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9 **BEFORE THE PUBLIC AUDITOR**
10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF:) DOCKET NO. OPA-PA-19-001
12 JJ GLOBAL SERVICES,)
13 Appellant,)
14 and)
15 GUAM VISITORS BUREAU,)
16 Purchasing Agency.)

17 **JJ GLOBAL'S OPPOSITION TO
18 GVB's MOTION TO DISMISS APPEAL**

19 COMES NOW Appellant, JJ GLOBAL SERVICES ("Appellant" or "JJ Global"), by and
20 through their counsel of record, the Law Office of Vanessa L. Williams, P.C., by Vanessa L.
21 Williams, Esq., and hereby OPPOSES Purchasing Agency's Motion to Dismiss Appeal.

22 **BACKGROUND**

23 On July 23, 2018, the Guam Visitor's Bureau ("Purchasing Agency" or "GVB")
24 announced an invitation for bid regarding the Tumon Landscape Maintenance project. (See GVB
25 IFB No. 2018-001, Jul. 23, 2018). (Procurement Record, p.2, Jan. 11, 2019). The bid
26 encompassed furnishing of all necessary labor, materials, equipment, tools and services for the
27 Tumon Landscape Maintenance project. On August 20, 2018, JJ Global submitted their bid for
28 \$197,258.76. (See JJ Global Services IFB Proposal, Aug. 20, 2018). (Procurement Record, p.122,
Jan. 11, 2019). On August 20, 2018, the opening of the bid submissions was held at the GVB
Main Conference Room with JJ Global having the lowest bid among the other competing
companies: Landscape Management Services Inc. ("LMS") and Canton Construction.
(Procurement Record, p.135, Jan. 11, 2019).

1 On November 1, 2017, LMS received the Notice of Award for GVB IFB 2018-001.
2 (Procurement Record, p.137, Jan. 11, 2018). The notice was served to LMS days before GVB had
3 informed JJ Global of their disqualification due to non-responsibility.

4 On November 7, 2018, JJ Global received GVB's Notice for Non-responsibility dated
5 October 31, 2018. (*See* Notice of Non-Responsibility, Oct. 31, 2018). The acknowledgement
6 receipt shows the receipt date of November 7, 2018 at 4:11 p.m. by Ms. Rose Meno. On
7 November 19, 2018, JJ Global served GVB with a procurement protest alleging improper
8 determination for non-responsibility and a biased procurement process. (*See* Procurement Protest,
9 Nov. 19, 2018). On December 18, 2018, GVB responded to JJ Global's protest. In it, GVB
10 responded:

11 You have taken issue with [the non-responsibility] determination.
12 While your response is ipse dixit, the Guam Visitors Bureau will
13 reconsider its determination should JJ Global elect to provide
14 evidence of satisfactory performance, actual statements from
15 responsible individuals at these agencies would of course be helpful.
16 In the event JJ Global decides to submit such additional evidence,
17 please do so no later than 14 days after the date of this letter.

18 *See Notice of Appeal*, Attachment D, Jan. 2, 2019.

19 On January 2, 2019, JJ Global filed its appeal with the Office of the Public Accountability
20 requesting relief. (*See* Notice of Procurement Appeal, Jan. 2, 2019). JJ Global filed its second
21 procurement protest (Protest 2) on December 27, 2018. *See Attachment 1*. GVB has yet to issue
22 a decision on JJ Global's second protest.

23 On February 6, 2019, GVB filed a Motion to Dismiss an Appeal alleging JJ Global
24 purposely delivered a false document in order to deceive the OPA. JJ Global now files this
25 Opposition to GVB's Motion to Dismiss an Appeal.

26 ARGUMENT

27 I. GVB's Jurisdictional Motion is Untimely and Should be Denied.

28 GVB contents that JJ Global's protest to the agency was untimely and therefore the Office
of Public Accountability (OPA) is without jurisdiction over this appeal. GVB's objection or

1 motion addressed to the jurisdiction of the Public Auditor was not promptly filed. 2 G.A.R. §
2 12104(c)(9) provides that “[a]ny objection or motion addressed to the jurisdiction of the Public
3 Auditor shall be promptly filed.”

4 GVB did not file such motion until February 6, 2019, thirty-five (35) days after JJ Global
5 filed their Notice of Appeal. There is no reason GVB should have delayed in filing this motion
6 since JJ Global’s alleged untimeliness was also the basis for GVB’s denial of their protest on
7 December 18, 2018. (*See* Notice of Appeal, Attachment D, Jan. 2, 2019). Indeed, GVB indicated
8 in its agency report that the timeliness of the protest was at issue, and that it would be filing a
9 motion on the issue. *See*, Agency Report, p. 81, Jan. 17, 2019. At the very least, GVB should have
10 filed this motion concurrently with its Agency Report. To wait until the motion cut-off deadline
11 weeks after declaring its intent to file the motion addressing jurisdiction, is not “prompt” as
12 required by 2 G.A.R. § 12104(c)(9).

13
14 **II. JJ Global Timely Filed their Protest.**

15 A protest is timely when it is received by the Purchasing Agency within fourteen days of
16 when the protestor knew or should have known of the facts giving rise to the protest. 5 GCA §
17 5425(a). JJ Global submitted its protest to GVB on November 19, 2018 based on GVB’s
18 improper determination of non-responsibility. GVB’s purported Notice of Non-Responsibility is
19 dated October 31, 2018. GVB contends it served JJ Global with this notice on November 1, 2018.
20 JJ Global contends that it received the notice on November 7, 2018.

21 In either event, JJ Global’s protest should be considered timely. Multiple events in this
22 procurement could have triggered JJ Global’s protest. *See Guam Imagine Consultants, Inc. v.*
23 *GMHA*, 2004 Guam 15 ¶ 28 (rejecting that there can only be one event that triggers the right to
24 protest, and finding multiple events in any given procurement may legitimately trigger protests).
25 GVB’s Notice of Non-responsibility indicates it was made pursuant to 2 GAR § 3116(b)(2)(ii),
26 (4) and (5)). *See* Procurement Record, p. 175, Jan. 11, 2019. Title 2 G.A.R. § 3116(b)(2)(ii)
27 provides that a bidder’s satisfactory record of performance is a factor to be considered in
28 determining the responsibility of a contractor. Although JJ Global obviously challenges the

1 GVB's Notice dated October 31, 2018 contending that is has an unsatisfactory record of
2 performance pursuant to 2 GAR § 3116(b)(2)(ii) , it was not until GVB responded to JJ Global's
3 Sunshine Act request on December 14, 2018 that JJ Global would know that the Notice of Non-
4 Responsibility was not based on *any* information or communication. Indeed, this lack of
5 information is what also gave rise to JJ Global's second protest (Protest 2) which is undisputedly
6 timely and also implicates GVB's determination of non-responsibility. *See Attachment 1.* JJ
7 Global has already requested a decision on Protest 2 so that in the event it is denied, JJ Global
8 may appeal and consolidate that appeal with this appeal in the interest of judicial economy.

9 Further, GVB apparently admitted to the timeliness of JJ Global's protest by allowing JJ
10 Global 14 days after December 18, 2019 to respond to GVB's determination of non-
11 responsibility. Nowhere in GVB's December 18, 2018 response did it dispute the timeliness of
12 JJ Global's protest. Instead, GVB stated:

13 You have taken issue with [the non-responsibility] determination.
14 While your response is ipse dixit, the Guam Visitors Bureau will
15 reconsider its determination should JJ Global elect to provide
16 evidence of satisfactory performance, actual statements from
17 responsible individuals at these agencies would of course be helpful.
18 In the event JJ Global decides to submit such additional evidence,
19 please do so no later than 14 days after the date of this letter.

20 *See Notice of Appeal*, Attachment D, Jan. 2, 2019. Thus, GVB was expressly allowing GVB an
21 additional 14 days after December 18, 2018 response to challenge or protest its determination of
22 non-responsibility. GVB cannot claim they allowed JJ Global additional time to respond to its
23 determination of non-responsibility and also claim that JJ Global ran out of time to respond to its
24 determination of non-responsibility.

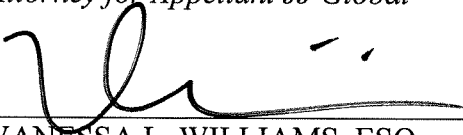
25 CONCLUSION

26 For the foregoing reasons, JJ Global's protest was timely, the Office of Public
27 Accountability (OPA) has jurisdiction over this appeal, and GVB's motion to dismiss should be
28 DENIED.

Respectfully submitted this 13th day of February, 2019.

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LAW OFFICE OF VANESSA L. WILLIAMS, P.C.
Attorney for Appellant JJ Global



VANESSA L. WILLIAMS, ESQ.

Attachment

1



JJGlobal

Facilities Maintenance • Logistics • Construction



December 27, 2018

Mr. Jon Nathan Denight
President and CEO
Guam Visitors Bureau
401 Pale San Vitores Road
Tumon, Guam 96913

RE: SECOND PROCUREMENT PROTEST
Ref: IFB No. 2018-001, Tumon Landscape Maintenance

Dear Mr. Denight:

On December 14, 2018, my office finally received a response to our Sunshine Act Request of November 19, 2018. Your response to the Sunshine Act request was exceedingly late, and our review of the documents that were ultimately provided both confirms the suspicions we had about collusion between the Guam Visitors Bureau and interested bidder LMS to drive the procurement to LMS, but also gives rise to further new grounds for Protest. The bases for the new protest are as follows:

GVB withheld information regarding Ranking and Award of the Contract to Deprive the Offerors of Their Rights Under the Guam Procurement Law.

JJ Global Services' initial protest on the determination that JJ Global Services was a non-responsible bidder was lodged with GVB on November 19, 2019— two days *before* the expiration of JJ Global Services' protest window. Despite this, it appears from the documents that we have reviewed that GVB, nearly one week before even informing JJ Global Services that it had been disqualified, had informed competing bidder LMS of that fact. Worse, it appears

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from the record that on October 31, 2018, GVB transmitted a contract for execution to LMS, and issued to LMS a Notice to Proceed on November 1, 2018. These interactions with LMS came a full week before JJ Global Services was even informed on November 7, 2018, that any selection or determinations had been made. JJ Global Services did not receive any written notification that LMS was selected until December 14, 2018, when GVB finally responded to JJ Global Services' sunshine request. To this date, GVB has not provided the Notice of Award to JJ Global Services. JJ Global Services protests its lack of equal treatment in the notification process, and the fact that the uneven notice procedures prejudiced the company.

It also appears that since GVB transmitted the contract to LMS before informing JJ Global Services that it had been deemed non-responsive, GVB believes that JJ Global Services' first protest was filed post award. GVB also appears to be taking the position that no stay of procurement is in effect. Therefore, it is clear that the entire scheme to award LMS its contract prior to informing JJ Global Services of the responsibility decision was made to avoid the stay of procurement and ram a contract through to LMS before the change in administration. The unfair notice procedures deprived JJ Global Services of its rights and effective remedies under the procurement law, and JJ Global Services protests this reality as a clear deviation from the intent of the procurement code.

LMS was a non-responsive bidder, and as such could not have been made the Awardee of IFB No. 2018-001

The IFB requires that a responsive bid include the submittal items contained in section II(5) of the IFB package. Included in that list is the certification of "compliance with U.S.DOL

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Wage Determination.” The Sunshine response we received on December 14, 2018, clearly shows that LMS failed to include the required wage determination listing. Rather than deem the IFB response from LMS non-responsive, GVB cast JJ Global Services’ lowest bid aside and still moved forward with contracting with LMS. A responsive bidder under 2 G.A.R. § 1106, 28 is one that conforms in all material respects to the Invitation to Bid. LMS did not conform to the IFB, and the failure to provide the wage determination information rendered its bid non-responsive. LMS could not have been awarded the contract as a non-responsive entity.

The Procurement Record provided to JJ Global Services is incomplete, and as such, GVB could not have moved forward with a contract award.


JJ Global Services also protests because GVB had a statutory obligation to maintain an accurate and complete Procurement Record under 5 G.C.A. § 5249, and it appears that the record is failing. First, JJ Global Services received a letter telling it that it was found to be non-responsible, but the law requires that a written determination of non-responsibility setting forth the basis of the finding. No such written determination appears in the procurement record received by JJ Global Services, and instead it simply appears that GVB issued a letter providing notice to JJ Global Services that it was non-responsible, instead of making a non-responsibility determination in the first instance. Second, the record appears to be completely devoid of a log of all communications with GVB about the procurement, including the communications our company made to GVB while we attempted to learn more about the status of our lowest bid. These records simply do not appear to exist. More, no GVB Board Minutes or resolutions appear to authorize the conduct that you, Mr. Denight, undertook during this procurement. No resolutions or minutes authorize entering into a contract with LMS, or authorize entering into a

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contract with the more expensive contractor. The record is deficient, and any award made pursuant to a defective procurement record is void.

JJ Global Services bid for the job was more than \$50,000 dollars less than the next bidder. GVB should sustain the grounds for JJ global Services' protests, and move forward with an award to JJ Global Services as the lowest responsive and responsible bidder to the IFB. GVB should also respect the procurement stay mandated by 5 G.C.A. §5425(g).

Sincerely,



Luis Bustamante
President/Owner

Cc: Law Offices of Civile & Tang, PLLC

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