Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

Audit on Procurement and Costs of Renovating the Commonwealth Development Authority's Leased Building January 1998 to August 1999

Audit Report
AR-00-02

Office of the Public Auditor

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July 10, 2000

Mr. Juan S. Tenorio
Chairman,
Commonwealth Development Authority
Saipan, MP 96950

Dear Chairman Tenorio:

Subject: Cover Letter - Final Audit Report on Procurement and Costs of Renovating CDA's Leased Building (Report No. AR-00-02)

The enclosed audit report presents the results of our audit on procurement and costs of renovating CDA's leased building. The objectives of the audit were to determine: (1) whether CDA contracts for renovation of the building and parking area and related expenses reflected the prudent expenditure of CDA funds, and (2) whether CDA implemented contracting practices that adhered to CNMI procurement regulations.

Our audit showed that CDA failed to control costs and prudently manage its assets during a period when the government was implementing austerity measures to reduce costs. Instead, it renovated its leased building at a considerable cost of $461,095, without disclosing the full extent of the renovation to the Governor and the Legislature, and without having sufficient budget authority. Our review also showed that in processing contracts for renovation of its leased building, CDA failed to implement contracting practices consistent with CNMI procurement regulations. Finally, CDA solicited, reviewed, and approved procurement contracts even though it had neither statutory procurement authority nor delegated authority from the Director of Procurement and Supply (P&S).

The audit report makes four recommendations, two of which (No. 1 and No. 3) require CDA's attention and response, one of which (No. 2) requires the Legislature's attention and response, and one of which (No. 4) requires the attention and response of the Secretary of Finance.

We recommended that CDA:

- immediately take steps to obtain from the lessor reimbursement for the accrued interest on public funds advanced for the parking lot improvements; and

- ensure that all CDA officials attend a presentation on the procurement regulations to be conducted jointly by P&S and the Office of the Public Auditor.

In her response dated March 8, 2000, CDA's Executive Director agreed that she would ensure that all CDA officials involved in the procurement process attend a joint presentation on the Procurement

Regulations. She did not agree, however, that CDA should obtain reimbursement from the lessor of the accrued interest on public funds advanced for parking lot improvements.

We recommended that the Legislature amend 1 CMC §7402 of the Planning and Budgeting Act to specifically provide that unused budget authority may not be transferred to subsequent years, and to provide sanctions for violations. In his response dated February 18, 2000, the Speaker of the House of Representatives stated that he concurred with our assessment that gross irregularities have occurred, and that action must be taken. He said he intended to comply with our recommendation that 1 CMC §7402 be amended to provide that unused budget authority may not be transferred to subsequent years. He also felt that the recommendations in the report did not go far enough, and suggested that we refer this matter to the Attorney General's office to investigate whether criminal charges should be filed against any individuals and to recover public funds which were expended in an improper manner.

We recommended that the Secretary of Finance require P&S to assess CDA's capability to administer its own procurement regulations. More specifically, P&S should determine whether CDA has adopted the CNMI Procurement Regulations, and if so, whether CDA has the staff capability to carry out the functions P&S would normally administer; it should then decide whether CDA should be delegated procurement authority. In responding to our draft, the Secretary of Finance indicated that she had requested the Attorney General to provide her with an opinion as to whether CDA has statutory authority to adopt its own regulations. If the Attorney General rules that CDA does not have statutory authority to promulgate its own regulations, we will close this recommendation after (1) P&S determines whether CDA has the staff capability to carry out the functions P&S would normally administer, and (2) P&S decides whether CDA should be delegated procurement authority. If the Attorney General rules that CDA has the needed authority, then we will consider this recommendation closed.

Based on the responses received, we consider all four recommendations to be open. The additional action required before the recommendations can be closed is presented in **Appendix D.**

Sincerely,

Leo L. LaMotte
Public Auditor, CNMI

cc: Governor
Lt. Governor
Tenth CNMI Legislature (27 copies)
Secretary of Finance
Attorney General
Special Assistant for Management and Budget
Press Secretary
Press

Contents

EXECUTIVE SUMMARY

The Commonwealth Development Authority (CDA) is required under its enabling legislation to exercise financial prudence in managing its assets. Nevertheless, it failed to control costs and prudently manage its assets during a period when the government was implementing austerity measures to reduce costs. Instead it renovated its leased building at a considerable cost of $461,095, without disclosing the full extent of the renovation to the Governor and Legislature, and without having sufficient budget authority. Also, in processing contracts for the renovation of its leased building, it failed to implement contracting practices consistent with CNMI procurement regulations. Furthermore, it solicited, reviewed, and approved procurement contracts even though it had neither statutory procurement authority nor authority delegated by the Director of Procurement and Supply (P&S). CDA ignored or disregarded applicable laws and regulations, such as when it decided to implement what was purported to be a design-build contract as being in its best interests, and then in contrary fashion proceeded to renovate its leased building without such a contract. CDA's practices raise concerns about its commitment to observe and comply with requirements imposed by law.

Background

After receiving an inquiry about the cost to renovate CDA's leased building and parking area, the Office of the Public Auditor initiated an audit of the contracts and purchases associated with the renovation to determine whether CDA spent funds prudently in renovating its property, and to determine whether CDA followed procurement practices consistent with applicable regulations. CDA, an autonomous agency of the government, was created to stimulate the economic development of the Commonwealth of the Northern Mariana Islands (CNMI).

For the past 20 years, CDA has been leasing its office building from Ms. Margarita P. Kintol, with the latest lease amendment signed on April 9, 1998.

Objectives and Scope

The objectives of our audit were to determine: (1) whether CDA contracts for renovation of the building and parking area and related expenses reflected the prudent expenditure of CDA funds, and (2) whether CDA implemented contracting practices which adhered to CNMI procurement regulations. The audit covered a *design contract*, a *construction contract*, and a *professional services contract*, all associated with the renovation project, as well as the procurement of furniture and fixtures to modernize CDA's renovated office.

In Renovating its Leased Property, CDA Failed to Control Costs and Exercise Prudence in Managing its Assets, and also Failed to Implement Contracting Practices Consistent with CNMI Regulations.

Renovation of CDA Building Resulted in Excessively High Lease Costs

Although CNMI law requires that CDA engage in prudent financial management of its assets, CDA management pursued a costly renovation project during a period of financial uncertainty because it wanted its office building to "look like a banking institution." CDA renovated its building and parking area in consideration for the lessor providing a 2-year extension and another 5-year option on the lease. The renovation, inclusive of costs for the design, construction, and construction management, amounted to $461,095. Amortized over the extended life of the lease, this renovation cost will effec tively increase the $8,000 monthly rent by $5,489 (to $13,489 per month) if the contract option to extend the lease by five years is exercised. Alternately, the effective monthly rent will increase by $19,212 (to $27,212 per month) if CDA occupies the building only during the present lease term and does not exercise the additional five-year option.

CDA took issue with our assertion that it had incurred excessively high lease costs, and that it could have considered other space alternatives. One alternative we suggested was to use space in the new Retirement Fund Building. CDA maintains that we are comparing apples and oranges when we point out that it could have achieved considerable savings by instead leasing space from the new Retirement Fund Building which was available at $1.35 per sq. ft. OPA continues to maintain that CDA could have leased this very modern and suitable government space at a long term rate of $1.35 per sq. ft., rather than incurring costs of at least $2.11 per sq. ft. inclusive of renovation costs. Also, occupancy in government-owned space should always be the first source when the government needs facilities.

CDA Did Not Provide Full Disclosure of its Planned Renovation

Although required to submit a budget to the Governor and the Legislature, CDA was less than forthright in disclosing the full extent of its planned renovation to the CNMI Administration and Legislature. When CDA submitted its 1999 budget to both the Administration and Legislature, it understated funding required to carry out its planned building renovation. Consequently, the Legislature did not receive information that could have enabled it to modify or reject CDA's budget and thereby curtail the size of this renovation project.

CDA took issue with our assessment and replied that it needs to submit its budget to the Governor and Legislature for informational purposes only. We must point out that the Legislature's authority over autonomous agencies such as CDA goes beyond merely being kept informed. Such authority enables the Legislature to revise CDA's budget if it finds it necessary; CNMI law (1 CMC Section 7206(c)) allows the Legislature to reject or modify budgets submitted to it by public corporations such as CDA.

CDA Awarded Contracts to Renovate its Leased Property Without Having the Needed Funding Authority

CDA awarded contracts for the design and construction of its leased property without having sufficient authorized funding. First CDA failed to budget sufficient funds for the renovation in 1998. Then during Fiscal Year1999, the

CDA Board on October 23, 1998 authorized management to *reprogram* lapsed funds remaining from its Fiscal Year 1998 budget. Excess funds can only be reprogrammed before the end of the fiscal year in which they were budgeted. As a result, CDA violated the Commonwealth Code by improperly obligating $309,800 in funds beyond the $20,000 in available budget authority. Had CDA reprogrammed funds before the end of Fiscal Year 1998, it would have had $200,000 available for building improvements. Even then, that amount was still insufficient to cover the $329,800 needed for the design and construction contracts CDA had awarded.

CDA disagreed with our assessment and stated that it had not intended to ignore the reprogramming process, and that it later requested such reprogramming authority from the CDA Board. OPA points out, however, that by law any request for reprogramming authority must be sent to the Governor and Legislature, rather than to the Board. Further, even if approved, the amount requested would still have been far short of the $329,800 needed to fund the design and construction contracts awarded.

CDA Provided Lessor With an Interest-Free Loan For Renovating its Parking Lot

CDA's lease obligates the lessor to pay for costs incurred in renovating its parking lot, and the lessor agreed to absorb those costs through a monthly reduction in lease payments until the debt was liquidated. However, CDA failed to include interest as part of this cost--making no provision to recover the amount of interest that would normally accrue on a debt until fully paid. As a result, CDA in effect provided the lessor – the mother-in-law of CDA's Board Chairman – with an interest-free loan.

CDA disagreed with our finding, and stated that parking lot renovation costs being recovered from the lessor were a part of lease negotiations. We do not believe that parking lot costs could have been considered during negotiations because such costs were not known until over 3 months later when CDA's contractor provided a cost estimate.

CDA Failed to Implement Contracting Practices Consistent With CNMI Procurement Regulations

In processing contracts for the renovation of its leased building, CDA failed to implement contracting practices consistent with CNMI law. Furthermore, it solicited, reviewed, and approved contracts even though it had neither statutory procurement authority nor authority delegated by the Director of P&S. More specifically:

- CDA's Board Chairman placed himself in a conflict-of-interest situation prohibited by CDA's enabling act.

  CDA disagreed with our assessment, stating that the Chairman was not involved in negotiations for the present lease agreement. However, OPA must point out that the basis of the conflict was not the negotiations underlying the present lease agreement but rather the lack of any evidence showing that the Chairman excused himself from the decision to renovate the building, together with evidence we found showing his signature on: the 1995 lease agreement, the 1998 contract for the design and renovation of the

building, and the 1998 construction contract. (See page 18).

- CDA approved contracts without having valid procurement authority, thereby exercising review and oversight responsibilities normally exercised by the Director of Procurement and Supply.

  CDA disagreed with our assessment, stating that it is an autonomous agency and that it has the authority to issue its own procurement regulations. We find that CDA's enabling legislation does not provide it with specific authority to enact its own procurement regulations. Also, the Commonwealth Code makes the Department of Finance responsible for all procurement in the CNMI, including that of autonomous agencies, unless exempted by law. (See page 20).

- CDA's decision to execute a purported design-build contract was ill-advised because the contractor selected had not demonstrated itself to be a responsible bidder.

  In response to our report, CDA further justified its need to award the contract on a design-construction basis, but failed to address the basis for the finding. In fact no design-build contract was ever finalized. (See page 23).

- CDA awarded a $279,800 contract for construction work without obtaining full and open competition as is required by CNMI procurement regulations .

  CDA disagreed with our assessment and stated that CDA's actions resulted in an even better price for the project than if CDA had gone out under the normal bidding process. We maintain that without formal advertisement where detailed specifications are known, there is no basis for saying that the lowest price was obtained, and there is no justification for violating procurement policies and procedures. (See page 27).

- CDA inadequately justified the procurement of a sole source professional services contract when it failed to show whether other non-government sources had been considered.

  In responding to our assessment, CDA cited additional factors, including the contractor's purported experience with design-build contracts, as to why the individual hired should have been acceptable. CDA, however, ignored the basis for our finding, namely that the justification was prepared *three months after the award of the contract,* and that it lacked an adequate statement of what consideration was given to alternative sources. Neither the justification nor CDA's response to our report provided any details to substantiate the contractor's purported design-build experience. (See page 29).

- CDA hired a professional to oversee construction who was not licensed. CDA defends its action by indicating it met the requirements of 4 CMC §3214 which OPA finds it has not met. To illustrate;

  - while CDA indicates that required supervision was provided by the design-build contractor and the professional

services contractor, we note that it was CDA's responsibility to provide supervision and certainly not the duty of the ones being supervised;

- while CDA claims the project was not a public works project, our research shows it to be a public work within the meaning of the applicable legislation; and lastly,

- while CDA believes the $200,000 threshold in the law did not apply as the project was to cost less than $150,000, we disagree since CDA must have known that the project would cost more than either $150,000 or $200,000 given that Black Micro initially advised CDA that it would cost around $600,000. (See page 32).

- CDA purchased furniture for its renovated offices without obtaining competitive bids and without preparing the proper documentation.

  CDA defended its action by stating that the furniture did not have to be procured separately through competitive bidding as it was an additive part of the construction contract. We note, however, that the furniture in fact was never negotiated as an additive item in the subject contract, and because CDA acted as the procurement agent for the purchase, it should have followed CNMI procurement regulations. Once again CDA demonstrated its ignorance of procurement regulations or its intention to ignore them. (See page 34).

Conclusions and Recommendations

CDA failed to control costs and prudently manage its assets during a period when the government was implementing austerity measures to reduce costs. Also, CDA management's failure to follow proper procurement procedures likely resulted in CDA paying much more than was reasonable on this project.

We recommend that:

1. the CDA Board Chairman immediately take steps to obtain from the lessor reimbursement of the accrued interest on public funds advanced for the parking lot improvements;

2. the Legislature amend 1 CMC §7402 of the Planning and Budgeting Act to specifically provide that unused budget authority may not be carried over to subsequent years, and to provide sanctions for violations;

3. the CDA Board Chairman ensure that all CDA officials attend a presentation on the procurement regulations to be conducted jointly by P&S and the Office of the Public Auditor; and finally

4. the Secretary of Finance require P&S to assess CDA's capability to administer its own procurement regulations. More specifically, P&S should determine whether CDA has adopted the CNMI procurement regulations, and if so, whether CDA has the staff capability to carry out the functions P&S would normally administer; it should then make a decision as to whether CDA ought to be delegated procurement

authority.

Commonwealth Development Authority Response

In her response dated March 8, 2000, the CDA Executive Director stated she did not agree with Recommendation 1 which states that CDA should obtain reimbursement from the lessor for the accrued interest due on public funds advanced for parking lot improvements. She agreed with Recommendation 3 and said she would ensure that all CDA officials involved in procurement actions attend a joint presentation on the Procurement Regulations.

CNMI Legislature Response

The Speaker of the House stated he intended to comply with our Recommendation 2 that 1 CMC §7402 be amended to provide that unused budget authority may not be transferred to subsequent years. We received no response from the Senate President.

Department of Finance Response

In her response dated June 1, 2000, the Secretary of Finance said DOF found that CDA had neither adopted its own procurement regulations (despite CDA's claim that it had authority to do so), nor had CDA been authorized to administer its own regulations. Also, it stated that it needed a legal opinion from the Attorney General as to whether CDA has statutory authority to issue its own regulations, before it would conduct an assessment of CDA staff capability to administer its own regulations.

OPA Comments

Based on comments received from CDA, DOF, and the Legislature (Appendices A, B, & C), we consider all recommendations still open until actions specified in **Appendix D** are taken.

Introduction

Background

After receiving an inquiry about the cost to renovate the Commonwealth Development Authority's (CDA) leased building and parking area, the Office of the Public Auditor initiated an audit of the contracts and purchases associated with the construction to determine whether CDA spent funds prudently in renovating its property, and to determine whether CDA followed procurement practices consistent with applicable regulations in carrying out this renovation. CDA, an autonomous agency of the government, was created to stimulate the economic development of the Commonwealth of the Northern Mariana Islands (CNMI).

CDA Leased Building

For the past 20 years, CDA has been leasing its office building from Ms. Margarita P. Kintol. The parties entered into a new lease agreement on September 21, 1995 which provided a two-year lease period from October 1, 1995 to September 30, 1997 with an option for a three-year extension. On July 29, 1997, CDA management opted for the three-year extension (up to September 30, 2000). The contract also provided that the rental rate of $7,040 per month during the first two years would be increased to $8,000 per month during the three-year extension.

In early 1998, CDA began efforts to renovate the office building and the parking area. The relevant sequence of events is as follows:

- On February 5, 1998, the CDA Board approved the chairman's recommendation to renovate the CDA office so that it would "look like a banking institution."

- On March 1, 1998, CDA signed a sole source contract with EJT Associates to provide project coordination and management services for the renovation.

- On March 6, 1998, CDA published a request for proposals (RFP) seeking qualified architect/engineering/construction firms to provide professional services (design and construction) for a major renovation of the CDA leased building and parking area.

- CDA On April 9, 1998, CDA and the lessor amended their lease agreement. In consideration for CDA conducting a major renovation of the lessor's building that CDA occupies, its contract was extended by two years until September 30, 2002 with an option to renew for an additional five years after 2002 at no increase in the $8,000 monthly lease payments during the two-year and optional five-year periods.

- On June 15, 1998, CDA purported to award a *design-build contract*[1] to Black Micro Corporation that was limited to certain design tasks with a provision that construction was to be negotiated later. However, after CDA failed to negotiate a contract modification, it awarded a separate "construction contract" on September 14, 1998 to North Pacific Builders, Inc. for the actual renovation of the building.

- On April 15, 1999, construction was completed, with CDA having spent $575,286 to make its facility "look like a banking institution." The cost included $461,095 for renovating the building, and another $114,191 for furnishing the building with new furniture, as follows:

Renovation of building and parking lot:	
Project coordination and management fee (EJT Consulting)	$115,179
Design costs ($50,000 contract price plus $2,884 for building sign)	52,884
Parking lot (Black Micro Corp.)	36,488
Building construction (North Pacific Builders)	
($279,800 contract price plus $7,550 for change orders)	287,350
Other costs	5,682
Subtotal	$497,583
Less: Landlord's reimbursement for parking lot (Exclusive of un-billed interest)	36,488
Subtotal	$461,095
Furniture	114,191
Total	***$575,286***

Objectives, Scope, and Methodology

In planning this audit we established two audit objectives, namely: (1) to determine whether CDA contracts for renovation of the building and parking area and related expenses reflected the prudent expenditure of CDA funds, and (2) to determine whether CDA implemented contracting practices which adhered to CNMI procurement regulations.

[1] As discussed on page 24, CDA absolved Black Micro of responsibility for the design work, instead holding it responsible only for the construction portion of the contract which was to be added later as a contract modification. The contract modification, however, was never executed.

The audit covered the period from January 1998 to August 1999. In conducting the audit we:

- reviewed a March 1, 1998 contract with EJT Consulting for project coordination and management services associated with the renovation.

- reviewed a June 15, 1998 contract[2] with Black Micro Corporation, Inc. for the design and construction of the CDA-leased building whereby construction was to be negotiated later via a contract modification, never successfully negotiated by CDA.

- reviewed a September 14, 1998 "construction contract" awarded to North Pacific Builders, Inc. for the actual renovation of the building.

- assessed the impact of related costs for furniture, computer equipment and art work associated with modernizing the building.

To determine whether contracts and purchases reflected the prudent expenditure of CNMI funds, we examined CDA's legal authority for the expenditure of funds; obtained cost data for various contracts and purchases associated with the project and determined total expenditures incurred; computed life cycle costs associated with different lease options available; compared CDA budgets with such expenditures; reviewed CDA board minutes to examine board decisions concerning renovation of the CDA building; compared project construction and management expenditures with criteria provided by the California Council of the American Institute of Contract Compensation; queried a person knowledgeable in the engineering/architectural field about the reasonableness of costs; reviewed costs incurred in renovating the parking lot including estimated interest charges properly assessable to the lessor; determined whether CDA was aware of the austere financial conditions in effect when it was making the renovation; and reviewed the CDA budgets to determine if building plans were adequately disclosed to the CNMI Administration and Legislature.

To determine whether CDA contracts and purchases associated with the renovation of the CDA building and parking area adhered to CNMI Procurement Regulations, we ascertained whether CDA had valid procurement authority by reviewing CDA's enabling legislation; ascertained whether the Division of Procurement and Supply (P&S) had ever delegated procurement authority to CDA; reviewed CDA's procurement regulations and compared them with the CNMI Procurement Regulations; reviewed contracting practices followed to determine if competitive procedures as specified in the regulations were followed; reviewed contracts and purchases to determine if fair and open competition was observed; reviewed a sole source justification for compliance with procurement regulations; compared contract

[2] See footnote 1 on page 2.

amounts with the CDA budget to determine if sufficient funds were available for renovation; and reviewed solicitation practices employed to determine if all prospective bidders were given an opportunity to bid on the purported design-build contract.

We performed our audit at the CDA Office on Saipan between August 1999 and January 2000. The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were considered necessary under the circumstances.

As part of our audit, we evaluated contracting and budgetary controls over contracts awarded. We found internal control weaknesses in this area which are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve internal controls in this area.

Prior Audit Coverage

This is OPA's initial audit of CDA's procurement practices.

Findings and Recommendations

A. Contracts for Renovation of CDA's Leased Building and Parking Area Were Not a Prudent Expenditure of Funds

CDA failed to prudently manage its assets by controlling costs during a period when the government was implementing financial austerity measures.

The Commonwealth Development Authority (CDA) is required under its enabling legislation[3] to exercise financial prudence in managing its assets. Nevertheless, it failed to control costs and prudently manage its assets during a period when the government was implementing austerity measures to reduce costs. Instead it renovated its leased building at a considerable cost of $461,095, without disclosing the full extent of the renovation to the Governor and Legislature, and without having sufficient budget authority.

Renovation of CDA Building Resulted in Excessively High Lease Costs

Although CNMI law requires that CDA engage in prudent financial management of its assets, and while the CNMI was in a period of financial uncertainty, CDA management pursued a costly renovation project because they wanted the office building to "look like a banking institution." CDA renovated its building and parking area in consideration for the lessor providing a 2-year extension and another 5-year option on the lease. The renovation, inclusive of costs for the design, construction, and construction management, amounted to $461,095. Amortized over the extended life of

Renovated Entrance Foyer on 2nd Floor

Renovated Loan Department

[3] PL 4-49, the Commonwealth Development Authority Act of 1984, became effective May 31, 1985 and is now codified as 4 CMC § 10101 et seq.

the lease, this renovation cost *effectively* increased the $8,000 monthly rent by $5,489 (to $13,489 per month) if the contract option to extend the lease by five years is exercised, or by $19,212 (to $27,212 per month) if CDA occupies the building only during the lease term and does not exercise the additional five-year option.

CDA's enabling legislation provides a mandate for CDA to carefully use its fund resources when renovating its leased building. Section 11(a) of the Commonwealth Development Authority Act, codified as 4 CMC §10403(a), states that "The authority shall engage in prudent financial management of all its assets."

In January 1998, the new CNMI administration began to implement austerity measures considered necessary due to the Commonwealth's uncertain financial condition and a decrease in government revenues. To initiate this effort, the Governor on January 13, 1998 directed[4] all department and activity heads in the Executive Branch to refrain from traveling outside the Commonwealth and from entering into new contracts. These restrictions were subsequently extended[5] in May 1998 and again in October 1998. As concerns contracting, the Governor specifically directed that: "No contracts or personnel actions of any kind over $5,000 may be entered into or approved" without the approval of the Governor's office. While the restrictions did not apply directly to autonomous agencies such as CDA, such agencies would normally be expected to comply with the spirit of these directives. Because of the tone of the Governor's directives, it is unrealistic to conclude that the need for fiscal austerity would apply only to Executive Branch agencies.

In spite of the dismal economic environment and the Governor's Directive, CDA nevertheless decided to go forward and renovate its leased building and parking lot at considerable cost. To illustrate:

- The CDA Board approved a recommendation on February 5, 1998 that CDA's leased building would be renovated to "look like a banking institution."

- CDA awarded a contract on March 1, 1998 for project coordination and project management services which ultimately cost CDA $115,000.

- CDA awarded a purported design-build contract[6] for design services in the amount of $50,000 in June 1998.

- CDA awarded a construction contract in the amount of $279,800 in September 1998.

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[4] Directive No. 195

[5] Directive Nos. 199 and 207

[6] See footnote 1 on page 2.

We believe that CDA paid dearly to obtain a "financial institution facility with a sophisticated island aesthetic quality" as called for in the renovation contract. The magnitude of the $461,095 spent renovating the property can be better comprehended if one allocates these costs over the remaining life expectancy of the lease in order to assess effective lease costs. To illustrate:

- If the option to extend the lease by five years is exercised, this would *effectively* represent an increase in lease costs of about $5,489 per month (from $8,000 monthly to about $13,489), a 68.6 percent increase. This would have the *effect* of increasing the monthly lease cost for the 6400 sq. ft. leased from $1.25 per sq. ft. to $2.11 per sq. ft.

- If in the future CDA chooses not to exercise its option to renew the lease for an additional five years, the *effect* would be to increase monthly lease costs over the two additional years from $8,000 to $27,212, an increase of about $19,212 per month, or more than triple the previously agreed-upon monthly rental rate. This would have the *effect* of increasing the monthly lease cost from $1.25 per sq. ft. to $4.25 per sq. ft.

While the financial impact of these renovations may or may not have been known when the lease was extended on April 9, 1998, it was certainly known on May 22, 1998 when the sole offeror on the renovation project, Black Micro Corp., indicated to CDA that the total cost of the building alone could be about four times the amount of the budgeted ceiling in the proposed contract. Referring to language in the draft contract, Black Micro Corp. stated in a letter to CDA that "we find the distinct possibility that this set budget may be severely insufficient." It stated that the budget ceiling of $150,000 in the proposed contract for the building alone would amount, for a 6,000 sq. ft. area,[7] to only $25 per sq. ft, whereas a decent interior improvement could cost about $100 per sq. ft. Thus, the offeror was announcing that the cost of renovating the building could be as much as $600,000.

We believe that when confronted with the potential of such a substantial increase in lease costs, CDA officials should have scoped back the work, since an increase in effective monthly lease costs from $1.25 to $4.25 or even to $2.11 per sq. ft. could not be justified in the economic climate of the day. The CDA Chairman was very much aware of ongoing austerity measures within the Government. CDA Board minutes dated October 23, 1998 state:

- "The Chairman asked the Board to look at the Earnings and Expenditure Comparative Report. The reason that he submitted this report is to show that CDA is spending within their budget limit-in cognizant [sic] of the Governor's Directive on austerity measures."

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[7] While Black Micro Corp. used a figure of 6,000 sq. ft. for the area of the CDA-leased building, the lease specifies that it actually covers 6,400 sq. ft.

Asked whether CDA had conducted a study to determine whether it was more cost effective to renovate the CDA leased building than to find another building, the former CDA Executive Director advised us that CDA had not conducted such a study but that it believed it could save more than $120,000 if it could lock in its lease rental cost through an extended lease with the lessor. She stated that lease costs usually increase by about $.25 per sq. ft. per year. She also said that no written survey had been prepared to determine other buildings' suitability for rent.

We inquired as to the availability of government space at the new Retirement Fund Building on Capitol Hill and were advised that more than 10,000 sq. ft. of space, including 7,000 sq. ft. on the 3rd floor, were vacant and available for occupancy at an asking price of $1.35 per sq. ft. The $1.35 per sq. ft. cost for space at the Retirement Fund Building is only slightly higher than the price CDA had paid ($1.25 per sq. ft.) for its previously unrenovated space, and is considerably less than the new "effective" lease costs computed after including life cycle costs of the renovation. To illustrate, with renovation completed, CDA will be paying effective lease costs of:

- $2.11 per sq. ft. if it chooses to exercise its option to renew the lease for an additional five years, or

- $4.25 per sq. ft. if it chooses not to exercise its option to renew the lease.

In our opinion, the increased costs associated with the renovation seem particularly excessive considering that the building is not used extensively by the public. Asked about usage of the building, a CDA official advised us that three to four clients come in daily to the Loan Dept. and that meeting rooms are used for monthly meetings of three different organizations: the CDA board, NMHC, and a group from CHC.

Also, as will be discussed later on page 18, the CDA Chairman participated in a decision affecting the interests of his mother-in-law, the lessor of the CDA-leased building. Consequently, the Chairman's decision to renovate a property belonging to his mother-in-law, with CDA funds, raises a suspicion of favoritism toward his mother-in-law.

While DPW's assistance is frequently sought by government agencies to help them reduce costs, CDA did not in this instance solicit the services of DPW. A CDA official explained that they had not requested DPW to assist them because they felt DPW was always short-handed.

CDA's actions can best be summarized as a failure to manage prudently. As indicated above, CDA embarked on this project at a time when the Governor had called for general financial restraint, and without considering less expensive options such as using recently renovated space in the new Retirement Fund Building which was available at a comparatively reasonable price, or using the technical services of the Department of Public Works to manage and coordinate this project. Further, it

engaged in this effort while there was a suspicion of favoritism toward the Board Chairman's mother-in-law.

CDA Response (Verbatim Comments)

The OPA's finding that the cost of renovation resulted in excessively high lease costs is a classic example of a very faulty analysis. The lease agreement was amended in March of 1998 and the rental was "locked in" at $1.25 per square foot for a period of 10 years. This by itself was a coup resulting in a tremendous benefit to the Lessee, as shown below.

By obtaining an extension of 2 years after the first option and a second option for a period of 5 years, the Lessee negotiated an additional lease period of 7 years. Over this additional period, the lease rental would be increased by .856 cent in order to recover the renovation costs, for a total square foot price of $2.107 per square foot for a building that is safe, modern, functional and looks like a modern banking institution. The OPA fails to recognize the benefit to CDA for locking in the rental of a private commercial building (one that conforms to modern commercial building standards) for seven years. Instead, it argues that CDA could have obtained cheaper rental at the Retirement Fund Building, a government-owned building that does not and cannot compete in the private rental market. Effectively, this is comparing apples and oranges. Moreover, OPA ignores the fact that CDA, at the time it embarked on its renovation project, had just exercised its first option under the lease and was not in the market for a new lease space.

Lastly, OPA tries to make a point about CDA possibly choosing not to exercise its option to renew the lease for five years. This, according to their analysis, will result in a rental of $4.25 per square foot. This is an absolutely ridiculous point. Why would CDA not renew for an additional five years after negotiating such favorable rent for a modern facility that was modified to fit its needs.

OPA Comments

While CDA stated that they locked in a *lease* rate of $1.25 per sq. ft. in this lease contract, when *the cost of renovating* the project is amortized over the remaining life of the lease, the proration has the *effect* of increasing the rental rate to $2.11 per sq. ft., assuming that CDA chooses to exercise its option to renew the lease. With the decreasing demand for office space Saipan has been experiencing the last few years, there is no reason why CDA would have had to pay increasingly higher rates in the foreseeable future as CDA asserts. The point we made is that CDA could have obtained similar space, such as at the Retirement Fund Building, at a much lower cost than the $2.11 per sq. ft. it will *effectively* be paying. To illustrate, CDA could have locked in leased space from the Retirement Fund for $1.35 per sq. ft., according to a Retirement Fund official, thereby saving about $.76 per square foot.

CDA also states that at the time it embarked on its renovation project, it had just exercised its first option under the lease and was not in the market for new lease space. We believe that before exercising its option effective on October 1, 1997, CDA should have investigated the possibility of leasing space in the Retirement Fund or other buildings, given that CDA officials said that CDA had long planned to renovate the building and that the Board's formal decision to renovate it came only six months later. It is quite possible that CDA could have even negotiated its desired space configuration while the Retirement Fund Building was under construction. And although that building would not become available for occupancy for 14 months (December 1998), it is hard to imagine that CDA could not have negotiated an extension of its existing lease for that period on favorable terms, given the weak rental market existing at that time. Such a plan would have been far more cost-effective than undertaking an expensive renovation to "look like a banking institution," a questionable motivation in itself since CDA does not carry on the usual daily banking activities, and customers seeking a loan from CDA are not likely to care whether its facility looks like a bank or not.

CDA attempted to refute our point that space was available from the Retirement Fund by implying that the Retirement Fund cannot compete in the private market. We must clarify that the issue was not about competitive value, but rather the selection of better alternatives, i.e., was the Retirement Fund Building available, would the building meet the objectives of CDA? Government-owned space, such as at the Retirement Fund Building, should always be the first source of space for government agencies, including CDA, and the private sector should be only a secondary resource when adequate government space is not available.

CDA Did Not Provide Full Disclosure of its Planned Renovation

Although required to submit a budget to the Governor and the Legislature, CDA was less than forthright in disclosing the full extent of its planned renovation to the CNMI Administration and the CNMI Legislature. When CDA submitted its 1999 budget to both the Administration and Legislature, it grossly understated funding required to carry out its planned building renovation. Consequently, the Legislature was not provided information that could have enabled it to modify or reject CDA's budget and thereby curtail the size of this renovation project.

According to the general management guidelines in Section 10(f) of the Commonwealth Development Authority Act (4 CMC §10101 et seq.), CDA expenses are to be in conformity with a budget prepared and submitted to the Governor and the Legislature for information purposes. This reflects the clear intention that the Legislature and Administration should be informed as to the nature and extent of CDA's planned expenditures.

While CDA had long planned to renovate its building, according to CDA officials, it failed to adequately reflect the full extent of such expenditures in its fiscal year 1999 budget, which shows only $80,000 to be spent on building improvements even though such expenditures would later amount to $461,000. To illustrate:

- On February 5, 1998, the CDA board approved its chairman's recommendation to renovate the CDA office so that it would "look like a banking institution," and on March 5, 1998, CDA's Executive Director advised CDA's legal counsel that its Board had directed that F/Y 1998 and 1999 budgeted funds were to be used for the renovation. Yet the budgets for those fiscal years contained only $20,000 and $80,000, respectively, for building improvements.

- The board in its minutes from February 5, 1998 stated that an increase of 8 percent between the 1998 and 1999 budgets was to be used for building improvements. That amount, however, was not reflected in the fiscal 1999 budget submission.

Queried about this situation, CDA officials explained to us that CDA had planned to fund building improvements out of a surplus being generated in fiscal year 1998. This is exactly what happened when on October 23, 1998, CDA approved the reprogramming of $425,000 (lapsed from the FY 1998 budget).

The Commonwealth Code provides that the Legislature may reject or modify budgets submitted to it by CDA. 1 CMC Section 7206(c) of the Planning and Budgeting Act specifies that the budget programs of each government corporation shall be transmitted to the Legislature for approval, rejection, or modification as a part of the annual budget submission.

Because CDA failed to accurately project the true nature of its planned expenditures for renovation of the CDA building in its fiscal year 1999 budget submission, the Legislature was not properly informed about the magnitude of the renovation project. Had it been so informed, it might have altered or rejected the submitted budget, resulting in substantial modification of this project.

CDA Response (Verbatim Comments)

We disagree with the above OPA's assessment. CDA submits its annual budget report to the Governor and the Legislature for information purposes only. Considering that CDA has full authority over its budget appropriations, the Board of Directors proceeded with the approval to renovate the CDA office in February 5, 1998.

OPA Comments

CDA apparently believes that merely disclosing the renovation to the Governor and Legislature is sufficient according to the law. When the Legislature required that CDA expenses were to be in conformity with a budget prepared and submitted to the Governor and Legislature, it was reflecting its clear intention that both branches be informed as to the nature and extent of CDA's planned expenditures. In submitting budgets for fiscal years 1998 and 1999 showing that only $20,000 and $80,000, respectively, were to be incurred for building renovation, CDA did not *fully disclose* the extent of its planned renovation which ultimately amounted to

$461,000, exclusive of furniture also purchased. Although CDA believes it is reporting its budget to the Governor and Legislature only for informational purposes, we again point out that CNMI law allows the Legislature to also reject or modify budgets submitted to it by public corporations such as CDA. More specifically, 1 CMC Section 7206(c) of the Planning and Budgeting Act specifies that:

> "the budget programs of each government corporation shall be transmitted to the Legislature for approval, *rejection, or modification* as part of the annual budget submission." (Emphasis added.)

CDA Awarded Contracts to Renovate its Leased Property Without Having the Needed Funding Authority

CDA awarded contracts for the design and construction of its leased property without having sufficient authorized funding. First CDA failed to budget sufficient funds for the renovation in 1998. Then during Fiscal Year1999, the CDA Board on October 23, 1998 authorized management to *reprogram* lapsed funds remaining from its Fiscal Year 1998 budget. Excess funds can only be reprogrammed before the end of the fiscal year in which they were budgeted. Had CDA reprogrammed funds before the end of Fiscal Year 1998, it would have had $200,000 available for building improvements. Even then, that amount was still insufficient to cover the $329,800 needed for the design and construction contracts CDA had awarded. As a result, CDA violated the Commonwealth Code by improperly obligating $309,800 in funds beyond the $20,000 in budget authority available.

1 CMC §7402 of the Commonwealth Code provides that CDA may reprogram up to 10 percent of funds previously appropriated, provided that such action is reported within 30 days to the Governor's Special Assistant for Planning and Budgeting, the Chairman of the House Committee on Appropriations, and the Chairman of the Senate Committee on Fiscal Affairs. We discussed this matter with a CDA official who advised that CDA had not sent the necessary reprogramming report to the Governor's Office or the Legislature as required. As a result, reprogramming authority was not available.

Had CDA acted before the end of the Fiscal Year 1998 and also submitted a reprogramming report to the Governor and Legislature as required, it could have reprogrammed up to 10 percent of funds previously appropriated, thereby making $180,000 of CDA's $1.8 million appropriation available for building construction. This amount, together with the $20,000 previously budgeted for improvements in Fiscal Year 1998, would still have been insufficient to cover the $329,800 needed for the design and construction contracts previously awarded in Fiscal Year 1998, since total obligations for these two contracts exceeded available budgetary authority by $129,800 as illustrated below:

Budget Authority Available if Reprogramming Had Been Completed by the End of Fiscal Year 1998

- Fiscal Year 1998 obligations for design and construction of the CDA-leased building:

Contract awarded for design	$50,000
Contract awarded for construction	279,800
Subtotal--obligations for building improvements	$329,800

- Less: Funds available for renovation:

Fiscal Year 1998 allocation for building improvements	$20,000
Reprogramming if available	180,000
Subtotal–funding potentially available in Fiscal Year 1998	$200,000

- Obligation in excess of potentially available funds $129,800

Unfortunately, the CDA Board did not attempt to reprogram until October 23, 1998, 3 weeks after the end of the 1998 fiscal year, and consequently up to $180,000 potentially usable for building improvements never became available for that purpose. Consequently CDA was left with only $20,000 in fiscal year 1998 to fund these two contracts.

If CDA intended to transfer unused 1998 budget authority for use in Fiscal Year1999, such action would likewise have been improper. Our review of CDA's enabling legislation as well as relevant appropriation acts for fiscal years 1998 and 1999 indicates that CDA was only provided one-year budget authority. When authority for more than one year is provided, the Legislature usually indicates its intention by adding to the budget authority the words "without fiscal year limitation." The Commonwealth Code provides that CDA shall submit an annual budget to the Governor and the Legislature for approval, rejection, or modification, and that unused budget authority may be reprogrammed as discussed above; however, it makes no provision for CDA to transfer lapsed funding authority from one fiscal year to the next. CDA's enabling legislation, 4 CMC §10402(f), further states that "The Authority shall pay its administrative expenses out of funds available ....in conformity with a budget, prepared and submitted to the Governor and the legislature."

As a result, CDA was not able to carry over funds as it intended, and violated the Commonwealth Code by obligating $309,800 beyond its budget authority of $20,000.

CDA Response (Verbatim Comments)

We do not agree with this finding. The Board was fully aware that funding for the renovation would come from surplus of FY 1998 budget. At the time of approval, CDA was not able to confirm nor estimate the cost of the renovation until after

negotiations, nearing the end of the fiscal year. Because CDA was consumed with the renovation project, it did fail to reprogram funds before the end of the fiscal year but it did not intentionally ignore this process. Reprogramming was later requested and the Board of Directors approved to reprogram lapsed funds of FY98 for the construction renovation on October 23, 1998.

OPA Comments

CDA's comments reflect an ignorance of the law as concerns reprogramming actions. We must clarify that it is not sufficient for CDA to merely request reprogramming from its Board. Instead, the statute addressing reprogramming actions (1 CMC §7402) states that if an agency plans to reprogram funds, it must submit a report of such action to the Governor and Legislature. Furthermore such reprogramming actions are limited to 10 percent of an agency's budget. CDA failed to submit the required reports, and even if it had submitted them, the reprogramming available would have been limited to only 10 percent of CDA's $1.8 million budget, or about $180,000. This amount together with $20,000 previously budgeted for improvements in fiscal year 1998 was still far short of the $329,800 needed to fund the two design and construction contracts CDA awarded during fiscal year 1998.

CDA Provided Lessor with an Interest-Free Loan for Renovating the Parking Lot

CDA's lease with Ms. Kintol makes the lessor responsible for paying parking lot costs incurred in renovating the parking lot, and the lessor agreed to absorb such costs through a monthly reduction in lease payments until such debt was liquidated. However, CDA failed to include interest as part of the cost--making no provision to recover the amount of interest that would normally accrue on this debt until fully paid. As a result, CDA in effect provided the lessor with an interest-free loan.

According to CDA's agreement with the lessor, the lessor was to be responsible for maintaining the parking lot. In a memo to CDA dated July 16, 1998, the lessor agreed to absorb the cost of parking lot improvements, calculated by CDA to be $36,488, through a monthly reduction in lease payments. This amount, however, did not include interest on the parking lot debt. According to generally accepted accounting principles, accrued interest costs are incurred over the period of time a debt is unpaid.

We examined CDA's legal authority, including its purpose, powers, restrictions, and general management guidelines, and found no basis for CDA to provide an interest-free loan to the lessor. Indeed, 4 CMC §10404 implies that CDA should not enter into interest-free transactions:

- "The authority may set *concessional interest rates* for projects and other undertakings which serve *particular socioeconomic needs* as determined by the authority, but with due regard for the overall need of the authority to cover its costs." (Emphasis added.)

Consequently, interest of about $9,278.31 should have been part of the cost of the parking lot improvement to be borne by the lessor. This represents the interest that would accrue on the unpaid debt assuming a commercially acceptable rate of 12 percent. CDA's failure to recover such interest made the lessor in effect the beneficiary of an interest-free loan.

It is possible that CDA's failure to charge interest on the debt was an oversight in that management may have failed to understand that such interest was a cost associated with this debt. However, since the Chairman was both CDA's expenditure authority and a relative of the lessor, it is also possible that the interest requirement may have been conveniently ignored when the decision was made that the lessor should reimburse CDA for the costs of the parking lot.

CDA Response (Verbatim Comments)

We disagree with OPA's assessment that CDA provided the Lessor with an interest-free loan. The amount assessed against the Lessor for recovery is a negotiated amount that already takes into account CDA's costs. The amount being recovered from the Lessor is not a loan. It is a very vital part of the lease negotiations entered into by the parties.

OPA Response

While the unpaid interest was not designated as a loan, it should be treated as one. Otherwise, CDA will have provided a gift to the lessor which it was not entitled to do. CDA paid up-front costs for the renovation, which under terms of the lease agreement should have been borne by the lessor. However, because the lessor did not repay such up-front costs immediately, but only over a period of time, she had use of the money for costs incurred without paying for it.

CDA claims that the renovation costs being recovered from the lessor by offset against lease payments were a part of the lease negotiations. We fail to understand how such costs could have been considered during lease negotiations because they were determined only after the lease was signed on April 9, 1998. When CDA signed the lease, which provided that CDA would renovate the building in consideration of a lease extension, it could not have known the cost of improving the parking lot, since Black Micro Corp. only provided an estimate of the amount 3 months later. Without knowledge of the parking lot costs, there would have been no basis to conduct negotiations. Our review of this cost estimate shows that it contained no provision to recover the interest cost from the Lessor.

Conclusions and Recommendations

CDA spent more to renovate this property than prudent fiscal management would warrant. It embarked on this project during a general economic belt tightening period in the Commonwealth and without considering less expensive options such as using

space in the new Retirement Fund Building available at a comparatively reasonable price. It also failed to utilize the in-house professional expertise of DPW staff who could have provided project management and coordination services at a considerable cost saving.

CDA was less than forthright in disclosing the full extent of its planned renovation to the CNMI Administration and the Legislature. As a result, the Legislature did not receive information that could have enabled it to modify or reject CDA's budget, and possibly reduce the cost of this renovation project.

CDA awarded contracts to renovate its leased property without having the needed funding authority, and thereby violated the Commonwealth Code which prohibits the award of contracts when funds are not available. We acknowledge that there could be confusion as to how the Code addresses the disposition of unused annual budget authority specifically as concerns autonomous agencies such as CDA, as well as the lack of any penalties to ensure that government corporations comply with the Planning and Budgeting Act.

The renovation of the parking lot did not qualify as meeting a socioeconomic need. Furthermore, even if it could somehow be construed to meet a socioeconomic need, CDA was authorized to charge only a *concessional* interest rate, and not grant an interest-free loan. CDA should obtain reimbursement from the lessor for the interest on money advanced for the parking lot renovation costs.

Accordingly, we recommend that:

1. the CDA Board Chairman immediately take steps to obtain from the lessor reimbursement of accrued interest on public funds advanced for the parking lot improvements; and

2. the Legislature amend 1 CMC §7402 of the Planning and Budgeting Act to specifically provide that unused budget authority may not be carried over to subsequent years, and to provide sanctions for violations.

CDA Response

Recommendation 1 - The Executive Director did not agree that CDA should obtain reimbursement from the lessor for the accrued interest on public funds advanced for parking lot improvements.

CNMI Legislature Response

Recommendation 2 - The Speaker of the House stated that he intended to comply with our recommendation that 1 CMC §7402 be amended to provide that unused budget authority not be carried over to subsequent years.

OPA Comments

Based on comments received from CDA and the Legislature, we consider both recommendations still open and unresolved until our recommended action is taken.

B. CDA Failed to Implement Contracting Practices Consistent with CNMI Procurement Regulations

CDA failed to implement contracting practices consistent with CNMI procurement regulations.

In processing contracts for the renovation of its leased building, CDA failed to implement contracting practices consistent with CNMI law. Furthermore, CDA solicited, reviewed, and approved contracts even though it had neither statutory procurement authority nor authority delegated by the Director of P&S. More specifically:

- CDA's Board Chairman placed himself in a conflict-of-interest situation prohibited by CDA's enabling legislation (see page 18);
- CDA approved contracts without having valid procurement authority, thereby exercising review and oversight responsibilities normally exercised by the Director of Procurement and Supply (see page 20);
- CDA's decision to execute a purported design-build contract was ill-advised because Black Micro had not demonstrated itself to be a responsible bidder (see page 23);
- CDA awarded a $279,800 contract for construction work without obtaining full and open competition as is required by CNMI procurement regulations (see page 27);
- CDA inadequately justified the procurement of a sole source professional services contract when it failed to show whether other non-government sources had been considered (see page 29);
- CDA hired a professional to oversee construction who was not licensed (see page 32); and lastly,
- CDA purchased furniture for its new office without obtaining competitive bids and without preparing the proper documentation (see page 34).

CDA management's failure to follow proper procurement procedures likely resulted in CDA paying much more than it should have on this project.

CDA Board Chairman Engaged in a Conflict of Interest

The CDA Board Chairman engaged in a conflict of interest and violated CDA's enabling act when he signed contracts and a lease agreement in which his mother-in-law had a financial interest, and began making improvements to the CDA leased building. CDA's enabling act prohibits a board member from participating in a determination of any question affecting the personal interests or the interests of any

enterprise in which the member's *mother-in-law is* directly or indirectly interested (emphasis added).

The Board Chairman signed: (a) a September 21, 1995 lease agreement for the CDA-occupied building, (b) a June 15, 1998 contract for the design and renovation of that building and an adjacent parking lot, and (c) a September 14, 1998 construction contract associated with the building renovation. Margarita Kintol, the Chairman's mother-in-law, owns the building and parking lot and thereby has a financial interest in these transactions.

The CDA Board Chairman as the son-in-law of Margarita Kintol was and is prohibited from participating as a public official in transactions affecting Ms. Kintol's interests. 4 CMC Section 10408(a), which is part of the CDA enabling act, prohibits CDA board members from participating in matters in which certain relatives are involved. More specifically it states:

> "No member of the board, officer, counsel, agent, or employee of the authority shall in any manner, directly or indirectly, participate in the deliberation or upon the determination of any question affecting the personal interests or the interests of any enterprise in which his parent, son, daughter, brother, sister, *mother-in-law*, father-in-law, sister-in-law, brother-in-law, or any member of his household is directly or indirectly interested." (Emphasis added.)

As a party to these transactions, the Board Chairman placed himself in a position to benefit his mother-in-law whose interests were affected by these transactions.

CDA Response (Verbatim Comments)

We disagree with OPA's assessment that Chairman Tenorio engaged in a conflict of interest. CDA originally took over the lease of the building from the Economic Development Loan Fund, its predecessor agency. When it negotiated the present lease agreement, after the EDLF lease expired, the Chairman was not involved in the negotiations after having disclosed his conflict of interest.

The CDA records also reflect that the decision to renovate was made by the Board, as a whole, after the proper committee Chairman, Mr. Plasido M. Tagabuel, had recommended its approval. Chairman Tenorio did not participate in the Board's approval. In addition, the Executive Director negotiated the changes to the lease agreement subsequent to the Board's approval to renovate the building.

OPA Comments

Our basis for asserting that the Chairman had engaged in a conflict-of-interest was (1) the Chairman's signature on three documents: namely, the September 21, 1995 lease agreement for the CDA leased building; the June 15, 1998 contract for the

design and renovation of that building and an adjacent parking lot; and the September 14, 1998 construction contract associated with the building renovation; and (2) the lack of any evidence showing that the Chairman excused himself from the decision to renovate the building. We did not address the subject of negotiations. Also, we did not question the lease agreement signed subsequent to the Board's approval of the renovation project. The Chairman's signature on the September 21, 1995 lease indicated his approval of the transaction. To be free from any conflict of interest, he should have removed himself from the decision-making process and not merely have disclosed the matter to the Board as CDA asserts. The only other CDA signature on the lease document was a concurrence by another member of the board.

As concerns the February 5, 1999 decision to renovate the building, while the Board minutes we reviewed indicate that such decision may have been made by the Board as a whole, they provide no indication that the Chairman removed himself from the vote on this matter, which is where a likely conflict would occur. Relevant excerpts from these minutes, signed by Chairman Tenorio, follow:

> "CDA Budget for FY 1999 - The Chairman informed the Board that the present Administration asked all agencies including autonomous agencies for their budget. He noted that there is an 8% increase from FY 1998, which is the capital outlay, for building improvement. He said he asked that the office be renovated and make it look like a banking institution; improvements will include Tinian and Rota. He added that he sought the Chairman of Personnel and Budget approval yesterday regarding the increase. Director Plasido M. Tagabuel, Chairman for Personnel & Budget said he agreed with the increase and asked his colleagues to support the improvement. He then recommended it for approval."

CDA Approved Contracts Without Having Valid Procurement Authority

CDA approved contracts and leases associated with the renovation project even though it had never been provided with the requisite procurement authority. CDA believes its own enabling legislation constitutes sufficient procurement authority. Our review indicates, however, that such authority has neither been statutorily given nor delegated to it by P&S. Consequently, CDA has engaged in the approval of contracts that normally, in accordance with CNMI procurement regulations, would have involved the P&S Director who could have provided a different level of objectivity to such review. As a result, less than adequate review and oversight may have taken place in the award of leases and contracts concerning the renovation of the building occupied by CDA.

On May 25, 1994, CDA's Board of Directors adopted procurement regulations previously drafted, and on July 15, 1994 CDA announced its intent to adopt such regulations by publishing them in the Commonwealth Register. Only one public comment was received, and subsequently on November 15, 1994, the CDA Board approved the procurement regulation with amendments. A CDA official, however,

advised us that a Notice of Adoption was never published in the Commonwealth Register. CDA officials advised us that CDA believes it has statutory authorization to implement its own procurement regulations based on the powers prescribed in the Commonwealth Development Act under 4 CMC §10203(a)(1)(2) which states that:

> "(a) Subject to any limitation set forth in this Act, the Authority shall have those powers reasonably necessary and incidental to the fulfillment of its purposes, including but not limited to the powers: (1)...; (2) to prescribe, adopt, amend, and repeal regulations and bylaws consistent with this Act governing the manner in which its business will be conducted and in which the obligations imposed on it by law will be performed;"

A review of this Section shows that CDA has no basis for believing it has statutory procurement authority. The Section's very general language does not give CDA statutory authority to enact its own procurement regulations. Were that the case, the power to adopt regulations could also be construed to allow CDA to exempt itself from restrictions in statutes or other regulations. We brought this matter to the attention of the Special Assistant to the Director of P&S who agreed that CDA's enabling act does not authorize it to issue its own procurement regulations.

Nor does CDA have procurement authority through delegation. According to Section 2-201(1) of the CNMI Procurement Regulations, purchasing will be centralized through the Director of P&S unless the Director has delegated such authority to other agencies in writing. Questioned about any past delegation to CDA, the Special Assistant to the Director of Procurement and Supply replied that P&S had never delegated such procurement authority to CDA. Consequently, CDA engaged in the review and approval of various leases and contracts associated with the renovation that should have involved the P&S Director who could have provided a greater degree of objectivity to such review.

We question whether CDA's contracts would have been approved had they been subjected to review and approval by P&S officials rather than in-house. More specifically:

- The P&S Director would likely have rejected the so-called design-build contract as it was not a firm fixed price contract, there was no justification for a cost reimbursement contract, and it was not a real design-build contract. (See pages 23-27 below.)

- The P&S Director would likely have rejected the construction contract as it was not subject to full and open competition. (See pages 27-28 below.)

- The P&S Director would likely have rejected the professional services contract for project coordination and management services as it was not a competitive procurement or adequately justified. (See pages 29-32 below.)

- The P&S Director would likely have rejected the purchase of furniture as the transaction was neither properly documented nor competitively bid as required by procurement regulations. (See pages 34-36 below.)

CDA Response (Verbatim Comments)

We disagree with the OPA's assessment. CDA is an autonomous agency that is not funded by the general fund. It has the authority to issue its own procurement regulations and to negotiate and execute contracts that further its purposes and objectives. CDA can borrow funds on behalf of the CNMI Government and its agencies, float bonds in the open market and do numerous other things in furtherance of its statutory mandate. To accomplish these, it has the authority to advertise, negotiate and enter into contracts for services and goods. It is the approving agency for a number of specialized financial transactions (e.g., public borrowing, floating of bonds, etc.) for the entire CNMI Government and is charged with the responsibility of handling Covenant CIP funds. To even suggest that it must rely on the advice and consent of the Special Assistant for P&S is ludicrous.

OPA Comments

We take issue with CDA's assertion that it has the authority to issue its own procurement regulations and to negotiate and execute contracts that further its purposes and objectives. 1 CMC §2553(j) of the Commonwealth Code makes the Department of Finance responsible for all procurement in the CNMI, including that of autonomous agencies unless specifically exempted by law. The DOF has appointed the Director of P&S to administer and supervise such procurement activities. There is no evidence that CDA has requested the approval of the P&S Director to conduct its own procurement pursuant to Section 2-201 which authorizes P&S to delegate certain procurement functions and responsibilities to public agencies in particular circumstances.

CDA in its defense ignores our basis for asserting that it lacks its own procurement authority, namely: (1) there is no statute that gives it procurement authority, and (2) the Director of Procurement and Supply has not delegated procurement authority to it. Instead, CDA attempts to demonstrate its authority by asserting that it can borrow funds on behalf of the CNMI government, approve specialized financial transactions for the entire CNMI government, and has responsibility for handling Covenant CIP funds, all issues unrelated to having procurement authority. The bottom line is that CDA's enabling statute does not grant authority over procurement matters, and P&S has not delegated authority under the CNMI Procurement Regulations.

CDA Decision to Negotiate a Purported Design-Build Contract was Questionable

CDA's decision to execute a purported $50,000 design-build contract on June 15, 1998 was ill-advised because Black Micro had not demonstrated itself to be a responsible bidder. For bidding purposes, Section 1-201 of the CNMI Procurement Regulations defines the term "responsible" to mean "a person who has the capability in all important respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance."

Facts emerging during contract negotiations raised doubt as to the responsibility of the lone proposer (a joint venture of Black Micro Corp. and J.C. Tenorio & Associates), namely whether the purported design-build contractor would complete construction, thereby indicating that the project was at high risk and dictating that CDA reissue the RFP. Then during negotiations, the responsive partner, Black Micro Corp., indicated that construction costs would likely be much higher than budgeted, and also declined to be fully responsible for design services, a key element of any design-build contract. Finally, design was the only portion of the contract fixed as to amount, thereby placing CDA in an additional high risk situation. Given this body of information, CDA should have canceled negotiations and re-advertised the design and construction phases of the project separately, but it did not. As a result, CDA was committed to an approach that may have resulted in higher construction costs than necessary. Also, the contract, as executed, was not in reality a design-build contract since it did not include the construction portion, leaving that portion to be negotiated later as a contract modification which never happened.

Contractor Was at Risk of Not Completing Renovation

Our review of correspondence leading up to the award of the design-build contract showed that CDA was assuming undue risk in completing negotiations with Black Micro Corp. as that company was unlikely to complete the renovation to CDA's satisfaction:

- On April 14, 1998, CDA received only one proposal (Black Micro Corp./J.C. Tenorio & Associates) in response to its RFP, and subsequently found one of the two parties to the joint proposal to be non-responsive. Instead of canceling the proposal, however, it split the team and negotiated with the remaining party (Black Micro Corp.).

- On May 22, 1998, 3 weeks before the award of the purported design-build contract, Black Micro Corp. advised CDA that the project could not be built within the cited budget, and that construction could cost four times as much as the $150,000 budgeted for construction (see earlier discussion on page 7).

Still CDA awarded the purported design-build contract[8] to Black Micro Corp. on June 15, 1998, then scaled it down to a "design contract" only, leaving the construction portion to be negotiated later as a contract modification which never happened. CDA subsequently found that because of high construction costs it needed to negotiate a separate construction contract with another contractor.

Contractor Relieved of Responsibility for Project Design

Although Black Micro Corp.'s contract specifies that it was to be compensated for project design, CDA absolved it from any responsibility for project design, an essential element of any design-build contract. The contract specifies that the contractor will be compensated $50,000 for the performance and completion of Comprehensive Design Work, and provides that the contractor will perform required work in accordance with the Scope of Work described, in part, by Exhibit A-3 attached to the contract. However, a careful review of the Exhibit A-3 documents showed that CDA absolved Black Micro from responsibility for the design work:

- Exhibit A-3.2, a letter to Black Micro from Richard N. Cody[9] dated May 20, 1998, states that "it is understood that Black Micro will generally be responsible for the construction portion of the project and Richard N. Cody (RNC), the architectural services portion...."

- Exhibit A-3.1, a Black Micro letter to CDA dated May 20, 1998, states "since Black Micro Corporation shall not be responsible for the Design and Certification Work, CDA shall issue a letter indemnifying Black Micro Corporation from any design liabilities on this project particularly against any structural design defects and non-compliance to Fire Code and ADA standards."

- Exhibit A-3.4, a CDA letter to Black Micro dated May 20, 1998, states that "CDA acknowledges that BMC [Black Micro] shall not be responsible for the design aspect of the (a) Civil Work, and (b) Interior/Exterior of this renovation project.....CDA also acknowledges that RNC shall be responsible with the design aspect of the (a) Civil Work, and (b) Interior/Exterior Work."

The effect of the incorporation of the three documents was that the person who did the actual design, Mr. Cody, was not bound under any contractual obligation with CDA. The only contract that existed was between CDA and Black Micro Corp. As a result, CDA had no one to look to if the design work had been negligent or deficient. This likely occurred either because CDA conducted an inadequate review of the Black Micro Corp. contract documents before contract approval or because CDA was negligent in agreeing to the contract language. Although CDA's contract with Black Micro Corp. was for both design and construction of renovation work, this documentation served to absolve Black Micro Corp. of design responsibilities,

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[8] See footnote 1 on page 2.

[9] Mr. Cody is an architect who is employed in the Technical Services Branch of the Department of Public Works.

instead holding them responsible for the construction portion of the contract which was later to be negotiated as a contract modification.

Only a Small Portion of Purported Design-Build Contract was Fixed as to Amount

Section 3-401 of the CNMI Procurement Regulations requires a firm fixed price contract unless a cost reimbursement contract is justified. CDA awarded a purported design-build contract without negotiating a firm fixed price for construction, as required by the procurement regulations, thereby increasing the risk of higher costs. A firm price for only the design portion of the contract was initially negotiated. The cost of constructing the building was left open for negotiation and later contract modification after the completion of design work. When subsequent negotiations failed to produce an acceptable construction price from Black Micro Corp., CDA obtained three new bids without publicly advertising the project, and then negotiated a construction contract with the lowest responsive bidder. As a result, CDA may not have received the lowest possible price. Had the P&S Director been given a chance to review this transaction, we believe he would likely have rejected the purported design-build contract because CDA had not received a firm fixed price for the bulk of the work.

When asked why CDA chose to go forward with a design-build contract when most of the costs were not fixed, a CDA official replied that the agency considered the design-build route to be the quickest way to complete construction. Asked why they pushed ahead with this contract given the likelihood that Black Micro would submit a high construction cost proposal and was also unwilling to accept responsibility for the design, the same official said that CDA believed that Black Micro Corp. would subsequently reduce its price.

Queried about this RFP, the Special Assistant to the Director of P&S stated he had never seen a design-build contract awarded for renovation. He said that when CDA learned that the architect/engineering firm included in the original bid was non-responsive, it should have rejected the proposal. He also stated that it was not appropriate to absolve the contractor selected from responsibility for a key bid element--design.

We believe that CDA's decision to go forward and negotiate this particular design-build contract was ill-advised. Instead it should have canceled negotiations and re-advertised the design and construction of the project separately. While the design portion of the design-build contract was ultimately carried out to CDA's satisfaction, CDA was unable to negotiate a planned contract modification with Black Micro Corp. for renovation of the building.

CDA Response (Verbatim Comments)

The scope of renovation required redesigning electrical, plumbing and structural aspects of the building. It was therefore very important that CDA utilize an integrated design-build process in order to insure that the architectural portion be an integral part of the renovation project. This has obvious and distinct advantages.

CDA's procurement regulations do not prohibit design-build construction contracts. Because of time constraints and other considerations, CDA decided that it would be better not to split the process of design and construction. The objective, of course was to shorten the procurement process and, more importantly obtain proposals that integrated the design and construction process. As mentioned earlier, this has its distinct advantages.

Ultimately, the initial contractor priced itself out of the contract and, arguably, some of the benefits of a design-build process was eliminated. However, the process still provided CDA with distinct benefits and advantages. In particular, one major benefit was that Black Micro's proposal served as the touchstone figure from which CDA could base itself in determining the best price for its renovation project. One simply has to look at the significant difference between Black Micro's price and the actual contractor's price.

It was unfortunate that Black Micro was provided a letter that purportedly released them from any responsibility under the design portion. In retrospect, this may have been a mistake because Cody & Associates and Black Micro collaboration was a singular contract. Black Micro knew this going in and, in fact, had no problem with the design because they based their proposed construction price on this very design. This issue is moot, however, because the design did not prove to be faulty.

OPA Comments

We did not make a case for or against CDA's choice to use the design-build method per se, or state that such a procedure was prohibited by regulation. Rather, we are critical of the decision to award a purported design-build contract to a contractor who had not demonstrated that it was a responsible bidder. While CDA asserts that the sole proposer ultimately priced itself out of the subsequent construction contract, our point was that CDA had knowledge of this situation before it agreed to the June 15, 1998 purported design-build contract with Black Micro. As we reported previously, Black-Micro advised CDA on May 22, 1998, 3 weeks before the award of the purported design-build contract, that the project could not be built within the stated budget, and that construction would cost roughly four times the budgeted amount of $150,000 as reflected in the proposed contract, or about $600,000. Contrary to the statement in CDA's reply that the contractor would not reduce its price, Black Micro did subsequently come down in price to $390,000. However, CDA still made the award to another contractor who came in with a lower construction price, as will be discussed in the next finding.

In summary, we believe that the design contract should not have been awarded to Black-Micro (Mr. Cody, the DPW architect who did the design work, was not a signatory to this contract) because doubt had been raised during negotiations as to whether Black-Micro was a responsible bidder and would complete construction, thereby placing CDA in a high-risk situation. Black Micro Corp. demonstrated this when it indicated that the price would likely be much higher than budgeted, and by its failure to accept responsibility for the design work even though it was the sole signatory to the contract. Finally, design was the only portion of the purported design-build contract fixed as to amount, thereby placing CDA in an additional high-risk situation with respect to the construction phase. It is hard to visualize any distinct advantages to such a bungled procurement process as this one.

Construction Awarded Without Full and Open Competition

CDA awarded a contract in the amount of $279,800 for construction work without obtaining full and open competition as required by CNMI procurement regulations. Instead it informally obtained three offers and selected one bid without publicly announcing that such work was available for competitive bids. As a result the government may not have received the lowest possible price.

Section 3-101 of the CNMI Procurement Regulations requires that, with certain exceptions, all government procurement be awarded competitively through *full and open* competition. The exceptions do not include construction. Sections 3-102(2) and 3-106(3) of these regulations require that the public be given adequate notice of any proposal or bid through publishing it in a newspaper of general circulation over a period of 30 days.

When CDA found that it was unable to negotiate a reasonable price with Black Micro Corp. for the construction of the building, it informally obtained bids from three firms. Contrary to the CNMI Procurement Regulations, CDA did not *publicly advertise* such work, and still considers such work to be a modification of the original contract even though the work was done by North Pacific Builders, who was not a party to the original contract. Because of its failure to publicly advertise such work, CDA may not have obtained the lowest price.

Queried about this transaction, the Special Assistant to the Director of P&S acknowledged that while CDA obtained competition, it did not obtain *full and open* competition. He said in a situation such as this, CDA should have publicly announced the offering of the construction work as the design had already been fully developed.

CDA Response

(CDA did not provide comments under this finding caption, but instead included comments under the previous finding caption. Accordingly, we have placed those

CDA comments in the next two paragraphs to facilitate discussion. CDA's verbatim comments follow.)

Because CDA found itself unable to negotiate the construction price with Black Micro, it opted for a procedure that would best serve its needs and still obtain the best price for its project. CDA had the distinct advantage of knowing Black Micro's proposal from which it could base a reasonable and competitive price. As a result, CDA was able to obtain the best and most reasonable price under the circumstances. We disagree that full and open competition was not achieved.

Contrary to the OPA's opinion, CDA's procedures resulted in obtaining an even better price for its project than if it had gone out under the normal bidding process as suggested by the P&S Director. In particular, the fact that Black Micro, a reputable contractor in the region, was involved in the design stage meant that it was in a position to go as low as possible in fixing its construction price. Because they refused to go below their $600,000 proposal, this served as a strong indicator for CDA to rely on this as a touchstone figure. CDA was in a win-win situation. It could reasonably rely on the fact that any contract amount below the Black Micro price would result in savings for CDA. More importantly, it was in the tremendously enviable position of being able to keep this amount confidential while specifically targeting the lowest possible price when informally negotiating a contract amount with the three prospective contractors. It is a very important to note that had CDA gone out with a competitive bidding procedure it would have not been able to have the downward control it had in informally negotiating with these prospective contractors. It is quite apparent that the price is (sic) finally negotiated for its construction would never have been obtained if it had gone out on a competitive bid.

OPA Comments

CDA disagreed with our finding that construction was awarded without full and open competition. It asserted that because of Black Micro's proposal it was in a position to know what was a good price, and that this enabled it to obtain a better price than if it had gone out under the normal bidding process. CDA states that Black Micro failed to go lower than $600,000 and that any price below this figure would represent a savings. As we stated earlier, Black Micro did submit a lower bid, finally coming in with a bid of $390,000 which was still unacceptable to CDA. We wonder if Black Micro's proposal had been $1 million or $2 million whether CDA would have treated any contract amount below that as "savings" for CDA. In any event, because the other bidders were selected by CDA without formal advertisement, there was no assurance that the lowest price was obtained when CDA awarded the construction contract to North Pacific Builders. CDA has attempted to justify its violations of procurement policies and procedures as a better way to make procurement decisions.

Professional Services Contract Awarded Without Competition or Adequate Justification

In renovating its leased building, CDA awarded a contract for project coordination and management services to EJT Consulting without competition and without a timely and proper sole source justification as required by CNMI procurement regulations, and subsequently paid $115,178.62 in related fees for services rendered. CDA's sole source justification lacked validity, as it was prepared in an untimely fashion–almost three months after the award of the contract. The justification also lacked credibility since it did not contain an adequate statement of what consideration had been given to alternative sources. As a result, CDA likely paid an excessive amount for project coordination and management services involved in renovating its building.

Procurement Regulations Not Followed

CNMI procurement regulations require that agencies normally solicit professional services publicly through a Request for Proposal, next conduct discussions with offerors to determine their qualifications, and finally make an award to the offeror considered most qualified. An agency may forego these requirements if instead it is able to justify a sole source procurement. Section 3-104 of the CNMI Procurement Regulations and Section 128 of CDA's proposed regulations state that for sole source procurement, a written justification must be prepared to address what consideration has been given to alternative sources.

In renovating the CDA-leased building, CDA awarded a March 1, 1998 contract without competition to EJT Consulting for "project coordination and management services" and then belatedly justified the award three months later on May 29, 1998. CDA subsequently paid EJT Consulting $115,178.62 in fees for services rendered over a 15-month period, an amount we consider excessive by industry standards. According to the contract, EJT Consulting could bill CDA at an hourly rate of $75 with no limit on the number of hours it could bill. The contract merely stated that:

> "It is very difficult to know exactly how much effort will be required, since EJT efforts are in response to requests from CDA and are related to the performance of the construction contractor."

In our opinion, CDA's action indicates an attempt merely to superficially comply with the regulations calling for preparation of a sole source justification. Our review also showed that CDA's justification provided no information to indicate that other sources outside of the government had been considered. It stated only that a source within the appropriate government agency was considered but that the agency did not have qualified staff available. More specifically, it stated that:

> "To understand why this should be approved as a sole source contract, it must be fully understood that all reasonable efforts were made to ensure

> the services through the appropriate government agency. The fact is the *government agency*[10] *does not have on staff* a qualified professional for assignment to perform project coordination and project management that are considered essential project tasks in executing design and construction....." (Emphasis and footnote added).

We questioned CDA officials about preparation of the sole source justification. The former Executive Director acknowledged that CDA did not attempt to obtain professional services from any other agency or from others in the private sector. Queried about this justification, the Special Assistant to the Director of P&S stated that if that agency had been given the opportunity to review this transaction before approval, P&S would have rejected it as a non-competitive procurement because there were other sources qualified to do the work.

Our review indicated that indeed there were other sources that might have performed the work. The Board of Professional Licensing identified nine different architects licensed on the island. One of these, in fact, was the consultant employed by DPW who ultimately provided the design services.

By limiting itself to a single proposal and not undertaking "full and open" competition from other sources, CDA may have paid considerably more for professional services than necessary.

Excessive Project Coordination and Management Fees

The $115,000 in billing fees ultimately paid to EJT Consulting for project coordination and management services amounted to about 30 percent of the overall design and construction costs associated with the project. A review of charges shows that over a 15 month period, an average of 109 hours was billed monthly. Concerned about what appeared to be a very high cost, we obtained a copy of the Chart for Basic Architectural Services used by the California Council of the American Institute of Contracts Compensation. It shows that an architect's fee for basic architectural services on an office building with total construction costs of $500,000 should approximate 8.5 percent of the construction costs. This is a considerably smaller percentage than the fees paid to EJT Consulting. The chart also shows that where specialized services of an architect are required, compensation for consulting services may be billed on an hourly rate basis with rates that range from $15 to $35 per hour, considerably less than the $75 per hour rate allowable in EJT Consulting's contract.

We queried a local individual practicing in the architect and engineering field about the reasonableness of this project coordination and management fee. He advised us that the absence of a maximum number of hours was indicative of a "Cinderella contract," and is usually given only when there is a special relationship between the

[10] The former CDA Executive Director stated that DPW was the government agency referred to in the justification.

building owner and project manager. He provided two examples of projects involving CNMI government buildings handled by two different contractors:

- A $25,000 fee was paid to a contractor covering a 6-month period for project coordination services (monitoring, follow-up, etc.) on a building costing about $1.3 million. This fee represented only about 1.9 percent of the building cost.

- A $36,000 fee was paid to a contractor covering a 6-month period for project management with extensive oversight on a building costing approximately $450,000 where the project manager reevaluated costs on an ongoing basis. This fee represented about 8 percent of the project's cost, and amounted to $6,000 per month for the contract period.

The Chart for Basic Architectural Services cited above also states that where construction time is exceeded by more than 25 percent, as was the case here, extra charges may be appropriate provided they are agreed upon before services are performed. However, no ceiling was included in EJT Consulting's contract regarding the maximum number of hours to be worked.

In its contract with EJT Consulting, CDA clearly agreed to an excessive hourly rate when it agreed to a rate of $75 per hour for hours billed. Also, CDA's failure to include a ceiling on the maximum number of hours that could be billed appears to have resulted in the agency incurring significantly greater project management costs than would have otherwise been the case. Also, CDA's failure to solicit these services from other contractors may have resulted in it not obtaining the most qualified professional or negotiating a more reasonable price.

CDA Response (Verbatim Comments)

The sole-source justification provided by CDA would have been more acceptable to OPA if it had considered the following additional factors:

a) The design-build procurement which ultimately resulted in considerable savings for CDA was an option being explored by CDA management in order to get away from the more restrictive method of competitive bidding which it felt was not a proper method for achieving its renovation goals.

b) Because of Ms. Evelyn J. Tenorio's background and experience in this type of construction contracts, she was specifically suited for sole source justifications;

c) Because of Ms. Tenorio's knowledge and experience, she was able to handle everything from the start and assist CDA in every step of the way including its legal counsel in drafting the design-build contract; and

d) CDA had never procured a construction contract using this method, either for itself or its clients, and needed the additional assistance (e.g., every step of the

negotiations from start to finish was handled by Ms. Tenorio) thereby justifying the open-ended aspect of the contract. It was clear that CDA could not have embarked on and completed a design-build contract without the assistance of Ms. Tenorio. As a result of this experience, it is safe to say that CDA now has the knowledge and experience to undertake design-build contracts in the future without requiring the hands on supervision that Ms. Tenorio had provided.

OPA Comments

CDA has chosen to ignore the basis for our finding–that the professional services contract was awarded without competition or adequate *justification,* resulting in a contract where excessive fees were charged. Instead, it cited additional factors as to why Ms. Tenorio should have been acceptable, namely, her unique background, knowledge, and experience. These factors, however, do not address the fact that the justification was prepared 3 months *after* the contract was awarded to her, or that the justification prepared lacked an adequate statement of the consideration given to alternative sources as required by procurement regulations. As a result, CDA paid $115,000 in fees over a 15-month period, an amount we consider exorbitant by industry standards. To reiterate our previous illustration, according to the Chart for Basic Architectural Services used by the California Council of the American Institute of Contracts Compensation, an architect's fees for basic architectural services on an office building whose construction cost amounts to approximately $500,000 should result in a fee of no more than about 8.5 percent of construction costs, or less than $50,000. CDA did not address this point in its response, and also chose to ignore that there are 9 licensed architects on Saipan. We note that Ms. Tenorio is not licensed in the Commonwealth.

CDA Hired a Professional to Oversee Construction Who Was Not Licensed

While CNMI law requires that CDA engage in a construction project only with the services of a licensed professional, we found no such professional had been hired to supervise construction.

CNMI law requires that CDA's construction project proceed only with the services of a licensed professional. More specifically, 4 CMC §3214 of the Commonwealth Code provides that:

> "The Commonwealth and its officers shall not engage in construction of any public works involving professional engineering, architecture, or landscape architecture for which plans, specifications and estimates have not been made and the construction of which is not supervised by a professional engineer, architect or landscape architect duly registered or exempted . . ."

This project was not exempt from such requirement because project costs exceeded the exemption threshold of $200,000.

Our review revealed that none of CDA staff were licensed by CNMI's Board of Professional Licensing. As a result, the project, which needed a qualified professional to perform project coordination and project management services considered essential in executing design and construction, did not receive the services of a licensed professional.

CDA Response (Verbatim Comments)

We disagree with OPA's opinion above. The contractor retained a licensed architect to supervise the work on the project. EJT acted as CDA's "eyes and ears", monitoring the project. At the beginning, it was understood by EJT and CDA as not to exceed a total cost of $150,000, which is below the $200,000 threshold figure for which a licensed architect or engineer is required for public works construction supervision. The renovation project is factually and legally not a "public works" project for purposes of 4 CMC §3214. It does not involve the construction of a building or property owned by CDA. Rather, it is leased property whose renovation has been agreed and approved by the CDA Board and the building owner, at arms-length, as part of the lease agreement.

OPA Comments

We disagree with CDA for the following reasons:

- CDA indicates that supervision was provided by the contractor (Black Micro Corp.) and by EJT (Ms. Tenorio). We must reiterate that it was CDA's responsibility to hire a construction manager or supervisor, and it was certainly not the responsibility of the one whose work was to be supervised. We again point out that Ms. Tenorio is not licensed by the Board of Professional Licensing.

- CDA indicates that this was not a public works project. We must again state that this renovation project is a public work within the meaning of 4 CMC §3214. We believe the purpose of this statute is to protect the public from incomplete, inadequate, and shoddy design and construction of facilities which involve the use of public funds and which are used extensively by the public. CDA provided funds to renovate a building for which it had been the sole tenant for many years, a status likely to continue given the relationship between the building's owner and CDA's Board Chairman. Ownership is not a controlling factor in determining what is a public work. *Sullivan v. Faras-RLS Group, Ltd.* 795 F.Supp.305 (1992).[11]

[11] The *Sullivan* holding relied on an earlier decision by the U.S. Supreme Court which determined that "the question of title to the buildings or improvements or to the land on which they are situated is no longer of primary significance." *U.S. v. Noland,* 62 S.Ct. 899, 901-2 (1942). Also, see the ruling in *U.S. v. National Surety Corp.*, 179 F.Supp 598 (1959), that public work includes projects carried on with public aid to serve the interests of the general public.

- Finally, CDA indicated that the $200,000 threshold in the law did not apply to it as the renovation project was originally to cost less than $150,000. We believe that when CDA authorized the project to "look like a banking institution," it should have concluded that the project cost would be much more than $150,000 given that it eventually cost 3 times this amount, or about $461,000, and that Black Micro had originally projected around $600,000.

CDA Purchased Furniture for its Office Without Obtaining Competitive Bids

At the height of CNMI's period of financial uncertainty, CDA spent $114,191 for the purchase of furniture to modernize its renovated office space. Although competitive procurement is required by the CNMI Procurement Regulations, CDA purchased furniture for its renovated office without securing bids and without proper documentation, instead justifying the purchase on the basis that CDA was obtaining a government rate. As a result, CDA may have paid considerably more than had it solicited competition from vendors.

On February 5, 1999, CDA purchased $97,777 in furniture and fixtures from Sources Direct for its renovated office even though it did not secure competitive bids and did not prepare a contract evidencing the purchase. Later, in June 1999, CDA made an additional furniture purchase totaling $7,606 from the same vendor. We requested documentation substantiating the purchases and were provided a quotation that had been furnished by Sources Direct as well as invoices from that same agent, none of which adequately document the transactions under CNMI procurement regulations.

Both the CNMI Procurement Regulations (Sections 3-101 and 3-103) and CDA regulations require that procurement of more than $10,000 be competitively bid except where the purchase is considered sole source, emergency or expedited procurement, none of which was the case here. Further, Section 2-104(1) states that contract documents are to be prepared by the official with expenditure authority. In this case there was no document prepared by either CDA's executive director or the Board Chairman evidencing the purchase. The Chairman justified the purchase on the basis that the government rate being obtained saved CDA substantial costs. CDA's documentation shows that Sources Direct provided CDA with a 15.3 percent discount off its normal retail rates.

Notwithstanding this justification, CDA paid considerably more for furniture than had it solicited competition from vendors. Some examples of furniture purchased for specific offices are listed below:

- Chairman's office on 2nd floor--22 pieces for $29,063,
- two secretary/receptionist areas--15 pieces for $9,895,
- library--11 pieces for $6,605.00,
- waiting area--5 pieces for $4,600,
- board conference room on 1st floor--11 pieces for $6,530, and
- Executive Director's office--5 pieces for $4,744.

Executive Director's Office Furniture–-5 pieces for $4,744

Examples of some high priced items purchased include:

- video cabinet for $3,229,
- bookcase-credenza (72" x 42") for $2,212,
- double pedestal desk (36" x 72") for $1,601, and
- bow top executive desk (72" x 42") for $3,872.

Bow Top Executive Desk–$3,872

A review of the General Services Administration's Federal Supply Schedule listing prices of furniture available to U.S. Government and other government agencies including the CNMI shows that CDA could have paid substantially less for the furniture it purchased.

	Comparative Furniture Prices	
Item	**GSA**	**CDA's Source**
Double Pedestal Desk	$685	$1,601
Bow Top Executive Desk[12]	761	3,872

When these purchases were made, $97,777 in February 1999 and $7,606 in June 1999, the CNMI government's fiscal crisis was well underway and the Governor had previously called for financial restraint. The CDA Board Chairman, who authorized the furniture purchases, was very much aware of the fiscal crisis, and the austerity measures being imposed on Executive Branch agencies to meet it (see page 6). Given the circumstances, it appears that such expenditures were wasteful and ostentatious, as the new furniture was not essential for the efficient functioning of the agency. In light of the CNMI's economic condition at the time, these purchases were excessive not only in terms of the prices paid for individual items but also for the amount spent on various individual offices.

CDA Response (Verbatim Comments)

The purchase of furnishings for the office was an additive part of the construction contract and did not have to be separately procured through competitive bidding.

OPA Comments

Our review of the September 14, 1998 construction contract between CDA and North Pacific Builders shows that furniture was never negotiated as an additive item in the construction contract, and therefore should have been procured by competitive bidding in accordance with procurement regulations. While CDA on February 2, 1999 requested that such furnishings be included as an additive item to the construction contract, it subsequently *refused to negotiate* a price when it advised North Pacific Builders that: "CDA will *not* procure the additive item - furnishings through NPB" (Emphasis added).

CDA acted as the procurement agent for the furniture, when on February 5, 1999, while negotiations with North Pacific Builders were still under way, the CDA Board Chairman advised his executive director that, in accordance with the recommendation of CDA's project architect, "I hereby direct CDA to procure office furnishings directly from Sources Direct." Instead, the agency should have followed CNMI procurement regulations by obtaining competitive bids for the proposed purchase.

[12] The GSA price listed is for a 72" by 36" Bow Top Desk. CDA had purchased a Bow Top Executive Desk which was somewhat larger at 72" by 42", perhaps justifying a slightly higher price than $761.

Conclusion and Recommendations

CDA stated they believe that all their actions, while violating procurement regulations, obtained the best results. We disagree and have shown that violating procurement policies resulted in higher costs to CDA.

In their decisions involving the renovation project, CDA officials demonstrated a lack of understanding of many provisions of the CNMI and CDA procurement regulations. Accordingly, we believe they need to be educated on the content of these regulations. Finally, because of this seeming inability to follow existing regulations, P & S should immediately determine whether CDA has the staff capability to carry out the procurement function, and make a decision as to whether or not it should delegate procurement authority to CDA.

The CDA Chairman participated in decisions affecting the interests of his mother-in-law, the lessor of the CDA-leased building, and thereby violated an ethical standard contained in CDA's enabling legislation. The Chairman's decision to renovate a property belonging to his mother-in-law with CDA funds raises a suspicion of favoritism toward his mother-in-law.

Accordingly, we recommend that:

3. the CDA Chairman ensure that all CDA officials attend a presentation on the procurement regulations to be conducted jointly by P&S and the Office of the Public Auditor; and

4. the Secretary of Finance require P&S to assess CDA's capability to administer its own procurement regulations. More specifically, P&S should determine whether CDA has adopted the CNMI procurement regulations, and if so, assess whether CDA has the staff capability to carry out the functions P&S would normally administer, and then make a decision as to whether CDA should be delegated procurement authority.

CDA Response

Recommendation 3 - The CDA Executive Director stated that she would ensure that all CDA officials involved in procurement actions attend a joint presentation on the Procurement Regulations.

DOF Response

Recommendation 4 - The Director of Finance stated that DOF found that CDA has neither adopted its own procurement regulations despite CDA's claim of having statutory authority to do so, nor has CDA been authorized to administer its own procurement functions pursuant to the CNMI Procurement Regulations Sections 1-105 and 2-201. However, the Secretary maintains that DOF still needs an opinion

from the Attorney General as to whether or not CDA has the statutory authority to promulgate its own regulations before it will take action to assess CDA's capability to administer its own regulations. Accordingly, it has requested such opinion from the Attorney General.

OPA Comments

Based on the response of CDA we consider Recommendation 3 to be open and unresolved until all CDA officials have attended the joint presentation on the Procurement Regulations as recommended.

Likewise, we consider Recommendation 4 to be open until (1) the Attorney General rules on whether CDA has the statutory authority to promulgate its own regulations, (2) P & S assesses CDA's capability to administer its own procurement regulations, and (3) P & S makes a decision as to whether CDA should be delegated procurement authority.

Appendix A
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Commonwealth of the Northern Mariana Islands
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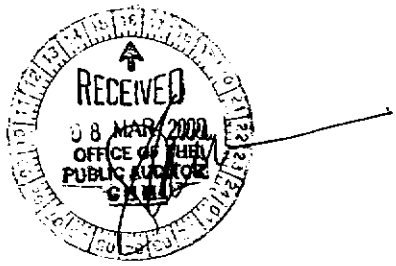
March 8, 2000



Mr. Leo LaMotte
Public Auditor
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Saipan, MP 96950

Dear Mr. LaMotte:

Re: Response to the Audit of Procurement and Costs of Renovating CDA's Leased Building

We have reviewed the Findings and Recommendations of the OPA on the CDA Building Renovation Project and the following are our response:

A. **Renovation of CDA Building and Parking Area were not a Prudent Expenditure of Funds.**

1. Renovation of CDA Building Resulted in Excessively High Lease Costs.

The OPA's finding that the cost of renovation resulted in excessively high Lease costs is a classic example of a very faulty analysis. The lease agreement was amended in March of 1998 and the rental was "locked in" at $1.25 per square foot for a period of 10 years. This by itself was a coup resulting in a tremendous benefit to the Lessee, as shown below.

By obtaining an extension of 2 years after the first option and a second option for a period of 5 years, the Lessee negotiated an additional lease period of 7 years. Over this additional period, the lease rental would be increased by .856 cent in order to recover the renovation costs for a total square foot price of $2.107. For seven years, CDA will be paying a rental of $2.107 per square foot for a building that is safe, modern, functional and looks like a modern banking institution. The OPA fails to recognize

the benefit to CDA for locking in the rental of a private commercial building (one that conforms to modern commercial building standards) for seven years. Instead, it argues that CDA could have obtained cheaper rental at the Retirement Fund Building, a government-owned building that does not and cannot compete in the private rental market. Effectively, this is comparing apples and oranges. Moreover, OPA ignores the fact that CDA, at the time it embarked on its renovation project, had just exercised its first option under the lease and was not in the market for a new lease space.

Lastly, OPA tries to make a point about CDA possibly choosing not to exercise its option to renew the lease for five years. This, according to their analysis, will result in a rental of $4.25 per square foot. This is an absolutely ridiculous point. Why would CDA not renew for an additional five years after negotiating such favorable rent for a modern facility that was modified to fit its needs?

2. ***CDA did not provide full disclosure of its planned renovations.***

We disagree with the above OPA's assessment. CDA submits its annual budget report to the Governor and the Legislature for information purposes only. Considering that CDA has full authority over its budget appropriations, the Board of Directors proceeded with the approval to renovate the CDA office in February 5, 1998.

3. ***CDA awarded contracts to renovate its leased property without having the needed funding authority.***

We do not agree with this finding. The Board was fully aware that funding for the renovation would come from surplus funds of FY 1998 budget. At the time of approval, CDA was not able to confirm nor estimate the cost of the renovation until after negotiations, nearing the end of the fiscal year. Because CDA was consumed with the renovation project, it did fail to reprogram funds before the end of the fiscal year but it did not intentionally ignore this process. Reprogramming was later requested and the Board of Directors approved to reprogram lapsed funds of FY98 for the construction renovation on October 23, 1998.

4. ***CDA provided lessor with an interest-free loan for renovating the parking lot.***

We disagree with OPA's assessment that CDA provided Lessor with an interest-free loan. The amount assessed against the Lessor for recovery is a negotiated amount that already takes into account CDA's costs. The amount being recovered from Lessor is not a loan. It is a very vital part of the lease negotiations entered into by the parties.

B. CDA Failed to Implement Contracting Practices Consistent with CNMI Procurement Regulations

1. CDA Board Chairman engaged in a conflict of interest.

We disagree with OPA's assessment that Chairman Tenorio engaged in a conflict of interest. CDA originally took over the lease of the building from the Economic Development Loan Fund, its predecessor agency. When it negotiated the present lease agreement, after the EDLF lease expired, the Chairman was not involved in the negotiations after having disclosed his conflict of interest.

The CDA records also reflect that the decision to renovate was made by the Board, as a whole, after the proper committee Chairman, Mr. Plasido M. Tagabuel, had recommended its approval. Chairman Tenorio did not participate in the Board's approval. In addition, the Executive Director negotiated the changes to the lease agreement subsequent to the Board's approval to renovate the building.

2. CDA approved contracts without having valid procurement authority.

We disagree with the OPA's assessment. CDA is an autonomous agency that is not funded by the general fund. It has the authority to issue its own procurement regulations and to negotiate and execute contracts that further its purposes and objectives. CDA can borrow funds on behalf of the CNMI Government and its agencies, float bonds in the open market and do numerous other things in furtherance of its statutory mandate. To accomplish these, it has the authority to advertise, negotiate and enter into contracts for services and goods. It is the approving agency for a number of specialized financial transactions (e.g., public borrowing, floating of bonds, etc.) for the entire CNMI Government and is charged with the responsibility of handling Covenant CIP funds. To even suggest that it must rely on the advice and consent of the Special Assistant for P & S is ludicrous.

3. CDA's decision to negotiate this particular design-build contract was questionable.

The scope of renovation required redesigning electrical, plumbing and structural aspects of the building. It was therefore very important that CDA utilize an integrated design-build process in order to insure that the architectural portion be an integral part of the renovation project. This has obvious and distinct advantages.

CDA's procurement regulations do not prohibit design-build construction contracts. Because of time constraints and other considerations, CDA decided that it would be better not to split the process of design and construction. The objective, of course was to shorten the procurement process and, more importantly, obtain proposals that integrated the design and construction process. As mentioned earlier, this has its distinct advantages.

Ultimately, the initial contractor priced itself out of the contract and, arguably, some of the benefits of a design-build process was eliminated. However, the process still provided CDA with distinct benefits and advantages. In particular, one major benefit was that Black Micro's proposal served as the touchstone figure from which CDA could base itself in determining the best price for its renovation project. One simply has to look at the significant difference between Black Micro's price and the actual contractor's price.

It was unfortunate that Black Micro was provided a letter that purportedly released them from any responsibility under the design portion. In retrospect, this may have been a mistake because Cody & Associates and Black Micro collaboration was a singular contract. Black Micro knew this going in and, in fact, had no problem with the design because they based their proposed construction price on this very design. This issue is moot, however, because the design did not prove to be faulty.

Because CDA found itself unable to negotiate the construction price with Black Micro, it opted for a procedure that would best serve its needs and still obtain the best price for its project. CDA had the distinct advantage of knowing Black Micro's proposal from which it could base a reasonable and competitive price. As a result, CDA was able to obtain the best and most reasonable price under the circumstances. We disagree that full and open competition was not achieved.

Contrary to the OPA's opinion, CDA's procedures resulted in obtaining an even better price for its project than if it had gone out under the normal bidding process as suggested by the P & S Director. In particular, the fact that Black Micro, a reputable contractor in the region, was involved in the design stage meant that it was in a position to go as low as possible in fixing its construction price. Because they refused to go below their $600,000.00 proposal, this served as a strong indicator for CDA to rely on this as a touchstone figure. CDA was in a win-win situation. It could reasonably rely on the fact that any contract amount below the Black Micro price would result in savings for CDA. More importantly, it was in the tremendously enviable position of being able to keep this amount confidential while specifically targeting the lowest possible price when informally negotiating a contract amount with the three prospective contractors. It is very important to note that had CDA gone out with a competitive bidding procedure it would have not been able to have the downward control it had in informally negotiating with these prospective contractors. It is quite apparent that the price is finally negotiated for its construction would never have been obtained if it had gone out on a competitive bid.

4. ***Professional services contract awarded without competition or adequate jurisdiction.***

The sole-source justification provided by CDA would have been more acceptable to OPA if it had considered the following additional factors.

a) The design-build procurement which ultimately resulted in considerable savings for CDA was an option being explored by CDA management in order to get away from the more restrictive method of competitive bidding which it felt was not a proper method for achieving its renovation goals.
b) Because of Ms. Evelyn J. Tenorio's background and experience in this type of construction contracts, she was specifically suited for sole-source justifications;
c) Because of Ms. Tenorio's knowledge and experience, she was able to handle everything from the start and assist CDA in every step of the way, including its legal counsel in drafting the design-build contract; and
d) CDA had never procured a construction contract using this method, either for itself or its clients, and needed the additional assistance (e.g., every step of the negotiations from start to finish was handled by Ms. Tenorio) thereby justifying the open-ended aspect of the contract.

It was clear that CDA could not have embarked on and completed a design-build contract without the assistance of Ms. Tenorio. As a result of this experience, it is safe to say that CDA now has the knowledge and experience to undertake design-build contracts in the future without requiring the hands on supervision that Ms. Tenorio had provided.

7. ***CDA hired a professional to oversee construction who was not Licensed.***

We disagree with OPA's opinion above. The contractor retained a licensed architect to supervise the work on the project. EJT acted as CDA's "eyes and ears", monitoring the project. At the beginning, it was understood by EJT and CDA as not to exceed a total cost of $150,000, which is below the $200,000 threshold figure for which a licensed architect or engineer is required for public works construction supervision. The renovation project is factually and legally not a "public works" project for purposes of 4 CMC §3214. It does not involve the construction of a building or property owned by CDA. Rather, it is leased property whose renovation has been agreed and approved by the CDA Board and the building owner, at arms-length, as part of the lease agreement.

8. ***CDA purchased furniture for its office without obtaining competitive bids.***

The purchase of the furnishings for the office was an additive part of the construction contract and did not have to be separately procured through competitive bidding.

Lastly, the building was in dire need of repairs. And recently due to the imposition of strict compliance to ADA's and OSHA's requirement, we found it necessary to renovate the building.

Recommendations

On recommendation #1, please refer to page 2 of this letter, item number 4. In response to recommendation #3, we will ensure that all CDA officials involve in procurement activities attend the presentation on the Procurement Regulations.

Appendix A
Page 7 of 7

Response to Audit – Building Renovation
March 8, 2000
Page 7

The foregoing are CDA Board of Directors' responses to the OPA audit report. We hope we satisfactorily addressed your concerns and findings. Should you have any other questions or need further clarifications, please do not hesitate to call our office.

Sincerely,

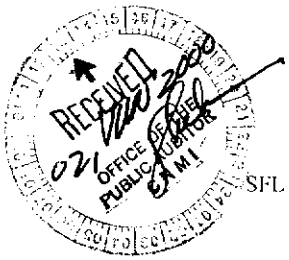
MaryLou S. Ada
Executive Director

xc: CDA Board of Directors
Governor
Senate President
Speaker of the House
Representative Dino M. Jones

Appendix B
Page 1 of 2

Office of the Secretary
Department of Finance

P.O. Box 5234 CHRB SAIPAN, MP 96950 TEL: (670) 664-1100 FAX: (670) 664-1115



June 1, 2000

SFL 2000-349

Sent Via Facsimile and Pouch Mail
Mr. Leo L. LaMotte
Public Auditor, CNMI
Office of the Public Auditor
2nd Floor J.E. Tenorio Building
Saipan, MP 96950

RE: Response to Audit of Procurement and Costs of Renovating CDA's Lease Building

Dear Mr. LaMotte:

This is in response to the single recommendation addressed to the Department of Finance in the subject draft audit report. The recommendation is for Procurement and Supply to assess CDA's capability to administer its own procurement regulations. In answering this, P&S should determine if CDA has adopted its own regulations and whether it has the staff capability to carry out functions that P&S administers.

In preparing our response to this audit, we discovered that CDA has neither adopted its own procurement regulations, despite its claim to statutory authority to do so, or has CDA been authorized to administer its procurement functions pursuant to the CNMI Procurement Regulations Sections 1-105 and 2-201. As it stands, it is premature for Procurement and Supply to assess CDA's capability to administer its own procurement regulations when it may actually have statutory authority to promulgate its own regulations, in which case, Finance is not involved.

We have asked the Attorney General for a legal opinion whether CDA does indeed have the statutory right to its own procurement regulations. Attached is a copy of the memorandum addressed to the Attorney General. If an opinion is rendered stating that CDA does not have statutory authority and is subject to the CNMI Procurement Regulations, then we will conduct staff capability and decide whether to authorize CDA to administer its own procurement functions by adopting the CNMI Procurement Regulations.

Thank you for your attention. We will advise your office of any further development on this matter.

Sincerely,

Lucy DLG. Nielsen
Secretary of Finance

cc: Director of Procurement and Supply
Grace Robles, OPA

Office of the Secretary
Department of Finance

P.O. Box 5234 CHRB SAIPAN, MP 96950 TEL: (670) 664-1100 FAX: (670) 664-1115

MEMORANDUM

TO : Attorney General

FROM : Secretary of Finance

SUBJECT : Request for Legal Opinion

RECEIVED 2000 OFFICE OF THE PUBLIC AUDITOR

DATE: 05/31/00
SFM 2000-293

In order to address a recommendation in the Public Auditor's audit on CDA's procurement and costs of renovating CDA's leased building, we request your assistance in rendering an opinion whether the CDA has statutory authority to adopt its own procurement regulations.

The subject draft audit requires the Department of Finance to determine whether CDA has the staff capability to carry out the functions the Division Procurement and Supply would normally administers. We can not proceed with answering this question until we determine whether they are even required to adopt the CNMI Procurement Regulations or whether they have statutory authority to adopt its own regulations, in which case, Finance has no involvment in their procurement functions.

Thank you for your attention. We appreciate a response as soon as possible.

LUCY DLG. NIELSEN

cc: Director of Procurement and Supply
CNMI Public Auditor

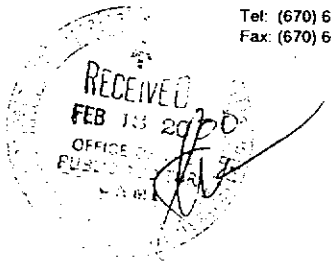
Appendix C

OFFICE OF THE SPEAKER

House of Representatives
Twelfth Northern Marianas Commonwealth Legislature
P.O. Box 500586
Saipan, MP 96950 - 0586

BENIGNO R. FITIAL
Speaker of the House

Tel: (670) 664-8874
Fax: (670) 664-8900



February 18, 2000

Leo L. LaMotte
Public Auditor
P.O. Box 1399
Saipan, MP 96950

RE: Draft Report-Audit of Procurement and Costs of Renovating CDA's Leased Bldg.

Dear Mr. LaMotte:

I have reviewed your draft report concerning the project referenced above, and I am very upset with its findings. I concur with your assessment that gross irregularities have occurred, and that action must be undertaken. I fully intend to comply with your recommendation that 1 CMC 7402 be amended to provide that unused budget authority may not be transferred to subsequent years. I do feel, however, that your recommendations do not go far enough. I strongly suggest that you refer this matter to the Attorney General's office to investigate whether criminal charges should be filed against any individuals, and to recover public funds which were expended in an improper manner.

It is very clear to me that proper procedures were not followed and that an impermissible conflict of interest existed between CDA's Board Chairman and the owner of CDA's office building. It is exactly this type of situation that erodes the public trust in government, and is something that I feel must be stopped and that those responsible must be held accountable for their actions.

Thank you very much for allowing me this opportunity to respond to this most troubling situation. Please let me know if my office can provide any further assistance.

Sincerely,

BENIGNO R. FITIAL
Speaker

xc: Acting Attorney General

021800.Ltr.Leo LaMotte

Appendix D

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
1. The CDA Board Chairman immediately take steps to obtain reimbursement from the lessor of the amount of the accrued interest on public funds advanced for the parking lot improvements.	CDA	Open	The Executive Director of CDA disagreed with our recommendation. *OPA Comment* This finding remains open until CDA obtains reimbursement from the lessor for the amount of the accrued interest on public funds advanced for the parking lot improvements.
2. The Legislature amend 1 CMC §7402 of the Planning and Budgeting Act to specifically provide that unused budget authority may not be transferred to subsequent years, and to provide sanctions for violations.	Legislature	Open	The Speaker of the House stated that he intended to comply with our recommendation that 1CMC 7402 of the Planning and Budget Act be amend ed to provide that unused budget authority may not be transferred to subsequent years. *OPA Comment* We consider this recommendation open until appropriate legislation is introduced to amend 1 CMC §7402.
3. *The CDA Board Chairman ensure that all CDA officials attend a presentation on the procurement regulations to be conducted jointly by P& S and the Office of the Public Auditor.*	CDA	Open	The Executive Director of CDA stated that she would ensure that all CDA officials involved in procurement actions attend a joint presentation on the procurement regulations to be conducted jointly by P&S and the Office of the Public Auditor. *OPA Comment* We consider this recommendation open until all appropriate CDA officials attend a presentation on the procurement regulations conducted jointly by P&S and the Office of the Public Auditor.
4. The Secretary of Finance require P&S to assess CDA's capability to administer its own procurement regulations. More specifically, P&S should determine whether CDA has adopted the CNMI's procurement regulations and if so, assess whether CDA has the staff capability to carry out the functions P&S would normally administer, and then make a decision as to whether CDA should be delegated procurement authority.	DOF	Open	The Secretary maintains that DOF still needs an opinion from the Attorney General as to whether or not CDA has the statutory authority to promulgate its own regulations before it will take action to assess CDA's capability to administer its own regulations. *OPA Comment* We consider this recommendation open until (1) the Attorney General rules on whether or not CDA has the statutory authority to promulgate its own regulations as requested by the Secretary of Finance, (2) if it does not, P&S determines whether CDA has the staff capability to carry out the functions P&S would normally administer, and (3) P&S then make a decision as to whether CDA should be delegated procurement authority.

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