



OFFICE OF THE PUBLIC AUDITOR

November 7, 2008

X **Appellant - Oceania Collections Services (OCS)**

Virge M. Tedpahogo
Assistant Manager
Oceania Collection Services
220 South Route 4, Ste. 203
Hagatna, GU, 96910

Appellee (Purchasing Agency) - Department of Chamorro Affairs

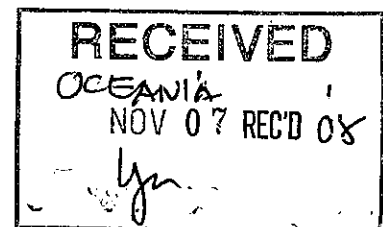
Sylvia M. Flores
President
Suite 408 - DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Transmitted herewith is a copy of the Decision and the Findings and Recommendations on appeal OPA-PA-08-006 in the appeal of Oceania Collections Services regarding the Department of Chamorro Affairs, Chamorro Village, solicitation of Bad Debt Collection Services through RFP No. CV-08-007.

A complete copy of the Decision and Findings will be posted on our website within the next day and available for public view at www.guamopa.org.

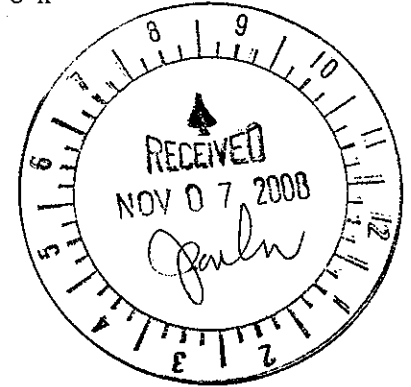
Senseramente,

Doris Flores Brooks, CPA, CGFM
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PROCUREMENT APPEALS

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IN THE APPEAL OF
OCEANIA COLLECTION SERVICES,
Appellant.

Appeal No. OPA-PA-08-006

DECISION

I. INTRODUCTION

This is the Decision of the Public Auditor, Doris Flores Brooks, 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 procurement 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 Public Auditor holds that, based on the record before her, the procurement of RFP No. CV-08-007 is improper and must be redone by DCA.

II. FINDINGS OF FACT

This Decision is based on the Procurement Record, all documents submitted by the parties in the appeal, as well as all testimony and arguments presented at the August 29, 2008, Hearing in this matter. The Findings of Fact of the Hearing Officer, Robert G.P. Cruz., Esq. are also adopted, incorporated by reference, and made a part of this Decision.

Decision - 1

1 1. On February 15, 2008, DCA issued Request for Proposal (RFP) No. CV 08-007 for
2 Bad Debt Collection Services for the Chamorro Village.

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

4 3. Under item (F) of the RFP, Deadline and Bid Opening, DCA indicated that all RFP's
5 received by the deadline "shall be opened and reviewed immediately on the same day after the
6 submission deadline above. "A representative must be present during the bid opening for further
7 information."
8

9 4. Under item (G) of the RFP, Company Information and Proposal Amount, DCA had
10 proposers read a qualifier and provided a space for the submission of a price proposal. A price
11 proposal was to be written into two blank spaces which indicated "monthly cost" and "total
12 amount." If any proposer did not fill these two lines, it was interpreted by DCA to mean a "no
13 bid amount." No clear instructions were provided to each proposer on providing a price proposal
14 or bid amount.
15
16

17 5. Four prospective bidders submitted proposals before the RFP deadline. These same
18 bidders had representatives present for the opening. The prospective bidders included:

- 19 a. United Pacific Collection
- 20 b. Art Design and Services
- 21 c. Oceania Collection Services
- 22 d. Guam Marianas Collection Agency

23 6. Of the four proposers DCA had recorded the following price proposals at opening:
24

25 <u>Proposer</u>	26 <u>Bid Amount</u>
27 a. Oceania Collection Services	a. No Bid Amount.
28 b. United Pacific Collection	b. No Bid Amount. But, two options were offered in detail in a separate narrative labeled "cost and

1 fees" within their proposal. United Pacific will
2 remit to Client the full amount referred so long
3 as the debtor pays a collection fee of 33.3%, an
4 amount added to the debt. OR If debtor does not
5 pay the collection fee, United Pacific will only
6 collect the amount of the debt, of which 75%
7 will be remitted to Client and 25% will be
8 retained by United Pacific as the contingent fee.
9 If no collection is made there will be no charge
10 to Client by the Agency.

11 c. Guam Marianas Collection Agency

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

18 d. Art Design & Service
19 (ADS Debt Recovery)

20 d. 32% of amount per debt amount collected.

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

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

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

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

8. At the conclusion of the February 26 meeting, DCA announced that they would need
more time to review each proposal before making an announcement on the selected company, so
no bidder was selected or offered an award. DCA further announced that they would determine
whether to award a single or a multiple contract(s).

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

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

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

14 12. On April 17, 2008, DCA also informed Guam Marianas Collection Agency of their
15 selection to be awarded the contract.
16

17 13. Oceania filed an appeal to OPA on May 5, 2008, on the grounds that the award for
18 bad debt collection services was not correctly made to the lowest bidder.
19

20 14. Acting President Sylvia M. Flores, prior to the formal Hearing, signed a letter dated
21 August 21, 2008, to the President of Guam Marianas Collection Agency canceling RFP No. CV
22 08-007.
23

24 15. The formal Hearing was held on August 29, 2008, at 11A.M. Present for DCA were
25 Sylvia M. Flores, Acting President and Michael A. Cura, Chamorro Village Manager. Present for
26 Oceania were Virge M. Tedpahogo, Assistant Manager and Alex Del Priore, Data Entry and
27 Collection Specialist. Formal witnesses were also called during the Hearing. Ms. Bennie Mesa,
28 from Art Design and Services testified for Oceania.

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III. ANALYSIS

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

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

3. These two vendors (Oceania and Guam Marianas Collection Agency), who knew the percentage contingent fee provided by the other two bidders, made oral proposals. Based on records received and testimony provided at the formal Hearing it is unclear when the oral proposals were given, whether given before or after all bid proposals had been opened. Despite this, any modification of a bid after the date and time set for opening of the bids is considered late. 2 G.A.R, Division 4, Chapter 3, Section 3109(k). For these reasons, DCA's procurement violated Guam's Procurement Code, and Oceania and Guam Marianas Collection Agency should have been eliminated from contention and not have been considered further. As such, the procurement should be invalidated and redone.

4. Funds involved in this procurement are non-appropriated funds generated from rent and fees at the Guam Public Market. However, procurement laws are applicable to the expenditure any Territorial funds, regardless of source. 5 G.C.A. Section 5004(b).

5. The Public Auditor finds that the procurement process as implemented by DCA was flawed. Rather than using an Invitation for Bids (IFB) as provided by 5 G.C.A. Section 5211,

1 DCA issued a Request for Proposals (RFP). There is a difference in procedure between RFP and
2 an IFB. In a RFP, the determination of whether professional services are necessary should be
3 weighed by examining if “the services require the exercise of professional and significant
4 business judgment in providing important services on behalf of the government body.”
5 Professional services “involve quality as the paramount concern and require a recognized
6 professional, [profession], and special expertise” to perform the work. *1983 Audit Report of*
7 *Belcastro, 595 A.2d 15, 21 (Pa. 1991)*. In government, procurement of professional services is
8 often sought for accountants, physicians, lawyers, dentists, licensed nurses, licensed health
9 professionals and other professionals. If the procurement does not meet the relevant professional
10 service exception, and is not exempt from other statutory exceptions, then the competitive sealed
11 bidding process pursuant to 5 G.C.A. Section 5211 and 2 G.A.R. Division 4 Section 3109(b)
12 should be used.
13
14

15
16 At issue is whether bad debt collection services are "professional services" as defined
17 above via the scope of services provided in DCA’s RFP. Our analysis of the RFP itself reveals
18 that debt collection services are not a professional service. First, we found no requirement for
19 any professional certifications like there are for teachers, lawyers, doctors, public accountants,
20 engineers, etc. In fact, the only license and minimum requirement of the RFP was for a business
21 license and for the selected company to have been in business for one (1) year. Second, the
22 duties listed under the scope of services or “Work Requirements of Company” such as
23 maintaining bad debt accounts records, providing reports and consulting with Chamorro Village
24 on the status of accounts, and collecting on past due accounts do not require a “recognized
25 professional and special expertise” *CVA05-005 Fleet Services Inc. vs. DOA and Kloppenburg*
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1 *Enterprises Inc.* DCA should clarify their purposes before proceeding with future procurement
2 in order to determine the appropriate source selection to utilize.

3
4 Based on the current specifications of the RFP, the only procurement method applicable
5 here is the use of an IFB, which is the preferred source method for supplies, equipment, or
6 general services. The IFB is used to initiate competitive sealed bid procurement 2 G.A.R.
7 Division 4 Section 3109(c)(1).

8 The Guam Procurement Law provides for several methods of procuring government
9 contracts applicable to the Executive Branch, and expressly mandates the use of competitive
10 sealed bids or request for proposals, unless the procurement falls within certain statutory
11 exceptions. These exceptions include: small purchases¹, sole source procurement², emergency
12 procurement³, and procurement from non-profit corporations⁴.

13
14 The instructions to the parties should either be for one or the other. Further, detailed
15 instruction on price proposals shall be clear. One that would be helpful is an instruction that a
16 contingency fee or a percentage of amounts collected be submitted, rather than a flat or monthly
17 fee.
18

19 20 **IV. CONCLUSION**

21 For the above reasons, the Public Auditor finds that the RFP should be cancelled and the
22 procurement revised to comply with the law. 5 G.C.A. Section 5451 states that "If prior to award
23

24
25 _____
26 ¹Title 5 G.C.A. Section 5213

27 ²Title 5 G.C.A. Section 5214

28 ³Title 5 G.C.A. Section 5215

⁴Title 5 G.C.A. Section 5217

1 it is determined that a solicitation or proposed award of a contract is in violation of the law, then
2 the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law.”

3
4 The Public Auditor finds that the procurement process as implemented by DCA was
5 flawed and that DCA shall be required to rebid the contract. Rather than using an Invitation for
6 Bid as provided by 5 G.C.A. Section 5211, the agency (1) issued a Request for Proposal, (2)
7 allowed bidders to submit a late price bid, and even then, (3) selected a vendor for award, Guam
8 Marianas Collection Agency, who had not submitted the lowest bid as Oceania had the lowest
9 bid percentage offer of 20%. Further, because Oceania was a late bidder, the Public Auditor
10 recommends that DCA redo the procurement as an Invitation for Bid as spelled out in Guam
11 Procurement Laws and Regulations 5 G.C.A. Section 5211(b).
12

13 This is a final administrative Decision. Parties are hereby informed of their right to
14 appeal from a Decision of the Public Auditor to the Superior Court of Guam, in accordance with
15 Part D of Article 9 of 5 G.C.A. Section 5481(a) within 14 days.
16

17 A copy of this Decision shall be provided to the parties, in accordance with 5 G.C.A.
18 Section 5702, and shall be made available for review on the OPA website at
19 www.guamopa.org.
20

21 **DATED** this 7th day of November, 2008.
22

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24 
25 _____
26 DORIS FLORES BROOKS, CPA, CGFM
27 PUBLIC AUDITOR
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