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| | Ms. Roxana Weil, Esq. Executive VP & Counsel Interested Party InfoSend, Inc. 4240 E La Palma Avenue Anaheim, California 92807 Phone: (714) 993-2690 Fax (714) 993-1306 Email: Roxana.w@infosend.com | Phone: | (671) 475-0390 x. 204 |
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Re: OPA-PA-21-012 Decision

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

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8 In the Appeal of) **Appeal No: OPA-PA-21-012**
9)
10 Graphic Center, Inc.,) **DECISION**
11)
12 Appellant.)
13 _____)

I. INTRODUCTION

14 This is the Decision of the Public Auditor, pursuant to 2 G.A.R. § 12110, for Appeal No.
15 OPA-PA-21-012. Appellant GRAPHIC CENTER, INC (“Graphic Center”) filed its appeal on
16 October 22, 2021, for review of the GUAM POWER AUTHORITY’s (the “GPA”) award of a
17 contract under GPA-RFP-21-002 for the procurement of Professional Printing, Mailing, and
18 Processing Services Relating to Utility Customer Billing to INFOSEND, INC. (“InfoSend”). The
19 Appeal was heard on February 4, 2022, before Public Auditor Benjamin J. F. Cruz. James M. Maher,
20 Esq. appeared on behalf of Appellant Graphic Center, D. Graham Botha, Esq. appeared for
21 Respondent GPA, and Roxana Weil, Esq. appeared on behalf of Interested Party InfoSend.
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II. JURISDICTION: STANDARD REVIEW

23
24 The decision of the Public Auditor under appeal is authorized by 5 G.C.A. § 5703. The
25 determination of an issue, the findings of fact, and the decision of the Public Auditor are stated in 5
26 G.C.A. § 5704.
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III. FINDINGS OF FACT

The Public Auditor shall have the power to review and determine *de novo* any matter properly submitted. 5 G.C.A. § 5703 (a), and in reaching this Decision, has considered and incorporates herein the procurement record and all documents submitted by the parties, and has considered the testimony and arguments made during the hearing held on February 4, 2022. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On May 13, 2021, GPA issued Request for Proposal No. GPA-RFP-21-002 for the Re-Solicitation of Professional Printing, Mailing and Processing Services Relating to Utility Customer Billing.

2. Section 1.10 of the RFP, Post-Proposal Meeting stated:

After receipt of proposals, GPA may request additional information over the telephone or in individual meetings with selected OFFERORS to clarify and discuss their proposals.... GPA reserves the right to request clarifications from only those OFFERORS whom it deems in the best interests. All clarifications shall be documented by OFFERORS as addenda to the submittals.

3. Section 2.3 of the RFP, Standards for Determination of Most Qualified Offeror indicated:

In determining the most qualified OFFEROR, the Agency/Department shall be guided by the following:

- A. The ability, capacity and skill of the OFFEROR to perform the work specified.
- B. Whether the OFFEROR can perform promptly or within the specified time.
- C. The quality of performance of the OFFEROR with regards to awards previously made to him.
- D. The previous and existing compliance by the OFFEROR with laws and regulations relative to procurement.

4. Section 2.12 of the RFP, Required Forms, indicated:

All Offerors are required to submit current affidavits, as required below. Failure to do so will mean disqualification and rejection of the proposal.

- A. Major shareholders Disclosure Affidavit
- B. Non-Collusion Affidavit
- C. No Gratuities or Kickbacks Affidavit

- D. Ethical Standards Affidavit
- E. Declaration Re-Compliance with U.S. DOL Wage Determination
- F. F. Restriction Against Convicted Sex Offenders
- G. Exhibit A

5. At the end of the “Scope of Work” in the RFP, it indicated:

Additional Requests:

- Each Proponent must complete Exhibit A.

“Exhibit A – 2020 Billing Cycle” was included as part of the RFP packet.

6. Section 5.0 of the RFP, Evaluation Criteria indicated:

A committee will convene after the deadline for receipt of submittals to evaluate the respondents’ qualifications based on, but not limited to the following criteria:

| Criteria | Points | Weight |
|--|--------|--------|
| Experience of the firm in this type of service and utility scale | 10 | 25% |
| Quality of approach and methodology that demonstrates an understanding of the requirements | 10 | 25% |
| Quality, extent and relevance of Proponent’s staff/ experience in conducting service(s) and utility scale. | 10 | 25% |
| Overall presentation (Quality of submittal, professionalism, etc.) | 10 | 15% |
| References | 10 | 10% |

A team composing of five (5) members will be chosen by the Authority to evaluate the proposals based on the above criteria. Each team member will rank each OFFEROR based on points received from the total weighted criteria. A final ranking will be determined by consolidating the team members’ ranking.

- 7. On May 25, 2021, Graphic Center received the RFP packet, and submitted questions regarding the RFP, including a clarification on “Exhibit A”.
- 8. On May 28, 2021, GPA Issued Amendment No. 1, which provided the additional “Exhibit A” attachments that were missing from the initial RFP packet. Graphic Center was the only potential bidder emailed Amendment No. 1.
- 9. On June 3, 2021, bids were received from InfoSend, Graphic Center, and Moonlight BPO.

- 1 10. On June 7, 2021, GPA noted that upon review of the Major Shareholder Affidavit for
2 Moonlight BPO, findings that the “percentage of shares held” was not indicated on the form
3 pursuant to Public Law 36-13, and recommend that the proposal be rejected due to not
4 meeting the required information.
5
- 6 11. On June 18, 2021, the RFP Evaluation committee met to review the proposals submitted.
- 7 12. On June 22, 2021, the Evaluation Committee drafted a memo to GPA’s Supply Management
8 Administrator requesting clarification from InfoSend.
- 9 13. On July 1, 2021, GPA sent the request for clarification to InfoSend.
- 10 14. On July 2, 2021, InfoSend responded to GPA’s clarification questions.
- 11 15. On July 27, 2021, the Evaluation Committee met and evaluated the proposals of Graphic
12 Center and InfoSend.
- 13 16. On July 28, 2021, the Evaluation Committee sent a memo to GPA’s Supply Management
14 Administrator indicating the Committee would like to proceed with the next step of the RFP
15 process with InfoSend, which scored 491.5 out of 500, while Graphic Center scored 444.5
16 out of 500. This was approved by the General Manger on July 30, 2021.
- 17 17. On August 18, 2021, GPA notified Graphic Center that InfoSend was selected as the best
18 qualified offeror. GPA notified Moonlight BPO that its proposal was disqualified and
19 rejected.
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- 21 18. On August 19, 2021, Graphic Center requested the procurement record and asked to meet
22 with GPA to discuss why their company was not qualified, which GPA treated as a Freedom
23 of Information Act (FOIA) request.
- 24 19. On August 25, 2021, GPA responded to Graphic Center’s FOIA request for the procurement
25 record.
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1 20. On August 30, 2021, Graphic Center filed an agency-level protest. In their protest, Graphic
2 Center disputed the evaluation scores given to them and InfoSend. Graphic Center contested
3 how InfoSend could score higher than them on printing and mailing delivery time, quality
4 of approach and understanding of the requirements and experience evaluation criteria when
5 InfoSend is not located on island and has not had any experience providing services directly
6 to GPA like Graphic Center has.
7

8 21. On October 7, 2021, GPA denied Graphic Center's protest.

9 22. On October 14, 2021, Graphic Center requested for the supplement of the procurement
10 record for the period September 1, 2021 to October 14, 2021, which GPA treated as a second
11 FOIA request.
12

13 23. On October 18, 2021, GPA responded to Graphic Center's FOIA request for the
14 supplemental procurement record.

15 24. On October 22, 2021, Graphic Center filed a procurement appeal with the Office of Public
16 Accountability (OPA). Graphic Center alleged InfoSend's absence of a demonstrated record
17 and development system cannot score higher on the evaluation criteria when compared to
18 Graphic Center's demonstrated record of service to GPA for five years. In addition to the
19 "six deficiencies" they re-highlighted from their protest letter, which they felt GPA failed to
20 address, their appeal concerned one additional issue in that Graphic Center contends
21 InfoSend submitted an Incomplete Packet and therefore was non-responsive because they
22 failed to include "Exhibit A" in its bid packet, which would disqualify them and have their
23 bid rejected. Graphic Center requested the OPA order GPA to disqualify InfoSend from
24 eligibility for award as their bid was non-responsive and they were a non-responsible offeror,
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1 with an ultimate award given to Graphic Center, as the next lowest price responsive bidder
2 to the RFP.

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4 **IV. ANALYSIS**

5 **A. GRAPHIC CENTER’S PROTEST THAT INFOSEND’S IS UNABLE TO MEET**
6 **THE REQUIREMENTS OF THE RFP AND GPA IMPROPERLY EVALUATED**
7 **THE PROPOSALS IS INVALID.**

8 In its agency level protest, Graphic Center alleges six (6) deficiencies with InfoSend’s bid and
9 GPA’s uncritical evaluation of those deficiencies that would deem InfoSend as non-responsive and
10 non-responsible. Graphic Center questions how their record of service and experience with GPA for
11 the past five years does not warrant them superior over InfoSend’s proposal in the evaluation.

12 Guam Procurement requires GPA to evaluate proposals only on the evaluation factors stated in
13 the RFP. 2 GAR § 3114 (f) (2) Graphic Center contends that there were two separate criteria in the
14 RFP. However, the Public Auditor finds that Section 5.0 of the RFP entitled “Evaluation Criteria”
15 was the one rightfully used by GPA to evaluate the proposals. The criteria identified in Section 5.0
16 of the RFP is in line with the minimum factors identified in Guam Procurement, which are (A) the
17 plan for performing the required services; (B) ability to perform the services reflected by technical
18 training and education, general experience, specific experience in provided required services, and
19 the qualifications and abilities of personnel proposed to be assigned to perform the services; (C) the
20 personnel, equipment, and facilities to perform the services currently available or demonstrated to
21 be made available at the time of contracting, and (D) a record of past performance of similar work.

22
23 2 GAR § 3114 (f) (2)

24 Prior to evaluating the proposals, GPA’s Evaluation Committee met on June 18, 2021 to
25 review the proposals submitted and determined they wanted to seek clarification from InfoSend on
26 the following:
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- 1 1. How long will mail (USPS) take from California to Guam?
- 2 2. Is there a minimum bill print per batch or cycle? Guam Power Authority has 29 bill cycles
- 3 with different bill print amounts per cycle.
- 4 3. GPA's system does not have Intelligent Mail Barcode (IMB) and is not Coding Accuracy
- 5 Support System (CASS) compliant, will provide address validation? What services can you
- 6 provide to allow GPA to get the postage discount?
- 7 4. Whose USPS postage permit will be used?
- 8 5. What is the timeframe from setup to go live?

9 On July 2, 2021, InfoSend responded to GPA's clarification questions, and on July 27, 2021, the
10 evaluation committee met and evaluated both Graphic Center and InfoSend's proposal (including
11 the additional clarifications) based on the criteria identified in Section 5.0 of the RFP. Although
12 both proposals were determined to be responsive and responsible, the Evaluation Committee scored
13 InfoSend's proposal higher and ranked it as the most qualified bidder of the two bidders. After
14 conclusion of validation of qualifications, evaluation, and discussion, the head of the agency
15 conducting the procurement or a designee of such officer shall select, in the order of their respective
16 qualification ranking, no fewer than three acceptable offerors deemed to be the best qualified to
17 provide the required services. 2 GAR § 3114 (j)

18 The offeror determined to be best qualified shall be required to submit cost or pricing data
19 to the head of the agency conducting the procurement at a time specified prior to commencement of
20 negotiations. 2 GAR § 3114 (k) On August 17, 2021, GPA then requested InfoSend submit pricing
21 data, which InfoSend provided on August 23, 2021. If compensation, contract requirements, and
22 contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded
23 to that offeror. 2 GAR § 3114 (l) (3) InfoSend submitted its best and final pricing proposal on
24 October 21, 2021. The Evaluation Committee was scheduled to meet on October 26, 2021, to review
25 the proponents of InfoSend's Best and Final Offer, but Graphic Center filed the procurement appeal
26 on October 22, 2021.

1 Graphic Center’s main arguments for why InfoSend is unable to meet the RFP requirements is
2 because unlike Graphic Center, InfoSend is located off-island and has not had the same five year
3 experience providing service to GPA. Graphic Center also provided testimony that they spoke with
4 the Postmaster on Guam who emphasized the delivery times from the U.S. Mainland exceed normal
5 5-day delivery and are currently, for a host of reasons “severely delayed.”

7 However, Kelly Law of InfoSend testified that they have been in the print, mail, and utility
8 billing space since the inception of the company in 1996. They provide data processing, printing,
9 and mailing services as well as e-billing services. To date, they have about 712 clients and
10 approximately 600 of those are utility billers. In their proposal submitted, Ms. Law testified they
11 provided utility clients with similar billing numbers as GPA or even greater as references. InfoSend
12 has 185 employees across their production facilities. InfoSend has disaster recovery protection
13 across their core production facilities, with servers synced to one location to the next, and allows
14 them to continue to meet their service level agreements.

16 Ms. Law also testified that InfoSend is designated as a U.S.P.S. Detached mail unit, which means
17 they have U.S.P.S. staff on site at their facility, where they work daily and accept mail from InfoSend
18 on behalf of U.S.P.S. The mail is then transferred by the U.S.P.S. to the bulk mail facility unit. This
19 allows InfoSend to skip a lot of the certification stuff as mail is inducted and proves InfoSends pre-
20 sorting capabilities and following U.S.P.S. compliance and regulation. Ms. Law also testified that
21 in her experience in dealing with the U.S.P.S., they do not give guarantees on mail turnaround times,
22 and never have for first class mail, but do provide guidance. InfoSend provided in their RFP the
23 U.S.P.S. turnaround time with induction zip code of Anaheim, California, and the mailing estimate
24 to Guam, with the turnaround time listed as 5 days (back in May 2021 when InfoSend submitted
25 their response to the RFP). Although the U.S.P.S. has changed expectations for mailing turnaround
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1 time since InfoSend submitted its proposal, the estimated turnaround time has been consistent of 5
2 days from California to Guam.

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4 The Public Auditor finds that Graphic Center has failed to prove that InfoSend is unable to meet
5 the requirements of the RFP and that GPA's evaluation of the proposals were contrary to law, and
6 therefore finds their protest to not be valid.

7 **B. GRAPHIC CENTER'S APPEAL THAT INFOSEND SUBMITTED AN**
8 **INCOMPLETE PACKET WAS UNTIMELY**

9 Graphic Center's argument in its appeal that InfoSend submitted an Incomplete Packet and
10 therefore was non-responsive because they allegedly failed to include "Exhibit A" in its bid packet,
11 which would disqualify them and have their bid rejected, was not identified in its August 30, 2021
12 agency level protest. It was only in its Notice of Procurement Appeal to the OPA on October 22,
13 2021. GPA did not have a chance to address this issue within its October 7, 2021 agency decision,
14 and therefore, the issue may not be properly before the Public Auditor.

15
16 Whether an appeal is properly before the OPA is an issue of subject matter jurisdiction,
17 which may be raised at any time. *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5 ¶¶
18 21-11; see also *DFS Guam LP v. A.B. Won Pat Int'l Airport Auth*, Guam, 2020 Guam 20 ¶ 66.

19 In order for an appeal to be properly before the Public Auditor, it must be based on an agency
20 denial of a timely protest, which is within the fourteen (14) day limit of when they knew or should
21 have known the issue. A party should file a protest "when alleged misconduct forms the basis of a
22 procurement protest, the time runs from the date on which the protesting party first learned of the
23 purported misconduct." *Id.* ¶ 89. A protest filed more than 14 days after the disappointed offeror or
24 bidder had notice of the grounds for the protest is barred as untimely. "[A]n aggrieved bidder must
25 raise known defects in the solicitation process during the administrative review phase" *Id.* ¶ 74.
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1 In their initial protest, Graphic Center made no mention of the allegation that InfoSend did
2 not submit “Exhibit A”. Assuming that Graphic Center did not have the full InfoSend proposal as
3 part of GPA’s August 25, 2021 response to their request for the procurement record, the Public
4 Auditor finds that this is not the start date of when Graphic Center “knew or should have known”
5 about the alleged missing “Exhibit A” issue.
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7 However, after receiving the agency’s denial of their protest, Graphic Center filed a second
8 request for the procurement record on October 14, 2021, this time for documents from the period of
9 September 1, 2021 to October 14, 2021. GPA responded to Graphic Center’s request on October
10 18, 2021, and Graphic Center filed their appeal with the OPA on October 22, 2021. In their appeal,
11 Graphic Center first makes the allegation of InfoSend not submitted “Exhibit A”. Therefore, the
12 Public Auditor finds October 18, 2021 as the date for which Graphic Center “knew or should have
13 known” about the alleged missing “Exhibit A” issue.
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15 It is clear that Graphic Center had full knowledge of the alleged missing “Exhibit A” from
16 InfoSend’s packet on October 18, 2021, when GPA responded to their request for the supplemental
17 procurement record, because they included it as part of their procurement appeal to the OPA.
18 Graphic Center had 14 days from October 18, 2021 to file protest to GPA on the alleged missing
19 “Exhibit A” issue.
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21 Because Graphic Center did not file a protest with GPA and GPA did not have a chance to
22 respond to the protest by issuing a decision on the matter, Graphic Center failed to exhaust the first
23 administrative remedy. Therefore, the Public Auditor finds he has no subject matter jurisdiction.
24 And because Graphic Center failed to file protest within 14 days of when they “knew or should have
25 known” about the issue of the missing “Exhibit A”, their protest and procurement appeal is
26 considered untimely. This portion of Graphic Center’s procurement appeal is dismissed.
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V. CONCLUSION

Based on the foregoing, the Public Auditor makes the following determinations:

- A. Graphic Center’s protest that InfoSend’s is unable to meet the requirements of the RFP and GPA improperly evaluated the proposals is NOT VALID.
- B. Graphic Center’s allegation that InfoSend submitted an incomplete packet by not submitting “Exhibit A” was UNTIMELY and therefore is DISMISSED WITH PREJUDICE as it is not properly before the Public Auditor.
- C. Graphic Center’s appeal is hereby DENIED.
- D. The parties shall bear their respective costs and attorney’s fees.

This is a Final Administrative Decision for Appeal No. OPA-PA-21-012. The Parties are hereby informed of their right to appeal the Public Auditor’s Decision to the Superior Court of Guam in accordance with Part D of Article 9 of 5 G.C.A. §5481(a) within fourteen (14) days after receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA website at www.opaguam.org.

DATED this 25th day of March 2022.



BENJAMIN J.F. CRUZ
Public Auditor of Guam



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-012 Decision

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Mar 25, 2022 at 9:36 AM

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Hafa Adai,

Please see attached Decision for OPA-PA-21-012. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

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