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PROCUREMENT APPEALS  
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*Attorney for the Guam Power Authority*

OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

IN THE APPEAL OF	)	DOCKET NO. OPA-PA-21-012
	)	
Graphic Center, Inc.,	)	<b>AGENCY REPORT</b>
	)	
Appellant.	)	
_____	)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

(a) A copy of the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA.***

(b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA in OPA-PA-21-012.***

(c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA in OPA-PA-21-012.***

(d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA in OPA-PA-21-012.***

(e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1,***

**2021, by GPA in OPA-PA-21-012.**

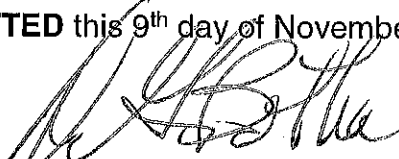
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA.***

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: ***Please see attached.***

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): ***Not applicable.***

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: ***Previously submitted to the Office of the Public Auditor ("OPA") on November 1, 2021, by GPA.***

**RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of November, 2021, by:

  
D. GRAHAM BOTHA, ESQ.  
GPA General Counsel

## **STATEMENT ANSWERING ALLEGATIONS OF APPEAL**

(As required by 2 G.A.R. §12105(g))

### **I. RELEVANT BACKGROUND**

**A. GPA SOLICITS BIDS FOR IFB GPA-RFP-21-002, PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING TO UTILITY CUSTOMER BILLING**

On January 7, 2021, Guam Power Authority (“GPA”) issued Request for Proposal, GPA-RFP-21-002, PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING TO UTILITY CUSTOMER BILLING, (Tab “45”). Three bidders, Graphic Center, Inc., Moon Light BPO and InfoSend, Inc., expressed interest in the RFP from May 6, 2021 to June 3, 2021, and all three bidders submitted proposals in response to the RFP. Abstract of RFPS, June 3, 2021. (Tab “39”). Prior to submission of the proposals, the bidders had an opportunity to submit questions regarding the RFP. GPA issued amendment I in response to these questions, and other amendments to clarify the RFP. Procurement Record, Tab “42-45”.

One bidder, Moon Light BPO, was disqualified due to a failure to meet the requirements of PL 36-13. (Tab “38”). On June 22, 2021, the evaluation committee met and requested clarification from InfoSend, Inc., Tab “31-33”. The evaluation committee met on July 27, 2021 and scored the two bidders, Graphic Center, Inc. and InfoSend, Inc. (Tab “28”). The evaluation committee memo dated July 28, 2021, scored Graphic Center, Inc. 444.5 points out of 500 points, and InfoSend, Inc. 491.5 points out of 500 points. (Tab “27”). Bid status letters were sent to both bidders on August 11, 2021. (Tabs “24 and 26”). The evaluation committee met on

August 26, 2021, to review the sealed price proposal received on August 18, 2021 from InfoSend, Inc. (Tab “21-22”). The evaluation committee memo dated August 26, 2021, requested a best and final offer price from InfoSend, Inc. (“Tab 20”). The Certification of Completed Procurement Record is dated October 28, 2021. Tab “1”.

Graphic Center, Inc. filed a protest with GPA on August 30, 2021, which resulted in a Stay of Procurement. “Tabs 16-17”. The evaluation committee memo dated September 1, 2021, reviewed the Graphic Center, Inc. protest letter and provided a response. (“Tab 14”). GPA denied the protest on October 7, 2021, and there was a Lift of Stay when the protest was denied by GPA. (Tab “13”). Graphic Center, Inc. filed an appeal to the OPA on October 25, 2021, and GPA filed a Stay of Procurement on July 1, 2021 (Tab “3 & 6”).

## II. DISCUSSION

### A. THE INFOSEND, INC. BID WAS RESPONSIVE, AND THE AWARD FOR PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING TO UTILITY CUSTOMER BILLING WAS PROPERLY AWARDED TO INFOSEND, INC. AS INFOSEND, INC. MET THE SPECIFICATIONS IN THE RFP.

Procurement law requires that GPA evaluate proposals only on the evaluation factors stated in the RFP. The minimum factors are: (a) the plan for performing the required services; (b) the ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the require services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; (c) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and (d) a record of past performance of similar work. 2 GAR, Div. 4, §31 14(j). After conclusion of validation of qualifications, evaluation, and

discussions, the head of the purchasing agency or his or her designee shall select, in the order of their respective qualification ranking, no fewer than three (3) acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services. 2 GAR, Div. 4, §3114(j).

InfoSend, Inc. was ranked the most qualified bidder of two bidders, by the evaluation committee on July 28, 2021. GPA requested that InfoSend, Inc. submit pricing data pursuant to 2 GAR, Div. 4, §3114(k). If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror. 2 GAR, Div. 4, §3114(l)(3). An award shall be made to the offeror determined in writing by the head of the purchasing agency or his or her designee to be best qualified based on the evaluation factors set forth in the RFP, and negotiation of compensation determined to be fair and reasonable. Written notice of award shall be public information and made a part of the contract file. 5 GCA §5216(e) and 2 GAR, Div. 4, §3114(l)(5).

Two bidders submitted proposals which were opened by GPA on June 3, 2021. The evaluation committee requested clarification from InfoSend, Inc., and reviewed the clarification. Graphic Center, Inc. sent a letter to GPA alleging the InfoSend, Inc. did not meet the RFP specifications. In its protest, Graphic Center, Inc. alleges, without substantiation, that the InfoSend, Inc. cannot provide the proper level of service as the development work and fulfillment will be performed in California. There is no requirement in the RFP that development work and fulfillment be done in Guam. Graphic Center, Inc. disputes the scores given to InfoSend, Inc. specifically, regarding Section J, which it states “asks if island printing

and mailing will be available.” Section J, Mail provides that “GPA wants the best value as well as present a host of delivery options to its customers. Please also include if local printing and mailing will be available.” GPA was looking at delivery options that are available and local printing and mailing was not a requirement. GPA also noted that Graphic Center, Inc. did not address Section M, Disaster Recovery Plan, in its RFP submission to GPA. GPA wanted information regarding the proponent’s processes and procedures regarding Disaster Recovery and backup processes.

Appellant notes in its appeal that this RFP is a re-solicitation of GPA-RFP-21-002 in February 2021. Graphic Center, Inc. states that GPA failed to inform “Graphic of the Bid Invitation.” This is completely false in that Graphic Center, Inc. was informed of the **RFP**, but failed to submit a proposal to the original RFP. Further, GPA advertised the RFP in Guam newspapers as required, and Graphic Center, Inc. knew that its previous contract with GPA was expiring.

Graphic Center, Inc.’s protest is essentially a dispute of the scores given to Graphic Center, Inc. and those scores given to InfoSend, Inc. It alleges that “it will not be possible for the company to provide the proper level of service since all of the development work and fulfillment will be performed in California.” The proposal submitted by InfoSend, Inc. indicates that it has extensive experience in dealing with utilities in California, and most specifically with the CC&B Oracle system used by GPA.

Graphic Center, Inc. alleges that InfoSend, Inc. submitted an RFP package to GPA that was incomplete. InfoSend, Inc. submitted an RFP response to GPA on May 27, 2021, prior to

the June 3, 2021 submission date, and prior to GPA issuing GPA Amendment 1 (Exhibit A), which was acknowledged by InfoSend, accepting the requirement to complete Exhibit A. Graphic Center, Inc. also alleges that InfoSend, Inc. did not submit a sealed pricing proposal by the submission deadline. InfoSend, Inc. received a notice via e-mail on August 17, 2021, which requested a sealed price proposal by August 18, 2021. InfoSend, Inc. provided via e-mail a price proposal to GPA, and was then advised by GPA that electronic submissions were not accepted, and that a sealed price proposal must be delivered by hand-delivery or by off-island courier. InfoSend, Inc. spoke to GPA Buyer Dawn Fejeran on August 18, 2021, and advised her that InfoSend, Inc. would send a price proposal via FedEx which was received by GPA on August 23, 2021.

Similarly Graphic Center, Inc. alleges, without substantiating documents, that InfoSend, Inc.'s development system is untested and unidentified. InfoSend, Inc. has over 24 years of experience in supporting more than 550 public utility clients from four production facilities throughout the United States. Listed on the references section of the RFP response, are four public utility clients, using GPA's billing system (Oracle CC&B) as required by GPA, including one public utility which has been an InfoSend, Inc. client for over nine years. InfoSend, Inc.'s response in the Scope of Work section provides a detailed response to each major section – Communication, Security, Electronic Archive, Internet Email Delivery, Specific Handling, Printer, Finishers, Mail, Paper, Processing Window, Disaster Recover, Reporting, Archival and Retrieval Processing and Other Services.

Graphic Center additionally alleges that the USPS had changed its delivery-day ranges,

and reflect eight days to reach Guam, which would delay delivery to Guam. The actual USPS postal maps both before and after October 1, 2021, demonstrate that first class delivery times to Guam remain unchanged and do not reflect eight days for delivery to Guam.

Graphic Center, Inc. alleges that InfoSend's proposal is deficient in that it does not meet the requirements of Section 2.3, subsection B of the RFP. Subsection B is one of 4 standards relating to determination of the most qualified offeror, relating to whether the Offeror can perform promptly or within the specified time. InfoSend, Inc. specified a 12-week project implementation period in its response to GPA, dated July 2, 201. InfoSend, Inc. has set up and maintained 11 CC& B clients. InfoSend, Inc. provided Oracle CC&B references in the RFP response to allow GPA to contact references regarding their experience with onboarding, data processing, programming, and project management capabilities.

The GPA evaluation committee carefully reviewed the submissions of the both bidders, and determined that the most qualified bidder, based on scoring, was InfoSend, Inc. Graphic Center, Inc. was not disqualified, but was just ranked second of the two bidders. After conclusion of validation of qualifications, evaluation, and discussions, the head of the purchasing agency or his or her designee shall select, in the order of their respective qualification ranking, no fewer than three (3) acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services. 2 GAR, Div. 4, §3114(j).

*In the Appeal of 1-A Guam WEBZ*, OPA-PA 16-002 also addresses the issue of bid evaluation and stated that "the Request for Proposals shall set forth the evaluation criteria to be



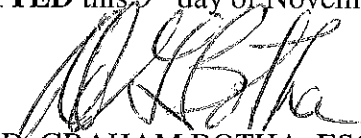
used and no criteria may be used in bid evaluation that are not set forth in the Request for Proposals.” 5 GCA §5211(e) and 2 GAR, Div. 4, Chap 3, §3109(n)(1).

Procurement law requires that GPA evaluate proposals only on the evaluation factors stated in the RFP. The minimum factors are: (a) the plan for performing the required services; (b) the ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the require services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; (c) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and (d) a record of past performance of similar work. 2 GAR, Div. 4, §3114(j). An award shall be made to the offeror determined in writing by the head of the purchasing agency or his or her designee to be best qualified based on the evaluation factors set forth in the RFP, and negotiation of compensation determined to be fair and reasonable. Written notice of award shall be public information and made a part of the contract file. 5 GCA §5216(e) and 2 GAR, Div. 4, §3114(l)(5). The evaluation committee reviewed both proposals and selected InfoSend, Inc. as the best qualified offeror.

#### CONCLUSION

GPA requests that the appeal of Graphic Center, Inc. be dismissed, and that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result.

**RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of November, 2021, by:

  
D. GRAHAM BOTHA, ESQ.  
GPA General Counsel