your response not be received within **TEN (10)** days, we will presume your agreement with the draft audit report in all respects and proceed to produce and release the final report.

Should you require further assistance or information in this matter, please feel free to call me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "A.J. Sonny Shelton", with a long horizontal line extending to the right.

A.J. Sonny Shelton
Acting Public Auditor

DRAFT



Guam Visitors Bureau
Setbision Bisitan Guahan



Commonwealth Now!

December 20, 2000

Mr. A.J. Sonny Shelton
Acting Public Auditor
Office of the Public Auditor
P.O. Box 23667
GMF, Guam 96921

Post-it* Fax Note	7671	Date	12/19/00	# of pages	1
To	Sonny Shelton	From	ELDY		
Co./Dept.	Act. Dir. (DOA)	Co.	OPA		
Phone #		Phone #			
Fax #	472-8483	Fax #	475-0993		

Dear Mr. Shelton,

Thank you for your letter of December 6, 2000 relative to the draft audit report of the Guam Visitors Bureau, covering fiscal years 1997, 1998, and 1999.

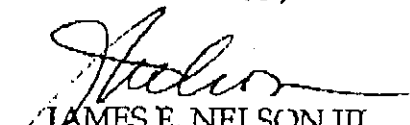
This letter is to advise you that the Bureau does not agree with the audit report findings and respectfully requests that you withhold the release of the audit report until the Bureau has completed a proper response to the findings. The response is currently being prepared and should be delivered to your office no later than the close of business on Tuesday, December 26, 2000.

I must apologize for not meeting the 10-day requirement set by your office to submit a response, but most of the findings warrant an accurate interpretation of the law that created the Bureau. In addition, the Bureau is very clear in its policies, procedures and purpose regarding travel to off island promotional and marketing events and should be addressed in our response.

I believe that part of the problem stems from a mindset that did not take into account that the Bureau is an autonomous agency with the flexibility to operate and react to market conditions. The Bureau's legal counsel will address this issue in our response.

I thank you for your cooperation and look forward to submitting the Bureau's response in a few days.

Si Yu'os Ma'ãse',


JAMES E. NELSON III
General Manager

cc: T. Sgro, Chairman of the Board
G. Perez, Vice Chairman of the Board
J. Calvo, Secretary/Treasurer of the Board
T. Cruz, Deputy General Manager
R. Cunliffe, Controller
F.R. Cunliffe, Legal Counsel



Guam Visitors Bureau
Setbision Bisitan Guahan

12/26/00
Received by Office of the
Public Auditor

7:45 p.m.



Commonwealth Now!

December 26, 2000

Mr. A. J. Sonny Shelton
Acting Public Auditor
Office of the Public Auditor
P. O. Box 23667
GMF 96921

Dear Mr. Shelton,

I have reviewed the draft audit report of the Guam Visitors Bureau and I would like to begin my response with the following;

Although the draft audit report sets forth the public laws which establish GVB in its most recent form, the auditors do not seem to be aware, that although GVB attempted to argue that GVB was a government agency, the Supreme Court of Guam declared that GVB is not a government agency or instrumentality, (GEDA and GVB v. Island Equipment Co., Inc., et al., Supreme Court of Guam CVA97-030).

My response will address the draft audit report, item by item.

Off island promotional travel should be restricted.

It is unfair for the auditors to lump three years of travel related expenses into one report. For the sake of accuracy and to present a clearer picture of the Bureau's travel activity, these figures should be broken down year by year. For example, the Bureau incurs higher travel expenses during even numbered years because of the higher level of marketing activity overseas, especially in Japan. The largest travel show for the Japan market is always held on even numbered years and warrants greater participation from the Bureau's board members, management and staff.

The draft audit report mentioned that "the Bureau shall agree to abide by the off-island travel rates and regulations applicable to GovGuam employees". Yet, the report did not set forth what those requirements purport to be. The report also did not take into account or mention the amount of money saved through in-kind contributions by the airlines of free and discounted airfare. I believe that compared to government agencies, the Bureau does everything within its means to reduce the cost of air travel to all of its functions overseas and should be reflected in the report.

The number of travelers should be limited.

The draft audit report is very critical of the number of trips that the Bureau's board members and senior management has taken with regard to various programs. The need for board members and senior management to travel has been regularly debated at the board level, and because of protocol issues that so often arise at the functions which are being attended by the Bureau's personnel, it has consistently been deemed necessary that board members and/or senior management participate. I must again reiterate that much more takes place at overseas events other than the event itself. Courtesy calls to the most senior management levels of

travel agents, travel related media and government officials are arranged in support of and in conjunction with these events. In addition, a closer look at all travel documents will prove that the Bureau does not travel in large groups most, if not all of the time, as the report states. I believe that the examples stated in the draft audit report are isolated cases, which can be proved necessary.

Prudence should be exercised when selecting promotional events.

By using the Sapporo Ice Festival as an example in the draft audit report for the Bureau to exercise prudence, it becomes obvious the auditors did not fully understand the Bureau's role at this event. Aside from participating in the event, the Bureau annually renews its friendship relations with the Sapporo Tourist Association, as well as makes courtesy calls to various travel agents, travel wholesalers, and government officials. In addition, the Bureau participates in media interviews; both print and electronic, in order to enhance Guam's presence in the market place. The publicity that Guam receives at the Sapporo Ice Festival has been valued in the hundreds of thousands of dollars and far exceeds the cost of travel to the event. Likewise with the other events cited in this section of the report.

The statement that "no marketing staff was included in the group, although the marketing department is responsible for the development and implementation of the Bureau's promotional activities abroad", causes me to surmise that the auditors feel that there should always be a marketing staff present at an event. For your information, it was not necessary for any Guam marketing staff to attend this particular event because our Japan office staff staffed it. In addition, whenever there are courtesy calls to be made or media interviews to be given, senior management is charged with this responsibility because of protocol issues. We do not send a marketing manager or a marketing officer to meet with senior management officials of travel agencies, media or high-ranking government officials. In Japan, it is considered an insult if a subordinate of the visiting head of a delegation meets a high-ranking official. A situation such as this could do more damage to a destination's image than you can imagine.

The draft audit report also stated that the Bureau's travel abroad should be properly planned to derive maximum benefits. The Bureau's participation in all of its events are scrutinized to the fullest extent by their respective committee's prior to its inclusion in the budget, approval by the board, and consequently the legislative and executive branches of government. I disagree with the draft audit reports view that the Bureau's overseas activities are not properly planned.

The Board's control and participation in marketing trips increases costs.

In this section, the draft audit report states that, "Nonetheless, the board controls all facets of the program in Guam and abroad. Although they were hired to manage the day-to-day operations of the Bureau, the GM and DGM are also intimately involved in the marketing program abroad". I would hope that this statement was not solely based on the Bureau's travel records for the fiscal years 1997, 1998 and 1999. If it was, then it is obvious that the auditors did not familiarize themselves with how the Bureau implements its marketing programs overseas. The members of the board of directors are active, but in no way is it a Board that micro-manages the day-to-day activities of the Bureau. The Board allows senior management the latitude to operate the Bureau in the most efficient way possible. In addition, we must keep in mind that except for one or two board members; the board members are practitioners of the

industry. They bring the expertise, knowledge and presence to all overseas events that the Bureau's staff is unable to. Lastly, the Bureau's board members are not compensated. I must ask, what other evidence do you have that can prove your statement.

Marketing Guam as a destination of choice is much more than just implementing a marketing plan. Tourism generates better than 50% of the Guam's total revenues and every effort must be made to protect that revenue source. It takes more than just minimal marketing staff to deliver that message to the travel agent community, especially in Japan. Your recommendation to reduce travel by the GM, DGM and board members would cause more damage to Guam's image in the international tourism community than you could ever imagine.

The draft audit report states that travel is necessary. That is partly correct. The other part of the equation is that we must send the right people to deliver the marketing message. Guam's tourism industry is a 1.5 billion-dollar industry. The draft audit report is recommending that we curtail travel by the GM, DGM and appropriate board members. I contest that your recommendation is not the way to protect a 1.5 billion-dollar industry.

Recommendations.

1. Senior management has always recommended marketing promotional trips, after review by the appropriate committee, to the Board for approval because the cost of the trips exceeds senior management's authorized level of approval. The Bureau prefers to keep this policy in place.
2. Senior management has always recommended the appropriate staff necessary to travel to overseas events in order to complete its mission, and will continue to do so.
3. All of the Bureau's overseas marketing events are bona-fide events. As I mentioned earlier, these events are reviewed by the appropriate committee whose members comprise a cross section of travel industry experts. We will continue to adhere to this practice.
4. The Board has always limited its members from traveling, except for large shows that warrant their participation. The Board will continue this practice.
5. Through its advertising, public relations and sales promotion agencies, the Bureau measures the effectiveness of the events it participates in and will continue to do so.

Contract award and enforcement process needs improvement.

As I stated earlier in this response, the Supreme Court of Guam has ruled that the GVB is not a government agency or instrumentality. The draft audit report implies that there is no compliance with Article 6 Sections 22601 of 5 GCA. Because the Bureau is not a government agency or instrumentality, the Attorney General nor the Governor have any business signing on contracts of the Bureau.

Further 12 GCA §9111 sets forth the procurement regulation that applies specifically to the Bureau. That requires the Bureau to seek the most reasonable price for services and products. That being the case, the Bureau still puts out an RFP for all contractual services it requires.

Contracts should be adequately reviewed and approved.

I am glad that the draft audit report cited the Tumon and Agana Bay Beach Cleaning and Maintenance Contract because you are personally familiar with this project. The contract with JJ Moving Service Inc. was awarded in all fairness despite ZBA's recommendation and JJ Moving Service Inc. unsolicited revision of its bid for the following reasons.

1. Although Paterra, Inc. was the lowest bidder, they were a new company with no experience in the beach cleaning and maintenance service industry and was set up specifically to submit a bid.
2. Paterra, Inc. did not have the equipment, as specified in the RFP, on island and would have taken them at least 60 days to obtain the equipment.
3. Paterra, Inc. was hoping that if they won the bid, the contract amount would finance the purchase of the equipment.
4. Paterra, Inc. did not have the manpower to carry out the contract at the time the bid was submitted.

JJ Moving Service Inc. was under contract at the time of the bid on a month to month basis. The Board was aware of this and kept abreast of the situation at all times. Further, it was at this time that senior management and the Board agreed that the new contract be on a calendar year basis rather than a fiscal year.

As far as the management of the contract is concerned, ZBA did not fulfill its duties and responsibilities as far as the Bureau is concerned. The cost of the contract was also of great concern to the TAF Committee and the Board. As a matter of fact, you were in those TAF Committee meetings and you were in support of finding another contract manager in order to lower the cost of the contract. It was you, as the Director of the Department of Parks and Recreation (DPR), that recommended DPR take over the contract for \$2,600.00 per month.

The reason that DPR's handling of the management contract was short-lived was because, like ZBA, DPR did not fulfill its duties and responsibilities under the contract. During DPR's tenure, the Bureau was still receiving complaints from the hotels in the Tumon Bay area regarding the cleanliness of the beach.

The Bureau did not direct the contractor to inspect its own work. At that time, the Bureau enlisted the help of all the hotels in the Tumon Bay area to inspect their areas and report any problems. In addition, the Special Assistant to the GM was directed to inspect all other areas that were outside any hotel properties. The Guam Environmental Protection Agency (GEPA) was also asked to report any inconsistencies regarding the beach cleaning and maintenance since they inspected the beaches on a daily basis. By doing so, the Bureau saved \$96,000.00 in contractual obligations.

As a final note, I believe it is clearly inappropriate for you to sign the draft audit report, which includes comments on DPR's oversight of the beach cleaning and maintenance contract. Since DPR completely failed to live up to its contractual obligation to oversee the project in an appropriate fashion, it appears that you have a conflict which is inherent and I would like for this conflict to be added as a footnote.

Attorney General must approve all contracts for Legal Counsel.

Again, the Supreme Court of Guam has ruled that the GVB is not a government agency or instrumentality. The draft audit report states that there is no compliance with Article 6 Sections 22601 of 5 GCA. Because the Bureau is not a government agency or instrumentality, the Attorney General nor the Governor have any business signing on contracts of the Bureau.

GovGuam retirement benefits should not be given to contractors.

The issue of retirement benefits to contractors is not applicable to the statutes cited because the Bureau is not a government entity. Although the Bureau's Legal Counsel issued a legal opinion stating that contractors should not be provided retirement benefits, the Civil Service Commission indicated that they were of the opinion that it was allowable, and the board chose to follow the Civil Service Commission's opinion.

Contract should be entered into only when a bona-fide need exists.

I beg to differ with your assessment of the Guam Liaison Office in the Philippines. The Guam Liaison Office is a multifaceted office, which incorporates three separate functions; marketing representative office for the Bureau, marketing representative office for GEDA and representative office for the Guam Medical Referral Office. It is not solely an office operated on behalf for the Bureau, although the Bureau is the lead agency as specified in the contract.

Although your office doubts that there is a bona-fide need for the Guam Liaison Office, it has proven to be an invaluable asset, not only for the Bureau, but more importantly for the hundreds of people in need of medical attention that have taken advantage of its services.

The Bureau does not absorb the entire cost of the services rendered by the Guam Liaison Office, but shares the cost with GEDA.

The Bureau is a public corporation funded with appropriated funds.

12 GCA §9113(b) provides that the monies appropriated to the Bureau are considered grants in aid. A grant in aid is money given by a government agency to a person or institution for a specific purpose. Although it is done by appropriation, it has a different meaning than monies given to agencies of the Government of Guam.

The draft audit report also misstates the requirement of matching funds, which are found in 12 GCA §9113(c). That paragraph provides that the Legislature may condition the appropriations on a matching in-kind fund at an 80/20 percentage. None of the budgets that have been passed of which I am familiar have ever contained such a condition.

Proper management and use of funds.

The draft audit report indicates that spending in excess of amounts currently available are violations of 5 GCA. As previously indicated, the Bureau is different than the Government of Guam agencies which are required to comply with procurement rules and regulations. Under this section of the draft audit report, it indicates that somehow the Bureau is obligating the

Government for payment of money. I don't know how a non-government entity can obligate the Government of Guam for the payment of money.


The Board has consistently tried to get the Legislature to deal with the funding issues. Since the monies that are subject to the appropriations of the Legislature are considered grants in aid, the Board has consistently requested that those monies be paid in advance. Unfortunately, because the Government is in tight, financial straits, the Executive Branch of the Government has withheld payments that have been appropriated as grants in aid to the Bureau, probably illegally. This has caused the contracts that the Bureau had entered for promotions to become overextended thereby establishing the over expenditures of monies that the Legislature had promised to make available.

Recommendations for the General Manager.

1. I will have the Bureau's Legal Counsel review the provisions stated in your recommendations and submit a legal opinion as to its validity to the Bureau, and more so to the position of General Manager. Based on the legal opinion, I will act accordingly.
2. To my knowledge, I have always followed proper and sound government encumbrance accounting. I will review this recommendation with the Bureau's Controller to ensure that the Bureau continues to follow this practice.
3. I will review the policies and procedures concerning the Petty Cash Fund as well as the Membership Fund and ensure that they are updated to meet the needs of the Bureau.
4. I will study closely the need of the Petty Cash Fund in our Japan office and take appropriate action to ensure that the fund is at a reasonable and acceptable level based on the cost of doing business in Japan.
5. To my knowledge, there is no "Office Cash Envelope" as stated in the draft audit report. What is being used is a canvas bank bag that is locked and kept in a safe at all times. Still, I will review this recommendation with the Bureau's Controller.

It is important to note that although there is discussion of the employees and their actions, a review of 12 GCA Chapter 9 makes it quite clear that the employees of the Bureau are not employees of the Government of Guam. However, the various sections establish clearly that the employees were not intended to be employees of the Government of Guam, they are just provided many of the benefits that accrue to employees of the Government of Guam. Section 9110 provides that the Board shall establish rules and regulations for the evaluation, suspension rules, etc. of employees. Section 9110(b) provides that employees of the Bureau shall be members of the retirement fund and that the Bureau shall contribute to the worker's compensation fund on behalf of the employees and Bureau employees are eligible to participate in Government of Guam health and life insurance programs. Finally, in Section 9116, it continues the employees membership in the Government of Guam retirement fund and that their positions be classified. While we have argued all these sections and many others establish that the Bureau is a government entity, the Supreme Court disagreed.

Sincerely,



JAMES E. NELSON III
General Manager