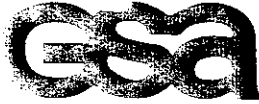


Felix P. Camacho  
Governor

Lourdes M. Perez  
Director



**GENERAL SERVICES AGENCY**

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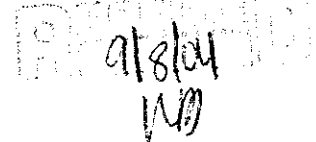
September 9, 2004

Memorandum

To: Director, Chamorro Land Trust Commission

From: Chief Procurement Officer

Subject: Request for Clarification



Hafa Adai! This is in response to your request for clarification regarding the appropriate time to disclose information in processing a solicitation through the Request for Proposal method.

Attached is a copy of the Guam Administrative Rules and Regulations Subsection 3114(i) (2) states in part: “ **No Disclosure of Information.**” Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made.

**Your question is:** “Is it appropriate for the CLTC Board of Directors to disclose or discuss the RFDP during the regular scheduled board meeting prior to an official award with the developer?”

**Response:** No. It is inappropriate. The CLTC Board can discuss the RFDP only during an Executive Session since an official award has not been made. Since the Board of Directors meetings are opened to the general public it is inappropriate to discuss any information regarding the RFDP if an official award has not been made. I hope this clarification will help the Board to understand the position of the task force.

If you have any further questions please feel free to contact this office at 475-1713.

Handwritten signature of Claudia S. Acfalle in black ink.  
CLAUDIA S. ACFALLE

cc: Board of Directors, CLTC

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(3) an expression of interest in providing a particular service specified in §3114(a); and

(4) any other pertinent information requested by the Procurement Officer.

Persons may amend statements of qualifications at any time by filing a new statement.

**(e) Public Notice in Competitive Selection Procedures.** Notice of the need for services specified in Section 3114(a) (Application) be made by the Procurement Officer in the form of a Request for Proposals at least ten (10) days before the proposals are due. Adequate public notice shall be given as provided in §3109(f) (Public Notice), and additionally shall consist of distributing Requests for Proposals to persons interested in performing the services required by the proposed contract.

**(f) Request for Proposals.**

**(1) Contents.** The Request for Proposals shall be in the form specified by the Procurement Officer and contain at least the following information:

(A) the type of services required;

(B) a description of the work involved;

(C) an estimate of when and for how long the services will be required;

(D) the type of contract to be used;

(E) a date by which proposals for the performance of the services shall be submitted;

(F) a statement that the proposals shall be in writing;

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(G) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;

(H) a statement of the minimum information that the proposal shall contain, to include:

(i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

(ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

(iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

(iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the Request for Proposals;

(v) a plan giving as much detail as is practical explaining how the services will be performed; and

(vi) the factors to be used in the evaluation and selection process and their importance.

(2) **Evaluation.** Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary

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according to the type of services being procured. The minimum factors are:

(A) the plan for performing the required services;

(B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the personnel proposed to be assigned to perform the services;

(C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting, and

(D) a record of past performance of similar work.

(g) **Pre-Proposal Conferences** . Pre-proposal conferences, as appropriate, may be conducted in accordance with §3109(h) (Pre-Bid Conferences). Such a conference may be held anytime prior to the date established for submission of proposals.

**(h) Receipt and Handling of Proposals.**

(1) **Registration.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be established which shall include for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only

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after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.

(2) **Requests of Nondisclosure of Data.** If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such office shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the head of the agency conducting the procurement or a designee of such officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests under 5 GCA Chapter 5 Article 9 (Legal and Contractual Remedies) of the Guam Procurement Act, the proposal will be so disclosed.

(i) **Discussion.**

(1) **Discussions Permissible.** The head of the agency conducting the procurement or a designee of such officer shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

(A) determine in greater detail such offeror's qualifications, and

(B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

(2) **No Disclosure of Information** Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the

offeror awarded the contract shall be opened to public inspection except as otherwise provided in the contract. (See §3114(h)(1), Receipt and Handling of Proposals, Registration).

**(3) Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

**(j) Selection of the Best Qualified Offerors** . After conclusion of validation of qualifications, evaluation, and discussion as provided in §3114(i) (Discussions), the head of the agency conducting the procurement or a designee of such officer shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

**(k) Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the head of the agency conducting the procurement at a time specified prior to the commencement of negotiations in accordance with §3118 (Cost or Pricing Data) of these Regulations.

**(l) Negotiation and Award of Contract.**

**(1) General.** The head of the agency conducting the procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

**(2) Elements of Negotiation.** Contract negotiations shall be directed toward:

(A) making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;

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(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

**(3) Successful Negotiation of Contract with Best Qualified Offeror** . If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

**(4) Failure to Negotiate Contract With Best Qualified Offeror.**

(A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the head of the agency conducting procurement or a designee of such officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three days.

(B) Upon failure to negotiate a contract with the best qualified offeror, the head of the agency conducting the procurement or the designee of such officer may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided in Subsection 3114(l)(4)(a) of this Section and commence with the next qualified offeror.

**(5) Notice of Award.** Written notice of award shall be public information and made a part of the contract file.

(6) **Failure to Negotiate Contract with Offerors Initially Selected as Best Qualified.** Should the head of the agency conducting the procurement or a designee of such officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with Subsection 3114(1)(4) of this Section until an agreement is reached and the contract awarded.

(m) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of the contract, the head of the agency conducting the procurement or a designee of such officer shall prepare a memorandum setting forth the basis of award including:

(1) how the evaluation factors stated in the Request for Proposals were applied to determine the best qualified offerors; and

(2) the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

All memoranda shall be included in the contract file and be available for public inspection.

(n) **Approval of Contracts for Legal Services.** As provided by §2111 (Authority to Contract for Certain Service, Approval of Contracts for Legal Services) of these Regulations, no contract for the services of legal counsel may be awarded without the approval of the Attorney General.

(o) **Reports.** The head of each using agency shall submit annually to the Chief Procurement Officer a listing of all contracts awarded under §3114 of these Regulations in the preceding fiscal year. The report shall identify the parties to