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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

JUL 06 2010

TIME: 4:37 BY: mku
FILE NO. OPA-PA: 09-012

7 **BEFORE THE PUBLIC AUDITOR**
8 **PROCUREMENT APPEAL**

9 In the Appeal of)
10 Z4 Corporation,) Docket No. OPA-PA-09-012
11 Appellant.) DOE'S RESPONSE TO Z4
CORPORATION'S STATEMENT OF
COSTS AND REASONABLE PROFIT
AND Z4'S MOTION FOR ATTORNEY'S
FEES AND COSTS

12 1. Jurisdiction:

13 a) Z4 Corporation's Motion for Attorney Fees and Cost is not properly before the
14 Office of the Public Accountability (OPA).

15 b) OPA-PA-09-012 Decision dated 5th day of May, 2010 stated it was a Final
16 Administrative Decision and;

17 "the Parties are hereby informed of their right to appeal from a Decision by the
18 Public Auditor to the Superior Court of Guam in accordance with Part D of
19 Article 9 of 5 G.C.A. within fourteen (14) days after receipt of a Final Decision
20 5 G.C.A. Section 5481(a).

21 c) Neither party filed an Appeal.

22 d) If Z4 Corporation wanted to contest the damages awarded it could of filed an
23 Appeal.

1 e) There is no provision for the requested attorney fees and costs in 5 G.C.A.
2 Section 5452(a)(1)(ii) Chapter IX, Section 9.7.1.3 DOE Procurement Regulations. Z4
3 Corporation's request is without merit.

4 f) Therefore Z4 Corporation's Motion for Attorney Fees and Costs should be
5 dismissed.

6 2. Reasonable Costs

7 a) DOE is endeavoring to determine Z4 Corporation's reasonable costs in
8 accordance with the procedures it pays contractors.

9 b) Requests for clarifications and additional documentary evidence of actual
10 expenses has been made by DOE to Z4 Corporation.

11 c) Attached is DOE's Facility and Maintenance Manager's attested statement as to
12 what has been verified to date on Z4 Corporation's Statement of Cost dated June 14,
13 2010.

14 d) DOE will continue to with Z4 Corporation as to the documentation requested.

15 e) Z4 Corporation did not proffer any evidence into the OPA record on the issue of
16 reasonable costs incurred in performance of the contract or provide a listing and
17 documentation of the same as requested by DOE before and during the hearing. DOE's
18 first receipt of any listing of actual costs with June 14, 2010 and that listing fails to
19 include documentation.

20 f) The items claimed by Z4 Corporation to have been incurred as costs in the
21 performance of the contract are costs ordinarily documented and recorded and DOE
22 believes the issues and the amount reasonable cost can be resolved by the parties upon
23 receipt of further documentation.
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1 3. Reasonable Profit

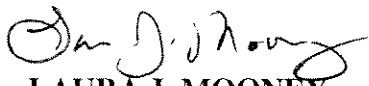
- 2 a) Item #6 in the OPA Decision – Conclusion stated Z4 Corporation is entitled to a
3 reasonable profit for the services it rendered prior to the termination of its award.
- 4 b) DOE is unable to agree with Z4 Corporation’s statement of reasonable profit and
5 methodology asserted for calculating it.
- 6 c) Once Reasonable Cost are calculated taking an industry agreed percentage of that
7 would be an acceptable methodology for the calculation.
- 8 d) The Guam Contractor’s Board, Bureau of Statistics and other industry reference
9 groups can be contacted and it is believed the reasonable mark-up for profit and
10 administrative cost is 6% to 10% of the actual labor and material.
- 11 e) Z4 Corporation’s methodology suggested is not in keeping with “the services
12 rendered prior to termination”. It is speculative and based on a calculation as to
13 service not yet performed or in the case of Z4 Corporation even agreed upon as to
14 material. Z4 Corporation’s materials were not approved as listed in their
15 documentation and need to go through the A & E approval process to “meet or
16 exceed” the A & E specification.
- 17 f) DOE is willing to meet with Z4 Corporation and calculate base on accepted
18 industry accepted practices a reasonable profit for services performed prior to the
19 termination of the award.

20
21 DOE in closing and for the preceding reasonable request the OPA; (1) to dismiss Z4
22 Corporation’s Motion for Attorney’s Fees and Cost for Lack of Jurisdiction. (2) Permit DOE
23 and Z4 Corporation to continue to develop and review documented actual expenses reasonable
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1 incurred and an opportunity to after that calculation is agreed upon calculate reasonable profits
2 for services render prior to the termination of the award.

3 Dated: July 6, 2010

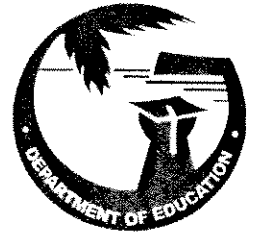
4 DEPARTMENT OF EDUCATION

5 By: 
6 **LAURA J. MOONEY**
7 Legal Counsel
8 Attorney for DOE, Appellee
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Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

ATTESTMENT OF BILLY P. CRUZ

I am the Acting Facilities and Maintenance Manager and I have had the allegations as to Z4 Corporation's Exhibit 100 performance cost of Oceanview Middle School Gymnasium project contract in the Z4 Corporation investigated for purposes of routing and approving payment. There is not sufficient documented of the items provided to us. No prior invoice has been received. Attached is a letter dated July 2, 2010 from the Program Coordinator III, Rodrigo B. Traya regarding Z4 Corporation's request for reimbursement of reasonable cost incurred as part of OPA Decision. We can only verify the following items on Exhibit 100:

Item No.	Description of Costs	Unit Price	Total Amount
B	Coordination with Government agencies for building permit process	\$2,500.00	\$2,500.00
C	Coordination with suppliers/vendors	\$1,800.00	\$1,800.00
D	Attend Pre-Construction Meeting: 1. Pete Valencia = \$250.00 2. Julisi Nucum = \$250.00 3. Armando Aragon = \$250.00	\$750.00	\$750.00
E	Bid Bond Fee	\$250.00	\$250.00
F	GFD building clearance fee	\$561.00	\$561.00
G	Preparation of Bid documents: 1. Preparation of schedule of values for use in the project: 8 hrs. x \$45.00 = \$360.00 2. Preparation of progress for this project: 8 hrs. x \$45.00 = \$360.00	\$720.00	\$720.00
TOTAL AMOUNT =			\$6,581.00

We can only verify \$6,581.00 of the total amount claim \$12,661.00.

Dated this 6th day of July, 2010.


BILLY P. CRUZ



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Nerissa Bretania-Underwood Ph.D.
Superintendent of Education

July 02, 2010

MEMORANDUM

To: Manager
Facilities and Maintenance Division

From: Program Coordinator III

Subject: Z4 Corporation- Request for Reimbursement of Reasonable
Cost Incurred as part of OPA Decision
Repair/Renovation of Oceanview Middle School Gymnasium

Per your instruction the undersigned together with Franck Cepeda, Carpenter II, proceeded to Oceanview Middle School in the afternoon of July 01, 2010. We met with Ms. Cheryl Gumabong, School Administrative Officer and inquired about what Z4 Corporation has done if there was any on the proposed project, Repair/Renovation of the Gymnasium.

Ms. Gumabong disclosed that from the time after the pre-construction meeting which was conducted several months ago at F & M office here in Piti, Z4 Corporation had only one visit made to the project site. They made a tour of the site, took some measurements and the primary purpose was to reroute traffic for the students due to the proposed construction and also to prepare to secure the perimeter of the project site for safety. So far from then up to the present NOTHING has been done.

On July 02, 2010 Frank Cepeda and the undersigned went to Z4 Corp. office/stockyard. We met with Pete Valencia, the Company's President and General Manager and a certain Armando Aragon. We discussed several items on their reasonable cost claim and inquired if they could substantiate or if they have something to show proof.

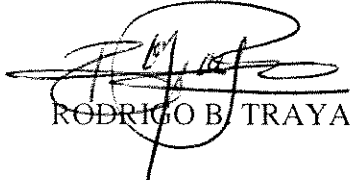
Item A:- Pete Valencia and Armando Aragon alleged that the structure they have fabricated were already disposed off considering the length of time the project has been pending and the materials used were light materials (wood) and also said structure is obstructing some areas of their stockyard hence the necessity to dispose such. In addition they alleged that their claim does not include material cost as reflected. (No way for Frank Cepeda and me to substantiate this item)

Items B,C,E,F,G & I- We believe these are legitimate claims but as to the amount, we have no way of computing such.

Item D- Pete Valencia AND Armando Aragon alleged that the charges does not only reflect

the number of hours they actually spent on the pre-con meeting (pre-con meeting approx. 1 ½ hours) but the total hours they spent for the purpose (travel and waiting time till the start of the actual pre-con meeting).

This report is submitted for your final decision whether to accept such claim or require Z4 Corp for some paper works (such as computation on some items) or to accept it as is in order to expect closure of this issue and in order to proceed with the re-bid of this long awaited project.



RODRIGO B. TRAYA

