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FILE NO OPA-PA: 19-006

9 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
10 **HAGATNA, GUAM**

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

APPEAL NO: OPA-PA-19-006

14 **REPLY TO OPPOSITION TO**
15 **MOTION TO DISMISS APPEAL FOR**
16 **LACK OF JURISDICTION**

17 **REPLY**

18 The Guam Housing and Urban Renewal Authority (“GHURA”) through counsel,
19 Anthony C. Perez, Esq., hereby files its Reply to Appellant’s Opposition to Motion to Dismiss
20 Appeal for Lack of Jurisdiction. Appellant’s arguments in its Opposition are unsupported by the
21 record in this matter, and exhibit a feigned and deliberate ignorance of the procurement
22 methodology utilized by GHURA for Invitation for Bid IFB#GHURA-COCC-019-001 (“IFB”).

23 Appellant’s main argument is that it was not sure that GHURA was utilizing a
24 competitive method of source selection until May 6, 2019, when the bidders were provided a
25 Notice of Award exhibiting that Base Bid No. 3 was awarded to Appellant, Base Bid No. 1 was
26 awarded to GET, LLC, and Base Bid No. 2 was not awarded. *See* Appeal, Attachment 5. It was
27 only then, according to Appellant, that it realized that GHURA was not procuring the grounds
28 maintenance services pursuant to 5 GCA § 5001(d) (Policy Concerning Sheltered Workers or
Persons with Disabilities) and 5 GCA § 5217 (Procurement from Nonprofit Corporations). The
record in this matter exhibits the fallacy of Appellant’s arguments.

ORIGINAL

1 On February 28, 2019, GHURA issued its IFB seeking grounds maintenance services for
2 GHURA properties. *See* Agency Report, Tab C. That same date, Flame Tree Freedom Center,
3 Inc. (“FTFC”) picked up a copy of the IFB at GHURA. *See* Agency Report, Tab E,
4 Acknowledgement of Receipt of IFB. The IFB provides that a contract will be awarded on the
5 basis of the lowest and most responsible bid for the work described in bid documents. An
6 invitation for bid constitutes competitive sealed bidding where an award is made to the lowest
7 responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for
8 Bids. 5 GCA § 5211(g).

9
10 Thus, on February 28, 2019, Appellant knew that GHURA’s method of source selection
11 was an invitation for bid which constitutes a competitive sealed bidding. Conversely, Appellant
12 was also aware that GHURA was not procuring services via 5 GCA § 5001(d) and 5 GCA §
13 5217. Once GHURA issued the IFB and Appellant picked up a copy of the IFB on February 28,
14 2019, that triggered the start of the protest period concerning the method of source selection
15 utilized by GHURA.

16
17 On March 18, 2019, Appellant sent an email to GHURA attaching a March 11, 2019
18 letter from it to GHURA, an Incorporation Certification, a Certificate of Tax Exemption, and a
19 business license. *See* Appeal, Attachment 1. In this March 11, 2019 letter, FTFC expresses its
20 “formal interest” in providing services related to the IFB. *Id.* On March 27, 2019, FTFC
21 emailed GHURA asking for a response to its March 18, 2019 email along with attached March
22 11, 2019 letter of “formal interest”. *See* Appeal, Attachment 2. On March 28, 2019, GHURA
23 responded to FTFC via email reiterating that this project is bid through the competitive process.
24 *See* Appeal, Attachment 3. On March 28, 2019, FTFC submitted a bid in response to the IFB.
25 *See* Agency Report, Tab B.

1 Thus, on March 28, 2019, Appellant was informed that this IFB was bid through the
2 competitive process. GHURA did not need to inform Appellant that this IFB was a competitive
3 process because the whole concept of an IFB is soliciting bids through the competitive process.
4 The Appellant continued to know the method of source selection that GHURA was utilizing was
5 through the competitive process. Appellant still did not submit a protest within fourteen days.
6

7 It was not until May 7, 2019, that Appellant lodged its Letter of Protest *concerning the*
8 *award of Base Bid No. 1. See Agency Report, Tab A.* This Protest was lodged the day after it
9 was made aware that it was the successful bidder for Base Bid No. 3 and the unsuccessful bidder
10 for Base Bid No. 1. The Letter of Protest relates to the award of Base Bid No. 1, and not
11 necessarily to the method of source selection. This is further apparent because Appellant was
12 awarded Base Bid No. 3 under the IFB, and Appellant did not protest that award though that bid
13 was awarded under the competitive process. On May 17, 2019, GHURA denied the protest of
14 FTFC. *See Agency Report, Tab F.*
15

16 The crux of the Appeal is the method of source selection utilized by GHURA, as the
17 Appeal provides as follows:

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

24 Importantly, Appellant argues that the procurement process was flawed from the
25 **beginning**, when it was placed in a competitive situation. The beginning of the procurement
26 process was when the IFB was issued and picked up by the Appellant on February 28, 2019. If
27 the procurement process was flawed from the beginning as it contends, then Appellant had
28 fourteen days to submit a protest in accordance with 5 GCA §5425(a) and 2 GAR, Div. 4, §

1 9101(c)(1). Appellant did not file a protest within fourteen days. The OPA thus lacks
2 jurisdiction over this Appeal.

3 Appellant, without any basis, argues that it did not receive any responses to its
4 correspondence directly from the GHURA Executive Director, and was thus unaware how
5 GHURA would respond to its correspondence. The Executive Director of GHURA is not
6 required to personally respond to inquiries from a bidder. The IFB clearly states that GHURA's
7 Buyer Supervisor I will administer the bid process, and any questions or information regarding
8 this bid should be made to Greta Balmeo, Buyer Supervisor I and Albert Santos, A&E Manager.
9 See Agency Report, Tab C, p. 2; p. 3, §§ B. and C. In fact, Greta Balmeo responded to an
10 inquiry from Appellant on March 28, 2019 advising that this IFB is bid through an open and
11 competitive process. See Appeal, Attachment 3.
12

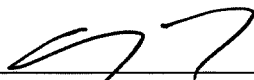
13
14 **CONCLUSION**

15 The record in this matter is clear that the OPA lacks jurisdiction over this appeal for
16 failure of Appellant to submit a timely protest. Appellant, in its Opposition, makes disingenuous
17 arguments that are unsupported by the record in an attempt to express confusion, ignorance, and
18 disbelief about its clear knowledge of when it knew or should have known about the method of
19 source selection that GHURA utilized in procuring grounds maintenance services.
20

21 Respectfully submitted this 5th day of July, 2019.

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

23
24 By:



25 **ANTHONY C. PEREZ, ESQ.**
26 *Attorney for Guam Housing and Urban
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