



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

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

Appellant

APPEAL NO: OPA-PA-08-009

FINDING AND RECOMMENDATIONS
OF HEARING OFFICER

I. INTRODUCTION

This is the Finding of the Hearing Officer 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.'s (Hereafter "PCR") was the best offeror for RFP-GHURA-RP&E-08-002 (Comprehensive Housing Study) (Hereafter "RFP"). The Hearing Officer recommends the Public Auditor hold that, based on the record, 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 should be denied.

II. FINDINGS OF FACT

These findings are 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:

a. A Comprehensive Housing Study for Guam; and

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

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

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

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

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

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

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

16 8. On or about June 5, 2008, fifteen (15) days after GHURA denied their May 12, 2008
17 protest, CHA filed this appeal.⁸

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22 ² Id.

23 ³ Id.

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

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

27 ⁶ Id.

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

⁸ CHA Appeal.

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III. ANALYSIS

GHURA properly denied CHA's May 12, 2008 protest. On appeal, CHA alleges that it and not PCR should have been selected as the most qualified offeror due to CHA's expertise, experience, and past record of performance. CHA alleges that PCR's voluminous proposal may have overwhelmed some of the evaluation committee members. CHA alleges that at least one member of the evaluation committee was personally biased against CHA. And, CHA alleges that PCR does not have the experience, professional designations, market data, or expertise to complete the services required by the RFP. CHA does not provide any evidence to support these allegations. As will be discussed below, CHA's subjective belief that it should have been selected as the best offeror is overcome by the objective evaluation conducted by GHURA's evaluation committee in accordance with the evaluation criteria set forth in the RFP.

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

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

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| 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% |
| ii. <i>The expertise, experience and availability of personnel for each task to be completed within the specified time frame.</i> | 35% |
| iii. <i>The Proposer's demonstrated past record of performance.</i> | 20% |
| iv. <i>The Proposer's capacity to perform the work within a prescribed time frame.</i> | 10% ⁹ |

⁹ Proposal Evaluation Criteria, Paragraph F, Page 6, RFP, Tab C, Agency Report.

1 The evaluation factors (ii and iii) clearly indicate that an offeror's expertise, experience,
2 and past record of performance account for a total of 55% of the total score for each offeror. The
3 remaining 45% of an offeror's score is dependent on other factors which include the completeness
4 of the proposals and the offeror's methodology and approach, the offeror's capacity to perform
5 the work within a prescribed time frame. Thus, even if CHA scored the maximum amount of
6 points for the expertise, experience, and past record of performance factors, another offeror could
7 still be selected as the best offeror if it scored higher on the remaining evaluation criteria. Greater
8 weight cannot be given to CHA beyond 55% of the total score for each offeror on the factors of
9 expertise, experience, and past record of performance due to the procurement law and regulations
10 cited above. Thus, the Hearing Officer recommends that the Public Auditor find that CHA's
11 expertise, experience, and past record of performance, by themselves, are not sufficient to justify
12 overturning GHURA's selection of PCR as the best offeror.
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16 **B. There is no evidence that the Evaluation Committee was overwhelmed by PCR's
17 Proposal or that they lacked the aptitude to judge PCR's proposal.**

18 CHA alleges that PCR's proposal was voluminous and that its sheer weight and intensity
19 of material may have overwhelmed some of those judging the proposals. The procurement
20 record submitted in this matter does not support this allegation.¹⁰ PCR's Proposal contained
21 approximately fifty-five (55) pages.¹¹ CHA's Proposal was larger than PCR's proposals because
22 CHA's proposal contained approximately seventy-five (75) pages. Therefore CHA's allegation
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24 ¹⁰ Generally, proposals of the other offerors are not made public until after the award, and only the proposal of the
25 offeror who is awarded the contract is made public: 2 G.A.R., Div. 4, Chap. 2, §3114(h)(1) and (i)(2). Here, the
26 record does not indicate any award was made. However, PCR submitted its proposal, with redactions, and a letter
27 by PCR's Counsel requesting that GHURA include it in the Procurement Record in this matter. See Letter from
28 Janalynn C. Damian, Esq., to Anthony C. Perez, Esq., dated June 27, 2008. Further, PCR has entered its
appearance in these proceedings as an interested party and filed Comments to the Agency Report. The Public
Auditor accepts PCR's redacted proposal as part of the record in this matter and any reference to said proposal only
refers to PCR's redacted proposal and not any information PCR deemed confidential or proprietary.

¹¹ PCR Proposal, Procurement Record.

1 that the sheer weight and intensity of material submitted by PCR may have overwhelmed some
2 of those judging the proposals is not supported as the size of PCR's proposal was just as
3 voluminous as CHA's.

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

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

14 CHA claims that at least one of the members of the evaluation committee may have been
15 biased against CHA. However, CHA does not identify which of the five (5) members of the
16 evaluation team may have been biased. CHA only asserts that the bias may have resulted from a
17 prior contract CHA completed for GHURA.¹³ Assuming *arguendo*, that a committee member
18 considered CHA's performance on this prior contract, the Hearing Officer recommends that the
19 Public Auditor find that this is not bias, but instead the correct performance of the committee
20 member's duty. As stated above, one of the criteria that was used to evaluate the proposals was
21 the offeror's demonstrated past record of performance and this criteria was worth 20% of the
22 offeror's total score.¹⁴ Thus, consideration of CHA's performance on a prior GHURA contract
23 was not bias because the RFP required evaluation of CHA's past record of performance.

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

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

28 ¹³ Page 2, CHA Appeal.

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

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

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

21 CHA raises an entirely new allegation for the first time on appeal. CHA argues that the
22 RFP specifications and requirements were flawed because they did not require a comprehensive
23 source of complete and accurate real estate market data.¹⁹ This argument is not part of CHA's
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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.

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

1 May 12, 2008 protest and it is not part of GHURA's May 21, 2008 Decision denying CHA's
2 protest. The Public Auditor's jurisdiction is limited to reviewing GHURA's May 21, 2008
3 Decision denying CHA's May 12, 2008 Protest. 5 G.C.A. §5425(e). The issue of whether the
4 the RFP specifications and requirements were flawed because they did not require a
5 comprehensive source of complete and accurate real estate market data was not raised in CHA's
6 May 12, 2008 protest or GHURA's May 21, 2008 Decision denying the protest. As a result,
7 there is simply no decision concerning this issue for the Public Auditor to review. Thus, the
8 Hearing Officer recommends that the Public Auditor find that she does not have the jurisdiction
9 to hear this issue because it is not properly before her.

11 IV. CONCLUSION

12 Based on the foregoing, the Hearing Officer recommends that the Public Auditor
13 determine the following:

14 1. CHA's expertise, experience, and past record of performance, by themselves, are
15 not sufficient to justify overturning GHURA's selection of PCR as the best offeror.

16 2. There is no merit to CHA's allegation that PCR's Proposal was voluminous or that
17 GHURA's evaluation committee members lacked the aptitude to accurately review and judge
18 PCR's Proposal.

19 3. An evaluation committee member's consideration of CHA's performance on a prior
20 GHURA contract, if it occurred, was not bias because the RFP required evaluation of CHA's
21 past record of performance.

22 4. The Public Auditor accepts GHURA's finding that PCR has the experience and
23 expertise to complete the services required by the RFP.

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

27 6. CHA's appeal is hereby denied.
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