



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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In Re:) **APPEAL NO. BP-Ao8o.1**
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Appeal of GPPC, Inc.) **IFB13-GOV-083**
)
) **“Million Gallon Reservoir Replacement”**
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) **RECONSIDERATION REQUEST**
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BACKGROUND

GPPC, Inc. (“GPPC”) filed a timely appeal with the Public Auditor (“OPA”) on August 6, 2013 objecting to the denial of its protest over the disqualification of GPPC as a non-responsible bidder on the above solicitation. On September 17, 2013, OPA issued its decision denying GPPC’s appeal (“Decision”). GPPC filed a timely¹ request for reconsideration (“Request”) on September 27, 2013. On October 1, 2013 the Water Task Force (“WTF”) submitted an email clarifying certain aspects of their recommendation to the Director of Procurement and Supply, which was considered by the Director in his finding GPPC to be a non-responsible bidder. OPA treated the WTF email as a comment under NMIAC § 70-30.3-505(f) and solicited comments from all other interested parties.² No additional comments were received. GPPC submitted a rebuttal to the WTF comments on October 16, 2013.

DISCUSSION

Parties seeking reconsideration of an OPA decision must set forth the factual and legal grounds that warrant reversal, specifying legal errors made or information not previously considered. *See* NMIAC § 70-30.3-505(i)(1). GPPC’s Request claims OPA misstated certain facts in the Decision. GPPC further claims that OPA’s application of the law *relied* on these erroneous facts, which lead to an incorrect decision. On this basis, GPPC seeks reversal of OPA’s Decision affirming the Director’s adverse responsibility determination. GPPC makes no claim that OPA applied the incorrect legal standard when reviewing the Director’s responsibility decision. Alternatively, GPPC requests that OPA modify its Decision to correctly state the facts in the administrative record.

¹ NMIAC § 70-30.3-505(i)(2) provides a ten (10) day filing window after the basis for reconsideration is known or should have been known. GPPC filed the present Request ten calendar days after OPA distributed its Decision.

² OPA notes that, as pointed out by GPPC in their rebuttal, the WTF comments include information that post dates the Director’s Protest Decision. OPA will not consider any such information in the present decision.

GPPC claims OPA's Decision erroneously states that a WTF recommendation to the Director of Procurement and Supply ("Director") cited **three** problematic welding projects involving GPPC. *See Request*, p. 1. GPPC points out that the WTF recommendation cites only **one** welding project and two other projects not involving welding. *Id.* Reviewing the record in this matter and the comments submitted by WTF confirm that GPPC is correct: OPA's Decision erroneously stated the number of welding projects referenced in the WTF memorandum. *See Memorandum from WTF Legal Counsel to WTF Program Manager*, p. 2-5 (June 13, 2013); *Protest Decision by Director of P&S*, p. 3 (July 23, 2013); *Comments submitted by WTF to GPPC Request for Reconsideration*, p. 1 (October 1, 2013). The WTF memorandum, attached to the WTF recommendation to the Director, cite only one tank welding project in which GPPC was having performance issues. *See Memorandum from WTF Legal Counsel to WTF Program Manager*, p. 2-4 (June 13, 2013). The WTF memorandum cites two other CUC projects where GPPC was having performance problems, but both other projects are unrelated to welding or tank construction. *Id.* at 4-5.

Unfortunately, OPA misread both the WTF Memorandum and the Director's Protest Decision when it referred to three welding projects in the Decision. As GPPC notes, OPA referenced multiple welding projects or "similar/related" projects on six (6) occasions in the Decision. *See Request*, p. 2; *Decision*, p 1, 4, and 5. As noted above, this was erroneous and GPPC is entitled to a correction of the administrative record in this respect.

While GPPC is correct in pointing out the factual errors in the Decision, it is incorrect in concluding that those errors lead to an incorrect ruling by OPA. As stated in the Decision, procuring officers are afforded broad discretion in making responsibility determinations. *In re Appeal of GPPC, Inc.* OPA Appeal No. BP-061 (April 1, 2010); *Appeal of Maeda Pacific Corporation*, OPA Appeal No. BP-A074 (April 11, 2013). Furthermore, responsibility determinations are essentially an exercise of business judgment, where reasonable minds might reach different conclusions. *In re Appeal of Resource Management International Corporation*, OPA Appeal No. BP-A055, (July 15, 2008). When under administrative review, a procuring officer's responsibility decision will not be disturbed unless there is no reasonable basis for the determination or the contractor demonstrates bad faith by the agency. *Id.*

Reviewing the Director's responsibility determination under the corrected administrative record leads OPA to the conclusion that it was a reasonable exercise of business judgment. The Director had information to suggest that GPPC was poorly performing on one large tank welding project and poorly performing on two unrelated, but recent, projects in the CNMI. Questionable performance on one similar tank welding project alone provides a sufficient basis to support the Director's responsibility determination. The fuel tank fabrication project is recent in time to the reservoir project and is of a very similar nature. The two additional unrelated projects simply add further doubt to GPPC's ability to responsibly perform the reservoir project. Nothing in GPPC's Request modifies their claims of bad faith already discounted in the Decision. Accordingly, OPA finds the Director's determination that GPPC was a non-responsible bidder to be reasonable.

DECISION

OPA's decision *In re Appeal of GPPC, Inc.*, BP-AO80, issued on September 17, 2013 misstated facts regarding GPPC's past or ongoing performance. The corrected facts from the administrative record are as follows: the Water Task Force Memorandum cites one welding tank project where GPPC was having performance problems and two other projects unrelated to welding or tank construction where GPPC was having performance problems. All references to multiple welding projects, "similar" projects, or "related" projects are hereby stricken from the September 17, 2013 decision. GPPC's Request for Reconsideration in this respect is granted.

Notwithstanding this factual misstatement in the September 17, 2013 decision, OPA finds that the Director of Procurement and Supply's determination that GPPC was non-responsible bidder was reasonable. GPPC's Request for Reconsideration in this respect is denied.

Dated this 1st day of November, 2013.

BY



JOSEPH J. PRZYUSKI
OPA Legal Counsel

CONCUR



MICHAEL PAI, CPA
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