



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Guahan Ventures Inc. dba Turfco; OPA-PA-21-0032 messages

Claire Pollard <cpollard@rwtguam.com>

Thu, Aug 5, 2021 at 4:46 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Dear Mr. Hernandez:

Please see the attached [Comments on Agency Report](#) and [Hearing Request](#) to be filed in the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

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Regards,
Claire Pollard**RAZZANO WALSH & TORRES, P.C.**

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2 attachments**8.5.21 Comments on Agency Report.pdf**

370K

**8.5.21 Hearing Request.pdf**

34K

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Aug 5, 2021 at 4:50 PM

To: Claire Pollard <cpollard@rwtguam.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Edwin J. Torres" <etorres@rwtguam.com>

Hafa Adai,

OPA confirms receipt of this email and the attached documents.

[Quoted text hidden]

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

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**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

PART I.

In the Appeal of

Guahan Ventures Inc. dba Turfco

Appellant.

DOCKET NO. OPA-PA-21-003

COMMENTS ON AGENCY REPORT

I. INTRODUCTION

Pursuant to 2 GAR §§ 12104(c)(4) and 12108(a), Appellant Guahan Ventures Inc. dba Turfco (“Turfco” or “Appellant”) submits its Comments on the Agency Report submitted by the General Services Agency (“GSA”) to the Office of Public Accountability on July 26, 2021. These comments are submitted to address the inadequacies and unavailing nature of the Agency Report regarding GSA Request for Quotation (REQ) Q210280170 issued on June 14, 2021, and changed on June 16, 2021, with the identifier RFQ 21002179 seeking golf carts (the “IFB”).

II. COMMENTS TO AGENCY STATEMENT

A. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND.¹

The General Services Agency (“GSA”) issued a Request for Quote for Requisition No. Q210280170 on June 14, 2021, seeking golf carts. Q210280170 stated that a quote was required no later than June 17, 2021, before close of business at 5pm. There was no delivery date originally indicated in the quotation. On June 14, 2021, GSA informed bidders that the “preferred ETA is 30 days from the date of purchase order award.” Other offerors prepared their bids later that day, and the next day Turfco prepared its quote for golf carts with a delivery date of 30 days out from a firm order. On June 16, 2021, at 5:43pm — after working hours and a day before the deadline for submission of quotes — GSA sent an email to offerors stating “See attached Request for Quote.... Please note that this is an ‘Emergency Procurement’ and Delivery Require is ‘IMMEDIATE’” Which was entered on the last page of the RFQ Request. Thank you for your attention please acknowledge receipt of this email.” (internal quotations and ellipses in original). The RFQ was also changed to RFQ21002179.

On June 24, 2021, Turfco learned that it was the lowest responsive bidder to the IFB that was originally issued, but that the Abstract declared instead that Guam AutoSpot was selected for Award. GSA informed Turfco that Turfco was not selected because Guam AutoSpot could deliver the golf carts “immediately” — a specification change that was added the day before the quote was due and after all

¹ Much of this history is contained in Turfco’s Notice of Appeal, but is recounted here for ease of reference for the reader.

offerors had prepared their bids. On June 24, 2021, Turfco protested GSA's award to Guam AutoSpot based upon the improper late addition of the "immediate delivery" specification that was not contained in the original bid requirements, only added after-hours in the waning moments of the bid submission window, and inserted after all offerors had already prepared their bids. GSA denied the protest on June 25, 2021. This Notice of Appeal to the OPA followed.

B. GSA'S AGENCY REPORT'S USE OF AN "EMERGENCY" TO JUSTIFY THE LATE CHANGE TO THE PROCUREMENT IS UNSUPPORTED BY LAW OR FACT.

GSA's attempts to defend its conduct by declaring that the purchase was "based on Executive Order 2021-12." Agency Report, Tab 1. That order has no bearing on the procurement of golf carts. That order, like much of the litany of other COVID-19 edicts from the Governor before it, is simply an order continuing the Governor's continuance of the public health emergency first declared in Executive Order No. 2020-03. The Government acknowledges that, at first, it issued its request for quotations without regard to fulfilling any emergency need. Agency Report, Tab 1, pg. 2. The Government does not contest that it confirmed to bidders in a separate email that the "preferred ETA is 30 days from the date of purchase order award." Attachment C to Notice of Appeal. Instead, the Government explains that these normal procurement processes were the result of a "mistake," and that the request was supposed to be to fulfill an emergency need. Agency Report, Tab 1, pg. 2. GSA explains that adjusting the procurement after business hours the day before it was due was appropriate and somehow in furtherance of that emergency

need. Agency Report, Tab 1, pg. 2. The Government's reliance upon a COVID-19 induced "emergency" in June of 2021 requiring the immediate purchase of golf-carts is untenable, and does nothing to further the obligations under the law that the procurement system "provide for increased public confidence in the procedures followed in public procurement," and "ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory," 5 GCA. § 5001.

GSA provides no legal or factual support why, 15 months after the first COVID-19 public health emergency declaration, GSA needed to conduct this emergency procurement for golf carts in a single day after deciding a normal procurement with a normal procurement delivery timeframe was a "mistake." This lack of justification for an emergency procurement of golf carts in June, 2021, places this procurement squarely in violation of 5 GCA § 5215. As the Office of Public Auditor has explained in its recent examination of emergency procurement use during the COVID-19 pandemic, "After three months of emergency procurement, GovGuam had sufficient information regarding [its procurement needs] to prepare and issue an IFB, instead of the extended use of emergency procurement." OPA Report No. 21-06, Government of Guam Procurement of Hotels Used for COVID-19 Quarantine Performance Audit March 2020 through December 2020 (July 2021), 6. That same logic applies here.

Simply put, the timeline of the COVID-19 pandemic does not support the emergency justification that GSA has declared to be necessary here. The Government declared on June 12, 2021, that it needed "six golf carts to support

transportation for individual with disabilities, mobility challenges (i.e., senior citizens, and additional mobility support on the event of inclement weather at ongoing mass vaccination sites, public health outreach sites, and rapid engagement sites.” Procurement Record, Tab 6. **At the time this purported justification was provided, Guam had already spent six months vaccinating senior citizens.** See, JIC Release No. 507. (explaining that on December 24, 2020, the Department of Public Health and Social Services (DPHSS) declared that individuals ages 75 years and older may obtain the COVID-19 vaccine.)² Here, after 6 months of issuing vaccines to continually waning crowds, the Government certainly had the ability to procure needed golf carts without resorting to emergency processes after the close of the normal work day. Despite this, the Government nevertheless pushed forward with an emergency procurement, and issued that emergency procurement to potential vendors within a single day of choosing which vendor to select.

C. GSA’S AGENCY REPORT DOES NOT DENY THAT ITS LATE CHANGE TO THE PROCUREMENT BENEFITTED ONE OFFEROR.

The GSA acknowledges that it received bids from other offerors prior to changing this procurement of golf carts to an “emergency” procurement. GSA’s Agency report does not contest that with one party — AutoSpot — declared that it could provide immediate delivery despite that not being an original bid requirement. GSA’s Agency Report does not contest that GSA then changed the bid specifications in a way that matched AutoSpot’s immediate delivery option, and

² On January 5, 2021, DPHSS declared individuals ages 60 years and older may obtain the COVID-19 vaccine. JIC Release No. 522. On February 1, 2021, DPHSS declared that individuals 55 years of age and older may obtain the COVID-19 vaccine. JIC Release No. 557.

that the result of such a change was to prevent an award to Turfco who had a much lower price and was responsive to all specifications in existence at the time its bid was submitted.

The Procurement Record reveals that the selection of AutoSpot was apparently a forgone conclusion. The unsigned June 11, 2021, Requisition Emergency Form provides no actual justification for the procurement, and in the space made available explains that the “justification” for the requisition is “Suggested (sic) vendor: AutoSpot.” Procurement Record, Tab 6. That Requisition Emergency form also confirms that, originally, the procurement contained no “immediate delivery” requirement. Again, that immediate delivery requirement only appears in the record after AutoSpot declared to GSA as part of its response to the quote request that it could provide immediate delivery. Similarly, the June 12, 2021, memo to GSA from the agency seeking the golf carts contains no such “immediate delivery” requirement. Procurement Record, Tab 6.³

D. IT APPEARS THAT GSA IS SEEKING TO VIOLATE, OR HAS VIOLATED, THE AUTOMATIC STAY.

Troublingly, it appears that GSA has taken steps to violate the automatic stay of procurement mandated by Guam Law. It is axiomatic that “Once a party brings a timely protest, an automatic stay of procurement until final resolution of

³ Remaining unexplained is the appearance in the procurement record of a June 1, 2021, unaddressed letter from AutoSpot describing its golf carts and advertising them for sale. It appears that the vendor informed the agency that golf carts were available, and the agency, much like the tail wagging the dog, then declared a need for the golf carts. Turfco reserves its rights to seek a further explanation of this record, and the origins and impact of the June 1, 2021, AutoSpot letter on the eventual procurement that was issued.

that protest is required by both 5 GCA, Chapter 5, and 2 GAR, Div. 4, Chapter 9.” *Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13, ¶ 24 (Guam Apr. 22, 2015). The Procurement Record shows that, shortly after deciding to deny Turfco’s Protests, GSA issued purchase orders to AutoSpot for the golf carts to be delivered to the “Governor’s Office.” Procurement Record, Tab 7. Bills of Sale for the “Governor’s Office” were also prepared. Procurement Record, Tab 7.⁴ The procurement record does not show any attempted compliance with the requirements of 5 GCA 5425 (g) that would allow pushing forward with a procurement despite the existence of the automatic stay.

GSA’s actions constitute a further violation of law. *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20, ¶ 148. (“We have consistently held that the stay following a timely, pre-award procurement protest applies automatically. In other words, the stay under section 5425(g) is triggered by a timely protest. It applies where a protest is both factually timely and ... pursued before the award has been made. This is in accord with the mandatory nature of 5 GCA § 5425(g). For this reason, once a party brings a timely protest, an automatic stay of procurement until final resolution of that protest is required. While our cases have indicated that parties have sought to enforce the automatic stay by court order, our case law is equally clear that the automatic stay is a legal entitlement that vests upon a timely, pre-award protest. No court order is necessary for the

⁴ It remains unclear from the record why golf carts claimed to be needed for vaccination locations would be directed to the Governor’s Office, as that office has no procuring authority.


automatic stay to become effective. The automatic stay set forth in section 5425(g) remains in effect from the date of protest and continues until final resolution of the action by the Superior Court.” (internal quotations, citations, and edits omitted). GSA’s pushing forward with the procurement award to AutoSpot hampers any remedy Turfco may have to become an awardee of the quotation request.

III. CONCLUSION

GSA issued a request for quotes, then bootstrapped an emergency justification for that request to turn this into a sole source procurement. GSA’s Agency report does not alter the fundamental reality that the COVID-19 Pandemic is being used as an excuse to ignore the fundamental protections afforded to the people of Guam and the vendors who interact with the Government of Guam. Based on the foregoing, Turfco respectfully requests that its protest appeal be sustained.

Submitted this 5th day of August, 2021.

RAZZANO WALSH & TORRES, P.C.

By: 
JOSHUA D. WALSH
EDWIN J. TORRES
Attorneys for Appellant