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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

AUG 16 2011

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 FILE NO. OPA-PA: 11-012

Attorneys for the Government of Guam

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 HAGÁTÑA, GUAM**

In the Appeal of:)	DOCKET NO. OPA-PA-11-012
)	
JOETEN DEVELOPMENT INC.,)	
)	
Appellant.)	REBUTTAL TO THE COMMENTS ON THE AGENCY REPORT
)	
)	
)	

Procedural Background:

Protestor, Joeten Development, Inc. (“Joeten”), filed an appeal with the Office of the Public Auditor on July 6, 2011, with regard to Invitation for Bid No. GSA-047-011, “Lease of Office Space” for the Department of Revenue and Taxation’s main facility. On July 20, 2011, the Government filed the Agency Report. In response, Joeten provided comments to the Agency Report on August 4, 2011. The Government provides the following as a clarification and response.



Rebuttal to the Comments on the Agency Report:

Joeten charges the Agency Report does not adequately answer the allegations of the appeal. Essentially, the protestor argues the General Services Agency ("GSA") did not provide enough information in response to its bid submission. However, in its appeal, Joeten acknowledges receiving notification of the bid cancellation from GSA, on May 13, 2011, due to insufficient funds¹. Under Guam procurement law and regulations, GSA acted appropriately. Upon receipt of notice of insufficient funds from the Department of Revenue and Taxation ("DRT")², GSA cancelled the invitation for bid due to insufficient funds. Under the law, GSA need not provide any additional information and is under no obligation to make an award.

In its appeal, Joeten questions DRT's determination regarding insufficient funding, since the current rent exceeds the bid price submitted.³ Notwithstanding this observation, the Government need not enter into a contract when its funding is uncertain. GSA received notice from DRT that the agency lacked funding and acted by cancelling the solicitation. Even if the Public Auditor makes a finding that adequate funding existed to award a contract to Joeten, cancelling the bid was an appropriate action by GSA because only one bidder responded to IFB No. GSA-047-011. The Chief Procurement Officer's action to cancel IFB No. GSA-047-11 without award is consistent with existing procurement regulations. Specifically, 2 GAR Div. 4.

¹ A copy of this notification is included in the Procurement Record as Tab 9, Bid Status

² A copy of this notification is included in the Procurement Record as Tab 10, Letter from Revenue and Taxation - Cancellation

³ The Government provides the following factual clarification to streamline and expedite the protest process: DRT sent the May 2, 2011 letter to GSA (stating insufficient funds) due to the lack of FY 2012 fund allocation for office space approval. However, funds did exist to cover office space through 9/30/11 and the amount allocated for September 2011 exceeded the bid amount provided by Joeten. At the present time, DRT is still without funding approval for FY 2012 and later years for the lease of office space. DRT anticipates approval of the amount requested. Without discussing specific budget line items, the total amount requested for the lease office space exceeds the costs associated under IFB No. GSA-047-011.

§ 3102(c)(1) provides that if the government receives only one (1) bid in response to an invitation for bid. "... an award may be made to the single bidder if the Chief Procurement Officer finds the price submitted *fair and reasonable* ... Otherwise, the bid may be rejected Pursuant to the provisions of § 3115. ."

As drafted, the Bid Status provided to the Protestor (cancelling the bid in its entirety)⁴ is consistent with the provisions of § 3102(c)(1) and § 3115. Since only one (1) bid was received, the bid may be rejected unless it is fair and reasonable. § 3115(b) clearly states the issuance of a solicitation does not compel an award of a contract. When one (1) bid is received in a solicitation, barring a finding of a fair and reasonable price, a compelling reason exists to cancel the solicitation in the best interests of the island.

Once cancelled, the Government, acting through the Chief Procurement Officer, may solicit new bids, cancel the procurement in its entirety, or conduct a sole source or emergency procurement.⁵ Under the facts and circumstances, cancellation of IFB No. GSA-047-11 is consistent with the underlying tenets of the Guam procurement law⁶ which require a procurement: "... to maximize to the fullest extent practicable the purchasing value of public funds of the (Island) ...to foster effective broad-based competition within the free enterprise system; and ... to provide safeguards for the maintenance of a procurement system of quality and integrity."

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⁴ included in the procurement record under Tab 9

⁵ 2 GAR Div 4, § 3102

⁶ codified under 5 GCA § 5001(b)(5)(6), and (7)

Therefore, under any facts contemplated, GSA acted appropriately by cancelling the bid in its entirety, with the anticipation of re-bidding at a later date.

Respectfully submitted this 16th day of August 2011.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By:


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