



OFFICE OF THE PUBLIC AUDITOR

**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

COPY

OFFICE OF PUBLIC ACCOUNTANTS
PROCUREMENT APPEALS

DEC 14 2011

TIME: 3:28 BY: [Signature]
FILE NO. OPA-PA: 11-020

PART I- To be completed by OPA

In the Appeal of _____)
)
)
(Name of Company), APPELLANT)
)
)
)

NOTICE OF APPEAL

Docket No. OPA-PA 11-020

PART II- Appellant Information

Name: InfraTech International, LLC
Mailing Address: 118 Aspengao CT.
Barrigada, Guam 96913
Business Address: 118 Aspengao CT.
Barrigada, Guam 96913
Daytime Contact No: 671-888-5670

PART III- Appeal Information

- A) Purchasing Agency: Guam Department of Education
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB 038-2011
- C) Decision being appealed was made on 12/1/11 (date) by:
 Chief Procurement Officer Director of Public Works xx 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)
- xx 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:

<u>J & B Modern Tech</u>	_____
<u>Mega United Corp.</u>	_____
<u>Allied Pacific Builders</u>	_____
<u>Bascon Corp.</u>	_____
_____	_____

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 the Public Auditor 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 the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 14 day of Dec., 2011.


 By: InfraTech International, LLC
 APPELLANT

or

By: _____
 Appellant's Duly Authorized Representative
 (Address)
 (Phone No.)



OFFICE OF THE PUBLIC AUDITOR

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

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

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 13 day of Dec., 2011.

By: (Please select one)

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

G. Ravindra Gogineni
Signature

Ravindra B. Gogineni, InfraTech International, LLC
Print Name

Ravindra B. Gogineni

From: Trinidad Bucao <tlgbucao@gdoe.net>
Sent: Thursday, December 01, 2011 11:36 AM
To: ravi@infratechintl.com
Cc: Marcus Y. Pido; Emmajean O. Lamb
Subject: Response to Letter of October 04, 2011
Attachments: InfraTech Response to ltr of 100411.pdf

Hafa Adai!

Please see attached file for Response to Letter of 10/04/11.

Original will be mailed out.

Regards,

--

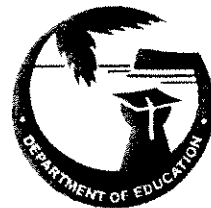
*Trinidad LG Bucao
Procurement Office
Department of Education
P.O. Box DE
Hagatna, Gu 96932
671 300-1581
671 472-5001 (fax)
tlgbucao@gdoe.net*



Taling M. Taitano
Interim Superintendent of Education

DEPARTMENT OF EDUCATION OFFICE OF SUPPLY MANAGEMENT

Manuel F.L. Guerrero Administration Building
2nd Floor, Suite B-202
Hagatña, Guam 96910
Telephone: (671) 300-1581 • Fax: (671) 472-5001
Email: mypido@gdoe.net



Marcus Y. Pido
Supply Management Administrator

November 30, 2011

Mr. Ravindra B. Gogineni
InfraTech International, LLC
118 Aspengao Ct
Barrigada, Guam 96913

RE: Response to Letter of October 4, 2011

Dear Mr. Gogineni:

This letter is written in response to your letter of October 4, 2011 regarding Guam Department of Education ("GDOE") Invitations for Bids ("IFBs") Numbers 037-2011, 038-2011 and 039-2011 for Structural Repairs and Roof Coating at GDOE buildings. Though you state in your letter that you are officially protesting these IFBs, your correspondence does not meet the requirements for filing a protest as contained in 2 GAR §9101(c)(3). Specifically, you failed to label your correspondence a "protest". Despite this error, GDOE has accepted your correspondence as a protest and has considered the information therein. For the reasons below, GDOE hereby rejects your protest in its entirety. Each of the assertions in your letter of October 4, 2011 is listed below, with GDOE's response following:

GDOE failed to provide the information requested in our email dated August 5, 2011.

GDOE received an email from you on Friday, August 5, 2011 at 1:49pm (a copy of this email is attached herewith as Attachment 1). In that email, you state, "more questions are arising as the legend given in the sheets is not matching with the abbreviations used in the drawing. Also, the drawings are confusing as most of them are not to scale. If we are to go and take the measurements we need to be accompanied by GDOE representative who is familiar with the room numbers and have access to every room to make sure that we are not missing any detail."

All prospective bidders for the IFBs were advised that the mandatory visits to the sites where the work is to be performed were not the only opportunities to visit the sites. In fact, during the mandatory visits, prospective bidders were encouraged to return to each site (each site is an operating GDOE school) to verify existing site conditions. Prospective bidders were advised they could sign in and out at the school office during site visits, and that school maintenance or janitorial staff could assist them with access to the areas that the bidder wanted to visit.

GDOE has issued an Invitation for Bids (IFB 035-2011, IFB 036-2011, IFB 037-2011, IFB 038-2011 and IFB 039-2011) to perform Roof Coating and Structural Repairs at various schools. InfraTech International, LLC has attended all the mandatory site visits along with other interested bidders. Upon completion of mandatory site visits, InfraTech International's Engineer started the estimate the scope of work as per plans and specifications. In due process, we were coming across several questions. On August 05, 2011, InfraTech had requested Mr. Pido of Guam Department of Education (GDOE) to provide us the representative's name for each school to verify the questionable areas and GDOE failed in providing the name of the representative for each school (See Attachment # 1).

Though, GDOE is claiming that they put in the plans and specifications that each bidder is responsible for verifying the existing conditions. However, verifying the ceiling spalls, ceiling cracks and beam cracks is not practical to measure by the each bidder without incurring unreasonable expenses. These things shall have been identified by the A&E Firm, which was hired to put the drawings together. The drawings provided to the prospective bidders contain several errors. InfraTech International has submitted a letter to GDOE requesting for clarification

After receiving an Amendment No. 9 on September 28, 2011, InfraTech International has submitted a letter dated September 28, 2011 on September 29, 2011 requesting additional information and notified GDOE that failure to clarify the issues addressed in our letter, will make our letter as an official protest (See Attachment # 2). The intent of this letter is to protest all the bids, unless GDOE clarifies the concerns brought to their attention. Instead of clarifying, GDOE responded back saying that the dead line to submit the questions is over and asked us whether we intend to protest the bids (See Attachment # 3).

As a concerned citizen, we decided to verify that our concerns are valid and reasonable by allowing IFB 035-2011 and IFB 036-2011 bids. After reviewing 'IFB 035-2011 & IFB 036-2011', we concluded that we have valid reasons to protest the bids because the unit prices and lump sum prices are not matching. As such, InfraTech International has submitted a letter protesting the solicitation/bid process (See Attachment # 4).

As per § 5425 (g) "In the event of a timely protest under Subsection (a) of the Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest,". After receiving our protest letter prior to the bid opening, GDOE not only continued the procurement process but also, opened the bids.

InfraTech International submitted the protest letter because it strongly believes that the solicitation/bid process is not fair and is lacking critical information in determining the lowest responsive and responsible bidder. We are saying that based on the following reasons:

- The lump sum bids submitted by each bidder did not identify the total quantities of respective works that are needed to be done under this contract.
- The unit prices submitted by each bidder are not corresponding to their lump sum bids, thus making their bids an unbalanced bids.

- The purpose of mandatory pre-bid and site visit is defeated as GDOE was not prepared to show all the areas that are needed repair works.
- GDOE failed to give equal opportunity to all the prospective bidders.
- The breakdown of lump sum price will be submitted by the winning bidder prior to the commencement of work to use it in case of any additional works are needed to be done to complete the work under the existing contract with GDOE. GDOE failed to identify reasons for requiring separate unit prices as the bids are calling for Lump Sum.
- The unit prices submitted by the bidders are inconsistent given the fact that the scope of work for all the bids is similar.

Ravindra B. Gogineni

From: Ravindra B. Gogineni <ravi@infratechintl.com>
Sent: Friday, August 05, 2011 1:49 PM
To: 'mypido@gdoe.net'
Subject: IFB 035-2011, 036-2011, 037-2011, 038-2011 & 039-2011

Importance: High

Dear Mr. Pido:

We have been checking the web site regularly and did not see any amendments or clarifications. As we continue working on the project, more questions are arising as the legend given in the sheets is not matching with the abbreviations used in the drawing. Also, the drawings are confusing as most of them are not to scale. If we are to go and take the measurements we need to be accompanied by GDOE representative who is familiar with the room numbers and have access to every room to make sure that we are not missing any detail. Therefore, we are not only requesting once again to postpone the bid at least 2-3 weeks, but also provide us the representative's name for each school to verify the areas we have questions. Our request for extension is reasonable as the revised bid schedule form is not uploaded as we were notified during the pre-bid and site visits. As you know, IFB 035-2011 & 036-2011 are due next week, which is less than week. Looking forward to hearing from you.

Should you have any questions or require additional information, please do not hesitate to contact me.

Best Regards,
Ravindra B. Gogineni
Vice President

I InfraTech International, LLC

118 Aspengao CT.
Barrigada, Guam 96913
Ph: 671-888-5670
Fax: 671-734-1629



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I InfraTech International, LLC

118 Aspenqao CT., Barrigada, Guam 96913

September 28, 2011

Mr. Marcus Y. Pido
Supply Management Administrator
Department of Education
Office of Supply Management
Manuel F.L. Guerrero/Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96932

PROCUREMENT SECTION
RECEIVED

SEP 29 2011

DEPARTMENT OF EDUCATION
TIME: 12:12 INITIAL: JPB

**Reference: GDOE IFB 035-2011, 036-2011, 037-2011, 038-2011 & 039-2011
Structural Repairs and Roof Coating**

Subject: Request for Clarification

Hafa Adai Mr. Pido:

With this letter we acknowledge the receipt of Amendment No. 9 dated September 28, 2011.

As part of the preparation, InfraTech International, LLC has submitted questions requesting you to provide us the detailed information about the repairs such as ceiling spalls, roof cracks and others mentioned in the respective bid packages. The following information is critical in submitting most economical and competitive bid packages:

1. Ceiling Spalls – The plans are inconsistent. The drawings failed to identify Length, Width and Depth of the spalls.
2. Beam Spalls – The bid form does not have pay item for this work.
3. Water Ponding – The plans does not have enough information to compute the volume of concrete required to address this issue.
4. Wall Cracks – Plans not only does not have the Length, Width and Depth of the cracks to compute the volume of epoxy needed, but also does not have the area of walls required the painting due to the crack repairs.
5. Above are some of the items that require additional information related to the repair works. In addition, there are several unidentified cracks shown on the plan.

Without this critical information, all the contractors are being left to their own assumptions, which will not give equal opportunity and fair playing field. This will lead into a massive change orders after awarding the contract.

In addition on page 7 of Amendment No. 9, under Item 4, Section 1.6.B states that "Applicator Company specializing in performing the work of this section with minimum 5 years experience approved as an authorized applicator in writing by manufacturer." Since, the warranty is being extended by the

I InfraTech International, LLC _____

118 Aspengao CT., Barrigada, Guam 96913

manufacturer, we believe that this is not necessary. This is limiting the number of participants and eliminating competition and unfair for new companies who are certified by the manufacturer for performing this type of work. As such we are requesting you to remove this requirement from the bid and respond to our questions prior to closing the bids. In case, if you fail to remove this requirement and clarify our questions, we regret to inform you that please consider this letter as an **OFFICIAL PROTEST** and the procurement process must be stalled until these issues are resolved.

Should you have any questions and/or require additional information, please do not hesitate to contact me.

Sincerely,



Ravindra B. Gogineni

Vice President & General Manager

Ravindra B. Gogineni

From: Ravindra B. Gogineni <ravi@infratechintl.com>
Sent: Friday, August 05, 2011 1:49 PM
To: 'mypido@gdoe.net'
Subject: IFB 035-2011, 036-2011, 037-2011, 038-2011 & 039-2011

Importance: High

Dear Mr. Pido:

We have been checking the web site regularly and did not see any amendments or clarifications. As we continue working on the project, more questions are arising as the legend given in the sheets is not matching with the abbreviations used in the drawing. Also, the drawings are confusing as most of them are not to scale. If we are to go and take the measurements we need to be accompanied by GDOE representative who is familiar with the room numbers and have access to every room to make sure that we are not missing any detail. Therefore, we are not only requesting once again to postpone the bid at least 2-3 weeks, but also provide us the representative's name for each school to verify the areas we have questions. Our request for extension is reasonable as the revised bid schedule form is not uploaded as we were notified during the pre-bid and site visits. As you know, IFB 035-2011 & 036-2011 are due next week, which is less than week. Looking forward to hearing from you.

Should you have any questions or require additional information, please do not hesitate to contact me.

Best Regards,
Ravindra B. Gogineni
Vice President

InfraTech International, LLC

118 Aspengao CT.
Barrigada, Guam 96913
Ph: 671-888-5670
Fax: 671-734-1629



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Ravindra B. Gogineni

From: Ravindra B. Gogineni <ravi@infratechintl.com>
Sent: Tuesday, September 27, 2011 8:31 AM
To: mypido@gdoe.net
Cc: 'procurement@gdoe.net'
Subject: IFB 035-2011; 036-2011; 037-2011; 038-2011 & 039-2011

Importance: High

Hafa Adai, Mr. Pido,

Upon reviewing your response to the questions submitted by us and other interested contractors, we have the following questions:

1. As per your response, GDOE require to paint the entire section of the wall. However, GDOE did not provide any details of the walls that have cracks for us to quantify the materials and labor required to perform these tasks. As such, we are requesting to move this task under Force Account. Please, clarify?
2. Also, your response did not address our request for clarification dated August 5, 2011 to verify the details, we are requesting to classify the repairs as a unit price lump sum and assign them under Alternate Bid keeping the Roof Coating as a Base Bid to have a fair competition field to all the participants. The reason for our request is the drawings failed to provide the length, width and depth of the cracks and/or repair works, which is very critical in computing the materials requirement.

Should you have any questions or require additional information, please do not hesitate to contact me.

Best Regards,
Ravindra B. Gogineni
Vice President

I InfraTech International, LLC

118 Aspengao CT.
Barrigada, Guam 96913
Ph: 671-888-5670
Fax: 671-734-1629



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**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
Manuel F.L. Guerrero/Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96932
Telephone: (671) 300-1581 Fax: (671) 472-5001
Email: procurement@gdoe.net



Taling M. Taitano
Interim Superintendent of Education

Marcus Y. Pido
Supply Management Administrator

September 23, 2011

Infratech International, LLC
118 Aspengao CT
Barrigada, Guam 96913

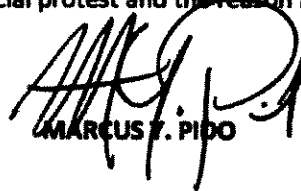
Reference: GDOE IFB 035 THRU 039-2001; Structural Repairs & Roof Coating
Letter of 9/28/11 – Request for Clarification

Dear Mr. Gogineni:

We are in receipt of your Request for Clarification of 9/28/11 and believe the amendments that have been sent out adequately address your questions/concerns as submitted and we continue to assert that it is the Contractor's responsibility to field verify the existing conditions (please refer to the plan sets that states *verify existing dimensions and conditions*).

Further, you did not ask any of the questions (1-5) prior to the deadline for questions. The deadline for submissions for questions has past. We look forward to your continued participation in GDOE's solicitations.

Finally, please indicate whether you are filing an official protest and the reason for such.


MARCUS Y. PIDO

Acknowledge Receipt

(Print Name)

(Signature)

(Company Name)

_____ AM/PM
(Date) (Time)

I InfraTech International, LLC

118 Aspenqao C.L. Barrigada, Guam 96913

October 04, 2011

Mr. Marcus Y. Pido
Supply Management Administrator
Department of Education
Office of Supply Management
Manuel F.L. Guerrero/Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96932

**Reference: GDOE IFB 037-2011, 038-2011 & 039-2011
Structural Repairs and Roof Coating**

Subject: Request for Clarification

Hafa Adai Mr. Pido:

With this letter we acknowledge the receipt of your letter dated September 23, 2011 received on September 30, 2011 via email at 5:35 p.m.

We disagree that our questions/concerns were adequately addressed in the amendments. Once again, I am calling your attention to our email dated August 5, 2011 (See Attachment # 01). GDOE did not provide the representative's name as requested in our email. If you leave to the each contractor to determine the extent of work to be done, then how GDOE will determine who submitted the lowest responsive and responsible bid. We followed up on the status our requested with another email dated September 27, 2011 (See Attachment # 02). Also, GDOE issued an amendment on September 28, 2011 with a critical qualification requirement. This requirement will eliminate the one of the reputable manufacturers in the world.

Your responses to the questions submitted by the prospective bidders were issued after the last day to submit questions. However, the prospective bidders shall be allowed to submit any questions that came out of the GDOE responses. Corner to corner paint requirement was not stated in the original SOW and the amendment does not mention anything about the total area for the bid analysis purpose.

As a concerned citizen, I certainly would like to see that our public schools do take advantage of the ARRA funding and fix the school to avail safe facilities in educating the kids. As such, I did not want to turn in my official protest immediately and for this reason only I waited till today to make sure that I have a valid reason to protest. After witnessing the bid opening of the first two bids out of the total five bids that are due this week, it is my opinion that majority of the bids submitted are unbalanced. I can say this because if you add the quantity of the roof coating required per school and multiply with the unit prices given in the respective bids, the roof coating amount alone is exceeding the lump sum offer submitted to do the Structural Repairs and Roof Repairs & Coatings.

Based on the results of the bids 'IFB 035-2011 and IFB 036-2011', we believe that it is not possible for GDOE to compare the bids and determine the lowest responsive and responsible bidder. GDOE must change the Bid Cost Form including reasonable quantities for each item to best of its knowledge in order to compare all the bids under equal and fair competing atmosphere.

I InfraTech International, LLC

178 Aspencroft Ct., Barrigada, Guam 96913

With this letter we are **officially protesting** the above referred bids for the following reasons:

- GDOE failed to provide the information requested in our email dated August 5, 2011.
- GDOE was not adequately prepared for the mandatory site visits as the rooms that require the repair works were not shown during the mandatory site visits.
- GDOE added last minute requirement in Amendment No. 9, under Item 4, Section 1.6.B that "Applicator Company specializing in performing the work of this section with minimum 5 years experience approved as an authorized applicator in writing by manufacturer." We believe that this not necessary as the warranty is being offered by the manufacturer not the applicator.
- Corner to corner paint requirement was identified after the deadline to submit questions and area needed to be painted is not provided.
- Bid packages did not identify how GDOE will choose the responsive and responsible winning bidder as the plans are inconsistent and overwhelming amount of work is depending upon the interpretation of each bidder.

Should you have any questions and/or require additional information, please do not hesitate to contact me.

Sincerely,



Ravindra B. Gogineni
Vice President & General Manager

Cc: Attorney General's Office
Office of The Public Auditor
GDOE Board of Directors Office