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Commonwealth of the Northern Mariana Islands

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August 12, 1997

The Honorable Froilan C. Tenorio
Governor of the Commonwealth of the Northern Mariana Islands
Capitol Hill, Saipan MP 96950

Dear Governor Tenorio:

**Subject: Cover Letter - Office of the Special Assistant for Drug and Substance Abuse
Procurement of Professional Services from MBG Management Services, Inc.
from March 27, 1996 to February 28, 1997 (Report No. AR-97-11)**

The enclosed audit report presents the results of our audit and investigation of the procurement of professional services from MBG Management Services, Inc. by the Office of the Special Assistant for Drug and Substance Abuse from March 27, 1996 to February 28, 1997. The objective of our audit and investigation was to determine the propriety of transactions with MBG Management Services, Inc. and the reasonableness of expenditures related to the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI.

Our audit and investigation showed that the Special Assistant (1) had a conflict of interest when he personally participated and influenced the procurement of the contract with MBG which he knew would substantially compensate his sister as Subcontractor, and (2) awarded the contract under the sole-source procurement method without exploring other possible sources to assure a fair and reasonable price for the project. In addition, MBG was (3) overpaid because it was allowed to bill the CNMI based on actual hours or cost incurred (similar to a cost reimbursement contract), and not based on performance or submission of contract deliverables as required under the firm fixed price contract, and (4) allowed to continue working despite the stop work and cancellation of the original contract, resulting in additional billings. Any subsequent change order to support the overpayments should not be allowed because (1) a portion of the excess was due to double billing and higher travel rates, (2) the additional time spent by the Subcontractor was not due to an increase or change in the scope of work, and there was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience, and (3) increasing the contract price without any change in the scope of work affected the reasonableness of the contract's sole source procurement and award of the contract to MBG which, according to the Special Assistant, would result in "significant cost savings" to the CNMI. As a result, (1) the Special Assistant's sister was improperly benefitted by more than

\$45,000 in violation of the CNMI Procurement Regulations, (2) public funds were not protected from waste and abuse because of the lack of competition in the procurement of the contract, (3) MBG was overpaid by \$21,365 in excess of the contract's firm fixed price, and (4) MBG submitted unallowable billings after the contract was canceled amounting to \$11,530.

We recommended that the Governor (1) take administrative action, and/or refer to the Attorney General's Office for possible action, against the Special Assistant for Drug and Substance Abuse for violations of the CNMI Procurement Regulations. Such action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution (in accordance with Section 6-211 of the Procurement Regulations); (2) establish a certification program for contracting officers and expenditure authorities to assist them in carrying out their duties. The program should include awareness of all laws and regulations impacting the responsibilities of expenditure authorities, including the CNMI Procurement Regulations and the CNMI Ethics Code Act; and (3) appoint the Director and Addiction Specialist and the therapist from the CNMI Mental Health and Social Services to evaluate the effectiveness of the Drug and Substance Abuse program. They should (a) determine whether MBG was able to train supervisors to be qualified trainers for further training of other government personnel as originally planned under the MBG contract, and (b) identify these supervisors and provide OPA their names for reference purposes. We also recommended that the Secretary of Finance (4) stop payment of the additional billing of \$11,530 for work performed under the original contract after it was canceled. The billing should be disregarded for violation of the CNMI Procurement Regulations. The Special Assistant should be held responsible for any payment. We also recommended that the Secretary of Finance (5) reduce any future payments to MBG by \$21,365, which was paid in excess of the firm fixed price. In particular, the \$21,365 should be offset against the \$10,584 (under PO P68172) and \$12,309 (supplemental contract C70199) which are valid unpaid billings by the Contractor.

In his letter response dated July 8, 1997, the Governor addressed one recommendation only, *i.e.*, considering reasonable recommendations about appropriate actions to be taken with regard to the Special Assistant.

In his letter response dated June 5, 1997, the Secretary of Finance stated that no payment has been made on the billing for work performed under the original contract after it was canceled, and any payments on this contract will be held until the Attorney General's Office completes its investigation. The Secretary of Finance also stated that the Attorney General's Office disagreed with the recommendation on offsetting of the excess payment against the valid unpaid billings. Further, the Attorney General's Office instructed the Department of Finance to release the payments due on other contracts with the vendor while it is continuing to investigate the status of the disputed contract.

Based on the responses we received from the Governor and the Secretary of Finance , we consider one recommendation resolved and the other 4 recommendations open. The additional information or action required to close the recommendations is presented in **APPENDIX F**.

Sincerely,

ORIGINAL SIGNED

Leo L. LaMotte
Public Auditor, CNMI

cc: Lt. Governor
Tenth CNMI Legislature (27 copies)
Secretary of Finance
Attorney General
Special Assistant for Management and Budget
Public Information Officer
Press

CONTENTS

EXECUTIVE SUMMARY i

INTRODUCTION

Background 1
Objective, Scope, and Methodology 1
Prior Audit Coverage 2

FINDINGS AND RECOMMENDATIONS

A. MBG Contract Was Improperly Procured By Special Assistant in Violation of CNMI Procurement Regulations 3
B. MBG Was Overpaid in Excess of Firm Fixed Price and Failed to Comply with the Stop Work and Cancellation of the Contract 13

APPENDIX

A. Discussion of Unperformed Deliverables 24
B. Discussion of Excess of the Actual Hours and Cost Over the Adjusted Firm Fixed Price 28
C. Comparison of Contractor and Subcontractor’s Actual (billed against Contract C60221) and Adjusted Hours (after adjustment of hours related to unperformed deliverables) 31
D. Governor's Letter Response Dated July 8, 1997 34
E. Secretary of Finance's Letter Response Dated June 5, 1997 41
F. Status of Recommendations 43

EXECUTIVE SUMMARY

Our audit and investigation showed that the Special Assistant (1) had a conflict of interest when he personally participated and influenced the procurement of the contract with MBG which he knew would substantially compensate his sister as Subcontractor, and (2) awarded the contract under the sole-source procurement method without exploring other possible sources to assure a fair and reasonable price for the project. In addition, MBG was (3) overpaid because it was allowed to bill the CNMI based on actual hours or cost incurred (similar to a cost reimbursement contract), and not based on performance or submission of contract deliverables as required under the firm fixed price contract, and (4) allowed to continue working despite the stop work and cancellation of the original contract, resulting in additional billings. Any subsequent change order to support the overpayments should not be allowed because (1) a portion of the excess was due to double billing and higher travel rates, (2) the additional time spent by the Subcontractor was not due to an increase or change in the scope of work, and there was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience, and (3) increasing the contract price without any change in the scope of work affected the reasonableness of the contract's sole source procurement and award of the contract to MBG which, according to the Special Assistant, would result in "significant cost savings" to the CNMI. As a result, (1) the Special Assistant's sister was improperly benefitted by more than \$45,000 in violation of the CNMI Procurement Regulations, (2) public funds were not protected from waste and abuse because of the lack of competition in the procurement of the contract, (3) MBG was overpaid by \$21,365 in excess of the contract's firm fixed price, and (4) MBG submitted unallowable billings after the contract was canceled amounting to \$11,530. The Governor's response agreed with most of the audit findings and added, in essence, that the ends justified the means. While we believe addressing the drug problem is very important, we disagree that anything done in the name of drug programs is automatically justified, particularly in this case where training government supervisors to become trainers is a major part of the contract and the effectiveness of that program has not been evaluated. Delaying that part of the program may even have been more beneficial.

In March 1996, the Office of the Special Assistant for Drug and Substance Abuse executed a contract with MBG Management Services, Inc., a company based in the U.S., under Contract No. C60221-01 using sole source procure-

ment. The contract was for the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI. MBG was to provide professional services from April 5, 1996 to February 28, 1997 for

\$100,175.

Contract No. C60221-01 was canceled effective November 1, 1996. The Special Assistant and the Contractor ignored the order to stop work. Instead, the Contractor proceeded with a planned trip to the CNMI in November 1996 to perform additional work after receiving assurance of payment from the Governor and the Special Assistant. At the time the contract was canceled, a total of \$98,899 had been billed by and paid to the Contractor; no additional payment has been made after the cancellation of the contract.

To make recommendations on the final disposition of Contract No. C60221-01 and two other related procurement transactions, OPA conducted an audit of all expenditures related to the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI.

The objective of our audit and investigation was to determine the propriety of transactions with MBG Management Services, Inc. and the reasonableness of expenditures related to the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI. To accomplish our objectives, we interviewed CNMI officials and officials of companies who could provide information about the program. We also examined two contracts, one change order, one purchase order, billing statements, payment vouchers, supporting invoices, and other pertinent documents related to the project. We compared the actual hours billed by the Contractor and the Subcontractor with the budgeted hours specified in the

proposal submitted by the Contractor. We also compared the materials and services received with the contract deliverables. Our audit covered transactions from March 27, 1996 to February 28, 1997.

MBG Contract Was Improperly Procured by Special Assistant in Violation of CNMI Procurement Regulations

The CNMI Procurement Regulations prohibit any public official or employee from participating directly or indirectly in a procurement when a member of the public official or employee's immediate family has a financial interest, or has an arrangement concerning prospective employment, related to the procurement. The Procurement Regulations also require that a professional service contract be procured using competitive sealed proposals unless other methods of procurement are justified. Our audit and investigation of the Office of the Special Assistant for Drug and Substance Abuse's procurement of the contract for professional services from MBG showed that the Special Assistant (1) had a conflict of interest when he personally participated and influenced the procurement of the contract with MBG which he knew would substantially compensate his sister as Subcontractor, and (2) awarded the contract under the sole-source procurement method without exploring other possible sources to assure a fair and reasonable price for the project. (It should be noted that advertising locally with no results does not justify sole source contracting with anyone of choice outside the CNMI). This occurred because the Special Assistant

did not follow procedures to exclude himself from participating in the procurement as required under the regulations. As a result, (1) public funds were not protected from waste and abuse because of the lack of competition in the procurement of the contract, and (2) the Special Assistant's sister was improperly benefitted by more than \$45,000 in violation of the CNMI Procurement Regulations.

Accordingly, we recommend that the Governor:

1. Take administrative action, and/or refer to the Attorney General's Office for possible action, against the Special Assistant for Drug and Substance Abuse for violations of the CNMI Procurement Regulations. Such action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution (in accordance with Section 6-211 of the Procurement Regulations).

MBG Was Overpaid in Excess of Firm Fixed Price and Failed to Comply with the Stop Work and Cancellation of the Contract

Under a firm fixed price contract, the contractor is entitled to the full contract amount as long as the specific contract deliverables are performed or submitted, regardless of whether the actual hours or costs incurred by the contractor were less than (or more than) the budgeted time and cost. The contractor's failure to perform specific contract deliverables, however, requires

that the amounts associated with these deliverables be deducted from the contract price and not paid. Our audit showed, however, that MBG was (1) overpaid because it was allowed to bill the CNMI based on actual hours or cost incurred (similar to a cost reimbursement contract), and not based on performance or submission of contract deliverables as required under the firm fixed price contract, and (2) allowed to continue working despite the stop work and cancellation of the original contract, resulting in additional billings. Any subsequent change order to support the overpayment should not be allowed because (1) a portion was due to double billing and higher travel rates, (2) the additional time spent by the Subcontractor was not due to an increase or change in the scope of work, and there was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience, and (3) increasing the contract price without any change in the scope of work affects the reasonableness of the contract's sole source procurement and award of the contract to MBG which, according to the Special Assistant, would result in "significant cost savings" to the CNMI. This occurred because the Special Assistant, as the expenditure authority, was not sufficiently aware of the procurement and contracting process and the Procurement Regulations in general, including the appropriate use of contracts, change orders, and purchase orders. As a result, MBG (1) was overpaid by \$21,365 in excess of the contract's firm fixed price (after adjustment of price related to unperformed services and deliverables)

and (2) billed unallowable costs amounting to \$11,530 after the contract was canceled.

Accordingly, we recommend that the Governor:

2. Establish a certification program for contracting officers and expenditure authorities to assist them in carrying out their duties. The program should include awareness of all laws and regulations impacting the responsibilities of expenditure authorities, including the CNMI Procurement Regulations and the CNMI Ethics Code Act.
3. Appoint the Director and Addiction Specialist and the therapist from the CNMI Mental Health and Social Services to evaluate the effectiveness of the Drug and Substance Abuse program. They should (a) determine whether MBG was able to train supervisors to be qualified trainers for further training of other government personnel as originally planned under the MBG contract, and (b) identify these supervisors and provide OPA their names for reference purposes.

We also recommend that the Secretary of Finance:

4. Stop payment of the additional billing of \$11,530 for work performed under the original contract after it was canceled. The billing should be disregarded for violation of the CNMI Procurement Regulations. The Special Assistant should be held responsi-

ble for any payment.

5. Reduce any future payments to MBG by \$21,365, which was paid in excess of the firm fixed price. In particular, the \$21,365 should be offset against the \$10,584 (under PO P68172) and \$12,309 (supplemental contract C70199) which are valid unpaid billings by the Contractor.

Office of the Governor's Response

In response to Recommendation 1, the Governor stated that he is willing to consider reasonable recommendations about appropriate actions to be taken with regard to the Special Assistant. Recommendations 2 and 3 were not addressed, however, in the Governor's response.

Department of Finance Response

In response to Recommendation 4, the Secretary of Finance stated that this payment has not been made and any payments on this contract will be held until the Attorney General's Office completes its investigation. For Recommendation 5, the Secretary of Finance stated that the Attorney General's Office disagreed with this recommendation. Further, the Attorney General's Office instructed the Department of Finance to release the payments due on other contracts with the vendor while it is continuing to investigate the status of the disputed contract.

OPA Comments

Based on the responses we received, we consider Recommendation 1 to be

resolved and the other 4 recommendations open. The additional information or action required to close the

recommendations is presented in **APPENDIX F.**

Introduction

Background

In March 1996, the Office of the Special Assistant for Drug and Substance Abuse executed a contract with MBG Management Services, Inc., a company based in the U.S., under Contract No. C60221-01 using sole source procurement. The contract was for the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI. MBG was to provide professional services from April 5, 1996 to February 28, 1997 for \$100,175.

Contract No. C60221-01 was canceled effective November 1, 1996. The Special Assistant and the Contractor ignored the order to stop work. Instead, the Contractor proceeded with a planned trip to the CNMI in November 1996 to perform additional work after receiving assurance of payment from the Governor and the Special Assistant. At the time the contract was canceled, a total of \$98,899 had been billed by and paid to the Contractor; no additional payment has been made after the cancellation of the contract.

To make recommendations on the final disposition of Contract No. C60221-01 and two other related procurement transactions, OPA conducted an audit of all expenditures related to the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI.

Objective, Scope, and Methodology

The objective of our audit and investigation was to determine the propriety of transactions with MBG Management Services, Inc. and the reasonableness of expenditures related to the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI. To accomplish our objectives, we interviewed CNMI officials and officials of companies who could provide information about the program. We also examined two contracts, one change order, one purchase order, billing statements, payment vouchers, supporting invoices, and other pertinent documents related to the project. We compared the actual hours billed by the Contractor and the Subcontractor with the budgeted hours specified in the proposal submitted by the Contractor. We also compared the materials and services received with the contract deliverables. Our audit covered transactions from March 27, 1996 to February 28, 1997.

The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were considered necessary under the circumstances.

Prior Audit Coverage

OPA has conducted a comprehensive audit of CNMI Government professional services contracts of the Executive Branch from October 1991 to July 1995. The contract executed by the Special Assistant with MBG, however, was not within the scope of that audit; thus, this is OPA's initial audit of this contract.

Findings and Recommendations

A. MBG Contract Was Improperly Procured By Special Assistant In Violation of CNMI Procurement Regulations

Special Assistant Substantially Influenced Procurement of Contract that Benefitted His Sister By More Than \$45,000

The CNMI Procurement Regulations prohibit any public official or employee from participating directly or indirectly in a procurement when a member of the public official or employee's immediate family has a financial interest, or has an arrangement concerning prospective employment, related to the procurement. The Procurement Regulations also require that a professional service contract be procured using competitive sealed proposals unless other methods of procurement are justified. Our audit and investigation of the Office of the Special Assistant for Drug and Substance Abuse's procurement of the contract for professional services from MBG showed that the Special Assistant (1) had a conflict of interest when he personally participated and influenced the procurement of the contract with MBG which he knew would substantially compensate his sister as Subcontractor, and (2) awarded the contract under the sole-source procurement method without exploring other possible sources to assure a fair and reasonable price for the project. (It should be noted that advertising locally with no results does not justify sole source contracting with anyone of choice outside the CNMI). This occurred because the Special Assistant did not follow procedures to exclude himself from participating in the procurement as required under the regulations. As a result, (1) public funds were not protected from waste and abuse because of the lack of competition in the procurement of the contract, and (2) the Special Assistant's sister was improperly benefitted by more than \$45,000 in violation of the CNMI Procurement Regulations.

Discussion

The CNMI Procurement Regulations under Ethics In Public Contracting specifically prohibit a public official or employee from participating in government transactions which may financially benefit the public official or employee's close relatives. Section 6-204 of the regulations states:

"It is a breach of ethical standards for any employee to participate *directly or indirectly* in a procurement when the employee knows that: (a) the employee or *any member of the employee's immediate family* has a *financial interest* pertaining to the procurement; or (b) any other person, business or organization with whom the employee or any member of the

employee's immediate family is negotiating or *has an arrangement concerning prospective employment* is involved in the procurement."¹

"Upon *discovery of an actual or potential conflict of interest*, an employee shall promptly file with the Chief (Director of Procurement & Supply) a written statement of disqualification and *shall withdraw from further participation* in the transaction involved. The employee may, at the same time, *apply to the Public Auditor for an advisory opinion* as to what further participation, if any, the employee may have in the transaction."

Section 6-101 (6) defines *immediate family* as spouse, children, parents, brothers, and *sisters*.

CNMI Procurement Regulations also require that professional service contracts be competitively procured. Section 3-107 states in part:

"It is the policy to *publicly announce* all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price...Adequate notice of the need for such services shall be given by the official with expenditure authority through a *Request for Proposals*."

A professional service contract, however, may be awarded without competition if another method of procurement, such as the sole-source method, is justified. Section 3-104 states:

"A contract may be awarded for a supply, service, or construction without competition when the Chief *determines in writing* that there is *only one source* for the required supply, service or construction. A *written justification for sole source procurement* shall be prepared by the official with expenditure authority and shall contain the *unique capabilities required* and *why they are required* and the *considerations given to alternative sources*."

[Emphasis added in all citations above]

1 The CNMI Procurement Regulations define *direct or indirect participation* as involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Conflict of Interest

The Special Assistant for Drug and Substance had a conflict of interest when he personally executed Contract No. C60221-01 under a sole source procurement, knowing that his participation as the contracting officer would substantially influence the transaction with a company (MBG Management Services, Inc.) that he knew would contract with and substantially compensate his sister as a Subcontractor.

On September 9, 1996, an OPA Investigator interviewed the Special Assistant for Drug and Substance Abuse to obtain information on the procurement of professional services for the design, development, and implementation of a drug-and-alcohol-free workplace program for the CNMI. During this interview, the Special Assistant stated that in early 1995, he contacted local groups and agencies about the development of a drug and alcohol testing and referral policy for the CNMI. He stated that he also contacted his sister in the U.S. about possible leads on companies that could best serve the CNMI in the area of drug and alcohol awareness education and the design of a drug and alcohol testing process. He stated that his sister, who at that time was employed as a Director of Marketing and Client Support at Occupational Medicine Associates in Washington State, suggested that if he wanted the program done right, he should contact MBG Management Services, Inc. in Olympia, Washington. He stated that it was his sister's opinion that MBG was the best possible company he could find for this work. The Special Assistant stated that he did contact the President of MBG, gave him an outline of what the problems were in the CNMI, and requested him to provide a proposal on what MBG could do to address the problems. The Special Assistant stated that MBG did provide him with a proposal which the Special Assistant felt was perfect to meet the needs of the CNMI.

When we asked MBG about pre-contract discussions regarding the sister's participation, we were told that no pre-contract discussions took place. However, in a separate interview, the Special Assistant stated that when he began to negotiate a price with MBG, the possibility of his sister becoming a subcontractor for the project was brought up. According to the Special Assistant, MBG advised him that the hourly cost to do the training called for in the proposal was fixed but could be reduced by having MBG subcontract this part of the proposal to someone else at a lower rate. The Special Assistant stated that the MBG President told him he knew the Special Assistant's sister was qualified to do this type of work, and that MBG would approach her to see if she would be willing to do this portion of the proposal as a subcontractor. The Special Assistant stated that he also contacted his sister to discuss with her the possibility of doing the work as a subcontractor for MBG. The Special Assistant stated that he was excited about the possibility of his sister doing the work because he had not seen his sister in 16 years, and her involvement in this

project would give them an opportunity to re-establish their family ties. He also stated that by having her as the trainer, he would be able to save the government more money on the contract because she would be able to stay with him while on Saipan, thus saving on the costs of hotel and meals.

The Special Assistant stated that it was after he knew his sister was going to be involved as a subcontractor in this project that he became concerned that someone might consider this improper. The Special Assistant stated that he then decided to contact the former Acting Attorney General to seek his opinion on the matter. The Special Assistant stated that the former Acting Attorney General told him that as long as he would not hire his sister directly to work on the project and the decision to award the contract to MBG was not based on the requirement that his sister be a subcontractor, then it would be all right for her to be involved in the project. The Special Assistant stated that his decision to award the contract to MBG was not influenced by the fact that his sister was going to be involved as a subcontractor. The Special Assistant stated that he contacted other possible providers and found that MBG was the only one that would be able to cover and provide service in all the areas needed. It should be noted that the Special Assistant did not seek advice from the Office of the Public Auditor, which under the Ethics Act is the proper office to give such advice.

On September 11, 1996, the President of MBG Management Services (Contractor) responded to our inquiry regarding the business relationship of the Subcontractor and MBG. The Contractor stated that the Subcontractor was contracted by MBG for the specific purpose of providing assistance in fulfilling the contractual requirements of the project between the CNMI and MBG. The Contractor stated that the Subcontractor has never been an employee of MBG and that his decision to use her as a subcontractor was made solely on her experience in the clinical toxicology field and in the drug-free workplace environment. It was also stated in MBG's proposal that the Subcontractor had an extensive background in the design and implementation of clinical testing programs. The Subcontractor's resume, however, did not show experience in the fields mentioned by the Contractor, but rather showed a vast experience in marketing of pharmaceutical products and medical services.² Despite the Subcontractor's lack of experience in the design and implementation of a drug-and-alcohol-free workplace program, more than one-third of the project was

2 The sister's resume submitted to our office showed that she graduated with a degree of Bachelor of Science - Minor in Physical Sciences and a degree of Associate of Arts and Science. Her resume showed post-graduate studies that emphasized technical writing, microcomputers, programming, and business law. Her resume also showed that she held jobs as a Staff Technician who provided technical support to scientists and engineers within bioelectromagnetics, developmental toxicology, and biology/chemistry sections; as a Pharmaceutical/Medical Sales Representative who managed marketing campaigns and product promotions; and as a Director of Marketing and Client Support who coordinated the development, implementation, and monitoring of marketing plans and materials, the conducting of marketing surveys, advertising, sales promotion and public relations, creation of competitive strategies, and other marketing-related tasks.

subcontracted to her, for which she was paid an hourly rate of \$85 under Contract No. C60221-01. MBG retained 5% of that amount for overhead costs. The actual amount billed by MBG for the Subcontractor's services was \$48,365. Of this amount, an estimated \$45,947 was for the Special Assistant's sister.

Improper Sole Source Procurement

The Special Assistant violated the CNMI Procurement Regulations when he procured the services of MBG Management Services, Inc. for the design, development, and implementation of a drug-and-alcohol-free workplace program under a sole source procurement without giving adequate notice of the need for such services through a Request for Proposals (RFP). His justification letter for a sole source procurement submitted to the Director of Procurement and Supply merely stated that he contacted three U.S. firms concerning their ability to deliver all components of this program without providing documentation of such contacts. As a result, the CNMI government has no assurance that it received the best price and quality for this procurement.

During an interview conducted by OPA, the Special Assistant was asked if he prepared a written RFP that stated the scope of work needed for a drug-and-alcohol-free workplace program and if he provided this RFP to companies that might be able to provide the services. The Special Assistant stated that he did not formulate his own specifications on what the program should contain or what was expected of the vendor. He stated that when he contacted other companies he verbally told them what he was looking for using the specifications submitted by MBG. He stated that the companies he contacted either said they would not be able to provide service in all the areas he wanted covered or they were not interested at all in doing the project.

On September 11, 1996, the Special Assistant provided OPA with a listing of six companies and organizations in the U.S. and Guam that he told us he had contacted about the project. According to the Special Assistant, none of the companies contacted could provide a program like MBG's. There was no evidence, however, that the Special Assistant did contact the six companies and organizations, except for one company that sent a proposal on May 12, 1995.³ When we contacted two individuals from the Guam Department of Mental Health and Substance Abuse whose names and contact numbers appear on the list provided to us by the Special Assistant, they told us that no one had contacted them about the design or their feasibility of doing a drug-and-alcohol-fit for-work program for the CNMI. When we contacted another company on the

³ The proposal, which was submitted by Hazelden, provided a three-year Prevention program for the CNMI. Contract price was \$101,900. During an interview conducted by OPA, the Special Assistant stated that Hazelden's proposal did not cover all the areas MBG's proposal covered. In the November 13, 1996 letter to OPA, the Special Assistant stated that Hazelden would not participate in the program and had referred another company for the project.

list, the Johnson Institute in Minnesota, we were told by the Major Account Representative that the Johnson Institute has been in business for 30 years and has conducted alcohol-and-drug awareness programs for both government and private sectors all around the world. However, the Major Account Representative stated that she had never received a call from anyone on the feasibility or design of such a program for the CNMI, and that if a request had been received by anyone from the Johnson Institute, it would have been referred to her because she handles all major accounts for the Institute. We also made a number of attempts to contact Wolfgang and Associates, Birch and Davis Associates, and the Center for Substance Abuse Prevention to verify if they had been contacted by the Special Assistant about the program. However, we could not reach the parties concerned; neither were our calls returned. The Special Assistant kept no record of discussions with any of these companies.

We also made a call to the National Clearinghouse for Alcohol and Drug Information Center in Maryland to locate companies that design and/or present alcohol-and-drug awareness programs to government agencies and private companies. We were referred to the KRA Corporation in Maryland, and a telephone interview was conducted with the Project Director for Technical Assistance to Communities. The Project Director stated that there are hundreds of companies and consultants throughout the United States that can design and present an alcohol-and-drug awareness program for the CNMI. The Project Director stated further that the KRA Corporation receives funding from the Center for Substance Abuse, which is a federal government agency for alcohol-and-drug education programs. The Project Director told us that federal funding is available for such programs through KRA Corporation and that they were then reviewing a request from the Marshall Islands for an alcohol-and-drug awareness program.

During an interview conducted by OPA on October 4, 1996, the Director and Addiction Specialist of the CNMI Mental Health and Social Services told us that he was not consulted by the Special Assistant for Drug and Substance Abuse about the design or implementation of an alcohol-and-drug-fit-for-work program. He recalled mentioning to the Special Assistant the possibility of setting up such a program for the CNMI, but the next time he heard about the program was when the Special Assistant's sister, who was the Subcontractor for the project, came to his office to introduce herself and the work she would be doing for the fit-for-work program.

During another interview conducted by OPA on October 15, 1996, a therapist from the CNMI Mental Health and Social Services stated that she was introduced to the fit-for-work program for the CNMI when she was invited to a meeting organized by the Special Assistant and the Subcontractor. The therapist mentioned that this was the first time she heard of the program and was never asked for help with the design or feasibility of such a program for the

CNMI. She also felt that if research was done over the Internet, one could have come up with at least a dozen companies that could provide the same program for less money. The therapist further stated that CUC has a very successful drug-and-alcohol program that did not cost a lot of money. The therapist mentioned that on many occasions, while attending a fit-for-work training class conducted by the Subcontractor, questions were asked by participants that could not be answered by the Subcontractor and had to be referred to the therapist. The therapist stated that the program, which is to train people from different government agencies to then train other employees from their particular agencies, is not achieving its objective. The therapist and the Director and Addiction Specialist are now the primary instructors for the drug abuse portion of the program.

Causes and Effect

This occurred because the Special Assistant did not follow procedures to exclude himself from participating in the procurement as required under the regulations. In addition, the Special Assistant did not act in the best interest of the CNMI when he accepted MBG's proposal without exploring other possible sources to assure a fair and reasonable price. Although his personal interest in the contract conflicted with the government's interest, the Special Assistant did not file with the Director of Procurement and Supply a written statement of disqualification and did not withdraw from further participation in the transaction. He also did not contact OPA or request an advisory opinion on his participation. As a result, (1) public funds were not protected from waste and abuse because of the lack of competition in the procurement of the contract, and (2) the Special Assistant's sister was improperly benefitted by more than \$45,000 in violation of the CNMI Procurement Regulations.

Conclusion and Recommendation

The Special Assistant for Drug and Substance Abuse violated prohibitions of the CNMI Procurement Regulations against conflict of interest when he participated in a transaction in which he derived financial gain for his sister and personal advantage for himself. The Special Assistant's participation in the transaction substantially influenced the transaction in favor of MBG, which subcontracted more than one-third of the project to the Special Assistant's sister. The manner in which the contract was awarded to MBG under the sole source procurement method violates the Procurement Regulations. MBG was awarded the contract without adequate notice given to other companies through a Request for Proposals. Further, the Special Assistant arbitrarily awarded the contract to MBG without consulting with the Director and Addiction Specialist, the

authority on drug education in the CNMI, on the feasibility of setting up such a program in the CNMI based on MBG's proposal.

The existence of a conflict of interest adversely affected the decisions of the Special Assistant concerning the transaction. The Special Assistant tried to mask his conflict of interest by his justification that subcontracting part of the project to his sister would save the CNMI money. However, if there was a plan to subcontract part of the services in order to lower the project cost, the Special Assistant should have publicized the need for a subcontractor and chosen the one best qualified to provide the service at the most reasonable price. Accordingly, we recommend that the Governor:

1. Take administrative action, and/or refer to the Attorney General's Office (AGO) for possible action, against the Special Assistant for Drug and Substance Abuse for violations of the CNMI Procurement Regulations. Such action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution (in accordance with Section 6-211 of the Procurement Regulations).

Office of the Governor's Response

In his response, the Governor said he is willing to consider reasonable recommendations about appropriate actions to be taken with regard to the Special Assistant. Furthermore, he stated that after he had received OPA's initial report on this contract, he revoked the Special Assistant's expenditure authority and transferred it to his Special Executive Assistant. The Governor stated, however, that this action did not solve the previous error in the administration of the contract.

OPA Comments

We consider Recommendation 1 resolved. We have already begun consultations with the Governor's staff regarding actions to be taken against the Special Assistant. The additional information or action required to close the recommendation is presented in **APPENDIX F**.

Other Matters Discussed by the Governor

The Governor discussed and commented on some of the matters contained in the draft audit report. He said that (1) because it was sole sourced does not mean that the contract was a bad deal for the Commonwealth. If MBG did a competent and workmanlike job, and the Commonwealth got its money's worth, then the sole -sourcing issue is of secondary importance. He listed the numerous benefits derived by the CNMI from contracting with MBG; (2) the Special Assistant

contacted, and held discussions with several firms in addition to MBG. The three firms were Occupational Medicine and Associates, Inc; the Johnson Institute; and Hazelden Foundation; (3) the Director and Addiction Specialist's statement that he was not consulted about the design and implementation of a drug-free workplace program does not appear to be correct, and in any event is not relevant to the procurement question. He further said that the therapist has stated that the statements attributed to her on the draft audit report were not correct; (4) the statement of KRA Corporation that there are hundreds of organizations that could have provided a drug and alcohol awareness program is not relevant because MBG was providing more than a drug and alcohol awareness program. The "Fit-for-Work" program included a drug and alcohol awareness as one part of it, but it went much further; and (5) the suggestion on the draft report that the Special Assistant could have pulled down a contractor from the Internet does not seem well founded. This was a large complex contract requiring hundreds of hours of work and a high degree of expertise.

OPA Comments

Our comments are as follows: (1) We did not say that a procurement through sole source is always a bad deal for the CNMI. In employing this method of source selection, however, the contracting officer must meet certain criteria (*e.g.*, considering alternatives) since public funds are involved. Had the project been advertised and assuming no one else was available, then sole source would have been justified. In the case of the MBG contract, there was no assurance that the CNMI got the best deal by contracting with MBG. There is no justification for spending public money just to achieve a project's objectives if there could have been other alternatives, nor is it ethical to favor contracts with relatives. Public funds should be protected from this kind of abuse. (2) The response provided only the names of the three firms, in addition to MBG, with which the Special Assistant supposedly held discussions. It did not provide the results of discussions or correspondence to show contact with the firms he claimed to have contacted (these had been requested since the start of the investigation). Occupational Medicine was not among those firms he stated he contacted based on his September 11 1997 memorandum to OPA. For Johnson Institute, OPA's investigation showed that it had never received a call from anyone on the feasibility or design of such a program for the CNMI. (3) The response did not attach documents to show that our facts are wrong. In our transmittal letter accompanying the draft report, we stated that if the response pointed out any incorrect facts, documents showing the correct facts should be attached to the response and we would make appropriate corrections in the final report. The statements of the Director and Addiction Specialist and the therapist are relevant to the procurement question because it would have been advisable for the Special Assistant to consult these two knowledgeable individuals about the design of the program, prepare a written RFP, and advertise. (4) Regardless of whether the KRA Corporation's statement was irrelevant, it is obvious that there

were numerous companies which could provide what the CNMI needed. Instead of searching for them, the Special Assistant's sister suggested MBG and MBG in turn stated that she was highly qualified, which is not true. This looks like a mutually beneficial arrangement leading to sole source procurement. (5) The report was quoting only what the therapist had said during the interview regarding searching over the Internet.

The Governor's response appears to be stating that the end justified the means. While we believe addressing the drug problem is very important, we disagree that anything done in the name of drug programs is automatically justified, particularly in this case where training government supervisors to become trainers is a major part of the contract and the effectiveness of that program has not been evaluated. Delaying that part of the program may even have been more beneficial.

B. MBG was Overpaid in Excess of Firm Fixed Price And Failed to Comply with the Stop Work and Cancellation of the Contract

MBG Was Overpaid by \$21,365 Under Original Contract and Billed Unallowable Costs of \$11,530 after Cancellation of the Contract

Under a firm fixed price contract, the contractor is entitled to the full contract amount as long as the specific contract deliverables are performed or submitted, regardless of whether the actual hours or costs incurred by the contractor were less than (or more than) the budgeted time and cost. The contractor's failure to perform specific contract deliverables, however, requires that the amounts associated with these deliverables be deducted from the contract price and not paid. Our audit showed, however, that MBG was (1) overpaid because it was allowed to bill the CNMI based on actual hours or cost incurred (similar to a cost reimbursement contract), and not based on performance or submission of contract deliverables as required under the firm fixed price contract, and (2) allowed to continue working despite the stop work and cancellation of the original contract, resulting in additional billings. Any subsequent change order to support the overpayment should not be allowed because (1) a portion was due to double billing and higher travel rates, (2) the additional time spent by the Subcontractor was not due to an increase or change in the scope of work, and there was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience⁴, and (3) increasing the contract price without any change in the scope of work affected the reasonableness of the contract's sole source procurement and award of the contract to MBG which, according to the Special Assistant, would result in "significant cost savings" to the CNMI. This occurred because the Special Assistant, as the expenditure authority, was not sufficiently aware of the procurement and contracting process and the Procurement Regulations in general, including the appropriate use of contracts, change orders, and purchase orders. As a result, MBG (1) was overpaid by \$21,365 in excess of the contract's firm fixed price (after adjustment of price related to unperformed services and deliverables)⁵ and (2) billed unallowable costs amounting to \$11,530 after the contract was canceled.

4 Our investigation revealed that the Subcontractor showed vast experience in marketing and no experience in conducting training related to drug-free workplace environments.

5 Of the \$100,175 firm fixed price contract, specific contract deliverables valued at \$38,146 were not performed by MBG, thus reducing the contract price to only \$62,029. MBG, however, billed and was paid \$83,394 for work performed relating to the original contract thereby exceeding the adjusted contract price by \$21,365 (Actual payments received by MBG totaled \$98,899. This includes additional payments of \$15,505 which were properly covered by a separate change order and separate budget. Thus, the amount paid relating to the adjusted firm fixed price was \$83,394).

Discussion

Under a firm fixed price contract, the contractor is entitled to the full contract amount as long as the specific contract deliverables are performed or submitted, regardless of whether the actual hours or costs incurred by the contractor were less than (or more than) the budgeted time and cost. The contractor's failure to perform specific contract deliverables, however, requires that the amounts associated with these deliverables be deducted from the contract price and not be paid. The price provided is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. A firm fixed price contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively, and imposes a minimum administrative burden upon the contracting parties.

The contract executed by the Special Assistant with MBG under C60221-01 was a firm fixed price contract of \$100,175. The scope of the project and the contract deliverables were indicated in the contract by reference to the specific sections of the proposal. The proposal indicated the specific deliverables under each phase of the project (Phases I to V) and the summary of tasks. It also indicated the budget under each phase summarizing the total and unit costs per hour or per item for the service or materials to be provided by the contractor. For the time cost of the Contractor and Subcontractor, the proposal provided the number of hours for each task in each phase of the contract.

Based on the CNMI Procurement Regulations, this is a firm fixed price contract for which the CNMI Department of Finance certified a contract cost of \$100,175 payable from the budget of the Office of the Special Assistant. There is no written explanation as required by the Procurement Regulations (Section 3-401) to justify that this is any other type of contract, *i.e.*, a cost reimbursement contract.

MBG Billings Based on Actual Hours or Cost Incurred Resulting in Overpayment

MBG billed the CNMI based on actual hours or cost incurred (similar to a cost reimbursement contract) and not based on performance or submission of contract deliverables. This billing method employed by the Contractor resulted in an undue advantage to the Contractor because its actual time and cost exceeded the contract's firm fixed price. Instead of requiring the Contractor to adhere to the contract price, the Special Assistant accepted the Contractor's improper billing method by approving payments. This occurred because the Special Assistant, as the expenditure authority, was not sufficiently aware of the

procurement and contracting process and the Procurement Regulations in general, including the appropriate use of contracts, change orders, and purchase orders. The amounts associated with deliverables which MBG failed to perform totaled \$38,146, resulting in an adjusted firm fixed price of \$62,029. Because the amount billed and paid relating to the original contract totaled \$83,394, MBG was overpaid by \$21,365 in excess of the contract's adjusted firm fixed price.

The following two tables show the (1) computation of the contract's adjusted firm fixed price (after adjustment of price related to unperformed services and deliverables) and overpayment, and (2) details of the excess of the actual hours and cost over the adjusted firm fixed price (per budget item).

Table 1 - Computation of Adjusted Firm Fixed Price and Overpayment

Contract's Original Firm Fixed Price		\$100,175
Price related to unperformed services and deliverables:		
Phase II.3, 4, and 5 - Three Urine Drug Testing Collection Training Sections, One Breath Alcohol Technician Training Session, and Urine Drug Testing and Breath Alcohol Testing Protocol Manual	(\$5,080)	
Phase IV - Private Sector Partnering	(14,610)	
Supervisory Training Materials	(1,079)	
Employee Awareness Materials	(17,377)	(38,146)
Adjusted Firm Fixed Price		\$62,029
Less: Amount Billed and Paid relating to Original Contract		83,394 ⁶
Overpayment		\$21,365

Of the original firm fixed price contract of \$100,175, specific contract deliverables valued at \$38,146 as itemized in the proposal were not performed or submitted. We found that three of five contract deliverables in Phase II and all in Phase IV were not performed or submitted. Also, only a small portion of the materials for supervisory training and employee awareness that needed to be delivered was provided under the original contract. A detailed analysis of unperformed services and contract deliverables is presented in **APPENDIX A**.

6 Actual payments made to MBG (under Check nos. 440539 and 454585) totaled \$98,899. This includes additional payments of \$15,505 which were properly covered by a separate change order and separate budget [(1) \$11,305 for the additional on-site employee awareness sessions by the Subcontractor which was covered by change order no. 1, and (2) \$2,000 for car rental, \$1,634 for postage and printing, and \$566 for telephone which were covered by "On-Site/Misc. Costs", a separate budget provided by the Commonwealth in addition to the firm fixed price]. Thus, the amount paid relating to the adjusted firm fixed price was \$83,394.

Table 2 - Excess of Actual Hours and Costs Over Adjusted Firm Fixed Price

Budget Item	ACTUAL		ADJUSTED FIRM FIXED PRICE		Over (Under) Payment
	No. of Units	Amount	No. of Units	Amount	
Time cost for Contractor (\$125/hr.)	153 hrs.	\$19,125	136 hrs.	\$17,000	\$2,125
Time cost for Subcontractor (\$85/hr.)	436 hrs.	37,060	316 hrs.	26,860	10,200
Airfare (\$1,100/round trip)	4 round trips	8,004	4 round trips	4,400	3,604
Travel time from and to mainland (\$60/hr)	100 hrs.	6,000	48 hrs.	2,880	3,120
Hotel and meals (\$150/day)	Actual	2,263	17 days	2,550	(287)
Car rental (\$50/day)	Actual	1,590	17 days	850	740
Supervisory training materials (\$11.99/unit)	410 units	4,916	410 units	4,916	0
Employee awareness materials (\$3.99/unit)	645 units	2,573	645 units	2,573	0
Supplies, miscellaneous office expenses	Actual	1,863	-	0	1,863
Totals		\$83,394		\$62,029	\$21,365

A detailed analysis of the over(under) payments shown above is presented in APPENDIX B.

Overpayments Should Not be Allowed to be Supported by a Subsequent Change Order

Overpayments to MBG should not be allowed to be supported by any subsequent change order because (1) a portion was due to double billing and higher travel rates, (2) the additional time spent by the Subcontractor was not due to an increase or change in the scope of work, and there was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience, and (3) increasing the contract price without any change in the scope of work affected the reasonableness of the contract's sole source procurement and award of the contract to MBG which, according to the Special Assistant, would result in "significant cost savings" to the CNMI. As in any fixed price contract, the government should not be made responsible for absorbing any losses incurred by the Contractor which are not directly related to a change or increase in scope of work. These are further discussed as follows.

1. **Double Billing and Higher Travel Rates-** Of the \$21,365 excess, about \$7,500 was the result of double billing and higher travel rates. MBG double billed the CNMI for car rental for \$700 and billed in excess of the budget for airfare and travel time for \$6,724, which is like increasing a rate that was already negotiated under the original contract. (Further discussed in **APPENDIX B, items c and d**).
2. **Not a Change in Scope -** The 120 excess hours incurred by the Subcontractor, amounting to \$10,200, was not due to an increase in the scope of work but was due to more hours spent in doing the same tasks proposed in the original contract (*i.e.*, in the formation of and liaison with task team and development of plan and guidelines, further discussed in **APPENDIX B, item b**). There was no determination of whether the additional time spent was due to unexpected difficulties in implementing the program or as a direct result of the Subcontractor's inexperience in the matter. Our investigation revealed that the Subcontractor showed vast experience in marketing and no experience in conducting training related to drug-free workplace environments.
3. **Affected the Reasonableness of the Contract's Sole Source Procurement and Awarding of the Contract to MBG -** One of the considerations of the Special Assistant in awarding the contract to MBG was its "significant cost savings" to the CNMI. Increasing the contract price without any change in the scope of work affected the reasonableness of the contract's sole source procurement and award of the contract to MBG.

MBG Failed to Comply with Stop Work and Cancellation of the Contract

Despite the cancellation of the original contract on November 1, 1996, the Contractor proceeded with a planned trip to the CNMI in November 1996 to perform additional supervisory training sessions after receiving assurance of payment from the Governor and the Special Assistant. As a result, MBG submitted unallowable billings under the original contract's change order for work performed after the contract was canceled, amounting to \$11,530.

At the time of the audit, the unpaid balance of billings submitted by the Contractor totaled \$34,423. This consisted of (a) billing under the change order amounting to \$11,530 for work performed after the original contract was canceled, (b) the purchase order for \$10,584 for additional materials, and (c) billings amounting to \$12,309 under a new contract. Except for the \$11,530 billings under the change order for work performed after the contract was canceled, the rest of the unpaid billings were considered valid. A detailed analysis of all the unpaid billings is shown below:

1. \$11,530 Billings Under Change Order No. 1

A change order to Contract No. C60221-01 amounting to \$26,166 was processed in September 1996. The scope changes were as follows:

1. Increase in on-site employee awareness sessions of 133 hours⁷ (the original budget provided that the Subcontractor would render 24 hours of Employee Awareness sessions, *i.e.*, 12 sessions of 2 hours duration, and was increased to 21 sessions for a total of 128 hours), totaling approximately \$11,000;
2. Increase in on-site supervisory sessions from three to four weeks at approximately \$12,000 (additional 4-day sessions performed by the Contractor in November 1996); and
3. New educational materials provided to CNMI employees (no estimate was given; we computed that about \$3,000 could be allocated to the materials).

In scope change no. 1, the Special Assistant did not ask for written revisions *before* certain tasks were added. Under Phase III, the Subcontractor had a budget of 24 hours for 12 employee awareness sessions (2 hrs./session); however, according to MBG, the Subcontractor conducted 21 days of those sessions, which we estimated from the billings to be about 128 hours. Two months after the Subcontractor had completed her work, the Special Assistant processed a change order for the Subcontractor to perform additional employee awareness sessions. Total payments for this change order were \$11,305 and although an exception was noted in the execution of the change order, we consider the payment proper.

The unpaid billing under the change order is \$11,530 for work performed by the Contractor after the original contract was canceled. Despite the cancellation of the original contract on November 1, 1996, the Contractor proceeded with a planned trip to the CNMI in November 1996 to perform additional supervisory training sessions, after receiving assurance of payment from the Governor and the Special Assistant. CNMI Procurement Regulations (§ 5-103(2)), however, allow only payment of actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination. Consequently, the additional billing by the Contractor amounting to \$11,530 should not be paid. The authorizing officials, who assured the Contractor of payment, should be held

7 133 hours represent the difference between the actual and original budgeted hours of the Subcontractor and not the actual hours spent for additional employee awareness sessions which was only 104 hours. The difference of 29 hours was applied to hours spent by the Subcontractor relating to ice conference, written responses to issues raised, coordination with the Special Assistant, meeting with OPM, etc, which were not budgeted.

responsible for any payment because they acted beyond the scope of their duties, in violation of the Procurement Regulations (§1-108) which provide that any procurement action of an employee of the government or its agencies or political subdivisions *in violation of the regulations is an action outside the scope of his or her employment*. The government should seek a judicial determination, if the contractor claims any liability against it arising from these improper acts, that such liability is the individual liability of the authorizing officers who committed the wrongful act. In actuality, no contract was binding between the CNMI and MBG when MBG performed the services in November 1996.

2. \$10,584 Billings Covered By Purchase Order P68172

Purchase Order P68172 dated September 27, 1996 for \$10,584 was processed to cover the price and shipping cost of 200 supervisory training materials and 1,875 employee awareness materials. Although this should have been processed through a change order and not through a purchase order, these materials were no doubt needed, and therefore are payable. These materials were originally budgeted under the original contract; however, because they were not delivered, the price was deducted from the original firm fixed price.

3. \$25,538 Billings Under A New Contract C70199

Contract C70199 for \$25,538 was executed in January 1997 to provide additional funding for seven training sessions and 150 supervisory training materials. The new contract was procured through an RFP by the Executive Assistant to the Governor (not the Special Assistant for Drugs and Substance Abuse). MBG was the sole respondent, primarily because the scope of the new contract was for the completion of the project already started under the canceled contract. It was obvious that no other proposer would apply because of the limited scope. Nevertheless, the Director of Procurement & Supply concluded that acceptance of the MBG proposal would be beneficial to the CNMI because substantial resources had already been invested in the project.

In the cancellation of contract C60221-01, one of the justifications stated was that the contract did not provide for and there had been no periodic evaluations of the effectiveness of the services. The new contract was procured, however, without evaluating whether the additional services (*e.g.*, training sessions) from MBG were necessary, if the “train the trainer objective” of the original contract had been achieved. Nevertheless, this was not the fault of the Contractor, and he is therefore entitled to payment of the unpaid billings of \$12,309 for the services he rendered under the new contract.

Conclusion and Recommendations

The Special Assistant's failure to manage the contract with MBG in accordance with the provisions of the CNMI Procurement Regulations requiring the utilization of a fixed price contract indicates that as an expenditure authority, he was not sufficiently aware of the procurement and contracting process and the Procurement Regulations in general. In our opinion, no official should be given expenditure authority until the official is familiar with all laws and regulations involved. Also, the additional billing for work performed under the original contract after it was canceled should not be the responsibility of the CNMI, and the CNMI should not be liable for the costs incurred.

Accordingly, we recommend that the Governor:

2. Establish a certification program for contracting officers and expenditure authorities to assist them in carrying out their duties. The program should include awareness of all laws and regulations impacting the responsibilities of expenditure authorities, including the CNMI Procurement Regulations and the CNMI Ethics Code Act.
3. Appoint the Director and Addiction Specialist and the therapist from the CNMI Mental Health and Social Services to evaluate the effectiveness of the Drug and Substance Abuse program. They should (a) determine whether MBG was able to train supervisors to be qualified trainers for further training of other government personnel as originally planned under the MBG contract, and (b) identify the trained supervisors and provide OPA their names for reference purposes.

We also recommend that the Secretary of Finance:

4. Stop the payment of the additional billing of \$11,530 for work performed under the original contract after it was canceled. The billing should be disregarded for violation of the CNMI Procurement Regulations. The authorizing officials should be held responsible for any payment.
5. Reduce any future payments to MBG by \$21,365, which was paid in excess of the firm fixed price. In particular, the \$21,365 should be offset against the \$10,584 (under PO P68172) and \$12,309 (supplemental contract C70199) which are valid unpaid billings by the Contractor.

Office of the Governor's Response

The Governor did not address Recommendations 2 and 3.

Department of Finance Response

Recommendation 4

The Secretary of Finance stated that this payment has not been made and any payments on this contract will be held until AGO completes its investigation.

Recommendation 5

The Secretary of Finance stated that the AGO disagreed with the recommendation. Further, AGO instructed the Department of Finance (DOF) to release the payments due on other contracts with the vendor⁸ while it is continuing to investigate the status of the disputed contract.

OPA Comments

We consider Recommendations 2 to 5 open. It is proper for the CNMI to withhold payment of \$22,893 unpaid billings to the Contractor (covered by purchase order and supplemental contract) as this is necessary to recover the earlier \$21,365 overpayment to the Contractor. We disagree with the AGO's claim that the two pending invoices are separate contractual obligations from the original contract.⁹ The purchase order and supplemental contract were used only because no change orders to the original contract were possible, that contract having been canceled. For this reason, it makes sense for the CNMI to withhold payment of so much of MBG's claim as is necessary to recover for the earlier overpayment to the Contractor. The CNMI would be justified in paying MBG

8 Attached to the response was a memorandum from AGO to DOF stating that the Public Auditor's cancellation action was specific to the cited contract and does not provide a basis for withholding payment on other contracts or purchase orders with the same vendor. According to AGO, the two pending invoices are separate contractual obligations, for which the CNMI is now seriously delinquent.

9 A claim has a logical relationship to the original claim if it arises out of the **same aggregate of operative facts** as the original claim, or the claims are **offshoots of the same basic controversy between the parties**. *Booth v. Lewis*, 798 P.2d 447 (Haw.App.) See also *McCabe v. United Bank of Boulder*, 657 P.2d 976 (Colo.App. 1982). A logical relationship will be found if both claim and counterclaim have **common origin and common subject matter**. *Slide-A-Ride of Las Cruces v. Citizens Bank*, 733 P. 2d 1316 (NM 1987). The CNMI's claim would certainly be considered in any litigation initiated by MBG. It is based on the same aggregate of operative facts as MBG's claim, is an offshoot of the same basic controversy between the parties, and has a common origin and common subject with the contractor's claim.

only \$1,528. The additional information or action required to close the recommendations is presented in **APPENDIX F**.

Other Matters Discussed by the Governor

The Governor discussed and commented on some of the matters contained in the draft report. He said that (1) it is not clear that the MBG contract was for a firm fixed price. The contract stated that it would be payable by billings submitted monthly to the Secretary of Finance, which is inconsistent with a firm fixed price. A contractor might submit progress reports on a fixed price contract and not monthly billings. Many professional services contracts, especially contracts for instruction and training, legitimately fall within a cost reimbursement category. The Special Assistant failed only to attach a written determination that this was a cost reimbursement contract; (2) there are valid reasons for the unperformed deliverables (he cited the reasons). Much of the time that was to have been spent on Phase IV was cannibalized to feed the unexpectedly large time requirements of Phases III and V. He agreed that this should have been accompanied by a proper change order. But the fact that the contract was changed does not mean that the CNMI did not get its money's worth; (3) OPA's counts on the Supervisor Training materials and the Employee Awareness materials are in error. According to the Special Assistant, he received approximately 2,700 units altogether; and (4) MBG was required to proceed with a planned trip to the CNMI in November 1996 despite cancellation of the contract because MBG had largely finished its work and only a week or two of seminars and training remained. By the time a replacement contractor could have been found, the cost of completing the contract would be significantly greater. The Governor also noted that after the contract was canceled and the Special Assistant advertised for the work using proper procurement procedures, no one responded. This strongly suggests that no one else could have easily completed the job at the time the contract was canceled. In a separate letter to the Special Assistant, MBG stated the following: "It was explained to me in a telephone conversation with you that the trip and funding for that trip was outside of the contract and was to be an effort (sic) and payment from the Governor's discretionary fund".

OPA Comments

Our comments are as follows: (1) A contract with a provision stating "payable monthly with invoice presented" can still be classified as a firm fixed price contract. The total fees of \$100,175 stated in the contract were not a ceiling amount that the contractor may not exceed (which is usually established in a cost reimbursement contract). It is the total of the prices of all the required services and deliverables. Billings should be based on percentage of performance of the deliverables. As in any fixed price contract, the government should not be made

responsible for absorbing any losses incurred by the contractor which are not directly related to a change or increase in scope of work. (2) We do not question the reasons for the unperformed deliverables. We discussed the matter to establish the prices related to unperformed services and deliverables which should be deducted from the original firm fixed price and not paid. As stated above, in any fixed price contract, the government should not have to absorb any losses incurred by the contractor which are not directly related to a change or increase in scope of work. (3) The number of materials stated in the report is accurate. The Special Assistant may have compared his count (2,700 units) with those delivered under the original contract (1,055 units) and failed to consider those delivered under PO P68172 and Supplemental Contract C70199 (also indicated in the report), which totaled 2,225 units. (4) The supervisory training sessions in November 1996 do not constitute an emergency to justify such action from the Governor and the Special Assistant. The fact that there were training sessions conducted in January 1997 (under the supplemental contract) means that the November 1996 training could have also been performed later on. MBG was the sole respondent on the supplemental contract primarily because the scope of the new contract was for the completion of the project already started under the canceled contract. It was obvious that no other proposer would apply because of the limited scope. Also, payment from the discretionary fund is in effect circumventing the law because the billing was a violation of the CNMI Procurement Regulations and should not be paid by the CNMI.

DISCUSSION OF UNPERFORMED DELIVERABLES

Following is a breakdown of the contract deliverables and the budget for the cost of the contract as shown in the proposal of MBG. Beside each contract deliverable, we indicate whether it was performed or not.

Deliverables and Budget Description	Unit Cost	Hours or Units	Total Cost
Phase I - Deliverables		Performed?	
1. Facilitated model policy development session		Yes	
2. Completed Governor's model policy for the CNMI government		Yes	
3. Plan for the development of sustainable supervisory training		Yes	
4. Model Supervisor Guideline Manual		Yes	
Budget			
1. Time cost for R.D. Kuest	\$125/hr.	57 hrs.	\$7,125
2. Time cost for Subcontractor	\$85/hr.	40 hrs.	3,400
3. Airfare	\$1,100	2	2,200
4. Travel time from and to mainland	\$60/hr.	24	1,440
5. Hotel and meals	\$150/day	8	1,200
6. Car rental	\$50/day	8	400
Phase I total cost			\$15,765
Phase II - Deliverables		Performed?	
1. Urine Drug Testing - Report regarding proposal for urine drug collection, testing and medical review		Yes	
2. Breath Alcohol Testing - Report regarding proposal for breath alcohol testing equipment, technician training, and sustainable training resources		Yes	
3. Three Urine Drug Testing Collection Training Sessions		No	
4. One Breath Alcohol Technician Training Session		No	
5. Urine Drug Testing and Breath Alcohol Testing Protocol Manual		No	
Budget			
1. Time cost for R.D. Kuest	\$125/hr.	26 hrs.	\$3,250
2. Time cost for Subcontractor	\$85/hr.	88 hrs.	7,480
Phase II total cost			\$10,730

APPENDIX A

Page 2 of 4

Deliverables and Budget Description	Unit Cost	Hours or Units	Total Cost
Phase III - Deliverables			Performed?
1. Development of agency-specific policy and procedures (for DPS and PSS) through a facilitated group process			Yes
2. Supervisor training sessions (2)			Yes
3. Development of agency-specific implementation plan and supervisor guidelines			Yes
4. Presentation of 12 employee awareness sessions to DPS and PSS employees			Yes
Budget			
1. Time cost for R.D. Kuest	\$125/hr.	50 hrs.	\$6,250
2. Time cost for Subcontractor	\$85/hr.	60 hrs.	5,100
3. Airfare	\$1,100	2	2,200
4. Travel time from and to mainland	\$60/hr.	24	1,440
5. Hotel and meals	\$150/day	9	1,350
6. Car rental	\$50/day	9	450
7. Supervisory training materials	\$11.99	100	300
8. Employee awareness materials	\$3.99	1,500	5,895
Phase III total cost			\$22,985
Phase IV - Deliverables			Performed?
1. Creation of "Governor's Blue Ribbon Team" program to include plan, approach, promotional and implementation materials			No
2. Scheduling and arrangements for 2 to 3 "Governor's Breakfasts" to announce the program			No
3. Scheduling of 2 implementation seminars			No
4. Two implementation seminars for private sector employers			No
5. One supervisory training program (<i>to be paid by participants</i>)			No
Budget			
1. Time cost for R.D. Kuest	\$125/hr.	42 hrs.	\$ 5,250
2. Time cost for Subcontractor	\$85/hr.	72 hrs.	6,120
3. Airfare	\$1,100	2	2,200
4. Travel time from and to mainland	\$60/hr.	24	1,440
5. Hotel and meals	\$150/day	9	1,350
6. Car rental	\$50/day	9	450
Phase IV total cost			\$16,810
Phase V - Deliverables			Performed?
1. Policy development (2 group policy sessions)			Yes
2. Train-the-trainer preparation and training			Yes
3. Supervisor training sessions (5 sessions)			Yes
4. Employee awareness sessions (30 sessions of 2 hrs. each)			Yes
5. Trouble shooting and incident consultation			Yes

APPENDIX A

Page 3 of 4

Deliverables and Budget Description	Unit Cost	Hours or Units	Total Cost
Budget			
1. Time cost for R.D. Kuest	\$125/hr.	11 hrs.	\$ 1,375
2. Time cost for Subcontractor	\$85/hr.	176 hrs.	14,960
3. Phase V supervisory training materials	\$11.99	400	4,796
4. Phase V employee awareness materials	\$3.99	3,500	13,950
Phase V total cost			\$35,081
Totals by Budget Item- Phases I to V			
1. Time cost for R.D. Kuest	\$125/hr.	186 hrs.	\$23,250
2. Time cost for Subcontractor	\$85/hr.	436 hrs.	37,060
3. Airfare	\$1,100	4	4,400
4. Travel time from/to mainland	\$60/hr.	72	4,320
5. Hotel and meals	\$150/day	26	3,900
6. Car rental	\$50/day	26	1,300
7. Supervisory training materials	\$11.99	500	5,995
8. Employee awareness materials	\$3.99	5,500	19,950
Phases I to V Total Contract Cost			\$100,175

Price related to unperformed services and deliverables:

- a. Phase II.3, 4, and 5 - The budget for Phase II is \$10,730, consisting of time cost for the Contractor and Subcontractor for 26 and 88 hours at \$125 and \$85 per hour, respectively. The amount of time allocated for the three unperformed deliverables (3 Urine Drug Testing Collection Training Sessions, 1 Breath Alcohol Technician Training Session, and Urine Drug Testing and Breath Alcohol Testing Protocol Manual) totaled 8 and 48 hours for the Contractor and Subcontractor, respectively, amounting to \$5,080. This price should be deducted from original firm fixed price and not be paid.
- b. **Phase IV** - This was entirely eliminated. Based on its August progress report, MBG stated that "...in consultation with Richard Pierce, the Special Assistant that due to the time needs to assure that Phases I-III were successfully completed that the time budget allocated to Phase IV be transferred." Thus, the entire budget of \$16,810 should be deducted from the original firm fixed price. We noted, however, that MBG failed to include in the total firm fixed price, the cost of two round trip flights of \$2,200 (Phases I, III, and IV were budgeted two round trip flights each, however, the total for Phases I to V indicated four round trip flights only instead of six), and because the deliverables in Phases I and III were performed, the four round trip flights in the budget were applied to Phases I and III. We reduced the cost of Phase IV by \$2,200 resulting in an adjusted price of \$14,610 (\$16,810 less \$2,200), which is to the advantage of the Contractor.

- c. **Supervisory Training Materials** - The Contractor also included in the original firm fixed price the amount of \$5,995 for the delivery of 500 units of these materials at \$11.99 each. Only 410 of the materials were delivered under the original contract. Cost of undelivered materials totaled \$1,079 (90 units times \$11.99).
- d. **Employee awareness materials** - Also included in the original firm fixed price was the delivery of 5,000 units of these materials totaling \$19,950. However, only 645 units of the materials costing \$2,573 were delivered by MBG under the original contract. Thus, price related to undelivered materials of \$17,377 should be deducted from the original firm fixed price.

**DISCUSSION OF EXCESS OF THE ACTUAL HOURS AND COST
OVER THE ADJUSTED FIRM FIXED PRICE**

We reviewed the billings under the original contract and found that actual hours and costs exceeded the adjusted firm fixed price, explained as follows:

- a. Time cost for Contractor** - The number of hours billed by the Contractor for work performed exceeded the adjusted hours by 17, amounting to \$2,125. This was basically due to additional hours spent by the Contractor relating to “ice” conference, written responses to issues raised, coordination with the Special Assistant, meeting with OPM, etc, which were not budgeted. The Contractor also performed an additional 4 supervisor training sessions in July 1996 (with a total of 32 hours) which were not part of the scope of work by the Contractor under the original contract. The proposal included two sessions of supervisor training at 8 hours each but instead the Contractor performed about 48 hours of supervisor training (Phase III.b - see **APPENDIX C** for comparison of the actual hours billed against the adjusted hours for each component of the program). The Contractor could have assumed that since he had unused hours for unperformed deliverables, he could use these hours to cover other tasks as long as the total actual hours did not exceed the total budgeted hours. Also, since the Subcontractor failed to perform 28 hours of supervisor training sessions (Phase V.c), the Contractor performed the training. However, the Contractor billed at a higher rate than the Subcontractor, resulting in additional cost to the contract. Also, the Special Assistant did not ask for written revision in the budget *before* this task was added.
- b. Time cost for Subcontractor** - The variance of \$10,200 was caused by the Subcontractor rendering 120 hours in excess of the adjusted hours. Basically, this was due to the excess hours incurred by the Subcontractor in doing Phase I.b (formation of and liaison with task team) and Phase III.c (development of individual agency implementation plan and supervisor guidelines). In Phase I.b, for example, the budgeted time was only 4 hours, but the actual hours charged were 96, thus an excess of 92 hours. In Phase III.c, the budgeted time was also only 4 hours but the Subcontractor charged 37 hours, thus an excess of 33 hours (see **APPENDIX C**).
- c. Airfare and Travel Time from and to Mainland** - The excess variance of \$3,604 in airfare costs was caused mainly by the Contractor taking business class instead of economy class flights between the mainland and the CNMI. Although MBG proposed \$1,100 per single round trip flight or a total cost of \$4,400 for four round trip flights, MBG actually billed the CNMI a total of \$8,004 for two economy class round trip flights for the Contractor and the Subcontractor, and two business class round trip flights for the Contractor (a round trip economy ticket costs about \$1,500, while a round trip business class ticket costs about \$2,500).

MBG also budgeted only 48¹ hours for the Contractor's travel time (24 hours per round trip), but actually charged 100 hours (about 32 hours per round trip); as a result, actual travel time cost exceeded budget by \$3,120.

- d. Car rental** - Actual cost incurred was \$3,590, \$2,000 of which could be covered by "On-Site/Misc. Costs", a separate budget provided by the Commonwealth in addition to the firm fixed price, under Travel and mileage expense on islands². The excess over the adjusted firm fixed price of \$740 was due to double billing by MBG to the CNMI for car rental expenses incurred by the Subcontractor during her stay on Saipan. The first billing, paid per Payment Voucher no. 932207, included a \$700 monthly car rental charge for the period April 18-May 18, 1996; the second billing, paid per Payment Voucher no. 937592, included another \$700 monthly car rental charge for the same period.
- e. Supplies, miscellaneous office expenses** - The original firm fixed price of \$100,175 did not include budget for supplies and other items such as supervisor Self-Study Kits, overhead transparencies, etc. Further, a separate budget under "On-Site/Misc. Costs" did not provide for these expenses. MBG billed the CNMI, however, for these expenses totaling \$1,863.

For hotels and meals, the actual amount billed did not exceed the adjusted firm fixed price of \$2,550. The budget was still over by \$287. In this case, MBG was entitled to the amount proposed, although in the billings, we noted unnecessary hotel expenses of \$136 and personal meal expenses of the Special Assistant of \$121 charged against the contract, discussed as follows:

Unnecessary Hotel Expenses - \$136

MBG's second billing to the CNMI included hotel expenses of \$136 incurred by the Subcontractor on her return trip to the US mainland after the conclusion of her work in the CNMI. Supporting documentation shows that the Subcontractor stayed overnight in a Los Angeles hotel on July 30, 1996. The hotel charge for the trip to Los Angeles was made after the conclusion of the Subcontractor's work and was not related to the work she performed for the CNMI drug-and-alcohol-free workplace program. The Subcontractor's original flight itinerary, based on the plane ticket submitted to the Department of Finance to claim contract payment, shows that she arrived in the CNMI on March 22, 1996 from Washington State, with connecting flights in San Francisco, Honolulu, and Guam; and was scheduled to go back to Washington State on June 26, 1996 via the

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- 1 24 hours were deducted from the budgeted travel time as they represent part of Phase IV, the phase which was totally eliminated.
- 2 The proposal provided that travel costs of \$2,000 are primarily for Subcontractor to do clinical assessment and collection training. Although our review showed that only minor time was spent by the Subcontractor for this purpose, we allowed \$2,000 of the Subcontractor's car rental to be covered by this budget.

same route. The Subcontractor did not incur hotel expenses on her flight to the CNMI. She also did not justify the change in the itinerary nor the additional hotel cost.

Personal Meal Expenses of the Special Assistant - \$121

Included in two billing statements of MBG are charges for meal expenses incurred by the Contractor during his trips to the CNMI. The billing statements supporting Payment Voucher nos. 932207 and 937592 showed at least six separate charges for business lunches and dinners attended by the Contractor, the Subcontractor, and the Special Assistant for Drug and Substance Abuse. The Special Assistant's share in the meal expenses totaled \$121. It is improper for the Special Assistant to accept meals offered by the Contractor.

**Office of the Special Assistant for Drug and Substance Abuse
Comparison of Contractor and Subcontractor's Actual (billed against Contract C60221)
and Adjusted Hours (after adjustment of hours related to unperformed deliverables)
March 27 - July 27, 1996**

Task	Contractor			Subcontractor		
	Actual Hours	Adjusted Hours	Actual is Over/(Under)	Actual Hours	Adjusted Hours	Actual is Over/(Under)
PHASE I Governmental Operations - Master Plan for the Design, Development, and Implementation of Urine Drug and Breath Alcohol Testing - Governor's Executive Order						
a. Development of conceptual framework and overall project management and evaluation plan	23	16	7	4	8	(4)
b. Formation of and liaison with task team	2	1	1	96	4	92
c. Development of model policy with task team	20	16	4	16	16	0
d. Initial development of model supervisor guidelines	4	16	(12)	4	4	0
e. Development of a sustainable supervisor training program including a train-the-trainer component	6	8	(2)	14	8	6
f. Coordinate with Special Asst. for Drug and Substance Abuse, meet with Office of Personnel Management, Civil Service orientation, Saipan Ice Conference, appear on cable T.V., Rotary, correspondence, meet with Tinian Mayor and Senator, other appointments	22	0	22			0
Total time for Phase I	77	57	20	134	40	94
PHASE II Clinical Testing Planning and Development of Collection, Testing, and Medical Review Protocol and Procedure Manual						
a. Design and development of urine drug and breath alcohol testing program	4	4	0	8	8	0
• Assessment of urine collection and testing capabilities	4	4	0	8	8	0
• Assessment of breath alcohol testing capabilities	4	4	0	16	8	8

**Office of the Special Assistant for Drug and Substance Abuse
Comparison of Contractor and Subcontractor's Actual (billed against Contract C60221)
and Adjusted Hours (after adjustment of hours related to unperformed deliverables)
March 27 - July 27, 1996**

Task	Contractor			Subcontractor		
	Actual Hours	Adjusted Hours	Actual is Over/(Under)	Actual Hours	Adjusted Hours	Actual is Over/(Under)
b. Conduct urine drug collection training	0	0	0	0	0	0
c. Conduct breath alcohol technician training	0	0	0	0	0	0
d. Development of recommendations for urine drug and breath alcohol testing	4	4	0	0	8	(8)
e. Design and determination of medical review officer program	0	2	(2)	5	8	(3)
f. Preparation of urine collection, testing, medical review, and breath testing training manual and protocol	0	0	0	8	0	8
Total time for Phase II	16	18	(2)	45	40	5
PHASE III Model Plan Implementation - Detailed Implementation with Two Agencies (Department of Public Safety and Public School System)						
a. Formation of agency task team and policy development facilitation	12	16	(4)	14	16	(2)
b. Supervisor training (2 sessions)	48	16	32	24	16	8
c. Development of individual agency implementation plan and supervisor guidelines	0	12	(12)	37	4	33
d. Employee awareness sessions for DPS and PSS (12 sessions of 2 hours duration)	0	6	(6)	24	24	0
Total time for Phase III	60	50	10	99	60	39
PHASE IV Private Sector Partnering						
a. Preliminary development of plan and networking of employers	0	0	0	12	0	12
b. Creation of Governor's drug and alcohol free workplace team	0	0	0			

**Office of the Special Assistant for Drug and Substance Abuse
Comparison of Contractor and Subcontractor's Actual (billed against Contract C60221)
and Adjusted Hours (after adjustment of hours related to unperformed deliverables)
March 27 - July 27, 1996**

		Contractor			Subcontractor		
Task		Actual Hours	Adjusted Hours	Actual is Over/(Under)	Actual Hours	Adjusted Hours	Actual is Over/(Under)
•	planning and presentation of regional awareness breakfasts and implementation seminars	0	0	0	0	0	0
•	development of "Governor's Blue Ribbon Partners" team	0	0	0	0	0	0
c.	Sponsorship of 2 regional breakfasts and seminars on establishing and implementing drug and alcohol free workplace programs	0	0	0	0	0	0
d.	Supervisory training programs for dealing with the employee in crisis (costs to be paid by participants)	0	0	0	0	0	0
Total time for Phase IV		0	0	0	12	0	12
PHASE V Full Policy Implementation to All Commonwealth Agencies, Supervisory Training, and Employee Awareness Sessions							
a.	Policy development (2 group policy sessions)	0	2	(2)	46	40	6
b.	Train-the-trainer preparation and training	0	4	(4)	18	16	2
c.	Supervisor training sessions (5 sessions)	0	0	0	12	40	(28)
d.	Employee awareness sessions (30 sessions of 2 hours each)	0	0	0	62	60	2
e.	Trouble shooting and incident consultation	0	5	(5)	8	20	(12)
Total time for Phase V		0	11	(11)	146	176	(30)
TOTAL HOURS		153	136	17	436	316	120

APPENDIX D
Pages 1 to 7 of 7

Note: APPENDIX D (pages 34 to 40), which contains the Governor's letter response dated July 8, 1997, was intentionally omitted to reduce this publication's file size. The response is available at OPA upon request.

APPENDIX E
Pages 1 to 2 of 2

Note: APPENDIX E (pages 41 to 40), which contains the Secretary of Finance's letter response dated June 5, 1997, was intentionally omitted to reduce this publication's file size. The response is available at OPA upon request.

APPENDIX F
Page 1 of 2

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
1. Take administrative action, and/or refer to the Attorney General's Office for possible action, against the Special Assistant for Drug and Substance Abuse for violations of the CNMI Procurement Regulations. Such action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of government money, or criminal prosecution (in accordance with Section 6-211 of the Procurement Regulations).	Office of the Governor	Resolved	<p>In his response, the Governor said he is willing to consider reasonable recommendations about appropriate actions to be taken with regard to the Special Assistant. Furthermore, he stated that after he had received OPA's initial report on this contract, he revoked the Special Assistant's expenditure authority and transferred it to his Special Executive Assistant. The Governor stated, however, that this action did not solve the previous error in the administration of the contract.</p> <p>OPA Comment</p> <p>We have already begun consultations with the Governor's staff regarding actions to be taken against the Special Assistant. The Governor should provide OPA a copy of the document showing the administrative action to be taken against the Special Assistant and/or copy of the results of AGO's review of the case.</p>
2. Establish a certification program for contracting officers and expenditure authorities to assist them in carrying out their duties. The program should include awareness of all laws and regulations impacting the responsibilities of expenditure authorities, including the CNMI Procurement Regulations and the CNMI Ethics Code Act.	Office of the Governor	Open	<p>The response did not address the recommendation.</p> <p>OPA Comment</p> <p>The Governor should provide OPA a copy of the specific plan of action to establish a certification program for contracting officers and expenditure authorities.</p>
3. Appoint the Director and Addiction Specialist and the therapist from the CNMI Mental Health and Social Services to evaluate the effectiveness of the Drug and Substance Abuse program. They should (a) determine whether MBG was able to train supervisors to be qualified trainers for further training of other government personnel as originally planned under the MBG contract, and (b) identify the trained supervisors and provide OPA their names for reference purposes.	Office of the Governor	Open	<p>The response did not address the recommendation.</p> <p>OPA Comment</p> <p>The Governor should provide OPA copies of the (1) appointment letters of the Director and Addiction Specialist and the therapist to evaluate the effectiveness of the Drug and Substance Abuse program and (2) results of evaluation.</p>

APPENDIX F
Page 2 of 2

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
<p>4. Stop payment of the additional billing of \$11,530 for work performed under the original contract after it was canceled. The billing should be disregarded for violation of the CNMI Procurement Regulations. The authorizing officials should be held responsible for any payment.</p>	DOF	Open	<p>The Secretary of Finance stated that this payment has not been made and any payments on this contract will be held until AGO completes its investigation.</p> <p>OPA Comment</p> <p>The Secretary of Finance should provide OPA copies of the (1) directive instructing DOF-Finance & Accounting to stop payment of the additional billing of \$11,530 for work performed under the original contract after it was canceled, and (2) letter informing the Contractor that the billing is being disregarded.</p>
<p>5. Reduce any future payments to MBG by \$21,365, which was paid in excess of the firm fixed price. In particular, the \$21,365 should be offset against the \$10,584 (under PO P68172) and \$12,309 (supplemental contract C70199) which are valid unpaid billings by the Contractor</p>	DOF	Open	<p>The Secretary of Finance stated that the AGO disagreed with the recommendation. Further, AGO instructed DOF to release the payments due on other contracts with the vendor while it is continuing to investigate the status of the disputed contract.</p> <p>OPA Comment</p> <p>It is proper for the CNMI to withhold payment of \$22,893 unpaid billings to the Contractor (covered by purchase order and supplemental contract) as this is necessary to recover the earlier \$21,365 overpayment to the Contractor. The AGO's claim that the two pending invoices are separate contractual obligations from the original contract is not correct. The purchase order and supplemental contract were used only because no change orders to the original contract were possible, that contract having been canceled. For this reason, it makes sense for the CNMI to withhold payment of so much of MBG's claim as is necessary to recover for the earlier overpayment to the Contractor. The CNMI would be justified in paying MBG only \$1,528.</p> <p>The Secretary of Finance should reconsider and implement our recommendation by withholding payments to MBG except for the net difference of \$1,528 (\$22,893 unpaid billings less \$21,365 overpayment to the Contractor).</p>