

1
2 **THE LAW OFFICE OF JOHN C. TERLAJE, P.C.**
3 Suite 216, Terlaje Professional Building
4 194 Hernan Cortez Avenue
5 Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

AUG 04 2011

6 *Attorney for Appellant Joeten Development, Inc.*

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FILE NO. OPA-PA: 11-012

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8 BEFORE THE PUBLIC AUDITOR
9 PROCUREMENT APPEAL

10 IN THE APPEAL OF) DOCKET NO. OPA-PA-11-012
11)
12 JOETEN DEVELOPMENT, INC.,) APPELLANT'S COMMENTS
13) ON AGENCY REPORT:
14 Appellant.) CERIFICATE OF SERVICE
15)

16 **I. PROCEDURAL BACKGROUND**

17 On March 29, 2011, GSA issued an Invitation for Bid No. GSA-047-11, "Lease of
18 Office Space" for the Department of Revenue and Taxation for a period of three years with
19 an option for an additional two years subject to the availability of funds. On the deadline to
20 submit all offers, April 14, 2011, Joeten was the only bidder. The appellant was deemed to
21 be the only responsive and responsible bidder.

22 Upon transmission of the award to the Department of Revenue and Taxation for
23 approval, the department submitted a letter recommending that the bid be canceled due to
24 insufficient funds. Joeten then initiated a bid protest on May 25, 2011 to the GSA. The
25 Chief Procurement Officer denied the bid protest on June 10, 2011. On July 6, 2011 this
26 Appeal was filed with the Office of the Public Auditor. The Agency report was delivered on
27 July 20, 2011 and these comments to the report are being timely provided.

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LAW OFFICES OF
JOHN C. TERLAJE
2ND FLR. SUITE 216
194 HERNAN CORTES AVE..
HAGATNA GUAM 96910
TELEPHONE: (671) 477-8894 / 477-8895
FAX: (671) 472-8896

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2 **II. COMMENTS ON THE AGENCY REPORT**

3 A. The Agency Report does not answer the allegation of the Appeal.

4 The Guam Procurement regulations state that the Agency Report shall include a
5 statement answering the allegations of the Appeal and setting forth findings, actions, and
6 recommendations in the matter with any additional evidence or information deemed necessary
7 in determining the validity of the Appeal. The statement shall be fully responsive to the
8 allegations of the Appeal. 2 GAR 12105(g).

9
10 The Agency Report is identical to the Procurement Record except that the Agency
11 report included a “pleading” that stated what was included in the Agency Report. The agency
12 report only stated that on May 2, 2011 the Department of Revenue and Taxation
13 recommended to cancel the bid, due to insufficient funds as stated by the deputy Director.
14 Agency Report Overview.

15 This conclusion is unsupported by the agency, and carries with it no reference to the
16 procurement record, or even a simple citation to the Appeal of the appellant.

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18 The Agency Report of one and a half pages consists of a page list of documents and a
19 half page overview basically stating the history of the bid. This hardly even touched the
20 surface of the requirement for the agency to be “fully responsive to the allegations,” and does
21 not attempt to “setting forth findings, actions, and recommendations in the matter together
22 with any additional evidence or information deemed necessary in determining the validity of
23 the Appeal.” The report does not even attempt to develop a defense of the agency action as is
24 required under the rules. This leaves the OPA with the task of trying to determine the
25 rationale behind the denial of the Appellant's protest.
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Furthermore, the Agency also failed to comply with two of the Guam Procurement Laws, which is to both “permit the continued development of procurement policies and practices” and to “provide for increased public confidence in the procedures followed in public procurement”. 5 GCA 5001(b)(2); 5 GCA 5001(b)(3).

As stated in the protest letter dated May 25, 2011 the grounds for the protest include that no statement has been provided to Joeten stating that it would not be in the best interest of the Government to accept the proposed bid for lease of space. It is obvious that the space is needed and a necessity for the government of Guam to continue its work for the betterment of the people of Guam. There was no ambiguity or inadequate specification when the bid was announced and as of today none exists.

No factors had been presented and the need for the space has not diminished in any way since the request for bid and up to the present time. As to the price exceeding the available funds, as stated earlier, the bid is significantly less than the lease price the agency is paying today. The proposed price is within the industry standard for the area and place. The budget for the agency actually reflects a significantly higher amount appropriated for the lease of office space than what was submitted. Lastly, there has been no assertion that any collusion had occurred prior to or after the bidding process.

II. CONCLUSION

Joeten urges the Public Auditor to examine the issues complained of; Joeten believes that its proposal was proper and legitimate and that there was no mention as to a cap of monies on the request; that the bid meets the criteria set out in the request for proposal; that

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2 the rationale set out by the agency is flawed; and that the proposal set out would meet the
3 agency's needs and is in the best interest of the territory to enter into such contract.

4 **IV. RELIEF REQUESTED**

5 This appeal is brought in the context of a pre-award protest, though the bid has been
6 opened and submitted. Joeten believes that it has met all the requirements to be the only
7 responsive and lowest bidder upon opening of the bid and thus should be awarded the bid as
8 per the context of the proposal.
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11 Respectfully submitted this 4th day of August 2011 at Hagatna, Guam.

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13 LAW OFFICE OF JOHN C. TERLAJE, P.C.

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16 **JOHN C. TERLAJE, ESQ.**
17 Attorney for Appellant JOETEN DEVELOPMENT, INC.
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CERTIFICATE OF SERVICE

I, **JOHN C. TERLAJE**, do hereby certify that on the 4th day of August 2011, I caused to be served a true and correct copy of the **APPELLANT'S COMMENTS ON AGENCY REPORT; CERTIFICATE OF SERVICE** upon the following:

Department of Revenue Taxation
P.O. Box 23607
Barigada, Guam 96921

Executed at Hagatnam, Guam, on August 4, 2011.

The Law Office of John C. Terlaje, P.C.



JOHN C. TERLAJE, ESQ.