



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

APPEAL NO: OPA-PA-14-002

FUKUDA ENTERPRISES, LLC.

DECISION

Appellant

I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-14-002 which was filed by FUKUDA ENTERPRISES, LLC, (Hereafter referred to as "FUKUDA") on April 11, 2014 regarding the GUAM DEPARTMENT OF EDUCATION's (Hereafter referred to as "GDOE") March 27, 2014 denial of FUKUDA's March 5, 2014 Protest concerning GDOE-IFB-004-2014 (Indefinite Quantity Bid for the Purchase of Special Education Mini Buses (22 Passenger)) (Hereafter referred to as "IFB"). The Public Auditor holds that: (1) FUKUDA's protest was timely; (2) GDOE did not violate the automatic stay; (3) The IFB's deadline for prospective bidders to submit written questions did not bar protests after that date; (4) GDOE properly exercised its power to resolve protests through mutual agreement without issuing a formal decision; (5) The IFB's original wheelchair lift specification unduly restricted competition; and (6) GDOE treated the prospective bidders fairly and equitably. Accordingly, FUKUDA's appeal is hereby DENIED.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties pursuant to the Parties' May 19, 2014 Stipulation to Submit Matter on Record without Hearing. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

- 1 1. On or about November 20, 2013, GDOE issued the IFB.¹
- 2 2. The IFB required, in relevant part, the following:
- 3 a. That the prospective bidder had until November 27, 2013 to submit pre-bid
- 4 written questions to GDOE.²
- 5 b. That the deadline to submit bids was 10:00 a.m. on December 11, 2013.³
- 6 c. That the minimum quantity of vehicles that must be bid was five (5) mini
- 7 buses that meet the IFB specifications.⁴
- 8 d. The successful bidder shall guarantee vehicular type of equipment offered
- 9 against defective parts, workmanship, and performance, for a period of not less than one (1) year
- 10 after date of receipt of equipment.⁵
- 11 e. That the busses provided must have a wheel chair lift and that the successful
- 12 bidder must be certified by the Wheelchair Lift Manufacturer to entertain, address and negotiate
- 13 all Warranties and Liabilities for the Wheelchair Lift including an authorized service center
- 14 located on Guam.⁶
- 15 f. That the busses have a three (3) year/thirty-six-thousand (36,000) miles
- 16 bumper to bumper limited warranty and that the successful bidder would provide service for one
- 17 (1) year/twelve-thousand (12,000) miles, and that all parts and labor shall be included at “No
- 18 Cost to the Government.”⁷
- 19 3. On or about December 6, 2013, GDOE issued IFB Amendment 2 which, in relevant
- 20 part, extended the deadline to submit bids in response to the IFB to 10:00 a.m. on December 16,
- 21 2013.⁸
- 22 4. On or about December 13, 2013, GDOE issued IFB Amendment 3 which extended
- 23 the deadline to submit bids in response to the IFB to 10:00 a.m. on December 20, 2013.⁹
- 24 5. On or about December 19, 2013, prospective bidder TRIPLE J MOTORS (Hereafter

24 ¹ Page 2, Paragraph 1.1, IFB Timeline, IFB, Exhibit 1, Procurement Record

25 filed on April 22, 2014.

25 ² Id.

26 ³ Id.

26 ⁴ Page 3, General Information & General Instructions, Paragraph 2.1.3, Id.

27 ⁵ Page 3, General Information & General Instructions, Paragraph 2.1.3.A,

27 Guarantee of Vehicle Type of Equipment, Id.

27 ⁶ Page GDOE 0041, IFB Specifications, Id.

28 ⁷ Page GDOE 0043, Id.

28 ⁸ Page GDOE 0049 to 0050, IFB Amendment 2 dated December 6, 2013, Id.

28 ⁹ Page GDOE 0052, IFB Amendment 3 dated December 13, 2013, Id.

1 referred to as "TRIPLE J") filed a protest with GDOE alleging that the IFB specification
2 requiring the successful bidder to be certified by the wheelchair lift manufacturer to entertain,
3 address and negotiate all warranties and liabilities for the wheelchair lift including an authorized
4 service center located on Guam was unjustified, unfair, and restricted other potential vendors.¹⁰
5 TRIPLE J further alleged that the primary wheelchair lift manufacturer was Ricon, which has
6 only one authorized service and warranty facility on Guam which is FUKUDA, and that Ricon
7 refuses to certify any other vendors to service their products resulting in the specification
8 limiting potential vendors to FUKUDA.¹¹

9 6. As a result of the TRIPLE J's protest, GDOE issued a stay of procurement on
10 December 20, 2013.¹²

11 7. On or about January 13, 2014, GDOE advised TRIPLE J that it had reviewed
12 TRIPLE J's Protest with the DEPARTMENT OF PUBLIC WORKS (Hereafter referred to as
13 "DPW"), which was the entity that developed the specifications for the IFB, and that DPW
14 advised amending the IFB as follows:

15 a. Delete the wheelchair lift manufacturer certification requirements in the
16 IFB's specifications.

17 b. Add the following warranty requirements to the WARRANTY Section of the
18 IFB specifications:

19 1) The successful bidder shall be fully responsible to entertain, address,
20 negotiate and schedule any and all warranty related issues whether in-house or outside vendors.

21 2) All warranty and maintenance services shall be performed by
22 manufacturer/factory trained, authorized technicians.¹³

23 8. GDOE also offered to voluntarily amend the IFB in accordance with DPW's
24 recommendations in exchange for TRIPLE J rescinding its protest in writing.¹⁴

25 9. On or about January 16, 2014, TRIPLE J accepted GDOE's offer and submitted their

26 ¹⁰ Page GDOE 0097, Triple J Protest Letter, Exhibit 2, Id.

27 ¹¹ Id.

28 ¹² Page GDOE 0102, Notice of Stay of Procurement dated December 20, 2013,
Exhibit 15, GDOE's Agency Report filed on April 29, 2014.

¹³ Page GDOE0089, E-Mail from Marcus Y. Pido, GDOE Supply Management
Administrator to Charlie Reynolds, Fleet Sales, TRIPLE J, dated January 13,
2014, Exhibit 13, Procurement Record filed on April 22, 2014.

¹⁴ Id.

1 letter rescinding their protest on condition that GDOE amend the IFB in accordance with DPW's
2 recommendations.¹⁵

3 10. On or about January 30, 2014, GDOE issued a Notice to Lift the Stay of Procurement
4 which advised the prospective bidders that GDOE had responded to the protest that caused the
5 December 20, 2013 Stay of Procurement and that GDOE will proceed with the solicitation for
6 the IFB.¹⁶ FUKUDA received this notice on January 31, 2014.¹⁷

7 11. On or about February 11, 2014, GDOE issued IFB Amendment 4 which, in relevant
8 part, amended the IFB as follows:

9 a. Deleted the language in the IFB Specifications stating: "Successful bidder
10 must also be certified by Wheelchair Lift Manufacturer to entertain, address and negotiate all
11 Warranties and Liabilities for or said Wheelchair Lift here including an on island authorized to
12 service center located on Guam."¹⁸

13 b. Added the following to the Warranty Section of the IFB Specifications:

14 1) The successful bidder shall be fully responsible to entertain, address,
15 negotiate, and schedule any and all warranty related issues whether in-house or outside vendors.

16 2) All warranty and maintenance services shall be performed by
17 manufacturer/factory trained, authorized technicians.¹⁹

18 c. Extended the time to submit bids in response to the IFB to 10:00 a.m. on
19 February 19, 2014.²⁰

20 12. On or about February 14, 2014, fourteen (14) days after receiving the notice that
21 GDOE was lifting the stay because it resolved TRIPLE J's Protest, and three (3) days after
22 GDOE issued IFB Amendment 4, FUKUDA sent a letter to GDOE expressing its disagreement
23 with GDOE's IFB Amendment 4. In the letter, FUKUDA asked GDOE whether the amendment
24 was GDOE's response to the Stay of Procurement and it asked GDOE how it was possible for a
25 prospective bidder to protest on December 20, 2013, the day the bids were due and after the

25 ¹⁵ Page GDOE 0095, Letter from Charlie Reynolds, TRIPLE J Fleet & Commercial
26 Sales Manager to GDOE dated January 16, 2014, Id.

27 ¹⁶ Page GDOE 0103, Notice to Lift Stay of Procurement dated January 30, 2014,
28 Exhibit 16, GDOE's Agency Report filed on April 29, 2014.

¹⁷ Page GDOE 0100, Procurement Record and Communication Log, Exhibit 14, Id.

¹⁸ Page GDOE 0054, Amendment 4 dated February 11, 2014, Exhibit 1, Procurement
Record filed on April 22, 2014.

¹⁹ Page GDOE 0065, IFB Specifications, Amendment 4 dated February 11, 2014,
Id.

²⁰ Page GDOE 0054, Id.

1 period for prospective bidders to submit questions. FUKUDA also stated that GDOE should
2 continue with the original bid form because it was unfair to other prospective bidders who were
3 present at GDOE's Procurement Office on December 20, 2013 and were ready to submit their
4 bids.²¹

5 13. On February 19, 2014, GDOE received the following bids in response to the IFB:

6 a. TRIPLE J bid the amount of eighty-nine-thousand-nine-hundred-sixteen-
7 dollars (\$89,916) per vehicle for a total of four-hundred-forty-nine-thousand-five-hundred-
8 eighty-dollars (\$449,580) for five (5) vehicles.

9 b. FUKUDA bid the amount of ninety-eight-thousand-six-hundred-sixty-nine-
10 dollars (\$98,669) per vehicle for a total of four-hundred-ninety-three-thousand-three-hundred-
11 forty-five-dollars (\$493,345) for five (5) vehicles.²²

12 14. On March 5, 2014, twenty-two (22) days after GDOE issued IFB Amendment 4,
13 FUKUDA filed a protest with GDOE alleging that Amendment 4 was issued after December 20,
14 2013, after the initial date the bids were due and long after the November 27, 2013 deadline for
15 prospective bidders to submit questions to GDOE had expired. The protest also alleged that
16 FUKUDA's February 14, 2014 letter to GDOE was a protest letter and that GDOE had failed to
17 respond to it.²³

18 15. On or about March 25, 2014, GDOE issued a Notice of Stay of Procurement advising
19 the bidders that GDOE received a protest on March 5, 2014 and that award of the IFB would be
20 stayed until the protest is resolved.²⁴

21 16. On or about March 27, 2014, GDOE issued its Protest Decision denying FUKUDA's
22 March 5, 2014 protest because: (1) FUKUDA's February 14, 2014 letter to GDOE was not
23 treated as a protest because FUKUDA failed to state that it was protesting IFB Amendment 4; (2)
24 The IFB's November 27, 2013 deadline for prospective bidders to submit questions to GDOE
25 does not bar protests after that date; (3) IFB Amendment 4 was not unfair to prospective bidders
26 because its amendments would increase competition among bidders resulting in more

27 ²¹ Page GDOE 0067 to 0068, Jason Y. Fukuda's Letter to Marcus Y. Pido, GDOE
Supply Management Administrator dated February 14, 2014, Exhibit 3, Id.

28 ²² Page GDOE 0076, Abstract of Bidders, Exhibit 8, Id.

²³ Page GDOE 0070, FUKUDA Protest Letter dated March 5, 2014, Exhibit 4, Id.

²⁴ Page GDOE 0073, Notice of Stay of Procurement dated March 25, 2014, Exhibit
6, Id.

1 competitive rates for GDOE and GDOE gave prospective bidders an additional eight (8) days to
2 amend their bids and submit them after it issued the amendment.²⁵

3 17. On April 11, 2014, fifteen (15) days after GDOE issued its Protest Decision,
4 FUKUDA filed this appeal.

5 6 III. ANALYSIS

7 Pursuant to 5 G.C.A. §5703, the Public Auditor shall review GDOE's March 27, 2014
8 Decision denying FUKUDA's March 5, 2014 protest *de novo*. As threshold matters, the Public
9 Auditor must first determine if FUKUDA's March 5, 2014 protest was timely and whether
10 FUKUDA's protest allegations concerning GDOE's resolution of TRIPLE J's December 20,
11 2013 Protest are timely.

12 13 A. FUKUDA's Protest was Timely.

14
15 The Public Auditor disagrees with GDOE's finding that FUKUDA's February 14, 2014
16 letter to GDOE was not a protest. GDOE states that it did not treat FUKUDA's letter as a protest
17 because FUKUDA failed to label or use the word "protest" in its letter.²⁶ GDOE's analysis of
18 FUKUDA's February 14, 2014 letter is not supported by Guam Procurement Law or GDOE
19 Procurement Regulations. Protests must be submitted in writing within fourteen (14) days after
20 an aggrieved person knows or should know of the facts giving rise thereto and protests filed after
21 the fourteen day (14) period shall not be considered. 5 G.C.A. §5425(a) and Chapter IX, Section
22 9.2.3.1, GDOE Procurement Regulations. To expedite the handling of protests, the envelope
23 should be labeled "Protest," and the written protest shall include as a minimum, the following:
24 (1) The name and address of the protestor; (2) Appropriate identification of the procurement; (3)
25 A statement of the reasons for the protest; and (3) Supporting exhibits, evidence, or documents to
26 substantiate any claims, and if such documents are not available within the fourteen (14) day
27 protest filing period, the expected availability date shall be indicated. Chapter IX, Section

28 ²⁵ Page GDOE 0074 to 0075, GDOE Protest Decision dated March 27, 2014, Exhibit
7, Id.

²⁶ Id.

1 9.2.3.3. Here, as stated above, FUKUDA's February 14, 2014 letter was in writing and filed
2 with GDOE only three (3) days after GDOE issued IFB Amendment 4 on February 11, 2014 and
3 complies with the fourteen (14) day deadline for protests. Additionally, FUKUDA's letter has its
4 name and address, identifies the IFB, and states the reasons for its disagreement with GDOE's
5 issuance of IFB Amendment 4.²⁷ Although, it does not have supporting documents, it references
6 the language of the IFB Amendment 4, which is not disputed by the parties. It is true that
7 FUKUDA did not use the word "Protest" in its letter. However, 5 G.C.A. §5425(a), Chapter IX,
8 Sections 9.2.3.1 and 9.2.3.3, GDOE Procurement Regulations, which govern the form of protests
9 and which are cited above, do not require protestors to do so. In fact, only Chapter IX, Section
10 9.2.3.3, GDOE Procurement Regulations, states that the envelope the protest is in should be
11 labeled "Protest" but does not require the word to be used in the protest itself. Therefore, the
12 Public Auditor finds that FUKUDA's February 14, 2014 letter was a protest concerning GDOE's
13 issuance of IFB Amendment 4 and that it was timely because it was filed with GDOE fourteen
14 (14) days after FUKUDA received GDOE's notice that the stay of procurement was lifted
15 because TRIPLE J's protest was resolved, and because it was filed only three (3) days after
16 GDOE issued the amendment on February 11, 2014.

17 Despite the finding that FUKUDA's February 14, 2014 letter was a protest, there are
18 consequences for its failure to properly label the letter as a protest. In the event of a timely
19 protest the purchasing agency shall not proceed further with the solicitation or award of the
20 contract prior to final resolution of the protest, and any such further action is void. 5 G.C.A.
21 §5425(g) and Chapter IX, Section 9.2.5. Here, despite receiving FUKUDA's Protest on
22 February 14, 2014, GDOE proceeded with accepting and opening bids submitted in response to
23 the IFB on February 19, 2014 and did not issue a stay of the procurement until March 25, 2014.
24 However, GDOE should not be faulted for this delay in staying the procurement. FUKUDA
25 does admit that its February 14, 2014 letter was not artfully drafted.²⁸ The language of the letter
26 not only excludes the use of the word protest, but is put in the form of questions to GDOE. The
27 reason the envelopes containing the protest should be marked "Protest" is to expedite their
28 handling. Chapter IX, Section 9.2.3.3, GDOE Procurement Regulations. Here, without such

²⁷ Page GDOE 0067, Jason Y. Fukuda's Letter to Marcus Y. Pido, GDOE Supply Management Administrator dated February 14, 2014, Exhibit 3, Id.

²⁸ Page 2, Statement of Grounds for Appeal, Notice of Appeal filed on April 11, 2014.

1 labeling, and despite meeting the minimal form requirements for a protest, the Public Auditor
2 finds that GDOE was reasonably unsure as to whether FUKUDA's February 14, 2014 letter was
3 a protest because the language of the letter could also be viewed as a submission of additional
4 questions by FUKUDA and GDOE reasonably did not respond because the deadline for written
5 questions expired on November 27, 2013. Once, GDOE received FUKUDA's March 5, 2014
6 Protest, which was clearly marked as a protest and unambiguously clarified that the February 14,
7 2014 letter was a protest, GDOE acted accordingly by not taking any further action in awarding
8 the IFB and issuing a stay of procurement on March 25, 2014. Thus, the Public Auditor finds
9 that GDOE did not violate the automatic stay imposed by 5 G.C.A. §5425(g) and Chapter IX,
10 Section 9.2.5 by receiving and opening bids on February 19, 2014 because FUKUDA failed to
11 clearly identify its February 14, 2014 letter as a protest until March 5, 2014. The Public Auditor
12 will now review GDOE's denial of FUKUDA's Protest.

13 **B. The IFB's Deadline for Written Questions did not bar TRIPLE J's Protest.**

14
15 GDOE's Protest Decision correctly found that the IFB's November 27, 2013 deadline for
16 prospective bidders to submit questions to GDOE did not bar protests after that date. Generally,
17 protesters may file a protest on any phase of solicitation or award including, but not limited to,
18 specifications preparation, bid solicitation, award, or disclosure of information marked
19 confidential in the bid or offer. Chapter IX, Section 9.2.3.2, GDOE Procurement Regulations.
20 This regulation's language "any phase of solicitation or award," is very broad and gives
21 protesters the right to file a protest at any time after the solicitation is issued so long as they do so
22 within fourteen (14) days when they knew or should have known of the subject of the protest.
23 Hence, the Public Auditor finds that TRIPLE J's December 19, 2013 protest was made during
24 the IFB's solicitation phase and is allowed pursuant to the broad language of Chapter IX, Section
25 9.2.3.2, GDOE Procurement Regulations. The Public Auditor will now review the issue of
26 whether GDOE had the authority to resolve TRIPLE J's Protest.
27
28

1 **C. GDOE had the Authority to Resolve TRIPLE J's Protest**
2

3 FUKUDA argues that GDOE should have decided that TRIPLE J's December 19, 2013
4 protest was untimely instead of agreeing to issue IFB Amendment No. 4. This argument is
5 flawed for two (2) reasons. First, GDOE has the broad authority to resolve protests via mutual
6 agreement. GDOE's Superintendent or his designee shall have the authority, prior to the
7 commencement of an action in court concerning the controversy, to settle and resolve a protest of
8 an aggrieved bidder, offeror, contractor, actual or prospective, concerning the solicitation or
9 award of a contract. 5 G.C.A. §5425(b) and Chapter IX, Section 9.2.1. If the protest is not
10 resolved by mutual agreement, GDOE's Superintendent or his designee shall promptly issue a
11 decision in writing stating the reasons for action taken and informing the protestor of his or her
12 right to administrative and judicial review. 5 G.C.A. §5425(c) and Chapter IX, Section 9.2.7,
13 GDOE Procurement Regulations. Here, as stated above, GDOE resolved TRIPLE J's protest
14 through a mutual agreement instead of issuing a protest decision. The Public Auditor finds that
15 GDOE's resolution of TRIPLE J's Protest was a proper exercise of its power to resolve protests
16 through mutual agreement without issuing formal decision.

16 The second reason that FUKUDA's timeliness argument is flawed concerns GDOE's
17 power to amend the IFB. The IFB states that it may not be modified unless done by an
18 amendment made in writing by GDOE's Supply Management Administrator.²⁹ Here, IFB
19 Amendment 4 is in writing and signed by Marcus Pido, GDOE's Supply Management
20 Administrator. Hence, the IFB states that it can be amended and IFB Amendment 4 meets the
21 requirements to be a valid amendment. Thus, even assuming *arguendo* that TRIPLE J's
22 December 19, 2014 protest was untimely, GDOE retained the authority to resolve it through
23 mutual agreement and it retained the authority to amend the IFB. Based on the foregoing, the
24 Public Auditor finds no merit to FUKUDA's arguments concerning the timeliness of TRIPLE J's
25 December 19, 2013 Protest. The Public Auditor will now review FUKUDA's main issues,
26 which are whether GDOE should have amended the IFB specifications in the manner and at the
27 time it did.

28

29 Page GDOE 0006, Section 2, Paragraph 2.2.10, Acknowledgments Of Amendments
to IFB, Exhibit 1, Procurement Record Filed on April 22, 2014

1 **D. IFB Amendment 4 is necessary to foster Broad Based Competition**

2
3 FUKUDA's arguments that the original IFB specifications should be used have no merit.
4 One of the underlying purposes of Guam's Procurement Law is to foster effective broad based
5 competition within the free enterprise system. 5 G.C.A. §5001(b)(6). This policy must be
6 implemented in the specifications used in solicitations. All specifications shall seek to promote
7 overall economy for the purposes intended and encourage competition in satisfying the
8 Government of Guam's needs and shall not be unduly restrictive. 5 G.C.A. §5265 and Chapter
9 IV, Section 4.6, GDOE Procurement Regulations. Here, the original specification at issue in this
10 matter fails to heed this policy or comply with the requirement that specifications encourage
11 competition. Indeed, FUKUDA admits that there are only two (2) wheelchair lift manufacturers,
12 Ricon and Braun Ability, which a prospective bidder could receive the certification required by
13 the original language of the IFB's wheelchair lift specification, of which FUKUDA has obtained
14 Ricon's certification as required by the original IFB specification.³⁰ Consequently, the IFB's
15 original wheelchair lift specification would only allow one other additional prospective bidder
16 and this would be whoever could obtain Braun Ability's certification. The Public Auditor finds
17 that this consequence unduly restricts competition in violation of 5 G.C.A. §5001(b)(6), §5265,
18 and Chapter IV, Section 4.6, GDOE Procurement Regulations and that GDOE had to amend the
19 specification to comply with the aforementioned procurement laws and regulations.

20 There is also no merit to FUKUDA's argument that the original IFB wheelchair lift
21 specification is necessary to protect the end-users of this equipment, Guam's Special Education
22 schoolchildren, and mitigate GDOE's liability should there be an equipment malfunction. As
23 stated above, IFB Amendment required the successful bidder to be fully responsible to entertain,
24 address, negotiate, and schedule any and all warranty related issues whether in-house or outside
25 vendors, and mandated that all warranty and maintenance services shall be performed by
26 manufacturer/factory trained, authorized technicians. Additionally, the prospective bidders were
27 required to guarantee the vehicular type of equipment offered against defective parts,
28 workmanship, and performance, for a period of not less than one (1) year after date of receipt of
equipment and provide a three (3) year/thirty-six-thousand (36,000) miles bumper to bumper

³⁰ Page 4, Statement of Grounds for Appeal, Notice of Appeal filed on April 11, 2014

1 limited warranty, and the successful bidder would provide service for one (1) year or twelve-
2 thousand (12,000) miles with all parts and labor included at no cost to GDOE. Thus, IFB
3 Amendment 4 did not do away with the requirement that the wheelchair lifts have warranties and
4 be serviced by qualified technicians, it only eliminated the unduly restrictive requirement that
5 prospective bidders be certified by the very limited number of wheelchair lift manufacturers to
6 negotiate these warranties.

7
8 **E. GDOE's did not violate its Duty to treat all bidders Fairly and Equitably**

9
10 There is no merit to FUKUDA's argument that the IFB should have been cancelled in its
11 entirety. Another underlying purposes and policies of Guam's Procurement Law is to ensure the
12 fair and equitable treatment of all persons who deal with the procurement system of the
13 Government of Guam. 5 G.C.A. §5001(b)(4). This purpose and policy is infused into regulations
14 regarding the timing of when to allow prospective bidders to respond to IFB amendments. IFB
15 amendments shall be distributed in a reasonable time to allow prospective bidders to consider
16 them in preparing their bids and if the time and date set for the receipt of bids will not permit
17 such preparation, such time shall be increased to the extent possible in the amendment, or, if
18 necessary, by telegram, telephone, or facsimile and confirmed in the amendment. Chapter III,
19 Section 3.9.9.3, GDOE Procurement Regulations. Here, as stated above, prospective bidders
20 were ready to submit their bids on December 20, 2013, but did not as a result of the stay
21 resulting from TRIPLE J's December 19, 2013 Protest. After this protest was resolved, GDOE
22 subsequently issued IFB Amendment 4 on February 11, 2014 and the amendment stated that bids
23 were due on February 19, 2014. This gave the prospective bidders eight (8) additional days to
24 amend the bids they originally prepared for the December 20, 2013 bid submission date. The
25 Public Auditor finds that GDOE treated the prospective bidders fairly and equitably by giving
26 them a reasonable time to change their bids in response to IFB Amendment 4 before bid
27 submission.

28
IV. CONCLUSION

Based on the foregoing the Public Auditor hereby determines the following:

1 1. FUKUDA's February 14, 2014 Protest was timely.

2 2. Despite receiving FUKUDA's protest on February 14, 2014, GDOE did not violate
3 the automatic stay imposed 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5 by receiving and
4 opening bids on February 19, 2014 because FUKUDA failed to clearly identify its February 14,
5 2014 letter as a protest until March 5, 2014.

6 3. The IFB's November 27, 2013 deadline for prospective bidders to submit written
7 questions did not bar TRIPLE J's December 19, 2013 Protest because it was made during the
8 IFB's solicitation phase and is allowed pursuant to the broad language of Chapter IX, Section
9 9.2.3.2, GDOE Procurement Regulations.

10 4. GDOE's resolution of TRIPLE J's Protest was a proper exercise of its power to
11 resolve protests through mutual agreement without issuing a formal decision pursuant to 5
12 G.C.A. §5425(b) and Chapter IX, Section 9.2.1.

13 5. The IFB's original wheelchair lift specification unduly restricted competition in
14 violation of 5 G.C.A. §5001(b)(6), §5265, and Chapter IV, Section 4.6, GDOE Procurement
15 Regulations and GDOE had to amend the specification to comply with the aforementioned
16 procurement laws and regulations.

17 6. GDOE treated the prospective bidders fairly and equitably by giving them a
18 reasonable time to change their bids in response to IFB Amendment 4 before bid submission.

19 7. FUKUDA's Appeal is hereby DENIED.

20 This is a Final Administrative Decision. The Parties are hereby informed of their right to
21 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
22 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
23 Decision. 5 G.C.A. §5481(a).

24 A copy of this Decision shall be provided to the parties and their respective attorneys, in
25 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
26 www.guamopa.org.

27 DATED this 6th day of June, 2014.

28 
DORIS FLORES BROOKS, CPA, CGFM
PUBLIC AUDITOR