



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF
OCEANIA COLLECTION SERVICES,
Appellant.

APPEAL NO. OPA-PA-08-006

FINDINGS AND RECOMMENDATIONS
OF HEARING OFFICER

I. INTRODUCTION

These are the Findings and Recommendations of the Hearing Officer, Robert G.P. Cruz Esq., on an appeal filed on May 5, 2008, by Oceania Collection Services (Hereinafter "Oceania") regarding the Department of Chamorro Affairs (Hereinafter "DCA") Chamorro Village solicitation of Bad Debt Collection Services through RFP No. CV-08-007. A Hearing on this appeal was held on August 29, 2008. At Hearing, DCA was represented by Sylvia M. Flores, Acting President and Michael A. Cura, Chamorro Village Manager. Oceania was also present at Hearing and was represented by Virge M. Tedpahogo, Assistant Manager and Alex Del Priore, Data Entry and Collection Specialist. The Hearing Officer recommends the Public Auditor hold that, the procurement of RFP No. CV-08-007 is improper and must be redone by DCA.

II. FINDINGS OF FACT

These Findings of Fact are based on the Procurement Record and all documents submitted by the parties in the appeal. A Pre-Hearing conference was held before the Hearing Officer and OPA staff on July 25, 2008, at 2 P.M. Present were Michael A. Cura and Jeffery A.

1 San Nicolas for DCA and Virge M. Tedpahogo and Alex Del Priore for Oceania. Neither the
2 Appellant Oceania nor DCA were represented by legal counsel in this appeal, but each party
3 agreed to a Hearing date and a list of witnesses to be called.
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5 1. On February 15, 2008, DCA issued Request for Proposal (RFP) No. CV 08-007 for Bad
6 Debt Collection Services for the Chamorro Village.

7 2. All proposals were due to DCA by February 26, 2008, at 10 A.M.

8 3. Under item (F) of the RFP, Deadline and Bid Opening, DCA indicated that all RFP's
9 received by the deadline "shall be opened and reviewed immediately on the same day after the
10 submission deadline above and that a representative must be present during the bid opening for
11 further information."
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13 4. Under item (G) of the RFP, Company Information and Proposal Amount, DCA had
14 proposers read a qualifier and provided a space for the submission of a price proposal. A price
15 proposal was to be written into two blank spaces which indicated "monthly cost" and "total
16 amount." If any proposer did not fill these two lines, it was interpreted by DCA to mean a "no
17 bid amount." No clear instructions were provided to each proposer on providing a price proposal
18 or bid amount.
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20 5. Four prospective bidders submitted proposals before the RFP deadline. These same
21 bidders had representatives present for the opening. The prospective bidders included:
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- 23 a. United Pacific Collection
- 24 b. Art Design and Services
- 25 c. Oceania Collection Services
- 26 d. Guam Marianas Collection Agency
- 27

28 6. Of the four proposers DCA had recorded the following price proposals at opening:

1 **Proposer**

Bid Amount

2 a. Oceania Collection Services

a. No Bid Amount.

3
4 b. United Pacific Collection

b. No Bid Amount. But, two options were offered in detail in a separate narrative labeled "cost and fees" within their proposal. United Pacific will remit to Client the full amount referred so long as the debtor pays a collection fee of 33.3%, an amount added to the debt. OR If debtor does not pay the collection fee, United Pacific will only collect the amount of the debt, of which 75% will be remitted to Client and 25% will be retained by United Pacific as the contingent fee. If no collection is made there will be no charge to Client by the Agency.

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11 c. Guam Marianas Collection Agency

c. No Bid Amount. However, Guam Marianas indicated that if there was "no collection" "no fee" would be assessed. Further, they also indicated that "contingency fees" would apply; however, the "contingency fees" were "to be determined upon further negotiation."

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16 d. Art Design & Service
(ADS Debt Recovery)

d. 32% of amount per debt amount collected.

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18 7. DCA allowed Oceania Collection Services, Guam Marianas Collection Agency, and
19 United Pacific Collection representatives to verbally announce their percentage rates during the
20 bid opening. No record exists to confirm if ADS offered an oral proposal.

21 a. Oceania announced a 33 1/3% collected with a 20% intro rate and further
22 requested to submit a letter on their percentage rates.

23 b. Guam Marianas Collection Agency announced a 25% contingency fee along
24 with a 50% off-island contingency fee.

25 c. United Pacific Collection representative announced a 33 1/3% plus interest fee
26 to reiterate what was written into their proposal.

27 8. At the conclusion of the February 26 meeting, DCA announced that they would need
28 more time to review each proposal before making an announcement on the selected company, so

1 no bidder was selected or offered an award. DCA further announced that they would determine
2 whether to award a single or a multiple contract(s).

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4 9. Oceania submitted a letter after the bid opening on February 26, 2008, to memorialize
5 their oral offer of a standard collection rate of 33.3% and a separate introductory collection rate
6 of 20% for all new contracts.

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8 10. According to Acting President Sylvia M. Flores, RFP No. CV 08-007 was the first
9 RFP that DCA had contracted out for a collection of bad debts. Ms. Flores testified at the formal
10 Hearing that DCA does not utilize other options to collect bad debts, such as filing small claims
11 cases in Superior Court due to DCA's lack of manpower.

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13 11. On April 17, 2008, DCA faxed Oceania to inform them of their non-selection stating
14 that they had selected "one vendor to handle the collection of [their] accounts payables based on
15 the lowest percentage rates."

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17 12. On April 17, 2008, DCA also informed Guam Marianas Collection Agency of their
18 selection to be awarded the contract.

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20 13. Oceania filed an appeal to OPA on May 5, 2008, on the grounds that the award for
21 bad debt collection services was not correctly made to the lowest bidder.

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23 14. Acting President Sylvia M. Flores, prior to the formal Hearing, signed a letter dated
24 August 21, 2008, to the President of Guam Marianas Collection Agency canceling RFP No. CV
25 08-007.

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27 15. The formal Hearing was held on August 29, 2008, at 11 A.M. Present for DCA were
28 Sylvia M. Flores, Acting President and Michael A. Cura, Chamorro Village Manager. Present for
Oceania were Virge M. Tedpahogo, Assistant Manager and Alex Del Priore, Data Entry and

1 Collection Specialist. Formal witnesses were also called during the Hearing. Ms. Bennie Mesa,
2 from Art Design and Services testified for Oceania.

3 4 5 **III. ANALYSIS**

6 1. From testimony at Hearing from two unsuccessful bidders it appears that Guam
7 Marianas Collection Agency was awarded the contract despite not having submitted the lowest
8 bid. It appears that DCA may have awarded the contract in violation of 5 G.C.A. Section 5003,
9 which requires the negotiating of contracts in good faith.

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11 2. After bids were opened, it was noticed that two (Oceania and Guam Marianas
12 Collection Agency) of the four bidders had not included a price (percentage contingent fee) in
13 their bid package as did the other two (Art Design & Service Debt Recovery and United Pacific
14 Collection). Testimony of Virge Tedpahogo and Benni Mesa.

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16 3. These two vendors (Oceania and Guam Marianas Collection Agency), who knew the
17 percentage contingent fee provided by the other two bidders, made oral proposals. Based on
18 records received and testimony provided at the formal Hearing it is unclear when the oral
19 proposals were given, whether given before or after all bid proposals had been opened. Despite
20 this, any modification of a bid after the date and time set for opening of the Bid is late. 2 G.A.R.,
21 Division 4, Chapter 3, Section 3109(k). For these reasons, DCA's procurement violated Guam's
22 Procurement Code, and Oceania and Guam Marianas Collection Agency should have been
23 eliminated from contention and not have been considered further. As such, the procurement
24 should be invalidated and redone.
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1 4. Funds involved in this procurement are non-appropriated funds generated from rent
2 and fees at the Guam Public Market. However, procurement laws are applicable to the
3 expenditure of any Territorial funds, regardless of source 5 G.C.A. Section 5004(b).
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5 5. The Hearing officer recommends that the Public Auditor find that the procurement
6 process as implemented by DCA to be flawed. Rather than using an Invitation for Bid (IFB) as
7 provided by 5 G.C.A. Section 5211, DCA issued a Request for Proposal (RFP). There is a
8 difference in procedure between a RFP and an IFB. In a RFP, the determination of whether
9 professional services are necessary should be weighed by examining if “the services require the
10 exercise of professional and significant business judgment in providing important services on
11 behalf of the government body.” Professional services “involve quality as the paramount concern
12 and require a recognized professional, [profession], and special expertise” to perform the work
13 *1983 Audit Report of Belcastro, 595 A.2d 15, 21 (Pa. 1991)*. In government, procurement of
14 professional services is often sought for accountants, physicians, lawyers, dentists, licensed
15 nurses, licensed health professionals and other professionals. If the procurement does not meet
16 the relevant professional service exception, and is not exempt from other statutory exceptions,
17 then the competitive sealed bidding process pursuant to 5 G.C.A. Section 5211 and 2 G.A.R.
18 Division 4 Section 3109 (b) should be used.
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22 At issue is whether bad debt collection services are "professional services" as defined
23 above via the scope of services provided in DCA’s RFP. Our analysis of the RFP itself reveals
24 that debt collection services are not a professional service. First, we found no requirement for
25 any professional certifications like there are for teachers, lawyers, doctors, CPA's, or engineers,
26 etc. In fact, the only license and minimum requirement of the RFP was for a business license and
27 for the selected company to have been in business for one (1) year. Second, the duties listed
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1 under the scope of services or “Work Requirements of Company” such as maintaining bad debt
2 accounts records, providing reports and consulting with Chamorro Village on the status of
3 accounts, and colleting on past due accounts do not require a “recognized professional and
4 special expertise” *CVA05-005 Fleet Services Inc. vs. DOA and Kloppenburg Enterprises Inc.*
5 DCA should clarify their purposes before proceeding with future procurement in order to
6 determine the appropriate source selection to utilize.
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8 Based on the current specifications of the RFP, the only procurement method applicable
9 here is the use of an IFB, which is the preferred method source for supplies, equipment, or
10 general services. The IFB is used to initiate competitive sealed bid procurement 2 G.A.R.
11 Division 4 Section 3109(c)(1).
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13 The Guam Procurement Law provides for several methods of procuring government
14 contracts applicable to the Executive Branch, and expressly mandates the use of competitive
15 sealed bids or request for proposals, unless the procurement falls within certain statutory
16 exceptions. These exceptions include: small purchases¹, sole source procurement², emergency
17 procurement³, and procurement from non-profit corporations⁴.
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19 The instructions to the parties should either be for one or the other. Further, detailed
20 instruction on price proposals shall be clear. One that would be helpful is an instruction that a
21 contingency fee or percentage of amount collected be submitted, rather than a flat or monthly
22 fee.
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26 ¹Title 5 G.C.A. Section 5213

27 ² Title 5 G.C.A. Section 5214

28 ³ Title 5 G.C.A. Section 5215

⁴ Title 5 G.C.A. Section 5217

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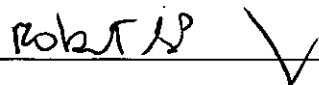
IV. CONCLUSION

For the above reasons, the Hearing Officer recommends that the Public Auditor find that the RFP be cancelled and the procurement revised to comply with the law. 5 G.C.A. Section 5451 states that "If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law."

The Hearing Officer further recommends that Public Auditor find that the procurement process as implemented by DCA was flawed and that DCA be required to rebid the contract. Rather than using an Invitation for Bid as provided by 5 G.C.A. Section 5211, the agency (1) issued a Request for Proposal (RFP), (2) allowed bidders to submit a late price bid, and even then, (3) selected a vendor for award, Guam Marianas Collection Agency, who had not submitted the lowest bid as Oceania had the lowest bid percentage offer of 20%. Further, because Oceania was a late bidder, the Hearing Officer recommends that DCA redo the procurement as an Invitation for Bid as spelled out in the Guam's Procurement Laws and regulations 5 G.C.A. Section 5211(b).

A copy of these Findings shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. Section 5702, and shall be made available for review on the OPA website at www.guamopa.org.

RESPECTFULLY SUBMITTED THIS 6th day of November, 2008



ROBERT G.P. CRUZ, ESQ.
Hearing Officer