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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: Jul 1, 2019
TIME: 2:15 AM PM BY: FDJ
FILE NO OPA-PA: 19-006

6 BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

7 HAGATNA, GUAM

8 IN THE APPEAL OF
9 FLAME TREE FREEDOM CENTER, INC.,
10 Appellant,

11 APPEAL NO: OPA-PA-19-006

12 **OPPOSITION TO GHURA'S MOTION
13 TO DISMISS APPEAL FOR LACK OF
14 JURISDICTION**

15 **INTRODUCTION**

16 On 21 June 2019, the Guam Housing and Urban Renewal Authority ("GHURA") filed a
17 motion to dismiss the FLAME TREE Freedom Center's ("FTFC") appeal to the Office of Public
18 Accountability ("OPA") for lack of jurisdiction since it allegedly claims that FTFC failed to file
19 a timely protest to GHURA's method of source selection for the Invitation for Bid ("IFB")
20 IFB#GHURA-COCC-019-001, and therefore, contends the FTFC's appeal was not within OPA's
21 jurisdiction over this Appeal.

22 **BACKGROUND**

23 In FTFC's 11 March 2019 letter to GHURA's Executive Director, FTFC stated that
24 "...the FLAME TREE Freedom Center (FTFC), a non-profit organization that employs
25 individuals with disabilities, is hereby expressing formal interest in providing the subject
26 services per 5 Guam Code Annotated provisions below:" and cited 5 GCA § 5001(d) and § 5217.

1 FTFC sent a 9 April 2019 letter to the GHURA Executive Director citing, to name a few,
2 the aforementioned 5 GCA provisions; how GHURA handled prior year grounds maintenance
3 service contracts with FTFC using the same 5 GCA provisions; comparison to how General
4 Services Agency (“GSA”) has treated FTFC on GSA IFBs taking into consideration the same
5 referenced 5 GCA provisions; a parallel between 5 GCA § 5001 and 41 USC Chapter 85; the
6 offer to submit an updated price; and a request to GHURA and its Board to consider the
7 foregoing prior to reaching a decision on s contract aaward. GHURA did not issue a response to
8 FTFC 9 April 2019 letter.
9

10
11 On 6 May 2019, GHURA issued it’s 6 May 2019 letter which indicated the GHURA
12 Board of Commissioners approval of the awards for IFB#GHURA-COCC-019-001.

13 On 7 May 2019, FTFC filed a protest with GHURA based on 5 GCA § 5001 and §5217.

14 On 15 May 2019 following a GHURA – FTFC meeting on 10 May 2019, FTFC
15 submitted a lower price offer for GHURA’s consideration and requested GHURA, in the spirit
16 and intent of the federal and local statues, to reconsider its position.
17

18 On 17 May 2019, GHURA denied FTFC’s protest, primarily on the basis of 5 GCA §
19 5217.

20 Furthermore, it should be noted that FTFC did not receive any correspondence from
21 GHURA to indicate that its proposal was non-responsive; therefore, FTFC concludes that it met
22 all other criteria, with the exception of being the lowest price bid for Base Bid Packet #1.
23

24 **ARGUMENT**


25 Since FTFC did not receive any responses to its correspondence directly from the
26 GHURA Executive Director, as the head of the purchasing agency, FTFC was unaware how
27 GHURA would eventually respond to FTFC’s correspondence and requests, mentioned above.
28

1 FTFC only had insight to the bid prices submitted by each of the prospective vendors; however,
2 FTFC was not privy to how GHURA evaluated the proposals or whether all proposals were
3 responsive and compliant.
4

5 FTFC has been consistent in citing the procurement provisions regarding non-profit
6 organizations. Specifically, 5 GCA § 5001 states: 5 GCA § 5001 (d) reads: Purposes, Rules of
7 Construction. (d) Policy Concerning Sheltered Workers or Persons with Disabilities. If any
8 entity of the government of Guam or any entity expending government funds intends to procure
9 any supply or service which is offered by a non-profit corporation employing sheltered or
10 persons with disabilities, or a government of Guam entity employing sheltered workers or
11 persons with disabilities, then that entity shall procure such supply or service from that non-
12 profit corporation or government entity if the supply or service is available within the period
13 required by the procuring entity. As stated in the aforementioned provision, this is mandated
14 policy. Therefore, when GHURA decided to award contrary to this provision. FTFC had
15 grounds for a protest.
16
17

18 In conclusion, when GHURA's announced the award of Base Bid #1 on 6 May 2019, it
19 was only then did FTFC have the full understanding of GHURA's intent, which gave FTFC
20 sufficient justification to file an official protest on 7 May 2019. FTFC contends that its protest
21 was filed in accordance with the required timelines and, therefore, requests the OPA to deny
22 GHURA motion to dismiss the appeal on the basis of jurisdiction.
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24 Dated this 1st day of July 2019.

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27 Eddy J Reyes, President
28 FLAME TREE Freedom Center, Inc.