



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

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6 IN THE APPEAL OF,

) **APPEAL NO: OPA-PA-16-002**

7 1-A GuamWEBZ,

) **DECISION**

8 Appellant
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11 **I. INTRODUCTION**

12 This is the Decision of the Public Auditor for appeal number OPA-PA-16-002 which was
13 filed by 1-A GuamWEBZ, (Hereafter Referred to as "GuamWEBZ") on March 28, 2016
14 regarding the GUAM COMMUNITY COLLEGE's (Hereafter Referred to as "GCC") March 14,
15 2016 denial of GuamWEBZ's March 10, 2016 Protest concerning Bid No. GCC-FB-16-006
16 (Website Services for Guam Community College) (Hereafter referred to as "IFB"). The Public
17 Auditor holds that: (1) Only GuamWEBZ's claims that the other bidder was Non-Responsible
18 and that GCC did not properly evaluate the bids submitted in response to the IFB are timely; (2)
19 The other bidder was a Responsible Bidder; and (3) GCC did not evaluate the bids in accordance
20 with the IFB Requirements. Accordingly, GuamWEBZ's appeal is hereby DENIED in part and
21 SUSTAINED in part.

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23 **II. FINDINGS OF FACT**

24 The Public Auditor in reaching this Decision has considered and incorporates herein the
25 procurement record and all documents submitted by the parties, and all arguments made during
26 the July 5, 2016 hearing and continued July 7, 2016 hearing for Appellant's Appeal. Based on
27 the aforementioned record in this matter, the Public Auditor makes the following findings of
28 fact:

1 1. On or about January 25, 2016, GCC issued the IFB.¹

2 2. The IFB required, in relevant part, the following:

3 a. That a local procurement preference application be submitted in duplicate in
4 the bid envelope at the date and time set for bid opening.²

5 b. That the bidder awarded the contract submit a copy of its current business
6 license expiring June 30, 2016 upon issuance of award.³

7 c. That no late bid, late modification, or late withdrawal will be considered unless
8 received before contract award, and the modification, or withdrawal would have been timely but
9 for the action or inaction of territorial personnel directly serving the procurement activity.⁴

10 d. The Procurement Officer shall examine the bids to determine the validity of
11 any request for non-disclosure of trade secrets and other confidential or proprietary data
12 identified in writing.⁵

13 e. That bids shall be publically opened in the presence of one or more witnesses,
14 at the time, date, and place designated in the IFB. The name of each bidder, the bid price, and
15 such other information as is deemed appropriate by the Procurement Officer, shall be read aloud
16 and recorded, or otherwise made available, and that the open bids shall be available for public
17 inspection except to the extent the bidder designates trade secrets or other proprietary data to be
18 confidential as set forth in Guam laws.⁶

19 f. That GCC would not consider for award any offer submitted by a bidder who
20 has not complied with the Guam Licensing Law and that specific information on licenses may be
21 obtained from the Director of Revenue and Taxation.⁷

22 g. That all procurement of supplies, services, and construction will be made from
23 among businesses licensed to do business in Guam in accordance with Guam Procurement Law.⁸

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25 ¹ Page 0309, Bid Invitation, IFB, TAB 3, Volume 2, Procurement Record filed on
26 April 5, 2016.

² Page 0310, Special Reminder to Prospective Bidders, IFB, Id.

³ Id.

27 ⁴ Page 0312, Paragraph 7(b)Late Bid, Late Withdrawals, and Late Modifications,
Sealed Bid Solicitation Instructions, Id.

28 ⁵ Page 0313, Paragraph 12, Confidential Data, Id.

⁶ Page 0313, Paragraph 11, Receipt, Opening, and Recording of Bids, Id.

⁷ Page 0314, Paragraph 4, Licensing, General Terms and Conditions, Id.

1 h. That GCC would consider not more than two (2) (Basic and Alternate) item
2 prices and the bidder shall explain fully each price if supplies, materials, equipment, or specified
3 services offered comply with specifications and the product's origin and that where a basic or
4 alternate bid meets the minimum required specification, cost and other factors will be
5 considered.⁹

6 i. That award shall be made to the lowest responsible and responsive bidder,
7 whose bid is determined to be the most advantageous to the Government, taking into
8 consideration the evaluation factors set forth in the solicitation and that no other factors or
9 criteria shall be used in the evaluation.¹⁰

10 j. That the bidders claiming the Local Procurement Preference place a checkmark
11 or an "x" on the block on a procurement preference that applies to them.¹¹

12 k. That bids in response to the IFB must be submitted to GCC no later than 10:00
13 a.m. on February 9, 2016.¹²

14 l. The contract awarded to the successful bidder would have a three (3) year
15 contract period, with the option to renew annually for two (2) additional consecutive years.¹³

16 3. On February 1, 2016, GCC held a Pre-Bid Conference and Rajesh K. Sharma
17 appeared on behalf of GuamWEBZ. At the conference, GCC representatives reviewed the IFB's
18 Procurement Requirements under the Special Reminders to Prospective Bidders and they
19 informed the prospective bidders that a copy of a business license expiring June 30, 2016 would
20 be required upon award of the bid.¹⁴

21 4. On or about February 5, 2016, GCC issued IFB Amendment No. 1, which, in relevant
22 part, stated the following:

23 a. That GCC did not have a preference for Development Tools for its website, but
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26 ⁸ Page 0314, Paragraph 5, Local Procurement Preference, Id.

27 ⁹ Page 0314, Paragraph 9, Bidder's Price, Id.

28 ¹⁰ Page 0317, Paragraph 23, Award, Cancellation & Rejection, Id.

¹¹ Page 0325, Local Procurement Preference Application, IFB, Id.

¹² Page 0309, Bid Invitation, Id.

¹³ Page 0332, Website Services for GCC, Id.

¹⁴ Page 0349, Pre-Bid Conference Minutes, Id.

1 both proprietary and non-proprietary options are welcome and GCC informed the bidders that
2 they could submit both options in their bid proposals.¹⁵

3 b. That the Bid Opening was extended from 10:00 a.m. on February 9, 2016 to
4 10:00 a.m. on February 15, 2016.¹⁶

5 5. On or about February 15, 2016, GuamWEBZ and WSI submitted bids in response to
6 the IFB which were publically opened by GCC. Both bidders submitted Local Procurement
7 Preference Affidavits, however, only GuamWEBZ submitted a Guam Business License which
8 would expire on June 30, 2016. WSI bid two (2) options, Option A was for proprietary based
9 website, which had a total cost of \$87,900 and Option B was for a Drupal based website, which
10 had a total cost of \$100,900. GuamWEBZ submitted one bid which had a total cost of \$99,
11 610.¹⁷

12 6. On or about February 16, 2016, GCC's Website Advisory Group, whose members
13 were Jayne Flores, Wes Gima, Frank Camacho, Dean Rivera, and Angela Cabrera, met and
14 reviewed the bids submitted by GuamWEBZ and WSI, and they determined that lowest,
15 qualified bidder was WSI's proprietary bid because it had a bid price of \$23,100 for the first
16 year.¹⁸

17 7. That same day, Joleen Evangelista, GCC's Procurement & Inventory Administrator
18 advised Dr. Mary Y. Okada, GCC's President, that based on the evaluation conducted by GCC's
19 Website Advisory Group, WSI was deemed the lowest, most responsible and responsive bidder
20 and she recommended that WSI be awarded the website services contract. Dr. Mary Y. Okada
21 approved the recommendation that day.¹⁹

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26 ¹⁵ Page 0343, IFB Amendment No. 1 dated February 5, 2016, Id.

27 ¹⁶ Page 0344, Id.

28 ¹⁷ Pages 0363-4, Bid Abstract, Id.

¹⁸ Page 0505, Memorandum dated February 16, 2016 from Jayne Flores to Joleen Evangelista, Id.

¹⁹ Page 0504, Memorandum dated February 16, 2016 from Joleen Evangelista to Mary A.Y. Okada, Id.

1 8. On or about February 23, 2016, GCC issued its Notice of Non-Award to GuamWEBZ
2 which also advised GuamWEBZ that the bid has been evaluated and awarded to WSI.
3 GuamWEBZ received the notice via email on February 24, 2016.²⁰

4 9. On or about February 23, 2016, GCC issued a Notice of Bid Award to WSI informing
5 WSI that it would be awarded the contract upon receipt of a list of workers WSI would assign to
6 the project and a copy of WSI's current business license or contractor's license expiring on June
7 30, 2016 and WSI received the notice on February 24, 2016.²¹

8 10. On March 10, 2016, GuamWEBZ filed its protest with GCC alleging that: (1) WSI
9 was not a responsible bidder because it violated Guam's Business Licensing Law because WSI
10 had not had a valid Guam Business License since its last license expired on June 30, 2013; (2)
11 WSI was not a responsible bidder because it is not qualified for the Local Procurement
12 Preference; (3) WSI was not a responsible bidder because it submitted 2 bids; (4) Some bid
13 evaluators made errors in the evaluation process.²²

14 11. On or about March 11, 2016, WSI submitted its Guam Business License and
15 provided GCC a list of the employees it would assign to the project and GCC verified that these
16 employees were cleared from the Sex Offender Registry.²³

17 12. That day, GCC and WSI entered into a contract for the services solicited in the IFB.²⁴

18 13. Also, on that day, GCC issued Purchase Order No. P1600914 to pay for the contract
19 between GCC and WSI.²⁵

20 14. On March 14, 2016, GCC denied GuamWEBZ's protest on the sole ground that it
21 was untimely because GCC emailed its notice of non-award to GuamWEBZ on February 24,
22 2016, and the fourteen (14) day protest period established by 2 G.A.R., Div. 4, Chap. 9,
23 §9101 expired on March 9, 2016, the day before GuamWEBZ's protest was filed. GCC emailed
24 GuamWEBZ its protest denial that same day.²⁶

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26 ²⁰ Pages 0528-9, Id.

27 ²¹ Pages 0531-2, Id.

28 ²² Page 0558-0560, GuamWEBZ Protest dated March 10, 2016, Id.

²³ Pages 0537-0538, Id.

²⁴ Page 0541, Agreement Between GCC & WSI dated March 11, 2016, Id.

²⁵ Page 0545, GCC Purchase Order No. P1600914, Id.

²⁶ Pages 0556-7, Id.

1 15. Fourteen (14) days later, on March 28, 2016, GuamWEBZ filed this appeal.²⁷

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3 **III. ANALYSIS**

4 Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GCC's March 14, 2016
5 Decision denying Guam WEBZ's March 10, 2016 protest *de novo*. GuamWEBZ's protest and
6 this appeal raise the following issues. First, whether GCC correctly determined that
7 GuamWEBZ's protest was untimely. Second, whether GCC correctly determined that WSI was
8 a responsible bidder. Third, whether GCC should have disqualified WSI's proprietary proposal.
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10 Fourth, whether WSI should have been disqualified because it submitted two (2) proposals.
11 And, fifth, whether GCC's Website Advisory Group made errors in their evaluation of the
12 proposals submitted in response to the IFB. The threshold issue in this matter is whether
13 GuamWEBZ's protest was timely and the Public Auditor must review this issue first to ensure
14 that this matter is properly before her.

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16 **A. GCC Correctly Found that Two Issues Raised in GuamWEBZ's Protest were**
17 **Untimely.**

18 GCC denied GuamWEBZ's Protest on the sole ground that it was untimely.²⁸ Guam
19 Procurement Law and Regulations mandate that protests shall be submitted in writing within
20 fourteen (14) days after such aggrieved person knows or should know of the facts giving rise
21 thereto and protests filed after the fourteen (14) day period shall not be considered. 5 G.C.A.
22 §5425(a) and 2 G.A.R., Div. 4, Chapter 9, §9101(c)(1).²⁹ Here, GCC's denial of GuamWEBZ'

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25 ²⁷ Notice of Appeal filed on March 28, 2016.

26 ²⁸ Page 4, Statement Answering Allegations of the Appeal, TAB 1, Agency Report
27 filed on April 12, 2016.

28 ²⁹ Generally, GCC is exempt from the centralized procurement regime created by
5 G.C.A. §5120, but is governed by Articles 1, 3, 6, 7, 10, 11, and 12 of
Guam's Procurement Law. 5 G.C.A. §5125. Further, although GCC is authorized
to promulgate its own procurement regulations pursuant to 5 G.C.A. §5131, GCC
has adapted the Government of Guam's Procurement Regulations as GCC's
Procurement Regulations. See GCC Procurement Policy No. 228 adopted on
August 2, 2010 pursuant to GCC Board of Trustee's Resolution No. 9-2010.

1 protest was based on the fact that a fourteen (14) day period which started February 24, 2016, the
2 date GCC emailed GuamWEBZ its Notice of Non-Award as described above, expired on March
3 9, 2016.³⁰ The OPA must analyze whether GuamWEBZ knew or should have known of the
4 facts giving rise to its March 10, 2016 protest on or about February 24, 2016 when GCC started
5 the aforementioned fourteen (14) day protest period. Further, the OPA must evaluate each of the
6 issues raised by GuamWEBZ's protest to determine when GuamWEBZ knew or should have
7 known of the facts said protest issues are based on.

8 The Public Auditor finds that GCC correctly determined that the issue of whether GCC
9 should have disqualified WSI's proprietary proposal, and the issue of whether WSI should have
10 been disqualified because it submitted two (2) proposals were untimely. GuamWEBZ knew or
11 should have known of WSI's submission of a proprietary proposal and of WSI's submission of a
12 total of two proposals at the bid opening on February 15, 2016. GuamWEBZ's President was
13 present at the bid opening on behalf of GuamWEBZ and took notes of what occurred on that
14 date.³¹ Hence, when GCC opened WSI's bid and publically announced that WSI had submitted
15 two (2) proposals, a proprietary option and Drupal based option as set forth above, GuamWEBZ
16 knew or should have known of WSI's proprietary proposal and the fact that WSI's bid contained
17 two (2) proposals. Therefore, the fourteen (14) day period to file a protest concerning these two
18 (2) issues would have expired on February 29, 2016, which is ten (10) days before
19 GuamWEBZ's protest was filed on March 10, 2016. The jurisdiction of the Public Auditor is
20 limited to matters that are properly submitted before her. 5 G.C.A. §5703. Here, the issues
21 raised by GuamWEBZ concerning WSI's proprietary proposal and the issues concerning WSI's
22 submission of two (2) proposals with its bid are not properly before the Public Auditor because
23 GuamWEBZ failed to file a timely protest concerning them as set forth above. Accordingly, the
24 Public Auditor finds that she lacks the jurisdiction to hear these issues in this appeal.

25 The Public Auditor finds that the issue of whether GCC correctly determined that WSI
26 was a responsible bidder and the issue of whether GCC's Website Advisory Group made errors

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³⁰ Pages 0556-7, Tab 3, Procurement Record filed on April 5, 2016.

³¹ Testimony of Rajesh K. Sharma on July 5, 2016

1 in their evaluation of the bids submitted in response to the IFB were timely. GuamWEBZ asserts
2 that it could not have known any of the facts giving rise to its protest until March 1, 2016, which
3 is the date that GCC responded to the Freedom of Information Act (Hereafter Referred to as
4 “FOIA”) Request GuamWEBZ served on GCC on February 25, 2016.³² The Public Auditor
5 finds that this assertion is not true when applied to the issue of whether GCC should have
6 disqualified WSI’s proprietary proposal, and the issue of whether WSI should have been
7 disqualified because it submitted two (2) proposals because these issues are untimely as set forth
8 above. However, this assertion is applicable to issues of whether WSI was a responsible bidder
9 and whether GCC’s Website Advisory Group made errors in their evaluation of the bids
10 submitted in response to the IFB. In the aforementioned FOIA request, GuamWEBZ requested
11 that GCC disclose all records pertaining to the review, discussion, evaluation, and scoring of the
12 bids submitted in response to the IFB; the factors GCC based its decision to award the bid to
13 WSI and to decline to award the bid to GuamWEBZ; the members of GCC’s Website Advisory
14 Group who evaluated and scored the bids submitted in response to the IFB; and a copy of WSI’s
15 bid.³³ GCC responded to the FOIA request by disclosing, in relevant part, the evaluation sheets
16 used by its Website Advisory Group, the Bid Abstract, the factors GCC based its decision to
17 award the bid contract to WSI and decline to award to GuamWEBZ, the names of the members
18 of its Website Advisory Group, and twenty-five (25) pages of WSI’s bid (GCC claimed that the
19 remaining portions of the bid were confidential/proprietary.³⁴ The Public Auditor finds that this
20 information included the facts that were not only material to GuamWEBZ’s claims that WSI was
21 not a responsible bidder, and that GCC’s Website Advisory Group made errors in their
22 evaluation of the bids, but were also unavailable to GuamWEBZ until it received GCC’s
23 responses to its FOIA request. GuamWEBZ responsibility claim concerns whether WSI’s bid
24 complied with certain IFB requirements regarding business licenses.³⁵ This claim was dependent
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26 ³² Page 2, Appellant’s Comments to Agency Report filed on April 15, 2016

27 ³³ GuamWEBZ FOIA Request dated February 25, 2016, GCC’s Exhibit J.

28 ³⁴ GCC’s Response to GuamWEBZ FOIA Request dated March 1, 2016, Exhibit 7, Protest filed on March 28, 2016.

³⁵ Page 0558, GuamWEBZ Protest dated March 10, 2016, Tab 3, Volume 2, Procurement Record Filed on April 5, 2016.

1 on GuamWEBZ reviewing the content of WSI's bid which did not occur until after GCC
2 disclosed it on March 1, 2016. Likewise, GuamWEBZ's claim concerning GCC's Website
3 Advisory Group's errors was dependent on GuamWEBZ reviewing the evaluation sheets, which
4 it did not have until March 1, 2016. Hence, March 1, 2016 is the proper date to begin the
5 fourteen (14) day protest period for these claims because this is the date on which GuamWEBZ
6 knew or should have known of the facts giving rise to these claims. Therefore, GuamWEBZ's
7 March 10, 2016 protest concerning these issues was filed within the fourteen (14) day protest
8 period required by 5 G.C.A. §5425(a) and 2 G.A.R., Div. 4, Chapter 9, §9101(c)(1).
9 Accordingly, these two claims are properly before the Public Auditor and, as set forth above, the
10 Public Auditor will review these claims *De Novo*.

11 Finally, the Public Auditor must address GuamWEBZ's argument, made for the first time
12 on appeal, that WSI did not timely submit its bid at or prior to 10:00 a.m. on February 15, 2016
13 which was the deadline for the submission of bids in response to the IFB. The Public Auditor
14 finds that this issue is not properly before her because it was not a claim made in GuamWEBZ's
15 initial protest. However, the manner in which GCC responded to this claim at the hearing in this
16 matter deserves comment. Specifically, to counter this allegation GCC submitted page 46 of
17 Exhibit E, which contained GCC's stamp on WSI's bid which clearly indicates that the bid was
18 timely because it was submitted at 8:56 a.m. on February 15, 2016. In addition to this, GCC also
19 submitted the page of GuamWEBZ's bid containing GCC's time stamp on page 47 of Exhibit
20 E.³⁶ Neither of these documents was included in the procurement record submitted April 5,
21 2016. Hence, because these documents were not submitted with the procurement record and
22 only appeared when GCC filed its exhibits for the hearing in this matter on June 3, 2016, the
23 Public Auditor must admonish GCC for its untimely submission of the complete Procurement
24 Record in this matter. The head of a purchasing agency shall submit to the Public Auditor a
25 complete copy of the procurement record relevant to the appeal within five (5) working days of
26 receiving notice of an appeal. 2 G.A.R., Div. 4, Chap. 12, §12104(c)(3). Although GCC

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³⁶ Page 0046 and 0047, Exhibit E, GCC's Exhibits Re Hearing on Appeal filed on June 3, 2016.

1 eventually complied with this requirement in this matter, GCC must be reminded that it is not
2 exempt from this requirement, it does not have the discretion to selectively choose which
3 documents to include in its procurement record, and that it must submit the entire procurement
4 record within the five (5) day period required by the aforementioned procurement regulation.

5 **B. WSI was a Responsible Bidder.**

6 As stated above, the IFB stated that the award shall be made to the lowest responsible and
7 responsive bidder, whose bid is determined to be the most advantageous to the Government,
8 taking into consideration the evaluation factors set forth in the solicitation and that no other
9 factors or criteria shall be used in the evaluation.³⁷ The term “responsible” as used in Guam’s
10 Procurement Laws and Regulations means a person who has the capability in all respects to
11 perform fully the contract requirements, and the integrity and reliability which will assure good
12 faith performance. 5 G.C.A. §5201(f) and 2 G.A.R., Div. 4, Chap. 1, §1106(27). Before
13 awarding a contract the Procurement Officer must be satisfied that the prospective contractor is
14 responsible. 2 G.A.R., Div. 4, Chap. 3, §3116(b)(4). One of the factors used to determine
15 whether the standard of responsibility has been met is whether the prospective contractor is
16 qualified legally to contract with the Government of Guam. 2 G.A.R., Div. 4, Chap. 3,
17 §3116(b)(2)(A)(iv). A requirement to legally contract for a service business is that they must
18 **annually** obtain a Guam Business License if they are engaged in or carrying on any service
19 business and no person, unless exempted by law, shall engage in, transact, conduct, continue, do,
20 or carry on a business in Guam until it obtains a business license (Bold Emphasis Added). 11
21 G.C.A. §76101 and §70130(b).

22 In its protest, GuamWEBZ makes three (3) claims that allege WSI was not a responsible
23 bidder and each claim concerns WSI’s Guam Business License. GuamWEBZ’s first claim
24 alleges that WSI failed to comply with Paragraph 4 of the IFB’s General Terms and Conditions
25 wherein GCC cautioned the bidders that it would not consider for award any offer submitted by a
26 bidder who has not complied with the Guam Licensing Law and that specific information on
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³⁷ Page 0317, Paragraph 23, Award, Cancellation & Rejection, Id.

1 licenses may be obtained from the Director of Revenue and Taxation.³⁸ GuamWEBZ alleges
2 that WSI did not comply with this IFB requirement because it violated Guam's Business
3 Licensing Law by not renewing its business license after June 30, 2013 while providing website
4 services to GCC.³⁹ However, the only evidence supporting this claim is GCC and
5 GuamWEBZ's stipulation and agreement that WSI did not renew its Guam Business License
6 from June 30, 2013 to March 11, 2016.⁴⁰ This fact, by itself, fails to establish a violation of
7 Paragraph 4 of the IFB's General Terms and Conditions. As stated above, the IFB only required
8 the submission of a Guam Business License at the time of award and not with submission of the
9 bid. Further, as stated above, on February 23, 2016, GCC requested that WSI provide a business
10 license and WSI did so on March 11, 2016, and GCC and WSI entered into their contract for the
11 website services that day. The business license that WSI provided to GCC, as required by the
12 IFB, indicated a \$150.00 penalty in addition to the fee of \$150.00. Hence, if WSI violated the
13 Guam Business License law as alleged by GuamWEBZ, it appears they paid the appropriate fine
14 for their violation prior to obtaining their renewed business license. To the extent that
15 GuamWEBZ claims WSI violated the Website Services solicitation and contract that existed
16 prior to the IFB solicitation that is the subject of this appeal, the Public Auditor finds that issue is
17 not properly before her and it will not be considered by the Public Auditor. Further, to the extent
18 that GuamWEBZ is inviting the Public Auditor to enforce Guam's Business Licensing laws for
19 WSI's alleged violation of that law in carrying out GCC's prior website services contract without
20 a business license, the Public Auditor must decline because the administration of Guam's
21 Business Licensing laws is vested in the License Division of the Department of Revenue and
22 Taxation, Government of Guam, and not the Public Auditor. 11 G.C.A. §70104. The Public
23 Auditor does encourage GCC and all agencies to annually check its vendors to ensure they are
24 duly licensed to do business on Guam.

27 ³⁸ Page 0314, Paragraph 4, Licensing, Id.

28 ³⁹ Page 0559, GuamWEBZ Protest dated March 10, 2016, Id.

⁴⁰ Statements of Rebecca J. Wrightson, Esq. and John R.B. Bell, Esq., on July 5, 2016.

1 GuamWEBZ's second claim alleges that WSI violated Paragraph 5 of the IFB's General
2 Terms and Conditions which states that all procurement of supplies, services, and construction
3 will be made from among businesses licensed to do business in Guam in accordance with Guam
4 Procurement Law.⁴¹ Specifically, GuamWEBZ argues that WSI could not claim the Local
5 Procurement Preference because it only applies to businesses licensed to do business on Guam.⁴²
6 All procurement of supplies and services shall be made from among businesses licensed to do
7 business on Guam and that maintain an office or other facility on Guam, whenever a business is
8 willing to be a contractor. 5 G.C.A. §5008. Once again, the only evidence submitted by
9 GuamWEBZ is that WSI did not have a Guam Business License from June 30, 2013 to March
10 11, 2016 as stipulated by the Parties. This fact, by itself, does not establish a violation of
11 Paragraph 5 of the IFB's General Terms and Conditions. As set forth above, the IFB did not
12 require that the bidders submit a business license with their bids and only required the successful
13 bidder to submit a business license at the time of award. Further, as set forth above, after
14 selecting WSI for contract award GCC requested that WSI provide it with a business license and
15 WSI complied with this request on March 11 2016. The Public Auditor finds that these facts
16 indicate that WSI was properly qualified for the local procurement preference because at the time
17 of award it produced a valid Guam business license.

18 The Public Auditor is not persuaded by GuamWEBZ's arguments that WSI had to have a
19 business license at the time it submitted its bid to qualify for the Local Procurement Preference.⁴³
20 For a service business to qualify for Guam's Local Procurement Preference it must be: (1)
21 Licensed to do business on Guam; (2) Maintain an office or other facility on Guam; (3) Actually
22 be in business; (3) Do a substantial portion of its business on Guam; (4) Hire at least ninety-five
23 percent (95%) U.S. Citizens, lawfully admitted permanent residents, or nationals of the United
24 States, or persons who are lawfully admitted to the United States to work. 5 G.C.A. §5008(d).
25 Here, WSI applied for the Local Procurement Preference and checked the box on the IFB's Local

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28 ⁴¹ Page 0314, Paragraph 5, General Terms and Conditions, IFB, Tab 3, Volume 2
Procurement Record filed on April 5, 2016.

⁴² Page 0559, GuamWEBZ Protest dated March 10, 2016, Id.

⁴³ Page 3, Appellant's Hearing Brief filed on June 6, 2016.

1 Procurement Preference form for service businesses and submitted the form with its bid.⁴⁴ As
2 stated above, the Parties both stipulated that WSI did not have a Guam Business License from
3 June 30, 2013 to March 11, 2016. This stipulation means that when WSI submitted its bid on
4 February 15, 2016 it did not have a business license. The Public Auditor finds that despite this,
5 WSI could still qualify for the local preference because it subsequently submitted a business
6 license on March 11, 2016. This finding is in line with case precedent and the policies underlying
7 Guam's Procurement Laws and Regulations. Guam's Local Procurement Preference Statute
8 does not require bidders or offerors to have a business license at the time they submit their bids
9 or proposals. *TRC Environmental Corporation v. Office of Public Auditor*, SP0160-07, Page 8,
10 Decision and Order on Petition for Writ of Mandate filed on November 24, 2008 (Superior Court
11 of Guam). Further, Guam has a statutorily mandated procurement policy of fostering effective
12 broad based competition within the free enterprise system. 5 G.C.A. §5001(b)(6). Hence, WSI
13 was not required to submit a business license until it was considered for award and properly
14 filled out its Local Procurement Preference Application and submitted it with its bid. Further,
15 adapting GuamWEBZ's theory that bidders or offerors must have Guam Business Licenses at the
16 time they submit their bids or proposals would not foster broad based competition because it
17 would unnecessarily limit the number of businesses that could apply for the local procurement
18 preference. This would also be inconsistent with the holding in *TRC Environmental Corporation*
19 *v. Office of Public Auditor*, SP0160-07, as previously cited. Hence, the Public Auditor finds that
20 GuamWEBZ's argument that WSI should have been licensed at the time it submitted its bid
21 violates prior case precedent and Guam's Procurement policy of fostering broad based
22 competition.

23 The Public Auditor encourages GCC and all agencies to diligently ensure that bidders
24 that claim the Local Procurement Preference are in fact businesses that meet all the requirements
25 for Local Procurement Preference, and not just take these claims on face value. Here, it appears,
26 based on the record of this proceeding, that GCC simply assumed that both GuamWEBZ and
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⁴⁴ Page 0387, WSI Bid, Local Procurement Preference Application, Procurement Record filed on April 5, 2016.

1 WSI were local businesses because they both have offices on Guam and they submitted a local
2 procurement preference application.⁴⁵ On August 11, 2016, the Public Auditor attempted to
3 verify whether WSI actually qualified for the local procurement preference by requesting that
4 GCC provide the Public Auditor with the residential addresses and citizenship of individuals
5 identified in WSI's bid. On August 16, 2016, GCC only provided the residential addresses of the
6 individuals. As stated above, to qualify for the local procurement preference a business must
7 hire at least ninety-five percent (95%) U.S. Citizens, lawfully admitted permanent residents, or
8 nationals of the United States, or persons who are lawfully admitted to the United States to work.
9 5 G.C.A. §5008(d). Here, the Public Auditor finds that GCC does not have the citizenship
10 information of WSI's employees that it would need to determine whether WSI qualifies for the
11 local procurement preference. If GCC re-solicits this bid as set forth below, it must, at the very
12 minimum, obtain the information from the bidders who apply for the local procurement
13 preference and evaluate it to determine whether they actually qualify for the preference.

14 GuamWEBZ's third claim alleges that WSI violated Paragraphs 17(d), 17(f), and 17(i) of
15 the IFB's General Terms and Conditions. Paragraph 17(d) states that in determining the lowest
16 responsible offer, GCC would be guided by the character, integrity, reputation, judgment,
17 experience, and efficiency of the bidder.⁴⁶ Paragraph 17(f) states that in determining the lowest
18 responsible offer, GCC shall be guided by the previous and existing compliance by the bidder
19 with laws and regulations relative to procurement.⁴⁷ Paragraph 17(i) states that in determining
20 the lowest responsible offer, GCC would be guided by the compliance with all of the conditions
21 to the solicitation.⁴⁸ Here, once again, GuamWEBZ can only point to its stipulation with GCC
22 that WSI did not have a Guam Business License between June 30, 2013 and March 11, 2016 to
23 substantiate any of these claims. Although WSI's business license indicates it paid a penalty of
24 \$150.00, no other evidence was presented in this matter showing that there was a prior finding
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27 ⁴⁵ Testimony of Jolene Evangelista, GCC's Procurement and Inventory
Administrator, on July 5, 2016.

28 ⁴⁶ Page 0316, Paragraph 17(d), Standard for Determination of Lowest
Responsible Bidder, Id.

⁴⁷ Page 0316, Paragraph 17(f), Id.

⁴⁸ Page 0316, Paragraph 17(i), Id.

1 by a purchasing agency, an administrative tribunal, or the Courts of Guam, that WSI had violated
2 Guam's procurement laws or regulations that GCC would be required to consider pursuant to
3 Paragraph 17(f). As stated above, the IFB only required the submission of a business license at
4 the time the successful bidder was considered for award. Here, GCC deemed WSI to be the
5 successful bidder and WSI provided GCC with a Guam Business License at the time GCC was
6 considering to award the IFB contract to WSI.

7 GuamWEBZ's claim raises questions, but no evidence was presented to substantiate them
8 other than the \$150 penalty on the business license WSI submitted on March 11, 2016. This
9 evidence shows that the penalty was resolved through payment of the \$150 fine and does not
10 indicate that WSI lacks the capability in all respects to perform fully the contract requirements,
11 and the integrity and reliability which will assure good faith performance. Based on the
12 foregoing, the Public Auditor finds that WSI was a responsible bidder. The Public Auditor will
13 now review whether GCC's Website Advisory Group made errors in their evaluation of the
14 proposals submitted in response to the IFB.

15
16 **C. GCC did not Evaluate the Bids in Accordance with the IFB's Requirements.**

17 GuamWEBZ alleges that GCC unfairly and improperly evaluated the bids submitted in
18 response to the IFB.⁴⁹ The invitation for bids shall set forth the evaluation criteria to be used and
19 no criteria may be used in bid evaluation that are not set forth in the Invitation for bids. 5 G.C.A.
20 §5211(e) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1). As stated above, the IFB stated that award
21 shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the
22 most advantageous to the Government, taking into consideration the evaluation factors set forth
23 in the solicitation and that no other factors or criteria shall be used in the evaluation.⁵⁰ So what
24 were the evaluation factors or criteria set forth in the IFB? This is not an easy question to
25 answer. The evaluation factors or criteria are set forth in Paragraph 17 of the IFB's General
26 Terms and Conditions which is titled: "Standard for Determination of Lowest Responsible
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28 ⁴⁹ Page 4, Appellant's Hearing Brief filed on June 6, 2016.

⁵⁰ Page 0317, Paragraph 23, Award, Cancellation & Rejection, IFB, Tab 3
Procurement Record filed on April 5, 2016.

1 Bidder.” This paragraph states that in determining the lowest responsible bidder, GCC shall be
2 guided by: (a) The price of items offered; (b) The ability, capacity, and skill of the bidder to
3 perform; (c) Whether the bidder can perform promptly or within the specified time; (d) The
4 character, integrity, reputation, judgment, experience, and efficiency of the bidder; (e) the quality
5 of performance of the bidder with regards to awards previously made; (f) The previous and
6 existing compliance by the bidder with laws and regulations relative to procurement; (g) The
7 sufficiency of the financial resources and ability of the bidder to perform; (h) The ability of the
8 bidder to provide future maintenance and services for the subject award; and (i) The bidder’s
9 compliance with all of the conditions of the solicitation.⁵¹ Yet, this is not the standard used by
10 GCC. GCC’s Website Advisory Group used a score sheet that did not include any of the
11 evaluation factors or criteria as set forth in Paragraph 17 of the IFB’s General Terms and
12 Conditions. Instead, these score sheets evaluated the bids based on: (1) The bidder’s
13 qualifications/references; (2) Approach; (3) Whether the proposed website would allow GCC
14 personnel to conduct specified actions with minimal effort; and (4) Web site support and
15 maintenance.⁵² These requirements were specified in the IFB’s Bid Submittal Requirements.⁵³
16 Further, they do not comport with nor match the standards set forth in Paragraph 17 of the IFB’s
17 General Terms and Conditions. The Public Auditor finds that GCC was required to evaluate the
18 bids in accordance with Paragraph 17 of the IFB’s General Terms and Conditions because that
19 paragraph specifically stated that in determining the lowest bidder, GCC “**shall** be guided” by all
20 the criteria set forth in said paragraph (Bold Emphasis Added). There is no equivalent language
21 in the bid submittal requirements of the IFB. Nevertheless, the Public Auditor will compare the
22 criteria set forth in Paragraph 17 of the IFB’s General Terms and Conditions and the criteria set
23 forth in GCC’s score sheets to determine if any of these separate criteria overlap.

24 The Public Auditor finds that Paragraphs 17(b), (c), (d), (e), and (h), of the IFB’s General
25 Terms and conditions overlap with the score sheet criteria. Paragraph 17(b), requiring GCC to

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28 ⁵¹ Page 0316, Paragraph 17, Standards for Determination of Lowest Responsible Bidder, General Terms and Conditions, Id.

⁵² Page 0506, Evaluation Sheet for IFB, Id.

⁵³ Pages 0332-0337, Website Services for GCC, IFB, Id.

1 determine whether the bidders had the ability, capacity, and skill of the bidder to perform, is
2 easily met by the score sheets review and ranking of the bidders' qualifications/references and
3 approach. Paragraph 17(c)'s requirement concerning whether the bidder can perform promptly or
4 within the specified time is met by the scoresheets' evaluation of whether the bids submitted in
5 response to the IFB developed a plan of implementation containing project timeline charts and
6 deadlines indicating the target date for the new website launch by July 1, 2016. Paragraph 17(d),
7 requiring GCC to evaluate the character, integrity, reputation, judgment, experience, and
8 efficiency of the bidders, and Paragraph 17(e), regarding the quality of performance of the bidder
9 with regards to awards previously made, are also met by the score sheets review and ranking of
10 the bidders' qualifications/references. Paragraph 17(h), requiring GCC to evaluate the ability of
11 the bidders to provide future maintenance and services for the subject award was met by the
12 score sheets review and ranking of the bidders' proposed web site support and maintenance.
13 Hence, this overlap results in GCC properly using the criteria or factors set forth in Paragraphs
14 17(b), (d), (e), and (h), of the IFB's General Terms and Conditions in its determination of the
15 lowest responsible bidder.

16 The Public Auditor finds that GCC complied with Paragraph 17(i) of the IFB's General
17 Terms and Conditions on February 15, 2016, the day the bids were opened. On that day, GCC
18 personnel conducting the bid opening evaluated whether the bidders had submitted all the
19 documents required by the IFB.⁵⁴ Although not taken into account on the score sheets, by
20 conducting this evaluation at bid opening, GCC sufficiently complied with Paragraph 17(i) of the
21 IFB's General Terms and Conditions, which required GCC to evaluate the bidder's compliance
22 with all of the conditions of the solicitation.

23 The Public Auditor finds that Paragraphs 17(f), and (g), do not overlap with the score
24 sheet criteria. Without this overlap, GCC failed to determine the following. First, there was no
25 evaluation of the previous and existing compliance by the bidders with laws and regulations
26 relative to procurement as required by Paragraph 17(f). Second, there was no evaluation of the
27 sufficiency of the financial resources and ability of the bidders to perform as required by

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⁵⁴ Page 0363, Bid Abstract, Id.

1 Paragraph 17(g). The Public Auditor finds this to be a fatal flaw in GCC's evaluation of the bids
2 because Paragraph 17 of the IFB's General Terms and Conditions mandated that GCC consider
3 these criteria or factors in determining the lowest bidder. Accordingly, the Public Auditor finds
4 that GCC's failure to evaluate the bids using all the criteria and factors set forth in Paragraph 17
5 of the IFB's General Terms and Conditions resulted in a violation of 5 G.C.A. §5211(e) and 2
6 G.A.R., Div. 4, Chap. 3, §3109(n)(1). Unfortunately, GCC's serious evaluation errors do not end
7 here.

8 The Public Auditor finds that GCC did not properly evaluate the price of the items
9 offered as required by Paragraph 17(a) of the IFB's General Terms and Conditions. Generally,
10 in terms of price, in competitive sealed bidding the contract is awarded to the lowest bidder. 5
11 G.C.A. §5211(g) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1). Further, a purchasing agency's
12 price analysis may consist of evaluating the price submissions of prospective bidders or offerors
13 in the current procurement. 2 G.A.R, Div. 4, Chap. 3, §3118(g). Here, the only type of price
14 analysis GCC could conduct would have been an analysis of the price submissions of the bidders
15 who submitted bids in response to the IFB. Here, the IFB stated that the contract terms would be
16 for three (3) years with an option to renew annually for two (2) consecutive years.⁵⁵ The IFB
17 also contained a separate blank line for the bidders to submit a total bid price.⁵⁶ And, the IFB
18 contained a Bid Price Form that itemized the bid prices for: (1) 1st Year initial website
19 development and maintenance and hosting costs; (2) 2nd Year maintenance and hosting costs; (3)
20 3rd Year maintenance and hosting costs; (4); 4th Year Option to Renew for maintenance and
21 hosting costs; and (5) 5th Year Option to Renew for Maintenance and Hosting Costs, and the
22 bidders were to add all these costs to come up with a Grand Total amount.⁵⁷ The Public Auditor
23 finds that by requiring the bidders to disclose their prices for each year of the contract, including
24 the option years, and requiring the bidders to add these prices up to a grand total, GCC was
25 required to compare the grand total amount of the bids to determine which bidder was the lowest
26 bidder. GCC could have easily done this because WSI's total bid price was \$87,900 for its

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28 ⁵⁵ Page 0332, Website Services for GCC, IFB, Id.

⁵⁶ Page 0337, Id.

⁵⁷ Page 0338, Bid Price Form, Id.

1 proprietary based website and \$100,900 for its Drupal based website.⁵⁸ GuamWEBZ total bid
2 price was \$99,610.⁵⁹ Further, this analysis would have resulted in WSI's proprietary bid being
3 deemed the lowest bid. However, despite finding that WSI's bid was the lowest bid, GCC
4 applied the wrong methodology because it only compared the costs of the first year of the
5 contract finding that the \$23,100 cost for WSI's proprietary bid was the lowest bid.⁶⁰
6 WSI's first year total costs were \$23,100 for its proprietary based website and \$26,500 for its
7 Drupal based website.⁶¹ GuamWEBZ's first year total cost was \$31,306.⁶² WSI's proprietary
8 bid was still the lowest bid. The Public Auditor finds that if agencies require bidders to submit 5
9 years of price, they should base their determination on lowest price on the total five year price.
10 This would be in line with 5 G.C.A. §5001(b)(4) and 2 G.A.R., Div. 4, Chap. 1,
11 §1102 (3), to ensure the fair and equitable treatment of all persons who deal with the
12 Government of Guam's procurement system. Additionally, in negotiating, performing, or
13 administering its contracts, GCC must act in good faith. 5 G.C.A. §5003 and 2 G.A.R., Div. 4,
14 Chap 1, §1105. GCC would be violating the aforementioned policy and the requirement to act in
15 good faith if it intentionally forced bidders to unnecessarily divulge their prices for the optional
16 years and not consider it in lowest price determination.

17 Albeit GCC's use of this incorrect methodology has the same result as using the correct
18 methodology of the total bid price, that is WSI's proprietary bid is the lowest bid, it would set a
19 very bad precedent to ratify this mistake. Specifically, Guam's Procurement Laws and
20 Regulations are meant to provide safeguards for the maintenance of a procurement system of
21 quality and integrity. 5 G.C.A. §5001(b)(7) and 2 G.A.R., Div. 4, Chap. 1, §1102(6). One of
22 these safeguards is requiring purchasing agencies to evaluate the price submissions of
23 prospective bidders or offerors in the current procurement pursuant to 2 G.A.R, Div. 4, Chap. 3,
24 §3118(g). Here, as stated above, the IFB limits GCC's evaluation of the bids to the total bid
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26 ⁵⁸ Page 0381, Bid Price Form, WSI's Bid, Id.

27 ⁵⁹ Pages 0484-5, Bid Price Form, GuamWEBZ's Bid, Id.

28 ⁶⁰ Page 0504, Memorandum dated February 16, 2016 from Joleen Evangelista to
Mary A.Y. Okada, Id., and testimony of Joleen Evangelista on July 5, 2016.

⁶¹ Page 0381, Bid Price Form, WSI's Bid, Id.

⁶² Page 0484, Bid Price Form, GuamWEBZ's Bid, Id.

1 prices submitted by the bidders. GCC and other purchasing agencies must not be allowed to
2 manipulate bid awards by evaluating the sub-parts of a bid's price if the IFB requires that bids be
3 evaluated based on their total price. The Public Auditor finds that she must enforce these
4 safeguards to ensure the integrity of the procurement system by finding that GCC violated
5 Paragraph 17(a) of the IFB's General Terms and Conditions when it did not evaluate the bidder's
6 total bid prices as required by the IFB.

7 Finally, the Public Auditor finds that GCC failed to correctly score the bids. The score
8 sheets required the bid evaluators to rate, on a scale of 1-5, 1 being the minimum rating and 5
9 being the best rating, each of the bid specifications.⁶³ However, only one (1) of the five (5)
10 members of GCC's Website Advisory Group actually rated the bid specifications as required and
11 the remaining four (4) members left the rating blocks blank on their score sheets.⁶⁴ Further, there
12 is no evidence that GCC used these scores in their analysis of the bids.

13 Based on the foregoing, the Public Auditor finds that GCC's evaluation of the bids
14 violated Paragraph 17 of the IFB's General Terms and Conditions because GCC's evaluation
15 was unfair and improper for the reasons set forth above. The Public Auditor will now review
16 what the appropriate remedy for these violations is.

17
18 **D. GCC's Motion to Strike Portions of GuamWEBZ's Remedies Brief is Denied.**

19 The Public Auditor finds that there is no merit to GCC's Motion to Strike Pages 1-3 of
20 GuamWEBZ's Remedies Brief. The Parties had the option of filing their respective remedies
21 briefs in this matter no later than 5:00 p.m. on July 11, 2016 and both parties submitted their
22 remedies briefs at that date and time. On July 12, 2016, GCC filed its motion to strike pages 1-3
23 of GuamWEBZ's Remedies Brief on the ground that it was an improper proposed findings of
24 fact and conclusions of law that exceeded the scope of a remedies brief.⁶⁵ In opposition to this
25 motion, GuamWEBZ argues that GCC is arguing form over substance because its factual

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28 ⁶³ Page 0506, Evaluation Sheet for IFB, Id.

⁶⁴ Pages 0506-0525, Id.

⁶⁵ Page 3, GCC's Motion to Strike Pages 1-3 of GuamWEBZ's Brief Regarding Remedies (Hereafter Referred to as GCC's Motion) filed on July 12, 2016.

1 assertions are intertwined with its proposed remedies.⁶⁶ After reviewing GuamWEBZ's
2 remedies brief, the Public Auditor finds that that GuamWEBZ's factual assertions, albeit put in
3 an extensive format, are merely meant to support its proposed remedies which it does provide on
4 pages 3-5 of GuamWEBZ's Remedies Brief. Accordingly, the Public Auditor finds that
5 GuamWEBZ did not exceed the scope of an appropriate remedies brief and GCC's Motion to
6 Strike Pages 1-3 of GuamWEBZ's brief is hereby DENIED.

7
8 **E. GCC must Terminate its Contract with WSI and Re-solicit the IFB.**

9 The Public Auditor finds that GCC must terminate its contract with WSI and re-solicit the
10 IFB. If after an award it is determined that a solicitation or award of a contract is in violation
11 law, then, if the person awarded the contract has not acted fraudulently or in bad faith, the
12 contract may be ratified and affirmed, provided that it is determined that doing so is in the best
13 interests of the Government of Guam, or the contract may be terminated and the person awarded
14 the contract shall be compensated for the actual expenses reasonably incurred under the contract,
15 plus a reasonable profit, prior to termination. 5 G.C.A §5452(a)(1) and 2 G.A.R., Div. 4, Chap.
16 9, §9106(1)(a). Here, as stated above, the Public Auditor found that GCC's failure to evaluate
17 the bids using all the criteria and factors, inclusive of the methodology in determining lowest
18 price, set forth in Paragraph 17 of the IFB's General Terms and Conditions resulted in a violation
19 of 5 G.C.A. §5211(e) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1). Further, the Public Auditor
20 finds that there is no evidence that WSI acted fraudulently or in bad faith. GCC argues that the
21 Public Auditor should ratify the contract because any violation of law committed by GCC was
22 minor, did not inflict prejudice on the bidders, and should be waived.⁶⁷ However, as stated
23 above, GCC failed to evaluate the bids in accordance with all the provisions of Paragraph 17 of
24 the IFB's General Terms and Conditions and GCC failed to score the bids as required by its
25 score sheets. Further, as stated above, the IFB did not articulate what the exact criteria or factors
26 GCC would use to evaluate the bids submitted in response to the IFB. The Public Auditor finds

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⁶⁶ Pages 1-2, GuamWEBZ's Opposition to GCC's Motion filed on July 14, 2016.

⁶⁷ Page 3, GCC's Remedies Brief filed on July 11, 2016.

1 that these omissions are not minor and caused great prejudice as the bidders were left to guess
2 exactly how their bids would be scored. GCC also argues that the best interests of the
3 Government of Guam are served by ratifying the contract because of the substantial time GCC
4 expended in preparing and conducting the solicitation.⁶⁸ However, this assertion is not
5 supported by the record. As set forth above, there were only forty-six (46) days between GCC
6 issuance of the IFB on January 25, 2016 and GCC's award of the contract to WSI on March 11,
7 2016. GCC's Website Advisory Group may not have made so many errors had it given the
8 evaluation committee more time to evaluate. The Public Auditor finds that ratifying the contract
9 is not in the best interests of the Government of Guam. As stated above, ratification would set a
10 very bad precedent because it may encourage other purchasing agencies in cases where an IFB
11 requires the bidders prices to be evaluated based on a total price, to manipulate the outcome by
12 evaluating only certain portions of a bidder's price instead of the total price. Therefore, the
13 Public Auditor finds that the contract between WSI must be terminated and GCC must
14 compensate WSI for the actual expenses it reasonably incurred under the contract, plus a
15 reasonable profit, prior to termination.

16 The Public Auditor also finds that, should GCC still have the funds for this project, GCC
17 should re-solicit the IFB after amending it. Specifically, GCC should clearly articulate in the
18 IFB the criteria or factors that GCC will use to evaluate the bids to comply with 5 G.C.A.
19 §5211(e) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1). Further, GCC should ensure that the
20 persons evaluating the bids submitted in response to the IFB only use the evaluation criteria as
21 specified in the IFB in their evaluations. Finally, should GCC re-solicit the IFB, it must also
22 amend the IFB so that it clearly articulates what prices will be evaluated to determine which bid
23 is the lowest bid. GCC must also ensure that its evaluation team uses only this price or set of
24 prices to determine which bid is the lowest.

26 IV. CONCLUSION

27 Based on the foregoing the Public Auditor hereby determines the following:
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⁶⁸ Page 4, Id.

1 1. The Public Auditor finds that GCC correctly determined that the issue of whether
2 GCC should have disqualified WSI's proprietary proposal, and the issue of whether WSI should
3 have been disqualified because it submitted two (2) proposals were untimely.

4 2. The Public Auditor finds that the issue of whether GCC correctly determined that WSI
5 was a responsible bidder and the issue of whether GCC's Website Advisory Group made errors
6 in their evaluation of the bids submitted in response to the IFB were timely.

7 3. The Public Auditor finds that WSI was a responsible bidder and GuamWEBZ claims
8 to the contrary lack merit.

9 4. The Public Auditor finds that GCC's evaluation of the bids violated Paragraph 17 of
10 the IFB's General Terms and Conditions because GCC's evaluation was unfair, improper, and
11 violated 5 G.C.A. §5211(e) and 2 G.A.R., Div. 4, Chap. 3, §3109(n)(1).

12 5. GCC is hereby admonished for not providing a complete procurement record in a
13 timely manner.

14 6. GuamWEBZ's Appeal is hereby DENIED in part and SUSTAINED in part.

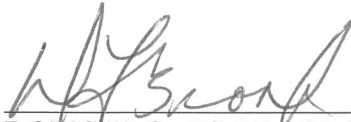
15 7. No later than thirty (30) days after this Decision is issued, and pursuant to 5 G.C.A
16 §5452(a)(1) and 2 G.A.R., Div. 4, Chap. 9, §9106(1)(a), GCC shall terminate its contract with
17 WSI awarded as a result of the IFB and GCC must compensate WSI for the actual expenses it
18 reasonably incurred under the contract, plus a reasonable profit, prior to termination.

19 8. The Public Auditor finds that GuamWEBZ is not entitled to its reasonable costs
20 incurred in connection with the IFB's solicitation and GuamWEBZ's protest pursuant to 5
21 G.C.A. §5425(h), because WSI was a responsible bidder and there was no reasonable likelihood
22 that GuamWEBZ may have been awarded the contract due to GuamWEBZ submitting the
23 second highest bid. Further, GuamWEBZ is not entitled to its attorney's fees pursuant to 5
24 G.C.A. §5425(h).

25 This is a Final Administrative Decision. The Parties are hereby informed of their right to
26 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
27 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
28 Decision. 5 G.C.A. §5481(a).

1 A copy of this Decision shall be provided to the parties and their respective attorneys, in
2 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
3 www.opaguam.org.
4

5 **DATED** this 22nd day of August, 2016.
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8
9 DORIS FLORES BROOKS, CPA, CGFM
10 PUBLIC AUDITOR
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