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9

10 **OFFICE OF THE PUBLIC AUDITOR**  
11 **PROCUREMENT APPEALS**

12  
13 IN THE APPEAL OF ) **DOCKET NO. OPA-PA-21-012**  
14 )  
15 GRAPHICS CENTER, INC., ) **APPELLEE'S HEARING BRIEF**  
16 )  
17 Appellant. )  
18 \_\_\_\_\_ )  
19

20  
21 **COMES NOW**, the GUAM POWER AUTHORITY, by and through its counsel of  
22  
23 record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the January 28, 2022,  
24 hearing as follows.

25 **BACKGROUND**

26 On January 7, 2021, Guam Power Authority ("GPA") issued Request for Proposal, GPA-  
27 RFP-21-002, PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES  
28 RELATING TO UTILITY CUSTOMER BILLING. Three bidders, Graphic Center, Inc.,  
29 InfoSend, Inc. and Moon Light GPO, expressed interest in the RFP from May 6, 2021 to June 3,  
30 2021, and all three bidders submitted bids in response to the RFP. Prior to submission of the bids,  
31 the bidders had an opportunity to submit questions regarding the RFP. GPA issued amendments I  
32 in response to these questions to clarify the RFP.

33 One bidder, Moon Light GPO, was disqualified due to a failure to meet the requirement of  
34 PL 36-13. On June 22, 2021, the evaluation committee met and requested clarification from

1 InfoSend, Inc. The evaluation committee met on July 27, 2021, and scored the two bidders,  
2 Graphic Center, Inc. and InfoSend, Inc. The evaluation committee memo dated July 28, 2021,  
3 scored Graphic Center, Inc. 444.5 points out of 500 points, and InfoSend, Inc. 491.5 points out of  
4 500 points. Bid status letters were sent to both bidders on August 11, 2021. The evaluation  
5 committee met on August 26, 2021 to review the sealed price proposal received on August 18,  
6 2021 from InfoSend, Inc. The evaluation committee memo dated August 26, 2021, requested a  
7 best and final offer price from InfoSend, Inc. The Certification of Completed Procurement Record  
8 is dated October 28, 2021.

9 Graphic Center, Inc. filed a protest with GPA on August 30, 2021, which resulted in a Stay  
10 of Procurement. The evaluation committee memo dated September 1, 2021, reviewed the Graphic  
11 Center, Inc. protest letter and provided a response. GPA denied the protest on October 7, 2021, and  
12 there was a Lift of Stay when the protest was denied by GPA. Graphic Center, Inc. filed an  
13 appeal to the OPA on October 25, 2021, and GPA filed a Stay of Procurement on October 25,  
14 2021.

## 15 II. DISCUSSION

16 A. THE INFOSEND, INC. BID WAS RESPONSIVE, AND THE AWARD FOR  
17 PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING  
18 TO UTILITY CUSTOMER BILLING WAS PROPERLY AWARDED TO INFOSEND,  
19 INC. AS INFOSEND, INC. MET THE SPECIFICATIONS IN THE RFP.  
20

21 Procurement law requires that GPA evaluate proposals only on the evaluation factors stated  
22 in the RFP. The minimum factors are: (a) the plan for performing the required services; (b) the  
23 ability to perform the services as reflected by technical training and education, general experience,  
24 specific experience in providing the require services, and the qualifications and abilities of  
25 personnel proposed to be assigned to perform the services; (c) the personnel, equipment, and

1 facilities to perform the services currently available or demonstrated to be made available at the  
2 time of contracting, and (d) a record of past performance of similar work. 2 GAR, Div. 4, §3114(j).  
3 After conclusion of validation of qualifications, evaluation, and discussions, the head of the  
4 purchasing agency or his or her designee shall select, in the order of their respective qualification  
5 ranking, no fewer than three (3) acceptable offerors (or such lesser number if less than three  
6 acceptable proposals were received) deemed to be the best qualified to provide the required  
7 services. 2 GAR, Div. 4, §3114(j).

8 InfoSend, Inc. was ranked the most qualified bidder of two bidders, by the evaluation  
9 committee on July 28, 2021. GPA requested that InfoSend, Inc. submit pricing data pursuant to 2  
10 GAR, Div. 4, §3114(k). If compensation, contract requirements, and contract documents can be  
11 agreed upon with the best qualified offeror, the contract shall be awarded to that offeror. 2 GAR,  
12 Div. 4, §3114(l)(3). An award shall be made to the offeror determined in writing by the head of the  
13 purchasing agency or his or her designee to be best qualified based on the evaluation factors set  
14 forth in the RFP, and negotiation of compensation determined to be fair and reasonable. Written  
15 notice of award shall be public information and made a part of the contract file. 5 GCA §5216(e)  
16 and 2 GAR, Div. 4, §3114(l)(5).

17 Two bidders submitted proposals which were opened by GPA on June 3, 2021. The  
18 evaluation committee requested clarification from InfoSend, Inc., and reviewed the clarification.  
19 Graphic Center, Inc. sent a letter to GPA alleging the InfoSend, Inc. did not meet the RFP  
20 specifications. In its protest, Graphic Center, Inc. alleges, without substantiation, that the InfoSend,  
21 Inc. cannot provide the proper level of service as the development work and fulfillment will be  
22 performed in California. There is no requirement in the RFP that development work and  
23 fulfillment be done in Guam. Graphic Center, Inc. disputes the scores given to InfoSend, Inc.

1 specifically, regarding Section J, which it states “asks if island printing and mailing will be  
2 available.” Section J, Mail provides that “GPA wants the best value as well as present a host of  
3 delivery options to its customers. Please also include if local printing and mailing will be  
4 available.” GPA was looking at delivery options that are available and local printing and mailing  
5 was not a requirement. GPA also noted that Graphic Center, Inc. did not address Section M,  
6 Disaster Recovery Plan, in its RFP submission to GPA. GPA wanted information regarding the  
7 proponent’s processes and procedures regarding Disaster Recovery and backup processes.

8 Appellant notes in its appeal that this RFP is a re-solicitation of GPA-RFP-21-002 in  
9 February 2021. Graphic Center, Inc. states that GPA failed to inform “Graphic of the Bid  
10 Invitation.” This is false in that Graphic Center, Inc. was informed of the **RFP**, but failed to submit  
11 a proposal to the original RFP. Further, GPA advertised the RFP in Guam newspapers as required,  
12 and Graphic Center, Inc. knew that its previous contract with GPA was expiring.

13 Graphic Center, Inc.’s protest is essentially a dispute of the scores given to Graphic Center,  
14 Inc. and those scores given to InfoSend, Inc. It alleges that “it will not be possible for the company  
15 to provide the proper level of service since all of the development work and fulfillment will be  
16 performed in California.” The proposal submitted by InfoSend, Inc. indicates that it has extensive  
17 experience in dealing with utilities in California, and most specifically with the CC&B Oracle  
18 system used by GPA.

19 Graphic Center, Inc. alleges that InfoSend, Inc. submitted an RFP package to GPA that was  
20 incomplete. InfoSend, Inc. submitted an RFP response to GPA on May 27, 2021, prior to the June  
21 3, 2021 submission date, and prior to GPA issuing GPA Amendment 1 (Exhibit A), which was  
22 acknowledged by InfoSend, accepting the requirement to complete Exhibit A. Graphic Center, Inc.  
23 also alleges that InfoSend, Inc. did not submit a sealed pricing proposal by the submission

1 deadline. InfoSend, Inc. received a notice via e-mail on August 17, 2021, which requested a  
2 sealed price proposal by August 18, 2021. InfoSend, Inc. provided via e-mail a price proposal to  
3 GPA, and was then advised by GPA that electronic submissions were not accepted, and that a  
4 sealed price proposal must be delivered by hand-delivery or by off-island courier. InfoSend, Inc.  
5 spoke to GPA Buyer Dawn Fejeran on August 18, 2021, and advised her that InfoSend, Inc. would  
6 send a price proposal via FedEx which was received by GPA on August 23, 2021.

7 Similarly, Graphic Center, Inc. alleges, without substantiating documents, that InfoSend,  
8 Inc.'s development system is untested and unidentified. InfoSend, Inc. has over 24 years of  
9 experience in supporting more than 550 public utility clients from four production facilities  
10 throughout the United States. Listed on the references section of the RFP response, are four public  
11 utility clients, using GPA's billing system (Oracle CC&B) as required by GPA, including one  
12 public utility which has been an InfoSend, Inc. client for over nine years. InfoSend, Inc.'s  
13 response in the Scope of Work section provides a detailed response to each major section –  
14 Communication, Security, Electronic Archive, Internet Email Delivery, Specific Handling, Printer,  
15 Finishers, Mail, Paper, Processing Window, Disaster Recover, Reporting, Archival and Retrieval  
16 Processing and Other Services.

17 Graphic Center additionally alleges that the USPS had changed its delivery-day ranges, and  
18 reflect eight days to reach Guam, which would delay delivery to Guam. The actual USPS postal  
19 maps both before and after October 1, 2021, demonstrate that first class delivery times to Guam  
20 remain unchanged and do not reflect eight days for delivery to Guam.

21 Graphic Center, Inc. alleges that InfoSend's proposal is deficient in that it does not meet  
22 the requirements of Section 2.3, subsection B of the RFP. Subsection B is one of 4 standards  
23 relating to determination of the most qualified offeror, relating to whether the Offeror can perform

1 promptly or within the specified time. InfoSend, Inc. specified a 12-week project implementation  
2 period in its response to GPA, dated July 2, 201. InfoSend, Inc. has set up and maintained 11 CC&  
3 B clients. InfoSend, Inc. provided Oracle CC&B references in the RFP response to allow GPA to  
4 contact references regarding their experience with onboarding, data processing, programming, and  
5 project management capabilities.

6 The GPA evaluation committee carefully reviewed the submissions of the both bidders,  
7 and determined that the most qualified bidder, based on scoring, was InfoSend, Inc. Graphic  
8 Center, Inc. was not disqualified, but was just ranked second of the two bidders. After conclusion  
9 of validation of qualifications, evaluation, and discussions, the head of the purchasing agency or  
10 his or her designee shall select, in the order of their respective qualification ranking, no fewer than  
11 three (3) acceptable offerors (or such lesser number if less than three acceptable proposals were  
12 received) deemed to be the best qualified to provide the required services. 2 GAR, Div. 4,  
13 §3114(j).

14 *In the Appeal of 1-A Guam WEBZ*, OPA-PA 16-002 also addresses the issue of bid  
15 evaluation and stated that “the Request for Proposals shall set forth the evaluation criteria to be  
16 used and no criteria may be used in bid evaluation that are not set forth in the Request for  
17 Proposals.” 5 GCA §5211(e) and 2 GAR, Div. 4, Chap 3, §3109(n)(1).

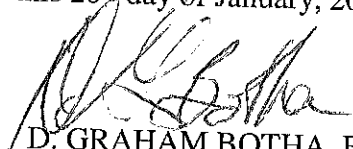
18 Procurement law requires that GPA evaluate proposals only on the evaluation factors stated  
19 in the RFP. The minimum factors are: (a) the plan for performing the required services; (b) the  
20 ability to perform the services as reflected by technical training and education, general experience,  
21 specific experience in providing the require services, and the qualifications and abilities of  
22 personnel proposed to be assigned to perform the services; (c) the personnel, equipment, and  
23 facilities to perform the services currently available or demonstrated to be made available at the

1 time of contracting, and (d) a record of past performance of similar work. 2 GAR, Div. 4, §3114(j).  
2 An award shall be made to the offeror determined in writing by the head of the purchasing agency  
3 or his or her designee to be best qualified based on the evaluation factors set forth in the RFP, and  
4 negotiation of compensation determined to be fair and reasonable. Written notice of award shall  
5 be public information and made a part of the contract file. 5 GCA §5216(e) and 2 GAR, Div. 4,  
6 §3114(l)(5). The evaluation committee reviewed both proposals and selected InfoSend, Inc. as the  
7 best qualified offeror.

8 CONCLUSION

9 GPA requests that the appeal of Graphic Center, Inc. be dismissed, and that the Public  
10 Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

11 **RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of January, 2022.

12   
13 D. GRAHAM BOTHA, ESQ.  
14 GPA General Counsel  
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