

Annual Report

Office of the Public Auditor

January to December 2010

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Public Auditor



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Audit Reports

Tobacco Control Fund Status Inspection Report

OPA's inspection of the Tobacco Fund Status found that within fiscal years 2003 to 2009, the required amount to cover all enacted appropriations out of the Fund exceeded actual Fund revenues. Also, appropriations were enacted for purposes that had no relationship to the original legislative intent. OPA concluded that the Tobacco Control



Fund has become merely a reserve for the General Fund. The major recommendation in the report was to have the Tobacco Control Fund merged with the General Fund. This would simplify the budgeting process and allow greater transparency in the budgeting and accounting process. The Acting Secretary of Finance concurred with OPA's recommendation. Also, in reviewing the fiscal year 2008 CNMI Single Audit, OPA noted a total of 18 similar special revenue funds and suggested that the Legislature consider looking into these funds and take similar actions if warranted.

CNMI Single Audit

OPA staff assisted in the audit of the Commonwealth of the Northern Mariana Islands' (CNMI) financial statements for the fiscal year ended September 30, 2009, conducted by Deloitte & Touche in accordance with the United States Office of Management and Budget Circular A-133. The audit report showed that the CNMI General Fund's deficit rose 17.4% to \$300.8 million from \$256.4 million in fiscal year 2008.



The financial highlights of the report were as follows:

- The CNMI's total net deficiency increased by \$45.2 million to a net deficiency of \$164.2 million, which represents an increase of approximately 38% from the net deficiency at the beginning of the year.
- During the year, the CNMI's expenses for governmental activities were \$275.4 million. These expenses were funded in part by program revenues of \$117.4 million, further funded with taxes and other general revenues that totaled \$112.8 million. The difference between total revenues of \$230.2 million and total expenses of \$275.4 million resulted in the \$45.2 million increase in net deficiency.
- At September 30, 2009, the General Fund reported an unreserved fund deficit of \$300.8 million, reflecting an increase of 17.4% from the unreserved fund deficit of \$256.3 million at the beginning of the year.

- For budgetary reporting purposes, General Fund actual revenues were lower than final estimates by \$18.4 million or 11.8%, while reported actual expenditures exceeded final estimated appropriations by \$18.6 million or 11.0%.

PSS FY 2009 Single Audit Discloses Material Control Weaknesses

The report on the audit of the financial statements of the Public School System for the years ended September 30, 2009 and 2008, conducted by J. Scott Magliari and Company disclosed material weaknesses in internal controls as follows:



1. Use of Preauthorized Trip Report - Most of the trip reports examined did not provide detailed descriptions of what was obtained during the trip and how these could help improve PSS.
2. Use of Organization Credit Card - PSS credit cards were used on several trips to pay for accommodations and conference/seminar registrations of the traveler in violation of PSS policy on the use of PSS credit card.
3. Compliance with Appropriations Budget - The Board of Education increased the salary of the PSS Commissioner, Legal Counsel, and Board Secretary in violation of the 2009 Appropriations Act which froze all government salaries except for classroom teachers. Also PSS used funds appropriated for PSS operations to renovate the office of the Board of Education amounting to \$9,590 and purchased equipment for the Board though the Appropriations Act expressly prohibited such expenditures.
4. Sole Source Contracts - Several sole source contracts were awarded without Cost and Price analysis.

The report listed other violations in PSS's established travel and employment contract policies, and questioned costs on Federally-funded programs.

Report on CPA's FY2009 Financial Statements, Internal Control and Compliance

The Report on Internal Controls and on Compliance of the Commonwealth Ports Authority (CPA) conducted by Deloitte and Touche for the year ended September 30, 2009 disclosed weaknesses in internal controls some of which are as follows:



- CPA was assessed a penalty of \$176,378 for the non-filing of Form 941 Employer's Quarterly Federal Tax Return for fiscal year 2008 and the

first and second quarters of fiscal year 2009. CPA received various notices from the Internal Revenue Service but did not act on these notices in a timely manner.

- The Airport general checking account was not reconciled during the fiscal year. At September 30, 2009, the general ledger account balance was \$16,095 and the bank balance was \$21,263.
- Reconciliations of the Airport and Seaport payroll accounts were not performed during the fiscal year.

Report on CUC's FY 2009 Financial Statements, Internal Control and Compliance

The report on the audit of financial statements of the Commonwealth Utilities Corporation (CUC) for the fiscal year ended September 30, 2009 and 2008, conducted by J. Scott Magliari & Company, disclosed the following:



- Pursuant to Title 4 Division 8 of the Commonwealth Code § 8155, all funds received by CUC must be deposited into insured or fully collateralized accounts. Bank deposits in the amount of \$9,538,178 and \$8,101,172 were in excess of FDIC insurable limits insured as of September 30, 2009 and 2008, respectively. CUC also has deposits of \$18,293 in 2009 and \$5,259 in 2008 maintained in an uninsured financial institution.
- For fiscal year ended September 30, 2009, CUC adjusted \$287,297 as additional production fuel expenses, for the net overstatement of the inventory general ledger balance control account against adjusted inventory valuation report. The variance was not investigated and there was no analysis of the loss pertaining to normal operations (such as flushing loss), costing or pricing variance and extraordinary loss which may be due to theft.
- Pursuant to CUC Electric Service Regulation, Part 17, CUC may disconnect past due accounts 14 calendar days after the second disconnection notice, which is sent 45 days after the first disconnection notice. The audit found 244 customer accounts whose aggregate overdue balance was \$299,875 none of which had disputes or promissory notes and were not disconnected. Also, since CUC may not disconnect customers who are disputing their account balances, as of September 30, 2009, total customers with disputed accounts totaled 781 with an aggregate balance of \$9,703,070. The collectability of these past due customer accounts are doubtful.

Report on NMIRF's FY 2009 Financial Statements, Internal Control and Compliance

The report on the audit of financial statements of the Northern Mariana Islands Retirement Fund for the years ended September 30, 2009 and 2008 conducted by J. Scott Magliari & Company disclosed unfunded liability of \$545,965,188.

Based on the latest actuarial valuation of the Defined Benefit Plan dated October 1, 2008, the present value of accrued benefits amounted to \$899,440,600. As of September 30, 2009, plan net assets available for benefits were \$353,475,412. If the plan terminated at September 30, 2009, the Fund's plan net assets available for benefits would not be enough to pay for its accrued benefits. Present value of accrued benefits in excess of the plan net assets available for benefit was \$545,965,188.

Additionally, the report noted the following:

- As noted in the FY 2008 audit, the third-party systems developer may be in violation of the terms of the contract. The contract states that the project should be completed and successfully rolled-out by September 30, 2008. As of audit report date, May 28, 2010, the database software has not been fully implemented. (Note: As of December 31, 2010, the third-party systems vendor still has not completed and rolled-out the database software for use by NMIRF.)
- Receivable confirmation received from a plan sponsor showed a significant difference with the employer contributions receivable in NMIRF's records. NMIRF has not performed account reconciliation with the plan sponsor.
- The subsidiary ledgers and general ledger balances for Employer Contributions, Mortgage Loan Receivables, Buy Back Receivable, and Accounts Payable were not reconciled.
- The refund made to a member exceeded his actual contributions plus interest. The disbursement made included the buyback balance that was uncollected.
- During meetings of the Board of Trustees, the Controller only presented certain elements of the financial statements, such as investment withdrawals for the period and contributions received. A complete set of financial statements was not prepared to provide management with sufficient information to make informed decisions.

Other Financial Audits

OPA also supervised and monitored the procurement and conduct of audit services for the single audits and financial and compliance audits for Fiscal Year 2009 of the following agencies:

- Commonwealth Development Authority
- Northern Mariana Islands Housing Corporation
- Marianas Public Land Trust
- Marianas Visitors Authority
- Northern Marianas College

Procurement Appeals

BP-A061: OPA Affirmed P&S Director's Decision to Deny GPPC's Second Protest

The issue on appeal was whether ITSI, Inc. ITSI "qualified" its lump sum bid such that it could not be considered a firm offer and must be rejected as non-responsive. On April 1, 2010, OPA found that ITSI's bid was responsive, that the Contracting Officer properly solicited additional information with which to make a responsibility determination, and that the Contracting Officer's responsibility decision had a rational basis, with no showing of fraud or bad faith or prejudicial violation of an applicable statute or regulation.

BP-A062: Bid Acceptance Period Had Expired and Contractor Legitimately Refused to Waive the Expiration

ITSI, Inc. (ITSI) filed an appeal from the denial of its protest regarding DPW 09-IFB-19 by the Director of the Division of Procurement and Supply, Department of Finance (the Director). The Director found that ITSI had not timely raised the issue of a design flaw. He also found ITSI had both explicitly and implicitly extended its bid proposal, had not revoked the offer prior to the CNMI's acceptance of it, and the ITSI offer was still viable because of the CNMI's reliance upon it.



The Old Puerto Rico dump site

ITSI appealed the Director's Decision to OPA. ITSI claimed it timely raised the issue of the design flaw regarding the thickness of the landfill cap "early and often." In its August 12, 2010 decision, OPA found, on the contrary, prior to its April 2010 protest, ITSI raised the issue only once and that was before the bids were even submitted. Thus, OPA found that the issue of the design defect was not timely raised by ITSI. OPA also found that ITSI's bid acceptance period had expired and ITSI alone had the right to waive that expiration and had refused to do so; and that the solicitation DPW 09-IFB-19 was cancelled on the date of the decision pursuant to NMIAC 70-30.3-510(a)(1). OPA made no determination on disposition of the bid bond, as OPA has no jurisdiction over what the CNMI could do with ITSI's bid bond.

BP-A063: GPPC Request for Reconsideration on Puerto Rico Dump Closure

GPPC, Inc., (GPPC) filed its Request for Reconsideration after OPA issued its Decision on the third appeal on the closing of the Puerto Rico dump. On September 8, 2010, OPA reconsidered its previous decision to cancel both the Notice of Proposed Award and the invitation for bid (IFB). OPA cancelled the Notice of Proposed Award to ITSI, for the reasons outlined in its previous Decision, that is, that the bid acceptance period had expired and the right to waive that expiration belonged to ITSI alone, either explicitly or by its conduct, and it had not done so. OPA rescinded its cancellation of the solicitation. OPA also noted it could not award the contract to GPPC as it cannot substitute its judgment for that of the Contracting Officer. Moreover, OPA left to the discretion of the Director to determine whether (1) GPPC was a responsible bidder, (2) whether its bid price was reasonable, or (3) whether awarding the contract to GPPC was in the best interests of the Commonwealth.

BP-A064: OPA upholds PSS Rejection of Hong Electric's Bid as Non-responsive

Hong Electric Enterprises, Inc. (Hong Electric) timely submitted a bid on PSS IFB 10-056, Electrical Upgrade at Hopwood Junior High School and Dandan Elementary School. Hong Electric's bid was twice rejected by the Commissioner of Education (Commissioner) of the Public School System (PSS) as non-responsive, first because its completion date exceeded that prescribed by the RFP and then because it had failed to sign a required EEO form. Hong protested. The Commissioner agreed that failure to sign the EEO form was immaterial but sustained the Contracting Officer's determination that the bid was non-responsive due to the extended completion period. Hong then appealed to OPA because of an ambiguity in the expected completion date. On October 26, 2010, OPA found that PSS properly rejected the appellant's bid as non-responsive.

Audit Recommendation Tracking

OPA tracked 46 recommendations in 2010. Of the 46 audit recommendations, six were closed and 40 remained either open or resolved. Of the 40 open or resolved recommendations, 26 were considered delinquent.

Potential Recovery of \$2.6 Million Referred to AGO

As of December 31, 2010, audit recommendations in seven audit reports were referred to the Attorney General's Office (AGO) for legal action to recover monies improperly expended. According to these seven audit reports, approximately \$2.6 million is potentially recoverable. The AGO did not provide OPA an update on these referral cases during OPA's follow-up process, therefore, the status of these referrals remain unchanged.

Potential Recovery of \$3.6 Million Hinges on Agencies' Actions

Recommendations in eight audit reports identified potential recoveries due to unpaid rentals of land leases, uncollected labor processing fees, overpayments in professional services contracts and retirement benefits, and improper expenditures of public funds.

During its follow-up process for the period covering January 2010 through December 2010, OPA received updates from the Department of Public Lands and the Northern Mariana Islands Retirement Fund on the status of recovery of funds.

Of the \$4,726,434 identified as potentially recoverable, \$1,054,605 has been partially recovered leaving a balance of \$3,671,829 still potentially recoverable as of December 31, 2010.

Independent Auditor's Recommendations

OPA also includes in its Audit Recommendation Tracking System a total of 161 recommendations from 12 recent audit reports issued by private CPA firms.

Investigations

OPA receives and acts on complaints from the public to investigate fraud, waste and abuse in the CNMI government. From January to December 2010, OPA received 130 complaints through OPA's website hotline, letters, or internal referrals. Of the 130 complaints, 22 were considered high priority, 25 were considered medium priority, 33 were low priority, and 50 were designated as inappropriate for investigation due to either insufficient information or the complaint was outside of OPA's mandate.

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

In 2010, the Office of the Attorney General filed separate criminal cases against five government employees in the wake of investigations by OPA that uncovered time sheets being falsified, deposit and trust money being stolen, and even a Public School System's laptop landing at a pawnshop.

In March 2010, the AGO withdrew its staff from the OPA/AGO task force on white-collar crime and government corruption due to the restructuring of its investigative personnel. This action led to the decommissioning of the task force.



Investigation Unit office building

Campaign Finance

Campaign Finance Reporting Guide

Under the Election Reform Act of 2000 (Election Reform Act), OPA is mandated to monitor all campaign contributions and expenditures. OPA provided the candidates and their treasurers a Campaign Finance Reporting Guide which outlines the responsibilities and restrictions placed on candidates and their treasurers and provides assistance on how to complete the required campaign finance reports.

Before the 2010 Election, OPA conducted three presentations on Saipan, Tinian, and Rota to explain directly to the candidates and their treasurers the details of the Election Reform Act and illustrated how to properly complete the required Campaign Statement Account.

Campaign Statement of Account

Public Law 12-18, the "Northern Mariana Islands Election Reform Act of 2000," requires all certified candidates to file a detailed Campaign Statement of Account. This itemized Statement, prepared with the advice and co-signature of the candidate's treasurer, must show the specific source(s), name(s) of contributor(s), and amount(s) of contributions and expenses.



The Commonwealth Election Commission (CEC) certified four candidates for the 2010 election for the Delegate to the United States Congress.

Observation of Elections

CNMI Election Law also states that a preliminary count of votes must be conducted at the voting location by one CEC staff member in the presence of one representative from OPA and one assistant attorney general. Furthermore, any appeals to decisions made by CEC staff members on voter challenges will be heard by a panel of three consisting of the Chair or Commissioner of CEC, the Public Auditor and the Attorney General. In 2010, OPA observed the conduct of elections for Delegate to the United States Congress.

Ethics Act

One of OPA's primary responsibilities is to enforce the Government Ethics Code Act of 1992 (Ethics Act).

In 2010, OPA conducted five presentations on Saipan, Tinian and Rota to ensure government agency and employee compliance with its provisions. Agencies and employees were also provided five brochures developed by OPA that address: 1) Conflicts of Interest, 2) Gifts and Gratuities, 3) Complaints on Ethics Violations, 4) Political Activity, and 5) Filing of Financial Disclosure Statements.

Financial Disclosure

Under 1 CMC § 8511 of the Ethics Act, all elected and appointed Commonwealth officials, judicial officers, and executive department heads or directors are required to file an annual confidential financial disclosure statement to avoid possible conflicts of interest. OPA's Ethics and Compliance Unit continues to vigorously implement all financial disclosure requirements of the Ethics Act to ensure compliance by officials and appointees.

OPA is confident these ongoing efforts will help increase awareness and reduce the number of ethics violations. For additional information about the CNMI Ethics Code Act, please visit our website at www.opacnmi.com.

Ethics Opinion 10-1

On August 25, 2010, OPA received an anonymous request for an advisory opinion interpreting the Ethics Act. OPA noted in its Ethics Opinion 10-01 that the Ethics Act, CNMI Constitution, and House of Representative Rules of Procedures all prohibit legislators from influencing, introducing, voting or debating on legislation that benefits relatives (as defined by the Ethics Act) to any degree greater than as members of the public. OPA opined that the hypothetical assumptions presented in the request for an advisory opinion indicated a direct conflict of interest, where individual plots of land owned by relatives are re-zoned by the legislation which is not part of a greater legislative scheme to revisit the zoning designations of the zoning law. The scenario presented by the requesting party was deemed as violating the Ethics Act, the CNMI Constitution, and House of Representative Rules of Procedures.

Ethics Investigation

On August 29, of 2010 OPA received several anonymous complaints alleging violations of the Ethics Act and the Commonwealth Election Act regarding the hosting of a dinner party in support of a candidate for public office by an appointed Commonwealth official. In response to these allegations, OPA launched an investigation under the Ethics Act. On December 12, 2010 OPA

issued an investigative report to the appropriate parties as required under the law. The contents of the investigative report, including the identity of the subject of the investigation and the findings and recommendations of the Public Auditor, are confidential pursuant to CNMI law.

OPA Human Resources

Personnel

In fiscal year 2010, OPA was authorized 33 full-time equivalent (FTE) employee positions. The 33 FTEs consisted of 22 auditors/analysts, five investigators, two legal counsels, three administrative staff, and one intern analyst. OPA started the year with 18 FTEs filled, but resignations and non-renewals of contracts during the year left OPA with only 14 FTEs filled at year end. Of the 14 FTEs at year end, eight were auditors/analysts, two were investigators, two were legal counsels, and two were administrative staff.



Public Auditor Mike Pai and the audit staff

The low staff level negatively impacted OPA's ability to look into the numerous requests for audits and investigations. Only a few audits were started and because of the length of time needed to complete audits in accordance with Generally Accepted Auditing Standards (GAAS), these audits were ongoing at the end of the year.

Auditor Training Program

OPA established an Auditor Training Program in December 2002 through a partnership with the Department of Interior's Office of Insular Affairs and Office of Inspector General. OPA anticipated that the training program would help attract and retain resident auditors. However, the results of the program did not meet expectations because OPA was not able to recruit and retain qualified auditors. This may be due in part to the CNMI's economic situation and the government's financial condition as staff and job applicants looked for higher salaries and more stable employment conditions elsewhere.



USDA's Pacific Islands Training Initiative Program sponsored a training course held at the Hyatt Regency Hotel on November 15-19, 2010. OPA audit staff along with representatives from the Northern Mariana Islands Retirement Fund and J. Scott Magliari & Company attended the training course.

Summer Internships

OPA regularly participates in Summer Youth Employment Training Program through the Workforce Investment Agency. In 2010, OPA employed four trainees.

Financial Information

Guaranteed Funding

Constitutional and statutory provisions guarantee funding for OPA. As authorized by 1 CMC §7831, OPA receives one percent of all local appropriations and is authorized to receive one percent of the operations budgets of all public corporations and autonomous agencies. While this funding guarantee has averaged over \$3 million a year, OPA's budget submissions have historically been much less. At the end of the fiscal year, any funds received in excess of actual expenditures revert to the general fund. However, OPA experienced deficits in the last two fiscal years due to the failure by autonomous agencies to remit one percent of their operating budgets.

Budget and Expenditures

In Fiscal Year 2010, OPA had an approved budget of \$2,646,536. OPA's actual expenditures totaled \$1,299,794 for a surplus of \$1,346,742. Of OPA's total expenditures, 74% or \$957,575 was spent on personnel expenses and 26% or \$342,219 was spent on all other expenses, which included \$264,445 for professional services – most of which was for the CNMI government-wide single audit.

Technical Assistance Grants

Due to the CNMI's dire financial situation, OPA turned to the Department of Interior Office of Insular Affairs for technical assistance grant funds. In 2010, OPA received a Technical Assistance Grant of \$78,810 to assist the office in purchasing critically needed IT/Computer equipment for its investigative/audit staff.

Additionally, OPA used remaining funds from an existing Technical Assistance Grant of \$120,000 that was awarded in November 2008. This grant funded OPA's Auditor Training Program and expenses incurred by OPA audit and investigative staff in attending training courses to enhance their professional skills. The Continuing Professional Education (CPE) hours earned from the training courses also enabled OPA to comply with the CPE requirements of the Government Auditing Standards.

Professional Affiliations

Association of Pacific Island Public Auditors (APIPA)

In 1988, the CNMI Public Auditor along with the heads of audit organizations of American Samoa, Republic of Marshall Islands, Federated States of Micronesia, and Republic of Palau formed the APIPA. The Department of Interior Office of the Inspector General – Guam also became a nonvoting member in 1988. Since inception, APIPA has expanded to include Public Auditors from Pohnpei, Yap, Chuuk, Kosrae, Guam, Western Samoa and the United States Virgin Islands.



APIPA was formed to achieve the following objectives:

1. Establish an organized body to act as one voice in support of the goal of promoting efficiency and accountability in the use of public resources of emerging nations of the Pacific;
2. To provide a forum for the exchange of ideas, experience, problems, and the identification of solutions which are often unique to the Public Auditors in the Pacific;
3. Sponsor auditing and accounting training workshops, in cooperation with established associations of the staff of member offices;
4. Identify scholarship sources for Pacific Islanders in need of financial assistance to study auditing and accounting at the post-secondary level; and
5. Promote public awareness for the purpose of conducting audits of public resources.

The members hold an annual conference, which usually lasts five days. The annual conference provides the APIPA members with the required continuing professional education for their audit staff. It has also become an important forum for discussion and interaction among APIPA members and those involved in auditing and government financial management in the region.

In 2010, OPA staff members attended the APIPA Conference held in Pohnpei, Federated States of Micronesia.

Pacific Association of Supreme Audit Institutions (PASAI)

OPA is one of 25 member audit organizations that make up the PASAI. PASAI was created to promote understanding and cooperation among Pacific Audit Institutions. PASAI encourages the exchange of ideas, experiences, and expertise among member organizations; provides continuing education for government auditors; and links regional public audit organizations with counterparts worldwide.

Association of Government Accountants (AGA)

The AGA provides support for the careers and professional development of government finance professionals nationwide. There are currently over 14,000 AGA members.



With the reactivation of the local AGA chapter, OPA is looking to the AGA as another source of continuing professional education credits for OPA staff.

Society for Human Resource Management (SHRM)

SHRM's mission is to serve the needs of the human resource professionals by providing the most essential and comprehensive resources available. It is the world's largest association dedicated to human resource management. SHRM has more than 500 affiliated chapters, including the CNMI. OPA is an active participant in the local SHRM chapter.

Appendix A

OPA Functional Organizational Chart



