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Attorneys for Alvarez & Marsal  
Public Sector Services, LLC

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 08/19/2016

TIME: 2:05  AM  PM BY: Rg

FILE NO OPA-PA: 16-012

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

IN THE APPEAL OF ) APPEAL NO. OPA-PA-\_\_\_\_\_  
)  
)  
)  
) **NOTICE OF APPEAL**  
)  
ALVAREZ & MARSAL PUBLIC )  
SECTOR SERVICES, LLC, )  
)  
)  
Appellant. )  
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)  
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This appeal arises out of the decision by Guam Department of Education (“GDOE”) of the Method, Solicitation and Award of RFP-05-2016 for selection of a Third Party Fiduciary Agent to provide third-party fiduciary oversight services and fund management services, including but not limited to the administration or oversight of U.S. Department of Education grant funds.

**Appellant Information**

Name: Alvarez & Marsal Public Sector Services, LLC

Mailing Address: 555 Thirteenth St., N.W.  
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**ORIGINAL**

Daytime Contact: For purposes of this appeal, all communications may be sent to  
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**Appeal Information**

- A. Purchasing Agency: Guam Department of Education
- B. Number/Description of Procurement: Guam Department of Education  
RFP-005-2016  
Third Party Fiduciary Agent

The Decision being appealed is dated August 4, 2016, by GDOE Supply Management Administrator Carmen T. Taitano and received by Appellant on August 4, 2016.

- C. Appeal is made from GDOE's Decision on Protest of Method, Solicitation or Award.
- D. Names of Competing Bidders, Offerors, or Contractors known to Appellant:

Appellant does not know the name of competing bidders, offerors, or contractors at this time and has filed a Sunshine Act Request to GDOE requesting this information. A response was received by GDOE exercising their right to a 10-day extension of time. True and correct copies of Appellant's Sunshine Act request and GDOE's response are attached hereto as Exhibits 1 and 2. *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*

**Statement Supporting the Appeal**

A. Jurisdiction

The Office of Public Accountability ("OPA") has jurisdiction over procurement disputes, including the present dispute. 5 G.C.A. §§ 5427, 5706.

B. Factual Background

On March 21, 2016, RFP 05-2016 was issued by GDOE. The deadline for submission of an RFP proposal was May 6, 2016 at 3:00 p.m. Chamorro Standard Time.

Appellant was the only bidder who submitted seven (7) written questions concerning the RFP, for which GDOE provided responses.

On May 3, 2016, Appellant submitted its RFP proposal three (3) days early.

On May 6, 2016 at 2:37 p.m., approximately 33 minutes before the scheduled deadline for submission of any RFP proposals, GDOE sent an email to Appellant's representative William Roberti at 12:37 a.m. Eastern Standard Time informing Appellant that the deadline for submissions was extended to May 11, 2016. A true and correct copy of the email is attached hereto as Exhibit 3. GDOE issued Amendment No. 2 extending the deadline. A true and correct copy of the amendment is attached hereto as Exhibit 4.

On May 11, 2016 Mr. Roberti received an email from Pacific Daily News reporter Haidee Eugenio asking whether Appellant was "one of the 3 interested parties that submitted a bid?" A true and correct copy of the email is attached hereto as Exhibit 5.

On May 18, 2016 Appellant learned through an article appearing in the Pacific Daily News that the deadline for the RFP was extended "in order to maximize competition" and that three proposals had been received as of the extended deadline. A true and correct copy of the article is attached hereto as Exhibit 6.

On July 5, 2016 Appellant received a letter from GDOE informing Appellant that it was ranked as the Second (2<sup>nd</sup>) Most Qualified Offeror. A true and correct copy of the letter is attached hereto as Exhibit 7.

On July 15, 2016 Appellant lodged its protest ("Protest"). A true and correct copy of the letter is attached hereto as Exhibit 8.

On August 4, 2016 GDOE issued a determination and response to the Protest, attached hereto as Exhibit 9, denying the Protest on all grounds.

### C. Grounds for appeal

Appellant Alvarez & Marsal appeals the GDOE Determination pursuant to 5 G.C.A. § 5425(a). Appellant, an actual bidder, is aggrieved by the Determination on the award of RFP-05-2016 and specifically appeals on the following grounds:

1. As a preliminary matter, Appellant submits that the OPA is disqualified from hearing and ruling upon this appeal. Yukari Hechanova, a Deputy Assistant Public Auditor, was a member of the Evaluation Committee reviewing Appellant's and other bidders' proposals. The OPA cannot serve as an impartial, unbiased arbiter of this appeal where its own deputy auditor has evaluated Appellant's proposal and rendered a decision on the issues directly related to the matter being appealed. There is an indisputable conflict of interest and Appellant request that the OPA disqualify itself from hearing this appeal. *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*
2. GDOE's last minute and inexplicable decision to extend the proposal submissions deadline to May 11, 2016 prejudiced Appellant and gave other bidders the advantage of additional time to provide and submit their proposals. Appellant questions whether the extension of the deadline was a deliberate attempt to give an advantage to one or

*information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*

3. 2 GAR § 3114(f)(2) states in part, “[p]roposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposal.” The RFP explicitly required proposals to be evaluated based upon the following criteria: firm capacity and ability; work plan; firm qualifications; presentation; adequacy of firm resources; and past performances and client references. Based upon all of these criteria, Appellant was the best qualified offeror. Upon information and belief, the entity selected by GDOE as the most qualified offeror is not the best qualified entity to provide the services required under the RFP. GDOE failed to evaluate the proposals in accordance with the requirements of the RFP and in accordance with 2 GAR § 3114(f)(2). *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*
4. The Guam Procurement Law defines a “responsive bidder” as “a person who has submitted a bid which conforms in all material respects to the Invitations for Bids.” 5 G.C.A. § 5201(g) (emphasis added). Upon information and belief, the bid submitted by the entity determined to be the most qualified offeror did not meet the material or minimum requirements as stated in the RFP. *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*
5. Appellant is extremely concerned about the public release of information concerning the three bidders in this RFP on the day of the extended deadline for submission of proposals. Information pertaining to bids that have been received is strictly confidential, and the number of bids received should not have been disclosed. Appellant believes that the confidential nature of the competitive sealed bidding process in this case may have been violated. *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*
6. Upon information and belief, GDOE violated Guam Procurement Law Regulations by not acting in good faith in the administration of this procurement. *Appellant has filed a Sunshine Act request with GDOE to request information and documents relating to the RFP and reserves the right to amend or supplement its filings in this appeal.*

E. Request for hearing

Appellant requests a hearing on this appeal.

**Declaration re Court Action**

Pursuant to 5 G.C.A. Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned does hereby confirm that to the best of her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the OPA within twenty-four (24) hours if court action commences regarding this Appeal or the underlying procurement action.

**Relief Requested**

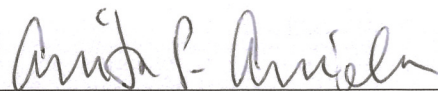
Appellant requests a determination by an appropriate, impartial hearing officer of the following:

- (i) That any bid award, issuance of purchase orders and/or contracts be stayed as required by law until a final resolution of this appeal has been made;
- (ii) That GDOE's determination of the most qualified offeror be rescinded;
- (iii) That Appellant be determined to be the most qualified offeror for RFP05-2016 and that GDOE be ordered to begin negotiations with Appellant and award the contract to Appellant;
- (iv) That Appellant be granted reimbursement of its costs incurred in preparing its proposal, this Protest, and the Appeal pursuant to 5 G.C.A. § 5425(h).
- (v) That Appellant be awarded reasonable attorney's fees and costs, as permitted by Guam law;
- (vi) For such other relief that is deemed just and appropriate under the circumstances.

Dated this 19<sup>th</sup> day of August, 2016.

ARRIOLA, COWAN & ARRIOLA  
Attorneys for Appellant Alvarez & Marsal  
Public Sector Services, LLC

BY: \_\_\_\_\_

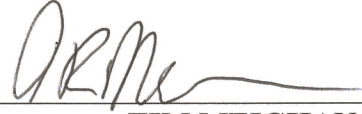


ANITA P. ARRIOLA

**VERIFICATION**

I, Tim Meighan, Senior Director and duly authorized representative of Alvarez & Marsal Public Sector Services LLC, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that is true and correct of my own knowledge, except as to those matters alleged upon information and believe and as to those matters, I believe them to be true.

Dated this 19<sup>th</sup> day of August, 2016.



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**TIM MEIGHAN**