



## EXECUTIVE SUMMARY

### Mayors' Council of Guam Host Community Benefit Fund

### OPA Report No. 22-03, July 2022

Our audit of the receipts and disbursements of the Mayors' Council of Guam's (MCOG) Host Community Benefit Fund (HCBF) administered by the Host Community villages of Chalan Pago-Ordot (CPO) and Inalåhan found that the overall management and usage of the HCBF was not entirely in accordance with applicable laws, regulations and best practices. Specifically, we found:

- Unauthorized Expenditures from the HCBF
- Lack of Adequate Documentation for Expenditures
- Commingling of HCBF with Non-Appropriated Fund (NAF) Revenues
- Non-Issuance of Form 1099 for Non-Employee Compensation
- Non-Compliance with the Open Government Law for Host Community Municipal Planning Council (MPC) Meetings

Based on our review of selected transactions, we questioned \$114 thousand (K) in expenditures, of which \$67K was from the CPO Mayor's Office and \$47K from the Inalåhan Mayor's Office, that were unauthorized because they were not approved by their respective MPCs as required by the HCBF's enabling legislation.

#### **Uses of the HCBF**

As hosts of the Ordot Dump and Layon Landfill, the villages of CPO and Inalåhan are to be compensated \$150K annually for accommodating the solid waste needs of the island of Guam. Ratepayers are assessed a premium surcharge of \$0.38 per month for residential customers and \$3.57 per ton for commercial customers by the Guam Solid Waste Authority, which, in turn, transfers these monies to the host villages. The funds are to be used for capital improvement projects which may include, but are not limited to, (1) youth, senior and community centers; (2) recreation areas, to include parks, sports fields and public gathering areas; (3) infrastructure to provide access to utilities, telecommunications, television and internet services to areas where providing such services are cost prohibitive; and (4) village beautification projects.

#### **Unauthorized Expenditures from the HCBF**

We found that CPO spent \$201K<sup>1</sup> of the HCBF during a five-year period on staff/MPC recognition; sponsorship; equipment; donations; reimbursements; and other purchases. Minimal expenditures were recorded during the five-year period, as the CPO Mayor's Office is working on leveraging the HCBF funds to construct a multi-purpose recreation/emergency center and a new Mayor's office. Based on Title 10, Chapter 51, §§51404 and 51406 of the Guam Code Annotated (GCA), the MPC of the Host Community shall determine the projects to be funded for the village. **No expenditure** (emphasis added) shall be made from the HCBF that is not approved by resolution of the MPC; however, in our testing of 20 sample transactions from the CPO Mayor's Office, we found that 17 transactions totaling \$67K were not specifically approved through a resolution pursuant to the HCBF's enabling legislation.

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<sup>1</sup> CPO spent \$55K in FY 2017, \$65K in FY 2018, \$28K in FY 2019, \$12K in FY 2020, and \$42K in FY 2021.

Additionally, we found that Inalåhan spent \$960K<sup>2</sup> of the HCBF during a five-year period on employee bonuses; community functions; donations; equipment; food and catering; permits and licenses; prizes and awards; repairs and maintenance; supplies and materials; and other purchases. In our testing of 60 sample transactions from the Inalåhan Mayor’s Office, we noted 18 transactions totaling \$47K that were not specifically approved via a resolution pursuant to the HCBF’s enabling legislation.

#### *Bonuses Given to Unclassified Employees*

Our review of Inalåhan’s HCBF disbursements made between FY 2017 to FY 2020 also found that monetary gifts were given to as many as nine Inalåhan Mayor’s Office staff annually for Christmas, with amounts ranging from \$150 to \$200. A total of \$7K in bonuses was paid to Inalåhan Mayor’s Office staff from FY 2017 to FY 2020. Staff of the mayors’ offices serve as unclassified employees pursuant to 5 GCA §40121. According to 4 GCA §6218.2, no bonuses shall be authorized and/or paid in lump-sum, or otherwise, to unclassified employees of GovGuam unless so specified by law. While it is generous to reward employees for their hard work, these bonuses were inappropriately awarded to unclassified GovGuam employees. It is noted, however, that the current Inalåhan Mayor has discontinued the practice of awarding bonuses to Inalåhan Mayor’s Office staff as of the second quarter of FY 2021.

#### **Lack of Adequate Documentation for Expenditures**

Our results of testing for CPO and Inalåhan’s compliance with the MCOG’s standard operating procedures (SOPs) for appropriated funds for the procurement of supplies, materials, and services found that several disbursements lacked adequate documentation for certain purchases. We noted multiple transactions for both CPO and Inalåhan that did not have three quotations solicited prior to purchase. The non-solicitation of a minimum of three quotations for applicable purchases goes directly against the competitive nature that characterizes the GovGuam procurement process.

#### *Lack of Department of Public Works Approval for Construction Projects*

We identified ten out of 20 transactions for CPO totaling \$82K related to construction, road repair, and beautification projects. We could not find supporting documentation to prove the projects were reviewed and approved by the Department of Public Works (DPW). Three disbursements did not require DPW approval: one disbursement for an environmental study totaling \$15.5K was a contract directly overseen by DPW, while the remaining two disbursements were for advertisement of the invitation for bid relative to the Multi-Purpose Center and new Mayor’s office projects. The CPO Mayor stated that his prior experience in the military as an Engineer Officer allowed for the CPO Mayor’s Office to be relieved of the requirement to seek approval from DPW for capital improvement projects within this threshold. This arrangement has been in existence since the Mayor took office in January 2009.

For Inalåhan, we identified five out of 60 transactions for totaling \$38K for community projects and construction; however, we could not find supporting documentation to prove the projects were reviewed and approved by DPW.

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<sup>2</sup> Inalåhan spent \$240K in FY 2017, \$172K in FY 2018, \$227K in FY 2019, \$88K in FY 2020 and \$233K in FY 2021.

### *Guam Community College Procurement Training Certification*

According to the Procurement Training Compliance Report submitted by the MCOG for FY 2021, the Administrative Assistants under the former Inalåhan Mayor and the CPO Mayor completed Module 1 of the Guam Community College Procurement Training Program in January 2018, and therefore obtained the requisite credential to carry out procurements as a level-one purchaser; however, as of the of FY 2021, there were no personnel at the Inalåhan Mayor's Office that have completed the procurement training.

### **Commingling of HCBF with NAF Revenues**

Pursuant to 10 GCA §51406, the HCBF shall be maintained separate and apart from all other government funds. In our review of Inalåhan's and CPO's bank statements, proceeds from the HCBF and village NAF revenues were deposited into the same bank account. For Inalåhan, this practice occurred from FY 2017 to the first quarter of FY 2021; however, we noted that NAF revenues have not been deposited into the Inalåhan's HCBF account since the second quarter of FY 2021. For CPO, a secondary bank account was in existence during the five-year scope period for investment of some of the HCBF proceeds as time certificates of deposit, which accumulated NAF interest revenue of about \$1.2K per month; however, this account was closed by the CPO Mayor's Office as of May 2022.

### **Non-Issuance of Form 1099 for Non-Employee Compensation**

The usage of the HCBF primarily consists of payments to third-party vendors to provide services to the Host Community. In instances where services performed by third-party vendors exceeds \$600, Form 1099-NEC for non-employee compensation (NEC) must be issued for tax purposes. In our examination of Inalåhan's and CPO's HCBF disbursements, many of the transactions met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with both Inalåhan and CPO's mayoral office staff, it was disclosed that Form 1099-NECs were not issued.

### **Non-Compliance with the Open Government Law for Host Community MPC Meetings**

As of June 2021, Public Law (P.L.) 36-34 required for regular and special meetings of a public agency to be broadcasted via video live streaming applications. The provisions of P.L. 36-34 also apply to village MPC meetings according to a legal opinion issued in March 2022 by the Office of the Attorney General of Guam; however, P.L. 36-34 did not provide funding needed for agencies to obtain the technology needed to comply with this mandate. Consequently, Inalåhan and CPO MPC meetings held after May 2021 were not properly noticed nor broadcasted in accordance with P.L. 36-34.

### **Conclusion and Recommendations**

Our audit of the HCBF administered by the CPO and Inalåhan Mayor's Offices determined that the funds were not entirely properly managed due to non-compliance issues with certain disbursements. To promote transparency, accountability, and compliance with the Host Community Benefits Fund Program, we made seven recommendations to address the non-compliance issues with certain disbursements.

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Public Auditor