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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 07-28-16
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FILE NO OPA-PA: 16-009

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

IN THE APPEAL OF) OPA-PA-16-009
)
PURESTONE, LLC)
)
) **AGENCY REPORT**
)
)
APPELLANT)
)
)
_____)

COMES NOW Agency Guam Economic Development Authority by and through Fisher & Associates and submits an Agency Report pursuant to 12 Guam Code Ann. §12105. Because the Chamorro Land Trust Commission is an Agency intimately involved in this matter, the Guam Economic Development Authority believes its presence desirable. GEDA therefore asks the Office of Public Accountability to summons it to answer to this Appeal.

FISHER & ASSOCIATES



Thomas J. Fisher, Esq.
For GEDA

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I. A Copy of the Protest
Please see Notice of Appeal, Purestone LLC, 13 July 2016 at Exhibit 2.

II. A Copy of the Bid or Offer, a Copy of the Bid or Offer that is being
Considered for Award, a copy of all Other Bids.
Please see Agency Procurement Record filed 20 July 2016 for all offers.

III. A Copy of the Solicitation.
Please see Agency Procurement Record filed 20 July 2016.

IV. A Copy of the Abstract of Bids or Offers.
Please see Agency Procurement Record filed 20 July 2016.

V. Any Other Documents which are Relevant to the Protest
Please see Agency Procurement Record filed 20 July 2016.

VI. The Decision from which the Appeal is Taken.
Please see Agency Procurement Record filed 20 July 2016.

VII. A Statement Answering the Allegation of the Appeal.

A. *The Guam Economic Development Authority's Interpretation of Public Law
33-95 is Correct.*

Recently enacted Public Law 33-95 voided “any solicitation for interest or
proposals, ... for commercial activity on CLTC land with the intent of entering
into a commercial lease” See 21 Guam Code Ann. §75122(b)(6). Purestone
LLC believes the purpose of RFP 14-002 is to control the creation of

1 commercial activity pursuant to a lease but not a license. GEDA asserts that this
2 is an overly restrictive reading of the statute.

3 Where the purpose of the public law is to restrict unregulated use and
4 disposition of Chamorro Land Trust property, the Legislature’s intent was to
5 control commercial activity whether it be pursuant to a license or lease. In any
6 case, the type of activity proposed results in a physical alteration, occupation,
7 taking away, and destruction of the property. This has many of the attributes of
8 a leasehold and fewer of a license. GEDA asserts that the Chamorro Land Trust
9 Commission has come to this conclusion and determined that termination of the
10 Request for Proposals is the proper course. *See Agency Procurement Record*
11 *filed 20 July 2016, Vol. I at Tab Q.*

12
13 *B. The Guam Economic Development Authority has not Violated Guam*
14 *Procurement Law in Cancelling this Solicitation.*

15 Purestone LLC. believes that the GEDA has violated 5 Guam Code Ann.
16 §5225 and 2 Guam Admin. R. and Reg. §3115(d)(2) in the cancellation of this
17 solicitation. Section 5225 states, “An Invitation for Bids, a Request for
18 Proposals, or other solicitation may be cancelled, or any or all bids or proposals
19 may be rejected in whole or in part as may be specified in the solicitation, when
20 it is in the best interests of the Territory in accordance with regulations
21 promulgated by the Policy Office. The reasons therefor shall be made part of
22 the contract file.” *Id, emphasis added.* Regulations state,

23 After opening, but prior to award, all bids or proposals may be rejected in
24 whole or in part when the Chief Procurement Officer, the Director of
25 Public Works, or the head of a Purchasing Agency determines in writing
that such action is in the territory's best interest for reasons including, but
not limited to:

- 1 (i) the supplies, services, or construction being procured are no longer
2 required;
- 3 (ii) ambiguous or otherwise inadequate specifications were part of the
4 solicitation;
- 5 (iii) the solicitation did not provide for consideration of all factors or
6 significance to the territory;
- 7 (iv) prices exceed available funds and it would not be appropriate to
8 adjust quantities to come within available funds;
- 9 (v) all otherwise acceptable bids or proposals received are at clearly
10 unreasonable prices; or
- 11 (vi) there is reason to believe that the bids or proposals may not have been
12 independently arrived at in open competition, may have been collusive,
13 and may have been submitted in bad faith.

14 *2 Guam Admin. R. and Reg. §3115(d)(2), emphasis added.*

15 Here, the solicitation specifically reserved the agency's right to cancel or
16 terminate the solicitation upon the Agency's determination which it exercised.
17 *See Agency Procurement Record filed 20 July 2016, Vol. I at Tab B, page 15.*
18 By responding to the Solicitation, Purestone accepted that very reservation. It
19 cannot now complain that the GEDA followed and executed a term of the
20 Solicitation to which it agreed.

21 Additionally, the assertion that the cancellation of this solicitation violates
22 statute and regulation misses the mark. The cancellation is attributable to a
23 change in law (*see supra*); the CLTC and GEDA merely comply with that law.
24 Whether this statutory requirement is in the best interest of the Territory is, in
25 this instance, a question best put to the Guam Legislature and is not a proper
subject for non-Legislative review. There may be many reasons, historical,

1 societal and cultural for preserving Chamorro lands intact. It is not necessarily
2 an argument of economy that wins the day.

3 Purestone LLC. also states that the Agency did not act in good faith in the
4 administration of this procurement. Purestone makes no argument on this point
5 though and offers no evidence in support. Please note that neither the CLTC nor
6 GEDA had any foreknowledge that the Guam Legislature would enact
7 legislation voiding the solicitation. The Agencies have done nothing more than
8 abide by the law and their interpretation of the language of the solicitation. An
9 assertion of bad faith simply fails.

10
11 VIII. A Determination Required under 2 GAR §9101(e).

12 Not applicable.

13
14 IX. A Statement Indicating whether the Matter is the Subject of a Court
15 Proceeding

16 The Guam Economic Development Authority agrees with Purestone
17 LLC's statement that no case or action concerning the subject of this Appeal
18 has been commenced in court. The Guam Economic Development
19 Authority agrees to notify the Office of Public Accountability within 24
20 hours if court action commences regarding this Appeal or the underlying
21 procurement action.
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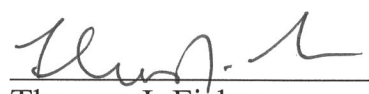
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X. Conclusion

Wherefore the Guam Economic Development Authority Prays that

A. Purestone LLC be granted no relief and its appeal denied.

B. That the Chamorro Land Trust Commission be summonsed to answer to this Appeal.



Thomas J. Fisher
Counsel, GEDA