

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 Email: jbenavente@gpagwa.com	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
	Mr. D. Graham Botha, Esq General Counsel Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290 Email: gbotha@gpagwa.com	Pages:	11 (including cover page)
CC:	Mr. James M. Maher, Esq. Attorney for Appellant Graphic Center, Inc. Law Office of James M. Maher 238 Archbishop Flores Street, Ste. 300 Hagatna, Guam 96910 Phone: (671) 477-7892 Email: jmpc671@gmail.com	Date:	October 25, 2021
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-21-012 Notice of Receipt of Appeal

For Review
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Comments:

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



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

October 25, 2021

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagåtña, Guam 96932

VIA FACSIMILE: (671) 648-3165

Re: Notice of Receipt of Appeal – OPA-PA-21-012

Dear Mr. Benavente,

Please be advised that Graphic Center, Inc. (hereinafter referred to as “Graphic Center”) filed an appeal with the Office of Public Accountability (OPA) on October 22, 2021, regarding GPA’s denial of Graphic Center’s protest related to the procurement for Professional Printing, Mailing, and Processing Services Relating to Utility Customer Billing (GPA-RFP-21-002). OPA has assigned this appeal case number OPA-PA-21-012.

Immediate action is required of GPA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first three pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Monday, November 1, 2021**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Division 4, Chapter 12, §12105, by **Tuesday, November 9, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to Graphic Center. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that GPA provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Eight Pages of the Notice of Appeal – OPA-PA-21-012

Cc: James M. Maher, Esq., Attorney for Appellant Graphic Center

LAW OFFICE OF JAMES M. MAHER
238 Archbishop Flores Street, Ste. 300
Hagatna, Guam 96910
Tel: 671-477-7892
E-mail: jmpc671@gmail.com

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Oct. 22, 2021

PROCUREMENT APPEAL OF DENIAL OF ~~PROCUREMENT~~ PROTEST *Amis*
IN THE OFFICE OF PUBLIC ACCOUNTABILITY
FILE NO OPA-PA: 21-012

PART I.

In the Appeal of) DOCKET NO. OPA-PA-
)
)
GRAPHIC CENTER, INC.) NOTICE OF APPEAL
)
Appellant.)
_____)

I. APPELLANT INFORMATION

Appellant's Name: Graphic Center, Inc.
Appellant's Mailing Address: Graphic Center, Inc.
167 Serenu Avenue
Tamuning, Guam 96913
Appellant's Business Address: Graphic Center, Inc.
167 Serenu Avenue
Tamuning, Guam 96913
Appellant Representative's Direct Email Address: chris@gciguam.com

Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Graphic Center, Inc.'s ("Graphic") counsel, James M. Maher of the Law Office of James M. Maher, PC.

Counsel's Mailing Address: 238 Archbishop Flores Street, Ste. 300
Hagatna, Guam 96910
Counsel's Telephone: 671-477-7892
Counsel's Direct Email Address: jmpc671@gmail.com

II: APPEAL INFORMATION

- A. Purchasing Agency: Guam Power Authority
- B. Solicitation Number: GPA-RFD-21-002 (printing, mailing, archival and retrieval processing for GPA statements)("invitation").
- C. The Decision being appealed was provided to the Appellant on October 11, 2021. The Decision was made by the Head of the Purchasing Agency, Mr. John M. Benavente, P.E.
- D. The name of the only competing offeror known to Appellant is: INFOSEND, INC.

III: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

The Guam Power Authority ("GPA") issued Bid Invitation GPA-RFP-21-002 in February of 2021. GPA failed inform Graphic of the Bid Invitation. The Bid Invitation was cancelled. Graphic was informed that GPA had disqualified the sole but unknown bidder. The Guam Power Authority reissued its Bid Invitation GPA-RFP-21-002, a copy of which is appended and marked as exhibit "1". Graphic was informed of the re-issued RFP on May 18, 2021. In April of 2021, GPA and Graphic began negotiating with Graphic for a six-month extension of the GPA-RFP-21-002, a copy of GPA's and Graphic's communications regarding the extension are appended and marked as exhibit "2". On May 28, 2021, approximately three (3) working days before the re-issued Bid Invitation submission deadline, GPA informed Graphic about an amendment to the RFP containing two pages of questions to Graphic which it answered and included in its bid packet. Infosend bid packet contained neither the amendment nor answer to the questions in it, "inclusion" or amendment to the RFP, a copy of which is appended and marked as exhibit "3". On August 18, 2021, Graphic was informed that an award was recommended for Infosend. Graphic lodged its protest on August 30, 2021, alleging that

Infosend's was a non-responsive and non-responsible bidder, as set forth in Graphic's protest letter, a copy of which is appended and marked as exhibit "4". GPA denied the protest on October 7, 2021, a copy of the denial is appended and marked as exhibit "5"¹. GPA informed Graphic of its denial of the protest on October 11, 2021.

Graphic identified six (6) deficiencies with Infosend's bid and with GPA's uncritical evaluation of those deficiencies: (1) Infosend's ability, skill and capacity to meet the requirements of section 2.3 of the RFP; (2) Infosend's ability to meet the requirements of section 2.3, subsection B of the RFP; (3) a higher evaluation score accorded Infosend than accorded Graphic in categories of quality and understanding of services and utility scale, despite Graphic's 5-year record of product service to GPA and Graphic's creation of a print system to accommodate GPA's unique needs, and the absence of Infosend's proven service record and its untested, unknown print system; (4) system development, a major component and a condition precedent to service under the RFP was not given due weight and consideration in evaluating the responsive/responsible nature of the offerors' proposals; (5) in light of GPA subscriber adoption rate and changes in postal services periods, Infosend's inability to timely supply professional printing and processing services shall have a significant and negative impact GPA's operating budget and cash flow; and six (6) Infosend did not submit a sealed pricing proposal by the submission deadline. Those failures were identified to GPA in Graphic's correspondence of August 30, 2020. On October 11, 2021, Graphic received correspondence from GPA Denying its Protest. This Notice of Appeal to the OPA followed.

2. Infosend Submitted An Incomplete Packet

As noted about, GPA informed Graphic of an amendment to the RFP which contained

¹ In 2018, GPA requested a disaster recovery plan, Graphic provided a disaster recovery plan. See Kubra, Services Organization Controls Report appended and marked as exhibit "6".

two pages of questions which is referred in the bid packet as Exhibit A. Graphic answered the questions and included the amendment and its answers to the questions in its bid packet. Infosend's bid packet contains neither the amendment to the RFP nor answers to the questions posed in GPA's amendment. Infosend's packet is incomplete and therefore Infosend should be disqualified. The bid packet clearly states that if Exhibit A is not included in an offeror's packet that the offeror is disqualified its bid rejected. See page 14 of GPA bid packet.

3. GPA's Protest Decision failed to substantively address the merits of Graphic's protest.

GPA's October 7, 2021 denial of Graphic's protest did not substantively address the allegations that Infosend was non-responsive to the RFP, that the evaluators abused their discretion in the scores assigned to the offerors in that the scores bore no rational and factual relationship to the record before the evaluators. The evaluators either minimized or overlooked the significant deficiencies in Infosend's proposal. When addressing obvious deficiencies, GPA stated only that they were not RFP's requirements. In evaluating the proposals, GPA ignored system development, a major component of the RFP, failing to note that Infosend's development system is untested and unidentified. Graphic has a proven development system in place, functioning and tested. Rather than conducting a disinterested and thorough inquiry into the allegations raised, GPA provided a generic, non-responsive explanation in dismissing Graphic's protest and thereby avoided addressing the underlying merits of the protest.

4. Despite Graphic's Demonstrated Record of Service to GPA for Five Years, GPA's Denial Assumes Infosend development System Is Extant Even In Absence Of It

GPA's scoring of Infosend's development system to service GPA's subscribers, in the absence of a demonstrated record and existence of such a system, is curious. The evaluators accorded Graphic a lower score than Infosend in the categories of quality approach,

understanding of requirements, staffing and experience despite Graphic's five (5) years of service. Conversely, GPA failed to explain its high score and rating of Infosend despite the absence of any previous work relationship with Infosend, the absence of an identifiable, tested development system and despite a large geographic distance that separates Infosend's operations and GPA's subscriber base which shall, as noted above, adversely impact GPA's cash flow. The logistics of billing customers over great geographic distances compounds the difficulty of providing adequate notice to customers to ensure GPA's timely receipt of customer payments. Presently, GPA, operating on a 15-day billing cycle, provides a customer billing file to Graphic who, in turn, generates a billing which it mails to the GPA customer that same day. The customer receives it the following day. As such, a current customer has fourteen days to pay. Customer billing, GPA's receipt of payment, its resulting cash flow and customer satisfaction under an Infosend scenario is fraught with problems. First, the geographic distance from the U.S. mainland to Guam is significant. Communications over different time-zones and work-weekend overlap complicate and delay communications necessary to prompt and accurate customer billing. An additional issue that guarantees delay is a recent change in U.S.P.S.'s service standards, specifically its deliver-day ranges, effective October 1, 2021. This service change shall ensure a time delay in delivery service between the mainland and Guam, a copy of U.S.P.S.'s Lower Postal Service Standards Take Effect October 1 is appended and marked as exhibit 7. Under the new U.S.P.S. service standards, a mainland delivery shall require eight (8) to reach GPA customers on Guam. Under an optimal delivery scenario, a GPA customer shall therefore have approximately six (6) days to pay the bill assuming Infosend, like Graphic, receives the billing file from GPA on the first day of the billing cycle, generates a customer billing and mails it out the same day. One can envision an endless array of unexpected events

that could intervene to further delay the arrival of mail on Guam from a mainland site, all of which shall diminish customer satisfaction, result in late payment and adversely impact GPA's finances.

Infosend's rather optimistic estimate in creating a viable service system overlooks the in-time communication necessary to customize it to GPA's needs and its subscribers as well as GPA's ability to replicate and cross-reference data necessary to creating a system. A more realistic projection is a minimum of nine (9) months. A proven development system is a condition precedent to determining an offeror's responsibility. This essential component of the RFP GPA severely minimized in its evaluation and took Infosend's uninformed representation at face value in evaluating the proposals. GPA's failure to address those issues in its Protest decision violates procurement law, which constitutes further grounds for appeal.

IV. RULING REQUESTED

Graphic respectfully requests that the Office of Public Accountability Order the following:

- (1) That GPA disqualify Infosend from eligibility for an award under this RFP, as Infosend's proposal was non-responsive;
- (2) That GPA determine Infosend to be a non-responsible offeror given the inability of its proposed solutions to the RFP to safely and efficiently perform as specified by GPA; and
- (3) That GPA award GPA-RFD-21-002 to Graphic as the next lowest price responsive bidder to the RFP

A. SUPPORTING EXHIBIT, EVIDENCE OR DOCUMENTS

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- (1) GPA RFP No.: Re-Solicitation GPA-RFP-21-002 as Exhibit 1
 - (2) E-mail correspondence from Chris Biolchino to Melvyn K. Kwek dated April 14, 2021 and April 16, 2021 as Exhibit 2
 - (3) GPA Amendment No.: I to Request for Proposal No.: Re-Solicitation GPA-21-002 as Exhibit 3
 - (4) Graphic Center letter to GPA dated August 30, 2021 as Exhibit 4
 - (5) Denial of Procurement Protest dated October 7, 2021 as Exhibit 5
 - (6) Kubra, Services Organization Controls Report as Exhibit 6
 - (7) Lower Postal Service Standards Take Effect October 1 as Exhibit 7
- Graphic anticipates providing further documentation, including testimony, to substantiate

its claims as GPA submits the full contracting procurement record to the OPA, and allows Graphic to review the procurement record in in full.

PART V: DECLARATION RE COURT ACTION

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise express interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court. The undersigned party does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned part agrees

to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this ^{29th} day of October, 2021.

LAW OFFICE OF JAMES M. MAHER

By: 

JAMES M. MAHER
Attorney for Graphic Center, Inc.



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-012 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Oct 25, 2021 at 8:16 AM

To: John M Benavente <jbenavente@gpagwa.com>, Graham Botha <gbotha@gpagwa.com>

Cc: jmpc671@gmail.com

Hafa Adai,

Please see attached Notice of Receipt of Appeal 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

Office of Public Accountability – Guam

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