



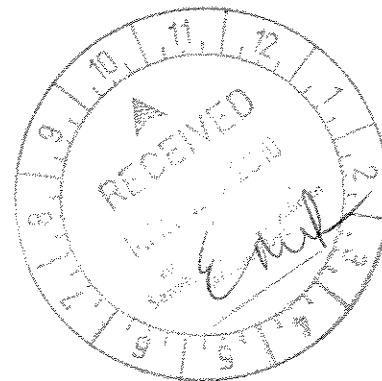
**ORIGINAL**

OFFICE OF THE PUBLIC AUDITOR  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

March 26, 2010

Honorable Vicente C. Pangelinan  
Chairman  
Committee on Appropriations, Taxation, Banking Insurance, Retirement, and Land  
30<sup>th</sup> Guam Legislature  
155 Hesler Place  
Hagatna, Guam 96910

Subject: FY 2011 Budget Request  
Reference: Office of Public Accountability



Hafa Adai Senator Pangelinan,

Relative to Fiscal Year 2011 budget requests, enclosed are one (1) original, twenty (20) copies, and one (1) electronic format on compact disc (CD) of the budget call documents for the Office of Public Accountability and Procurement Appeals.

Should your staff have any questions, please contact Llewelyn Terlaje at 475-0390 ext. 217.

*Senseramente,*

Doris Flores Brooks, CPA, CGFM  
Public Auditor

Receipt Acknowledgement:

\_\_\_\_\_  
Signature / Date



# **Office of Public Accountability**

## **FY 2011 - Budget Presentation**



# Overview of Agency Mandate

- The Office of the Public Auditor (OPA) was established by Public Law 21-122 on July 20, 1992. The OPA is an instrumentality of the government of Guam, independent of the executive, legislative, and judicial branches.



# Mission & Vision

**Motto:** *“Auditing for Better Government”*

**Mission:** To improve the public trust, we audit, assess, analyze, and make recommendations for accountability, transparency, effectiveness, efficiency, and economy of the government of Guam, independently, impartially, and with integrity.

**OPA’s Vision:** “Guam is the model for good governance in the Pacific.”



# Goals and Objectives

To improve the audited entity's effectiveness, efficiency, and economy and promote good governance, we will:

- Maintain the independence of OPA
- Deliver timely, reliable, and nonpartisan reports
- Advance staff competence
- Increase public knowledge of OPA's mission and work
- Build and improve relations with government entities



# Core Values

- » Independence
- » Accountability
- » Integrity
- » Transparency
- » Impartiality



# 1 GCA §1908

- §1908. The Public Auditor shall, annually audit or cause to be conducted post audits of all the transactions and accounts of all departments, offices, corporations, authorities, and agencies in all branches of the government of Guam.
- The Public Auditor may conduct the audit through his or her staff or may retain the services of an independent audit firm or organization, which audit shall be under the direction and supervision of the Public Auditor.



# 1 GCA §1909

- Direct and supervise all financial and management audits conducted pursuant to §1908, so that annual audits are completed for the prior fiscal year no later than June 30.
- Submit reports to the Governor and the Legislature, that include recommendations for necessary legislation to improve and to protect the integrity of the financial transactions and condition of the government.
- Report to Attorney General of Guam for prosecution of violations of law, where such violations pertain to the expenditures of funds and property of the government of Guam.
- Hear and decide all appeals of decisions that arise under 5 GCA § 5425(c), as provided for by 5 GCA § 5425(e).





# OPA's Stakeholders

- The people of Guam
- Governor of Guam, Senators, and all Elected Officials
- All branches, departments, and instrumentalities of the government of Guam
- Federal Government
- Boards and Commissions
- Private Businesses as vendors of the Government of Guam

The OPA serves the public interest, and the various stakeholders by providing reliable and dependable information, unbiased analysis, and objective recommendations on how best to use government resources in support of the well being of our island and its constituents.



# Public Auditor Inauguration

- On January 5, 2009, Doris Flores Brooks was sworn in for her 3<sup>rd</sup> term as Public Auditor of Guam at the Judicial Center in Hagatna.



# OPA Name Change

- P.L. 30-27, passed in June 2009, renamed the Office of the Public Auditor to the “*Office of Public Accountability.*”
- The name change better reflects the purpose and mission of OPA to promote public accountability.
- We thank Senator Palacios and members of the 30<sup>th</sup> Guam Legislature for support of this change.



# How OPA supports current organizational structure

- In general, audits of our government are an essential element of public control and accountability.
- OPA audits provide the public, elected officials, and entities with a fair, objective, and reliable assessment of local government performance. Our audits have made recommendations for improving policies, organizational structure, accounting procedures, and management control systems and operations.
- Auditing provides reasonable assurance that our government is:
  - Operating in accordance with laws, rules, regulations and policies;
  - Functioning economically, efficiently, and effectively; and
  - Responding to citizens' needs.



# 2009 - Year in Review

- The issues of OPA staff classification, compensation, promotion, and recruitment remain our primary concerns.
- OPA operations have been hindered largely due to the shortage of staff.
- Over the last three years, OPA staffing has declined 32% going from 19 in FY 2006 to 13 (including five new employee hires) as of September 30, 2009.
- For the first part of 2009, we were down to 9 employees.
- In 2009, OPA lost three key personnel: The Deputy Public Auditor and one senior auditor went to autonomous agencies who offered higher compensation, and one other senior auditor resigned and went to law school.



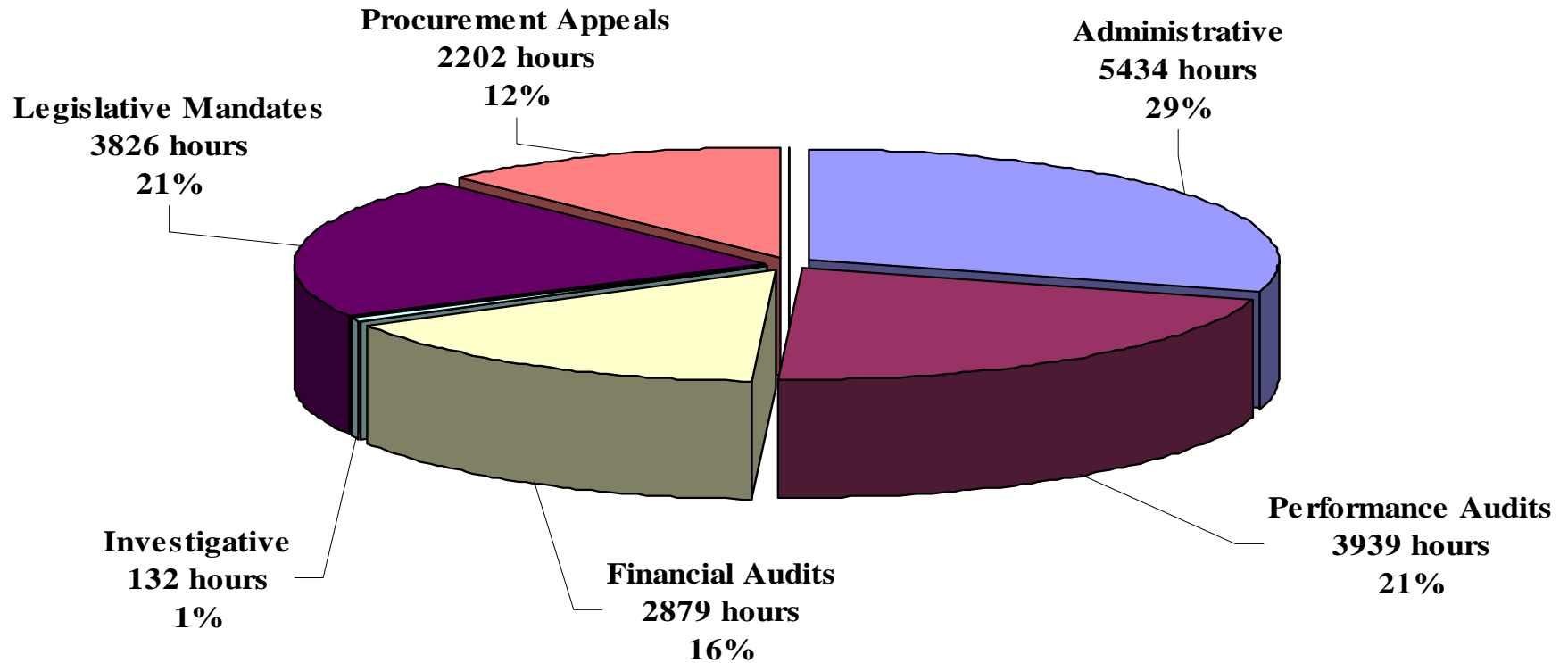
# 2009 - Year in Review

- Despite these challenges, OPA continued its commitment and dedication to “*Auditing for Better Government*”, issuing 7 performance audits/legislative mandates, developed and conducted 3 training sessions on the American Recovery and Reinvestment Act (ARRA) issues, conducted 3 procurement trainings, and administered 12 procurement appeals.
- The 7 audits collectively identified over \$1.2 million (M) in questioned costs and other financial impacts.
- These reports made 6 recommendations to the audited government entities to improve accountability and operational efficiency.
- Developed and conducted 3 procurement training sessions at GMHA, DOE, and GSA.
- Developed ARRA guidance and conducted 3 training seminars for 31 agencies with 120 senior management, directors, and controllers.
- Hosted the 20<sup>th</sup> Association of Pacific Islands Public Auditors conference with over 320 attendees.



# FY 2009 Staff Hours Distribution

- As of September 30, 2009, OPA had 12 full-time and 1 part-time staff.
- Total hours expended was 18,412. The chart below illustrates the composition of hours.





# Audits Completed in 2009

- Government auditing continues to evolve. It has become a more comprehensive activity involving **Oversight, Insight, and Foresight.**
- OPA completed 3 **oversight** reviews during the year:
  - FY 2008 4<sup>th</sup> quarter, FY 2009 1<sup>st</sup> Quarter, and FY 2009 2<sup>nd</sup> and 3<sup>rd</sup> quarter financial reporting requirements
- 2 audits offered **insight**:
  - CLTC Commercial Division
  - DOC Overtime and Hazardous Pay
- 2 audits provided **insight** as well as **foresight**:
  - GovGuam Medical Referral Benefits Bank Account
  - GovGuam Physical Fitness and Wellness Program





# Audits Completed in 2009

## **Of the 7 audits, analyses, and reviews:**

- 4 were mandated by public law;
- 2 came at the request of Senators; and
- 1 was self initiated

## **OPA Mandates**

- Three quarterly financial reports submitted by government entities (P.L. 29-19 and 29-113)
- CLTC Commercial Division



# Audits Completed in 2009

## **Audit Requests from Legislators**

- DOC Overtime and Hazardous Pay
- GovGuam Medical Referral Benefits Bank Account

## **OPA Self-Initiated Performance Audit**

- GovGuam Physical Fitness and Wellness Program

## **ARRA Training**

- Developed ARRA guidance and conducted 3 training seminars with 120 senior management, directors and controllers from 31 agencies.
- Periodic monitoring of ARRA grant reporting.

## **Procurement Appeals**

- Received 12 procurement appeals, of which 5 received a decision following a hearing; 4 were resolved by appellant and purchasing agency; 1 dismissed due to Public Auditor recusal; and 2 received a pre-hearing or hearing, but still remains open.
- Developed and conducted 3 procurement trainings at GMHA, DOE, and GSA.



# Audits Completed in 2009

## **Report Nos. 09-01, 09-02, 09-05: Submission of FY 2008 4<sup>th</sup> Quarter, FY 2009 1<sup>st</sup> Quarter, and 2<sup>nd</sup> and 3<sup>rd</sup> Quarter Financial Reports**

- The FY 2009 Budget Act required 60 entities to submit various reports manually, electronically, and to be posted on the entity's website, to avoid penalties.
- P.L. 29-02 placed the de-appropriation penalty of a 20% salary reduction for directors, deputies, and CFOs who fail to comply with the reporting requirements. The penalty was never applied to the heads of non-compliant entities.
- Summary of Compliance Reporting:
  - P.L. 29-19 (FY 2008):
    - 4<sup>th</sup> qtr, all 59 entities complied with the reporting requirements.
  - P.L. 29-113 (FY 2009):
    - 1<sup>st</sup> qtr, the Guam Commission for Education Certification was added bringing the total agencies to 60. Of this number, 54 or 90% of the agencies were in full compliance.
    - 2<sup>nd</sup> and 3<sup>rd</sup> qtr, 55 of the 60 agencies or 92% were in full compliance.
- The FY 2010 Budget Act no longer requires quarterly financial reporting of entities. Despite this, OPA continues to post its quarterly reports on the website to promote transparency and accountability.



# Audits Completed in 2009

## Report No. 09-03: CLTC Commercial Division

- The CLTC lacks management and control systems, procedures, and assigned staff to adequately attend to the tasks of issuing commercial properties.
- As of December 31, 2008, CLTC had accounts receivables of \$305,472, of which \$261,337 or 86% were over 90 days past due, some amounts owed dating back to 2005.
- The Chamorro Land Trust Act was intended to advance the well-being of the Chamorro people. However, more than 60% of the land awarded by CLTC over the past three fiscal years was for commercial purposes.
  - Commercial Applicants: Issued licenses for 106 acres, or 428,967 square meters or 7 cents/square meters/annum, to 10 commercial applicants.
  - Agricultural and Residential Lease Applicants: Issued leases for only 62 acres, or 250,905 square meters to 60 agricultural and residential lease applicants.
- Financial impact of \$261,337 were identified for the 90-day past due amounts owed.



# Audits Completed in 2009

## Report No. 09-04: DOC Overtime and Hazardous Pay

- DOC continues to incur overtime accumulating to \$150,549 as of May 2009, despite the overtime caps implemented by management. Out of 76 employees, 10 employees incurred \$99,527, or 66% of the total overtime.
- Inappropriate hazardous pay of \$231,202 expended by DOC or an average of \$57,801 annually since 2005, to employees not in a life-threatening environment. Although the Civil Service Commission instructed DOC to cease hazardous pay for all employees working in the administrative division in 2001, the audit found that employees in the Director's office continued to receive hazardous pay.
- DOC paid \$896,963 in overtime to 191 employees between October 2008 to May 2009. Nearly 90% of the amount paid, or \$795,374, was paid to five DOC positions. Although DOC maintains a call-back list to distribute overtime more equitably, overtime is voluntary and that supervisors have discretion to assign overtime.
- Questioned costs totaling \$381,751 were identified due to the accumulated DOC overtime despite overtime caps established and hazardous pay for employees not in a life-threatening environment.



# Audits Completed in 2009

## **Report No. 09-06: GovGuam Medical Referral Benefits Bank Account**

- The MRBBA has not been implemented because the current mechanisms identified in P.L. 24-276 does not take into account the major airline that services Guam's (major airline) authority and prerogative to establish, regulate, and restrict its frequent flyer program.
- Similar attempts to pool travel miles by the U.S. Federal Government and the governments of the Commonwealth of the Northern Mariana Islands, and the Republic of Palau were equally unsuccessful for the same reason.
- Although the major airline allows transfers for a fee of \$7.50 per 500 miles, P.L. 24-276 does not address the transfer of miles, including who should pay the transfer service charge, nor does it require medical patient recipients to establish or maintain their own accounts.



# Audits Completed in 2009

## Report No. 09-07: GovGuam Physical Fitness and Wellness Program

- Without a designated entity to monitor the programs, government of Guam has paid noncompetitive rates to have the wellness and fitness centers available to government employees.
- Between October 1, 2007 and June 30, 2009, the government of Guam paid \$496,388 to the physical fitness center and \$203,400 to the wellness center. The payment was based on the total number of government employees (10,250 per month) enrolled in the Guam Health Insurance Plan (GHIP) rather than the number of government enrollees who actually participated in the Wellness Benefits.
- Over the two-year period from October 2007 to September 2009, the only utilization data provided was that 58 government employees participated in the wellness center between October 2008 and February 2009. Out of 10,250 GHIP enrollees, we found that a monthly average of 618 government employees or only 6% of the total GHIP enrollees utilized the fitness center.
- Questioned costs totaling \$699,788 were identified for payments made to an addendum of the original healthcare plan RFP, which was sole-sourced and not advertised.



# Summary of Audit Focus

- Since its inception, OPA audits have focused on uncovering fraud, waste, and abuse in our government; OPA will continue to focus resources in these areas as warranted.
- In our fourth and fifth years, we performed accountability and internal control audits of non-appropriated funds.
- In our sixth year, we conducted audits mandated by public laws, follow-up reviews of past audits, and other core accountability and compliance audits.
- In the last three years, mandated audits and requests for audits by government officials have averaged over 30% of our shrunken workforce hours.
- Moving forward, the OPA looks to provide continued **oversight, insight, and foresight** for our government. Our audits will focus on economy, efficiency, accountability, and transparency of all instrumentalities of the government of Guam.





# Benchmarks

- Two critical aspects can be considered in assessing OPA's performance.
- The first indicator is Budget Execution, with an operational budget of \$1M (after \$253K in lapses) the OPA completed 7 audits, analyses, and reports that identified \$1.2M in questioned cost, and supervised 18 financial audits that identified \$3.1M in questioned costs in CY 2009. This equates to a return on investment of 435% for every dollar appropriated.
- The second indicator relates to the quality of work performed. *Government Auditing Standards* require audit organizations to undergo a quality control review, or peer review, every three years. Since 2002, OPA has received "Full Compliance" in its external quality control peer review. The 2005 and 2008 review were also "Full Compliance."
- The next quality control review will be in 2011.



# High Risk Audit Areas

- When conducting audits, we apply a risk-based approach to audit selection; identifying those areas that have the highest risk of loss or possible mismanagement of funds.
- High risk audit areas have been widespread among various government entities and programs, particularly those operating their own checking accounts. OPA audits of these entities have consistently shown:
  - Lack of understanding of the importance of internal controls, checks, and balances;
  - Lack of monitoring and oversight;
  - Improper procurement; and
  - Lack of financial reporting.



# OPA Operational Statistics

OPA has issued 101 reports and made 499 recommendations which recognized a total of \$118.2M in financial impact to our government over the last nine years.

Financial impacts are the questioned costs, waste and abuse, lost revenue opportunities, dormant bank accounts, unreported amounts, and un-reconciled accounts identified by OPA audits.

Year	Reports Issued	Recommendations	Financial Impact
2009	7	6	\$ 1.2M
2008	10	28	\$ 9.6M
2007	18	45	\$33.3M
2006	19	76	\$20.9M
2005	9	49	\$ 6.2M
2004	14	91	\$16.4M
2003	11	77	\$26.8M
2002 & 2001	13	127	\$ 3.8M
<b>Totals :</b>	<b>101</b>	<b>499</b>	<b>\$ 118.2M</b>



# Financial Impacts Identified by OPA

Financial impacts are the questioned costs, waste and abuse, lost revenue opportunities, dormant bank accounts, unreported amounts, and un-reconciled accounts identified by OPA audits.

<b>2009:</b>	<b>\$ 1.2M</b>
<b>2008:</b>	<b>\$ 9.6M</b>
<b>2007:</b>	<b>\$ 33.3M</b>
<b>2006:</b>	<b>\$ 20.9M</b>
<b>2005:</b>	<b>\$ 6.2M</b>
<b>2004:</b>	<b>\$ 16.4M</b>
<b>2003:</b>	<b>\$ 26.8M</b>
<b><u>2001 &amp; 2002:</u></b>	<b><u>\$ 3.8M</u></b>
<b>TOTAL:</b>	<b>\$118.2M</b>

OPA has recognized a total of **\$118.2M** in financial impact to our government over the last eight years.



# Audits in Progress

- Medically Indigent Program
- Leave Sharing
- Payroll Efficiency
- OPA Recommendations Follow-Up
- Guam Solid Waste Management
- PASAI Solid Waste Management  
(Cooperative Audit)



# 2010 Audit Plan

- Through extensive deliberations, the OPA established the 2010 Audit Work plan with 10,440 total available auditing hours for the year (based on an audit staff of 10).
- Performance Audits to be Initiated in 2010
  1. DPW Procurement of Construction Projects
  2. Building Permit Fees
  3. DOE Procurement Practices
  4. GSA Sole Source Procurement
  5. GPD Asset Forfeiture Follow-Up
  6. E-911 Emergency Reporting System Fund



# Financial Audits Issued in 2009

- 1 GCA §1909(a) and Federal Single Audit Act require all financial audits to be issued by June 30 (9 months after year end).
- The FY 2008, government of Guam audit was issued in June 2008, the fourth consecutive year of timely issuance of the government-wide financial audit. Timely issuance began since FY 2005.
- FY 2008 marks the second year GovGuam's financial statements and its autonomous entities were issued with unqualified "clean" opinions.
- The General Fund deficit stood at \$415.5 million (M), a notable improvement from the \$501.9M deficit at the beginning of the fiscal year. However, the reduction was primarily attributable to the issuance of long-term debt.



# Financial Audits Issued in 2009

- We supervised, reviewed, and analyzed 18 FY 2008 financial audits of autonomous agencies and the General Fund, which identified:
  - \$3.1M in questioned costs
  - 70 audit findings and
  - 83 management letter comments





# Financial Audits Issued in 2009

- Government of Guam and its component units collectively incurred \$3.1M in questioned costs in FY 2008. Of these questioned costs, \$1.2M or 40% are procurement-related. The largest question cost was \$809K for the procurement finding for the Office of Homeland Security.
- Questioned costs decreased for both the General Fund and DOE. General Fund questioned costs went from \$2.8M to \$1.9M. Questioned costs at DOE went from \$446K in FY 2007 to \$4K in FY 2008.



# Financial Audits Issued in 2009

- OPA works with DOA and the autonomous entities to resolve questioned costs for all Executive Branch agencies.
- Between Fiscal Years 2002 and 2008, DOA resolved \$52.2M in questioned costs, leaving \$7.8M in unresolved costs for the General Fund.



## Financial Audits Issued in 2009

- The FY 2008 audits were issued timely, with less audit findings, and fewer questioned costs.
- We have seen improvement in certain government agencies these past few years, most significantly GMHA.
  - GMHA received an unqualified or “clean” opinion for the first time in 5 years after reconciling accounts receivable, bad debt expenses, and contractual adjustments.



# Financial Audits Issued in 2009

- While there has been improvements in the accounting infrastructure at most government of Guam entities, we still need improvements at some agencies due in part to weak internal controls, particularly DOE.
- All entities have unqualified or “clean” opinions on the financial statements. However, nearly all entities have qualified opinions in their compliance report.
- Only GCC and UOG were classified as low-risk auditees.
- DOE had questioned costs of \$4K, which was significantly lower than the \$446K questioned costs in FY 2007. DOE however remains on high-risk status for over 6 years with the US Department of Education, since 2003.



# Financial Audits

**Over the past nine years, financial audits have improved with timely issuance, lower questioned costs, and fewer findings.**

- CY 2009
  - 18 Financial Audits Issued
  - \$3.1M in Questioned Costs
  - 70 Audit Findings and 83 Management Letter Comments
  - GCC and UOG were the only low-risk auditees
  
- CY 2008
  - 18 Financial Audits Issued
  - \$3.2M in Questioned Costs
  - 88 Audit Findings and 77 Management Letter Comments
  - GCC and UOG were the only low-risk auditees



# Financial Audits

- CY 2007
  - 18 Financial Audits Issued
  - \$4M in Questioned Costs
  - 136 Audit Findings and 66 Management Letter Comments
  - GCC and UOG were the only low risk auditees
  
- CY 2006
  - 19 Financial Audits Issued
  - \$4.4M in Questioned Costs
  - 188 Audit Findings and 79 Management Letter Comments



# Financial Audits

- CY 2005
  - 26 Financial Audits Issued
  - \$2.1M in Questioned Costs
  - 236 Audit Findings and 21 Management Letter Comments
- CY 2004
  - 25 Financial Audits Issued
  - \$13.1M in Questioned Costs
  - 485 Audit Findings and 29 Management Letter Comments



# Financial Audits

- CY 2003
  - 15 Financial Audits Issued
  - \$22.4M in Questioned Costs
  - 260 Audit Findings
  
- CY 2002
  - 14 Financial Audits Issued
  - \$10M in Questioned Costs
  - 181 Audit Findings
  
- CY 2001
  - 11 Financial Audits Issued
  - \$15K in Questioned Costs
  - 39 Audit Findings





# OPA Operational Statistics

The OPA tracks financial audit information based on the audits completed during a calendar year. From calendar years 2001 to 2009, a total of 1,683 findings were identified, with over \$62.5M in questioned costs.

<b>CY</b>	<b># Of Findings</b>	<b>Questioned Costs</b>
2009	70	\$ 3,090,559
2008	88	3,312,358
2007	136	4,057,666
2006	188	4,443,204
2005	236	2,112,369
2004	485	13,073,265
2003	260	22,355,335
2002	181	10,080,662
2001	39	14,954
<b><u>Total:</u></b>	<b><u>1683</u></b>	<b><u>\$ 62,540,372</u></b>



# General Fund Deficit

- The government of Guam's deficit decreased by \$86.4M from \$501.9M in FY 2007 to \$415.5M in FY 2008. The decrease is attributable to three factors: (1) refunding and issuance of general obligation bonds; (2) issuance of long-term debt for streetlights; and (3) adjustment of medical bill accrual for GMHA.
  1. GovGuam refinanced debt of \$151.9M in general obligation bonds.
  2. GovGuam issued \$13.8M promissory notes to pay GPA for delinquent streetlight bills.
  3. P.L. 29-132 clarification of funds appropriated from the GMHA Pharmaceutical Fund, which resulted in a \$13.2M reduction of amounts owed to MIP.
- Total revenues decreased slightly by \$1.6M from \$514.8M to \$513.2M.
  - Tax revenues increased by \$16.8M from \$426M in 2007 to \$443M in 2008.
  - Gross receipts taxes (GRT) rose to \$185.8M, a \$13M or 7.6% increase from the prior year. This is the first time that GRT collections have reached this level since 1997, when they were \$184.5M.
  - Income taxes increased by \$3.3M from \$250.8M in 2007 to \$254.1M in 2008.
  - One time contribution of \$10.4M from GEDA due to Tobacco debt refinancing.



# General Fund Deficit

- The Guam Legislature enacted various laws (P.L. 29-116, 30-1, and 30-7) that authorized the issuance of Deficit Financing Bonds to finance certain General Fund liabilities, other past due expenditures of GovGuam, and facilities of the Solid Waste Management System. As a result, GovGuam subsequently issued bonds in June 2009 aggregating \$473.5M. Of this amount,
  - \$271.1M in General Obligations (GO) bonds were issued to pay delinquent tax refunds (\$112M), liabilities associated with the court-ordered COLA settlement (\$85M), past due retirement contributions of DOE and GMHA (\$21M), bond fees interest, and capitalized interest (\$35M), leaving a balance of \$18M. The GO bonds received “**B+**” or highly speculative non-investment grade.
  - \$202.4M GO bonds (secured by Section 30 revenue) were issued to comply with the Consent Decree, including the closure of the Ordot Dump and opening of a new landfill. These GO bonds received “**BBB-**” or investment bonds of medium grade quality.



# General Fund Deficit

- General Fund's expenditures increased by \$32.6M, going from \$421.5M in 2007 to \$454.2M.
- Expenditures for public education of the DOE and DPW Bus Operations, increased by \$9.7M, going from \$183.4M in 2007 to \$193M in 2008.
- Compared to the \$27.2M retirees payment in FY 2007, the General Fund expended \$39.5M on behalf of retirees in FY 2008 of which:
  - \$19.8M for retiree healthcare premiums;
  - \$11.4M for supplemental annuity benefits fund;
  - \$7.6M for COLA; and
  - \$684K for Medicare reimbursements.



# Financial Audits RFPs

OPA issued the following financial audit RFPs on behalf of the following entities in 2009:

1. Port Authority of Guam, April 2009
2. Guam Preservation Trust, August 2009
3. Tourist Attraction Fund & Territorial Highway Fund, August 2009
4. Guam Economic Development Authority, September 2009
5. University of Guam, September 2009
6. Government of Guam Retirement Fund, September 2009



# First Off-Island Accounting Firm Selected for Financial Audit

- Eide Bailly, LLP, located in Idaho, was the very first off-island accounting firm selected to conduct the financial audit of the University of Guam for fiscal years 2009-2011, since the election of the Public Auditor in 2000.

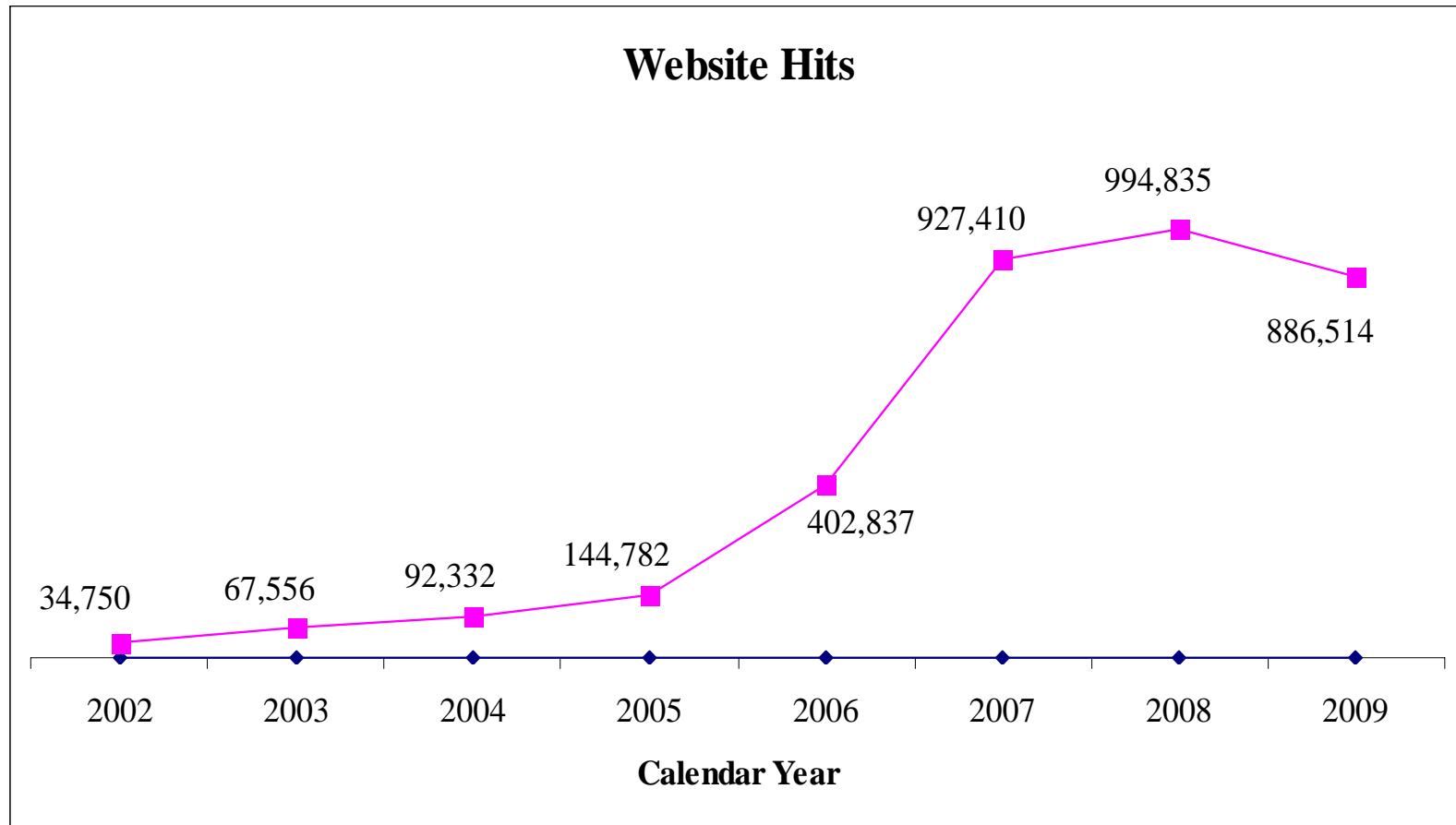


# OPA Website Hits / Visits

- To ensure public accountability and enhance transparency in our government, all OPA audit reports and financial audits of government entities are posted on OPA's website, [www.guamopa.org](http://www.guamopa.org)
- In addition to performance and financial audit information, the OPA website also contains budget, expenditure, and staffing patterns required by the various Budget Acts.
- In 2006, our website recorded 402,837 hits. In 2007, the hits doubled to 927,410. The number of hits went down slightly in 2009 to 886,514 hits.
- The OPA website continues to be an important source of reliable transparent information about the financial condition of our government.



# OPA Website Hits / Visits







# OPA Received Silver Award for Best Website

- OPA won the Association of Local Government Auditors' prestigious Silver Award for Best Website.
- Websites were judged in four categories: usability, accessibility, design, and uniqueness.
- Additionally, a wildcard for extras or exceptional areas was also considered.
- According to the judges, the ***“Guam [website] scored the highest in uniqueness and was very strong in content and design.”*** *The judges praised the website’s information and search capability, its usability and accessibility, and its animation and visual appeal, adding that its Ethical Tool Kit was “impressive.”*



# HOTLINE Tips

- The OPA HOTLINE provides the public with the means to pass on questions and concerns about our government.
- HOTLINE tips are investigated and addressed accordingly.
- In HOTLINE's first year, 2001, we received 163 tips.
- Our highest number of tips was 175 in 2004 and our lowest number of tips was 50 in 2009. This is the lowest number of tips since the establishment of the hotline in 2001.
- OPA's sole investigator, who retired in 2006, addressed more than 85% of the 2006 tips.



# HOTLINE Tips

- With the loss of our Investigator, nearly 98% of our 2008 and 2009 tips have remained unaddressed.
- In addition to audit duties, audit staff are now assigned to handle HOTLINE tips and to follow-up and coordinate with the Attorney General's Office for indictment and prosecution.
- Given limited resources and the small number of hotlines received, hotline tips are added collateral duties of OPA auditors.



# Hotline Statistics 2001 - 2009

Agencies or Programs	2009	2008	2007	2006	2005	2004	2003	2002	2001	TOTAL
Guam International Airport Authority	0	0	3	5	2	10	13	12	22	67
Guam Public School System	18	9	45	17	14	9	11	13	13	149
Department of Public Works	0	6	14	9	0	3	10	11	14	67
Guam Power Authority	1	2	7	6	3	3	10	11	14	57
Department of Corrections	1	5	1	1	2	2	2	11	10	35
Guam Memorial Hospital Authority	1	2	2	1	7	4	1	11	8	37
Government of Guam Retirement Fund	0	0	3	3	1	15	1	6	0	29
Department of Administration	0	0	3	1	2	4	5	6	5	26
Mayors Council of Guam	0	5	11	8	9	4	6	2	7	52
Guam Housing and Urban Renewal Authority	0	0	2	1	6	10	3	2	3	27
Guam Waterworks Authority	1	0	7	5	12	4	7	4	3	43
Guam Fire Department	0	3	1	2	1	6	4	3	4	24
Guam Mass Transit Authority	0	0	0	0	1	3	5	5	4	18
Department of Public Health and Social Services	2	2	0	1	4	5	0	4	8	26
Guam Telephone Authority	0	0	0	0	1	9	3	3	1	17
Office of the Attorney General	0	1	1	3	3	4	9	1	0	22
Guam Police Department	1	0	2	1	0	2	3	3	5	17
Guam Visitors Bureau	0	1	2	0	3	5	1	1	5	18
Superior Court of Guam	3	0	3	2	4	4	2	4	2	24
University of Guam	1	2	2	1	0	4	3	3	2	18
Port Authority of Guam	0	0	0	1	3	3	4	1	3	15
Department of Land Management	0	0	0	0	1	3	0	1	4	9
Office of the Governor	2	5	0	1	0	4	3	1	0	16
Department of Parks & Recreation	0	1	7	4	1	1	1	1	5	21
Department of Labor	0	0	0	0	0	2	3	2	1	8
Guam Economic Development and Commerce Authority	1	0	0	0	0	2	4	0	1	8
General Services Agency	0	0	2	2	1	3	3	0	1	12
Other Agencies and Programs	18	18	39	37	35	49	27	23	18	264
<b>Total</b>	<b>50</b>	<b>62</b>	<b>157</b>	<b>112</b>	<b>116</b>	<b>177</b>	<b>144</b>	<b>145</b>	<b>163</b>	<b>1126</b>

March 2010



# APIPA 2009

- The Guam OPA hosted the 20th Association of Pacific Islands Public Auditors (APIPA) conference held at the Hyatt Hotel from July 27 – 31, 2009.
- The conference's theme was “*20 Years of Advancing Pacific Islands Public Accountability*,” offering four tracks (Audit, Audit Supervisory, Finance, and Advanced Finance).
- Participants had over 20 courses to choose from and earned up to 38 Continuing Professional Education (CPE) credits.
- The conference drew 320 participants, the highest to date, from 14 countries and Pacific Regions.



# Public Accountability Week

- The Governor proclaimed July 26 – August 1, 2009 as “*Public Accountability Week.*”
- The proclamation comes in light of Guam OPA as the host of the 20<sup>th</sup> Annual APIPA conference.

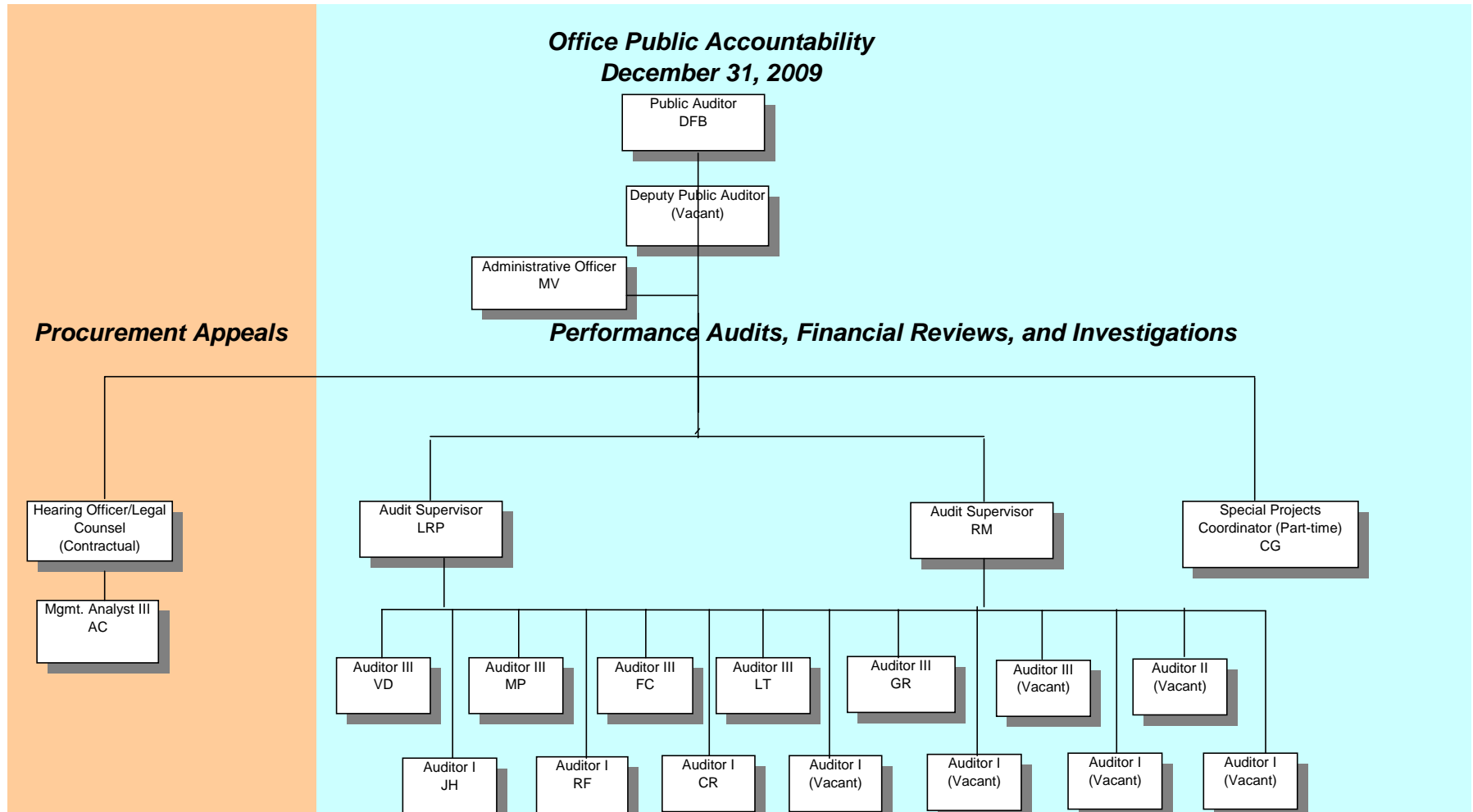


# OPA Staff

- The current OPA staff is a complement of 13 full time employees and 1 part-time.
  - Public Auditor
  - 2 Audit Supervisors
  - 4 Senior Auditors
  - 4 Junior Auditors
  - 1 Management Analyst for Procurement Appeals
  - 1 Administrative Officer
  - 1 Part-time Editor
- OPA contracts 3 hearing officers on an as needed basis.  
(See Organizational Chart for details)



# Organizational Chart







# Staff Certifications

- 2 Certified Public Accountants
- 1 Certified Internal Auditor
- 3 Certified Government Financial Managers
- 3 Certified Government Auditing Professionals
- 2 Master of Business Administration
- 1 Master of Arts in Organizational Management



# Training Grant

Working with Department of the Interior's Office of Insular Affairs (DOI/OIA), the OPA received the following.

## Technical Assistance Grant No. TA-Guam-OPA-2008-1

<u>Description</u>	<u>Grant Amount</u>	<u>Date Approved</u>
Initial Grant	\$80,000	Feb 19, 2008

- To date, we have expended \$40,686.23 of this grant leaving a remaining balance of \$39,313.77.
- An extension was granted to extend the grant period through September 30, 2010.
- OPA will be working with DOI OIA to secure a new training grant for 2011.

## Past Training Grants:

### Technical Assistance Grant No. G-109

<u>Description</u>	<u>Grant Amount</u>	<u>Date Approved</u>
Initial Grant	\$ 38,100	Oct. 9, 2003
Amendment #1	19,050	Jul. 15, 2004
Amendment #2	95,200	Nov. 3, 2004
Amendment #3	<u>66,500</u>	Feb. 2, 2007
<b>Total Grant G-109:</b>	<b>\$218,850</b>	

- To date, we have expended \$218,773 of this grant leaving a remaining balance of \$77. Overall, 7 OPA staff members completed DOI/OIG internships, and 3 staff members attended IG Academy for basic non- investigator training at Glynco, GA. This grant has been closed as of October 31, 2008.



# GovGuam Audit Spending

- GovGuam spends \$2.2M on audits, or less than one cent of every dollar of general fund and special revenues of \$628.7M.
- The \$2.1M is comprised of \$1.1M for financial audits and \$1M for OPA (after \$253K in lapses).
- With a \$1M appropriation for FY 2009, we completed 7 audits, analyses, and reports that identified \$1.2M in questioned costs; supervised 18 financial audits that identified \$3.1M in questioned costs; supervised 1 FY 2009 financial audit that identified \$156K in questioned costs; developed and conducted 3 ARRA trainings, conducted 3 procurement trainings, received 12 procurement appeals, and resolved 7 appeals.



# Loss of Staff

- From January 2006, OPA went from a staff complement of 18 and 1 part-time editor to 13 and 1 part-time editor as of December 2009 (11 in audit, 1 in procurement appeals, and 1 administrative), a 30% reduction over 3 years.
- Although the audit side of the house has 11 personnel, 4 of the 11 auditors were recently hired.



# New Hiring via DOA

- In October 2008, OPA submitted requests to DOA HR to hire in the classified service.
- Police clearance, drug testing, and other documentation is ongoing before the actual hiring and promotion can occur in the classified service.
- Between March and September 2009, DOA approved the hiring of four new auditors above step.
- The hiring of new staff and approval of above step petition took almost four months.



# Reclassification of Existing Staff via DOA

- Hiring and promoting staff in the classified service through DOA has been a very time consuming and laborious undertaking. The detailed narrative justifications and production of documents is exhaustive.
- 5 existing staff were reclassified from unclassified to classified employees and were promoted to step 10.
- A process of over six months to reclassify and promote existing staff is not conducive to sound personnel management policies.



# Bill No. 30-208

- In August 2009, Bill No. 30-208 was introduced to clarify the restrictions established on the recruitment or compensation of Guam personnel above Step 10 of the Compensation Schedule.
- Specifically, the bill requests that compensation of an unclassified employee hired above Step 10 “after October 1, 2007” shall be adjusted.
- The Budget Act of 2008 mandated that the “*Director of Administration shall adjust the compensation of an unclassified employee who was hired above Step 10 before enactment hereof effective the date of this enactment.*” As a result, an Audit Supervisor was adversely affected.
- No other government of Guam employee was similarly affected with 4 G.C.A. § 6205.2; only an OPA employee.



# Pay Adjustment Made

- On August 17, 2009, DOA made a pay adjustment taking an unclassified position as a Management Analyst IV and pay at N-19 \$63,506 to N-10 \$46,596 pursuant to Superior Court Proceedings 192-07, dated November 13, 2008 and DOA Memo DOA-07-0780, dated April 27, 2009.
- On the same day, Mrs. Perez was converted from unclassified to classified position as a Management Analyst IV.
- In September 2009, OPA submitted satisfactory performance evaluations for Mrs. Perez to adjust her pay from N-10 (\$46,596) to N-12 (\$49,915).
- We thank the 30<sup>th</sup> Guam Legislature for their support of Bill 30-208.





## Bill No. 30-211

- In August 2009, Bill No. 30-211 was introduced in efforts to preserve OPA's independence by restoring the Public Auditor's authority to hire a Deputy Public Auditor and a Secretary in the unclassified service and protection against OPA staff's salary reduction.
- Nearly all other government entities have similar type of positions including the elected Attorney General.



# Difficulty in Recruiting

- Since September 2009, only a handful of applicants have been received for auditors job announcements via DOA, despite continuous announcements.



# Deputy PA Salary Not Comparable

- In December 2008, OPA submitted a request to DOA to reconsider the salary of the Deputy Public Auditor of \$60,528 to be equivalent to that of the DRT Deputy of \$73,020.
- In February 2009, DOA approved an increase from \$60,528 to \$66,364.
- DOA did not find that the Deputy Public Auditor position to be comparable to the DRT Deputy.
- DOA stated that the OPA Deputy position did not meet the know how, complexity, and accountability for a higher grade.



# Deputy PA Salary Lowest Among States

- Even with a salary of \$66,364, according to the 2008 edition of Auditing of the States, updated annually by the National Association of State Auditors, out of 52 states and territories, Guam's Deputy salary is the lowest.
- At \$73,020, the Deputy salary would still remain the lowest.



# Existing Salary Ranges Lowest Among States

- Similarly, the starting salaries of entry level, middle level, and upper level auditors are among the lowest of the 52 states and territories.
- Auditor I - \$24,656 to \$52,170
- Auditor II - \$26,520 to \$56,114
- Auditor III - \$28,768 to \$60,681
- Chief Auditor - \$33,811 to \$71,541



# OPA Staff Recruited to Autonomous Entities

- Since 2006, OPA has lost 10 professional staff.
- Nearly all the 10 individuals left because of significantly higher salaries.
- An Audit Supervisor earning \$71,541 was recruited by UOG for a salary of \$85,500.
- An Auditor II earning \$39,780 was hired by GPA for \$62,765 (M-05B).
- Most recently, the Deputy Public Auditor with a salary of \$60,528 was recruited by GWA for a salary of \$73,596 (M9B). The protracted effort to upgrade the deputy salary took its toll.



# Personnel Flexibility Given to Other Entities

- Autonomous entities have flexibility to hire personnel as appropriate.
- Precedents have been established by statute to allow piece meal legislation.
- Autonomous entities have their own pay plan and most recently GPA, GCC, PAG, and GIAA have updated their compensation plans.
- Attorneys at Department of Law have a separate pay plan by statute.
- For salary purposes, OPA has been treated as a line entity and awaits the Hay Classification.



# Hiring Policies

- We ask Senators to pass Bill 30-211, to preserve OPA's independence by restoring the Public Auditor's ability to hire a Deputy Public Auditor and Secretary in the unclassified service and the protection against staff's salary reduction.
- We also ask Senators to review the hiring policies and practices of DOA to find a more expeditious, efficient, and equitable method to hire, promote, recruit, and retain qualified personnel.
- Retention of qualified individuals remains an ongoing challenge. OPA, under the purview of DOA HR personnel management, is unable to respond to autonomous entities, the federal government, and private sector who have greater personnel flexibility.





# OPA Hiring Difficulties

The two main reasons OPA is unable to recruit is as follows:

1. Low Compensation Package
2. Bureaucratic and long process to be hired (almost 4 months for new hires and 6 months for reclassification of existing employees)



# Implementation of Hay Study

- OPA awaits the implementation of the government-wide classification, compensation, and benefits study.
- We request that OPA be given authority to implement the study using its lapsed funds.
- If authority is given to adjust salaries consistent with the proposed Hay study, OPA should be in a better position to attract and retain qualified staff.



# OPA Personnel Lapses

- In FY 2009, OPA had personnel lapses of \$253K. This represents 20% of OPA's FY 2009 approved budget that can be used toward deficit reduction.
- In FY 2008, personnel lapses of \$321K would have contributed to deficit reduction; however, these lapses were transferred out to cover over expenditures in other areas.
- The budgetary process tends to reward entities who over expend as shortfalls are covered.
- Through transfer authority, entities who under spend have their budget further reduced.



# FY 2011 Budget Request

• Salaries & Benefits	\$ 1,039,402
• Contractual	149,960
• Rent	102,594
• Travel	20,200
• Equipment	25,100
• Supplies	10,800
• Miscellaneous	5,950
• Telephone	8,000
• <b>Total</b>	<b><u>\$1,362,006</u></b>



# Justification for Increases

- The OPA currently has 7 vacancies: 1 Deputy Public Auditor and 6 Auditors.
- Upon hiring additional staff in the year, we anticipate increases in expenses in all categories as a result of more staff.
- Rent increase due to addition of a procurement hearing room.
- Contractual increase due to RFP to update audit manual, administrative procedures, and conduct training.
- Equipment
  - Upgrading of the server
  - Audit software



# Specialty Pay and Vacant Positions

- The OPA does not incur expenses for specialty pay categories to include: Overtime, Night Differential, Hazard Pay, Holiday Pay, Incentive Pay, etc.
- The OPA does not have any new division expenditures, and does not anticipate outsourcing any existing work except financial audits, which have been contracted over these past decades.
- OPA does not have any expenditures that can be funded by the American Recovery and Reinvestment Act of 2009. However, OPA continues to monitor ARRA expenditures and provide ARRA guidance.



# New Programs and Future Considerations

- The OPA does not anticipate the initiation of any new programs that will affect the FY 2011 Budget Request.
- However, new outreach efforts have already been implemented, which provide more services with minimal costs, such as procurement, ethics, and ARRA trainings.



# Technology Roadmap

- Currently, OPA utilizes information technology to improve the economy, efficiency, and effectiveness of audit and procurement work.
- OPA has transitioned to a more automated audit process, utilizing various data mining and Microsoft applications. Our office also has remote access to the AS400 system.
- Our website serves as a portal for government financial information, and our hotline provides an outlet for audit requests and tips.
- Filings of procurement appeals are posted in real time on the web.
- We upgraded our website, with new search features that will allow users access to audits and other government financial information at a click of the mouse.
- We also upgraded our phone system, which will improve communications, as well as provide multi-user conferencing.





# Appropriation History

Over the last 5 years, appropriated funds have varied considerably.

<b>Fiscal Year</b>	<b>OPA</b>	<b>Procurement Appeals</b>	<b>Total Appropriation <sup>(A)</sup></b>	<b>Adjustment</b>	<b>Final Budget</b>
2010	\$ 1,226,349	\$ -	\$ 1,226,349	-	\$1,226,349
2009	\$ 1,108,676	\$ 163,106	\$ 1,271,782	\$(253,037) <sup>(B)</sup>	\$1,018,745
2008	\$ 1,177,239	\$ 173,193	\$ 1,350,432	\$(320,692) <sup>(C)</sup>	\$1,029,740
2007	\$ 1,102,731	\$ 134,014	\$ 1,236,745	\$(162,225) <sup>(D)</sup>	\$1,074,520
2006	\$ 950,000	\$ 100,000	\$ 1,050,000	\$ 22,395 <sup>(E)</sup>	\$1,072,395

(A) The FY 2010 appropriation was a combination of OPA and Proc.Appeals amounts whereas prior fiscal years had separate budgets for OPA and Procurement Appeals. For comparison purposes, we also combined the OPA and Proc. Appeals appropriations and adjustments for FY 2006 – FY 2009 .

(B) Personnel lapses due to recruitment difficulties.

(C) Governor's Transfer Authority (TR-2008-01).

(D) Due to P.L. 29-02.

(E) Carryover Authorization.



# Analysis of Approved Budget

Object Class	2010 Approved Budget	2009 Approved Budget	Variance	% Change
Salaries and Benefits	\$ 952,365	\$ 942,698	\$ 9,667	1.0%
Operations:				
Rent	\$ 93,500	\$ -	\$ -	0.0%
Contractual	\$ 119,872	\$ -	\$ -	0.0%
Travel	\$ 18,000	\$ -	\$ -	0.0%
Equipment	\$ 16,000	\$ -	\$ -	0.0%
Supplies	\$ 11,112	\$ -	\$ -	0.0%
Telephone & Utilities	\$ 7,000	\$ -	\$ -	0.0%
Miscellaneous	\$ 8,500	\$ -	\$ -	0.0%
<b>Total Operations</b>	<b>\$ 273,984</b>	<b>\$ 329,084</b>	<b>\$ (55,100)</b>	<b>-16.7%</b>
<b>Total Approved Budget</b>	<b>\$ 1,226,349</b>	<b>\$ 1,271,782</b>	<b>\$ (45,433)</b>	<b>-3.6%</b>

**Note: 2009 Budget authorized the Public Auditor to allocate approved budget.**



# Prior Year Obligations & Unbudgeted Items

- The OPA does not have any Prior Year Obligations to report



# Procurement Appeals

- Procurement Appeals became fully operational and OPA began accepting appeals in October 2006, when the rules of procedures were promulgated through the AAA.
- The designation of OPA as the hearing authority for Procurement Appeals indicates trust and confidence in OPA. We are appreciative of the Legislature's trust and will continue to ensure fair and balanced procedures for all procurement appeals.



# Procurement Appeals Savings

Prior to FY 2010, Procurement Appeals was a separate division and had a separate appropriation. Beginning October 1, 2009, Procurement Appeals is part of OPA's total budget. The cost savings and other benefits of this budget arrangement include:

- OPA staff provides administrative support, including back-up personnel when on leave;
- Common Use of OPA equipment, telephone and fax numbers, fax and copy machines, and the website; and
- OPA audits provide historical perspective of procurement



# Procurement Appeals Savings

Cost savings have also been realized through hiring contractual attorneys vs. a full-time attorney:

- In FY 2009, OPA paid three attorneys \$50,200 for procurement appeal work;
- In FY 2008, OPA paid two attorneys just under \$70,000 for procurement appeal work; and
- In FY 2007, OPA's full time attorney earned a salary of \$80,000 plus benefits of \$21,900.



# Procurement Appeals

- Since OPA first accepted appeals in October 2006, 38 appeals have been filed:
  - 12 appeals filed in CY 2009
  - 12 appeals filed in CY 2008
  - 11 appeals filed in CY 2007
  - 3 appeals filed in CY 2006



# Procurement Appeals

- During CY 2009, OPA addressed 12 appeals.
  - 4 received Decisions following a Hearing. However, 1 decision (09-005 GCIF vs. DPW) was appealed to the Superior Court by the appellant.
  - 5 received Dismissals as they were resolved by the appellant and purchasing agency
  - 1 appeal was not heard due to the Public Auditor's recusal
  - 2 received either a Hearing or Pre-Hearing, but remained open at year end
- We again request that the Legislature amend the law to allow OPA staff to hear appeals in the event that the Public Auditor has a conflict. Sufficient experience and hearing has occurred and OPA staff together with the Hearing Officers, qualify to hear appeals in the absence of the Public Auditor.





# Procurement Appeals

- OPA has three private attorneys to serve as Hearing Officers and one Management Analyst III to handle the procurement appeals workload.
- In March 2006, the OPA employed in-house counsel to handle all appeals filed. In July 2007 the in-house counsel resigned and Hearing Officers were contracted thereafter.
- OPA issued an RFP in November 2009 to search for additional attorneys to handle OPA's growing caseload for FY 2010-2012. No new attorneys were added in 2009 based on the submission to the RFP.



# Procurement Appeals

- Having three attorneys efficiently and effectively allowed OPA to close out a number of pending appeals.
- Conflict checks were closely tracked and monitored to avoid conflicts of interest with a specific appellant or appellee involved in an appeal.
- As we have gained knowledge and experience, the Procurement Appeals' goal is to issue a decision within 90 days. Specifically, OPA-PA-009-005 GCIF vs. DPW took 93 days to resolve the appeal from receipt on August 29, 2009 to decision issuance on November 27, 2009.
- A Year in Review Follows. . .



# Appeals Addressed in 2009

## Dismissals:

- **09-001 (Mega United Corp. vs. GIAA)**
  - OPA's jurisdiction over an appeal applies only after a formal protest is lodged and denied by the awarding authority as stipulated by 5 GCA §5425(e). Mega United Corp. did not file its protest with GIAA.
- **09-002 (Teal Pacific LLC vs. DOE)**
  - Dismissed due to the Public Auditor's doctor/patient recusal with a principal of the appellant
- **09-004 (Loyal Pacific Corp. vs. DOE)**
  - Agreement was reached and the appeal was resolved between parties and dismissed
- **09-006 (Eons Enterprises Corp. vs. DOE)**
  - Agreement was reached and appeal was resolved between parties and dismissed
- **09-009 (Guam Cleaning Masters vs. DCA)**
  - Agreement was reached and appeal was resolved between parties and dismissed
- **09-011 (J & G dba IBSS vs. GSA)**
  - GSA issued response to appellant's protest and the appeal was withdrawn by the appellant



# Appeals Addressed in 2009

## Decisions Issued:

- **09-003 (Guam Pacific Enterprises Inc., vs. GPA)**
  - OPA determined that GPA holds an obligation to properly exercise discretion and administer its contracts in good faith, particularly to small local contractors, such as the appellant, relative to the assessment of liquidated damages. The OPA granted the appeal for one of the eleven purchase orders in the appeal, because there was insufficient evidence in the record to establish that GPA had demonstrated a true and legitimate need or purpose for requiring an exact delivery due date. The other ten purchase orders presented in the appeal were denied and deemed untimely because the appellant failed to seek remedy within 60 days of the assessment of liquidated damages by GPA.



# Appeals Addressed in 2009

## Decisions Issued:

- **09-005 (Guam Community Improvement Foundation vs. DPW)**
  - The Public Auditor denied the appeal and determined there was no merit to GCIF's allegation that IBC, the No. 1 ranked qualified offeror, could not finance the re-building of JFK High School as required by the RFP and that IBC's Certificates of Participation cost was more than what IBC initially offered. The Public Auditor also denied the appellant's motion to unseal the protected confidential portions of the procurement record because DPW had not issued a formal notice of award to IBC as of the date of the OPA's decision.



# Appeals Addressed in 2009

- **Decisions Issued:**
  - **09-007 (Guam Education Financing Foundation vs. DPW)**
    - Related to Appeal 09-005. The Public Auditor denied this appeal and found there was no merit to GEF's allegations that, IBC, the No. 1 ranked offeror, submitted their proposal in bad faith; that IBC should be disqualified because their proposed JFK campus did not meet the size requirements set forth in the RFP; or that IBC failed to provide financing as proposed in their RFP response. The Public Auditor found that the procurement record was incomplete and the following be made part of the record:
      - sources and uses of funds
      - analysis of the \$1.8 million in maintenance
      - analysis and cost comparison on financing a 30-year period versus a 20-year period



# Appeals Addressed in 2009

- **Decisions Issued:**

- **09-010 (ASC Trust Corporation vs. GGRF)**

- The Public Auditor denied appellant ASC's claim and stated that ASC did not provide sufficient evidence and did not provide the burden of proof that the GGRF selection committee evaluated and scored in a capricious, arbitrary, and manner contrary to law. The PA's ruling was based on a de novo review of the procurement records and compelling direct oral testimony from the three selection committee members. Each committee member stood by their ranking and scores and each stated they would score the same way if they were asked to perform this task again. All stated that they believe price was the negotiable area. The PA further ruled that GGRF can proceed with the award to GWRS.



# Appeals in Progress

Three appeals that remain open:

1. **09-005 (GCIF vs. DPW):** OPA decision appealed by GCIF to the Superior Court. Pending Judge's ruling on GCIF's motion.
2. **09-008 (O & M Energy vs. GPA):** Cases filed in Superior Court by GPA and TEMES before OPA issued its decision. OPA jurisdiction under review by Superior Court.
3. **09-012 (Z4 Corp. Vs. GSA-DOE):** Hearing to be continued in April 2010.





# Appeals in Progress

- **09-005 (GCIF vs. DPW):**
  - OPA issued its decision in November 2009, which denied GCIF's appeal
  - GCIF appealed OPA's decision to Superior Court in December 2009
  - Hearings were held at the Superior Court in February and March 2010
  - Pending Judge's decision on GCIF's appeal of OPA's decision



# Appeals in Progress

- **09-008 (O & M Energy vs. GPA)**
  - In February 2010, the Judge ordered OPA not to issue its decision
  - Cases filed in Superior Court by GPA and TEMES
  - OPA jurisdiction under review by Superior Court
- **09-012 (Z4 Corp. Vs. GSA-DOE)**
  - Pre-hearing conference held in January 2010
  - Formal hearing held in February 2010
  - Continuation of hearing in April 2010



# Decisions Taken to Superior Court

- Following the issuance of a Decision, parties have 14 days to exercise their right to appeal a Decision to the Superior Court.
- In CY 2009, one OPA Decision was appealed to the Superior Court:
  - **09-005 (Guam Community Improvement Foundation vs. DPW)**
    - **SP 0247-09 Filed December 11, 2009 by Cunliffe and Cook/Attorney for the Appellant)**
    - Appealed by GCIF, No. 3 ranked offeror by DPW, seeks a mandate from the court to compel the OPA to unseal the protected parts of the procurement record filed by DPW with the OPA and to remove IBC as the successful offeror for the RFP to rebuild the new JFK High School.
    - **The 09-005 Decision was heard by Superior Court in February and March 2010. Pending Judge's decision on GCIF's motion.**



# FY 2011 Budget Request Procurement Appeals

It is the OPA's goal to have its Hearing Officers:

- (1) be readily available to handle the time sensitive appeals, considering potential conflicts, and time constraints; and
- (2) resolve filed appeals within a 90-day time frame.



# Proposed Amendments to Procurement Appeals Rules & Law

## Rule Changes adopted August 2009

- Issuing Separate Findings of Fact
  - Amended 2 GAR § 12110 to eliminate the requirement for the Hearing Officer (HO) to issue a separate Findings of Fact and provide for only one Decision issued by the PA, with guidance from the HO.
- Disqualification of Public Auditor
  - Amended 2 GAR § 12602 to allow for other OPA officers to hear appeals should the PA be disqualified rather than have appeals be taken to Superior Court, provided the alternates are not in conflict. However, this rule still requires changing the law.
  - Amended 2 GAR § 12104 to remove the seven-day deadline requiring parties to file their motion to object to the PA hearing an appeal.



# Proposed Amendments to Procurement Appeals Rules & Law

## Law Changes Being Requested

- Decisions of the Public Auditor
  - Amended 5 GCA § 5702 to allow for other OPA officers to hear appeals should the PA be disqualified rather than have appeals be taken to Superior Court, provided the alternates are not in conflict.

OPA will go through the AAA for more proposed rule changes and will again request amendments to law with the Legislature.