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9  
10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

11 In the Appeal of

12 JRN AIR CONDITIONING &  
13 REFRIGERATION, INC.,

14 Appellant

**Docket No. OPA-PA-20-004**

**APPELLANT'S COMMENTS TO AGENCY  
REPORT**

15 COMES NOW Appellant JRN Air Conditioning & Refrigeration, Inc. and submits its  
16 Comments to both the Statement Answering Allegations of Appeal ("Agency Report 1"), filed on  
17 June 30, 2020, and the Amended Agency Statement ("Agency Report 2"), filed on July 17, 2020, by  
18 Purchasing Agency Guam Memorial Hospital Authority ("GMHA").

19  
20 **A. Determination of Bid Responsibility**

21 Neither agency report submitted by GMHA provide any more than conclusory statements  
22 that GMHA "was not satisfied" with Appellant's various submissions to demonstrate experience and  
23 qualification as to boiler installation. Agency Report 2, 8:11 and 18. Furthermore, GMHA takes the  
24 position that it simply "cannot instruct bidders as to what specific documents might satisfy the  
25 ultimate and *subjective* determination of responsibility that lies with the Procurement Officer *who*  
26 *'must be satisfied* that the prospective contractor is responsible.'" Agency Report 2, 9:4-6 (emphasis  
27 added). As no intelligible reasons were given for GMHA's dissatisfaction with Appellant's

1 submissions, it must then be assumed that GMHA can say no more than that its bidding process was  
2 governed by its procurement officer's personal preference.

3 While Appellant recognizes that the procurement process may reasonably allow room for a  
4 procurement officer's discretion, Appellant cannot agree that the procurement law allows room for a  
5 total reliance on such subjectivity, which seems to be GMHA's position. To do so compromises the  
6 integrity that the procurement laws and regulations aim to preserve.

7 GMHA's position is precisely the root of Appellant's complaint that the procurement in this  
8 case was done arbitrarily and capriciously. Though there is no other basis for believing that GMHA  
9 could not provide instruction or some guidance as to what it was looking for in bidder qualification  
10 other than its own belief, Appellant also notices that GMHA fails to, either by election or by  
11 inadvertence, even define what would have rose to the level of satisfactory or sufficient statements  
12 of qualification or performance data. Instead, GMHA shifts the burden of knowing what would  
13 satisfy GMHA to the bidders. Thus, to attempt to understand GMHA's methodology in this  
14 instance, it is necessary to scrutinize both Appellant's submissions and those of the intended winner,  
15 AMmanabat Corporation. (Both agency reports failed to critically examine AMmanabat's  
16 submissions as to qualification other than to just conclusively state that GMHA "was satisfied with  
17 the experience of AMmanabat's *subcontractor*." Agency Report 2, 11:11-12 (emphasis added).)

18 AMmanabat's *only* submission to demonstrate qualification as to boiler installation is a  
19 project list belonging to Wilfredo S. Meneses, the General Manager of AMmanabat's subcontractor,  
20 WSM Construction Company. The project list followed a copy of Mr. Meneses's business card.  
21 The card, while it states several specialty areas, does not list anything directly related to boiler  
22 installation. Alas, it is only at the very end of Mr. Meneses's project list can one find a sole line  
23 item that reads "Start up and commissioning of Leo Palace Club House Boiler" with a value of  
24 \$1,500.00. None of the other 61 projects listed by Mr. Meneses involved boiler installation. It can  
25 also be deduced that the scope of this one project is incomparable to that of the IFB in this case.  
26 Moreover, no information as to whether Mr. Meneses is a PEALS-certified licensed professional  
27 engineer was provided, and it may be assumed that he is not. Neither AMmanabat nor Mr. Meneses

1 submitted certified statements, sworn affidavits, or statements from manufacturers.

2 Compare Appellant's submissions: (1) the resume of Appellant's project mechanical  
3 engineer (Teddy Glen Roman Garcia), (2) literature of the boiler manufacturer, Cleaver Brooks,  
4 confirming all-inclusive technical support, parts, and service, (3) a subsequent letter confirming  
5 start-up, commissioning, testing, and overall installation supervision by Cleaver Brooks, (4) the  
6 engagement of a PEALS-certified and licensed professional engineer experienced in the  
7 replacement, i.e., installation, of boilers (Mauro R. Narvarte), (5) an affidavit from Appellant's  
8 project manager (Cesar Cordero) detailing Mr. Narvarte's role and duties, and (6) a supplemental  
9 affidavit of Mr. Garcia as to his experience with the removal, installation, and maintenance of boiler  
10 systems. Here, Appellant established the expertise of its own personnel, the expertise of its retained  
11 licensed mechanical engineer, and the direct involvement of the boiler's manufacturer, and yet  
12 GMHA determined that the one, relatively small project of Mr. Meneses prevailed.

13 GMHA argues, however, that the resume and affidavit of Mr. Garcia "detail his personal  
14 experience" but "does not provide any information related to JRN's qualifications or performance  
15 data specific to boiler installation," nor does it "detail any experience with boiler installation while  
16 employed with JRN." Agency Report 2, 8:22-26. Unfortunately, GMHA's argument can only stand  
17 if GMHA can confirm that Mr. Meneses's completion of the Leo Palace Club House boiler project  
18 was completed while Mr. Meneses was an *employee* of AMmanabat. Appellant doubts GMHA was  
19 able to make such distinction, or even confirm that Mr. Meneses completed that project in  
20 conjunction with AMmanabat, at the time it was evaluating bids. To demand that Mr. Garcia's  
21 experience would only be relevant if such experience was gained while employed with Appellant,  
22 but not demand the same of AMmanabat and its subcontractor, is inherently unfair. In fact, under  
23 GMHA's own analysis, AMmanabat could have also been deemed non-responsible since it is  
24 unconfirmed whether the project list of Mr. Meneses included just projects completed under WSM  
25 or also included projects completed during Mr. Meneses's other employment. Again, Appellant  
26 doubts GMHA made such distinction at the time it was evaluating the bids and bidder qualifications.  
27 There is no qualitative difference between Appellant relying on the past experience of its own

1 personnel and its retained licensed mechanical engineer versus AMmanabat relying on the past  
2 experience of its subcontractor.

3 GMHA also argues that Appellant should have known what GMHA was looking for since it  
4 submitted “lists of licenses, memberships, past and current projects, and supplier information”  
5 regarding air conditioning and that Appellant “was not able to provide any similar documents  
6 specific to boiler removal or installation.” Agency Report 2, 9:12-17. However, to make this  
7 argument, GMHA has to forego its position that it could not have instructed bidders on the kinds of  
8 documents or information required to demonstrate bidder qualification or its position that the  
9 procurement officer’s subjective determination trumped any objective criteria. Simply put, GMHA  
10 cannot argue that it expected to receive certain documents or information from bidders but at the  
11 same time also say it had no standard other than the general “statement of qualification and  
12 performance data”.

13 Appellant argues that not only were its submissions sufficient to establish qualification to be  
14 a responsible bidder with regard to boiler installation, it was categorically more qualified than the  
15 intended winner selected by GMHA. GMHA had not justifiable reason to find AMmanabat  
16 qualified when it refused to qualify Appellant.

### 17 18 **B. Evaluation Criteria**

19 GMHA argues that the IFB’s evaluation criteria were “clearly stated” in Section 19 of the  
20 General Terms and Conditions in that the Hospital Administrator, or procurement officer, shall be  
21 guided, in pertinent part, “the ability, capacity, and skill of the Bidder to perform.” Agency Report  
22 2, 9:21-25. Beyond stating this general fact, however, GMHA supplies no other insight on what that  
23 particular criterion means. GMHA does not because it cannot. The fact that GMHA was unable to  
24 produce any other document or information related to this criterion other than the IFB itself suggests  
25 that its meaning was, too, undefined for GMHA. Nowhere in either agency report did GMHA  
26 articulate what guided its bid evaluation or selection process above subjectivity or personal  
27 preference. GMHA could not produce meeting notes, practice guides, or any other reference.

1 Instead, GMHA just restates that it “cannot not instruct bidders as to what specific documents might  
2 satisfy” GMHA. Agency Report 2, 10:26-27. This raises a serious question as to whether GMHA  
3 was ever applying anything other than subjective personal preference, and, if so, whether GMHA  
4 could ever apply evaluation criteria fairly and uniformly across the board and as to all prospective  
5 bidders. Here, the mere inability of GMHA to articulate some real criteria evidences the absence of  
6 one.

7  
8 **C. GMHA clearly advantaged AMmanabat over the other bidders.**

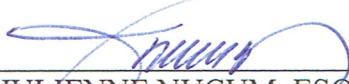
9 While GMHA admits that it was AMmanabat that prompted GMHA to strike the  
10 requirement that bidders contract another licensed professional engineer, GMHA attempts to gloss  
11 over the fact that no other bidder except AMmanabat was ever informed of the change. Agency  
12 Report 2, 3:25-4:2. GMHA goes on to argue that amendments to bids occur only when changes are  
13 made *prior* to bid opening. Agency Report 2, 12:6-8 (emphasis original). Perhaps this is GMHA’s  
14 belated attempt to absolve itself of a duty to be transparent in the information it provides to bidders.  
15 Even if an amendment may not have been necessary in this instance, GMHA was obligated to  
16 inform the other bidders of such a material change, especially since all three bidders were requested  
17 to submit proof of PEALS certification following the initial submission of bids. GMHA could have  
18 easily sent an e-mail message to the other bidders as it did to AMmanabat, but for some inexcusable  
19 reason, it did not.

20 This glaring individualized treatment of AMmanabat begs two questions: the first being  
21 whether there was an appreciable amount of influence over GMHA exercised by AMmanabat, for  
22 whatever reason, and second, whether GMHA was able to use the elimination of the PEALS  
23 certification requirement as a basis to diminish Mr. Narvarte’s significance in Appellant’s bid in  
24 order to advantage AMmanabat, who did not have the qualification of a licensed mechanical  
25 engineer. GMHA had to have known, through Appellant’s repeated submissions, that Appellant’s  
26 engagement of Mr. Narvarte served to satisfy both items #1 and #13 of the Special Reminder to  
27 Prospective Bidders.

1 This, in conjunction with GMHA's blatant show of preference for AMmanabat as detailed in  
2 Section A above, clearly demonstrates that the bids were not held to the same standard, warranting  
3 action by the Office of Public Accountability now. The fact remains that GMHA was presented  
4 with two bids, with that of Appellant not only being responsible but also lowest in price. Yet,  
5 GMHA exercised an inappropriate and unjustified amount of discretion in selecting to award the bid  
6 to a lesser qualified and more expensive bidder. While a price difference of \$10,000 may not  
7 generally be substantial, the constant precarious financial situation of GMHA should have guided  
8 the procurement officer in acting more prudently and in line with the public interest.

9  
10 Respectfully submitted July 27, 2020

11 By

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16 JULIENNE NUCUM, ESQ.  
17 Attorney for Appellant  
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**OPA-PA-20-004 - Appellant's Comments to Agency Report**

2 messages

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Mon, Jul 27, 2020 at 2:44 PM

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Good afternoon:

Please find attached Appellant JRN Air Conditioning & Refrigeration, Inc.'s Comments to GMHA's agency reports. Please confirm receipt. A copy will also be following via fax.

Thank you for your time,  
Julienne

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 **OPA-PA-20-004 - Appellant's Comments to Agency Report.pdf**  
5334K**Jerrick Hernandez** <jhernandez@guamopa.com>

Mon, Jul 27, 2020 at 4:14 PM

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Hafa Adai,

Confirming receipt of the Appellant's Comments to Agency Report, which was also received via Fax. See attached OPA stamped acknowledgment.

[Quoted text hidden]

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

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