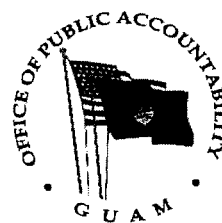


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Phone: Email:	(671) 687-5533 tsteelglobal@gmail.com	Phone: Fax:	475-0390 x. 208 472-7951

Re: OPA-PA-16-015 Decision

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Thank you,
 Jerrick Hernandez
 Auditor
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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

Docket No. OPA-PA-16-015

TRANS STEEL MANAGEMENT,

DECISION

Appellant.

This is the Decision of the Public Auditor for appeal number OPA-PA-16-015 regarding Trans Steel Management's ("Trans Steel") Appeal of the Guam Power Authority's ("GPA") denial of procurement protest dated December 1, 2016, concerning Invitation for Bid No. GPA-SS-003-16 ("the IFB"), which solicits bids for miscellaneous surplus salvage items for sale by GPA.

This matter came before Public Auditor Doris Flores Brooks and Hearing Officer Delia Lujan Wolff for a Hearing on February 10, 2017. Present at the Hearing were John M. Pearson, General Manager of Trans Steel, Attorney D. Graham Botha, counsel for GPA, and Jamie Pangelinan, the Supply Management Administrator for GPA.

I. FINDINGS OF FACT

In reaching this Decision, the Public Auditor has considered and incorporates herein the procurement record and all documents submitted by the parties, and all arguments made during the February 10, 2017 Hearing on Trans Steel's Appeal. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1. On August 11, 2016, GPA issued the IFB soliciting bids for miscellaneous surplus salvage items for sale by GPA. (Procurement Record, Tab 1A.)

1 2. The IFB provided, in relevant part, the following:

2 a. The salvage items for sale were described as “Miscellaneous Light Vehicles [,]
3 Miscellaneous Heavy Equipment [,] Miscellaneous Automotive Parts [,] Miscellaneous Scrap
4 Metal” in “Poor (**As Is**)” condition. (Procurement Record, Tab 1A (bold in original).)

5 b. The salvage items for sale included, but were not limited to bucket trucks, utility
6 trucks, pickups, vans, a digger, SUVs, sedan, an RTV, a forklift, a crane, a flatbed truck, and a
7 stake truck. (Id.)

8 c. The Minimum Acceptable bid amount for the salvage items was \$30,000.00. (Id.)

9 d. Bidders were invited and urged to inspect the property to be sold prior to
10 submitting bids, with the first day of inspection being August 11, 2016. (Id.)

11 e. A bid deposit of 25% of the total amount must accompany the bid, and bidders
12 were required to make a non-refundable payment of \$25.00 for each package payable to the “Guam
13 Power Authority” prior to issuance of a bid package. (Id.) Deposits accompanying bids, which are
14 not accepted, will be returned. (Id.)

15 f. The date and time of Bid Opening was September 6, 2016, at 10:00 a.m. (Id.)

16 3. On or about August 15, 2016, Trans Steel conducted its first inspection of the salvage
17 items.

18 4. On September 6, 2016, prior to the scheduled bid opening, Trans Steel conducted a
19 second inspection of the salvage items and saw that some items previously present during the first
20 inspection had since been removed.

21 5. Only Trans Steel submitted a bid in response to the IFB. (Procurement Record, Tab 1A.)

22 6. On September 6, 2016, GPA conducted a bid opening. (Procurement Record, Tab 1A.)

23

24

25

1 7. Trans Steel bid a total bid offer of \$5,000.00 to purchase the salvage items. (Procurement
2 Record, Tab 1A.) Trans Steel also submitted to GPA a deposit of 25% of the bid amount, or
3 \$1,250.00. (Id.)

4 8. Trans Steel claims that the removal of salvage items was a factor in determining the
5 \$5,000.00 total bid offer.

6 9. On or about September 16, 2016, GPA decided to reissue the IFB, since the bidder did
7 not meet the minimum acceptable amount of \$30,000.00. (Procurement Record, Tab 1 A.)

8 10. On September 23, 2016, GPA issued a check to Trans Steel in the amount of \$1,250.00,
9 for the return of Trans Steel's deposit. (Procurement Record, Tab 1A.) Trans Steel received the
10 returned deposit on September 26, 2016. (Id.)

11 11. On September 20, 2016, GPA reissued the IFB. (Procurement Record, Tab 3.)

12 12. The re-bid IFB contained generally the same terms of the original IFB, except that the
13 Minimum Acceptable amount was stated to be \$15,000.00 and the bid opening was scheduled for
14 October 6, 2016, at 10:00 a.m. (Procurement Record, Tab 3.)

15 13. On October 3, 2016, GPA received \$25.00 from Trans Steel as the fee for the reissued
16 bid. (Procurement Record, Tab 6.)

17 14. Again, only Trans Steel submitted a bid in response to the reissued IFB. (Procurement
18 Record, Tab 7.)

19 15. On October 6, 2016, GPA conducted a bid opening. (Procurement Record, Tab 7.)

20 16. Trans Steel bid a total bid offer of \$4,300.00 to purchase the salvage items.
21 (Procurement Record, Tabs 7-8.) Trans Steel also submitted to GPA a deposit of 25% of the bid
22 amount, or \$1,075.00. (Id., Tab 9.)

1 17. Sometime after the bid opening, GPA contacted different companies to solicit interest
2 in bidding on the salvage items, which were the subject of the IFB.

3 18. On October 14, 2016, Joseph Pablo of 4 J's Equipment, Inc. ("4J's"), sent an email to
4 Jamie Pangelinan of GPA, stating that he would like to submit a bid for the scrap at the GPA
5 Transportation Yard and asked if this was still possible. (Procurement Record, Tab 11.)

6 19. In a letter dated October 17, 2016, and received by Trans Steel on October 20, 2016,
7 GPA informed Trans Steel that it was not awarded the re-bid due to not meeting the \$15,000.00
8 minimum acceptable amount. (Procurement Record, Tab 12.) In the letter, GPA also
9 acknowledged that Trans Steel was the only bidder on both the original and reissued IFB. (Id.)

10 20. Shortly thereafter, GPA informed Trans Steel that it may offer at least \$10,000.00 to
11 purchase the salvage items, which were the subject of the IFB.

12 21. On October 24, 2016, GPA issued a check in the amount of \$1,075, payable to Trans
13 Steel, for the return of the 25% deposit, which Trans Steel received shortly thereafter. (Procurement
14 Record, Tab 14.)

15 22. On October 28, 2016, Trans Steel submitted a letter to GPA, wherein Trans Steel offered
16 to purchase for \$10,000.00 the salvage items, which were the subject of the IFB. (Procurement
17 Record, Tab 16.)

18 23. On the same day, October 28, 2016, 4 J's submitted to GPA a letter wherein it made a
19 "counter offer in the amount of \$15,100 for GPA-SS-00316." (Procurement Record, Tab 17.)

20 24. On October 28, 2016, GPA prepared an Abstract of Bids for "RE-BID GPA-SS-003-
21 16," with an opening date of October 28, 2016, and an opening time of 10:00 a.m., describing the
22 supplies as "MISCELLENEOUS SURPLUS SALVAGE BID (COUNTER OFFER)" and
23
24
25
26
27

1 identifying both 4 J's and Trans Steel as bidders with their respective bid amounts of \$15,100.00
2 and \$10,000.00. (Procurement Record, Tab 15.)

3 25. GPA accepted 4 J's "counter offer." In a letter from GPA to Joseph A. Pablo of 4 J's,
4 dated October 28, 2016, GPA informed 4 J's that it received its proposal of \$15,100.00 for
5 Miscellaneous Surplus Salvage Bid and that "[c]onditions of sales requirement remain as indicated
6 on Re-Bid-003-16[.]" (Procurement Record, Tab 18.) 4 J's signed the letter on December 7, 2016,
7 and acknowledged and accepted the terms and conditions stated in the letter. (Id.)

9 26. In a letter dated October 28, 2016, and received by GPA on October 31, 2016, Trans
10 Steel protested GPA's award to 4 J's. (Procurement Record, Tab 19.) Trans Steel questioned how
11 another company was able to receive information about the GPA offer and how it was eligible to
12 submit an offer on the IFB. (Id.) Trans Steel stated that only Trans Steel should have been able to
13 submit a counter offer since it was the sole bidder on the original and reissued IFB. (Id.) Trans
14 Steel claimed that, if its counteroffer was not satisfactory, then the IFB should have been cancelled
15 and reissued for the public. (Id.)

17 27. In a letter dated December 1, 2016, GPA denied Trans Steel's October 28, 2016
18 procurement protest on the grounds that Trans Steel's bids on the original and reissued IFB were
19 properly rejected for failure to bid the minimum acceptable amount, and, after GPA informed Trans
20 Steel that it would consider other salvage bids with a minimum amount of \$10,000.00, 4 J's outbid
21 Trans Steel and was properly awarded as a responsive bidder. (Procurement Record, Tab 21.)
22 Trans Steel received GPA's denial letter on December 5, 2016. (Id., Tab 22.)

24 28. On December 15, 2016, Trans Steel commenced the instant procurement appeal.

1 **II. ANALYSIS**

2 In this appeal of GPA's December 1, 2016 denial of Trans Steel's October 28, 2016, protest,
3 Trans Steel requests that the OPA order GPA to rescind its letter to 4 J's dated October 28, 2016,
4 awarding 4 J's on the IFB, and to instead make an award to Trans Steel on its \$10,000.00 offer.
5 Pursuant to 5 GCA § 5703 and 2 GAR 4 § 12103, the Public Auditor shall review and determine
6 GPA's denial of Trans Steel's protest de novo.
7

8 The Public Auditor agrees with Trans Steel that the award to 4 J's was improper. As the
9 procurement at issue concerns the sale of surplus supplies, GPA had to comply with the competitive
10 sealed bidding requirements contained in 2 GAR 4 § 8102(h)(2), which provides:

11 (2) Competitive Sealed Bidding.

12 (a) Soliciting and Opening. When making sales by competitive sealed
13 bidding, notice of the sales should be given at least ten (10) days before the date set
14 for opening bids. Notice shall be given by mailing a Request for Sale Bids to
15 prospective bidders, including those bidders on lists maintained for this purpose,
16 and by making the Request for Sale Bids publicly available. Newspaper
17 advertisement may also be used. The Request for Sale Bids shall list the supplies
18 offered for sale; designate their location and how they may be inspected; and state
19 the terms and conditions of sale and instructions to bidders including the place, date,
20 and time set for bid opening. Bids shall be opened publicly.

21 (b) Award. Award shall be made in accordance with the provisions of the
22 Request for Sale Bids to the highest responsive and responsible bidder, provided
23 that the price offered by such bidder is acceptable to the Chief Procurement Officer.
24 Where such price is not acceptable, the Chief Procurement Officer may reject the
25 bids in whole or in part and negotiate the sale provided the negotiated sale price is
26 higher than the highest responsive and responsible bidder's price, or such officer
27 may resolicit bids. 2 GAR 4 § 8102(h)(2).

28 Here, Trans Steel was the only entity to submit a timely bid on the reissued IFB¹. At the October
6, 2016, bid opening, only Trans Steel had submitted a bid and only its bid was opened by GPA.
Thus, 4 J's bid, submitted on October 28, 2016, could not have been accepted as to the reissued

¹ The Public Auditor makes no opinion regarding whether the IFB constitutes a Request for Sale Bids and whether the notice requirements of 2 GAR 4 § 8102(h)(2)(a) were met, as Trans Steel has not raised these issues in its appeal.

1 IFB because the bid was 22 days late from the deadline to submit bids, as set forth in the reissued
2 IFB. As 4 J's bid was clearly untimely, 4 J's was not a responsive bidder as to the reissued IFB. 5
3 GCA § 5201(g) ("Responsive Bidder means a person who has submitted a bid which conforms in
4 all material respects to the Invitation for Bids."). Since the bid opening had already occurred and 4
5 J's could not be a responsive bidder on the reissued IFB, GPA should not have entertained 4 J's
6 October 14, 2016 request to submit an offer. In sum, the award to 4 J's was improper.
7

8 Regarding Trans Steel's request to be awarded on the IFB, the Public Auditor finds that
9 Trans Steel's failure to meet the \$15,000.00 minimum acceptable price, a material aspect of the
10 reissued IFB, rendered its bid nonresponsive. 5 GCA § 5201(g). Consequently, GPA's rejection of
11 Trans Steel's bid was proper.
12

13 It is worth noting that GPA has failed to maintain a complete record of the procurement.
14 Pursuant to 5 GCA § 5249(b), GPA was required to keep "a log of all communications between
15 government employees and any member of the public, potential bidder, vendor or manufacturer
16 which is in any way related to the procurement [.]" 5 GCA § 5249(b). During the hearing, Jamie
17 Pangelinan, the Supply Management Administrator for GPA, testified that, after the bid opening
18 on the reissued IFB, GPA contacted potential bidders, including and other than 4 J's and Trans
19 Steel, who might be interested in purchasing the salvage supplies. However, the procurement
20 record lacks any log of communications between GPA and any other potential bidder. The
21 procurement record also appears to lack a log of all of the communications between GPA and 4 J's
22 and GPA and Trans Steel. The requirement that agencies keep a log of such communications is
23 vital to protecting the integrity of the bidding process. 5 GCA § 5252. GPA's practice of engaging
24 in informal, unlogged communications with members of the public or potential bidders related to
25 the procurement blocks transparency and erodes public confidence in the procurement process.
26
27

1 Lastly, the Public Auditor shares in Trans Steel's concern regarding the completeness of
2 the surplus supplies which were the subject of the IFB. Once GPA commenced the procurement
3 to sell the surplus items and invited potential bidders to inspect the "as is" property prior to bidding,
4 the surplus supplies should not have been raided or otherwise altered by GPA, as what happened
5 with this IFB.
6

8 IV. CONCLUSION

9 Based on the foregoing, the Public Auditor hereby determines the following:

10 1. Guam Power Authority's award to 4 J's Equipment, Inc. on the reissued IFB was
11 improper and void.

12 2. Guam Power Authority properly rejected Trans Steel Management's \$4,300.00 bid on
13 the reissued IFB.

14 3. In accordance with 2 GAR 4 § 8102(h)(2)(b), GPA should reissue the bid.

15 4. Accordingly, Trans Steel Management's procurement appeal is hereby GRANTED IN
16 PART and DENIED IN PART.
17

18 This is a Final Administrative Decision. The Parties are hereby informed of their right to
19 judicial review in the Superior Court of Guam of a Decision of the Public Auditor under 5 GCA
20 Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law. In
21 accordance with 5 GCA § 5481(a), such action shall be initiated within fourteen (14) days after
22

1 receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties
2 and their respective attorneys, in accordance with 5 GCA § 5702, and shall be made available for
3 review on the OPA website at www.opaguam.org.

4 SO ORDERED this 10th day of March, 2017.

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7 

8

DORIS FLORES BROOKS, CPA, CGFM
9 Public Auditor of Guam