

# **GOVERNMENT OF GUAM PROCUREMENT OF HOTELS USED FOR COVID-19 QUARANTINE**

**PERFORMANCE AUDIT**  
*March 2020 through December 2020*

**OPA Report No. 21-06**  
**July 2021**





**Government of Guam  
Procurement of Hotels Used for COVID-19 Quarantine**

**Performance Audit  
March 2020 through December 2020**

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## **EXECUTIVE SUMMARY**

### **Government of Guam Procurement of COVID-19 Quarantine and Isolation Facilities OPA Report No. 21-06, July 2021**

Our audit of the procurement of Coronavirus (COVID-19) quarantine and isolation facilities found that the initial emergency procurement conducted by the Office of the Governor (OOG) did not comply with Guam Procurement Law with the following deficiencies: (1) improper procuring authority, (2) conflict of interest with one of the awarded facilities, (3) incomplete procurement record, and (4) contract issues. Therefore, we questioned the total costs of \$3 million (M) for the initial procurement.

In two subsequent emergency procurements, the Government of Guam (GovGuam) rectified the first two deficiencies cited. They were conducted by the Guam Homeland Security/Office of Civil Defense (GHS/OCD) and administered by the General Services Agency (GSA), instead of OOG. However, they continued to have an incomplete procurement record and the services extended beyond the 30-day emergency procurement limit to as long as six months.

The Governor of Guam (Governor) issued an emergency declaration through Executive Order (E.O.) No. 2020-03. As a result, GovGuam spent over \$11.5M for the use of six hotels as quarantine and isolation facilities between March 2020 through December 2020 via emergency procurement. This does not include other COVID-19 related facilities procured and utilized by GovGuam (i.e., nurse lodging, homeless shelters, etc.). GovGuam should have utilized competitive sealed bidding procurement method by issuing an invitation for bid (IFB), instead of continuing to use emergency procurement for the use of quarantine and isolation facilities beyond May 2020.

#### **Initial Emergency Procurement**

Pursuant to Title 5 of the Guam Code Annotated (G.C.A.) § 5215, emergency procurement requires three things that:

- (1) It shall be made with such competition as is practicable under the circumstance;
- (2) The procurement agent must solicit at least three informal price quotations; and
- (3) The award [must go] to the firm with the best offer, as determined by evaluation cost and delivery time. We found several initial procurement issues to include improper procuring authority, conflict of interest with awarded hotel, incomplete procurement record, and contract issues.

In January 2020, the GHS Advisor was tasked to procure facilities for COVID-19 quarantine and isolation. However, the Governor tasked OOG Legal Counsel to take over the procurement in March 2020. OOG secured four facilities totaling \$2.5M. Table 1 shows the timeframe and contract amounts for quarantine and isolation facilities.

**Table 1: First Procurement of Quarantine and Isolation Facilities**

Hotel	Contract Issued	Contract End Date	Estimated Rooms <sup>1</sup>	Date of Utilization	Contract Amount
Hotel A	March 18, 2020	May 17, 2020	48	April 1, 2020 to September 1, 2020	\$ 292,800
Hotel B	March 18, 2020	March 28, 2020	103	March 18, 2020 to March 28, 2020	113,300
Hotel C	March 23, 2020	April 22, 2020	389	March 24, 2020 to May 16, 2020	1,205,900
Hotel D	March 18, 2020	May 17, 2020	144	March 24, 2020 to May 17, 2020	878,400
<b>Total</b>					<b>\$2,490,400</b>

<sup>1</sup> Flat rate of \$100 for each occupied and unoccupied room.

*OOG Has No Proper Procuring Authority*

Pursuant to 10 G.C.A. § 19403, the Governor has an “oversight” role of the public health emergency in the activation of the disaster response and recovery aspects of GovGuam, and the initiation of the emergency declaration directly appoints a primary “public health authority” (PHA) to respond to the emergency. As stated in E.O. 2020-03, the PHA is the Director of the Department of Public Health and Social Services (DPHSS) with the authorization to exercise all powers. By delegating OOG’s Legal Counsel to handle the procurement, it bypassed the procuring authority already provided to the DPHSS Director under the PHA and Guam Procurement Law, and the authority of GSA’s Chief Procurement Officer (CPO) also under Guam Procurement Law.

The OOG contends that it is within the Governor’s authority under the Organic Act and 10 G.C.A. Chapter 19 “Emergency Health Powers” to execute general supervision over GovGuam during a declared state of public health emergency. However, that authority shall not be in conflict with any Guam laws. In which, Public Law (P.L.) 16-124 specifically repealed the governor’s executive control of GovGuam procurement and transferred that authority to a centralized procurement comprised of the Policy Office, CPO, and Director of the Department of Public Works. In addition, the OOG’s justification for their procuring authority is inconsistent with prior treatment and practice of emergency procurement used in a public health state of emergency.

*OOG Legal Counsel Conflict of Interest*

It appears there was a potential conflict of interest having OOG’s Legal Counsel in charge of the initial procurement when their immediate family had a financial interest with one of the awarded hotels, which was publicized in local media articles. Hotel C’s mortgage was with a local bank that the OOG’s Legal Counsel was previously employed at and his immediate family is currently employed with and owns, which would be a conflict of interest as identified in 5 G.C.A. § 5628 (a) . Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

*Incomplete Procurement Record*

The procurement record for the initial COVID-19 quarantine and/or isolation facilities were incomplete as it lacked sufficient documentation to provide a complete history of the procurement in compliance with 5 G.C.A. § 5215. This included the request for quotations (i.e. solicitations local hotels) and the award of the procurement (i.e. selection of the local hotels). There is no clear indication in the procurement record with regards to who and how the decision to use these

facilities was made. Without a proper procurement record, it voids the mandated transparency and accountability in the procurement process.

*Contracts Were Not in Conformance with E.O. and Guam Procurement Law*

The contracts for Hotels A through D were not in conformance with the E.O. and 5 G.C.A. § 5215. Specifically, 1) the contracted dates exceeded the 30-day limit for emergency procurement; 2) renewal terms disregarded E.O. terms; 3) total rooms procured conflicted with the Governor’s requested requirement; and 4) the CPO’s authorized signature was missing.

It was the understanding of the OOG’s Legal Counsel that they were acting on behalf of the Governor, the E.O., and the Governor’s executive powers allowing them to fast track the procurement process and forego the missing items identified in the initial procurement record. However, by doing this, it undermined the integrity of the procurement process and led to non-compliance with Guam Procurement Law.

**Subsequent Emergency Procurements**

Due to the long-term COVID-19 pandemic state of emergency, GovGuam continued to use emergency procurement pursuant to 5 G.C.A. § 5215 under the Governor’s emergency declaration. GovGuam issued two successive procurements in May 2020 and August 2020. Unlike the initial procurement, GHS/OCD requested the two procurements instead of the PHA, and GSA administered it. This rectified the procuring authority and conflict of interests deficiencies cited in the initial procurement.

**Second Emergency Procurement**

The second procurement occurred in May 2020. GSA issued a Request for Quotation (RFQ) to 11 hotels from May 12 to 15, 2020. GSA received quotes from six of 11 hotels, and awarded P.O.s to two hotels (Hotel B and Hotel D) to be used as quarantine facilities for a total of \$300K. Hotel A continued to be an isolation facility through September 2020, based on GHS/OCD data, procurement records that were provided were incomplete. Due to the termination of the contract with Hotel B because they did not meet the basic terms of the agreement, additional RFQs to five hotels were issued on May 20, 2020. GSA received three quotes and awarded the P.O. to Hotel E to be used as an isolation facility for a total of \$300K. Table 2 below shows the timeframe and amounts paid to each hotel.

**Table 2: Second Procurement of Quarantine and Isolation Facilities**

Hotels	P.O. Issued	P.O. End Date	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel A	No record	No record	May 18, 2020 to July 19, 2020	No record	No record	No record
Hotel B	May 16, 2020	August 16, 2020	May 18, 2020 to May 23, 2020	98	Occupied: \$99/person Unoccupied: \$90	\$ 100,000
Hotel D	May 16, 2020	August 16, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person <sup>2</sup> Unoccupied: \$65	200,000
	July 14, 2020	September 30, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person <sup>2</sup> Unoccupied: \$66	1,500,000
Hotel E	May 27, 2020	August 16, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person <sup>2</sup> Unoccupied: \$90	300,000

Hotels	P.O. Issued	P.O. End Date	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
	July 14, 2020	September 30, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person <sup>2</sup> Unoccupied: \$90	2,600,000
	July 20, 2020	September 30, 2020	September 2, 2020 to continuous	48	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	50,000
<b>Total</b>						<b>\$4,750,000</b>

<sup>2</sup> \$30 for any additional person in room.

<sup>3</sup>\$50 for any additional person in room

On May 27, 2020, Hotel B’s P.O. was terminated for cause after it was determined that they did not meet the basic terms of agreement, which they protested and appealed. The appeal was settled and dismissed on August 28, 2020. Hotel B was used for six days, but received a settlement of \$50K (half of their awarded amount) for the termination of the P.O.

On September 1, 2020, GovGuam amended Hotel E’s P.O. indicating “early termination due to decision to consolidate quarantine facility to one venue.” Although Hotel D and Hotel E P.O.’s were set to expire on August 16, 2020, GSA initiated overlapping P.O.s to extend services. The extensions totaled \$4.2M.

### Third Emergency Procurement with Extensions

GHS/OCD data indicated Hotel A continued as an isolation facility through September 1, 2020. However, 63 days passed with no P.O. for Hotel A. GSA issued a \$50 thousand (K) P.O. for Hotel A on July 20, 2020. No documentation was provided for the 63 days worth of hotel services.

On August 21, 2020, GSA issued RFQs to four hotels for the August to September 2020 timeframe. Only one hotel responded to this third procurement with a positive quote. On August 22, 2020, GSA awarded a \$200K P.O. to Hotel F. On October 1, 2020, GSA issued another \$200K P.O. to Hotel F to continue services indicated on the initial P.O. through December 31, 2020. Several amendments increased the original P.O. to \$2.2M. On December 31, 2020, GSA amended the P.O. extending services with Hotel F through January 31, 2021.

On October 1, 2020, GSA issued a \$500K P.O. for Hotel E to be used as an isolation facility through December 31, 2020. Figure 3 shows the procurement timeframe and the amounts paid to the procured quarantine and/or isolation facilities.

**Table 3: Third Procurement of Quarantine and Isolation Facilities**

Hotels	P.O. Issued	P.O. End	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel A	July 20, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$150/person Unoccupied: \$90	\$ 50,000
	August 28, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	50,000
Hotel F	August 22, 2020	September 30, 2020	August 23, 2020 to September 30, 2020	300	Occupied: \$159/person Unoccupied: \$120	200,000
Hotel E	September 15, 2020	September 30, 2020	September 2, 2020 to December 31, 2020	150	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	500,000
	October 1, 2020	January 31, 2021	September 2, 2020 to December 31, 2020	150	Occupied: \$175/per person <sup>3</sup> Unoccupied: \$90	1,034,620

Hotels	P.O. Issued	P.O. End	Dates of Utilization	Estimated Rooms	Room Rates	P.O.s Amount
Hotel F	October 1, 2020	January 31, 2021	October 1, 2020 to December 31, 2020	300	Occupied: \$159/person Unoccupied: \$120	2,200,000
<b>Total</b>						<b>\$ 4,034,620</b>

<sup>3</sup>\$50 for any additional person in room

*Incomplete Procurement Record*

There were noted improvements in the procurement record for the subsequent procurements conducted by GHS/OCD and GSA, namely the fact that RFQs were issued and responses were properly documented. However, it was incomplete and lacked sufficient documentation to provide a complete history of all the hotels procured in compliance with 5 G.C.A. § 5215. This included no procurement record documentation for 63 days of Hotel A services.

*Use of Emergency Procurement Beyond 30-Day Limit*

GHS/OCD and GSA used emergency procurement beyond the 30-day limit for the second and third procurements, which was also cited as a deficiency in the initial procurement. It was GHS’ understanding that since the emergency declaration was extended through E.O., they can continue using the current emergency procurement. P.L. 35-109 was passed on October 30, 2020, which increased the emergency procurement time limit from 30 days to 90 days. However, P.L. 35-109 is not applicable to the three procurements of quarantine and/or isolation facilities and GovGuam is still non-compliant with 5 G.C.A. § 5215.

**Other Matters**

We noted differences between contract amounts and disbursement amounts made to the hotels used as a quarantine and/or isolation facility. Most of the differences were increases as high as \$2.8M. There is nothing in the procurement record to show the reason for the increases beyond the contract value and changes in the occupied and unoccupied rates increasing the disbursements. In addition, the total number of rooms awarded fluctuated. There was no clear explanation in the procurement record to indicate the rationale for the minimum guaranteed number of rooms needed. We plan to look more into utilization and expenditures as part of the subsequent audit of COVID-19 quarantine and isolation facilities.

**Conclusion and Recommendations**

The COVID-19 pandemic was an unprecedented public health emergency, and while there appears to be misjudgments made, we must take the lessons learned in the experience and make necessary changes to improve future plans.

While emergency procurement was acceptable for the initial procurement of the quarantine facilities to use, GovGuam was working on procuring quarantine facilities as far back as January 2020. After three months of emergency procurement, GovGuam had sufficient information regarding room utilization rates and the long-term requirement for quarantine and isolation facilities to prepare and issue an IFB, instead of the extended use of emergency procurement.

Issuing an IFB would have provided better assurance that GovGuam received the lowest overall cost. Further, an IFB shows that the procurement process ensured the opportunity to compete and is open and fair to all those who chose to do business with the government, and not just a select

few. GovGuam stated that it plans to continue utilizing emergency procurement of the quarantine and/or isolation facilities. However, we recommend GHS/OCD and GSA prepare and issue an IFB instead.

The use of emergency procurement for the quarantine and isolation facilities and several other COVID-19 related expenses has raised the need for more accountability and transparency in the process. To this end, the Guam Legislature has introduced several legislations aimed at improving the process. Guam OPA will conduct several audits on these expenses to highlight additional areas of improvement needed.

**OOG Management Response and Office of Public Accountability Reply**

In OOG's official management response, the OOG disagreed with our audit findings and recommendations. In reply, generally, our audit findings and recommendations remained the same.



Benjamin J.F. Cruz  
Public Auditor



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## **Introduction**

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This report presents the results of our performance audit of the Government of Guam’s (GovGuam) procurement of Coronavirus (COVID-19) quarantine and isolation facilities. We initiated this audit in response to the Guam Legislature’s concern over questionable emergency procurement practices associated with COVID-19 quarantine and/or isolation facilities. Our objective was to determine whether the procurement of COVID-19 quarantine and/or isolation was conducted in accordance with applicable rules and regulations.

Our scope covered GovGuam procurement for COVID-19 quarantine and isolation facilities from March 1, 2020 to December 31, 2020. This does not include other COVID-19 related facilities procured and utilized by GovGuam (i.e., nurse lodging, homeless shelters, etc.). The initial procurement utilized an emergency procurement process by the Office of the Governor (OOG) legal counsel. Subsequent procurements continued to use emergency procurement by Guam Homeland Security/Office of Civil Defense (GHS/OCD) and General Services Agency (GSA).

This report is Part I of a series of reports. It primarily focuses on GovGuam’s procurement process of quarantine and isolation facilities to house all resident and non-residents entering Guam without a DPHSS recognized and certified documentation indicating they are not infected with COVID-19. Part II will focus on GovGuam’s quarantine and isolation facility utilization and expenditures.

Refer to Appendices 1 and 2 for the objectives, scope, and methodology, and prior audit coverage.

## **Background**

In January 2020, the World Health Organization (WHO) declared a Global Health Emergency with regard to the COVID-19 outbreak. COVID-19 is a respiratory disease that is a new strain of coronavirus not previously identified in humans and posed a significant public health risk.

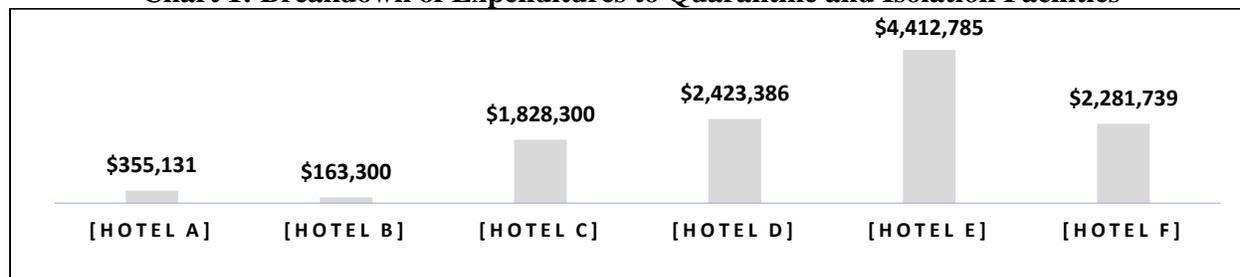
On March 14, 2020, the Governor of Guam (Governor) declared a state of emergency to respond to COVID-19 and issued Executive Order (E.O.) 2020-03, which provided GovGuam authority to suspend statutes, orders, rules and regulations that prevent, hinder, or delay necessary action to respond to the emergency including purchasing for a period of thirty days unless otherwise extended. In alignment with the Governor’s E.O., GovGuam invoked the ability to utilize emergency procurement pursuant to §§ 19505 and 19803 of Chapter 19, Title 10, Guam Code Annotated (G.C.A.). See Appendix 4 for the complete E.O. 2020-03.

On March 16, 2020, the Governor issued E.O. 2020-04 that confirmed three COVID-19 cases and notification of the Philippines going into nationwide lockdown. This led to a rapid emergency procurement response resulting in the temporary purchase and occupation of selected hotels to quarantine an expected influx of individuals into Guam possibly affected by COVID-19. See Appendix 5 for the complete E.O. 2020-04.

The Governor issued 44 separate E.O.s. from March 2020 through December 2020. Of the 44 E.O.s, 10 E.O.s extended the public health emergency for an additional thirty-(30) day period. See Appendix 6 for extension E.O.s and Appendix 7 for additional E.O.s unrelated to extension.

The Department of Administration (DOA) paid \$11.5 (M) million for seven hotels used for COVID-19 quarantine and isolation facilities during the public health emergency. See Chart 1 below.

**Chart 1: Breakdown of Expenditures to Quarantine and Isolation Facilities**



Quarantine and isolation facilities operations expenditures were reimbursed or funded by the \$118.0M Coronavirus Aid, Relief, and Economic Security Act (CARES Act). CARES Act and Federal Emergency Management Agency (FEMA) approved federal funding continue to support these expenditures.

**Applicable Laws and Regulations**

The following G.C.A. and Public Law (P.L.) citations apply to the procurement of COVID-19 quarantine and/or isolation facilities:

- Procuring Authority: 10 G.C.A. §19403. Pursuant to 10 G.C.A. §19403, the Governor has an oversight role of the public health emergency in the activation of the disaster response and recovery aspects of GovGuam. The initiation of the emergency declaration directly appoints a primary “public health authority” (PHA) to respond to the emergency. In E.O. 2020-03, the PHA is the Director of the Department of Public Health and Social Services (DPHSS) with the authorization to exercise all powers.
- Emergency procurement: 5 G.C.A. §5215. Emergency procurement requires three things that:
  - (1) It shall be made with such competition as is practicable under the circumstance;
  - (2) The procurement agent must solicit at least three informal price quotations; and
 The award [must go] to the firm with the best offer, as determined by evaluation cost and delivery time.
- Conflict of Interest: 5 G.C.A. §5628. Title 5 G.C.A. § 5628 (a) states that it shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows:
  - (1) The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement; and
  - (2) A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement.
- Procurement Records: 5 G.C.A. §5252

- Contract formation: 5 G.C.A. §5235
- Contract approval: 5 G.C.A. §5121
- Competitive Sealed Bidding: 5 G.C.A. §5211

Refer to Appendix 3 for applicable laws details.

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## Results of Audit

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Our audit of the emergency procurement of COVID-19 quarantine and isolation facilities found that the initial procurement conducted by the Office of the Governor did not comply with Guam Procurement Law with the following deficiencies: (1) improper procuring authority, (2) conflict of interest with one of the awarded facilities, (3) incomplete procurement record, and (4) contract issues. Therefore, we questioned total costs of \$3M for the initial procurement.

GovGuam rectified the first two deficiencies cited in the subsequent procurements conducted by GHS/OCD and administered by GSA. However, they continued to have an incomplete procurement record and the services extended beyond the 30-day emergency procurement limit to as long as six months.

GovGuam should have utilized competitive sealed bidding procurement method by issuing an invitation for bid (IFB), instead of continuing to use emergency procurement for the use of quarantine and isolation facilities beyond May 2020.

### Initial Procurement

The GHS Advisor was tasked to procure a quarantine facility in January 2020. However, the Governor tasked OOG Legal Counsel to take over the emergency procurement. OOG secured four facilities for COVID-19 quarantine and isolation in March 2020 totaling \$2.5M. See Table 1 below.

**Table 1: First Procurement of Quarantine and Isolation Facilities**

Hotel	Contract Issued	Contract End Date	Estimated Rooms <sup>1</sup>	Date of Utilization	Contract Amount
Hotel A	March 18, 2020	May 17, 2020	48	April 1, 2020 to September 1, 2020	\$ 292,800
Hotel B	March 18, 2020	March 28, 2020	103	March 18, 2020 to March 28, 2020	113,300
Hotel C	March 23, 2020	April 22, 2020	389	March 24, 2020 to May 16, 2020	1,205,900
Hotel D	March 18, 2020	May 17, 2020	144	March 24, 2020 to May 17, 2020	878,400
<b>Total</b>					<b>\$2,490,400</b>

<sup>1</sup> Flat rate of \$100 for each occupied and unoccupied room.

### *OOG Has No Proper Procuring Authority*

Since the OOG's legal counsel handled the procurement, it bypassed the procuring authority of the DPHSS Director as the PHA and the GSA Chief Procurement Officer (CPO) under Guam Procurement Law. The OOG contends it is within the Governor's authority under the Organic Act and 10 G.C.A. Chapter 19 Emergency Health Powers to execute general supervision over GovGuam during a declared state of public health emergency. However, that authority shall not be in conflict with any Guam laws. P.L. 16-124 repealed the governor's executive control of executive branch procurement. It also transferred that authority to the centralized procurement regime comprised of the Policy Office, CPO, and Department of Public Works Director.

Further, the OOG's justification for their procuring authority is inconsistent with prior treatment and practice of emergency procurement during a public health state of emergency. In a paper titled

“Emergency Procurement in a Time of Pandemic”, the Governor issued E.O. 2019-21 in September 2019 as a Declaration of State of Emergency to assist in preventing a Dengue Fever outbreak on Guam. E.O. 2019-21 explicitly called on the Procurement Law authority, citing “5 G.C.A. § 5215, authorizing emergency procurement to contain and further prevent any outbreak of mosquito borne diseases.” Unlike E.O. 2020-03, precaution was taken in E.O. 2019-21 to expressly instruct DPHSS “to keep appropriate documentation on all emergency expenses for inspection by the Executive Branch and by the Public Auditor of Guam”.

#### *OOG Legal Counsel Conflict of Interest*

It appears there was a conflict of interest with the OOG legal counsel handling the initial procurement, in accordance with 5 G.C.A. § 5628. The OOG legal counsel’s immediate family had a financial interest with an awarded hotel. Hotel C had a mortgage with a local bank that the OOG legal counsel was previously employed at and his immediate family is currently employed with and owns. This was publicized in the local media.

In accordance with Guam Procurement Law, a purchase of goods or services from a business in which an employee’s family has a financial interest, or may directly benefit from such purchase, is a conflict of interest. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. However, the procurement record did not possess a written statement of disqualification thus withdrawing legal counsel of further participation in the emergency procurement.

#### *Incomplete Procurement Record*

Good governance is needed by properly documenting the emergency procurement, including a written determination of the basis for the selection of any particular contractor. However, the procurement record for the initial COVID-19 quarantine and isolation facilities was incomplete. It lacked sufficient documentation to provide a complete procurement history in compliance with 5 G.C.A. § 5215. This included the request for quotations (i.e., local hotels’ solicitations) and the award of the procurement (i.e., selection of the local hotels). There was no clear indication in the procurement record to who and how GovGuam decided to use these facilities.

The procurement record showed that the quarantine and isolation facility procurement started in January 2020. The Guam Hotel and Restaurant Association (GHRA) solicited its members on the possibility of becoming a quarantine and isolation facility. After E.O. 2020-04 was issued, the OOG legal counsel and GHRA contacted certain hotels directly and started negotiations. However, it is uncertain whether the OOG legal counsel used GHRA’s information to determine which facilities to request quotations from. The OOG legal counsel received limited hotel responses to operate as quarantine and isolation facilities. The response list only contained Hotel B and Hotel C of which were contracted to operate as quarantine and isolation facilities, Subsequently, Hotel A and Hotel D were contractually secured to operate as quarantine and isolation facilities. These contracts committed GovGuam to an estimated \$2.5M for 684 rooms distributed between the four hotels.

The procurement record is evidence of the procurement award and the results of the monitoring and oversight of contract implementation. To provide transparency and accountability, the procurement record should document the proposed expenditure of government funds to vendors.

*Contracts Were Not In Conformance with E.O. and Guam Procurement Law*

The initial four quarantine and isolation facilities’ contracts were not in conformance with the E.O. and 5 G.C.A. § 5235. Specifically, 1) the contract dates exceeded 30 days, 2) renewal terms disregarded E.O. terms, 3) total rooms procured conflicted with the Governor’s requested requirement, and 4) authorized signature of CPO was missing.

- 1) Contract end dates from selected quarantine and isolation hotels exceeded the 30-day requirement under the emergency procurement. As seen in Table 2, Hotels A, C, and D exceeded the 30-day procurement requirement from the procurement start date.

**Table 2: Quarantine and Isolation Facility Days Utilized (Initial procurement)**

Hotel	Contract Start Date	End Date	Total Days
Hotel A	March 18, 2020	September 1, 2020	168
Hotel B	March 18, 2020	March 28, 2020	11
Hotel C	March 24, 2020	May 16, 2020	54
Hotel D	March 24, 2020	May 17, 2020	55

GHS/OCD data noted service extensions for Hotel A and Hotel C. Issuance of a P.O. extended the hotel services of Hotel A until September 1, 2020. Hotel C was extended until May 16, 2020. However, no purchase order or amendment was issued to extend Hotel C’s emergency procurement.

- 2) Contract renewal terms disregarded the appointed roles based on the emergency declaration where the DPHSS Director manages the public health emergency. It also disregarded 30-day emergency procurement and how it cannot be extended without a new executive order. Each contract noted renewal terms as follows:

*At the option of GHS/OCD, and as agreed to by the Hotel, this Agreement may be renewed for ten (10) additional one month (1) periods, subject to wage and benefit compliance and the appropriation, allocation and availability of funds (each being a "Renewal Term"). Upon expiration of the Renewal Term, this Agreement shall expire, unless sooner terminated.*

We determined the contract renewal terms section should have noted DPHSS as the responding agency and that the contract renewal was subject to a new executive order, which provides an additional 30-day period.

- 3) Total rooms procured conflicted with the Governor’s requirement. The Governor’s May 2020 memo required facilities able to house the anticipated need for at least 200 travelers. However, on March 23, 2020, GovGuam contracted with four hotels with a total 684 rooms.

**Table 3: Hotel Rooms Procured**

<b>Hotel</b>	<b>Rooms</b>	<b>Disbursements</b>
Hotel A	48	\$ 255,200
Hotel B	103	113,300
Hotel C	389	1,828,300
Hotel D	144	835,200
<b>Total</b>	<b>684</b>	<b>\$ 3,032,000</b>

As shown in Table 3, GovGuam procured quarantine hotel rooms in excess of what was necessary to meet the valid requirements of 200 travelers.

- 4) The contracts did not contain the signature of the CPO, her designee, or an agency's procurement officer authorized to procure the quarantine and isolation facilities. Though all contracts were not executed until signed by the Governor, procurement contracts are to be executed with the CPO's signature with the Governor performing a reviewer role in accordance with 5 G.C.A. § 5121.

The procurement record showed that the OOG legal counsel recognized there were several contract issues and worked with the Office of the Attorney General (OAG), GHS/OCD, and FEMA to address the issues. The OOG legal counsel stated vendors were awarded and paid before the contract was completed. The vendors provided the accommodations if GovGuam agreed to pay as they go due to the vendors' cash flow issues and needed to pay their own staff and vendors.

The OOG legal counsel's understanding is that the E.O. and the Governor's executive powers allowed them to fast track the procurement process and forego the missing items in the procurement record of the quarantine and isolation facilities' initial procurement. By doing this, it undermined the integrity of the procurement process and led to non-compliance with Guam Procurement Law. Therefore, we questioned the total cost of \$3M for the initial procurement.

### **Subsequent Emergency Procurements**

GovGuam continued to use emergency procurement due to the long-term state of emergency resulting from the COVID-19 pandemic. Pursuant to 5 G.C.A. § 5215 under the Governor's emergency declaration, GovGuam issued two subsequent emergency procurements in May 2020 and August 2020 for COVID-19 quarantine and isolation facilities.

Unlike the initial procurement, the GHS/OCD Administrator requested the May 2020 and August 2020 procurements. This rectified the procuring authority and conflict of interest deficiencies cited in the initial procurement. However, they continued to have an incomplete procurement record and extended services beyond the 30-day emergency procurement limit to as much as six months.

### **Second Procurement**

GovGuam's second procurement occurred in May 2020. GSA issued a Request for Quotation (RFQ) to 11 hotels between May 12-15, 2020. Six of the 11 hotels responded to the RFQ. The RFQ indicated several options for rooms as needed or leasing the entire facility with occupied and unoccupied room rates. At a minimum, it appeared the government required the Hotel Quarantine Facility with 154 rooms plus 17 rooms for surge and Hotel Isolation Facility with 36 rooms plus

11 rooms for surge. GovGuam looked for several quarantine and isolation facilities with a minimum of 190 rooms.

**Table 4: Second Procurement of Quarantine and Isolation Facilities**

Hotels	P.O. Issued	P.O. End Date	Dates of Utilization	Estimated Rooms	Room Rates	Total P.O. Amount
Hotel A	No record	No record	May 18, 2020 to July 19, 2020	No record	No record	No record
Hotel B	May 16, 2020	August 16, 2020	May 18, 2020 to May 23, 2020	98	Occupied: \$99/person Unoccupied: \$90	\$ 100,000
Hotel D	May 16, 2020	August 16, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person <sup>2</sup> Unoccupied: \$65	200,000
	July 14, 2020	September 30, 2020	May 17, 2020 to August 25, 2020	144	Occupied: \$110/person <sup>2</sup> Unoccupied: \$66	1,500,000
Hotel E	May 27, 2020	August 16, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person <sup>2</sup> Unoccupied: \$90	300,000
	July 14, 2020	September 30, 2020	June 17, 2020 to August 25, 2020	270	Occupied: \$140/person <sup>2</sup> Unoccupied: \$90	2,600,000
	July 20, 2020	September 30, 2020	September 2, 2020 to continuous	48	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	50,000
<b>Total</b>						<b>\$4,750,000</b>

<sup>2</sup> \$30 for any additional person in room.

<sup>3</sup>\$50 for any additional person in room

Hotel A continued as an isolation facility after the initial contract ending an additional 63 days from May 18, 2020 to July 19, 2020 based on GHS/OCD data. However, a procurement record was provided to OPA, but it was incomplete.

On May 16, 2020, GSA issued a P.O. to Hotel B as a quarantine facility through August 16, 2020. However, on May 27, 2020, Hotel B's P.O. was terminated for cause that they did not meet the basic terms of the agreement. Hotel B filed a procurement protest on June 9, 2020 to GSA for wrongful termination of contract. After GSA denied the protest on June 10, 2020, Hotel B filed a procurement appeal to OPA on June 23, 2020. OPA-PA-20-005 was settled on August 27, 2020 and dismissed on August 28, 2020. Hotel B was used for six days, but received a settlement of \$50K (half of their awarded amount) for the termination of the P.O.

On May 16, 2020, GSA issued a P.O. to Hotel D as a quarantine facility through August 16, 2020, for an estimated 144 rooms with \$110 per person (plus \$30 for any additional person) for occupied rooms and \$65 per day for unoccupied rooms. The total awarded was \$100K. On June 12, 2020, GSA issued an amendment that increased the P.O. by \$100K for a total of \$200K for continuation of services.

On May 21, 2020, GSA issued a P.O. to Hotel E as a quarantine facility through August 16, 2020. It was for an estimated 270 rooms with a daily rate of \$140 (plus \$30 for any additional person) for occupied rooms and \$90 for unoccupied rooms. The total award was \$100K. GSA cancelled the P.O. and issued a second P.O. to Hotel E to correct the vendor name and number on May 27, 2020. Between May to June 2020, GSA issued two P.O. amendments that increased the P.O. by \$200K for a total of \$300K for the continuation of services.

On July 14, 2020, GSA issued a P.O. to Hotel D for additional funding as a quarantine facility extending the P.O. expiration date to September 30, 2020. The rooms remained an estimated 144 rooms with \$110 per person (plus \$30 for any additional person) for occupied rooms and the unoccupied rooms were \$66. The total awarded was \$300K. Between July to August 2020, GSA issued two amendments that increased the P.O. by \$1.2M for a total of \$1.5M for services.

On July 14, 2020, GSA issued a supplemental funding P.O. to Hotel E as a quarantine facility through September 30, 2020. The P.O. was for an estimated 270 rooms with a daily rate of \$140 (plus \$30 for any additional person) for occupied rooms and \$90 for unoccupied rooms. The total award was \$300K. Between July to September 2020, GSA issued three P.O. amendments that increased the P.O. by \$2.3M for a total of \$2.6M for the continuation of services.

On July 20, 2020, GSA issued a P.O. to Hotel E as an isolation facility through September 30, 2020. The P.O. was for an estimated 48 rooms with a daily rate of \$175 (plus \$50 for any additional person) for occupied rooms and \$90 for unoccupied rooms. The total award was \$50K.

### Third Procurement

GovGuam’s third procurement occurred in August 2020. GSA issued RFQs to four hotels on August 21, 2020. The timeframe is for August 22, 2020 to September 30, 2020. The RFQ indicated a single quarantine facility comprising of at least 550 to 600 room capacity, with a government minimum definite use of 300 rooms for occupied and unoccupied rooms. One hotel responded with a positive quote, while three hotels responded with “No Quote”.

**Table 5: Third Procurement of Quarantine and Isolation Facilities**

Hotels	P.O. Issued	P.O. End	Dates of Utilization	Estimated Rooms	Room Rates	Total P.O. Amount
Hotel A	July 20, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$150/person Unoccupied: \$90	\$ 50,000
	August 28, 2020	September 30, 2020	April 1, 2020 to September 1, 2020	48	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	50,000
Hotel F	August 22, 2020	September 30, 2020	August 23, 2020 to September 30, 2020	300	Occupied: \$159/person Unoccupied: \$120	200,000
Hotel E	September 15, 2020	September 30, 2020	September 2, 2020 to December 31, 2020	150	Occupied: \$175/person <sup>3</sup> Unoccupied: \$90	500,000
	October 1, 2020	January 31, 2021	September 2, 2020 to December 31, 2020	150	Occupied: \$175/per person <sup>3</sup> Unoccupied: \$90	1,034,620
Hotel F	October 1, 2020	January 31, 2021	October 1, 2020 to December 31, 2020	300	Occupied: \$159/person Unoccupied: \$120	2,200,000
<b>Total</b>						<b>\$4,034,620</b>

<sup>3</sup>\$50 for any additional person in room

While the initial contract ended on May 17, 2020, Hotel A continued as an isolation facility through September 2020 based on GHS/OCD data. GSA issued a P.O. for Hotel A on July 20, 2020, 63 days after contract ending, for 48 rooms with a daily rate of \$150 per person for occupied rooms and \$90 for unoccupied rooms. The total purchase order award was \$50K.

On August 22, 2020, GSA issued a P.O. to Hotel F as a quarantine facility through September 30, 2020. It was for an estimated 300 rooms with daily rate of \$159 (plus \$69 for any additional person) for occupied rooms and \$120 for unoccupied rooms. The total purchase order award was \$200K.

GSA cancelled the P.O. and issued a second P.O. to Hotel F to correct the vendor name and number on September 2, 2020.

On August 28, 2020, GSA issued a P.O. to Hotel A for continued service as an isolation facility through September 30, 2020. It was for 48 rooms with a daily rate of \$175 per person occupied and \$90 for unoccupied rooms. The total purchase order award was \$50K.

On September 15, 2020, GSA issued a supplemental funding P.O. to Hotel E to continue as an isolation facility through September 30, 2020. The P.O. was for an estimated 48 rooms with a daily rate was \$175 per person (plus \$50 for any additional person) for occupied room and \$90 for unoccupied room. The total purchase order award was \$50K, which was increased by \$450K for a total of \$500K for services.

On October 1, 2020, GSA issued another P.O. to Hotel F to continue services indicated on the initial September 2, 2020 P.O. through December 31, 2020. The P.O. was for a definitive 300 rooms for with a daily rate of \$159 per person (plus \$69 for any additional person) for occupied and \$120 for unoccupied room. The total purchase award was \$200K. Between October to December 2020, GSA issued three separate amendments that increased the P.O. by \$2.0M for a total of \$2.2M for the continuation of services. One of the amendments included an amendment of “Articles for Services” to include 11% occupancy rate and \$1K per day for rental of Mezzanine and Bamboo Lounge for the use of triage for surgeon cell and DPHSS.

On October 1, 2020, GSA issued a P.O. for Hotel E as an isolation facility through December 31, 2020. It was for an estimated 48 to 150 rooms with \$175 per person for occupied rooms and \$90 for unoccupied rooms. The total purchase order award was \$500K. On December 9, 2020, GSA issued an amendment that increased the P.O. by \$535K to \$1.0M.

#### *Incomplete Procurement Record*

There were noted improvements in the subsequent procurements conducted by GHS/OCD and GSA. The RFQs were issued and responses were properly documented. However, Hotel A procurement record was still incomplete. It lacked sufficient documentation to provide a complete procurement history of the 63 day hotel services from the end of the initial procurement contract until the P.O. issued by GSA on July 20, 2020 to be in compliance with 5 G.C.A. § 5215.

Once again, we remind the agencies that the procurement record is relied upon as evidence of all actions taken to award the procurement and the results of the monitoring and oversight of contract implementation. To provide transparency and accountability, the procurement record should document the proposed expenditure of government funds to vendors.

#### *Use of Emergency Procurement Beyond 30-Day Limit*

Emergency procurement authorized by E.O.s or Certificates, in essence a direct award, are restricted to an amount of goods or supplies necessary to meet an emergency for the 30-day period immediately following the award of the emergency procurement. However, GHS/OCD and GSA used emergency procurement beyond the 30-day limit for the second and third procurements. This was also a deficiency in the initial procurement. See Tables 7 and 8 below. It was GHS’

understanding that since the emergency declaration was extended through E.O., they can continue using the current emergency procurement.

**Table 6: Second Procurement – Number of Days Used per Hotel**

Hotels	Contract start date	Utilization end date	Total Days
Hotel A	March 18, 2020	September 1, 2020	168
Hotel B	May 16, 2020	May 23, 2020	9
Hotel D	May 16, 2020	August 25, 2020	102
Hotel E	May 21, 2020	August 25, 2020	97
Hotel F	August 22, 2020	September 30, 2020	40

**Table 7: Third Procurement – Number of Days Used per Hotel**

Hotel	Contract start date	Utilization end date	Total Days
Hotel E	October 1, 2020	December 30, 2020	92
Hotel F	October 1, 2020	December 30, 2020	92

Environmental threats can create an urgent need to procure services and supplies to respond adequately to such emergencies. The Legislature passed P.L. 35-109 on October 30, 2020 to allow an increase in the emergency procurement time limit from 30 days to 90 days. Further, no emergency procurement shall be made for an amount or construction greater than the amount of such supplies, services, or emergency construction works that are necessary to address the emergency for a 90-day period following the emergency declaration. The emergency may extend beyond the 90 days if the CPO, DPW Director, the head of the purchasing agency, or a designee of either officer determines additional time is necessary and the contract scope and duration are limited to the emergency. In addition, 30 days prior to execution of the extension, a public hearing shall be held by the procuring agency. See Appendix 3 for applicable laws.

The new law was passed after the second and third procurement of the quarantine and isolation facilities. As a result, GovGuam is still found to be in non-compliance with 5 G.C.A. § 5215.

**Competitive Sealed Bid for Subsequent Procurements**

It was acceptable for the initial procurement of the quarantine facilities to use emergency procurement. However, GovGuam was working on procuring quarantine facilities as far back as January 2020. After three months of using emergency procurement, GovGuam had sufficient information regarding room utilization rates and the long-term requirement for quarantine and isolation facilities to utilize competitive sealed bidding instead of the extended use of emergency procurement.

Competitive sealed bidding in the form of Invitation for Bids (IFB) as identified in 5 G.C.A. § 5211 is the preferred method for the procurement of supplies, services, or construction, which would include quarantine and isolation facilities. As seen in Figure 1 below, an IFB has more requirements than emergency procurement as identified in 5 G.C.A. §5215. See Appendix 3 for the applicable laws.

**Figure 1: Emergency Procurement vs. Competitive Sealed Bid**

<b>Emergency Procurement</b>
<ul style="list-style-type: none"> <li>☛ <b>Determination of Need</b> Described through Executive Order or Certificate of Emergency</li> <li>☛ <b>Source goods and services locally</b> Recognize goods and services available within the local area</li> <li>☛ <b>Solicit price quotations</b> Transmit request and receive price quotes</li> <li>☛ <b>Issue notice of award</b> Performance must meet 30-day need</li> </ul>
<b>Competitive Sealed Bidding</b>
<ul style="list-style-type: none"> <li>☛ <b>Develop IFB</b> Specifications and/or Scope of Work, Contract terms and conditions.</li> <li>☛ <b>Advertisement of Solicitation</b> Public notice of bid opportunity to potential bidders.</li> <li>☛ <b>Receive and Open Bid Responses</b> Retrieval and public opening of bid proposals.</li> <li>☛ <b>Evaluate Bid Responses</b> Bid award shall be made to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB.</li> <li>☛ <b>Develop Award Determination</b> Evaluated to determine compliance with all IFB requirements, specifications, and ability of the bidders to perform the contract.</li> <li>☛ <b>Issue Notice of Award &amp; Post Award</b> Contract may only be awarded to a responsive and responsible bidder.</li> </ul>

An IFB for the quarantine and isolation facilities would have provided better assurance that GovGuam received the lowest overall cost. Also, it would ensure the procurement process involved as much competition as possible and is open and fair to all those who choose to do business with the government. GovGuam stated that it plans to continue utilizing emergency procurement of the quarantine and isolation facilities. We recommend GHS/OCD and GSA prepare and issue an IFB for this continuous procurement.

**Other Matters**

We found other issues indirectly related to our audit objective, but merit inclusion in this report as it relates to the COVID-19 quarantine and isolation facilities. Table 9 shows the difference between contract and disbursement amounts to the hotels. Most of the differences were increases as high as \$2.8M. There is nothing in the initial procurement record to show the reason for the increases beyond the contract value. In addition, there is nothing in subsequent procurement record P.O.’s to note the changes in the occupied and unoccupied rates increasing the disbursements.

**Table 8: Contract/P.O. Amount vs. Disbursements**

	Contract/PO [A]	Disbursements during Contracted Period [B]	Disbursements after Contracted Period [C]	Difference =[A]-([B]+[C])
<b>Initial Procurement</b>				
Hotel A	\$ 292,800	\$ 255,200	\$ -	\$ (37,600)
Hotel B	113,300	113,300	-	\$0
Hotel C	1,205,900	1,828,300	-	622,400
Hotel D	878,400	835,200	-	(43,200)
Subtotal	2,490,400	3,032,000	-	541,600
<b>Second Procurement</b>				
Hotel A	No record	No record	No record	No record
Hotel B	100,000	50,000	-	(50,000)
Hotel D PO #1	200,000	657,454	930,732	1,388,186
Hotel D PO #2	1,500,000	-	-	-
Hotel E PO #1	300,000	1,393,700	1,552,190	2,645,890
Hotel E PO #2	2,600,000	-	-	-
Hotel E PO #3	50,000	-	-	-
Subtotal	4,750,000	2,101,154	2,482,922	3,984,076
<b>Third Procurement</b>				
Hotel A PO #1	50,000	-	99,931	49,931
Hotel A PO #2	50,000	-	-	(50,000)
Hotel F PO #1	200,000	111,956	-	(88,044)
Subtotal	300,000	111,956	99,931	(88,113)
<b>Third Procurement (FY 2021)</b>				
Hotel E PO #4	500,000	1,466,895	-	966,895
Hotel E PO #5	1,034,620	-	-	(1,034,620)
Hotel F PO #2	2,200,000	2,169,783	-	(30,217)
Subtotal	3,734,620	3,636,678	-	(97,942)
<b>Total</b>	<b>\$ 11,275,020</b>	<b>\$ 8,881,788</b>	<b>\$ 5,165,705</b>	<b>\$ 2,772,473</b>

In addition, the number of rooms awarded fluctuated and there was no clear explanation in the procurement record to indicate the rationale for the minimum guaranteed number of rooms needed.

**Figure 2: Number of Hotel Rooms Awarded**



We will look more into utilization and expenditures as part of the subsequent audit of COVID-19 quarantine and isolation facility.

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## Conclusion and Recommendations

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The COVID-19 pandemic was an unprecedented public health emergency. While there appears to be misjudgments, we must take the lessons learned in the experience and make necessary changes to improve future plans. Our audit of the procurement of COVID-19 quarantine and isolation facilities found that the initial procurement conducted by the OOG did not comply with Guam Procurement Law with the following deficiencies: (1) improper procuring authority, (2) conflict of interest with an awarded facility, (3) incomplete procurement record, and (4) contract issues. Therefore, we questioned total costs of \$3.M for the initial procurement.

In the two subsequent procurements, GovGuam rectified the first two deficiencies cited as they were conducted by GHS/OCD and administered by GSA. However, they continued to have an incomplete procurement record and services were extended beyond the 30-day emergency procurement limit to as long as six months.

It was acceptable for the initial procurement of the quarantine facilities to use emergency procurement. However, GovGuam was procuring quarantine facilities as far back as January 2020. After three months of using emergency procurement, GovGuam had sufficient information to prepare and issue an IFB. GovGuam had information regarding room utilization rates and the long-term requirement for quarantine and isolation facilities.

An IFB would have provided better assurance that GovGuam received the lowest overall cost. Also, it would ensure that the procurement process involved as much competition as possible and is open and fair to all those who chose to do business with the government. GovGuam stated that it plans to continue utilizing emergency procurement of the quarantine and/or isolation facilities. We recommend GHS/OCD and GSA prepare and issue an IFB for this continuous procurement.

The emergency procurement use for the quarantine and isolation facilities and several other COVID-19 related expenses has raised the need for more accountability and transparency in the process. To this end, the Guam Legislature has introduced several legislations aimed at improving the process. OPA will also conduct several audits on these expenses to potentially highlight additional areas of improvement needed.

## Classification of Monetary Amounts

	Findings Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact
<b>1.</b>	<b>Initial Emergency Procurement</b>				
	a. OOG Has No Procuring Authority	\$ 3,032,000	\$ -	\$ -	\$ -
	b. OOG Legal Counsel Conflict of Interest	-	-	-	-
	c. Incomplete Procurement Record	-	-	-	-
	d. Contract Were Not In Conformance with E.O. and Guam Procurement Law	-	-	-	-
	<i>Sub-Total</i>	3,032,000	-	-	-
<b>2.</b>	<b>Subsequent Emergency Procurements</b>				
	a. Second Procurements	-	-	-	-
	b. Third Procurement				
	c. Incomplete Procurement Record				
	d. Use of Emergency Procurement Beyond 30-Day Limit				
	e. Competitive Sealed Bid for Subsequent Procurements	-	-	-	-
	<i>Sub-Total</i>	-	-	-	-
<b>3.</b>	<b>Other Matters</b>				
	<i>Sub-Total</i>				
	<b>Overall Total</b>	<b>\$ 3,032,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

In April 2021, we provided a draft report to the Office of the Governor, GSA, and OHS for their official response and an audit exit conference was held in May 2021. In their June 2021 response letter, the OOG disagreed with our findings and recommendation.

OOG stated that the Governor has ultimate authority under the Organic Act of Guam. Further, the Emergency Health Powers Act allowed them to bypass regulations to secure the initial quarantine facilities. OOG contends that they did not have to comply with emergency procurement because it was not the mechanism used for the initial procurement, as it was an “emergency purchase”. Further, the Governor through E.O 2020-03 suspended utilizing emergency procurement for the initial procurement because they considered it to “hinder or delay actions in an emergency”.

Pursuant to 5 G.C.A. § 5215, emergency procurement provides the mechanism to expedite an “emergency purchase” as it clearly states “the CPO, the Director of Public Works, the head of the Purchasing Agency, or a designee of either officer may make or authorize others to make emergency procurements **when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurement be made with such competition as is practicable under the circumstance**”. Emergency procurement is authorized through a written determination or by Executive Order, where the governor makes a declaration of emergency.

While we respect the OOG’s position regarding the authority, they also noted that the Organic Act of Guam states “[s]**subject to the laws of Guam**, the Governor shall establish, maintain, and operate public-health services in Guam, including quarantine stations, at such places in Guam as may be necessary, and [s]he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.” These laws are mechanisms that can be used in an emergency and provide the avenue to ensure there is accountability and transparency of public funds. Work on securing quarantine and isolation facilities started in January 2020, and while the immediate threat occurred in March 2020, there appeared to be enough information and time to utilize emergency procurement.

OOG contends the OOG Legal Counsel did not have a conflict of interest within the meaning of Guam Procurement Law. They stated that they did not have sufficient information in order to formulate a proper response as OPA did not disclose who the affected OOG legal counsel was and the reference to information from unidentified media sources was hearsay.

It is almost common knowledge who the OOG legal counsel is who handled the initial procurement, as they testified at a public hearing before the legislature on the matter. It is also almost common knowledge of the relationship between this OOG legal counsel and the Governor of Guam, and where they were both previously employed at and the family that has a financial interest in that organization.

It is OPA’s practice not to disclose names of people or businesses in our audit reports, but they can be discussed during preliminary findings and exit meetings. During the exit meeting with OOG, OPA discussed the conflict of interest finding, but did not receive any questions or comments from the OOG representative. They chose to hold comments for their official management response.

While the initial sources of the conflict of interest from local media outlets, OPA verified the information by reviewing the mortgage agreement. It indicated one of the initially procured hotels had a mortgage with a local bank that the OOG’s legal counsel’s immediate family has a financial interest with. It may have been impractical for OOG legal counsel to recuse himself from conducting the “emergency purchase” of quarantine facilities given the urgent circumstances. However, at least some disclosure by the OOG legal counsel was needed for this specific hotel.

OOG contends that emergency procurement is still the appropriate mechanism to use for the procurement of quarantine and isolation facilities as Guam remains in a state of emergency due to the COVID-19 pandemic. However, the reasoning that emergency procurement should continue during a state of emergency negates the mechanism’s intent. Emergency procurement is should be used when a service or item is urgently needed. We have dealt with the pandemic for over a year. Although the quarantine requirements changed, the need for a quarantine and isolation facility has become the norm. As an example, while quarantine requirements were lifted for most travelers who met the DPHSS guidance, quarantine is still being required for non-vaccinated travelers who have not met the DPHSS guidance. Therefore, a facility is still needed.

GovGuam has sufficient information and time to plan and prepare an IFB for a longer-term use of quarantine and isolation facilities. Issuing an IFB would have provided better assurance that GovGuam received the lowest overall cost. Further, an IFB shows that the procurement process ensured the opportunity to compete and is open and fair to all those who chose to do business with the government, and not just a select few.

We recognize that COVID-19 pandemic was an unprecedented public health emergency, and commend GovGuam’s hard work to deal the pandemic. However, it is also important to identify any lessons learned from the experience in order to help make necessary changes to improve future plans, which was the goal of our audit. We thank OOG, GSA, and OHS for their cooperation during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz  
Public Auditor

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## **Appendix 1: Objective, Scope & Methodology**

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Our audit objective was to determine whether the procurement of COVID-19 quarantine and/or isolation was conducted in accordance with applicable rules and regulations.

Our audit scope covered GovGuam procurements for COVID-19 quarantine and isolation facilities from March 1, 2020 to December 31, 2020. This does not include other COVID-19 related facilities (i.e. nurse lodging, homeless shelters, etc.) procured and utilized by GovGuam.

### **Audit Methodology**

To accomplish our objective, we performed the following:

1. Reviewed the Guam procurement rules and regulations, laws pertaining to the Executive Branch's oversight responsibilities, Governor's executive orders and memoranda, and other relevant documents pertaining to GovGuam's response to the COVID-19 pandemic, and prior audits on GovGuam procurement.
2. Conducted interviews with Office of the Governor, GHS/OCD, GSA, and DOA.
3. Obtained and reviewed the procurement records for the quarantine and isolation facilities.
4. Obtained and analyzed COVID-19 related expenditure data from DOA.
5. Obtained and analyzed quarantine utilization data from GHS/OCD.

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

**OPA Report No. 04-14: Competitive Sealed Bidding, Sole Source, and Emergency Procurement Functions (Issued December 2004)**

OPA found that GSA did not comply with Guam procurement rules and regulations for purchases of goods and services. GSA did not obtain or document the required number of quotations for emergency purchases. These conditions occurred because GSA did not properly plan or monitor the effectiveness of the procurement methods and make the appropriate adjustments to the Guam procurement rules and regulations. Therefore, GSA was unable to assure that purchases were made in the government's best interest. As a result, \$110,288 in emergency purchases was unsupported.

**OPA Report No. 05-01: Guam Fire Department (GFD) Emergency Procurement of Fire Trucks Pursuant to P.L. 27-99 (Issued May 2005)**

Pursuant to P.L. 27-99, passed June 25, 2004, OPA was designated as the observer for the emergency procurement of two fire trucks by GFD and GSA. We found that P.L. 27-99 permitted GFD to purchase two fire trucks without conforming to standard procurement practices; thus, setting a precedent allowing emergency purchases to be obtained without following emergency procurement regulations. P.L. 27-99 may have immediately addressed GFD's need for fire trucks; however, the waiver of procurement regulations is not good procurement policy and should be discouraged. The report recommendations urged the Legislature to discontinue passing legislation that waives procurement regulations for any purchase. Even the Governor raised concern over the lack of procurement procedures in P.L. 27- 99.

**OPA Report No. 06-11: GovGuam Emergency Executive Orders and Certificates of Emergency (Issued October 2006)**

OPA found no major irregularities with emergency procurement, as 201 of the 204 POs tested and authorized by emergency E.O.s adhered to prescribed procurement laws and regulations.

OPA recommended:

- Guam Legislature
  - Require the Governor to seek legislative approval when money is requested for non-disaster related emergencies, to ensure that all transfers address only the most immediate emergencies.
  - Impose time provisions for emergency funding, since there are no expiration dates for the expenditure of emergency funds.
  - Eliminate Certificates of Emergency because they duplicate the authorization given in E.O.s.
  - Require quarterly reporting of emergency expenditures, instead of the five-day reporting requirement from the date of declaration, culminating in a final report 30 days after the account is closed, and no later than one year after the date of declaration.
- Director, DOA

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## **Appendix 2: Prior Audit Coverage**

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- Pending the requirement by law, limit the life of an emergency account to a maximum of one year, with the initial six months to expend and encumber all funds and the second six months to liquidate any outstanding encumbrances. Further, that the account be closed upon reaching the fund limit and any unused funds or unliquidated encumbrances revert to the General Fund.
- Require GSA to create a standard template for office lease to promote the development of bid specifications that are not restrictive or perceived to be restrictive.

### **OPA Report No. 17-05: GSA Procurement Practices (Issued November 2017)**

OPA concluded the GSA's practices on:

- Procurement planning did not comply with Guam Procurement Law and Regulations;
- Competitive sealed bids did comply with the Guam Procurement Law and Regulations based on 11 POs related to nine competitive sealed bids tested; and
- Small purchases, sole source, and emergency procurements did not comply with the Guam Procurement Law and Regulations based on 29 POs tested.

### **OPA Report 19-04: GovGuam Procurement Training and Certification (Issued April 2019)**

OPA concluded that GovGuam agencies have partially complied with the required procurement training and certification. The purpose of this program is to ensure that employees are knowledgeable of the Guam Procurement Law and Regulations in order to effectively and efficiently perform their jobs. Therefore, we recommended:

- All directors and administrators of line and autonomous agencies; mayors; and respective procurement personnel, to obtain the required training and certifications according to their procurement capacity;
- GovGuam executive and legislative officials, and staff handling procurement, are recommended to obtain, at minimum, Module 1 certification; and
- The need to obtain additional module certifications should be determined depending on the level of involvement in procurement.

### **OPA Report No. 20-09: GovGuam Procurement Training and Certification Program (Issued December 2020)**

Our follow-up review of the GovGuam compliance with GCC's Procurement Training and Certification Program found that agencies continue to work on complying with the procurement training and certification requirements. We continue to recommend all directors and administrators of line and autonomous agencies, mayors, all executive, legislative, and judicial branch officials, and their procurement personnel, obtain the required training and certifications according to their procurement capacity. Until such time an entity is established to monitor compliance, we recommend the Legislature amend the law to require all agencies to submit a report summarizing procurement training compliance of its employees responsible for procurement annually to OPA, 30 days after the end of each fiscal year.

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## **Appendix 3: Applicable Laws and Regulations**

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### **Procuring Authority**

According to 10 G.C.A. §19104(1), *Definitions*, the “Public health authority” (PHA) is the DPHSS (Director)...or any person directly authorized to act on behalf of DPHSS. The determination of the PHA shall be determined...shall be appointed by the Governor by an Executive Order declaring a public health emergency (PHE).

The emergency health powers under 10 G.C.A. §19403(b), stipulates the PHA shall coordinate all matters pertaining to the PHE response on Guam. Also having primary jurisdiction, responsibility and authority for:

- (1) Planning and executing PHE assessment, mitigation, preparedness response and recovery for Guam;
- (2) Coordination PHE response between Federal and local authorities
- (3) Collaborating with relevant Federal government authorities, elected officials of other states, private organizations or companies;
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
- (5) Organizing public information activities regarding PHE response operations.

### **Emergency Procurement**

Emergency procurement regulations under 5 G.C.A. § 5215 stipulates emergency procurement is authorized when there is a threat to public health, welfare, or safety... provided that: (1) the procurement agent must solicit at least three informal price quotations; (2) must award procurement to the firm with the best offer, as determined by evaluating cost and delivery time; (3) no emergency procurement shall be made greater than the amount of goods and services necessary to meet the emergency for the 30-day period; and (4) a written determination of the basis for the emergency or the Governor’s declaration of an emergency through issuance of an Executive Order, which should be included in the file.

According to 5 G.C.A. § 5215, the Governor must approve the use of emergency procurement through a Certificate of an E.O. The Governor shall declare an emergency and approve, in writing, the use of emergency procurement via E.O. unless the CPO, the Director of Public Works, or the head of the purchasing agency (i.e., the head of an entity) initiates a Certificate for the Governor’s approval.

Procurement Law requires the copies of approved Certificates be sent to the Speaker and the Governor prior to any award.

Emergency procurement authorized by E.O.s or Certificates, in essence, a direct award, are restricted to an amount of goods or supplies necessary to meet an emergency for the 30-day period immediately following the award of the emergency procurement.

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## **Appendix 3: Applicable Laws and Regulations**

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Page 2 of 3

The basic process for conducting an emergency procurement requires three things, 1) competition as is practicable under the circumstances; 2) solicitation of at least three informal price quotations; and, 3) award to the best offer considering time and price.

### **Procurement Records**

5 G.C.A. § 5248 requires that the CPO shall maintain a record of procurement actions taken under sole source and emergency procurement to include the (1) contractor's name, (2) amount and type of each contract, and (3) a listing of supplies, services, and construction procured under each contract for a minimum period of five years to be submitted to the Legislature annually.

Additionally, according to 5 G.C.A. § 5249, each procurement officer is to maintain a complete record for each procurement. The procurement files should contain sufficient documentation to provide a complete history of the procurement to include all communication, external and internal.

### **Contract Formation**

5 GCA § 5235 stipulates that any type of contract which will promote the best interest of the Territory may be used; provided that the use of cost-plus-a-percentage-of-cost contract is prohibited.

A cost plus percentage of cost contract or CPPC is a cost reimbursement contract containing some element that obligates the non-state entity to pay the contractor an amount, undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs. CPPC Contracts are prohibited for non-state entities.

A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Territory than any other type or that it is impracticable to obtain the supplies, services or construction required except under such contract.

### **Competitive Sealed Bidding**

5 G.C.A. § 5211 requires all contracts to be procured using the competitive sealed bidding method except as provided under small purchases, sole source, emergency, and professional services. Thus, procurement of supplies or services greater than \$15,000 must undergo competitive sealed bidding.

- An invitation for bid (IFB) outlining the instructions and purchase information is used to initiate this type of procurement [5 G.C.A. § 5211(b)].
- IFBs are required to be mailed or furnished to an adequate number of bidders to secure competition [2 G.A.R. § 3109(f)(1)].
- The CPO has authority to decide when the procurement will be initiated and the time for response to the solicitation [2 G.A.R. § 3103(a)(2)].
- Procurement in excess of \$25,000 must be publicized at least once and at least seven days before the final date of bid submission [2 G.A.R. § 3109(f)(2)].

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## Appendix 3: Applicable Laws and Regulations

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- A minimum of 15 days shall be provided unless the procurement officer determines that a shorter time is necessary [2 G.A.R. § 3109(d)].
- Any partnership or corporation is required to submit an affidavit, which lists each major shareholder who has held more than ten percent of the outstanding interest or shares [2 G.A.R. § 3109(e)(3)(E)].
- Each bid shall be time-stamped, but not opened, and shall be stored in a secure place until the time and date set for bid opening [2 G.A.R. § 3109(l)(1)].
- No late bid, withdrawal, or modification will be considered unless received before contract award [2 G.A.R. § 3109(k)(2)].
- Bids are opened publicly in the presence of one or more witnesses. In addition, information deemed appropriate shall be recorded at the time of bid opening [2 G.A.R. § 3109(l)(2)].
- If only one responsive bid is received, an award may be made to the single bidder if the price submitted is fair and reasonable [2 G.A.R. § 3102(c)(1)].
- A solicitation is cancelled only when there are compelling reasons to believe that the cancellation is in the territory's best interest [2 G.A.R. § 3115(b)].
- The reasons for cancellation or rejection shall be part of the procurement file and shall be available for public inspection [2 G.A.R. § 3115(d)(3)].
- Bids will be evaluated to determine which bidder offers the lowest cost to the territory [2 G.A.R. § 3109(n)(4)].
- The contract is awarded to the lowest and most responsive bidder whose bid meets the criteria set forth in the IFB [2 G.A.R. § 3109(n)(1)].
- A record showing the basis for determining the successful bidder shall be made part of the procurement file [2 G.A.R. § 3109(p)].
- A written notice of award is sent to the successful bidder; and for procurement over \$25,000, each unsuccessful bidder shall also be notified of the award [2 G.A.R. § 3109(q)].

### **Public Law (P.L.) 35-109 (passed in October 2020)**

- P.L. 35-109 recognizes that environmental threats can create an urgent need to procure goods, services and construction in the same way that threats to public health, welfare, and safety can. The new law recognizes procurement in thirty-(30) day time frames will not always be sufficient to respond adequately to such emergencies. In addition, the new law imposes additional requirements on the processing of such emergency procurement.



**ISLAND OF GUAM  
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HAGÁTÑA, GUAM 96932  
U.S.A.**

**Executive Order No. 2020-03**

**RELATIVE TO DECLARING A STATE OF EMERGENCY TO  
RESPOND TO NOVEL CORONAVIRUS (COVID-19)**

**WHEREAS**, the United States Centers for Disease Control and Prevention (“CDC”) has identified COVID-19, a respiratory disease that is a new strain of coronavirus not previously identified in humans, as posing a significant public health risk;

**WHEREAS**, on January 30, 2020, the World Health Organization (“WHO”) declared a Global Health Emergency with regard to the COVID-19 outbreak;

**WHEREAS**, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19;

**WHEREAS**, on March 13, 2020, President Donald Trump declared a national emergency over the COVID-19 outbreak in the continental United States;

**WHEREAS**, while no cases of COVID-19 have been identified on Guam, an emergency situation exists such that in order to safeguard the community and general welfare of the island, it is critical that timely precautions be taken and that resources be immediately identified, mobilized and prepositioned; and

**WHEREAS**, *I Maga’hågan Guåhan*, pursuant to Section 1421g of the Organic Act of Guam, is obligated to provide for the public health of Guam including protecting against the spread of **COVID-19**.

**NOW, THEREFORE, I, LOURDES A. LEON GUERRERO**, Governor of Guam, by the authority vested in me by the Organic Act and laws of Guam, and for the purpose of marshalling all of the island’s resources and appropriate preparedness, response, and recovery measures, hereby order the following:

1. **Declaration of State of Emergency.** A state of emergency pursuant to Section 19401 of Article 4, Chapter 19, Title 5, Guam Code Annotated is hereby declared for Guam as a result of the effects of **COVID-19** on the island.
2. **Primary Public Health Authority.** The Department of Public Health and Social Services, through its Director and with the approval of *I Maga’hågan Guåhan*, shall be authorized to exercise all powers enumerated in Chapter 19 of Title 10, Guam Code Annotated.
3. **Geographic Areas Applicable to the Declaration.** All geographic areas with confirmed cases of COVID-19 shall be applicable to this declaration. The authority of this Executive Order shall pertain to all of Guam.



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4. **Suspension of Statutes, Orders, Rules and Regulations That Prevent, Hinder or Delay Necessary Action to Respond to the Emergency.** Pursuant to Section 19403(a)(1), of Chapter 19, Title 10 Guam Code Annotated, statutes, orders, rules, and regulations that prevent, hinder or delay necessary action to prepare for or respond to this public health emergency, including but not limited to, purchases and hiring, are hereby suspended.
5. **Price Gouging.** Effective immediately and throughout the duration of this Executive Order or within any time period allowed by law, whichever is longer, it shall be an unfair trade practice for any merchant or landlord to increase the price of any goods, services, or dwelling rentals on the basis of shortage anticipated or caused by this public health emergency.
6. **Personnel and Procurement.** Pursuant to Sections 19505 and 19803 of Chapter 19, Title 10, Guam Code Annotated, this Executive Order shall authorize, hiring, overtime and any procurement related to this public health emergency for all government of Guam agencies responding to the emergency.
7. **GHS/OCD to be Lead Agency for Logistics.** GHS/OCD shall be the lead agency for the logistical organization and direction of resources and procurement of any goods and services relative to this Executive Order. Any procurement pursuant to this Executive Order is not being used solely for the purpose of avoidance of the provisions of the Guam Procurement Law.
8. **Authorization For Overtime.** Authorization is given for the payment of overtime for non-exempt Government of Guam employees, to work in excess of forty (40) hours a week to mitigate and respond to the effects of **COVID-19**. The Office of Civil Defense Administrator is authorized to determine the eligibility of overtime expenditures resulting from work performed by the government agencies, and approval from the Bureau of Budget Management & Research shall be obtained prior to incurring any overtime or expenses. Failure to obtain prior approval shall be grounds for denying reimbursement.
9. **Documentation of Expenses.** All departments and agencies are instructed to keep appropriate documentation on all emergency expenses authorized by this Executive Order for inspection by the Executive and Legislative Branches and by the Public Auditor of Guam, and in anticipation of federal disaster assistance approval by the President of the United States to be administered by any federal agency.
10. **Activation of Guam National Guard.** The Adjutant General is authorized to issue active duty orders for the mobilization of such National Guard personnel and equipment as she may determine to protect life and safety, to continue essential public services, and to prevent undue loss and suffering.



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11. **Severability.** If any provision of this executive order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.

Signed and Promulgated at *Hagåtña*, Guam, this 14<sup>th</sup> day of March, 2020.

**LOURDES A. LEON GUERRERO**  
*Maga'hågan Guåhan*  
Governor of Guam

Attested by:

**JOSHUA F. TENORIO**  
*Sigundo Maga'låhen Guåhan*  
Lieutenant Governor of Guam





**ISLAND OF GUAM  
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HAGÁTÑA, GUAM 96932  
U.S.A.**

**EXECUTIVE ORDER NO. 2020-04**

**RELATIVE TO RESPONDING TO CONFIRMED CASES OF NOVEL  
CORONAVIRUS (COVID-19)**

**WHEREAS**, on March 14, 2020, I, Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, acting pursuant to the power provided to me by the Organic Act and the laws of Guam, declared a public health emergency in the island of Guam due to the potential dangers posed by the 2019 novel coronavirus ("COVID-19"); and

**WHEREAS**, since the declaration of a public health emergency, Guam has confirmed three cases of COVID-19; and

**WHEREAS**, it is of the utmost importance that *I Maga'hågan Guåhan* utilizes all available resources of the government of Guam to respond to this public health threat evidenced by these newfound cases; and

**WHEREAS**, the Director of the Guam Department of Public Health and Social Services ("DPHSS") and members of the Federal Centers for Disease Control and Prevention ("CDC") have advised that Guam undergo an "investigatory period" to detect and track the potential spread of COVID-19; and

**WHEREAS**, as a community, we place special emphasis on care for those most vulnerable among us, especially the *manåmko'*, who, along with those with pre-existing medical conditions, are most at risk of severe effects from COVID-19; and

**WHEREAS**, the CDC and DPHSS recommend implementation of community mitigation strategies, including limiting government operations to essential services and the prohibition of large gatherings in an effort to further prevent the transmission of COVID-19.

**NOW, THEREFORE, I, LOURDES A. LEON GUERRERO, I Maga'hågan Guåhan**, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do hereby order:

- 1. CLOSURE OF NON-ESSENTIAL GOVERNMENT OF GUAM OFFICES.** Effective immediately and through March 30, 2020, all non-essential government of Guam offices are closed and such services are suspended. Essential personnel shall be identified and contacted by their appropriate supervisors.
- 2. CLOSURE OF ALL SCHOOLS.** Pursuant to Section 3317, Article 3, Chapter 3, of Title 10, Guam Code Annotated, beginning March 17, 2020, all public and private schools on Guam serving prekindergarten through 12<sup>th</sup> grade students must close for educational purposes through March 30, 2020. The definition of habitual truancy pursuant to Article 4, Chapter 6, of Title 17, Guam Code Annotated, is



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suspended. And student absences due to school closures and absences connected to the transmission of COVID-19 during the effect of this Executive Order shall not contribute to the calculation of habitual truancy.\

**3. PROHIBITION ON LARGE GATHERINGS.** Pursuant to Section 3317, Article 3, Chapter 3, of Title 10, Guam Code Annotated, effective immediately and through March 30, 2020, gatherings of 50 people or more in a single room or single space at the same time for social, spiritual and recreational activities, including, but not limited to, community, civic, public, leisure, faith-based, or sporting events, parades, concerts, festivals, fiestas, conventions, fundraisers and similar activities are prohibited throughout the island of Guam.

**4. EMERGENCY MEASURES CONCERNING FACILITIES AND MATERIALS.** Effective immediately and through March 30, 2020, any place of business or public accommodation for which attendance is anticipated to be fewer than 50 people, shall operate at no greater than 50% occupancy, and no greater than 50% of seating capacity.

The preceding directive shall not apply to retail establishments providing basic food and necessities (e.g. grocery and convenience stores), hospitals, pharmacies, or other medical offices/facilities. This Order is not intended to prohibit routine business gatherings held at the place of business.

**5. MANDATORY SOCIAL-DISTANCING.** In all other instances not captured by this prohibition, it is strongly recommended that mitigation measures are implemented and enforced. These measures include but are not limited to social distancing of at least six feet; frequent cleaning of all surfaces; posting of signs; and permitting/encouraging teleworking. Older residents and those with pre-existing medical conditions are encouraged to limit excursions of any type.

**6. RESTRICTING ENTRY INTO GUAM.** Pursuant to Section 3333, Article 3, Chapter 3, of Title 10, Guam Code Annotated, all persons who are non-residents who have been in a country with confirmed COVID-19 cases for more than one (1) week and do not possess a DPHSS recognized and certified document that attests that they are not infected with COVID-19, shall be restricted entry into Guam. The date of the test must not be more than one (1) week from the date of attempted entry into Guam.

Any individual who enters into Guam without the proper documentation shall be quarantined pursuant to this Section and Sections 19604 and 19605 of Article 6, Chapter 19 of Title 10, Guam Code Annotated.

Any and all costs associated with the quarantine and/or treatment of individuals who are subject to restricted entry into Guam pursuant to this Executive Order shall be the responsibility of the individual and the carrier that the individual contracted with to travel to Guam.



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U.S.A.

7. **ENFORCEMENT.** DPHSS is directed to issue guidance, subject to my approval to implement the terms of this Order. DPHSS shall enforce this Order and, if necessary, may do so with the assistance of the Guam Police Department.
  
8. **SEVERABILITY.** If any provision of this executive order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.

**SIGNED AND PROMULGATED** at Hagåtña, Guam, this **16th** day of **March 2020**.

**LOURDES A. LEON GUERRERO**  
*Maga'hågan Guåhan*  
Governor of Guam

Attested by:

**JOSHUA F. TENORIO**  
*Sigundo Maga'låhen Guåhan*  
Lieutenant Governor of Guam



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**Appendix 6:**  
**Executive Orders Extending Public Health Emergency**

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	<b>Executive Order</b>	<b>Date Issued</b>	<b>Title/Purpose</b>
1.	Executive Order No. 2020-03	March 14, 2020	Relative to Declaring a State of Emergency to Respond to Novel Coronavirus (COVID-19)
2.	Executive Order No. 2020-04	March 16, 2020	Relative to Responding to Confirmed Cases of Novel Coronavirus (COVID-19)
3.	Executive Order No. 2020-09	April 5, 2020	Relative to Additional Isolation Measures
4.	Executive Order No. 2020-11	April 30, 2020	Relative To Extending The Public Health Emergency And Establishing The Pandemic Conditions Of Readiness System
5.	Executive Order No. 2020-16	May 28, 2020	Relative To Allowing Additional Activities During Pandemic Condition Of Readiness 2
6.	Executive Order No. 2020-22	June 29, 2020	Relative to Extending the Public Health Emergency Declared to Respond to the Novel Coronavirus COVID-19
7.	Executive Order No. 2020-24	July 19, 2020	Relative to Declaring Pandemic Condition of Readiness (PCOR) 3
8.	Executive Order No. 2020-29	August 27, 2020	Relative to Extending Public Health Emergency and Modified Stay-at-Home Order
9.	Executive Order No. 2020-35	September 29, 2020	Relative to Providing Financial Assistance to Medical and Health Providers and Families of COVID-19 Related Fatalities
10	Executive Order No. 2020-38	October 28, 2020	Relative to Implementation of COVID-19 Public Health Enforcement Rules and Extension of the Public Health Emergency
11	Executive Order No. 2020-41	November 27, 2020	Relative to Extending the Public Health Emergency Declared to Respond to Novel Coronavirus (COVID-19)
12.	Executive Order No. 2020-46	December 29, 2020	Relative to Extending the Public Health Emergency Declared to Respond to Novel Coronavirus (COVID-19)

## Additional Executive Orders Issued from March – December 2020

	Executive Order	Issued	Title/Purpose
1.	Executive Order 2020-05	March 19, 2020	Relative to Mandating Social Isolation, Lifting Restrictions on Health Care Licensure, and Clarifying Status of Non-Essential Government of Guam Operations
2.	Executive Order 2020-06	March 24, 2020	Relative to the Creation of COVID-19 CURE Action Team and Extension of Social Isolation Mandate
3.	Executive Order 2020-07	March 28, 2020	Relative to Establishing a Moratorium on Evictions, Clarifying Price Gouging Prohibitions, and Providing for Telephonic Participation in Public Meetings
4.	Executive Order 2020-08	April 5, 2020	Relative to Establishing Covid-19 Response Differential Pay
5.	Executive Order 2020-10	April 10, 2020	Relative to the Reservation of Road Access for Essential Business and Activities in a Public Health Emergency
6.	Executive Order 2020-12	May 5, 2020	Relative To The Creation Of Prugraman Salappe\ 'Ayudon I Taotao, A Disaster Relief Program
7.	Executive Order 2020-13	May 5, 2020	Relative To Ensuring Regular, Reliable, And Relevant Reporting Regarding Expenditures Authorized Pursuant To The Public Health Emergency Declared To Respond To The COVID-19 Pandemic
8.	Executive Order 2020-14	May 8, 2020	Relative to Declaring Pandemic Condition of Readiness (PCOR) 2
9.	Executive Order 2020-15	May 15, 2020	Relative to the Extension of Prugraman Salappe\ 'Ayudon I Taotao, A Disaster Relief Program
10.	Executive Order 2020-17	June 1, 2020	Relative to Guam\'s Launching of the Pandemic Unemployment Assistance and Federal Pandemic Unemployment Compensation Programs
11.	Executive Order 2020-18	June 1, 2020	Relative to Launching the Guam Small Business Pandemic Assistance Grant Program
12.	Executive Order 2020-19	June 2, 2020	Relative to Safely Addressing the Critical Shortage of Personal Protective Equipment Necessary for Responding to the COVID-19 Public Health
13.	Executive order 2020-20	June 5, 2020	Relative to Setting Conditions for Entry Into Guam and Permitting Limited School Operations
14.	Executive Order 2020-21	June 17, 2020	Relative to Addressing the Mental Health, Drug, Alcohol and Rehabilitation Needs of the Department of Corrections Through the Establishment of the Guam Behavioral Health and Wellness Center Annex
15.	Executive Order 2020-23	June 30, 2020	Relative to Reconstituting the Interagency Council for Coordinating Homelessness Programs; Establishing the Office of Homelessness Assistance and Poverty Prevention at the Mayors Council of Guam; and Providing Shelter and Protection for Unsheltered Homeless Families and Individuals

## Additional Executive Orders Issued from March – December 2020

	Executive Order	Issued	Title/Purpose
16.	Executive Order 2020-25	July 20, 2020	Relative to Revised Restrictions on Entry into Guam, and Implementing Measures to Ensure the Safe Practice of Certain Economic Activities
17.	Executive Order 2020-26	August 7, 2020	Relative to Implementation of Additional Safety Measures and Issuance of Temporary Teaching Certifications During the Public Health Emergency
18.	Executive Order 2020-27	August 14, 2020	Relative to Declaring Pandemic Condition of Readiness (PCOR) 1
19.	Executive Order 2020-28	August 21, 2020	Relative to Ordering Guam Residents to Stop the Spread of COVID-19 by Staying Home
20.	Executive Order 2020-30	September 4, 2020	Relative to Extending Stay-At-Home Order
21.	Executive Order 2020-31	September 11, 2020	Relative to Extending the Stay-at-Home Order
22.	Executive Order 2020-32	September 17, 2020	Relative to Continuing the Stay-at-Home Order with Additional Services
23.	Executive Order 2020-33	September 20, 2020	Relative to the Utilization of Quarantine and Isolation to Combat the Spread of COVID-19
24.	Executive Order No 2020-34	September 24, 2020	Relative to Instituting Safer-At-Home Advisory
25.	Executive Order No 2020-36	October 1, 2020	Relative to Authorizing the Operation of Additional Businesses and Activities During Pandemic Condition of Readiness 1 (PCOR 1)
26.	Executive Order No. 2020-37	October 22, 2020	Relative to Amending Executive Order No. 2020-23 Creating the Office of Homelessness Assistance and Poverty Prevention
27.	Executive Order No. 2020-39	November 6, 2020	Relative to Creating a Community Defense Liaison Office within the Office of the Governor, as the Successor Office of the Guam Buildup Office
28.	Executive Order No. 2020-40	November 23, 2020	Relative to Establishing the Small Business Rent Assistance Grant Program
29.	Executive Order No. 2020-42	December 9, 2020	Relative to Establishing the Guam Abandoned Derelict Vessels Removal Group
30.	Executive Order No. 2020-43	December 14, 2020	Relative to Amending Restrictions on the Operation of Businesses and Activities During Pandemic Condition of Readiness 1 (PCOR 1)
31.	Executive Order No. 2020-44	December 18, 2020	Relative to Further Amending Restrictions on the Operation of Businesses and Activities During PCOR1
32.	Executive Order No. 2020-45	December 23, 2020	Relative to Further Amending Restrictions During Pandemic Condition of Readiness 1 (PCOR 1)



June 1, 2021

The Honorable Benjamin J.F. Cruz  
Public Auditor  
Office of Public Accountability  
238 Archbishop Flores Street  
Suite 401 Dna Bldg.  
Hagatna, GU 96910-5113

Dear Public Auditor Cruz:

Please find enclosed responses from the following agencies to your draft audit report of the Government of Guam's Coronavirus (COVID-19) Quarantine and Isolation Facilities:

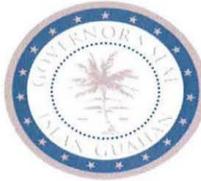
1. Ms. Claudia S. Acfalle, Chief Procurement Officer, General Services Agency
2. Atty. Leslie Travis, Legal Counsel, Office of the Governor
3. Mr. Patrick T. Leon Guerrero, Acting Administrator, Office of Civil Defense

I trust that this information will be helpful and responsive to the draft audit's findings. I appreciate your time and remain available to answer any questions or concerns.

Sincerely,

  
Jon Junior Calvo  
Chief of Staff

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
BY: FbJ  
DATE: 6/1/2021  
TIME: 5:15  AM  PM



**OFFICE OF LEGAL COUNSEL**

*Ufisinan I Maga'hågan Guåhan*  
*Office of the Governor of Guam*

LOURDES A. LEON GUERRERO  
*Governor of Guam*

JOSHUA F. TENORIO  
*Lieutenant Governor of Guam*

June 1, 2021

**HONORABLE BENJAMIN J.F. CRUZ**  
*Public Auditor*  
OFFICE OF THE PUBLIC ACCOUNTABILITY  
Suite 401, DNA Building  
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**Re: Office of Legal Counsel's Response to the Office of the Public Accountability's Draft Report regarding Government of Guam Procurement of Hotels Used for COVID-19 Quarantine – Performance Audit (March 2020 through December 2020) dated May 2021**

*Hafa Adai* Public Auditor Cruz:

**I. INTRODUCTION**

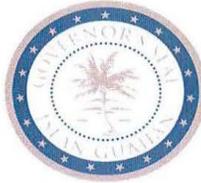
The Office of the Governor of Guam was provided with a Draft Report of the Office of Public Accountability's Performance Audit of the Government of Guam's Procurement of Hotels Used for COVID-19 Quarantine from March-December 2020 ("Draft Report").

As stated in the Draft Report, the Office of the Public Accountability's ("OPA") audit of the procurement found that the initial procurement of quarantine and isolation facilities facilitated by the Office of the Governor did not comply with Guam Procurement Law as follows: (1) improper procuring authority, (2) conflict of interest with one of the awarded facilities, (3) incomplete procurement record, and (4) contract issues. The OPA found that these noted deficiencies result in \$3.1 million of questioned costs for the initial procurement.

The Draft Report further states that two subsequent procurements of quarantine and isolation facilities conducted by Guam Homeland Security/Office of Civil Defense ("GHS/OCD") and administered by the General Services Agency ("GSA"), did not comply with Guam Procurement Law as follows: (1) incomplete procurement record, and (2) services procured extended beyond the 30-day limit for emergency procurements.

The OPA ultimately found that the Government of Guam ("GovGuam") should have utilized competitive sealed bidding procurement method by issuing an invitation for bid ("IFB") instead of continuing to use emergency procurement for the use of quarantine and isolation facilities beyond May 2020.

As discussed herein, the Governor has ultimate authority under the Organic Act of Guam to establish quarantine stations in Guam for the protection of the community from the spread of disease. This concomitant authority and responsibility is independent of any legislative grant of authority in the *Islan Guåhan Emergency Health Powers Act* ("EHPA"), and because it originates from the Organic Act, the legislature is not authorized to pass legislation that would contravene such authority. Accordingly, the Office of the



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Governor is a proper procuring authority, notwithstanding the fact that the initial procurement of quarantine facilities was undertaken with the approval of the Department of Public Health and Social Services (“DPHSS”), which is charged in the EHPA with responsibility for the protection of persons in Guam during a public health emergency, and under the guidance of the Office of the Attorney General.

The Office of the Governor further submits that the Draft Report does not accurately reflect the emergency purchase mechanism utilized in the procurement of quarantine and isolation facilities at the onset of the COVID-19 pandemic. Instead, the Draft Report characterizes the initial procurement as an emergency procurement under 5 GCA § 5215, which was the mechanism utilized by GHS/OCDC in subsequent procurements. The emergency purchase power, authorized in the EHPA, was activated by the Governor’s authorized suspension of statutes and regulations that would hinder or delay the emergency response, which the Governor implemented in Executive Order No. 2020-03, issued on March 14, 2020.

The Office of the Governor further submits that the OPA’s findings regarding a purported conflict of interest involving legal counsel and one of the procured hotels does not provide adequate notice, to affected legal counsel or to the Office of the Governor, of the factual basis for the findings. Accordingly, the Office of the Governor cannot speculate regarding such basis and is not given adequate notice of the matters it must investigate and the matters to which it must respond.

Finally, although the Draft Report concludes that continued procurement of quarantine facilities during the COVID-19 public health emergency should be accomplished utilizing competitive bids, the Office of the Governor submits that the uncertainty and instability of the pandemic, including the presence of variants and the status of Guam’s inoculation efforts, require that the procurement mechanism utilized provide the necessary flexibility to shift with the circumstances as they develop. Accordingly, the competitive bid mechanism is not the proper vehicle by which the government should procure quarantine facilities.

**II. RELEVANT FACTS**

On March 14, 2020, Governor Lourdes Leon Guerrero issued Executive Order No. 2020-03 (“E.O. No. 2020-03”). In E.O. No. 2020-03, citing to her responsibility under Section 1421g of the Organic Act of Guam “to provide for the public health of Guam, including protecting against the spread of COVID-19,” declared a state of emergency in Guam as a result of the effects of COVID-19 on the island, pursuant to 10 GCA § 19401. Pursuant to 10 GCA § 19403(a)(1), E.O. No. 2020-03 further provided that “statutes, orders, rules and regulations that prevent, hinder or delay necessary action to prepare for or respond to [the COVID-19] public health emergency, including but not limited to, purchases and hiring, are hereby suspended.”

On March 16, 2020, citing to additional authority pursuant to 10 GCA § 3333 and 10 GCA §§ 19604 and 19605, the Governor issued Executive Order No. 2020-04, restricting entry into Guam and implementing isolation and quarantine protocols.

As of present date, the public health emergency has been continued fifteen (15) times. Since March 14, 2020, the island has continuously been in a state of public health emergency, renewed approximately every thirty



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(30) days. During the pendency of the public health emergency, the Governor has issued several Executive Orders which, along with corresponding guidance memoranda issued by DPHSS, implement quarantine policies for incoming travelers, including mandatory quarantine at a government facility under specific circumstances. Additionally, the government operates an isolation facility for incoming travelers who have tested positive for COVID-19, and for individuals who have tested positive for COVID-19 in the community but cannot effectively isolate themselves in their homes.

**III. COMMENTS ON DRAFT REPORT**

**A. LEGAL STANDARD**

**1. Quarantine Authority**

The Organic Act of Guam provides that “[s]ubject to the laws of Guam, the Governor shall establish, maintain, and operate public-health services in Guam, including...quarantine stations, at such places in Guam as may be necessary, and [s]he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.” 48 USC § 1421g(a).

The EHPA was enacted in 2003, with the legislative intent to give the government of Guam “the ability to respond, rapidly and effectively, to potential or actual public health emergencies.” 10 GCA § 19102(e).

Section 19401 of the EHPA authorizes the Governor to declare a state of public health emergency, in consultation with the public health authority or unilaterally when circumstances require prompt action. *See* 10 GCA § 19401.

Section 19604 of the EHPA further provides that during a public health emergency, the public health authority may isolate or quarantine individuals or groups of individuals. 10 GCA § 19604(a). It further provides that such isolation and quarantine “may include, but are not limited to, confinement to private homes or other private and public premises.” 10 GCA § 19604(b).

**2. Procurement Authority**

The Procurement Code requires that government contracts generally shall be awarded by competitive sealed bidding. 5 GCA § 5211. This general rule is subject to several exceptions, including small purchases, sole source procurement, and emergency procurements. 5 GCA §§ 5213, 5214 and 5215. As explained in the Draft Report, the Competitive Sealed Bidding process contains numerous requirements, including (1) development of an Invitation for Bids (“IFB”), (2) Advertisement of Solicitation, (3) Receipt and Opening of Bid Responses, (4) Evaluation of Bid Responses, (5) Development of Award Determination, and (6) Issuance of Notice of Award. Draft Report at 17-18; *see also* 5 GCA § 5211. Similarly, Emergency Procurements entail fulfillment of several requirements: (1) Determination of Need, (2) Source of goods and services locally, (3) Solicitation of price quotations, and (4) Issuance of Notice of Award. Draft Report at 17; *see also* 5 GCA §



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5215. While less involved than the Competitive Sealed Bidding process, the Emergency Procurement process also contemplates coordinated efforts of several agencies and vendors. Both the Competitive Sealed Bidding process and the Emergency Procurement process are further subject to protests and appeals, both of which may result in protracted proceedings that can delay the procurement process indefinitely.

Further, Section 19403 of the EHPA provides in relevant part:

(a) Emergency Powers. During a state of public health emergency, I Maga'låhen Guåhan [The Governor] may:

- (1) through an executive order suspend, the provisions of any regulatory statute prescribing procedures for conducting local business, or the orders, rules and regulations of any government of Guam agency, to the extent that strict compliance with the same would prevent, hinder or delay necessary action (including emergency purchases) by the public health authority to respond to the public health emergency, or increase the health threat to the population;
- (2) utilize all available resources of the government of Guam, as reasonably necessary to respond to the public health emergency;
- (3) transfer the direction, personnel or functions of the government of Guam departments and agencies in order to perform or facilitate response and recovery programs regarding the public health emergency[.]

10 GCA § 19403(a) (emphasis added).

Section 19502 of the EHPA further provides:

The public health authority may exercise, for such period as the state of public health emergency exists, the following powers concerning facilities, materials, roads or public areas:

(a) Use of Materials and Facilities. To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food and clothing.

10 GCA § 19502. Facilities or materials procured pursuant to Section 19502 are compensated pursuant to Section 19506, which provides in relevant part that "[t]he government of Guam shall pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by a public health authority for its temporary or permanent use under this Article according to the procedures and standards set forth in § 19805 of this Chapter.



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Section 19805 in turn provides in part:

§ 19805. Compensation.

(a) Taking. Compensation for property shall be made only if private property is lawfully taken or appropriated by a public health authority for its temporary or permanent use during a state of public health emergency declared by I Maga'[hagan] Guahan [The Governor] pursuant to this Chapter.

....

(c) Amount. The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to nonemergency eminent domain procedures, as provided in Chapter 15 of Title 21 of the Guam Code Annotated, except that the amount of compensation calculated for items obtained under § 19505 shall be limited to the costs incurred to produce the item.

10 GCA § 19805.

Finally, Section 19808 of the EHPA provides in relevant part:

(b) Prior Conflicting Acts. In the event of a conflict between this Chapter and other local laws or regulations concerning public health powers, the provisions of this Chapter apply.

10 GCA § 19808.

**3. Applicable Canons of Statutory Construction**

As the court provided in *Sumitomo Const., Co. v. Gov't of Guam*:

It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear legislative intent to the contrary, the plain meaning prevails...Moreover, in determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections. As stated by the Supreme Court of the United States, "words and people are known by their companions." *Gutierrez v. Ada*, 528 U.S. 250, 255, 120 S.Ct. 740, 744, 145 L.Ed.2d 747 (2000). Accordingly, "[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Kelly*, 479 U.S. at 43, 107 S.Ct. at 357-58 (citation omitted).

2001 Guam 23 ¶ 17. "If a statute is ambiguous as to a certain term, courts will look to the legislative history in order to ascertain the legislative intent." *In re I Mina Trentai Dos Na Liheslaturan Guahan*, 2014 Guam



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24 ¶ 13. “[I]n determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections.” *Sumitomo Constr., Co., supra* at ¶ 17.

“[A] narrower, more specific provision of a statute takes precedence over a more general provision of the same statute.” *Camacho v. In re Gumataotao*, 2010 Guam 1 ¶ 19 (citing *Rose v. State*, 19 Cal.2d 713, 123 P.2d 505, 512 (Cal.1942) (“A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.”); see also *In re I Mina Trentai Dos Na Liheslaturan Guåhan, supra* at ¶ 13 (“Where a specific statute appears to conflict with a general statute, the more specific statute prevails.”).

Finally, a statute should be construed to give effect to all of its provisions so that no part would be superfluous or insignificant.” *Macris v. Richardson*, 2010 Guam 6 ¶ 15; see also *Washington Mkt. Co. v. Hoffman*, 101 U.S. 112, 115–16, 25 L. Ed. 782 (1879) (“We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word...[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. This rule has been repeated innumerable times.”) (internal quotations omitted). “A statutory provision should be interpreted consistently and so as not to render another statutory provision, particularly one concerning the same subject, null and void.” *Pangelinan v. Gutierrez*, 2004 Guam 16 ¶ 21.

**B. THE INITIAL PROCUREMENT OF QUARANTINE FACILITIES COMPLIED WITH GUAM LAW**

In the Draft Report, the OPA finds that certain aspects of both the initial procurement of quarantine facilities purportedly overseen by the Office of the Governor and the subsequent procurement by the GHS/ OCD of quarantine and isolation facilities did not comply with various aspects of Guam Procurement Law. With regard to the initial procurement, the Draft Report notes the following purported deficiencies: (1) improper procuring authority, (2) conflict of interest with one of the awarded facilities, (3) incomplete procurement record, and (4) contract issues. These findings are addressed in turn herein, and in responses by relevant agencies filed concurrently herewith.

**1. The Office of the Governor of Guam is a Proper Procuring Authority for Quarantine Facilities under the Organic Act of Guam.**

The Draft Report notes that “[p]ursuant to 10 GCA § 19403, the Governor has an ‘oversight’ role of the public health emergency in the activation of the disaster response and recovery aspects of GovGuam, and the initiation of the emergency declaration directly appoints a primary ‘public health authority’ (PHA) to respond to the emergency.” Draft Report at 10. The Draft Report further finds that, although the Governor contends she has authority under the Organic Act of Guam to execute general supervision during a public health emergency, “that authority shall not be in conflict with any Guam laws” and “P.L. 16-124 specifically



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repealed the governor's executive control of GovGuam procurement and implemented a centralized procurement transferring that authority to the centralized procurement regime comprised of the Policy Office, CPO, and Director of the Department of Public Works." *Id.*

The Governor's authority over public health in general, and over quarantine stations specifically, originates not from statute but from the Organic Act of Guam. Specifically, Section 1421g(a) provides as follows:

(a) Public health services

Subject to the laws of Guam, the Governor shall establish, maintain, and operate public-health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

48 U.S.C.A. § 1421g(a) (emphasis supplied). The Draft Report observes that the Governor's authority under the Organic Act "shall not be conflict with any Guam laws." Draft Report at 10. However, although the Governor's Organic Act authority to establish quarantine stations in Guam is "[s]ubject to the laws of Guam," the Legislature's authority to pass laws that affect the Governor's Organic Act authority is itself subject to a very important limitation: legislative power extends to all rightful subjects of legislation not inconsistent with the provisions of the Organic Act. 48 U.S.C.A. § 1423a.

In *Bordallo v. Baldwin*, the Ninth Circuit held that although the governor's governance over the hospital pursuant to Section 1421g(a) was subject to legislation, the legislature's power was itself restricted by the Organic Act, and that laws passed by the legislature subject to which the governor was to perform his Organic Act function "may not negate the command of the Organic Act that the ultimate responsibility for the governance of the Hospital be in the Governor." *Bordallo v. Baldwin*, 624 F.2d 932, 934-35 (9th Cir. 1980). The Ninth Circuit's decision in *Bordallo* directly applies to limit the legislature's ability to pass laws that negate the Governor's ultimate responsibility and authority to establish quarantine stations.

Based on the analysis provided in *Bordallo*, and the express mandate of the Organic Act, it is clear that the Governor's authority to establish quarantine stations in Guam extend past the "general supervision" the Draft Report suggests the Governor is limited to. Though the Draft Report states that the 16th Legislature in Public Law No. 16-124 "repealed" the Governor's executive control of Gov Guam procurement, because the legislature's actions cannot contradict the Organic Act, such legislation cannot displace the Governor's Organic Act authority to herself establish quarantine facilities. Though normally the legislature, by its own Organic Act authority, has purse powers that would necessarily affect the Governor's ability to establish quarantine stations by controlling the budget, because the quarantine stations at issue were established utilizing federal funds appropriated specifically for use in preparation for or in response to COVID-19, the legislature's intervention was not necessary for the Governor's execution of her Organic Act authority to establish quarantine stations.

Though the Draft Report indicates that previous procurements during the 2019 public health emergency



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related to dengue fever in Guam utilized Emergency Procurements through the CPO and GSA, such emergency did not implicate the Governor's quarantine powers in the Organic Act, and therefore are inapposite in the instant analysis. Moreover, even if the Governor delegated Organic Act powers over quarantine in prior instances, which she has not, such delegation does not result in a waiver of her authority to establish quarantine stations in the context of the current emergency.

The Office of the Governor submits that the Draft Report's findings that the Office of the Governor was not a proper procuring authority for quarantine stations do not accurately account for the Governor's Organic Act authority and responsibility to establish quarantine stations.

Finally, although, as discussed, the Governor does in fact possess the authority to establish quarantine stations in Guam, it is critical to note that the initial procurement of quarantine stations, though facilitated by the Office of the Governor, was undertaken with the approval of the DPHSS and the guidance of the Office of the Attorney General.

**2. Legal Counsel for the Office of the Governor did not Have a Conflict of Interest within the Meaning of Guam Procurement Law.**

The Draft Report finds that Legal Counsel to the Office of the Governor had a conflict of interest constituting a breach of ethical standards under the procurement code related to the initial procurement of quarantine facilities. Draft Report at 11. Specifically, the Draft Report finds that the Legal Counsel "in charge of the initial procurement" had immediate family members with a financial interest in the awarded hotels as "publicized in articles by the local media," and that one of the hotels had a mortgage with a local bank at which the Legal Counsel was previously employed and in which the Legal Counsel's immediate family is currently employed and has ownership interest in. The Draft Report references 5 GCA § 5628 for this finding, which provides in relevant part:

§ 5628. Employee Conflict of Interest.

(a) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement[.]

The Draft Report provides insufficient information regarding this finding. Specifically, the Draft Report does not identify the legal counsel alleged to have the conflict of interest, the member of such legal counsel's immediate family that has a financial interest pertaining to the procurement (or the business or organization in which the legal counsel's immediate family member has a financial interest pertaining to the procurement),



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the immediate family member in question and the precise nature of the interest, and, importantly, the evidentiary basis for the finding that such interest existed at the time of the procurement. References in the Draft Report to hearsay contained in unidentified media sources is insufficient to provide the Office of the Governor, or the employee in question, with necessary information to formulate a proper response. Accordingly, the Office of the Governor requests more precise information related to this finding, and an opportunity to respond at such time such information is provided.

**3. The Procurement Mechanism Utilized in the Initial Procurement was Emergency Purchase, Not Emergency Procurement.**

The Draft Report further finds that the procurement record for the initial procurement was incomplete. However, the Office of the Governor submits that the Draft Report fundamentally misstates the procurement mechanism utilized in the initial procurement and its consequent finding regarding the necessary documents for the procurement record are not consistent with the utilized mechanism.

It is beyond reasonable dispute that the initial procurement of quarantine facilities occurred against a backdrop of extreme exigence. On March 13, 2021, President Donald Trump declared a national emergency over the COVID-19 outbreak in the continental United States. At the time this emergency was declared, Guam had no known cases of COVID-19. However, though the science surrounding the COVID-19 pandemic was, and to an extent remains, largely unknown, the Governor took immediate action to prepare for the likelihood the pandemic would soon reach Guam's shores. On March 14<sup>th</sup>, the Governor declared a state of emergency in Guam. Though the Governor and DPHSS had enlisted the assistance of the Guam Hotel and Restaurants Association to identify local hotels that might serve as potential government quarantine and isolation facilities months prior to the national and local emergency declarations, the time to stand up such facilities was abruptly cut short by factors beyond the government's control. Specifically, on March 18, 2020, the Governor learned that Philippine President Rodrigo Duterte intended to close airports in the Philippines, providing a limited window within which Guam residents in the Philippines could return to Guam before the airport shutdown in Manila. Though Guam had no known cases of COVID-19 at the time, cases in the Philippines numbered in the hundreds, and the sudden influx of Guam residents returning from travel to the Philippines required action that strained the timelines associated with procurement, including emergency procurement as provided in 5 GCA § 5215.

Days prior to President Duterte's announcement of airport closures, the Governor had implemented the suspension of statutes that would hinder preparation for or response to the emergency, as provided in 10 GCA § 19403(a)(1). Section 19403 expressly includes emergency purchases in the types of necessary action during a public health emergency for which suspension of statutes and regulations would apply so as to ensure such actions are not delayed by application of such statutes.

The Draft Report characterizes the initial procurement of quarantine facilities by the Office of the Governor as having been procured "using emergency procurement pursuant to 5 GCA § 5215." Draft Report at 9. As noted in the Draft Report, emergency procurement would ordinarily require some level of competition,



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solicitation of three informal price quotations, formal evaluation and ultimate award to the firm with the best offer. *Id.* However, this statute is among the statutes expressly suspended by Section 19403(a)(1) and Executive Order No. 2020-03, which referenced Section 19403.

Pursuant to accepted canons of statutory construction, the strict application of the emergency procurement provisions of 5 GCA § 5215 cannot be held to apply following the declaration of a public health emergency and activation of the suspension provisions provided in Section 19403. As discussed above, in interpreting statutes, courts must first look to the plain meaning of the statute. *Sumitomo Const., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. The plain language of Section 19403 authorizes the Governor to suspend statutes that would hinder or delay emergency actions *including emergency purchases*.

Emergency purchases are in fact the *only* type of action specifically enumerated in the other general language authorizing suspension of statutes that would hinder or delay actions in an emergency. Had Section 19403 not specifically included emergency purchases in its mandate, the section would still nevertheless be broad enough to interpret the statute to encompass suspension of ordinary procurement protocol. However, the general application of Section 5215 must certainly yield to the specific suspension provided in Section 19403 in the event of a public health emergency. *See Camacho v. In re Gumataotao*, 2010 Guam 1 ¶ 19 (citing *Rose v. State*, 19 Cal.2d 713, 123 P.2d 505, 512 (Cal.1942) ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."); *see also In re I Mina Trentai Dos Na Liheslaturan Guåhan, supra* at ¶ 13 ("Where a specific statute appears to conflict with a general statute, the more specific statute prevails.").

To continue to require strict application of the procurement code notwithstanding the specific language in Section 19403 authorizing suspension of statutes that would delay or hinder actions taken in response to a public health emergency including emergency purchases would render the referenced language in Section 19403 superfluous and void.

Section 19403 does not require that the Governor consult with or receive approval from any other agency or government entity in order to suspend the regulatory statutes, but rather simply requires that she issue an executive order implementing the suspension. Because the EHPA authorizes suspension of statutes that would hinder the government's response to a public health emergency, specifically allowing for emergency purchases, and because the Governor activated this suspension in Executive Order No. 2020-03, strict compliance with the Guam Procurement Law was suspended, and remains suspended during the public health emergency. The Governor has strictly complied with the requirements of 19403 that provides for the use of emergency purchases to the extent that strict compliance with the procurement code would delay necessary action. Notwithstanding the suspension, the Office of the Governor has only utilized the power of emergency purchase in the single instance of procuring the quarantine facilities as a crisis response to the closure of Manila airports, out of necessity.

Therefore, although the Draft Report notes that specific hallmarks of and records related to Emergency Procurement are absent from the initial procurement of quarantine facilities, it is clear that the EHPA



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contemplated broad suspension of regulations in order to provide the Government with the flexibility necessary to respond to the emergency circumstances, which, in this instance, was crucial to standing up the initial quarantine. To the extent, in hindsight, there were more efficient methods by which quarantine could be implemented on such extreme short notice, this fact would not negate the fact that the mechanism utilized was contemplated by the legislature in enacting the EHPA.

**C. THE CONTINUED USE OF EMERGENCY PROCUREMENT RELATIVE TO  
PROCUREMENT OF QUARANTINE FACILITIES COMPLIES WITH GUAM LAW**

The Draft Report further urges that the continued procurement of quarantine facilities should be accomplished utilizing the Competitive Sealed Bid process favored in the procurement code. However, Emergency Procurements continue to be an appropriate mechanism for the procurement of quarantine and isolation facilities. 5 GCA § 5215 authorizes the use of Emergency Procurements when there exists a threat to public health under emergency conditions, and there is no question Guam, like the rest of the world, remains in a state of emergency due to the COVID-19 pandemic. Although the Draft Report posits that the Government has sufficient information at this time regarding room utilization rates and longer-term requirements for quarantine such that competitive sealed bidding is both appropriate and efficient, the quarantine policy that informs the space requirements for quarantine is shifting and will continue to shift as vaccinations and, ultimately, herd immunity, occur. In fact, the length of quarantine and exemptions to quarantine were recently amended in Executive Order No. 2021-10, issued on May 13, 2021, impacting the room requirements for incoming travelers. Additionally, the emergence of varied strains of COVID-19 may likewise alter the immediate needs of the community for quarantine. Therefore, the procurement method utilized in the procurement of quarantine stations must necessarily continue to be chosen to afford the government with as much flexibility as possible, to enable the government to adapt to the uncertain and unpredictable nature of the current emergency.

**IV. CONCLUSION**

For the foregoing reasons, the Office of the Governor submits that the Draft Report be amended to reflect the factual inaccuracies noted herein, and that its findings be amended in light of the authority provided herein.

Respectfully submitted this 1<sup>st</sup> day of June 2021.

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*Office of Legal Counsel*  
**SOPHIA SANTOS DIAZ**  
**LESLIE A. TRAVIS**

By: \_\_\_\_\_

LESLIE A. TRAVIS

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## Appendix 9:

# Guam Homeland Security/Office of Civil Defense Response Page 1 of 6

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May 31, 2021

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Hagatna, Guam 96910

Hafa Adai Mr. Calvo,

Thank for the opportunity to respond to the Draft Audit Report of the Government of Guam Procurement of Hotels Used for Covid-19 Quarantine. At the start of the COVID-19 Pandemic the Government of Guam needed to procure large volumes of goods and services quickly to manage the increased risk. While we recognize that these were exceptional circumstances, it remains essential that decisions are properly documented and made transparent if the government is to maintain the public trust that the money is being spent appropriately and fairly. The evidence set out in the documentation submitted and data compiled in our report shows that these standards of transparency, documentations, and processes were not consistently met in the first phase of the pandemic.

I want to open my remarks with the observation that the draft report appears to be characterized by conclusions drawn from either misinformation, misinterpretation and/or does not provide a complete, objective understanding of all facts provided to the OPA during audit. We asked that we be given the opportunity to address these concerns prior to issuing any audit report. Detailed comments on individual points in response to the recommendations in the draft report are as follows:

**Finding: Initial Procurement**

The initial quarantine and/or isolation facilities were procured using emergency procurement pursuant to Title 5 of the Guam Code Annotated (G.C.A.) § 5215. The basic process for conducting an emergency procurement requires three things: (1) that it shall be made with such competition as is practicable under the circumstance, (2) the procurement agent must solicit at least three informal price quotations, and (3) the award [must go] to the firm with the best offer, as determined by evaluation cost and delivery time. We found several issues related to the initial procurement to include: improper procuring authority, conflict of interest with awarded hotel, incomplete procurement record, and contract issues.

The former Homeland Security Advisor was initially tasked to start looking into procuring a quarantine facility back in January 2020. However, when things weren't moving as quickly as needed, the Governor tasked the Office of the Governor (OOG) Legal Counsel to take over the procurement. In March 2020, OOG secured four facilities ([Hotel A], [Hotel B], [Hotel C], and [Hotel D]) to be used for COVID-19 quarantine and isolation in March 2020 totaling \$2.5M. [Hotel E] was also utilized but no record was provided. Figure 1 below shows the timeframes and amounts paid to procured quarantine and isolation facilities.

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## Appendix 9:

# Guam Homeland Security/Office of Civil Defense Response Page 2 of 6

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### **Response: Initial Procurement**

GHS/OCD was unaware of contracted services of HOTEL A, HOTEL B, HOTEL C, HOTEL D, and HOTEL E for the Non-Congregate Shelters. The former Homeland Security Advisor assigned to

expedite the procurement process failed to inform the OCD Administrator on the governor's directive. The OCD Administrator could have sought advice and guidance from the Chief Procurement Officer on effectively procuring under "Emergency or Exigent Circumstances."

### **Finding: Incomplete Procurement Record**

The procurement record for the initial COVID-19 quarantine and/or isolation facilities were incomplete as it lacked sufficient documentation to provide a complete history of the procurement in compliance with 5 G.C.A. § 5215. This included the request for quotations (i.e. solicitations local hotels) and the award of the procurement (i.e. selection of the local hotels). There is no clear indication in the procurement record with regards to who and how the decision to use these facilities was made. Without a proper procurement record, it voids the mandated transparency and accountability in the procurement process.

### **Response: To Incomplete Procurement Record: Response to Incomplete Procurement Record:**

Due to the high volume of documents for each purchase order for the QFAC/ISOFAC, an electronic file was prepared and submitted for OPA to review. In addition to the electronic file, GHS/OCD organized a binder containing copies of procurement documents specific to each purchase order for the QFAC/ISOFAC and delivered them to OPA.

To eliminate the need to duplicate relevant procurement documents, GHS/OCD is currently working to implement an electronic document management system on a controlled-access network or management information system.

### **Finding: Contract Issues**

The contracts for the initial four procured quarantine and isolation facilities were not in conformance with the E.O. and 5 G.C.A. § 5235. Specifically, 1) the contracted dates exceeded 30 days limit for emergency procurement, 2) renewal terms disregarded E.O. terms, 3) total rooms procured conflicted with the Governor's requested requirement, and 4) authorized signature of Chief Procurement Officer missing.

### **Response: Contract Issues**

The contract for the initial procurement for Non-Congregate Shelter was prepared and executed by the Office of the Governor's, Legal Counsel. This was based on the contract issues regarding the initial four non-congregate quarantine and isolation facilities not in conformance with the E.O. and 5 G.C.A. § 5235, however there is an exception to the rule when disaster strikes. In this case, with number of Covid-19 positives rising, competitive procurement would have delayed the process of quickly containing incoming passengers.

We recognize the regular procurement would have been impractical or even caused increased potential threat. FEMA defines both emergency or exigent circumstances as a situation that demands immediate aid or action. This allows non-state entities to sole-source or award a contract without engaging in full and open competition (FEMA Procurement Under Grants "An Exception to the Rules During Emergency or Exigent Circumstances).

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## Appendix 9:

# Guam Homeland Security/Office of Civil Defense Response Page 3 of 6

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Based on OPA findings GHS/OCD will continue to process emergency resource without interference.

**Finding: Second Procurement**

The second procurement occurred in May 2020, when GSA issued RFQs to eleven hotels from May 12 to 15, 2020. GSA received quotes from only three of the eleven hotels, and awarded P.O.s to those three hotels ([Hotel B], [Hotel D], and [Hotel F]) to be used as quarantine facilities for a total of \$300K. [Hotel A] continued to be used as an isolation facility through September 2020, based on GHS/OCD data, but no procurement record was provided. Figure 2 below shows the timeframes and amounts paid to each hotel.

**Response: Second Procurement:**

GHS/OCD created The Scope of Work for the QFAC/ISOFAC based on CDC guidelines for Alternate Care facilities, CDC guidance for Quarantine and Isolation facilities, Public Assistance guidelines under Emergency Protective Measures, and FEMA guidelines on Non-Congregate Shelters. The occupancy was on compiled data collected from the daily count of occupancy from the initial QFAC/ISOFAC facilities utilized in March.

Requisitions were keyed in as blanket purchase agreements through the AS400. Procurement was processed based on the approval of BBMR and the availability of funds.

**Hotel B:**

May 9, 2020 requisition Q200280164 was keyed into the As400  
May 16, 2020 Purchase Order P206E00310 was fully executed for \$100,000.00 and awarded to **Hotel B**.

May 27, 2020, OCD Administrator issued a termination letter for Hotel Santa Fe for non-compliance under the terms and agreement of Purchase Order P206E00310.

May 27, 2020 Purchase Order P206E00310 was canceled entirely and liquidated on.

June 5, 2020 letter from **Hotel B** requesting for 10-day cure in resolving non-compliance issues.

June 9, 2020, **Hotel B** submitted a letter protesting the termination of P206E310 to OCD Administrator and Chief Procurement Officer. Unable to resolve the non-compliance complaint, Hotel B then filed Government Claims which resulted in their favor and a payment of \$50,000.00.

**Hotel F:**

May 19, 2020 Requisition Q200280175 was keyed into the As400

May 21, 2020 Purchase Order P206E00326 fully executed for \$100,000.00

May 21, 2020 Purchase Order P206E00326 was liquidated (wrong vendor number) and transferred to Purchase Order P206E00344 in the same amount.

July 13, 2020 Requisition keyed in for supplemental funding to cover P206E00344

July 14, 2020 Purchase Order P206E00461 fully executed for \$300,000.00 for Quarantine Facility

July 18, 2020 Requisition Q200280222 was keyed in the As400

July 20, 2020 Purchase Order P206E00478 fully executed for \$50,000.00 Isolation facility

Sept 9, 2020 Requisition Q200280249 was keyed in to the As400

Sept 15, 2020 Purchase Order P206E00643 fully executed for \$50,000.00 supplemental for P206E00478

Sept 29, 2020 Requisition Q210280025 was keyed into the As400

Oct 01, 2020 Purchase Order P216E00025 fully executed for \$500,000.000 Isolation Facility

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**Appendix 9:**

**Guam Homeland Security/Office of Civil Defense Response Page 4 of 6**

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**Response: Third Procurement with Extensions**

Purchase orders being utilized for Non-Congregate Shelter for QFAC/ISO FAC were adjusted by encumbrance monthly coinciding with the Executive Order extending the Public Health Emergency and additional 30 days.

**Other matters:**

Based on the OPA findings GHS/OCD along with the Department of Public Health and Social Services (DPHSS) are moving forward in finalizing the procurement process for an Invitation to Bid for consolidation of the two facilities into one based on a defined workflow plan that separates the two facilities by wings or floors.

**Procurement process:**

GHS/OCD utilizes the standard 3 quotation process for emergency procurement. No Sole Source procurement was executed during this operational period.

Again, thank you for the opportunity to respond to the Draft Audit Report. If there are any questions or concerns, the POC is the undersigned at (671) 489-4742 or via email at [marie.t.quenga@ghs.guam.gov](mailto:marie.t.quenga@ghs.guam.gov).

Sincerely,



Patrick T. Leon Guerrero  
Acting OCD Administrator  
Guam Homeland Security/Office of Civil Defense

attachment

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## Appendix 9: Guam Homeland Security/Office of Civil Defense Response Page 5 of 6

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**EXECUTIVE ORDER NO. 2020-09 – EXTENTION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING MAY 05, 2020**

Effective Sunday, April 5, 2020, public health emergency first declared in Executive Order 2020-03 which is set to expire on April 13, 2020 is extended for a thirty (30) day period. All provisions outlined in Executive Order 2020-03 through this Order shall be continue in full force and effect until May 5, 2020

**EXECUTIVE ORDER 2020-11 – EXTENTION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING JUNE 05, 2020**

Effective Thursday, April 30, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order No 2020-09 and currently set to expire on May 5, 2020 is extended for an additional thirty (30) days expiring June 5, 2020.

**EXECUTIVE ORDER NO. 2020-16 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING JUNE 29, 2020**

Effective 12:00 am Saturday, May 30, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order 2020-09 and 2020-11 and currently set to expire on May 30, 2020 extended an additional 30 days expiring on June 29, 2020.

**EXECUTIVE ORDER 2020-22 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING JULY 30, 2020**

Effective 12:01 am on Tuesday, June 30, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11 and 2020-16 and currently set to expire June 29, is extended for an additional thirty (30) day period expiring July 30, 2020.

**EXECUTIVE ORDER 2020-24 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING AUGUST 29, 2020**

Effective 12:01 am Saturday, July 31, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16 and 2020-22 and currently set to expire July 30, is extended for an additional thirty (30) day period expiring August 29, 2020.

**EXECUTIVE ORDER 2020-29 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING SEPTEMBER 30, 2020**

Effective Sunday, August 30, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22 and 2020-24 and currently set to expire August 29, 2020, is extended for an additional thirty (30) day period expiring September 30, 2020.

**EXECUTIVE ORDER 2020-31 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING SEPTEMBER 30, 2020**

Effective Sunday, August 30, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22 and 2020-24 and currently set to expire August 29, 2020, is extended for an additional thirty (30) day period expiring September 30, 2020.

**EXECUTIVE ORDER 2020-35 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING OCTOBER 30, 2020**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24 and 2020-29 and currently set to expire September 30, 2020, is extended for an additional thirty (30) day period expiring October 30, 2020

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## Appendix 9:

# Guam Homeland Security/Office of Civil Defense Response Page 6 of 6

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**EXECUTIVE ORDER 2020-38 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING NOVEMBER 29, 2020**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, AND 2020-35 and currently set to expire October 30, 2020, is extended for an additional thirty (30) day period expiring November 29, 2020

**EXECUTIVE ORDER 2020-41 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING DECEMBER 29, 2020**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35 and 2020-38 and currently set to expire November 29, 2020, is extended for an additional thirty (30) day period expiring December 29, 2020

**EXECUTIVE ORDER 2020-46 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING January 29, 2021**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38 and 2020-41 and currently set to expire December 29, 2020, is extended for an additional thirty (30) day period expiring January 29, 2021.

**EXECUTIVE ORDER 2021-03 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING MARCH 1, 2021**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38, 2020-41 AND 2020-26 and currently set to expire January 30, 2020, is now set to expire March 1, 2021.

**EXECUTIVE ORDER 2021-05 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING APRIL 1, 2021**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38, 2020-41, 2020-46 and 2021-03 and currently set to expire March 1, 2021. is now set to expire April 1, 2021.

**EXECUTIVE ORDER 2021-07 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING MAY 1, 2021**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38, 2020-41, 2020-46, 2021-03 and 2021-05 and currently set to expire April 1, 2021. is now set to expire May 1, 2021.

**EXECUTIVE ORDER 2021-09 – EXTENSION PUBLIC HEALTH EMERGENCY AN ADDITIONAL 30 DAYS EXPIRING MAY 31, 2021**

Effective, October 1, 2020, the public health emergency first declared in Executive Order 2020-03, extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38, 2020-41, 2020-46, 2021-03, 2021-05 and 2021-007 and currently set to expire May 1, 2021 is now set to expire May 31, 2021.

**Appendix 10:**  
**General Services Agency Response**



LOURDES A. LEON GUERRERO  
GOVERNOR  
  
JOSHUA F. TENORIO  
LIEUTENANT GOVERNOR

**DEPARTMENT OF ADMINISTRATION**  
*DEPARTAMENTON ATMENESTRACION*  
P.O. Box 884 HAGATNA, GUAM 96932

**GENERAL SERVICES AGENCY**  
*AHENSIAN SETBISION HINIRAT*  
CLAUDIA S. ACFALLE, CHIEF PROCUREMENT OFFICER  
WEBSITE: [WWW.GSA.DOA.GUAM.GOV](http://WWW.GSA.DOA.GUAM.GOV)  
EMAIL: [GSAPROUREMENT@GSADOA.GUAM.GOV](mailto:GSAPROUREMENT@GSADOA.GUAM.GOV)



EDWARD M. BIRN  
DIRECTOR  
  
BERNADINE C. GINES  
DEPUTY DIRECTOR

June 01, 2021

Honorable Benjamin J.F. Cruz  
Public Auditor  
Office of the Public Auditor  
Suite 401, Pacific Daily News Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910



**OFFICE OF LEGAL COUNSEL**  
*Ulisian I Maga'lagan Guahan Office of the Governor*

Date: 06/01/2021  
Time: 2:50p  
Received By: [Signature]

Dear Honorable Cruz:

Hafa Adai! This is our response to your draft audit report dated May 2021 for the Coronavirus (COVID-19) quarantine and isolation facilities. The following is the response to the audit findings relative to the second and third procurement:

**Finding:**

On page 4 paragraph 4 Second Procurement stated in part: “[Hotel A] continued to be used as an isolation facility through September 2020, based on GHS/OCD data, but no procurement record was provided.”

**GSA’s Response:**

On 18 July 2020 GHS/OCD submitted requisition number Q200280222 to GSA requesting for isolation facility. On 20 July 2020 GSA awarded PO# P206E00477 to [Hotel A]. Therefore, we disagree that the procurement record is incomplete. Any prior commitment by the government prior to 20 July 2020, GSA had no knowledge.

**Finding:**

On page 5 paragraph 2 Third Procurement stated in part: “...On 01 October 2020 GSA issued a P.O. to [Hotel F] in the amount \$500k.

**GSA’s Response:**

GSA did not issue a purchase order to [Hotel F] in October 2020 because GSA terminated with [Hotel F] in September 2020, due to consolidation of quarantine facility. Therefore, GSA disagree with finding.

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## Appendix 10: General Services Agency Response

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**Finding:**

On page 5 paragraph 3 Incomplete Procurement Record stated in part: "...lacked sufficient documentation to provide a complete history of all the hotels procured in compliance with 5 GCA Subsection 5215. This included no procurement record for [Hotel A] and incomplete procurement record for [Hotel F].

**GSA's Response:**

Again, GSA issued a purchase order for [Hotel A] July 20, 2020, any prior commitment by the government GSA had no knowledge. For [Hotel F] GSA did not issue a purchase order in October 2020. Therefore, GSA disagree with finding.

**Finding:**

On page 5 paragraph 4 Use of Emergency Procurement Beyond 30 Day Limit states in part: "... P.L. 35-109 was passed on October 30, 2020, which increased the emergency procurement time limit from 30 days to 90 days. However, because the new law wasn't passed until after the second and third procurement of quarantine and/or isolation facilities, GovGuam is still found to be non-compliant with 5 GCA Subsection 5215.

**GSA's Response:**

It has been the position of GSA in collaboration with the Office of the Attorney General that the 5GCA Subsection 5215 is silent as to a timeframe when the procurement is for services. Therefore, we disagree with finding.

**Conclusion and Recommendations:**

On page 6 paragraph 3 Conclusion and Recommendations states in part: "... However, we recommend GHS/OCD and GSA prepare and issue an IFB instead."

**GSA's Response:**

If you recall during our last zoom meeting with your office, I stated on the record that I have previously informed GHS/OCD to submit a requisition to begin the formal bid solicitation process.

GSA will continue to improve the processes within the procurement activities of this government.

If you should have any questions or concerns regarding our response, please contact me at 475-1700.

Sincerely,

  
CLAUDIA S. ACFALE  
Chief Procurement Officer

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**Appendix 11:**  
**Status of Audit Recommendations**

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<b>No.</b>	<b>Addressee</b>	<b>Audit Recommendations</b>	<b>Status</b>	<b>Action Required</b>
1.	General Services Agency, and Guam Homeland Security/Office of Civil Defense	Prepare and issue an IFB for the quarantine and isolation facility instead of continuous use of emergency procurement.	OPEN	Please provide the target date and title of official(s) responsible for implementing the recommendation.

# GOVERNMENT OF GUAM PROCUREMENT OF HOTELS USED FOR COVID-19 QUARANTINE Report No. 21-06, July 2021

## ACKNOWLEDGEMENTS

### *Key contributions to this report were made by:*

Frederick D. Jones, MBA, Auditor-in-Charge  
Jerrick J.J.G. Hernandez, CGAP, CICA, Audit Supervisor  
Benjamin J.F. Cruz, Public Auditor

## MISSION STATEMENT

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

## VISION

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

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### **Objectivity**

To have an independent and impartial mind.

### **Professionalism:**

To adhere to ethical and professional standards.

### **Accountability:**

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- Or visit us at Suite 401 DNA Building in Hagåtña

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