

1 with the Office of Public Accountability. In that appeal, APM expands upon the basis of its
2 protest and raises the following points¹;

- 3 a. Why bidders were not present during review and deliberation of the technical portion
4 (phase 1). *Appeal at p. 7, ¶ 1.*
- 5 b. Whether the Attorney General participated in all facets of the process. *Id at ¶ 2.*
- 6 c. Whether the issuance of a purchase order constitutes an assignment. *Id at ¶ 3.*
- 7 d. Whether certain language in the IFB is comprehensible. *Id at ¶ 3.*
- 8 e. Whether an impropriety occurred in the handling of his bid bond. *Id at pp. 7-9.*

9 Guam Medical Referral Service comments upon the Agency Report in the context of the protest
10 and appeal.

11 1. *The Agency addresses alleged irregularities in the “process”.*

12 Appellant raises concerns with the process. A review of the Agency Report reveals that
13 GSA complied with the process for multi-step competitive sealed bidding (*see AR at tab 3, pp. 1-*
14 *3, and compare 5 Guam Code Ann. §5211 with Federal Acquisition Regulation (FAR) 14.503 et*
15 *seq.*) and APM raises no substantiated indication of irregularity in the process.

16 APM believes, presumably, that the offerors should have been present during the
17 evaluation of technical bids. *Appeal at p. 7, ¶ 1.* But APM was aware of the process to be
18 followed in this multi-step invitation for bid no later than 17 June 2011. *See AR at tab 6.* If it
19 thought that this process was improper, it was required to file a protest with GSA within 14
20 days of discovering this “issue” *See 5 Guam Code Ann. §5425(a), “(a) Right to Protest. Any*

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24 ¹ These issues are not properly before the Office of Public Accountability. *See 5 Guam Code*
25 *Ann. §5425 and Captain Hutapea and Associates v. GHURA, OPA-PA-08-009.* They are
properly disregarded by the OPA.

1 actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with
2 the method of source selection, solicitation or award of a contract, may protest to the
3 Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency.
4 The protest shall be submitted in writing within fourteen (14) days after such aggrieved
5 person knows or should know of the facts giving rise thereto.” APM never raised the issue to
6 the agency, it is now too late to protest this aspect of the process and, fundamentally, the
7 process followed is correct.

8 APM also asks whether the Attorney General participated in all facets of the process.
9 *Id at ¶ 2.* Whether he did or did not GMRS cannot say, but notes that the law does not
10 require him to do so. 5 Guam Code Ann. §5150 states that the Attorney General (or his
11 designee) “shall act as legal advisor during all phases of the solicitation or procurement
12 process.”² Thus, where the agency seeks advice, the Attorney General must provide it. That
13 is the case in this procurement. On June 9th, 2011, the Attorney General advised that the
14 medical referral contract could not be solicited as an exception to competitive sealed bidding.
15 *See AR at tab 18.* Eight days later the solicitation issued as a multi-step process in accordance
16 with the Attorney General’s advice. GMRS can see no impropriety here but notes that GSA
17 has taken affirmative measures to “tighten” its process. *See AR at tab 1, p. 2.*

18 APM asks whether the issuance of a purchase order constitutes an assignment.
19 Although this question is posed without absolute clarity, GMRS assumes APM speculates
20 such issuance violates a contract term. But APM’s appeal is of a decision relative to source
21 selection, solicitation and award under 2 Guam Admin. R. & Reg. §12201(a) not contract
22 performance. That question is beyond the OPA’s jurisdiction. *See Guam Pacific Enterprises,*

24 ² The statute offers no guidance on what this means. Absent some articulated quantified
25 affirmative duty, the best that can be said is that if an agency asks, the AG must answer.

1 *Inc., OPA-PA-09-003.* In any event, an award of a contract is not understood to be an assignment
2 of duties between the principles.

3 APM struggles with the language of the solicitation concerning unpriced technical offers.
4 APM does not protest here; merely ruminates. Potential offeror's including APM, had ample
5 opportunity to seek assistance with difficult passages in the solicitation at a pre-bid conference.
6 This is not a protest, more an observation. In any case, the language APM has difficulty with is
7 not overly opaque. *See AR at tab 6, p. 5.*

8 APM also complains of the handling of its bid bond. GSA has adequately explained and
9 documented the circumstances under which APM's bond package may have been opened and
10 there is no suggestion that there was fraud or manipulation present; merely accident. Two
11 comments are germane; APM's phase 1 technical proposal was unacceptable making its price
12 point in phase 2 irrelevant, and APM itself does not allege any impropriety affecting the award.
13 As APM states "I am no longer questioning whom the contract was awarded to." *AR tab 2 at*
14 *p.1.*

16 **FISHER & ASSOCIATES**

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18 **THOMAS J. FISHER, ESQ.**

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