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09-010

**AGENCY REPORT**  
**OPA - PA - 09 - 012**  
**GDOE**

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AGENCY REPORT FOR OPA-PA-09-012  
December 09, 2009

This is an appeal presented to the Office of Public Accountability by Z-4 Corporation. GSA rejects the appeal as set forth by -4 for the following reasons:

1. Initially, the Guam Public School System (now Guam Department of Education (GDOE)), let this bid out for the Oceanview Middle School Gymnasium Repairs in 2009. A protest was initially lodged by Eons Enterprises Corporation with the Office of Public Accountability (OPA) on issues regarding the above subject matter.

The General Services Agency (GSA) took over the daily operations of GDOE on August 12, 2009, as well as those protests that were not resolved. Upon review by GSA of the procurement record, GSA discovered that there was an error in disqualifying the bid and its alternate submitted by Eons Enterprises Corporation. GDOE had disqualified the alternate bid submitted by Eons Enterprises for failing to explain what they are bidding on when in fact, Eons Enterprises did explain and justified what they were offering on their alternate bid. This fact was confirmed by GDOE's architect on this project.

Also, 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 July 27, 2009 that both the alternate bid submitted by Eons and the basic bid submitted by Z-4 could complete the project as required. Again, on October 07, 2009, the Facilities Manager approved the alternate bid submitted by Eons.

2. However, on August 6, 2009, GOED issued a bid status to Z-4, which provided for a recommendation that Z-4 was the lowest and most responsible and responsive bidder. The bid status further provided that Z-4 must submit its one hundred percent performance bond no later than August 14, 2009. Z-4 never submitted this bond, but rather requested for an open-ended extension.

Performance bonds are required by GDOE's procurement rule section 5.3.1.1., which 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 one, the contractor's bid shall be rejected." Also in 5 GCA Section 5304, it states in pertinent 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." Clearly, the law requires the submission of the performance bond, not an open extension to gather one.

Furthermore, in response to a written request by the Chief Procurement Officer of GSA, dated September 25, 2009, the Guam Department of Education's Facilities and Maintenance Division responded that Eons needed to confirm that all materials complied with the Technical specification at no additional cost during the construction stage of this project. Eons affirmed that this was the case through a memorandum on October 8, 2009.

Also on August 6, 2009, the same letter served as notice that the Notice to Proceed issued under the bid status award is hereby considered null and void. No purchase order had been issued to your company, nor was a performance bond submitted by your company as of August 28, 2009, when the GDOE issued the notice of stay.

4. Z-4 indicated that it did a number of meetings and permit applications in fulfillment of the contractual obligations. On page GP-4, "Preconstruction Conference" it 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. Contractor needs to contact GPSS Contracts Office to arrange a schedule for this conference.

No evidence is provided in the procurement file that the Contracts Office scheduled any preconstruction meeting with Z-4. Z-4 is a seasoned vendor with the government of Guam and should have known that prior to any work being done, it need to receive an award.

5. Z-4 has indicated that under the procurement laws 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. Further, GSA's attempt to revoke the award is insufficient to terminate the award of the contract to Z-4.

GSA that consulting with the Attorney General is not required at this time since no award has been made to Z-4. An Award cannot be made until the bidder submits a one hundred percent performance bond. As noted by the attorney for Z-4, there is no execution of the contract since there was no performance bond given.

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer