

**Superior Court of Guam
Judicial Building Fund**

**Performance Audit
October 1, 1999 through September 30, 2004**

**OPA Report No. 05-08
December 2005**



OFFICE OF THE PUBLIC AUDITOR

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EXECUTIVE SUMMARY

Superior Court of Guam
Judicial Building Fund
October 1, 1999 through September 30, 2004

The Judicial Building Fund (JBF) was established by Public Law 17-82 in December 1984 to plan, construct, furnish, and equip a new Judicial Building. Revenues include all income and interest income received by the Courts for the filing of documents or imposition of fines, and from rental income paid by tenants occupying the Judicial Building. The JBF is under the stewardship of the Judicial Council of Guam. Some of our findings include:

1. **Non-compliance with Judiciary procurement regulations.** The Superior Court did not competitively procure and/or maintain adequate supporting documentation for the procurement of capital outlay, supplies and services totaling \$999,730. Sole source procurement without public notification was utilized for 61% of the transactions reviewed.
2. **Non-Approval of JBF expenditures by the Judicial Council.** With the exception of a May 2002 approval, the Judicial Council did not approve JBF expenditures through “a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council” prior to FY 2004.
3. **Budget over-expenditures.** Over the past five years, JBF expenditures exceeded various line item budget levels approved by Rural Development. In FY 2004, JBF expenditures exceeded the approved Rural Development budget by \$176,550. Court officials did not seek prior approval from Rural Development, as required, to reprogram line item categories within a fiscal year and among fiscal years. The expenditures reported to Rural Development did not correspond to the audited expenditures reported in the annual financial audits of the Government of Guam for fiscal years 2000, 2001, and 2002.
4. **Non-compliance with reporting requirement.** The Judicial Council did not submit to the Legislature an annual accounting of JBF revenues and expenditures with its annual budget request as required by law.
5. **Discretionary procurement of lobbying services.** The audit disclosed that \$564,039 was spent from local appropriations to lobby a Congressional measure regarding Guam’s judiciary. Although the JBF was not utilized to pay for the lobbying, neither the Superior Court nor the Supreme Court solicited request for proposals. Unlike the Executive Branch, the Judiciary’s procurement policy allows for discretionary procurement of professional services and does not require advertisement regardless of the amount.
 - The Superior Court paid \$479,000 to lobby against the measure. The Superior Court hired Howard Hills for “legal research and advisory consultation.” Howard Hills was the conduit to pay lobbyist Jack Abramoff. According to Howard Hills, of the \$479,000 he received, \$324,000 was transferred to Jack Abramoff’s firm.

- Four individuals signed the contract with Howard Hills. In contrast, the series of change orders that increased the projected cost from \$20,000 to \$120,000, then to \$479,000, were signed only by Howard Hills and the former Administrative Director of the Superior Court.
 - Howard Hills' payments consisted of an initial \$20,000 retainer paid in 1998, 47 \$9,000 payments paid from February 2001 to July 2002, and one \$36,000 paid in May 2001. Procurement by sealed bid was required for purchases over \$10,000 under the Prior Procurement Policy. It appears that Howard Hills was paid in \$9,000 increments to circumvent the sealed bid requirement.
 - The Superior Court did not issue IRS Form 1099-MISC despite having paid Howard Hills \$20,000 in 1998, \$108,000 in 2001 and \$351,000 in 2002.
 - The lobbying registration filed by Greenberg Traurig, LLP, Jack Abramoff's firm, named Howard Hills and not the Superior Court, as its client.
- The Supreme Court paid \$85,039 to two firms to lobby in favor of the measure.
- A detailed billing submitted by the first firm indicated that services had commenced prior to the signing of the contract. Charges totaling \$2,311 were performed two months before a Purchase Order (PO) was approved. The PO amount was increased by \$4,349 from the original amount of \$4,000 to \$8,349. However, services were rendered prior to the adjustment, and the adjustment date coincided with the date on the check for \$4,349. This firm was paid \$8,349. We found no lobbying registration filed by this firm.
 - A \$30,000 PO was processed for the lobbying services provided by McClure, Gerard & Neuenschwander's. This firm was paid \$76,690, or \$46,690 more than was indicated in the PO. The registration filed by McClure, Gerard & Neuenschwander identified the Supreme Court as its client.

6. **Unrealized rental revenues.** The Superior Court leased a portion of the old Superior Court building for \$1 annually to the I Inetnon I Emplehao I Kotte (SCOG Employees Association), which in turn sublet it to concessionaires from November 1992 to January 2005. The SCOG Employees Association earned \$245,553 that could have been earned by the Superior Court.

A preliminary draft report was transmitted to the Judiciary on November 16, 2005. We met with Judiciary officials on November 22, 2005 to discuss the preliminary draft. As a result of the meeting, subsequent revisions to the preliminary draft were made. A final draft report was transmitted to the Judiciary on December 2, 2005 for its official response. On December 13, 2005, the Administrator of the Courts (Administrator) submitted a 24-page response indicating concurrence with four of our five recommendations. The Administrator concurred with recommendations 1, 2, 4, and 5, and disagreed with recommendation 3. In addition, the response contained extensive comments to the various findings. A synopsis of management's response and OPA reply follows:

Disagreement with Recommendation 3

The Administrator disagreed with the recommendation to revise its current procurement regulations to include maintaining a list of qualified professionals. According to the response, “a list of those professionals willing to offer their services to the Judiciary is already informally maintained.” Our recommendation to maintain a formal list of professionals (vendors) selected through request for proposals provides the Judiciary with a useful tool for encouraging competition and ensuring that professional services are procured with fairness and equity.

Discussion of Findings

- 1. Non-compliance with Judiciary procurement regulations.** The Administrator’s response acknowledged that proper documentation was not maintained for various procurement transactions tested during the audit, and that while the solicitation process is often bypassed for those procurements, the purchases were made “in the best interest of the Judiciary.” Although the Administrator was in agreement that complete and written documentation be maintained for each procurement file, the response noted that there is no requirement for the Purchasing Officer to document a decision to bypass the procurement process for small purchases. We emphasize the importance of adequate written documentation to provide an audit trail and the rationale for procurement decisions. As such, the procurement files should speak for themselves.
- 2. Non-approval of JBF expenditures by the Judicial Council.** The response stated that while the Judicial Council did not approve JBF expenditures, all expenditures “received the written approval of the lender, Rural Development, as required.” It is the Judiciary’s position that the Statement of Budget, Income and Equity reports submitted to Rural Development are tantamount to approval. No other documentation indicating written approval by Rural Development other than the Rural Development letters of concurrence/non-concurrence with proposed budget amounts and one approval increasing a line item budget was provided to us.
- 3. Budget over-expenditures.** The Administrator stated that the \$176,550 reported as over-expenditure for fiscal year 2004 was inaccurate. He claimed that they did not exceed their fiscal year 2004 budget and that reprogramming funds among line item categories within a fiscal year and among fiscal years was common practice. He also pointed out that Rural Development has neither communicated that such practice was inappropriate nor imposed any sanction for this practice. However, the Administrator’s position is inconsistent to that of Rural Development. An Area Specialist stated that Rural Development must approve any reprogramming in writing.
- 4. Non-compliance with reporting requirement.** The response contended that the Judiciary provided the Legislature with financial statements and that the Legislature has never indicated that the Judiciary failed to comply with this reporting requirement. The Administrator stated that, “the Judiciary will cause to be prepared, even at additional expense, full statements of accounts of all money received and expended out of JBF accounts for annual transmittal to the Legislature.” The requirement of law is to submit current financial information as audited financial information can be at least one to two years old at the time of the budget submission. Our recommendation calls for the

submission of unaudited accounting of revenues and expenditures, which can be generated from the Judiciary's financial management system at no extra cost.

5. **Discretionary procurement of lobbying services.** The Administrator suggested that we may have erroneously miscalculated the payments to Howard Hills by adding two voided checks and have misrepresented the amounts in our analysis. The purported miscalculation is not a result of the voided checks, which were originally included in the schedule for illustration purposes only and did not affect the total payments. The Administrator did not include the initial \$20,000 retainer fee in his calculation. The voided checks were subsequently eliminated from the schedule.
6. **Unrealized rental revenues.** The response contended that leasing a portion of the former Superior Court to the Employees Association for \$1 annually had several non-monetary benefits such as improving employee morale. However, because of the sublease the Superior Court lost the opportunity to earn \$245,553 in rental revenues.
7. **Complicated method of allocating revenues.** The response noted that employees involved in the process of allocating JBF revenues are aware of the proper procedures. However, the process, though instilled among the employees, should be documented to ensure accuracy and consistency.

Although a user-friendly format describing each fee, the amount, and the apportionment of each fee between the JBF and other funds was created and disseminated to employees, we noted that "the SOP is still in draft form and does not require the approval of the Judicial Council." As the new schedule is a modification, the draft SOP should be finalized, approved by the Judicial Council, and disseminated to all personnel involved in the allocation and collection of revenues.

8. **Use of JBF to Supplement Court Operations.** The response stated that although it appeared that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation, it has always sought Rural Development approval. However, Rural Development has informed the Judiciary in writing that, "[t]he judicial building fund (JBF) can not be used to relieve the local government's responsibility in meeting its operating expenses."

See Appendix 14 for the Administrator's 24-page response.



Doris Flores Brooks, CPA, CGFM
Public Auditor



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Introduction

This report represents the results of the audit of the Superior Court of Guam’s Judicial Building Fund (JBF). The audit was conducted at the request of the Speaker of the 27th Guam Legislature.

Our audit objectives were to determine whether JBF revenues were properly recorded and expended in accordance with the JBF’s enabling legislation and loan covenants, and to determine the amounts associated with the Superior and Supreme Courts’ lobbying activities. The scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

In January 1974, the Guam Legislature passed P.L. 12-85, the Court Reorganization Act, renaming the Island Court as the Superior Court of Guam. The Superior Court was given original jurisdiction over all cases arising under Guam law. Its predecessor, the Island Court, had jurisdiction only over misdemeanors, civil actions having a value less than \$2,000, domestic, probate, and land registration proceedings. Prior to the Court Reorganization Act, the Guam District Court, a federal institution, had jurisdiction over felonies and all civil cases with a value of more than \$2,000.

The U.S. Congress, through the Omnibus Territories Act of 1984, amended the Organic Act to allow the Legislature to form a Supreme Court or “a court of appeals” for Guam.¹



Image 1: External view of the Guam Judicial Center.

In December 1984, P.L. 17-82 established the JBF “for the sole purpose of financing the planning, construction, furnishing and equipment of a new judicial building for the Superior Court of Guam.” Revenue sources of the JBF include interest income, all income received by the Courts for the filing of documents or imposition of fines, and rental income paid by tenants occupying the judicial building.

The JBF is a fund separate and apart from the Government of Guam General Fund and other Superior Court of Guam accounts. The Judicial Council of Guam (Judicial

¹ A Supreme Court created by P.L. 12-85 had been found inorganic by the U.S. Supreme Court in *Territory of Guam v. Olsen* (1977), 431 U.S. 195, 97 S. Ct. 1774.

Council) oversees the JBF, and is required to submit an annual financial report of revenues and expenditures of the JBF to the Legislature.

In March 1988, the Judicial Council borrowed \$11 million from the Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), to finance the construction of a new judicial building. FmHA was later renamed Rural Development Authority, USDA (Rural Development).

The new building, currently known as the Guam Judicial Center (Judicial Center), was “designed to house the Superior Court of Guam, the Attorney General's Office, the Public Defender [Service Corporation] and eventually, the Supreme Court of Guam.” Construction commenced in September 1988 and was completed by July 1991.



In July 1997, Guam’s Congressional Delegate introduced House Resolution (H.R.) 2370, Guam Judicial Empowerment Act of 1997, “[t]o amend the Organic Act of Guam for the purposes of clarifying the local judicial structure and the office of Attorney General.” This measure was passed as U.S. P.L. 105-291, Guam Organic Act Amendments of 1998, but without the provisions clarifying Guam’s judicial structure.

In February 1998, P.L. 24-139, Section 33, amended the structure of the Judicial Council to include all Superior Court Judges and three community members appointed by the Presiding Judge. The Presiding Judge was Chairman of the Judicial Council until October 2003, although section 25 of P.L. 24-139 gave the Supreme Court administrative authority over the Superior Court.

In February 2001, in another effort to clarify the local judicial structure, Guam’s Congressional Delegate introduced H.R. 521. The bill sought to amend the Organic Act of Guam to designate the Supreme Court as the highest court in Guam’s judicial branch and provide the Supreme Court supervisory and administrative jurisdiction over the Superior Court. The two Courts were in disagreement over the proposed changes, and each initiated lobbying efforts in Washington, D.C. H.R. 521 was not passed and the succeeding Guam Congressional Delegate introduced a similar measure, H.R. 2400, in June 2003. See page 21 for specifics on lobbying efforts.

In October 2003, P.L. 27-31 unified the Superior and Supreme Courts into the Judiciary of Guam. The law further modified the membership of the Judicial Council to consist of the three full-time Supreme Court Justices, the Presiding Judge, and a Superior Court Judge appointed by the Presiding Judge. The law also designated the Chief Justice as Judicial Council Chairman.

In October 2004, Congress passed H.R. 2400 as U.S. P.L. 108-378. This law amended the Organic Act of Guam, re-organized the local judicial system, and designated the Supreme Court as the highest court of Guam.

Farmers Home Administration Loan

The Judicial Council entered into an \$11 million, 40-year loan with the Farmers Home Administration in March 1988 for the purpose of expanding or extending the Judicial Complex² “subject to the concurrence of the Governor in writing and the Legislature by statute.”³ The Governor of Guam in July 1988 and the Guam Legislature through P.L. 19-19 in August 1988 concurred with the execution of the Judicial Council’s loan agreement with Rural Development. Specific terms and conditions include:

- (1) To use the loan solely for purposes authorized by FmHA;
- (2) To maintain improvements and make repairs required by FmHA;
- (3) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses not directly incurred by the facility financed by FmHA;
- (4) To assign all monies (rent, issues, profits and income) now in or hereafter coming into the JBF to FmHA; and
- (5) To maintain books and records relating to the operation of the facility and its financial affairs, and to provide for an audit as may be required.

A real property mortgage with assignment of rents and fees secures the \$11 million loan. A portion of the Judicial Complex, as well as the adjacent parking lot, was pledged as collateral. The property on which the former Superior Court sits is not subject to the mortgage.

The loan agreement requires the Judicial Council to have a reserve equal to the annual debt service payment of \$901,560. The loan agreement allows the Judicial Council to withdraw from the reserves, subject to USDA approval, to repair catastrophic-related damages to the facility, repair or replace short-lived assets, and extend or improve the facility. However, in the event that funds are withdrawn from the reserve account, deposits of \$90,156, or 10% of the annual debt service payments, are to be made each year until the account balance reaches the reserve requirement, or \$901,560.

As of September 30, 2004, the amount owed to Rural Development was approximately \$4.9 million. The loan was initially expected to mature in 2028, but because advance payments were made on the loan, it is expected to be paid in full by 2011. See Appendix 4.

² The Judicial Complex includes the former Superior Court and the Judicial Center (new building).

³ P.L. 17-82 originally indicated that Legislative concurrence was to be in the form of a resolution. P.L. 19-06 modified the Legislative approval requirement to be by statute.

Results of Audit

JBF revenues declined steadily over the past five years from \$2.3 million in 2000 to just under \$1 million in 2004. The decline can be attributed primarily to the decrease in traffic fines collected, the passage of various legislation re-directing JBF revenues to other purposes, and the decline in interest income.

The Superior Court did not initially provide us with their method of allocating revenues, which made it difficult to ascertain whether the current methodology was in accordance with existing laws and promulgation orders, and whether all revenues were properly allotted to the JBF and the other funds. After our review, we were provided with a modified allocation methodology and procedures for the current fees schedule, which we utilized to verify 11 relevant transactions.⁴ We determined that the new allocation method is in accordance with laws and promulgation orders and that revenues were properly allotted to the JBF and the other funds.

The JBF carries \$5.6 million in rental receivables from the Office of the Attorney General and the Public Defender Service Corporation. Because there appears to be no commitment from either tenant to pay off their respective outstanding debt, it has been the practice of the Superior Court to fully reserve these receivables as uncollectible.

P.L. 26-101 amended the JBF's enabling legislation to allow for partial diversion of funds. An amount not to exceed \$20,000 per annum was to be provided for the Hero Scholarship Program Fund upon provision of a listing of qualified applicants by the University of Guam or Guam Community College. Because no listing of qualified applicants has been provided to the Judiciary by the University of Guam or Guam Community College, no funds have been provided to this program.

P.L. 26-124 authorized the Judicial Council "to provide for the design, construction and collateral equipment of a forensic science laboratory." The project was not undertaken, because the forensic science laboratory is not an expenditure directly incurred by the facility financed by Rural Development and is therefore not a permissible use of JBF.

Pursuant to a Judicial Council resolution, all JBF expenditures, except the quarterly loan payments to Rural Development, were to be approved through "a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council." Our review of Judicial Council minutes indicated that the Judicial Council did not approve all JBF expenditures prior to FY 2004 with the exception of the approval of the use of JBF funds for existing contracts in May 2002.

It appears that the Judicial Council overspent various line item budget levels, but not necessarily in the overall budget levels for fiscal years 2000 through 2004. Further, it

⁴ Of the transactions reviewed, the modified allocation methodology and procedures is only applicable to 11 of the 61 revenue transactions reviewed.

appears that the Judicial Council exceeded the overall budget approved by Rural Development by \$176,550 in FY 2004. Judiciary officials explained that the over-expenditure was a result of capital improvement projects approved by Rural Development in previous fiscal years, but did not commence until FY 2004. In addition, expenditures reported to Rural Development did not correspond to audited expenditures reported in the annual financial audits of the Government of Guam for fiscal years 2000, 2001, and 2002.

It appears that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation. Rural Development has informed the Judiciary in writing that, “[t]he judicial building fund (JBF) can not be used to relieve the local government’s responsibility in meeting its operating expenses.”

The Judicial Council has not transmitted unaudited financial information of all JBF revenues and expenditures to the Legislature as part of the annual Superior Court budget submission as required by P.L. 17-82.

The Judicial Council did not follow its established procurement regulations for the procurement of capital outlay, supplies, and services totaling \$999,730. These purchases were not competitively procured, were not advertised, and/or lacked appropriate supporting procurement documentation. The Superior Court also utilized sole source procurement extensively, which led to situations where competition was not sought and public notification (i.e. advertisements) was not provided.

The Superior and Supreme Courts had opposing views, and each initiated lobbying efforts for and against H.R. 521, a measure containing provisions to designate the Supreme Court as the highest Court in Guam’s judicial structure. The Superior Court spent \$479,000 from its General Fund appropriations against the measure, and the Supreme Court spent \$85,039 from its prior fiscal years lapsed funds in support of the measure. Although the JBF was not utilized for the payment of lobbying fees, the Courts’ procurement regulations at the time of the lobbying activities did not apply to professional services such as legal fees, therefore, the lobbying services were not subject to the competitive procurement process and advertising was not required.

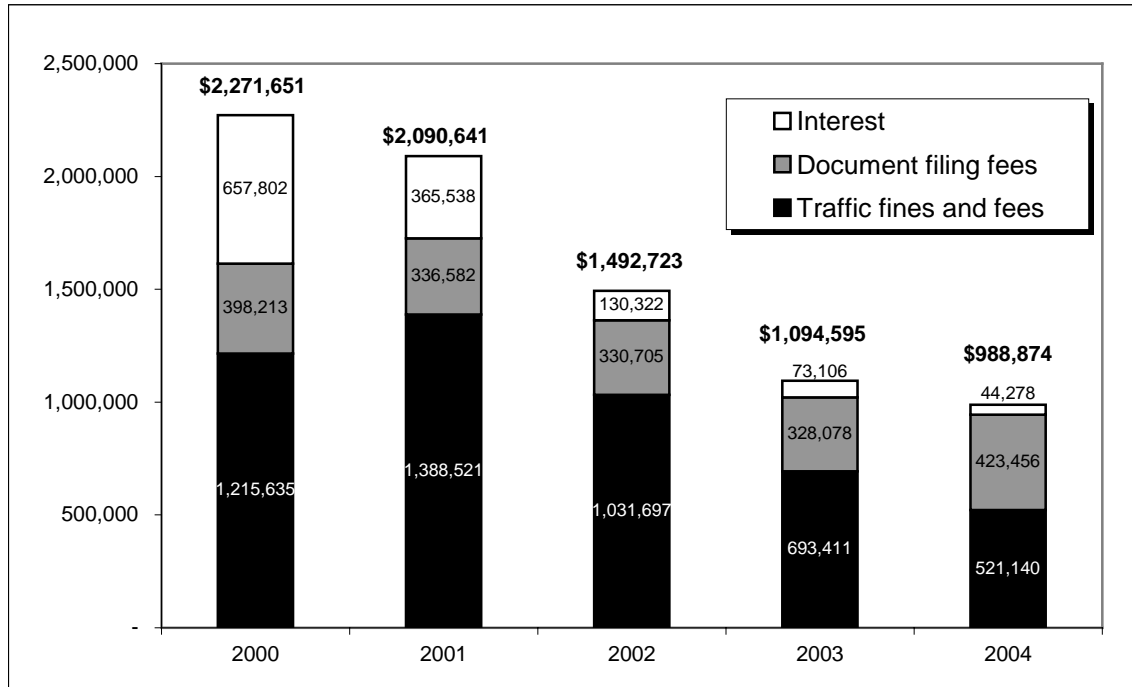
The Superior Court could have realized approximately \$245,553 of rental revenues over the life of the lease of a portion of the former Superior Court to the I Inetnon I Emplehao I Kotte, who in turn sublet it to concessionaires, from January 1993 to January 2005. However, it has leased a portion of the former Superior Court for only \$1 annually. The lease was recently terminated due to the Judiciary’s space requirements.

JBF Revenues

JBF revenues include all rental income paid by tenants occupying the Judicial Center, all interest income from all other accounts of the Superior Court, document filing fees, and traffic fines, except incomes earmarked for the Criminal Injuries Compensation Fund and the Guam Law Library.

JBF revenues have declined steadily, going from \$2.3 million in FY 2000 to just under \$1 million in FY 2004, a decrease of 56 percent in four years. See Appendix 5.

Chart 1: FY 2000 – 2004 Judicial Building Fund Revenues



The decline can be largely attributed to the following factors: (1) a reduction in the issuance of traffic citations and collection of traffic fines due to the shortage of police personnel; (2) the enactment of various laws apportioning revenues originally earmarked for JBF to other funds; and (3) the decline in interest income.

Decline in Traffic Fines Collected

Traffic fines represent a significant majority of total JBF revenues. Revenues derived from traffic fines declined considerably from a high of \$1.2 million in 2000 to just slightly over \$500,000 in 2004. See Chart 1 and Appendix 5.

According to Judiciary officials, the decline in the collection of traffic fines is a result of the decline in the number of traffic citations issued, and can be partly attributed to the shortage in manpower within the Guam Police Department (GPD). The Chief of Police concurred with the Judiciary officials.

GPD issued 12,170 citations in FY 2000, 16,551 in FY 2001, 7,927 in FY 2002, 4,910 in FY 2003, and 5,295 in FY 2004. Revenues derived from traffic fines were \$1,215,635 in 2000, \$1,388,521 in 2001, \$1,031,697 in 2002, \$693,411 in 2003, and \$521,140 in 2004. See Chart 2.

Chart 2: Number of Traffic Citations Issued v Traffic Revenues

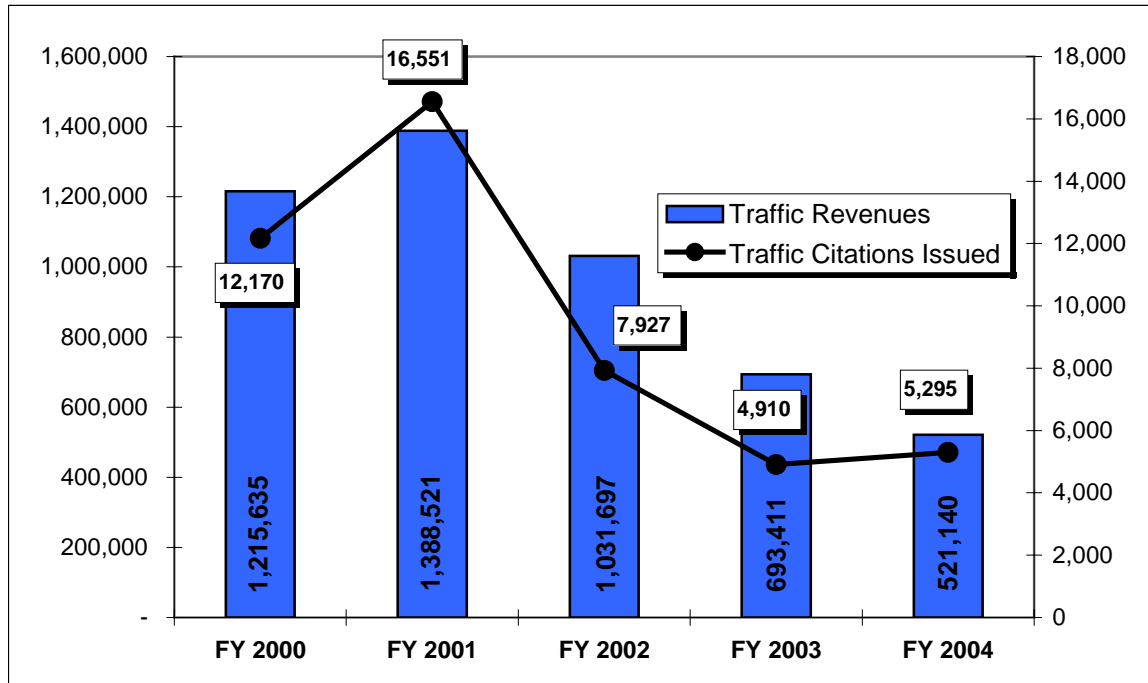


Chart 2 illustrates that traffic revenues declined correspondingly with the decline in traffic citations issued. FY 2004 did not follow this trend, because Superior Court Judges have allowed an increasing number of traffic violators to perform community service in lieu of paying traffic fines.

Decline of Interest Income

Interest income, another major source of revenue, also declined precipitously going from \$657,802 in 2000 to \$44,278 in 2004. According to Judiciary officials, the decline in interest income can be attributed to the falling interest rates in the past years. In addition, the Controller stated that the Judiciary has experienced delays in receiving their General Fund allotments from the Department of Administration causing the Judiciary to forgo potential interest income.

Complicated Allocation of JBF Revenues

Since the passage of P.L. 17-82, several laws and Superior Court promulgation orders have affected the apportionment of filing fees. As a result of these changes, the process of how these revenues are to be allocated to the JBF and other funds has become more complicated. See Appendix 6.

Two separate divisions are involved in the preparation of revenue source documents and the collection of revenues. The Intake Unit within the Courts & Ministerial Division prepares the source documents, which specify the fine/fee amount and dictate the allocation of fees to the JBF and various other funds. The source documents are provided to court patrons who present them to the Financial Management Division for payment.

We requested a schedule of how the various fines and fees are to be allocated to the JBF and other funds. Although the Financial Management and Courts & Ministerial Divisions did not readily provide us with a schedule for apportioning fees, a schedule was later provided.

An Intake Unit Supervisor said that staffers have been orally informed of fee increases. It appears that there was no written schedule provided to staffers as to how to apportion the fees among the various funds, and that staffers rely on memory when allocating the fees.

Of the approximately \$2.1 million in revenues collected in FY 2003 and 2004, we reviewed 61 revenue transactions with a combined value of \$157,301 to determine whether JBF revenues were properly distributed among various funds and programs, and in accordance with law and promulgation orders.

In July 2004, the existing fee schedule (old schedule) was modified and a new fee schedule was established. Of the 61 transactions reviewed, 50 transactions were under the old schedule and 11 transactions were under the new schedule.

During our review, we noticed that some fees were not entirely deposited into the JBF and were instead allocated among other funds. While a basic fee distribution schedule was provided to us, the apportionment of fees among the various funds remained unclear. The apparent lack of a consistent and documented fee schedule and apportionment procedure during our review process made it difficult to identify the allocation method used by Judiciary employees to account for all revenues received pre-July 2004 and amounts allocated to the JBF and other funds.

Due to the lack of a detailed apportionment schedule during our review process, we were unable to ascertain whether the revenues allocation methodology was in accordance with law and promulgation orders. We reviewed revenue transactions from fiscal years 2003 and 2004, but subsequently suspended our review of revenue transactions for fiscal years 2000 through 2002.

In September 2005, the Judiciary began modification of its existing filing fees schedule to address the fee schedule changes, which took effect on July 1, 2004, and to include the allocation of the various fees among the JBF and other various funds. This schedule was provided to us and used to verify whether the 11 transactions were properly allocated to the JBF and other funds according to the new fee schedule. We determined that the 11 transactions were properly allocated, however, we did not verify the 50 transactions that occurred prior to July 2004, and as such, we were unable to ascertain whether the allocation was in accordance with laws and promulgation orders. Although a memorandum provided by the Judiciary states the "SOP is still in draft form and does not require the approval of the Judicial Council" it was disseminated to the Intake Unit on November 11, 2005 to be immediately adhered to by all personnel directly involved in the revenue allocation and collection process.

As of November 2005, only fines and fees for traffic and small claims are automated. Filing fees, because of their susceptibility to change, are still allocated manually by staffers.

We recommend that the Judicial Council finalize the official allocation schedule in accordance with current laws and rules, and consistent with the Rural Development agreement. Further, we recommend that they automate the process of allocating filing fees to the JBF and other various funds in order to ensure accuracy and minimize human error.

Rent Receivables Uncollected

Another source of JBF revenues had been rent paid by Judiciary tenants, the Office of the Attorney General (OAG) and the Public Defender Service Corporation (PDSC). Up until 1997, rents were a steady source of income.



Office of the Attorney General. The OAG entered into a lease agreement with the Superior Court for 62 months, from August 1991 to September 1996. The OAG occupied 16,935 square feet of space at \$2.30 per square foot, or \$38,951 per month, for the first 36 months. For the next 13 months, the AG paid \$40,898 per month, or approximately \$2.415 per square foot.

For the remaining 13 months, the OAG paid \$42,947 per month, or approximately \$2.536 per square foot. Records show that the OAG paid rent for a total of 60 months, or \$2,406,265,⁵ which accounts for all but the last two months of the lease term.

The lease agreement expired in September 1996. The OAG remained in the Judicial Center, but did not remit any further rent. At the end of FY 2004 the OAG owed \$3.7 million in unpaid rent. Unable to reach an agreement with the Judicial Council, the OAG was ordered to vacate the premises by February 28, 2005.



Public Defender Service Corporation. The PDSC entered into a lease agreement with the Superior Court for 60 months, from August 1992 to August 1997, for 7,770 square feet in the second floor of the former Superior Court. For the first 36 months, the PDSC paid \$2.30 per square foot, or \$17,871 per month. For months 37 through 49, the PDSC paid \$18,765 per month, or approximately \$2.415 per square foot. For the remaining 12 months, the PDSC paid \$19,703 per month, or \$2.536 per square foot.

⁵ Calculation by square footage may differ due to rounding.

The PDSC entered into another lease agreement with the Superior Court in August 1997, but did not pay rent under this new agreement. As of September 2004, the PDSC owed approximately \$1.9 million in unpaid rent.

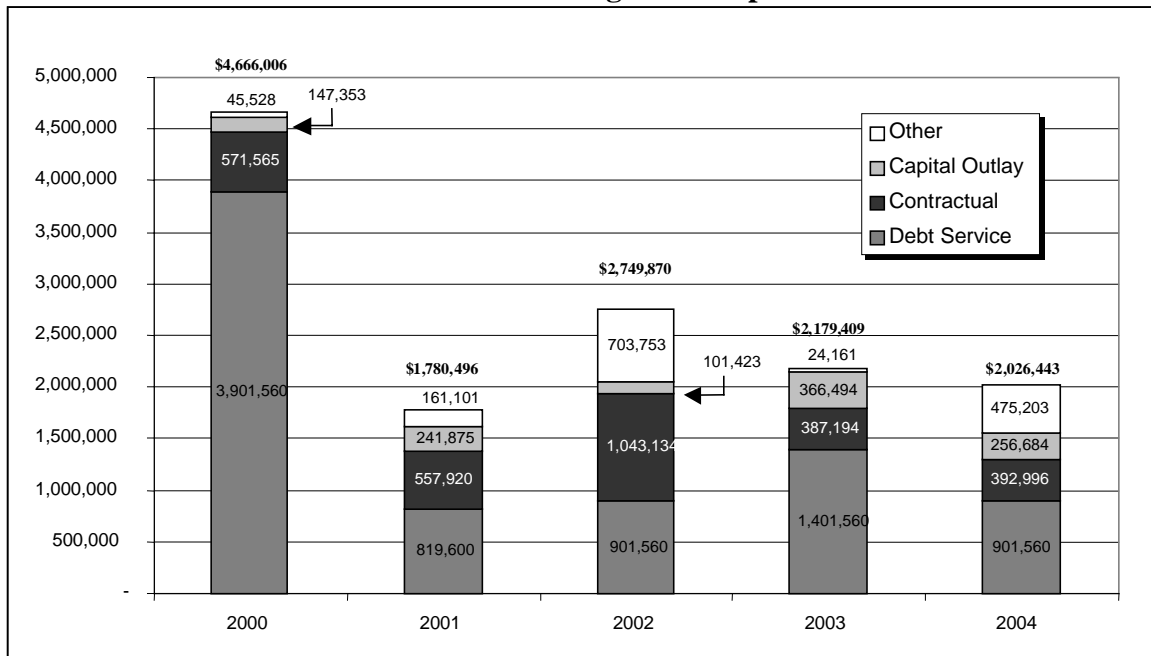
In October 2004, the PDSC negotiated a new and lower rental agreement with the Judicial Council at a monthly rate of \$12,500, or \$1.609 per square foot. The current lease is for 12 months from October 2004 to September 2005 with the option to renew for three one-year periods. The PDSC has been current with its rental payments under the new agreement. The PDSC rental payments are deposited into the JBF, but are earmarked for a specific Judiciary project.

As of September 2004, the Judiciary carried \$5.6 million in rental receivables from the OAG and PDSC. Due to the Government of Guam’s financial deficit, it is unlikely that the Guam Legislature will provide additional appropriation to the OAG and the PDSC to pay the unpaid rent. Moreover, Judiciary officials indicated that there appears to be no commitment from the OAG or the PDSC to pay off their respective outstanding debt. Due to this lack of commitment to pay, it has been the practice of the Superior Court to fully reserve the rent receivables as uncollectible.

JBF Expenditures

JBF expenditures were \$4.7 million in 2000, \$1.8 million in 2001, \$2.7 million in 2002, \$2.2 million in 2003, and \$2 million in 2004, or approximately \$13.4 million for the five years. See Chart 3 and Appendix 5.

Chart 3: Judicial Building Fund Expenditures



NOTE: "Other" includes utilities, non-capital equipment, personnel, and supplies & materials.

The JBF was initially established by P.L. 17-82 for the “sole purpose of financing the planning, construction, furnishing and equipment of a new Judicial Building for the Superior Court of Guam, and shall be used for no other purpose.” The Judicial Council entered into a loan agreement with Rural Development “subject to the concurrence of the Governor in writing and the Legislature by statute.”⁶ The Governor concurred in July 1988. In August 1988, P.L. 19-19 provided Legislative concurrence to the Judicial Council’s loan agreement with Rural Development “embodied in the loan resolution adopted by the Judicial Council on March 17, 1988.”

The uses of the JBF in the enabling legislation appeared to be more stringent than the uses contained in the Judicial Council’s loan agreement with Rural Development. Specifically, the law only authorized the JBF to be used to plan, construct, furnish, and equip a “**new Judicial Building**” [emphasis added]. In contrast, the loan permitted the use of JBF for the “the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its **Judicial Complex**” [emphasis added].

Other Authorized Uses of JBF

Over time, new laws expanded the use of the JBF for the Hero Scholarship Program Fund and the Forensic Science Laboratory.

Hero Scholarship Program Fund

In June 2002, P.L. 26-101 allowed for the partial diversion of JBF monies. The law created the Hero Scholarship Program Fund to aid children of fallen peace officers of Guam to attend the University of Guam (UOG) or the Guam Community College (GCC). P.L. 26-101 also provided that an amount not to exceed \$20,000 per annum “shall be available for the Hero Scholarship Program Fund” provided that UOG or GCC provides to the Judiciary a listing of qualified applicants. According to Judiciary officials, no funds have been provided to this program because neither University of Guam nor Guam Community College provided a listing of qualified applicants. Further, because the Hero Scholarship Program Fund is an expenditure not directly incurred by the facility, Judiciary officials are of the opinion that it is not a permissible use of JBF under the loan agreement unless approved by Rural Development.

In September 2005, the Legislature through P.L. 28-68 appropriated \$20,000 from the JBF to the Hero Scholarship Program for FY 2006 without requiring that a list of qualified applicants first be provided by UOG or GCC.

Forensic Science Laboratory

In August 2002, P.L. 26-124 authorized the Judicial Council “to provide for the design, construction and collateral equipment of a forensic science laboratory” to benefit GPD. The loan to finance the laboratory was to be repaid from JBF monies. Although

⁶ See footnote 3.

authorized by law, the Judicial Council was not required to finance the forensic science laboratory. The Controller and the Administrator of the Courts⁷ stated that, like the Hero Scholarship Program Fund, the forensic science laboratory is not an expenditure directly incurred by the facility and is therefore not a permissible use of JBF without RDA approval under the loan agreement.

In September 2005, P.L. 28-68 required that the Judicial Council commence efforts to effectuate the provisions of P.L. 26-124 authorizing the Judicial Council to design and construct the forensic lab within ninety days of October 2, 2005. Judiciary officials indicate that such efforts have already begun.

We recommend that the Judicial Council confer with Rural Development on the applicability of JBF funds for the Hero Scholarship Program Fund and Forensic Science Laboratory pursuant to various public laws.

Non-Approval of JBF Expenditures

In April 2002, the Judicial Council adopted Resolution No. 2002-001, which states that

. . . No funds from the Judicial Building Fund, with the exception of the quarterly loan payment to [Rural Development], shall be expended without a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council . . .

Our review of Judicial Council minutes indicates that, with the exception of the approval of use of JBF for existing contracts in May 2002, JBF expenditures were not approved by “a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council” prior to FY 2004.

Budget Over-Expenditure

According to an Area Specialist from Rural Development, all JBF expenditures require Rural Development approval. The process of approval starts with the Superior Court submitting an annual line item budget. Any modification to the initially approved budget, to include any reprogramming, requires the written approval of Rural Development.

Budgets provide a basis for the evaluation of actual performance.

Budgetary control is the use of budget by management to monitor and control the operations of a company . . . Budget reports contain relevant information that compares actual results to planned objectives. This comparison is motivated by a need to monitor performance and control activities.⁸

⁷ The Administrator of the Courts assumed the position on January 2004, and also held the position from September 1987 to September 1994.

⁸ K. Larson, J. Wild, B. Chiappetta. Fundamental Accounting Principles (5th Edition). © 1999. McGraw-Hill.

Ideally, budget requests should be submitted and approved at the beginning of the fiscal year; however, the Area Specialist noted that the Court sometimes submitted proposals well into the fiscal year.

Over the past five years, the Superior Court overspent its approved budget within specific years by line item categories. See Appendix 7.

Rural Development officials stated that prior written approval is required before line item budgets can be reprogrammed. According to Judiciary officials, Rural Development has long been aware of the Judiciary's reprogramming practices, but has neither indicated any concern nor imposed sanctions on the over-expenditures by line item within the past few years.

In a letter dated October 2004, Rural Development approved a request to reprogram \$75,000 from contractual services to capital outlay. It should be noted that this is the only document provided to us, which indicates any effort to seek prior approval to reprogram.

In FY 2004, the Superior Court overspent its approved overall budget by \$176,550. The Judiciary's Controller explained that this was not an over-expenditure of its FY 2004 budget, but rather consisted of approved expenditures from prior years regarding projects that were temporarily suspended due to concerns regarding the overall fiscal health of the JBF based on reduced revenues. The projects were eventually undertaken during FY 2004 when the fiscal health of the JBF had improved. See Appendix 7.

In an October 2004 letter, Rural Development noted that the Judiciary had exceeded their equipment/capital budget by \$4,572, and had instructed the Controller to "submit a corrected quarterly report. . . and provide supporting documentation and adequate justification. . ." This was the only document provided to us that indicates Rural Development was monitoring JBF expenditures.

The annual budget approved by Rural Development is not a legal spending limit and appears that it is only for the purpose of providing Rural Development assurance of loan repayment ability. We noted that the loan agreement does not have a penalty for noncompliance with the approved budget.

Moreover, the expenditure amounts reported by the Judiciary officials to Rural Development did not correspond with audited expenditures reported in the annual financial audits of the Government of Guam for fiscal years 2000, 2001, and 2002. See Appendix 8.

Rural Development stated that it has not conducted a compliance review in recent years. Such a review is usually conducted once every three years.

It is the Judiciary officials' position that the actual expenditure reports submission is tantamount to Rural Development approval of reprogramming among budget categories

within a fiscal year, as well as between fiscal years. However, we were unable to confirm this with Rural Development.

As of September 30, 2004, the JBF ending fund balance has diminished, going from \$4.3 million in FY 2000 to \$1.2 in million FY 2004. The loan agreement requires the Judicial Council to maintain a reserve equal to the annual debt service payment of \$901,560. If this trend continues, debt service obligations may be jeopardized in the near future. See Appendix 9.

Use of JBF to Supplement Court Operations

The Loan Resolution provides that “[JBF] [r]evenue cannot be used to pay any expenses not directly incurred by the facility financed by FmHA.” However, Judicial Council minutes seem to imply that the JBF could be used for other purposes as long as the Judicial Council approves it. In a May 2002 Judicial Council meeting, a council member proposing a resolution seeking legislative approval to allow the use of JBF monies to pay for court-appointed attorneys fees,⁹ stated that “[t]he intention of this resolution is that the [Judicial Council] not use the operational funds of the Superior Court, but rather to utilize funds from the Judicial Building Fund since it has in excess of \$4 million dollars in the bank.”

In response to the request, the Chairman suggested suspending further discussion until the JBF is discussed as other Judicial Council members had asked to present resolutions requesting separate funding from the JBF.

In this meeting, a staff attorney raised a concern regarding the Judicial Council proposal citing “a recent court decision reaffirmed that the Legislature cannot change a law that affects a pre-existing contract.” In response, the council member stated, “it would not affect the pre-existing contract,” and that “Rural Development has a mortgage on the funds and it is not until there is a default is there a triggering of the assignment of the proceeds of the fund. Until such time as there is a default, the funds can be utilized for other purposes.”

At a December 18, 2003 Judicial Council meeting, the Chairman stated that “any money that JBF picks for electrical bill, the savings be re-programmed from the budget for indigent counsel fees in order to start paying some fees.”¹⁰

These statements seem to indicate that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation.

Compliance with Reporting Requirements

7 G.C.A. §9504 requires the Judicial Council to submit to the Legislature “full statements of accounts of all money received and expended out of the account or accounts of the

⁹ The proposed resolution to use JBF for attorney fees did not materialize.

¹⁰ This is in reference to deappropriated capital improvement projects previously approved by Rural Development.

Building Fund” with the Superior Court of Guam’s annual budget request. We found that the Judicial Council did not comply with this reporting requirement.

By not submitting timely current financial information with the budget submissions, the Legislature does not have the benefit of having the most current financial information of JBF revenues and expenditures for its review at the time of the budget submission. We recommend that the Judicial Council submit unaudited revenues and expenditures of the JBF to the Legislature as part of the annual budget request as required by 7 G.C.A. §9504.

Procurement of Supplies and Services

According to An Elected Official’s Guide to Procurement,¹¹ “only a fully competitive process can meet the procurement objectives of openness, integrity, and equity.” Further, “the goal of integrity is woven throughout the procurement cycle, so as to maintain the public’s trust and reduce the government’s exposure to criticism and suit. This goal is achieved through the requirement for complying with all applicable legal provisions.”

The Superior Court underwent a change in procurement policy on March 19, 2004. During our review, we utilized two sets of procurement regulations as applicable to the period in which the transactions occurred.¹²

Prior Procurement Policy

Prior to March 19, 2004, the Superior Court of Guam established and utilized the “Procurement & Supply Management Policy & Procedures” (Prior Procurement Policy).

Section 1003.01 of the Prior Procurement Policy states that “Procurement by sealed bid is authorized for any purchase at the discretion of the Purchasing Agent¹³ and the Purchasing Officer, but it **is mandatory where the total cost of requisition is \$10,000 or more** [emphasis added].” In addition, publication in a newspaper of general circulation in Guam soliciting for sealed bids is required.

Exceptions¹⁴ to the sealed bid requirement are summarized below:

- (1) The existence of an emergency situation affecting the general public;
- (2) The procurement is for supplies or services where it is impractical or impossible to secure competition;
- (3) The procurement is for supplies consisting of technical equipment or components;

¹¹ Government Finance Officers Association of the United States and Canada. An Elected Official’s Guide to Procurement by Patricia Watt. June 1995. July 1999.

¹² The Judiciary’s procurement policies and procedures are separate from those followed by Executive Branch agencies.

¹³ Under the Prior Procurement Policy, the Purchasing Agent for the Superior Court was its Administrative Director and the Purchasing Agent for the Supreme Court was its Executive Officer.

¹⁴ The Prior Procurement Policy specifies that exceptions must be certified by the Purchasing Agent in writing.

- (4) The procurement is for supplies or services acquired through a federal agency, and costs are known to be lower than the prevailing market prices; and
- (5) The procurement is for supplies offered through bargain sales, bankruptcy or receivership sales, or other dispositions of property at lower than the prevailing market prices.

The Prior Procurement Policy did not provide guidelines for the procurement of professional services. Services are narrowly defined as “any rental of facilities (sic), repair or maintenance of equipment, machinery or other personal property, but does not include contracts for constructions, recruitment or other services incident (sic) to employment.”

We reviewed 30 purchase orders (POs) totaling \$1,567,559 under this policy. Of the 30 POs, 17 POs totaling \$1,538,919 were over \$10,000 and 13 POs totaling \$28,640 were less than \$10,000.

We found that 11 POs amounting to \$944,297 were subject to the sealed bid and advertisement requirements, but were acquired through sole source selection and did not have documentation in their respective files to justify the sole source selection. Specific examples include:

- Three POs with an aggregate amount of \$685,000 for the accounting system maintenance;
- Four POs with an aggregate amount of \$189,245 for training and various computer-related services;
- Three POs with an aggregate amount of \$49,232 for elevator maintenance; and
- One PO amounting to \$20,820 for air-conditioning preventive maintenance.

We were informed by a Procurement Officer that sole source POs are rolled over to ensuing fiscal years without going through the competitive process, and that the procurement office merely maintained the sole source POs as they have been established in the past.

Section 1003.02 of the Prior Procurement Policy authorizes procurement on the open market where the total cost is less than \$10,000. The open market procurement methods are summarized as follows:

- (1) Petty cash if under \$40;
- (2) POs issued as needed if under \$500;
- (3) Quarterly “open” standing POs if under \$1,000;
- (4) “[S]olicitation of informal written or oral quotations in the open market, **except that the Procurement Officer, with the concurrence of the**

- Purchasing Agent, may dispense with such solicitations** [emphasis added]” where the total cost is at least \$1,000, but less than \$5,000; and
- (5) Solicitation of at least “three informal written quotations on the open market of which a written record shall be kept, **except that the Procurement Officer, with the concurrence of the Purchasing Agent, may dispense with such quotations** [emphasis added]” where the total cost is \$5,000 or more, but less than \$10,000.

Of the 13 purchases in excess of \$1,000 but less than \$10,000, 6 POs amounting to \$16,195 have no written record of a solicitation process having occurred. Specific examples included:

- \$1,520 for generator preventive maintenance;
- \$4,560 for preventive maintenance of the fire alarm system;
- \$2,505 for the purchase of an elevator phone; and
- \$4,443 for the replacement of a compressor and for future repairs.

Although the Prior Procurement Policy included a provision that allowed the Procurement Officer to bypass the solicitation process, a written justification for not obtaining solicitations should be maintained in the procurement file.

An essential procurement element found in state and local laws is the written documentation of all steps in the procurement cycle. Procurement files should have sufficient historical documentation such as the rationale for the method of procurement, list of sources solicited, copies of published notices, copies of solicitations, abstract of each offer or quote, source selection documentation, notice of awards, and other appropriate procurement documentation. As such, “[a] properly documented file provides an audit trail from the initiation of the requirement to the beginning of the contract. It provides a complete background as a basis for informed decisions at each step in the acquisition process. A well documented file speaks for itself . . .”¹⁵

We noted that under the Prior Procurement Policy, the solicitation requirement for small purchases up to \$10,000 was discretionary. In comparison, the Executive Branch Procurement Regulations does not allow for discretionary procurement. The Executive Branch purchasing agencies are permitted to adopt their own procedures except for small purchases less than \$500. For purchases over \$500, Executive Branch entities are required to “provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Purchasing agency.”¹⁶

Current Procurement Policy

On March 19, 2004, the Judicial Council of Guam adopted the “Judicial Council of Guam Procurement Regulations” (Current Procurement Policy) for the Supreme and Superior Courts.

¹⁵ US Department of Transportation Best Practices Manual.

¹⁶ 2 Guam Administrative Rules (G.A.R.) §3111 (e).

The threshold for procurement by competitive sealed process was increased from \$10,000 to \$15,000. Section 6 of the Current Procurement Policy provides three methods for the procurement of supplies and services with a total cost of at least \$15,000 and are summarized as follows:

- (1) **Competitive Sealed Bids:** Mandatory for the procurement of goods and services \$15,000 or more, and is the preferred method of procurement;
- (2) **Competitive Sealed Proposals:** Authorized for procurements involving rental or lease of real estate, or where procurement by competitive sealed bids is impractical;
- (3) **Request for Proposals for Professional Services:** Mandatory for professional services with total cost of \$15,000 or more.

The Current Procurement Policy requires public notification in a newspaper of general circulation in Guam requesting sealed bids. Exceptions to the competitive sealed process remain as established under the Prior Procurement Policy.

The Current Procurement Policy's definition of services is restricted to "any rental or lease involving real estate." Although the Current Procurement Policy requires that professional services be procured through Request for Proposals (RFPs), it provides exceptions. The RFP process for professional services is not applicable "to the hiring of interns, law clerks, **attorneys** [emphasis added], Judges or Justices Pro Tempore, marriage counselors, therapists, psychiatrists, psychologists, interpreters or services related to the contracting of services related to legal research."

Five POs totaling \$268,721, of which four were over \$15,000 and one was less than \$15,000, were reviewed under the Current Procurement Policy. Of the five transactions reviewed, one transaction over the \$15,000 threshold did not conform to the Current Procurement Policy.

- An \$18,400 PO for the Superior Court accounting system was a rollover from the previous fiscal year and did not undergo the competitive sealed bidding process. We noted that this was the same local vendor who received \$685,000 in sole source procurements, without documentation or justification, under the Prior Procurement Policy discussion.

Other Procurement Concerns

Payments Under An Expired Contract

Four direct payments of \$5,085, \$8,908, \$2,125, and \$4,720 totaling \$20,838 were made in FY 2004 under a Construction Management Agreement that expired over 10 years ago. The payments were made to the original architect of the Judicial Center. Invoices for two of the payments indicated that the expenditures were incurred in previous fiscal years. The decision to procure from this vendor without going through a competitive sealed bid process suggested preferential treatment of the said vendor.

Extensive Use of Sole Source Procurement

During our procurement testing process, we noted that the Superior Court utilized sole source procurement extensively. The sole source process can lead to situations where competition is not sought and public notice (i.e. advertisements) is not provided. Of the \$1,857,118¹⁷ in transactions reviewed, we noted that \$1,127,071¹⁸, or 61 %, were sole source procurements.

In order to provide needed goods and services effectively and efficiently at the lowest overall cost, procurement must seek “to foster as much competition as possible.”¹⁹ Competition is defined as taking active steps to ensure that as many bids/proposals as possible are received for each solicitation. Sole sourcing does not afford any type of competition.

The Superior Court’s practice of bypassing the competitive procurement process by continuing to procure from a particular vendor and rolling over expired sole source POs do not ensure that goods and services are procured in a manner that best serves the public interest and suggests preferential treatment.

Of equal importance is maintaining adequate documentation of the entire procurement process. Procurement files should have sufficient documentation so that a reasonably knowledgeable person can review a procurement file and conclude that the chosen vendor was selected in accordance with established rules and regulations.

Based on our review, we concluded that the Superior Court did not properly procure and/or did not adequately support \$999,730 of procured goods and services. We recommend that Judiciary officials ensure that all supplies and services are competitively procured and that adequate written documentation be maintained for each procurement file.

In July 2004, the Judiciary of Guam hired a new Judiciary & Facilities Management Administrator, who has since instituted changes to the operational procedures to include competitive procurement of services once previously rolled over from one fiscal year to the next.

Lobbying Fees

In February 2001, H.R. 521 was introduced to amend the Organic Act of Guam to “include an appellate court designated as the ‘Supreme Court’ ” and designate the Supreme Court as the highest court in the Guam Judicial Branch. H.R. 521 did not pass. In June 2003, a similar measure, H.R. 2400, was introduced and passed. Its passage as U.S. P.L. 108-378 amended Section 22(a) of the Organic Act of Guam, reorganized the

¹⁷ Consists of 35 Pos and 4 payments made under a Construction Management Agreement.

¹⁸ This is the value of 21 sole source procurements.

¹⁹ An Elected Official’s Guide to Procurement.

local court system, and designated the Supreme Court of Guam the highest court in the Guam Judicial Branch.²⁰

The Supreme and the Superior Courts of Guam had conflicting views on the proposed legislation and retained different law firms to present their opposing stances.

Superior Court of Guam

The Superior Court retained the services of Howard Hills,²¹ a California-based attorney, who employed lobbyist Jack Abramoff, to lobby against H.R. 521. The Superior Court paid a total of \$479,000 from its General Fund appropriation for its lobbying efforts.

Howard Hills. In April 1998, the Superior Court of Guam retained the legal services of Howard Hills,²² an attorney licensed to practice on Guam,²³ for \$20,000 “to provide legal services as requested by the client.”

Mr. Hills and the Deputy Administrative Director of the Superior Court, acting on behalf of the Administrative Director of the Superior Court, signed the “Contract to Employ Attorney.”²⁴ A staff attorney approved it as to form and the Controller certified the funds available. The contract was ambiguous and did not contain elements of a well-written contract, such as the start and completion dates, a description of the type of legal service to be provided, and the rate or basis of compensation.

Over the next several years, a series of change orders stipulated a biweekly fee of \$9,000 and increased the originally projected cost from \$20,000 to \$120,000, then to \$420,000, then further to \$479,000. A synopsis of the change orders follows:

- (1) **January 26, 2001:** Initial change order was signed “to agree to continue performance of the contract for the purposes of additional legal research and professional services as agreed between them . . . Attorney shall submit invoices for flat biweekly fee at the rate of \$9,000 up to but not to exceed \$120,000.00.”
- (2) **February 10, 2002:** A change order to extend the services for a one-year period “effective as of the date services commence” was agreed upon. Total fees were still expected “not to exceed \$120,000.00.” However, we

²⁰ The initial attempt to clarify Guam’s judicial structure occurred in July 1997 when Guam’s Congressional Delegate introduced H.R. 2370. Specific provisions include affording the Supreme Court “supervisory jurisdiction over the Superior Court of Guam and all other courts in Guam.” The measure was passed as US P.L. 105-291 without the provisions for “Judicial Authority: Supreme Court of Guam.”

²¹ The former Administrative Director of the Superior Court confirmed that Howard Hills was hired in connection with the Superior Court lobbying activities.

²² According to Howard Hills, he was initially retained by the Superior Court to conduct research on the establishment of the administrative makeup of the executive, legislative, and judicial branches for all fifty states and territories. His contract was extended upon the introduction of H.R. 2370.

²³ As of September 2005, Howard Hills is an inactive member of the Guam Bar.

²⁴ The signature on the contract, which was identified as that of the former Deputy Administrative Director of the Superior Court, did not correspond with the printed name.

noted that by the time this change order was signed, the Superior Court had already spent \$128,000, which is \$8,000 in excess of the agreed-upon amount.

- (3) **April 4, 2002:** This change order extended the services for a one-year period “effective as of the date this change order has been signed by both parties.” Expected total fees remained “not to exceed \$120,000.00.”

We noted that by May 3, 2002, the Superior Court made three more payments of \$9,000, or \$27,000, bringing the total payments to \$155,000, which was \$35,000 in excess of the \$120,000 authorized amount.

- (4) **May 27, 2002:** This change order stated that the client and attorney “agree to continue performance of the contract for the purposes of additional research and professional services as agreed between them . . . Attorney shall submit invoices for a flat fee at the rate of \$9,000.00 . . . up to but not to exceed \$420,000.00 . . .”

- (5) **May 29, 2002:** Just two days later, another change order was signed indicating that the “[a]ttorney shall submit invoices for a flat fee at the rate of \$9,000.00 based on services rendered by attorney **or other attorneys** [emphasis added] retained for purposes of this contract, up to but not to exceed \$479,000.00 . . .”

The initial contract contained four signatures. In contrast, only the Administrative Director of the Superior Court and Howard Hills signed the change orders. The change orders did not indicate that the staff attorney approved it as to form and the Controller did not certify the availability of funds. Although the change orders indicated the fee rate and increases in contract amount, they provided neither the specific type of services being provided nor the justification for the increases in amounts and extension of services.

We also noted that the invoices provided by Mr. Hills did not itemize the nature of the legal research conducted. Mr. Hill’s invoices merely indicated, “Legal research and advisory consultation per contract for professional services, including all fees and expenses” and nothing more. This is highly unusual for attorney invoices, which normally specify in detail, by time increments and hourly rates, the work performed.

A total of \$479,000 was paid to Howard Hills for alleged legal research. An initial payment of \$20,000 was remitted in 1998. From February 2001 to July 2002, he was paid \$459,000 comprising of one \$36,000 payment and 47 payments in \$9,000 increments. See Appendix 10.

In a May 2005 interview, Mr. Hills stated that of the \$479,000 he received, \$324,000 was transferred to Jack Abramoff’s firm.

It should also be noted that the Superior Court did not issue IRS Form 1099-MISC despite having paid Howard Hills \$108,000 in calendar year 2001 and \$351,000 in calendar year 2002.²⁵

We found no lobbying registration filed on behalf of the Superior Court in the United States Senate Office of Public Records archive.²⁶ Instead, Greenberg Traurig, LLP filed a lobbying registration, effective May 2002, to lobby for “[p]ublic policies related to issues of judicial and legal structures for states and possessions” and identified Howard Hills, **not the Superior Court**, as the client. The lobbying registration cites Jack Abramoff and others as lobbyists. See Appendix 11.

The agreement that the Superior Court entered with Howard Hills was vaguely defined and did not disclose the true intent of the lobbying efforts. The lobbying registration did not identify the Superior Court as the rightful client. In an interview, the former Administrative Director of the Superior Court stated that, in retrospect, the Superior Court hired a lobbyist, referring to the arrangement of hiring Howard Hills, who in turn hired lobbyist Jack Abramoff.

It should be noted that the Superior Court’s Prior Procurement Policy does not provide guidelines for the procurement of professional services such as legal services, therefore, it allowed for the procurement of legal services to be discretionary. Moreover, this implies that the procurement of professional services need not be advertised regardless of the amount.

While not applicable to the Judicial Branch, we note that the Executive Branch Procurement Regulations requires the procurement of professional services, such as accountants, physicians, lawyers, and dentists in excess of \$5,000 through RFPs. Public notification for the intent to procure such services is also required.

If the theory of the Executive Branch’s Procurement Regulations regarding the procurement of supplies and services were applied to the Superior Court’s securing of these lobbying services, it would appear that the Superior Court artificially divided the invoices to circumvent its procurement procedures. By issuing a series of \$9,000 payments, the transactions appeared to be within the Superior Court Prior Procurement Policy small purchase threshold of \$10,000 and were therefore not subject to the competitive sealed bid process or to the requirement to advertise.²⁷

Supreme Court of Guam

The Supreme Court retained two law firms to lobby in favor of H.R. 521 for a total of \$85,039. The Supreme Court used prior year lapsed funds to pay for its lobbying activities.

²⁵ The Judiciary began issuing IRS Form 1099-MISC for all legal services effective January 2003.

²⁶ <http://sopr.senate.gov/>

²⁷ Under the established procurement policy at the time of the payments, procurement by sealed bids and advertisement was necessary for requisitions of \$10,000 and over. See discussion on Prior Procurement Policy for details.

Law Firm.²⁸ In October 2001, the Supreme Court entered into a personal services agreement with a law firm. A memorandum signed by an Associate Justice indicated that the personal services agreement was “to engage the services of [the law firm] to **lobby with Congress for the passage of H.R. 521** [emphasis added].”

In an October 2001 letter, signed by an attorney licensed to practice on Guam, to the Supreme Court, the law firm expressed appreciation for the Supreme Court’s decision to retain them “in connection with H.R. 521 dealing with the Supreme Court of Guam.” The engagement letter, which appears to be the contract, specified fees not to exceed \$4,000, and requested a \$2,500 retainer fee.

A PO for \$4,000 was processed “to cover the cost for services rendered pursuant to Contract signed on October 22, 2001.” However, a detailed billing by date and hour indicated that services had commenced prior to the signing of the contract, and charges totaling \$2,311 dated as early as August 2001, or two months before the PO for the services was approved. Although an adjustment was made to increase the original PO amount from \$4,000 to \$8,349, services were rendered prior to the adjustment. We also noted that the adjustment date coincided with the date printed on the check. This lobbying firm was paid a total of \$8,349. See Appendix 12.

McClure, Gerard & Neuenschwander, Inc. The Supreme Court subsequently entered into an agreement with McClure, Gerard & Neuenschwander, Inc. on December 17, 2001 with “the goal of obtaining congressional approval of H.R. 521.” The letter, which also appeared to be the contract, specified a monthly fee of \$10,000 plus out of pocket expenses, and was signed by a representative of McClure, Gerard & Neuenschwander, Inc., an Associate Justice of the Supreme Court, and the certifying officer of the Supreme Court.

McClure, Gerard & Neuenschwander, Inc. filed a lobbying registration specifically on behalf of the Supreme Court of Guam for “[i]ssues related to establishing an independent Supreme Court in Guam,” effective in February 2002. See Appendix 13.

Unlike the Superior Court, the Supreme Court invoices disclosed that the services rendered were for lobbying activities.

A PO was processed on February 2001 for \$30,000 “to cover services rendered referenced in Contract dated 17-DEC-2001” and certified that the “procurement is for services which it is impractical to secure competition.” In May 2003, a memorandum from the Supreme Court extended the December 2001 letter for another three months. Payments to McClure, Gerard & Neuenschwander, Inc. totaled \$76,690, which was \$46,690 more than what was indicated in the original PO. See Appendix 12.

At the time of its lobbying activities, the Supreme Court also followed the Prior Procurement Policy, which did not contain provisions pertaining to the procurement of

²⁸ The firm’s name was not disclosed, because we did not find a lobbying registration publicly filed by the firm.

professional services. Thus, the procurement of the lobbying services was discretionary and need not be advertised.

As previously noted, the Executive Branch requires professional services, such as accountants, physicians, lawyers, and dentists in excess of \$5,000 be procured through RFPs. Public notification for such services is also required.

We found that no JBF monies were utilized for the \$564,039 in total payments to the lobbyists. The Superior Court of Guam utilized monies from its General Fund appropriations, while the Supreme Court of Guam used prior fiscal year lapsed funds. There was no local law prohibiting the use of government funds for lobbying prior to P.L. 27-29, which was passed in September 2004.

The Prior Procurement Policy at the time the lobbying services were contracted for did not contain provisions for personal contracts. Service was defined as “any rental of facilities (sic), repair or maintenance of equipment, machinery or other personal property, but does not include contracts for constructions, recruitment or other services incident (sic) to employment.” Judiciary officials are of the opinion that, because the Prior Procurement Policy did not provide guidelines for the procurement of legal services, the manner in which the lobbying services were procured was discretionary.

The Judiciary’s Current Procurement Regulations are an improvement over their past procurement policy by providing guidelines for the procurement of professional services. However, the regulations state that “[s]ervices do not include contracts with interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters or Judges or Justices Pro Tempore, or services related to legal research.” Because these professional services are not included in the current definition, they are considered exceptions to the established guidelines. All procurement should be competitive to allow the government to secure a fair and reasonable price.

We recognize that some professional services, such as marriage counselors, therapists, psychiatrists, and psychologists, are unique to the court system, and the lengthy process to properly procure these services may be cumbersome to court operations. The Judiciary should consider maintaining a listing of potential professional service providers selected through the RFP process. The Executive Branch Procurement Regulations state that for services needed on a recurring basis, “the Procurement Officer shall actively solicit persons engaged in providing such services to submit annual statements of qualifications. . .” Once a list is established, selections can be made as the need for the service arises.

We note that the Judiciary is already applying this concept by maintaining a listing of qualified attorneys, from which selections for the representation of indigent clients are made. We recommend that the practice be applied to all professional services.

Judiciary Procurement Policies in Other Jurisdictions

We surveyed the island governments of Micronesia to determine whether the government branches in their respective islands follow a single procurement policy. We received

responses from the Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, and the Virgin Islands. With the exception of the Virgin Islands, the three other island governments require the Judicial Branch to follow the same procurement regulations as the Executive Branch.

Unrealized Rental Revenue



Image 2: External view of the former Superior Court.

The Superior Court leased 718 square feet of the former Superior Court to the I Inetnon I Emplehao I Kotte (SCOG Employees Association) for \$1 annually from January 1993 to January 2005. In turn, the SCOG Employees Association sublet the area to concessionaires.

From November 1992 to November 1998, the Employees Association sublet 690 square feet of the Superior Court of Guam Annex to a local vendor for a monthly rate of \$1,725. This agreement was signed prior to the SCOG Employees Association agreement with the Superior Court.

The SCOG Employees Association sublet 718 square feet to another local vendor from December 1998 to January 2005 for a monthly rate of \$1,636.

Based on the Employee Association's lease agreements with the concessionaires, we estimated that the SCOG Employees Association may have received as much as \$245,553 in rent payments from the vendors, \$125,925 from November 1992 to November 1998 and \$119,628 from December 1998 to January 2005.

For our audit period, we projected that the Superior Court could have earned approximately \$109,251 had the vendor been charged \$2.536 per square foot, the rate paid by the Public Defender from 1997-2004, who occupied the same building.

In November 2004, the Administrator of the Courts notified the second sublessee that its agreement with the SCOG Employees Association would not be renewed and to vacate the premises no later than January 31, 2005. The Judiciary has since utilized the space for its operations.

Conclusion

The Superior Court's method of allocating revenues was not available to us during our testing period, which made it difficult to ascertain whether the current methodology was in accordance with existing laws and promulgation orders and to determine whether all revenues were properly allotted to the JBF and the other funds. A modified allocation methodology and procedures for the current fees schedule were provided to us after our review. We verified 11 applicable revenue transactions and determined that the revenues were properly allotted to the JBF and the other funds. However, we were unable to verify the 50 transactions that were under the old fee schedule.

The JBF enabling legislation is more stringent than certain covenants of the loan agreement with Rural Development Authority with respect to the allowable uses of JBF, although the legislation was effectively amended by legislative concurrence through P.L. 19-19 and the Governor of Guam's concurrence with the loan agreement terms.

The JBF carries \$5.6 million in rental receivables from the Office of the Attorney General and the Public Defender Service Corporation. It has been the Judiciary's practice to fully reserve the receivables as uncollectible.

The Judicial Council did not provide \$20,000 annually to the Hero Scholarship Program. Neither UOG nor GCC provided a listing of qualified applicants as contemplated by law. Judiciary officials state that because the expenditure is not directly incurred by the facility, this provision of the law is inconsistent with the loan agreement with Rural Development.

Although authorized by law, the Judicial Council was not required to finance the forensic science laboratory. Judiciary officials stated that the forensic science laboratory is not an expenditure directly incurred by the facility and is therefore not a permissible use of the JBF under the loan agreement unless approved by Rural Development. In September 2005, P.L. 28-68 mandated the Judicial Council to commence efforts to design and construct a forensic science laboratory. Judiciary officials stated that efforts have commenced.

Contrary to a passed resolution, the Judicial Council did not approve all JBF expenditures through "a proper and lawful resolution duly raised and voted affirmatively by a majority of the members of the Judicial Council."

Based on reports provided, the Judicial Council overspent various line item budget levels for FY 2000 through FY 2004 without approval from Rural Development. In FY 2004, the Judicial Council exceeded the overall budget approved by Rural Development by \$176,550. With the exception of one occurrence in FY 2004, Rural Development did not raise any concerns over the line item over-expenditures. Further, the expenditure amounts reported to Rural Development did not correspond to the audited expenditure amounts for fiscal years 2000, 2001, and 2002.

The Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation. Rural Development has informed the Judiciary in writing that, “[t]he judicial building fund (JBF) can not be used to relieve the local government’s responsibility in meeting its operating expenses.”

The Judicial Council did not follow its established procurement regulations for the procurement of capital outlay, supplies, and services totaling \$999,730. These purchases were not competitively procured and/or lacked appropriate supporting procurement documentation. Sole source procurement without public notification was utilized for 61% of the transactions reviewed.

The Judicial Council did not comply with the JBF enabling legislation requirement that a full accounting of all JBF revenues and expenditures be transmitted to the Legislature as part of the annual Superior Court budget request.

The Superior Court paid \$479,000 from its local appropriation to lobby against H.R. 521 and the Supreme Court paid \$85,039 from its local appropriation to lobby in favor of the measure. Neither Court solicited competition or provided public notification (i.e. advertisement) in the procurement of the lobbying services. The Judiciary Procurement regulations did not provide guidelines for the procurement of professional services, thereby rendering the procurement of the lobbying services discretionary and did not require advertisement.

The Superior Court lost \$109,251 in unrealized rental revenues from FY 2000-2004 when the Superior Court leased a portion of the former Superior Court to its Employees Association. Over the life of the lease, the unrealized rental revenues amounted to \$245,553.

Recommendations

Recommendations to the Judicial Council of Guam:

1. Finalize the development of the updated draft official allocation schedule in accordance with current laws and rules and consistent with the Rural Development agreement, and disseminate such schedule to all staff directly involved in the revenue allocation and collection.
2. Automate the process of allocating filing fees to the JBF and other various funds to minimize the possibility of human error and to ensure accuracy.
3. Revise the Current Procurement Regulations to:
 - Establish a listing of qualified professionals (i.e.: therapist, marriage counselors), selected through Request for Proposals, whose services may be required by the Judiciary, other than those secured by order of a Court, from which selections can be made for services needed on a recurring basis; and
 - Ensure competitive procurement for supplies and services, and maintain adequate written documentation for all procurement.
4. Confer with Rural Development on the applicability of JBF funds for the Hero Scholarship Program Fund and the Forensic Science Laboratory pursuant to various public laws.
5. Submit unaudited revenues and expenditures of the JBF to the Legislature as part of the annual budget request as required by 7 G.C.A. §9504.

Management's Response and OPA Reply

A preliminary draft report was transmitted to the Judiciary on November 16, 2005. We met with Judiciary officials on November 22, 2005 to discuss the preliminary draft. As a result of the meeting, subsequent revisions to the preliminary draft were made. A final draft report was transmitted to the Judiciary on December 2, 2005 for its official response.

On December 13, 2005, the Administrator of the Courts (Administrator) submitted a 24-page response (Appendix 14) indicating concurrence with four of our five recommendations. The Administrator concurred with recommendations 1, 2, 4, and 5, and disagreed with recommendation 3. In addition, the response contained extensive comments to the various findings.

Disagreement with Recommendation 3

The Administrator disagreed with the recommendation to revise its current procurement regulations to include maintaining a list of qualified professionals. According to the response, "a list of those professionals willing to offer their services to the Judiciary is already informally maintained." Our recommendation to maintain a formal list of professionals (vendors) selected through RFPs provides the Judiciary with a useful tool for encouraging competition and ensuring that professional services are procured with fairness and equity.

Summary of Responses to Various Findings

1. **Complicated method of allocating revenues.** The response noted that employees involved in the process of allocating JBF revenues are aware of the proper procedures. However, the process, though instilled among the employees, should be documented to ensure accuracy and consistency.

Although a user-friendly format describing each fee, the amount, and the apportionment of each fee between the JBF and other funds was created and disseminated to employees, we noted that "the SOP is still in draft form and does not require the approval of the Judicial Council." As the new schedule is a modification, the draft SOP should be finalized, approved by the Judicial Council, and disseminated to all personnel involved in the allocation and collection of revenues.

2. **Non-approval of JBF expenditures by the Judicial Council.** The Judicial Council adopted a resolution to approve all JBF expenditures, except debt service payments, through "a proper and lawful resolution duly raised and voted upon affirmatively by a majority of the members of the Judicial Council." We found that such was not the case. The response stated that while the Judicial Council did

not approve JBF expenditures, all expenditures “received the written approval of the lender, Rural Development, as required.” It is the Judiciary’s position that the Statement of Budget, Income and Equity reports submitted to Rural Development are tantamount to approval. No other documentation indicating written approval by Rural Development other than the Rural Development letters of concurrence/non-concurrence with proposed budget amounts and one approval increasing a line item budget was provided to us. We also found that audited expenditures did not correspond to the expenditures reported to Rural Development for fiscal years 2000, 2001, and 2002.

3. **Budget over-expenditures.** The Administrator stated that the \$176,550 reported as over-expenditure for fiscal year 2004 was inaccurate. He claimed that they did not exceed their fiscal year 2004 budget and that reprogramming funds among line item categories within a fiscal year and among fiscal years was common practice. He also pointed out that Rural Development has neither communicated that such practice was inappropriate nor imposed any sanction for this practice. However, the Administrator’s position is inconsistent to that of Rural Development. An Area Specialist stated that Rural Development must approve any reprogramming in writing.
4. **Non-compliance with Judiciary procurement regulations.** The Administrator’s response acknowledged that proper documentation was not maintained for various procurement transactions tested during the audit, and that while the solicitation process is often bypassed for those procurements, the purchases were made “in the best interest of the Judiciary.” Although the Administrator was in agreement that complete and written documentation be maintained for each procurement file, the response noted that there is no requirement for the Purchasing Officer to document a decision to bypass the procurement process for small purchases. We emphasize the importance of adequate written documentation to provide an audit trail and the rationale for procurement decisions. As such, the procurement files should speak for themselves.
5. **Use of JBF to Supplement Court Operations.** The response stated that although it appeared that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation, it has always sought Rural Development approval. However, Rural Development has informed the Judiciary in writing that, “[t]he judicial building fund (JBF) can not be used to relieve the local government’s responsibility in meeting its operating expenses.”
6. **Non-compliance with reporting requirement.** The response contended that the Judiciary provided the Legislature with financial statements and that the Legislature has never indicated that the Judiciary failed to comply with this reporting requirement. The Administrator stated that, “the Judiciary will cause to be prepared, even at additional expense, full statements of accounts of all money

received and expended out of JBF accounts for annual transmittal to the Legislature.” The requirement of law is to submit current financial information as audited financial information can be at least one to two years old at the time of the budget submission. Our recommendation calls for the submission of unaudited accounting of revenues and expenditures, which can be generated from the Judiciary’s financial management system at no extra cost.

7. **Discretionary procurement of lobbying services.** The Administrator suggested that we may have erroneously miscalculated the payments to Howard Hills by adding two voided checks and have misrepresented the amounts in our analysis. The purported miscalculation is not a result of the voided checks, which were originally included in the schedule for illustration purposes only and did not affect the total payments. The Administrator did not include the initial \$20,000 retainer fee in his calculation. The voided checks were subsequently eliminated from the schedule.
8. **Unrealized rental revenues.** The response contended that leasing a portion of the former Superior Court to the Employees Association for \$1 annually had several non-monetary benefits such as improving employee morale. However, because of the sublease the Superior Court lost the opportunity to earn \$245,553 in rental revenues.

See Appendix 14 for the Administrator’s 24-page response.

The legislation creating the Office of the Public Auditor requires agencies to submit an action plan to implement audit recommendations within six months after report issuance, or by June 19, 2006. We will be contacting the Administrator of the Courts to provide the target date and title of the official(s) responsible for implementing the recommendation.

We appreciate the cooperation shown by the Judiciary of Guam.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1

Classification of Monetary Amounts

Finding Area	JBF	Local Appropriation	Total
1 JBF Revenues			
Decline in Traffic Fines Collected			
Decline of Interest Income			
Complicated Allocation of JBF Revenues			
2 JBF Expenditures			
Other Authorized Uses of JBF			
Non-Approval of JBF Expenditures			
Use of JBF to Supplement Court Operations			
Budget Overexpenditure	[\$176,550] ¹		
3 Compliance with Reporting Requirements			
4 Procurement of Supplies and Services			
Prior Procurement Policy			
<i>Not procured by competitive sealed bid</i>	\$ 944,297		\$ 944,297
<i>Solicitations not obtained</i>	\$ 16,195		\$ 16,195
Current Procurement Policy			
<i>Not procured by competitive sealed bid</i>	\$ 18,400		\$ 18,400
Other Procurement Concerns			
<i>Expired agreement</i>	\$ 20,838		\$ 20,838
5 Lobbying Fees			
Supreme Court		\$ 85,039	\$ 85,039
Superior Court		\$ 479,000 ²	\$ 479,000
6 Unrealized Rental Revenue	\$ 109,251		\$ 109,251
TOTAL QUESTIONED COSTS	\$ 1,108,981	\$ 564,039	\$ 1,673,020

¹OPA did not determine the specific transactions that contributed to the overexpenditure. The transactions could have been accounted for in the Improper Procurement of Supplies and Services and were not classified as questioned costs.

²Of this amount, \$20,000 is outside our audit scope.

Appendix 2

Scope and Methodology

The scope of this audit included all JBF revenues collected and expenditures paid for a five-year period from fiscal year 2000 through fiscal year 2004, and the lobbying activities of the Superior and Supreme Courts.

The audit methodology included gaining an understanding and familiarity of the processes relevant to the recognition of revenues, expenditures, and other transactions concerning the JBF. We obtained complete listings of JBF revenue and expenditure transactions for fiscal years 2000 – 2004.

JBF revenue collection from October 1999 through September 2004 (Fiscal Years 2000 through 2004) was approximately \$7.9 million, of which, 61²⁹ transactions totaling \$157,301 were randomly selected for revenue testing. Sample revenues were tested for existence by tracing recorded transactions in the financial management system to source documents. Revenue transactions were also tested for completeness by tracing a sample of selected source documents to the financial management system.

Testing of judgmentally³⁰ selected revenue and expenditure transactions for fiscal years 2003 and 2004 was conducted in the survey phase. Because we were unable to ascertain whether the allocation methodology of revenues were in accordance with law and promulgation orders, revenue testing was suspended for fiscal years 2000 through 2002. We determined that the 11 of the 61 transactions reviewed were properly allocated, however, however, we did not verify the 50 transactions that occurred prior to July 2004.

Total expenditures for fiscal years 2000 through 2004 were approximately \$13.4 million, of which \$7.9 million was for debt service. Seventy-three expenditure transactions totaling \$4,061,237 were randomly selected for testing. Our test was to determine whether or not expenditures were properly authorized, incurred, and allowable by law. We also reviewed selected expenditures to determine whether they were approved by Rural Development. Purchase orders included in the expenditure samples were also reviewed for compliance with established Superior Court procurement policies.

We also compared amounts approved by Rural Development to the annual audited expenditures and amounts reported to Rural Development.

Upon initiation of the audit, we were under the assumption that payments for the Supreme and Superior Court's lobbying activities were derived from JBF; however, our review revealed that JBF was not utilized. Further review was conducted to determine if the lobbying payments were obtained in accordance with established procurement policies.

²⁹ Consists of 31 samples from FY 2004 and 30 samples from FY 2003.

³⁰ Samples were judgmentally selected based on transaction amount and/or descriptions

Our audit was conducted in accordance with the standards for performance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Accordingly, we obtained an understanding of internal controls of the JBF. Testing of records and other auditing procedures that were considered necessary were conducted under applicable circumstances.

Appendix 3

Prior Audit Coverage

The JBF is included in the annual Government of Guam Basic Financial Statements. A review of the Single Audits for fiscal years 2000 through 2004 revealed no significant findings relevant to the JBF.

In June 1992, the US Department of the Interior released Report No. 92-I-900, an audit of the Superior Court's fines and fees. This audit found that the Court did not properly assess fines, nor did it properly control and use related funds. Furthermore, it was noted that the Court did not have written procedures to ensure that all financial data were recorded in the accounting records and that tickets were not accurately controlled.

According to the Judiciary Controller, all recommendations have been implemented.

Appendix 4
FmHA Loan Balance

JUDICIAL COUNCIL OF GUAM				
ESTIMATED REMAINING AMORTIZATION SCHEDULE				
Date	Payment	Interest	Principal	Balance
5/2/2005				4,566,576
6/1/2005	225,390	89,205	136,185	4,430,391
9/1/2005	225,390	86,544	138,846	4,291,545
12/1/2005	225,390	82,921	142,469	4,149,076
TOTAL	676,170	258,670	417,500	
3/1/2006	225,390	79,287	146,103	4,002,973
6/1/2006	225,390	78,195	147,195	3,855,778
9/1/2006	225,390	75,320	150,070	3,705,708
12/1/2006	225,390	71,601	153,789	3,551,919
TOTAL	901,560	304,403	597,157	
3/1/2007	225,390	67,876	157,514	3,394,405
6/1/2007	225,390	66,307	159,083	3,235,322
9/1/2007	225,390	63,200	162,190	3,073,131
12/1/2007	225,390	59,379	166,011	2,907,120
TOTAL	901,560	256,761	644,799	
3/1/2008	225,390	55,554	169,836	2,737,284
6/1/2008	225,390	53,471	171,919	2,565,365
9/1/2008	225,390	50,112	175,278	2,390,087
12/1/2008	225,390	46,181	179,209	2,210,878
TOTAL	901,560	205,318	696,242	
3/1/2009	225,390	43,188	182,202	2,028,676
6/1/2009	225,390	39,629	185,761	1,842,915
9/1/2009	225,390	36,000	189,390	1,653,525
12/1/2009	225,390	31,949	193,441	1,460,084
TOTAL	901,560	150,766	750,794	
3/1/2010	225,390	28,522	196,868	1,263,216
6/1/2010	225,390	24,676	200,714	1,062,502
9/1/2010	225,390	20,755	204,635	857,867
12/1/2010	225,390	16,576	208,814	649,053
TOTAL	901,560	90,528	811,032	
3/1/2011	225,390	12,679	212,711	436,341
6/1/2011	225,390	8,524	216,866	219,475
9/1/2011	225,390	4,241	221,149	(1,674)

Source: USDA Rural Development

Appendix 5

JBF Statements of Income

GOVERNMENT OF GUAM Judicial Building Fund

Statement of Revenues, Expenditures, and Changes in Fund Balances ¹
Year Ended September 30, 2000 - 2004

REVENUES	2000	2001	2002	2003	2004	TOTAL
Traffic fines and fees	\$ 1,215,635	\$ 1,388,521	\$ 1,031,697	\$ 693,411	\$ 521,140	\$ 4,850,404
Document filing fees	398,213	336,582	330,705	328,078	423,456	1,817,034
Interest	657,802	365,538	130,322	73,106	44,278	1,271,047
Rent *	-	-	-	-	-	-
Total revenues	2,271,651	2,090,641	1,492,723	1,094,595	988,874	7,938,485
EXPENDITURES ²						
Debt Service						
Quarterly installment payment	901,560	819,600	901,560	901,560	901,560	4,425,840
Principal retirement	3,000,000	-	-	500,000	-	3,500,000
Total debt service	3,901,560	819,600	901,560	1,401,560	901,560	7,925,840
Other Categories						
Capital outlay						
Office furniture/equipment over \$500	-	5,399	11,925	229,871	90,942	338,137
Repair, remodeling, or alteration of building	114,109	220,590	80,240	136,623	29,670	581,232
Vehicles	-	-	-	-	52,800	52,800
Others	33,244	15,886	9,258	-	83,272	141,660
<i>Total capital outlay</i>	<i>147,353</i>	<i>241,875</i>	<i>101,423</i>	<i>366,494</i>	<i>256,684</i>	1,113,829
Contractual						
Equipment maintenance	393,108	523,952	538,605	327,062	335,980	2,118,707
Professional/Consultant services	5,579	19,142	59,480	45,611	36,238	166,050
Vehicle & equipment rental/leases	157,278	14,826	431,097	-	5,370	608,571
Others	15,600	-	13,952	14,521	15,408	59,481
<i>Total contractual</i>	<i>571,565</i>	<i>557,920</i>	<i>1,043,134</i>	<i>387,194</i>	<i>392,996</i>	2,952,809
Non-capital equipment (furniture/equip under \$500)	-	665	5,537	24,161	-	30,363
Personnel	33,998	139,530	28,726	-	-	202,254
Supplies (custodial supplies)	11,530	20,906	58,040	-	-	90,476
Utilities	-	-	611,450	-	475,203	1,086,653
Total other categories	764,446	960,896	1,848,310	777,849	1,124,883	5,476,384
Total expenditures	4,666,006	1,780,496	2,749,870	2,179,409	2,026,443 **	13,402,224
Excess(deficiency) of revenues over (under) expenditures	(2,394,355)	310,145	(1,257,147)	(1,084,814)	(1,037,569)	
Total other financing sources (uses), net	-	-	-	-	-	
Fund balances at beginning of year	6,697,896	4,304,467	4,614,612	3,357,607	2,272,794	
Fund balances at end of year	\$ 4,303,541	\$ 4,614,612	\$ 3,357,465	\$ 2,272,794	\$ 1,235,225	

NOTES:

* No rent income was generated for fiscal years 2000-2004.

** This amount is the Superior Court AS400 amount. FY 2004 Basic Financial Statements figure vary by \$475,203. This amount was classified as a transfer out, and is reflected as other financing uses.

1 Revenues and expenditures have been expanded by OPA into specific categories for illustration purposes.

2 Expenditure totals for fiscal years 2000 and 2002 vary from the General Purpose Financial Statement figures by insignificant amounts

Chronology of Changes in the Allocation of JBF Revenues

The following public laws and promulgation orders chronicle the changes in the allocation of JBF revenues:

- **December 1984:** P.L. 17-82 originally stated that all income and interest income received by the Superior Court “for the filing of documents, or imposition of fines, which are not specifically appropriated for other purposes, shall be deposited into the Judicial Building Fund.”
- **August 1987:** P.L. 19-06, Section 1, amended Title II, Code of Civil Procedure, §189.1 to include a provision that allowed the Court, subject to Judicial Council approval, to charge for necessary programs and services. Revenues generated from these fees can either be deposited to the JBF or to other revolving accounts to support programs.
- **August 2003:** A Justice Pro Tempore was appointed for the Supreme Court’s review of the Superior Court’s proposal to increase its fees. (Promulgation Order No. 03-005)
- **October 2003:** Superior Court of Guam Promulgation Order No. 03-008 modified Rule 91 and established a new, increased, fee schedule to be effective December 1, 2003.
- **December 1, 2003:** Promulgation Order 03-008 is amended: \$150.00 Probate Filing Fee for the “First paper on behalf of each adverse party ... of making joinder” was rescinded; and the Superior Court Traffic Clearance fee reverted to the original fee of \$1.00. (Promulgation Order 03-010)
- **December 17, 2003:** P.L. 27-55, Section 2, established the Judicial Client Services Fund (JCSF). Section 1 of the same public law amended the JBF enabling legislation to provide that “[a]ll increases in fees, fines, or revenues approved by the Supreme Court of Guam or the Judicial Council and collected by the Courts of Guam, which are over and above the fee schedule established as of September 12, 2002, shall be deposited into the JCSF.”
- **December 22, 2003:** Promulgation Order No. 03-012 repealed Promulgation Orders 03-008, 03-010, and 03-011³¹. It also mandated that effective January 1, 2004, affected fees would revert to their preexisting amounts. Further, it stated that Pursuant to P.L. 27-31, court fees would be decided upon by the Judicial Council.
- **April 2004:** Judicial Council Resolution No. JC 04-010 reinstated Promulgation Order 03-008³² with fee increases to take effect on July 1, 2004. However, the increase in filing fees, are exclusively for the JCSF.

³¹ Promulgation Order No. 03-011 was essentially identical to Promulgation Order No. 03-010, with the exception of the dates and one less signature.

³² The fees schedule (Rule 91) can be viewed at <<http://www.guamcourts.org/SuperiorCourt/Proposed%20Fees/fees.htm>>

Amount Approved v. Audited Amount

Expenditure Category	FY 2000			FY 2001		
	Approved By * Rural Development	Audited Amounts	(Over)Under	Approved By Rural Development	Audited Amounts	(Over)Under
Capital Outlay	657,009	147,353	509,656	316,000	241,875	74,125
Office Furniture & Equipment (over \$250)					5,399	
Land Improvement		16,996			15,886	
Non-Structural Improvement Vehicles						
Repair, Remodeling, or Alteration of Building		114,109			220,590	
Automation Hardware		16,248				
Contractual Services	660,053	571,566	88,487	742,674	557,920	184,754
Insurance, Bonding		15,600		9,200	-	9,200
Equipment Maintenance		393,108		440,214	523,952	(83,738)
Professional/Consultant Svcs		5,579		78,000	19,142	58,858
Vehicle & Equipment Rental/Lease		157,278		214,260	14,826	199,434
Advertisement, Duplicating, Printing				1,000	-	1,000
Equipment Purchases - Non Capital Items	-	-	-	-	665	(665)
Office Furniture & Equipment (less \$250)					665	(665)
Personnel	-	33,998	(33,998)	-	139,530	(139,530)
Staff Salary, New Salary & Increment		27,027	(27,027)		4,523	(4,523)
Employee Benefits		6,971	(6,971)		135,007	(135,007)
Supplies & Materials	-	11,530	(11,530)	-	20,906	(20,906)
Custodial Supplies		11,530	(11,530)		20,906	(20,906)
Utilities	-	-	-	-	-	-
TOTAL	1,317,062	764,446	552,616	1,058,674	960,896	97,778

* Amounts shown in this column are derived from the fourth quarter "Statement of Budget, Income and Equity" submitted by the Judiciary to Rural Development. Initial amounts approved by Rural Development are not available.

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - Amounts in "Approved by Rural Development" are derived from approval letters written by Rural Development to the Judiciary following the annual budget submissions.
- 3 - Amount in each expenditure category (i.e.: Capital Outlay) is a summation of the amounts in the subcategories.

Amount Approved v. Audited Amount

Expenditure Category	FY 2002			FY 2003		
	Approved By Rural Development	Audited Amounts	(Over)Under	Approved By Rural Development	Audited Amounts	(Over)Under
Capital Outlay	1,168,201 *	9,258	1,158,943	446,500	366,494	80,006
Office Furniture & Equipment (over \$250)					229,871	
Land Improvement	14,000	9,258	4,742			
Non-Structural Improvement						
Vehicles						
Repair, Remodeling, or Alteration of Building					136,623	
Automation Hardware						
Contractual Services	711,074 **	1,043,134	(332,060)	524,163	387,194	136,969
Insurance, Bonding	15,600	13,100	2,500		13,100	
Equipment Maintenance	440,214	538,605	(98,391)		327,062	
Professional/Consultant Svcs	40,000	59,480	(19,480)		45,611	
Vehicle & Equipment Rental/Lease	214,260	431,097	(216,837)		-	
Advertisement, Duplicating, Printing	1,000	852	148		1,421	
Equipment Purchases - Non Capital Items	-	5,536	(5,536)	-	24,161	(24,161)
Office Furniture & Equipment (less \$250)		5,536	(5,536)		24,161	(24,161)
Personnel	-	28,726	(28,726)	-	-	-
Staff Salary, New Salary & Increment		1,048	(1,048)			
Employee Benefits		27,678	(27,678)			
Supplies & Materials	-	58,040	(58,040)	-	-	-
Custodial Supplies		58,040	(58,040)			
Utilities	-	611,450	(611,450)	-	-	-
TOTAL	1,879,275	1,756,144	123,131	970,663	777,849	192,814

Original amount approved for capital outlay is \$333,600. Subsequently \$820,601 was approved on March 2002 for facilities maintenance. Amount shown includes the \$14,000 approved for Non-Structural Improvement.

** Fourth quarter report indicated \$763,722 was approved.

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - Amounts in "Approved by Rural Development" are derived from approval letters written by Rural Development to the Judiciary following the annual budget submissions.
- 3 - Amount in each expenditure category (i.e.: Capital Outlay) is a summation of the amounts in the subcategories.

Amount Approved v. Audited Amount

Expenditure Category	FY 2004		
	Approved By Rural Development	Audited Amounts	(Over)Under
Capital Outlay	9,500 *	256,684	(247,184)
Office Furniture & Equipment (over \$250)		90,942	
Land Improvement	9,500	4,262	5,238
Non-Structural Improvement		79,010	
Vehicles		52,800	
Repair, Remodeling, or Alteration of Building		29,670	
Contractual Services	463,628	392,995	70,633
Insurance, Bonding	600	14,820	(14,220)
Equipment Maintenance	417,028	335,979	81,049
Professional/Consultant Svcs	35,000	36,238	(1,238)
Vehicle & Equipment Rental/Lease	10,000	5,370	4,630
Advertisement, Duplicating, Printing	1,000	588	412
Equipment Purchases - Non Capital Items	-	-	-
Office Furniture & Equipment (less \$250)			
Personnel	-	-	-
Staff Salary, New Salary & Increment			
Employee Benefits			
Supplies & Materials	-	-	-
Custodial Supplies			
Utilities	475,203	475,203	-
TOTAL	948,331	1,124,881	(176,550)

* Fourth quarter "Statement of Budget, Income and Equity" report indicated that \$790,216 was approved.

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - Amounts in "Approved by Rural Development" are derived from approval letters written by Rural Development to the Judiciary following the annual budget submissions.
- 3 - Amount in each expenditure category (i.e.: Capital Outlay) is a summation of the amounts in the subcategories.

Audited Amount v. Reported Amount

Expenditure Category	FY 2000			FY 2001		
	Audited Amounts	Reported To Rural Development	Variance	Audited Amounts	Reported To Rural Development	Variance
Capital Outlay	147,353	147,353	-	241,875	242,540	(665)
Contractual Services	571,565	616,167	(44,602)	557,920	819,600	(261,680)
Equipment Purchases - Non Capital Items	-	-	-	665	-	665
Personnel	33,998	-	33,998	139,530	-	139,530
Supplies & Materials	11,530	-	11,530	20,906	-	20,906
Utilities	-	-	-	-	-	-
TOTAL	764,446	763,520	926	960,896	1,062,140	(101,244)

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - "Audited Amounts" are derived from annual government-wide financial audits.
- 3 - Amounts in "Reported to Rural Development" are derived from the fourth quarter "Statement of Budget, Income and Equity" submitted by the Judiciary to Rural Development.

Audited Amount v. Reported Amount

Expenditure Category	FY 2002			FY 2003		
	Audited Amounts	Reported To Rural Development	Variance	Audited Amounts	Reported To Rural Development	Variance
Capital Outlay	101,423	106,959	(5,536)	366,494	390,655	(24,161)
Contractual Services	1,043,134	1,074,614	(31,480)	387,194	387,194	-
Equipment Purchases - Non Capital Items	5,537		5,537	24,161		24,161
Personnel	28,726		28,726	-		-
Supplies & Materials	58,040	55,146	2,894	-		-
Utilities	611,450	611,450	-	-		-
TOTAL	1,848,310	1,848,170	140	777,849	777,849	(0)

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - "Audited Amounts" are derived from annual government-wide financial audits.
- 3 - Amounts in "Reported to Rural Development" are derived from the fourth quarter "Statement of Budget, Income and Equity" submitted by the Judiciary to Rural Development.

Audited Amount v. Reported Amount

Expenditure Category	FY 2004		
	Audited Amounts	Reported To Rural Development	Variance
Capital Outlay	256,684	256,684	-
Contractual Services	392,996	392,995	1
Equipment Purchases - Non Capital Items	-	-	-
Personnel	-	-	-
Supplies & Materials	-	-	-
Utilities	475,203	475,203	-
TOTAL	1,124,883	1,124,881	1

NOTES:

- 1 - Debt service was eliminated as an expenditure category, because it is a primary use of JBF. Additionally, Rural Development was not consistent in specifying the category in its approval letters.
- 2 - "Audited Amounts" are derived from annual government-wide financial audits.
- 3 - Amounts in "Reported to Rural Development" are derived from the fourth quarter "Statement of Budget, Income and Equity" submitted by the Judiciary to Rural Development.

Appendix 9

JBF Balance Sheets

GOVERNMENT OF GUAM
Judicial Building Fund
 Balance Sheet
 September 30, 2000 - 2004

	2000	2001	2002	2003	2004
Assets					
Cash and equivalents	\$ 4,001,975	\$ 3,624,262	\$ 1,978,787	\$ 1,208,846	\$ 1,117,931
Investments (tcds)	1,000,718	1,000,718	1,000,718	1,000,718	1,000,718
Receivables, net	3,442,129	467,230	783,399	374,069	
Receivable from Federal Agencies	-	-	-	-	-
Interfund receivables, net	-	-	-	63,230	-
Deposits and other assets	-	-	-	-	-
Total Assets	<u>8,444,822</u>	<u>5,092,210</u>	<u>3,762,904</u>	<u>2,646,863</u>	<u>2,118,648</u>
Liabilities and Fund Balance					
Accounts payable	\$ -	\$ -	\$ -	\$ -	\$ -
Accrued payroll and other	698,225	10,366	-	-	-
Interfund payables	-	-	-	-	883,422
Deferred revenue	3,442,130	467,231	405,297	374,069	
Total liabilities	<u>4,140,355</u>	<u>477,597</u>	<u>405,297</u>	<u>374,069</u>	<u>883,422</u>
Fund Balance					
Reserved for:					
Specific purposes	-	-	-	-	-
Related assets	-	-	-	-	-
Encumbrances	466,797	225,974	90,473	-	114,437
Continuing appropriations	-	-	-	-	-
Unreserved (deficit)	3,837,670	4,388,639	3,267,134	2,272,794	1,120,790
Total fund equity (balance)	<u>4,304,467</u>	<u>4,614,613</u>	<u>3,357,607</u>	<u>2,272,794</u>	<u>1,235,227</u>
Total liabilities and fund balance	<u>\$ 8,444,822</u>	<u>\$ 5,092,210</u>	<u>\$ 3,762,904</u>	<u>\$ 2,646,863</u>	<u>\$ 2,118,649</u>

Note: The information presented in this page is a compilation of the JBF balance sheets presented in the FY 2000-2004 Government of Guam Basic Financial Statements, formerly known as the General Purpose Financial Statements.

Appendix 10
Superior Court Lobbying Payments

Lobbying Payments to Howard Hills

	Check Date	Check Number	Amount	Description
1	06/18/98	040281	\$ 20,000 *	Retainer to provide unspecified legal services
2	02/05/01	076737	9,000	Legal research and advisory consultation for Feb 1-15, 2001
3	02/15/01	077080	9,000	Legal research and advisory consultation for Feb 16-28, 2001
4	05/01/01	080073	9,000	Legal research and advisory consultation for Apr 16-30, 2001
5	05/29/01	081313	36,000	Legal research and advisory consultation for Mar 1-15, 2001, Mar 16-31, 2001, Apr 1-15, 2001, and May 1-15, 2001
6	07/23/01	083407	9,000	Legal research and advisory consultation for June 1-15, 2001
7	07/24/01	083410	9,000	Legal research and advisory consultation for June 1-15, 2001
8	07/25/01	083475	9,000	Legal research and advisory consultation for July 1-15, 2001
9	12/14/01	088853	9,000	Legal research and advisory consultation for July 15-31, 2001
10	12/24/01	089132	9,000	Legal research and advisory consultation Aug 1-15, 2001
11	05/03/02	093934	9,000	Legal research and advisory consultation
12	05/03/02	093939	9,000	Legal research and advisory consultation for Feb 15-28, 2002
13	05/03/02	093945	9,000	Legal research and advisory consultation for Mar 1-15, 2002
14	05/28/02	094758	9,000	Legal research and advisory consultation
15	05/28/02	094762	9,000	Legal research and advisory consultation for Mar 15-30, 2002
16	05/28/02	094767	9,000	Legal research and advisory consultation for Apr 1-15, 2002
17	05/28/02	094773	9,000	Legal research and advisory consultation for Apr 15-30, 2002
18	05/29/02	094911	9,000	Legal research and advisory consultation
19	05/29/02	094917	9,000	Legal research and advisory consultation
20	05/29/02	094922	9,000	Legal research and advisory consultation
21	05/29/02	094924	9,000	Legal research and advisory consultation
22	05/31/02	094956	9,000	Legal research and advisory consultation
23	05/31/02	094961	9,000	Legal research and advisory consultation
24	05/31/02	094963	9,000	Legal research and advisory consultation
			\$ 254,000	Subtotal

NOTE: Invoice descriptions are based on actual invoices as provided by Superior Court.
 * This amount is outside our audit scope.

Appendix 10
Superior Court Lobbying Payments

<u>Check Date</u>	<u>Check Number</u>	<u>Amount</u>	<u>Description</u>
		254,000	Subtotal from previous page
25 05/31/02	094967	9,000	Legal research and advisory consultation
26 06/19/02	095650	9,000	Legal research and advisory consultation
27 06/19/02	095657	9,000	Legal research and advisory consultation
28 06/19/02	095661	9,000	Legal research and advisory consultation
29 06/19/02	095667	9,000	Legal research and advisory consultation
30 07/01/02	095905	9,000	Legal research and advisory consultation
31 07/02/02	096152	9,000	Legal research and advisory consultation
32 07/02/02	096157	9,000	Legal research and advisory consultation
33 07/02/02	096166	9,000	Legal research and advisory consultation
34 07/02/02	096174	9,000	Legal research and advisory consultation
35 07/02/02	096183	9,000	Legal research and advisory consultation
36 07/02/02	096197	9,000	Legal research and advisory consultation
37 07/02/02	096204	9,000	Legal research and advisory consultation
38 07/17/02	096560	9,000	Legal research and advisory consultation
39 07/17/02	096564	9,000	Legal research and advisory consultation
40 07/17/02	096570	9,000	Legal research and advisory consultation
41 07/17/02	096573	9,000	Legal research and advisory consultation
42 07/18/02	096578	9,000	Legal research and advisory consultation
43 07/18/02	096583	9,000	Legal research and advisory consultation
44 07/18/02	096590	9,000	Legal research and advisory consultation
45 07/18/02	096597	9,000	Legal research and advisory consultation
46 07/19/02	096617	9,000	Legal research and advisory consultation
47 07/19/02	096621	9,000	Legal research and advisory consultation
48 07/19/02	096626	9,000	Legal research and advisory consultation
49 07/19/02	096633	9,000	Legal research and advisory consultation
		<u>\$ 479,000</u>	GRAND TOTAL SUPERIOR COURT LOBBYING PAYMENTS

NOTE: Invoice descriptions are based on actual invoices as provided by Superior Court.

Greenberg Traurig, LLP Lobbying Registration

00020200509

Clerk of the House of Representatives Legislative Resource Center B-106 Cannon Building Washington, DC 20515	Secretary of the Senate Office of Public Records 232 Hart Building Washington, DC 20510
---	--

SECRETARY OF THE SENATE
02 JUN 20 PM 4:24

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration 1. Effective Date of Registration 5/23/2002
 2. House Identification Number _____ Senate Identification Number _____

REGISTRANT

3. Registrant Name Greenberg Traurig, LLP
 Address 800 Connecticut Avenue, NW Suite 500
 City Washington State DC Zip 20004
 4. Principal place of business (if different from line 3)
 City _____ State/Zip (or Country) _____
 5. Telephone number and contact name Contact E-Mail (optional)
202-331-3100 Jack A. Abramoff
 6. General description of registrant's business or activities
Law Firm

CLIENT A lobbying firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should check the box labeled "Self" and proceed to line 10. Self

7. Client Name Howard Mills, Esq.
 Address 550 Bracke Street
 City Laguna Beach State CA Zip 92651
 8. Principal place of business (if different from line 7)
 City _____ State/Zip (or Country) _____
 9. General description of client's business or activities
Attorney at Law

LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within two years of first acting as a lobbyist for this client, state the executive and/or legislative position(s) in which the person served.

Name	Covered Official Position (if applicable)
Jack A. Abramoff	
Edward P. Ayoub	Legislative Counsel, Senator Harry Reid
Todd A. Boulanger	
Linsay Crisler	

Greenberg Traurig, LLP Lobbying Registration

00020200510

Registrant Name: Greenberg Traurig, LLP

Client Name: Howard Hillis, Esq.

Item	Description	Data
10a	Lobbyist Name	Duane E. Gibson
10b	Covered Official Position	Senior Counsel, Com. on Trans. & Infrastructure
10a	Lobbyist Name	Kevin A. Ring
10b	Covered Official Position	
10a	Lobbyist Name	Tony C. Rudy
10b	Covered Official Position	Dep. CoS & Gen. Counsel, Majority Whip
10a	Lobbyist Name	Alan Skowowitz
10b	Covered Official Position	
10a	Lobbyist Name	Michael D. Smith
10b	Covered Official Position	
10a	Lobbyist Name	Neil Valtz
10b	Covered Official Position	Chief of Staff, Representative Bob Ney
10a	Lobbyist Name	Michael E. Williams
10b	Covered Official Position	
10a	Lobbyist Name	Fadgett R. Wilson
10b	Covered Official Position	

Greenberg Traurig, LLP Lobbying Registration

Registrant Name: Greenberg Traurig, LLP 00020200611
 Clerk Name: Howard Hill, Esq.

LOBBYING ISSUES

11. General lobbying issue areas. Select all applicable codes listed in instructions and on the reverse side of Form LD-1, page 1.

GOV

12. Specific lobbying issues (current and anticipated)

Public policies related to issues of judicial and legal structures for states and possessions.

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than \$10,000 to the lobbying activities of the registrant in a semiannual period and in whole or major part, plans, supervises, or controls the registrant's lobbying activities?

- No. Go to line 14. Yes. Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Name	Address	Principal Place of Business (city and state or country)

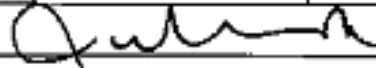
FOREIGN ENTITIES

14. Is there any foreign entity that:

- a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
- b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the client or any organization identified on line 13; or
- c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

- No. Sign and date the registration. Yes. Complete the rest of this section for each entity matching the criteria above, then sign and date the registration.

Name	Address	Principal Place of Business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

Signature:  Date: 6/19/2011
 Printed Name and Title: Jack A. Abramoff - Senior Director of Government Affairs

Appendix 12

Supreme Court Lobbying Payments

Payments to Law Firm

	Check Date	Check Number	Amount	Description
1	10/26/01	1303	2,500	For professional services through November 30, 2001
2	01/22/02	1382	1,500	For professional services through November 30, 2001
3	05/30/02	1477	4,349	For professional services rendered through April 30, 2002
			\$ 8,349	Total Payments to Law Firm

Payments to McClure, Gerard & Neunschwander, Inc.

	Check Date	Check Number	Amount	Description
1	05/03/01	1452	\$ 20,152	Professional services and advice rendered February-March 2002
2	07/11/02	1524	20,906	Professional services and advice rendered through May 2002
3	07/31/02	1545	10,041	Professional services and advice rendered June 2002
4	09/30/02	1601	10,404	Professional services and advice rendered July 2002
5	09/30/02	1624	15,187	Professional services and advice rendered August 2002
			\$ 76,690	Total Payments to McClure, Gerard & Neunschwander, Inc.

**\$ 85,039 GRAND TOTAL SUPREME COURT PAYMENTS FOR
LOBBYING AND LEGAL SERVICES**

McClure, Gerard & Neuenschwander, Inc. Lobbying Registration

Clerk of the House of Representatives Legislative Resource Center B-106 Cannon Building Washington, DC 20515	Secretary of the Senate Office of Public Records 232 Hart Building Washington, DC 20510
---	--

SECRETARY OF THE SENATE
02 MAR -5 PM 1:01

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration I. Effective Date of Registration 2/4/2002
 2. House Identification Number _____ Senate Identification Number _____

REGISTRANT

3. Registrant Name McClure, Gerard & Neuenschwander, Inc.
 Address 201 Maryland Ave., NE
 City Washington State DC Zip 20002 USA
 4. Principal place of business (if different from line 3)
 City _____ State/Zip (or Country) _____
 5. Telephone number and contact name Contact E-Mail (optional)
202-543-7200 Trevor Kolego trevor@mgoinc.com
 6. General description of registrant's business or activities
Government relations

CLIENT A lobbying firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should check the box labeled "Self" and proceed to line 10. Self

7. Client Name Supreme Court of Guam
 Address 120 West O'Brien Drive Suite 300 Guam Judicial Center
 City Hagatna State GU Zip 96910-5174 USA
 8. Principal place of business (if different from line 7)
 City _____ State/Zip (or Country) _____
 9. General description of client's business or activities
Highest court in the Judicial system of Guam.

LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within two years of first acting as a lobbyist for this client, state the executive and/or legislative position(s) in which the person served.

Name	Covered Official Position (if applicable)
Steven Barringer	
Joseph Findare	
Matthew Iandolo	
Nils Johnson	Leg Director - Sen Craig

McClure, Gerard & Neuenchwander, Inc. Lobbying Registration

Registrant Name: McClure, Gerard & Neuenchwander, Inc.

Client Name: Supreme Court of Guam

Item	Description	Data
10a	Lobbyist Name	Trevor Kolego
10b	Covered Official Position	
10a	Lobbyist Name	James McClure
10b	Covered Official Position	
10a	Lobbyist Name	Tod Neuenchwander
10b	Covered Official Position	

McClure, Gerard & Neuenschwander, Inc. Lobbying Registration

Registrant Name: McClure, Gerard & Neuenschwander, Inc.
 Client Name: Supreme Court of Guam

LOBBYING ISSUES

11. General lobbying issue areas. Select all applicable codes listed in instructions and on the reverse side of Form LD-1, page 1.

FOR, GOV

12. Specific lobbying issues (current and anticipated)

Issues related to establishing an independent Supreme Court in Guam

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than \$10,000 to the lobbying activities of the registrant in a semiannual period and in whole or major part plans, supervises, or controls the registrant's lobbying activities?

- No. Go to line 14. Yes. Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Name	Address	Principal Place of Business (city and state or country)

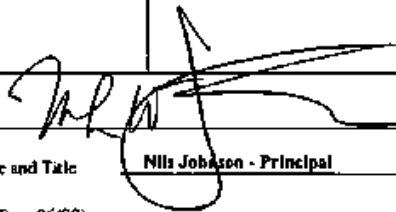
FOREIGN ENTITIES

14. Is there any foreign entity that:

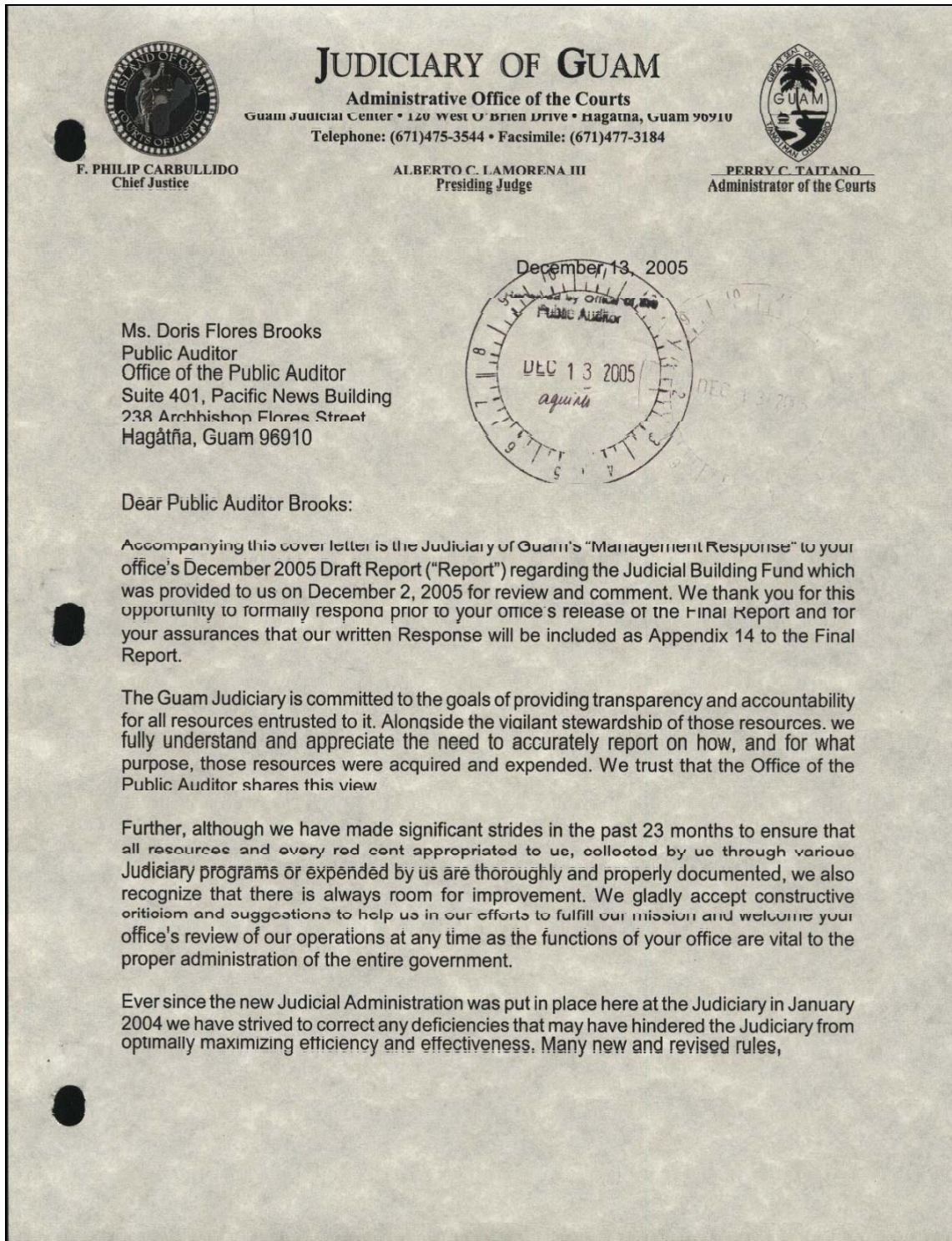
- a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
- b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the client or any organization identified on line 13; or
- c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

- No. Sign and date the registration. Yes. Complete the rest of this section for each entity matching the criteria above, then sign and date the registration.

Name	Address	Principal Place of Business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client

Signature:  Date: 2/28/2002
 Printed Name and Title: Nils Johnson - Principal

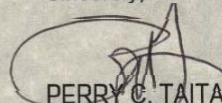
Appendix 14
Management Response



Letter to the Public Auditor
December 13, 2005
Page 2 of 2

regulations, policies and procedures have been implemented to help us achieve this goal. We look forward to receiving sound and constructive recommendations from those who are genuinely committed to good governance to further assist us in exceeding our goals and expectations.

Sincerely,



PERRY C. TAITANO
Administrator of the Courts

Enclosure

cc: Chief Justice F. Philip Carbullido

**JUDICIARY OF GUAM'S MANAGEMENT RESPONSE TO THE
OFFICE OF THE PUBLIC AUDITOR'S DECEMBER 2005
DRAFT REPORT REGARDING THE SUPERIOR COURT OF
GUAM JUDICIAL BUILDING FUND FROM OCTOBER 1, 1999
THROUGH SEPTEMBER 30, 2004**

December 13, 2005

TABLE OF CONTENTS

Sections of this Response, other than this Table of Contents and the Judiciary's Introductory Statement, are organized in a manner which tracks the headings of the various sections and subsections used by the Office of the Public Auditor in its December 2005 Draft Report.

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B. Response to "JBF Expenditures" Subsection	6
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E. Response to "Lobbying Fees" Subsection	16
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I. Judiciary's Introductory Statement

The Judiciary of Guam provides this written Response to the Office of the Public Auditor's ("OPA") December 2005 Draft Report ("Report") regarding the Superior Court of Guam Judicial Building Fund. The Report was provided to the Judiciary on December 2, 2005 for review and comment. This Response was prepared through a collaborative effort of Judiciary personnel.

It is important at the outset to articulate that the policy of the Judicial Branch is to establish and maintain an effective internal control system to ensure that funds are safeguarded, that laws and regulations are followed and that reliable data is obtained, maintained and reported. Since the change in the administration of the Judicial Branch which was brought about by the passage of Fed P.L. 108-378 we have taken steps to address even the slightest appearance of inappropriate procedures or actions in efforts to maintain transparency and accountability.

The OPA plays a critical role in improving the operation of government. The Judiciary is committed to upholding its fiscal obligations to taxpayers and considers the efficient and effective management of its financial systems and procedures a top priority. The Judiciary has taken several measures over the last two years to improve the management of its finances and had already implemented, even before the present audit commenced, a number of the issues raised by the OPA in its Report. We appreciate the OPA's efforts to further assist us in meeting our goals. We are also in the process of implementing programs to address the findings, including submission of full statements of the accounts of the JBF on an annual basis to the Legislature rather than awaiting audit of financials, to ensure that there is no issue regarding our compliance with reporting requirements.

We sincerely thank the OPA for the extensive investment of time it has clearly dedicated to the process of preparing this Report, and for affording us the opportunity to review, comment and discuss its findings prior to preparation of the final Report. We also thank the OPA for clearly and concisely pointing out to us what it found to be "shortcomings," in its estimation. We are hopeful that the OPA and the Judiciary are able to continue communicating in a constructive manner as we all strive to improve the function of the government.

II. Response to OPA's "Introduction" Section

The OPA Report states that P.L. 17-82 established the JBF for certain specific purposes. It is important to note at the outset, as discussed later in the Report and as appears in the Report's Conclusion section, that the language of P.L. 17-82 was effectively amended when the Governor

of Guam and the Legislature, through P.L. 19-19, concurred with the loan agreement terms, thereby expanding the purposes for which the JBF could be used.

III. Response to OPA's "Results of Audit" Section

The Report's "Results of Audit" Section begins with a ten-paragraph introductory summary followed by several subsections. Because certain issues are mentioned in the introductory summary as well as in their own specific subsections, where appropriate this Response addresses those issues immediately below as well as in later subsections herein.

Method of Allocating Revenues

Further discussion can be found in subsection III.A. below regarding the "JBF Revenues" subsection of the Report.

The Report raises the issue of how the Judiciary allocates revenues it receives. The Judiciary works diligently to ensure that employees comply with applicable laws and established procedures pertaining to financial functions and, furthermore, that record keeping systems are instituted and managed in order to achieve compliance with laws and procedures. Judicial Council Resolution 04-010 sets forth the Superior Court of Guam schedule of fees (Rules 91 and 92). The schedule was recently prepared in a user-friendly format for employees describing each fee, the amount, and the apportionment of each fee by type of fund whether it be destined for the Judicial Building Fund, the Territorial Law Library Fund or the Judicial Client Services Fund. A similar format was presented for Traffic Fines funds distribution. The updated schedules were disseminated to all Intake personnel in the Courts & Ministerial Division of the Superior Court who are involved in the process of receiving funds.

Lease to Employees Association

The Judiciary's comprehensive Response to the Report's subsection regarding its lease of property to its Employee's Association can be found at subsection III.F. below.

Judicial Council Approval of JBF Expenditures

The Report points out that although a Judicial Council Resolution was in place requiring that all JBF expenditures other than the quarterly loan payment be approved by the Council, such was not done for all expenditures. However, it is important to note that every expenditure of JBF funds received the written approval of the lender, Rural Development, as required. Further, the Judicial Council did not convene for quite some time and when it did meet repeated deadlock votes occurred on a multitude of issues. Thus, although the Judicial Council did not approve

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each expenditure during that time period, such concern is greatly minimized by the reality that Rural Development itself approved every expenditure. Under the new Judicial Administration, the new Judicial Council meets regularly once a month.

Failure to Follow Procurement Regulations

The Judiciary's comprehensive Response to the Report's subsection regarding "Procurement of Supplies and Services" can be found at subsection III.D. below.

Budget Over-Expenditures

The Judiciary's comprehensive Response to this issue can be found at subsection III.B. below regarding the Report's "JBF Expenditures" subsection.

Lobbying Fees

The Judiciary's comprehensive Response to this issue can be found at subsection III.E. below regarding the Report's subsection addressing the payment of Lobbying Fees by both the Superior and Supreme Courts.

Hero Scholarship Program Fund

As noted by the OPA Report, until recently no legal mandate existed requiring the transfer of funds from the JBF regarding the Hero Scholarship Program Fund because the Judiciary never received a list of qualified applicants from the University of Guam or from the Guam Community College. However, Public Law 28-68 removed that prerequisite effective October 1, 2005. The Judiciary will inquire of Rural Development what its position is regarding Public Law 28-68's mandate that \$20,000 be transferred annually from the JBF to support the Hero Scholarship Program Fund.

Annual Transmittal of JBF financial Information to Legislature as Part of
Budget Submission

The Judiciary's comprehensive Response to this issue can be found at subsection III.C. below regarding the Report's subsection addressing the Judiciary's "Compliance with Reporting Requirements."

A. Response to "JBF Revenues" Subsection

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The Report comments that a complicated method for allocating JBF revenues exists at the Judiciary. The Judiciary submits the employees involved in the process are well aware of the proper procedures that must be adhered to regarding the receipt of payments at the Judiciary. Nonetheless, the Judiciary agrees that increased automation of the processing of payments received by the Judiciary would be beneficial. However, under its current procedures the Judiciary works diligently to ensure that employees comply with applicable laws and established procedures pertaining to financial functions and, furthermore, that record keeping systems are instituted and managed in order to achieve compliance with laws and procedures. Judicial Council Resolution 04-010 sets forth the Superior Court of Guam schedule of fees (Rules 91 and 92). The schedule was recently prepared in a user-friendly format for employees describing each fee, the amount, and the apportionment of each fee by type of fund whether it be destined for the Judicial Building Fund, the Territorial Law Library Fund or the Judicial Client Services Fund. A similar format was presented for Traffic Fines funds distribution. The updated schedules were disseminated to all Intake personnel in the Courts & Ministerial Division of the Superior Court who are involved in the process of receiving funds and they will continue to adhere to the required practices in the carrying out of their important duties.

B. Response to "JBF Expenditures" Subsection

The Report comments that the JBF enabling legislation is more strict than that loan resolution and its related documents regarding what JBF funds may be used for. We point out, as stated quite clearly by the Report in its Conclusion, that "the [enabling] legislation was effectively amended by legislative concurrence through P.L. 19-19 and the Governor of Guam's concurrence with the loan agreements terms." Consequently, the arguably stricter terms of the original enabling legislation have been supplanted by the terms of the loan resolution and its related documents.

Hero Scholarship Program

As noted by the OPA Report, until recently no legal mandate existed requiring the transfer of funds from the JBF regarding the Hero Scholarship Program Fund because the Judiciary never received a list of qualified applicants from UOG or GCC. Public Law 28-68 removed that prerequisite effective October 1, 2005. The Judiciary will inquire of Rural Development what its position is regarding Public Law 28-68's mandate that it transfer \$20,000 from the JBF annually to support the Hero Scholarship Program Fund.

Forensic Science Laboratory

Throughout the summer and fall of 2005 the Judiciary has been in regular

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communications with various members of the Legislature as well as the Guam Police Department regarding efforts to move ahead with the forensic science lab project. Quite possibly as a result of the unified efforts to proceed with the science lab project, we point out that P.L. 28-068 which was signed into law on September 30, 2005, again addressed the forensic lab matter. Specifically, Section 14 of Part II of Chapter II of that law requires that within 90 days the Judicial Council commence efforts, in all due diligence, to effectuate the provisions of the P.L. 26-124 regarding the science lab. Further, the Judicial Council is required to then report its progress to the Governor and the Speaker of the Legislature within 180 days and to also post its report on the Judiciary's website. The Judiciary fully intends to comply with this provision of law in efforts to facilitate the design and construction of a new forensic science laboratory here on Guam.

Non-Approval of JBF Expenditures by the Judicial Council

The Report points out that although a Judicial Council Resolution was in place requiring that all JBF expenditures other than the quarterly loan payment be approved by the Council, such was not done for all expenditures. However, it is important to note that every single expenditure of JBF funds received written approval of the lender, Rural Development, prior to such expenditure being made. Moreover, due to the fact that the Judicial Council did not convene for quite some time or, when it did meet repeated deadlock votes occurred on a multitude of issues. Thus, although the Judicial Council technically failed to approve each expenditure during that time period, such concern is greatly minimized by the reality that Rural Development itself approved every expenditure. Nevertheless, under the new Judicial Administration, the new Judicial Council now meets monthly. Further, the new Judicial Council approves an annual budget of JBF expenditures.

Budget Over-Expenditure

The Report states that “[o]ver the past five years, the Superior Court overspent its approved budget within specific years by line item categories.” However, Rural Development has always allowed for the reprogramming of approved funds in this manner. Rural Development has always been aware that such is common practice and has never communicated in any manner to the Judiciary that such practice was inappropriate. Not unlike any other budget, budget items are often “best estimates” and are thus variable in nature. The amount actually expended inevitably departs from the budgeted estimates, particularly when dealing with a capital improvement line item or big ticket equipment line item. Reprogramming is commonplace. Again, Rural Development has never indicated any concern with this practice and no sanction

has ever been imposed on the Judiciary for such practice. Further, except for FY 2004 which is addressed below, overall annual expenditures did not exceed approved annual budget amounts.

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The Report states that the Judicial Council exceeded the FY 2004 budget approved by Rural Development by \$176,550. This is an inaccurate statement. The appearance of an over-expenditure in FY 2004 consisted of Capital Outlay expenditures for capital improvement projects undertaken in FY 2004 that had been approved by RDA in previous fiscal years. The Judiciary was instructed by Rural Development to include in its year-ending report any projects that were undertaken in a given year that may have been from prior-year approvals, thus evidencing Rural Development's awareness that doing so was common practice. In FY 2004 an approved budget of \$9,500 for Capital Outlay and \$463,628 for Contractual Services was secured by the Judicial Council from Rural Development. The OPA Report indicates that during FY 2004 \$256,684 was spent on Capital Outlay items and \$70,633 was spent on Contractual Services. Thus, it appears that an "over-expenditure" of \$247,184 occurred for Capital Outlay projects and an under-expenditure of \$70,633 occurred for Contractual Services. Thus the net effect indicates an apparent over-expenditure of \$176,550.

Regardless of the various ways in which the numbers may be presented, the simple fact remains that every FY 2004 Capital Outlay expenditure was made on projects that were approved by Rural Development, either in that year or in prior fiscal years. For various administrative reasons the Judiciary did not go forward with those projects in the years they were approved, including the fact that its practice has always been to keep a conservative eye on the JBF balance to ensure it remains healthily above the required reserve level of \$901,560.

The Capital Outlay projects approved in former years and undertaken in FY 2004 were as follows: Approximately \$60,000 was approved for new carpet in FY 2001; approximately \$83,000 was approved for an alarm system, an additional approximate \$20,000 was approved for new carpet, and approximately \$20,000 was approved for renovations to the Supreme Court in FY 2002; and approximately \$4,000 was approved for carpet equipment and approximately \$53,000 was approved for the purchase of vehicles in FY 2003. These approximate figures total \$240,000. Thus, while the Report might at first glance indicate an over-expenditure for Capital Outlay items in FY 2004 of \$247,184, approximate calculations clearly illustrate that at least \$240,000 of that was spent to fund projects approved in prior fiscal years. The Judicial Council did not exceed the FY '04 budget. In fact, upon taking into account the projects listed above which were approved in prior fiscal years but expensed in FY 2004 when they were undertaken, the Judicial Council in fact under-expended its approved budget by an approximate amount in excess of \$65,000 in FY 2004. (See Appendix 7 to OPA Report.) The Judiciary will take necessary action to ensure that its records are corrected to reflect that expenses approved in certain years are charged against funds from those years if Rural Development indicates its desire that such corrections be made.

Concern Over Diminishing JBF Balance

The Report notes with apparent concern that the JBF balance has diminished over time. It is important to note that a major factor in the diminishing of the fund balance has been the

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advance payment of the debt service. When the JBF had a large cash reserve, the sum of \$3.5 million was paid to reduce the principal balance on the loan. Rural Development monitors the financial position of the JBF on a quarterly basis and concurs with the annual budget of JBF. In fact, Item 7 of the Loan Resolution stipulates the Superior Court shall "not enter into any contract or agreement or incur any liabilities in connection with making enlargement, improvements or extensions without prior written consent of the Government (RDA)." This has always been done.

Use of JBF to Supplement Court Operations

The Report comments that certain "statements seem to indicate that the Judicial Council used or attempted to use the JBF to supplement operating expenses normally funded by General Fund appropriation." The Judicial Council has always followed proper procedures in requesting Rural Development's approval for uses of JBF funds to pay certain expenses, whatever those expenses may be. Rural Development approved the use of JBF funds to pay electrical bills at the Judiciary. All applicable procedures and requirements were followed throughout that process. As a result of that approval, the Judiciary was able to reallocate resources to partially pay down the extremely burdensome and underfunded indigent defense arrears. Furthermore, such payment of indigent defense arrears using general fund appropriations was made in accordance with Guam law which provided the Judiciary with transfer authority regarding funds appropriated to it by the Legislature.

C. Response to "Compliance with Reporting Requirements" Subsection

The Report concludes that Judicial Council has not complied with 7 GCA § 9504's reporting requirements. Title 7 GCA § 9504 requires the Judicial Council to prepare full statements of accounts of all money received and expended out of the accounts of the JBF and to transmit such report to the Legislature each fiscal year with the budget request of the Judiciary for the ensuing fiscal year. Generally speaking, each year the Judiciary has provided the Legislature with financial statements as part of the budget process which incorporated the JBF revenues and expenditures. The Legislature has never indicated to the Judiciary that the Judiciary had failed to comply with its JBF reporting requirements. Nonetheless the Judiciary will cause to be prepared, even at additional expense, full statements of accounts of all money received and expended out of JBF accounts for annual transmittal to the Legislature. Effective October 1, 2005, the Judiciary will submit the information to the Legislature together with its Budget Request for the ensuing fiscal year.

D. Response to "Procurement of Supplies and Services" Subsection

1. The Report found that eleven (11) Purchase Orders ("PO") amounting to \$944,297 were subject to the sealed bid and advertisement requirements but were instead

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acquired through sole source selection and did not have documentation in their respective files to justify the sole source selection. Specifically, they were identified as follows in the Report:

- a. Three POs with an aggregate amount of \$685,000 for the accounting system maintenance;
- b. Four POs with an aggregate amount of \$189,245 for training and various computer related services;
- c. Three POs with an aggregate amount of \$49,232 for elevator maintenance; and
- d. One \$20,820 PO for air-conditioning preventive maintenance.

Regarding (a) above (\$685,000):

Following the Superior Court's acquisition of its IBM AS400 mainframe computer in 2000, Data Management Resources ("DMR") was issued an application/software maintenance contract each year. When DMR was issued the maintenance contract for the first year it was the only firm on island that had the capacity and capability to provide the services required by Superior Court in terms of application/software development and maintenance. This situation persisted for years, including the periods covered by the OPA's Report. Furthermore, DMR maintains all documentation regarding the Judiciary's MIS system and possesses the expertise specific to the Judiciary's system, a system which is unlike the Executive Branch's Department of Administration's MIS system. Regarding FY '05, the DMR contract was not similarly renewed, but rather a solicitation process occurred and an RFP was issued by the Judiciary. The result of the process was an award to DMR once again, from which resulted another one-year contract with DMR. That contract included a provision allowing the Judiciary the unilateral right to extend annually for up to a total of three years, which it has done regarding FY '06, in the best interest of the Judiciary. Of significant note regarding the competitive process for the FY '05 contract period is that fact that DMR was determined to be the only qualified, responsive and responsible entity seeking the contract. While one other entity did submit a proposal to in response to the RFP, such was rejected as the entity failed to comply with certain conditions applicable to the solicitation. Furthermore, the resulting contract was in the amount of \$175,000, which was the exact same amount expended by the Judiciary for the contracts DMR was issued for FYs '02 and '04. This award and contract following a complete RFP process further validates that DMR is the only firm on Guam capable of meeting the Superior Court's application/software maintenance requirements and that the process utilized by the Judiciary in fiscal years prior to FY '05 resulted in contracts which were in the best interest of the Judiciary even though the best record-keeping procedures may not have been adhered to. While it is acknowledged that proper documentation was not maintained regarding the

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Superior Court's decision to award the contract to DMR each year through either sole source or by applying a procurement exception to the situation, the decision was nonetheless made each year in the best interest of the court's use of limited resources and such decisions were not arbitrary or irresponsible.

Regarding (b) above (\$189,245):

Two (2) of the four (4) POs totaled an amount of \$25,625 and were issued to IBM for the annual maintenance of the IBM AS400 computer mainframe and related equipment in FYs '02 and '03. The Superior Court failed to document the application of a procurement exception to the situation for each of the two PO's. Such was done, however, for FY '05 when a PO was issued which properly documented the applicable exception to the standard competitive procedure of the procurement rules, that being the reality that no competition was possible regarding the required services. To this day IBM is the only firm on Guam that provides maintenance support for the IBM AS400 computer mainframe and peripheral equipment. Regarding the FY '06 time period, the procurement officers inquired of another company, GETS Office Systems, a possible vendor, whether it could provide the maintenance services and were told it could not. Therefore another PO was used to again contract with IBM for the same service and the applicable exception to the procurement procedures was again properly documented. The inquiry of GETS Office Systems was also properly documented in the Procurement Division's FY '06 PO file. Again, although it is acknowledged that proper documentation was not maintained regarding the decision-making actions of the procurement officers, sound decisions were nonetheless made and the contracts were awarded to IBM based on the procurement officers' knowledge of the marketplace and awareness that no firm other than IBM could provide the needed maintenance support to the IBM machines.

Two (2) of the four (4) POs totaled an amount of \$163,620 and were issued to IBM to cover the costs of computer equipment upgrades which were necessary to facilitate access to the Superior Court's AS400 system. This was done pursuant to IBM's ICC financing plan (lease-to-purchase program) which had been available to the Judiciary since it originally purchased the AS400 system from IBM. Through the ICC plan, Government agencies could purchase computer equipment without paying the full amount upon delivery of the equipment. Instead, the equipment could be financed over time by virtue of a lease-to-purchase agreement which included favorable financing rates.

The Superior Court initially issued a PO to IBM to cover the cost of upgrading computer equipment under the ICC financing plan in the amount of \$40,905 during FY '00 but only to cover the period from November 1999 to December 1999 as the ICC plan ran on a calendar year system. A second PO was then issued in the amount of \$122,715 to cover the remainder of FY '00, from January 2000 to September 2000.

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Through the ICC plan, the Superior Court purchased several central processing units, monitors and printers for the upgraded Windows inter-connectivity to the Court's AS400 mainframe, to include the following computer enhancements: e-mail, word processing and financial spreadsheet software suite, Internet/Web, among others, whose programs or software functions/processes did not exist within the former IBM dummy terminals. These computer upgrades through have benefitted the Judges, management and employees in carrying out the essential duties involved in their daily operations which require constant access to the AS400.

The Superior Court acknowledges that it did not fully document its acquisitions through the ICC program. However, it is clear that at the time no other vendors on Guam offered a similar lease-to-own program involving favorable terms, financing rates and conditions for the Judiciary. The protracted payments allowed the Superior Court to spread-out payments and also secure the eventual ownership of the upgraded computer equipment which is still being utilized today.

Regarding (c) above (\$49,232):

Each of the three PO's for elevator maintenance discussed in the Report covered a specific fiscal year and were regarding FYs '00, '01 and '03. The Superior Court did not document the sole source decision or application of a procurement exception to the situation each of those years. However, the Otis Elevator Company was issued the contract each year because for many years it was the only firm on Guam that provided elevator maintenance services. Thus, although it is again acknowledged that proper documentation was not maintained regarding the decision-making actions of the procurement officers, sound decisions were nonetheless made and the contracts were awarded to Otis based on the procurement officers' knowledge of the marketplace and awareness that no firm on Guam other than Otis could provide the needed elevator maintenance.

As is common procurement practice, during the final quarter of the FY '04 service period efforts were begun to properly procure the services for the FY '05 service period. However those efforts were suspended when it was discovered that the Superior Court had previously agreed to a five (5) year maintenance contract with the Otis Elevator Company. While that contract was scheduled to expire on October 1, 2004, it also contained an express provision articulating that the contract would automatically renew for an additional five (5) year period, and thus would continue until 2009, unless written notice was given by the Judiciary at least ninety (90) days prior to October 1, 2004 that it did not want the extension to kick in. Subsequent to that discovery, the Judiciary was successful in negotiating and securing a supplement to the contract whereby the five year extension would only last until the end of FY '05, thus essentially allowing the Judiciary to "opt out" of the last four year of the additional five years if it so desired. In preparation for that decision, and regarding the FY '06 service period, the Judiciary undertook proper procurement procedures regarding securing elevator maintenance services

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from and after the end of FY '05 by soliciting Requests for Quotations since the total expenditure under the annual contract was estimated to be less than \$15,000. The result of the competitive process was the awarding of an annual maintenance contract to a firm other than the Otis Elevator Company and thus the longstanding relationship with Otis ended on September 30, 2005.

Regarding (d) above (\$20,820):

Until 2004, Carrier Guam, Inc., was issued an annual maintenance air conditioning contract by the Judiciary via successive POs. While no documentation was maintained support the applicability of a procurement exception prior to FY '04, procurement officers were justified in the issuance of the POs as Carrier Guam, Inc., was the only known vendor at the time who had the comprehensive maintenance capabilities in terms of trained personnel, knowledge of the Judiciary's air conditioning system and the availability of parts and thus it was the only entity capable of keeping the air conditioning system operating at a acceptable level of reliability. In FYs '05 and '06 procurement files contain thorough documentation supporting the procurement actions taken regarding the procurement of services for air conditioning maintenance and are thus in compliance with the Judiciary's procurement rules.

The Judiciary concurs with the OPA's observations and fully acknowledges that sound fiscal policy requires that it continue its now-current and thorough practices of properly competing all procurement matters unless an exception to the procurement requirements is properly determined. Furthermore, the Judiciary concurs that full documentation of all such procurement matters should be maintained, including those for which a solicitation is not required due to an applicable exception.

2. The Report quotes the Superior Court's prior procurement policy regarding purchases between \$1,000 and \$5,000 wherein informal written or oral quotations obtained on the open market were required; and for purchases between \$5,000 and \$10,000 wherein three informal written quotations obtained on the open market were required – of which a written record was also required. The Report concluded that of 13 purchases in excess of \$1,000 but less than \$10,000 six (6) POs totaling \$16,195 “had no written record of a solicitation process having occurred.”

The Report identified only four (4) of the referenced POs, all of which were for amounts between \$1,000 and \$5,000. However, under the regulations in place at the time, solicitations in such situations did not require a written record and thus it is entirely likely that proper solicitations were undertaken.

Pursuant to the Procurement Policy in place at the time and which was quoted in the Report, the following standard applied to purchases between \$1,000 and \$5,000:

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[S]olicitation of informal written or oral quotations in the open market, except that the Procurement Officer, with the concurrence of the Purchasing Agent, may dispense with such solicitations.

Furthermore, it is also important to note that the standard that applied to POs between \$5,000 and \$10,000 was as follows:

Solicitation of at least "three informal written quotations on the open market of which a written record shall be kept, except that the Procurement Officer, with the concurrence of the Purchasing Agent, may dispense with such quotations."

In comparing these two standards, the following is clear: For purchases between \$1,000 and \$5,000, which all four of the POs cited by the Report were, informal written or oral quotations sufficed, and no written record of such solicitations was required to be kept. To the contrary, when a purchase involves the greater amount, \$5,000 - \$10,000, oral quotations did not suffice, and it was required that a written record of the obtaining of quotes be kept. Thus, the four PO purchases cited in the Report did not violate the applicable standard.

Furthermore, notwithstanding the lack of any requirements that quotations be in writing or that written records of the solicitation process be maintained regarding purchases of \$1,000 to \$5,000, under the applicable Procurement Policy the Purchasing Officer, with the concurrence of the Purchasing Agent, possessed the discretionary authority to bypass the solicitation process. Additionally, no requirement existed for the Purchasing Officer to document a decision to bypass the solicitation process.

Finally, after reviewing each of the purchases in question and interviewing procurement officers, it has been determined that the purchases were made in the best interest of the Judiciary. In all cases, the requirements were specific to a system, hardware, or equipment that the Superior Court had already procured and that the vendors were either the authorized dealer/maintenance support provider or that the vendor was the only one at the time that provided the service. Thus it is clear that although the solicitation process was bypassed in each of these situations, such was expressly authorized and each decision was based on legitimate, reasonable considerations. Therefore improper procurement was not undertaken and the applicable procurement regulations and standards were properly followed.

Notwithstanding this explanation, the Judiciary concurs that, to the extent the currently applicable standards allow such bypassing of requirements, such decisions should be done in writing and should provide the rationale supporting the decision. Such will ensure that public officials are held accountable for their actions, will document

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the reason(s) for any such decisions, and will establish an audit trail for the expenditure of funds and accountability of resources.

3. The Report stated that five procurement transactions totaling \$268,721 were tested under the Judiciary's current procurement policy, of which four were over \$15,000 and one was less than \$15,000. Of the five transactions tested, The Report took exception to one transaction over the \$15,000 threshold. An \$18,400 PO for the Superior Court accounting system was a rollover from the previous fiscal year and did not undergo the competitive sealed bidding process but rather was issued to DMR. It was noted that the PO involved the same local vendor that had previously received \$685,000 in sole source procurements, without documentation or justification, under the prior procurement policy.

The PO in question was issued to DMR under the same premise that DMR was awarded contracts for years regarding the application/software maintenance services. (See discussion above.) Because DMR maintains all the Judiciary's application/software documentation it was most advantageous to the Judiciary that DMR perform the work regarding the accounting system and thus the award was not arbitrary.

4. The Report found that four direct payments to an A/E firm ("Firm") totaling \$20,838 were made in FY '04 under an expired construction management agreement.

The Firm that provides the Judiciary with A/E support is used by the Judiciary for several reasons. Since the New Judicial Building was first occupied there has been many problems with the facility that only the Firm is knowledgeable of and through time corrected the problems associated with the facility. In addition, the Firm is most knowledgeable of every facet of the building since documentation to support changes to the facility, infrastructure upgrades, As-builts and shop drawings have not been maintained by the Judiciary nor the Department of Public Works. Since the building was first constructed there has been many upgrades, alterations, infrastructure changes, etc., all of which the Firm maintains its documentation. To allow another A/E firm to do the same work will be costly and most likely be problematic since documentation and up to date drawings, as-builts and shop drawings were not maintained by the Judiciary. To this day, the lack of documentation, drawings and updates, as-builts and shop drawings continue to be the reason that the sole source A/E continues to serve the Judiciary. To award a contract to other than the Firm would not serve the Judiciary's best interest. Notwithstanding the process in which the Judiciary issued the direct payments without documenting its actions the Judiciary was not arbitrary in its decision.

The Judiciary will continue to fully abide by its existing regulations in regards to the procuring of services. If a valid procurement exception applies to a situation such as that

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involving the A/E firm, such will be properly documented and fully supported by the proper authorities within the Judiciary. If not, formal procurement procedures will be properly followed.

5. The practice of documenting various procurement processes is good public policy. It holds Government officials responsible and accountable to the taxpayers and the public. The suggestion by the OPA that legitimate bypassing of solicitation procedures be fully documented is welcomed by the Judiciary.

E. Response to "Lobbying Fees" Subsection

1. Superior Court

The Report discusses a "Contract to Employ Attorney" and provides a synopsis of change orders to that contract. Within that synopsis the Report states, regarding February 10, 2002, that "... by the time this change order was signed, the Superior Court had already spent \$128,000, which is \$8,000 in excess of the agreed-upon amount." However, an analysis of the check disbursement transaction report indicates that the Superior of Guam paid Mr Hills \$108,000 of the \$120,000 contract agreement. Checks numbered 79313 dated April 4, 2001 and 79984 dated April 27, 2001 are voided checks which may erroneously been included in the computation.

A second component of the synopsis regarding change orders indicates that the total payments were \$155,000, "\$35,000 in excess of the \$120,000 authorized." Again, however, checks numbered 79313 dated April 4, 2001 and 79984 dated April 27, 2001 are voided checks which may erroneously been included in the computation.

On May 3, 2002 three payments were made for prior period obligations incurred on March 16-31, 2001, February 15-28, 2002 and March 15-30, 2002. The chief certifying officer, who at the time was the former Administrative Director, approved the payment over and above the stated contract agreement. The Change Order was subsequently amended on May 27, 2002 to address the additional contract obligation.

As concluded by the OPA Report, all actions involving the contracting of legal professional services and all payments made in connection therewith were done in conformity with then existing procurement policy.

2. Supreme Court

The Report states that "[i]n October 2001, the Supreme Court entered into a personal services agreement with a lobbying firm." The contract was with Attorney Lawrence R. Barusch and his law firm of Parsons, Behle and Latimer for legal services. Barusch was and is an attorney licensed to practice on Guam with knowledge of the issues surrounding HR 521. The service rendered by Barusch was legal advice concerning passage of HR 521.

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The Supreme Court's procurement regulations at the time did not cover professional services. The exact definition of "service" per § 1007.02 provided: "The term services means any rental of facilities rental [sic], repair or maintenance of equipment, machinery or other personal property, but does not include contracts for constructions, recruitment or other services incident to employment." The procurement rules therefore did not govern the procurement of Barusch's services, whether they be characterized as legal or lobbying services. The procurement was made at the responsible discretion of the purchasing authority. In any event, the purchase price was below \$10,000 and even if the procurement rules applied, sealed bids were not required per § 1003.02. Further, the Supreme Court used prior year lapsed funds to pay for this service which was expressly permitted by Public Law 26-36. Moreover, no law or regulation prohibited using government funds for lobbying services at the time.

Regarding the services provided by attorney Barusch, the Report notes that, "a detailed billing by date and hour indicated that services had commenced prior to the signing of the contract" However, no procurement regulation or statutory provision exists which precludes preliminary consultation and research leading to a contractual relationship from being compensated. The preliminary discussions and research benefitted the court. If no contractual relationship was entered into, the court would not have paid for the services. Further, the Report notes that, "an adjustment was made to increase the original PO amount from \$4,000 to \$8,349." Regardless, all increases were properly documented and approved by the Purchasing Officer and Certifying Officer.

The Report states that, "[t]he Supreme Court subsequently entered into an agreement with McClure, Gerard & Neuenschwander, Inc." As noted above, the Supreme Court's procurement regulations in place at the time did not cover professional services. The applicable procurement rules therefore did not govern the procurement of MGN's services. The procurement was made at the responsible discretion of the purchasing authority. Nonetheless, out of an abundance of caution and in recognition of the procurement rules, the Supreme Court made the determination that this procurement was for services for which it was impractical to secure competition. This exception to the sealed bid process per § 1003.03.a.2 was expressly noted in the purchase order for MGN's services.

Bid procedures in existence at the time did not allow negotiation. Under the procurement rules in place at the time the lowest responsible bidder was simply awarded the bid. The nature of the lobbying services sought by the Supreme Court absolutely required negotiations. Generally, lobby services are procured on an hourly basis. By negotiating a contract based on milestones, as discussed below, the Supreme Court was able to obtain MGN's services at a greatly reduced rate. Moreover, time was of the essence when MGN's services were procured. The Supreme Court sought to have H.R. 521 introduced before the Congress recessed for that year and a consultant was greatly needed to assist the Court in that

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regard. For these reasons, it would have been impractical to follow the sealed bid requirements in the old procurement rules. The Supreme Court entered negotiations with MGN at the recommendation of Barusch and negotiated a contract with favorable terms to the Supreme Court and with specific milestones established. Continuation of the contract was conditioned on MGN's accomplishment of each of the following milestones: MGN was instructed to facilitate a public hearing on HR 521 within 3 months of their hiring. This goal was realized with a public hearing before the U.S. House of Representatives on May 8, 2002; MGN was tasked with having the measure reported out by the Committee on Energy and Natural Resources, and MGN was directed to achieve the same objectives in the Senate chamber. All the objectives with which MGN was tasked were accomplished.

The Supreme Court used prior year lapsed funds to pay for this service. Public Law 26-36 permitted the Supreme Court to use lapsed funds for personal services contracts. Furthermore, no law at the time prohibited using government funds for lobbying services. The Report notes that increases were made to the original PO regarding the lobbying services provided by the McClure firm. However, all increases were properly documented and approved by the Purchasing Officer and Certifying Officer.

As the Report points out, the Supreme Court was forthright in its hiring of the lobbyist. In fact, the Supreme Court addressed the issue of its hiring of the lobbyist to then-Senator Joseph F. Ada, Chairman of the Committee on Power, Public Safety and the Judiciary, 26th Guam Legislature in a letter dated October 24, 2002. This letter was copied to the Governor, all senators, Congressman Underwood, all Guam Bar Association members and the media. The Supreme Court has never attempted to hide its lobbying activity.

F. Response to "Unrealized Rental Revenue" Subsection

The Report points out that the Superior Court lost potential rental revenue when it leased space to its Employees Association from January 1993 until January 2005 which the Employees Association then sublet to concessionaires, realizing income from such transactions.

While the Report points out the financial aspect of the leasing arrangement regarding the space the Association sublet to concessionaires, it fails to mention that there were several non-monetary aspects involved. Further, it is important to point out that the space that was leased to the Association was not subject to the Rural Development mortgage and thus the terms of the loan resolution and mortgage did not apply to the Judiciary's rental of that space. Additionally, the Judicial Council's rental agreement with the Association was not in violation of any local law or regulation. In an effort to improve employee morale throughout the Court and to facilitate smooth operations at the Judiciary, management at the time made the leasing decision in order to provide the association an opportunity to generate funds to support the Association. The decision

was partially based on the fact that the Association is essentially prohibited from soliciting donations of any sort from the community due to the nature of the work done by the Judicial Branch. The Association's use of the space as a sublet to concessionaires provided a space where employees could take breaks nearby the workplace. It also provided a convenient location for patrons of the court to obtain a snack, drink or lunch while remaining close at hand to court proceedings. However, due to the Judiciary's need for space to house its operations, the lease was terminated in January 2005.

IV. Response to OPA's "Conclusion" Section

This section of the Report includes eleven (11) separate paragraphs. While the matters mentioned by the OPA are thoroughly addressed previously in this Response, we again respond to each paragraph here.

Response to First Paragraph Regarding Allocation of Revenues:

The Judiciary works diligently to ensure that employees comply with applicable laws and established procedures pertaining to financial functions and, furthermore, that record keeping systems are instituted and managed in order to achieve compliance with laws and procedures. Judicial Council Resolution 04-010 sets forth the Superior Court of Guam schedule of fees (Rules 91 and 92). The schedule was recently prepared in a user-friendly format for employees describing each fee, the amount, and the apportionment of each fee by type of fund whether it be destined for the Judicial Building Fund, the Territorial Law Library Fund or the Judicial Client Services Fund. A similar format was presented for Traffic Fines funds distribution. The updated schedules were disseminated to all Intake personnel in the Courts & Ministerial Division of the Superior Court who are involved in the process of receiving funds.

Response to Second Paragraph Regarding Authorized Uses of the JBF:

The Judiciary concurs with the Report's statement.

Response to Third Paragraph Regarding Uncollectible Rental Receivables:

The Judiciary concurs with the Report's statement.

Response to Fourth Paragraph Regarding the Hero Scholarship Fund Program:

The Judiciary has acted appropriately regarding the Hero Scholarship Fund Program.

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Prior to the promulgation of Public Law 28-68 the law did not direct the Judiciary to transfer funds from the JBF to the Hero Scholarship Program until certification by the University of Guam or Guam Community College that eligible applicants for the program existed. No certification ever occurred. Even if such certification had occurred, the Judiciary could not have transferred funds from the JBF to the Hero Scholarship Program without the written approval of Rural Development because such would have impaired the contract rights of Rural Development as it has a security interest in all JBF funds. Thus the Judiciary lacked the legal authority to comply with the "mandate" of the pre- Public Law 28-68 Hero Scholarship statute. The Judiciary has continually upheld the rights and provisions contained in the Rural Development loan agreement and has continually fulfilled its responsibilities and duties to the JBF. Management, through its correct interpretations, continues to strengthen the security by facilitating, improving, and maintaining the orderly payment of the loan and carrying out only legitimate, lawful and RDA-approved disbursements of JBF monies. Public Law 28-68 has changed the requirement regarding the Hero Scholarship Program, requiring the Judiciary to transfer \$20,000 annually from the JBF to support the Program even without certification of qualified applicants. The Judiciary will be contacting Rural Development to investigate its position regarding this statutory mandate which impacts the JBF.

Response to Fifth Paragraph Regarding Forensic Science Laboratory:

The Judiciary concurs with the Report's statement that "the Judicial Council was not required to finance the forensic science laboratory," but instead it was merely authorized to do so. Nonetheless, throughout the summer and fall of this year the Judiciary has been in regular communications with various members of the Legislature as well as the Guam Police Department regarding efforts to move ahead with the forensic science lab project. Quite possibly as a result of the unified efforts to proceed with the project, Public Law 28-68 again addressed the forensic lab matter when it was signed into law on September 30, 2005. Specifically, Section 14 of Part II of Chapter II of Public Law 28-68 requires that within 90 days of October 1, 2005 the Judicial Council commence efforts, in all due diligence, to effectuate the provisions of the Public Law 26-124 regarding the forensic science lab. Further, the Judicial Council is required to then report its progress to the Governor and the Speaker of the Legislature within 180 days and to also post its report on the Judiciary's website. The Judiciary fully intends to comply with this provision of law

in efforts to facilitate the design and construction of a new forensic science laboratory here on Guam and meetings with relevant parties have already commenced in this regard.

Response to Sixth Paragraph Regarding Judicial Council Approval of JBF Expenditures:

The Report points out that although a Judicial Council Resolution was in place requiring that all JBF expenditures other than the quarterly loan payment be approved by the Council, such

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was not done for all expenditures. However, it is important to note that every single expenditure of JBF funds received written approval of the lender, Rural Development, prior to such expenditure being made. Moreover, due to the fact that the Judicial Council did not convene for quite some time or, when it did meet repeated deadlock votes occurred on a multitude of issues. Thus, although the Judicial Council technically failed to approve each expenditure during that time period, such concern is greatly minimized by the reality that Rural Development itself approved every expenditure. Nevertheless, under the new Judicial Administration, the new Judicial Council meets monthly. In addition, the new Judicial Council approves an annual JBF budget.

Response to Seventh Paragraph Regarding Apparent Budget Over-Expenditures :

Rural Development has always been aware of circumstances when the Judiciary shifts approved budget expenditures from one line item to another within a fiscal year and has never raised the issue or requested that the Judiciary obtain approval for such actions. The Judiciary did not exceed FY 2004's total budget, rather capital outlay projects which had been approved by Rural Development in prior years but not undertaken in those years were done during FY 2004, thus reflecting the actual expenditure in FY 2004 rather than during the year of approval. The Judiciary will take necessary action to ensure that its are corrected to reflect that expenses approved in certain years are charged against funds from those years if Rural Development indicates its desire that such corrections be made.

Response to Eighth Paragraph Regarding Procurement Matters:

The Judiciary concurs with the Report's statement, however points out that while formal competition may not have occurred nor detailed documentation kept, in several instances such was not required under then-existing procurement policy and, further, in situations where such was required but not undertaken there do not appear to have been any situations involving inappropriate procurement processes.

In any event, under the new Judiciary Administration, an experienced Procurement Administrator has since been hired. Further, the Judiciary's Procurement Regulations have been updated and closer monitoring of procurement procedures implemented.

Response to Ninth Paragraph Regarding Lobbying Services:

Regarding lobbying services secured by the Superior Court, as concluded by the OPA Report, all actions involving the contracting of legal professional services and all payments made in connection therewith were done in conformity with then existing procurement policy.

Regarding lobbying services secured by the Supreme Court, as also concluded by the OPA Report, all actions involving the contracting of legal professional services and lobbying

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services and all payments made in connection therewith were done in conformity with then existing procurement policy.

Response to Tenth Paragraph Regarding Lobbying Services:

The Report concludes that Judicial Council has not complied with 7 GCA § 9504's reporting requirements. Title 7 GCA § 9504 requires the Judicial Council to prepare full statements of accounts of all money received and expended out of the accounts of the JBF and to transmit such report to the Legislature each fiscal year with the budget request of the Judiciary for the ensuing fiscal year. Generally speaking, the Judiciary has provided the Legislature annually with financial statements as part of the budget process which incorporated the JBF revenues and expenditures. The Legislature has never indicated to the Judiciary that the Judiciary had failed to comply with its JBF reporting requirements. Nonetheless the Judiciary will cause to be prepared, even at additional expense, full statements of accounts of all money received and expended out of JBF accounts for annual transmittal to the Legislature. Effective October 1, 2005, the Judiciary will submit the information to the Legislature together with its Budget Request for the ensuing fiscal year.

Response to Eleventh Paragraph:

While the Report points out the financial aspect of the leasing arrangement regarding the space the Association sublet to concessionaires, it fails to mention that there were several non-monetary aspects involved. Further, it is important to point out that the space that was leased to the Association was not subject to the Rural Development mortgage and thus the terms of the loan resolution and mortgage did not apply to the Judiciary's rental of that space. Additionally, the Judicial Council's rental agreement with the Association was not in violation of any local law or regulation. In an effort to improve employee morale throughout the Court and to facilitate smooth operations at the Judiciary, management at the time made the leasing decision in order to provide the association an opportunity to generate funds to support the Association. The decision was partially based on the fact that the Association is essentially prohibited from soliciting donations of any sort from the community due to the nature of the work done by the Judicial Branch. The Association's use of the space as a sublet to concessionaires provided a space where employees could take breaks nearby the workplace. It also provided a convenient location for patrons of the court to obtain a snack, drink or lunch while remaining close at hand to court proceedings. However, due to the Judiciary's need for space to house its operations, the lease was terminated in January 2005.

V. Response to OPA's "Recommendations" Section

This final section of the Report contains five (5) specific recommendations. Although

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these items have been previously addressed throughout the Judiciary's response, we believe it is beneficial to summarize our positions herein.

Recommendation 1: "Finalize the development of the updated draft official allocation schedule in accordance with current laws and rules, and consistent with the Rural Development agreement, and disseminate such schedule to all staff directly involved in the revenue allocation and collection."

Response: The Judiciary has already developed and implemented an official allocation schedule of fines and fees which is in accordance with current laws and rules and consistent with the RDA agreements. The Judiciary is committed to upholding its fiscal obligations to taxpayers and seeks to achieve accuracy, efficiency and uniformity of fiscal transactions involving the JBF, therefore we will ensure that all staff directly involved in the revenue collection and allocation process are intimately familiar with the allocation schedule. This will be accomplished through continued training and education.

Recommendation 2: "Automate the allocation process for filing fees to the JBF and other various funds to minimize the possibility of human error and to ensure accuracy."

Response: The Judiciary agrees that the concept of further automating functions within its branch could improve operations. However, such will require additional funding as well as detailed assessments of how to best implement such automated practices. The Judiciary is willing to investigate possible automation options available to it regarding its Financial Management and Courts & Ministerial Divisions.

Recommendation 3: "Revise the Current Procurement Regulations to: Maintain a listing of qualified professionals through Request for Proposals (i.e.: therapists, marriage counselors, etc.) whose services may be needed by the Judiciary, other than those secured by order of a Court, from which selections can be made for services needed on a recurring basis; and maintain adequate written documentation for each procurement."

Response: We disagree that the Judiciary's Procurement Regulations need be revised regarding personal services since, generally speaking, a list of those professionals willing to offer their services to the Judiciary is already informally maintained. Further, the Judiciary at all times remains cognizant of its fundamental fiduciary duty to spend funds in a fiscally conservative manner, including the securing of the services mentioned here, and does so strictly and zealously regardless of whether formal procurement regulations apply or if a formal list is maintained. The Judiciary is in full agreement that complete written documentation should properly be maintained regarding each and every procurement, and have already implemented a program whereby such is occurring. All procurement personnel involved in procurement activities will be continually trained and

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monitored to ensure that thorough, accurate and proper record keeping is maintained.

Recommendation 4: "Confer with Rural Development on the applicability of JBF funds for the Hero Scholarship Program Fund pursuant to P.L. 26-101 and 28-68."

Response: The Judiciary will be inquiring of Rural Development what its position is regarding the language found in P.L. 28-68 requiring that \$20,000 be transferred annually from the JBF to support the Hero Scholarship Program Fund.

Recommendation 5: "Submit unaudited revenues and expenditures of the JBF to the Legislature as part of the annual budget request as required by 7 GCA § 9504."

Response: The Judiciary will cause to be prepared, even at additional expense, full unaudited statements of accounts of all money received and expended regarding JBF accounts for annual transmittal to the Legislature as part of the budget process.