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[e-File] OPA-PA-21-014; In the Appeal of JJ Global Services: Comments to Agency

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Håfa Adai:

Please find the attached document for filing in the above-referenced matter, as follows:

- Comments to Agency

Your confirmation of receipt is greatly appreciated.

Sincerely,

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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

| | | |
|---------------------|---|----------------------------------|
| In the Appeal of |) | DOCKET NO. OPA-PA-21-014 |
| |) | |
| JJ GLOBAL SERVICES, |) | COMMENTS TO AGENCY REPORT |
| |) | |
| <u>APPELLANT.</u> |) | |

COMES NOW, Appellant JJ Global Services (“JJ Global”), by and through its counsel of record, Vanessa L. Williams of the Law Office of Vanessa L. Williams, and hereby submits its comments to General Services Agency (“GSA”) Agency Report for OPA-PA-21-014, pursuant to 2 Guam Administrative Rules and Regulation, Division 4, Section 12104(c)(4).

BACKGROUND

On April 1, 2021, GSA issued an Invitation for Bid (IFB No. GSA-023-21) for the repair and maintenance of the Northern Regional Recreational Swimming Pool in the Dededo Sports Complex. Notice of Appeal, Ex. 1 (Nov. 5, 2021). On Page 1 of GSA’s IFB’s Special Reminder to Prospective Bidders, it states prospective bidders are reminded to comply with the “CURRENT BUSINESS LICENSE/CONTRACTOR’S LICENSE/SPECIALITY LICENSE IN REFERENCE TO SUPPLIES OR SERVICES FOR THIS BID” or face “disqualification and rejection of the bid.” *Id.* On Paragraph 4, Page 23 of GSA’s IFB General Terms and Conditions, it states: “Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.” *Id.* at p. 23 ¶ 4. On Paragraph 6, Page 23 of GSA’s IFB’s General Terms and Conditions, it states: “Bidders shall comply with all specifications and other requirements of the Solicitation.” *Id.* at p. 23 ¶ 6. On

1 Paragraph 14, Page 23 of GSA’s IFB’s General Terms and Conditions, it states: “Bids will be
2 considered only from the such bidders who, in the opinion of the Government, can show evidence
3 of their ability, experience, equipment, and facilities to render satisfactory service.” *Id.* at p. 23 ¶
4 14. On Paragraph 16, Page 24 of GSA’s IFB’s General Terms and Conditions, the Standard for
5 Determination of Lowest Responsible Bidders” is guided by the following, inter alia: “b) The
6 ability, capacity, and skill of the Bidder to perform[,] ...e) The previous and existing compliance
7 by the Bidder with laws and regulations relative to procurement[,] ... [and] h) The compliance
8 with all of the conditions of the Solicitation.” *Id.* at p. 24 ¶ 16. On the General Requirements
9 Section of Page 34 of GSA’s IFB, it states: “By submitting a proposal/[q]uote, each bidder agrees
10 that [Department of Parks and Recreation], in determining the successful bidder and its eligibility
11 for the award, may consider the bidder’s experience and facilities, conduct and performance under
12 other contracts and financial performance.” *Id.* at p. 34.

13 On June 8, 2021, JJ Global, Guahan Cleaning Masters 1, and Total Chemical Resources,
14 Inc. submitted bids in response to IFB No. GSA-023-21. *Id.* at Ex. 2. On April 5, 2021, JJ Global
15 submitted their Bid Submission for IFB No. GSA-023-21. *Id.* at Ex. 3. On April 29, 2021, Total
16 Chemical Resources, Inc. submitted their Bid Submission for IFB No. GSA-023-21. *Id.* at Ex. 4.
17 On September 29, 2021, JJ Global received GSA’s Bid Status rejecting JJ Global’s Bid
18 Submission due to “high price”. *Id.* at Ex. 5.

19 On October 6, 2021, JJ Global protested the award of IFB No. GSA-023-21 to Total
20 Chemical Resources, Inc. on the grounds that Total Chemical Resources, Inc. was not the lowest
21 responsive and responsible bidder when it lacks the proper licensing necessary to comply with
22 the licensing requirements of Guam law and the IFB. *Id.* at Ex. 6. On October 21, 2021, GSA
23 denied JJ Global’s protest, which was received by JJ Global the next day, October 22, 2021. *Id.*
24 at Ex. 7. On November 5, 2021, JJ Global filed a Notice of Appeal for the instant matter, which
25 was docketed as OPA-PA-21-014. Notice of Appeal (Nov. 5, 2021). On November 23, 2021,
26 GSA filed its Agency Report. GSA Agency Rpt. (Nov. 23, 2021). JJ Global now files its
27 Comments to GSA’s Agency Report on December 9, 2021.

1 **ARGUMENT**

2 **I. Total Chemical Resources is not a responsible and responsive bidder when it does**
3 **not have any contracting licenses.**

4 TCR is not a responsible and responsive bidder when it lacks all contracting licenses
5 required to execute the IFB. A responsible bidder is “a person who has the capability in all
6 respects to perform fully the contract requirements, and the integrity and reliability which will
7 assure good faith performance.” 5 GCA § 5201(f). One factor considered in determining the
8 responsibility of a bidder is whether the prospective bidder has the “appropriate financial,
9 material, equipment, facility, and personnel resources and expertise, or the ability to obtain them,
10 necessary to indicate its capability to meet all contractual requirements ...[.]” 2 GAR Div. 4 §
11 3116(b)(2)(A)(i); IFB at page 23 § 15. The IFB delineates the standard for determining the lowest
12 responsible bidder, which includes:

- 13 ...
14 (b) The ability, capacity, and skill of the Bidder to perform[,]
15 (c) The previous and existing compliance by the Bidder with laws and regulations
16 relative to procurement[,] ...
17 (g) The ability of the bidder to provide future maintenance and services for the
18 subject of the award[,]
19 [and] (h) The compliance with all of the conditions of the Solicitation.

20 IFB at page 24 § 16. A responsive bidder is “a person who has submitted a bid which conforms
21 in all material respects to the Invitation for Bids.” 5 GCA § 5201(g); 2 GAR Div. 4 § 3109(n)(2).

22 TCR is neither a responsible nor responsive bidder. TCR is not a responsible bidder
23 because it lacks the capability to perform the full contract requirements when it not a contractor
24 nor does it possess any of the requisite contractor’s licenses. Likewise, TCR is not a responsive
25 bidder because it did not submit a bid conforming to all material respects of the IFB when its
26 submission lacked the general and specialty licenses required by the bid.

27 It is evident from the outset that IFB No. GSA-023-21 required both contractor’s and
28 specialty licenses due to the explicit mention on the first page of the IFB, which states as follows:
“(X) CURRENT BUSINESS LICENSE/CONTRACTOR’S LICENSE/SPECIALTY LICENSE
IN REFERENCE TO SUPPLIES OR SERVICES FOR THIS BID”. IFB page 1 (emphasis
in original). Directly below this requirement, the IFB states: “**Failure to comply with the above**

1 **requirements may be cause for disqualification and rejection of the bid.”** *Id.* (emphasis in
2 original). In fact, under the IFB’s General Terms and Conditions, numerous terms and conditions
3 require the bidder to comply with the relevant laws and requirements necessary to fully perform
4 on the bid. IFB pp. 23-24 §§ 4, 14-16, and 34; *see* IFB p. 23 § 6 (“COMPLIANCE WITH
5 SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS: Bidders shall comply
6 with all specifications and other requirements of the Solicitation.”)

7 The IFB includes two items: the repair of the swimming pool/sports complex and its
8 maintenance of the facilities. *Id.* at pp. 32-33. Item 1 includes repairing of the pool and the
9 installation of lights, among others; whereas Item 2 includes maintenance, monitoring, and repair,
10 which may include grounds, electrical, and mechanical work. *Id.* at pp. 33-34. Accordingly, a
11 variety of general building and specialty contractor licenses are needed for both items, which
12 includes swimming pool, electrical, and plumbing. *See id.* at pp. 32-34 29 and 29 GAR § 1421
13 (3) (listing specialty contractor classifications). According to both TCR’s bid submission and the
14 Contractors Licensing Board’s (“CLB”) FOIA response, TCR is not licensed with the CLB at all
15 and therefore does not have *any* contractor’s license. *See* Notice of Appeal, Exs. 4 & 6. Thus,
16 TCR is not a responsible nor responsive bidder as it lacks the requisite licenses to perform the
17 services in the IFB.

18 In GSA’s response to JJ Global’s Protest, GSA states: “JJ Global acknowledges and
19 recognizes, through a FOIA request made with the Contractor’s License Board on June 9, 2021,
20 a valid Total Chemical Resources Pool Maintenance and Repair of Equipment and General
21 Building Contractor’s business license.” Notice of Appeal, Ex. 7. This is demonstrably untrue.¹
22 While JJ Global acknowledges TCR submitted two business licenses in its bid submission, it does
23 not acknowledge nor recognize either license to be “contractor’s licenses” necessary to perform
24 on the IFB. TCR does not possess *any* contractor’s license, only business licenses, which grant
25 different rights. *See* Notice of Appeal, Exs. 4 & 6. While a business license does grant the licensee
26 “the right to engage in a business or to practice a trade or a profession[,]” no person may “act,

27
28 ¹ Furthermore, JJ Global’s FOIA request was to the CLB, which deals with licenses to contractors, not general
business licenses. 21 GCA § 70103(a). Thus, JJ Global would not have obtained TCR’s business licenses in a FOIA
request to the CLB.

1 assume to act, or advertise, as a general engineering contractor, a general building contractor or a
2 specialty contractor without a [contractor's] license....” Compare 11 GCA § 70103(h) and 21
3 GCA § 70108(a) (emphasis added). Here, by submitting a bid for the IFB, TCR is assuming to
4 act as a general contractor and specialty contractor despite being neither. Without the requisite
5 contractor’s licenses, TCR cannot fully perform on the IFB without; therefore, TCR cannot be a
6 responsible nor responsive bidder and should not be awarded the IFB.

7 **II. 21 GCA § 70107(c) does not apply to TCR’s bid when none of the companies are**
8 **specialty contractors and the bid requires more than just electrical work.**

9 The statute cited by GSA does not apply because none of the companies named in TCR’s
10 bid, TCR, R&E Builders, and D.B.P. Construction, are specialty contractors. Notice of Appeal,
11 Ex. 4. GSA argues TCR’s bid is responsive because 21 GCA § 70107(c) allows it to take and
12 execute the IFB and contract despite lacking specialty contractor’s licenses. *Id.* at Ex. 7. Section
13 70107(c) states:

14 This Section shall not prohibit a specialty contractor from taking and executing a
15 contract involving the use of two (2) or more crafts or trades, if the performance
16 of the work in the crafts or trades, other than in which the specialty contractor is
licensed, is less than thirty-five percent (35%) and supplemental to the
performance of work in the craft for which the specialty contractor is licensed.

17 21 GCA § 70107(c). GSA argues this exempts TCR from possessing specialty licenses because
18 the total percentage of electrical work, which is specialty contractor work, would only be about
19 10-15% of the total bid. Notice of Appeal, Ex. 7. However, Section 70107(c) does not apply for
20 two reasons: (a) TCR, R&E Builders, and D.B.P. Construction are not specialty contractors; and
21 (b) the IFB requires more specialty contractor work than just electrical. Thus, TCR should not be
22 awarded the IFB because § 70107(c) does not exempt it from requiring contractor’s licenses to
23 fully perform on the contract.

24 **A. Neither Total Chemical Resources nor the subcontractors are specialty**
25 **contractors.**

26 None of the companies named in TCR’s bid submission are specialty contractors, thus 21
27 GCA §70107(c) does not apply. The exemption Section 70107(c) states it does “not prohibit a
28 *specialty contractor* from taking and executing a contract....” 21 GCA § 70107(c). Thus, as a

1 threshold issue, the person seeking exemption under this statute must actually be a specialty
2 contractor. However, as shown above, TCR is not a specialty contractor or even a contractor at
3 all. TCR only possesses business licenses. Notice of Appeal, Exs. 4 & 6. As for R&E Builders
4 and D.B.P. Construction, both companies only possess general building contractor licenses.
5 Notice of Appeal, Exs. 4 & 6; 29 GAR § 1421. Thus, because none of the companies are specialty
6 contractors, the exemption for specialty contractors under § 70107(c) does not apply to them.
7 Therefore, TCR should not be awarded the IFB or contract.

8 **B. The IFB requires more specialty contracting work than just electrical work.**

9 Section 70107(c) also does not apply here because there is more specialty work in the bid
10 than just electrical. GSA argues TCR does not need to have a specialty contractor's licenses
11 because "the percentage of the total bid ... that will go towards Electrical (lights inside the pool
12 and the lights outside the pool) will be about 10-15%." Notice of Appeal, Ex. 7. For § 70107(c)
13 to apply, "the performance of the work in the crafts or trades, other than in which the specialty
14 contractor is licensed" must be "less than thirty-five percent (35%)[" 21 GCA § 70107(c).
15 However, the IFB will require more than just the estimated 10-15% of specialty electrical work.
16 According to the the specifications of the IFB, the work would also requires the specialty licenses
17 for swimming pool and plumbing. *Supra* Section I. *See id.* at pp. 32-34 29 and 29 GAR § 1421
18 (3) (listing specialty contractor classifications). A large part of the IFB deals with the repair and
19 maintenance of the swimming pool, which would require specialty licenses for plumbing. *Id.*
20 Therefore, unless the swimming pool repairs are less than 20% of the work solicited in the IFB,
21 Section 70107(c) cannot apply.

22 **CONCLUSION**

23 JJ Global is the lowest responsible and responsive bidder. TCR's bid does not comply
24 with the requirements, terms, and conditions of the IFB. TCR is not a contractor nor its
25 subcontractors named in its bid are specialty contractors. Thus, TCR is not the lowest responsible
26 bidder nor is it exempted under 21 GCA § 70107(c). Therefore, JJ Global respectfully requests
27 that the Public Auditor rule TCR is not the lowest responsible bidder for IFB No. GSA-023-21
28 and that its award and contract under the IFB is null and void. Furthermore, JJ Global requests

1 the IFB be awarded to JJ Global as the lowest responsible bidder and all other legal and equitable
2 remedies available to it.

3 Respectfully submitted this 9th day of December 2021.

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