

1 **LAW OFFICE OF ANTHONY C. PEREZ**

2 Suite 802, DNA Building  
3 238 Archbishop Flores Street  
4 Hagåtña, Guam 96910  
Telephone No. (671) 475-5055/7  
Facsimile No. (671) 477-5445

5 *Attorney for Guam Housing and*  
6 *Urban Renewal Authority*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: Jun 21, 2019  
TIME: 11:15  AM  PM BY: FDJ  
FILE NO OPA-PA: 19-006

7 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
8 **HAGATNA, GUAM**

9 In the Appeal of  
10 FLAME TREE FREEDOM CENTER, INC.,  
11  
12 Appellant.

APPEAL NO: OPA-PA-19-006

13 **MOTION TO DISMISS APPEAL FOR**  
14 **LACK OF JURISDICTION**

15 **INTRODUCTION**

16 The Guam Housing and Urban Renewal Authority (“GHURA”) through counsel,  
17 Anthony C. Perez, Esq., moves to dismiss this appeal for lack of jurisdiction. Appellant failed to  
18 timely protest the method of source selection utilized by GHURA, and consequently, the Office  
19 of Public Accountability (“OPA”) has no jurisdiction over this Appeal.

20 **BACKGROUND**

21 On February 28, 2019, GHURA issued Invitation for Bid IFB#GHURA-COCC-019-001  
22 (“IFB”) seeking grounds maintenance services for GHURA properties. See Agency Report, Tab  
23 C. That same date, Flame Tree Freedom Center, Inc. (“FTFC”) picked up a copy of the IFB at  
24 GHURA. See Agency Report, Tab E, Acknowledgement of Receipt of IFB. The IFB provides  
25 that a contract will be awarded on the basis of the lowest and most responsible bid for the work  
26 described in the bid documents. See Agency Report, Tab C.

27 On March 18, 2019, FTFC sent an email to GHURA, attaching a March 11, 2019 letter  
28 from FTFC to GHURA, an Incorporation Certification, a Certificate of Tax Exemption, and a

**ORIGINAL**

1 business license. *See* Appeal, Attachment 1. In this March 11, 2019 letter, FTFC expresses its  
2 “formal interest” in providing services related to the IFB. *Id.* On March 27, 2019, FTFC  
3 emailed GHURA asking for a response to its March 18, 2019 email along with attached March  
4 11, 2019 letter of “formal interest”. *See* Appeal, Attachment 2. On March 28, 2019, GHURA  
5 responded to FTFC via email advising that this project is bid through the competitive process.  
6  
7 *See* Appeal, Attachment 3.

8 On March 28, 2019, FTFC submitted a bid in response to the IFB. *See* Agency Report,  
9 Tab B. That same date, GHURA drafted an Abstract of Bids exhibiting that FTFC was the  
10 lowest bidder for Base Bid No. 3, and second lowest bidder for Base Bid Nos. 1 and 2. *See*  
11 Agency Report, Tab D. On May 6, 2019, bidders were provided a Notice of Award exhibiting  
12 that Base Bid No. 3 was awarded to FTFC, Base Bid No. 1 was awarded to GET, LLC, and Base  
13 Bid No. 2 was not awarded. *See* Appeal, Attachment 5.

14  
15 On May 7, 2019, FTFC issued its Letter of Protest *concerning the award of Base Bid No.*  
16 *1.* *See* Agency Report, Tab A. The Letter of Protest relates to the award of Base Bid No. 1, and  
17 not necessarily to the method of source selection. This is further apparent because FTFC was  
18 awarded Base Bid No. 3 under the IFB, and FTFC did not protest that award. On May 17, 2019,  
19 GHURA denied the protest of FTFC. *See* Agency Report, Tab F.

20  
21 On May 30, 2019, FTFC lodged its Procurement Appeal with the Office of Public  
22 Accountability. FTFC’s appeal is solely premised on the method of source selection utilized by  
23 GHURA, as the Appeal provides the following statements:

24 “FTFC contends that the procurement process was flawed from the beginning,  
25 when FTFC was placed in a competitive situation contrary to 5 GCA § 5001(d), 5  
26 GCA § 5217, and 5 GCA § 5210. FTFC is of the opinion that it should have  
27 never been placed in a competitive situation based on the Government of Guam  
28 policy established for non-profit organizations. The following rationale is  
provided to justify FTFC’s grounds for an appeal.” *See* Appeal, Statement on  
Grounds of Appeal, i., p. 2.

1 FTFC then goes on to explain each of the statutes referenced above to rationalize how it  
2 should not have had to participate in a competitive process through the invitation for bid. FTFC  
3 was aware that GHURA was utilizing an invitation for bid for grounds maintenance services  
4 since February 28, 2019, yet failed to submit a timely protest as to the method of source  
5 selection.  
6

### 7 ARGUMENT

8 The Public Auditor shall have the power to review and determine *de novo* any matter  
9 properly submitted to her or him. 5 GCA § 5703 and 2 GAR, Div. 4, § 12103(a). This power  
10 includes the power to rule on motions, and other procedural items on matters pending before  
11 such office. 2 GAR, Div. 4, § 12109(d). Any motion concerning the jurisdiction of the Public  
12 Auditor shall be promptly filed, and the Public Auditor shall have the right to raise the issue of  
13 jurisdiction *sua sponte* at any time. See 2 GAR, Div. 4, § 12104(c)(9). For an appeal to be  
14 properly before the Public Auditor, the Appellant must have filed its protest no later than  
15 fourteen days after it became aware that GHURA was procuring grounds maintenance services  
16 through the competitive process, i.e. an invitation for bid. See *In the Appeal of JJ Global*  
17 *Services*, OPA-PA-19-001, Decision and Order (March 21, 2019), at 3.  
18

19 FTFC has failed to comply with applicable law which provides definitive timelines for  
20 aggrieved bidders to file a Protest. In its Appeal, FTFC has complained about the method of  
21 source selection employed by GHURA when seeking grounds maintenances services. FTFC's  
22 position is that GHURA should not have issued the IFB, and FTFC should not have been placed  
23 in a competitive situation concerning the procurement of grounds maintenance services.  
24 However, FTFC has been aware since at least February 28, 2019 that GHURA's method of  
25 source selection would be through issuance of an invitation for bid.  
26  
27  
28

1 For procurement protests, any actual or prospective bidder, offeror or contractor who may  
2 be aggrieved in connection with **source selection**, solicitation, or award of a contract, may  
3 protest to the Chief Procurement Officer, the Director of Public Works, or the head of a  
4 purchasing agency. 5 GCA §5425(a). The protest shall be submitted in writing **within fourteen**  
5 **days** after such aggrieved person **knows or should know** of the facts giving rise thereto and  
6 protests filed after fourteen-day period shall not be considered. *Id.*, and 2 GAR, Div. 4, §  
7 9101(c)(1). If the protest is not resolved by mutual agreement, the Chief Procurement Officer,  
8 the Director of Public Works, the head of a purchasing agency, or the designee of one of these  
9 officers shall promptly issue a decision in writing and such decision may be appealed by the  
10 protestant to the Public Auditor within fifteen days after receipt by the protestant of the notice of  
11 decision. 5 GCA § 5425(c) and (e), and 2 GAR Div. 4, § 9101(g). Applying these procurement  
12 laws and regulations, for this matter to be properly before the Public Auditor, the Appellant must  
13 have filed its protest no later than fourteen days after it became aware that GHURA was  
14 procuring grounds maintenance services through the competitive process i.e. an invitation for  
15 bid.

16 Here, the record is clear about when FTFC knew that GHURA would be using an  
17 invitation for bid in procuring grounds maintenance services. Most obviously, FTFC picked up a  
18 copy of the IFB on February 28, 2019. On March 28, 2019, GHURA emailed FTFC again  
19 advising that these services will be procured through the competitive process. That same date,  
20 FTFC filed its bid in response to the IFB.

21 Under the Guam procurement law and regulations, FTFC should have protested  
22 GHURA's method of source selection when it became aware of fact giving rise thereto. Here,  
23 FTFC was aware that GHURA was utilizing an IFB on February 28, 2019, and thus should have  
24 filed a protest within fourteen (14) days from that date. FTFC not only received the IFB, but  
25

1 actually submitted a bid in response to the IFB on March 28, 2019. FTFC failed to timely protest  
2 the method of source selection utilized by GHURA. FTFC's Letter of Protest was issued May 7,  
3 2019, over two months after they were aware that GHURA was soliciting ground maintenance  
4 services via an invitation for bid, a day after the bids were awarded, and a date well-beyond the  
5 statutory time-lines. In addition, the Letter of Protest relates to the *award of Base Bid No. 1*, and  
6 not necessarily to the method of source selection. FTFC asked for reconsideration of the award  
7 to GET, LLC. but did not specifically even protest the method of source selection. Instead, they  
8 stated they are willing to submit an updated price proposal. *See Appeal, Attachment 4.*

9  
10 The instant Appeal complains about the method of source selection GHURA utilized in  
11 procuring grounds maintenance services. The OPA does not have jurisdiction over this Appeal  
12 because FTFC did not file its Protest as to the method of source selection within the statutory  
13 time-frames.  
14

#### 15 CONCLUSION

16 For the foregoing reasons, GHURA respectfully requests that the OPA dismiss this  
17 Appeal for lack of jurisdiction.

18 Respectfully submitted this 21<sup>st</sup> day of June, 2019.  
19  
20  
21

22 LAW OFFICE OF ANTHONY C. PEREZ

23  
24 By:

  
25 ANTHONY C. PEREZ, ESQ.

26 *Attorney for Guam Housing and Urban  
27 Renewal Authority*  
28