



Jerrick Hernandez <jhernandez@guamopa.com>

IFB 001-2022, NOTICE OF APPEAL

GPE INC <guampacific@gmail.com>

Fri, Feb 4, 2022 at 4:25 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

Dear Mr. Hernandez,

Please see attached NOTICE OF APPEAL documents and confirm receipt of this email.

Very Respectfully,
Sedfrey M. Linsangan
President
Guam Pacific Enterprise, Inc.
Tel: (671) 649-6994/7/8



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

 **IFB 001-2022, NOTICE OF APPEAL.pdf**
4262K



Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

PART I- To be completed by OPA

In the Appeal of)

Guam Pacific Ent. Inc.)

(Name of Company), APPELLANT)

NOTICE OF APPEAL

Docket No. OPA-PA _____

PART II- Appellant Information

Name:

Guam Pacific Ent. Inc.

Mailing Address:

P.O. Box 23128 Barrigada

Guam 96921

Business Address:

Hatmon Guam

Email Address:

guampacific@gmail.com

Daytime Contact No:

649-6997-8-4

Fax No.:

649-6988

PART III- Appeal Information

A) Purchasing Agency: Department of Education

B) Identification/Number of Procurement, Solicitation, or Contract: IFB 001-2022

C) Decision being appealed was made on Jan. 28 (date) by:

Chief Procurement Officer Director of Public Works Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

Decision on Protest of Method, Solicitation or Award

Decision on Debarment or Suspension

Decision on Contract or Breach of Contract Controversy

(Excluding claims of money owed to or by the government)

Determination on Award not Stayed Pending Protest or Appeal

(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

LI' LLC
USA Contractors Inc
Product Solutions

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- Declaration Re Court Action

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 4 day of Feb, 2021

By: _____

APPELLANT

or

By: _____

Appellant's Duly Authorized Representative

(Address)

(Phone No.)

APPENDIX A



**Appendix B: Declaration Form
PROCUREMENT APPEAL**

In the Appeal of _____)
)
)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
)
)
_____)

DECLARATION RE COURT ACTION
(To be signed by the Government Purchasing Agency.)

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 4th day of Feb, 202.

By: [Signature]
DECLARANT
Sedfrey M. Linsangan
Print Declarant's Name



**Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL**

In the Appeal of)
)
) **HEARING**
) **REQUEST/WAIVER**
)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
Guam Pacific Ent. Inc)

Please select one:

- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.
- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this ___ day of _____, 20__.

By: (Please select one)

- APPELLANT
- ___ Chief Procurement Officer
- ___ Director of Public Works
- ___ Head of Purchasing Agency


Signature

Sedfrey M. Linsangan
Print Name

Concise Statement

On Nov. 4, 2021, I filed a Notice of Protest. DOE issued a Stay of Procurement on Nov. 8, 2021 and Protest decision was issued on Jan. 28, 2022. (EXHA)

My complaint is DOE is imposing delivery date that is unrealistic. Factory for the table indicated a 90 days manufacturing process plus inland freight from Florida to Los Angeles California. The 90 days could be extended due to supply of components, labor shortage and trucking. California to Guam is around 4 weeks to be exact including waiting and minor delays. So, we are talking about 130-140 days. How did DOE come up with 60 days delivery? Did they contact the factory? Violations of Section 5001, Purposes and Rules of Construction and Section 5003, Requirement of Good Faith

and Buy American Act provisions and Exec. Order of Pres. Biden 14005 (Section 1)

My concern was also raised by USA Contractors.

15%. Bid bond should not be required because Section 5501 of CHS, Guam Procurement law conflicts with the 15% Bid bond which is a requirement for Gov. Guam local funded project. Section 5501 provides that any conflict with Federal law against local law, Procurement officers have to adhere to Federal laws, executive Orders that covers federal financial assistance Awards. (American Rescue Act Funds)


15% Bid bond is a violation to the intent of Buy American Act, Made in America provisions. (Section 1 and 3 of Exec. Order 14005 of President Biden's Executive Order)

Ruling Requested

I am requesting that bidders should be the one offering their delivery date because they are the one coordinating with the factory. Other Gov. Guam agencies leave it to the bidders to offer our delivery date.

I am also requesting that 15% bid bond be waived since the funds being used is Federal Financial assistance Award. So many Federal funds were disbursed by the Gov. Guam but no additional tax or bid bond was added because its intention is to help the people, economy and small business owners and workers without restricting them.

Dated: 2/4/20

Respectfully Submitted

Sedfray M. Linsangan



JON J. P. FERNANDEZ
Superintendent of Education

DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT

www.gdoe.net/procurement
501 Mariner Avenue
B-Building, Suite 116
Barrigada, Guam 96913
Telephone: (671) 475-0438/Fax: (671) 472-5001
Email: procurement@gdoe.net



CARMEN T. CHARFAUROS
Supply Management Administrator

January 28, 2021

Guam Pacific Enterprises Inc.
P.O. Box 23128
Barrigada, GU 96921
Tel: (671) 649-6998
Fax: (671) 649-6988
Email: guampacific@gmail.com

Attn: Sedfrey Linsangan
RE: Guam Pacific Enterprises, Inc. ("GPE")

Subject: Response to November 5, 2021

Reference: Cafeteria Tables

Formal Invitation for Bid ("IFB") 001-2022

Hafa Adai Mr. Linsangan,

This letter is in response to your emails on November 5, 2021, and November 17, 2021 that protests GDOE IFB 001-2022 for Cafeteria Tables.

Based on a review of your protest **GDOE hereby DENIES your protest in its entirety for the reasons discussed below:**

1. GPE alleges, the delivery date specified in Section 3.2.8 is unrealistic and not consistent with the intentions and purpose of Guam Procurement Law and Made in American Act. DOE has no idea on the delivery date because they are not contacting the manufacturers of the table. Therefore the delivery should be offered by the Bidders not DOE. Imposed delivery date could be subjected to manipulation and misconduct.

Guam Procurement Law provides purchasing agencies the authority to procure products and services as well as to develop the specifications, terms, and conditions therein to meet a purchasing agency's needs. Guam Procurement Law states that an Invitation for Bid ("IFB") shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Section 3.2.8, is a term and condition of the IFB and therein an evaluation and award term pursuant to Guam Procurement Law.

EXHA

2. GPE alleges, 15% Security Bid bond should not be applied because the funds being spent is not local funds but federal financial funds through American Rescue Act funds. 15 % Bid bond should be waived to comply with Section 1 and Section 3 of the Executive Order 14005 of President Biden.

Guam Procurement Law applies to every expenditure of public funds irrespective of their source, including federal assistance funds. 5 GCA §5004. The Federal laws referenced do not prohibit state agencies from including security bonds into specifications. In addition, Guam Procurement Law specifically requires a bid security for this IFB, and is binding on GDOE. 5 GCA §5212.

3. GPE alleges, the Section 3.2.4 is inconsistent with the American Made Act Law and Guam Procurement Law Chapter 5.

The Federal laws referenced do not prohibit state agencies from developing specifications including the duration of awards. Guam Procurement Law provides specific authority to purchasing agencies to develop the duration of the award for Invitations for Bid.

4. GPE alleges, 15% Bid bond is substantially burdening the bidders like me which is inconsistent with the Eos on the made in America and buy American act purpose and intentions. The reason is I have to produce cashiers check in the form of bid bond so that I can save fees and percentage charged by insurance companies. For instance, I have to issue a \$100,000 check for DOE which they will keep until I delivered the tables that could be 5 months or more. The same with Purifiers, my manufacturer could only produce 200 pcs in 3 months or little bit more to maintain the quality. If DOE break down the quantity according to the needs of every school then. I have to issue \$120,000 bid bond in the form of cashiers check. Bid bond or Cashiers check that DOE will just keep in their safe and cannot be spent.

As stated above, a bid security is required for this IFB pursuant to Guam Law. This law is binding on GDOE and its procurements. GDOE will only procure services and supplies in accordance with the relevant law, rules and regulations.

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- GPE alleges, we are the distributor of purifier that supply the hospitals here in Guam. It is a proven machine that is also being used by schools and hospitals in the mainland. It is expensive than other brands but could last for decades if properly maintained and very quiet compare to others because schools in the US had tested different brands and selected our product. That is why it is essential to breakdown the quantity per school so that me and the other bidders can bid according to our manufacturers capacity. The quantity of 2 thousand plus is just unrealistic for US manufacturers.

To be clear, this is in response to the protest of GDOE IFB 001-2022 for cafeteria tables. Guam Procurement Law, Rules and Regulations, provide the authority and guidance for purchasing agencies for the preparation and issuance of specifications for procurements. GDOE developed the specifications in the best interest of GDOE and its schoolchildren, in an effort to best meet its needs, and in accordance with the relevant laws, rules, and regulations.

Given the facts and reasons stated above, GDOE hereby denies your protest in its entirety. Pursuant to 5 GCA §5425(e), you are hereby advised that you have a right to administrative and judicial review as allowed by the Guam Procurement Law. You may appeal the decision to the Guam Office of Public Accountability within fifteen (15) days.

Kindly acknowledge receipt of this letter and send via email to procurement@gdoe.net or via fax to (671) 472-5001.

Sincerely,

Acknowledgement Receipt

Jeffrey Linsay
Print Name

[Signature]
Signature

Jan 28
Date

7:00 pm
Time

[Signature]
CARMEN T. CHARFAUROS
Supply Management Administrator

Emailed through IPhone



Jon J.P. Fernandez
Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
501 Mariner Avenue
B-Building, Suite 116
Barrigada, Guam 96913
Telephone: (671) 475-0438 / Fax: (671) 472-5001
Email: procurement@gdoe.net



Carmen T. Charfauros
Supply Management Administrator

NOTICE OF STAY OF PROCUREMENT

November 8, 2021

To: All Bidders
From: GDOE Office of Supply Management
Reference: Cafeteria Tables
Formal Invitation for Bid: GDOE IFB 001-2022

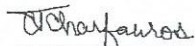
This notice is to advise you that the Department has received a letter of protest regarding the referenced Invitation for Bid. Therefore, pursuant to 5 GCA § 5425(g), a "STAY OF PROCUREMENT" is hereby issued and shall remain in effect until the protest is resolved.

Once resolution of this matter is achieved, the Department will advise all Bidders.

Any questions or concerns regarding this matter may be directed to our office at (671) 475-0438.

Please acknowledge receipt of this NOTICE OF STAY OF PROCUREMENT for IFB 001-2022 by signing below and returning the signed document via fax to (671) 472-5001 or via email to ddhayashi@gdoe.net.

Senseramente,


CARMEN T. CHARFAUROS
Supply Management Administrator

Acknowledgement Receipt

Guam Pacific Ent Inc.

Company

Seafrey M. Linsangan

Print Name


Signature

IFB 001-2022, Notice of Protest

GPE INC <guampacific@gmail.com>

Fri, Nov 5, 2021,
11:11 AM

to ddhayashi, Procurement

Dear Ms. Hayashi and Ms. Charfauros,

I am protesting due to the following reasons.

1) The delivery date specified in Section 3.2.8 is unrealistic and not consistent with the intentions and purpose of Guam Procurement Law and Made in American ACT.

Argument. DOE has no idea on the delivery date because they are not contacting the manufacturers of the table. Therefore the delivery should be offered by the Bidders not DOE. Imposed delivery date could be subjected to manipulation and misconduct.

2) 15% Security Bid bond should not be applied because the funds being spent is not local funds but federal financial funds through American Rescue Act funds. 15 % Bid bond should be waived to comply with Section 1 and Section 3 of the Executive Order 14005 of President Biden .

I believe that my concerns have merits therefore a Stay of Procurement is warranted because it is in the best interest of the USA and the Territory of Guam.

Please confirm receipt of my email relative to Notice of Protest.

Very Respectfully,

Sedfrey M. Linsangan

President

Guam Pacific Enterprises Inc.

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Guam Pacific Enterprise, Inc.
Tel: (671) 649-6994/7/8



JON J.P. FERNANDEZ
Superintendent of Education

DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT

www.gdoe.net
501 Mariner Avenue, Suite 116
Barrigada, Guam 96913
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CARMEN T. CHARFAUROS
Supply Management Administrator

November 3, 2021

AMENDMENT 1

Prospective Bidder:

Please refer to our Invitation for Bid for IFB 001-2022, Cafeteria Tables, a copy of which was obtained by your company for consideration.

In the Spirit of clarity and achieving the best possible solution to satisfy the requirements of IFB 001-2020 is answering questions received for this IFB and requesting that all prospective bidders to re-download the copy of IFB 001-2022. Bid cost form has also been updated.

PLEASE RE-DOWNLOAD UPDATED BID PACKET

***QUESTIONS FROM VENDORS AND GDOE RESPONSES:**

LI'I LLC

1. Should the Mobile Cafeteria tables come with seating attached, or is DOE seeking just tables?

GDOE Response: The mobile cafeteria table must include seating.

2. If seats should be attached to the Mobile Cafeteria Table, does DOE have a preference if the seating is bench seating, or individual seating?

GDOE Response: Bench seating.

3. If DOE prefers individual attached seating, does DOE have a preference if the seats are round or square?

GDOE Response: There is no preference.

4. Should the seating be detachable?

GDOE Response: No

5. Is there a specified weight capacity for the seating?

GDOE Response: Total capacity of 1100 lbs.

6. Is there a preference on how many people should be able to sit at each Mobile Cafeteria Table?

7. Will DOE consider bids for 6 foot cafeteria tables in greater quantities (i.e. 412 6 foot tables, instead of 206 12 foot tables)?

GDOE Response: No.

8. How tall should the tables be?

GDOE Response: 29 – 30 inches in height.

9. Many Mobile Cafeteria Tables in the 12 foot class do not measure exactly 12 ft in length. Is 12 feet an exact measurement that is required, or will DOE accept some tolerance either above or below the 12 foot measurement?

GDOE Response: It is not exact. We will accept a slight tolerance in inches, but not beyond that.

10. If DOE will accept some tolerance either above or below the 12 foot measurement, how much variation is allowed?

GDOE Response: Six inches above or below is acceptable.

11. Will DOE accept any table finish as long as the table is anti-bacterial and has phenolic backer lamination?

GDOE Response: The tabletop must be a laminate finish protective against scratches and cuts in addition to the phenolic backer.

12. Are there a color, materials, or other requirements for the table legs?

GDOE Response: There are no requirements for these particular items; however, it will be taken into consideration during the final comparison and selection of the table.

13. Regarding Automatic Locking Mechanism --is it okay a if keyis required to lock and unlock?

GDOE Response: A key will be accepted for consideration. Keep in mind we are looking at products that are both durable, efficient, safe and user friendly.

14. If key operated locking mechanism is allowed, will duplicate keys (how many) be needed?

GDOE Response: Should the product with a "key operated locking mechanism" be selected, please provide a minimum of 4 keys per lock. There must be an assurance that additional spare keys can be ordered or obtained at a later date, if needed.

15. Please clarify what "easy to reach" release handle to unlock, fold or unfold means.

GDOE Response: Simply put, the person folding or unfolding the table should not have to reach into or under the table in order reach the release handle.

USA CONTRACTORS, INC.

16. When is this bid going to be awarded? This will determine the manufacturers pricing to use 2021 or 2022.

GDOE Response: There is no set date of when this bid will be awarded as there are many situations where a bid can allow an award in a matter of a month or as long as a few months. If there are no issues, I do anticipate this being awarded by the ending of November or early December.

completed by then much less have it delivered within 60 days. The current lead time for manufacturing is 12 weeks after receipt of the Purchase Order (PO) plus the holiday closures coming up.

GDOE Response: No question asked.

GPE INC:

18. Section 3.2.4 provides that the duration of award shall be for 1 year. My concern is this bid is 100% federally funded, it should be awarded asap to comply with AARP FUNDS ACT. 1 year is unreasonable for the school to keep our bid bond or cashier's check. The duration should not exceed 60 days to be consistent with the intention and purpose of Guam Procurement Law to attract more bidders. Will the duration be changed for compliance?

GDOE Response: Please refer to the 5 GCA § 5212. Bid Security and Performance Bond Requirement for Contractors. There are processes and procedures that take place prior to award therefore an award cannot be issued right away.

19. Shall we be disqualified if we offer delivery longer than 60 days as specified in Section 3.2.8. My concern is you give us the option to offer our delivery time in the description of the item with the price and delivery. My point is we could have lower cost but longer delivery.

GDOE Response: Delivery date remains at 60 days. We will factor in a reasonable lead time that is closest to the 60 days.

The Product Solutions:

20. On page 11, line 4.4 is asking for GDOE Procurement Form 005 but there was none?

GDOE Response: Please disregard Section 4.4 as it should have been removed as it does not apply to federally funded BID's.

21. On Bid Form, GDOE IFB no. 037-2021 is different from IFB 001-2022

GDOE Response: Originally, this BID was referenced as 037-2021 but it had to change to current FY 2022. Please see revised BID cost form.

22. Where is the wage determination attachment?

GDOE Response: Wage determination is located right after AG form 006, pages 27-38.

All else remains the same.

Sincerely,


CARMEN T. CHARFAUROS
Supply Management Administrator