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Attorneys for Appellant TLK Marketing Co. Ltd.

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEAL**

In the Appeal of
TLK Marketing Co. Ltd.,
Appellant.

Docket No. OPA-PA16-003

**TLK MARKETING CO. LTD.'S
RESPONSE TO AGENCY REPORT**

I. INTRODUCTION

TLK Marketing Co., Ltd. ("TLK") submits its response to the Guam Visitor's Bureau's ("GVB") *Agency Report filed Pursuant to 2 Guam Admin. R. and Reg. §12105* ("Agency Report") filed on May 9, 2016 in response to TLK's Procurement Appeal regarding the award of GVB RFP No. 2016-006 to HIC, INC. ("HIC").

TLK Appealed GVB's April 8, 2016 agency decision on the following grounds: (1) TLK's protest was timely filed; and (2) HIC did not meet the five (5) year mandatory experience requirement in the RFP, therefore, the proposal was non-responsive and should have been rejected. As discussed in TLK's Appeal and TLK's Response to the Agency Report ("TLK Response") nothing in the Agency Report or the Procurement Record filed by GVB on May 2, 2016 rebuts TLK's allegations that HIC did not meet the five (5) year mandatory experience

requirement in §1.1. of the RFP. TLK also gave GVB notice of the automatic stay imposed by 5 G.C.A. §5425(g), staying the procurement.

All of these issues are properly before the Public Auditor and the OPA has jurisdiction to review and consider these issues in this Appeal.

II. ARGUMENT

There are three issues in Appeal. As discussed more fully below, the three issues were raised in the Protest. The Public Auditor has jurisdiction to review all of the issues raised in the Protest.

A. HIC Was A Non-Responsive Offeror.

1. Section 1.1 Of The RFP Contains A Mandatory Five (5) Years Experience Requirement.

TLK protested the purported award of the contract to HIC on the ground that HIC did not meet the mandatory five (5) year experience requirement. *See, Ex. D* at pp. 1-2, TLK Appeal. TLK asserts that Section II of the RFP states that “[s]election of the best Offeror will be based on the qualifications, experience and commitment of Offerors lead and support individuals proposed for this RFP, and the Offeror’s plan of action. More importantly, §1.1 of the RFP explicitly imposes a mandatory requirement that the Proposer establish that it is a “qualified professional tourism destination marketing agency with a minimum of 5 years extensive and consistent experience working with the Republic of Korea travel trade, close relationship with the Korean government and the US Embassy....” *See, Ex. A* at pp. §1.1, TLK Appeal.

GVB mischaracterizes TLK’s claim, referring to the claim as raising “collateral issues [*sic*] ... not properly before the Office of Public Accountability on appeal since they were not first raised at the agency level”, is patently false. *Agency Response* at 7. TLK’s Protest the selection and ranking of HIC. TLK identifies the RFP minimum experience requirements and

references HIC's Certificate of Registered Incorporation establishing February 25, 2013 as the date it was licensed to provide advertising, travel and entertainment services, in Korea. See, **Ex. D** at pp. 1-2, TLK Appeal. GVB was the drafter of the RFP, which RFP included a clear mandatory five (5) year minimum experience requirement. GVB now conveniently disavows its own work product, and claims that the offeror does not need to have the five year experience, because "[s]uch a specification would be unduly restrictive, would disqualify joint offers or teaming agreements and would tend to advantage an incumbent over competitive efforts."

In the federal procurement system, certain experience requirements may be viewed as "definitive" and must be satisfied as a prerequisite to an award. In *Matter of United Materials*, B- 243669 (Comp.Gen.), 91-2 CPD P 161, 1991 WL 165242 (Aug. 16, 1991), the United States Comptroller General explained in a protest where it was claimed that there was insufficient objective evidence to support the contracting officer's determination that the bidder had the requisite experience to satisfy the explicit experience requirements. The Comptroller General explained:

Our Office generally does not review affirmative determinations that a bidder is responsible, that is, capable of performing the contract. Such determinations are based in large measure on subjective judgments. One exception to this rule is where a solicitation contains definitive responsibility criteria, which are specific and objective standards established by an agency to measure an offeror's ability to perform a particular contract. *Calculus, Inc.*, B-228377.2, Dec. 7, 1987, 87-2 CPD ¶ 558. These special standards put firms on notice that the class of prospective contractors is limited to those who meet qualitative or quantitative criteria deemed necessary for adequate performance. *Antenna Prods. Corp.*, B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Although not every experience requirement in a solicitation constitutes a definitive criterion of responsibility, see, e.g., *Power Testing Inc.*, B-197190, July 28, 1980, 80-2 CPD ¶ 72 (5-year experience requirements for the electricians and foreman to be used on the job), a solicitation requirement that the prospective contractor have a specified number of years of experience in a

particular area is a definitive responsibility criterion. *Topley Realty Co., Inc.*, 65 Comp.Gen. 510 (1986), 86-1 CPD ¶ 398. Here, while the experience requirement was stated in terms of the “installer,” the requirement was clearly understood by the agency and the bidders to be a definitive criterion applicable to the bidders (as indicated below, Blazer intends to install the waterproofing). See *Urban Masonry Corp.*, B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. Thus, the requirement that the waterproofing installer have at least 3 years of “specialized” experience in the installation of fluid-applied waterproofing is a definitive responsibility criterion.

Evidence that a bidder meets a definitive responsibility criterion must be obtained by the agency so that compliance with the requirement, which is a prerequisite to award, can be determined. *Prime Mortgage Corp.*, 69 Comp.Gen. 618 (1990), 90-2 CPD ¶ 48. Where an allegation is made that a definitive criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the criterion has been met, *BBC Brown Boveri, Inc.*, B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309; although the relative quality of the evidence regarding responsibility is a matter for the judgment of the agency, the contracting officer may only find compliance with the definitive responsibility criterion based upon objective evidence. *Vulcan Eng'g Co.*, B-214595, Oct. 12, 1984, 84-2 CPD ¶ 403.

United Materials, 1991 WL 165242, at **1-2.

By ignoring its own unambiguous experience requirements and accepting HIC proposal although it did not meet these experience requirements, GVB gave HIC an unfair advantage over TLK and over other persons or companies who may have been dissuaded from submitting proposals because of the requirement of experience in the RFP.

Also GVB's argument is unavailing because the clear purpose of experience requirements is to weed out non-qualified offerors who do not have the necessary experience for the services required. Setting an objective criterion, in this case, five years, insures that Government Agency receives proposals from qualified offerors with the minimum experience.

GVB also argues that the experience requirement was not a requirement, but was a suggestion for offerors. *See, Agency Report* at 8. The downgrade of the threshold five year Korean travel marketing experience to merely a “suggestion” is disingenuous at best. As the author of the RFP, GVB could have excluded the minimum experience requirement or written it as a recommendation, soliciting proposers with “as much experience as possible” or who “preferably have experience” in the relevant areas. GVB did not do this. The language of the RFP is clear: proposers must have a *minimum* of 5 years relevant experience. GVB’s argument, that a minimum experience requirement is meaningless or flexible, should be rejected.

The RFP should be construed against GVB, the author and drafter, and GVB should not be allowed to re-define or interpret provisions in the RFP after a protest is filed to suit its purposes.

2. HIC Did Not Meet the Five Year Mandatory Requirement Under §1.1 Of The RFP And Its Proposal Must be Rejected.

With respect to the merits of the claim, TLK states in the Protest that “HIC has been licensed in Korea as an advertising, travel, and entertainment company for approximately three years. HIC’s *Certificate of Registered Incorporation* shows that it registered advertising, travel and entertainment services as additional purposes on February 25, 2013.” *See, Ex. D* at 2, TLK Appeal. GVB identifies five points to support of HIC’s qualifications and ability to meet the experience criterion:

- As SD Pharm it entered marketing contracts with various entities as far back as 2006
- Happy Idea Company’s founding member has close to 15 years of experience in the field of public relations and is a successful public relations and marketing professional

- A Director at Happy Idea Company has marketing experience and over 10 years' experience in magazine publishing
- A Deputy General manager has at least 5 years' experience organizing overseas trips for clients
- A manager for HIC has more than 5 years in the hospitality industry as well as experience in sales and marketing.

See, Agency Report at pp. 8-9.

First, the RFP states it is the *Offeror entity* which must meet the minimum five year “extensive and consistent experience,” not a director, employee, or officer of the Offeror. *See*, §1.1, RFP. This means, the Offeror *entity* must have been licensed, in business as a Korean marketing firm, and have had the necessary Korean marketing experience for at least five (5) years. GVB’s argument that the experience requirement should be based solely on the experience of an employee, director or officer, and not the Offeror *entity* completely ignores the plain meaning of §1.1 of the RFP. Nor are the individual employees’ experience in unrelated fields, such as magazine publishing, sufficient to meet the experience requirements of the RFP.

Second, GVB argues that HIC has existed the past five (5) years without offering any evidence or documents to support this assertion. This is a false statement because HIC has not been in existence for five (5) years, let alone as a tourism destination marketing agency. *See, Ex. A* (Certificate of Registered Incorporation), attached hereto.¹ HIC’s Certificate of Registered Incorporation confirms that its original purposes are medical or real-estate related and include “technical development, manufacturing and sales of medicine,” and “sale and lease of real estate business.” HIC was not registered and did not obtain license for any travel-related purposes

¹ HIC’s representations about its age and relationship with SD Pharm are inconsistent. At one point in the technical proposal, HIC claims to have changed from SD Pharm to HIC in 2013. *See Ex. B* (“Why HIC” Excerpt from Technical Proposal), attached hereto. At another point in its proposal, HIC claims to have existed since 2011. *See, Ex. C* (“Organizational Chart” from HIC Technical Proposal.), attached hereto.

until *February 22, 2013*, a little of over three years ago. *See, Ex. A* (Certificate of Registered Incorporation) attached hereto. HIC mispresents its experience by relying on the experience of a SD Pharm – a company for which no information is provided in HIC’s Proposal. HIC claims that it changed its name from “SD Pharm” in 2013. *See Ex. B* (“Why HIC” Excerpt from HIC Technical Proposal) attached hereto. However, an online report shows SD Pharm to be an individually owned company in the name of Park, Saedong (Don Park), which is still in existence. *See Ex. D* (SD Pharm Online Info) attached hereto.

There is nothing in the Procurement Record which explains who SD Pharm is and why its experience, if any, can be used to qualify HIC in this solicitation. SD Pharm is not the Offeror, and its experience, if any, cannot be adopted by HIC to meet the five year “extensive and consistent experience” requirement of the RFP. HIC has misrepresented its experience, and should not be rewarded for its bad acts.

At the most, HIC may have had 3 years’ relevant experience by the time of its bid and award – well under the 5 year requirement. This renders HIC a non-responsive Offeror.

B. TLK’s Protest was Timely.

GVB’s argues that TLK was “aware of the method of procurement much more than fifteen (15) days prior to filing its Protest... a protest based upon the method of procurement is ... untimely.” *Agency Report* at 9. TLK filed its protest within 14 days of receiving two letters dated March 10, 2016, the “Notice of Selection” letter from GVB and the notice of terminate TLK on its current GVB contract. *See, Exs. B & C, TLK Appeal.*

The Guam Procurement Law provides that a bidder must file a protest within fourteen days “after such aggrieved person knows or should know of the facts giving rise thereto.” 5 GCA § 5425(a). There is absolutely no authority for GVB’s that this deadline begins to run

when a proposer received *any* information or facts that support its protest, which GVB posits only for the transparent attempt of cutting off TLK's substantive rights. Indeed, no Guam statute or regulation provides any guidance as to when an entity is deemed to have sufficient knowledge to trigger the fourteen-day deadline, especially in a case where, as here, TLK is challenging the finding that a HIC is qualified when HIC and GVB colluded and engaged in misconduct. The OPA has held that in cases where a proposer is challenging the finding that a competing deficient proposer was awarded the RFP, the fourteen-day period in Section 5425(a) does not begin until there is notice of the award. *See In the Appeal of JMI Edison*, OPA-PA-13-009, Decision, p. 4 (Nov. 27, 2013).

The *JMI Edison Decision* is consistent with federal authorities under the federal government's analogous procurement regime, which have uniformly found that protests based on the eligibility of a competing proposer should be brought after an award is made or the agency otherwise gives pre-award notice confirming eligibility. *See, e.g., Reep, Inc.*, B- 290688 (Comp. Gen.), 2002 CPD P 158, 2002 WL 31103566 (Sept. 20, 2002) ("Unless the firm with the alleged conflict of interest is actually selected for award, the protester has not suffered any competitive prejudice"); *see also Kimmins Thermal Corp.*, B- 238646 (Comp. Gen.), B- 238646.3, 90-2 CPD P 198, 1990 WL 278456 (Sept. 12, 1990) (finding that the time to file the protest commenced prior to award when the agency representatives informed the protestor that it would consider the other firm's proposal); *Arco Mgmt. of Washington, D.C., Inc.*, B- 248653 (Comp. Gen.), B- 248653.2, 92-2 CPD P 241, 1992 WL 310270 (Oct. 13, 1992). The rationale for these decisions is that "the allegedly conflicted firm may not be the eventual awardee, either because it loses the competition or because the agency ultimately concludes that the firm has an impermissible conflict of interest." *Reep, Inc.*, B- 290688 (Comp. Gen.), 2002 CPD P 158, 2002

WL 31103566 (Sept. 20, 2002); *see also Kimmins Thermal Corp.*, B- 238646 (Comp. Gen.), B-238646.3, 90-2 CPD P 198, 1990 WL 278456 (Sept. 12, 1990). These federal authorities recognize that “in applying our timeliness rules, we will not charge a protester with knowledge that another firm was considered eligible for award simply because the protester knew that the other firm had submitted an offer.” *Id.* Moreover, the federal authorities “resolve any reasonable doubt in favor of the protester” on issues of timeliness. *Ervin & Associates, Inc.*, B-278850 (Comp. Gen.), 98-1 CPD P 89, 1998 WL 126843 (Mar. 23, 1998). GVB’s self-serving attempt to interpret timeliness rules in contravention of the OPA’s interpretation and the interpretation of an exhaustively developed body of federal procurement authorities should be rejected.

C. The Automatic Stay Was Triggered Upon the Filing of the Protest.

It is undisputed that TLK informed GVB that the procurement is subject to the automatic stay imposed by 5 G.C.A. §5425(g):

II. NOTICE OF AUTOMATIC STAY

This is a timely protest. Pursuant to 5 G.C.A. §5425(g), GVB must stay this procurement.

TLK Marketing can be reached at the following address:

Mr. Henry Lee
TLK Marketing Co. Ltd.
Kory Building, Room 616
24 Sinmunro 1-GA, Jongro-gi
Seoul, Korea 110-796

Ex. B, TLK Appeal. Although GVB did not address the automatic stay issue in its April 8th Agency Decision, there is no question the matter was raised.

5 GCA §5425(g) provides, in relevant part, that "in the event of a timely protest... the Territory shall not proceed further with the solicitation of with the award of the contract prior to final resolution of such protest, and any such further action is void, unless there is a written

determination by the Chief Procurement Officer with the written concurrent of the head of the purchasing agency and the Attorney General, that the award of the contract without delay is necessary to protect the substantial interests of the Territory " 5 GCA § 5425(g)(l).

TLK's first and second protests were timely filed, and GVB was required to cease further action on the solicitation until final resolution of TLK's protests. *See Appeal of JMI Edison*, Appeal No.: OPA-PA-13-009, Order Re: JMI-Edison's Motion For Issuance Of A Stay, at 3 ((Nov. 4, 2013) (because automatic stay is in effect, "GMHA is prohibited from proceeding further with the solicitation or with the award of the contract until final resolution of JMI's appeals to the Public Auditor and if subsequently timely filed, to the Superior Court of Guam Accordingly, GMHA is ordered not to proceed further with the solicitation or award of the contract until final resolution of JMI's protest. Additionally, GMHA is enjoined from taking any further action on the contracts purportedly awarded to MedPharm until final resolution of JMI's Protest or until the stay is lifted").

GVB argues that no automatic stay is in place because the contract had already been awarded by the time TLK protested. Contrary to GVB's belief that there is no automatic stay in effect, as discussed in *TLK's Motion to Confirm Automatic Stay* filed on May 6, 2016, at pp. 1-11, and as supported by the evidence in the Procurement Record, the filing of the protest triggered the automatic stay.

First, the RFP specifically requires approval of the GVB Board after determination of who is the "best-qualified Offeror." *See*, RFP at 32. Further, the RFP, at Section 3.10 requires that "[i]f compensation, contract requirements, and contract documents can be agreed upon with the best-qualified Offeror, **and subject to Board approval**, the contract shall be awarded to that

Offeror. Written notice of award shall be public information and made a part of GVB's procurement file." (emphasis added). *Id.*

At the February 25, 2016, GVB board meeting, Director Hong Soon Im made a motion, which was seconded by Mr. Shinohara, regarding the negotiation and contracting of the Korean Marketing Contract. A verbatim transcript of tape from the February 25th board meeting submitted by GVB as part of the Procurement Record discloses that no such award took place:

H.S. Im: I have ah, one motion. Uh, I think right now we have ah, a RFP for Korea market going on this morning. So motion to recommend Board approval to authorize the GVB General Manager as Chief Procurement Officer to **enter into negotiation and contract** with the highest rated and most qualified Offeror for GVB RFP 2016-006: Tourism Destination Marketing Representation Service in the Republic of Korea.

M. Baldyga: May I have a second please?

S. Shinohara: Second.

M. Baldyga: Thank you. Nate, any update?

N. Denight: Uh, yeah so the committee did the um, uh the ---

M. Baldyga: Evaluation--

N. Denight: --The first evaluation and they did the uh, in person interviews with the companies this morning--

M. Baldyga: Oh, good.--

N. Denight: And, and so uh--

M. Baldyga: So four hours... Wow.

N. Denight: --So four hours, yeah. So we're still, we're still in the process of tallying the, the results but at that point we would want to start ah, negotiations with the highest rated proposer as our standard operating procedures.

M. Baldyga: Alright, makes sense. Any comments or questions? Okay all in favor of approving the motion as stated please say aye.

[Board]: Aye.

M. Baldyga: Any opposed, please say nay. The ayes have it and the motion carries. There is no old business, there is no new business, there is no executive session, there is an announcement... (emphasis added).

See, 2/25/16 Board Meeting - CD from Procurement Record from 1:09:50 to 11:11:18.

A review of the Procurement Record discloses that the GVB Board did not approve the HIC Contract *after* determination of who is the “best-qualified Offeror” and *after* negotiation and reaching agreement regarding the contract terms and price with the best-qualified Offeror. During the February 25, 2016 GVB Board Meeting, the board “authorize[d] the GVB General Manager as Chief Procurement Officer to enter into negotiation and contract with the highest rated and most qualified Offeror for GVB RFP 2016-006: Tourism Destination Marketing Representation Service in the Republic of Korea.” *Id.*

The transcript of the February 25th board meeting confirms that the results of the evaluation team had not been tallied, and that Mr. Denight did not present the ranking of the best-qualified offerors or the recommendations or results of the evaluation team to the Board of Directors for consideration and approval. Without the necessary board approvals, there can be no award.

Second, the Guam Procurement Law requires the Agency to negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable. 2 GAR §3114(l)(1). Guam law also requires that at the conclusion of the negotiations, a “Memorandum of Evaluation and Negotiation” must be prepared setting forth the basis for the award. 2 GAR §3114(m). Specifically, the Memorandum of Evaluation and Negotiation should contain the following information:

(m) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of the contract, the head of the agency conducting the procurement or a designee of such officer *shall* prepare a memorandum setting forth the basis of award including:

(1) how the evaluation factors stated in the Request for Proposals were applied to determine the best qualified offerors; and

(2) the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

All memoranda shall be included in the contract file and be available for public inspection. (emphasis added).

Id.

GVB did not prepare a Memorandum of Evaluation and Negotiation after negotiations with HIC were concluded, and thus, did not comply with Guam law. Without the Memorandum of Evaluation, there is no record of the negotiations and what, if any, significant considerations were considered, and most importantly, there can no basis for determining whether this is a fair and reasonable contract. Board approval of a contract cannot be made in a vacuum, but, must be based on the Memorandum of Evaluation and Negotiation required under 2 GAR §3114(l)(1). For the foregoing reasons, the contract was not awarded, and the automatic stay was triggered when TLK filed protest 1.

D. TLK Is Entitled To the Relief It Seeks.

In its Agency Report, GVB argues that the relief requested by TLK is not supported by authority. TLK has not argued for any relief that is beyond the authority of the Public Auditor. The Public Auditor was given broad power by the Guam Legislature to “promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5 [Guam’s procurement laws].” *See*, 5 GCA §5703. Evidence of GVB’s attempt to extinguish TLK’s substantive right to protest under 5 GCA §5425 is supported by Procurement Record. In an email dated March 9, 2016, to Don Park (HIC), GVB was explicit in its attempt to extinguish the substantive rights of TLK and

other unsuccessful offerors: “Please refrain from mentioning this [contract award] until we have finalized the negotiations and signed a contract. We do not want any protest from the other offerors. Thank you for your understanding.” *See, Ex. E* (3/9/16 Email Exchange) attached hereto. GVB’s new attempt to eliminate protest rights, by delaying notification of intent to award until after the contract is awarded, causes irreparable damage to the integrity of the procurement process. 5 GCA §5425 grants the Public Auditor the authority to prevent this practice.

The OPA should disregard GVB’s absurd argument that the first place award to HIC cannot be set aside because TLK does not challenge that ranking “either substantively or arithmetically.” This argument is wrong on its face. TLK’s assertion is that HIC was not qualified to bid *at all* because it did not meet the five (5) year experience requirement.

E. GVB’s Allegations Regarding Unpaid Invoices Are Irrelevant And False.

In a transparent attempt to bully TLK and to intimidate TLK from pursuing its substantive rights, GVB falsely accuses TLK of breaching its contract and threatening criminal prosecution with respect to payment of invoices to certain Korean vendors. *See, Agency Report* at 5-6. GVB fails to disclose that TLK paid in full all of these invoices in February 2016, one month prior to the filing of the Protest. *See, Agency Report* at pp. 6, 64-67.

The payment of invoices issue is irrelevant to any of the issues before the OPA in this Appeal. It has nothing to do with HIC’s failure to meet the five (5) year experience requirement, the timeliness of TLK’s protest, and the applicability of the automatic stay.

Further, there was no concern about payment of invoices when the proposals were submitted and the evaluation committee met with TLK. TLK submitted its proposal, made its presentation, and earned a high ranking as it competed for the contract. In a termination letter

sent on March 10, 2016, *after* the resolution of this dispute over invoices, GVB praised TLK, noting that “Your hard work and professionalism were key factors in the tremendous growth of the Korean market.” *See Ex. C, TLK Appeal.*

Similarly, GVB argues that TLK’s refusal to turn over operations to HIC damaged GVB’s reputation in Korea. GVB provides no actual evidence that this has damaged its reputation, instead relying on an email from HIC. These retaliatory accusations against TLK are irrelevant to the question of whether GVB’s award of the contract to HIC was proper. GVB’s attempt to shift the blame to TLK does not change the fact that GVB improperly awarded a contract to an unqualified offeror.

F. TLK Will Be Irreparably Harmed Unless the Public Auditor Intervenes.

Contrary to GVB’s claim that TLK’s claims of harm are based on TLK’s assumption that it has a “right to perpetual succession,” TLK has a claim of irreparable harm based on “the possibility of TLK to be awarded the contract.” *TLK Appeal* at 7. The Federal Claims court has held that where an aggrieved offeror can only gain the costs of bid preparation in a suit for damages, and not anticipated profits, such a bid protester is irreparably harmed. *See, Bannum, Inc. v. United States*, 60 Fed. Cl. 718, 730 (Fed. Cl. 2004) citing *Essex Electro Eng’rs, Inc. v. United States*, 3 Cl. Ct. 277, 287 (1983), *aff’d*, 757 F.2d 247 (Fed.Cir.1985). This is the exact situation faced by TLK. An order from the OPA confirming that the automatic stay is in effect and enjoining GVB from further violations of the automatic stay is necessary to protect TLK’s rights and to protect the integrity of the procurement system.

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III. CONCLUSION

TLK requests a ruling from the OPA as follows:

1. That agencies of the Government of Guam may not usurp the procurement process and the protections of 5 GCA 5425(g) by negotiating and entering into a contract with a selected offeror prior to informing other offerors that they have not been selected for negotiation and award;
2. That all offerors responding to a Request for Proposal or other similar procurement process be informed at the same time, and that a selection was made by an Agency;
3. That the ranking of HIC as the highest ranked offeror for GVB RFP No. 2016-006 be set aside;
4. A declaration that the Contract negotiated and executed between GVB and HIC be declared void *ab initio* and set aside;
5. A determination that as the first ranked responsive offeror, GVB should immediately begin negotiations with TLK and award the contract to TLK;
6. For an award of reasonable attorney's fees and costs of this protest and appeal; and
7. For such other relief that the OPA may determine is just and proper.

Submitted this 19th day of May, 2016.

CIVILLE & TANG, PLLC

By: 

JOYCE C. TANG

*Attorneys for Appellant TLK Marketing
Co. Ltd.*

EXHIBIT A

CERTIFICATE OF REGISTERED INCORPORATION
(WHOLE CURRENT VALID ITEMS FOR SUBMISSION)

Register No. 058037
ID. No : 120111 - 0580375

Name of Company : **HIC Co., Ltd.**

<Changed on Feb. 22, 2013 Registered on Feb. 25, 2013>

Main Office : Samsung Medi Castle 9th fl. 901, 464-1 Samsan-dong, Bupyeong-dong
Incheon-si

Method of Notice : Published it on the Incheon Ilbo to be issued in Incheon

Amount of One Stock : 5,000 Won

Total Amount of Stock to be issued : 160,000 Stocks

<Changed on May 20, 1999 Registered on May 31, 1999>

Total Issued Stocks : 40,000 Stocks / Ordinary stocks 40,000 Stocks

Total Capital : 200,000,000 Won

PURPOSE

1. Examination business for early detection and treatment of cancers
1. Technical development of physical checkup
1. Physical checkup related service business
1. Treatment of human disease and protection related business
1. Medical business and medical related service business
1. Technical development, manufacturing and sales of medicine
1. Technical development, manufacturing and sales of medical supplies
1. Development, manufacturing and sales of gene related technology
1. Development, manufacturing and sales of biotech related products
1. Development, manufacturing and sales of bio new medicines
1. Manufacturing and sales of medical devices and apparatus
1. Manufacturing and sales of medical auxiliary equipment and devices
1. Development, manufacturing and sales of functional dietary supplements and other foods

- 1. Whole and retail sale business of medical devices, materials and medicine
- 1. Operation of welfare facilities for the aged and for general use
- 1. Trading business of reagents and medical devices
- 1. Whole sale business of reagents and medical devices
- 1. Sale and lease of real estate business
- 1. Development of real estate

1. Broadcasting production business

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Advertising and advertising agency

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Event arrangement, planning and production

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Entertainment agency and management

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Travel business

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Trading and trading agency

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Production and installation of miniature exhibits

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Publication and production of publicity and sales promotion

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Production, printing and publication of industrial design

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Franchise business, distribution and sale, whole and retail sale

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Production of mobile applications

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Electro publication and agency

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Digital contents and export business

<Added on Feb. 22, 2013 Registered on Feb. 25, 2013>

1. Investment business related to the above businesses

<Added on Mar. 31, 2014 Registered on Apr. 3, 2014>

1. Sales promotion and its agency related to the above businesses

<Added on Mar. 31, 2014 Registered on Apr. 3, 2014>

1. Other incidental business related to the above businesses

<Added on Mar. 31, 2014 Registered on Apr. 3, 2014>

DETAILS OF EXECUTIVES

Auditor	Lee, In Cheol	571117 - *****	
	Reappointed on Mar. 31, 2014		Registered on Apr. 3, 2014
Internal Director	Park, Chun Do	570326 - *****	
	Inaugurated on Mar. 31, 2014		Registered on Apr. 3, 2014
Internal Director	Park, Sae Dong	690110 - *****	
	Inaugurated on Mar. 31, 2014		Registered on Apr. 3, 2014
Representative Director	Park, Sae Dong	690110 - *****	
	601-1801, Convention-daero 100 (Songdo-dong, Songdo Hillstate 6th Comp.)		
	Yeonsu-gu, Incheon-si		
	Inaugurated on Mar. 31, 2014		Registered on Apr. 3, 2014

Date of Establishment : Aug. 31, 2011

Cause and Date of Registration Records : Establishment

<Registered on Aug. 31, 2011>

Competent Registry Office : Registry Office of Incheon District Court

Issued by : Central Management Office of Registered Information

/ Court Administrative Agency

This is to certify that the Company Court Register is true and correct to the original one filed at this office.

Date of issue : Mar. 21, 2016

/S/ Official Seal Affixed

Officer in charge of Computer Operation

Central Management Office of Registered Information

Court Administrative Agency

EXHIBIT B

WHY HIC

“

*Imagine a happy idea
that will bring happiness to our clients*

”

Happy Ideas, New Expression

HIC provides our clients with a level of excellence that surpasses their highest expectations. Our people and our organization will come to represent the ideal business partner for corporations eager to manage their communications with their key stakeholders

HIC Overview

Founded in 2006 as “SD Pharm” in Korea then changed its name to “HIC” in 2013. Happy Idea Company started its operation as a medical consulting group specializing in medical health and family welfare. However, with the aim of meeting the growing demands of the tourism representation market, HIC has expanded its business ground by establishing its first tourism representation office. Currently, HIC is sub-contracted to represent the Guam Visitor’s Bureau (GVB) in Korea. HIC performs tourism planning, promotion, and marketing work for Guam in Korea. As a primary vendor of GVB, HIC will be allowed to showcase its dynamic abilities and take the destination to the next level.

HIC office is located in the heart of central Seoul, Jong-ro district, just a few minutes to City Hall and the main royal palace of the Joseon Dynasty, Gyeongbokgung. Jong-ro district remains as one of the Seoul’s most important financial and cultural areas to this day and serves as the home for Korean and international media, foreign embassies, tourism related businesses and government

EXHIBIT C

ORGANIZATIONAL CHART

HIC Organizational Chart

Name of Company: HIC, Inc.

Type of Business: C Corporation

No. of Employees: 10 Full-time employees

No. of Offices: 2 (Seoul & Incheon)

Age of Business: A total of 10 years
(5 years as SD Pharm 5 years from 2011 as HIC)

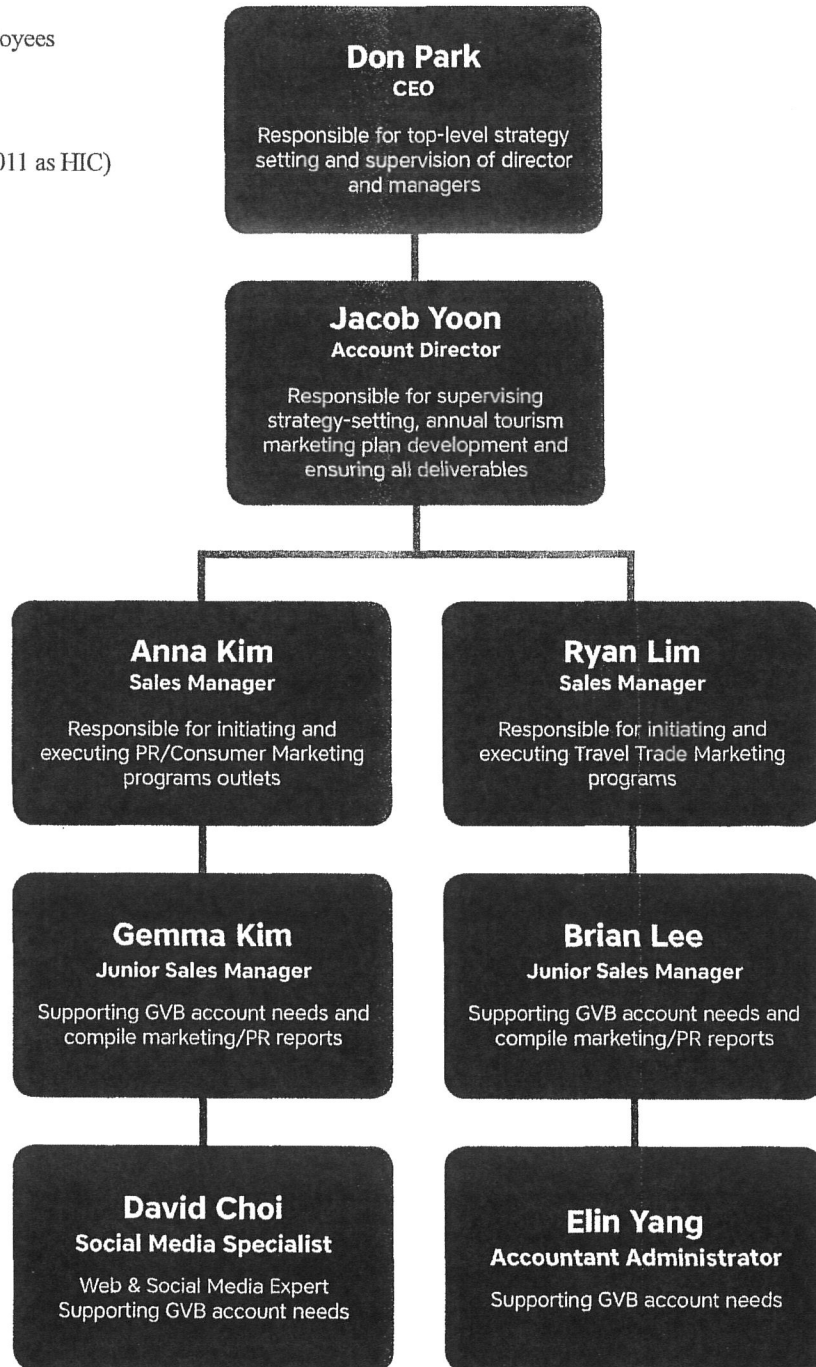


EXHIBIT D

서울특별시 종로구 새문안로 91
고려빌딩 612-613호
[별지 제41호서식]

공증
인가 **광화문 법무법인**

(전화) 02)739-2550/3/4/9
(팩스) 02)733-8562

Registered No. 2016 - 2663

NOTARIAL CERTIFICATE



KwangHwa-Moon Law Firm and Notary Office Inc.
91, Saemunan-Ro Jongno-Ku, Seoul, Korea

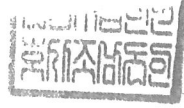


SD Pharm

Representative	Park, Saedong	Business Size	Small-Business
Business Registration No.	122-13-41***	Category of public offering	Individual Business
Corporate No. (KID No.)	690110-1*****	Category of Industry	Wholesaler of Medicine
Address of Main Office	Jangje-ro 221beon-gil, Bupyeong-gu, Incheon	Opening Date	Jan. 23, 2006

* Source from K Report site (<http://www.kreport.co.kr/>)

Korea Enterprise Data (KED) is a leading supplier of business credit reports on Korean businesses.





- K-Report소개
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- Online 신용분석
- Online 신용알람
- 마케팅DATA
- 신설법인

- My Page
- 장바구니
- 프리미엄 구매
- 본인 신용정보

Customer Center
02-3215-2777

영수증출력
PDF Reader

아이디 비밀번호 로그인 ID/PASSWORD 찾기

통합검색 **검색** 상세검색

K-REPORT 장바구니 프리미엄 구매

Online 신용분석 Online 신용알람 마케팅 Data 신설법인

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에스디람

정보수정요청

대표자	박세동	기업규모	소기업
사업자번호	122-13-41***	기업공개분류	개인사업자
법인번호	690110-1*****	산업분류	의약품 도매업
본사주소	인천 부평구 장제로221번길	설립일	2006년 01월 23일

※기업의 전화번호는 노출금지 항목으로 유선상 안내가 어려우며, 보고서 구매 또는 통산사(114 등)에 문의를 통해 확인바랍니다.
보고서 구매 후 정보수정 시점에 따라 기재된 기업정보가 변경될 수 있으며 일부 업종은 전화번호가 기재되어 있지 않을 수 있습니다.

영문 **영문**

선택 **영문** 보고서명 등금산출일 재무기준일 가격(NAT포함) 샘플

조회한 기업의 상품이 없습니다.



서울특별시 종로구 새문안로 91
고려빌딩 612-613호
[별지 제45호서식]

공증
인가

광화문 법무법인

(전화) 02)739-2550/3/4/9
(팩스) 02)733-8562

위 번역문은 원문과 상위없음을 서약
합니다.

2016년 04월 29일

서약인 서미숙



I swear that the attached translation is
true to the original.

Apr. 29, 2016

Signature Seo Mee Sook

등부 2016년 제 2663호

Registered No. 2016-2663

인 증

Notarial Certificate

위 서미숙-----은
본 공증인의 면전에서 위 번역문이 원
문과 상위없음을 확인하고 서명날인
하였다.

Seo Mee Sook----- personally
appeared before me, confirmed that
the attached translation is true to the
original and subscribed his(her) name.

2016년 04월 29일

이 사무소에서 위 인증한다.

This is hereby attested on this
29th day of Apr. 2016 at this office.

공증
인가 광화문 법무법인

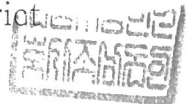
KwangHwa-Moon
Law Firm and Notary Office Inc.

소속 서울중앙지방검찰청

Belong to Seoul Central District
Prosecutors` Office

서울특별시 종로구 새문안로 91

91, Saemunan-Ro Jongno-Ku,
Seoul, Korea



공증담당변호사

[Handwritten signature of Cho Nam-Don and red notary seal]

Signature of the Notary Public

[Handwritten signature of Cho Nam-Don and red notary seal]

Cho Nam-Don

This office has been authorized by the
Minister of Justice, the Republic of
Korea, to act as Notary Public Since
Dec. 21, 1998 Under Law No. 3790

EXHIBIT E



Gina Kono <gina.kono@visitguam.org>

RE: GVB Korea Marketing Representative RFP

1 message

박세동 <psduj@hanmail.net>

Wed, Mar 9, 2016 at 3:06 PM

To: gina.kono@visitguam.org

Cc: Anna Kim <anna_kim@hicompany.co.kr>, 윤호석 <jacob_yoon@hicompany.co.kr>, Colleen Cabedo <colleen.cabedo@visitguam.org>

Hafa Adai Gina,

Thank you for your email.

I just got to the office and signed the document. I will send it to you as soon as I finish scanning the document right after this email.

I would like to let you know we have not contacted any Korean media regarding the announcement. As you know, I arrived in Korea this morning.

I also checked with Anna and Gemma if they contacted any medias, but they didn't as well. I heard that Anna received only one phone call from one of the newspaper company, and she just said that there is nothing she can talk about it now. I promise you that we have not mentioned about the result of RFP, and also will not mention it until the contract is all done.

Sincerely,

Don

----- 원본 메일 -----

보낸사람: Gina Kono <gina.kono@visitguam.org>

받는사람 : Don Park <psduj@daum.net>

참조 : Anna Kim <anna_kim@hicompany.co.kr>, 윤호석 <jacob_yoon@hicompany.co.kr>, Colleen Cabedo

<colleen.cabedo@visitguam.org>

날짜: 2016년 3월 09일 수요일, 11시 25분 05초 +0900

제목: GVB Korea Marketing Representative RFP

Hafa Adai Don,

Hope your visit to Guam was successful and your flight back to Korea was pleasant and comfortable.

Don, I am emailing you to request if you can urgently respond to our GVB RFP2016-006 Retainer Fee Negotiation communication? GVB General Manager would like to finalize the RFP and finalize all the necessary paperwork and communications to the other offerors.

BTW, I was contacted by someone mentioning that HIC is communicating with the Korea media announcing that they have successfully been awarded the GVB Marketing Representative contract. Please refrain from publicly mentioning this until we have finalized the negotiations and signed a contract. We do not want any protest from the other offerors. Thank you for your understanding.

Please urgently get back to us today.

Senseramente' (Sincerely),

Gina Kono

Marketing Officer II, Marketing Department

GUAM VISITORS BUREAU

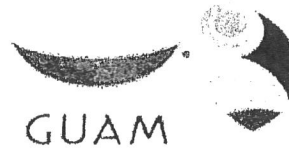
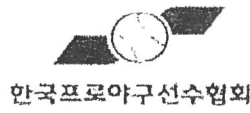
401 Pale San Vitores Road | Tumon, Guam 96913 | (671) 646-5278

gina.kono@visitguam.org | www.visitguam.org



Like us on Facebook

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Incheon, 403-090 Korea
Tel. 032-507-4162 / Fax. 032-507-4164
Email: psduj@daum.co.kr



psduj@hoonmail.net