



OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO. OPA-PA 11-013

UNIVERSITY of GUAM

Office of the President

Unibetsedât Guahan

Legal Counsel

OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

In the Appeal of)
) CASE NO: OPA-PA-11-013
Phil-Gets (Guam) International Trading Corp.,)
dba J&B Modern Tech,)
) AGENCY REBUTTAL TO
) APPELLANT'S COMMENTS ON
Appellant.) AGENCY REPORT
)

Appellee University of Guam, by and through its counsel of record, Victorina M.Y. Renacia, submits its Agency Rebuttal to Appellant's Comments on Agency Report in the form required under 2 G.A.R. § 12104 (c)(4) as follows:

A. Rebuttal Exhibit (RE) Listing:

- RE-1 UOG Procurement Regulation 9.2.8 *et seq.*
- RE-2 Certified Applicator Requirements for United Coatings' Finishing Systems
- RE-3 Re-Issue Request for Clarification of Qualifications and New Submission Date
- RE-4 Bid Specification Section 1.5 Qualifications, pgs. 89-90
- RE-5 Bid Specification Section 1.05 Substitutions, p. 96
- RE-6 Instructions to Bidders, Number 18, Responsible and Responsive Bidder
- RE-7 Photograph of Okkodo High School Roof taken April 2011
- RE-8 Photograph of Okkodo High School Roof taken April 2011

B. Rebuttal

1. Lowest Responsible and Responsive Bidder

University of Guam Procurement Rules and Regulations, Section 3.9.14.1 state:

“The contract is to be awarded ‘to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.’ ” As stated in the University’s Agency Report and emphasized more thoroughly below, the University does not argue that Appellant’s bid was the lowest priced; however, Appellant was not the lowest responsible and responsive bidder. Notably, Appellant makes no mention attesting to its responsibility or responsiveness under the bid. Having the lowest priced bid, without evaluation of responsibility and responsiveness, does not assure Appellant of the award.

Appellant’s assertion that its Comments present to some extent its first opportunity to “build a record” is inaccurate. Appellant could have presented all its arguments in a Request for Reconsideration of the Protest decision, pursuant to the University of Guam Procurement Manual, Section 9.2.8 *et seq.*, attached as Rebuttal Exhibit 1 (RE-1). Instead, Appellant chose to forego this available remedy and file its appeal with the Office of Public Accountability. Appellant’s claim that it had little time to build a record due to the University’s reasons for its bid rejection is without merit, since a Request for Reconsideration was readily available to Appellant.

2. Isla Paint

The University has no knowledge of a \$10,000 certification fee for which Isla Paint allegedly wanted to charge Appellant. The Certified Applicator Requirements for United Coatings’ Finishing Systems signed by Independent United Coatings’ Representative Brian Kent is attached as RE-2. The on-site training fee is One Thousand Eight Hundred Dollars

(\$1,800.00) and, among other requirements, there is a requirement of the completion of at least 10,000 sq. ft. of fluid applied roofing under a Technical Representative's supervision. RE-2.

Isla Paint is not the only vendor who sells acceptable roofing products for UOG Bid P13-11. 3M is another vendor on Guam who sells acceptable or comparable products for roof repair that meet the University's product specifications.

3. University's Requests for Clarification

Appellant states that the University changed its specifications from its original language in its Re-Issue Request for Clarification of Qualifications and New Submission Date. RE-3. But note the reference to the original specifications and page number at the beginning of the Re-issue Request. This Re-issue Request simply added clarifying language to the original specifications, but did not substitute or supersede the original language. To ensure equitable treatment among all bidders, the Re-issue Request was given to all bidders, whether or not they had provided the information previously.

The Re-issue Request "1.5.1 Fluid-Applied Roofing Material Manufacturer Company document of experience" (*See* RE-3) paraphrases the original wording of "1.5.1 Fluid-Applied Roofing Material Manufacturer Company specializing in reinforced fabric acrylic copolymer roofing systems with a minimum of 5 years experience." RE-4 at 89. The Re-issue Request "1.5.2 Applicator Company approved as an authorized applicator in writing by manufacturer (Note: The Company, not an individual working for the Company)" (*See* RE-3) clarifies a portion of the original language of "1.5.2 Applicator Company specializing in performing the work of this section with minimum of 5 years experience approved as an authorized applicator in writing by manufacturer." *See* RE-4 at 89. Lastly, the Re-issue Request "1.5.3 Applicator approved and certified by manufacturer (Note: The approval and certification has to be current,

signed and dated by manufacturers authorized representative). This will apply for all applicators the company intends to use for this project.” once again clarifies and also expands the original language of “1.5.3 Applicator approved and certified by manufacturer.” RE-4 at 90. But in no instance does it substitute for, delete, or change the intent of the original bid language.

The Re-issue Request asked for approvals and certifications of the companies previously identified before bid closing. It did not ask for a second round of new products or subcontractors, which Appellant provided in its response to the Re-issue Request. New or alternate proposals or options were not requested, nor are they allowed at this stage of the bidding. Under Section 1.05 of the bid, p. 96, Substitutions, A. “Proposals for substitution product shall be accepted only from bidding contractor and not less than (10) working days before bid due date. Contractor guarantees that proposed substitution shall meet the performance and quality standards of this specification.” RE-5. The Re-Issue Request was not a second opportunity for Appellant to introduce new products or options. The University neither asked for nor did it entertain alternate products or new proposals under the Re-Issue Request. Notably, Appellant was the only bidder who responded to the Re-issue Request by providing new and multiple options. Appellant should not be allowed to usurp the procurement process and expect to be favorably rewarded, in derogation of procurement rules.

4. Bid Rejection

Appellant’s bid was rejected because it was non-responsive and in non-conformance with the bid specifications. UOG Bid No. P13-11, Instructions to Bidders, p. 5, No. 18, Method of Award, states in relevant part: “Bid shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for Bids. A responsible bidder is one who has the capability in all respects to perform fully the contract

requirements, and the integrity and reliability which all assure good faith performance. A responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids.” RE-6. As stated in the University’s Agency Report, Appellant’s bid was “in non-conformance with the specifications because it did not identify a product compliant with the bid specifications at the time of bid closing. Further, Appellant’s response to the University’s Reissue of a Request for Clarification of Qualifications proposed the use of alternate roofing products and certified contractors. This information was late and should have been submitted to the University before bid closing.” See Agency Report, p. 9; see also RE-5, Substitutions. Although Appellant timely submitted its response to the Re-Issue Request, the content of its response (i.e., new options with multiple products and subcontractors from what Appellant submitted at close of bid) was unallowable under the bidding process. As stated above, the Re-Issue Request did not call for new proposals or options. It called for approvals and certifications for those companies and products submitted to the University before bid closing. Appellant’s unacceptable product submission at bid closing and belated alternate proposals as a response to the Re-Issue Request were deemed non-responsive and nonconforming to the bid specifications.

Aldocoat Roof Systems does not meet the University standards for roof repair, as determined in the evaluation report by the University’s experts, AM Orient. See Exhibit AR-1. Appellant challenges the determination that the viscosity of a single coat of Aldocoat does not meet the University’s performance requirements, calling it a “sham requirement”, and arguing that a second coat of Aldocoat would correct the problem. The University stands by its experts’ determinations of the products submitted by all the bidders. *Id.* Attached as Exhibits RE-7 and RE-8 are color photographs of the roof of Okkodo High School taken by AM Orient in April

2011. Aldocoat 650 was used as the roofing membrane, the application of which was completed in late July 2008. As one can see from the photographs, it is grossly apparent that this product is deficient in performance and does not perform under the extreme high humidity, heat and wet conditions that exist on Guam. *Id.*

5. Subcontractor issue

As part of the bid, the University required that the bidding company be a certified applicator of an approved product. *See* RE-3 and RE-4. The University intended for the bidding company to be held directly responsible to the University for any claims, warranty or otherwise, that might arise under the bid. However, it was acceptable to the University for the bidding company to use a subcontractor who was also a certified applicator of the acceptable product, as clarified in the Protest Determination letter. *See* AR-3. Both parties were required to be certified to avoid any warranty problems that might arise if only the subcontractor were certified, where the manufacturer's warranty might not extend to the bidding company. This requirement would protect the University from any unintended consequences under the warranty. While Appellant states this requirement was not apparent in the language of the bid, the University argues that Appellant understood the requirement, as it sought information from Isla Paint about its own certification for Roof Mate. Appellant only requested a list of certified subcontractors after it determined that it could not timely be certified under the bid. And so it provided the University with alternate proposals or options in response to the University's Re-Issue of Request for Clarification, which the University rejected as non-conforming to the specifications.

The University rejected Appellant's submission of Roof Mate, which is an acceptable product to the University, because of Appellant's untimely proposal submission under the bid, as discussed above. Further, although Appellant's proposed subcontractor for Roof Mate is a

certified applicator of the product, Appellant is not, which does not meet the requirements of the bid.

6. University's Position

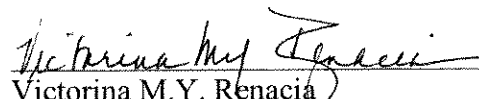
Appellant has described the University's position as a "moving target", "shifting", "changing". This is Appellant's attempt to misdirect and mislead the Public Auditor from the plain facts of the case. The University corrected Appellant's bid status to accurately reflect the reasons for its rejection. Since Appellant did not get the remedy it sought in the first instance; i.e., determination of being the lowest responsible and responsive bidder and thus being awarded the bid, the University in its Protest Determination letter proceeded to provide the reasoning for its rejection on the basis of non-conformance with the specifications. The Bid Status (Corrected) letter and the Protest Determination letter were intended to have been sent out at the same time, as stated in the Protest Determination letter. Although Appellant does state that the Protest Determination letter was received immediately after receipt of Bid Status (Corrected), Appellant's Comments p.8, the dates do not jibe because of the University's internal administrative processing. **The University has not backdated any documents.** And under 5 GCA § 5481, the time limitation on protested solicitations and awards must be initiated within fourteen (14) days **after receipt** of a final administrative action, so that Appellant's time period for filing the appeal begins after receipt of the Protest Determination.

Conclusion

Appellant is not the lowest responsible and responsive bidder because it was in non-conformance with the bid specifications, as discussed above. A nonresponsive low priced bidder is not awarded the bid. Appellant cannot change the rules of the bidding process by getting a second bite at the apple, and thereafter expect to be favorably rewarded. Nor does it have the

authority to determine what standards the University should use in its roof repairs. The University respectfully requests that the Public Auditor find that the University acted within its authority under the Guam Procurement Law and rules and regulations in denying Appellant's Protest. Because this is an American Recovery and Reinvestment Act of 2009 (ARRA)-funded bid and time is of the essence, the University respectfully requests that the Public Auditor expedite this matter to the extent possible, so that the University may continue to award the bid within the statutory timeframes of the ARRA funding.

Respectfully submitted this 11th day of August, 2011.


Victorina M.Y. Renacia
University Legal Counsel

1. State the reasons for the action taken; and
2. Inform the protestant of its right to administrative and judicial review.

9.2.7.1. TIME FOR DECISION AND NOTICE OF DECISION (GSA Section 9-101.07.1).

A decision on a protest shall be made by the President as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, those set forth in Subsection 9.2.7.2. (Bid Preparation Costs) of this Section, and Section 9.5. (Determination that Solicitation or Award Violates Law), Section 9.6. (Violation of Law Found Prior to Award. Remedies), and Section 9.7. (Violation of Law Found After an Award. Remedies) of these Regulations. A copy of the decision as contained in this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

9.2.7.2. BID PREPARATION COSTS (GSA Section 9-101.07.2).

In addition to any other relief, the President shall award the protestant the reasonable costs incurred in connection with the solicitation and protest, including the bid preparation costs, excluding attorney fees, if:

1. The protestant should have been awarded the contract under the solicitation but was not; or
2. There is a reasonable likelihood that the protestant may have been awarded the contract but for the breach of any ethical obligation imposed herein or the willful or reckless violation of any applicable procurement law or regulation.

9.2.7.3. FRAUDULENT OR FRIVOLOUS PROTEST (GSA Section 5425(h), Authority to Resolve Protested Solicitations and Awards, Entitlement to Costs).

The President shall have the power to assess reasonable costs other than attorney fees incurred by the University against a protestant upon its finding that the protest was made fraudulently, frivolously or solely to disrupt the procurement process.

9.2.8. REQUEST FOR RECONSIDERATION (GSA Section 9-101.08).

9.2.8.1. REQUEST (GSA Section 9-101.08.1).

Reconsideration of a decision of the President may be requested by the protestor,

appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest.

The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

9.2.8.2. TIME FOR FILING (GSA Section 9-101.08.2).

Requests for reconsideration of a decision of the President shall be filed within fifteen (15) working days after receipt by the protestant of the notice of decision.

9.2.8.3. TIME FOR ACTING (GSA Section 9-101.08.3).

A request for reconsideration shall be acted upon as expeditiously as possible. The President may uphold the previous decision or reopen the case as such officer deems appropriate.

9.2.9. EFFECT OF JUDICIAL OR ADMINISTRATIVE PROCEEDINGS (GSA Section 9-101.09).

If an action concerning the protest has commenced in court, the President shall not act on the protest, but refer the protest to the Attorney General. This Section shall not apply where a court requests, expects, or otherwise expresses interest in the decision of the President.

9.2.10. FINALITY (GCA Section 5425(f)).

Unless a person adversely affected by the decision commences an action in the Superior Court, a decision of the President is final in accordance with Sections 9.2.3.(Filing of Protest) through 9.2.9. (Effect of Judicial or Administrative Proceeding).

9.3. DEBARMENT OR SUSPENSION BY THE President (GSA Section 9-102).

9.3.1. AUTHORITY TO DEBAR OR SUSPEND (GSA Section 9-102.01).

9.3.1.1. APPLICATION (GSA Section 9-102.01.1).

This Subsection applies to all debarments or suspensions of persons from consideration for award of contract imposed by the President.



Isla Paint and Supply
250 Guerrero Drive Tamuning, Guam 96931
Ph/Fax: (671) 647-7870 Fax: (671) 647-4285
Email: IslaPaint@Islanders.guam.net

CERTIFIED APPLICATOR REQUIREMENTS
FOR
UNITED COATINGS' FINISHING SYSTEMS

1. Certification is only available to companies and not individuals.
2. An Approved Applicator Qualification Form must be completed and on file.
3. A historic use and working knowledge of fluid applied roofing systems including installation of fabric reinforcement systems over both metal and concrete substrates is required.
4. When a lack of experience so merits, a supervisor and designated employees of the Applicant' company must complete an orientation and on-site training program.
5. The on-site Training Fee is \$1800.00 and includes:
 - a. Two hour orientation covering materials, system designs, application procedures, warranty requirements, warranty processing, and responsibilities.
 - b. Completion of at least 10,000 sq.ft. of fluid applied roofing under Technical Representative' supervision.
 - c. Above area may be either a single project or be combined with several smaller project.
 - d. It is preferred the training include both concrete and metal substrates.
 - e. Applicant is responsible for all tools, equipment, and materials.
 - f. All safety requirements are the responsibility of the Applicant and shall be strictly followed.
 - g. Total supervisory time including orientation shall not exceed 20 hours.
 - h. Delay or rescheduling of designated times may incur additional fees.

Certified Applicator Certification is valid for three years and must be renewed.
There is no fee for Certification renewal.

Respectfully;

Brian Kent
Ind. United Coatings' Representative
Western Pacific / Japan

EXHIBIT RE-2

OPA-PA-11-013



UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN

Administration and Finance
Consolidated Procurement Office

RE-ISSUE
REQUEST FOR CLARIFICATION OF QUALIFICATIONS
AND
NEW SUBMISSION DATE
UOG BID NO. PI3-II
RECOVERY CIP: ROOF REPAIR & NEW ROOF AT VARIOUS FACILITIES
Date Issued: March 16, 2011

This is notifying all prospective bidders of the following clarification and submission:
Exhibit B Project Specification or Equivalent Equal, Section 1.5 Qualifications Page 89:
1.5.1 Fluid-Applied Roofing Material Manufacturer Company document of experience.
1.5.2 Applicator Company approved as an authorized applicator in writing by manufacturer
(Note: The Company, not an individual working for the Company)
1.5.3 Applicator approved and certified by manufacturer (Note: The approval and certification
has to be current, signed and dated by manufacturers authorized representative). This will apply
for all applicators the company intends to use for this project.

A complete and up to date set of Manufacturer Roofing System Specifications for the proposed
Roofing System the bidding company is approved and certified to install.

1.1 Deadline for submission of the above information will on Tuesday, March 22, 2011.

All other terms and conditions remain the same.

Regards,

Carlos L.G. Iriarte
Buyer II

Please acknowledge receipt and fax to 734 -3118:

Name of company: J & B MODERN TECH

ALEXANDER SALAZAR 3/16/11
Print Name/Signature/Date

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced.

FACTORY MUTUAL ENGINEERING AND RESEARCH (FM)

FM P7825 (2001) Approval Guide

FEDERAL STANDARD (FED-STD)

FED-STD-313 (Rev. C) Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities

NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)

NRCA-02 (1996) NRCA Roofing and Waterproofing Manual

1.2 SYSTEM DESCRIPTION

Roofing System: Single component, multi-layered application of fluid-applied acrylic copolymer materials with non-woven polyester reinforced fabric to prevent moisture migration and penetration during rain and high temperature, high humidity thermal cycling. The system shall have Class I Roofing System Recognition as tested by Factory Mutual (FM P7825) or other accredited testing laboratory meeting the roofing assembly system testing requirements of Factory Mutual, incorporate adhesion, impact and abrasion resistance, flexibility and excellent weather resistance. The system shall have a minimum of 5 years successful performance in a high temperature and high humidity environment similar to Guam.

1.3 SUBMITTALS

Submit the following in accordance with Section 01332, "Submittals During Construction for Design Build".

SD-01 Preconstruction Submittals

Applicator's qualifications

Material compatibility

SD-03 Product Data

Fluid-applied roofing system

Moisture meter

Provide data for fluid-applied roofing; reinforcing fabric; joint and crack sealants; with temperature range for application of waterproofing membrane.

SD-04 Samples

Fluid-applied roofing;

Submit samples of not less than 2" X4" in size showing the applied thickness, texture, and color as selected.

SD-07 Certificates

A. Fluid-applied roofing system certifying that products meet or exceed specified requirements.

B. Applicator approved and Certified by manufacturer.

SD-08 Manufacturer's Instructions

Application instructions

Manufacturer's material safety data sheets

1.5 QUALIFICATIONS

1.5.1 Fluid-Applied Roofing Material Manufacturer Company specializing in reinforced fabric acrylic copolymer roofing systems with a minimum of 5 years experience.

1.5.2 Applicator Company specializing in performing the work of this section with minimum of 5 years experience approved as an authorized applicator in writing by manufacturer.

1.5.3 Applicator approved and certified by manufacturer.

1.6 QUALITY CONTROL

A. Qualifications:

1. Manufacturer: Company specializing in permanent waterproofing, liquid applied acrylic roofing systems with a minimum of five (5) years experience in high temperature high UV and high humidity environments.
2. Applicator specializing in performing the Work of this Section with minimum 5 year documented experience with projects in Saipan or Guam.
3. Applicator approved and Certified by manufacturer.

B. Technical Representative

1. Manufacturer's Technical Representative: Manufacturer to make available technical representative to monitor ongoing operations to assure proper installation of roofing. Maintain same Technical Representative for duration of project.
2. Substrate Certification: Submit Manufacturers Technical Representative's written certification of compliance of prepared substrate in conformance with requirements necessary for system Installation. Certification of substrate to be accomplished just prior to application of membrane system.
3. Manufacturer's Technical Representative Field Review of Work:

A. Number of Visitations: Tech Rep shall inspect regularly. Submit number of manufacturer's recommended minimum number of times that Technical Representative is scheduled to field review work to ensure the success of the installation. Indicate when such visits are to be conducted.

B. Field Reports: For each visit, submit Technical Representative's field report assessing each installation. The detailed field reports to indicate the date, the time, the length of time of each visit, the condition of each day, the condition of the substrate at the time of application, the application procedures wet and dry film thickness measured, and other important aspects affecting the success of the installation.

1.6.1 Application Instructions Indicate special procedures and perimeter conditions requiring special attention.

1.6.2 Manufacturer's Material Safety Data Sheets

Submit for fluid-applied roofing, solvents, and other potentially hazardous materials, as defined in FED-STD-313.

1.6.3 Material Compatibility

Manufacturer's certification that fluid membrane materials are physically and chemically compatible with each other. Materials not certified are not permitted in the work area.

1.7 PREROOFING CONFERENCE

Prior to starting application of fluid-applied roofing system, arrange and attend a Preroofing conference at project site with UOG Representative, Contractor, and Subcontractors to ensure a clear understanding of drawings and specifications. Ensure that other trades that may perform other types of work on or over the membrane after installation, attend this conference.

1.8 DELIVERY, STORAGE, AND HANDLING

Deliver fluid-applied roofing materials in manufacturer's original, unopened containers, with labels intact and legible. Containers of materials covered by a referenced specification number shall bear the specification number, type, and class of the contents. Deliver materials in sufficient quantity to continue work without interruption. Store and protect materials in accordance with manufacturer's instructions, and use within their indicated shelf life. Store materials on pallets and cover from top to bottom with canvas tarpaulins.

ROOF HATCH (Prepared By COEVAL Design Partners)

PART I - GENERAL

1.1 SUMMARY

- A. Work Included: Furnishing and installing factory fabricated roof hatches.
- B. Related Work

1.2 REFERENCES

- A. American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959; (610) 832-9585, FAX (610) 832-9555
 - 1. ASTM A 36-93A: Standard Specification for Structural Steel.

1.3 SUBMITTALS

- A. Product Data: Provide manufacturer's products data for all materials in this specification.
- B. Shop Drawings: show profiles, accessories, location and dimension.
- C. Samples: Manufacturer to provide upon request; sized to represent material adequately.
- D. Contract Closeout: Roof Hatch manufacturer shall provide the manufacturer's warranty prior to the Contract closeout.

1.05 SUBSTITUTIONS

- A. Proposals for substitution product shall be accepted only from bidding contractor and not less than (10) working days before bid due date. Contractor guarantees that proposed substitution shall meet the performance and quality standards of this specification.

1.6 JOB CONDITIONS

- A. Verify that other trades with related work are complete before installing roof hatch(s).
- B. Mounting surfaces shall be straight and secure; substrates shall be of proper width.
- C. Refer to the construction documents, shop drawings and manufacturer's installation instruction.
- D. Coordinate installation with roof membrane and roof insulation manufacturer's instruction before starting.
- E. Observe all appropriate OSHA safety guidelines for this work.

1.07 WARRANTY/GUARANTEE

- A. Manufacturer's standard warranty. Materials shall be free of defects in material and workmanship for a period of five years from the date of purchase. Should a part fail to function in normal use within this period, manufacturer shall furnish a new part at no charge. Electrical motors, special finishes, and other special equipment (if applicable) shall be warranted separately by the manufacturers of those products.

PART II- PRODUCTS

2.1 MANUFACTURER

- A. The Dura - Red Products, 4900 Cecelia Street, Cudahy, CA 90201 Phone (323)771 -9000 Fax (323) 771-9009 email info@dura-red.com or approved equal.

2.2 ROOF HATCH

- A. Furnish and install where indicated on plans metal roof hatch . Model LH, size width; 3'0" (914mm) x length: 36" (762mm). length denotes hinge side. The roof hatch shall be single leaf. The roof hatch shall be pre-assembled from the manufacturer.
- B. Performance Characteristics:
 - 1. Cover shall be reinforced to support a minimum live load of 40 psf (195kg/m²) with a

21 for more details.

13. ACKNOWLEDGEMENT OF CLARIFICATIONS, ADDENDUM OR ADDENDA, AND AMENDMENTS (Attachment N): All bidders must sign and include this form with their bid form. Refer to instruction No. 17 for more details.

14. BID SUBMITTAL PACKING COVERSHEET (Attachment O): All bidders must use this coversheet when submitting their sealed bid submittal packet containing their original and copy sets of their Bid submittal documents. Please place this coversheet outside of your sealed envelope for quick attention and identification by UOG officials that this is a seal bid reply that its time sensitive due to the deadline time. Please ask the Procurement official receiving your bid submittal to stamp the date, time, and name of the UOG official receiving your packet. Refer to instruction 19 - 23 for additional information.

15. BID OPENING ABSTRACT FORM (Attachment P): After the deadline date and time for all bid submittals; UOG invites all bidders and the public to witness the opening of the sealed bids received. The location of the bid opening will be posted before the deadline date and time; or you may call the UOG Procurement Office at 735-2925 before the deadline date to inquire. During the Bid Opening, please use the blank form provided to follow along as the UOG Procurement officials open each sealed bid packet received and announces whether all the required submittals have been found in each packet. Then the Bid Price will be read out loud for all witnesses to record.

16. RIGHT TO ACCEPT AND REJECT BIDS: The President of the University of Guam reserves the unqualified right, in his sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, which in his sole and absolute judgment will under all circumstances best serve the interests of the University of Guam. In the event that the successful bidder fails to execute the contract upon his part or to furnish a satisfactory performance and payment bond, the University, after declaring the security deposit of such bidder forfeited, reserves the option to accept the bid of any other bidder within ten (10) days from such default, in which case such acceptance shall have the same effect as to such bidder as though he was the originally successful bidder.

17. MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS: The University reserves the right to revise or amend the specifications prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or addendums to this Invitation for Bids and shall be identified as such. It is required that the bidders acknowledge in writing receipt of all amendments issued and such acknowledgment must be included in the bid. The amendment shall refer to the portions of the Invitation for Bids it amends. Amendments shall be sent to all prospective Bidders known to have received an Invitation for Bids. Amendments shall be distributed within a reasonable time to allow prospective Bidders to consider the amendment in preparing their Bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by facsimile, email or telephone and confirmed in the amendment.

18. METHOD OF AWARD: Bid shall be awarded to the [] highest-rated, [x] lowest, [] highest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for Bids. A responsible bidder is one who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which all assure good faith performance. A responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids. The University reserves the right to waive any minor information of irregularity in Bids received. The President shall have the authority to award or reject Bids, in whole or in part for any one or more items if he determines it is in the public interest.

Award issued to the [] highest-rated, [x] lowest, [] highest, responsible and responsive bidder within the specified time for acceptance as indicated in the Bid, results in a binding contract without further action by either party provided the successful bidder executes a formal contract with the University. In case of any error in the extension of prices, unit price will govern. It is the policy of the Government of Guam to award Bids to qualified local vendors.

EXHIBIT RE-6



EXHIBIT RE-7

OPA-PA-11-013



EXHIBIT RE-8

OPA-PA-11-013