



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

1998 Annual Report

Leo L. LaMotte
Public Auditor



Public Auditor's Message_____



We noted over the past year that CNMI Government officials have increasingly responded positively to our audits, investigations, our Ethics Act implementation, and even our decisions on bid protest appeals. We extend our thanks to all those officials and employees for their cooperation and assistance.

We also appreciate the fact that most officials and employees required to file a statement of financial interest were prompt in filing. The response to our Ethics Act presentations has also been gratifying.

In addition, we thank all those who utilized our Hotline to report improper government activities.

On the other hand, we are still finding procurement to be a major problem. Once again, much of our audit and investigation effort involves fraud, waste and abuse in CNMI Government procurement. Some of these matters are included in this report and others are still in process and will likely be disclosed in 1999. Procurement involves millions of dollars. Careful procurement can save our cash-strapped government significant amounts of funds.

Although procurement sets in motion the improper use of funds, the management of construction contracts, professional service contracts, and all other procurement and delivery of goods and services is also very crucial, and improvements appear to be needed. Proper administration and supervision of government contracts and purchase orders can prevent waste of funds that might be used to pay for other urgently needed public projects.

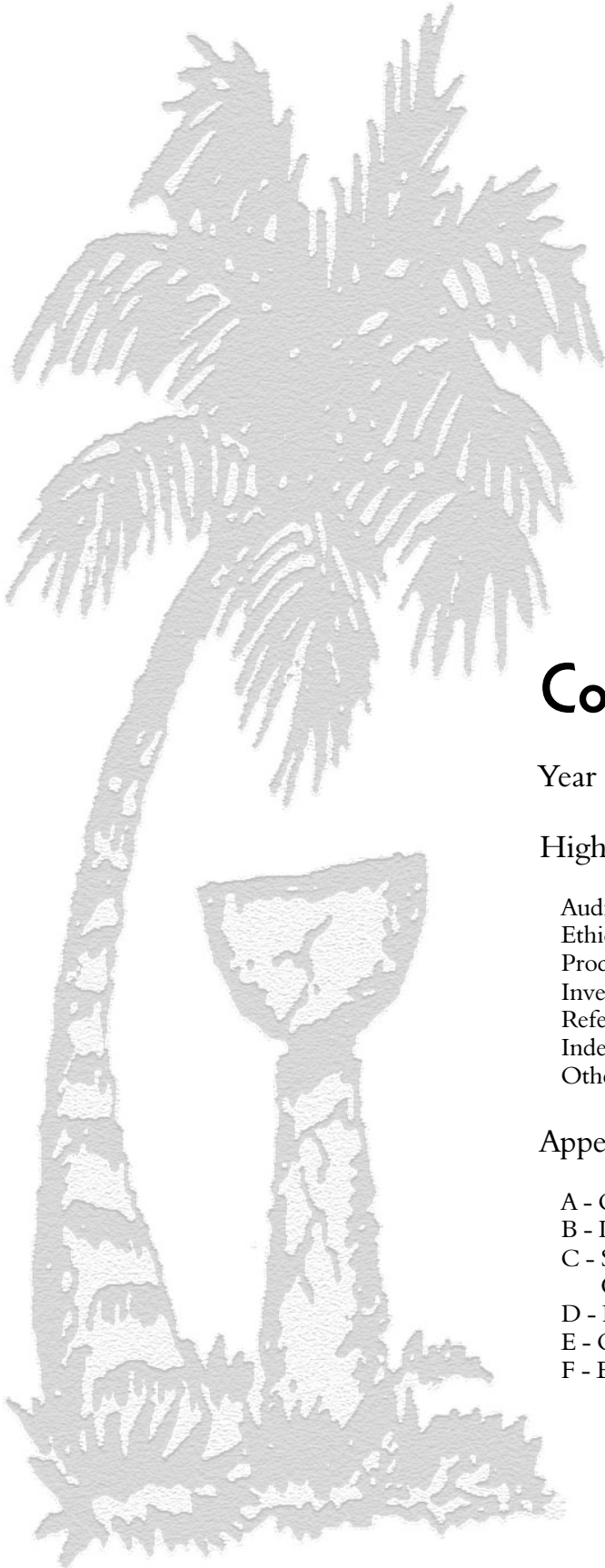
Of course, we continue to encourage government officials and employees to avoid misuse of government vehicles and to avoid misuse of time and attendance. While individual misuse of vehicles and time and attendance may not seem important, when misuse of 1,300 vehicles and the time and attendance of 5,000 employees occur, the amount of waste can be considerable.

We at the Public Auditor's Office take our responsibilities very seriously. We hope you will take the time to look over our Annual Report and get to know us a little better and learn about all the activities of our office. We welcome your suggestions and comments to help us do an even better job during the next year.

A handwritten signature in cursive script, reading "Leo LaMotte". The signature is written in black ink and is positioned above the printed name and title.

Leo L. LaMotte
Public Auditor

April 1999



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Year in Review

The mission of the Office of the Public Auditor (OPA) is to promote accountability and fiscal integrity to ensure the proper use of public resources. In line with this mission, OPA conducted and supervised financial, operational, and performance audits of CNMI Government departments, agencies and programs. OPA also conducted investigations on allegations of fraud, waste and abuse, ethics violations, and matters arising from audits which required further investigation. As mandated by statute, OPA implemented the Government Ethics Code Act of 1992. Also, OPA adjudicated appeals of decisions made in the solicitation and award of contracts.

Audit Activities

In 1998, a total of 20 final reports were released. 18 of the 20 final reports pertain to operations of 9 departments and agencies, while 2 final reports pertain to CNMI Government-wide operations. **Appendix A** lists the final audit reports issued by OPA. Also, 8 draft reports were released for agency comments, while either a draft report was in preparation or field work was ongoing for 58 other audit engagements. Of the 86 total audits, 46 were requests, 22 were self-initiated, 10 were investigations-initiated, and 8 were mandated by law.

OPA supervised and monitored the procurement and conduct of audit services for the single audits and financial and compliance audits of the CNMI Government and other autonomous agencies. In 1998, nine audit reports were issued by independent CPA firms, while field work was ongoing on four audits as of year end.

Appendix B lists all audit reports issued by independent CPA firms and ongoing audits at year end.

At the end of 1998, OPA identified outstanding audit recommendations that if implemented could result in the recovery of \$961,122 due to improper disbursements. This matter has been reported to the Interagency Audit Coordinating Advisory Group in OPA's Report on CNMI Agencies' Implementation of Audit Recommendations as of December 31, 1998.

Ethics Act Implementation

In 1998, OPA's Ethics Unit monitored the filing of statements of financial interest by CNMI Government officials and employees. Penalties were imposed upon late filers. One case of non-filing was referred to OPA's legal counsel for action.

Seven Ethics violations were reported to heads of agencies and offices and to the Attorney

General's Office, while investigation was ongoing for eight cases. Also, OPA issued Ethics Act advisory opinion no. 98-01 showing that the Acting Attorney General had removed herself from I&S Corporation matters thereby absolving her conflict of interest.

Throughout the year, OPA conducted presentations on the Ethics Act to educate government officials and employees of its requirements. In 1998, OPA gave 58 presentations to 32 government departments and agencies and 6 private groups.

The Ethics Unit also drafted a revised Ethics Act which included proposed changes to reinforce and clarify the Act.

Decisions on Procurement Appeals

In 1998, decisions by the Commonwealth Utilities Corporation in two power plant project procurements were appealed to OPA. Of the two cases, one was denied and one was partially granted. Also, decisions were issued on three appeal cases filed in 1997.

In addition, OPA issued rulings in seven requests for reconsideration filed in 1998 pertaining to its previous decisions. There were no pending appeal cases at the end of 1998.

Investigative Activities

OPA investigated cases involving violations of procurement regulations, fraud, misuse of government funds and property, embezzlement, theft, and violations of the Ethics Act.

During the year, OPA entered into a memorandum of understanding with the Federal Bureau of Investigation for a joint task force primarily against public corruption and government program fraud. OPA assigned one investigator and one auditor to the task force.

Referrals to the AG

As a result of its audit and investigative work, OPA referred 16 cases to the Attorney General involving violations of federal or Commonwealth criminal law and matters requiring civil action.

Other Activities

The Public Auditor submitted written and oral testimony on legislative hearings involving the Tinian Casino Gaming Commission, Marianas Visitors Authority's settlement with I&S Corporation, and the Governor's nominees to key government positions.

As mandated by Public Law 9-68, OPA developed its own procurement regulations. The regulations addressed deficiencies noted in OPA audits.

OPA participated in the development of the CNMI's Financial Management Improvement Plan. The plan included a draft revision of the CNMI Procurement Regulations which OPA offered to prepare based on the work it has done on its own regulations. The revised regulations were completed in December 1998.

OPA's web site (<http://opacnmi.com>) continued to provide the public with up-to-date information on OPA reports and procurement decisions issued, government ethics, and other activities.



Violeta Tesorero was named "1997 Employee of the Year" during Employee Recognition Week ceremonies.

Personnel

In fiscal year 1998, OPA was authorized 39 full-time equivalent (FTE) employees. The 39 FTEs consisted of 29 auditors, 5 investigators, 2 legal counsels, 2 administrative staff, and the Public Auditor. See OPA organizational chart in **Appendix E**.

Total staff time available for the year was 70,471 hours after deduction for holidays and leave. These hours were applied to efforts as shown in **Figure 1**.

Financial Information

In 1998, total deposits to OPA’s special account by the Department of Finance totaled \$2,353,823. Due to the absence of an approved budget for the CNMI Government, OPA, however, operated at fiscal year 1997’s budget level of \$1,958,700 as authorized by Public Law 10-41.

In 1998, OPA’s total expenses were \$1,854,817. Of this amount, \$1,461,102 was for personnel costs, while \$393,715 was for all other costs. □

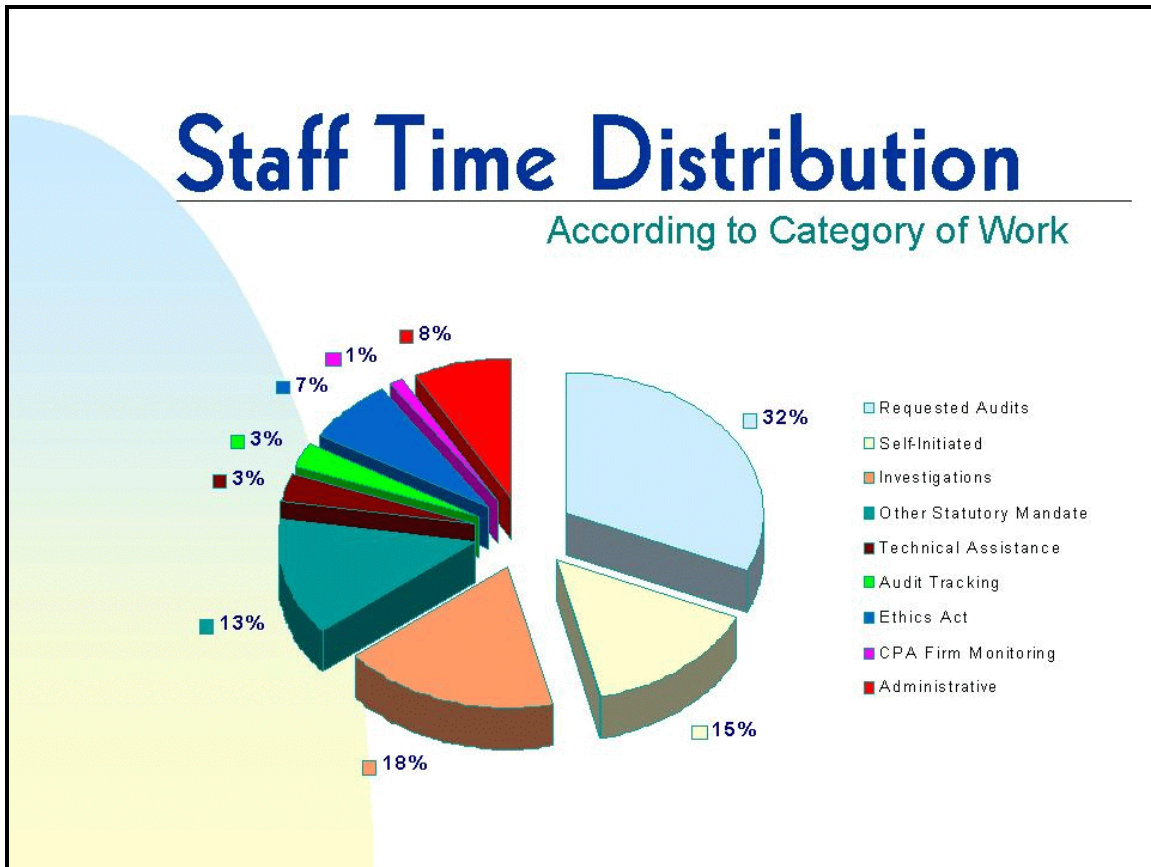


Figure 1

Highlights of Activities

Activities of the Office of the Public Auditor were primarily directed by OPA's mission and mandate. Its overall objectives were to improve the economy, efficiency and effectiveness of government operations and prevent fraud, waste and abuse. OPA's activities are grouped into categories, namely: (1) audit activities, (2) Government Ethics Act implementation, (3) adjudication of procurement appeals, (4) investigative activities, and (5) other activities.

Audit Activities

Personnel Management

Time and Attendance

A CNMI-wide audit (AR-98-03) and subsequent agency audits (LT-98-04 and LT-98-09) showed that CNMI government offices, departments, and agencies committed abuses in timekeeping, and in granting of leave, overtime, and compensatory time (comp time) to employees. Specifically, the audit found that:

- employee time charges were either falsified or incorrectly summarized,
- administrative leave was indiscriminately granted, and
- overtime and comptime were granted in violation of regulations.

The improprieties noted during OPA's surprise inspections of time and attendance likely occurred repeatedly throughout the year, resulting in misuse of substantial amounts of public funds for personnel costs.

Also, the audit found timekeeping practices employed by government offices, departments, and agencies were inadequate, inconsistent, and subject to errors and manipulations. Specifically, the audit found:

- certain offices did not require employees to document their time and attendance;
- selected officials and employees were exempted (without authority) from reporting their time-in-and-out;
- employees were allowed to manually fill out their time cards instead of using the time clock;



Timekeeper at the mechanic shop of the Saipan Mayor's Office checks time cards.

- employees' actual time-in-and-out were not reported; and
- records were not maintained and updated to document the whereabouts of employees leaving the office during working hours, calls of employees reporting leave, and other related matters.

As a result, government employees can get paid without actually completing regular hours of work.

Another audit (LT-98-07) showed that a Technical Financial Analyst at the Department of Finance abused his status as an employee exempted from overtime under the Fair Labor Standards Act (FLSA) by repeatedly coming late for work, taking time off at will, and leaving work several hours earlier than the set time. The employee, however, was paid in full without deductions although he had not performed additional work and was not charged annual leave to offset lost hours. During the six-month period under audit, the employee's absences resulted in total working time of only 456 hours instead of the prescribed 748 hours. In effect, the employee was overpaid by 292 hours or \$5,975.

Also, an audit (LT-98-01) of overtime claims submitted by a Public School System (PSS) Administrative Officer showed that the employee was not entitled to overtime. The audit showed that there was insufficient evidence to establish her as a "non-exempt" employee entitled to overtime pay, and that specific requirements in the personnel regulations for overtime payment were not met.

Compliance with Approved FTE Positions

The audit (LT-98-11) showed that the Rota Mayor's Office (RMO) exceeded its authorized full time employees (FTEs) by at least 43 positions because RMO failed to transfer 31 vacant FTE positions to the Public School System (PSS) in Rota to staff the new Sinapalo Elementary School as required by Public Law

10-41, the 1997 Appropriation Act. Instead of transferring the positions to PSS, RMO hired 31 new employees to fill the vacant positions, and even hired 12 more employees on top of its authorized ceiling of 84 FTEs.

Under Public Law 10-41, RMO was authorized an FTE ceiling of 84 positions. The Act, however, provided that FTE positions would be reduced or transferred should vacancies occur.

As a result, an amount estimated at \$700,000 on an annualized basis is being spent for personnel in excess of the authorized FTE ceiling for RMO, without authorization from the Legislature.

CPA Rota Employee Salaries and Salary Increases

The audit (LT-98-12) showed inequities in granting salaries and salary increases at the CPA Rota branch office. Specifically, the audit found that:

- several CPA-Rota branch employees were not classified using the CPA Employee Classification and Compensation Plan for Rota employees ("Rota Salary Plan"), but were classified using the CPA Employee Classification and Compensation Plan for Saipan employees ("Saipan Salary Plan") which placed them at higher pay levels with higher pay;
- several Rota employees were hired or promoted to positions which did not exist under the Rota Salary Plan; and
- two Rota employees who did not meet minimum qualification requirements were hired at pay levels higher than the pay levels for qualified employees occupying comparable positions.

This occurred because CPA management decided to standardize the pay level of all CPA employees regardless of their branch assignments by making revisions to the classification

plan in order to resolve existing disparities on salary rates between branches. However, there was no written adoption by the CPA Board to formally incorporate these changes into the Rota Salary Plan. CNMI law requires the Board to review and approve any changes or amendments to CPA's wage and salary scale.

As a result, there is no assurance that Rota employees were granted salaries and salary increases in an equitable manner. In addition, the security of Rota International Airport may be jeopardized by the hiring of two unqualified individuals to serve as Airport Police Officers.

Misuse of Government Vehicles

A CNMI-wide audit (**AR-98-02**) showed that the government has failed to fully comply with the requirements of the Government Vehicle Act and the Government Vehicle Regulations. Some government officials themselves have disregarded the requirements and found excuses to exempt themselves and some of their staff from the requirements of the Act and Regulations. This condition occurred because of a lack of commitment by most agency heads to implement the requirements. Consequently, control over use of government vehicles is weak and has resulted in widespread misuse.

The audit showed that there are a number of government vehicles that are tinted and do not have proper markings and government license plates. Based on a list of government vehicles prepared by OPA at the time of the audit, about 124 government vehicles on Saipan did not have the required government plates.

OPA's inspection of government vehicles also showed waste and abuse because instead of procuring less expensive vehicles that economically and effectively meet the government's transportation needs, some officials procure luxury vehicles apparently for their own comfort and prestige. Inasmuch as this practice constitutes wasteful expenditure of public funds, OPA questioned the intent behind the

procurement of luxury vehicles, especially in light of the fact that several government vehicles are driven home by officials and employees. It appears that some government officials and employees take advantage of the privilege of using taxpayer-provided transportation to personally benefit.

Also, on February 17, 1998, OPA issued an audit report (**LT-98-03**) which showed that the former Deputy Director of the Commonwealth Ports Authority (CPA), who was already assigned a government vehicle, without authority took full possession of an additional government leased vehicle, a Toyota Camry, for his personal use to conduct private matters during his working hours from late May or early June 1996 to September 18, 1996. The government lost approximately \$7,145, representing the lease cost of the vehicle and the salary of the former Deputy Director during the period he was using the vehicle for personal matters on official government time.

On December 20, 1996, the CNMI Superior Court found the former CPA Deputy Director guilty of misusing a government vehicle.

Contract Administration

Marianas High School Gym Construction

The audit of the Marianas High School (MHS) Gymnasium construction contract (**AR-98-01**) showed that PSS did not terminate the contractor's right to continue the contract for default despite (1) the contractor's overall poor performance and slow progress of work, (2) considerable delay in the procurement of the steel building for the gym due to the contractor's financial difficulties, (3) poor quality of construction work (i.e., existing structures may have to be demolished or reworked), and (4) failure of the contractor to address and cure construction problems and deficiencies.

PSS poorly managed the MHS Gym project, and was negligent in enforcing applicable contract provisions and procurement regula-

tions. As a result, contract provisions and procurement regulations were violated, and \$969,631 in government funds, time, and effort may have been wasted and spent without any public benefit.

Professional Services Contract with Former AG

The audit (AR-98-06) showed that the Office of the Governor's professional services contract with the former CNMI Acting Attorney General was procured despite a budget deficit in the Office of the Governor's account, in violation of the CNMI Planning and Budgeting Act which prohibits expenditure of funds in excess of appropriations. When the contract was routed to the Procurement & Supply (P&S) Director for initial review, it had already been signed by the Governor, other government officials, and the Contractor, in violation of the CNMI Procurement Regulations. The P&S Director probably did not have any choice but to approve the contract because higher level officials had already signed it.

In addition, the Contractor was overpaid by \$35,125 because of double payments, unliquidated advances, and excessive reimbursements, and was granted terms and conditions which substantially favored the Contractor at the expense of the government without reasonable justification.

As a result, CNMI laws and regulations were violated, the protection provided by the Procurement Regulations against possible improprieties was overridden by high level officials, and public funds were illegally spent without appropriation by the Legislature.

Violations of Procurement Regulations

MVA's Promotion and Advertising Services

The audit (AR-98-04) showed that the Marianas Visitors Authority (MVA) procured promotion and advertising services in violation of the CNMI Procurement Regulations (CNMI-PR). At various dates from fiscal year 1992 to 1996,

MVA:

- procured services from nine foreign advertising companies amounting to more than \$7.34 million without following competitive selection procedures,
- entered into "open-ended" agreements with several companies instead of firm fixed-price contracts, and
- paid the companies without valid government contracts,
- compensated several companies using the cost-plus-a-percentage-of-cost method specifically prohibited under the regulations, or the cost reimbursement method without justification.

Of the nine companies, three were awarded contracts during fiscal year 1997 without following competitive selection procedures and were paid more than \$4.16 million. When the three contracts expired at the beginning of fiscal year 1998, the companies were allowed to incur expenditures although no new contracts had been approved. Such expenditures totaled \$2.72 million as of February 1998.

As a result, public funds were illegally spent by MVA in violation of procurement regulations, and there was no assurance that expenditures totaling more than \$14.22 million were necessary or were procured at a fair and reasonable price.

Lease of KBC Building by Tinian Mayor's Office

Our audit and investigation of the Tinian Mayor's contract (LT-98-05) for the lease of the KBC Building showed that the former Director of Procurement and Supply approved a two-year lease contract amounting to \$240,000 without either competitive bidding or, at least, a sole source justification. He also failed to assess the legal capacity and authority of the vendor to enter into a two-year lease agreement for the KBC Building prior to its approval.

The CNMI government found itself in a complicated situation. The Tinian Mayor's Office renewed the lease of the KBC Building, unaware that the lessor had a limited ownership interest remaining in the property. Because of this, lease payments were made to the lessor even after his ownership interest in the property expired. When third parties started filing claims over the lease payments, DOF began withholding the lease payments.

OPA recommended the deposit of the \$10,000 monthly rental to an escrow account until such time as the proper recipient of the rental payments is established.

Follow-up audit of Improper Procurement of Air Conditioners by SMC

The follow-up audit (**LT-98-13**) showed that concerns raised during the previous audit (e.g., absence of funding, absence of bidding, and failure to issue a purchase order prior to the procurement of air conditioners) were not addressed by the past Administration. Instead, former Administration officials ignored the audit findings and condoned the action of involved officials by not holding them accountable for the improper procurement of the air conditioners.

As in the previous audit, the follow-up audit did not challenge the necessity of acquiring air conditioners for the use of the Saipan Municipal Council. Instead, the first audit pointed out the improper way in which the air conditioners were acquired, while the follow-up audit further pointed out that public funds were unlawfully used to pay for the air conditioners.

The intervention of the former Executive Assistant to the Governor, former Special Assistant for Management and Budget, and former Acting Secretary of Finance allowed the Council to use its FY 1997 appropriation to complete the payment for the air conditioners. The Administration officials ignored prior decisions by the Legislature, Attorney General's Office, Office of the Public Auditor, and

Procurement and Supply Office to disapprove the Council's request to make the payment.

As a result, an additional \$12,018 in public funds were spent on the improperly procured air conditioners, in violation of the FY 1997 Appropriation Act.

Misuse of Public Funds

Public Funds Misused by Former Secretary of Finance

An audit (**AR-98-06**) showed that the former Secretary of Finance misused public funds amounting to \$100,249. Specifically, the former Secretary received two cash advances of \$20,000 and \$10,000 (a total of \$30,000) for two off-island trips which were recorded directly as official representation expenses instead of advances. Recording the cash advances directly as expenses prevented the monitoring and implementation of collection procedures (such as salary deductions) when the advances were not liquidated. Furthermore, instead of liquidating the advances after the two trips, the former Secretary requested additional reimbursements of \$33,077 by submitting receipts for his expenses.

The former Secretary was also reimbursed for various questionable official representation expenses totaling \$66,582. These included payments for hotel accommodations and meals without justification or supporting documentation, items that are inappropriate to be charged to official government expense such as liquor and cigars (except for legitimate and necessary official representation purposes), unaccounted for equipment, duplicate charges, unidentified expenses, and personal expenses such as purchases of expensive shirts, suits, and leather accessories.

In addition, the former Secretary was reimbursed for several questionable expenses charged to other accounts totaling \$3,667. These consisted of equipment rental for his private business and reimbursement of an amount already refunded by a vendor to his credit card account.

This misuse of public funds occurred because the former Secretary of Finance used his position to benefit himself at the expense of the CNMI Government. As the head of DOF, he had the authority over all staff members responsible for processing payments made to him, and therefore there was almost no instance when his request for payment was denied.

OPA recommended that the current Secretary of Finance require the former Secretary to return public funds he misused totaling \$100,248.66. Also, OPA recommended that the Attorney General be requested to prosecute the former Secretary for misconduct in public office. Furthermore, the current Secretary of Finance should develop and implement written policies and procedures to ensure that official representation expenses are incurred only for official purposes.

Misappropriation of Collections at Revenue & Taxation

An audit and investigation (LT-98-08) showed that weaknesses in internal controls over collections at the Department of Finance's Division of Revenue and Taxation resulted in misappropriation of cash collections amounting to \$13,340. The former cashier, however, admitted taking only \$11,900. The matter was referred to the Attorney General's Office for criminal prosecution.

The audit found the following internal control weaknesses:

- All cashiers were given unrestricted access to the computerized cash receipt system by sharing one password.
- There was no procedure to prevent manual alteration of official receipts and the receipt detail report.
- Details of official receipts were not reconciled with the receipt detail report and actual collections.

- There was no separation of incompatible duties. The cashier, apart from his cashiering function, controls the receipt from Treasury and issuance to cashiers of blank or unused official receipts.
- Blank/unused official receipts issued to each cashier were not recorded.

On January 31, 1997, the former cashier was convicted of theft of \$12,908 in government collections. He was sentenced to five years' imprisonment, but with only nine months to be actually spent in jail and the remaining four years and three months on active probation. He was required to pay restitution to the government of \$12,908 plus nine percent interest compounded quarterly.

The former cashier served the nine months of his jail term from February 6 to November 6, 1997, and on February 13, 1998 started making restitution of \$250 per month.

Financial Management

Marianas High School Student Funds

A follow-up audit (LT-98-14) showed that financial records of Marianas High School student funds are inadequate to determine what happened to the \$5,069 that was paid back by a former principal and the former custodian for the funds they took during school year 1991 to 1992. Consequently, MHS has still not identified the student organizations that were deprived of the use of their monies, and the risk still exists that the recouped \$5,069 will be lost or used improperly.

In addition, the funds custodians (including the previous custodians) were not oriented on how to account for and maintain the funds. Furthermore, they were unaware of OPA's prior audit recommendations, not knowledgeable in establishing accounting records, and unaware of the need for internal controls. As a result, the correct balance of the student funds remains unaccounted for. The bank balance as of

December 31, 1997 is \$15,848 less than the total balance of the individual student organization ledgers maintained by the custodian as of the same date.

Mandated Audits

CNMI Lottery Operations

OPA issued audit reports (LT-98-02 and LT-98-10) on government revenues from the CNMI Lottery operations for the 3rd and 4th quarters of fiscal year 1997. These reports were not completed in 1997 because the auditee failed to provide the needed documents in time for us to complete and release our audit reports in 1997.

Other Audits

MRO's Reconciliation of Claims with Straub Clinic

A review (LT-98-06) showed that the results of the Medical Referral Office's (MRO) reconciliation of medical claims with Straub Clinic and Hospital, Inc. were fairly accurate except for several adjustments due to misclassification and transposition errors amounting to \$19,892.

As of April 23, 1998, however, the reconciliation had not yet been fully completed because of certain matters beyond the control of MRO. At least \$414,027 of \$812,390 in claims submitted by Straub had not yet been reviewed by MRO because the claim invoices and other supporting documents were either missing or had not yet been received from Straub.

The reconciliation, however, was able to identify \$219,024 which had been previously paid by the government; \$74,090 which should be rejected because the claims were not covered or authorized under the medical referral program and, instead, should be billed to the patients; and \$114,772 which had already been submitted to the Department of Finance for processing of payments.

Tracking of Audit Recommendations

OPA implemented an audit recommendation tracking system to ensure that recommendations in audit reports issued by OPA and private CPA firms are implemented rather than being forgotten or ignored.

As of December 31, 1998, OPA has identified \$970,122 in its list of outstanding recommendations which the CNMI government should recover due to overpayments, improper payments, etc.

Additionally, other outstanding recommendations address needed improvements in internal controls and operating procedures. These recommendations if implemented should result in cost savings for the government through improved efficiency and effectiveness and minimizing opportunities for fraud, waste and abuse.

OPA released a separate report on CNMI agencies' implementation of the audit recommendations.

Ethics Act Implementation

Ethics Unit

In 1996, OPA established the Ethics Unit within the Audit Division. The Unit was tasked with the responsibility of implementing and enforcing the Government Ethics Code Act of 1992. In 1997, procedures for the operation of the Ethics Unit were developed. In addition, a record-keeping and follow-up system was established for receiving and investigating complaints, and preparing and issuing of reports and opinions on ethics matters.

Financial Disclosure Reporting

In 1998, the Ethics Unit continued its vigorous implementation of the financial disclosure

requirements of the Ethics Act. As in the previous year, Ethics Unit staff exerted extra effort in ensuring that filing notices were received by “reporting individuals,” and answered queries from filers regarding the disclosure requirement and the statement of financial interest.

In 1998, “reporting individuals” generally filed in a timely manner (see Statistics on **Table 1**). However, despite repeated reminders, there were 17 late filers who were assessed late filing penalties of \$2,060. Of the 17 late filers, 4 paid the late filing penalties, while the remaining 13 were referred to OPA’s Prosecutor for collection. Of the 13 cases, payments were received without legal action being taken in 9 cases, commitments to pay the late fees in installments were received in 2 cases, and the late filer’s response is awaited in 2 cases before taking legal action. Also, one individual did not file a statement of financial interest and the case was referred to OPA’s Prosecutor for legal action.

Financial Disclosure Statistics

	1996	1997	1998
No. of Persons Required to File	407	421	517
Filed on Time	370	417	493
Filed Late	24	4	17
Did Not File	13	0	1
Civil Penalties Assessed	\$4,930	\$180	\$2,060
Cases Referred to AG/OPA Prosecutor	20	0	13
Resolved	4	0	10
Unresolved	16	0	3

Table 1

Public Education Campaign

To better educate the public about the CNMI Government Ethics Code Act, OPA previously has developed five pamphlets, which provide information on the following topics:

- Conflict of Interest
- Gifts and Gratuities
- Political Activity

- Complaints on Ethics Violations
- Filing Financial Disclosure Statements

We continued to distribute these pamphlets to new filers, and at the request of the Public School System to all teachers during presentations conducted.

OPA developed a slide presentation on the Ethics Act enabling its staff to give public officials and employees a complete and thorough overview of the Act. Subsequently, OPA gave 58 presentations on the Ethics Act to 32 government departments and agencies and 6 private groups. The presentations provided a forum for public officials, employees and the general public to ask questions and obtain clarifications on specific cases. **Appendix F** lists the presentations conducted by the Ethics Unit in 1998.

Complaints and Investigations

In 1998, OPA received 11 formal complaints of ethics violations. Reports were issued on 5 cases while the remaining 6 cases are still under review.

In addition, 13 complaints received in 1997 were reviewed in 1998. Preliminary work on the 13 cases revealed that only 4 warranted investigation. Investigations were not conducted on the other 9 for the following reasons:

- complaint did not involve an ethics issue,
- statute of limitations had run out, or
- complaint was directed to another government agency for action.

Of the 4 investigated cases, reports were issued on 2 cases while the other 2 cases are still pending.

Also, OPA began developing a database that will provide the ability to match reported financial disclosure information with third-party information. The database when completed will assist OPA in determining the accuracy and

reliability of reported data and assist in investigations of ethics violations. However, progress has been slow because in some cases, agency automated data is not available, and in other cases, available data is not comparable.

Improvement of Ethics Act

During the year, considerable time was spent researching ethics issues to improve the Ethics Act. Based on the research work, OPA drafted a revised Ethics Act.

Proposed changes were made to reinforce and clarify the Act, to address concerns raised by the Executive Branch and other elected officials, and generally to make the Act consistent with language used in other jurisdictions. Major changes included the addition of sections addressing nepotism, responsibilities of the Attorney General, and solicitation and use of property by government officials and employees who are members of non-profit organizations. Also, revisions were made in sanctions and penalties for violating the Ethics Act.

Inquiries and Opinions

During the year, OPA continued to receive numerous inquiries (20 to 25 per week) about ethics matters. These inquiries generally did not require investigation and responses were made either orally or in writing. In addition, OPA issued one formal opinion at the request of two members of the Senate.

Donations and Gifts

Prior to this year, agencies were not reporting gifts as required by the Ethics Act. However, after we advised agencies and departments to report gifts previously received, and provided them with revised donation forms, agencies began to submit reports.

In 1998, we monitored donations and gifts brought to our attention. When we learned through the media of donations and gifts to

government employees/officials on behalf of the government, we promptly advised them of the requirement to report such donations and gifts both to OPA and the Secretary of Finance.

Total cash and non-cash donations and gifts reported to OPA in 1998 amounted to \$139,079 (Table 2).

Donations Reported in 1998			
Agency	Cash	Non-cash	Total
NMC	\$6,872.38	\$7,307.00	\$14,179.38
PSS	14,000.00	-	14,000.00
Saipan Mayor	-	900.00	900.00
Rota Mayor	-	100,000.00	100,000.00
Joeten-Kiyu Public Library	-	10,000.00	10,000.00
Total	\$20,872.38	\$118,207.00	\$139,079.38

Table 2

Procurement Appeals

OPA received four appeals of bid protest decisions by the Commonwealth Utilities Corporation (CUC). The four appeals protested either the award of a contract by CUC or the evaluation and selection of proposals. In addition, OPA also reviewed three appeals received in late 1997 for a total of seven appeals processed in 1998.

In 1998, decisions were rendered on five of the seven cases processed. Two appeals were granted, one was granted in part, while two were denied. OPA's consideration of the two remaining appeals was suspended because a new selection process, subsequently undertaken by CUC, may render moot some or all of the issues on these two appeals.

In 1998, appeals were granted for the following reasons:

- improper evaluation of bids and proposals,
- violations of specific provisions of applicable procurement regulations pertaining to competitive sealed proposals and bids, or
- unauthorized reprogramming of funds.

In addition, OPA received six requests for reconsideration of previous appeal decisions and one motion to alter or amend an OPA reconsideration decision. These requests were all decided in 1998. Six of these cases were denied while one resulted in a modification of the appeal decision.

Appendix D lists decisions issued in 1998 on appeals of bid protest.

Investigative Activities

The Investigation Division was established to provide OPA with the capability to conduct investigations into allegations of fraud, waste, abuse or irregularities in the programs and operations of the CNMI Government. During the year, the Investigation Division investigated cases involving violations of procurement regulations, fraud, misuse of government funds, misuse of government property, misuse of government vehicles, embezzlement, theft, and violations of the Ethics Act.

During the year, the Investigation Division also provided assistance to other law enforcement agencies including the Federal Bureau of Investigation.

In the second half of 1998, OPA entered into an agreement with the Federal Bureau of Investigation to form a joint task force. OPA assigned two staff members, one investigator and one auditor, to the task force.

OPA HOTLINE

Saipan - (670) 235-3937

Tinian - (670) 433-3937

Rota - (670) 532-0298

The Investigation Division managed OPA's Hotline. Several thousand reports of fraud, waste and abuse in the CNMI Government were received from the Hotline.

Referrals to the Attorney General

The law requires the Public Auditor to refer matters to the Attorney General whenever the Public Auditor has reasonable grounds to believe there have been violations of either federal or Commonwealth criminal laws. Also, the law states that if the Public Auditor believes that civil recovery proceedings are appropriate, the Public Auditor shall refer the matter to the Attorney General. The Public Auditor may file civil actions with the approval of the Attorney General.

In 1998, OPA referred 16 cases to the Attorney General's Office. In addition, there were 40 cases from prior year referrals - 14 from 1995, 13 from 1996, and 13 from 1997. Of the 40 cases, 2 were closed during the year, while 3 will be dropped from the list of outstanding referrals because the Attorney General's Office does not intend to take action.

Appendix C shows the status of referrals as of December 31, 1998.

Independent CPA Firm Audits

Independent Certified Public Accounting (CPA) firms conducted financial and compliance audits of the CNMI Government and its agencies. The purposes of the audits were:

- Single audits in accordance with the U.S. Office of Management and Budget (OMB) Circular A-128 (Audits of State and Local Governments) or OMB Circular A-133 (Audits of Institutions of Higher Education and Other Non-Profit Organizations),
- Financial statement audits,
- Study and evaluation of internal accounting controls, and
- Financial and compliance audit of a Federal grant program.

OPA supervised and monitored the procurement and conduct of audit services for the single audits and financial and compliance audits of the following agencies:

- CNMI Government
- Commonwealth Development Authority
- Commonwealth Government Employees Credit Union
- Commonwealth Ports Authority
- Commonwealth Utilities Corporation
- Marianas Public Land Trust
- Marianas Visitors Authority
- Northern Marianas College
- Northern Mariana Islands Retirement Fund/Government Health Insurance Fund
- Public School System
- Workmen's Compensation Commission

In 1998, nine audit reports were issued by the CPA firms, while field work was ongoing on four audits as of year end. **Appendix B** provides a complete listing of independent CPA firm audits.

Other Activities

Legislative Hearings

During the year, the Public Auditor testified in several Legislative Hearings. In August 1998,

the Public Auditor attended and submitted written testimony (**M-98-01**) to a Senate joint committee investigation into the \$2,243,028 settlement agreement negotiated between I&S Corporation and the Marianas Visitors Authority. In addition, the Public Auditor gave written and oral testimonies in the Tinian Gaming Control Commission investigation hearings.

Also, the Public Auditor attended confirmation hearings for several nominee's to key government positions.

CNMI Financial Management Improvement Plan

From August to September 1998, OPA participated in the development of the CNMI Financial Management Improvement Plan (FMIP). The plan was developed to improve the CNMI government's management of its financial resources.

The plan was a joint project by the Department of Finance, Office of Management and Budget, and OPA. Representatives of the United States Department of Agriculture Graduate School's Pacific Island Training Initiative Program provided support and assistance to the project.

Revision of CNMI Procurement Regulations

Public Law 9-68 required OPA to establish its own procurement regulations which are substantially similar to the CNMI procurement regulations and to administer its own procurement functions. Using the CNMI regulations as a guide, OPA developed its regulations with the intention of having it serve as a model for the CNMI Government. The regulations addressed deficiencies noted in OPA audits.

The FMIP required the CNMI Government to update its procurement regulations. The plan included a review of the procurement regulations being developed by OPA and adapting them to the CNMI's requirements.

OPA offered to revise the CNMI's procurement regulations based on the work it has done on its own regulations. The revised regulations were completed in December 1998 and were presented in early 1999 to the Secretary of Finance and the FMIP members for comments and adoption.

Additionally, OPA prepared presentations for CNMI government departments and agencies to familiarize them with the proposed new regulations if and when they are adopted.

Internet Web Site

In 1998, OPA continued to maintain its web site. The web site provided a method of informing the public of audit and letter reports released, decisions on procurement appeals, Government Ethics Act requirements, job vacancies, fraud, waste and abuse hotline information, and useful links on the Internet.

The web site was revised to improve navigation within the site. Also, a "subscription" feature was added which gives visitors the option to be notified of new OPA reports or decisions released by e-mail.

Concerned citizens have also utilized the site's hotline report form to report fraud, waste and abuse in the government.

The web site received over 9,300 "unique" visits in 1998. OPA's web site can be accessed at <http://opacnmi.com>.

Technical Assistance

At the request of other government branches, departments, and agencies, OPA provided technical assistance on the preparation of the CNMI Budget. Also, OPA assisted in researching information pertaining to proposed legislation.

APIPA

As an active member, OPA participated in the annual conference of the Association of Pacific Island Public Auditors (APIPA) held in February 1998 in Pohnpei, Federated States of Micronesia. The one-week conference provided a forum for sharing experiences and solutions to audit issues common to the Pacific Islands.



OPA Participants to the 1998 APIPA Conference held in Pohnpei poses with training instructors.

The conference also provided OPA staff with training on audit management and supervision. In addition, OPA participants earned 40 continuing professional education hours needed by OPA to meet the requirements of the Government Auditing Standards issued by the United States General Accounting Office. □

Appendix A - OPA Audit Reports Issued

Report No.	Issue Date	Dept/Agency	Report Title	Audit Period
LT-98-01	01/07/98	PSS	Audit of Overtime Claims of a Public School System Administrative Officer	Sep. 1996 to Apr. 1997
AR-98-01	01/15/98	PSS	PSS Audit of MHS Gymnasium Contract	Aug. 1992 to May 1997
LT-98-02	02/12/98	DOF	Audit of Government Revenues from the CNMI Lottery Operations for the 3 rd Quarter of FY 1997 Ending 06/30/97	3 rd Quarter FY 1997
LT-98-03	02/17/98	CPA	CPA Misuse of Government Vehicle	Sep. 1996
LT-98-04	04/06/98	DPW	Audit of DPW Granting Extensive Administrative Leave to a Former Employee	Dec. 22, 1996 to Aug. 2, 1997, Pay Periods 1 to 16
LT-98-05	04/08/98	TMO	Audit and Investigation of the Tinian Mayor's Contract for the Lease of the KBC Building	Jan. 1995 to Sep. 1997
AR-98-02	05/26/98	Various	Review of CNMI's Compliance with Government Vehicle Act and Regulations	Mar. 1995 to Mar. 1997
AR-98-03	06/24/98	Various	Audit of CNMI Government Employees' Time and Attendance	July 1995 to June 1997
LT-98-06	07/07/98	DPH	DPH Review of the Medical Referral Office's Reconciliation of Medical Claims with Straub Clinic and Hospital, Inc.	Jan. 1990 to Dec. 1996
AR-98-04	07/13/98	MVA	Marianas Visitors Authority (Formerly MVB) - Review of Promo and Advertising Services	FY 1992 to 1998
LT-98-07	08/05/98	DOF	Audit of Abuse of Government Time by a DOF Technical Financial Analyst	Sep. 28, 1997 to Mar. 28, 1998
LT-98-08	08/25/98	DOF	Audit and Investigation of Government Misappropriation of Collections at the DOF's Division of Revenue and Taxation	July 1, 1995 to July 31, 1996
AR-98-05	08/18/98	Gov's Office	Audit of the Professional Services Contract with the CNMI's Former Acting Attorney General	Oct. 1996 to Aug. 1997
LT-98-09	08/27/98	DPH	Audit of Time and Attendance of Employees of Department of Health's Materiel Management Division Covering the Payroll Periods Ending March 14 & 28, 1998	Pay Periods Ending March 14 & 28, 1998
LT-98-10	09/16/98	DOF	Audit of Government Revenues from the CNMI Lottery Operations for the 4 th Quarter Ending 09/30/97	4 th Quarter FY 1997

Report No.	Issue Date	Dept/Agency	Report Title	Audit Period
LT-98-11	09/16/98	RMO	Audit of Compliance with Authorized Number of Full Time Employee Positions in the Rota Mayors Office	Nov. 8, 1997
LT-98-12	09/24/98	CPA	Audit of Salary Increases Granted to CPA - Rota Employees	As of Oct. 27, 1997
LT-98-13	11/20/98	SMC	Follow up Audit of the Improper Procurement of Air conditioners for the SMC	Feb. 1994 to Feb. 1996
AR-98-06	12/14/98	DOF	Audit of Misuse of Funds by the Former Secretary of Finance	FY 1995, 1996 & 1997
LT-98-14	12/23/98	MHS	Follow up Audit - MHS Student Funds	Aug. 1991 to Sep. 1992

Appendix B - Independent CPA Firm Audits

A. Audit Reports Issued

Auditee	Auditor	Type of Audit	Report Date
1. CNMI Government	Deloitte and Touche	Financial and compliance audit in accordance with OMB Circular A-133 (single audit requirements of states and local governments) for FY 1997.	October 16, 1998
2. Commonwealth Ports Authority	Deloitte and Touche	Financial and compliance audit in accordance with OMB Circular A-133 for FY 1997.	January 6, 1998
3. Commonwealth Govt. Employees' Credit Union	Burger & Comer, P.C.	Audit of Financial statements for FY 1997.	August 4, 1998
4. NMI Health & Life Insurance Trust Fund	Burger & Comer, P.C.	Audit of financial statements for FY 1997.	February 27, 1998
5. Northern Marianas College	Burger & Comer, P.C.	Audit of financial statements for FY 1995.	August 01, 1998
6. Northern Marianas College	Burger & Comer, P.C.	Audit of financial statements for FY 1996.	August 01, 1998
7. Northern Mariana Islands Retirement Fund	Burger & Comer, P.C.	Audit of financial statements for FY 1997.	January 21, 1998
8. Public School System	Deloitte & Touche	Financial and compliance audit in accordance with OMB Circular A-133 for FY 1995.	November 6, 1998
9. Worker's Compensation Commission	Burger & Comer, P.C.	Audit of financial statements for FY 1997.	January 21, 1998

B. Audits in Progress

Auditee	Auditor	Type of Audit	Status
1. Commonwealth Utilities Corporation	Deloitte and Touche	Financial and compliance audit in accordance with OMB Circular A-128 for FY 1996 & FY 1997.	Draft Audit Report was issued. Waiting for the agency's response.
2. Public School System	Deloitte and Touche	Financial and compliance audit in accordance with OMB Circular A-128 for FY 1996.	Draft Audit Report was issued. Waiting for the agency's response.
3. Public School System	Deloitte and Touche	Financial and compliance audit in accordance with OMB Circular A-128 for FY 1997.	Audit is ongoing.
4. Northern Marianas College	Burger & Comer, P.C.	Financial and compliance audit in accordance with OMB Circular A-133 (single audit requirements for institutions of higher education and other non-profit organizations) for FY 1997.	Audit is ongoing.

Appendix C - Status of Referrals to Attorney General's Office

Reference	Status of Referral
1. OPA referral letter dated 3/23/95 (AR-95-09)	The matter was settled in June 1997 and the final payment is due on July 1998. AGO will provide OPA copies of the checks.
2. OPA referral letter dated 6/23/95 (AR-95-19)	The current status was not provided by AGO.
3. OPA referral letter dated 7/5/95 (LT-95-04)	The matter is under investigation by the Civil Division.
4. OPA referral letter dated 8/14/95 (AR-95-17)	The current status was not provided by AGO.
5. OPA referral letter dated 9/15/95	AGO does not intend to take any action. OPA note: To be dropped from the list.
6. OPA referral letter dated 9/27/95 (AR-95-21)	The matter is under investigation by the Civil Division.
7. OPA referral letter dated 10/3/95 (AR-95-22)	The matter is under investigation by the Civil Division. However, AGO has not filed any civil action.
8. OPA referral letter dated 10/10/95 (AR-96-05)	The Civil Division is still considering possible legal theories under which the Commonwealth could bring a cause of action.
9. OPA referral letter dated 10/24/95	Closed.
10. OPA referral letter dated 05/13/97 (Case#96-0033)	AGO does not intend to take any action. OPA note: To be dropped from the list.
11. OPA referral letter dated 05/19/97 (LT-97-05)	The matter is under investigation by the Civil Division.
12. OPA referral letter dated 06/02/97 (AR-97-07)	The Criminal Division declined to prosecute. However, the matter is under investigation by the Civil Division.
13. OPA referral letter dated 06/17/97 (AR-97-09)	The matter was investigated by the Civil Division. However, the current status was not provided by AGO.
14. OPA referral letter dated 10/01/97 (AR-97-04)	The matter is under investigation by the Civil Division.
15. OPA referral letter dated 10/21/97	The current status was not provided by AGO.
16. OPA referral letter dated 12/10/97 (AR-97-12)	The matter is under investigation by the Criminal Division
17. Report #AR-95-07	The matter is under investigation by the Civil Division.
18. Report #AR-95-11	The matter is under investigation by the Civil Division.
19. Report #AR-95-12	The matter is under investigation by the Civil Division.
20. Report #AR-95-18	This case is currently pending in the Superior Court and is being prosecuted by the Civil Division.
21. Report #AR-96-05	The Civil Division is still considering possible legal theories under which the Commonwealth could bring a cause of action.

Reference	Status of Referral
22. Report #LT-96-04, OPA Case#95-0003	The matter is under investigation by the Civil Division. It will likely be referred to the Criminal Division for review.
23. Report #LT-96-06, OPA Case#96-0002	The matter is under Investigation by the Civil Division.
24. Report #LT-96-07, OPA Case#96-0024	The matter was referred to the Criminal Division. However, the current status was not provided by AGO.
25. Report #LT-96-08, OPA Case#96-0003	The matter is under investigation by the Civil Division.
26. OPA Case#96-0001	The matter is under investigation by the Civil Division.
27. OPA Case#96-0004 (LT-97-01)	The matter was referred to the Criminal Division. A jury trial was scheduled last December 1997. However, current status was not provided by AGO.
28. OPA Case#96-0005	The matter is under investigation by the Criminal Division.
29. OPA Case#96-0009	The matter is under investigation by the Criminal Division.
30. OPA Case#96-0025	Closed.
31. OPA Case#96-0036 (AR-97-06)	The matter is under investigation by the Civil Division. However, the matter will be referred to OPA for further investigation.
32. OPA Case#96-0038	Charges were filed by the Criminal Division and the defendant pleaded guilty. A review hearing was set for May 1998.
33. OPA Case#96-0043	AGO does not intend to take any action. OPA note: To be dropped from the list.
34. OPA Case#96-0044	Charges were filed by the Criminal Division. The case is active and is being prosecuted.
35. OPA Case#97-0012	The matter was referred to the Criminal Division. However, the current status was not provided by AGO.
36. OPA Case#97-0020	Charges were filed by the Criminal Division. The case is presently under the Adult Diversion Program.
37. DOF legal counsel referral letter to AG dated 11/13/95	Current status was not provided by AGO.
38. Memo to Secretary of Finance from Director of Personnel dated March 13, 1997	The matter is under investigation by the Civil Division.
39. Case# 96-0041	The matter was referred to the Criminal Division. However, the current status was not provided by AGO.
40. Report# AR-97-01	The current status was not provided by AGO.
41. OPA referral letter dated February 11, 1998 (Case# 97-051)	The matter is under investigation by the Criminal Division.
42. OPA referral letter dated February 17, 1998 (LT-98-03)	The matter is under investigation by the Civil Division.

Reference	Status of Referral
43. OPA referral letter dated April 28, 1998 (AR-97-05)	The current status was not provided by AGO.
44. OPA referral letter dated May 8, 1998 (Case# 98-020)	The current status was not provided by AGO.
45. OPA referral letter dated May 21, 1998 (Case# 98-008)	The current status was not provided by AGO.
46. OPA referral letter dated June 19, 1998 (Case# 98-036)	The current status was not provided by AGO.
47. OPA referral letter dated July 13, 1998 (AR-98-04)	The current status was not provided by AGO.
48. OPA referral letter dated July 24, 1998 (Case# 97-052)	The current status was not provided by AGO.
49. OPA referral letter dated July 24, 1998 (AR-98-037)	The current status was not provided by AGO.
50. OPA referral letter dated August 12, 1998 (Case# 98-007)	The current status was not provided by AGO.
51. OPA referral letter dated August 18, 1998 (AR-98-05)	The current status was not provided by AGO.
52. OPA referral letter dated September 16, 1998 (LT-98-11)	The current status was not provided by AGO.
53. OPA referral letter dated October 1, 1998 (Case# 97-053 & 98-039)	The current status was not provided by AGO.
54. OPA referral letter dated November 17, 1998 (Case# 98-042)	The current status was not provided by AGO.
55. OPA referral letter dated November 18, 1998 (Case# 90-CR1)	The current status was not provided by AGO.
56. OPA referral letter dated December 14, 1998 (AR-98-06)	The current status was not provided by AGO.

Appendix D - Decisions on Procurement Appeals

Decision No. BP-A014.2

Appellant: Torres Refrigeration, Inc. (TRI)

Subject of Appeal: Request for Reconsideration from OPA's Reconsideration Decision No. BP-A014.1

Date Issued: 10/28/98

Description:

TRI filed a request for reconsideration with this office on May 28, 1998 from the May 18, 1998 decision of OPA, referred as Decision No. BP-A014.1, which ratified the contract between the Public School System (PSS) and JWS Air Conditioning and Refrigeration (JWS) on the delivery and installation of 118 split type air conditioners (A/Cs) for Marianas High School (MHS). OPA denied TRI's request for reconsideration. In its decision, OPA found that, procedurally, no provision exists for OPA to entertain a request for reconsideration from a request for reconsideration. OPA added that because TRI was previously given the opportunity to argue against PSS's reconsideration request, OPA cannot now consider any of TRI's subsequent objections on these issues.

Decision No. BP-A016.2

Appellant: Commonwealth Utilities Corporation (CUC)

Subject of Appeal: Motion to Alter or Amend Decision on Request for Reconsideration No. BP-A016.1

Date Issued: 10/23/98

Description:

CUC filed a motion requesting OPA to delete and exclude reference to a memorandum by CUC's Acting Power Division Manager which was cited on page 8 of Decision No. BP-A016.1. This decision pertained to CUC's earlier request for reconsideration of a previous OPA decision on the 80 MW power plant project (referred to as Appeal Decision No. BP-A016). CUC alleged that the referenced memorandum is covered by the "attorney-client privilege" and/or by the "deliberative process or executive privilege." OPA denied CUC's motion. OPA found that the subject memorandum was nothing more than a communication between one member of the selection committee and the other three, and that nothing in the subject memorandum requested legal advice. In submitting the documents to OPA for review, OPA found that CUC's legal counsel did not make any cautionary comments or express reservations about any of the documents provided, and claimed no privilege. As for CUC's claim of executive privilege, OPA ruled that the memorandum was disclosed well after relevant decisions were made by CUC, and as a result, disclosure had no effect on the deliberative or decision-making process.

Decision No. BP-A016.1

Appellant: Commonwealth Utilities Corporation (CUC)

Subject of Appeal: Request for Reconsideration of Earlier Decision (OPA Appeal Decision No. BP-A016)

Date Issued: 9/22/98

Description:

CUC requested that OPA reconsider its earlier decision granting in part the appeal filed by Pacific Marine and Industrial Corporation & Ogden Energy Inc. (PMIC/Ogden) on CUC's Request for Proposals (RFP) No. 97-0025 pertaining to the solicitation of proposals for an additional 80 Megawatt (MW) of power generation facility on Saipan. This request for reconsideration was denied in its entirety. In its decision, OPA concluded that CUC's arguments in its reconsideration request provided no basis for OPA to alter its decision on PMIC/Ogden's appeal because CUC's arguments did not persuade OPA that its decision contained errors of fact or law, and those arguments presented information which was inconsistent, irrelevant, incorrect, or lacking in merit. OPA's earlier decision granted in part PMIC/Ogden's appeal because its review showed that CUC's determination of competitive range offers was not in compliance with CUC's own Procurement Regulations. OPA then recommended that CUC make a redetermination of the competitive range offerors in which all proposals that are reasonably susceptible of award should be included within the range.

Decision No. BP-A015.1

Appellant: Pacific Marine & Industrial Corporation (PMIC)

Subject of Appeal: Request for Reconsideration of Earlier Decision (OPA Appeal Decision No. BP-A015)

Date Issued: 7/20/98

Description:

PMIC requested that OPA reconsider its earlier decision denying PMIC's appeal on CUC's Request for Proposals (RFP) No. 97-0002 pertaining to the design, construction, and operation of a power generation facility on the island of Tinian. This request for reconsideration was denied in its entirety. In its decision, OPA concluded that the arguments in the reconsideration request provided no basis for OPA to reconsider its earlier decision. OPA stated that, based on PMIC's arguments, it was neither persuaded that its appeal decision contained errors of fact or law nor was it presented information not previously considered in its earlier decision which would warrant reversal or modification of that prior decision.

Decision: BP-A016

Appellant: Pacific Marine & Industrial Corporation & Ogden Energy, Inc. (PMIC/Ogden)

Subject of Appeal: 80 Megawatt (MW) Power Generation Facility for the Island of Saipan

Date Issued: 6/18/98

Description:

The appeal resulted from the denial of PMIC/Ogden's protest on the Commonwealth Utilities Corporation (CUC) Request for Proposals (RFP) No. 97-0025. This RFP was a solicitation of proposals from Independent Power Producers (IPPs) to provide an additional 80 Megawatt (MW) power generation facility on Saipan. We decided to grant the appeal in part. We concluded that CUC's determination of competitive range offerors was not in compliance with the CUCPR because (1) CUC merely reduced the number of those included within the competitive range based on a cut-off score, and concluded that those proposers whose scores were above the cut-off number were the only ones reasonably susceptible of award; (2) the cut-off score was itself flawed as it was based on erroneous scores; and (3) one of the committee members stated that twelve out of the thirteen proposals were reasonably susceptible of selection for award. Additionally, we concluded that CUC's methodology did not represent a rational approach to measure whether a proposal was reasonably susceptible of award. Accordingly, we recommended that CUC make a redetermination of the competitive range offerors in compliance

with the requirements of the CUCPR, and those which qualified under this standard but were originally excluded from the competitive range should be reinstated in the competition by asking the proposers to submit best and final offers.

Decision No. BP-A015

Appellant: Pacific Marine & Industrial Corporation (PMIC)
Subject of Appeal: Design, Construction, and Operation of a Power Generation Facility
on the island of Tinian
Date Issued: 6/9/98

Description:

This appeal resulted from the failure of the Commonwealth Utilities Corporation (CUC) Executive Director to issue a decision concerning PMIC's earlier protest on CUC's Request for Proposal (RFP) No. 97-0002. This RFP was a solicitation of competitive sealed proposals from independent power producers for the design, construction, and operation of a power generation facility that is capable of self-sustained operations under the following two options: (1) a 10 megawatt (MW) load which will initially house two 5 MW generating units with room for installing four additional units of the same size, and (2) a 30 MW load with financing schemes and a minimum repayment term of ten years. We decided to deny the appeal. We concluded in our appeal decision that OPA did not have jurisdiction to hear the appeal filed by PMIC on this RFP because PMIC had not earlier filed a timely protest with the CUC Executive Director pursuant to the CUC Procurement Regulations. Under those Regulations, a written appeal to the Public Auditor from a decision by the Director may be taken, provided that the party taking the appeal has first submitted a written protest within ten days after such aggrieved person knew or should have known of the facts giving rise to the protest.

Decision No. BP-A014.1

Appellant: JWS Air Conditioning and Refrigeration and PSS
Subject of Appeal: Reconsideration of Earlier Decision on Procurement of 118 Air Conditioners for
Marianas High School
Date Issued: 5/18/98

Description:

JWS Air Conditioning and the Public School System (PSS) requested reconsideration of an earlier decision (BP-A014). In its reconsideration decision, OPA determined that the violations in this particular procurement which were noted in the earlier ruling were not of such significance as to warrant the drastic remedy of directing the removal of the air conditioners installed at MHS by JWS. The decision stated that inappropriate actions or inactions by certain PSS and MHS personnel should not be tolerated because the integrity of the procurement process is at stake. OPA recommended that the PSS Commissioner consider imposing administrative disciplinary sanctions against the persons responsible for the violations of the PSSPR mentioned in the earlier decision, and for allowing JWS to continue performance of its contract after the protest was filed.

Decision No. BP-A014

Appellant: Torres Refrigeration, Inc.
 Subject of Appeal: Procurement of 118 Air Conditioners for Marianas High
 Date Issued: 3/31/98

Description:

The appeal resulted from the denial of the appellant's protest by the Commissioner of Education in PSS Invitation for Bids (IFB) No. 97-0019. This IFB was a solicitation of bids from vendors for the delivery and installation of 118 air conditioners for MHS. We decided to grant the appeal. We concluded in our appeal decision that there was a violation of the PSS Procurement Regulations in that: (1) the evaluation conducted did not adequately consider the selected bidder's compliance with the technical specifications of the IFB, (2) said evaluation considered certain factors not set forth in the bid specifications, and (3) the selected bidder did not fully meet the requirements set forth in the bid specifications.

Decision No. BP-A013

Appellant: Joeten Motors Company, Inc. (JMC)
 Subject of Appeal: Procurement of 12 Mini Vans by the Commonwealth Judiciary
 Date Issued: 3/11/98

Description:

The appeal resulted from the denial by the Director of Procurement and Supply of the appellant's protest on the Judiciary's Request for Proposal (RFP) No. 97-10. The RFP was a solicitation for proposals from automobile dealers for the purchase of 3 to 5 units of 1997 minivans. We decided to grant the appeal of JMC and direct that contract nos. 303745-OC and 303743-OC awarded to Microl Corporation covering the purchase of four and eight units of minivans, respectively, be terminated. As stated in the appeal decision, we found significant violation of applicable laws and regulations, specifically those pertaining to unauthorized procurement actions by the Judiciary, failure to give adequate public notice of the RFP, and unauthorized reprogramming of funds.

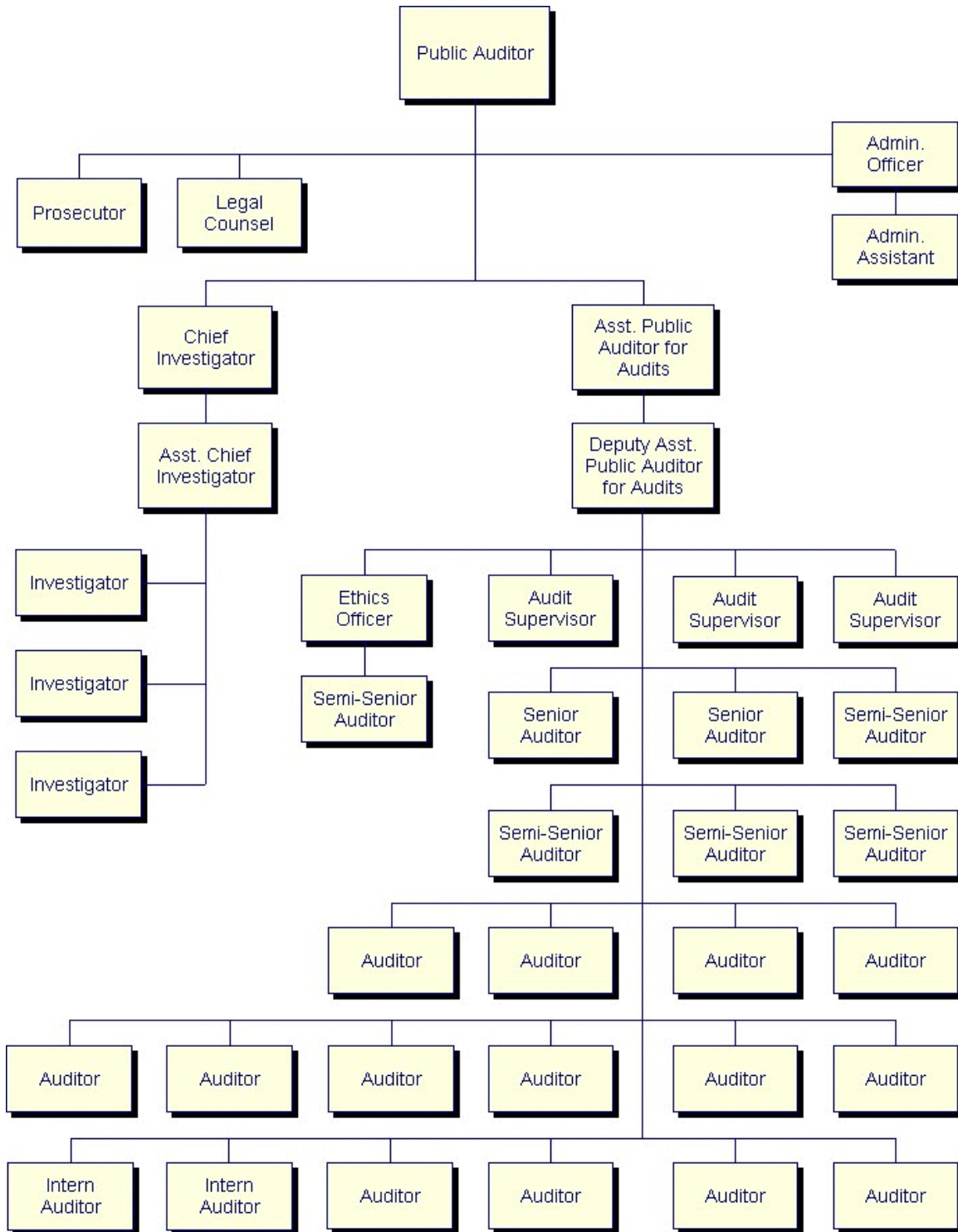
Decision No. BP-A012

Appellant: Carrier Guam Inc., Saipan Branch
 Subject of Appeal: Procurement of 118 Air Conditioners for Marianas High School (MHS)
 Date Issued: 2/26/98

Description:

The appeal resulted from the denial of the appellant's protest by the Commissioner of Education in the PSS Invitation for Bids (IFB) No. 97-0019. This IFB was a solicitation of bids from vendors for the delivery and installation of 118 air conditioners for MHS. We decided to deny the appeal. As stated in our appeal decision, we concluded that the appellant was not an interested party in PSS IFB 97-0019, and therefore lacked standing to protest any procurement action involving this IFB. We further stated that the appellant was not an interested party because it was neither an actual nor a prospective bidder.

Appendix E - OPA Organizational Chart



Appendix F - Ethics Presentations Conducted

	Date Given	Name of Organization
1	02/17/98	Div. of Youth Services - Homemakers and Parents Association
2	03/05/98	Council for the Humanities - NCNB Workshop
3	03/09/98	Office of the Lt. Governor
4	04/08/98	NMI Retirement Fund
5	04/09/98	Dept. of Community and Cultural Affairs
6	04/13/98	Northern Marianas Housing Corporation
7	04/17/98	Job Training Partnership Act Office
8	04/22/98	CNMI Legislature
9	04/24/98	Northern Marianas College
10	04/27/98	Tinian Mayor's Office
11	04/30/98	Saipan Mayor's Office
12	05/04/98	Marianas Visitor Authority
13	05/11/98	Northern Marianas College - Rota
14	07/08/98	Dept. of Public Health/CHC
15	07/10/98	Dept. of Public Safety
16	07/14/98	Dept. of Commerce
17	07/17/98	Dept. of Public Works
18	07/21/98	Dept. of Public Works - DEQ
19	07/22/98	Office of Personnel Management
20	08/11/98	Dept. of Labor and Immigration
21	08/13/98	Tinian Gaming Commission & Tinian Municipal Council
22	08/25/98	Saipan Municipal Council & Vocational Rehab Center
23	08/27/98	Dept. of Lands and Natural Resources
24	09/02/98	Rota Mayor's Office
25	09/08/98	Board of Elections
26	09/17/98	Public School System - Administration Division
27	09/18/98	Public School System - Administration Division
28	09/22/98	Joeten-Kiju Public Library & Board of Parole

	Date Given	Name of Organization
29	09/23/98	Public School System - Administration Division
30	09/25/98	Public School System - Administration Division
31	10/01/98	Governor's Disabilities Planning Council
32	10/06/98	Board of Professional Licensing
33	10/13/98	Koblerville Elementary School
34	10/13/98	Tanapag Elementary School - PTA
35	10/14/98	San. Antonio Elementary School
36	10/14/98	San. Antonio Elementary School - PTA
37	10/15/98	Hopwood Jr. High School
38	10/19/98	Rota Elementary School
39	10/20/98	Rota High School & Rota Liaison Office
40	10/20/98	Rota High School - PTA
41	10/21/98	GTC Elementary School
42	10/22/98	Tanapag Elementary School
43	10/23/98	Public School System - Administration Division
44	10/27/98	Tinian Elementary & High School
45	10/30/98	Public Defenders Office
46	11/06/98	Commonwealth Development Authority
47	11/12/98	Board of Education
48	11/12/98	San Vicente Elementary School
49	11/17 to 18/98	Marianas High School
50	11/18/98	Oleai Elementary School
51	11/19/98	Dept. of Finance - Finance & Accounting, Treasury and EDP Divisions
52	11/19/98	Dept. of Finance - Procurement & Supply Division
53	11/19/98	Garapan Elementary School - PTA
54	11/20/98	Dept. of Finance - Customs Division
55	11/20/98	Dept. of Finance - Secretary's Office and Division of Revenue & Taxation
56	12/02/98	Marianas Visitor Authority (Board of Directors)

