

Report on Compliance and Internal Control

Guam Memorial Hospital Authority
(A Component Unit of the Government of Guam)

Year Ended September 30, 2024



**Shape the future
with confidence**

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Year Ended September 30, 2024

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Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

Management and the Board of Trustees
Guam Memorial Hospital Authority

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (*Government Audit Standards*), the financial statements of Guam Memorial Hospital Authority (GMHA), as of and for the year ended September 30, 2024, and the related notes to the financial statements, which collectively comprise GMHA's basic financial statements (collectively referred to as the "financial statements"), and have issued our report thereon dated October 6, 2025.

Report on Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered GMHA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of GMHA's internal control. Accordingly, we do not express an opinion on the effectiveness of GMHA's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether GMHA's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Ernst + Young LLP

October 6, 2025

Report of Independent Auditors on Compliance for the Major Federal Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

Management and the Board of Trustees
Guam Memorial Hospital Authority

Report of Independent Auditors on Compliance for the Major Federal Program

Qualified Opinion

We have audited Guam Memorial Hospital Authority's (GMHA's) compliance with the types of compliance requirements identified as subject to audit in the U.S. Office of Management and Budget (OMB) *Compliance Supplement* that could have a direct and material effect on the GMHA's major federal program for the year ended September 30, 2024. GMHA's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Qualified Opinion on Assistance Listing Number (ALN) 21.027 COVID-19 Coronavirus State and Local Fiscal Recovery Funds

In our opinion, except for the noncompliance described in the Basis for Qualified and Unmodified Opinions section of our report, GMHA complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on ALN 21.027 COVID-19 Coronavirus State and Local Fiscal Recovery Funds for the year ended September 30, 2024.

Basis for Qualified Opinion

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America (GAAS); the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States (Government Auditing Standards); and the audit requirements of Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of GMHA and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion on compliance for the major federal program. Our audit does not provide a legal determination of GMHA's compliance with the compliance requirements referred to above.

Matters Giving Rise to Qualified Opinion on Assistance Listing 21.027 COVID-19 Coronavirus State and Local Fiscal Recovery Funds

As described in the accompanying schedule of findings and questioned costs, GMHA did not comply with requirements regarding Assistance Listing 21.027 COVID-19 Coronavirus State and Local Fiscal Recovery Funds as described in finding numbers 2024-001 and 2024-002 for Procurement, Suspension and Debarment.

Compliance with such requirements is necessary, in our opinion, for GMHA to comply with the requirements applicable to that program.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to GMHA's federal programs.

Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on GMHA's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material, if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about GMHA's compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the GMHA's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of GMHA's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of GMHA's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Other Matters

Government Auditing Standards requires the auditor to perform limited procedures on the GMHA's response to the noncompliance findings identified in our audit described in the accompanying schedule of findings and questioned costs. GMHA's response was not subjected to the other auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

GMHA is responsible for preparing a corrective action plan to address each audit finding included in our auditor's report. GMHA's corrective action plan was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on it.

Report on Internal Control Over Compliance

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance, and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we did identify certain deficiencies in internal control over compliance that we consider to be material weaknesses.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. We consider the deficiency in internal control over compliance described in the accompanying schedule of findings and questioned costs as items 2024-001 and 2024-002 to be material weaknesses.

A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

Government Auditing Standards requires the auditor to perform limited procedures on GMHA's response to the internal control over compliance findings identified in our audit described in the accompanying schedule of findings and questioned costs. GMHA's response was not subjected to the other auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

We have audited the financial statements of GMHA as of and for the year ended September 30, 2024, and the related notes to the financial statements, which collectively comprise the GMHA's basic financial statements. We issued our report thereon dated October 6, 2025, which contained an unmodified opinion on those financial statements. Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements, or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States. In our opinion, the schedule of expenditures of federal awards is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Ernst + Young LLP

October 6, 2025

Guam Memorial Hospital Authority
(a component unit of the Government of Guam)

Schedule of Expenditures of Federal Awards

Year Ended September 30, 2024

<u>Federal AL #</u>	<u>Pass-through Entity Identifying Number</u>	<u>Federal Grantor/Pass-Through Grantor/Program or Cluster Title</u>	<u>Federal Expenditures</u>
		U.S. Department of the Treasury: Pass-Through From the Office of the Governor of Guam:	
21.027	None	COVID-19 Coronavirus State and Local Fiscal Recovery Funds	\$ <u>1,454,726</u>
		Total U.S. Department of the Treasury	<u>1,454,726</u>
		U.S. Department of Health and Human Services: Pass-Through From the Office of the Governor of Guam:	
93.889	5 U3REP190565-05-00	COVID-19 National Bioterrorism Hospital Preparedness Program	<u>299,411</u>
		Total U.S. Department of Health and Human Services	<u>299,411</u>
		U.S. Department of the Interior: Pass-Through From the Office of the Governor of Guam:	
15.875	D15AP00046	Economic, Social and Political Development of the Territories	183,592
15.875	D20AP00073	Economic, Social and Political Development of the Territories	30,215
15.875	D20AP00010	Economic, Social and Political Development of the Territories	<u>9,090</u>
		Total U.S. Department of the Interior	<u>222,897</u>
		Corporation for National and Community Service Pass-Through From Serve Guam Commission:	
94.006	None	Americorps	<u>26,269</u>
		Total Corporation for National and Community Service	<u>26,269</u>
		Total Expenditures of Federal Awards	\$ <u>2,003,303</u>

Guam Memorial Hospital Authority
(a component unit of the Government of Guam)

Notes to the Schedule of Expenditures of Federal Awards

Year Ended September 30, 2024

1. Scope of Audit

Guam Memorial Hospital Authority (GMHA) is a component unit of the Government of Guam (GovGuam), a governmental entity created on July 26, 1977, under Public Law No. 14-29 as an autonomous agency of GovGuam. Only the transactions of GMHA are included within the scope of the Single Audit.

2. Basis of Presentation

The accompanying Schedule of Expenditures of Federal Awards (the Schedule) includes the federal grant activity of GMHA under programs of the federal government for the year ended September 30, 2024. The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the Schedule presents only a selected portion of the operations of GMHA, it is not intended to and does not present the net position, changes in net position or cash flows of GMHA.

3. Summary of Significant Accounting Policies

Basis of Accounting

Expenditures reported in the Schedule are reported on the accrual basis of accounting, consistent with the manner in which GMHA maintains its accounting records. Such expenditures are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement. Therefore, some amounts presented in this Schedule may differ from amounts presented in, or used in the preparation of the financial statements. All expenses and capital outlays are reported as expenditures. Pass-through entity identifying numbers are presented where available.

Matching Costs

Matching costs, i.e., the non-federal share of certain program costs, are not included in the Schedule.

Indirect Cost Rate

GMHA does not elect to use the 10% de minimis indirect cost rate allowed under the Uniform Guidance.

Guam Memorial Hospital Authority
(a component unit of the Government of Guam)

Schedule of Findings and Questioned Costs

Year Ended September 30, 2024

Section I—Summary of Auditor's Results

Financial Statements

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP:

Unmodified

Internal control over financial reporting:

Material weakness(es) identified?

_____ **Yes** X **No**

Significant deficiency(ies) identified?

_____ **Yes** X **None reported**

Noncompliance material to financial statements noted?

_____ **Yes** X **No**

Federal Awards

Internal control over major federal programs:

Material weakness(es) identified?

 X **Yes** _____ **No**

Significant deficiency(ies) identified?

_____ **Yes** X **None reported**

Type of auditor's report issued on compliance for major federal programs:

ALN 21.027

Qualified

Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)?

 X **Yes** _____ **No**

Identification of major federal programs:

Assistance Listing number

Name of federal program or cluster

21.027

COVID-19 Coronavirus State and Local Fiscal Recovery Funds

Dollar threshold used to distinguish between Type A and Type B programs:

\$750,000

Auditee qualified as low-risk auditee?

_____ **Yes** X **No**

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Section II – Financial Statement Findings - None

Section III – Federal Award Findings and Questioned Costs

Reference Number	Assistance Listing Number	Findings	Questioned Costs
2024-001	21.027	Suspension and Debarment	\$900,093
2024-002	21.027	Procurement	150,676

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Finding No.: 2024-001
Federal Agency: U.S. Department of Treasury
AL Program: COVID-19 21.027 Coronavirus State and Local Fiscal Recovery Funds
Requirement: Suspension & Debarment
Questioned Costs: \$900,093

Criteria:

2 CFR section 180.300 requires entities that enter into a covered transaction must verify that the entity or person with whom they intend to do business is not excluded or disqualified by:

- (a) Checking SAM.gov Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.

Condition:

For all 7 procurements tested, GMHA did not properly document that verification was performed to identify if the selected person or entity in the covered transaction was not suspended or debarred prior to transacting with them.

Cause:

GMHA lacked effective monitoring to ensure that vendors and entities that are debarred, suspended, or excluded from or ineligible for participation in Federal assistance programs or activities are restricted from Federal awards, subawards and contracts.

Effect:

GMHA is in noncompliance with the applicable requirement.

Identification as a Repeat Finding: Finding 2023-003

Recommendation:

GMHA should revisit and implement its procedures to ensure that vendors and entities that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities are restricted from Federal awards, subawards and contracts. Procedures performed should be adequately maintained in the procurement files.

Views of Responsible Officials:

Refer to GMHA's corrective action plan.

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Finding No.: 2024-002
Federal Agency: U.S. Department of Treasury
Federal Communications Commission
AL Program: COVID-19 21.027 Coronavirus State and Local Fiscal Recovery Funds
Requirement: Procurement
Questioned Costs: \$150,676

Criteria:

2 CFR 200.1, defines *State* as any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

2 CFR 200.317 requires that when conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. *If such policies and procedures do not exist*, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.

Effective July 1, 2019, GMHA Materials Management Policy and Procedure Manual (Policy No. 4.2) includes the following citations:

All supplies, equipment and services purchased by Guam Memorial Hospital Authority (GMHA) shall be in accordance with the provisions of the Guam Procurement Law and GMHA Rules and Regulations as amended.

Authority Citation	Purchase Amount	Required Documentation
1. SEALED BIDS (3-202): Purchases in excess of \$25,000	\$25,000 or more	Formal Bid Submission
2. SMALL PURCHASE (3-204): Purchases under \$25,000		
3-204.03 – Local or Off-Island	\$501 to \$24,999	3 – positive written quotations or FSS/GCA Catalog Price List
3-204.05 / GMHA Dir 96-01 Local or Off-Island	\$0.01 to \$250.00	1 – positive written or documented oral Quotation
3-204.05 / GMHA Dir 96-01 Local or Off-Island	\$251 to \$500	3 – positive written or documented oral Quotations

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Finding No.: 2024-002, continued
Federal Agency: U.S. Department of Treasury
Federal Communications Commission
AL Program: COVID-19 21.027 Coronavirus State and Local Fiscal Recovery Funds
Requirement: Procurement
Questioned Costs: \$150,676

Title 26 of the Guam Administrative Rules and Regulations (GARR) Chapter 16, sets forth as follows:

§16308. Methods of Source Selection. *Unless otherwise authorized by law, all hospital contracts shall be by competitive sealed bidding, pursuant to §16309 (Competitive Sealed Bidding) of these Regulations, except as provided in: (1) Section 16310 (Procurement from Non Profit Corporations); (2) Section 16311 (Small Purchases); (3) Section 16312 (Sole Source Procurement); (4) Section 16313 (Emergency Procurement); (5) Section 16314 (Competitive Selection Procedures for Services Specified in §16212); (6) Section 16507 (Architect-Engineer and Land Surveying Services); or (7) Section 16315 (Purchase of Drugs by Generic Names).* §16309. Competitive Sealed Bidding. (a) Application. The provisions of this section apply to every procurement made by competitive sealed bidding, including multi-step bidding.

§16309. Competitive Sealed Bidding. (a) Application. The provisions of this section apply to every procurement made by competitive sealed bidding, including multi-step bidding.

§16311. Small Purchases.

- (1) Application. In accordance with 5 GCA §5213 (Small Purchases) of the Guam Procurement Act, *this section is established for procurement of less than five thousand dollars (\$5,000) for supplies or services and less than fifteen thousand dollars (\$15,000) for construction.*

(b) Authority to Make Small Purchases. (1) Amount. The Hospital Administrator may use this section if the procurement is to be less than five thousand dollars (\$5,000) for supplies or services and less than fifteen thousand dollars (\$15,000) for construction. If these methods are not used, the other methods of source selection provided in 5 GCA §5210 (Methods of Source Selection) of the Guam Procurement Act and these Regulations shall apply.

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Finding No.: 2024-002, continued
Federal Agency: U.S. Department of Treasury
Federal Communications Commission
AL Program: COVID-19 21.027 Coronavirus State and Local Fiscal Recovery Funds
Requirement: Procurement
Questioned Costs: \$150,676

Condition:

For 2 (or 17%) of 12 items tested, GMHA's method of procurement did not comply with local procurement regulations. GMHA is considered an instrumentality of the Government of Guam which is included in the definition of a State within 2 CFR 200. Accordingly, as there exists policies and procedures for procurement, such policies and procedures should have been used in conducting procurement transactions under a federal award in accordance with 2 CFR 200.317.

Purchase Order (PO) Number	Purchase Order (PO) Amount	Procurement Method Used	Should be Procurement Method
20240396	\$124,404	Small Purchase	Competitive Sealed Bidding
20242839	\$26,272	Small Purchase	Competitive Sealed Bidding

Cause:

GMHA did not use the same policies and procedures used for procurement of non-federal funds in accordance with 2 CFR 200.317.

Effect:

GMHA is in noncompliance with the applicable requirement.

Recommendation:

GMHA should adopt and implement the same policies and procedures for federal funds as those used for non-federal funds in accordance with 2 CFR 200.317.

Views of Responsible Officials:

Management disagrees with the finding. Management concluded that procurement thresholds is not an aspect of *policies and procedures* required under 2 CFR 200.317. Management concluded that higher thresholds set in 2 CFR 200.320 *Simplified Acquisition Threshold* as the applicable requirement. Please refer to GMHA's views of responsible officials for their detailed response.

Guam Memorial Hospital Authority
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Schedule of Findings and Questioned Costs, continued

Finding No.:	2024-002, continued
Federal Agency:	U.S. Department of Treasury Federal Communications Commission
AL Program:	COVID-19 21.027 Coronavirus State and Local Fiscal Recovery Funds
Requirement:	Procurement
Questioned Costs:	\$150,676

Auditor's Response:

We clarified the requirement with the pass-through entity. The pass-through entity concurred with our finding. We recommend that GMHA work with its pass-through entity to address its concerns related to this compliance requirement.



GUAM MEMORIAL HOSPITAL AUTHORITY

ATURIDĀT ESPETĀT MIMURIĀT GUĀHĀN

850 Governor Carlos Camacho Road, Tamuning, Guam 96913
Operator: (671) 647-2330 or 2552 | Fax: (671) 649-5508



CORRECTIVE ACTION PLAN

Finding No. 2024-001 – Procurement, Suspension and Debarment

Views of Auditee and Planned Corrective Actions:

Starting in April 2024, GMHA incorporated the Certificate Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts and Grants in all of its Invitation for Bids and Request for Proposals.

Proposed Completion Date: Completed.

Name of Contact Person: Yukari Hechanova, Chief Financial Officer



GUAM MEMORIAL HOSPITAL AUTHORITY

ATURIDĀT ESPETĀT MIMURIĀT GUĀHĀN

850 Governor Carlos Camacho Road, Tamuning, Guam 96913
Operator: (671) 647-2330 or 2552 | Fax: (671) 649-5508



Views of Responsible Officials

Finding No.: 2024-002

For procurements using federal funds, GMHA is permitted to use a Simplified Acquisition Threshold up to the federal limit, which is currently set at \$250,000 or \$7.5 million for commercial goods. The Code of Federal Regulations (CFR) permits a non-federal entity to use a SAT up to the federal limits, without having to follow threshold limitations imposed by state or local law. The set of criteria employed by the Ernst & Young is incomplete, and fails to give proper deference to the legal opinions of licensed attorneys.

In determining to follow the federal SAT, GMHA considered the guidance of a memorandum from the Office of the Attorney General indicating substantively the same legal analysis as follows. *See* Memorandum from Deputy Attorney General, Solicitor Division to Chief Deputy Attorney General, *Federal Simplified Acquisition Threshold and Micro-purchase Threshold*, Ref: AG 22-0410 (Sept. 14, 2022).

When presented with this memorandum, the auditors refused to accept its instructions stating: “We were unable to follow why the Attorney General considered the definition of a non-Federal entity in applying the requirements of §§ 200.318 through 200.327. In reviewing the aforementioned sections, there was no reference to non-Federal entities.” This statement evidences the auditors’ fundamental misunderstanding of the law. The auditors based their analysis on an amended version of the CFR, which became effective only January 2025.

According the definitions in the Code of Federal Regulations in effect during the relevant 2023-2024 audit period, Guam is both a “State” and a “Non-Federal entity.” Guam Memorial Hospital Authority also falls within the definition of “Hospital” and “subrecipient.”

As relevant here, 2 CFR 200.1 states:

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Non-Federal entity (NFE) means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Hospital means a facility licensed as a hospital under the law of any State or a facility operated as a hospital by the United States, a State, or a subdivision of a State.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

As a Non-Federal entity, GMHA also is required to abide by the definition of “simplified acquisition threshold.” According to 2 CFR 200.1:

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. **The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.** However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

(emphasis added). This definition applies to purchasing by all non-federal entities—including GMHA.

Title 2 CFR 200.317 provides:

When procuring property and services under a Federal award, a State must follow the same **policies and procedures** it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

(emphasis added). As a subrecipient of Guam, GMHA would also be required to follow 2 CFR 200.320(a)(2)(ii), which reiterates that: “The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR.”

The CFR treats the requirement that a state or local entity follow (1) its own “policies and procedures” and (2) its own small purchase “threshold” as separate requirements.

The CFR applicable to most federal funds—including ARPA—only requires the hospital to follow the local “policies and procedures.” 2 CFR 200.317. The CFR requires GMHA—as a non-federal entity—to separately make a *determination* of an appropriate small purchase threshold based on a number of factors specific to GMHA, provided it does not exceed the federal SAT. 2 CFR 200.1; 2 CFR 200.320(a)(2)(ii).

Procurement method selection is essentially a two-step process: (1) Make a substantive determination about the monetary cost of a proposed procurement and determine whether it is below or above an applicable threshold. Which side of a threshold a procurement falls on (and some other factors) will determine the method—sole source, RFQ, RFP, IFB—that will be used. (2) After the method is determined, an entity is then pointed to specific policies and procedures applicable to that type of procurement.

The relevant factors for determining a recipient-specific SAT include an entity’s “internal controls, an evaluation of risk, and its documented procurement procedures.” 2 CFR 200.1; 2 CFR 200.320(a)(2)(ii). For a portion of the relevant procurement period, the CFR also stated: “When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.”

This section was amended effective approximately October 1, 2024. Now, it no longer requires the recipient or sub-recipient to ascertain whether this entity-specific threshold is “authorized or not prohibited under State, local, or tribal laws or regulations.”

But even under the prior version, the entity only needed to consider the authorization or lack of prohibition under state or local law if it was adopting a “**lower** simplified acquisition threshold” than the federal SAT. 2 CFR 200.320(a)(2)(ii) (effective until Sept. 30, 2024) (emphasis added). GMHA determined that the federal SAT levels were appropriate, and—in any event—local law does not prohibit GMHA from adopting the federal SAT when using federal funds.

GMHA’s use of the federal SAT for procurements using federal funds has been a decades long practice of our materials management, so a suggestion that it is unauthorized would be a finding quite inconsistent with GMHA’s internal controls.

Highlighting the distinctness or difference between the “policies and procedures” and “threshold” requirements, is the fact that “simplified acquisition procedures” and

“simplified acquisition threshold” are *defined* separately. *See* 48 CFR 2.101. And the two requirements are discussed separately in the section of the CFR discussing “informal procurement methods.” 2 CFR 200.320. Additionally, the small purchase “procedures” applicable to federal agencies, FAR Part 13, are contemplated in an entire section that is separate from the rules about the controlling SAT or other threshold. Finally, in other portions of the CFR—such as federal highway funds—the government has specifically instructed state entities to follow both the state or local “procedures” and the state or local “threshold.” 23 CFR 172.7(a)(2). When the CFR wants the state government to follow state SATs, it will specifically do so. It has not put that instruction in 2 CFR 200.320.

Guam law also specifically directs all persons within the Government of Guam to comply with the applicable federal law and regulations that are in conflict with or are not reflected in the Procurement Code. 5 GCA § 5501. In other words: Guam law requires GMHA to follow the federal rules. Specifically, here, the federal requirement that GMHA *determine* an appropriate SAT is not reflected in the local laws. GMHA, thus, must comply with the federal requirement that GMHA make a recipient-specific determination of an appropriate SAT.

Even the Guam Legislature understands that the law operates in the same manner as the Attorney General’s memorandum. During a legislative hearing on June 25, 2024, Senator Sabina Perez recited the same analysis, recognizing that Guam agencies can use the federal simplified acquisition threshold when expending federal funds. *See* Guam Legislature, Public Hearing Bill No. 134-39 (COR) at *1:46:00-1:46:31 (June 25, 2025), *available at* <https://www.youtube.com/live/ciXo1EEXJZI>.

In deciding the federal SAT applies, GMHA was also guided by precedent and guidance issued to other government entities. In 2015, when the Guam Department of Education was under a federal third-party fiduciary, it was still employing the lower local small purchase threshold. GDOE was instructed that this was inappropriate because federal law *supersedes* Guam law on the SAT. The federal fiduciary—consistent with USDOE instructions—required GDOE to follow the federal SAT. *See* Letter from John E. Hampford, Alvarez & Marsal, to Jon J.P. Fernandez, Superintendent of Guam Department of Education (Dec. 30, 2015); *see also* Letter from Jon J.P. Fernandez, Superintendent of Guam Department of Education to Attorney General Leevin T. Camacho and Public Auditor Benjamin J.F. Cruz (July 20, 2020). Thus, other Guam agencies have been instructed *by the federal government* to use the federal SAT.

This is also bolstered by the case law. The Guam Supreme Court has ruled that the CARES Act funding was a federal appropriation for a specific purpose, “outside the control of the Guam Legislature.” *See Story-Bernardo v. Gov’t of Guam*, 2023 Guam 27 ¶ 46. ARPA funding is substantively similar to CARES Act funds, simply with additional permitted uses. Local law cannot dictate how these federal funds are spent.

GMHA also considered case law from Texas federal court where a self-styled “whistleblower” sued the City of Burleson, Texas for allegedly spending in excess of their

own SAT. Under Burleson's own regulations, the local SAT was \$10,000, *see Rule 5.1*, City Council Policy 36, City of Burleson Purchasing Policy (*adopted* July 2, 2018, *revised* Oct. 16, 2023). However, the lawsuit alleged that the city was spending in excess of this \$10,000 SAT. The federal judge in that court stated:

"In addition, the regulations show that "formal purchasing methods are not required" for purchases that are less than the "simplified acquisition threshold." 2 C.F.R. § 200.1(2021). The simplified acquisition threshold is set at \$250,000. 48 C.F.R. § 2.101(2021). However, Mr. Eder's complaint incorrectly alleges "upon information and belief" that the simplified acquisition threshold is \$10,000. Doc. No. 37 at 12, ¶27(b). Mr. Eder's apparent misreading of the threshold for formal purchasing is central to his claim under the FCA, and it appears this concern may have arisen from simply misreading the rules, rather than any reasonable dispute under the law."

Eder v. City of Burleson, Civil No. 3:23-CV-00948-K, 2024 WL 4771408 at *5 (N.D. Tex., Nov. 13, 2024). Thus, the federal court recognized that the lower local SAT did not control. The only relevant SAT was the federal one.

GMHA's determination to use the maximum SAT allowed by the federal CFR is thus appropriate. The federal CFR rule requiring a recipient-specific SAT determination supersedes the local thresholds. If the procurement is under the federally-allowed \$250,000 SAT, GMHA must still follow the local small purchase procedures. *See in part* 5 GCA § 5213.

The auditors' view of Guam law appears to be a clear outlier, inconsistent with a plain reading of both federal and Guam law, the opinions of both federal and local courts, the memorandum from the Attorney General's Office, the understanding of the Guam Legislature, and the reasoned opinion of Hospital Legal Counsel. The auditors' finding is also inconsistent with decades of GMHA procurement practice. **The questioned costs based on this finding should be removed.**

The auditors' (1) inability to even reference the relevant definitions from the CFR in effect at the time of the relevant audit period and (2) unwillingness to accept the legal opinions from licensed attorneys, should be a finding on the auditors' peer review.



GUAM MEMORIAL HOSPITAL AUTHORITY

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Summary Schedule of Prior Audit Findings Year Ended September 30, 2024

<u>Finding No.</u>	<u>Assistance Listing No.</u>	<u>Requirement</u>	<u>Status at September 30, 2024</u>
2023-001/ 2022-001	N/A	Patient Receivables	Refer to Corrective Action Plan for Finding 2023-001.
2023-002	21.027	Allowable Costs/Cost Principles	Corrective action has been taken.
2023-003	21.027 32.006	Suspension and Debarment	Corrective action has been taken.