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Attorneys for: Appellant

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGATNA, GUAM**

IN THE APPEAL OF K CLEANING) OPA-PA-13-004
SERVICES,)
)
)
APPELLANT.) **APPELLANT'S AMENDED HEARING**
) **BRIEF**
)
_____)

Pursuant to the Order Consolidating Appeals and Amending Scheduling Order dated June 21, 2013, Appellant K Cleaning Services ("K Cleaning") files this Amended Hearing Brief. K Cleaning incorporates Appellant's Hearing Brief filed June 14, 2013 and incorporates its Statement of Grounds for Appeal filed with its Notice of Appeal on May 8, 2013. K Cleaning incorporates all of the points and arguments raised in these previously filed documents in this Amended Hearing Brief. K Cleaning also incorporates its designation of anticipates witnesses and proposed exhibits set forth in Appellant's Hearing Brief filed June 14, 2013.

K Cleaning believes Guam International Airport Authority ("Agency") would stipulate to the following facts:

1. There was a Pre-Bid Conference on February 7, 2013. There were thirty-eight (38) people signed in for the Pre-Bid Conference. The original date for submission and opening of bids was February 15, 2013. Agency extended the date to submit and

open bids to March 29, 2013 at 2:00 p.m. A representative of K Cleaning was at the Pre-Bid Conference.

2. A representative of K Cleaning was at Agency's conference room on March 29, 2013 before 2:00 p.m. At least one other bidder was also at the conference room.

3. Shortly after 2:00 p.m., on March 29, 2013 a GIAA representative came to the conference room and told K Cleaning's representative and the other bidder(s) that bids were to be submitted at the Executive Manger's Office.

4. Initially GIAA refused to accept K Cleaning's and other bid packages. GIAA then agreed to accept the bid packages but would not open them.

5. On April 4, 2013, K Cleaning wrote Agency a letter complaining that its bid should have been accepted, opened and considered on March 29, 2013.

6. On April 18, 2013, Agency sent K Cleaning a letter stating that it considered K Cleaning's April 4, 2013 letter, a letter of protest. Agency went on to reject K Cleaning's protest. Agency's letter failed to include statutory required notice that K Cleaning had rights of review of the Agency decision.

7. Since K Cleaning's bid was not opened and considered by Agency, K Cleaning did not receive bid status letter advising bidders that bid was recommended for and to other bidders.

ISSUE FOR HEARING

K Cleaning argues in the papers incorporated in this amended hearing brief that the Invitation for Bid was either clear in its statement that the bids were to be presented and opened at the GIAA Conference Room or that the IFB and supporting documents

were ambiguous because certain portions instructed bidders to present their bids for acceptance and opening at the conference room while another portion of the bid documents stated the bids should be delivered to the Executive Managers Office. This is primarily a legal determination for the OPA and initially K Cleaning did not believe a hearing would be necessary.

However, Agency in its reply to K Cleaning's response to the Agency's Report raised for the first time that information as to where the bids should be delivered was given at the February 7, 2013 Pre-Bid Conference. Although K Cleaning had a representative at that Pre-Bid Conference, due to the number of people in attendance and the noise related to the number of people, K Cleaning representative did not hear any instruction about where the bids should be delivered. K Cleaning will present evidence to the OPA regarding the situation at the Pre-Bid Conference.

K Cleaning would note that since the Agency apparently felt it necessary to state at the Pre-Bid Conference where the bids were supposed to be submitted, this is evidence of the fact that the IFB was unclear. If the OPA determines that K Cleaning did not receive notice of where the bids were supposed to be submitted at the Pre-Bid Conference because of the noise and number of people at the meeting, the OPA should find that the IFB was unclear and GIAA should have accepted the bids of individuals who were at the GIAA Conference Room as the IFB directed.

Upon finding that the Agency violated the IFB the award of contract should be voided and the contract should be given to the bidder whose bid was the lowest as required by Guam Procurement Law. There is no urgency or emergency to find that it is in the territory's best interest that contracts for more expensive janitorial services at the

airport should be continued when if GIAA had followed the bid process it would get those services for a lesser amount, which clearly is in the territory's best interest.

Respectfully submitted this 17th day of July, 2013.

CUNLIFFE & COOK
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By



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