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Attorney for Appellant
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

Docket No. OPA-PA-19-011

BASIL FOOD INDUSTRIAL SERVICES
CORPORATION,

**APPELLANT BASIL FOOD
INDUSTRIAL SERVICES
CORPORATION'S COMMENTS ON
AGENCY REPORT**

Appellant.

On January 6, 2020, GSA filed the Agency Report in OPA-PA-19-011. After review of the report, Basil Industrial Food Services has the following comments.

I. SH Enterprises Is Not a Responsible Bidder Because It Was Automatically Terminated From the ENP Nutrition Services Contract in April 2019

Basil argues that SH Enterprises is not a responsible bidder and should be disqualified from GSA-056-19 as it was terminated for cause under the specifications of the emergency procurement contract for the Elderly Nutrition Program for the month of April 2019. Section 12.8 of the Program Specifications for that emergency procurement contract specifically states that "in the event the Vendor who is awarded this emergency procurement for the provision of ENP Nutrition Services is issued a 'C' rating from the Division of Environmental Health, DPH&SS or is issued

a 'Stop Order' by the Guam Fire Department, the awarded Vendor *shall be terminated* as the Vendor of the ENP Nutrition Services.

GSA attempts to refute this argument by claiming that it did not have to disqualify SH Enterprises because it had withdrawn from the bid before any action was taken by the government. However, there is absolutely no written evidence or documentation to support this claim. Further, when analyzing the terms of the contract which governs the interaction between the parties, "if the language is clear and explicit and does not involve absurdity, the plain language controls. 18 GCA § 87104 (2005). Section 12.8 provides for the immediate termination of SH Enterprises at any point SH Enterprises receives a "C" rating. Therefore, any services to be provided by SH Enterprises came to a screeching halt after it received its "C" rating not because it had withdrawn, but because the contract was automatically terminated pursuant to the terms of the contract.

SH Enterprises also fails as a responsible bidder because it did not disclose this termination when it submitted its bid packet for GSA-056-19. Sections 2.4 and 2.5(f) specifically required SH Enterprises to list citations in the areas of procurement, material weakness, and its organization's non-compliance with contract provisions. SH Enterprises also had to certify as to whether it had a government contract terminated for cause in the preceding three (3) years. SH Enterprises did not abide by any of these requirements and, in fact, was untruthful when it certified that it had not had a government contract terminated for cause in the last three years. Accordingly, SH should be disqualified from the IFB.

II. GSA Violated The Notice Requirements in 5 G.C.A. § 5245(g)

The law is clear in that if there is a timely protest of the award of a procurement contract, the government may not proceed further with the award until a final resolution of the protest is

made unless (i) there is a written determination that the award of the contract without delay is necessary to protect substantial interests of the Territory, and (ii) absent a declaration of emergency by the Governor, the protestant has been given at least two (2) days notice (exclusive of territorial holidays). 5 G.C.A. § 5245(g).

GSA argues that it was justified in violating this law because it made its Decision on the protest the evening of November 30, 2019¹, it “believed the protest was without merit,” and it needed to ensure that the seniors received a hot meal on December 1, 2019. However, GSA neither provides a legal or reasonable justification to support its violation of 5 G.C.A. § 5245(g). When Basil submitted its protest on Friday, November 22, 2019, GSA was fully aware that time was of the essence in that it had to ensure that our manamko’ were fed on December 1, 2019. GSA has not provided a scintilla of evidence to support its delay in deciding this matter within the appropriate timeframe, and it is this one-sided and unjustifiable delay that is the sole basis for its non-compliance with the requirements of 5 G.C.A. § 5245(g).

III. GSA’s Response to Basil’s Protest was Insufficient

In response to Basil’s argument that GSA did not properly respond to the issues raised in the protest, namely, that SH failed to provide pertinent information regarding citations in the area of procurement, material weaknesses, and non-compliance with government provisions, as required by Sections 2.4 and 2.5 of the IFB, GSA stated in its Agency Report that it “was pointing out why it would be impossible to claim the failure to provide all of the information by one side was also not a failure by the protestor.” Basil is unable to decipher this statement and it should

¹ As indicated in its Notice of Procurement Appeal filed on December 16, 2019, GSA’s Decision denying Basil’s protest was sent to Ms. Alice Mendoza, the legal secretary of Basil’s legal counsel, on November 30, 2019. It should be further noted that Attorney Geri Diaz did not receive any notification of this Decision until early Monday morning (December 2, 2019) at 8:38 am as Ms. Mendoza was off-island on November 30, 2019 and December 1, 2019. Accordingly, Basil did not have official notice of GSA’s Decision until December 2, 2019.

not have to guess at its meaning. Further, this response is still non-responsive to Basil's protest as it does not specifically address the allegation that SH failed to provide information required by the IFB.

IV. Conclusion

The Agency Report is devoid of any substantive legal arguments to support GSA's Decision to Basil's protest. Accordingly, Basil asks that the OPA find that the notice provided by GSA to Basil on November 30, 2019 is insufficient and void, that any further action taken by GSA to proceed on the contract at issue is void, that SH Enterprises be disqualified from the IFB, that the contract be cancelled, and that GSA-056-19 bid be reissued.

DATED: Hagåtña, GU, January 16, 2020.

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