

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz
Lt. Governor

January 9, 2007

Kevin J. Fowler
Attorney At Law
Dooley Roberts & Fowler LLP
Suite 201, Orlean Pacific Plaza
865 South Marine Corps Drive
Tamuning, Guam 96913

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT & SPECIALS

JAN 15 2007

TIME: 11:5 AM
BY: JF
FILE No. OPA-PA 06-003

Re: Protest – Early Warning System or Outdoor PA System
(Purchase Order No. P066A06288 and P066A06304)

Dear Mr. Fowler:

Hafa Adai! This is in reference to a protest that was lodged on 05 December 2006 regarding the above referenced purchase order numbers.

I apologize for the delay in responding to the protest. We were awaiting for authorization from the Guam Office of Homeland Security to release the documents that formed the basis of our determination. Now that such authorization has been given, we are stating that the protest filed was determined to be without merit based on the following factual evaluation:

Issue No. 1

The protest stated that “the award is not in compliance with the Guam Procurement Law, 5 GCA §5122, with respect to sole source procurement.”

Response:

Purchase order number P066a06288 and P066a06304 did not indicate that the procurement method used was 5 GCA §5122. Instead it indicated the use of 3112 of 2GAR. The 2GAR 3112 illustrates the conditions for use of Sole source procurement which are: (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration; (2) where a sole supplier’s item is needed for trial use or testing; (3) where the sole supplier’s item is to be procured for resale; (4) where public utility services are to be procure; (5) where supplies are offered through bankruptcy or receivership sales, or other disposition at lower than prevailing market prices.

COPY ORIGINAL
COMMITTED TO EXCELLENCE

Therefore, the use of 3112 sole source method in the processing of P066A06288 and P066A06304 was justified based on the justification provided by the Guam Office of Homeland Security for interoperability and standardization of equipment, with the Naval and Air Force Bases here on Guam. To further justify the use of the sole source a copy of an email from the Command Naval Region Marianas indicating that the Naval Region is in fact still using the equipment provided by S.E.S., USA Inc. to ensure that the equipment requested by the Guam Office of Homeland Security is in fact still being used by the Naval and Air Force Bases here in Guam.

In addition, the HSPD8 under the Federal Preparedness Assistance on the topic of Equipment item #14 indicates the importance of interoperability and other capabilities consistent with the national preparedness goal, including the safety and health of first responders and item #15 indicates “to the extent permitted by law, equipment purchased through Federal preparedness assistance for first responders **shall conform to equipment standards in place at time of purchase.**” and the National Preparedness Goal under National Priorities 3.1.2 Expanded Regional Collaboration (page 11).

Issue No. 2

The invitation to bid and any award of the contract is not in compliance with the Guam Procurement Law, 5 GCA § 5008, regarding the policy in favor of local procurement or the procedures for competitive bidding.

Response:

Under the Guam Procurement Law, 5 GCA § 5008 Comment: states in part: “The aim is to encourage local businesses to the maximum extent possible. However, some needs of the government must be procured from off-island, especially services, and often such businesses do not have a system of agencies.” Therefore, there is no prohibition from procuring from an off-island vendor. Again, the method of procurement used in the procurement of the Island-wide Siren Warning System is 2GAR 3112 sole source procurement for compatibility of equipment.

The award was based on the justification provided by the Guam Office of Homeland Security to include the directive of the HSPD8 and the National Preparedness Goal in ensuring the interoperability or compatibility of the existing equipments is the paramount consideration. Based on the existing equipments installed at the Naval and Air Force Bases a determination has been made for compatibility of existing equipments.

Page 3 of 3
Protest – Kevin J. Fowler
01/09/07

In view of the above, it is my determination that proper procurement procedures were followed in the processing of this procurement. Therefore, you are hereby advised that this is the final determination of this Office.

Upon receipt of this letter, you are, therefore notified of our determination and that you have a right to seek administrative and judicial review.

Sincerely,


CLAUDIA S. ACFALLE

cc: Office of the Attorney General
Legal Counsel, Office of the Governor
Advisor, Guam Office of Homeland Security
Hearing Officer for Procurement Appeals, OPA