



Jerrick Hernandez <jhernandez@guamopa.com>

Fw: OPA-PA-22-002 University of Guam's Motion to Dismiss Appellant's JWS Claims

Cynthia Guerrero <cguerrero@triton.uog.edu>

Wed, Mar 23, 2022 at 11:37 AM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Camacho, Anthony" <arcamacho@triton.uog.edu>, Seth Forman <forman@guamlawoffice.com>

Thank you, Jerrick. My apologies.

Attached please find a copy of the University of Guam's Motion to Dismiss Appellant's JWS Claims in Docket No. OPA-PA-22-002 which was inadvertently emailed on March 22, 2022 to jhernandez@uguam.uog.edu instead of jhernandez@guamopa.com. In the event you are unable to open the attachment, please click on the link below:

 [OPA-PA-22-002 UOG MTD JWS Claims.pdf](#)

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Si Yu'os ma'åse',



Cynthia T. Guerrero, MPA

Office of the Legal Counsel

Office: +1 (671) 735-2992

cguerrero@triton.uog.edu

<https://www.uog.edu/administration/office-of-the-president/legal-counsel>

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From: Jerrick Hernandez <jhernandez@guamopa.com>

Sent: Wednesday, March 23, 2022 11:13 AM

To: Cynthia Guerrero <cguerrero@triton.uog.edu>

Cc: Camacho, Anthony <arcamacho@triton.uog.edu>; Seth Forman <forman@guamlawoffice.com>

Subject: Re: Fw: OPA-PA-22-002 University of Guam's Motion to Dismiss Appellant's JWS Claims

[Quoted text hidden]

 [OPA-PA-22-002 UOG MTD JWS Claims.pdf](#)
1192K

ANTHONY R. CAMACHO, ESQ.
UNIVERSITY OF GUAM
UOG Station
Mangilao, Guam 96923

Appearing as Counsel for University of Guam

PROCUREMENT APPEAL

IN THE MATTER OF)	DOCKET NO. OPA-PA-22-002
)	
ALL BUSINESS ENTERPRISES, CORP.,)	UNIVERSITY OF GUAM'S
)	MOTION TO DISMISS
Appellant.)	APPELLANT'S JWS CLAIMS
_____)	

COMES NOW, Purchasing Agency UNIVERSITY OF GUAM (UOG), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who, in accordance with the OFFICE OF PUBLIC ACCOUNTABILITY'S (OPA) March 11, 2022 Notice of Pre-Hearing Conference and Motion Filing Deadline, submits UOG's Motion to Dismiss Appellant ALL BUSINESS ENTERPRISES, CORP. (ABE) Claims concerning JWS, and said motion is as follows:

BACKGROUND

On or about October 22, 2021, the University issued UOG-IFB-B21-17 (Purchasing of HVAC Equipment) ("IFB"), the IFB required, in relevant part, that the successful bidder provide condenser coils that are copper finned and **which have been coated on the condenser and evaporator coils with a uniformly applied epoxy electrodeposition, phenolic, or vinyl type coating to all coil surface areas without material bridging**

between fins (Bold Emphasis Added). Section 2.2.1.1 Air-To-Refrigerant Coil, IFB Specifications, excerpt of IFB attached herein as Exhibit 1. The IFB also required, in relevant part, that the successful bidder must provide UOG with the Manufacturer's standard catalog data, at least five (5) weeks prior to the purchase or installation of a particular component, highlights to show material, size, options, performance charts and curves, etc., in adequate detail to demonstrate compliance with contract requirements. Section 2.1 Materials, IFB Specifications, Id. On November 19, 2021, UOG issued IFB Amendment 3 which stated in relevant part, that UOG confirm the funding source for the IFB contract would be the Higher Education Emergency Relief Fund ("HEERF") and that the Buy American Act is to be followed "to the most extent possible." See excerpts from IFB Amendment 3, Id.

Three bidders submitted bids in response to the IFB, ABE, JWS, and TONY'S WORKSHOP. UOG conducted a bid opening via Zoom conference at approximately 3:00 p.m. on December 6, 2021 and determined that TONY'S WORKSHOP submitted the lowest bid. See IFB's Abstract Analysis attached herein as Exhibit 2. On or about December 7, 2021, the University issued a Notice of Award of the IFB contract to TONY'S WORKSHOP. See Notice of Award attached herein as Exhibit 3.

On December 6, 2021, ABE submitted a Freedom of Information Act request on UOG requesting a copy of TONY'S WORKSHOP and JWS' bids submitted in response to the IFB including their ACCU Unit Brochures. UOG made those records available for ABE's inspection on December 13, 2021 and ABE received copies of those document on or about that day. On December 17, 2021 ABE filed a protest regarding the award of the IFB and

UOG issued its decision denying the protest on January 25, 2022. On or about February 7, 2022 ABE filed the appeal in this matter.

ARGUMENT

A. APPELLANT’S JWS CLAIMS ARE NOT PROPERLY BEFORE THE OPA

ABE’s claims regarding JWS’ bid are not properly before the OPA and the OPA does not have the jurisdiction to decide them. Generally, the jurisdiction of the OPA is limited to matters properly submitted to it. 5 G.C.A. §5703(a) and *TRC Environmental Corp. v. OPA*, Superior Court of Guam Special Proceedings Case No. SP0160-07, Decision and Order, p. 5 (Nov. 24, 2008). ABE had no authority to protest JWS’ bid because UOG did not award the IFB contract to JWS. Generally, any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the head of a purchasing agency. 5 G.C.A. §5425(a). Further, Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer. Section 9.2.3.2, UOG Procurement Regulations. Further, a purchasing agency’s procurement protest decision relative to the protest of a method of selection, solicitation, or award of a contract, may be appealed by the protestant to the Public Auditor within fifteen (15) days after receipt of the protestant of the notice of decision. 5 G.C.A. §5425(e). Here, UOG has not awarded a contract to JWS. Hence, neither 5 G.C.A. §5425(a) or Section 9.2.3.2, UOG Procurement Regulations give ABE the right to protest JWS’ bid because the bid, by itself, does not

constitute a method of source selection, a solicitation or an award of a contract. Although UOG's protest decision states that ABE's allegations concerning JWS' bid are moot and that, alternatively, ABE's allegations concerning the coating on the coils of the HVAC equipment offered by JWS' bid had no merit, there has been no protest decision concerning an award of the IFB's contract to JWS that could properly be before the OPA. Therefore, without an award of the contract to JWS, ABE's allegations concerning JWS' bid are not properly before the OPA and the OPA lacks the jurisdiction to consider them.

CONCLUSION

Based on the foregoing, the OPA must dismiss ABE's JWS Claims because they are not properly before the OPA, and the OPA must find that the portions of ABE's protest and this appeal concerning ABE's JWS Claims are at least frivolous, and possibly fraudulent, and meant solely to disrupt the procurement process and award UOG its reasonable costs and reasonable attorney fees in responding to them in accordance with 5 G.C.A. §5425(h)(2).

SUBMITTED this 22nd day of March, 2022 by:



ANTHONY R. CAMACHO, ESQ.
Attorney for the University of Guam

1.2 SUBMITTALS

SD-03 Product Data Spare Parts

Posted Instructions

Coil Corrosion Protection System Performance Tests Training

Inventory

Environmental Data

Supplied Products

SD-06 Test Reports

Refrigerant Tests, Charging, and Start-Up

System Performance Tests

SD-07 Certificates Service

Organizations

SD-10 Operation and Maintenance Data

Operation and Maintenance Manuals

1.3 DELIVERY, STORAGE, AND HANDLING

Protect stored items from the weather, humidity and temperature variations, dirt and dust, or other contaminants. Properly protect and care for all material both before and during installation. Submit an inventory of all the stored items. Replace any materials found to be damaged, at no additional cost to the Government. During installation, cap piping and similar openings capped to keep out dirt and other foreign matter.

1.4 ENVIRONMENTAL REQUIREMENTS

For proper Indoor Environmental Quality, maintain pressure within the building as indicated. Ventilation must meet or exceed ASHRAE 62.1 and all published addenda. Meet or exceed filter media efficiency as tested in accordance with ASHRAE 52.2. Thermal comfort must meet or exceed ASHRAE 55.

1.5 WARRANTY

Provide equipment with the 1 year manufacturer's warranty

PART 2 PRODUCTS

2.1 MATERIALS

Provide Manufacturer's standard catalog data, at least 5 weeks prior to the purchase or installation of a particular component, highlighted to show material, size, options, performance charts and curves, etc. in adequate detail to demonstrate compliance with contract requirements. Data includes manufacturer's recommended installation instructions and procedures. If vibration isolation is specified for a unit, include vibration isolator literature

2.1.4 Safety Devices

Exposed moving parts, parts that produce high operating temperature, parts which may be electrically energized, and parts that may be a hazard to operating personnel must be insulated, fully enclosed, guarded, or fitted with other types of safety devices. Safety devices must be installed so that proper operation of equipment is not impaired. Welding and cutting safety requirements must be in accordance with AWS Z49.1.

2.2 EQUIPMENT

2.2.1 Large-Capacity Split-System Air Conditioners (Greater Than 65,000 Btu/h)

Provide an air-cooled, split system which employs a remote condensing unit, a separate indoor unit, and interconnecting refrigerant piping. Provide the air conditioning type unit conforming to applicable Underwriters Laboratories (UL) standards including UL 1995. Unit must be rated in accordance with ANSI/AHRI 210/240. Provide unit with necessary fans, air filters, and cabinet construction as specified in paragraph UNITARY EQUIPMENT ACCESSORIES. Provide double-width, double inlet, forward curved centrifugal scroll type evaporator or supply fans. Provide the manufacturer's standard for the unit specified and may be centrifugal scroll type condenser or outdoorfans. Enclose fan condenser motors in totally enclosed enclosures and permanently lubricate ball bearings. Air Conditioners must have a minimum energy efficiency ratio (EER) of 12.

2.2.1.1 Air-To-Refrigerant Coil

Provide coils with copper tubes of 3/8 inch minimum diameter with copper fins that are mechanically bonded or soldered to the tubes. Provide casing of galvanized steel. Avoid contact of dissimilar metals. Test coils in accordance with ASHRAE 15 & 34 at the factory and ensure suitability for the working pressure of the installed system. Dehydrate and seal each coil testing and prior to evaluation and charging. Provide each unit with a factory operating charge of refrigerant and oil. Field charge unit shipped with a holding charge with refrigerant and oil. Provide separate expansion devices for each compressor circuit. Condenser coil must have special coating for corrosion resistance. Condenser coil must be copper finned. Coat condenser and evaporator coil with a uniformly applied epoxy electrodeposition, phenolic, or vinyl type coating to all coil surface areas without material bridging between fins. Apply coating at either the coil or coating manufacturer's factory. Coating process must ensure complete coil encapsulation and be capable of withstanding a minimum 1,000 hours exposure to the salt spray test specified in ASTM B117 using a 5 percent sodium chloride solution.

2.2.1.2 Refrigeration Circuit

Refrigerant-containing components must comply with ASHRAE 15 & 34 and be factory tested, cleaned, dehydrated, charged, and sealed. Provide refrigerant charging valves and connections, and pumpdown valves foreach circuit.

2.2.1.3 Unit Controls

Provide unit internally prewired with a 208 volt control circuit powered by an internal transformer. Provide terminal blocks for power wiring and external control wiring. Unit must have cutoffs high and low pressure, and low oil pressure for compressors with positive displacement oil pumps, supply fan failure, and safety interlocks on all service panels. Stage multiple compressors by means of a time delay. Internally protect unit by a circuit breaker in accordance with UL 1995.

AMENDMENT 3

**Invitation for Bid (IFB)
UOG IFB No. B21-17**

Date Issued: November 19, 2021

“PURCHASING HVAC EQUIPMENT”

This is to notify all prospective offerors of the following amendment set forth below:

- 1.1 Question & Answer Sheet 1 as set forth in the attached.
- 1.2 **REPLACE** Exhibit B “Scope of Work & Bid Price Form” with corrected forms as set forth in the attached.
- 1.3 Copy of Pre-bid Conference Sign-In sheet as set forth in the attached.
- 1.4 Deadline for submission should read as follows: **Monday, November 29, 2021 at 2:00 p.m.** (your bid submission must be submitted electronically to the Bid Share folder provided by UOG Procurement Office on or before 2:00 p.m.) Bid opening will take place at 3:15 p.m. via ZOOM link provided by procurement office to all registered offerors.

All other terms and conditions remain the same.


Emily G. Gumataotao
Supply Management Administrator

Please acknowledge receipt and email: uog.bids@triton.uog.edu:

Name of company: _____

Print Name/Signature/date _____

UOG INVITATION FOR BIDS NO. B21-17:
PURCHASING OF HVAC EQUIPMENT

QUESTION & ANSWER SHEET NO. 1
November 19, 2021

In response to the written "Questions" and/or 'Request for Clarifications' UOG received as of 10/26/2021 @ 4:49pm from vendor: **Guam Pacific Enterprise, Inc.**

Question 1: Section 5011 of Chapter 5 is not included in the Bid documents. (Policy In Favor of Serviced - Disabled Veteran Owned Business)

Answer: Please refer to Amendment 2. Item 1.4 #21

Question 2: Is the Bid All or None Bid?

Answer: UOG confirms yes, this is an All or None Bid.

Question 3: Is the installation required?

Answer: UOG confirms Installation is not required.

Question 4: Also, will you be using Federal Financial assistance Awards for this Bid therefore it is covered by Buy American Act.

Answer: UOG confirms Funds are from Higher Education Emergency Relief Fund (HEERF) The Buy American Act is to be followed "to the most extent possible."

In response to the written "Questions" and/or 'Request for Clarifications' UOG received as of 10/29/2021 @ 5:48pm from vendor: **MJM International Corporation**

Question 1: May I please get more information for the attached? Kindly clarify if it is the ton per unit and column (ton) is the total tonnage.

Answer: UOG confirms ton is the total tonnage.

In response to the written "Questions" and/or 'Request for Clarifications' UOG received as of 11/7/2021 @ 12:00pm from vendor: **JWS Refrigeration & A/C Ltd.**

Question 1: It was mentioned that you want to use only one manufacturer for the complete project, but you have Daikin condensers at the Marine Lab. It also is our understanding that many of the indoor units connected to these Daikin condensers also do not operate. These are VRF systems, which means they communicate with each other so you cannot use different manufacturers. Please clarify your intentions on this system.

Answer: UOG Confirms there is no need for VRF/VRV units as Item Description/Location has been revised to remove Marine Lab requirement. Please refer to Amendment 3, item 1.2.

UOG INVITATION FOR BIDS NO. B21-17:
PURCHASING OF HVAC EQUIPMENT

Answer: UOG confirms Funds are from Higher Education Emergency Relief Fund (HEERF) The Buy American Act is to be followed "to the most extent possible.

Question 2: The RFQ Equipment specifications refer to VFR /VRV Units. It does not go into detail on the units being requested.

Answer: UOG Confirms there is no need for VRF/VRV units as Item Description/Location has been revised to remove Marine Lab requirement. Please refer to Amendment 3, item 1.2.

Question 3: Of the units requested, the RFQ does not state whether they are Packaged Units, or Ducted Split Units that require Air Handling Units.

Answer: UOG confirms we are purchasing "Ducted Split Condensers only. No AHU's in this bid.

Question 4: The RFQ does not state efficiency requirements (EER rating)

Answer: UOG confirms there are no EER rating.

Question 5: Are you asking for direct replacements for the units in each of the buildings?

Answer: UOG confirms, no. In some of the buildings we are consolidating units from smaller units to a bigger unit.

Question 6: The RFQ mentions Storage, some about installation, & providing specs 5 weeks in advance of purchases. However, the Scope states it purchase only.

Answer: UOG confirms no storage or installation required.

Question 7: Does the bidder need to supply storage?

Answer: UOG confirms no storage required

In response to the written "Questions" and/or 'Request for Clarifications' UOG received as of 11/9/2021 @ 3:14pm from vendor: Ability Solutions LLC

Question 1: Can you provide a copy of the transcript for the sign-in on inspection day?

Answer: Please refer to Amendment 3, item 1.3.

In response to the written "Questions" and/or 'Request for Clarifications' UOG received as of 11/10/2021 @ 10:02am from vendor: Ability Solutions LLC

Question 1: May I inquire when the deadline is to deliver the equipment's?



ADMINISTRATION & FINANCE
Consolidated Procurement Office

ABSTRACT ANALYSIS
UOG IFB BID NO. B21-17

Title: **PURCHASING OF HVAC EQUIPMENT**

Date Issued: **10/22/2021** Date/Time Opened: **12/06/2021/ 3:15 p.m.**

Amendments Issued: Amendment 1 10/29/2021, Amendment 2 10/29/2021, Amendment 3 11/19/2021,
Amendment 4 11/22/2021, Amendment 5 11/24/2021, & Amendment 6 12/03/2021

This Bid is requested for: Lowest Responsive and Responsible Bidder

	VENDORS/BIDDERS		
	ALL BUSINESS ENTERPRISE	JWS	TONY'S WORKSHOP
Date Bid Submitted	12/06/2021	12/06/2021	12/06/2021
Time Bid Submitted	11:31	11:33	1:21 PM
Business License	X	NOT INCLUDED	NOT INCLUDED
Contact for Contract Administration (B)	X	X	X
Bidder's Qualifications (C)	X	X	X
BID SECURITY (D)	CC - \$218,410.00	CC - \$98,785.80	BB
Major Shareholder Affidavit (E)	X	X	X
Non-Collusion Affidavit (F)	X	X	X
Gratuities, Kickbacks Favors (G)	X	X	X
Ethical Standards (H)	X	X	X
DOL Wage Determination (I)	X	X	X
Contingent Fees (J)	X	X	X
Amendment 1	X	X	X
Amendment 2	X	X	X
Amendment 3	X	X	X
Amendment 4	X	X	X
Amendment 5	X	X	X
Amendment 6	X	X	X

Table 1.0

RFK BUILDING SECOND FLOOR	\$120,002.50	\$74,837.72	\$55,372.32
RFK BUILDING FIRST FLOOR	\$107,574.60	\$59,870.18	\$52,856.01
RFK BUILDING FIRST FLOOR MAIN ENTRANCE	\$67,372.50	\$22,451.32	\$17,711.51
RFK BUILDING FIRST FLOOR AV ROOM	\$67,372.50	\$22,451.32	\$17,711.51
RFK BUILDING FIRST FLOOR OFFICES	\$80,461.60	\$29,935.09	\$24,262.45
PIP SECOND FLOOR	\$80,461.60	\$29,935.09	\$24,262.45
SCIENCE BUILDING FIRST FLOOR	\$107,574.60	\$59,870.18	\$52,856.01
SCIENCE BUILDING SECOND FLOOR	\$107,574.60	\$59,870.18	\$52,856.01
SCIENCE BUILDING THIRD FLOOR	\$80,461.60	\$29,935.09	\$24,262.45
ENGLISH COMMUNICATION BUILDING CLASSROOM	\$983,59.60	\$44,902.64	\$36,503.19
COMPUTER CENTER OIT BUILDING FIRST FLOOR	\$120,002.50	\$74,837.73	\$55,372.32
LECTURE HALL AUDITORIUM	\$80,461.60	\$29,935.09	\$24,262.45
HSS BUILDING	\$240,005.00	\$74,837.73	\$110,134.64
HSS BUILDING	\$98,359.60	\$44,902.64	\$36,503.19
GRAND TOTAL	\$1,456,044.40	\$658,572.00	\$584,926.51

T: +1 671.735.2925 F: +1 671.735.3010 W: www.uog.edu E: uog.bids@triton.uog.edu

Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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Exhibit 2



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Consolidated Procurement Office

DELIVERY	18-20 WEEKS	9-12 WEEKS	24 WEEKS
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TABLE 2.0

Service for Maintenance and upkeep	\$51,000.00	\$1,275.00 QUARTER \$5,100.00 ANNUAL	\$26,000.00 QUARTER
Services for disposal	\$11,250.00	INCLUSIVE	\$54,148.63
Replacement/trade in program	TO BE DISCUSSED UPON AWARD.	1 YEAR WARRANTY	\$196,766.42

Attendees: (Print name & sign opposite the firm you represent)

Company/Firm Name	Representative (Print Name)	Signature
All Business Enterprises Corporation	Nelia Bangayan	ONLINE ZOOM
Tony's Workshop	Michael Ecalnea	ONLINE ZOOM
All Business Enterprises Corporation	Gene Bangayan	ONLINE ZOOM
JWS	Anthony Scragg	ONLINE ZOOM

Tabulators:

Emily G. Gumataotao	SMA	ONLINE ZOOM
Kaimana K. Terlaje	Property Control Officer	ONLINE ZOOM

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Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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ADMINISTRATION & FINANCE
Consolidated Procurement Office

December 7, 2021

TONY's WORKSHOP
P.O. Box 23066 GMF
Barrigada, Guam 96921
Main: 671-637-3060
Email: mike@tonysworkshop.com; tonyworkshop@teleguam.net

RE: NOTICE OF AWARD- UOG IFB B21-17: "PURCHASING OF HVAC EQUIPMENT"

Dear Sir/Madam

This letter is to certify that TONY's WORKSHOP is being awarded the University of Guam IFB BID B21-17.

As a result of our evaluation on the above referenced IFB, a purchase order or contract will be forthcoming

A representative from the respective unit will be in contact with you upon issuance of the purchase order and/or contract

If you have any questions, please feel free to contact me at 735-2925 or email at uog.bids@triton.uog.edu.

Thank you and Congratulations!

Sincerely,

Emily G. Gumataotao
Supply Management Administrator

Please acknowledge receipt and return via email to uog.bids@triton.uog.edu

(Please print name and sign) (DATE)

cc: FMS
PROCUREMENT FILES

T: +1 671 735 2925 F: +1 671 735 3010 W: www.uog.edu E: uog.bids@triton.uog.edu
Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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Exhibit 3



ADMINISTRATION & FINANCE
Consolidated Procurement Office

December 7, 2021

TONY's WORKSHOP
P.O. Box 23066 GMF
Barrigada, Guam 96921
Main: 671-637-3060
Email: mike@tonysworkshop.com / tonyworkshop@teleguam.net

RE: **NOTICE OF AWARD- UOG IFB B21-17: "PURCHASING OF HVAC EQUIPMENT"**

Dear Sir/Madam:

This letter is to certify that **TONY's WORKSHOP** is being awarded the University of Guam IFB **BID B21-17**.

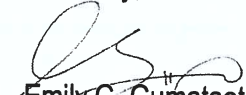
As a result of our evaluation on the above referenced IFB, a purchase order or contract will be forthcoming.

A representative from the respective unit will be in contact with you upon issuance of the purchase order and/or contract.

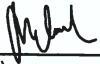
If you have any questions, please feel free to contact me at 735-2925 or email at uog.bids@triton.uog.edu.

Thank you and Congratulations!

Sincerely,


Emily G. Gumataotao
Supply Management Administrator

Please acknowledge receipt and return via email to uog.bids@triton.uog.edu.

Michael Ecalnea  12/7/21
(Please print name and sign) (DATE)

cc: FMS
PROCUREMENT FILES

T: +1 671.735.2925 F: +1 671.735.3010 W: www.uog.edu E: uog.bids@triton.uog.edu
Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913
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