



OFFICE OF THE PUBLIC AUDITOR

October 24, 2008

Captain, Hutapea + Associates
RECEIVED
RJW
10/24/08

X
Appellant – Captain, Hutapea, & Associates

W. Nicholas Captain, MAI, CRE, FRICS

President

Siska S. Hutapea, MAI, MRE

Vice President

101 Chalan Santo Papa, Suite 201

Hagatna, Guam 96910

VIA FACSIMILE 671- 472-1820

Attorney for Appellant – Captain, Hutapea & Associates, Inc.

Kevin J. Fowler, Esq.

Dooley Roberts & Fowler LLP

Suite 201, Orlean Pacific Plaza

865 South Marine Corps Drive

Tamuning, Guam 96913

VIA FACSIMILE: (671) 646-1223

Appellee – Guam Housing & Urban Renewal Authority

Ronald S. De Guzman

Executive Director

Guam Housing and Urban Renewal Authority (GHURA)

117 Bien Venida Avenue

Sinajana, Guam 96910

VIA FACSIMILE 671-472-7565

Attorney for Appellee – Guam Housing & Urban Renewal Authority

Anthony C. Perez, Esq.

Lujan, Aguigui & Perez LLP

DNA Building, Suite 300

238 Archbishop Flores Street

Hagatna, Guam 96910

VIA FACSIMILE 671-477-5297



OFFICE OF THE PUBLIC AUDITOR

October 24, 2008

Appellant – Captain, Hutapea, & Associates

W. Nicholas Captain, MAI, CRE, FRICS

President

Siska S. Hutapea, MAI, MRE

Vice President

101 Chalan Santo Papa, Suite 201

Hagatna, Guam 96910

VIA FACSIMILE 671- 472-1820

Attorney for Appellant – Captain, Hutapea & Associates, Inc.

Kevin J. Fowler, Esq.

Dooley Roberts & Fowler LLP

Suite 201, Orlean Pacific Plaza

865 South Marine Corps Drive

Tamuning, Guam 96913

VIA FACSIMILE: (671) 646-1223

Appellee – Guam Housing & Urban Renewal Authority

Ronald S. De Guzman

Executive Director

Guam Housing and Urban Renewal Authority (GHURA)

117 Bien Venida Avenue

Sinajana, Guam 96910

VIA FACSIMILE 671-472-7565

Attorney for Appellee – Guam Housing & Urban Renewal Authority

Anthony C. Perez, Esq.

Lujan, Aguigui & Perez LLP

DNA Building, Suite 300

238 Archbishop Flores Street

Hagatna, Guam 96910

VIA FACSIMILE 671-477-5297

RECEIVED
OCT 24 2008
3:40nc
DOOLEY ROBERTS & FOWLER LLP



OFFICE OF THE PUBLIC AUDITOR

October 24, 2008

Appellant – Captain, Hutapea, & Associates

W. Nicholas Captain, MAI, CRE, FRICS

President

Siska S. Hutapea, MAI, MRE

Vice President

101 Chalan Santo Papa, Suite 201

Hagatna, Guam 96910

VIA FACSIMILE 671- 472-1820

Attorney for Appellant – Captain, Hutapea & Associates, Inc.

Kevin J. Fowler, Esq.

Dooley Roberts & Fowler LLP

Suite 201, Orlean Pacific Plaza

865 South Marine Corps Drive

Tamuning, Guam 96913

VIA FACSIMILE: (671) 646-1223

X **Appellee – Guam Housing & Urban Renewal Authority**

Ronald S. De Guzman

Executive Director

Guam Housing and Urban Renewal Authority (GHURA)

117 Bien Venida Avenue

Sinajana, Guam 96910

VIA FACSIMILE

671-472-7565

Attorney for Appellee – Guam Housing & Urban Renewal Authority

Anthony C. Perez, Esq.

Lujan, Aguigui & Perez LLP

DNA Building, Suite 300

238 Archbishop Flores Street

Hagatna, Guam 96910

VIA FACSIMILE 671-477-5297

GHURA
FROM DESK
2008 OCT 24 PM 3:50
Received BY



OFFICE OF THE PUBLIC AUDITOR

October 24, 2008

Appellant – Captain, Hutapea, & Associates

W. Nicholas Captain, MAI, CRE, FRICS

President

Siska S. Hutapea, MAI, MRE

Vice President

101 Chalan Santo Papa, Suite 201

Hagatna, Guam 96910

VIA FACSIMILE 671- 472-1820

Attorney for Appellant – Captain, Hutapea & Associates, Inc.

Kevin J. Fowler, Esq.

Dooley Roberts & Fowler LLP

Suite 201, Orlean Pacific Plaza

865 South Marine Corps Drive

Tamuning, Guam 96913

VIA FACSIMILE: (671) 646-1223

Appellee – Guam Housing & Urban Renewal Authority

Ronald S. De Guzman

Executive Director

Guam Housing and Urban Renewal Authority (GHURA)

117 Bien Venida Avenue

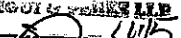
Sinajana, Guam 96910

VIA FACSIMILE

671-472-7565

RECEIVED

OCT 24 2008

LUJAN AGUIGUI & PEREZ LLP
By:  415

Attorney for Appellee – Guam Housing & Urban Renewal Authority

Anthony C. Perez, Esq.

Lujan, Aguiqui & Perez LLP

DNA Building, Suite 300

238 Archbishop Flores Street

Hagatna, Guam 96910

VIA FACSIMILE 671-477-5297



OFFICE OF THE PUBLIC AUDITOR

October 24, 2008

Appellant – Captain, Hutapea, & Associates

W. Nicholas Captain, MAI, CRE, FRICS

President

Siska S. Hutapea, MAI, MRE

Vice President

101 Chalan Santo Papa, Suite 201

Hagatna, Guam 96910

VIA FACSIMILE 671- 472-1820

Attorney for Appellant – Captain, Hutapea & Associates, Inc.

Kevin J. Fowler, Esq.

Dooley Roberts & Fowler LLP

Suite 201, Orlean Pacific Plaza

865 South Marine Corps Drive

Tamuning, Guam 96913

VIA FACSIMILE: (671) 646-1223

Appellee – Guam Housing & Urban Renewal Authority

Ronald S. De Guzman

Executive Director

Guam Housing and Urban Renewal Authority (GHURA)

117 Bien Venida Avenue

Sinajana, Guam 96910

VIA FACSIMILE 671-472-7565

Attorney for Appellee – Guam Housing & Urban Renewal Authority

Anthony C. Perez, Esq.

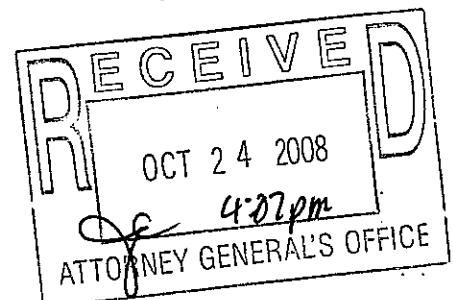
Lujan, Aguigui & Perez LLP

DNA Building, Suite 300

238 Archbishop Flores Street

Hagatna, Guam 96910

VIA FACSIMILE 671-477-5297



X

Attorney for Interested Party – PCR Environmental Inc.
Janalyn Cruz Damian, Esq.
Calvo & Clark, LLP
259 Martyr Street, Suite 100
Hagatna, Guam 96910

VIA FACSIMILE 671- 646-9403

Transmitted herewith is a copy of the Decision and the Findings of Fact and Recommendations on appeal OPA-PA-08-009 in the appeal of Captain Hutapea, & Associates, Inc., regarding the Guam Housing and Urban Renewal Authority Request for Proposal # GHURA-RP&E-08-002 for a Guam Comprehensive Housing Study.

A complete copy of the Decision and Findings will be posted on our website within the next day and available for public view at www.guamopa.org.

Senseramente,



Doris Flores Brooks, CPA, CGFM
Public Auditor

X

~~cc: Ms. Deborah Rivera, Assistant Attorney General - Office of the Attorney General
(VIA FACSIMILE 671-472-2493)~~



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF,
CAPTAIN, HUTAPEA & ASSOCIATES,
INC.,
Appellant

APPEAL NO: OPA-PA-08-009
DECISION

I. INTRODUCTION

This is the Public Auditor's Decision on an appeal filed on June 5, 2008, by Captain, Hutapea & Associates, Inc., (Hereafter "CHA") regarding the Guam Housing and Urban Renewal Authority's (Hereafter "GHURA") denial of CHA's May 12, 2008, protest of GHURA's determination that PCR Environmental, Inc. (Hereafter "PCR") was the best offeror for RFP-GHURA-RP&E-08-002 (Guam Comprehensive Housing Study) (Hereafter "RFP"). The Public Auditor holds that, based on the record before her, there is no evidence that GHURA's evaluation committee did not evaluate the proposals on the basis of the evaluation factors stated in the RFP. Accordingly, CHA's June 5, 2008, appeal is denied.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the Findings of the Hearing Officer, Anthony R. Camacho, Esq., issued on October 23, 2008. In addition, this Decision is based on the Procurement Record and all documents submitted by the parties in the appeal because no party to this proceeding has requested a hearing.

1. On February 10, 2008, GHURA advertised the RFP as available for pick-up beginning February 1, 2008, via publication in the Pacific Daily News.¹
2. The RFP requested proposals for:

¹ Excerpt of Pacific Daily News dated February 10, 2008, Procurement Record.

1 a. A Comprehensive Housing Study for Guam; and

2 b. The development of a dynamic interactive Housing Model that will be used to
3 generate forecasts of housing needs for Guam.²

4 3. The deadline for submission of proposals in response to the RFP was set for 3:00 p.m.
5 on February 29, 2008.³

6 4. CHA and PCR both submitted proposals in response to the RFP.⁴

7 5. CHA was subsequently notified that GHURA selected PCR as the best offeror.⁵

8 6. On May 12, 2008, CHA protested GHURA's selection of PCR as the best offeror
9 alleging that such action violates the RFP's requirement that an offeror have experience in the
10 Guam market.⁶

11 7. On May 21, 2008, GHURA denied CHA's protest on the grounds that the RFP does
12 not require an offeror to have experience in the Guam housing market, and that GHURA's
13 evaluation committee reviewed the proposals and provided an independent evaluation of which
14 offeror would be the best offeror to provide the services sought by GHURA, and based on the
15 strength of the offerors and their respective proposals, the evaluation committee determined that
16 PCR was the best offeror.⁷

17
18
19
20
21
22
23 ² Id.

24 ³ Id.

25 ⁴ CHA Proposal dated February 29, 2008, Tab 3, CHA Notice of Appeal dated June 5, 2008 (Hereafter "CHA
26 Appeal"), and PCR Proposal dated February 29, 2008, Procurement Record.

27 ⁵ May 21, 2008, Decision to official protest of Captain by GHURA's attorneys

28 ⁶ Id.

⁷ Decision on CHA Protest dated May 21, 2008, Tab 2, CHA Appeal.

1 8. On June 5, 2008, fifteen (15) days after GHURA denied their May 12, 2008, protest,
2 CHA filed this appeal.⁸

3
4 **III. ANALYSIS**

5 GHURA properly denied CHA's May 12, 2008, protest. On appeal, CHA alleges that it
6 and not PCR should have been selected as the most qualified offeror due to CHA's expertise,
7 experience, and past record of performance. CHA alleges that PCR's voluminous proposal may
8 have overwhelmed some of the evaluation committee members. CHA alleges that at least one
9 member of the evaluation committee was personally biased against CHA. And, CHA alleges
10 that PCR does not have the experience, professional designations, market data, or expertise to
11 complete the services required by the RFP. Finally, CHA alleges, for the first time on appeal,
12 that the RFP process is flawed because it did not require a comprehensive source of complete
13 and accurate real estate market data. CHA does not provide any evidence to support these
14 allegations. As will be discussed below, CHA's subjective belief that it should have been
15 selected as the best offeror is overcome by the objective evaluation conducted by GHURA's
16 evaluation committee in accordance with the evaluation criteria set forth in the RFP.

17 **A. CHA's expertise, experience, and past record of performance, by themselves,
18 does not require GHURA to select CHA as the best qualified offeror.**

19 CHA argues, at great length, that its expertise, experience, and its substantial past record
20 of performance justifies overturning GHURA's selection of PCR as the best offeror. Generally,
21 proposals must be evaluated only on the basis of evaluation factors stated in the request for
22 proposals. 5 G.C.A. §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114(f)(2). Here, the RFP states
23 that proposals will be evaluated on the basis of the following criteria with each item being given a
24 weight:

- 25
- | | | |
|----|--|-----|
| 26 | <i>i. The completeness of the proposal, particularly the methodology
and approach to be followed in performing the required services
within the Scope of Work.</i> | 35% |
|----|--|-----|
- 27

28 ⁸ CHA Appeal.

1 approximately fifty-five (55) pages.¹¹ CHA's Proposal was larger than PCR's proposals because
2 CHA's proposal contained approximately seventy-five (75) pages. Therefore CHA's allegation
3 that the sheer weight and intensity of material submitted by PCR may have overwhelmed some
4 of those judging the proposals is not supported as the size of CHA's proposal was just as
5 voluminous as PCR's.

6 Nor does the record support CHA's implication that GHURA's evaluation team lacked
7 the aptitude or ability to judge PCR's Proposal. GHURA's evaluation team consisted of high
8 ranking managerial officials as it was composed of Michael Duenas, GHURA's Chief Planner,
9 Ronald Lujan, GHURA's Community Development Manager, Albert Perez, Chief Economist of
10 Guam, Arnold Jose, President of Jose Realty and a former President of the Guam's Realtor's
11 Association, and Nora Camacho, a GHURA Planner III.¹² The Public Auditor finds no merit in
12 CHA's unsubstantiated implication that these evaluation committee members lacked the aptitude
13 to accurately review and judge PCR's Proposal.

14 **C. There is no evidence that any members of Evaluation Committee were biased**
15 **against CHA.**

16 CHA claims that at least one of the members of the evaluation committee may have been
17 biased against CHA. However, CHA does not identify which of the five (5) members of the
18 evaluation team may have been biased. CHA only asserts that the bias may have resulted from a
19 prior contract CHA completed for GHURA.¹³ Assuming *arguendo*, that a committee member
20 considered CHA's performance on this prior contract, the Public Auditor finds that this is not
21 bias, but instead the correct performance of the committee member's duty. As stated above, one
22 of the criteria that was used to evaluate the proposals was the offeror's demonstrated past record
23
24

25 Auditor accepts PCR's redacted proposal as part of the record in this matter and any reference to said proposal only
26 refers to PCR's redacted proposal and not any information PCR deemed confidential or proprietary.

27 ¹¹ PCR Proposal, Procurement Record.

28 ¹² Line 19-26, Page 7, Answer of GHURA to Procurement Appeal, Tab G, Agency Report.

¹³ Page 2, CHA Appeal.

1 of performance and this criteria was worth 20% of the offeror's total score.¹⁴ Thus,
2 consideration of CHA's performance on a prior GHURA contract was not bias because the RFP
3 required evaluation of CHA's past record of performance.

4 **D. The Evaluation Committee properly ranked PCR as the best offeror.**

5 CHA argued at great length that PCR should not have been determined to be the best
6 offeror because it does not have the experience, professional designations, market data, or
7 expertise to complete the services required by the RFP. As stated above, experience and
8 expertise were one of the RFP's evaluation criteria.¹⁵ CHA alleges that PCR is not qualified to
9 perform real estate consulting and analysis. However, the qualifications required by the RFP do
10 not require "real estate consulting," or "real estate analysis."¹⁶ CHA alleges that PCR does not
11 have a history of completing real estate consulting reports. However, as stated above, the RFP
12 was soliciting for a comprehensive housing study for Guam and the development of a dynamic,
13 interactive housing model, and not real estate consulting reports.¹⁷ CHA alleges that PCR's
14 project team's expertise is limited to environmental issues. However, this is not supported by
15 PCR's proposal which indicates that PCR's project team members have experience developing,
16 refining, and conducting comprehensive housing studies and developing interactive housing
17 models in other island communities comparable to Guam. Finally, CHA alleges that PCR has no
18 market data to complete the housing study. However, the RFP does not require that offerors use
19 market data they currently possess, instead, the RFP requires the collection of information about
20 Guam's existing conditions and current housing situation.¹⁸ Thus, the Public Auditor finds that
21 PCR has the experience and expertise to complete the services required by the RFP.

22 **E. The issue of whether the RFP Specifications and Requirements were flawed is**
23 **not properly before the OPA.**

24 ¹⁴ Proposal Evaluation Criteria, Paragraph F, Page 6, RFP, Tab C, Agency Report.

25 ¹⁵ Proposal Evaluation Criteria, Paragraph F, Page 6, RFP, Tab C, Agency Report.

26 ¹⁶ Section V, Paragraph B, Qualifications, Page 5, RFP, Tab C, Agency Report.

27 ¹⁷ Excerpt of Pacific Daily News dated February 10, 2008, Procurement Record.

28 ¹⁸ Section I, Paragraph B2a, Services Required, RFP, Tab C, Agency Report.

1
2 CHA raises an entirely new allegation for the first time on appeal. CHA argues that the
3 RFP specifications and requirements were flawed because they did not require a comprehensive
4 source of complete and accurate real estate market data.¹⁹ This argument is not part of CHA's
5 May 12, 2008 protest and it is not part of GHURA's May 21, 2008 Decision denying CHA's
6 protest. The Public Auditor's jurisdiction is limited to reviewing GHURA's May 21, 2008
7 Decision denying CHA's May 12, 2008 Protest. 5 G.C.A. §5425(e). The issue of whether the
8 RFP specifications and requirements were flawed because they did not require a comprehensive
9 source of complete and accurate real estate market data was not raised in CHA's May 12, 2008,
10 protest or GHURA's May 21, 2008 Decision denying the protest. As a result, there is simply no
11 decision concerning this issue for the Public Auditor to review. Thus, the Public Auditor does
12 not have the jurisdiction to hear this issue because it is not properly before her.
13
14
15

16 IV. CONCLUSION

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

- 18 1. CHA's expertise, experience, and past record of performance, by themselves, are not
19 sufficient to justify overturning GHURA's selection of PCR as the best offeror.
- 20 2. There is no merit to CHA's allegation that PCR's Proposal was voluminous or that
21 GHURA's evaluation committee members lacked the aptitude to accurately review and judge
22 PCR's Proposal.
- 23 3. An evaluation committee member's consideration of CHA's performance on a prior
24 GHURA contract, if it occurred, was not bias because the RFP required evaluation of CHA's
25 past record of performance.
- 26 4. The Public Auditor accepts GHURA's finding that PCR has the experience and
27 expertise to complete the services required by the RFP.

28

¹⁹ Page 3, Data Requirements Paragraph, CHA Comments to Agency Report dated September 8, 2008.

1 5. The Public Auditor does not have the jurisdiction to hear the issue of whether the
2 RFP's specifications and requirements were flawed because they did not require a
3 comprehensive source of complete and accurate real estate market data.

4 6. CHA's appeal is hereby denied.

5 7. GHURA's May 21, 2008, Decision denying CHA's May 12, 2008, protest is
6 sustained.

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

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

14
15 **DATED** this 23rd day of October, 2008.

16
17
18
19
20 
21 _____
22 DORIS FLORES BROOKS, CPA, CGFM
23 PUBLIC AUDITOR
24
25
26
27
28