

Felix P. Camacho
Governor



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Lt. Governor

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PROCUREMENT APPEALS

NOV 19 2009

TIME: 2:45 PM
BY: AC
FILE No. OPA-PA 09-011

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

In the Petition of)	DOCKET NO. OPA-PA-09-011
)	
Townhouse Department Stores, Inc.)	
dba Island Business Systems and Supplies)	APPELLEE RESPONSE TO
Appellant/Petitioner)	PETITION TO COMPEL
)	DECISION AND PRODUCE
)	DOCUMENTS

On August 28, 2009, Petitioner filed a protest of the General Services Agency's (GSA) Invitation for Bid Number GSA-084-09. On November 5, 2009, Petitioner filed a Petition to Compel Decision and Produce Documents. On November 10, 2009, GSA responded by informing Petitioner that it will cancel the bid in the best interest of the Territory. On November 12, 2009, Petitioner filed a Memorandum requesting that the Public Auditor to compel a full decision of the Protest.

This memorandum shall address each concern of the Appellant that was filed on November 5, 2009.

Complaint Number 1: The specifications failed to include essential information, namely the identity of the person or persons responsible for drafting the specifications and any persons, technical, literature or manufacturer's brochure or brochures relied upon.

GSA's response to Complaint number 1: GSA requires that an agency or department must confirm the specification prior to a bid being finalized. As such, such action does identify the person or persons responsible for drafting the specification and follows the requirements of the law.

Complaint Number 2: The evaluation criteria was improper in that they only included four specific items to be subjectively scored and all dealing with the bidder's responsibility.

GSA's response to Complaint Number 2: Complaint is correct in his assertion and GSA will have bids which do not meet the accountability requirements to be considered to be non-responsive.

Complaint Number 3: The multi-step process was improper where standard, commercial off-the-shelf supply items are being solicited.

GSA's Response to Complaint Number 3: Complaint is correct and GSA will have multi-step bids stopped if the requesting agency or department uses standard, commercial off-the-shelf supply items to solicit.

Complaint Number 4: The Invitation to Bid in this case is really an improper blank purchasing agreement.

GSA's Response to Complaint Number 4: 2 GAR Division 4 Section 311.9(i)(2) does not specify any requirement of a maximum or a minimum amount . Furthermore, there is no requirement that a determination must be made immediately before the bid is issued. Therefore, we disagree with the Complaint's assertion that this bid is an improper blank purchasing agreement.

Complaint Number 5: The Invitation for Bid intended to pave the way to enable GSA to purchase from the Federal Supply Schedule, but did not provide fair and equitable notice to the other bidders.


GSA's Response to Complaint Number 5: The notice given was the same for all of the bidders. No bidder received any other information prior to the award. Therefore, there is no discriminatory notice or unfairness to any bidder. All bidders were treated equally.

Complaint Number 6: The bid specifications were intentionally inconsistent and unduly restrictive, especially considering the standard commercial items being sought and failing to maximize competition.

GSA's Response to Complaint Number 6: GSA acknowledges that the specifications appear to be copied from the current copiers being used or some up drafted models are not generic but too restrictive.

CONCLUSION: GSA does not agree that all of the protested items rise to the level where this protest should be sustained. However because two (2) of the protested items do have merit, it is my decision that this bid be cancelled in the best interest of the Territory. Pursuant to 5 GCA Section 5425(c), the Appellant is hereby informed of his rights to seek any administrative or judicial review provided to him by law.

Further, all documents requested by the Appellant is hereby attached.


CLAUDIA ACFALLE
Chief Procurement Officer
General Services Agency