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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.

**MOTION FOR ORDER TO
SUPPLEMENT PROCUREMENT
RECORD; MOTION FOR DISCOVERY**

17 **I. INTRODUCTION**

18 JJ Global Services, (“Appellant”), through counsel, requests the Hearing Officer for the
19 Office of Public Accountability (“OPA”) to issue an Order compelling the Guam Visitors Bureau
20 (“GVB”) to supplement the Procurement Record filed on January 11, 2019, because GVB has not
21 provided all documents to the OPA as part of its Procurement Record. Alternatively, Appellant
22 moves, pursuant to Title 2 Guam Administrative Rules & Regulations (“GAR”), Division 4,
23 §12109(c), for an Order Requiring GVB to produce relevant documents omitted from the
24 Procurement Record and Agency Report submitted in this proceeding. This Motion is supported
25 by the accompanying Memorandum of Points and Authorities, all matters of record and such
26 further evidence as may be adduced at a hearing hereon.

27 ORIGINAL

1 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **A. THE PROCUREMENT RECORD PROVIDED BY GVB IS INCOMPLETE
AND MUST BE SUPPLEMENTED.**

4 As the procuring agency in GVB IFB No. 2018-001 (the “IFP”), GVB has a statutory
5 obligation to maintain an accurate and complete Procurement Record. *See*, 5 G.C.A. §5249.
6 Within five days after the filing of a procurement appeal, the agency must file a complete copy
7 of the Procurement Record. 2 GAR Div. 4 §12104(c)(3). The Agency must also file an Agency
8 Report. 2 GAR Div. 4 §12105. In addition to the Procurement Record, GVB is required to submit
9 in its Agency Report “[a]ny other documents which are relevant to the protest...” 2 GAR Div. 4
10 §12105(e). While GVB submitted an Agency Report and Procurement Record, these records are
11 incomplete.

12 GVB has failed to provide material and relevant documents as part of its Procurement
13 Record and Agency Report submitted in this proceeding. 5 GCA §5249 governs the contents of
14 the Procurement Record. Nowhere in the Procurement Record has GVB included “a log of all
15 communications between government employees and any member of the public, potential bidder,
16 vendor or manufacturer which is in any way related to the procurement,” as required by 5 GCA
17 §5429(b). The failure to provide a log of communications related to the procurement is a
18 deficiency of the record that must be addressed by the Public Auditor. *See TLK v. Marketing Co.,*
19 *Ltd. V. Guam Visitors Bureau et. al.*, Superior Court of Guam Civil Case No. CV0914-16,
20 Decision and Order, Nov. 13, 2018.

21 Appellant believes GVB may have excluded other relevant documents from the
22 Procurement Record. These documents include communication and documents created after the
23 signing of the purported contract. In its Agency Report, GVB states that it has, “reliable
24 information” that JJ Global did not perform contracts with the following agencies to their
25 satisfaction: the Guam Power Authority (“GPA”), the Guam Waterworks Authority (“GWA”),
26 the Department of Parks and Recreation (“DPR”), and the Guam International Airport Authority
27 (“GIAA”). Without seeing this information, it is impossible to determine whether it is reliable or
28 even exists.

1 The OPA can and should compel GVB to supplement its Procurement Record by
2 producing: (1) a log of all communications between government employees and any member of
3 the public, potential bidder, vendor or manufacturer which is in any way related to the
4 procurement; and (2) any and all documents, communications and records relating to the IFB,
5 most specifically with GPA, GWA, DPR and GIAA. In order for Agencies to be held
6 accountable, there needs to be transparency and accurate record keeping. The Public Auditor has
7 the “power, among others, to (d) Rule on motions, and other procedural items on matters pending
8 before such officer.” 2 GAR §12109. A complete Procurement Record must be provided to the
9 Public Auditor without delay, and GVB should be compelled to provide a full and complete
10 Procurement Record to the OPA and the Appellant. If GVB does not have or did not maintain a
11 record in respect to either of the two categories of missing information, then the OPA should
12 require the Procurement Officer and the General Manager, to submit a statement under penalty
13 of perjury that the missing documents, record or file was not maintained, kept or, if appropriate,
14 destroyed. *See* GCA §5250. (“No procurement award shall be made unless the responsible
15 procurement officer certifies in writing under penalty of perjury that he has maintained the record
16 required by §5249 of this Chapter and that it is complete and available for public inspection.”)

17
18 **B. IN THE ALTERNATIVE, GVB SHOULD BE COMPELLED TO PROVIDE**
19 **FOR EXAMINATION, THE WITNESSES AND DOCUMENTS**
20 **APPELLANT SEEKS REGARDING THIS PROCUREMENT.**

21 The Hearing Officer in a procurement appeal has broad authority to order discovery and
22 require that witnesses and documents be produced in procurement appeals. 2 GAR §12109(c)
23 authorizes the Hearing Officer to “require parties to produce for examination those relevant
24 witnesses and documents under their control.” GVB is required to produce the entire Procurement
25 Record and the Appellant is entitled to a full record to prosecute and defend this appeal. Appellant
26 will be severely prejudiced if it is limited to an incomplete procurement record, and these
27 documents are not produced and the sources of GVB’s information are not disclosed and made
28 available for examination. Appellant, therefore, requests that the Hearing Officer order GVB to
produce for examination those relevant witness and documents.

1 **III. CONCLUSION**

2 GVB has a continuing obligation to protect the integrity of the procurement process by
3 maintaining a complete and accurate procurement record. Based on the foregoing, the OPA
4 should order GVB to supplement its procurement record as the Appellant requests, or in the
5 alternative order the production of those witnesses and documents omitted from the record. If
6 neither is available, then the OPA should order the General Manager to submit a statement under
7 penalty of perjury that the missing documents, record or file was not maintained, kept or, if
8 appropriate, destroyed.

9 Respectfully submitted this 6th day of February, 2019.

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11 **LAW OFFICE OF VANESSA L. WILLIAMS, P.C.**
12 *Attorney for Appellant*

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14 _____
15 VANESSA L. WILLIAMS, ESQ.