

# **DEPARTMENT OF REVENUE & TAXATION BUSINESS PRIVILEGE TAX ON MILITARY CONSTRUCTION CONTRACTS**

**PERFORMANCE AUDIT**  
*October 2015 through September 2020*

**OPA Report No. 23-03**  
**March 2023**





**Department of Revenue and Taxation  
Business Privilege Tax on Military Construction Contracts**

**Performance Audit  
October 1, 2015 through September 30, 2020**

**OPA Report No. 23-03  
March 2023**

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**EXECUTIVE SUMMARY**  
**Department of Revenue & Taxation**  
**Business Privilege Tax on Military Construction Contracts**  
**OPA Report No. 23-03, March 2023**

Our performance audit of the Department of Revenue and Taxation (DRT) - Business Privilege Tax (BPT) on military construction contracts covering Fiscal Years (FY) 2016-2020 disclosed several deficiencies relative to the registration and licensing requirements, gross receipts reporting and BPT payments, questionable exemptions without sufficient documentation, and lapses in internal controls. These deficiencies resulted in question costs (over \$500K), unrealized revenues (over \$10M), and other financial impact/foregone revenues (over \$5M) for a total financial impact of over \$22M. DRT management and oversight body/commission need to address and resolve these deficiencies to enhance revenue collections relative to Guam's military construction contracts/projects. Specifically, we found the following:

**PART 1: REGISTRATION AND LICENSING**

Out of the 28 sampled foreign and local contractors from a total of 135 contractors taken from USASpending, we found the following with registration and licensing deficiencies:

**Federal Contractors without DRT Records and Tagged by DRT as Non-Filers**

Based on USASpending data, we found four contractors awarded military construction contracts from FY 2016-2020 with a combined total award of over \$85M. In DRT's response, these contractors were not registered with DRT, without required licensing documents such as a Certificate of Authority (COA) and Business License (BL), did not file Gross Receipts (GR), and thus were tagged by DRT as Non-Filers. Per DRT, these contractors are now part of the 2021 Tax Enforcement Division (TED) Compliance Initiative Program (CIP)-Federal Contractors, which started on June 17, 2021 (16 days after the start of this audit on June 1, 2021).

**Federal Contractors Tagged by DRT as Filers Without DRT Business License**

Nine contractors, mostly joint ventures (JVs) or limited liability companies (LLCs), were tagged as "Filers" per DRT's record. These contractors had either no BLs or expired BLs and were not on the CLB list of Authorized Contractors as of June 30, 2021. Per USASpending, these contractors had a combined construction contracts for FY 2016-2020 totaling over \$70M and reported combined Gross Receipts of over \$200M during the same period.

**Non-coordination between DRT and CLB on Federal Contractor Licenses**

DRT did not provide information regarding the contractors' CLB licenses for some of our sampled contractors, specifically those that did not have DRT BLs. Instead, DRT referred us to the CLB or Professional Engineers, Architects, and Land Surveyors (PEALS) for contractors' licenses. We verified these contractors with the CLB listing of Authorized Contractors as of June 30, 2021, and found that some were not within the listing. Without a CLB license, the contractors could have worked exclusively on military installations (on base) in Guam, thus requiring a DRT BL.

## **Lapses in Monitoring of Federal Contractors' Registration and Reporting Compliance**

Lapses were noted in DRT's monitoring of contractor compliance on registration and gross receipts reporting requirements. DRT did not periodically monitor if:

- Contractors awarded with military contracts on Guam applied for and filed appropriate licenses and were registered;
- Contractors who filed GRs had COA, DRT BL, or CLB/PEALS licenses;
- Contractors who had COA or BL had consistently filed monthly GRs and paid BPTs promptly; and
- Appropriate registration, documentation, and GRT filing process of a JV, LLC, or other companies with similar features were done.

## **PART 2: CONTRACTING GROSS RECEIPTS, BUSINESS PRIVILEGE TAX, AND BPT EXEMPTIONS**

In our review of the data provided by DRT on GR filings and paid BPTs, on 86 out of 103 sampled contractors, we found the following:

### **Contracting Gross Receipts (GRs) and Business Privilege Tax (BPT)**

#### **Potential Causes of Variances of Contractor Reported Gross Receipts versus Awarded Contract Amounts**

We noted some limitations in the reportable data required to be filled-in by the contractors based on GRT Form 1. The GRs were reported on each line item categorized per taxpayers' business activities and license type and inputted as it is in the DRT Power 7 system. Due to these limitations in the GRT Form-1, the Power 7 system cannot automatically distinguish and generate the following:

- Gross receipts for military construction contracts versus local construction contracts;
- BPTs due and paid/collected for military construction contracts versus local construction contracts; and
- Exemptions availed for military construction projects or local construction projects.

Additionally, without any information regarding the actual contract payments and list of contractors/sub-contractors with qualified/allowable exemptions, neither DRT nor OPA can accurately determine the reportable gross receipts and BPTs due from military construction contracts. Therefore, we cannot accurately ascertain the impact of potentially uncollected revenues on military construction contracts on Government of Guam (GovGuam) revenues.

#### **Federal Contractors Reported as "Non-Filers" without GRs and BPT Records with DRT**

Six contractors, who were mostly joint ventures (JV) or limited liability companies (LLC), were tagged by DRT as "Non-Filers" for FY 2016-2020 based on its responses to our data request.

Additionally, these contractors did not have a business license with DRT. Per USASpending, these contractors were awarded construction contracts of over \$90M with a performance period from 10/27/2015 to 6/30/2024. Without information on actual contract payments as reportable gross receipts, potential unpaid revenues would be over \$4M. Based on DRT's response in November 2022, these contractors are included in DRT's on-going FedCon CIP, which started in FY 2021.

### **Contractors Tagged as “Filers” Reported “Zero” GRs, and BPT for Five Years**

For FY 2016-2020, contractor TT was awarded construction contracts for the military buildup in Guam totaling over \$10M for a period of performance from 10/23/2017 through 9/30/2024. The contractor did not have a COA nor a BL and was tagged by DRT as a “Filer.” However, in its first response for FY 2016-2020, DRT reported “zero” gross receipts and “zero” BPTs for this contractor.

In November 2022, DRT provided a second set of data updated as of October 2022 (beyond our audit scope). These reflected GRs of over \$5M for Services and under \$500K for Contracting U.S. Without any information regarding the actual construction contract payments, potential estimated BPTs to be collected for construction contracts would be over \$500K.

### **Contractor Tagged by DRT as “Filer” Reported “Zero” GRs in a Certain Fiscal Year**

Contractor F reported by DRT as a “Filer,” filed “Zero” GRs for FY 2019 per DRT's response in the 2021 audit data request. The contractor was awarded federal construction contracts totaling over \$50M relative to the military build-up in Guam based on the USASpending report from FY 2016 to FY 2020. For the performance period 5/19/2016 to 7/31/2024, the reportable amount for 2019 would be over \$15M with a potential unpaid BPT of over \$500K.

In November 2022, DRT provided a second set of data updated as of October 2022 (beyond our audit scope). This reflected GRs of over \$80M filed for tax years 2016-2022 for Service and Profession and none for Contracting-local or Contracting-U.S. Accordingly, some of these GRT returns were processed after FY 2020 due to a shortage of manpower.

### **Variations between Reported GRs Compared with Awarded Contract Amounts**

Gross Receipts filed by eleven contractors, per DRT provided data from FY 2016-2020, had variances or were deficient versus the awarded contract amounts per USASpending. Deficiencies ranged from over \$3M to over \$315M.

In November 2022, DRT provided another updated GRs filed covering Tax Years 2016 to 2022 (beyond the audit scope). Using the DRT updated data to compare the awarded contract amounts versus updated gross receipts filed, it was determined that three contractors remained deficient in the amount of gross receipts filed, ranging from over \$2M to over \$160M. The potential unpaid BPT is over \$5M at 4%. We also noted excesses in gross receipts filings for eight contractors versus the DRT-reported contract amount per USASpending data.

### **Challenges in the Review of Contractor GR Reporting and BPT Payment Compliance**

DRT representatives identified several factors and variables, with undeterminable amounts for applicable contractors as of the audit termination date, that could potentially affect the contractors' gross receipts filing. Monetary values related to the factors could only be determined if an audit is performed. Specifically:

- USASpending data keeps on evolving as these include contract modifications such as additions, reductions, change orders, or cancellations;
- Multi-year awarded contracts or varying periods of performance;
- Contractors filing through their parent company or under a changed company name;
- On-island contractors hiring a third party or a company outside of Guam may or may not be subject to GRT reporting and BPT payment.

- Gross Receipts Form I filed by contractors encompasses all their business activities, which does not classify the sources of revenue specifically for local projects and for federal or military projects, as this is not specified in the GRT Form.

## **Business Privilege Tax Exemptions**

### **Calculated BPT Rates are way below the Mandated 4% or 5% rate Due to Potential Exemptions Claimed**

Gross Receipts and BPT data provided by DRT from FY 2016-2020 for the 16 contractors disclosed calculated BPT rates on contractors' reported GRs ranging from 0.19% to 4.31% only, which were way below the mandatory 4% rate (effective October 1, 2005) and 5% rate (effective April 1, 2018). According to DRT representatives, the deficiencies *could be due to exemptions, tax credits, or credit adjustments* (which are allowed by law) deducted from taxable gross receipts in contractors' GRT Form filings. For these 16 selected contractors, potential forgone revenues would be over \$5M. Rate deficiencies, which ranged from 0.48% to 4.27%, are the variances between the BPT rate that should be collected versus the actual rate of BPTs paid.

### **Exemptions Claimed for Exemption Code E42 (P. L. 32-230) cannot be identified if Filer is a Prime or Sub-Contractor due to lack of documentation**

We reviewed 25 federal contractors' GR filings. Six federal contractors had claimed exemptions in Schedule GRT-E under E-42 (PL 30-230). However, we could not find any documentation to show that the "Filers" are *prime contractors (who are not eligible for exemptions) or sub-contractors (who are eligible for exemptions)*. We were unable to identify from the documents provided (such as Schedule GRT-E and payment documents) if the "Filer" is the Prime Contractor or a Sub-Contractor and the contracting business names claimed as exemptions are Prime-Contractors.

Additionally, no documentation was provided to verify if the tax Filer or the exemptions claimed by certain contractors, numbering from one to 15 contractors, are eligible and valid according to the law. The claimed exemptions significantly reduced contractors' taxable gross receipts, reducing their tax liabilities. For the six contractors alone, questionable exemptions totaled over \$10M or equivalent to over \$500K (at 4%) potentially foregone BPTs.

During our discussion with DRT representatives, "Filers" who claimed Exemption Code E-42 (P.L. 30-230) were presumed to be sub-contractors as they are eligible to claim such exemptions under the law. However, DRT did not validate this presumption, as the GRT filings were not subjected to post reviews. In addition, per the DRT website, any exemptions or deductions must be sufficiently supported with documentation. Therefore, DRT needs to know the specific supporting documents necessary for claimed exemptions.

### **Deficiencies in 1% BPT Exemptions per P.L. No. 34-116 and P. L. No. 34-87**

We noted deficiencies in our review of the 1% exemptions claimed by some contractors. Total exemptions/credit adjustments claimed for the three contractors alone amounted to over \$1M. The deficiencies refer to contract name and date details, base for the 1% exemptions and lack of documents to support credit adjustments.

## **PART 3: OTHER FINDINGS**

### **System Cannot Automatically Generate Taxpayers with BPT Receivables**

In the audit final report, a finding states that an accounts receivable account is not set up for specific contractors' unpaid BPT. This finding was provided to DRT since June 20, 2022. In their response, DRT states, "there is an A/R account set up for every taxpayer who has unpaid BPT. Also, DRT's system can generate a specific contractor's unpaid BPT if it has already been assessed."

When the OPA requested a list of total outstanding BPT receivables booked as of September 30, 2022, they responded, "it would take some time to work on." However, DRT provided OPA with a system-generated Annual Activity Report, which only contains totals for BPT Receivables for FY 2021 and other related activities.

### **Internal Controls**

#### **Unprocessed BPT Returns and Unavailable Documents**

For the ten (10) contractors we have tested, we found that certain contractors' BPT payment document files were not available for examination. Per DRT procedure, the payment documents are filed and processed for recording at a later time when manpower is available. Additionally, per DRT's response as of May 19, 2022, to the OPA data request, some FY 2020 GRT returns were still not processed. Historically, DRT has had delays in processing/encoding GR-BPT filings.

#### **Inadequate Process and Review of GRT-BPT Filings and Exemptions Claimed**

DRT does not have a defined process or written standard procedures to review supporting documentation to validate claimed exemptions and credit adjustments' eligibility, authenticity, and accuracy. Additionally, DRT's day-to-day review process of GRT filings is only to ensure that information is completely documented in Schedule GRT-E form and properly encoded so that the system approves the encoded information. Therefore, there is no further verification of the eligibility of exemptions claimed.

#### **Procedures in Pursuing Unpaid/Delinquent Taxes Not Clearly Defined**

DRT Examination Branch does not follow specific procedures for determining, following up, and pursuing the collection of unpaid/delinquent taxes. Aside from having insufficient manpower, DRT does not have the framework to determine a timeframe for sending notices for unfiled returns and unpaid taxes or implementing the necessary action to enforce collections. This process appeared to be done and applicable only to taxpayers selected for a full compliance investigation under the CIP.

### **Conclusion and Recommendations**

The lapses in monitoring contractor registrations, limitations in the GR-BPT form, and other factors and variables (of undeterminable values) affect the reportable GRs. Additionally, the lack of information on actual contract payments, insufficient exemption documentation, lack of exemptions post reviews, and periodic audits are some of the vital factors that pose challenges in determining a fair estimate of a contractor's potential unreported/underreported taxable GRs. Cumulatively, we found total financial impact totaling over \$22M.

Until these factors are resolved, determining contractors' reportable GRs and BPTs due would remain challenging. Neither DRT nor OPA can measure the significance of the impact of revenue leakages from military construction contracts on GovGuam revenues. But certainly, the impact of

foregone revenues/revenue leakage on GovGuam revenues would be highly significant if unaudited.

According to DRT, it initiated its Tax Enforcement Division Compliance Initiative Program-Federal Contractors on June 17, 2021 (16 days after the start of this audit on June 1, 2021) and found 78% filing compliance. Phase I is ongoing, and Phase II, for an in-depth review of potential understatement, is expected to be performed in the second quarter of FY 2023.

DRT needs to collaborate with DFAS to obtain information on actual contract payments for contractors' awarded contracts and perform periodic audits. Therefore, we encourage DRT and an oversight government body to address and resolve the surmountable issues to enhance revenue collections relative to Guam's military construction contracts/projects. In this audit, we made eight recommendations and three suggestions.



Benjamin J.F. Cruz  
Public Auditor

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# Introduction

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The Office of Public Accountability (OPA) initiated this performance audit of the Department of Revenue and Taxation-Business Privilege Tax on Military Construction Contracts upon the request of Vice-Speaker of the 36<sup>th</sup> Guam Legislature. The Vice-Speaker requested an audit of federal military contracts to determine if the Government of Guam (GovGuam) is adequately collecting taxes on these contracts. Additionally, if GovGuam made necessary improvements to address the audit findings and recommendations in the 2008 and 2014 Department of Interior-Office of the Inspector General (DOI-OIG) evaluation reports.

Our audit objectives are to determine whether:

1. Prime and sub-contractors for US military construction contracts in Guam paid Business Privilege Tax (BPT) and other taxes, permits, and licenses required per Guam law;
2. Department of Revenue and Taxation has a mechanism to identify non-filer contractors and collect the appropriate taxes effectively; and
3. BPT exemptions granted to prime and sub-contractors are in accordance with the law.

Our audit scope and period cover the following:

1. Selected US military construction contracts awarded from Fiscal Year (FY) 2016 through 2020;
2. Business Privilege Tax and other taxes, permits, and licenses paid by selected prime and sub-contractors for FY 2016 through 2020;
3. Relevant documents such as contractors' permits and licenses, contracts, Gross Receipts Form-1, Schedule GRT-E, BPT exemption certificates, and other necessary documents.

## Background

The Department of Revenue and Taxation (DRT) is responsible for enforcing Guam's income and general tax laws and collecting tax revenues and revenues from other sources such as licensing and registration. DRT's mission is to "promote quality service to all taxpayers, increase taxpayer's voluntary compliance by helping them understand and meet their responsibilities by applying the tax law with integrity and fairness to all."

Within DRT is the Tax Enforcement Division, which identifies Contractors that may be non-compliant with their tax filing/reporting and payment obligations on their Guam-sourced income and expenses to the Government of Guam.

## Guam Legislature and Guam Build Up

In May 2009, members of the Guam Legislature, including the Vice-Speaker at the time had been exploring whether there was a leakage of taxes owed to the GovGuam by the Department of Defense (DOD). As a result, the Vice-Speaker wrote a letter to the Department of the Navy requesting DOD to submit to GovGuam and DRT contracts awarded for work done in Guam.

The Committee on Public Accountability and the Guam Buildup met with the Joint Region Marianas and came up with some issues that needed further discussion, such as:

- Requiring advance tax payments should apply to all local and federal contractors;

- Requiring payment of tax upfront, then seeking reimbursement would be problematic;
- Challenges in determining the tax due and reimbursing the federal government when contracts are not executed as planned;
- Safeguards for the proposed escrow account to refund contractors and DOD; and
- Business privilege tax due based on the contract award amount would be problematic.

### **Meeting of OPA Team with Joint Marianas Region Team**

In July 2021, the Public Auditor and OPA auditors met with the Joint Region Marianas Team. During the meeting, the Assistant Regional Engineer stated that their mission is to build facilities “NOT” to collect or assist in collecting taxes.

In September 2022, the Public Auditor met with the Admiral of NAVFAC, who initially recommended the DRT Director search for the list of contractors with the corresponding contracts on USASpending. The Public Auditor explained that the website does not provide information on how much was paid to the contracts to determine the reportable gross receipts for contractors’ GRT filing. The Admiral offered to introduce the DRT Director to Defense Finance and Accounting Services (DFAS), which make direct payments to the contractors and make arrangements for payment information. **He further stated that DRT needs to increase its manpower and conduct periodic audits.**

### **Department of Interior – Office of the Inspector General Evaluation Report**

The DOI-OIG 2013 Evaluation Report (HI-EV-GUA-0001-2013)-Guam Business Privilege Tax stated that DRT lacks the infrastructure, mechanism, and manpower to collect taxes due to Guam.

The evaluation found and reported potential underpaid revenue amounting to \$414 Thousand (K) (at 4%) from six contractors with a **total contract amount of \$10.4 Million (M)** based on the 2010 Contract Award Document. It also noted that 47 federal contractors (from the USASpending report) who conducted business in Guam are not found on the Military Contracts Award Report supplied by GEDA to DRT. **These contractors may have been subject to BPTs.**

The report included recommendations for DRT to develop and implement a BPT collection procedure with specific control elements and expand data sources to identify all contractors that may be subject to BPT.

In OPA Report No. 13-01, Department of Revenue and Taxation Gross Receipts Tax Exemptions issued in May 2013, we found that GRT and tax exemption data was incomplete, possibly unreliable, and lacked information for management and elected leaders to make sound decisions related to GRT.

In OPA Report No. 17-08, Department of Revenue & Taxation Gross Receipts Tax Exemptions issued in December 2017, taxes due to GovGuam was reduced by \$70.2M per year as a result of \$5.3 Billion (B) in GRT exemption from FY 2014 through FY 2016. Despite the significant impact of exemptions on the revenues, DRT conducted limited review and oversight of tax exemptions. In addition, **due to the lack of reconciliation of GRT due and GRT paid, DRT cannot easily ascertain the accounts receivable owed by taxpayers.**

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# Results of Audit

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Our performance audit of the DRT - Business Privilege Tax (BPT) on military construction contracts covering FYs 2016-2020 disclosed several deficiencies relative to the registration and licensing requirements, gross receipts reporting and BPT payments, questionable exemptions without sufficient documentation, and lapses in internal controls. These deficiencies resulted in question costs (over \$500K), unrealized revenues (over \$10M) and other financial impact/foregone revenues (over \$5M) for a total financial impact of over \$22M. DRT management and oversight body/commission need to address and resolve these deficiencies to enhance revenue collections relative to Guam's military construction contracts/projects. Specifically, we found the following:

## **Part 1: Registration and Licensing**

- Federal contractors without DRT records and tagged by DRT as Non-Filers
- Federal contractors tagged by DRT as Filers without DRT business license
- Non-coordination between DRT and CLB on federal contractor licenses
- Lapses in monitoring of federal contractors' registration and reporting compliance
- Contractors without physical copies of BLs

## **Part 2: Contracting Gross Receipts, Business Privilege Tax, and Business Privilege Tax Exemptions**

Contracting Gross Receipts (GRs) and Business Privilege Tax (BPT)

- Potential cause of variances of contractor reported GRs versus awarded contract amounts
- Federal contractors reported as "Non-Filers" and without GRs and BPT record with DRT
- Contractor tagged as "Filers" reported "zero" GRs, and BPT for five years
- Contractor tagged as DRT "Filer" reported "zero" GRs in a certain fiscal year
- Variances between reported GRs compared with awarded contract amounts
- Challenges in the review of contractor GR reporting and BPT payment compliance

BPT Exemptions

- Calculated BPT rates are way below the mandated 4% or 5% rate due to potential exemptions claimed
- Exemptions claimed for Exemption Code E42 (P. L. 30-230) cannot be identified if Filer is a Prime or Sub-Contractor due to lack of documentation
- Claimed exemption requirements not complied
- Deficiency in Schedule GRT E-Form
- Exemption Code E40 claimed without documentation
- Deficiencies in 1% BPT exemptions per P.L. No. 34-116 and P. L. No. 34-87

## **Part 3: Other Findings**

- System Cannot Automatically Generate Taxpayer with BPT Receivables
- Internal Controls
  - Unprocessed BPT returns & unavailable documents
  - Inadequate process and review of GRT/BPT filings and exemptions claimed
  - Procedures in pursuing unpaid/delinquent taxes not clearly defined

**PART 1: REGISTRATION AND LICENSING**

We reviewed the Certificate of Authority (COA) and the Department of Revenue and Taxation’s (DRT) Business License (BL) of 28 sampled local and foreign contractors (out of 135 filtered data from USASpending) awarded with contracts for Guam military installations. We also determined if the contractors without DRT BL were included in the Contractor’s License Board (CLB) list of authorized contractors as of June 30, 2021.

The Guam Attorney General’s Opinion (CLB 93-0543, dated June 17, 1993) stated, “foreign or off-island contractors, *whether or not* they are performing work exclusively on military installations in Guam, are required first to register or apply for a *Certificate of Authority* with the Guam Department of Revenue and Taxation’s General Licensing and Registration Branch.”

It further stated, “If you are a foreign or off-island contractor, *who is not required to obtain a contractor’s license from Guam CLB*, you are required to obtain a *business license* from DRT’s General Licensing and Registration Branch before you begin a project.”

We did not consider the lack of DRT BL a finding (deficiency) if the contractor had a CLB license number provided by DRT or if the contractor was included in the CLB list of authorized contractors as of June 30, 2021.

Based on DRT responses and our review of records and filed documents, we specifically found the following with registration and licensing deficiencies:

**Federal Contractors without DRT Records and Tagged by DRT as Non-Fileers**

Based on the USASpending data, we found four contractors awarded military construction contracts from FY 2016-2020 with a combined total award of over \$85M. In DRT’s response, these contractors were not registered with DRT, were without required licensing documents (COA & BL), did not file Gross Receipts, and therefore tagged as “**Non-Fileers.**” Additionally, these contractors were not on the CLB list of authorized contractors as of June 30, 2021.

In its updated response in November 2022 to OPA preliminary findings, these contractors are now part of the 2021 Tax Enforcement Division (TED) Compliance Initiative Program (CIP)-Federal Contractors, which started on June 17, 2021 (16 days after the start of this audit on June 1, 2021). See Table 1 for federal contractors without DRT records and tagged as non-filers.

**Table 1. Federal Contractors without DRT Records and Tagged as Non-Fileers**

Contractor	Contract Amounts FY 2016-2020	Gross Receipts FY 2016-2020 per DRT Response	Document/s Per DRT Response	Deficient Document/s	Remarks	CLB License
<b>NON-FILER</b>						
<b>Contractor II</b>	Over \$25M	-	NONE	COA & BL	Contracts for FY218-2020	NONE
<b>Contractor I</b>	Over \$45M	-	NONE	COA & BL	Contracts for FY219-2020	NONE
<b>Contractor V</b>	Over \$5M	-	NONE	COA & BL	Contracts for 2019	NONE

<b>Contractor VV</b>	Over \$5M	-	NONE	COA & BL	Contracts for -2016-2019	NONE
<b>Total</b>	Over \$85M					

### Federal Contractors Tagged as Filers Without DRT Business License

- **Based on Examined Documents**

Three foreign joint ventures (JV) or limited liability companies (LLC) contractors, who were tagged as “Filers” per DRT’s record, had no BLs or expired BLs. These contractors are likewise not on the CLB list of authorized contractors as of June 30, 2021, and thus are considered as having no CLB license. Per USASpending, these contractors had combined construction contracts for FY 2016-2020 totaling over \$25M and reported combined gross receipts of over \$65M during the same period. See Table 2 for contractors without DRT BL and CLB license.

**Table 2. Contractors without DRT BL and CLB License**

Contractor (Filer)	Contract Amounts FY 2016-2020	Period of Performance		Gross Receipts		Document/s Per DRT Response	Deficient Document/s	CLB License
		From	To	FY 2016-2020	Applicable Fiscal Year			
<b>Contractor R</b>	Over \$5M	1/8/2016	3/30/2018	Over \$50M	2016, 2017, and 2018	NONE	BL	NONE
<b>Contractor W</b>	Over \$1M	1/4/2016	2/21/2018	Over \$500K	2016 and 2017	With COA, No BL	BL	NONE
<b>Contractor ZZ</b>	Over \$15M	1/25/2016	12/28/2020	Over \$10M	2016 to 2020	With COA, With BL	BL (BL Expired 4/30/2019. Force Cancelled.	NONE
<b>Total</b>	<b>Over \$25M</b>			<b>Over \$65M</b>				

- **Based on DRT Response to OPA Data Request**

Six contractors reported as “Filers” were deficient with the required BL. These contractors received combined construction federal contracts for FY 2016-2020 of over \$45M per USASpending and reported combined gross receipts totaling over \$140M for FY 2016-2020. See [Appendix 3](#).

We recommend that DRT determines if the JVs, LLCs, or similar companies are required to have separate business licenses and other required documents and are subject to GR reporting and BPT payment separately from each partner.

### Non-coordination between DRT and CLB on Federal Contractor Licenses

DRT did not provide information regarding the contractors' CLB licenses in some of our sampled contractors, specifically those that did not have DRT BLs. Instead, DRT referred us to the CLB/PEALS Board for contractors’ licenses. We verified these contractors with the CLB listing of authorized contractors as of June 30, 2021; some were not found within the listing. Without a CLB license, the contractors could have worked **exclusively on military installations** (on base) in Guam, thus requiring a DRT license. See Table 1, Table 2, and [Appendix 3](#).

According to DRT FEDCON Supplemental Guidance & Information, all *contractors doing business in Guam are required to be licensed with the Guam Contractors License Board (CLB)*. However, an *exception* to this general rule is permitted in the case of a foreign or an off-island contractor doing *work exclusively* on a military installation in Guam.

According to DRT Compliance Task Force: Federal Task Force Standard Operating Procedures, *the CTF Agent has to verify if a taxpayer has a business license and /or COA issued by DRT, Contractor’s license issued by CLB, and/or Registration Number or Certificate of Authorization from Guam Professional Engineers, Architects, and Land Surveyors (PEALS)*.

To ensure foreign and local contractors comply with Guam licensing laws, we recommend that DRT implements a process that requires the CLB/PEALS to provide DRT periodic reports on registered contractors with their corresponding licenses.

**Lapses in Monitoring of Federal Contractors’ Registration and Reporting Compliance**

Lapses were noted in DRT’s monitoring of contractor compliance on registration and gross receipts reporting requirements. It did not periodically monitor if:

- Contractors awarded with military contracts for Guam applied for and filed appropriate licensing and were registered;
- Contractors who filed GRs had COA or DRT BL or CLB/PEALS licenses;
- Contractors who had COA or BL had consistently filed monthly GRs and paid BPTs promptly; and
- Appropriate registration, documentation, and GRT filing process of a JV, LLC, or other companies with similar features were done.

We recommend that DRT improve its processes to effectively identify federal contractors who completed projects for the US military in Guam.

**Contractors without Physical Copies of BLs**

Two contractors reported as having BLs, do not have physical copies on file. See Table 3 for federal contracts without physical copies of business licenses.

**Table 3. Federal Contractors Without Physical Copies of BLs**

<b>Contractor</b>	<b>Document/s Per DRT Response</b>	<b>Remarks</b>	<b>CLB License</b>
<b>Contractor E</b>	With COA and BL	No copy of BL	NONE
<b>Contractor Y</b>	With COA and BL	No copy of BL	NONE

## **PART 2: CONTRACTING GROSS RECEIPTS, BUSINESS PRIVILEGE TAX, AND BPT EXEMPTIONS**

### **Status of Tax Enforcement Division (TED) Compliance Initiative Program (CIP)-Federal Contractors**

Federal Contractors (FedCon) Standard Operating Procedure (SOP) was updated on March 18, 2021. It disclosed that the FedCon database from 2008 through 2021 was taken from raw data from *www.USASpending.gov*. USASpending is the official source for spending data for the US government and provides contract award data reported by federal agencies.

In the FedCon Task Force SOP, a Contractor Task Force (CTF) agent would prepare a comparative analysis between the FedCon contract amounts and the gross receipts reported on BPT and Income Tax Returns. Then, they will determine if enforcement action is necessary if significant differences are identified.

According to DRT, the TED Compliance Initiative Program (CIP) - Federal Contractors Phase 1 started on June 17, 2021 (16 days after the start of this audit on June 1, 2021). This phase generally addresses taxpayers' compliance with filing and licensing requirements. Phase I is currently on-going.

During this phase, DRT determined 335 FEDCON taxpayers, with **78% compliant with filing. Details of these compliant contractors were not available for disclosure to OPA by DRT.** Phase II will deal with an in-depth review of potential understatement of gross income/tax, which is expected to be performed during the second quarter of FY 2023. Another round of Phase I compliance work is expected to be performed during the second quarter of FY 2023.

### **Audit Results on the Review of Selected Contractors' Construction Contracts, Reported GRs and BPT Payments**

In our review of the data provided by DRT of GR filings and BPTs paid, on **86 out of 103 sampled** contractors, we found the following:

#### **Contracting Gross Receipts (GRs) and Business Privilege Tax (BPT)**

##### **Potential Cause of Variances of Contractor Reported GRs versus Awarded Contract Amounts**

We requested DRT Examination Branch for data and information relative to selected federal contractors' GRs reported/filed and BPTs paid covering the period October 1, 2016, through September 30, 2020 (FY2016 thru 2020). DRT provided OPA with the **total gross receipts for all contractors' business activities reported in their GRT Form 1.**

We noted some limitations in the reportable data required to be filled in by the contractors based on GRT Form 1. The GRs were reported on each line item categorized per taxpayers' business activities and license type and inputted as it is in the DRT Power 7 system. Due to these limitations

in the GRT Form-1, the Power 7 system cannot automatically distinguish and generate the following:

- Gross receipts for military construction contracts versus local construction contracts;
- BPTs due and paid/collected for military construction contracts versus local construction contracts; and
- Exemptions are availed for military construction projects or local construction projects.

The GRs data provided by DRT could be overstated if compared with awarded contract amounts specifically for military construction (scope of this audit). GRs reported by contractors in Form GRT-I encompassed gross receipts from contractors' business activities such as services, rental, profession, contracting-local and contracting-U.S., and interest. Per DRT, contracting-local in GRT Form I encompasses all construction revenues earned by a certain contractor whose construction/business company was organized/incorporated in Guam. Contracting-U.S. are those construction revenues earned in Guam by a construction/ business company organized outside Guam.

Additionally, without any information regarding the actual contract payments and list of contractors/sub-contractors with qualified/allowable exemptions, **neither DRT nor OPA can accurately** determine the reportable gross receipts and BPTs due from military construction contracts.

OPA calculation of potential underpayment/unpaid BPTs would be an estimate based on the applicable contract amount during the period of performance reported on USASpending. However, even the period of performance may not even be a fair estimate due to some variables and factors, which DRT is also uncertain for specifics and corresponding amounts. **Therefore, we cannot accurately ascertain the impact of potentially uncollected revenues on military construction contracts on GovGuam revenues.**

With all these uncertainties, we recommend that DRT coordinate with DFAS for information on actual contract payments and conduct a periodic audit on contractors to verify reportable GRs and corresponding BPTs due and owed by contractors.

#### **Federal Contractors Reported as “Non-Filers” and without GRs and BPT Records with DRT**

Out of 86 sampled contractors and based on DRT responses, we found six contractors who were mostly **joint ventures (JV) or limited liability companies (LLC)** were tagged by DRT as “**Non-Filers**” for FY 2016-2020 based on their response. Additionally, these contractors did not have business licenses with DRT. Per USASpending, construction projects in Guam were awarded contracts of over \$90M with a performance period from 10/27/2015 to 6/30/2024. Without information on actual contract payments as reportable gross receipts, potential unpaid BPT is over \$4M.

According to DRT's **statement**, as one of the variables, these contractors could file through parent companies or companies performing services outside of Guam, which may not be subject to GRT reporting or GRT payment. However, based on DRT's response in November 2022, these contractors are included in DRT's ongoing FedCon CIP, which started in FY 2021.

We recommend that DRT verify the reason/s why these JV and LLC contractors are tagged as “Non-Filers” so that appropriate measures can be undertaken to correct the process and collect potential revenues that may be due from the companies. See Table 4 for non-filer contractors.

**Table 4. Non-Filer Contractors**

<b>Contractor</b>	<b>Contract Amounts (FY 2016-2020) (Per USASpending)</b>	<b>Period of Performance - From</b>	<b>Period of Performance - To</b>	<b>Potential Unpaid BPT</b>	<b>Remarks</b>
<b>Contractor U</b>	Under \$500K	3/26/2019	1/31/2020	Under \$500K	Started filing GRT returns in May 2022. Included as part of the FedCon-CIP project
<b>Contractor II</b>	Over \$25M	7/13/2018	6/30/2024	Over \$1M	Each partner filed their GRT returns. Included as part of the FedCon-CIP project
<b>Contractor I</b>	Over \$45M	9/12/2019	9/11/2025	Over \$2M	Each partner filed their GRT returns.
<b>Contractor P</b>	Over \$5M	10/27/2015	9/5/2018	Under \$500K	Filed GRT Returns from FY 2016-2018 under a new name
<b>Contractor V</b>	Over \$5M	6/28/2019	10/10/2022	Under \$500K	Included as part of the FedCon-CIP project
<b>Contractor VV</b>	Over \$5M	5/31/2016	3/31/2021	Under \$500K	Included as part of the FedCon-CIP project
<b>Total</b>	<b>Over \$90M</b>			<b>Over \$4M</b>	

**Contractor Tagged as “Filer” Reported “Zero” Gross Receipts and Business Privilege Tax for Five Years**

Contractor TT was awarded federal construction contracts relative to the military build-up in Guam based on the USASpending report. For FY 2016-2020, contractor TT was awarded construction contracts for the military buildup in Guam totaling over \$10M for a period of performance from 10/23/2017 through 9/30/2024. The contractor has neither a COA nor a BL and was tagged by DRT as a “Filer.” However, in DRT’s first response for FY 2016-2020, “zero” gross receipts and “zero” BPTs were reported for this contractor.

However, in November 2022, DRT provided a second set of data updated as of October 2022 (beyond audit scope). The contractor filed GRs of over \$5M for **Services** and under \$500K for Contracting-US. According to DRT, the filing was based on the contractor’s license for tax years 2017-2022. Without any information regarding the **actual construction contract** payments, potential estimated BPTs to be collected for construction contracts would be over \$500K.

To enhance revenue collections from federal military construction contracts, we recommend that DRT coordinate with DFAS for information on actual contract payments and conduct a periodic audit to verify the reasons/causes of “zero” filings for construction contracts.

### **Contractor Tagged as “Filer” Reported “Zero” Gross Receipts in a Certain Fiscal Year**

Contractor F reported by DRT as a “Filer,” filed “Zero” GRs for FY 2019 per DRT's response in the 2021 audit data request. The contractor was awarded federal construction contracts totaling over \$50M relative to the military build-up in Guam based on the USASpending report from FY 2016 to FY 2020. For the performance period 5/19/2016 to 7/31/2024, the reportable amount for 2019 would be over \$15M with a potential unpaid BPT of over \$500K.

However, in November 2022, DRT provided a second set of data updated as of October 2022 (beyond audit scope). This reflected GRs of over \$80M filed for tax years 2016-2022 for **Service and Profession and none for Contracting-local and Contracting-US**. Accordingly, some of these GRT returns were processed after FY 2020 due to a shortage of manpower.

Without relevant information on actual contract payments to determine the reportable contract amount for gross receipts filing, we recommend that DRT coordinate with DFAS for information on actual contract payments and conduct periodic audits to verify reportable GRs and corresponding BPTs due and payable.

Additionally, since DRT is verifying compliance with selected contractors, we recommend that DRT increase its manpower to improve performance in examination and enforcement functions. Consequently, this will facilitate its verification process and recover potential revenue leakages.

### **Variations between Reported Gross Receipts Compared with Awarded Contract Amounts**

In one procedure in the Federal Contractors Task Force Standard SOP, a CTF agent would prepare a comparative analysis between the FedCon contract amounts and the gross receipts reported on BPT and Income Tax Returns. Then, they will determine if enforcement action is necessary if significant differences are identified.

We compared the Gross Receipts data provided by DRT from FY 2016-2020 versus the contract amounts covering FY 2016-2020 from USASpending. We found eleven contractors with variances or deficiencies in the gross receipts amounts reported per DRT's first set of data provided. Deficiencies ranged from over \$3M to over \$315M. See Table 5.

In November 2022, DRT provided another updated Gross Receipts filed covering the Tax Years 2016 to 2022 (beyond the audit scope). Using the DRT updated data to compare the awarded contract amounts versus the updated gross receipts disclosed; three contractors remain deficient in the amount of gross receipts filed. Deficiencies ranged from over \$2M to over \$160M, or a total of \$170M. These translate into a potential unpaid BPT of over \$5M at 4%. However, one contractor had a contract with a performance period of up to September 2023. See Table 5 for variances in GRT filing for FY 2016-2020 and FY 2016-2022.

We also noted excesses in gross receipts filing for eight contractors versus the DRT-reported contract amount per USASpending data. A potential reason could be that contract amounts referred to military construction contracts. At the same time, gross receipts encompassed all contractors' business activities, including profession, services, and local construction.

Additionally, GRs for contracting-local included all contractors’ revenues for his contracting activities, both local and military constructions. The contracting-local reported in GRT Form-1 refers to all contracting revenues of contractors whose businesses were organized/ incorporated in Guam. Contracting –US refers to contractors organized/incorporated outside Guam.

There is no accurate determination of unreported or underreported gross receipts from military constructions. Therefore, we recommend that a periodic audit of Guam contractors be performed and determine if some contractors warrant enforcement actions. Additionally, we recommend that DRT be provided with adequate manpower to perform this examination and enforcement functions.

**Table 5. Variances in GRT Filing for FY 2016-2020 & FY 2016-2022**

Contractor	Per OPA	Per DRT First Response		Per DRT Second Response		Excess (Deficiency)	Potential Unpaid BPT at 4%	Per DRT Remarks Based on Data Provided in November 2022
	Awarded Contracts (Per USASpending)	Gross Receipts (FY 2016-2020)	Deficiency	Awarded Contracts (Per USASpending)	Gross Receipts Tax Year 2016-2022			
<b>Contractor G</b>	Over \$360M	Over \$160M	Over \$195M	Over \$350M	Over \$720M	Over \$365M		Contractor filed gross receipts of \$722.6M for all business activities for tax period 10/2015 to 9/2022. Contracting-local amounted \$704.3M.
<b>Contractor J</b>	Over \$320M	Over \$3M	Over \$315M	Over \$380M	Over \$215M	(Over \$160M)	(Over \$5M)	Contractor filed gross receipts of \$219.3M for contracting-local for tax period 8/2018 to 9/2022.
<b>Contractor M</b>	Over \$5M	Over \$1M	Over \$3M	Over \$5M	Over \$5M	Over \$3M		Contractor filed gross receipts of \$9.1M for contracting-local for tax period 8/2018 to 9/2022.
<b>Contractor O</b>	Over \$65M	Over \$25M	Over \$35M	Over \$65M	Over \$65M	(Over \$2M)	(Under \$500K)	Contractor filed gross receipts of \$66.1M for contracting-local for tax period 8/2016 to 8/2022.

Contractor	Per OPA	Per DRT First Response		Per DRT Second Response		Excess (Deficiency)	Potential Unpaid BPT at 4%	Per DRT Remarks Based on Data Provided in November 2022
	Awarded Contracts (Per USASpending)	Gross Receipts (FY 2016-2020)	Deficiency	Awarded Contracts (Per USASpending)	Gross Receipts Tax Year 2016-2022			
Contractor Q	Over \$150M	Over \$4M	Over \$145M	Over \$150M	Over \$220M	Over \$70M		Contractor filed gross receipts of \$222.7M for contracting-local for tax period 10/2016 to 9/2022.
Contractor Z	Over \$20M	Over \$3M	Over \$15M	Over \$20M	Over \$15M	(Over \$6M)	(Under \$500K)	Contractor filed gross receipts of \$17.1M for contracting-U.S. for tax period 8/2016 to 8/2022.
Contractor AA	Over \$230M	Over \$100M	Over \$130M	Over \$255M	Over \$270M	Over \$15M		Contractor filed gross receipts of \$269.7M for contracting-local for tax period 8/2017 to 9/2022.
Contractor DD	Over 90M	Over \$75M	Over \$15M	Over \$95M	Over \$125M	Over \$25M		Contractor filed gross receipts of \$125.4M for contracting-local for tax period 10/2016 to 9/2022.
Contractor LL	Over \$15M	Over \$5M	Over \$5M	Over \$15M	Over \$50M	Over \$35M		Contractor filed gross receipts of \$54.2M for contracting-local for tax period 10/2016 to 9/2022.
Contractor NN	Over \$40M	Over \$35M	Over \$5M	Over \$45M	Over \$90M	Over \$45M		Contractor filed gross receipts of \$94.5M for contracting-local for tax period 10/2016 to 9/2022.
Contractor RR	Over \$85M	Over \$50M	Over \$30M	Over \$95M	Over \$125M	Over \$30M		Contractor filed gross receipts of \$126.5M for contracting-local and interest for tax period 10/2016 to 9/2022.
<b>Total</b>	<b>Over \$1.4B</b>	<b>Over \$475M</b>	<b>Over \$920M</b>	<b>Over \$1.5B</b>	<b>Over \$1.9B</b>		<b>Over \$5M</b>	

### Challenges in the Review of Contractor GR Reporting and BPT Payment Compliance

DRT representatives identified several factors and variables, but with **undeterminable amounts** for applicable contractors as of the audit termination date, that could potentially affect the gross receipts filing by the contractors. Monetary values related to the factors could only be determined if an audit is performed. These factors and variables are:

- USASpending data keeps on evolving as these include contract modifications such as additions, reductions, change orders, or cancellations;

- Multi-year awarded contracts or varying periods of performance;
- Contractors filing through their parent company or under a changed company name;
- On-island contractors hiring a third party or company outside Guam may or may not be subject to GRT reporting and BPT payment; and
- Gross Receipts Form I filed by contractors encompasses all their business activities, which does not classify the sources of revenue specifically for local projects and US- for federal or military projects, as this is not specified in the GRT Form.

With all the factors that **could not be translated into monetary values**, we recommend DRT immediately address and resolve variables and uncertainties through the following:

- A review of existing GRT Form filed by contractors, if it requires modification;
- For the Guam Legislature to clearly define the role of an oversight body/commission (such as the Committee on Public Accountability, Guam Buildup, etc.) that needs to monitor the awarded contractors periodically and update the status of awarded military contracts; and
- Collaboration between the oversight agency and DRT to coordinate with DFAS for a periodic report on payments made to awarded contracts.

### **Business Privilege Tax Exemptions**

Within the Guam Code Annotated, BPTs consist of five categories, one of which is the Gross Receipts Tax. From FY 2012-2016, GRT made up the largest category of BPTs paid into GovGuam. GRT business activities include contracting-local and contracting-U.S. among the 13 specified in Schedule GRT-E.

### **Calculated Business Privilege Tax Rates are way below the Mandated 4% or 5% rate Due to Potential Exemptions Claimed**

Section (§) 26201, Chapter 26 Article 2, Title 11 of the GCA states that a 4% Business Privilege Tax (BPT) is levied, assessed, and collected monthly against the persons on account of their businesses operating within and outside of Guam. The BPT is calculated by the application of rates against the values, ***gross proceeds of sales, or gross income*** derived from their business activities in Guam. In 11 GCA §26202 (e), it levies the 5% tax against the gross income **of any contractor**.

We reviewed Gross Receipts and BPT data provided by DRT from FY 2016-2020. We found that for **16 contractors**, calculated BPT rates ranged from **0.19% to 4.31%**, which were way below the mandatory 4% rate (effective October 1, 2005) and 5% rate (effective April 1, 2018). Rate deficiencies, which ranged from 0.48% to 4.27%, are the variances between the BPT rate that should be collected versus the actual rate of BPTs paid.

According to DRT representatives, the deficiencies ***could be due to exemptions, tax credits, or credit adjustments*** deducted from gross receipts in contractors' Gross Receipts filings to arrive at the GR amounts subject to BPT. For **these 16 selected** contractors alone, forgone potential revenues due to **exemptions and tax credits/credit adjustments** (which are allowed by law) were over \$5M. See [Appendix 4](#).

We recommend that DRT determine the eligibility, validity, and accuracy of exemption amounts claimed by instituting the following measures:

- Establish a continuing list of exempted contractors, total exemptions claimed for a certain fiscal year or tax year, and reasons for exemptions for monitoring and analysis for future decision-making.
- Require documents supporting exemptions, credit adjustments, or deductions upon filing;
- Increase manpower complement to perform thorough verification of filed GRT forms upon processing/encoding; and
- Periodically conduct post-review of exemptions claimed and corresponding documentations to establish propriety.

**Exemptions Claimed for Exemption Code E42 (P. L. 30-230) cannot be identified if Filer is a Prime or Sub-Contractor due to lack of documentation**

11 GCA Chapter 26 §26101 (b) defines **primary contractors** as “every person engaging in the business of contracting to erect, construct, repair or improve or to provide under contract any service or material for the construction or labor to another that the project may require. It also defined **sub-contractors** as “every person engaging in the business of providing labor, products or services **to a primary contractor for a specific project.**”

Public Law (PL) 30-230 was signed into law on December 30, 2010, and is effective March 1, 2011. The law was intended to simplify the enforcement and collection of BPTs on prime and sub-contractors and minimize leakage of BPT tax revenues. Title 11 GCA §26202 (e) levies the 5% tax against the gross income **of any contractor**, provided *there shall be deducted from the gross income of the taxpayer the amount that has been included in the gross income earned by the contractor who has already paid the tax.* In OPA Report No. 17-08 issued in December 2017, Public Law 30-230 (Sub-Contractor Receipts) is the third highest exemption claimed, totaling \$473.7M from FY 2014-2016.

Based on PL 30-230, the **prime contractors** are required to pay the full BPT based on the gross receipts from awarded contracts. However, the law allowed **sub-contractors** to claim an exemption of the corresponding gross receipts paid by the primary contractors in their BPT returns. Statutorily, it **shifts the levy and payment from the sub-contractors to the prime contractor.** In addition, it administratively shifts the reporting of the exemptions from the prime contractor to the sub-contractor.

We reviewed 25 federal contractors' GR filings. Six federal contractors had claimed exemptions in Schedule GRT-E under E-42 (PL 30-230). However, we could not find any documentation to show that the “Filers” are *prime contractors (who are not eligible for exemptions) or sub-contractors (who are eligible for exemptions).* We are unable to **identify** from the documents provided (such as Schedule GRT-E and payment documents to sub-contractors) if the “**Filer**” is **the Prime Contractor** or a **Sub Contractor** and the **contracting business names** claimed as exemptions are **Prime Contractors.**

Additionally, no documentation was provided to verify if the tax Filer or the exemptions claimed, numbering from one to 15 contractors, are eligible and valid according to the law. The claimed exemptions significantly reduced contractors’ taxable gross receipts, reducing their tax liabilities.

For the six contractors alone, **questionable exemptions totaled over \$10M or equivalent to \$500K (at 4%)** potentially foregone BPTs.

Per the DRT website, under Form GRT Information and Instructions- Exemptions or Deductions, it specified that any exemption or deduction claimed (Column B in Form GRT-1) **must be sufficiently supported by documentation**. Therefore, DRT needs to know the specific supporting documentation necessary for exemptions claimed.

During our discussion with DRT representatives, “Filers” who claimed Exemption Code E-42 (P.L. 30-230) were **presumed** to be **sub-contractors** as they are eligible to claim such exemptions under the law. DRT did not validate this presumption as the GRT filings were not subjected to post reviews.

To prevent or minimize foregone revenues from ineligible/questionable exemptions, we recommend that claimed exemptions be sufficiently documented and subjected to post reviews. See Table 6 for prime or sub-contractors claiming P.L. 30-230 questionable exemptions and [Appendix 5](#).

**Table 6. Prime or Sub-Contractors Claiming PL 30-230 Questionable Exemptions**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor NN</b>	Oct 2017	Over \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Jan-Mar 2018	Over \$1M	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Nov 2019	Over \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	<b>Total</b>	<b>Over \$2M</b>	<b>Under \$500K</b>		
<b>Contractor RR</b>	Apr 2017	Under \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	May 2017	Under \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Mar 2019	Over \$2M	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Jun 2019	Under \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Jul 2019	Over \$1M	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	<b>Total</b>	<b>Over \$4M</b>	<b>Over \$500K</b>		
<b>Contractor Y</b>	Sep 2018	Under \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	Oct 2019	Under \$500K	Under \$500K	1 contractor	No sufficient supporting documents to validate exemptions
	<b>Total</b>	<b>Over \$500K</b>	<b>Under \$500K</b>		

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Jan 2019	Over \$3M	Over \$500K	15 contractors	No sufficient supporting documents to validate exemptions
	Feb 2019	Over \$3M	Over \$500K	13 contractors	No sufficient supporting documents to validate exemptions
	Mar 2019	Over \$3M	Over \$1M	12 contractors	No sufficient supporting documents to validate exemptions
	Apr 2019	Over \$3M	Over \$500K	13 contractors	No sufficient supporting documents to validate exemptions
	May 2019	Over \$5M	Over \$1M	9 contractors	No sufficient supporting documents to validate exemptions
	Jun 2019	Over \$4M	Over \$1M	12 contractors	No sufficient supporting documents to validate exemptions
	Jul 2019	Over \$3M	Over \$1M	17 contractors	No sufficient supporting documents to validate exemptions
	Aug 2019	Over \$3M	Over \$500K	12 contractors	No sufficient supporting documents to validate exemptions
	<b>Total</b>	<b>Over \$30M</b>	<b>Over \$5M</b>		
<b>Contractor QQ</b>	Oct to Dec 2016, Feb 2017, Apr to June 2017, Aug-Sept. 2017	Over \$335M	Over \$1M	3 contractors	Incomplete filing document for March 2017 (Deficiencies were provided to DRT on 4/29/22)
	Oct, Nov, Dec 2017, March 2018	Over \$10M	Over \$500K	1-4 contractors	Incomplete filing document for January, February, April, May, June, July, August, and September 2018 (Deficiencies were provided to DRT on 4/29/22)
	<b>Total</b>	<b>Over \$345M</b>	<b>Over \$2M</b>		
<b>Contractor BBB</b>	Nov 2016, March 2017, April 2017	Over \$2M	Over \$500K	1-6 contractors	Incomplete filing document for October & December 2015, February, June, July, and September 2016 (Deficiencies were provided to DRT on 4/29/22)
	Feb 2019	Over \$500K	Over \$500K	No details	No details of names of sub-contractors/prime-contractors on the GRT-E Form
	<b>Total</b>	<b>Over \$2M</b>	<b>Over \$1M</b>		
<b>Grand Total</b>		<b>Over \$385M</b>	<b>Over \$10M</b>		

### Claimed Exemptions Requirements Not Complied

Based on the examined GRT-E Forms, the required information per 11 GCA §26202 (e) was not present. 11 GCA §26202 (e) levies the 5% tax against the gross income **of any contractor**. It further *states that any person claiming a deduction shall be required to show in the person's return the following:*

- a) **Either the name and contractor's license number issued by the Guam Contractor's Board** or Guam Business License; or
- b) The registration number for a professional engineer, architect or land surveyor; or
- c) Certificate of Authorization (COA) number for a business authorized to provide engineering, architecture, or land surveying services by the PEALS Board of the person *paying the tax on the amount deducted by the person.*

### **Deficiency in Schedule GRT-E Form**

In Schedule GRT-E, information that is required to be filled in are Name of Contractor, Contractor License No. Line No. (in Form-GRT-1), the basis for Exemption Code, and the amount (Exemption Claimed). **There was no mention of required supporting documentation.** Thus, the DRT processor merely accepts and manually processes the GRT-1 and Schedule GRT-E filings and inputs relevant information such as GRT account number, tax period, filed date, multiple filers, document locator number, and selected line items. However, the DRT website, under Form GRT Information and Instructions- Exemptions or Deductions, specified that any exemption or deduction claimed (Column B in Form GRT-1) **must be sufficiently supported by documentation.**

To enforce the requirement of exemption documentation, we suggest that such should be clearly stated/specified in the form GRT-E or any appropriate form of instruction or guidance.

### **Exemption Code E40 Claimed Without Documentation**

Contractor FF reported gross receipts for 2019 and 2020 totaling over \$5M. Additionally, it claimed Exemption under Code E-40 Others (GovGuam/FEDGOV) totaling over \$2M for the Guam Housing Urban Rehabilitation Agency and Guam Waterworks Authority. Exemptions were without any supporting documents relative to the projects as this is not specifically required per GRT forms. Claimed exemptions are equivalent to under \$500K BPT.

To ensure that exemptions claimed by contractor taxpayers are valid, allowable, and eligible, we recommend that DRT require sufficient documentation upon filing, as specified within DRT's website. We suggest that DRT may advise filers that processing will not be completed unless specified documentation is submitted.

### **Deficiencies in 1% BPT Exemptions per P.L. No. 34-116 and P. L. No. 34-87**

PL 34-87, enacted on March 16, 2018, increased the BPT from 4% to 5% effective April 1, 2018. PL 34-116 extended the 5% BPT rate effective **October 1, 2018**. To claim the 1% exemption, each taxpayer must complete DRT Form 3487 and file with BPT Return (Form GRT-1). **All contractors** defined under §26202 (e) of Title 11 of the GCA qualify for the 1% exemption. The 1% BPT increase shall not apply to income generated from the following:

1. Contracts entered into or **awarded before** the enactment of PL 34-87 on March 16, 2018
2. Contracts entered into or awarded after PL 34-87 were based upon **bids or proposals submitted before the law's passage.**

We noted deficiencies in our review of the 1% exemptions claimed by some contractors. Total exemptions/credit adjustments claimed for the three contractors alone amounted to **over \$1M**. See Table 7 for deficiencies in 1% exemptions claimed. Deficiencies are as follows:

1. There were no details of the contract name (Column A) and contract date (Column B) in Form 3487;
2. The base of the 1% exemption/credit adjustment is not identifiable or the base used is erroneous.
3. The base for the 1% should be the Taxable Value (Column C) in GRT Form 3487; and
4. No document to support the 1% credit adjustment

We recommend that any exemption, credits, or deductions claimed be sufficiently supported and subjected to post-review. Additionally, we suggest that filers be required to fill in the forms completely and appropriately.

**Table 7. Deficiencies in 1% Exemptions Claimed**

Contractors	Tax Year	Total Gross Receipts	Total Exemptions Claimed	Type of Exemptions	Deficiency/ies
<b>Contractor AA</b>	Nov 2018 to Sept. 2019	Over \$65M	Over \$500K	1% BPT Reduction	No documents
<b>Contractor NN</b>	Apr 2018	Under \$500K	Under \$500K	Cannot be determined	No document for the credit adjustment
	Aug 2018	Over \$1M	Under \$500K	Cannot be determined	No document
	Dec 2018	Over \$1M	Under \$500K	1% BPT Reduction	Erroneous basis
	Jan 2019	Over \$1M	Under \$500K	1% BPT Reduction	Erroneous basis
	Feb 2019	Over \$1M	Under \$500K	1% BPT Reduction	Erroneous basis
	Apr 2019	Over \$500K	Under \$500K	1% BPT Reduction	Erroneous basis
	May 2019	Over \$500K	Under \$500K	Cannot be determined	No document for the credit adjustment
	Jun 2019	Over \$500K	Under \$500K	Cannot be determined	No document for the credit adjustment
				1% BPT Reduction	No document for the credit adjustment
	Jul 2019	Over \$1M	Under \$500K	1% BPT Reduction	No document for the credit adjustment
				Credit adjustment	No document for the credit adjustment
Sep 2019	Over \$1M	Under \$500K	1% BPT Reduction	Basis of adjustment cannot be determined	
			Under \$500K		
<b>Contractor RR</b>	Apr 18	Under \$500K	Under \$500K	1% BPT Reduction	
	Oct & Dec 2019	Over \$20M	Under \$500K	1% BPT Reduction	Basis of adjustment cannot be determined
	Jan to Sep 2020		Under \$500K		
<b>Total</b>		<b>Over \$100M</b>	<b>Over \$1M</b>		

### **PART 3: OTHER FINDINGS**

#### **System Cannot Automatically Generate Taxpayers with BPT Receivables**

In the audit final report, a finding states that an accounts receivable account is not set up for specific contractors' unpaid BPT. This finding was provided to DRT since June 20, 2022. In their response, DRT states, "there is an A/R account set up for every taxpayer who has unpaid BPT. Also, DRT's system can generate a specific contractor's unpaid BPT if it has already been assessed."

When the OPA requested a list of total outstanding BPT receivables booked as of September 30, 2022, they responded, "**it would take some time to work on.**" However, DRT provided OPA

with a system-generated Annual Activity Report, which **only contains totals** for BPT Receivables for FY 2021 and other related activities.

## **Internal Control**

### **Unprocessed BPT Returns and Unavailable Documents**

For the 10 contractors we have tested, we found that certain contractors' BPT payment document files were not available for examination. Per DRT procedure, the payment documents are filed and processed for recording at a later time when manpower is available. Additionally, per DRT's response as of May 19, 2022, to the OPA data request, some FY 2020 GRT returns were still not processed. Historically, DRT has had delays in processing/encoding GR-BPT filings.

### **Inadequate Process and Review of GRT/BPT Filings and Exemptions Claimed**

To claim PL 30-230 exemptions, a contractor has to complete GRT-Form 1 and attach it to Schedule GRT-E. In Schedule GRT-E the exemption code listing applicable for contractors is Code E-42 (PL 30-230).

Based on our inquiry and discussion with the DRT representative, the agency does not have a defined process and written standard procedures to review any supporting documentation to validate claimed exemptions and credit adjustments' eligibility, authenticity, and accuracy. Additionally, DRT's day-to-day review process of GRT filings only to ensure that the proper exemption code, exemption amount, contractor name, and license number are sufficiently documented in the Schedule GRT- E form and properly encoded. Once the system approves the information presented, there is no further verification of the eligibility of exemptions claimed.

Exemptions can incentivize taxpayers if well designed and implemented, although revenues from tax exemptions reduce funds available for government social and economic goals. Without a clearly defined process and adequate written methodology to review and validate exemptions and credit adjustments, DRT may not be able to collect the correct amount of revenues owed by the contractors resulting in significant revenue leakage.

DRT implements the tax based on "voluntary compliance," in which the taxpayer is responsible for reporting and paying GRT. The burden of proof is placed on the taxpayer to report GRT revenues and claimed exemptions. The accuracy of reported gross receipts and exemptions can only be determined if DRT conducts an audit. Therefore, we recommend that DRT enhance its existing manpower complement to conduct periodic post-reviews and corresponding supporting documents.

### **Procedures in Pursuing Unpaid Delinquent Taxes Not Clearly Defined**

DRT Examination Branch does not follow specific procedures for determining, following up, and pursuing the collection of delinquent taxes. Aside from having insufficient manpower, it does not have the framework to determine a timeframe for sending notices for unfiled and unpaid taxes or implementing the necessary action to enforce collections. This process appeared to be done and applicable only to **taxpayers selected for a full compliance investigation** under the CIP.

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## Conclusion and Recommendations

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The lapses in monitoring contractor registrations, limitations in the GR-BPT form, and other factors and variables (of undeterminable values) affect the reportable GRs. Additionally, the lack of information on actual contract payments, insufficient exemption documentation, lack of exemptions post reviews, and periodic audits are some of the vital factors that pose challenges in determining a fair estimate of a contractor's potential unreported/underreported taxable GRs. Cumulatively, we found total financial impact totaling over \$22M.

Until these factors are resolved, determining contractors' reportable GRs and BPTs due would remain a challenge. Neither DRT nor OPA can measure the significance of the impact of revenue leakages from military construction contracts on GovGuam revenues. But certainly, the impact of foregone revenues/revenue leakage on GovGuam revenues would be highly significant if unaudited.

According to DRT, it initiated its Tax Enforcement Division Compliance Initiative Program-Federal Contractors on June 17, 2021 (16 days after the start of this audit on June 1, 2021) and found **78% filing compliance**. Phase I is ongoing, and Phase II, for an in-depth review of potential understatement, is expected to be performed in the second quarter of FY 2023.

DRT needs to collaborate with DFAS to obtain information on actual contract payments for contractors' awarded contracts and perform periodic audits. We, therefore, encourage DRT and an oversight body/commission to address and resolve the surmountable issues cited within the report to enhance revenue collections relative to the military construction contracts/projects in Guam.

In this audit, we made the following recommendations and suggestions for the DRT Director, management, and Legislature.

### Recommendations

- 1) DRT determines if the JVs, LLCs, or other similar companies are required to have separate business licenses and other required documents and subject to GR reporting and BPT payment separately from each partner.
- 2) DRT implements a process that requires the CLB/PEALS to provide DRT periodic reports on registered contractors with their corresponding licenses.
- 3) Improve its processes to effectively identify federal contractors who completed projects for the US military in Guam.
- 4) Coordinate with DFAS for information on actual contract payments to determine reportable GRs and BPTs due and owed by contractors and conduct periodic audits.
- 5) Verify the reason/s why these JV and LLC contractors are tagged as "Non-Filers" so that appropriate measures can be undertaken to correct the process and collect potential revenues that may be due from the companies.
- 6) DRT increase its manpower to improve performance in examination and enforcement functions.
- 7) Immediately address and resolve the variables and uncertainties through the following:
  - A review of existing GRT Form filed by contractors, if it requires modification;

- For the Guam Legislature to clearly define the role of an oversight body/commission (such as the Committee on Public Accountability, Guam Buildup, etc.) that needs to monitor the awarded contractors periodically and update the status of awarded military contracts; and
  - Collaboration between the oversight agency and DRT to coordinate with DFAS for a periodic report on payments made to the awarded contract.
- 8) Determine the eligibility, validity, and accuracy of exemption amounts claimed by instituting the following measures:
- Establish a continuing list of exempted contractors, total exemptions claimed for a certain fiscal year or tax year, and reasons for exemptions for monitoring and analysis for future decision-making.
  - Require documents supporting exemptions, credit adjustments, or deductions upon filing;
  - Increase manpower complement to perform thorough verification of filed GRT forms upon processing/encoding; and
  - Periodically conduct post-review of exemptions claimed and corresponding documentation to establish propriety.

### **Suggestions**

- 1) To enforce the requirement of exemption documentation, we suggest that such should be clearly stated/specified in the form GRT-E or any appropriate form of instruction or guidance.
- 2) We suggest that DRT may advise filers that processing will not be completed until specified documentation is submitted.
- 3) We suggest that filers be required to fill in the forms completely and appropriately.

# Classification of Monetary Amounts

Finding Description	Questioned Cost	Potential Savings	Unrealized Revenues	Other Financial Impacts/Forgone Revenues	Total Financial Impact
<b>Part I Registration and Licensing</b>					
Federal contractors without DRT records and tagged as non-filers.	\$ -	\$ -	\$ -	\$ -	\$ -
Federal contractors tagged as filers without DRT business license.	\$ -	\$ -	\$ -	\$ -	\$ -
Non-coordination between DRT and CLB on federal contractor licenses	\$ -	\$ -	\$ -	\$ -	\$ -
Lapses in monitoring of federal contractors' registration and reporting compliance	\$ -	\$ -	\$ -	\$ -	\$ -
Contractors without physical copies of BLs	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Part II Contracting Gross Receipts (GRs), Business Privilege Tax (BPT) and BPT Exemptions</b>					
Potential cause of variances of contractor reported gross receipts versus awarded contract amounts	\$ -	\$ -	\$ -	\$ -	\$ -
Federal contractors reported as non-filers and without GRs and BPT record with DRT	\$ -	\$ -	\$4,589,840	\$ -	\$4,589,840
Contractors Tagged as Filers Reported "Zero" GRs, and BPT for Five Years	\$ -	\$ -	\$536,086	\$ -	\$536,086
Contractor tagged as DRT Filer filed "zero" GRs in a certain fiscal year	\$ -	\$ -	\$836,737	\$ -	\$836,737
Variances between reported GRs compared with a awarded contract amounts	\$ -	\$ -	\$6,846,116	\$ -	\$6,846,116

# Classification of Monetary Amounts

Finding Description	Questioned Cost	Potential Savings	Unrealized Revenues	Other Financial Impacts/Forgone Revenues	Total Financial Impact
Challenges in the review of contractor GR Reporting and BPT Payment compliance	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	\$ -	\$ -	\$12,808,779	\$ -	\$12,808,779
<b>BPT Exemptions</b>					
Calculated BPT rates are way below the mandated 4% or 5% rate due to potential exemptions claimed	\$ -	\$ -	\$ -	\$7,486,374	\$7,486,374
Exemptions Claimed for Exemption Code E42 (P. L. 32-230) cannot be identified if Filer is a Prime or Sub-Contractor.	\$579,164	\$ -	\$ -	\$ -	\$579,164
Claimed exemption requirements not complied	\$ -	\$ -	\$ -	\$ -	\$ -
Deficiency in Schedule GRT E-Form	\$ -	\$ -	\$ -	\$ -	\$ -
Exemption Code E40 claimed without documentation	\$ -	\$ -	\$ -	\$115,181	\$115,181
Deficiencies in 1% BPT exemptions per P.L. No. 34-116 and P. L. No. 34-87	\$ -	\$ -	\$ -	\$1,463,538	\$1,463,538
<b>Total</b>	\$579,164	\$ -	\$ -	\$9,065,093	\$9,644,257
<b>Other Findings</b>					
System Cannot Automatically Generate Taxpayers with BPT Receivables	\$ -	\$ -	\$ -	\$ -	\$ -
Internal Controls					
Unprocessed BPT Returns and Unavailable Documents	\$ -	\$ -	\$ -	\$ -	\$ -
Inadequate Process and Review of GRT/BPT Filings and Exemptions Claimed	\$ -	\$ -	\$ -	\$ -	\$ -

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# Classification of Monetary Amounts

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<b>Finding Description</b>	<b>Questioned Cost</b>	<b>Potential Savings</b>	<b>Unrealized Revenues</b>	<b>Other Financial Impacts/Forgone Revenues</b>	<b>Total Financial Impact</b>
Procedures in Pursuing Delinquent Taxes Not Clearly Defined	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Overall Total</b>	\$579,164	\$ -	\$12,808,779	\$9,065,093	\$22,453,036

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## Management Response and OPA Reply

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The preliminary findings (for discussion purposes only) were presented to DRT representatives in March 2022 (Registration and Licensing) and June 2022 (Gross Receipts, BPTs, and BPT Exemptions).

A preliminary draft report was transmitted to the DRT Director on September 27, 2022. An exit conference was held on October 18, 2022, to discuss the audit's preliminary findings and recommendations.

There were subsequent meetings held to discuss DRT's response to OPA preliminary findings and to clarify data and information provided by DRT in **November 2022** (subsequent events). A meeting was held with DRT representatives on December 12, 2022, to clarify and validate the updated data and other relevant information. For fair reporting, these were considered and incorporated in this final report sent to DRT on December 22, 2022, for official management response.

Per DRT's request, a brief meeting was held on January 3, 2023, to discuss DRT's initial response on December 29, 2022. OPA sent a final report to DRT on January 5, 2023. In DRT's official final response on January 13, 2023, some findings and recommendations were concurred, and others were contested.

See [Appendix 6](#) for DRT's official management response and OPA reply.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, document the progress in implementing the recommendations, and endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will contact the Legislature to provide the target dates and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation and assistance given to us by the DRT Director, management, and staff during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz  
Public Auditor

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## Appendix 1

### Objective, Scope and Methodology

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#### Objectives

Our audit objectives are to determine whether:

1. Prime and sub-contractors for US military construction contracts in Guam paid Business Privilege Tax (BPT) and other taxes, permits, and licenses required per Guam law;
2. Department of Revenue and Taxation has a mechanism to identify non-filer contractors and collect the appropriate taxes effectively; and
3. BPT exemptions granted to prime and sub-contractors are in accordance with the law.

#### Scope

Our audit scope and time period cover the following:

1. Selected US military construction contracts awarded from Fiscal Year (FY) 2016 through 2020;
2. Business Privilege Tax and other taxes, permits, and licenses paid by selected prime and sub-contractors for FY 2016 through 2020;
3. Relevant documents such as contractors' permits and licenses, contracts, Gross Receipts Form-1, Schedule GRT-E, BPT exemption certificates, and other necessary documents.

#### Methodology

To accomplish our objectives, we performed the following:

1. Identified and reviewed applicable laws, rules and regulations, DRT guidelines, and FEDCON Standard Operating Procedures.
2. Identified and reviewed prior OPA performance audits, DOI-OIG Evaluation Reports, and other relevant publications.
3. Researched federal contractors awarded federal contracts from FY 2016-2020 from USASpending. Filtered the data to the following parameters:
  - a) Construction contracts only;
  - b) Place of performance –Guam; and
  - c) Performance period from FY 2016-FY 2020 until their end performance date.
4. Compared data from different sources and determined data that can be validated from USASpending to coincide with DRT's official data source.
5. Analyzed information and judgmentally selected samples for DRT data information and fieldwork.
6. Sent four batches of contractors requiring DRT to provide information on Gross Receipts and Business Privilege Tax for FY 2016-2020.
7. Performed an analysis of data to determine outliers and potential findings based on established criteria.
8. Issued a Survey Briefing Report with the Public Auditor's "Go" decision.
9. Performed examination of supporting documents, GRT Form-I, Schedule-E, and other relevant documents submitted during the filing.
10. Met with the OPA representatives to discuss the initial findings, conducted other subsequent meetings for clarification, and validated subsequent data provided.

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## **Appendix 1**

### **Objective, Scope, and Methodology**

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11. Met with DRT Director and other DRT representatives for an exit conference to discuss preliminary findings.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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.

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## Appendix 2

### Prior Audit Coverage

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#### **OPA Report No. 13-01 Department of Revenue and Taxation Gross Receipts Tax**

##### **Exemptions**

##### **Conclusion and Recommendations**

Gross receipts tax forms (a total of 79,700) have not been completely processed for CY 2011 and 2012 due to a breakdown of the optical image scanner, system interface, and the expiration/termination of the service agreement with the contracted vendor. Information for CY 2009 and 2010 was provided in March 2013 and the CY 2006-2008 information was provided in April 2013. However, we did not test the completeness, accuracy, and reliability of this data.

DRT had experienced a myriad of challenges processing GRT forms. GRT and exemption data is incomplete, possibly unreliable, and lacking necessary information for management and elected leaders to make sound decisions related to GRT. DRT is not effectively recording, monitoring, reporting and collecting GRT, and there is a high potential for loss revenues due to possible non reporting and under reporting of gross receipts. The amount of accounts receivable owed by taxpayers who have not filed is also unknown. Without GRT and exemption data, we were unable to quantify GRT exemptions and determine their financial impact on GovGuam revenues.

DRT continues to experience serious problems with tax collection activities as evidenced by the U.S. DOI OIG audit report on *Guam's Tax Collection Activities* issued in November 2008. The challenges noted in the OIG report include the lack of adequate funding and staff, an inability to hire and retain qualified tax enforcement staff, an ever increasing workload, and reliance on manual processes and outdated equipment. These challenges have existed for the past 20 years and still remain. As stated in the OIG's report, "the current lack of substantial audits, proactive efforts to identify non-filers and under-reporters, vigorous collection and enforcement efforts, and accurate property values creates little incentive for voluntary tax compliance and deprives Guam of the revenues it desperately needs to fund health, safety, education, and other programs for the citizens of Guam."

While DOA has developed compensating controls for GRT information, it too is saddled with an old antiquated legacy system BACIS/Firm400, originally designed in the early 1980s. As of FY 2011, revenues collected by the Government of Guam General Fund, and related Funds; exclusive of Autonomous agencies have grown to over a billion dollars. To properly and regularly account for this information, DRT together with DOA must move toward a fully integrated financial management system.

To improve the recording, reporting, collecting and monitoring of DRT's business privilege tax and exemptions, we recommend the Governor, the Legislature, the DRT Director, and the DOA Director:

1. Establish a tax administration task force to develop an action plan for revitalizing DRT and ensuring complete filing and payment of all taxes due to Guam.
2. Establish a financial management task force to develop an action plan for the acquisition of updated financial management systems at both DRT and DOA.
3. Establish and meet a target date to fully transition to e-filing of GRT forms and other related taxes.

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## Appendix 2

### Prior Audit Coverage

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#### OPA Report No. 17-08 Department of Revenue and Taxation Gross Receipts Tax Exemptions

##### Conclusion and Recommendations

From FY 2014 through FY 2016, GRT revenues (net of exemptions) were 33% of Guam's tax revenue. Tax due to GovGuam was reduced by an average of \$70.2M per year as a result of \$5.3B in GRT exemptions. This resulted in foregone potential revenues of \$210.7M. Despite the significance of GRT revenues and the impact exemptions have on revenues, DRT conducted limited review and oversight of tax exemptions. Without routine oversight and review, GovGuam may be missing opportunities to identify risks of lost revenue due to possible non-reporting and under-reporting of GRT. In addition, due to the lack of reconciliation between GRT due and GRT paid, DRT cannot easily ascertain the accounts receivable owed by taxpayers.

We could not ascertain the impact of exemptions on actual revenues reported in the financial audit as DRT could not provide data reconciling to payments collected. Therefore, the impact on exemptions was based on the tax due amounts provided by DRT.

GAO has recommended greater scrutiny of tax expenditures, as periodic reviews could help determine how well specific tax expenditures work to achieve their goals and how their benefits and costs compare to those of programs with similar goals. There is also no official reporting of tax expenditures (such as tax exemptions, deductions, credits, or exclusions) to allow policymakers to ascertain the cost-benefit of such preferential tax provisions as called by best practices identified by NCSL. WE suggest the Legislature to consider GAO and NCSL best practices of tax expenditure review, budgets, and reports.

In our prior GRT exemptions audit, OPA Report No. 13-01, we were unable to quantify GRT exemptions and determine their financial impact on GovGuam revenues because reliable GRT and exemption data was not available. Our current audit revealed that while GRT data is now available, the financial impact on FY 2012 and FY 2013 GovGuam revenues is unknown as data was incomplete and unreliable.

DRT also continues to manually input GRT returns with no analysis or review of the inputted data as evidence by the missing exemption codes and incorrect taxable amounts and tax due. For DRT to become more efficient in its tax collection responsibilities, technological improvement are needed to include full implementation of e-filing that would enhance productivity and efficiency. We found that DRT continues to experience the challenges identified in our previous audit, especially with the reliance on manual processes and outdated equipment.

While accurate, informative and transparent tax expenditure reports is a critical first step to be implemented, data must be reviewed, evaluated, and reported to allow for better public policymaking. Therefore, we recommend DRT management and BPT branch staff to:

- Analyze GRT data and resolve system errors by conducting in-house corrections;
- Regularly review GRT data and investigate any irregularities; and
- Work with policymakers to develop a more comprehensive and systematic strategy to review all tax expenditures on a regular basis.

## Appendix 3

### Contractors Without COA and/or DRT BL or CLB License

Contractor	Contract Amounts FY 2016-2020	Gross Receipts FY 2016-2020	Document/s Per DRT Response	Deficient Document/s	Remarks	CLB License
<b>FILERS</b>						
<b>Contractor B</b>	Over \$5M	Over \$5M	With COA; No BL	BL	Gross Receipts - 2016-2019	<b>NONE</b>
<b>Contractor L</b>	Over \$10M	Over \$50M	With COA & BL	BL cancelled 2/20/20	Gross Receipts- 2016-2020	<b>NONE</b>
<b>Contractor KK</b>	Over \$10M	Over \$25M	With COA; No BL	BL	Gross Receipts- 2016-2020	<b>NONE</b>
<b>Contractor X</b>	Over \$5M	Over \$10M	With COA; No BL	BL	Gross Receipts- 2017-2020	<b>NONE</b>
<b>Contractor CC</b>	Over \$1M	Over \$5M	With COA, No BL	BL	Gross Receipts- 2016-2020	<b>NONE</b>
<b>Contractor AAA</b>	Over \$4M	Over \$30M	With COA; No BL	BL	Gross Receipts- 2016-2020	<b>NONE</b>
<b>Total</b>	<b>Over \$45M</b>	<b>Over \$140M</b>				

**Appendix 4**  
**Contractors BPTs Paid Below the Required 4% or 5% Rate (Per DRT Data)**

Contractor	FY	Gross Receipts	BPT	Rate	Rate Deficiency	Potential Exemptions/Tax Credits/Credit Adjustments
<b>BATCH 1</b>						
Contractor LL	2020	Over \$5M	Under \$500K	2.89%	2.11%	Under \$500K
<b>BATCH 2</b>						
Contractor A	2016	Over \$5M	Under \$500K	2.97%	1.03%	Under \$500K
	2017	Over \$5M	Under \$500K	3.05%	0.95%	Under \$500K
	2018	Over \$5M	Under \$500K	3.04%	0.96%	Under \$500K
Contractor FF	2019	Over \$500K	Under \$500K	3.85%	1.15%	Under \$500K
	2020	Over \$3M	Under \$500K	4.31%	0.69%	Under \$500K
Contractor HH	2020	Over \$5M	Under \$500K	3.41%	1.59%	Under \$500K
Contractor YY	2016	Over \$10M	Under \$500K	1.29%	2.71%	Under \$500K
	2017	Over \$5M	Under \$500K	1.88%	2.12%	Under \$500K
	2018	Over \$2M	Under \$500K	2.31%	1.69%	Under \$500K
	2019	Over \$10M	Under \$500K	1.82%	3.18%	Under \$500K
	2020	Over \$3M	Under \$500K	2.81%	2.19%	Under \$500K
<b>BATCH 3</b>						
Contractor C	2017	Over \$4M	Under \$500K	0.33%	3.67%	Under \$500K
Contractor EE	2016	Over \$5M	Under \$500K	2.98%	1.02%	Under \$500K
	2017	Over \$5M	Under \$500K	3.19%	0.81%	Under \$500K
	2018	Over \$5M	Under \$500K	2.84%	1.16%	Under \$500K
	2019	Over \$5M	Under \$500K	2.99%	2.01%	Under \$500K
	2020	Over \$3M	Under \$500K	3.15%	1.85%	Under \$500K

**Appendix 4**  
**Contractors BPTs Paid Below the Required 4% or 5% Rate (Per DRT Data)**

<b>Contractor</b>	<b>FY</b>	<b>Gross Receipts</b>	<b>BPT</b>	<b>Rate</b>	<b>Rate Deficiency</b>	<b>Potential Exemptions/Tax Credits/Credit Adjustments</b>
<b>Contractor GG</b>	<b>2016</b>	Over \$500K	Under \$500K	<b>1.63%</b>	<b>2.37%</b>	<b>Under \$500K</b>
<b>Contractor JJ</b>	<b>2016</b>	Over \$3M	Under \$500K	<b>2.76%</b>	<b>1.24%</b>	<b>Under \$500K</b>
	<b>2017</b>	Over \$3M	Under \$500K	<b>1.78%</b>	<b>2.22%</b>	<b>Under \$500K</b>
	<b>2018</b>	Over \$4M	Under \$500K	<b>1.06%</b>	<b>2.94%</b>	<b>Under \$500K</b>
	<b>2019</b>	Over \$5M	Under \$500K	<b>1.75%</b>	<b>3.25%</b>	<b>Under \$500K</b>
<b>Contractor SS</b>	<b>2017</b>	Over \$1M	Under \$500K	<b>3.43%</b>	<b>0.57%</b>	<b>Under \$500K</b>
	<b>2019</b>	Over \$5M	Under \$500K	<b>2.05%</b>	<b>2.95%</b>	<b>Under \$500K</b>
	<b>2020</b>	Over \$5M	Under \$500K	<b>1.20%</b>	<b>3.80%</b>	<b>Under \$500K</b>
<b>Contractor UU</b>	<b>2016</b>	Over \$1M	Under \$500K	<b>2.18%</b>	<b>1.82%</b>	<b>Under \$500K</b>
	<b>2017</b>	Under \$500K	Under \$500K	<b>1.62%</b>	<b>2.38%</b>	<b>Under \$500K</b>
	<b>2018</b>	Over \$1M	Under \$500K	<b>0.19%</b>	<b>3.81%</b>	<b>Under \$500K</b>
<b>Contractor ZZ</b>	<b>2016</b>	Over \$2M	Under \$500K	<b>3.36%</b>	<b>0.64%</b>	<b>Under \$500K</b>
<b>BATCH 4</b>						
<b>Contractor N</b>	<b>2016</b>	Over \$4M	Under \$500K	<b>3.22%</b>	<b>0.78%</b>	<b>Under \$500K</b>
	<b>2017</b>	Over \$1M	Under \$500K	<b>3.43%</b>	<b>0.57%</b>	<b>Under \$500K</b>
<b>Contractor MM</b>	<b>2020</b>	Over \$5M	Under \$500K	<b>3.80%</b>	<b>1.20%</b>	<b>Under \$500K</b>
<b>Contractor OO</b>	<b>2016</b>	Over \$20M	Under \$500K	<b>0.78%</b>	<b>3.22%</b>	<b>Over \$500K</b>
	<b>2017</b>	Over \$25M	Under \$500K	<b>0.62%</b>	<b>3.38%</b>	<b>Over \$500K</b>
	<b>2018</b>	Over \$20M	Under \$500K	<b>0.85%</b>	<b>3.15%</b>	<b>Over \$500K</b>
	<b>2019</b>	Over \$15M	Under \$500K	<b>0.85%</b>	<b>4.15%</b>	<b>Over \$500K</b>
	<b>2020</b>	Over \$15M	Under \$500K	<b>0.73%</b>	<b>4.27%</b>	<b>Over \$500K</b>

**Appendix 4**  
**Contractors BPTs Paid Below the Required 4% or 5% Rate (Per DRT Data)**

<b>Contractor</b>	<b>FY</b>	<b>Gross Receipts</b>	<b>BPT</b>	<b>Rate</b>	<b>Rate Deficiency</b>	<b>Potential Exemptions/Tax Credits/Credit Adjustments</b>
<b>Contractor AAA</b>	<b>2017</b>	Over \$5M	Under \$500K	<b>3.52%</b>	<b>0.48%</b>	<b>Under \$500K</b>
	<b>2018</b>	Over \$20M	Over \$500K	<b>2.60%</b>	<b>1.40%</b>	<b>Under \$500K</b>
<b>TOTAL</b>						<b>Over \$5M</b>

## Appendix 5

### Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor NN</b>	Oct 2017	Over \$500K	Under \$500K	Contractor HH	No sufficient supporting documents to validate exemptions
	Jan-Mar 2018	Over \$1M	Under \$500K	Contractor AA	
	Nov 2019	Over \$500K	Under \$500K	Contractor AA	
	<b>Total</b>	Over \$2M	Under \$500K		
<b>Contractor RR</b>	Apr 2017	Under \$500K	Under \$500K	Contractor VVV	No sufficient supporting documents to validate exemptions
	May 2017	Under \$500K	Under \$500K	Contractor XXX	
	Mar 2019	Over \$2M	Under \$500K	Contractor EEE	
	Jun 2019	Under \$500K	Under \$500K	Contractor G	
	Jul 2019	Over \$1M	Under \$500K	Contractor EEE	
	<b>Total</b>	Over \$4M	Over \$500K		
<b>Contractor Y</b>	Sep 2018	Under \$500K	Under \$500K	Contractor DDD	No sufficient supporting documents to validate exemptions
	Oct 2019	Under \$500K	Under \$500K	No details	No details of names of sub-contractors
	<b>Total</b>	Over \$500K	Under \$500K		

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Jan 2019	Over \$3M	Under \$500K	Contractor QQQ	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor YYY	
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor HHH	
			Under \$500K	Contractor HHH	
			Under \$500K	Contractor FF	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor E	
			Under \$500K	Contractor TTT	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor G	
			Under \$500K	Contractor ZZZ	
			Under \$500K	Contractor G	
Under \$500K	Contractor PPP				

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Feb 2019	Over \$3M	Under \$500K	Contractor YYY	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor HHH	
			Under \$500K	Contractor HHH	
			Under \$500K	Contractor FF	
			Under \$500K	Contractor FFF	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor E	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor ZZZ	
			Under \$500K	Contractor G	
Under \$500K	Contractor PPP				

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Mar 2019	Over \$3M	Under \$500K	Contractor GGG	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor FF	
			Under \$500K	Contractor FF	
			Under \$500K	Contractor FFF	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor ZZZ	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Apr 2019	Over \$3M	Under \$500K	Contractor GGG	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor KKK	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor G	
			Under \$500K	Contractor ZZZ	
			Under \$500K	Contractor G	
Under \$500K	Contractor PPP				

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	May 2019	Over \$5M	Under \$500K	Contractor OOO	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor JJJ	
			Under \$500K	Contractor O	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor PPP	
	Jun 2019	Over \$4M	Under \$500K	Contractor III	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor III	
			Under \$500K	Contractor UUU	
			Under \$500K	Contractor NNN	
			Under \$500K	Contractor AA	
			Over \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor KKK	
			Under \$500K	Contractor QQQ	
			Under \$500K	Contractor KKK	
Under \$500K	Contractor PPP				
Under \$500K	Contractor JJJ				

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Jul 2019	Over \$3M	Under \$500K	Contractor AAAA	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor III	
			Under \$500K	Contractor UUU	
			Under \$500K	Contractor NNN	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor ZZZ	
			Under \$500K	Contractor FF	
			Over \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor QQQ	
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor QQ	
			Under \$500K	Contractor WWW	
			Under \$500K	Contractor DDD	
			Under \$500K	Contractor OOO	
Under \$500K	Contractor KKK				
Under \$500K	Contractor RRR				

**Appendix 5**  
**Contractors' PL 30-230 Questionable Exemptions (Per DRT Data)**

Contractors	Tax Year	Total Gross Receipts	Total Claimed	No. of Contractors Claimed	Deficiency/ies
<b>Contractor BB</b>	Aug 2019	Over \$3M	Under \$500K	Contractor AAAA	No sufficient supporting documents to validate exemptions
			Under \$500K	Contractor UUU	
			Under \$500K	Contractor AA	
			Under \$500K	Contractor FF	
			Under \$500K	Contractor G	
			Under \$500K	Contractor G	
			Under \$500K	Contractor QQQ	
			Under \$500K	Contractor LLL	
			Under \$500K	Contractor DDD	
			Under \$500K	Contractor KKK	
			Under \$500K	Contractor RRR	
	<b>Total</b>	Over \$30M	Over \$5M		
<b>Contractor QQ</b>	Oct to Dec 2016, Feb 2017, Apr to June 2017, Aug-Sept. 2017	Over \$335M	Over \$1M	Contractor SSS, T, and FF	No sufficient supporting documents to validate exemptions
	Oct, Nov, Dec, 2017, March 2018	Over \$10M	Over \$500K	One to four contractors	Incomplete filing document for January, February, April, May, June, July, August, and September 2018 (Deficiencies were provided to DRT on 4/29/22)
	<b>Total</b>	Over \$345M	Over \$2M		
<b>Contractor BBB</b>	Nov 2016, March 2017, April 2017	Over \$2M	Over \$500K	One to six contractors	Incomplete filing document for October & December 2015, February, June, July, and September 2016 (Deficiencies were provided to DRT on 4/29/22)
	Feb 2019	Over \$500K	Over \$500K	No details	No details of names of sub-contractors/prime-contractors on the GRT-E Form
	<b>Total</b>	Over \$2M	Over \$1M		
<b>Grand Total</b>		<b>Over \$385M</b>	<b>Over \$10M</b>		
<b>Potential Forgone BPT at 4%</b>			<b>Over \$500K</b>		

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**Appendix 6**  
**DRT's Management Response and OPA Reply**

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**Page 1 of 9**



Dipattamenton Kontribusiyan Adu'ana  
**DEPARTMENT OF**  
**REVENUE AND TAXATION**  
GOVERNMENT OF GUAM      Gubetnamenton Guahan

LOURDES A. LEON GUERRERO, Governor Maga'ähga  
JOSHUA F. TENORIO, Lt. Governor Sigundo Maga'ähgi

DAFNE MANSAPIT-SHIMIZU, Director  
Direktor  
MARIE P. LIZAMA, Deputy Director  
Sigundo Direktor

January 13, 2023

Public Auditor Benjamin J.F. Cruz  
Office of Public Accountability  
Suite 401, DNA Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

Subject: DRT Response to "BPT Military Construction Contracts 1.5.23" Report

Hafa Adai Public Auditor Cruz,

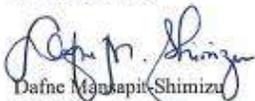
Transmitted herewith are DRT's responses to the most recent version of the OPA report on Business Privilege Tax on Military Construction Contracts dated January 5, 2023.

In the review of military construction contracts awarded by the federal government there are many factors which have to be considered to include period of performance, place of performance, type of business activity and licensing authority.

We recognize that there was a significant amount of work done by both the OPA and DRT teams and we appreciate all the time and effort involved to get to this point.

Please feel free to contact us with any questions or concerns regarding this matter.

*Si Yu'us Ma'ase,*

  
Dafne Mansapit-Shimizu  
Director

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## Appendix 6

# DRT's Management Response and OPA Reply

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Page 2 of 9

DRT Responses to BPT Military Construction Contracts I.5.23 Report – OPA Audit on Business Privilege Tax on Military Construction Contracts  
January 13, 2023

Note: The responses contemplate changes to the Conclusion and Recommendations sections of the OPA report in addition to the changes specifically noted in the responses below.

### Section I. DRT Response to Executive Summary and Introduction (Pages 1 – 9)

- Please refer to the corresponding responses for the “Results of the Audit” which begin with Section II below.
- Page 1, Item 2 – number of contractors indicated in report is ten, however, this should be four as indicated in Table 2.
- Page 8, *Background*, paragraph 1 - Department of Revenue and Taxation, note that DRT’s mission is “to provide quality service in helping the island community to understand and meet tax **and** licensing responsibilities by applying the Tax Laws and Business Regulations with fairness and integrity to all.”
- Page 8, *Background*, paragraph 2 – please replace Taxpayer Services Division with Tax Enforcement Division.

### Section II. DRT Response to Results of Audit – Part I: Registration (Page 11)

1. Federal Contractors without DRT Records and Tagged as Non-Fileers (Table 1)
  - *Take note that Contractor I and Contractor II (Table 1) are registered separately*, meaning, that both members of the joint venture are registered with the Department.
  - It is possible that the work done by the contractors was not performed on Guam. If this is the case, BPT reporting is not required and a Guam business license not required.
  - The tagging as “non-fileers” was based on the OPA’s criteria. This was not based on review for DRT tax purposes.
2. Federal Contractors Tagged as Filers Without DRT Business License
  - a. Based on Examined Documents
    - *Contractor R should be removed from Table 2* – Based on review of the online list of licensees issued by the Contractors Licensing Board (“CLB”), DRT was able to determine that Contractor R with Gross Receipts indicated as “Over \$50M” had a CLB license for period of 2015 – 2019. This period covers the entire performance period for this contract.
    - *Contractor BBB should be removed from Table 2* - Contractor BBB with Gross Receipts indicated as “Over \$5 M” had a business license during the period of performance which is included in the “Applicable Fiscal Year”. Business license was originally issued April 2011. It was not renewed in 2021, however, that was beyond the performance period.
    - *Contractor ZZ had an active business license for most of its performance period*. Contractor ZZ applied for its business license in 2014. Although its license expired in 2019, the business was licensed with Guam DRT for most of the performance period.
  - b. Based on DRT Response to OPA Data Request
    - It is important to note that PEALS is an additional licensing authority which should be considered by the OPA.
      - o *All six contractors in Appendix 2 should be removed from the Appendix* - Based on review of the online list of licensees issued by the Contractors Licensing Board (“CLB”) and the PEALS Board, DRT was able to determine that **all six**

## DRT's Management Response and OPA Reply

DRT Responses to BPT Military Construction Contracts 1.5.23 Report – OPA Audit on Business Privilege Tax on Military Construction Contracts  
January 13, 2023

- contractors are licensed.* This represents the entire \$140M indicated in the Appendix.
- Contractors B, L, KK, X, and CC were licensed by PEALS.
  - Contractor L had a CLB license issued 8/2016
  - Contractor AAA had a CLB license issued 2006
- Take note that the requirements are indicated in 11 GCA §707123, §707130, and §26101
    - o 11 GCA §707123 Combination Businesses states as follows: "Any person who operates any business which consists of a combination of two (2) or more of the classes provided in this Division shall be required to take out a separate license for each such classification."
  - DRT concurs with the OPA recommendation regarding JVs.
3. Non-coordination between DRT and CLB on Federal Contractor Licenses
- It is important to note that PEALS is an additional licensing authority which should be considered by the OPA.
    - o *All six contractors in Appendix 2 should be removed from the Appendix* - Based on review of the online list of licensees issued by the Contractors Licensing Board ("CLB") and the PEALS Board, DRT was able to determine that *all six contractors are licensed.* This represents the entire \$140M indicated in the Appendix.
      - Contractors B, L, KK, X, and CC were licensed by PEALS.
      - Contractor L had a CLB license issued 8/2016
      - Contractor AAA had a CLB license issued 2006
  - Please take note of the comments above regarding Tables 1, 2, and Appendix 2.
  - DRT believes that there should be discussion with CLB and PEALS in order to develop a mechanism for ensuring proper coordination between the agencies with regards to licensing.
4. Lapses in Monitoring of Federal Contractors' Registration and Reporting Compliance  
Note: DRT has worked to make improvements through SOP and process updates relative to more effectively identifying and determining whether federal contractors are in compliance. This is an ongoing process.
- a. -
  - b. In order for a contractor to be able to file gross receipts online as required by law, they must have been issued a business license from DRT, or must have a CLB license or a PEALS license.
  - c. License holders are not be able to renew their business licenses if they are not in compliance with the tax law.
  - d. -
5. Contractors without Physical Copies of BIs
- Please clarify why a physical copy of a business license is required.
  - Business license master records are system generated and are the source documents for business licenses. Business licenses are generated from the business license master record, which includes all information that is on a physical copy of a business license.
  - *Contractor E and Contractor Y renewed their business licenses online;* therefore, DRT does not have a physical copy of their business licenses.
  - When business licenses are renewed online, it is the licensee who receives a pdf file of its business license and then prints it out for posting.

## DRT's Management Response and OPA Reply

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- DRT has worked to encourage more online services, in particular in light of the public health emergency which existed over the last few years. We expect to see continued increase in the use of online services to include online renewal of business licenses. This is a vital part of the modernization efforts being undertaken by the Agency.

### Section III – DRT Response to Part 2 - Contracting Gross Receipts (GR), Business Privilege Tax (BPT), and BPT Exemptions

Status of Tax Enforcement Division (TED) Compliance Initiative Program (CIP) – Federal Contractors  
*\*Note that the TED Compliance Initiative Program (CIP) Federal Contractors Phase I started prior to June 2021.* A significant part of the Initiative involved updating and enhancing SOPs. This part of the process began prior to March 2021 as the SOPs were completed then. In addition to this, it is important to note that DRT did initiate a project in 2019 and prior years to address this matter.

1. Contracting Gross Receipts (GRs) and Business Privilege Tax (BPT)
  - 1.1 Potential Cause of Variances of Contractor Reported GRs versus Awarded Contract Amounts
    - Although we agree that the overall impact of any potentially uncollected revenues *cannot be ascertained*, we do not concur with other comments in this section as described below:
      - Initial review by the OPA included amounts reported on BPT return lines 9 and 10 only. Take note that although the audit seeks to address military construction contracts, based on review of USAspending.gov, at least one of the contractors selected by the OPA was listed as providing “architectural-engineer services”. These types of services would not be reported on line 9 or 10 of the Form GRT-1.
      - The statement that “[t]he DRT system cannot automatically generate gross receipts for a specific business activity” is not correct. This is not a system issue. Military contract revenue is not a GRT category which is required to be provided by law, therefore gross receipts are not broken down in this way.
      - DRT is able to determine the reportable gross receipts and BPTs due from military construction contract if/when an audit is conducted.
      - Note that the use of the terms “underpayment/unpaid BPTs” and “uncollected revenues” may be misleading.
    - Regarding the recommendation to coordinate with DFAS, DRT has reached out to its federal partners to assist with this, however, DRT agrees that there is much progress that must be made in this area.
    - Please replace “DRT - Collection Branch” with “DRT - Examination Branch” as it was Examination which was corresponding with the OPA regarding total gross receipts for contractors in batches 1 through 4.

DRT Responses to BPT Military Construction Contracts 1.5.23 Report – OPA Audit on Business Privilege Tax on Military Construction Contracts  
January 13, 2023

1.2 Federal Contractors Reported as "Non-Filers" and without GRs and BPT Record with DRT

- *Contractor I and Contractor II (Table 4) are reporting gross receipts* although they are reporting separately. This means that both members of the joint venture are filing and paying taxes.
- *Contractor P should be removed from Table 4* as it was filing and paying GRT although it did so under a new name. This makes up over \$500K of the over \$4M indicated.
- These three contractors make up 88% of the \$4M indicated in paragraph 1 of item 1.2.
- Initial review by the OPA included amounts reported on BPT return lines 9 and 10 only. Take note that although the audit seeks to address military construction contracts, based on review of USAspending.gov, at least one of the contractors selected by the OPA was listed as providing "architectural-engineer services". These types of services would not be reported on line 9 or 10 of the Form GRT-1.
- We recommend removing the word "assumptions" in paragraph 2. These are listed in DRT's variables in Exhibit 3.
- Paragraph 3 which states, "on-island contractors hiring a third party or outside of Guam" should be replaced with "or could be companies performing services outside of Guam."
- Please indicate in Table 4 that Contractor I is not part of FedCon CIP project.
- Note that the tagging as "Filers" or "Non-Filers" was based on the OPA's criteria. This was not based on review for DRT tax purposes.

1.3 Contractor Tagged as "Filer" Reported "Zero" Gross Receipts, and Business Privilege Tax for Five Years

- Performance period is a significant factor which must be taken into consideration when evaluating the data in this audit.
- Regarding Contractor TT it is important to consider the following:
  - *Performance period is October 23, 2017 through September 30, 2024, therefore there are still two years left for contract performance and for the reporting of gross receipts.*
  - From September 2020 through September 2022 – Contractor TT reported \$8.5M in GRs and paid over \$400K in GRT.
- DRT agrees that payment information will be significant to this effort. DRT has reached out to federal partners regarding this.

1.4 Contractor Tagged as DRT "Filer" Filed "Zero" Gross Receipts in a Certain Fiscal Year

- Regarding paragraph 2 of section 1.4, take note that Contractor F's returns were filed, however, they were not processed at the time that data was drawn and provided to the OPA. Please correct this as this contractor did file on time, however, information was not in the system due to not completely processed.
- DRT does agree that there is a need to increase manpower in all areas and seeks the OPA's support regarding addressing this.

## DRT's Management Response and OPA Reply

DRT Responses to BPT Military Construction Contracts 1.5.23 Report – OPA Audit on Business Privilege Tax on Military Construction Contracts  
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### 1.5 Variances between Reported Gross Receipts Compared with Awarded Contract Amounts

- Performance period is a significant factor which must be taken into consideration when evaluating the data in this audit.
  - Regarding Contractor J:
    - performance period is through 9/2023.
    - Contractor J reported 57% of contract amount so far and there is still about a year remaining for contract performance and for corresponding reporting and filing.
    - Contractor J is now reporting amounts higher than in prior periods likely due to performance period, therefore, it is possible that there were no gross receipts required to be filed in prior periods.
    - Contractor J performance period is still ongoing and makes over 94% of total of what OPA terms "deficiency" for the three contractors.

### 1.6 Challenges in the Review of Contractor GR Reporting and BPT Payment Compliance

- We do not concur with the recommendation.
- Recommend that word "emphasized" should be changed to "identified"
- We recommend to remove "but with undeterminable amounts" and replace with "that impact the gross receipts filing requirements" to make this point clearer.
- Regarding the term "Multi-awarded", we believe this should be "multi-year award".
- Regarding bullet 4, if service is not performed on Guam, then income is not required to be reported for GRT purposes.
- Regarding bullet 5, "Contracting – Local" means that the contractor is a domestic contractor and does not relate to whether a contract is performed either within or outside a federal military installation.
- Separate reporting of gross receipts either within or outside a federal military installation is not required. This was indicated in DRT's Exhibit 3, Item 1 which was previously provided.
  - Item 1 states that GRT Taxpayers are not required to report their gross receipts/income in the level of detail required for the OPA's specified audit scope of "military construction contracts".
- It is not clear what the following point means in the second section, bullet 2 which states, "For the legislature to clearly define the role of an oversight government agency that needs to periodically monitor the awarded contractors...". Would you please clarify?

## 2. Business Privilege Tax Exemptions (Page 21 of Report dated 1.5.23)

### 2.1 Calculated Business Privilege Tax Rates are way below the Mandated 4% or 5% rate Due to Potential Exemptions Claimed

- Note that the "Over \$10M" foregone potential revenues indicated by OPA in Appendix 3 is due to exemptions which are allowed by law.
- We noted that when a difference is an overage it is called a "variance" and when it is under it is called a "deficiency".
- The term "Rate Deficiency" (column 6 header) is misleading.

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**DRT's Management Response and OPA Reply**

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DRT Responses to BPT Military Construction Contracts 1.5.23 Report – OPA Audit on Business  
Privilege Tax on Military Construction Contracts  
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- *Note that gross receipts taxes are calculated as "Taxable Amount or Value" (gross receipts less exemptions) multiplied by the corresponding GRT tax rate.*
- What is being referred to is "Exemptions Claimed" which are allowed by law.
- Column Header "BPTs Waived/Exempted" should be "Exempted Gross Receipts Tax" as DRT does not waive Gross Receipts Taxes.
- Regarding Paragraph 2, statement "We received Gross Receipts and BPT data provided by DRT from FY 2016-2020 for the 16 contractors (43% out of 37 responded by DRT)." - please advise on what is being referred to with regards to the "37". It is not clear why this is indicated.

2.2 Exemptions Claimed for Exemption Code E42 (PL 30-230) cannot be identified if Filer is a Prime or Sub-Contractor

- Please replace "PL 32-230" with "PL 30-230".
- Note that a contractor can be both a prime contractor and a subcontractor.
- Subcontractors are not required by law to provide documentation to take the exemption. They are, however, required to provide information for the prime contractor when taking Exemption E42 on Schedule GRT-E.
- Please clarify what is meant by "full documentation".
- DRT does believe that there is a need to strengthen the monitoring of all exemptions. There is ongoing work being done to address this.
- Table 6, Column 6 heading "Deficiency/ies" - It is not clear what this means as exemptions are allowed by law.
- We do not agree with the statement that these are "questionable exemptions" as any foregone potential revenues indicated by OPA is due to exemptions which are allowed by law.
- *Contractor BBB should be removed from table due to there are names and numbers indicated on the GRT filing.* This is not properly noted in Table 6.
- *Comments on Column E for Contractors QQ and BBB are questionable.* There are inconsistencies in "Deficiency/ies" column - dates do not correspond with periods indicated.

2.3 Claimed Exemptions Requirements Not Complied

- Please clarify what is not being complied with as there is no reference to a contractor or a table.
- Please confirm that this is correct and should be listed as a finding.

2.4 Deficiency in Schedule GRT-E Form

- We do not concur.
- The law does not require documents be submitted to substantiate claiming exemption E42, however, documents may later be requested to be provided by the taxpayer.

2.5 Exemption Code E40 Claimed Without Documentation

- We do not concur.
- The law does not require documents be submitted to substantiate claiming exemption E40, however, documents may later be requested to be provided by the taxpayer.

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- Also take note of 11 GCA §26203(k)(15) which states that amounts received from sales of personal property to the government of Guam are exempt from BPT.

2.6 Deficiencies in 1% BPT Exemption per P.L. No. 34-116 and P.L. No. 34-87

- Recommend adjusting financial impact description of "Under \$500K" to "Under \$15,000" in Table 7 as *the actual impact of 1% is less than \$15,000.*

Section IV – DRT Response to PART 3: OTHER FINDINGS (Page 28)

1. Non-Booking of Business Privilege Tax Receivable

- We do not concur due to *there is an A/R account set up for every taxpayer* who has unpaid BPT. Also, DRT's system can generate a specific contractor's unpaid BPT if it has already been assessed.

2. Internal Control

2.1 - Unprocessed BPT Returns and Unavailable Documents

- BPT payments are processed or entered into the system when paid at TOG or DRT.
- Because of mandatory electronic filing of BPT, DRT has been able to make significant headway in the processing of returns.
- *DRT seeks the assistance of the OPA to advocate for mandatory electronic filing for other types of filings to help reduce the need for manual processing.*

2.2 - Inconsistent Filing of Payment Documents

- Information is entered into TPS when payment is received. Copies are not required to be submitted unless requested.
- Although it is not clear exactly what is being referred to, DRT believes that OPA report is likely referring to copies of documents submitted by taxpayers when filing GRT, which are not required by law. For example, there are taxpayers who include copies of checks, etc., however, these documents are not required to be submitted when filed.

2.3 - Inadequate Process and Review of GRT/BPT Filings and Exemptions Claimed

- Paragraph 2 - We agree that there is work to be done to enhance the process, however DRT is working to address.
- Paragraph 4 – Take note that there are other means for determining whether the exemptions are true and correct outside of an audit. Also, taxpayers sign that they understand that they are filing under penalties of perjury
- DRT does agree that more human and other resources are required in all areas.

2.4 - Lack of Written Procedures to Review Paid/Unpaid BPTs

- DRT does not concur. There is a written collection process and other guidelines for collection of all taxes.

2.5 - Procedures in Pursuing Unpaid Delinquent Taxes Not Clearly Defined

- DRT does not concur. There are specific processes, policies and procedures which are followed.
- Paragraph 2 comments are not clear. Also, compliance review is conducted whether registered or not, however, DRT agrees that there is always room for improvement.

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**DRT's Management Response and OPA Reply**

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DRT Responses to BPT Military Construction Contracts 1.5.23 Report – OPA Audit on Business  
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Section V – DRT Response to CONCLUSION AND RECOMMENDATIONS (Pages 30 – 31)

- Please review and clarify comments as they are not clear.
- Please note that the TED Compliance Initiative Program (CIP) Federal Contractors Phase I started prior to June 2021. A significant part of the Initiative involved updating and enhancing SOPs. This part of the process began prior to March 2021 as the SOPs were completed then. In addition to this, it is important to note that DRT did initiate a project in 2019 and prior years to address this matter.
- Note that Phase II is expected to begin in FY2023 Q2.
- Paragraph 4 - please clarify comments in this section.
- DRT recommends adjustments be made based on information provided to date.

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**DRT's Management Response and OPA Reply**

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The following is OPA's reply to DRT's official management response:

**Section I: DRT Response to Executive Summary and Introduction**

1. Page 1, Item 2 – number of contractors indicated in report is ten, however, this should be four as indicated on Table 2
  - a. OPA Reply: The nine contractors mentioned encompasses Table 2 and Appendix 2

**Section II: DRT Response to Results of Audit – Part I: Registration (Page 11)**

1. Federal Contractors without DRT Records and Tagged as Non-Filers
  - a. OPA Reply: Contractors I and II as JVs are confirmed by general licensing branch representatives to be registered separately as JVs, thus need a BL as a JV. The finding remains.
  - b. OPA Reply: DRT should already have verified if work was performed on Guam as this finding was presented to DRT since March 2022. The finding remains.
  - c. OPA Reply: Tagging of “filers” and “non-filers” is **filled in by DRT** using OPA's data request headers. The finding remains.
2. Federal Contractors Tagged as Filers Without DRT Business License
  - a. Based on Examined Documents
    - i. OPA Reply: Contractor R still needs a BL as a JV. The determination for a CLB license should have been done by DRT when the finding was presented since March 2022. The finding remains.
    - ii. OPA Reply: Contractor BBB finding was deleted.
    - iii. OPA Reply: Contractor ZZ filed GR in FY 2020, meaning it conducted business in FY 2020. However, the license expired in 2019. The finding remains.
  - b. Based on DRT Response to OPA Data Request
    - i. OPA Reply: The determination for a CLB/PEALS license should have been done by DRT when the finding was presented since March 2022. The finding remains.
3. Non-coordination between DRT and CLB on Federal Contractor Licenses
  - a. OPA Reply: The determination for a CLB/PEALS license should have been done by DRT when the finding was presented since March 2022. The finding remains.
4. Lapses in Monitoring of Federal Contractors' Registration and Reporting Compliance
  - a. OPA Reply: We acknowledge DRT's response. The finding remains.
5. Contractors without Physical Copies of BLs
  - a. OPA Reply: If DRT believes that the master record information on the business license is a sufficient documentary evidence, then DRT may continue with its current process. The finding remains.
  - b. OPA Reply: We acknowledge DRT's modernization efforts.

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**DRT's Management Response and OPA Reply**

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**Section III: DRT Response to Part 2 – Contracting Gross Receipts (GR), Business Privilege Tax (BPT), and BPT Exemptions**

Status of Tax Enforcement Division (TED) Compliance Initiative Program (CIP) – Federal Contractors

- a. OPA Reply: On Exhibit 6 (Page 1, last paragraph “DRT Response”), the Tax Enforcement Program Administrator stated that the TED CIP Phase I started on June 17, 2021 and is currently on going. We acknowledge DRT’s response.

1. Contracting Gross Receipts (GRs) and Business Privilege Tax (BPT)

- 1.1 Potential Cause of Variances of Contractor Reported GRs versus Awarded Contract Amounts

- i. OPA Reply: The body of the report states, “Due to these limitations in the GRT Form-1, the Power 7 system cannot automatically distinguish and generate the following...”. OPA emphasizes the limitations on the GRT Form-1 and not a system limitation.
    - ii. OPA Reply: The NAVFAC Admiral recommended that DRT needs to increase its manpower and conduct periodic audits. We respect DRT’s decision not concurring with OPA’s recommendation to conduct periodic audits.
    - iii. OPA Reply: We used the word “**potential**” instead of “actual” **underpayment/unpaid/uncollected** BPTs/revenues, since neither OPA nor DRT can determine the actual BPTs due. If DRT believes that the words used are “**misleading**,” DRT should have already been able to determine the **actual** BPT amounts due from the contractors since the preliminary findings on BPT rates & payments was provided to the Research & Appeals Officer and the former Acting Supervisor of the Business Privilege Tax Branch, on June 20, 2022.

- 1.2 Federal Contractors Reported as “Non-Filers” and without GRs and BPT Record with DRT

- i. OPA Reply: For Contractor I and II, based on our recommendation, DRT has to determine if the JVs should file GRs as a separate entity, which DRT concurred in their response. The finding remains.
    - ii. OPA Reply: For Contractor P, based on DRT response, it filed GRT for FY2016-2018 under the new name. The new name became effective only on 1/14/2019. The finding remains.
    - iii. OPA Reply: Tagging of “filers” and “non-filers” is **filled in by DRT** using OPA’s data request headers.

- 1.3 Contractor Tagged as “Filer” Reported “Zero” Gross Receipts and Business Privilege Tax for Five Years

- i. OPA Reply: We acknowledge DRT’s reply

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**DRT's Management Response and OPA Reply**

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- 1.4 Contractor Tagged as DRT “Filer” Filed “Zero” Gross Receipts in a Certain Fiscal Year
  - i. OPA Reply: Per DRT Data response on November 2022, contractor F filed only for services and profession, and none for contracting. The finding remains.
- 1.5 Variances Between Reported Gross Receipts Compared with Awarded Contract Amounts
  - i. OPA Reply: Calculated deficiencies are based on DRT provided data. DRT justification is noted.
- 1.6 Challenges in the Review of Contractor GR Reporting and BPT Payment Compliance
  - i. OPA Reply: Regarding “undeterminable amounts” of the variables/factors cited in DRT’s responses/exhibits, OPA emphasized that DRT cannot associate an estimated amount to a particular contractor unless an audit is conducted.
  - ii. OPA Reply: To help ease the burden of DRT, OPA recommends that a specific body/committee (for example: The Committee of Public Accountability or the Guam Buildup) have a clear and defined role regarding this matter.
- 2. Business Privilege Tax Exemptions (Page 21 of Report dated 1.5.23)
  - 2.1 Calculated Business Privilege Tax Rates are way below the Mandated 4% or 5% rate Due to Potential Exemptions Claimed
    - i. OPA Reply: Rate deficiencies correspond to the difference between the BPT rate that should be collected versus the actual rate of BPT paid.
  - 2.2 Exemptions Claimed for Exemption Code E42 (PL 30-230) cannot be identified if Filer is a Prime or Sub-Contractor
    - i. OPA Reply: The exemptions were questionable because they did not have sufficient supporting documentation to validate exemptions, as specified within the DRT website.
    - ii. OPA Reply: During fieldwork testing, the GRT-E form for Contractor BBB, provided by the former Acting Supervisor of the Business Privilege Tax Branch, has incomplete filing documents. This finding has been modified and noted on Table 6. This deficiency has been provided to DRT since June 2022.
  - 2.3 Claimed Exemption Requirements Not Complied
    - i. OPA Reply: Finding description has been added.
  - 2.4 Deficiency in Schedule GRT-E Form
    - i. OPA Reply: The DRT website specified that any exemption or deduction claimed (Column B in Form GRT-1) **must be sufficiently supported by documentation.**

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**DRT's Management Response and OPA Reply**

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**2.5 Exemptions Code E40 Claimed Without Documentation**

- i. OPA Reply: The DRT website specified that any exemption or deduction claimed (Column B in Form GRT-1) **must be sufficiently supported by documentation.**

**2.6 Deficiencies in 1% BPT Exemption per P.L. No. 34-116 and P.L. No. 34-87**

- i. OPA Reply: Total other financial impact/forgone revenue is changed to "Over \$1M", which is the total amount of exemptions claimed with deficiencies mentioned in Table 7.

**Section IV: DRT Response to PART 3: OTHER FINDINGS (Page 28)**

1. Non-Booking of Business Privilege Tax Receivable
  - a. OPA Reply: Finding has been modified.
2. Internal Control
  - 2.1 Unprocessed BPT Returns and Unavailable Documents
    - i. OPA Reply: We acknowledge DRT's response. The finding remains.
  - 2.2 Inadequate Process and Review of GRT/BPT Filings and Exemptions Claimed
    - i. OPA Reply: We acknowledge DRT's response. The finding remains.
  - 2.3 Procedures in Pursuing Unpaid Delinquent Taxes Clearly
    - i. OPA Reply: We acknowledge DRT's response. The finding remains.

**Section V: DRT Response to CONCLUSION AND RECOMMENDATIONS (Page 30-31)**

1. OPA Reply: We acknowledge DRT's comments.

**Appendix 7**  
**Status of Audit Recommendations**

<b>Number</b>	<b>Addressee</b>	<b>Audit Recommendation</b>	<b>Status</b>	<b>Actions Required</b>
1	DRT Director & Management	DRT determines if the JVs, LLCs, or similar companies must have separate business licenses and other required documents, subject to GR reporting and BPT payment separately from each partner.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.
2	DRT Director & Management	DRT implements a process that requires the CLB/PEALS to provide DRT periodic reports on registered contractors with their corresponding licenses.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.
3	DRT Director & Management	Improve its processes to effectively identify federal contractors who completed projects for the US military in Guam.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.
4	DRT Director & Management	DRT to coordinate with DFAS for information on actual contract payments and conduct a periodic audit on contractors to verify actual reportable GRs and corresponding BPTs due and owed by contractors.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.

**Appendix 7**  
**Status of Audit Recommendations**

<b>Number</b>	<b>Addressee</b>	<b>Audit Recommendation</b>	<b>Status</b>	<b>Actions Required</b>
5	DRT Director & Management	Verify the reason/s why these JV and LLC contractors are tagged as “Non-Filers” so that appropriate measures can be undertaken to correct the process and collect potential revenues that may be due from the companies.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.
6	DRT Director & Management	DRT increase its manpower to improve performance in examination and enforcement functions.	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.
7	DRT Director	Immediately address and resolve the variables and uncertainties through the following: <ul style="list-style-type: none"> <li>• A review of existing GRT Form filed by contractors, if it requires modification;</li> <li>• Collaboration between oversight agency and DRT to coordinate with DFAS for a periodic report on payments made to awarded contracts;</li> </ul>	OPEN	Submit a corrective action plan.  Implement no later than the beginning of the next fiscal year.

**Appendix 7**  
**Status of Audit Recommendations**

Number	Addressee	Audit Recommendation	Status	Actions Required
	Guam Legislature	<ul style="list-style-type: none"> <li>• For the Guam Legislature to clearly define the role of an oversight body/commission (such as the Committee on Public Accountability, Guam Buildup, etc.) that needs to monitor the awarded contractors periodically and update the status of awarded military contracts.</li> </ul>	OPEN	<p>Submit a corrective action plan.</p> <p>Implement no later than the beginning of the next fiscal year.</p>
8	DRT Director & Management	<p>Determine the eligibility, validity, and accuracy of the exemption claimed by instituting the following measures:</p> <ul style="list-style-type: none"> <li>• Establish a continuing list of exempted contractors, type, amount, and reasons of exemptions claimed for certain fiscal year/tax year, and reasons for exemptions;</li> <li>• Strictly require documents supporting exemptions and credit adjustments or deductions upon filing;</li> <li>• Increase manpower complement to perform thorough verification of filed GRT forms upon processing/encoding; and</li> <li>• Periodically conduct post-reviews of exemptions claimed and corresponding documentation to establish propriety.</li> </ul>	OPEN	<p>Submit a corrective action plan.</p> <p>Implement no later than the beginning of the next fiscal year.</p>

# DEPARTMENT OF REVENUE & TAXATION

## BUSINESS PRIVILEGE TAX ON MILITARY CONSTRUCTION CONTRACTS

### Report No. 23-03, March 2023

#### ACKNOWLEDGEMENTS

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

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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.

#### CORE VALUES

**Objectivity**

To have an independent and impartial mind.

**Professionalism**

To adhere to ethical and professional standards.

**Accountability**

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