



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 1399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

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

IN RE APPEAL OF
HAWAIIAN ROCK PRODUCTS CORPORATION

)
) DECISION ON APPEAL
) No. BP-A020
)

SUMMARY

This is an appeal by Hawaiian Rock Products Corporation (HRPC), represented by its Legal Counsel Robert B. Dunlap II of Carlsmith Ball, from the denial of its protest concerning the Saipan Highway Anti-Skid Overlay Project of the Department of Public Works (DPW) which was procured using the emergency procurement method. HRPC sought the disqualification of WEI, the selected contractor, on the ground that WEI was not a responsible bidder. The Division of Procurement & Supply (P&S) Director denied HRPC's protest, stressing his discretionary authority under this project's Instruction to Bidders (ITB) as well as the CNMI-PR provisions on emergency procurement. HRPC contends that the P&S Director went beyond his authority and arbitrarily ignored WEI's unpaid obligations. As remedy, HRPC is asking OPA to overturn the earlier award.

Our review of this appeal showed that the P&S Director: (1) had the discretion to consider all unpaid obligations for all former and ongoing contracts under the ITB; (2) did not have a reasonable basis to ignore WEI's unpaid obligations because WEI failed to supply the requested information about its financial condition; and (3) misinterpreted the CNMI-PR when he determined that finding a bidder to be responsible was not required in an emergency procurement and proceeded with the contract award to WEI, disregarding the fact that WEI was not a responsible bidder under Section 3-301(2). Our office determined, however, that absent any evidence of bad faith, we cannot find the P&S Director at fault for this action because of the CNMI-PR's lack of clear guidelines on emergency procurement.

We recognize that the award should properly have been made to the lowest responsive *and responsible* bidder if the P&S Director had properly interpreted and applied the regulations to this procurement. However, since the project has already been completed, we have no option other than to ratify WEI's contract. *Therefore, we are compelled to deny HRPC's appeal on DPW's anti-skid project.*

We recommend, however, that the P&S Director exercise greater care in making future emergency procurement awards, ensuring that award is made not only on the basis of the lowest responsive bid but also to a responsible bidder.

In this decision, we take note of a deficiency in this project's bid solicitation. We emphasize that the proper test of a bidder's financial responsibility should focus on a bidder's overall financial condition, and not merely on whether that bidder is current on its obligations to suppliers.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The Department of Public Works (DPW) Secretary, through his letter dated August 24, 1999, solicited quotations for the placing of anti-skid overlay at 7 hazardous road locations on Saipan (referred to as the "project" in this appeal decision). In his letter to the Procurement & Supply (P&S) Director, the DPW Secretary cited the following considerations to justify award of the project under the emergency procurement method:

- The road conditions at those locations posed a threat to public safety. According to the DPW Secretary, a high number of road accidents had occurred in those areas, including a recent fatality at one of the 7 locations.
- The project could be completed in fewer than 30 days, less than the time required to advertise the procurement under normal procurement procedures.
- Only two companies on the island: Hawaiian Rock Products, Co. (HRPC) and Western Equipment, Inc. (WEI), were found capable of performing the project.

The P&S Director approved the above request for emergency procurement on August 25, 1999. Accordingly, copies of a request for quotations, along with the bid schedule, plans and specifications for the project, were provided to HRPC and WEI. Both companies were given until August 27, 1999 to submit their bids. The timely bid submissions of these two companies showed that WEI submitted the lower bid, quoting a price 6% below HRPC's bid submission. On September 7, 1999, HRPC filed a protest against awarding the contract to WEI.

The Protest and Subsequent Appeal to OPA

In his September 7, 1999 letter of protest to the P&S Director, HRPC's Vice President asserted that WEI should be disqualified pursuant to Section 13(c) of the Invitation to Bid (ITB). According to HRPC, Section 13(c) stated that bidders must be disqualified for failure to pay or satisfactorily settle all bills for labor and materials on former contracts in force at the time of the bid advertisement. HRPC claimed that WEI owed it about \$45,000 for construction materials supplied for the Chalan Pale Arnold Road (CPAR) Phase 5 project, an amount which had been outstanding for over a year. Additionally, HRPC generally questioned WEI's responsibility as a contractor by claiming that WEI had only about 70% of the basalt aggregate required for the project. HRPC also doubted the ability of WEI's bonding company to cover its ongoing projects estimated at \$13M, and requested the P&S Director to look into this matter.

While the protest was ongoing, the P&S Director on September 15, 1999 approved the DPW Secretary's request to proceed with the award of the contract to WEI based on the following grounds: (1) the anti-skid project was urgently required because of the coming rainy season, (2)

failure to promptly award a contract would unduly delay completion of the project, and (3) it would be most advantageous to the CNMI to award the project to WEI as the low bidder. Subsequently, on September 17, 1999, the P&S Director notified all interested parties of his determination to proceed with the award of contract to WEI despite the pending protest.

Five days later, on September 22, 1999, HRPC filed an appeal to OPA based on the P&S Director's September 17, 1999 notice. OPA determined, however, that it lacked jurisdiction to hear HRPC's appeal because P&S had neither denied the protest nor failed to issue a decision by the time specified in the CNMI-PR. OPA concluded that the September 17, 1999 P&S letter was simply a notice to proceed with the award of the contract despite the ongoing protest, and was not a protest decision appealable to OPA.

On September 27, 1999, WEI submitted its comments on the protest and disputed the arguments raised by HRPC. WEI gave assurance that it could undertake the project if awarded the contract. The President of WEI did not specifically comment on his company's alleged "unpaid obligations" to HRPC, but argued that HRPC should not have waited until the bids were opened before contesting WEI's participation in this procurement.

As for the other issues, WEI stated that HRPC was misinformed on the quantity of its anti-skid materials on hand, as well as on the bonds it posted for government contracts. According to WEI, its inventory of anti-skid materials was more than enough to cover the 7 locations of the project. The WEI President mentioned that aside from the stock on hand, there would be a weekly delivery of 500 metric tons of basalt aggregate starting September 30, 1999.

On October 8, 1999, the processing of WEI's contract for the anti-skid project was completed (Contract no. 337432-OC), in which the project completion time was set within 14 government working days from the notice to proceed date. After five days, on October 13, 1999, DPW issued the notice to proceed, and on the same date the P&S Director issued his decision denying the September 7, 1999 protest filed by HRPC. In his protest decision, the P&S Director stated that the selection of WEI was advantageous to the government since it offered the lower bid as between the two able bidders on island. As for HRPC's other arguments, the P&S Director stated that an investigation conducted by DPW showed no evidence to support WEI's allegations.

Nine days later, on October 22, 1999, HRPC appealed the P&S Director's decision to OPA, arguing that the protest decision was contrary to the bid instructions. HRPC contends that the authority of the Director in Section 13(c) of the ITB did not include the discretion to ignore the bidder's failure to meet current obligations. In addition, HRPC reiterates its argument that WEI was not a responsible bidder as defined in CNMI-PR Section 1-201(16) [sic], and questions WEI's financial integrity and reliability. HRPC requests OPA to overturn the P&S Director's decision and award it the contract.

On December 22, 1999, two months after the appeal was filed, the P&S Director submitted his report to OPA, and disputes HRPC's contention that the protest decision was contrary to bid instructions. As regards the issue of responsibility, the P&S Director explains that the

CNMI-PR provision on emergency procurement gave him the discretion to disregard other CNMI-PR provisions which ordinarily would have required the rejection of WEI as a non-responsible bidder. The P&S Director adds that the anti-skid project was actually completed on October 30, 1999, and therefore the remedy being sought by HRPC (to overturn the award) can no longer be granted.

OPA is issuing its decision on this appeal pursuant to Section 5-102(8)(c)(i) which provides that the Public Auditor shall issue a decision after all necessary information for resolution of the appeal has been received.

ANALYSIS

The P&S Director's denial of HRPC's protest against awarding the anti-skid project contract to WEI is the issue of this appeal. We now discuss the arguments of HRPC and P&S as they were presented in the protest and appeal process, including our comments on the merits of the arguments.

HRPC's Arguments in its Protest to the P&S Director

In its protest letter, HRPC called for WEI's disqualification from the award, citing the requirement of ITB Section 13 and other allegations disputing WEI's ability to perform and complete the project. Specifically, HRPC claimed that:

- WEI must be disqualified because of outstanding debts to HRPC for materials it supplied to WEI more than a year earlier for the CPAR Phase 5 project. HRPC asserted that Section 13(c) of the ITB required that bidders must be disqualified for failure to pay or satisfactorily settle all bills for labor and materials on former contracts in force at the time of the bid advertisement.

According to HRPC, WEI still owed HRPC \$45,813 (including interest of \$11,947) on the CPAR Phase 5 project which had been outstanding for over a year, and DPW, the procuring agency for this project, had been fully informed of this situation.

- WEI had not fully paid a number of its contractors which included Sablan Construction Company, Ltd., and Construction Materials & Supply (the amount of these alleged unpaid obligations was not provided). HRPC asked that this matter be investigated thoroughly before considering award of the project to WEI.
- WEI was not a responsible bidder because it did not have the necessary materials on hand to perform the work within the required 14-day deadline. HRPC stated that WEI had only about 70% of the basalt aggregate required for the project, and importing more of this material would take at least 60 days based on its experience. Accordingly, HRPC asked for a stockpile survey by a licensed land surveyor to ensure that WEI had ample basalt aggregate to complete the project.

- Finally, HRPC questioned the ability of WEI's bonding company to adequately cover the payment and performance bonds for WEI's ongoing government contracts estimated at \$13M, excluding private sector work. HRPC asked that the bonds covering WEI's government projects be reviewed, as well as the capacity of the bonding company to guarantee \$13M of government projects.

Decision on the Protest by the Director of Procurement & Supply

The P&S Director, in his October 13, 1999 decision, denied all the arguments raised in the protest, mainly stressing his discretionary authority under the ITB as well as the CNMI-PR provisions for emergency procurement. Specifically, the P&S Director stated that:

- Section 13(c) of the ITB cited by HRPC in its protest did not require that the government disqualify bidders, but instead gave it the discretion whether to disqualify a bidder for failure to pay or satisfactorily settle its contractual obligations. The P&S Director stated that he did not question WEI's outstanding obligations to HRPC for labor and materials, but he emphasized that the Government has discretion whether or not to reject a bidder for this reason, based upon an assessment of what is in the best interest of the Government. The P&S Director found the selection of WEI to be advantageous to the Government since its offer was about \$20,000, or 6%, lower than that of HRPC. As regards the issue of WEI's unpaid obligations, the P&S Director stated that the amount of the unpaid obligations was not exorbitant and had been reduced significantly since May 1999.

Additionally, the P&S Director stated that under an emergency procurement, the CNMI-PR would permit award of a contract despite some concerns, especially when there is no question as to the awardee's overall ability to do the job.

- As regards WEI's outstanding obligations to other suppliers, the P&S Director had the discretion to disregard these obligations under Section 13(c) of the ITB and the CNMI-PR provisions on emergency procurement. He stated that these provisions applied regardless of whether or not WEI had unpaid obligations on certain government contracts.
- By signing the project's contract, WEI had entered into a legally binding commitment to supply the required materials and complete the project within 14 government working days. Additionally, the P&S Director stated that DPW-Technical Services Division (DPW-TSD) staff had confirmed that WEI's stockpile of basalt aggregate appeared sufficient to complete the project.
- Regarding HRPC's concerns about WEI's payment and performance bonds for its \$13M government projects, DPW had verified the bonding for these projects, except for the Beach Road Sewer Project which was being handled by the Commonwealth Utilities Corporation (CUC). According to the P&S Director, DPW's review showed that payment and performance bonds for these projects were all in effect. With respect

to the ability of WEI's bonding company to cover the \$13M in projects, the P&S Director stated that as long as these bonding companies were allowed to operate by the Department of Commerce, the bonds they issued should be accepted at face value.

HRPC's Arguments in its Appeal to the Public Auditor

In its October 22, 1999 letter to OPA, HRPC appealed the P&S Director's denial of the protest on the following grounds:

- Appellant HRPC alleges that the Director's decision was contrary to the instructions of the ITB, that since the purported discretion under Section 13(c) specifically refers to "former contracts" at the time of bid advertisement, the CPAR Phase 5 project which was an "ongoing contract" when the bid was advertised should not have been included within the Director's discretion to ignore unpaid obligations. HRPC states that Section 13(c) does not grant the P&S Director the discretion to disregard the bidder's failure to meet current obligations.

In addition, Appellant contends that the P&S Director arbitrarily decided that the amount owed was not exorbitant, and missed the point of its argument. HRPC explains that when WEI fails to settle its obligations, expenses are increased for its lenders, thereby allowing WEI to underbid competitors. HRPC stresses that a contractor should not be allowed to obtain public contracts when it is either unable or unwilling to settle its accounts from previous public contracts.

- Secondly, HRPC alleges that WEI was not a responsible bidder as it was unable to timely meet its financial obligations. According to HRPC, this puts into question WEI's financial integrity and reliability, citing the definition of "Responsible" in CNMI-PR Section 1-201(16). HRPC asserts that WEI misrepresented to DPW that it had settled its obligations to its vendors when it clearly had not, in order to collect payment on the CPAR Phase 5 project.

HRPC requests OPA to overturn the P&S Director's ruling and award the contract to the lowest responsible bidder.

P&S Director's Report on the Appeal

In his report to OPA, the P&S Director reiterates his arguments made at the protest level and at the same time responds to the allegations raised in the appeal. On the issue of whether his decision was contrary to the bid instructions, the Director responds that he does not find any difference between "former contracts in force at the time of advertisement for bids" as stated in the bid instructions, and "contracts which are still being performed" as set forth in the appeal. The Director believes that both terms refer to existing contracts, and he maintains that P&S has the discretion whether to consider such other contracts in awarding a particular contract.

The P&S Director also responds to Appellant's claim that his findings concerning the amount owed by WEI to HRPC were arbitrary. He explains that this amount, when compared to the original contract amount, was within the ability of WEI to pay off in a fairly short time. The P&S Director reiterates that he had the discretion whether or not to proceed with the award despite the existence of such obligations.

Regarding the allegation that WEI was not a responsible bidder because of a question about its financial integrity and reliability, the P&S Director acknowledges that he would have agreed with this view if this had been a standard procurement subject to CNMI-PR's usual requirements. According to the P&S Director, the CNMI-PR provision on emergency procurement gives him the discretion to disregard those sections of the CNMI-PR which would normally require the rejection of WEI as a non-responsible bidder. CNMI-PR Section 3-105 [Emergency Procurement] states that "Notwithstanding any other provisions of these regulations, the government may make emergency procurement..."

Finally, the P&S Director notes that the relief sought by HRPC in its appeal to overturn the award can no longer be granted. According to the P&S Director, the DPW-TSD Director has advised him that the anti-skid project (Contract no. 337432-OC) was actually completed on October 30, 1999, within the agreed 14-day deadline.

OPA's Comments

Appellant HRPC contends that the P&S Director went beyond the authority granted by ITB Section 13(c), and arbitrarily decided the issue of WEI's unpaid obligations. In addition, Appellant alleges that WEI is a non-responsible bidder, unable to timely meet its financial obligations. As a remedy, HRPC asks OPA to overturn the award earlier made on the project.

In resolving an arbitrary action or abuse of discretion issue, we must determine whether there is sufficient evidence to support the reasonableness of an agency action. The standard of review for an appeal alleging an arbitrary and capricious action is similar to, if not the same as, the abuse of discretion standard, and such review must determine whether the action was reasonable based on information sufficient to support the decision at the time it was made. [*In re Blankenship*, 3 N.M.I. 209, 217, 1992]. Our analysis should therefore focus on whether: (1) the P&S Director went beyond his authority under the ITB, and (2) there was a reasonable basis to support the P&S Director's decision to disregard WEI's unpaid obligation in awarding the contract for the anti-skid project.

Whether the P&S Director Went Beyond His Authority Under the ITB

HRPC alleges that the P&S Director's discretion in ITB Section 13 applied to only unpaid obligations on former contracts, not current contracts such as the CPAR Phase 5 project.

"...The Government reserves the right to disqualify bidders for any of the following reasons: (a) Lack of competency; (b) Uncompleted work which, in the judgement of the Government, might hinder or prevent the prompt completion of additional work

if awarded; (c) *Failure to pay or satisfactorily settle all bills due for labor and material on former contracts in force at the time of advertisement of bids*; (d) Default under previous contracts.” (Emphasis added).

Appellant previously cited this section in its protest, claiming that this section *requires* the P&S Director to disqualify WEI because of its unpaid obligations to HRPC. However, HRPC did not reiterate this argument in its appeal after receiving the P&S Director’s protest decision that Section 13 merely gives him the *discretion* to disqualify. Nevertheless, HRPC claims that the P&S Director’s discretion was limited to former contracts in force at the time of bid advertisement, and did not apply to ongoing contracts such as the CPAR Phase 5 project.

We disagree with Appellant. We believe that the language of Section 13(c) - specifically the words “in force” - was meant to focus on the inability of a bidder to settle obligations involving contracts ongoing at the time of bid solicitation, since there was a separate provision that dealt with former contracts. The succeeding subsection (d) - Default under previous contracts - addressed a bidder’s inability to settle obligations on prior contracts. ITB Section 13 clearly included in its grounds for disqualification all unpaid obligations of a bidder regardless of whether they pertained to former or current contracts. Although the ITB specified the grounds for disqualification, its language gave the P&S Director the discretion to disregard these factors when making an award if he determined that doing so would be in the Government’s best interest. Nowhere in the ITB was there a requirement that the P&S Director automatically reject a bidder for failure to settle bills on its former or current contracts.

Whether the P&S Director’s Decision Had a Reasonable Basis

Since we have determined that the P&S Director had the discretion to disregard WEI’s unpaid obligation to HRPC in making the award, we now discuss whether his decision had a reasonable basis. Our discussion addresses the arguments presented by HRPC in its appeal, including protest issues that are relevant in the appeal arguments.

In its appeal, HRPC alleges that the P&S Director’s protest decision was arbitrary in concluding that WEI’s \$45,000 obligation to HRPC was not exorbitant, while citing the \$20,000 advantage of WEI’s price as the primary basis for award. HRPC had argued in its protest that WEI would be able to underbid competitors if it was not compelled to settle its debts. In response to this allegation, the P&S Director explained that the amount owed by WEI to HRPC was well within WEI’s ability to pay when compared to the original balance.

Our review of collection notices from HRPC to WEI and other relevant documents showed that WEI’s obligation in question arose from construction materials (i.e., hot mix asphalt, sand and aggregate) supplied by HRPC totaling \$135,125 in June and July 1998 for the CPAR Phase 5 project. After more than a year, WEI’s obligation was reported by HRPC in its protest as \$45,814, including \$11,947 in interest. Our calculation showed that there had already been a 75% reduction in the principal amount of WEI’s obligation, leaving a principal balance of

\$33,867. This may have been the basis of the P&S Director's statement that WEI's remaining obligation was relatively small compared to the original contract amount.

Although the P&S Director disregarded WEI's unpaid obligation in his award consideration, he agrees with Appellant's other claim that WEI was not a responsible bidder for: (1) failure to supply P&S information as to its financial obligations to vendors; and (2) misrepresenting to DPW that it had settled all obligations to its vendors. An interview with the Executive Assistant to the P&S Director showed that WEI failed to respond to various inquiries made by P&S regarding WEI's unpaid obligations, and specifically to a letter dated October 7, 1999 from P&S to WEI inquiring about its unpaid obligations.

CNMI-PR Section 3-301(2) provides that "...The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination or nonresponsibility with respect to that bidder or offeror." P&S, however, asserts that WEI's failure to respond to inquiries would not call for WEI's disqualification for award because this was an emergency procurement. The P&S Director explains that an emergency procurement is not subject to the normal rules of the CNMI-PR, citing CNMI-PR Section 3-105(1) which states that: "...Notwithstanding any other provisions of these regulations, the government may make emergency procurement..." The Director contends that this section gave him the discretion to disregard those CNMI-PR provisions which would otherwise have caused him to reject WEI as a non-responsible bidder.

This brings us to the question of the proper basis of award under emergency procurement. Unlike with other source selection methods, the CNMI-PR do not establish an exact basis for award under emergency procurement. We acknowledge that the CNMI-PR do not provide clear guidelines on the applicability of standard procurement procedures to emergency procurement, and that the present CNMI-PR provisions could be subject to different interpretations.

A reading of the entire section cited by the P&S Director, however, does furnish some guidance for award decisions under this type of procurement. The last sentence in Section 3-105(1) provides that an emergency procurement, among other requirements, must be as competitive as practicable under the circumstances. Thus, competition is not removed as an element in emergency procurement. While the CNMI-PR do not provide an exact definition of the term "competitive," we believe that a competitive procurement does not merely involve inviting two or more bidders to participate and then determining the most responsive bidder, but also includes determining whether a successful bidder is sufficiently responsible to fully perform the terms of the contract. We believe it is important in every government procurement to establish the responsibility of the successful bidder before an award is made. There is no point in awarding a contract to the lowest responsive bidder if the awardee is not responsible and cannot fulfill the terms of the contract.

One of the underlying purposes and policies of the CNMI-PR is to foster effective broad-based competition within the free enterprise system [CNMI-PR Section 1-101(2)(f)]. The requirement of competition even for emergency procurement is in keeping with this policy.

Emergency procurement should be conducted as competitively as practicable, and there is nothing in the record to show that award of the contract to the lowest responsive *and responsible* bidder would have been impracticable at the time of award.

The P&S Director apparently based his award decision on the “Notwithstanding any other provision” clause in CNMI-PR Section 3-105(1), disregarding his finding that WEI was not a responsible bidder under Section 3-301(2). In this, he misinterpreted Section 3-105(1) because, as we have stated, even an emergency procurement requires that an award be made to a responsible bidder. We do not fault the P&S Director in this instance because the regulation lacks clarity and there was no evidence to indicate that he acted in bad faith. We strongly recommend, however, that he exercise greater care when conducting emergency procurement in the future to ensure that awards are made not only on the basis of the lowest responsive bid but also to a responsible bidder.

Other Matters

In another matter, our review showed a deficiency in the solicitation criteria which we believe warrants consideration in future government procurement. One of the solicitation provisions, ITB Section 13(c), allowed the P&S Director to disqualify bidders for “Failure to pay or satisfactorily settle all bills due for labor and material on former contracts in force at the time of advertisement of bids.” We note from the P&S Director’s report on the appeal that this provision was apparently intended to establish a bidder’s financial integrity and reliability. In an interview, the P&S Director’s Executive Assistant stated that the P&S investigation into WEI’s financial responsibility focused only on this solicitation requirement.

Although we find no specific prohibition in the CNMI-PR against this method of review, we believe such evaluation procedure is inadequate. The proper test of a bidder’s financial responsibility should not be limited to inquiring whether a bidder has unpaid obligations to suppliers, but should include a review and investigation of its financial condition as a whole (e.g., analysis of the bidder’s financial statements). We believe that it is improper for a contracting agency to disqualify a bidder merely because of its unpaid obligations to suppliers or to affirm a bidder’s financial integrity simply because it is current with its suppliers, without getting a complete picture of the bidder’s sources of funds and overall financial stability.

DECISION

Our review of this appeal showed that the P&S Director: (1) had discretion to consider all unpaid obligations for all former and ongoing contracts under the ITB; (2) did not have a reasonable basis to ignore WEI’s unpaid obligations, because WEI failed to supply requested information about its financial condition; and (3) misinterpreted the CNMI-PR when he determined that finding a bidder to be responsible was not required in an emergency procurement and proceeded with the contract award to WEI, disregarding the fact that WEI was not a responsible bidder under Section 3-301(2).

Absent any evidence of bad faith, however, we cannot fault the P&S Director for his decision because we acknowledge that the CNMI-PR does not have clear guidelines on emergency procurement. We recognize that the award should have been made to the lowest responsive and responsible bidder if the P&S Director had properly interpreted and applied the regulations to this procurement. However, since the project has already been completed, we have no option other than to ratify WEI's contract. *Therefore, we are compelled to deny HRPC's appeal on DPW's anti-skid project.*

We urge the P&S Director, however, to consider the points raised in our appeal decision in conducting bidding. Specifically, we recommend that the P&S Director exercise greater care in: (1) reviewing procurement solicitations, ensuring that the agency's minimum needs are effectively conveyed and that solicitations do not include unnecessary provisions, and (2) making future procurement awards, ensuring that award is made not only on the basis of the lowest responsive bid but also to a responsible bidder even in emergency procurements.

Section 5-102(9) of the CNMI-PR provides that the appellant, any interested party who submitted comments during consideration of the protest, the Director, or any agency involved in the protest, may request reconsideration of a decision by the Public Auditor. 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. Such a request must be received by the Public Auditor not later than ten (10) days after the basis for reconsideration is known or should have been known, whichever is earlier.



Leo L. LaMotte
Public Auditor, CNMI

February 29, 2000