


FISHER ASSOCIATES
ATTORNEYS AT LAW

ORIGINAL

14 April 2016

The Honorable Elizabeth Barrett-Anderson
Attorney General of Guam
c/o Mr. Phillip Tydingco and Ms. Jacqueline Cruz
Office of the Attorney General
590 S. Marine Corps Dr.
ITC Building, Suite 706, 7th Floor
Tamuning, GU 96913

A Protest of Office of Attorney General Request for Proposals No. 001-2016

Dear Madam Attorney General,

Hafa Adai. I am a prospective offeror in Request for Proposal No. 001-2016, Independent Prosecutor (Special Assistant Attorney General) (RFP) published 19 February 2016. This is a Protest of the method of source selection and method of solicitation of services called for in that RFP and submitted pursuant to 5 Guam Code Ann. §5425.

As you know, the subject RFP has been amended no less than four times. As originally issued, the RFP required prospective offerors to attend a pre-proposal conference scheduled for 25 February 2016 at 1400 at the Office of the Attorney General. *See RFP, 19 February 2016 at §2.3.1.* At this conference, prospective offerors were required to be present to receive a confidential packet or alternatively, contact you to make arrangements to pick up said packet. *Id.* All of this was to be done no later than close of business on 25 February 2016 and failure to pick up the packet would render a proposal non-responsive to the RFP. *See Id.*

On 23 February 2016 your office amended the RFP to move the pre-proposal conference date to 26 February 2016 at 1400. All other terms and conditions remained the same. *See RFP, Amendment I, 23 February 2016 at ¶¶1,2.*

Two days later, on 25 February 2016, the date of the pre-proposal conference was again changed to 11 March 2016 at 1400. *See RFP, Amendment II, 25 February 2016 at ¶¶1,4.* Consequences of not picking up a packet, or making arrangements to do so, remained unchanged. On 11 March 2016 the pre-proposal conference was held.

At that conference I noted the attendance of two other prospective offerors beside myself. I also stated that the RFP required attendance and receipt of packets (or reaching an alternative method for receipt) no later than close of business that day. As I recall, representatives of your office disagreed with my interpretation. In any

event, after the close of the pre-proposal conference, the RFP was amended yet again¹. In this Amendment III, your office removed the requirement that prospective offerors attend the conference and receive a packet by close of business and also stated an offeror “may” be present to pick up the confidential package and not “must” be present. *See RFP, Amendment III, 11 March 2016 at ¶¶1,2.*

Finally, on 31 March 2016, the RFP was amended for a fourth time. By this latest amendment, you invite prospective out-of-state offerors to make a pro hac vice application for admission to the practice of law on Guam. *See RFP, Amendment IV, 31 March 2016 at passim.* In this amendment you direct potential offerors to Rule 8 of the Guam Rules Governing Admission to the Practice of Law. *See Id at ¶1.* In relevant part, Rule 8 states;

(b) Authority of Court or Agency to Permit Appearance by Out-Of-State Lawyer and Guam Lawyer’s Duties Generally.

(1) Court Proceeding. A court of Guam may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

(2) Administrative Agency Proceeding. If practice before an agency of Guam is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

Guam Rules Governing Admission to the Practice of Law, Rule 8(b).

I believe you would agree that there is no court proceeding to which a pro hac vice application would pertain, and certainly no administrative agency proceeding exists for which an applicant might have been or has been retained to appear.

As you know, the procurement laws of Guam are designed in part to “provide for increased public confidence in the procedures followed in public procurement (and) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory” *See 5 Guam Code Ann. §5001(b)(3) and (4).* I believe that the process by which this RFP has developed may undermine public confidence in the procurement, impeaches a presumption of fair and equitable treatment of all persons who deal with the procurement system of Guam, and works a disadvantage to prospective offerors who have abided by the conditions of the RFP and are admitted to practice on Guam. I protest therefore the method of source selection and the method of solicitation of services since;

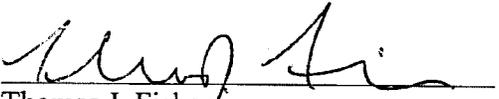
1. This RFP invites competition for award of a contract contrary to the laws of Guam, and
2. This RFP invites the practice of law contrary to the laws of Guam, and
3. This RFP places prospective offerors who have abided by the conditions of the RFP and are admitted to practice on Guam at a disadvantage, and
4. The “nunc pro tunc” alteration of RFP requirements for participation in a pre-proposal conference and receipt of packets is contrary to law and regulation, inequitable and unfair, and
5. The RFP violates the requirements of 5 Guam Code Ann. §5008 and 2 Guam Admin. R. & Reg. §1104.

¹ This assertion is based upon the circumstances as they appear. Your 11 March 2016 Amendment III is dated but not time-stamped.

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Please be aware that your office may proceed no further in this solicitation of services and award of a contract prior to the resolution of this protest. *See 5 Guam Code Ann. §5425(g).* Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Fisher", written over a horizontal line.

Thomas J. Fisher
Prospective Offeror

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General Request for Proposals
No. 001-2016

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ADMINISTRATION

Date/Time: *4/14/16*

