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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGATNA, GUAM**

IN THE APPEAL OF)	OPA-PA-14-002
)	
FUKUDA ENTERPRISES, LLC,)	APPELLANT'S COMMENTS ON
)	AGENCY REPORT
Appellant.)	
)	
_____)	

Guam Department of Education (herein after referred to as "GDOE") IFB 004-2014 provided a November 27, 2013 Deadline for Submission of Pre-bid Written Questions and a December 3, 2013 Deadline for GDOE Response to Pre-Bid Written Questions. See GDOE 0002. Section 2.3.2 of the IFB states, "Potential bidders may submit written questions concerning this IFB before the time and date listed below. Questions must be submitted in writing according to the instructions contained in Section 2.2.3 herein. All questions and responses will be made available in writing to every potential bidder. Questions submitted after the time and date below will not be considered or answered." (Emphasis added) (GDOE 0007).

Triple J Motors (hereinafter referred to as "TRIPLE J") did not raise the issues raised in its protest by submitting any Pre-Bid Written Questions. Instead it filed its protest regarding the wheelchair lift specification on December 19, 2013, the day before

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the opening of the bids. Exhibit 13 of GDOE's Submission of Procurement Record provides the correspondence between GDOE and Triple J regarding the protest filed by Triple J. Exhibit 12 pertains to correspondence between GDOE and the author of the specifications, Paul Cepeda of DPW. A review of these two exhibits reveals that GDOE sought Triple J's approval of the change of the specifications in return for Triple J agreeing to withdraw its protest. None of these documents were provided to Fukuda Enterprises, LLC (herein after referred to as "FUKUDA") or any other potential bidder.

It is Fukuda's position that the pre-bid protest as to specifications in the IFB should have been handled by GDOE in the same manner as the requirement for pre-bid questions and responses as set forth in the IFB and outlined above. Fukuda and other bidders should have had an opportunity to see the issue being raised by Triple J and the response of GDOE. This would have allowed Fukuda and other potential bidders to comment both on the issue raised by Triple J and the GDOE response.

As noted in Fukuda's argument in support of its appeal the information provided by Triple J in its letter to GDOE was not correct regarding there only being one certified manufacture of wheelchair lifts. If GDOE had followed normal procurement procedures and informed all potential bidders of the issue raised by Triple J, Fukuda could have brought to GDOE's attention the fact that it was misinformed by Triple J and the issue currently on appeal might have been resolved through mutual negotiations of all the parties avoiding the delays resulting from a protest and appeal.

5 GCA §5001(b)(3) provides that the purposes and policies of the procurement law are to "provide for increased public confidence in the procedures followed in public

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procurement;”. Subsection (4) provides that the purpose and policies of the procurement law are to “ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory;”. GDOE did not deal with all prospective bidders fairly and equitably in its handling of the issues raised by Triple J prior to the opening of the bid. Fair and equitable treatment would have required GDOE to advise all prospective bidders of the issue raised by Triple J and of the prospective change it was considering based on the issue raised by Triple J. This would have allowed the prospective bidders to respond to the issue raised by Triple J and the proposed change in the specification based on Triple J’s protest. If Triple J had raised the issue by way of a pre-bid question to GDOE all parties would have been aware of the question and GDOE’s response. By raising the issue by way of a protest and GDOE not informing all the potential bidders of the issue and its intended resolution thereof it clearly failed to follow the law in dealing with all interested parties fairly and equitably.

GDOE argues in its Answer of Purchasing Agency “Open, fair, and maximum competition is a tenet of Guam’s procurement system.” (GDOE 0106). GDOE, however, fails to consider 5 GCA §5001(b)(4) cited above, which require fair and equitable treatment of all persons who deal with the procurement system.

Appellant Fukuda respectfully asks the OPA to make a finding that GDOE violated the procurement law in failing to treat Fukuda and other prospective bidders fairly and equitably in the manner in which it handled the change of specifications in this IFB. Based thereon the IFB should be reissued after GDOE considers the fact that the

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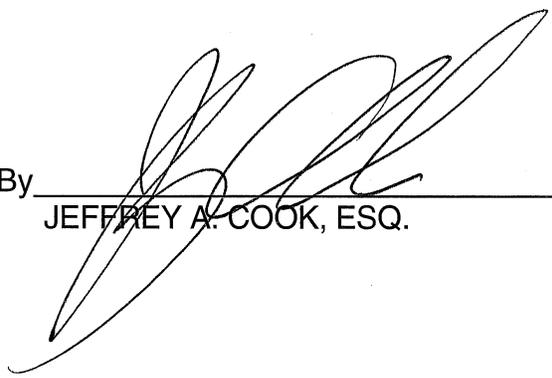
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basis for its change in specifications apparently was the result of false information provided by Triple J.

Respectfully submitted this 9th day of May, 2014.

CUNLIFFE & COOK
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By  _____
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