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Office of the Attorney General
Alicia G. Limtiaco
Attorney General of Guam
Civil Division
287 West O'Brien Drive
Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamattorneygeneral.com

Attorneys for the Purchasing Agency

BEFORE THE OFFICE OF PUBLIC AUDITOR
PROCUREMENT APPEAL

In the Appeal of:) Docket No.: OPA-PA-08-008

LATTE TREATMENT CENTER, INC.,)
Appellant.)
REPLY TO APPELLANT'S
COMMENTS

1. LTC admits that it does not have standing under conventional legal analysis. GRCP 17. It does not even argue that it should have prevailed. It argues that it is nevertheless "aggrieved" within the meaning of 4 GCA 5425(a). However, LTC cannot truly be aggrieved unless it can show that it could have won the award. Otherwise, it has nothing to complain about.

LTC has admitted that the OPA cannot award it the contract because it cannot argue that it was better qualified to perform or could have done so more cheaply.

ORIGINAL

1 2. LTC's argument that cost is irrelevant boggles the mind. Since when is cost
2 irrelevant to any contract?

3 3. DMHSA is shocked by LTC's argument against one of the most hallowed
4 principles of law we have, namely, that a man is innocent until proven guilty. LTC has
5 produced no evidence of wrongdoing and relies on mere unsubstantiated innuendo and hearsay.
6 Apparently, LTC believes in trial by media. This vicious innuendo should be ignored.

7 4. LTC has never made a specific request about documents. All it can get in this
8 case is the procurement records available to it as part of the Agency Record. LTC keeps saying
9 there is a smoking gun, but there is no smoke. What wrongdoing are we talking about? LTC
10 has never alleged a specific act of wrongdoing. All of its personal attacks on the successful
11 bidder and DMHSA personnel have never stated what happened or what rule was broken.

12 5. LTC argues there was no reason not to renew its contract. It still cannot
13 understand that this is not a renewal. This is a completely new contract being put out to bid.
14 LTC's past performance may be a plus in evaluating its bid, but previous bids, offers and
15 contracts are irrelevant.

16 6. LTC's counsel forgets that issues of subject matter jurisdiction may be raised at
17 any time. The OPA is not authorized by Guam law to decide questions regarding contract
18 renewal. She can hear "any matter properly submitted to her." The word "properly" in that
19 sentence must mean something. Otherwise, the OPA could end up hearing divorce cases and
20 felonies.

21 7. DMHSA restates the argument it made before, namely, that LTC may meet the
22 criteria and still be denied if there is a better contractor available. LTC is not as good at what
23 it does as the winning party.
24
25

1 8. LTC has not alleged a violation of the ethical Standards of Conduct enacted by
2 Part B of Article 11 of Title 5 GCA. If no law was broken, what is the problem? According to
3 Section 5603 thereof, the employee would have had to accept the plane ticket in connection
4 with a program requirement or purchase request. There was no quid pro quo, no showing of a
5 connection between the award and the trip. According to LTC's logic, the awardee would be
6 permanently disqualified from doing business with DMHSA for buying one plane ticket.

7 9. We should see one court document relating to this alleged criminal case before
8 it is taken seriously. Once again, LTC is maligning a good man unnecessarily and depriving
9 him of the benefit of the doubt that the law demands.

10 10. The gist of LTC's argument is collusion, but no collusion has been shown.
11 Instead we have vague, malicious talk of clandestine criminal trials and dirty plane tickets.
12 Where is the connection between the awardee and DMHSA? There is none. There is no
13 evidence whatsoever of collusion.

14 11. To sum up, no proof has been offered that any Guam procurement law has been
15 violated. In the absence of such a violation, there can be no reversal of the award.

16 RESPECTFULL SUBMITTED this 31ST day of July, 2008.

17 OFFICE OF THE ATTORNEY GENERAL
18 Alicia G. Limtiaco, Attorney General

19 By: David J. Highsmith
20 DAVID J. HIGHSMITH
21 Assistant Attorney General