

# Annual Report 2009



**Office of the Public Auditor**  
Commonwealth of the Northern Mariana Islands

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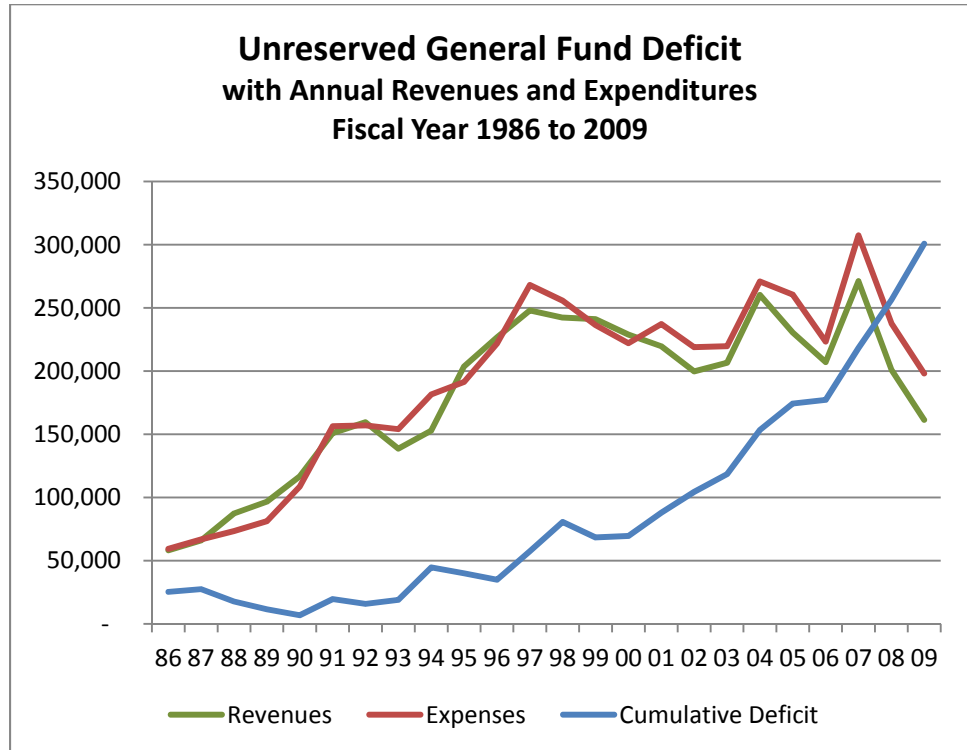
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## FINANCIAL AUDITS

### CNMI Single Audit

OPA staff assisted in the audit of the CNMI's financial statements in accordance with the United States Office of Management and Budget Circular A-133. The audit report showed that the CNMI's General Fund has sustained recurring operating deficits and has an unreserved fund deficit of \$300.8 million at September 30, 2009.



In addition, at September 30, 2009, the primary government's current liabilities exceeded current assets by \$258.18 million, and total liabilities exceeded total assets by \$164.2 million.

In 2009, management took the following actions and measures to address the CNMI's General Fund deficit position:

1. The deficit in the CNMI General Fund is in large part the result of underfunding of employer retirement contributions and related penalties totaling \$234.8 million as of September 30, 2009. On June 16, 2006, the CNMI passed three laws related to public employee pensions (Public Law Nos. 15-13, 15-14 and 15-15).
2. Various laws and other austerity measures, including reduced hours, hiring freeze, stringent review of non personnel expenditures and reduced budget allotments, were being implemented to reduce expenditures.

3. Public Law 17-6 authorized the Governor to reprogram available resources and transfer General Fund expenses to other funds up to \$10 million and the ARRA State Stabilization grant reimbursed \$3 million in General Fund expenditures.

Management believes that actions presently being taken to revise the CNMI's operating requirements provide the opportunity for the CNMI to commence the process of reducing the General Fund deficit position.

Other highlights of the audit were as follows:

- For the fiscal year ended September 30, 2009, the CNMI's total net deficiency increased by \$45.2 million to a net deficiency position of \$164.2 million, which represents an increase of approximately 38.0% from the net deficiency position at the beginning of the year, as restated.
- During the year, the CNMI's expenses for governmental activities were \$275.4 million, including expenses recorded for payments made or due to the autonomous agencies, and were funded in part by program revenues of \$117.4 million, further funded with taxes and other general revenues that totaled \$112.8 million. The difference between total revenues of \$230.2 million and total expenses of \$275.4 million is what resulted in the \$45.2 million increase in net deficiency.
- For budgetary reporting purposes, General Fund actual revenues was lower than final estimates by \$18.4 million or 11.8%, while reported actual expenditures exceeded final estimated appropriations by \$18.6 million or 11.0%. These amounts do not include transfers to and from other funds, nor does it include the receipt or use of long-term debt proceeds.

### **Other Financial Audits**

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

- Commonwealth Development Authority
- Commonwealth Ports Authority
- Commonwealth Utilities Corporation
- Marianas Public Land Trust
- Marianas Visitors Authority
- Northern Marianas College
- Northern Mariana Islands Retirement Fund
- Public School System
- Workmen's Compensation Commission

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

- Financial statement audits,
- Study and evaluation of internal accounting controls, and
- Financial and compliance audit of a Federal grant program.

## **AUDIT RECOMMENDATION TRACKING**

OPA tracked 48 audit recommendations in 2009. Of the 48 audit recommendations, two were closed and 46 remained either open or resolved. Of the 46 open or resolved recommendations, 30 were considered delinquent.

### **Delinquent Recommendations**

The number of delinquent recommendations decreased by 12 (29%) from 42 in 2008 to 30 in 2009. Agencies with delinquent recommendations as of December 31, 2009 include the Commonwealth Ports Authority, Commonwealth Utilities Corporation, Department of Finance, Department of Public Lands, Department of Public Safety, Northern Marianas College, Northern Mariana Islands Retirement Fund, and the Public School System. The recommendations addressed to these agencies were classified as delinquent as OPA was not informed by these agencies within the last 180 days of any corrective action taken to implement OPA's recommendations.

### **Potential Recovery of \$2.6 Million Referred to the AGO**

As of December 31, 2009, audit recommendations in 7 audit reports were referred to the Attorney General's Office for legal action to recover monies improperly expended. According to these 7 audit reports, approximately \$2.6 million is potentially recoverable. On December 1, 2009, OPA met with the Attorney General to discuss the status of these referrals. The Attorney General advised OPA that AGO will conduct further review of these referrals and will provide OPA the results of its review. As such, the status of these referrals remained unchanged.

### **Potential Recovery of \$3.7 Million Depend on Agencies' Action**

OPA identified potential recoveries of approximately \$3.7 million in 8 audit reports addressed to various agencies. During its semi-annual follow-up process for the period July 1, 2009 through December 31, 2009, OPA has not received any update on the status of recovery of funds from the responsible agencies. Therefore, approximately \$3.7 million remain potentially recoverable from the previous report as of June 30, 2009.

## Independent Auditor's Recommendations

OPA also includes in its Audit Recommendation Tracking Report a total of 147 recommendations outstanding from 12 audit reports issued by private CPA firms.

## PROCUREMENT APPEALS

### BP-A060 - Puerto Rico Dump Final Closure

OPA affirmed the decision of the Director of Procurement and Supply (P&S) on the appeal filed by GPPC from the denial of its protest of DPW-09-IFB-019, the Puerto Rico Dump Final Closure.

The Third Addendum to the IFB for the Puerto Rico Dump Final Closure required local bidders to submit their bid packages by 10:00 am on July 24, 2009. Off-island bidders had to have their bids postmarked by July 24, 2009 and received by P&S within seven days of that date. ITSI's bid package



was postmarked just after 4 pm Pacific Daylight Time on July 24 in Ygnacio, California and was received twice by P&S, once on July 28 and again on August 4. GPPC argued ITSI's bid package was not timely postmarked since it should have been mailed by 10:00 am local time even though the bidder was in California, and was not timely received.

GPPC timely filed its protest on August 13, 2009. Not having received a Decision from the Director in the requisite 20 calendar days or being given notice it was a complex issue, GPPC appealed to OPA on September 22, 2009. The Director released his Decision on the protest on September 23, 2009. OPA gave GPPC additional time to supplement its appeal should it wish to address the issues raised in the Director's Decision. GPPC argued that OPA's review should be de novo since the Director's Decision was late.

OPA found that the Director's delay was harmless error, though OPA concluded it would have reached the same result had it decided the matter de novo, because the dates on the documents were independently verifiable. OPA affirmed the Director's Decision that the bid was timely postmarked and timely received, and that P&S did not err in moving the bid opening back a day in

order to give off-island bidders the full seven days after July 24 to have their bids received.

### **BP-A058 - Cross Island Road Project RFP**

OPA affirmed the decision of the Director of Procurement and Supply on the appeal filed by Henry K. Pangelinan & Associates from the denial of its protest of DPW-07-RFP-016 for the Construction Management Services for the Cross Island Road Improvements, Phase I.

After issuance of an RFP by the Department of Public Works for a construction management contract for a road, Henry K. Pangelinan & Associates (HKPA) was informed that the Evaluation Committee had determined it to be the most qualified for the project. Negotiations between DPW and HKPA ensued for approximately the next fifteen months. Then DPW asked HKPA to confirm its best and final offer and identify the employees to be assigned to the project. HKPA did so. DPW then broke off negotiations, claiming that two employees were unacceptable: the Construction Manager identified did not meet the Scope of Work in the RFP and HKPA had not provided information on the proposed Construction Inspector so DPW could evaluate his qualifications and experience.

Nearly a month after receiving the letter from DPW, HKPA protested to the Director of Procurement and Supply. The Director found the protest to be untimely. OPA affirmed the Decision of the Director.

### **BP-A057.1 – Untimely filing by IBSS**

OPA affirmed its earlier decision that IBSS did not timely file its protest. IBSS did timely file its Request for Reconsideration but it did not raise any new issue on appeal.

IBSS argued that if “every rejected bidder was given the right, indeed the cause, to protest simply because their bid was not accepted, then the review process would overtake the procurement process.” But if OPA were to accept IBSS’ rationale, every rejected proposer could merely bide its time until it found some basis upon which to protest an award, which would wreak havoc on the procurement process and the need for finality, issuance of a valid contract, and the products or services that are the subject of the contract.

IBSS misguidedly relied upon two cases, both of which OPA distinguished in its Decision. *Rivera v. Guerrero*, 4 N.M.I. 79 (1993), is controlling. In that case, the NMI Supreme Court concluded that the time limit for filing an intra-agency appeal is “mandatory and jurisdictional.”

## **BP-A057 – IBSS appeal on NMC RFP**

OPA found that Island Business Systems & Supplies (IBSS) failed to file its original protest in a timely manner, and thus NMC was correct in its determination to essentially deny the protest.

According to the NMC procurement regulations, any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the President. The protest shall be received by the President in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto.

Similarly, under the CNMI's Procurement Regulations, any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the P&S Director. The protest shall be received by the P&S Director in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto.

IBSS was notified by letter dated March 4, 2008 that another company was selected to provide the copiers. IBSS did not allege delay in receipt of that letter. Instead, in its April 30, 2008 protest, IBSS argued that its employee after puzzling over [the letter dated March 4, 2008, wherein NMC notified IBSS that it did not receive the contract award because "another company offered a lower fee when compared with your offer"], the IBSS employee wrote NMC a letter on March 28, 2008 requesting all documents related to the solicitation.

While it was possible that IBSS did not know how it was aggrieved on March 4, 2008, it certainly knew that it was aggrieved. It could have at that time requested all the documents from NMC, thereby possibly staying the time required for its filing of a protest. Instead, it waited 16 working days of the College to request information.

IBSS officially protested NMC's award of the contract on April 30, 2008, when it was not timely. NMC did not write a decision on the protest, but rather provided a "courtesy" response eight months later. NMC seemed to believe that since it did not write a decision on the protest, OPA was precluded from writing a decision on the appeal. It was, perhaps, semantic, whether OPA refuses to accept the appeal or accepts it and then determines it not to be timely, but OPA believed that all its actions, as well as those of the College, should be on the record.

Based on the foregoing, OPA found the College properly denied IBSS' protest as untimely.



## **INVESTIGATIONS**

OPA's Investigative Unit was established to look into allegations of fraud, waste, and abuse in the collection and expenditure of public funds, including government programs and operations.

OPA receives and acts on complaints from the public to investigate fraudulent practices and activities. Because of the complexity of their role within the government, OPA investigators must prudently review every investigative request and related activity.

In 2009, OPA Investigations Unit actively participated in two separate joint task forces. One task force is with the Federal Bureau of Investigations (FBI) and has resulted in several high-profile fraud convictions in Federal Court in 2009.

OPA also entered into a Memorandum of Understanding with the CNMI Office of the Attorney General (OAG) to form a local joint task force on white-collar crime and government corruption. In 2009, the local task force received and investigated 45 complaints, of which 25 cases were referred for prosecution, resulting in criminal charges against 15 individuals.

## **CAMPAIGN FINANCE**

### **Campaign Finance Reporting Guide**

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

Before the 2009 General Election, OPA conducted two presentations on Saipan, Tinian, and Rota to explain directly to the candidates and their treasurers the details of the Election Reform Act and illustrated how to properly complete the required Campaign Statement Account.

### **Campaign Statement of Account**

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

The Commonwealth Election Commission certified 110 candidates for the 2009 General Election. Of the 110 certified candidates, only 69 filed on or before December 28, 2009 deadline; 40 filed after the deadline; and 1 candidate has yet to file.

## **ETHICS ACT**

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

In 2009, OPA conducted 11 presentations for over 350 government employees concerning the Code of Ethics in the CNMI Government in hopes that our presentation will serve as a guide in upholding the highest standards as public servants.

OPA also provides brochures that address Conflict of Interest, Gifts and Gratuities, Complaints on Ethics Violations, Political Activity, and Filing Financial Disclosure Statements.

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

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

## **FINANCIAL INFORMATION**

### **Guaranteed Funding**

Constitutional and statutory provisions guarantee funding for OPA. As authorized by 1 CMC § 7831, OPA receives one percent of all local appropriations and is authorized to receive one percent of the operations budgets of all public corporations and autonomous agencies. While this funding guarantee has averaged approximately \$3.23 million a year, OPA's budget submissions have historically been less.

## **Budget and Expenditures**

In Fiscal Year 2009, OPA had an approved budget of \$2,574,225. OPA's actual expenditures totaled \$1,371,109 for a surplus of \$1,203,116.

Of OPA's total expenditures, 71 percent or \$968,946 was spent on personnel expenses and 29% or \$402,163 was spent on all other expenses, which included \$284,710 for professional services most of which was for the CNMI government-wide single audit.

Additionally, OPA received grants from the Department of Interior for staff training and upgrade of OPA's network server totaling \$120,000.

## **HUMAN RESOURCES**

### **Personnel**

In fiscal year 2009, OPA was authorized 30 full-time equivalent (FTE) employee positions. The 30 FTEs consisted of 19 auditors/analysts, 5 investigators, 2 legal counsels, 3 administrative staff, and 1 intern analyst. OPA started the year with 21 FTEs filled, but resignations during the year left OPA with only 17 FTEs filled at year end. Of the 17 FTEs at year end, 9 were auditors/analysts, 4 were investigators, 2 were legal counsels, and 2 were administrative staff.

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

### **Auditor Training Program**

OPA created an Auditor Training Program in December 2002 through a partnership with OIA and the Office of the Inspector General (OIG) and in late 2004, with the General Accountability Office (GAO). A major component of the Auditor Training Program was month-long on-the-job training for CNMI auditors at OIG and GAO offices in Seattle, Denver, Sacramento, and Albuquerque.

OPA anticipated that the training program would help attract and retain resident auditors. However, results of the program did not meet expectations because OPA was not able to recruit and retain qualified auditors. This may be due in part to the CNMI's economic situation and the government's financial situation as staff and job applicants looked for higher salaries and more stable employment conditions elsewhere.

### **Intern Program**

OPA implemented an internship program in May 2001. The program includes audit and related training, with time off to obtain a degree from Northern Marianas College. Wilma Atalig completed her Bachelor's Degree in May 2009 and has now transitioned into a full time Analyst in OPA's Ethics and Compliance Unit.

### **DPS Police Academy Training**

The Department of Public Safety (DPS) Police Academy aims to produce professional and proficient officers who have shown an interest in developing a career in public safety. Thelma Mizer graduated from the 19th Police Academy Training Cycle with flying colors and now joins OPA's Investigations Unit.

### **Summer Internships**

OPA regularly participates in the Summer Youth Employment Training Program through the Workforce Investment Agency. In 2009, OPA employed four trainees.

## **INFORMATION TECHNOLOGY**

### **Server Upgrade**

In late 2009, OPA's information technology (IT) system received a boost with the upgrade of its local area network server, switches and cables. Funded by DOI technical assistance grant, OPA acquired the state of the art Dell PowerEdge R710 server. The new server retired an outdated server which the office used since 1998.

The new server brought OPA's IT capabilities up to date. The server enhanced OPA's network performance with increased data processing speed. Also, data transfers over the network now reach speeds of one gigabit per second, which is ten times faster than the retired server's speed of 100 kilobits per second. Data storage also increased five-fold. These enhancements provide OPA the capacity needed to adopt a paperless working environment thereby reducing cost and increasing efficiency and effectiveness in operations.



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## Website Update

In 2009, OPA redesigned its website to meet the current needs of visitors/users. The new site offers easier navigation and ability to search content. Reports are now grouped into categories for easier retrieval.

Reporting fraud, waste, and abuse of public funds is now possible using the website. A hotline form was added so that complaints are submitted and routed promptly to the Public Auditor and OPA's Investigations Unit.

OPA forms are also easier to obtain on the new website. The financial disclosure and campaign finance forms are grouped together and can be easily located in an area labeled Forms on the website's main page.

You can access OPA's website at [www.opacnmi.com](http://www.opacnmi.com).



## PROFESSIONAL AFFILIATIONS

### Association of Pacific Island Public Auditors (APIPA)

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

APIPA was formed to achieve the following objectives:

1. To establish an organized body to act as one voice in support of the goal of promoting efficiency and accountability in the use of public resources of emerging nations of the Pacific;
2. To provide a forum for the exchange of ideas, experience, problems, and the identification of solutions which are often unique to the Public Auditors in the Pacific;

3. Sponsor auditing and accounting training workshops, in cooperation with established associations of the staff of member offices;
4. Identify scholarship sources for Pacific Islanders in need of financial assistance to study auditing and accounting at the post secondary level; and
5. Promote public awareness for the purposes of conducting audits of public resources

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

In 2009, OPA staff attended the APIPA annual conference which was held in Guam.



The CNMI delegation to the 2009 APIPA Conference in Guam

### **Other Memberships**

Aside from the APIPA, OPA is also a member of the Association of Government Accountants (AGA), Pacific Association of Supreme Audit Institutions (PASAI), and Society for Human Resource Management (SHRM).

The AGA provides support for the careers and professional development of government finance professionals nationwide. With the reactivation of the local AGA chapter, OPA is looking to the AGA as another source of continuing professional education credits for OPA staff.

PASAI was created to promote understanding and cooperation among the 25 member countries and states. PASAI encourages the exchange of ideas, experiences, and expertise among the member organizations; provides continuing education for government auditors; and links regional public audit organizations with counterparts worldwide.

SHRM serves the needs of the human resource professionals by providing the most essential and comprehensive resources available. It is the world's largest association dedicated to human resource management. OPA is an active participant in the local SHRM chapter.

