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From: Speaker's Office <speaker@guamlegislature.org>
Sent: Monday, October 12, 2020 8:53 AM
To: Clerks Office
Cc: Rennae Meno
Subject: M&C Fwd: Audit Report: OPA Report No. 20-07, 75th Guam Island Fair and Liberation Day Carnival Procurement
Attachments: OPA Report No. 20-07.pdf

10/11/20	3:04 PM	10/11/20	OPA Report No. 20-07, 75th Guam Island Fair and Liberation Day Carnival Procurement.*	Office of Public Accountability	35GL-20-2286

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

---------- Forwarded message ---------
From: **Chris Rivera** <crivera@guamopa.com>
Date: Sun, Oct 11, 2020 at 3:04 PM
Subject: Audit Report: OPA Report No. 20-07, 75th Guam Island Fair and Liberation Day Carnival Procurement
To: Mayor Melissa Savares <msavares@gmail.com>
Cc: Robert Hofmann <guammayor@gmail.com>, MAYORS' COUNCIL OF GUAM <mcogadmin@teleguam.net>, Executive Director Angel R. Sablan <anghet@hotmail.com>, <Joshua.tenorio@guam.gov>, Speaker's Office

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Hafa Adai Mayor Savares,

OPA has released OPA Report No. 20-07, 75th Guam Island Fair and Liberation Day Carnival Procurement. We attached the final report for your copy.

We copied the Lieutenant Governor and the Speaker in this email to provide them a copy of our audit report as well.

You may visit our website to download the report at www.opaguam.org/reports-audits/opa-performance-audits-analyses.

Thank you.
--

Chris Rivera
Accountability Auditor

Office *of* Public Accountability - Guam
"Auditing for Good Governance"

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75th Guam Island Fair and Liberation Day Carnival Procurement

Performance Audit
January 2019 through December 2019

OPA Report No. 20-07
October 2020

75th Guam Island Fair and Liberation Day Carnival Procurement

Performance Audit
January 1, 2009 through December 31, 2019

OPA Report No. 20-07
October 2020

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Table of Contents

Page

Executive Summary 2
Introduction 4
Background 4
Guam Island Fair Committee Make-up 4
Application of Guam's Procurement Law 5
Procurement Records 5
Training and Certification of GovGuam Procurement Personnel 5
Funding the Guam Island Fair 6
Issues with Past Committees' Activities 7
Results of Audit 9
No Records for $234K Procurement of Goods and Services 9
Improper Solicitation Method Totaling $66K 10
Hotels for U.S. Entertainers Sole Source Procurement 10
Liberation T-Shirts Procurement 10
Ineffective Oversight in the Procurement Process 11
Procurement Training 11
Improvement in the Overall Oversight of the Fair Needed 11
Other Matters 12
Legal Provision on Committee Membership Needs Amendment 12
Conclusion and Recommendations 13
Classification of Monetary Amounts 14
Management Response and OPA Reply

Objective, Scope, & Methodology 27
Prior Audit Reports 28
Subcommittee Procurement of Goods and Services 30
Status of Audit Recommendations 31

EXECUTIVE SUMMARY
75th Guam Island Fair and Liberation Day Carnival Procurement
Report No. 20-07, October 2020

Our audit found that the Guam Island Fair Committee (the Committee) did not comply with Guam procurement rules and regulations (Guam Procurement) for purchases of major goods and services for the 75th Liberation Day celebration (the Fair). Specifically, we found: (1) no procurement records for purchases totaling $234 thousand (K), and (2) improper procurement method used for $66K purchases. These resulted in total questioned costs of $300K.

Non-compliance with Guam procurement has been a repeat finding in prior audits of the Fair and is due to the Mayors' Council of Guam's (MCOG) ineffective oversight. In addition, no MCOG member of the Committee was certified in Guam Procurement, as mandated by Public Law 32-131. As a result, they should not have participated in any procurement.

No Records for $234K Procurement of Goods and Services
MCOG did not provide procurement records for $234K paid to 11 different Fair vendors. For example, these disbursements did not have the rationale for the procurement method, vendor selection or rejection, and the basis of price. The Committee procured various goods and services totaling $234K for the Fair to include purchases for electrical and plumbing ($89K), car raffle prize ($21K), and containers ($20K).

Improper Procurement Solicitation Method Used
The procurement solicitation method for $66K purchases of goods and services were inconsistent with Guam Procurement. Carnival security in the amount of $34K was treated as a Small Purchase through a Request for Quotation (RFQ). However, this should have been a Competitive Sealed Bid as the costs exceeded the Small Purchase threshold. MCOG conveyed that the decision to book a specific entertainer from the United States (U.S.) mainland was made without their full support because of cash flow concerns for the estimated costs of $59K, including $22K spent on the lodging. This entertainer's expenses were treated as Sole Source instead of issuing out an RFQ.

Ineffective Oversight in the Procurement Process
Procurements of goods and services for the Fair were done by individual subcommittees. No committee member oversaw the entire procurement processes nor ensured maintenance of procurement records. MCOG provided files for our review, but several procurement records were missing. MCOG stated it followed the procurement process similar to the prior year's Fair. However, they believe that following Guam Procurement is not practical due to factors including a limited timeframe in planning and executing the Fair and lack of annual government appropriations. The Fair's funds were from sponsorships, solicitations, and donations. Though MCOG may find it impractical to follow Guam Procurement, their adherence ensures accountability and transparency of the Fair's activities.

Improvement in the Overall Oversight of the Fair Needed
MCOG has been the government entity mandated by Title 1 Chapter 10 §1013 of the Guam Code Annotated to annually appoint and maintain oversight of the Committee to plan and manage the Fair. However, the organizing Committee has fluctuated over the years. In the past, the Office of the Governor led the planning and execution of the Fair. From 2013 to 2017, the Guam Historical Liberation Society organized the Fair. Due to constant changes of the organizing committees, no overall entity maintained all the Fair's records for the prior years. MCOG, as the entity responsible with oversight would have been expected to do so, could not provide the Office of Public Accountability (OPA) the financial records for the Fairs held between 2015 and 2018.

MCOG's understanding is that its oversight responsibilities may be delegable to the appointed Committee. For the 75th Liberation, MCOG appointed the Lieutenant Governor and 35th Guam Speaker as Honorary Co-chairs. The Committee make-up was MCOG, various cabinet members from the current administration, and community representatives. MCOG understood that oversight responsibility transferred to the Honorary Co-chairs and the Committee, which included Guam Procurement compliance. MCOG's participation was reduced to Subcommittee activities and taking charge of bank accounts including collecting revenues and processing payments for expenses.

Although they may continue as part of the annual Fair's planning and execution of the activities, MCOG agreed that they do not have the capability to effectively perform and conveyed their desire not to be the Fair's oversight entity.

Legal Provision on Committee Membership Needs Amendment
The existing law allows MCOG to appoint an OPA representative as a Committee member. However, since OPA is mandated to audit the Fair, we took the position to not participate as a Committee member due to the inherent impairment of audit objectivity.

Conclusion and Recommendations
Under MCOG's oversight, the Committee did not comply with Guam Procurement for purchases of major goods and services for the Fair. MCOG can delegate authority, but not their inherent oversight responsibilities. Additionally, MCOG admitted that they lacked the capability and resources to effectively perform their mandate due to its primary responsibilities and conveyed their desire to no longer be the Fair's oversight entity. Therefore, we recommend the Legislature amend the law to: (1) remove MCOG and replace them with an entity equipped with the resources and capability to provide effective oversight and assume full responsibilities of the Fair and (2) remove OPA as a Committee member.

As a matter of full disclosure, the Public Auditor recused himself and did not participate in this audit because of the identified impairment in appearance due to familiarity. We thank MCOG and the Committee for their cooperation and transparency during this audit.

Office of Public Accountability

Introduction

Title 9 of the Guam Code Annotated (GCA) Chapter 64 Section (§) 64.62.2 mandates our office to audit the Mayors' Council of Guam (MCOG) activities related to Guam Island Fair and Liberation Day Carnival (the Fair). This report presents the results of our performance audit of the Guam Island Fair Committee's (the Committee) procurement of goods and services to celebrate the 75th Fair. Throughout this report, we use the terms '75th Liberation Day celebration,' 'the 75th Fair,' and 'the Fair' interchangeably.

Our audit objective was to determine if the Committee complied with Guam's procurement rules and regulations (Guam Procurement) for major purchases of goods and services related to this celebration.

Our audit objective, scope, and methodology are detailed in Appendix 1.

Background

Every July 21st, the people of Guam commemorate the anniversary of the island's liberation from the Japanese occupation during World War II and the inauguration of the government of Guam (GovGuam). These momentous historical events are celebrated in the summer where the Fair and annual parade are held.

Guam Island Fair Committee Make-up

During past celebrations, different organizations planned and arranged the Fair. However, in April 2011, MCOG was mandated under 1 GCA Chapter 10 §1013 to appoint and maintain oversight of the Fair Committee to plan and make appropriate arrangements for the celebration of the Fair. Accordingly, this Committee shall be composed of a representative from the Department of Administration (DOA), the Office of Public Accountability (OPA), and the First Lady [or the First Gentleman] of Guam. The Committee shall also include members of patriotic, religious, or other civic organizations. In lieu of this Committee, MCOG may designate one or more civic organizations as sponsors to plan and arrange for the Fair. However, it must still include a representative from DOA, OPA, and the First Lady or Gentleman of Guam.

Under the same authority, the Committee shall comply with the Guam Procurement and grant OPA to examine all procurement bids and quotes. DOA representative is mandated to ensure that all checks are deposited in a timely and appropriate manner and keep a ledger of all revenues and expenses.

In 2019, MCOG appointed the Lieutenant Governor and 35th Speaker of the Guam Legislature as Honorary Committee Co-Chairs. In January 2019, the Honorary Co-Chairs, MCOG, and various members of the current administration's cabinet were active in planning and executing the Fair through different Subcommittees, including Fireworks, Entertainment, and Queens Committees. Although the Lieutenant Governor and the Speaker served as the Honorary Co-Chairs, their positions were more ceremonial appointments. However, the Lieutenant Governor appeared to be more involved in planning and executing the Fair.

During the Committee meetings, all Committee members voted on celebration ideas presented by Subcommittees and event decisions by the Honorary Co-Chairs when present. However, there were instances when decisions were made by a small number of Committee members and were not voted on by all Committee members. Please see Appendix 3 for the full listing of Subcommittees.

Application of Guam's Procurement Law

Under 1 GCA §1013.6, Guam's procurement laws apply to the Committee as follows:

- (a) Open bidding process for all projects, goods, services, or activities that involve $15 thousand (K) or more, pursuant to Guam procurement law;
- (b) At least three price quotes for all projects, goods, services, or activities involving less than $15K; and
- (e) No payment is made, nor check issued before the open bid process has first been completed and fully complied with.

Procurement Records

According to 5 GCA §5249, each procurement officer shall maintain a complete record of each procurement and include the following:

- (a) The date, time, subject matter, and names of participants at any meeting including government employees that is in any way related to a particular procurement;
- (b) A log of all communications between government employees and any member of the public, potential bidder, vendor, or manufacturer which is in any way related to the procurement;
- (c) Sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;
- (d) Brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and
- (e) The requesting agency's determination of need.

Training and Certification of GovGuam Procurement Personnel

Title 5 GCA §5141 requires procurement personnel to be knowledgeable of the Guam Procurement in order to effectively and efficiently perform their jobs. GovGuam employees tasked to procure goods, services, or construction are required to receive the training and continuing education through the Guam Community College (GCC) Procurement Program or equivalent.

There are four subject matter areas:

a) Module 1: Fundamentals and Principles of Procurement (Basic) - This is an introduction to the procurement process, specifically understanding the Guam Procurement Law.

b) Module 2: The Procurement Solicitation Process (Advanced) - This examines local Guam laws and regulations covering methods of source selection, including bidding, offers, and other methods of acquisition.

c) Module 3: The Procurement Review and Remedies (Administrative) - This covers the legal aspects of procurement law dispute and review processes, and the remedies available. This examines three types of disputes, including those involving solicitation or award of contracts.

d) Module 4: The Management and Administration of Procurement (Administrative) - This covers the management and administration of the entire procurement process, from inception to contract termination and closeout.

GovGuam purchasing personnel required to take these modules depends on the capacity they perform.

- Level One Purchaser - Required to obtain a Certificate of Enrichment (Basic) by taking Module 1 and passing the required written examination. This includes the procurement requisition approver.

- Level Two Purchaser - Required to obtain a Certificate of Enrichment (Advanced) by completing Modules 1 and 2, pass the written examinations, and a minimum number of years of purchasing experience prescribed by DOA.

- Level Three Purchaser - Required to obtain a Certificate of Enrichment (Administrative) by completing Modules 1 through 4, pass the written examinations, and a minimum number of years of purchasing experience as prescribed by DOA. This includes the Chief Procurement Officer (CPO), Procurement Administrator, Supply Management Administrator, Procurement Officer, or Head of Procurement.

Funding the Guam Island Fair

The Committee does not receive local appropriations to purchase goods and services for the celebration. Instead, they fundraised monies and solicited donations from the community. Pursuant to 1 GCA §1013.6(d), the Committee opened a checking account with a local bank for its deposits and disbursements. Since the Queens Committee is a function of the MCOG, it was accounted for separately in the MCOG Revolving Fund.

The Committee reported $1.3 million (M) from fundraising activities, such as parade entry fees, merchandise sales, concessions, sponsorships, and donations. Public Law (P.L.) 35-10 allowed games of chance to operate at the Fair in 2019. The Committee received a majority of its revenues from the Games of Chance. See Table 1 below for the raised funds breakdown.

Table 1: Funds Raised by the Guam Island Fair Committee

Revenues	Amount
In-kind Donations	$ 702,186
Concessions	429,559
Sponsorships	109,500
Merchandise Sales	45,081
Car Raffle	34,725
Donations	13,500
Parade Entry Fees	8,840
Bank Transfer	877
Expense Refunds	656
Total	**$ 1,344,924**

The Committee spent $1.5M for the celebration. Of the $1.5M, $157K is still outstanding and has not yet been paid as of December 2019. Table 2 below lists the expenses for the Fair.

Table 2: Expenses for the Guam Island Fair

Expenses	Amount
In-kind Expenses	$ 702,186
Accrued Expenses	157,037
Carnival E&P	88,665
Events	86,510
Logistics	85,914
Fireworks	85,000
Carnival Security	58,644
Education	55,390
Media/Marketing	52,756
Carnival Grounds	38,786
Entertainment	35,180
Parade	33,163
F&B Volunteers	7,819
Administration	3,288
Total	**$ 1,490,339**

At the end of the celebration, the Committee reported a loss of $145K. According to 1 GCA §1013, net proceeds from the Fair shall be divided as follows:

- MCOG shall be entitled to retain fifty percent of the net proceeds and may convey any interest or portion thereof to any charitable organization; and
- Fifty percent of the net proceeds shall be held in trust by the MCOG and monies in this trust shall be donated to a charity or worthy public cause as the First Lady or the First Gentleman shall solely determine.

Issues with Past Committees' Activities

Audit reports on the Committees that organized the Fair have cited issues with procurement compliance, record-keeping, and lack of oversight. Specifically:

- In OPA Report No. 03-04, the Liberation Day Committee for 2001 and 2002 did not have or had insufficient supporting documents for bids totaling $930K.
- In OPA Report No. 10-09, because of the lack of continuity, succeeding Committees did not maintain the recommendations in OPA Report No. 03-04, which leaves them susceptible to deficiencies that were cited in the prior report.
- In the financial audit of the Guam Island Fair/Liberation Day Committee Fund for its activities as of December 2012, this Committee did not appear to comply with Guam Procurement which resulted in a questioned cost of $96K. Additionally, the auditors cited a lack of documents to support the disbursements of $13K.
- In the financial audit of the Guam Liberation Historical Society ending in December 2013 and 2014, documents detailing when cash reconciliation was performed were not prepared.

See Appendix 2 for these prior audit reports.

Results of Audit

Our audit found that the Committee did not comply with Guam procurement rules and regulations for purchases of major goods and services for the Fair. Specifically, we found: (1) no procurement records for purchases totaling $234K and (2) improper procurement method used for $66K purchases. These resulted in total questioned costs of $300K.

Non-compliance with Guam procurement has been a repeat finding in prior audits of the Fair due to the Committee and MCOG's ineffective oversight. In addition, no MCOG member of the Committee was certified in Guam Procurement as mandated by P.L. 32-131, and therefore, should not have participated in any procurement.

Our findings are not unique to the 75th Committee as these are continuous findings identified since MCOG was mandated oversight by 1 GCA §1013.

No Records for $234K Procurement of Goods and Services

MCOG did not provide procurement records for $234K, or 18 of 39 disbursements, paid to 11 different Fair vendors. For example, these disbursements did not have the rationale for the procurement method, vendor selection or rejection, and the basis of price. Our review was limited to examining invoices and agreements. Table 3 presents the disbursements with no supporting procurement documents.

Table 3: No Procurement Records for the Following Purchases

Vendors	Description	Amount
Vendor A	Electrical and Plumbing	$88,665
Vendor B	Carnival/Parade Stage, Lights, Logistics	$37,158
Vendor C	Carnival/Parade Sound Lighting	$22,500
Vendor D	Car Raffle Purchase Price of Prize	$20,688
Vendor E	Container & Chairs	$20,000
Vendor F	Documentary 75th GWSMF Sentimental Journey	$16,075
Vendor G	Banding Straps/Buckles	$9,278
Vendor H	Banner Mounts/Sponsors	$6,750
Vendor I	75th Booklet Research Fees	$5,850
Vendor J	Canopies	$3,756
Vendor K	Car Rental US Celebrities/Philippine Influencers	$3,454
	Total	**$234,175**

Title 1 GCA §1013.6 delineates the procurement requirements to be ensured by the Committee:

- §1013.6(a) There is an open bidding process for all projects, goods, services, or activities that involve $15,000 or more, pursuant to Guam procurement law.
- §1013.6(b) There are at least three price quotes for all projects, goods, services, or activities that involve $14,999 or less; and
- §1013.6(e) No payment is made, nor check issued before the open bid process has first been completed and fully complied with.

Without procurement records, we could not verify that the Committee complied with 1 GCA §1013.6 sections (a), (b), and (e).

Improper Solicitation Method Totaling $66K

The procurement solicitation method for $66K purchases of goods and services were inconsistent with Guam Procurement. See Table 4 below for the breakdown.

Table 4: Improper Procurement Solicitation Methods

Vendor	Description	Solicitation Method	Guam Procurement	Purchase Amount
Vendor L	Carnival Security	RFQ	IFB	$34,464
Vendor M	Hotels for U.S. Entertainers	Sole Source	RFQ	$21,589
Vendor N	Liberation T-Shirts	Sole Source	RFQ	$9,780
			Total	**$65,833**

Carnival Security Procurement

Carnival security was treated as a Small Purchase with a Request for Quotations (RFQ). However, this procurement should be a Competitive Sealed Bid through an Invitation to Bid (IFB) based on the overall cost threshold. MCOG procured this service the same way as in prior Fairs as Small Purchase through RFQ because the amount of service used changes as the Fair operates, which affects the overall carnival security costs. During the 75th Fair, there was an increase in the risk of crime and safety and MCOG decided on additional security guards present on certain days. However, MCOG procured this service in prior years and should have knowledge of prior carnival security costs. Also, the budget prepared by the 75th Fair Committee estimated costs to determine the proper procurement solicitation method, which would be an IFB instead of Small Purchase through just RFQs.

Hotels for U.S. Entertainers Sole Source Procurement

Sole Source procurement was commonly used when it was a Small Purchase Procurement with RFQ issued. The Honorary Co-Chairs and several Committee Members decided to fly in an entertainer from the U.S. mainland and perform at the Fair. However, there were concerns from MCOG regarding the costs of booking this entertainer. Although the Committee was not charged a regular "talent fee", the entertainer's specific accommodations for airfare, hotel, car rental, and parade float cost the Committee $59K. In comparison, $35K was spent on all other entertainers. The expenses for this entertainer were treated as Sole Source as they were approved based on the entertainer's requests. As seen in Table 4 above, the Committee used Sole Source and booked the entertainer's hotel preference instead of sending out RFQs to all Guam hotels.

Liberation T-Shirts Procurement

Liberation T-shirts in the amount of $10K was considered a Small Purchase. However, there were no records provided that the Committee solicited for quotes or issued RFQs.

This non-compliance with Guam procurement was a prior audit finding in the Committee's FY 2010, 2011, and 2012 financial audits. FY 2014 was the last financial audit conducted. Ten years later, MCOG's response remains that they exercise efforts to seek out vendors. Some procurement was Sole Source or had less than three quotes due to a lack of vendors. In addition, their vendor

selection is based on their history with certain vendors in providing the requested items and services for the Fair. However, until the law is changed, the Committee is required to follow the Guam Procurement for all projects, goods, services, and activities of the Fair.

Ineffective Oversight in the Procurement Process

Goods and services for the Fair were procured by individual subcommittees. No Fair Committee member oversaw the entire procurement processes nor ensured maintenance of procurement records. MCOG provided files for our review, but several procurement records were missing. MCOG stated it followed the procurement process similar to the prior year's Fair. However, they believe that the Guam Procurement compliance is not practical due to factors including a limited timeframe in planning and executing the Fair and the lack of annual government appropriations. The Fair's funds were from sponsorships, solicitations, and donations. Though MCOG may find it impractical to follow the Guam Procurement, their adherence ensures accountability and transparency of the Fair's activities.

Procurement Training

Title 5 GCA §5141 requires GovGuam procurement personnel to be knowledgeable of the Guam Procurement to effectively and efficiently perform their jobs. These personnel are required to receive training and continuing education through the GCC Procurement Program. None of the MCOG representatives in the Committee have taken the procurement training. As such, they should not participate in procurement until they obtained the mandated training and certifications.

Improvement in the Overall Oversight of the Fair Needed

MCOG is mandated by 1 GCA §1013 to annually appoint and maintain oversight of the Committee to plan and manage the Fair. However, the organizing Committee fluctuated over the years. In the past, the Governor appointed an organization or entity to plan and execute the Fair. From 2013 to 2017, the Guam Historical Liberation Society organized the Fair. Due to the constant changes of the organizing committees, no overall entity maintained all the Fair's records for the prior years.

MCOG is the entity responsible for the Fair's oversight, but they could not provide OPA the financial records for the Fairs held between 2015 and 2018. This is a repeat finding in our OPA Report No. 10-09, which was released a decade ago in December 2010. MCOG noted they were not responsible for leading the Fair and maintaining the Fair's records during those periods.

MCOG's understanding is that its oversight responsibilities may be delegated to the appointed Committee. For the 75th Liberation Fair, MCOG appointed the Lieutenant Governor and 35th Guam Speaker as Honorary Co-chairs. The Committee make-up included various cabinet members from the current administration, community representatives, and MCOG. As a result of MCOG's understanding, the oversight responsibility transferred to the Honorary Co-chairs and the Committee, which included Guam Procurement compliance. MCOG's participation was reduced to Subcommittee activities and taking charge of bank accounts including collecting revenues and processing payments for expenses.

Vendor Payments Lacked Approval

In our review of MCOG's processing of the Fair's payments, check disbursements totaling $414K had incomplete approval by the Finance Committee based on Check Request Forms. The Finance Committee Chair reasoned that the Form was an "internal" practice used to process checks with MCOG vendor payments and not fully adopted by the 75th Liberation Committee. As such, the Committee was not required to use this form. It was a good internal control practice to have for vendor payments. If they were regularly using the form, they should ensure it is completed and approved.

Although they may continue as part of the annual Fair's planning and execution of the activities, MCOG agreed that they lacked the capability and resources to effectively perform due to their primary responsibilities. As a result, MCOG conveyed their desire not to be the Fair's oversight entity anymore. We recommend the legislature amend the law to remove MCOG and replace them with an entity equipped with the resources and capability to provide effective oversight and assume full responsibilities of the Fair.

Other Matters

We found other issues indirectly related to our audit objective, but merit inclusion in this report as it relates to the Committee and MCOG's Fair responsibilities.

Legal Provision on Committee Membership Needs Amendment

Title 1 GCA §1013 allows MCOG to include an OPA representative as a member of the Committee. We strongly believe this is not practical because the law also mandates us to audit the Fair. Since the law was passed, we took the position to not involve ourselves to participate as a member of the Committee because of the inherent impairment of audit objectivity.

In May 2019, the Public Auditor submitted a testimony to repeal the provision that OPA serve as a member of the Guam Island Fair Committee. Based on Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, to perform management functions on behalf of the Committee – e.g., making policy decisions that affect future direction and operations, developing or approving policy, or authorizing transactions – would impair our independence. It is imperative that the law is amended to remove OPA as a member of the Liberation Day Committee to preserve this office's independence. Therefore, we recommend the legislature to amend the law to remove our office from being a Committee representative.

Conclusion and Recommendations

July 21, 2019 marked the 75th anniversary of Guam's Liberation and our island celebrated this milestone with the annual Fair. Our audit found the Committee did not comply with Guam procurement rules and regulations for purchases of major goods and services for the Fair's celebration. Specifically, we found: (1) no procurement records for purchases totaling $234K, and (2) improper procurement method used for $66K purchases. These resulted in total questioned costs of $300K.

Non-compliance with Guam procurement has been a repeat finding in prior audits of the Fair and is due to the Mayors' Council of Guam's (MCOG) ineffective oversight. In addition, no MCOG member of the Committee was certified in Guam Procurement, as mandated by Public Law 32-131. As a result, they should not have participated in any procurement.

MCOG's understanding is that its oversight responsibility may be delegated to the Committee or appointed entity. MCOG can delegate authority, but not their inherent responsibilities. Additionally, per MCOG's admission, they lacked the capability and resources to perform their mandate due to its primary responsibilities and conveyed their desire to no longer be the lead agency to oversee the Fair.

We recommend the legislature amend the law to remove MCOG and replace them with an entity equipped with the resources and capability to provide effective oversight and assume full responsibilities of the Fair. Further, we recommend to remove OPA as a Committee member due to the inherent impairment to audit Fair activities as mandated.

Classification of Monetary Amounts

	Findings Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
1	No Records for $234K Procurement of Goods and Services	$234,175	$-	$-	$-
2	Improper Solicitation Method Totaling $66K	$65,833	$-	$-	$-
	Total	**$300,008**	**$-**	**$-**	**$-**

In July 2020, we provided a draft report to MCOG for their official response. We also provided a courtesy copy to the Lieutenant Governor and the 35th Guam Legislature Speaker. Although MCOG was given a management response deadline, we received additional responses from the Lieutenant Governor and the 35th Guam Legislature Speaker ("Speaker").

We held a Preliminary Audit Findings meeting with MCOG in July 2020. This also served as the audit exit conference since there were no changes in our audit findings and recommendations. We met with the Office of the Speaker at their request in August 2020, however, there was no meeting with the Lieutenant Governor.

In their August 2020 response letter, MCOG disagreed with our findings but generally concurred with our recommendation.

- MCOG stated that 1 GCA Chapter 10 §1013 gives authority to appoint a committee, but does not mandate complete oversight. OPA disagrees with this interpretation. The law states, "The Mayors' Council of Guam is authorized and requested to annually appoint and maintain oversight of the Guam Island Fair Committee to plan and make appropriate arrangements for the celebrations of this Fair," [emphasis added].
- MCOG noted that applying GovGuam procurement is impossible because of the timelines involved and the difficulty in anticipating changes throughout the event. Several purchases were sole source and similar to how it was procured from past events. This finding remained as MCOG could not provide procurement documents for OPA review. For over a decade, this has been a repeat finding. MCOG continues to provide the same explanation for Guam Procurement noncompliance.
- MCOG said we did not meet with all of the 75th Guam Island Fair Committee Members for the audit, which we agree. However, OPA communicated with selected members relating to the procurement of the Fair's goods and services. Some members commented that they provided the procurement documents to MCOG since they were responsible for the checking account, depositing cash, processing payments, and overall recordkeeping.
- Lastly, MCOG commented that OPA should have been involved in the Guam Island Fair Committee based on the law. However, OPA has been advocating to be removed from the committee makeup since OPA is mandated to audit the Guam Island Fair. Consequently, this is a direct impairment under the Generally Accepted Government Auditing Standards. Prior to the engagement of this audit, OPA sent a letter in May 2019 to the Guam Legislature requesting an amendment of the law to remove OPA from the committee makeup.

The Lieutenant Governor and the Speaker generally concurred with our findings and recommendation. However, they clarified their limited involvement in the planning and participated for ceremonial purposes. While we agree with their limited involvement, we believe the Lieutenant Governor appeared to be more involved than the Speaker in the planning and decision making.

We thank MCOG and the Committee for their cooperation and transparency during this audit.

Office of Public Accountability

Mayors' Council of Guam
Konsehelon Mahot Guåhan

August 10, 2020

Auditor Christian Rivera
Auditor Jerrick Hernandez

VIA: Public Auditor B.J. Cruz
Office of Public Accountability

Buenas yan Hafa Adai! We are writing to inform you that we do not concur with your findings. The times allotted to plan organize and execute this island-wide celebration is virtually impossible based on the current law/method.

The 75th Liberation was a one government effort of Departments, Agencies, the 35th Legislature, Military, Civic groups, and the public. It was massive undertaking and collaboration. Everyone followed policy as best as "humanly" possible given the undue pressure for production and limited time and resources. The law says that DOA and the OPA should play a major role however, since the enactment of P.L. 31-025 they have not played any role. DOA questioned their role since it is not government funds and being held in a Government Account (compel a government employee and resources outside of the scope/work load) while the law authorizes and requests the formation of a committee, it does not mandate the Mayors' Council of Guam. The law also says it shall appoint a committee but does not mandate the agency to have complete oversight. Black's Law Dictionary defines "authorize" as, "to give legal authority; to empower;" or, "to formally approve; to sanction." Black's Law Dictionary (10th ed. 2014). "To request," means, "to ask (as a person or an organization) to do something." Webster's Third New International Dictionary 1929 (Phillip B. Grove, ed., 1981). I GCA $ 1013, while empowering MCOG to appoint and oversee the Guam Island Fair Committee, does not itself require that the Committee be created or that the Fair take place. See 1 GCA $ 1013 (2005). Even should MCOG appoint the Committee, or designate a civic organization with the participation of a representative of DOA, a representative of OPA, and the First Lady, the residual duty of MCOG is to "maintain oversight." Oversight means "watchful care" or "general supervision." Webster's Third New 1610 (Phillip B. Grove, ed., 1981). To oversee another actor perform an activity is a function in which discretion inheres. An overseeing body must make determinations about whether its instructions are being followed, and if not, the most appropriate and practicable way to remedy the disobedience or failure.

Public Law 35-10 was signed on May 5, 2019 which allowed for temporary gaming at the Carnival which brought in $428,681.47 in gaming concessions fee for 2019. This is where the bulk of the funds for the event came from. How was the committee to plan an event without knowing funding?

In regards to procurement- Trying to use the GovGuam model is near impossible because of the timelines involved with regular procurement. Budgeting, Advertising, Questions/Correspondence, Figuring out what model to use- IFB, RFW, RFP, IDIQ, Bid Submission, Bid Opening,

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Evaluations, Reports, Selection of Bidders, Budget Approval, Documentation of Contract Award, Meetings, and Execution to name a few steps. All of the above takes weeks if not months and doesn't take into account if there are questions, correspondence and protest. This is what we have been saying for years that Title 1, Chapter 10, Subsection 1013- 1013.6 cannot be fulfilled with an event like the Guam Island Fair or the Liberation Day festivities.

In most cases, you can't anticipate many factors in planning such a large scale event. *(e.g. how many chairs you'll need, or security to handle crowds, restroom cleaning, trash costs, special added value events, etc.)* For the other items cited- we reminded the auditors that the GWSMF Sentimental Journey and Guampedia contributions to the Commemorative and DVD are protected and copyright material. The committee determined that permission was needed, we identified the owner, we identified the rights needed, and it was determined that payment was needed. The owners of the material sent an invoice to the committee which was subsequently paid.

Here are the timelines- Funds from Carnival Vendors started to be deposited May 21, 2019. The Fundraising/Finance committee started seeking sponsors and the first amount didn't come in till May 31, 2019. The Fundraising committee was trying to carve out and plan at the same time the overall committee was planning to make the sponsorship packages more attractive.

As mentioned in the entertainment committee's email, the choice of the hotel for the U.S. Entertainers were part of their agreement and they had expressly relayed that it was either Dusit Thani or the Hyatt.

The OPA interpretation of the "we should have knowledge prior relative to carnival security" is a blatantly false assumption since event times have changed, location has changed, and the event is never the same year after year. You are interpreting an event you have not attended or seen, as admitted by yourselves.

There was no set and agreed upon budget for the event and the committee used its best guidance provided by the previous years. Many of the events were to "enhance" and raise the level of the specialness of the 75th Anniversary.

MCOG objects to the use of several words like erroneously, etc. just because the law says we have "oversight authority". The law also says OPA, GSA and DOA are to members of the committee but the same entities have chosen not to be participating members. Is it because it is not government money and there is a separation of responsibilities?

The implications directed at the Lt. Governor and Speaker are wrong and false. We all worked on it together. Every member and committee. We would like to note that the OPA did not interview anyone beside the MCoG President, Vice President, and Executive Director. The Lt. Governor, the Speaker of the Guam Legislature, the Finance Chairperson Mrs. Therese Arriola and other committee chairpersons were never interviewed for this audit.

INTRODUCTION

Lieutenant Governor Joshua F. Tenorio was provided with a Draft Report of the Office of Public Accountability's Performance Audit of the 75th Guam Island Fair and Liberation Day Carnival Committee ("Draft Report"). The Draft Report enumerated the following findings: (1) the Guam Island Fair Committee ("GIFC") did not comply with Guam procurement rules and regulations for purchases of major goods and services, resulting in total questioned costs of Two Hundred Seventy thousand dollars ($270,000.00), and (2) non-certified members of the GIFC should not have participated in any procurement.

Additionally, the Draft Report notes generally that the Mayors' Council of Guam's ("MCOG") oversight over the procurement of goods and services for the Guam Island Fair ("GIF") was ineffective, and that MCOG mistakenly believed that its oversight duties had transferred to the GIFC. The Draft Report recognizes that MCOG, by its own admission, does not have the capability to effectively perform the oversight duties imposed under Guam law.

As discussed herein, the Draft Report contains several factual inaccuracies that should be corrected to reflect actual events. Further, the audit process would benefit from interviews with and input from relevant parties, and the Lt. Governor is prepared to participate in such process to the extent practicable. Notwithstanding the inaccuracies contained in the Draft Report, the Lt. Governor agrees in principle with several of its findings.

The planning and execution of the GIF has historically been a complex quagmire requiring a monumental and coordinated effort of agencies, the legislature, military, civic organizations, volunteers, and the general public in a short timeframe, which renders oversight over the event cumbersome, and renders traditional procurement of event particulars untenable. However, the Lt. Governor states unequivocally that neither he nor any other member of the executive branch, by virtue of their participation in the Liberation 75th Planning Committee ("LPC"), assumed administrative oversight responsibilities, or procured goods or services for the GIF. The Lt. Governor and his staff were actively involved in planning the event and assisting in its execution to help achieve the goals of the MCOG, and to ensure the event's success. However, due to lack of statutory authority, the Lt. Governor ultimately deferred to the MCOG's operations, record-keeping and financial oversight, and neither acted nor purported to act as a procurement officer for the GIF or associated activities.

To the extent a response to the OPA's ultimate conclusions and recommendations is necessary and appropriate, the Lt. Governor supports the OPA's recommendation that the MCOG be relieved as the oversight entity for the GIF prospectively. The MCOG is particularly well-suited to fundraising activities, but by design, does not have the internal independent organizational capability and structure necessary to execute oversight duties for a large-scale multi-agency project.

STATUTORY AUTHORITY TO PERFORM AUDIT

THE AUDIT MANDATE OF 9 G.C.A. § 64.62.2

The OPA references 9 G.C.A. § 64.62.2 as the statutory authority for the audit performed on the MCOG and the LPC. However, Section 64.62.2 does not appear to confer authority to audit all of the MCOG's Liberation Day activities broadly, but rather appears to be specifically limited to gaming activities held at the Liberation Day Carnival. The audit at issue in the Draft Report appears to fall more properly within the purview of the OPA's general audit authority pursuant to 1 G.C.A. § 1908.

THE USE OF PUBLIC FUNDS

GUAM PROCUREMENT LAW DOES NOT APPLY TO NON-PUBLIC FUNDS.

1 G.C.A. § 1013.6, which was enacted on April 18, 2011, contains several broad quasi-procurement requirements, such as requiring an open bidding process for projects involving $15,000 or more, and price quotes for amounts less than $15,000. However, no definitions, procedures or rules have been established regarding these provisions. Nor does the statute instruct any entity to establish rules and regulations to formalize the quasi-procurement nature of the statute. Although Section 1013.6(a) makes reference to Guam procurement law, Title 5, Chapter 5 of the Guam Code Annotated, by its own terms, applies only "to every expenditure of *public funds*... by this Territory..." *See* 5 GCA § 5004 (b) (emphasis added). The GIF was funded by donations and sponsorships, which were solicited and reported to the MCOG, and for which the MCOG assumed financial recordkeeping duties. All expenditures for the GIF were made from such donations. Therefore, Guam procurement law does not apply to the use of these funds. In the absence of regulations regarding the broad and undefined provisions in Section 1013.6, the statute provides insufficient guidance as to the conduct expected of the MCOG and the GIFC, and how precisely the government can police and administer the use of non-public funds in such an exceptional circumstance. The absence of guidance and structure for government administration of non-public funds in this limited circumstance further affects the ability of agencies such at the OPA, GSA and the DOA to exercise control or oversight over the use of these funds. Control over this class of funds is plainly outside the mandate for these agencies.

GUAM ISLAND FAIR COMMITTEE DUTIES AND RESPONSIBILITIES

MAYOR'S COUNCIL OF GUAM NON-DELEGABLE OVERSIGHT RESPONSIBILITY

The Lt. Governor concurs with the OPA's interpretation of 1 G.C.A. § 1013, which confers authority on the MCOG to appoint members to the GCIF, but expressly requires that the MCOG *maintain oversight* over the GIFC to plan and arrange for the GIF. The MCOG's misunderstanding notwithstanding, Section 1013 cannot reasonably be interpreted to allow the MCOG to delegate oversight responsibility to the GIFC because the responsibility is over the GIFC itself. Although, as discussed below, the LPC was not the equivalent of the GIFC within the meaning of Section 1013, it appears the MCOG's understanding of its authority to delegate is not based on the language of the statute but rather what MCOG believed was established practice based on the experience of prior Island Fair Committees, further exacerbated by the fact that the MCOG does not currently, nor has it ever, had the structure and capability to perform such duties. At the time the Lt. Governor was appointed Honorary Co-Chairperson of the LPC, he did not assume the MCOG's oversight responsibility, and the records provided to the OPA by the MCOG do not reflect any such delegation of authority.

STATUTORY COMPOSITION OF THE GIFC

Section 1013 further provides in relevant part the specific makeup of the GIFC, which *shall be composed* of (1) a representative from the Department of Administration (DOA), (2) a representative from the Office of Public Accountability (OPA), (3) the First Lady of Guam, and (4) members of patriotic, religious or other civic

organizations.[1] The Lt. Governor is not authorized under Section 1013 to act as a regular member of the GIFC, further underscoring his lack of authority to act as a procurement officer for the GIF.

Further, it is clear that based on the plain language of Section 1013, that the LPC was not an equivalent entity to the GIFC contemplated in statute. *See Zheng v. Mayor's Council of Guam, et al,* Superior Court of Guam Case No. SP0076-15 (Decision and Order, July 13, 2015) (finding that Guam Liberation Historical Society was not "a civic organization sponsor" within the meaning of Section 1013 where entity "does not closely correspond" with member composition requirements of statute). Specifically, the GIFC on its own terms *shall be composed* of representatives from the DOA and the OPA, as well as the First Lady or in this case, the First Gentleman, none of whom were members of the LPC. Pursuant to 1 G.C.A. § 715(h)(9), use of the term "shall" in Section 1013 renders the reference composition as mandatory as opposed to the permissive use of the term "may." *See Enriquez v. Smith*, 2015 Guam 29 ¶ 26. It is clear that the GIFC contemplated in Section 1013 was simply not convened.

In an effort to plan and execute GIF festivities, the LPC operated with honorary co-chairpersons the Lt. Governor and Speaker Tina Muna Barnes. The Lt. Governor's presence on the LPC in an active honorary capacity, enabled the LPC and ultimately the MCOG to access organizational and logistical assistance, support, and coordination associated with the Office of the Lieutenant Governor and the Government of Guam.

Moreover, executive branch designees who were enlisted to provide support for the GIF were partnered with, and made recommendations to, the individual mayors to whom they were designated to provide support within their respective subcommittees. The Lt. Governor disagrees with Draft Report's statement that "[d]ecisions on some events were made by the Honorary Co-Chairs and also voted by individual members. However, there were instances when certain decisions were made only by a number of the [GIFC] members which did not go through voting." This statement is not accurate. No decisions or voting took place at any of the LPC meetings. Rather, subcommittees provided progress reports regarding their assigned action items. Because the 2019 GIF celebrated the 75th anniversary of Guam's liberation, it was highly anticipated and was expected to be well-attended. Consequently, the Lt. Governor devoted substantial personal time and attention to ensuring its success. However, ultimate decision-making authority, including with regards to any procurement decisions, was reserved to and exercised exclusively by the MCOG.

The Draft Report further states that "[t]he Honorary Co-Chairs and the Committee made a decision to have an entertainer from the U.S. mainland flown to Guam and perform at the fair. However, there were concerns from MCOG into the costs for booking this entertainer. Although they did not charge a regular 'talent fee', the entertainer's specific demands for airfare, hotel, car rental, and a parade float cost the Committee $59K. In comparison, $35K was spent on all other entertainers. The expenses for this entertainer were treated as Sole Source as they were merely approved based on the entertainer's requests."

At the outset, it must be noted that the $59,000 referenced as compensation for the "off-island entertainer" identified in the Draft Report, [redacted] does not represent the cash outlay for [redacted] services. Many of the items listed in the Draft Report that were included in [redacted] demands or "riders," were entirely or partially delivered by in-kind donation. For example, [redacted] parade float was supplied by Black Construction, and her airfare was at least partially sponsored by United Airlines. Actual cash outlay for other items such as rental car or lodging for [redacted] should be investigated by the OPA in order to make an accurate apples-to-apples comparison of [redacted] compensation package as compared to other entertainers, who received stipends. It is further worth noting that [redacted] services were unique, as a breakthrough mainstream U.S. performer from Guam. There is simply no competitive source for equivalent services.

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[1] Section 1013 further provides that the MCOG could designate a civic organization to sponsor the GIF. This option was not exercised and is not further addressed herein.

With regard to the claim that the Lt. Governor unilaterally decided that [redacted] should be engaged as a performer, the Lt. Governor states that he invited [redacted] to perform, and assisted in facilitating the solicitations for donations to address her riders. However, he did not have ultimate authority to engage her services, and despite the MCOG's hesitation regarding her engagement, the MCOG ultimately approved the contracting of [redacted] as the headliner entertainment for the GIF. While the MCOG may have made decisions based on the recommendations of and in deference to the Lt. Governor or other executive branch members who performed legwork and provided support to the MCOG, this fact, if true, would not alter MCOG's ultimate area of responsibility and the decision-making authority it retained on all GIF procurements.

The MCOG was also exclusively responsible for all disbursements made for the GIF. The Lt. Governor and his staff never controlled GIF accounts. All budgets were approved by the MCOG. While it is clear that the Lt. Governor and executive agencies provided substantial assistance to the MCOG in planning and executing the GIF, they did not take over the MCOG's oversight responsibilities, or step into the shoes of the MCOG or the GIFC contemplated by Section 1013.

PROCUREMENT TRAINING

The Draft Report notes that 5 G.C.A. § 5141 requires government procurement personnel to receive training from the Guam Community College Procurement Program, and that the MCOG representatives in the LPC, having not received such training, could not properly participate in government procurement. This finding again indicates a possible gap in the statutory framework for the GIF, which designates MCOG, an entity without substantial procurement experience or training, as the oversight entity for the GIF. The lack of procurement experience on the part of the MCOG likely contributed to the incomplete procurement record maintained for the GIF. No express or implied delegation of these responsibilities are documented to have been made to the Lt. Governor or his staff.

ADDITIONAL SOURCES FOR AUDIT INFORMATION

Because the Draft Report relies substantially on actions taken by the MCOG, the LPC and various subcommittees, in order to ascertain the full extent of such actions, it will likely be necessary to communicate with various individuals involved in planning and execution of the GIF. The Lt. Governor is willing to make himself and his staff available for any such interviews, provided adequate notice and availability. It does not appear that a full and accurate case history can be developed without such interviews. Further investigation would also inform the OPA's ultimate recommendations regarding the propriety of continuing to assign GIF oversight functions to the MCOG. Ultimately, despite the MCOG's best efforts and desire to organize an efficient and enjoyable event, it appears ill-suited to spearhead such an event. Additional interviews may assist the OPA in developing its recommendations to this effect, and in identifying alternative arrangements moving forward.

CONCLUSION

While the Lt. Governor does not disagree with the findings discussed in the Draft Report that the MCOG did not adequately exercise its oversight function over the GIF, keep adequate procurement records, or maintain properly trained and certified personnel in furtherance of its procurement of goods and services for the GIF, it is necessary to clarify factual recitations in the Draft Report regarding the true scope of the duties performed by the Lt. Governor and his staff, and the fundamental challenges encountered by the MCOG in planning and execution of the GIF. The Lt. Governor and his staff provided critical support to the MCOG in an effort to ensure that planning and executing the momentous 75th Guam Island Fair was conducted in an efficient manner. However, it was never contemplated or agreed that the Lt. Governor would assume oversight responsibilities.

Finally, in light of the MCOG's admitted limitations in terms of its capability and structure, which prevent it from adequately performing its oversight functions, the Lt. Governor supports the Draft Report's ultimate recommendation that the MCOG be relieved of its oversight responsibility over future Guam Island Fairs, and be permitted to proceed in participating in the GIF in a supporting role.

75TH GUAM ISLAND FAIR AND LIBERATION DAY CARNIVAL COMMITTEE

Draft Audit

OVERVIEW

1. Introduction

The Office of the Speaker has received a draft audit of the 75th Guam Island Fair and Liberation Day Carnival Committee which was made available to our office as the Speaker is indicated as "having responsibilities concerning the subjects discussed for their review and comment. The Audit, upon review by our office makes three points that need to be addressed:

1) *Procurement Procedures were not followed*
2) *Members not mandated by law to be a part of the Guam Island Fair Committee should not have been involved in procurement*
3) *Speaker Tina Rose Muña Barnes, having been named honorary Co-Chair had participated in an active role during the procurement process and had oversight of finances.*

It is important to note, that the audit which names Speaker Muña Barnes as a member having "oversight responsibilities" of the 75th Guam Liberation festivities, the auditors have not spoken to the Speaker. Only upon the receipt of this draft audit, it was the Speaker's staff, Mr. Chirag M Bhojwani, who reached out to the Office of the Public Auditor, and scheduled a meeting on August 11, 2020.

2. Procurement procedures were not followed

Upon receipt of this Audit, the Speaker, and her staff, are not familiar with the process in which goods and services were procured. This is primarily due to the fact that neither the Speaker, nor her staff, were in any way involved with the procurement process.

Upon receipt of this Audit, the Speaker did reach out to the Mayor's Council of Guam, and had a meeting with the Executive Director, Mr. Angel Sablan, as well as the Vice President of the Mayor's Council of Guam, Mayor Robert Hoffman. The Speaker was present at this meeting, so was Mr. Bhojwani,

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and her Committee Director, Mr. Alan Cepeda. Given that all funds for the 75th Guam Liberation Day were received through contributions from the community, meaning not a single-cent was funded through public governmental funds, it is the position of this office that Guam Procurement Law does not apply to the 75th Liberation Day Festivities, or the expenditures by the 75th Guam Island Fair and Liberation Day Carnival Committee. This position is derived from Title 5, Chapter 5, of the Guam Code Annotated, which states that Guam Procurement Law applies only "to every expenditure of public funds." As we have pointed out, the entire 75th Liberation festivities were all funded by contributions from the community – not public funds. In lay man's terms, not one single contribution was made into the General Fund and received by the Treasurer of Guam, then remitted into a fund specifically for the 75th Guam Liberation – or the Guam Island Fair. These were all private funds, contributed by donors who wanted to assist in 75th Liberation Day Festivities.

As a matter of Policy, this office believes that even if members of the Guam Island Fair Committee – honorary or not, wanted to follow Guam Procurement Law, there simply was no way to do so, given the stringent timeline put in place to complete the task at hand. As such, given that the Guam Island Fair is under the purview of the Mayor's Council of Guam, the Speaker hopes that these findings are shared with the Legislative Oversight Committee on the Mayor's Council so that better record-keeping processes and procurement procedures can be created, in order to withstand Public scrutiny.

3. Members not mandated by law to be a part of the Guam Island Fair Committee should not have been involved in procurement

It is the position of this Office to refrain on commenting on this matter, as neither the Speaker or her staff was involved with the procurement process, or is aware of how the process was executed. On Page 10 of 19 of the draft Audit, it states that the Honorary Co-Chairs and the Committee made a decision to have an entertainer from the US to perform at the fair, and the package provided to the entertainer did not follow the traditional RFQ. This office would like to highlight that neither the Speaker, nor her staff, was in any way involved in picking an entertainer for the liberation festivities. With regards to accommodations in lieu of a talent fee, just like the process of determining an entertainer – our office, the Speaker and her staff, was in no

way involved with the process and would refrain from commenting on something that we are unaware of.

4. **3) Speaker Tina Rose Muña Barnes, having been named honorary Co-Chair had participated in an active role during the procurement process and had oversight of finances**

The essence of the word honorary, as defined by Merriam-Webster is as follows: conferred or elected in recognition of achievement or service without the usual prerequisites or obligations. The Speaker's role was essentially as such – without any obligation. The Office of the Speaker is unaware if the OPA or auditors involved in this audit spoke to any member of the 75th Guam Island Fair and Liberation Committee, and if the auditors received the meeting notes, or attendance logs. The Speaker's Office is able to and willing, to produce such records, and these records will demonstrate that the Speaker attended less than half of the meetings held – 8 out of 20, as she had to attend to her primary obligation as Speaker of the Guam Legislature.

The Speaker's Office would like to point out that through the entire planning process, to the execution, the Speaker was only personally responsible for one thing: the annual War Survivors Remembrance Day Mass, as mandated by 33-56. This Mass, in accordance with the Law, was held on June 28th, 2019. Traditionally, the Archdiocese of Agana charges a $500 facility fee for such an event, but the Speaker had worked with Monsignor James L.G. Benavente to have this fee waived in honor of our Greatest Generation.

5. **Conclusion**

The Draft Audit as submitted seems to have accused members of partaking in actions that the Office of Public Accountability deemed in violation with Guam Law. As outlined above, these assumptions are far from the truth, and we hope that based on the response provided, the OPA make revisions to the statements put forth. While we do not disagree that the Speaker was an honorary Co-Chair, she was not involved in any planning, decision making, or signing of any checks with regards to the 75th Liberation Festivities. She was directly involved with only the execution on the Mass celebration on "War Survivors Remembrance Day".

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The Draft Audit also points out shortcomings with the Law, that need to be amended. The Speaker's Office, as the Oversight Chairwoman on the Committee on Public Accountability, hopes that going forward, our office, along with the OPA, can work collaboratively with the Oversight Chairman of the Mayor's Council to make these amendments to the law.

Submitted by: _____

Chirag M. Bhojwani 08/11/2020

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Appendix 1

Objective, Scope, & Methodology

Our audit objective was to determine if the Committee complied with Guam procurement rules and regulations for the procurement of major purchases for the 75th Fair. We defined major purchases as an amount exceeding 5% or $39K of the total expense, excluding in-kind.

Scope

Our scope is the duration of the 75th Fair from January 2019 to December 2019.

Methodology

To answer our objective, we performed the following:

- Reviewed the Guam procurement rules and regulations, laws pertaining to MCOG's oversight responsibilities, Executive Orders, meeting minutes, and publications.
- Requested financial documents from MCOG and other Committee members.
- Conducted multiple interviews with MCOG and Committee members.
- Reconciled bank accounts with reported expenses for the sample selected.
- Selected transactions based on a 5% materiality level of the total expenses (excluding in-kind transactions).
    - Our sample selection yielded 39 transactions with an aggregate amount of $494,744 from 22 different vendors, institutions, and individuals to be tested.
- Tested sample transactions based on Guam procurement rules and regulations compliance and check disbursement control.
- Reviewed GCC's Procurement Training Compliance database pertaining to Committee Members.

As a matter of disclosure, the Public Auditor recused himself and did not participate in this audit because of an identified impairment in appearance due to familiarity.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Performance Audits

OPA Report No. 03-04, Liberation Day Committee Funds and Activities, May 2003:
This performance audit focused on the evaluation of the accountability of funds and activities by the Liberation Day Committee for 2001 and 2002. The findings include underreported donations, revenues and expenses; and insufficient documents to support disbursements and monies raised. OPA made seven recommendations including: annual audit of the Liberation Day Committee by an independent auditor; establish formal policies and procedures to administer the activities and transactions of the Liberation Day activities to be adopted by future Liberation Day Committees; and Liberation Day proceeds be made payable to sponsor organizations, not individuals.

OPA Report No. 10-09, Liberation Day Committee Funds and Activities, December 2010:
This performance audit follows up on the audit recommendations made in OPA Report No. 03-04 to improve the accountability and internal control over Liberation Day revenues. The Liberation Day Committee made efforts to implement those audit recommendations. OPA made four recommendations in this report: (1) all proceeds be duly and accurately recorded and reported to the Legislature, the Governor and/or appointing authority within 120 days of the close of the Liberation Day Carnival; (2) designate the Department of Administration (DOA) to perform the accounting functions of LDC; (3) records be maintained in connection with the Liberation Day activities and submitted to DOA; and (4) revenues derived from the Liberation Day festivities and activities be subjected to an annual audit.

Financial Audits

Guam Island Fair/66th Liberation Day Committee Fund, Year End December 31, 2010:
The auditors found that this Committee did not prepare financial statements and the ledger was not maintained to account for receipts and disbursements. The Committee did not have an accountant to perform these tasks. MCOG mentioned they were active in seeking services of an accounting firm.

The auditors also found the Committee noncompliant with Guam Procurement. There were no procurement records that detail the rationale for the method of procurement, selection of contract type, rationale for contract/bid selection or rejection, and basis for contract price. This happened because there were lack of formal procurement rules and regulations on Liberation Day funds. In MCOG's response, the funds used for the festivities were not government funds or appropriations. The Committee, however, were frugal in procuring goods and services for the celebration.

Guam Island Fair/67th Liberation Day Committee Fund, Year End December 31, 2011:
The Committee still did not have formal accounting and financial procedures (as recommended in the previous year) which resulted in no financial statements prepared. In response, MCOG stated they secured a bookkeeper to perform accounting tasks and will procure QuickBooks.

Similar to the previous year, the Committee did not comply with Guam Procurement. The external auditors recommended the Committee maintain records that detail of rationale behind the method of procurement chosen, selection of contract type, rationale for contract/bid selection or rejection, and basis for contract price. MCOG responded that they created procurement template forms for the Committee's use and scheduled a Procurement Training Course with the Office of the Attorney General's.

Guam Island Fair/Liberation Day Committee Fund, Year End December 31, 2012 & 2011:
The external auditors found similar findings from the previous two years. The Committee still did not prepare financial statements for 2012. MCOG mentioned it had contracted the services of a bookkeeper. MCOG faced noncompliance with Guam Procurement on maintaining procurement records. In response, the Committee did not do an IFB to allow changes to the terms of services dependent on the need and activities at the carnival grounds.

Guam Liberation Historical Society, Year End December 31, 2014 & 2013:
The external auditors found no supporting documents for cash reconciliations and a significant amount of cash were not timely deposited.

Appendix 3

Subcommittee Procurement of Goods and Services

Committee	Description	Amount
Carnival E&P	Electrical and Plumbing	**$ 88,665**
Carnival Grounds	Portable Toilet Rental	$ 21,235
	Carnival Grounds Maintenance	$ 11,500
	Carnival Trash Bin.	$ 640
	Subtotal	**$ 33,375**
Carnival Security	Carnival Security Grounds	$ 13,920
	Carnival Security	$ 13,632
	Carnival Security Afterhours	$ 6,912
	Subtotal	**$ 34,464**
Education	75th Booklet Research & Printing	$ 25,650
	GWSMF Sentimental Journey	$ 16,075
	Subtotal	**$ 41,725**
Events	Car Show	$ 30,000
	Hotels for U.S. Entertainers	$ 21,589
	Production Cost	$ 20,100
	Airfare Reimbursement for U.S. Entertainers	$ 6,462
	Car Rental U.S. Celebs/Philippine Influencers	$ 3,454
	Subtotal	**$ 81,605**
Fireworks	Fireworks Show	**$ 85,000**
Logistics	Carnival/Parade Stage, Lights, Logistics	$ 37,158
	Carnival/Parade Sound Lighting	$ 22,500
	Container	$ 14,800
	Chairs & Carnival	$ 5,200
	Canopies	$ 3,756
	Subtotal	**$ 83,414**
Media/Marketing	Car Raffle Purchase Price of Prize	$ 20,688
	Liberation T-Shirts Printing/Production/Delivery	$ 9,780
	Banding Straps/Buckles for Sponsor Banners	$ 9,278
	Banner Mounts/Sponsors	$ 6,750
	Subtotal	**$ 46,496**
	Total	**$ 494,744**

Appendix 4

Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1.	Guam Legislature	Amend the law to remove MCOG and replace them with an entity equipped with the resources and capability to provide effective oversight and assume full responsibilities of the Fair.	OPEN	Please provide a target date for implementing the recommendation.
2.	Guam Legislature	Remove OPA as a Committee member due to the inherent impairment to audit Fair activities as mandated.	OPEN	Please provide a target date for implementing the recommendation.

75th Guam Island Fair and Liberation Day Carnival Procurement
Report No. 20-07, October 2020

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Christian Rivera, Auditor-in-Charge
Jerrick J.J.G. Hernandez, CGAP, CICA, MA, Audit Supervisor
Maria Thyrza Bagana, CGFM, Audit Supervisor

MISSION STATEMENT

To ensure public trust and assure good governance in the Government of Guam, we conduct audits and administer procurement appeals, with objectivity, professionalism, and accountability.

VISION

The Government of Guam is the model for good governance with OPA leading by example as a model robust audit office.

CORE VALUES

Objectivity: To have an independent and impartial mind.
Professionalism: To adhere to ethical and professional standards.
Accountability: To be responsible and transparent in our actions.

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