

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	10 (including cover page)
CC:	Mr. John C Terlaje, Esq. Attorney for Appellant Joeten Development, Inc. Law Offices of John C. Terlaje 194 Hernan Cortes Avenue, Suite 216 Hagatna, Guam 96910 Tel: (671) 477-8894 Fax: (671) 472-8896	Date:	December 12, 2018
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-18-008 Notice of Procurement Appeal

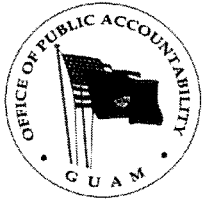
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 Jerrick Hernandez
 Auditor
 jhernandez@guamopa.com

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OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

December 12, 2018

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Corps. Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 472-4217/475-1727

Re: Notice of Receipt of Appeal – OPA-PA-18-008

Dear Ms. Acfalle,

Please be advised that Joeten Development Inc. (hereinafter referred to as “Joeten”) filed an appeal with the Office of Public Accountability (OPA) on December 11, 2018, regarding General Services Agency’s (GSA) and Department of Revenue and Taxation’s (DRT) response to Joeten’s protest relative to GSA/DRT Invitation for Bid No. GSA-016-18, Office Space for Lease for DRT. OPA has assigned this appeal case number OPA-PA-18-008.

Immediate action is required of DPW pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first two pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

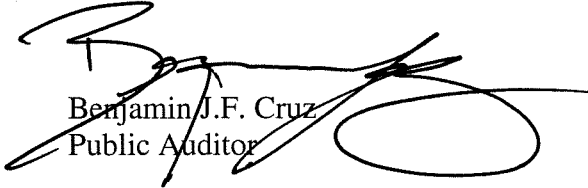
Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Wednesday, December 19, 2018**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, December 27, 2018**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to Joeten. Although the Guam Procurement Law and Regulations

require only one copy of the procurement record, OPA respectfully asks that GSA/DRT provide one original and two copies of the said record, which will be distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,



Benjamin J.F. Cruz
Public Auditor

Enclosure: First Seven Pages of the Notice of Appeal – OPA-PA-18-008

Cc: John C. Terlaje, Attorney for Joeten

RECEIVED
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PROCUREMENT APPEALS

DATE: 12/11/18

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FILE NO OPA-PA: 18-008

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)	Docket No. OPA-PA <u>18-008</u>
)	
JOETEN DEVELOPMENT, INC.,)	NOTICE OF PROCUREMENT
)	APPEAL
Appellant.)	
)	

Joeten Development Inc. ("Joeten") hereby appeal a decision issued by the General Services Agency ("GSA") and the Department of Revenue and Taxation ("DRT"), both agencies of the Government of Guam, on November 27, 2018, denying a protest raised by Joeten regarding GSA/DRT Invitation for Bid No. GSA-016-18, Office Space for Lease for DRT.

Part II- Appellant information:

Joeten Development Inc.

For purposes of this appeal, please direct documents and correspondence to Joeten Development, Inc.'s counsel:

John C. Terlaje
194 Hernan Cortes Avenue
Suite 216
Hagatna, Guam 96910
Telephone: (671) 477-8894
Fax: (671) 472-8896
Email: john@terlaje.net

Part III- APPEAL INFORMATION:

A. PUCHASING AGENCY: The General Services Agency and the Department of Revenue and Taxation.

ORIGINAL

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

1 B. IDENTIFICATION NUMBER OF THE PROCUREMENT, SOLICITATION,
2 OR CONTRACT: Invitation for Bid No. GSA-016-18.

3 C. DECISION BEING APPEALED: Decision dated November 27, 2018, made
4 by the head of the purchasing agencies.

5 D. APPEAL IS MADE FROM: A decision on protest of method, solicitation, or
6 award.

7 E. NAMES OF COMPETING BIDDERS, OFFERORS, OR CONTRACTORS
8 KNOWN TO APPELLANT: None other than Appellant.

9
10 **PART IV- FORM AND FILING:**

11 This is a Procurement Appeal made by Joeten Development Inc. of the protest
12 decision issued by GSA and DRT on November 27, 2018, in response to a protest letter
13 submitted by Joeten Development Inc. on November 9, 2018. (Exhibit A.)

14 STATEMENT OF GROUNDS FOR APPEAL

15 FACTUAL CONTEXT and CHRONOLOGY:

16 Invitation for Bid GSA-016-18 was issued on April 17, 2018. (Exhibit B.)

17 Bid opening was set for May 2, 2018 at 10:00 A.M. (Exhibit C.)

18 On May 2, 2018, the bids were opened and Joeten was the only bidder who submitted
19 the bid. All documents that were attached were announced to the public as well as the amount
20 of the bid.
21

22 ISSUES

23 The issue here is that GSA had set out the specifics needed for the Lease of office
24 space for the Department of Revenue and Taxation. On the date specified Joeten
25 Development Inc. (Joeten) submitted a bid encompassing all the needs of the agency, as per
26 the bid request. (Exhibit C.)
27
28

1 GSA notified Joeten on October 29, 2018, that the bid was "Rejected due to: Due to
2 Only 'One Bid Received.' Refer to 2GAR Div.4 §3102(1)(c). Will revert to 3112 (Sole
3 Source) procurement for negotiation." (Exhibit D.)

4 Joeten protested the decision of GSA on November 9, 2018 to GSA, and to the
5 Department of Revenue and Taxation. (Exhibit E and Exhibit F.)

6 Upon information and belief the government agency has sufficient funds to award said
7 bid, and there was no evidence that circumstances changed between the solicitation, the bid
8 opening, or the agency's letter of October 29, 2018. Rejection of the bid after opening was
9 arbitrary, capricious, and in bad faith. The bid in this matter was opened on May 2, 2018, at
10 which time was determined to be the only responsible bidder. In fact, Joeten's bid was
11 analyzed prior to June 8, 2018 and was being considered for award as seen on their letter
12 dated June 8, 2018. This letter was delivered on July 3, 2018. (Exhibit G.) This letter also
13 stated "Barring any formal protest lodged, a purchase order will be issued 14 days from the
14 date of this Notice." The rejection letter was dated almost five (5) months after the Notice of
15 Intent to Possible Award. Similarly, a letter dated October 15, 2018, delivered on November
16 5, 2018, was delivered by GSA that stated "Please find attached a Purchase order issued by
17 the General Services Agency which covers the periods of April to June as well as a new
18 agreement." (Exhibit H.) No attachments were included in that letter.

19 The bid was rejected only after the bid was opened and after the information
20 disseminated to the public, causing harm to Joeten in any potential rebid.

21 It is important to note that the area proposed to be leased is the same area where the
22 Department of Revenue and Taxation currently leases. Upon review of the budget of the
23 agency one will see that the agency has requested and has been approved for over One
24 Hundred Thousand Dollars (\$100,000.00) a month for rental. The proposed bid easily
25 conforms under the approved budget of the agency.

LAW and ARGUMENT

1
2 Upon information and belief, GSA violated the legal procurement process by not
3 complying with 5 GCA, Chapter 5 and/or relevant GAR's, by treating Joeten in a
4 discriminatory fashion, and/or that GSA did not evaluate Joeten's bid tender in accordance
5 with the terms of law. 2 GAR 3102(1)(a) states:

6
7 (c) Only One Bid or Proposal Received.

8 (1) One Bid Received. If only one responsive bid is received in response to an Invitation for
9 Bids (including multi-step bidding), an award may be made to the single bidder if the
10 Procurement Officer finds that the price submitted is fair and reasonable, and that either other
11 prospective bidders had reasonable opportunity to respond, or there is not adequate time for
resolicitation. Otherwise, the bid may be rejected pursuant to the provisions of §3115
(Cancellation of Solicitations; Rejection of Bids or Proposals) and:

12 (A) new bids or offers may be solicited;

13 (B) the proposed procurement may be cancelled; or

14 (C) if the Chief Procurement Officer, the Director of Public Works, or the head of a
15 Purchasing Agency, determines in writing that the need for the supply or service continues,
16 but that the price of the one bid is not fair and reasonable and there is no time for
17 resolicitation or resolicitation would likely be futile, the procurement may then be conducted
under §3112 (Sole Source Procurement) or §3113 (Emergency Procurement), as appropriate.

18 The GSA has not determined that the price was unfair or unreasonable. There was
19 ample time for other bidders to respond to said bid.

20 Furthermore the GSA has failed to provide any rationale if the bid was unreasonable
21 and not in the public best interest. The GSA must also determine that the sole bidder is the
22 actual only sole source available on Guam for the items requested. Being the only bidder or
23 money (price) is not a reason to go directly to sole source without determination of the above.

24 That GSA failed to perform its evaluation process, designation of award of lease
25 compliance with 5GCA, Chapter 5, "Guam Procurement Law", amongst others, as required
26 pursuant to such statute. Joeten was the sole bidder and should have been determined the only
27 responsive bidder and the lowest bidder upon opening of the bid.
28

1 26 GARR 16316 states:

2 (2) After Opening,

3 (A) After opening but prior to award, all bids or proposals may be rejected in whole or
4 in part when the Chief Procurement Officer, the Director of Public Works, or the head of the
5 Purchasing Agency determines in writing that such action is in the territory's best interest
6 including but not limited to:

7 (i) the supplies services, or construction being procured are no longer required;

8 (ii) Ambiguous or otherwise inadequate specifications were part of the solicitation;

9 (iii) the solicitation did not provide for consideration of all factors or significance to
10 the territory;

11 (iv) prices exceed available funds and it would not be appropriate to adjust quantities
12 to come within available funds;

13 (v) all otherwise acceptable bids or proposal received are clearly unreasonable prices;

14 or

15 (vi) there is reason to believe that the bids or proposals may have not been
16 independently arrived at in open competition, may have been collusive, and may have been
17 submitted in faith.

18 No statement has been provided to Joeten stating that it would not be in the best
19 interest of the Government to accept the proposed bid for lease of space. It is obvious that the
20 space is needed and not only needed but a necessity for the government of Guam to continue
21 its work for the betterment of the People of Guam. There was no ambiguity or inadequate
22 specification when the bid was announced and as of today no one exists.

23 No factors had been presented and the need for space has not diminished in any way
24 since the request for bid and up to the present time. The proposed price is within the industry
25 standard for the area and place. The budget for the agency actually reflects a significantly

1 higher amount appropriated for the lease of office space than what was submitted. Lastly,
2 there has been no assert that any collusion had occurred prior to or after the bidding process.

3 CONCLUSION

4 Joeten urges the Public Auditor to examine the issues complained of. Joeten believes
5 that its proposal was proper and legitimate and there was no mention as to a cap of monies on
6 the request. That the bid meets the criteria set out in the request for proposal; that the
7 rationale set out by the agency is flawed; and that the proposal set out would meet the
8 agency's needs and is in the best interest of the territory to enter into such contract.
9

10 RELIEF REQUESTED:

11 The appeal is brought in the context of a pre award protest, though the bid has been
12 opened and submitted. Joeten believes that it has met all the requirements to be the only
13 responsive and lowest bidder upon the opening of the and thus should be awarded the bid as
14 per the context of the proposal.

15 Joeten further requests its costs be reimbursed pursuant to 5 GCA 5425(h) (1). We
16 request that the Department of Revenue and Taxation, GSA and the Department of
17 Administration resolve this matter under its authority to resolve disputes by awarding this bid
18 to Joeten (5 GCA 5425(b)).
19

20 SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

21 With reference to all the matters submitted on the original Appeal as incorporated
22 above, and reserving the right to provide further written material as it may be considered
23 relevant or come to hand, there are attached hereto the following supporting materials.


- 24
- 25 1. Exhibit A: Letter re denial of protest dated November 27, 2018
 - 26 2. Exhibit B: IFB No. GSA-016-18
 - 27 2. Exhibit C: Copy of submitted bid
 - 28 2. Exhibit D: Letter re Rejection of Bid dated October 29, 2018

- 1 3. Exhibit E: Letter re Protest to GSA dated November 9, 2018
2 4. Exhibit F: Letter re Protest to DRT dated November 9, 2018
3 4. Exhibit G: Letter re Notice of Intent of Possible Award dated June 8, 2018
4 5. Exhibit H: Letter of Past Due Rental and New Lease dated October 15, 2018

5 **PART V- DECLARATION RE COURT ACTION:**

6 The undersigned party does hereby confirm that to the best of his knowledge no case or
7 action concerning the subject of this Appeal has been commenced in court. All parties are
8 required to and the undersigned party agrees to notify the Office of Public Accountability
9 within 24 hours if court action commences regarding this Appeal or the underlying
10 procurement action.
11

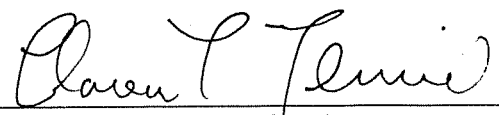
12 Submitted this 11th day of December, 2018.

13
14 By: 
15 **JOHN C. TERLAJE**
16 *Appellant's Authorized Representative*

17 **VERIFICATION**

18 I, Clarence T. Tenorio, Secretary/Treasurer of Joeten Development Inc., hereby
19 declare under penalty of perjury under the laws of Guam that I have read the foregoing
20 NOTICE OF PROCUREMENT APPEAL and that it is true and correct of my own
21 knowledge, except as to those matters alleged upon information and belief, and as to those
22 matters, I believe them to be true.
23

24 DATED this 11 day of December, 2018.

25
26 
27 **CLARENCE T. TENORIO**

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238 Archbishop Flores St.
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FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	10 (including cover page)
CC:	Mr. John C Terlaje, Esq. Attorney for Appellant Joeten Development, Inc. Law Offices of John C. Terlaje 194 Hernan Cortes Avenue, Suite 216 Hagatna, Guam 96910 Tel: (671) 477-8894 Fax: (671) 472-8896	Date:	December 12, 2018
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-18-008 Notice of Procurement Appeal

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Thank you,
 Jerrick Hernandez
 Auditor
 jhernandez@guamopa.com

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003	764	671-472-8896	12:04:18 p.m. 12-12-2018	00:03:05	10/10	1	EC	HS	CP21600