



## FACTUAL BACKGROUND

On August 6, 2009, the Guam Department of Education (“GDOE”) issued a “Bid Status” and notified Z4 that it was the lowest and responsive bidder to the Bid and stated that “after further review of the bid documents, the *award is made to the lowest most responsive and responsible bidder*,” which was recommended and approved for Z4. (Emphasis added). *See* Exhibit 3. This document also instructed Z4 to obtain a Performance Bond for the project. *Id.*

Also on August 6, 2009, the GDOE issued a “NOTICE TO PROCEED” to Z4, which stated that “as agreed, *you are hereby notified to commence work on the above contract on August 10, 2009* and you are to complete all work in the contract within 180 days.” *See* Exhibit 4, (emphasis added). Both the Bid Status and the Notice to Proceed were signed by the “Administrator, Supply Management” for the GDOE. *See* Exhibits 3 and 4.

Thereafter, based upon the representations of the GDOE, Z4 began performance on the contract pursuant to the NOTICE TO PROCEED. On August 13, 2009, Alpha Insurers approved the application of Z4 for the Performance/Payment Bond in the amount of \$810,000.00. *See* Exhibit 4. The issuance of the bond was subject only to the issuance of underwriting documentation by Z4. *Id.* On August 14, Z4 informed the GDOE that its Performance Bond had been approved and simply requested additional time to submit the bond. *See* Exhibit 6.

On August 20, 2009, officials from Z4 met with *officials from GDOE* and Taniguchi Ruth Makio Architects (“TRMA”), among others, and discussed and planned

further performance. *See* Exhibit 5. On August 20, Z4 applied for a building permit and plan review with the Department of Public Works of the Government of Guam. *Id.* On August 21, Z4 consulted with the Guam Environmental Protection Agency (“EPA”) to determine the environmental impact and the actions required by the Guam EPA for the project. *Id.* On August 24, Z4 applied for a permit with the Guam Fire Department for the project and said permit was approved and paid for on August 26. *Id.*

On August 6, 2009, Eons submitted a “Request for Re-Evaluation” to the GDOE. Eons’ request was denied on August 14, because Eons “failed to explain the reasoning behind the offering of the Alternate Bid.” *See* Exhibit 7. Thereafter, on August 28, Eons submitted an appeal of this decision on its *Request for Re-Evaluation* to the OPA.

In its appeal, Eons submitted an explanation highlighting the distinctions between its Alternate and Basic bid. *See* Exhibit 8. However, ***Eons did NOT claim that this document was submitted at the time of the bid opening.*** *Id.* Thus, based on information and belief, this explanation was not submitted with its bid to the GDOE.

Further, in its appeal, Eons itself acknowledged that the GDOE awarded the Bid to Z4. *Id.* On September 14, 2009, Eons withdrew its appeal “based on the representation of GSA/DOE [sic] that no award has been made.” *See* Exhibit 9. The OPA made no determination that the award to Z4 was in violation of Guam’s procurement law.

On October 9, 2009, GSA issued a “revised” Bid Status rejecting Z4’s bid and recommending the IFB be awarded to Eons. *See* Exhibit 10. On this same date, GSA informed Z4 that the Notice to Proceed is null and void. *Id.*

On October 15, 2009, Z4 submitted its Bid Protest challenging the revocation of its award of the IFB. *See* Exhibit 11. On October 29, GSA issued its first denial of Z4's Bid Protest. *See* Exhibit 1. Also on October 29, Z4 submitted the Statement of Roque Alcantara, which held that Eons failed to submit an explanation with the Alternate bid. *See* Exhibit 12. On November 3, GSA issued a second denial letter and refuted the statement of Mr. Alcantara. *See* Exhibit 2.

## ANALYSIS

### I.

#### **EONS' ALTERNATE BID FAILED TO COMPLY WITH THE IFB**

In its Bid Protest, Z4 claimed that the GDOE correctly rejected Eons' Alternate bid because the Alternate bid did not comply with the IFB. Specifically, Eons did not fully explain the products, materials, and/or services offered in the Alternate bid.

GSA denied the Bid Protest of Z4 and found that Eons' "alternate bid contained the [explanation] documents at the time of bid opening." Exhibit 2. However, a review of Eons Alternate bid will demonstrate that the Alternate bid failed to comply with the IFB because it did not fully explain the cost savings offered in the Alternate bid.

#### **A. Paragraph 9 of the IFB Required a Full Explanation of a Bid**

In paragraph 9 of the General Terms and Conditions, the IFB permitted the submission of a Basic bid and an Alternate bid. However, paragraph 9 clearly required both the Basic and Alternate bid to provide a full explanation of the supplies, materials, equipment, and/or specified services offered, as follows:

The Government will consider not more than two (2) (Basic and Alternate) item prices and the Bidder shall explain fully each if supplies, materials, equipment, and/or specified services offered comply with specifications and the product's origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. **Failure to explain this requirement will result in rejection of the bid.** [Exhibit 3, ¶9] (Emphasis in original).

According to the terms of the IFB, Eons Alternate bid was to include an explanation that fully explained the “supplies, materials, equipment, and/or specific services offered” and to ensure they complied with the specifications, including the “product’s origin.” The IFB clearly stated that any failure to fully explain the Alternate bid “**will result in rejection of the bid.**” *Id.*

The IFB required a full explanation of the services offered in a Basic and Alternate bid for a good reason: the agency must be able to determine whether the services and products offered comply with the specifications. Bids that do not supply the information required by the IFB must be rejected, especially where bidders are instructed that non-compliance is grounds for rejection. *See In the Appeal of Dick Pacific Co., Ltd.*, Appeal No. OPA-PA-07-007 (upholding the rejection of bid that did not comply with the requirements of the solicitation where bidder was expressly warned that failure to supply information is grounds for rejection).

**B. Eons Alternate Bid Failed to Fully Explain its Alternate Bid**

Primarily, multiple parties reviewed and evaluated Eons’ Alternate bid and found that the Alternate bid failed to fully explain the terms of the Alternate bid.

1. **Taniguchi Ruth Makio Architects Held that Eons Alternate bid Contained Insufficient Information**

On July 16, 2009, Mark Ruth from TRMA reviewed the Alternate bid submitted by Eons and the Basic bid submitted by Z4. Concerning Eons' Alternate bid, Mr. Ruth noted that "in many cases, the *catalog material provided is incomplete, not translated into English, or otherwise inadequate for the level of review required for approval.*" See Exhibit 14. Moreover, Mr. Ruth found that Eons failed to submit adequate information, or the explanation was not in English, for 8 of the 13 products evaluated. No such finding was made concerning Z4's Basic bid.

2. **Roque Alcantara Twice Held that Eons Failed to Fully Explain the Alternate bid**

Roque Alcantara, the former Supply Management Administrator for the GDOE, reviewed all bids submitted in response to the IFB. See Exhibit 12. During the initial review of Eons bid, Mr. Alcantara found that Eons submitted a Basic and Alternate bid; however, he noted that Eons did not submit an explanation for the terms provided in the Alternate bid. *Id.* Accordingly, he rejected the Eons' Alternate bid due to this failure, as it was expressly required by the IFB.

As per the request for re-consideration submitted by Eons, Mr. Alcantara again reviewed the bid submitted by Eons. See Exhibit 7 and 12. During this second review of Eons bid, he again could not locate an explanation for the Alternate bid. Therefore, Mr. Alcantara found that Eons failed to explain the terms of the Alternate bid as required by the IFB.

3. **The Alternate Bid Lacks a Materials Column**

Paragraph 9 also requires the bidder to fully explain each price for the materials and equipment and whether they meet the specifications of the IFB. Eons' Alternate bid fails to identify any materials offered. Moreover, the Alternate bid lacks any information on the price of the materials or equipment, and whether such materials or equipment meets the specifications of the bid. *See* Exhibit 15. The Alternate bid only offers pricing of "Labor". The failure of Eons' to: (1) specify the price for the materials and equipment; and (2) to indicate whether such materials and equipment meets the specifications justify the rejection of its Alternate bid, as expressed in the IFB.

4. **The Alternate Bid Failed to Indicate the Origin of the Products**

As stated above, paragraph 9 of the IFB mandates bidders who submit an Alternate bid to submit information regarding the "origin of the product[s]" for the items in the bid. A quick review of Eons' Alternate bid reveals that it failed to note the origin of each and every product in the bid. *Id.* Eons' failure to provide the origin of the products in its Alternate bid, justifies the rejection of the bid, as expressed in the IFB.

C. **Eons Failed to Explain the Differences Between its Two Bids**

A cursory review of Eons' Basic and Alternate bids will reveal numerous differences in the pricing of services and materials between the two bids. *See* Exhibits 15 and 16. Moreover, it is clear that there is no written explanation describing the differences of the materials and services offered in Eons' Basic and Alternate bids. Frankly, there are too many unexplained differences to address here. As stated above, there is some

information attached to the bids; however, TRMA held that this information was insufficient for the majority of the materials.

Most glaring, Eons' Alternate bid has drastic reductions in the price of labor; however, Eons doesn't even attempt to explain or otherwise justify the difference in the pricing for these services, as required in Paragraph 9. The OPA should take pause and question how Eons could offer such savings in the Alternate bid for the same projects described in its Basic bid. Accordingly, the OPA should find the GDOE properly rejected Eons' Alternate bid because it did not comply with the IFB.

As stated below, Eons and GSA claim that the Alternate bid contained an explanation (the "Explanation"). However, even if this is true, the Explanation fails to fully explain all the supposed costs savings for *all* items offered in the Alternate bid.

## II.

### **GSA CLAIMS EONS SUBMITTED THE EXPLANATION; HOWEVER, EVEN IF IT WAS SUBMITTED AS PART OF THE IFB, THE EXPLANATION WAS INSUFFICIENT**

In the October 29, 2009 denial letter, GSA claims that Eons' "alternate bid contained the [explanation] documents at the time of bid opening." Exhibit 1. However, both TRMA and Mr. Alcantara claim that there was no sufficient explanation for the terms in the Alternate bid. *See* Exhibit 14. In its appeal to the OPA, Eons submitted an explanation (the "Explanation"), *See* Exhibit 8 and 17; yet significantly, *Eons did not claim that the Explanation was submitted at the time of the bid opening.* *See* Exhibit 17. Moreover, the evidence will show that the Explanation was NOT submitted with Eons' Alternate bid at the bid opening. On information and belief, Z4 maintains that the



Explanation was submitted by Eons for the first time with its appeal to the OPA; and thus, the Explanation was tardy.

Nonetheless, even if the OPA finds that the proffered Explanation was submitted with the Alternate bid, for whatever reason, the Explanation is plainly insufficient to explain the cost savings offered in Eons' Alternate bid. As noted above, there are numerous differences in Eons' Basic and Alternate bid. While the Explanation does offer additional information regarding certain materials and equipment, it fails to fully explain all services and materials offered in the Alternate bid, as follows:

**A. Eons Fails to Account for Savings of \$105,702.60 in the Alternate bid**

Primarily, the Explanation only submits information on "major items". See Exhibit 8. Eons' Alternate bid is \$269,479.60 lower than its Basic bid. See Exhibits 15 and 16. However, the Explanation submitted by Eons only provides an explanation for the cost savings of totaling \$163,777.00. See Exhibit 8. Accordingly, the Explanation fails to account for and explain the basis of the cost savings for materials and services totaling \$105,702.60. Without a proper explanation, the GDOE cannot verify such savings, or verify whether Eons' Alternate bid complies with the specifications of the IFB.

**B. The Explanation Fails to Fully Explain the Alternate Bid**

As stated above, there are numerous reductions in the pricing of materials and labor in Eons' Alternate bid. While the Explanation did provide additional information regarding certain materials, the Explanation failed to fully explain many items offered in the Alternate bid. For the sake of economy, we will only discuss two items.

Particularly puzzling for example, is “Item B2” of Eons’ Alternate bid. According to Eons’ Basic and Alternate bids, Item B2 is to “clean and paint all interior and exterior walls, exposed conduits, concrete gutters and structures.” *Id.* For this item, the total unexplained savings offered in the Alternate bid is **\$26,560.00**. *See* Exhibits 15 and 16. Somehow, the Alternate bid offers a reduced pricing *for labor* of nearly **\$15,000.00**. It is difficult to imagine how Eons’ Alternate bid could offer such savings *for labor on the same project*.

In addition, for the same item, B2, Eons’ Alternate bid quotes additional savings of over **\$10,000.00**, without any mention of this item in the Explanation. *See* Exhibit 8. Finally, the Explanation states that the “paint” is the “same bas[ic] an[d] alternate materials.” *Id.* Therefore, it is impossible to determine whether Eons can actually offer such cost savings, and whether the materials and services offered in the Alternate bid comply with the specifications of the IFB.

Likewise, for “Item F4” to “provide roll-up door at existing wall opening”, the Alternate bid offers savings of **\$10,000.00**. However, there is no mention of this product in the Explanation. Eons did submit some information regarding the product; however, as noted by TRMA, the information is *not translated in English*. *See* Exhibit 14 and 18. Accordingly, TRMA stated that for this “Substitution, inadequate information submitted to determine construction and if will meet windload. *Assume is unacceptable.*” Exhibit 14.

Thus, even if the OPA finds, for whatever reason, that the Explanation was originally submitted with the Alternate bid, the Explanation fails to explain the cost

savings in the Alternate bid. This type of bidding practice should not be encouraged; and thus, the OPA should affirm the rejection of Eons' Alternate bid.

C. **The Tardy Explanation Demonstrates the Failures of the Alternate Bid**

The Explanation is insufficient to fully explain all the prices offered in the Alternate bid; however, it does demonstrate what was required by the IFB. The tardy Explanation is the best example of the type of information that should have been submitted by Eons in the Alternate Bid. For example, the Explanation states: (1) the origin of the materials, which were not indicated in the Alternate bid; and (2) the differences in materials, which was also not indicated in the Alternate bid.

Eons tardy Explanation demonstrates that Eons knew what was required by paragraph 9, because Eons submitted some of the required information in the Explanation. However, the Explanation still *only provided the required information for some of the materials* in Eons' Alternate bid, and the Explanation *failed to explain the differences of labor*.

A side by side comparison of the tardy Explanation and the Alternate bid will easily demonstrate the failures of the Alternate bid to "explain fully" all of the materials and services offered in the Alternate bid.

**III.**

**ALL INTERESTED PARTIES AGREE THAT THE IFB  
WAS AWARDED TO Z4, EXCEPT GSA**

GSA largely supported its denial of Z4's bid protest by claiming that no award was made to Z4. However, this issue is rather un-debatable, as the GDOE, Eons, and Z4 all hold that an award was made. Most disturbing, in its denial letter on November

3, 2009, GSA submitted documents *containing statements that the award was, in fact, made to Z4*. See Exhibit 2. GSA's claims that the no award was made demonstrates bad faith. Accordingly, the OPA should affirm the award of the IFB to Z4.

A. **All Interested Parties Agree That the Award was Issued to Z4**

In the November 3, 2009 denial letter, GSA supported the denial of Z4's Bid Protest with a memorandum written on *October 29, 2009*, by a procurement official of GDOE. In the memorandum, the official stated, among others, that:

After inputting the information on the requisition *and making the award to Z4*, I chose not to print the Purchase Order because I was waiting for Z4 to provide me a Performance Guarantee Bond ten days *after notification of award* . . . [Exhibit 19], (emphasis added).

There is only one reasonable interpretation of this statement: the award was made to Z4. Period. Moreover, even if this statement was not enough, Eons itself stated that "On August 6, 2009, the [GDOE] *awarded the Oceanview Middle School Gymnasium Repairs Contract to Z-4 Corporation* . . ." See Exhibit 17, (emphasis added). In support of this finding, Eons attached the Bid Status, mentioned below.

B. **The Bid Status Awarded the IFB to Z4**

The original Bid Status noted that "award is made to the lowest bidder," which was determined and approved to be Z4. See Exhibit 1. Thus, this document effectively awarded the IFB to Z4, without further action by Z4, including the submission of the performance bond, as noted in section "E" below. Nonetheless, even if the Bid Status is not considered an "award", the Notice to Proceed certainly would be.

C. **The Notice to Proceed Should Be Considered an Award**

The Notice to Proceed issued by the GDOE further notified Z4 that it was awarded the contract; moreover, the GDOE actually instructed Z4 to begin performance. See Exhibit 4. The Notice to Proceed instructed Z4 that: “*as agreed, you are hereby notified to commence work on the above contract on August 10, 2009* and you are to complete all work in the contract within 180 days.” *Id.* (emphasis added). In sum, this document contained all the material terms for the contract, including: (1) term, (2) date for completion, (3) date for commencement of performance, (4) contract price, and (5) remedies for breach. *Id.* Based on the four corners of this document, the GDOE issued an award of the Bid to Z4.

D. **By the Terms of the IFB, the Bid was Awarded to Z4**

The IFB provides that an “award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, *results in a binding contract without further action by either party.*” Exhibit 20, ¶23. Accordingly, Z4 was not required to submit the performance bond to complete the award, because no “further action” was required. See section “E” for further discussion regarding this bond.

Furthermore, under the terms of the IFB, the “Administrator, Supply Management [of the GDOE] shall have the authority to award, cancel, or reject bids, in whole or in part.” Exhibit 20, ¶23. Both the Bid Status and the Notice to Proceed were issued and executed by the Administrator, Supply Management of the GDOE. See Exhibits 3 and 4. Thus, this individual was authorized to award the Bid to Z4 on behalf of the GDOE and did, in fact, award the IFB to Z4.

E. **The Performance Bond Was to Be Submitted at Execution of the Formal Contract, NOT at the Award**

GSA argues that since Z4 did not submit a performance bond, there was no award. *See* Exhibit 1, p. 2. In support of this argument, GSA cites the Department of Education Procurement Regulations and the Guam Procurement Law.

However, both of these statutes actually negate GSA's argument because both specifically require the submission of the performance bond *at the time of execution* of the contract, *not the award*, as follows: (1) "*the performance bond shall be delivered . . . at same time the contract is executed,*" Department of Education Procurement Regulations Section 5.3.1.1 (emphasis added); and (2) "the following bond or security *shall be delivered to the Territory and shall be become binding upon the execution of the contract,*" 5 G.C.A. § 5304 (emphasis added). Therefore, according to both sections cited by GSA, the performance bond shall be delivered at the *execution* of the contract, NOT at the time of *award*.

Therefore, the OPA should affirm the award of the IFB to Z4.

**IV.**

**EONS CANNOT ENFORCE ITS AWARD BECAUSE IT HAS UNCLEAN HANDS**

The Guam Procurement Law requires all parties involved in the procurement of territorial contracts to "act in good faith." 5 G.C.A. § 5003. Here, GSA has demonstrated bad faith during this appeal by making misrepresentations to Eons and the OPA. In addition, Eons unreasonably acquiesced to the actions and misrepresentations of GSA and dismissed its appeal, *before the OPA could determine that the award to Z4*

*was proper and could not be set aside.* Therefore, Eons cannot enforce the award of the IFB to itself because it has unclean hands, as follows:

A. **GSA Misrepresented that No Award Had Been Made; and Eons Unreasonably Acquiesced**

On September 16, 2009, counsel for Eons submitted a letter indicating that it would withdraw its appeal before the OPA. *See* Exhibit 9. In the letter, counsel stated that it was withdrawing the appeal “based on the representation of GSA/DOE that no award has been made.” *Id.* As stated above, this misrepresentation contradicts internal memorandum of the GSA which indicated the “making of the award to Z-4”, and the clear and unambiguous Notice to Proceed and Bid Status awarding the IFB to Z4.

No rational argument can support the position of GSA; and Eons cannot deny it knew the award was made to Z4, because Eons itself instructed the OPA that the award had been made to Z4. GSA acted beyond its authority by representing that no award had been made, because an award cannot be revoke absent lawful justification. Accordingly, GSA acted in bad faith to secure the dismissal of Eons’ appeal; and Eons acquiesced to the unlawful actions of GSA. Finally, due to withdrawal of the appeal, the OPA was unable to examine the procurement record to determine whether the award to Z4 violated the procurement law, which it did not.

B. **GSA Misrepresented to the OPA that it Would Cancel the IFB; and Eons Unreasonably Acquiesced**

On September 16, 2009, the OPA issued its Order of Dismissal and dismissed the appeal of Eons regarding this IFB. *See* Exhibit 21. In the Order, the OPA indicated that it was dismissing the appeal due to the representations *of GSA that GSA was*

*going to cancel the IFB. Id.* Obviously, GSA did not cancel the IFB; and moreover, even if GSA wanted to cancel the IFB, it cannot do so without valid justification under the Guam Procurement law. Eons unreasonably acquiesced to this misrepresentation and knew, or should have known, that GSA lacked the authority to cancel the IFB because there was no valid justification to do so.

C. **Eons has Unclean Hands and Cannot Enforce its Award**

Public contractors are presumed to operate with knowledge of the relevant laws constraining procedural and substantive discretion and the authority of officials with whom they deal, and where applicable provisions are not followed, any agreements entered into are unenforceable. 73A C.J.S., *Public Contracts* § 8. A public agent cannot bind his or her principal agency by entering into a contract which is ultra vires, even though the public body for which the agent purports to act may have clothed the agent with apparent authority. *See Id.* A contractor must ascertain whether a public contract complies with the procurement laws. *See Id.* Finally, a contractor cannot invoke the principle of estoppel to aid in the enforcement of an invalid contract. *Id.*

As a public contractor, Eons is presumed to operate with the knowledge that GSA had made a lawful award to Z4, and GSA cannot simply revoke the award or cancel the IFB. A simple inspection of the bid documents would reveal that GSA had properly awarded to IFB to Z4, and GSA could not simply cancel the entire IFB. Further, it was unreasonable for Eons to dismiss its appeal because it *knew* that the award had been made to Z4, as Eons represented this to the OPA. Therefore, Eons knew that GSA was acting beyond its authority.



Eons unreasonably acquiescence to GSA and dismissed its appeal. As such, the OPA could not reach the merits of the award to Z4. If the OPA has examined the procurement record, it would have likely found that the award to Z4 was proper and could not be set aside. Accordingly, Eons cannot enforce its award of the IFB. To do so, Eons would have to evoke the principle of estoppel and request the OPA to ratify the unauthorized acts of GSA. However, the laws of equity do not work this way. "That who seeks equity must do equity." 30A C.J.S., *Equity* § 100. Eons has unclean hand because it unreasonably relied on the misrepresentations of GSA to avoid a possibly negative decision by the OPA. Eons cannot profit from the misrepresentations of GSA; and thus, Eons cannot enforce its award because it has unclean hands. Accordingly, the OPA should confirm the award of the IFB to Z4.

### **CONCLUSION**

The GDOE validly awarded the IFB to Z4 as the lowest responsible and responsive bidder. GSA had no authority to revoke this award. Therefore, the OPA should affirm the award of the IFB to Z4. In the alternation, the OPA should hold GSA to its representation codified in the Order of Dismissal and cancel the IFB.

Dated this 12<sup>th</sup> day of November, 2009.

**MAIR, MAIR, SPADE & THOMPSON, L.L.C.**  
Attorneys for Appellant Z4 Corporation

By

  
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**AARON R. JACKSON**

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MAIR, MAIR, SPADE  
& THOMPSON

OCT 29 2009

TIME: 4:35 PM  
RECD BY: [Signature]

Re: Protest – Invitation for Bid No.: GPSS IFB-008-2009 (Re-Bid)  
(Oceanview Middle School Gymnasium Repairs)

Dear Mr. Jackson:

Hafa Adai! This is to acknowledge receipt of your protest letter that was lodged on 15 October 2009 reference to Bid No.: GPSS IFB-008-2009 for the Oceanview Middle School Gymnasium Repairs.

Based on our factual evaluation of the issues raised on the protest letter our response is as follows:

**Issue A:**

You stated: The Bid was awarded to Z-4. The IFB provides that an “award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation”, results in a binding contract without further action by either party. The original Bid Status noted that “award is made to the lowest bidder,” which was determined to be Z-4; and thus, this document effectively awarded the Bid to Z-4, without further action by Z-4. Moreover, even if the Bid Status is not considered an “award” the Notice to Proceed certainly would be considered such.

**Response:**

On 06 August 2009 the Guam Department of Education (GDOE) issued a Bid Status to Z-4. Although the Bid Status issued to Z-4 noted the award is made to the lowest most responsive and responsible bidder, it further stated that it was a recommendation for award.

The Bid Status issued by GDOE also requested that Z-4 submit a one-hundred percent (100%) performance bond no lather than August 14, 2009 which was never submitted by Z-4, but instead Z-4 requested for an open ended extension to submit performance bond.

Pursuant to Department of Education Procurement Regulations Section 5.3.1.1 Performance Bond “General” it states in part: “...*The performance bond shall be delivered by the contractor to the Department at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor’s bid shall be rejected....*” In addition, Pursuant to 5GCA Chapter 5 §5304 Contract Performance and Payment Bonds. (a) When Required; Amounts, states in part: “ *When a construction contract is awarded in excess of Twenty-Five Thousand Dollars (25,000), the following bonds or security shall be delivered to the Territory and shall become binding on the parties upon the execution of the contract:*”

Therefore, it is the understanding of the General Services Agency/GDOE that an award has not been made to Z-4, because a performance bond has not been submitted by Z-4.

**Issue B:**

You stated: In reliance of GDOE’s award of the contract, Z-4 began performance on the contract. As noted above, Z-4 began securing the necessary permits for the project, consulted with various governmental agencies to determine the necessary actions for completing the project, and met with GDOE officials to further discuss performance. Z-4’s reliance on the contract caused it to incur costs which are above and beyond those reasonably expected to be incurred with the preparation of a bid. Z-4’s reliance further demonstrates that the parties understood that an award had been made.

**Response:**

On page GP-4, number 9: Preconstruction Conference states: “After award of the contract, but prior to commencement of any work at the site, meet with representatives of the Contracts Office to discuss and develop a mutual understanding relative to the administration of the safety program, preparation and submission of shop drawings and other submittals, scheduling, programming and prosecution of work. Contact GPSS Contracts Office to arrange a schedule for this conference.”

The Contracts Office stated on page GP-4 number 9 is the Procurement Office. Based on our review of the minutes prepared it did not indicate any staff from the Contracts Office. There is no evidence in the procurement file that the Contracts Office (Procurement Office) scheduled any preconstruction meeting with Z-4. As a seasoned bidder with the government of Guam bids, Z-4 should know better than to begin work or any discussions prior to receiving an award.

Therefore, Z-4 should not have conducted meetings or acquired any permits or clearances without first submitting a one-hundred percent (100%) performance bond in exchange with an approved purchase order or a contract approved by the Governor of Guam.

**Issue C:**

You stated: Valid grounds do not exist to rescind the award of the Contract because Eon's bids were properly rejected. You further stated that Eon's appeal to the OPA contained an explanation for the price submitted in the Alternate Bid; however, based on information and belief, this explanation was not submitted with the original Bid and should not be given consideration. Thus, the GDOE properly rejected the Alternate bid of Eons. Accordingly, the GDOE did not violate the procurement law of Guam in its award of the contract to Z-4 and this award should not be rescinded.

**Response:**

The GDOE procurement office erroneously disqualified the alternate bid submitted by Eons. It is evident that the GDOE procurement office erroneously disqualified the alternate bid submitted by Eons which is shown on the memorandum provided by the acting manager, Facilities Maintenance dated 27 July 2009 that both the alternate bid submitted by Eons and the basic bid submitted by Z-4 could complete the project as required.

GDOE did not issue an award to Z-4. The GDOE was waiting for a performance bond to be submitted by Z-4. On 14 August 2009, the GDOE received a letter from Z-4 requesting for an open ended extension to submit a performance bond. The GDOE received a letter from Alpha Insurers indicating that the performance bond was approved however issuance of the bond policy is subject to submission of required underwriting documentations by Z-4. The fact remains that Z-4 never submitted a performance bond to GDOE prior to 16 August 2009 when the stay of procurement was issued.

Your protest letter indicated that Eons submitted an explanation to their alternate bid after the bid opening, is false. Based on my review of the procurement files and after consultation with the GDOE buyer supervisor, the alternate bid contained the documents at the time of bid opening.

On 27 July 2009 a memorandum from the acting Facilities Manager, indicated on the memorandum that the alternate bid submitted by Eons is lower than the basic bid submitted by Z-4 and that both Eons and Z-4 believed that both Eons and Z-4 could complete the project as required. It is evident that the procurement office of GDOE incorrectly notified Z-4 as being the lowest responsive and responsible bidder.

Although GSA recognizes that on 27 July 2009 the GDOE acting Facilities Manager documented that both the alternate bid of Eons and the basic bid of Z-4 were able to complete the project requirement, the GSA on 25 September 2009 issued a memorandum to the acting manager, Facilities Maintenance Division to reevaluate the alternate bid submitted by Eon's. Again, on 07 October 2009 the GSA received a response from the Facilities Maintenance that the alternate bid submitted by Eons met the specifications of the bid.

On 08 October 2009 GSA issued a Notice of Intent of Possible Award to Eons and also indicated on the notice that all materials shall comply with the Technical Specifications at no additional cost during construction stages of the project, Eons concurred.

Please be advised that pursuant to the Guam Department of Education Procurement Regulations Section 5.3.1.1., and the 5GCA Chapter 5 §5304 both the regulations and the statute requires that the bidder **shall** submit a one-hundred percent (100%) performance bond prior to execution of a contract.

Therefore, it is the understanding of the GSA/GDOE that an award was not issued to Z-4 and that the GDOE incorrectly rejected the alternate bid submitted by Eons as being the lowest responsive and responsible bidder.

**Issue D:**

You stated: Under the procurement law of Guam, an award of contract may be canceled or revised only when the procurement officer, after consultation with the Attorney General, determines that the proposed award is in violation of law. Moreover, the GSA's attempt to revoke the award is insufficient to terminate the award of the contract to Z-4.

**Response:**

Again, it must be noted that an award cannot be made until the bidder submits a one-hundred percent (100%) performance bond. Therefore, it is the understanding and position of GSA that consulting with the Office of the Attorney General is not required at this time since no award has been issued to Z-4.

**Issue E:**

You stated: Even if there was a violation, the award of contract to Z-4 should be affirmed. It is in the best interests of the GDOE to affirm the award because Z-4 has already begun performance of the contract, including obtaining the proper permits and planning performance of the project with third parties.

**Response:**

Again, Z-4 should not have proceeded with preconstruction meetings or acquiring permits without an award and most importantly Z-4 is aware that they have not submitted the performance bond as required by the regulations and statute. The Z-4 being a construction company should be fully aware that a contract shall not be issued without providing a one-hundred percent (100%) performance bond as required by law. Therefore, it is the position of GSA that Z-4 has not been awarded a contract for GPSS IFB-008-2009 and neither, the government nor GDOE is liable for any cost incurred by Z-4.

Please note that by correcting the bid award based on the evaluation dated 27 July 2009 and the reevaluation dated 07 October 2009 by the acting manager of Facilities Maintenance that the alternate bid submitted by Eons met the requirements of the bid and that a savings of \$80,901.50 is in the best interest of the territory and the GDOE.


Therefore, the Revised Bid Status dated 09 October 2009 (the GDOE procurement incorrectly disqualified the alternate bid submitted by Eons) issued to Z-4 is sustained; the GSA letter dated 09 October 2009 to Z-4 indicating that the Notice to Proceed dated 06 August 2009 is null and void is sustained; GDOE is not responsible to pay for any costs incurred by Z-4 relative to GPSS IFB-008-2009 since no award was made to Z-4.

Page 6 of 6  
Protest - Z-4  
10/22/09

It is the final determination of this office that your protest is without merit based on our factual evaluation that the alternate bid submitted by Eons Enterprises is the lowest responsive and responsible bidder as also noted by the Manager, Facilities Maintenance Division.

Upon receipt of this notice you are notified of our final determination and that you have the rights to seek administrative or judicial review within the confines of the law.

Sincerely,

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

cc: Attorney General, Office of the Attorney General  
Superintendent, Guam Department of Education  
Legal Counsel, Guam Department of Education

Felix P. Camacho  
Governor



# GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam  
148 Route 1 Marine Drive, Piti, Guam 96915  
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz  
Lt. Governor

October 29, 2009

Aaron R. Jackson  
Law Offices  
Mair, Mair, Spade & Thompson, L.L.C.  
238 a.f.c Flores Street  
Suite 801, DNA Building  
Hagatna, Guam 96910

NOV 03 2009

TIME: 11:34  
RECD BY: [Signature]

Re: Bid Protest for Invitation for Bid No.: GPSS IFB-008-2009 (Re-Bid)  
(Oceanview Middle School Gymnasium Repairs)

Dear Mr. Jackson:

Buenas Yan Hafa Adai! This is to acknowledge receipt of your letter dated 29 October 2009 submitting additional information discovered during your investigation, specifically the statement written by Mr. Roque A. Alcantara.

Attached is a copy of a memorandum to file written by Albert Garcia, Buyer Supervisor II, from Guam Department of Education (GDOE), dated August 28, 2009. According to the statement written by Mr. Garcia, it was he and Ms. Edith Pinaula from GDOE that were present during the bid opening of GPSS IFB-008-2009. No other GDOE representatives were present during the bid opening.

In addition, attached is another memorandum to file written by Mr. Garcia on 29 October 2009, that he addressed the concern about Eon's alternate bid to Mr. Roke Alcantara and the response from Mr. Roke Alcantara was "the invitation for bid did not allow for an alternate bid" therefore, did not meet explanation requirement. Based on the statement made by Mr. Garcia, Mr. Alcantara was aware of the alternate bid submitted by Eon's which indicated on the top of the page "alternate bid".

Attached is a copy of a memorandum dated 16 July 2009, written by Taniguchi Ruth Makio Architects (TRMA) that indicates the subject matter to be "Bid Submittal Evaluation". In the context of the memorandum you will notice that Mr. Mark Ruth indicated "We have reviewed the product submittals provided by the two "low" contractor bidders. The low "basic bid" is Z4 Corporation and the low "alternate bid" is Eons Corporation." This memorandum further proves that Eon's alternate bid did contain the product specifications of Eon's alternate bid.

On 27 July 2009 the acting Facilities Manager, Mr. Billy Cruz addressed a memorandum to the Administrator, Procurement and Supply, which at the time was Mr. Roke Alcantara. In the context of the memorandum Mr. Cruz indicated "It is noted that the Alternate Bid amount of Eons Enterprise Corp. is lower than the lowest basic bid amount submitted by Z4 Corporation, however the method of award



for these bids is dependent on your office. Furthermore, based on the assessment of the existing manpower and financial capability of these contractors, it is our belief that they could complete the project as required. (Refer to attached copy). Therefore, I am quite surprised of the written statement made by Mr. Roke Alcantara dated 29 October 2009. The statement of Mr. Alcantara is unfounded based on factual evaluation of the procurement records for GPSS IFB-008-2009.

It is important to understand that even the acting Facilities Manager, GDOE recognized and noted on his memorandum dated 27 July 2009 that Eon's alternate bid was lower than the basic bid amount submitted by Z-4 Corporation. Throughout the procurement records you will find factual documents indicating that Eon's alternate bid was actually evaluated by both the TRMA and the acting Facilities Manager.

Therefore, the allegations made wherein Eon's failed to submit an explanation of their alternate bid at the time of bid opening is not true. Based on the statement made by the Buyer Supervisor II, Mr. Albert Garcia Eon's did submit the explanation for their alternate bid at the time of bid opening but was challenged by Mr. Roke Alcantara who then erroneously disqualified Eon's alternate bid submittal.

Please be advised that upon receipt of this notice you are notified of the final determination of this office and that your protest is without merit based on factual evaluation of the procurement file for GPSS IFB-008-2009. You are hereby notified that you have the rights to seek administrative or judicial review within the confines of the law.

Sincerely,



CLAUDIA S. ACFALLE  
Chief Procurement Officer

cc: Attorney General, Office of the Attorney General  
Superintendent, Guam Department of Education  
Legal Counsel, Guam Department of Education

August 28, 2009

Memorandum to File

From: Buyer Supervisor II

Subject: Correction of award

Reference: IFB 008-2009

This memo to file is to correct the procurement error made in regards to the evaluation of bids submitted on June 24, 2009.

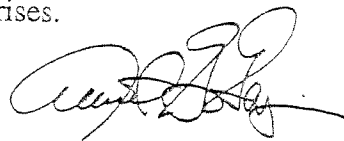
Published bid opening date was June 24, 2009 at 10:00am in which 4 bids were submitted. During the bid opening it was noted that Eon's Enterprises were the only Bidder's that submitted a Basic Bid and Alternative Bid. Please note that in attendance of the bid opening, were myself, one (1) procurement staff for tabulation as required, and the representatives of Bidder's.

Upon evaluation of the bids that were submitted, at the time, it was determined that Z4 Corporation be awarded the bid, being the lowest bidder. Eon's Enterprises requested for reconsideration of the evaluation and award because they had submitted an Alternate Bid, but was rejected for failing to explain their Alternate Bid Offer.

After further review, it was determined that during the bid opening, Eon's Enterprises did in fact submit and had given the full explanation as to the breakdown of the offer to their submittal of their Alternate Bid as stipulated in the requirements of the bid, therefore, making a justifiable request for reconsideration of the award.

After consultation with the GSA on the clarification of such justification, I, therefore, stand corrected and am making this official statement and that no coercion has been taken to validate the award.

Recommendation for the award be made to Eon's Enterprises.



ALBERT G. GARCIA

October 29, 2009

Memorandum to File

From: Buyer Supervisor II  
Subject: Response to action taken on award  
Reference: IFB 008-2009

On June 24, 2009, the aforementioned reference opened as schedule at 10:00 am.

There were four bids that were submitted and accepted prior to the bid opening date/time as scheduled, namely:

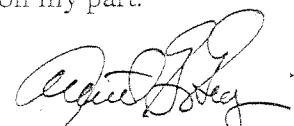
1. Loyal Pacific
2. Z4 Corporation
3. Eon's Enterprises
4. HUBTEC International Corp.

In attendance of the bid opening, a representative from each Company was in attendance except for Loyal Pacific Corp., inclusive of attendees were Procurement Personnel (Al Garcia, Buyer Supervisor II, Edith Pinaula, Buyer II) as required.

Upon completion of the Bid Opening, each company representative was asked to initial by their company name for verification.

After further review, the first recommendation for award was to Eon's Ent., who had submitted the Basic bid and a alternate bid price with the actual breakdown and that the award be made on the alternate bid price, however, when it was brought to the attention of the Administrator, Supply Management, he indicated that it was unacceptable because we never asked for an alternate bid price. Upon verification on the General Terms and Conditions, Item #9, titled, "Bidder's Price" was marked off. It states in part, "The Government will consider not more than two (2) (Basic and Alternate) item prices and the Bidder shall explain fully each price..."

In addition, he also stated that, "He reviewed the documents and that they don't meet the specifications." Furthermore, after inputting the information on the requisition and making the award to Z4, I chose not to print the Purchase Order because I was waiting for Z4 to provide me a Performance Guarantee Bond ten days after notification of award and that I will be able to make necessary changes if Z4 failed to provide the required documents, however, I was instructed to print the Purchase Order. Since then no further action was taken on my part.



ALBERT G. GARCIA

**MEMORANDUM**

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To Mr. Rod Traya

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Company Guam Public School System

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cc:

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From Mark Ruth

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Date July 16, 2009

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Subject Oceanview Gymnasium Renovation,  
Bid Submittal Evaluation

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Dear Rod,

We have reviewed the product submittals provided by the two "low" contractor bidders. The low "basic bid" is Z4 Corporation and the low "alternate bid" is Eons Corporation.

Each bidder submitted catalog data for products they propose use. The attached chart compares the submitted products by the two contractors. Only those products submitted by one or the other of the two contractors are discussed; for products not submitted, it is assumed that the contractor intends to comply with the specification.

The following are general comments:

- a. Most of the substitutions are for products made in China or Taiwan. If there is a buy-American clause in the GPSS front-end documents, they would not qualify.
- b. Several substitutions are proposed by both the Z4/basic bid and Eons/alternate bid.
- c. In many cases, the catalog material provided is incomplete, not translated into English, or otherwise inadequate for the level of review needed for approval. To assist GPSS in their bid evaluation, we have reviewed the information that was provided and indicate in the Comments columns whether we assume the product is acceptable or unacceptable. These are preliminary judgements and we must reserve the right to disapprove a full submittal when it is made.
- d. These submittals are not sufficient for "construction" submittal approval. Because our specification is based for the most part on U.S. products, during construction we will only review information provided in English, using English units of measurement, and meeting the U.S. testing standards specified. As such, the burden is on the contractor to obtain information to prove his product is a valid substitution and make a proper construction submittal.

Returned herewith are the submittal files you provided.

OCEANVIEW GYMNASIUM: BID SUBMITTAL REVIEW

(7/16/09)

<u>PRODUCT</u>	<u>Z4 BID</u>	<u>COMMENTS</u>	<u>EONS ALTERNATE</u>	<u>COMMENTS</u>
07120 Elastomer Roof		per spec	Gaco	Made in U.S., silicon coating is a substitution of system, (acrylic specified). Additional information required for review. Assume is unacceptable.
08100 Metal Doors	Mexin	Made in China, substitution acceptable.	Mexin	Made in China, substitution acceptable.
08210 Wood Doors		per spec	Mexin	Substitution, made in China. No information provided, assume is acceptable.
08310 Access Doors		per spec	Mexin	Substitution, made in China, inadequate information, assume is acceptable.
08330 Overhead Coiling Doors		per spec	Mexin	Substitution, inadequate information submitted to determine construction and if will meet windload. Assume is unacceptable.
08710 Hardware	Stanley	per spec	Power	Substitution, made in Taiwan. Inadequate information submitted to review. Assume is unacceptable.
09625 Athletic Flooring	Taraflex	per spec	Lesutan	Substitution, made in China. Catalog data not translated, so cannot compare to spec. Samples appear acceptable.
09650 Resilient Flooring		per spec	Regent	Substitution, made in China, 1/16" thickness vs. 1/8" per spec. Unacceptable product.
09900 Painting	Sherwin Williams	per spec	Sherwin Williams	per spec
10500 Lockers	Lyon	per spec	Hallowell	Substitution, information submitted for incorrect size lockers, no door numbers indicated. Assume is acceptable.

OCEANVIEW GYMNASIUM: BID SUBMITTAL REVIEW

(7/16/09)

<u>PRODUCT</u>	<u>Z4 BID</u>	<u>COMMENTS</u>	<u>EONS ALTERNATE</u>	<u>COMMENTS</u>
11480 Scoreboard	Electro-Mech	same product as Eons, see their comments.	Electro-Mech	Dimensions differ, reversible panels required for volleyball and wrestling, captions not backlighted, no provisions for timing servers (delay of game), no mesh protection. Product not acceptable.
12760 Telescopic Bleachers	Synergy	Made in U.S., substitution acceptable.	Synergy	Made in U.S., substitution acceptable.
15415 Electric Water Cooler		per spec	Haws	Made in U.S., substitution acceptable.

OCEANVIEW MIDDLE SCHOOL GYM RENOVATION

ABSTRACT OF BIDS

BASIC BID

CONTRACTOR	AMOUNT	REMARKS
Z4 CORP.	\$ 810,000.00	For Technical Evaluation
HUB TEC	\$ 868,000.00	Same
LOYAL PACIFIC CORP.	\$ 899,970.00	Same
EONS CORP.	\$ 998,578.10	Same

ALTERNATE BID

CONTRACTOR	AMOUNT	REMARKS
Z4 CORP.	NO BID	
HUB TEC	NO BID	
LOYAL PACIFIC CORP.	NO BID	
EONS CORP.	\$ 729,098.50	For Technical Evaluation

Note: Designer's assistance is needed for Technical Evaluation.



## FACILITIES AND MAINTENANCE DIVISION

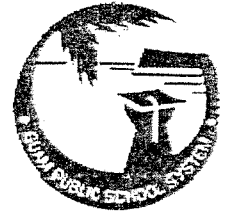
GUAM DEPARTMENT OF EDUCATION

P.O. BOX DE

Hagåtña, Guam 96932

Telephone: (671) 475-0611 thru 9

Fax: (671) 472-7040



BILLY P. CRUZ  
Acting Manager

Nerissa Bretania-Underwood, Ph.D.  
Superintendent of Education

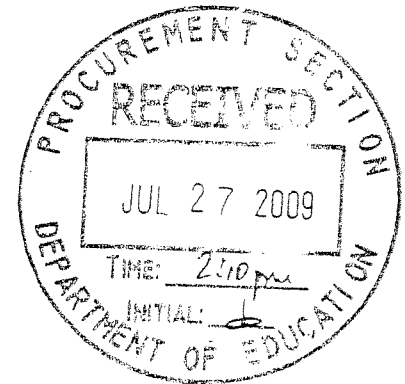
July 27, 2009

### MEMORANDUM

To: Administrator  
Procurement and Supply

From: Manager

Subject: Oceanview Middle School, Gymnasium Repairs  
GPSS IFB No. 008-2009



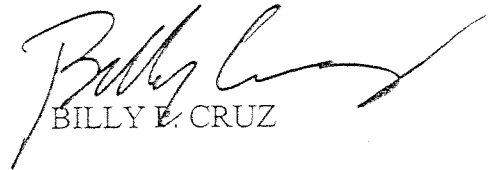
Returning herewith are bid documents for the above project with our findings/comments as follows:

- a. As to the administrative bid documents required, four (4) bidders basically complied with the requirements (subject to your final evaluation/ decision).
- b. Based on their documents submitted and based on previous services with these contractors, the three (3) except for Hub Tec International Corporation, had been doing projects directly with the Guam Department of Education and performance had been "Satisfactory".
- c. For Basic Bid, Z4 Corporation, submitted the lowest bid amount among the four (4) contractors, and Eons Enterprise Corporation, was the only one that submitted both Basic Bid and Alternate Bid.

It is noted that the Alternate Bid amount of Eons Enterprise Corp. is lower than the lowest basic bid amount submitted by Z4 Corporation, however the method of award for these bids is dependent on your office. Furthermore, based on the assessment of the existing manpower and financial capability of these contractors, it is our belief that they could complete the project as required.



Also attached herewith are the comments of TRMA (A& E who prepared the Technical plans and Specifications) on the catalogue or material brochures which contractors intend to use if awarded this project. According to TRMA, these are just preliminary judgements and these submittals are not sufficient for "construction" submittal. Final construction submittal will be required of contractor once award is made.

  
BILLY E. CRUZ



Narbon Arraola-Shafer, Ph.D.  
Superintendent of Education

# OFFICE OF SUPPLY MANAGEMENT GUAM DEPARTMENT OF EDUCATION

Mannual F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001



Salvatore E. Sgambellini  
Deputy Superintendent, Finance and Administrative Services

Roque A. Alcántara  
Administrator, Supply Management

## BID STATUS

August 06, 2009

Z-4 Corporation  
P.O. Box 23543  
GMF, Guam 96921  
Tel: (671) 898-4855  
Fax: (671) 649-0322

Attn: Armando Aragon

Reference: Oceanview Middle School Gymnasium Repairs  
Formal Bid: GPSS IFB 008-2009 (Re-Bid)

Dear Mr. Aragon,

Buenas Yan Saludas, The following information is provided for your perusal and is the evaluation results of the aforementioned reference.

After further review of the bid documents, the award is made to the lowest most responsive and responsible bidder.

Recommendation for award: Z-4 Corporation  
P.O. Box 23543  
GMF, Guam 96921  
Tel: (671) 898-4855  
Fax: (671) 649-0322

Total Bid Award: \$810,000.00

Please be advised that this shall serve as notice for you to submit a Performance Guarantee Bond as stipulated in the original bid document in the amount of EIGHT HUNDRED TEN THOUSAND AND NO CENTS (\$810,000.00) on or before August 14, 2009 by the Close of Business Day (5:00PM).

Please acknowledge receipt of this document and return via fax to Attn: A. Garcia, Buyer Supervisor II at 472-5001.

Should you have any questions or concerns regarding this matter, please do not hesitate or feel free to call me at 300-1581.

Sincerely,

ROQUE A. ALCANTARA  
Administrator, Supply Management

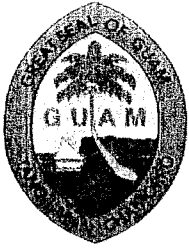
Acknowledge Receipt:

Name: (Sign/Print)

08-06-09  
Date:

2:32 PM  
Time:

EXHIBIT 3



**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



*Roque A. Alcantara  
Administrator, Supply Management*

*Nerissa Bretania-Shafer, Ph.D.  
Superintendent of Education*

July 30, 2009

**MEMORANDUM**

To: Administrator, Supply Management

From: Buyer Supervisor II

Subject: Analysis and Recommendation

Reference: Oceanview Middle School Gymnasium Repairs.  
**Formal Bid: GPSS IFB 008-2009 (Re-Bid)**

Referenced bid was published in a local news print media on Thursday, June 04, 2009 with an opening date on Wednesday, June 24, 2009 at 10:00am.

Twenty (20) prospective bidders acquired the bid invitation packages, however, only Four(4) submitted their offer, namely:

1. Loyal Pacific
2. Z4 Corporation
3. Eons Enterprises
4. HUBTEC International Corporation

Eons Enterprises submitted a primary and alternative bid, however, it is noted that items offered are of foreign products therefore, allowing for 15% increase for evaluation purposes only extending their offer above the bid price offered from Z4 Corporation.

After further review, confirmation on 10% Bid Guarantee Bond for all prospective bidders are qualified,



**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1580  
Fax: (671) 472-5001*



Roque A. Alcantara  
Administrator, Supply Management

Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

August 6, 2009

**NOTICE TO PROCEED**

To: **Z4 Corporation**  
P.O. Box 23543  
GMF, Guam 96921  
Tel: (671) 649-8121  
Fax: (671) 649-5737

Project Name: Renovation of Oceanview Middle School Gymnasium

Contract Number: GPSS IFB 008-2009 PO#200901666

Contract Amount: \$810,000.00

**Gentlemen:**

**Hafa Adai**, As agreed, you are hereby notified to commence work on the above contract on **August 10, 2009** and you are to complete all work in the contract within **180** calendar days. The completion date of this project is **February 5, 2010** with a warranty period of one (1) year.

Should you fail to complete the project on the completion date, you will be assessed **Liquidated Damages of \$400.00 per calendar day**, as stated in the contract.

In case of unforeseeable delay, you are required to notify the Guam Department of Education Procurement Office in writing. Please acknowledge receipt of this document and return faxed acknowledgment to our office at (671) 472-5001. Please provide a schedule as when you will begin work. Should you have



Date: August 13, 2009

Mr. Roque A. Alcantara  
Administrative Supply Management  
Office of Supply Management, Guam Department of Education  
2<sup>nd</sup> Floor Suite B-202, M.L. Guerrero Adm. Building  
Hagatna, Guam 96910

Re: Z-4 Corporation  
Performance and Payment Bond  
Project: Oceanview Middle School Gymnasium Repairs

Dear Mr. Alcantara,

Pursuant to the request of Z-4 Corporation, please be advised that their application for issuance of Performance/Payment Bond on above reference project in the amount of \$ 810,000.00 were approved.

Issuance of the bond policy is subject to submission of required underwriting documentations by Z-4 Corporation as stated in our letter of approval forwarded to their company.

Should you have other question regarding this matter, please feel free to call me at this numbers;  
472-3880, 472-8804-05.

Yours truly,

Victor De Roca  
EVP

11:10 AM  
RUB

Z4 CORPORATION  
P.O BOX 23543, BARRIGADA  
GUAM, 96921  
TEL. No.: 646-0874

PROJECT: OCEANVIEW MIDDLE SCHOOL GYMNASIUM REPAIR  
SUBJECT: MINUTES OF MEETING (CIP CONFERENCE ROOM)  
AUGUST 20, 2009, 9:00 AM

ATTENDEES:

- |                        |          |
|------------------------|----------|
| 1. Mr. Cedric Cruz     | TRMA     |
| 2. Mr. Billy Cruz      | DOE      |
| 3. Mr. Rod Traya       | DOE      |
| 4. Ms. Lynda Hernandez | OMS      |
| 5. Ms. Cheryl Gumabon  | OMS      |
| 6. Mr. Julisis Nucum   | Z4 Corp. |
| 7. Mr. Pete Valencia   | Z4 Corp. |
| 8. Mr. Armando Aragon  | Z4 Corp. |

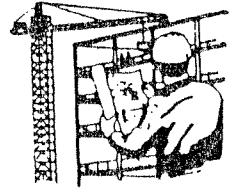
ITEM NO.	DISCUSSION	ACTION TAKEN
1.	Z4 Corporation will submit project progress schedule and schedule of values while building permit is on process. Project progress schedule is base on August 20, 2009 date and we will revised once the bldg. permit issued.	Noted
2.	Z4 will visit the site and draw a plan for the installation of safety fence and submit to TRMA for approval. This is to ensure the safety of the students and public during construction period.	Noted
3.	Z4 Corporation can't start any activity until the building permit was released which is expected by September.	Noted
4.	Ms. Cheryl Gumabon, OMS Principal, is asking the completion of the project which is 180 calendar days.	Noted
5.	All transaction is through TRMA in regards of the Oceanview Middle School Gymnasium Repair Project and Mr. Cedric Cruz is the main point of contact.	Noted
6.	Z4 will give update for building permit while is on process and forward to TRMA, Mr. Cedric Cruz.	Noted
7.	Existing trash bins around the Gymnasium will be relocated to give Z4 Corporation an access during construction period.	Noted
8.	Next meeting will be at the jobsite and schedule after the issuance of	

building permit.

9. Mr. Cedric Cruz recommends that Contractor's submittals are numbered consecutively starting #1. Noted
10. Meeting Adjourned at 10:00 PM.



BUILDING SAFETY  
IS NO ACCIDENT



**BUILDING PERMITS & INSPECTION SECTION  
APPLICATION FOR PERMIT & PLAN REVIEW**

Application Number: BO9000699

Permit Number: \_\_\_\_\_

**IMPORTANT:** Applicant must complete all items in sections I, II, III, IV

**I. LOCATION OF BUILDING**

Location 184 (No) ERSKIN DRIVE, AGAT GU 96928 (Street) Zoning District R1  
 Between \_\_\_\_\_ (Cross Street) Lot # \_\_\_\_\_ and \_\_\_\_\_ (Cross Street)  
 Subdivision \_\_\_\_\_ Lot # 142 Block \_\_\_\_\_ Lot Size \_\_\_\_\_

**II. TYPE AND COST OF BUILDING**

**A. Type of Building**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> New Building    | <input type="checkbox"/> Retaining Wall | <input checked="" type="checkbox"/> Repair |
| <input type="checkbox"/> Foundation Only | <input type="checkbox"/> Other _____    | <input type="checkbox"/> Demolished        |
| <input type="checkbox"/> Shell Only      | <input type="checkbox"/> Add            | <input type="checkbox"/> Reconstructed     |
| <input type="checkbox"/> Fence Wall      | <input type="checkbox"/> Alter          | <input type="checkbox"/> Relocated         |

Group Occupancy GOV'T. E Type of Construction \_\_\_\_\_ Foundation \_\_\_\_\_

152' x 132' x 30'  
Dimension of Building

**B. Ownership**

- Private (individual, corporation, non-profit institution, etc.)  Public (Federal, State, or Local Government)

**C. COST**

Cost of Improvements \_\_\_\_\_  
 electrical \_\_\_\_\_  
 plumbing \_\_\_\_\_  
 heating, air conditioning \_\_\_\_\_  
 other (elevator, etc.) \_\_\_\_\_

Nonresidential - Describe in detail proposed use of buildings, e.g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for department store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use.

OCEAN VIEW MIDDLE SCHOOL  
GYMNASIUM REPAIR

TOTAL COST OF IMPROVEMENT \$ 810,000.00

**D. PROPOSED USE - (For "Wrecking" most recent use)**

**Residential**

- One family  Garage  
 Two or more families

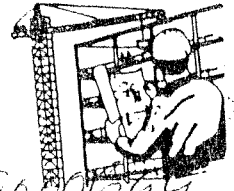
**Non-Residential**

- Amusement, Recreational  Office, bank, professional  
 Church, other religious  Public utility  
 School, library, other educational





BUILDING SAFETY  
IS NO ACCIDENT



Application Number: BD9000694

Permit Number: \_\_\_\_\_

**BUILDING PERMITS & INSPECTION SECTION  
APPLICATION FOR PERMIT & PLAN REVIEW**

TO BE FILLED OUT BY BUILDING PERMIT STAFF ONLY

**V. PLAN REVIEW RECORD**

Plans Review Required	Date Plans Started	Date Plans Approved	Comments
Architectural			
Structural			
Mechanical/Plumbing			
Flood Control			
Electrical			
HPCC			
Hydraulics/Civil			
Highway Encroachment			
Rights of Way			
Traffic Engineering			

**VI. ZONING PLAN EXAMINATION RECORD TO BE DONE BY DLM**

District TR-1 EXISTING SCHOOL

Use INTERIOR LEASE - Gymnasium

Front Yard \_\_\_\_\_

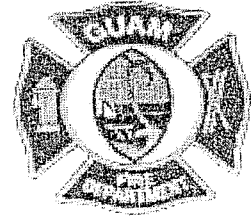
Side Yard Interior only

Rear Yard \_\_\_\_\_



# GUAM FIRE DEPARTMENT DIPATTAMENTON GUAFI GUAHAN

*Plan Review Section*



Fire Prevention Bureau  
Plan Review Application  
One Stop Office, Upper Tumon  
Tel: (671) 646-8810  
Fax: (671) 646-3130

Applicant No:	B09000699
GFD Review No	09-102
Date Submitted	8/24/2009
Date Approved	8/26/2009
GFD Reviewer	JA Manibusan, Captain

Owner	Guam Department of Education	Contractor	Z4 Corporation
Dbn		Address	PO Box 23543, GMF Guam 96921
Address:	PO Box DE Hagatna, Guam 96910	Contact No	6460874
Contact No.	3001580	Sub-Contractor	
Location of Project	Ocean View Middle School, Agat Guam RENOVATION AND REPAIR OF GYMNASIUM		

Architect	TRMA Architects
Address	PO Box EA Agana, Guam 96910
Contact No.	4758772

Fire Department Access and Water Supply	Yes/No	Comments
a. Fire Department Access		
b. Fire Hydrants and Water Main Supply		
c. Fire Hydrant Flow Requirements		
d. Hydrostatic Test		
e. Hydrant Location		

Fire Extinguishing Systems	Yes/No	Comments
a. Wet Pipe System		
b. Dry Pipe System		
c. Pre Action System		
d. Deluge System		
e. Combination Dry Pipe and Pre Action System		
f. Special Types		

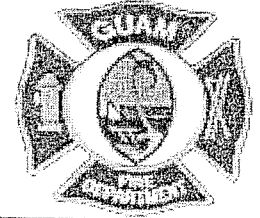
Standpipe Hose Systems	Yes/No	Comments
a. Class I		
b. Class II		
c. Class III		

Hydraulic Specifications	Yes/No	Comments
a. Sprinkler Systems Hydraulic Calculations		
b. Fire Pump Specifications		
c. Jockey / Booster Pump Specifications		

Commercial Cooking Operations	Yes/No	Comments
a. Fixed Wet Chemical Systems		



**GUAM FIRE DEPARTMENT**  
**DIPATTAMENTON GUAFI GUAHAN**  
*Plan Review Section*



b. Fixed Dry Chemical Systems		
-------------------------------	--	--

Fire Alarm and Detection Systems	Yes/No	Comments
a. Alarm Initiating Devices	YES	EXISTING
b. Alarm Indication Devices	YES	EXISTING

Acceptance Test Certification Documents	Yes/No	Comments
a. Fire Alarm Installation and Test Certification		PROVIDE FOR FINAL OCCUPANCY INSPECTION
b. Fire Sprinkler Installation and Test Certification		
c. Fire Pump Installation and Test Certification		
d. Commercial Cooking Installation Certification		
e. Liquid Petroleum Gas Installation Certification		

Additional Comments
1. Shall provide the approved jobsite plans during the final occupancy inspection
2. During the construction of the building and until the permanent fire-extinguishing system has been installed and is in service, Fire-protection shall be provided in accordance with Article 87, Section 8704 of the Uniform Fire Code.
3. Portable fire extinguishers shall be provided every 3000 sq. ft. with a minimal travel distance of 75 ft. shall be mounted and labeled
4. Means of Egress and all its appurtenances shall apply and be provided in accordance to Article 12
5. All Acceptance Installation and Test Certification Documentation shall be licensed under the Guam Contractors License Board
6. Schedule final occupancy inspection upon completion with GFD Prevention Bureau at One Stop.
7. Subject to further requirements if determined by GFD Code Enforcement Section.

*Note: Any changes, additions or alterations to approved plan without proper consultation with the Fire Prevention Bureau shall cause delay in the issuance of the Occupancy*

 Captain J.A. Manibusan Guam Fire Department Representative	 Armando Leon Aragon, Project Engineer Acknowledge By
8/26/2009	8/26/2009
Date	Date



A99- 1301166

# OFFICIAL RECEIPT

GOVERNMENT OF GUAM  
DEPARTMENT OF ADMINISTRATION  
FINANCIAL MANAGEMENT DIVISION  
P.O. BOX 884 HAGATNA, GUAM 96932

## PAID

DATE: 8/26/09  
PAYOR: Z4 CORP  
ADDRESS: GFD INV 0946

AUG 26 2009

TREASURER OF GUAM  
GA

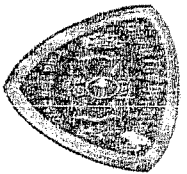
NOT VALID UNLESS OVERPRINTED BY OUR REGISTER/STAMP

### PAYMENT INFORMATION

DESCRIPTION	RESERVED FOR ISSUING OFFICE:	
	ACCOUNT NUMBER	AMOUNT
FP 010		561
ISSUING OFFICE:	PLEASE PAY TREASURER OF GUAM	561
AGENT:	TOTAL DUE	

CASH       CHECK: # 0113com      OTHER: \_\_\_\_\_

FCN-2-2-35



GOVERNMENT OF GUAM  
GUAM FIRE DEPARTMENT  
P.O. BOX 2950 HAGATNA, GUAM 96910

GFD - 0846  
**INVOICE**

DATE: 8/26/09  
PAYOR: Z4 Corporation  
ADDRESS: Banyaga

### PAYMENT INFORMATION

DESCRIPTION	AMOUNT
FP 010	561 00
ISSUING OFFICER <u>Yammylusson</u>	PLEASE PAY TREASURER OF GUAM
FP 12208	TOTAL DUE
	561 00

Remarks: FOR OVERVIEW BYMMSTUM  
Alan Tureau 09-102

GWA EPA Intra-Agency Routing Slip BP# B09000699

GEPA Ref. No.: <b>171-7621</b>	By: R. Joya	Program/Section: WPC	Date Routed: <b>08-21-09</b>
Project Name/Location: <b>ARSKIN DRIVE, AGOST GWAM (OCEANVIEW M.S. GYM. REPAIR)</b>			
TYPE OF DOCUMENT: <input type="checkbox"/> GLUC Application <input type="checkbox"/> Clearing & Grading <input type="checkbox"/> Grading <input type="checkbox"/> Clearing Permit <input type="checkbox"/> Hardfill Permit <input type="checkbox"/> Building Permit <input type="checkbox"/> Plan Review _____% <input type="checkbox"/> Notice of Violation <input type="checkbox"/> Stockpiling <input type="checkbox"/> Stop Work Order <input type="checkbox"/> Inquiry <input type="checkbox"/> Lot Parceling/Subdivision <input type="checkbox"/> SZC Application <input type="checkbox"/> Wetland Delineation <input type="checkbox"/> Advisory <input type="checkbox"/> Memo(Intra/Inter) <input type="checkbox"/> Other: _____ (Specify)			

ROUTING			APPROVED		DISAPPROVED		HOLD/RESUBMIT	
Program/Section	Date Received	Name of Assignee	Initial	Date	Initial	Date	Initial	Date
<input type="checkbox"/> Water Pollution		Oscar/ Manny						
<input type="checkbox"/> Water Resources								
<input checked="" type="checkbox"/> Safe Drinking Water	<b>8/21/09</b>	<b>Lito</b>	<b>SPM</b>	<b>9/3/09</b>				
<input type="checkbox"/> Individual Wastewater								
<input type="checkbox"/> Monitoring								
<input type="checkbox"/> Environmental Review								
<input type="checkbox"/> Air Pollution								
<input type="checkbox"/> Pesticide								
<input checked="" type="checkbox"/> Solid Waste	<b>9/04/09</b>	<b>Bob</b>	<b>[Signature]</b>	<b>09/11/2009</b>				
<input type="checkbox"/> Hazardous Waste								
<input type="checkbox"/> Hydro Geologist								
<input type="checkbox"/> Chief Engineer		Ivan						
<input type="checkbox"/> Legal Counsel								
<input type="checkbox"/> Administrative Services								
<input type="checkbox"/> Deputy Administrator								
<input type="checkbox"/> Administrator								

Person/Agencies/Companies Involved:		
Name	Address	Tel./Fax No.
<b>ARMANDO ARAGON</b>	<b>24 CORPORATION</b> P.O. BOX 23543, GWF GU 96921	<b>898-4855 / 649-0322</b>

**Comments/Recommendations/Actions:**

WPC ① Need to submit SW disposal plan.  
 ② Need to provide as-built <sup>drawing of</sup> drainage system.

**SDN ① MUST SUBMIT ANALYTICAL TEST RESULTS OF BSET & TEST PRIOR TO ISSUANCE OF OCCUPANCY PERMIT**

**② DISINFECTION OF WATER SYSTEM MUST BE COORDINATED WITH GEPA SDW STAFF**

**SWM = See Attachment 10**



**Z4 Corporation**

P.O. Box 23543 • GMF Barrigada, Guam 96921  
Tel No. (671) 646-0874 • Fax No. (671) 649-0322  
Email: z4corporation@yahoo.com

August 14, 2009

Mr. Roque Alcantara  
Administrator, Supply Management/Procurement  
Guam Public School System

**FAXED**  
8/14/09  
1:34 pm

Project : Oceanview Middle School Gymnasium Repairs

Formal Bid : GPSS IFB 008 – 2009

R E : Request for Extension of Time for Performance Bond

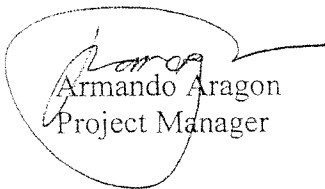
Sir :

Our Performance Bond was already approved from our insurance company as per their letter submitted to your office yesterday

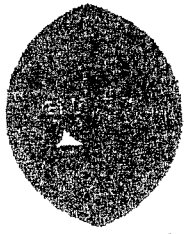
We would like to request an extension of time in submitting the final performance bond.

Your kind consideration on the aforementioned request is highly appreciated.

Sincerely yours,

  
Armando Aragon  
Project Manager

**EXHIBIT 6**



Nerissa Bretani-Shafer, Ph.D.  
Superintendent of Education

# OFFICE OF SUPPLY MANAGEMENT GUAM DEPARTMENT OF EDUCATION

Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001



Roque A. Alcantara  
Administrator, Supply Management

August 14, 2009

Eon's Enterprises Corporation  
118 E. Marine Drive, Suite B2 Eons Comm Building  
Dededo, Guam 96929  
Tel: (671) 637-6869  
Fax: (671) 637-6871

Attn: Frank F.C. Wu

Reference: Oceanview Middle School Gymnasium Repair  
Form Bid: GPSS IFB 008-2009 (Re-Bid)

**Buenas yan Saludas,** This letter is in response to your letter dated August 06, 2009 and received on the same.

In your letter, you indicate that *"The submission for Basic and Alternate bid is applicable as checked in the box no. 9 (BIDDER'S PRICES) of the invitation to bid and must be considered with most favorable to the government."*

Please be advised that it also states, **"Failure to explain this requirement will result in rejection of the bid."**(See Section 23)

Pursuant to **Section number 9** of the **General Terms and Conditions Sealed Bid Solicitation and Award**, submission of a Basic and Alternate bid is acceptable, however, you failed to explain the reasoning behind the offering of the Alternate Bid, therefore, your bid is hereby rejected in its entirety.

Should you have further concerns regarding this matter, please call me at 300-1581.

ROQUE A. ALCANTARA  
Administrator, Supply Management

Acknowledge Receipt:

MAX MANDABAT  
(Print and Sign)  
8-19-08  
(Date) 8:10 AM/PM  
(Time)

**EXHIBIT 7**



# EONS ENTERPRISES CORPORATION TABLE AND SPREADSHEET

Materials Offered for the Basic and Alternate bids:		Oceanview Gymnasium Repairs (FB 008-2009 (Re Bid)		Remarks		difference in price basic bid /alternate	
Item	Major Item/Materials	Basic Bid Materials	Alternate Bid Materials				
1	Allethic-Resilient flooring	1) MRI Polytex Gym, 7mm PU \$ 167,760.00	Lasutan BP2, 7mm PU \$ 58,716.00	Made in London, good quality. Too Expensive Floor system is available of range of specs High Shipment /Freight Expenses! Longer time in shipping and handling 60days		\$ 109,044.00	
2	Bleachers	Irvln Telescopic Seating Co. Irvln Model 4500 \$ 64,000.00	Synergy Telescopic Bleachers. \$ 40,000.00	Made in China, in compliance with the specs. Inexpensive Longer warranty		\$ 24,000.00	
3	Metal Doors/ Frames Roof up doors and	Dormat USA \$ 90,160.00	Mexin \$ 61,520.00	Made in USA, in compliance w/ the specs High price, good quality		\$ 28,640.00	
4	Panic devices/closers	Stanley e.g. door closer, panic device	Power Note: This is included at the doors accessories e.g. door closer, panic device	Made in Taiwan Meets the specs and inexpensive! Inexpensive shipment and delivery Simple mechanism and maintenance friendly UL approved		\$ 2,103.00	
5	Resilient Flooring, vinyl tiles	Armstrong, 12"x12"x1/8" 12x12x1/8" \$ 11,917.00	Regent 12x12x4mm \$ 9,814.00	Standard quality and materials, special order		\$ 2,103.00	
6	locker	Hallowell Brand	Hallowell Brand	Made in USA Meets the specs		\$ -	
7	Scoreboard	Scoreboard 2655	Haws	Made in USA Meets the specs		\$ -	
8	Drinking Fountain	Haws	Gacorool	Made in USA Meets the specs		\$ -	
9	Waterproofing	Gacorool	Gacorool	same basic ans alternate materials same basic ans alternate materials same basic ans alternate materials		\$ -	
10	Paints	Gypsum boards and metal studs		same basic ans alternate materials same basic ans alternate materials		\$ -	
11	Gypsum boards and metal studs			same basic ans alternate materials		\$ -	
12	other materials necessary to complete the project			major items difference basic vs alternate (Basic is higher)		\$ 153,777.00	

**BERMAN  
O'CONNOR &  
MANN**  
Attorneys at Law

Suite 503, Bank of Guam Building  
111 Chalan Santo Papa  
Hagátña, Guam 96910  
Tele. 671-477-2778  
Fax 671-477-4366  
Website: [www.pacific-lawyers.com](http://www.pacific-lawyers.com)  
Email: [gatorlaw@guam.net](mailto:gatorlaw@guam.net)

September 14, 2009

VIA HAND DELIVERY

Office of the Public Auditor  
Suite 401, DNA Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

Attention: Bob Cruz, Esq.  
Hearing Officer

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

SEP 14 2009 *ase*  
TIME: 1:45 pm  
BY: lwh  
FILE No. OPA-PA 09-006

**Re: Dismissal from Procurement Appeal  
File No. OPA-PA-09-006**

Dear Mr. Cruz:

Based on the representation of GSA/DOE that no award has been made of the above procurement contract and bidding process, we have decided to withdraw the referenced Appeal of Eons Enterprises Corporation File No. OPAPA-09-006 as premature, effective immediately.

Please contact us if you have any additional information on this matter.

Very truly yours,



Daniel J. Berman

E:\Christine\DJB\Ltrs\Office of the Public Auditor 091409.doc



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**EXHIBIT 9**

GENERAL SERVICE AGENCY  
(Ahensian Setbision Hinirat)  
Government of Guam  
P.O. Box FG, Agana, Guam 96910  
Tel: 475-1707-13 Fax: 472-4217 / 475-1716/27

Accountability \* Impartiality \* Competence \* Openness \* Value

## BID STATUS

Date: OCTOBER 9, 2009

Z-4 CORPORATION

P. O. BOX 23543

GMF, BARRIGADA, GUAM 96921

(TEL): 898-4855 (FAX): 649-0322

**ACKNOWLEDGEMENT COPY**

**RECEIVE BY** \_\_\_\_\_

**DATE** \_\_\_\_\_

BID INVITATION NO.: GSA/DOE IFB-008-2009

OPENED: JUNE 24, 2009

DESCRIPTION: GSA/DOE-008-2009, OCEANVIEW MIDDLE SCHOOL GYMNASIUM REPAIRS  
FOR DEPARTMENT OF EDUCATION

The following is the result of the above-mentioned bid. Refer to the items checked below.

[ ] Cancelled (in its entirety), or partially cancelled due to:

- ( ) Insufficient funds;
- ( ) Change of specifications; or
- ( ) Insufficient number of bidders.

[ XX ] Rejected due to:

**REVISED COPY**

- ( ) Late submission of bid;
- ( ) No bid security or insufficient bid security amount submitted; as required by section 11 of the

LAW OFFICES  
MAIR, MAIR, SPADE & THOMPSON, L.L.C.  
238 A.F.C. FLORES STREET  
SUITE 801, DNA BUILDING  
HAGÁTÑA, GUAM 96910

TELEPHONE (671) 472-2089/90  
FACSIMILE (671) 477-5206  
www.mmstlaw.com

October 15, 2009

VIA HAND DELIVERY  
AND FACSIMILE: (671) 472-4217

Ms. Claudia S. Acfalle  
Chief Procurement Officer  
General Service Agency  
(Ahensian Setbision Hinirat)  
Government of Guam  
148 Route 1 Marine Drive  
Piti, Guam 96915

Re: Bid Protest for Invitation for Bid No: GPSS IFB-008-2009 (Re-Bid)  
Oceanview Middle School Gymnasium Repairs

Dear Ms. Acfalle:

Please accept this letter as the official bid protest of Z-4 Corporation ("Z-4") to the revocation of the award to Z-4 in above-referenced Invitation for Bid ("IFB" or the "Bid"). This letter shall also serve as: (1) Z-4's official request for information pursuant to 2 GAR §9101(f), whereby Z-4 requests all documents relating to the subject IFB, including, the complete procurement file and the bid of Eons Enterprises Corporation ("Eons") and all supporting documents therefore; (2) Z-4's request for a final decision on this protest pursuant to 2 GAR §9103(d)(3), thereby requiring a decision to be issued within sixty (60) days; and (3) Z-4's demand that the procurement process regarding the IFB be stayed pending the resolution of this protest, pursuant to 2 GAR §9101. Finally, Z-4 reserves its right to supplement the grounds for its protest as its investigation is ongoing.

FACTUAL BACKGROUND

On August 6, 2009, the Guam Department of Education ("GDOE") issued a "Bid Status" and notified Z-4 that it was the lowest and responsive bidder to the Bid and stated that "after further review of the bid documents, the *award is made to the lowest most responsive and responsible bidder,*" which was recommended to be Z-4. (Emphasis

**EXHIBIT 11**

Ms. Claudia S. Acfalle  
October 15, 2009  
Page 2 of 6

added). A copy of the Bid Status is attached hereto and incorporated herein as Exhibit 1. This document also instructed Z-4 to obtain a Performance Bond for the project. *Id.*

In a letter of the same date, the GDOE issued a "NOTICE TO PROCEED" to Z-4, which stated that "as agreed, *you are hereby notified to commence work on the above contract on August 10, 2009 and you are to complete all work in the contract within 180 days.*" A copy of the Notice to Proceed is attached hereto and incorporated herein as Exhibit 2 (emphasis added). Both the Bid Status and the Notice to Proceed were signed by the "Administrator, Supply Management" for the GDOE. *See* Exhibit 1 and 2.

Thereafter, Z-4 began performance pursuant to the award of the contract. A copy of supporting documentation reflecting such performance is attached hereto and incorporated herein as Exhibit 3. On August 13, 2009, Alpha Insurers approved the application of Z-4 for the Performance/Payment Bond in the amount of \$810,000.00. *See* Exhibit 3. The issuance of the bond was subject only to the issuance of underwriting documentation by Z-4. On August 14, Z-4 informed the GDOE that its Performance Bond had been approved and simply requested additional time to submit the bond.

On August 20, 2009, officials from Z-4 met with officials from GDOE and Taniguchi Ruth Makio Architects, among others, and discussed and planned further performance of the contract. *See* Exhibit 3. On August 20, 2009, Z-4 applied for a building permit and plan review with the Department of Public Works of the Government of Guam. *Id.* On August 21, 2009, Z-4 consulted with the Guam Environmental Protection Agency ("EPA") to determine the environmental impact and the actions required by the Guam EPA for the project. *Id.* On August 24, 2009, Z-4 applied for a permit with the Guam Fire Department for the project and said permit was approved on August 26. *Id.* Z-4 incurred a cost of \$561.00 in obtaining this permit. *Id.*

On August 6, 2009, Eons submitted a "Request for Re-Evaluation" to the GDOE, which was later identified as a bid protest in its appeal. Eons' request was denied on August 14, 2009, because Eons "failed to explain the reasoning behind the offering of the Alternate Bid." Thereafter, on August 28, 2009, Eons submitted an appeal of this decision to the Office of the Public Auditor (the "OPA").

In its appeal, Eons argued that it had provided an explanation for its Alternate Bid. However, based on information and belief, this explanation was not submitted with its bid to the GDOE, as reflected in the documents supporting the appeal. Further, in its appeal to the OPA, Eons itself acknowledged that the GDOE awarded the Bid to Z-4. The OPA made no determination that the award to Z-4 was in violation of Guam's procurement law.

On August 28, 2009, the General Services Agency ("GSA") issued a Notice of Stay of Procurement, due to the appeal to the OPA filed by Eons. On September 14, 2009, Eons withdrew its appeal "based on the representation of GSA/DOE [sic] that no award has been made."

On October 9, 2009, GSA issued a "revised" Bid Status rejecting Z-4's bid and recommending the Bid be awarded to Eons. On this same date, GSA informed Z-4 that the Notice to Proceed is null and void. A copy of this "revised" Bid Status and accompanying correspondence is attached hereto and incorporated herein as Exhibit 4. In addition, GSA stated that "a purchase order has not been issued to your company and that a performance bond has not been submitted by your company as of August 28, 2009, when the GDOE issued a notice of stay." *Id.*

### DISCUSSION

#### A. The Bid was Awarded to Z-4

The IFB provides that an "award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, *results in a binding contract without further action by either party.*" IFB at p. 3, ¶23. The original Bid Status noted that "award is made to the lowest bidder," which was determined to be Z-4; and thus, this document effectively awarded the Bid to Z-4, without further action by Z-4. *See* Exhibit 1. Moreover, even if the Bid Status is not considered an "award", the Notice to Proceed certainly would be considered such.

The Notice to Proceed issued by the GDOE further notified Z-4 that it was awarded the contract, and the GDOE actually instructed them to begin performance. As noted above, this document instructed Z-4 that: "as agreed, *you are hereby notified to commence work on the above contract on August 10, 2009* and you are to complete all work in the contract within 180 days." (Emphasis added). *See* Exhibit 2. In sum, this document contained all the material terms for the contract, including: (1) term, (2) date for completion, (3) date for commencement of performance, (4) contract price, and (5) remedies for breach. Based on the four corners of this document, GDOE issued an award of the Bid to Z-4.

Furthermore, under the terms of the IFB, the "Administrator, Supply Management [of the GDOE] shall have the authority to award, cancel, or reject bids, in whole or in part." IFB at p. 3, ¶23. Both the Bid Status and the Notice to Proceed were issued and executed by the Administrator, Supply Management of the GDOE. *See* Exhibit 1 and 2.

Thus, this individual was authorized to award the Bid to Z-4 on behalf of the GDOE and did, in fact, award the contract to Z-4.

It must be noted that Eons dismissed its appeal only after the GDOE apparently represented to Eons that no award had been made for the Bid. However, it is clear from the Bid Status and Notice to Proceed issued to Z-4 that such an award was made. In addition, Eons itself interpreted the Notice to Proceed as an award, as stated in the appeal to the OPA. *See* Eons' appeal at p. 1. Although the GDOE apparently later stated that no award had been made, it is clear that all interested parties are in agreement that the Notice to Proceed was considered an award on the Bid. GSA's October 9 letter cannot simply rescind the award at this time.

B. Z-4 Began Performance on the Contract

In reliance of GDOE's award of the contract, Z-4 began performance of the contract. As noted above, Z-4 began securing the necessary permits for the project, consulted with various governmental agencies to determine the necessary actions for completing the project, and met with GDOE officials to further discuss performance. *See* Exhibit 3. Z-4's reliance on the contract caused it to incur costs which are above and beyond those reasonably expected to be incurred with the preparation of a bid. Z-4's reliance further demonstrates that the parties understood that an award had been made.

C. Valid Grounds Do NOT Exist to Rescind the Award of the Contract Because Eons' Bids Were Properly Rejected

Under the procurement law of Guam, an award of a contract may only be terminated after it is determined that an award of the contract is in violation of law. *See* 2 GAR §9106. Here, the GDOE did not violate the procurement laws of Guam by rejecting the Basic and Alternate bids of Eons.

Eons' *basic* bid was properly rejected because it was not the lowest responsible and responsive bid; Z-4 was the lowest responsible and responsive bidder. In addition, Eons' *Alternate* bid was properly rejected because Eons was not a responsible or responsive bidder as Eons did not comply with the requirements of the Bid. The Bid specifically required bidders to fully explain the price offered in each bid, Basic and Alternate. The GDOE properly held that Eons' *Alternative* bid was not explained properly. Thus, Eons was not the lowest responsible and responsive bidder.

Eons appeal to the OPA contained an explanation for the price submitted in the Alternate Bid; however, based on information and belief, this explanation was not submitted with the original Bid and should not be given consideration. Thus, the GDOE properly rejected the Alternate bid of Eons. Accordingly, the GDOE did not violate the procurement law of Guam in its award of the contract to Z-4 and this award should not be rescinded.

D. GDOE Has Not Properly Rescinded the Award Under the Procurement Laws of Guam

Under the procurement law of Guam, an award of contract may be canceled or revised only when the procurement officer, *after* consultation with the Attorney General, determines that the proposed award is in violation of law. *See* 2 GAR §9104. As stated above, there was no violation in the award to Z-4. Moreover, the GSA's attempt to revoke the award is insufficient to terminate the award of the contract to Z-4.

In the October 9 letter to Z-4, GSA stated that the Notice to Proceed was null and void. *See* Exhibit 4. GSA noted that the rejection of Eons' Alternate bid was in error. GSA further stated that "we are aware that a purchase order has not been issued to your company and that a performance bond has not been submitted by your company." *See* Exhibit 4. All of these statements are inaccurate.

A quick review of the Notice to Proceed reveals that it contained a purchase order number next to the contract number, specifically "PO#200901666." *See* Exhibit 2. Moreover, Z-4 had previously informed the GDOE that its Performance Bond was approved and only the mere formality of submitting the bond was not done.

In addition, the subject correspondence by GSA does not state that it consulted with the Attorney General in reaching its decision that the rejection of Eons' Alternate bid was misplaced. Moreover, on information and belief, no such consultation was made. However, it is a matter of record that the OPA made no determination that the award to Z-4 violated any procurement law. Therefore, GSA's letter attempting to revoke the award is not grounded in fact or law, and should have no legal effect on the award of the Bid to Z-4 by the GDOE.



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E. Even If There Was a Violation, the Award of Contract to Z-4 Should be Affirmed

Finally, even if the GDOE violated the procurement law in rejecting the Alternate Bid of Eons, which it did not, the proper course is for the GDOE to affirm the award of the contract because Z-4 has already commenced performance of the contract. The procurement law of Guam provides that if there is a violation of the procurement law, an award of contract should nonetheless be affirmed if such affirmation is in the best interests of Guam. See 2 GAR §9106. Here, it is in the best interests of the GDOE to affirm the award because Z-4 has already begun performance of the contract, including obtaining the proper permits and planning performance of the project with third parties.

CONCLUSION

GDOE awarded the contract for the Bid to Z-4, and Z-4 began performance on the contract in reliance on the award. There are no valid grounds for rescinding the award because Eons' bids were properly rejected. Moreover, GSA's attempt to rescind the award was not properly consummated; and thus, the award to Z-4 is still in effect. Thus, Z-4 seeks to continue performance of the contract. In addition, this protest includes: (1) Z-4's official request for information pursuant to 2 GAR §9101(f), as noted above; (2) Z-4 requests a final decision to be issued regarding this matter within sixty (60) days; and (3) Z-4's demand that the procurement process regarding the IFB be stayed pending the resolution of this protest, pursuant to 2 GAR §9101. Finally, Z-4 reserves the right to supplement its protest as its investigation is ongoing.

Warm Regards,



AARON R. JACKSON

ARJ:ens  
Enclosures

cc: Peter M. Valencia  
Guam Department of Education

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