



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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IN RE APPEAL OF

Henry K. Pangelinan & Associates, Inc

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APPEAL NO. BP- A058

DECISION ON APPEAL: DPW07-RFP-016

Construction Management Services for the Cross Island Road Improvements Phase I

I. SUMMARY

This is a decision on an appeal filed by Henry K. Pangelinan & Associates from the denial of its protest of DPW-07-RFP-016 for the Construction Management Services for the Cross Island Road Improvements, Phase I, by the Division of Procurement and Supply (hereinafter "P & S"), Department of Finance.

OPA has jurisdiction over this appeal as provided in Section 505(a) of the CNMI's Procurement Regulations (hereinafter "CNMI PR"). NMIAC 70-30.3-505(a).

OPA finds that Henry K. Pangelinan & Associates failed to file its original protest in a timely manner, and thus P & S was correct in its decision to deny the protest.

II. PROCEDURAL AND FACTUAL BACKGROUND

In June 2007, the Department of Public Works (DPW), through P & S, solicited for Construction Management Services for the Cross Island Road Improvements, Phase I. DPW-07-RFP-016

In a letter dated October, 29, 2007, Henry K. Pangelinan & Associates was informed that the Evaluation Committee had determined it to be the most qualified for the project. Negotiations between DPW and Henry K. Pangelinan & Associates ensued for approximately the next fifteen months.

In a letter dated January 27, 2009, DPW asked Henry K. Pangelinan & Associates to confirm that the negotiated fee was its best and final offer and to confirm the personnel to be assigned

to the project.

In a letter dated two days later, Henry K. Pangelinan & Associates confirmed that \$ 464,803.00 was its best and final offer and identified the personnel to be assigned to the project as Construction Manager Edward Babauta and Construction Inspector Dominador Aquino.

By letter dated March 4, 2009, DPW acknowledged receipt of Henry K. Pangelinan & Associates January 29, 2009 letter confirming its best and final offer and identifying the employees to be assigned to the project. DPW then stated that:

[a]fter careful review . . . [it had] determined Mr. Babauta is not meeting the requirements specified in the Scope of Work for Construction Manager. On the other hand, we do not have any record on file describing the qualification or background to evaluate Mr. Dominador Aquino.

The letter concluded with DPW terminating the negotiations with Henry K. Pangelinan & Associates for Construction Management Services for the Cross Island Road Improvements, Phase I.

By letter dated April 3, 2009 (and received by P & S on April 4), Henry K. Pangelinan & Associates protested the termination of negotiations to P & S.

P & S denied the protest on April 7, 2009 due to the untimeliness of the filing.

Two days later, Henry K. Pangelinan & Associates appealed the denial of its protest to the Office of the Public Auditor.

On the next business day, April 13, 2009, OPA requested a report on the denial from P & S and asked P & S to give notice to all interested parties.

P & S forwarded its report to OPA and notified all interested parties on April 30, 2009

Hofschneider Engineering submitted comments on the protest and the appeal on May 4, 2009.

III. JURISDICTION

OPA has jurisdiction over this appeal as provided in Section 505(a) of the CNMI PR. NMIAC 70-30.3-505(a).

IV. ISSUE

Was the Pangelinan protest timely filed?

V. ANALYSIS

Under the CNMI's Procurement Regulations,

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the P&S Director. The protest shall be received by the P&S Director in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto. . . .

NMIAC 70-30.3-501(a)(1).

DPW terminated the negotiations with Henry K. Pangelinan & Associates for Construction Management Services for the Cross Island Road Improvements, Phase I by letter dated March 4, 2009. Nearly a month later, on April 3, 2009, Henry K. Pangelinan & Associates protested the termination to P & S. Henry K. Pangelinan & Associates has not asserted any delay in receipt of the letter terminating negotiations nor any other good cause for its late filing.

VII. CONCLUSION

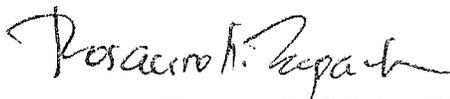
Based on the foregoing, OPA finds that P & S properly denied Henry K. Pangelinan & Associates' protest as untimely.

The appellant, any interested party who submitted comments during consideration of the protest, the Director of P & S, and any agency involved in the protest may request reconsideration of the Public Auditor's decision.

The request must contain a detailed statement of the factual and legal grounds for which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. NMIAC 70-30.3-505(i)(1).

The request for reconsideration shall be filed within ten days after the basis for reconsideration is known or should have been known. NMIAC 70-30.3-505(i)(2).

Dated this 11th day of May, 2009.



Rosauro Zapanta for Michael Pai
Public Auditor