

1 VANESSA L. WILLIAMS, ESQ.  
2 LAW OFFICE OF VANESSA L. WILLIAMS, P.C.  
3 414 WEST SOLEDAD AVENUE  
4 GCIC BLDG., SUITE 500  
5 HAGÁTÑA, GUAM 96910  
6 TELEPHONE: 477-1389  
7 EMAIL: VLW@VLWILLIAMSLAW.COM

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 03/08/19

TIME: 4:33  AM  PM BY: C. Rique

FILE NO OPA-PA: 19-001

Attorney for Appellant JJ Global Services

BEFORE THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF:

JJ GLOBAL SERVICES,

Appellant,

and

GUAM VISITORS BUREAU,

Purchasing Agency.

DOCKET NO. OPA-PA-19-001

APPELLANT JJ GLOBAL SERVICES'  
HEARING BRIEF

I. INTRODUCTION

On August 20, 2018 JJ Global submitted the lowest bid for GVB IFB No. 2018-001.<sup>1</sup> After a month passed without an award being made, JJ Global requested GVB provide a status update of the procurement.<sup>2</sup> In response, GVB requested JJ Global update their project reference list.<sup>3</sup> Although JJ Global promptly did so<sup>4</sup>, another month passed before GVB ultimately crafted a determination of nonresponsibility which would then allow GVB to award the contract to the next lowest bidder.

JJ Global filed this procurement appeal because GVB's Determination of Nonresponsibility is bogus. There are no comments or communications anywhere in the procurement record evidencing GVB's claim that JJ Global had prior unsatisfactory contract performance.

<sup>1</sup> See JJ Global Ex. 2 at 122 (08/20/2018 JJ Global's Proposal).

<sup>2</sup> See JJ Global Ex. 9 at 183 (09/19/2018 JJ Global's Request for Status).

<sup>3</sup> See JJ Global Ex. 10 at 214 (October 11, 2018 GVB Response).

<sup>4</sup> *Id.* at 213.

1 The evidence at the Final Hearing will support that GVB failed to maintain a complete  
2 procurement record and that GVB's determination that JJ Global was non-responsible was  
3 arbitrary, capricious and in violation of law. As a result of these violations of procurement law,  
4 the Hearing Officer should find that the procurement is void, the resulting contract must be  
5 terminated, and that JJ Global is entitled to an award of attorney's fees and costs for this appeal.  
6

## 7 **II. DISCUSSION**

8 The main issues in this Appeal are: (1) Whether GVB failed to maintain a complete  
9 procurement record as required by Guam Procurement Law, 5 GCA § 5249(b); and (2) Whether  
10 GVB's determination of non-responsibility was clearly erroneous, arbitrary, capricious, or in  
11 violation of Guam procurement law.

### 12 **A. GVB FAILED TO MAINTAIN THE COMPLETE PROCUREMENT RECORD** 13 **REQUIRED UNDER 5 GCA § 5249.**

14 Title 5 GCA § 5250 states simply that "[n]o procurement award shall be made unless ..."  
15 the record is certified as complete. 5 G.C.A. § 5250. Guam law specifies that "[e]ach procurement  
16 officer shall maintain a complete record of each procurement." 5 G.C.A. § 5249. The statute  
17 further identifies the specific records that must be kept. *Id.* at § 5249(a)-(3). GVB's solicitation,  
18 award and contract was based on a materially incomplete IFB Procurement record. GVB failed  
19 to maintain a materially complete IFB procurement record as required by law. Guam procurement  
20 law allows both pre-award and post-award procurements to be cancelled or terminated if the  
21 solicitation, proposed award, or contract is in violation of law. *See* 5 G.C.A. § 5451 (pre-award  
22 remedies); *id.* § 5452 (post-award remedies). *See also, Teleguam Holdings, LLC v. Guam*, 2018  
23 Guam 5 ¶ 41. Therefore, the IFB, award and contract must be terminated. *See In the Appeal of*  
24 *TeleGuam Holdings LLC, OPA-PA-18-004*, Decision and Order (Jan. 29, 2019).

25 The portions of the record identified by JJ Global as missing were (1) a log of  
26 communications, and (2) other relevant documents. Nowhere in the Procurement Record has  
27 GVB included "a log of all communications between government employees and any member of  
28 the public, potential bidder, vendor or manufacturer which is in any way related to the

1 procurement,” as required by 5 GCA §5429(b). Indeed, GVB admitted in its Opposition to JJ  
2 Global’s Motion to Supplement the Procurement Record that “[t]his is because such a log does  
3 not exist and GVB will not create one post hoc.” See Opposition to Motion to Supplement  
4 Procurement Record (Feb. 13, 2019)(emphasis added).

5 Further, the Bid Analysis and Administrative Review that are included in the Procurement  
6 Record also indicate that there are other missing documents material to GVB’s allegations that JJ  
7 Global had prior unsatisfactory contract performance.<sup>5</sup> The Memorandum of the Bid Analysis  
8 and Administrative Review states there were some discrepancies in JJ Global’s project reference  
9 list “as well as some negative feedback from some of the sources contacted.”<sup>6</sup> If there was a  
10 communication from any of the sources contacted, this would have to have been logged, this  
11 communication would have to have been included in the procurement record. However, there is  
12 no evidence anywhere in the procurement record of who exactly the communication was from,  
13 what exactly was communicated, and how the communication took place. At the very least, a log  
14 of this is required by 5 G.C.A. § 5249(d). A checklist attached to the Bid Analysis and  
15 Administrative Review indicates that there are notes from these communications because it states  
16 “\*see attached notes from reference/background check.”<sup>7</sup> However, there are no notes attached  
17 or provided anywhere in the procurement record.

18 If the contents of the missing communications contained information relating to JJ  
19 Global’s prior contractor performance, the missing evidence would directly address GVB’s  
20 determination of nonresponsibility. However, the contents of the drafts and communications will  
21 never be known, as the procurement officers failed to abide by their statutory mandate to keep  
22 these records. These missing communications from the procurement record are material to the  
23 procurement. See *Teleguam Holdings LLC* ¶ 39 (holding that appealing party must establish that  
24 items missing from the procurement record were material to the procurement). Without these  
25 missing records we cannot know on what information, if any, GVB based their determination of  
26 non-responsibility. See 2 G.A.R. § 3116. There is no substantive evidence related to GVB’s

27 \_\_\_\_\_  
28 <sup>5</sup> See JJ Global Ex. 8 (August 30, 2018 GVB Bid Analysis and Administrative Review).

<sup>6</sup> *Id.* at 132.

<sup>7</sup> *Id.* at 136.

1 determination that JJ Global had unsatisfactory performance, and the incomplete record thwarts  
2 review of the matter. Since the procurement record is materially incomplete, the contract can and  
3 should be terminated. *See id.* at ¶ 41.

4  
5 **B. GVB'S NON-RESPONSIBILITY DETERMINATION IS CLEARLY**  
6 **ERRONEOUS, ARBITRARY, CAPRICIOUS AND CONTRARY TO**  
7 **PROCUREMENT LAW.**

8 A determination of nonresponsibility pursuant to 5 G.C.A. 5232(c) is improper if it is  
9 clearly erroneous, arbitrary, capricious, or contrary to law. 2 G.A.R. § 3125. An action is  
10 arbitrary when it is unsupported by the procurement record. *TLK Marketing Co. Ltd. v. Guam*  
11 *Visitors Bureau*, Superior Court of Guam Civil Case No. CV0914-16, pp. 8-9, Decision and Order  
12 (Nov. 13, 2018) (finding OPA determination made without supporting evidence is arbitrary).  
13 GVB's Determination of Nonresponsibility is arbitrary and capricious because it is unsupported  
14 by any information in the procurement record. Although the Determination of Nonresponsibility  
15 states that comments were received by GVB from GPA, GWA, GIAA, and DPR, the Procurement  
16 Record is devoid of any communications from these agencies. *If* such information was actually  
17 received, and merely omitted from the procurement record, this still makes the determination  
18 contrary to the procurement law requiring the purchasing agency to maintain a complete  
19 procurement record. *See* 5 G.C.A. § 5249(b). *See* discussion *supra*.

20 GVB's Determination of Nonresponsibility is also contrary to law because it did not  
21 *promptly* provide this notice to JJ Global who would have otherwise been awarded the contract.

22 Section 3116(b)(5) provides:

23 If a bidder or offeror who otherwise who have been awarded a  
24 contract is found nonresponsible, a written determination of  
25 nonresponsibility setting forth the basis of the finding shall be  
26 prepared by the ...head of a Purchasing Agency. A copy of the  
27 determination shall be sent promptly to the nonresponsible bidder or  
28 offeror. The final determination shall be made part of the  
procurement file.

2 G.A.R. § 3116(b)(5).

1 Over two months passed after the bid opening before GVB provided JJ Global notice of  
2 its Determination of Non-Responsibility. GVB knew on August 20, 2018 that JJ Global would  
3 have been awarded the contract as the lowest bidder, if found responsible.<sup>8</sup> GVB conducted a Bid  
4 Analysis and Administrative review on August 30, 2018. The only relevant commentary in the  
5 Bid Analysis and Administrative Review is that there was a lack of contact information to verify  
6 information provided in JJ Global's Project Reference List and "some negative feedback from  
7 some of the sources contacted."<sup>9</sup> Not having heard from GVB, JJ Global followed up with GVB  
8 on September 19, 2018 requesting a status of the bid and contract award.<sup>10</sup> On September 28,  
9 2018, GVB responded by requesting JJ Global's clarification regarding JJ Global's Project  
10 Reference List.<sup>11</sup> JJ Global promptly did this<sup>12</sup>, but GVB still did not draft a written determination  
11 of nonresponsibility setting forth the purported basis of unsatisfactory contract performance until  
12 October 31, 2018.<sup>13</sup> This is the same date that GVB issued its Notice of Award to Landscape  
13 Management Services, the next lowest bidder.<sup>14</sup> This is not prompt as required by 2 G.A.R. §  
14 3116(b)(5).

15 It is undisputed that GVB failed to maintain a complete procurement record. Because  
16 GVB's determination that JJ Global was nonresponsible is unsupported by the procurement  
17 record, it was arbitrary, capricious and in violation of law. GVB also failed to provide the  
18 determination promptly to JJ Global despite having prior communications with JJ Global  
19 regarding their references and having completed the Bid Analysis and Administrative review over  
20 two months prior. As a result of these violations of procurement law, the Hearing Officer should  
21 find that the procurement is void, the resulting contract must be terminated, and that JJ Global is  
22 entitled to an award of attorney's fees and costs for this appeal.

23  
24  
25 <sup>8</sup> See JJ Global Ex. 8 at 135 (08/30/2018 GVB's Bid Analysis and Administrative Review).

26 <sup>9</sup> *Id.* at 132.

27 <sup>10</sup> See JJ Global Ex. 9 at 183 (09/19/2018 JJ Global's Request for Status).

28 <sup>11</sup> See JJ Global Ex. 10 at 214 (10/11/2018 and 10/15/2018 GVB – JJ Global Emails).

<sup>12</sup> *Id.* at 213.

<sup>13</sup> See JJ Global Ex. 13 at 175 (GVB's Notice of Nonresponsibility for JJ Global Services).

<sup>14</sup> See JJ Global Ex. 12 (October 31, 2018 Notice of Award).

1 **III. CONCLUSION**

2 JJ Global requests a ruling from the OPA as follows:

- 3 1. GVB failed to maintain a complete procurement record;
- 4 2. The missing records are material to the procurement;
- 5 3. GVB's determination of non-responsibility was arbitrary, capricious, and in  
6 violation of the law;
- 7 4. The resulting contract must be terminated;
- 8 5. For an award of reasonable attorney's fees and costs of this appeal; and
- 9 6. For such other relief that the OPA may determine is just and proper.

10 Respectfully submitted this 8<sup>th</sup> day of March, 2019.

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

14  
15 

16 \_\_\_\_\_  
17 VANESSA L. WILLIAMS, ESQ.