



Executive Summary
Guam Economic Development Authority
Procurement of Consultant Services for New Hospital Development
OPA Report No. 23-06, August 2023

Our compliance audit of the Guam Economic Development Authority's (GEDA) procurement of expert consultant services (Consultant) related to the new hospital development found the following noncompliance with Guam Procurement Law and Regulations:

1. GEDA did not make a written determination for the need of services prior to the issuance of the Request for Proposal (RFP) number RFP 14-008 (Solicitation for Multi-disciplinary professional services to assist with the research, development, planning, and implementation of economic initiatives and opportunities) as required by 2 Guam Administrative Rules (GAR) §3114 (c). The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after all bids were received and evaluated in April 2014 and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.
2. GEDA contends it executed an "Indefinite Delivery Indefinite Quantity" (IDIQ) type contract, which is not provided for in Guam Procurement Law and Regulations and contrary to the multi-term contract referenced in the RFP and the October 2014 written determination memorandum. GEDA also failed to fully comply with all requirements in 2 GAR §3121, Multi-Term Contracts.
3. GEDA utilized the Consultant services beyond the term of the contract indicated in the RFP, which was three years with two two-year options to extend. This would mean the contract should have been completed and a new RFP and contract issued by September 30, 2021. However, Task Order 8: Medical and Public Health Services Action Plan was issued on June 2, 2021, and is estimated to end on August 31, 2023, and Task Order 9 was issued on January 6, 2023, and is estimated to end on August 31, 2023. We determined expenses for Task Orders 8 and 9 totaling \$2 million (M) to be questioned costs.
4. GEDA did not have a specific "Notice of Intent to Award" in the procurement record, which was determined to be a minor informality.

Since the contract award, GEDA has expended a total of \$6.1M for nine task orders based on an RFP issued almost ten years ago. It is GEDA's understanding that they were utilizing an IDIQ contract, and that they could continue the use of the Consultant services indefinitely as long as there was a need and had funding. However, GEDA should have clearly defined the type of contract to be used in the RFP and ensured compliance with the RFP and all applicable procurement laws and regulations. Should GEDA still require the Consultant services, it needs to issue a new RFP immediately and ensure compliance with all applicable procurement laws and regulations.

GEDA Did Not Make a Written Determination for the Need of Services Prior to the Issuance of the Request for Proposal

The RFP was issued in March 2014, but a written determination was not done until October 2014. This was also after bids were received in April 2014 and after they were evaluated and the memorandum of ranking and request for fee proposal was sent to the Consultant in May 2014.

According to 2 GAR §3114 (c), the Head of the using agency or a designee of such officer shall determine in writing, **prior to announcing the need for any such services** that the services to be acquired are services specified in §3114 (a), that a reasonable inquiry has been conducted, the nature of the relationship to be established between the using agency and the contractor by the proposed contract, and that the using agency has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

In the procurement record, there was a written determination memorandum dated October 6, 2014 and signed by the Deputy Administrator at the time, who was the Acting Administrator. The memorandum stated that the furnishing of the long-term services is required to meet GEDA's needs and that a "Multi-Term Contract" will serve the best interest of GEDA to encourage effective competition. The memorandum also stated "to the best of my knowledge and belief, my predecessor in office made this same determination prior to publishing the referenced solicitation." However, we could not find any documentation in the procurement record to support the statement. Although a written determination was eventually documented, it was done well after the RFP was issued and therefore GEDA would be non-compliant with 2 GAR §3114 (c).

GEDA Contends It Utilized IDIQ Type Contract Which is Not Provided for in Guam Procurement Law and Regulations

The RFP did not directly state the type of contract to be used as required by 2 GAR §3114(f)(1). The only reference to the type of contract was in section 2.6.2. Term of Contract, which stated "Offerors are referred to Section 3121(e) of the Guam Procurement Law and Regulations, the terms of which are incorporated herein." Section 3121(e) refers to "Multi-Term Contract", which GEDA never indicated was used for the Consultant Services. Even if GEDA had used a Multi-term contract, they did not fully comply with the requirements of 2 GAR §3121. GEDA also did not comply with 5 Guam Code Annotated (GCA) § 5237 (a), which states that "a contract for supplies or services may be entered into for a period of time deemed to be in the best interests of Guam **provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation** and funds are available for the first fiscal period at the time of contracting.

Instead, GEDA contends it utilized an IDIQ Contract, which they view as synonymous with a multi-year contract. However, there is nothing in the Guam Procurement Law and Regulations that provides for an IDIQ Contract. There is 2 G.A.R., Div. 4, Chap. 3, §3119(i), which allows for Indefinite Quantity contracts. Even if they used this type of contract, GEDA would still not have complied with Guam Procurement Law and Regulations as they lacked documentation that a review of the contract was conducted every six months since its effective date of August 14, 2014. GEDA believes that the updated Memorandum of Agreements (MOA) and active engagement with the Consultant sufficed this requirement. However, the Office of Public Accountability disagrees with this determination.

GEDA Utilized Consultant Services Beyond the Term of Contract Indicated in the RFP

According to RFP 14-008, section 2.6.2. Term of Contract, “The term of the agreement shall be for a period of three (3) years with two two-year options to extend at the sole discretion of GEDA.”, which would mean that the Consultant services contract should have been completed and a new RFP issued before September 30, 2021 (going by fiscal year).

Task Order 8 started on June 2, 2021, and is estimated to end on August 31, 2023. Although it started within the scope of the RFP, the services continued beyond the scope. Task Order 9 started on January 6, 2023, and is estimated to end on August 31, 2023 which is beyond the scope of the contract term. GEDA believes that when they updated the MOAs with each new task order, it allowed them to change the scope period and extend beyond the RFP. However, as indicated in the “Scope of Services” for the initial contract, it states that “GEDA may require additional services not identified in the Scope of Services **yet within the scope of the solicitation.**” This means that regardless of the updated MOAs and new task orders, GEDA must still comply with the scope of the RFP. We determined expenses for Task Orders 8 and 9 totaling \$2M to be questioned costs.

In addition, 2 GAR §3102 (b) states that “the time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency determines in writing that it is not practical to award another contract at the time of such extension. Again assuming if GEDA used an indefinite quantity contract, they would still not have complied with this.

Lack of Specific “Notice of Intent to Award” Documentation is a Minor Informality

GEDA lacked a specific “Notice of Intent to Award” written document in the procurement record. The reference document indicated in GEDA's compliance with the Office of the Attorney General of Guam’s (OAG) procurement checklist for the “Notice of Intent to Award” is only a memorandum that states the Consultant's ranking and a request for a fee proposal. GEDA also had documentation from their Board of Directors with the approval of the ranking. It is in GEDA’s understanding that the memorandum of ranking, the subsequent negotiation, and subsequent approval of the board in regards to the procurement was sufficient as the “Notice of Intent to Award”.

Although the elements of the reference document for the “Notice of Intent to Award” can lead one to speculate that the Consultant might be awarded the contract, it is still only a memorandum stating that the Consultant received the highest score during the evaluation process. There was no phrase that similarly states this is a “Notice of Intent to Award” document, which we believe can be categorized as a “minor informality”. GEDA should ensure a specific “Notice of Intent to Award” is properly given to the selected vendor and documented in the procurement record for future procurements.

Conclusion and Recommendations

OPA found that GEDA was not in compliance with Guam procurement law and regulations, specifically for: (1) not making a written determination until after the RFP was issued, (2) executing an IDIQ type contract, and (3) utilizing the Consultant services beyond the scope of the RFP. As such, we make the following recommendation to GEDA:

1. Should they still require the Consultant services, we recommend they immediately issue a new RFP and ensure compliance with all applicable procurement laws and regulations.

In addition, if the Guam Legislature wants to provide for an IDIQ type contract, we suggest it amend the Guam Procurement Law and Regulations.

Lastly, we would like to remind GEDA management that anyone responsible for procuring goods, services, or construction must receive the mandated training and continuing education through the Guam Community College's Procurement Training and Certification Program or equivalent in order to comply with 5 GCA §5141.



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