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8 **G-CREW MAINTENANCE**

RECEIVED

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 10/22/12

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FILE NO OPA-PA: 12-015

9 **OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF
12 G-CREW MAINTENANCE,
13 Appellant.

) Docket No. OPA-PA-12-015

) **APPELLANT'S COMMENTS ON**
) **AGENCY REPORT**

14 The Appellant G-CREW MAINTENANCE ("G-Crew") submits the
15 following comments on the Agency Report.

16 **I. G-CREW MAINTENANCE WAS THE LOW BIDDER**

17 The Protest in this case revolved around line 7.0 on the Bid Schedule. The
18 bid of G-Crew is attached as Exhibit "1". Line item 7.0 was for sweeping and blowing
19 at various locations in Tumon. The frequency was stated to be "6X Per Week (Monday
20 Through Saturday)." The quantity was stated to be "all". The most logical
21 interpretation of that line item is that the unit cost is to be calculated per week since the
22 frequency is six days per week. G-Crew's unit cost was stated to be \$144.23. When that
23 figure is multiplied by 52, the result is \$7,499.96, which G-Crew rounded to \$7,500.00. It
24 is thus obvious what G-Crew did, and there is no reason to believe that this was an
25 error on G-Crew's part.

26 Nonetheless, the Guam Visitors Bureau ("GVB") took it upon itself to alter
27 G-Crew's bid after opening. GVB claims it reads the language "6X per week (Monday
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Through Saturday)” to mean 312 days rather than six days a week for 52 weeks. Although this is within the realm of plausibility, it is submitted that the single most reasonable interpretation is that the unit is one week consisting of six days. It should be noted that of the four bidders, only LMS used 312 days as the multiplying factor. See p. 223 in Agency Report. Guam Tropical Landscape used a unit of one month, see p. 226 in Agency Report, and J.J. Global simply left the space blank. See p. 229 in Agency Report.

In any event, none of this matters since it is only the amount entered in the “total cost” column that counts. Whether a bidder understood the unit cost to be calculated on a daily, weekly, or monthly basis is irrelevant to the total cost calculation, since the work must be done 312 times per year in any event, as all bidders understood. By the analysis utilized by GVB for the G-Crew bid, both the bids of Guam Tropical Landscape and J.J. Global would have to be rejected, despite the fact that those two bids are perfectly proper in calculating the total cost for line item 7.0, just as the bid of G-Crew is perfectly proper in calculating the total cost of line item 7.0.

At the time of bid opening, the bids were as follows: G-Crew - \$235,000.00; LMS - \$247,000.00; Guam Tropical - \$267,475.00; J.J. Global - \$286,274.00. See p. 218 in Agency Report. G-Crew was thus the low bidder prior to GVB altering the G-Crew bid by increasing line item 7.0 from \$7,500.00 to \$44,999.76. As a result of GVB’s alteration of the G-Crew bid, G-Crew was no longer the low bidder.

This was not GVB’s initial position. Attached as Exhibit “2” is a string of e-mails. (This document is in the Procurement Record). Doris Ada of GVB requested Tom (presumably Tom Fisher), to review bid item no. 7. She states “... I have a concern about #7 where the quantity varies among the bidders. By the way, when can we expect an opinion from you?” The next e-mail states “Lease (sic) see attached letter. R/TJF”. This presumably is the opinion letter to Doris Ada from Tom Fisher. Doris

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Ada then states in her next e-mail to various recipients "Based on the attached letter, the lowest bidder, G-Crew meets the bidding requirements and therefore will be awarded the project." That e-mail is dated September 7, 2012.

It was only later that GVB changed its mind and rejected the G-Crew bid by letter dated September 13, 2012. *See* Exhibit "3". G-Crew did protest to GVB on September 14, 2012, with a reasonable explanation of its understanding of item 7.0, and stood on its bid of \$235,000.00. *See* p. 2 of Agency Report. Nevertheless, GVB continued its rejection of the G-Crew bid. *See* p. 234 of Agency Report. GVB then issued its Notice of Intent to Award Contract to LMS on September 17, 2012. *See* p.235 of Agency Report. So far as G-Crew is aware, no actual award has been made at this time since the procurement was stayed as of September 14, 2012, the date of the G-Crew protest letter.

In its appeal dated September 27, 2012, G-Crew correctly pointed out that the bid form did not state 312 as the quantity applicable to Line Item No. 7, but instead stated "all", which was in contrast to other line items. This explains the bidders' confusion, but does not affect the bottom line of the overall bids. In its appeal, G-Crew also explained why it was able to make a low bid for item 7.0, and confirms its bid price of \$235,000.00.

In the Agency Statement, GVB claims that the G-Crew bid was "unbalanced" since its bid on line item 7.0 was lower than the other bidders, and its bid for line item 2.0 was higher than the other bidders. However, 7 G.C.A. § 5211(g) provides that "The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids ..." Subparagraph (f) of that section regarding correction of bids provides in part that "... After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Territory or fair competition

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shall be permitted ..." The fact is that the G-Crew bid of \$235,000.00 was the low bid, and it was prejudicial to the Territory for GVB to unilaterally increase the amount of that bid, and then award the contract to the next lowest bidder in the amount of \$247,000.00. This resulted in an unnecessary expenditure by GVB of \$12,000.00.

Moreover, it is not reasonable to reject the low bid because individual line items on its bid were different from other bidders. The bidder awarded the contract will be obligated to fulfill all of the obligations of the contract, and not just those obligations where a line item in its bid was similar to those of other bidders.

In the Agency Statement, GVB goes on to quote the following language:

The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

However, these concerns are not applicable here. First, there can be no reasonable doubt whether G-Crew bid will result in the lowest overall cost to the Government. Its bid was \$235,000.00, which is \$12,000.00 less than the next lowest bid.

Next, there may be circumstances where a high bid on a front-end item, such as a mobilization charge on a construction project, may in effect constitute an advance payment. However, once again, that is not a concern here, since all of the requirements of the IFB must be satisfied throughout the term of the contract. There is no front-loading here.

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Finally, although a few individual line items within the G-Crew bid were higher or lower than those of the other bids, the bottom line of the four bids are fairly close. The LMS bid was only 4.85% higher than the G-Crew bid. The difference between the highest bid (\$286,274.00) and G-Crew's bid of \$235,000.00 was only 17.91%. This should negate any concern that the G-Crew bid is so low that it will be unable to satisfy the terms of the IFB.


II. CONCLUSION

In conclusion, GVB wrongfully altered G-Crew's bid after opening, and as a result failed to obey the statutory mandate that the lowest responsible and responsive bidder be granted the award. The Public Auditor should therefore order that award of the contract be made to G-Crew as low bidder pursuant to 5 G.C.C.A. § 5451(b).

DATED this 22^d day of October, 2012.

Respectfully submitted,

BERMAN O'CONNOR & MANN
Attorneys for G-CREW MAINTENANCE

By: 
BILL R. MANN

TUMON LANDSCAPE MAINTENANCE

BID SCHEDULE

NO.	DESCRIPTION/BID ITEMS	FREQUENCY	QUANTITY	UNIT	*UNIT COST	*TOTAL COST
1.0	Trim and Edge Groundcovers at Road Medians, 5,800 Square Yards	Every Other Month (6X Per Year)	6	Each Occurrence	1,250.00	7,500.00
2.0	Grass Cutting & Edging, 22,100 Square Yards	2X Per Month (24X Per Year)	24	Each Occurrence	4,291.67	103,000.00
3.0	Prune Shrubs at Road Shoulders Including Weeding, 10,100 Linear Feet	Every Other Month (6X Per Year)	6	Each Occurrence	833.33	5,000.00
4.0	Prune Trees					
4.1	At Medians (41 Trees)	Once Per Quarter (4X Per Year)	4	Each Occurrence	1,250.00	5,000.00
4.2	At Road Shoulders (100 Trees)	Once Per Quarter (4X Per Year)	4	Each Occurrence	1,250.00	5,000.00
5.0	Prune and Defruit Coconut Trees					
5.1	At Medians, 75 Coconut Trees	Once Per Quarter (4X Per Year)	4	Each Occurrence	1,250.00	5,000.00
5.2	At Road Shoulders, 297 Coconut Trees	Once Per Quarter (4X Per Year)	4	Each Occurrence	2,500.00	10,000.00
6.0	Weeding at Medians, 3,900 Square Yards	Once Per Month (12X Per Year)	12	Each Occurrence	500.00	6,000.00
7.0	Sweeping / Blowing at Roadway, Turning Lanes, Sidewalk and Curb & Gutter including bus stops and seating areas	6X Per Week (Monday Thru Saturday)	ALL	Lump Sum (For One Year)	144.23	7,500.00

NO.	DESCRIPTION/BID ITEMS	FREQUENCY	QUANTITY	UNIT	UNIT COST	TOTAL COST
8.0	Repair of Irrigation System for Phase I & II	As Required	1	*Contingent Sum	\$10,000.00	\$10,000.00
8.1	Labor Rate for Repair Technician Note: Labor will be paid on an hourly basis as required.	*Hourly Rates: Supervisor: <u>\$ 25.00 P/m</u> Labor: <u>\$ 20.00 P/m</u>	N/A	N/A		
8.2	Equipment Rate Note: Equipment will be paid on an hourly basis as required.	*Hourly Rates: Backhoe: <u>\$ 250.00 P/m</u> Dump trucks: <u>\$ 250.00 P/m</u> Pick-up Truck: <u>\$ 100.00 P/m</u>	N/A	N/A		
8.3	Material Cost Note: Materials shall be paid at cost upon submission of official receipt plus 35% mark-up		N/A	N/A		
9.0	Garbage Collection	Daily for 1 Year	ALL	Lump Sum (For One Year)	\$ 87.67	\$ 32,000.00
10.0	Routine Soil Analysis at all medians to determine quality of existing topsoil	Once Per Year	ALL	Lump Sum	\$ 1,500.00	\$ 1,500.00

NO.	DESCRIPTION/BID ITEMS	FREQUENCY	QUANTITY	UNIT	UNIT COST	TOTAL COST
11.0	Fertilizer Application for Groundcover and Shrubs	Once Per Quarter (4X Per Year)	4	Each Occurrence	\$ 750.00	\$ 3,000.00
12.0	Add Mulch at Medians	2X Per Year	2	Each Occurrence	\$ 750.00	\$ 1,500.00
13.0	Power Washing (Sidewalks, Benches, Trash Receptacles, Bus Stops, Curbs)	2X Per Year	2	Each Occurrence	\$ 1,500.00	\$ 3,000.00
14.0	Miscellaneous repair and/or replacement of landscape and hardscape items	As required	1	*Contingent Sum	\$30,000.00	\$30,000.00
14.1	Labor rates. Labor will be paid on an hourly basis as required.	Hourly Rates Supervisor: \$ 25.00 P/h Labor: \$ 20.00 P/h				
14.2	Equipment rates.	Hourly Rates Pickup truck \$ 100.00 P/h Bucket truck \$ 250.00 P/h Backhoe \$ 250.00 P/h				
14.3	Material Cost Note: Materials shall be paid at cost upon submission of official receipt plus 35% mark-up					
				Total Bid Price	\$ 235,000.00	

* The Contingent Sums shall be included in the Total Bid Price. No work shall commence and be charged to these Contingent Sums unless authorized in writing by GVB's General Manager or an authorized representative.

* Contractor to fill in hourly labor and equipment rates based on industry standards, including markup. Material shall be paid at cost plus 35% mark-up.

* Unit & Total Cost in the Bid Schedule shall include all contractor mark-ups and GRT.



Doris Ada <doris.ada@visitguam.org>

TUMON LANDSCAPING MAINTENANCE IFB

1 message

Doris Ada <doris.ada@visitguam.org>

Fri, Sep 7, 2012 at 10:39 AM

To: Joann Camacho <joann.camacho@visitguam.org>, Rose Cunliffe <rose.cunliffe@visitguam.org>, Jon Nathan Denight <nathan.denight@visitguam.org>

Cc: TGE / Jeff Miller <jeffm@tg-engr.com>, TGE / Rico Arceo <ricoa@tg-engr.com>, TGE / Dennis Garcia <dennisg@tg-engr.com>

Hafa Adai Everyone:

Based on the attached letter, the lowest bidder, G-Crew, meets the bidding requirements and therefore will be awarded the project.

Thanks,
Doris

----- Forwarded message -----

From: <fisherassociates@teleguam.net>

Date: Fri, Sep 7, 2012 at 10:30 AM

Subject: Re: TUMON LANDSCAPING MAINTENANCE IFB

To: Doris Ada <doris.ada@visitguam.org>

Lease see attached letter. R/ TJF

>> > Hafa Adai Tom:

>> > I thought you might want to review the other three bids in order to
>> > understand and clarify Items #2 & #7. I have a concern about #7 where
>> > the

>> > quantity varies amongst the bidders.

>> > By the way, when can we expect an opinion from you?

>> > Thanks,

>> > Doris

>> >

>> > On Wed, Sep 5, 2012 at 4:41 PM, Doris Ada <doris.ada@visitguam.org>

>> > wrote:

>> >

>> >> Hafa Adai Tom:

>> >> Opening for the TLM Bids occurred August 31st. However, upon careful

>> >> evaluation, there are concerns which we believe require legal

>> >> clarification

>> >> before the lowest bid is accepted or rejected. Please refer to the

>> >> attached Bid Schedule of the lowest bidder.

>> >>

>> >>

>> >> We appreciate your clarification of the following:

> >>

>> >> 1. *The bid schedule is incomplete as it does not list the hourly

>> >> rates

>> >> for Items 8.1, 8.2, 14.1, and 14.2 *

EXHIBIT 2



GUAM VISITORS BUREAU

50th ANNIVERSARY · 1963 - 2013

September 13, 2012

Mr. Darren Gutierrez
President
G-Crew Maintenance
PO Box 1724
Hagatna, Guam 96910

RE: GVB IFB 2013-001

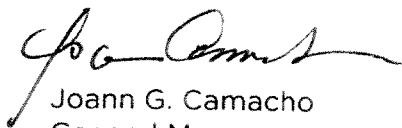
Håfa Adai Mr. Gutierrez:

Thank you for your response to my letter of September 12, 2012 concerning your ability to perform if awarded a contract in the referenced procurement.

I note that your bid schedule offers a total cost of \$7,500.00 at item 7.0 "sweeping/blowing at roadway. . ." As you know, this task must be performed 312 times during the contract year, see Item 7.0 on the bid schedule. In actuality, you have offered a unit cost of \$24.03 ($\$7,500.00 \div 312$) while your bid schedule reflects an offered unit cost of \$144.23. Were your bid to accurately reflect your offered unit cost (\$144.23), your total bid price would be \$272,499.76. This of course is not the lowest responsible and responsive offer. I conclude therefore that you have made an error in your bid. I conclude as well that this mistake is not minor and cannot be corrected without prejudice to other offerors.

Accordingly, your bid is rejected by the Guam Visitors Bureau. I hope you will understand that we do not take this action lightly. We recognize that potential vendors expend time and effort in preparing responses to solicitations. We appreciate your efforts herein and hope that you will seek to participate in future solicitations. We wish you the best.

Senseramente',



Joann G. Camacho
General Manager

EXHIBIT 3