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7 **PROCUREMENT APPEAL**

8
9 In the Appeal of)

Docket No. OPA-PA09-009

10)
11) GUAM CLEANING MASTERS,
12) APPELLANT.)

Guam Cleaning Masters' 2 G.A.R.
§ 12104(c)(4) Comments to
Agency Report

13
14 On November 13, 2009 Appellee-Department of Chamorro Affairs (DCA) filed
15 its Agency Report with the Office of the Public Auditor.

16 Pursuant to 2 G.A.R. § 12104(c)(4), Appellant-Guam Cleaning Masters
17 respectfully submits the following comments:

- 18 1. Appellee-DCA acknowledges in its Attachment 9 Answer (entitled
19 "Statement Answering Allegation of Appeal") that the procurement
20 intermingled public notices (PDN ads) for "request for proposal"
21 with procedures and nomenclature for "bid." Illustrative examples
22 included advertising publicly for a request for proposal &
23 announcing each "bidder's" submission at the "bid opening" (see
24 procurement record & Attachment 9 (page 1)); going into direct
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communications with "bidders" when the procedure applicable only for offerors under a RFP solicitation.

2. Appellee-DCA acknowledges in its Attachment 9 Answer that it violated the procurement law for further direct negotiations with the 3 lowest "bidders" on September 28 & 29, 2009. Said communications after the bids have been submitted is a violation of Appellant's rights to a lawful procurement as set forth in the Guam Procurement Law. This is an additional basis supporting Appellant's allegation that the collusion exists in this procurement.

3. Appellee-DCA acknowledges in its Attachment 9 Answer and the submitted November 5, 2009 Procurement Record that it did not compile the best/most qualified offeror ratings and follow the other procedures as set forth in the Guam Procurement Law if it was trying to solicit under a request for proposal.

4. Appellee-DCA acknowledges in its Attachment 9 Answer (f) that it intentionally and knowingly violated the Guam Procurement Law by not stopping the awarded janitorial services pending Appellant's appeal (self-help). The reasons given do not comply with the Guam Procurement Law, and acknowledge no application was made to exempt themselves from stopping receipt of awarded services pursuant to 5 G.C.A. § 5425(b). This is an additional basis supporting Appellant's allegation that collusion & fraud exists in this procurement.



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- 5. Appellee-DCA acknowledges in its Attachment 9 Answer and in its submitted Procurement Record that the “free” services that it purports brings the Awardee into compliance with P.L. 26-111 (wage & hour solicitation requirement) did not exist in its original bid, and was apparently devised as a basis to comply with P.L. 26-111 *after* Appellant’s protest. This is an additional basis supporting Appellant’s allegation that collusion & fraud exists in this procurement.
- 6. Appellee-DCA acknowledges in its Attachment 9(b) & (i) Answer the reason for using this solicitation procedure . . . because it has done so in the past, is not a justifiable basis to do so considering the Guam Procurement Law & associated regulations.
- 7. Appellee-DCA acknowledges in its Attachment 9(d) Answer that it solicited prices for janitorial services for the same location. Such a solicitation during an ongoing competitive bid/RFP process was inappropriate. Further, Appellee-DCA should have bid the project out and not performed a direct solicitation as it engaged in. These factors support Appellant’s allegation that collusion & fraud existed in this procurement.
- 8. Appellee-DCA acknowledges in its Attachment 9(g) that it failed to notify Appellant of its right to administrative and judicial review. This factors supports Appellant’s allegation that collusion & fraud existed in this procurement.

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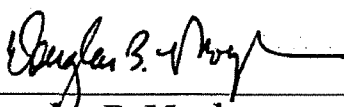
9. Appellant's other bases for its appeal are reinforced by the documents produced by Appellee-DCA in its Procurement Record and Agency Report, which are hereby incorporated herein.

Based upon the foregoing information and additional evidence as will be presented at the appeal hearing in this matter, Appellant requests that the procurement be either awarded to Appellant or dismissed in its entirety.

Further, due to the fundamental errors in Appellee-DCA's procurement, that Appellant's costs and attorneys fees be ordered reimbursed.

Respectfully submitted this 23rd day of November, 2009.

Douglas B. Moylan
Attorney at Law



Douglas B. Moylan