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OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

IN THE APPEAL OF Graphics Center, Inc., Appellant.	DOCKET NO. OPA-PA-21-012 **APPELLEE'S [PROPOSED] FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

COMES NOW, the GUAM POWER AUTHORITY, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and submits its Proposed Findings of Facts and Conclusions of Law, as follows.

[PROPOSED] FINDINGS OF FACTS

The Public Auditor makes the following finds of fact:

1. 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 [Procurement Record ("PR"), Tab 45].
2. 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 [PR, Tab 39].

3. 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 [PR, Tabs 42-45].
4. One bidder, Moon Light BPO, was disqualified due to a failure to meet the requirements of PL 36-13 [PR, Tab 38].
5. On June 22, 2021, the evaluation committee met and requested clarification from InfoSend, Inc. [PR, Tab 31-33].
6. The evaluation committee met on July 27, 2021 and scored the two bidders, Graphic Center, Inc. and InfoSend, Inc. [PR, Tab 28].
7. 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 [PR, Tab 27].
8. Bid status letters were sent to both bidders on August 11, 2021 [PR, Tab 24 and 26].
9. The evaluation committee met on August 26, 2021, to review the sealed price proposal received on August 18, 2021 from InfoSend, Inc. [PR, Tab 21-22].
10. The evaluation committee memo dated August 26, 2021, requested a best and final offer price from InfoSend, Inc. [PR, Tab 20].
11. The Certification of Completed Procurement Record is dated October 28, 2021 [PR, Tab 1].
12. Graphic Center, Inc. filed a protest with GPA on August 30, 2021, which resulted in a Stay of Procurement [PR, Tab 16-17].
13. Graphics Center, Inc. filed an appeal to the OPA on July 1, 2021, and GPA filed a Stay of Procurement on July 1, 2021. [PR, Tabs 4 & 6].

14. The evaluation committee memo dated September 1, 2021, reviewed the Graphic Center, Inc. protest letter and provided a response [PR, Tab 14].

15. GPA denied the protest on October 7, 2021, and there was a Lift of Stay when the protest was denied by GPA [PR, Tab 13].

16. Graphic Center, Inc. filed an appeal to the OPA on October 25, 2021, and GPA filed a Stay of Procurement on July 1, 2021 [PR, Tab 3 and 6].

17. The formal evidentiary hearing was held on February 4, 2022 before the Public Auditor.

18. Under cross-examination, Jesse Rosario of Graphic Center, Inc., admitted that Graphic Center, Inc. provided no response to Section G – Special Handling, and Section M – Disaster Recovery of the RFP. [Trial Exhibit "TE", Ex D, p.468 and p.470 and Evidentiary Hearing].

19. Under cross-examination, Chris Biolchino of Graphic Center, Inc., admitted that Graphic Center, Inc. provided no response to Section G – Special Handling, and Section M – Disaster Recovery of the RFP. [Trial Exhibit "TE", Ex D, p.468 and p.470 and Evidentiary Hearing].

20. Kelly Law of InfoSend, Inc. testified that InfoSend, Inc. provided a response to Section G – Special Handling, and Section M – Disaster Recovery of the RFP. [TE, Ex E, p.380 and p.387-390 and Evidentiary Hearing].

21. Kelly Law of InfoSend, Inc. testified that InfoSend, Inc. had extensive experience with public utility clients, specifically with utilities using Oracle CC&B billing software, had other backup facilities in the United States, and had a USPS Detached Mail Unit onsite in their Anaheim warehouse. [TE, Ex E, InfoSend, Inc. RFP proposal and Evidentiary Hearing].

22. Kelly Law of InfoSend, Inc. testified that InfoSend, Inc. mailed its RFP proposal to GPA prior to becoming aware of Amendment 1, and that the RFP proposal responded to all aspects of the GPA scope of work. [TE, Ex E, p.374-402 and Evidentiary Hearing].

23. James Borja, GPA evaluation committee member, testified that the evaluation committee reviewed the two proposals and scored the proposals based upon the evaluation criteria contained in the GPA RFP. [TE, Ex A, p.531 and Evidentiary Hearing].

24. James Borja, GPA evaluation committee member, testified that the evaluation committee met on July 28, 2021 and ranked InfoSend, Inc. the most qualified bidder of two bidders. [TE, Ex M, p.298 and Evidentiary Hearing].

25. Kelly Law of InfoSend, Inc. testified that InfoSend, Inc. mailed its sealed price proposal to GPA in response to GPA's request for the sealed price proposal pursuant to 2 GAR, Div. 4, §3114(k). [TE, Ex O, p.246-259 and Evidentiary Hearing].

[PROPOSED] CONCLUSIONS OF LAW

26. Pursuant to 5 GCA §5703, the Public Auditor reviews GPA's denial of Graphics Center, Inc.'s Protests *de novo*, and concludes that GPA's decision to award the PROFESSIONAL PRINTING, MAILING AND PROCESSING SERVICES RELATING TO UTILITY CUSTOMER BILLING to InfoSend, Inc. was proper.

27. 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). 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).

28. 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).

29. 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).

30. 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).

31. The Public Auditor has reviewed the procurement recorded submitted by GPA, and after careful evaluation and consideration, the Public Auditor determines that the procurement record is complete.

32. 5 GCA §5211(e) and 2 GAR, Div. 4, Chap. 3, §3109(n)(1) provides that "the invitation for bids 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 Invitation for Bids." *In the Appeal of 1-A Guam WEBZ,* OPA-PA 16-002.

33. GCA § 5001. Purposes, Rules of Construction. (a) Interpretation, provides that the underlying purposes and policies of this Chapter are: … (3) to provide for increased public confidence in the procedures followed in public procurement; (4) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory; (6) to foster effective broad-based competition within the free enterprise system; (7) to provide safeguards for the maintenance of a procurement system of quality and integrity; and (8) to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 25th day of February, 2022, by:

D. GRAHAM BOTHA, ESQ.
GPA General Counsel