



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

World Wide Web Site: <http://opacnmi.com>

2nd Floor J. E. Tenorio Building, Chalan Pale Arnold
Gualo Rai, Saipan, MP 96950

Mailing Address:
P.O. Box 501399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: (670) 234-6481
Fax: (670) 234-7812

IN RE REQUEST FOR RECONSIDERATION)	APPEAL NO. BP-A027.1
OF OPA APPEAL DECISION BP-A027 FILED BY)	DECISION ON REQUEST
THE PROCUREMENT & SUPPLY DIRECTOR)	FOR RECONSIDERATION
)	

BACKGROUND

On November 19, 2001, the Division of Procurement & Supply (P&S) Director filed with the Office of the Public Auditor (OPA) a request for reconsideration of OPA's November 9, 2001 appeal decision. That decision granted in part the appeal of Western Equipment ML joint venture pertaining to the solicitation of bids for the construction of the Marpi Solid Waste Facility under Invitation for Bid No. DPW00-IFB-049. In its decision, OPA remanded the determination of DPC/PDL's responsibility and local bidder preference back to P&S for re-evaluation¹.

P&S Director's Reconsideration Request

In his reconsideration request filed on November 19, 2001, the P&S Director requests that OPA rescind its remand of the re-evaluation, and instead assume complete and direct control of the decision-making process for this appeal. In particular, the P&S Director contends that: (1) contrary to what OPA stated, information needed for the determination of PDL's ability to perform 51% of the contract work is in the joint venture agreement between DPC and PDL, (2) OPA is fully capable of being the independent and detached evaluator required by the appeal decision, and there is no need to remand the evaluation back to P&S when OPA has all the information necessary to make the decision, and (3) should OPA feel the need to obtain outside expertise and evaluation on these issues, P&S will procure such services, but requests that OPA receive the independent and detached evaluations directly, and use them to make a definitive decision on this appeal.

OPA Comments

As stated in OPA's appeal decision, DPW's determination of DPC/PDL's local bidder preference only satisfied the requirement as to the amount of revenue. CNMI Procurement Regulations (CNMI-PR) Section 7-102(3) lists the following additional factors that should be considered - profit, subcontracting plans or arrangement, amount of labor, and other relevant factors. Our

¹ For information on the appeal decision, please refer to OPA Appeal Decision No. BP-A027.

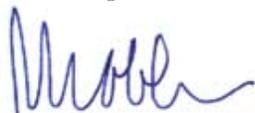
examination of the P&S files revealed no evidence that these other factors were given consideration. If DPW's review of DPC/PDL's local bidder preference concluded that the other four factors were not applicable under the circumstances, then the files should have contained evidence that such review and determination was in fact made. Contrary to P&S' statement that information needed for DPC/PDL's local preference determination is in the joint venture agreement, that document establishes only the division of revenue. The other factors to be considered are not clearly evident in the joint venture agreement.

Under CNMI-PR Section 6-103(1), OPA has the limited responsibility of determining that a solicitation or proposed award is not in violation of law or regulation. In relation to this, OPA's role under the CNMI-PR is to adjudicate procurement appeals and render decisions thereon. OPA's function, therefore, is limited to weighing the issues raised in the appeal and determining the merits thereof. It is not OPA's function to act as procurement officer or contracting authority and conduct an evaluation of bidder responsibility or a determination of local bidder preference. It is not proper for OPA to perform these functions as it would later restrict us from reviewing a possible protest related to the very transactions we evaluated. Under CNMI-PR Section 3-301, the evaluation of bidder/offeror responsibility is vested in the P&S Director. Under CNMI-PR Section 7-102(3), determination of local bidder preference is vested in the contracting officer. Consequently, OPA must not make these determinations on behalf of P&S and DPW.

DECISION

To obtain reconsideration of an appeal decision under the CNMI-PR, the requesting party is required to present a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. As set forth above, the P&S Director's arguments (1) have not persuaded us that our appeal decision contained errors of fact or law, (2) fail to present information not previously considered, and (3) are lacking in merit and contrary to the CNMI-PR and, therefore, do not warrant reversal or modification of our decision. We therefore affirm the findings of fact presented in our appeal decision, as well as our conclusions based thereon.

P&S' request for reconsideration is denied in its entirety.



Michael S. Sablan
Public Auditor

November 28, 2001