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FILE NO. OPA-PA-11-024

1 InfraTech International
2 118 Aspengao CT.
3 Barrigada, Guam 96913
4

5 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT**
6 **APPEAL**

7
8 IN THE APPEAL OF
9 INFRATECH INTERNATIONAL, LLC
10
11 Appellant

APPEAL NO. OPA-PA-11-021
INFRATECH COMMENTS ON
AGENCY STATEMENT

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14 InfraTech International, LLC (InfraTech) submits its comments on Agency
15 Statement in the same chronological order for the convenience.

16
17 **BACKGROUND**

18 GDOE through its counsel acknowledged that it received a letter
19 from InfraTech on October 4, 2011 and construed as protest. However, the
20 agency failed to identify that the letter was submitted **prior to the BID**
21 **OPENNING**.

22 As stated in our appeal, GDOE violated procurement regulations by not following
23 § 5425 (g) "In the event of a timely protest under subsection (a) of the Section or
24 under Subsection (a) of § 5480 of this Chapter, the Territory **shall not** proceed
25 further with the solicitation or with the award of the contract prior to final
26 resolution of such protest,

1 Also, InfraTech submitted a brief statement explaining the grounds for the appeal
2 to Office of Public Accountability (See Attachment # 1). As stated in our appeal
3 we are protesting the solicitation process.

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5 **I. Answer to Allegation in Appeal and Restatement of Motion to**
6 **Dismiss for Failure to State Ground for Appeal**

7 As stated above InfraTech identified the reasons for its appeal (See
8 Attachment # 1).

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10 **II. Appeal should be dismissed because Appellant is not an Actual or**
11 **Prospective Bidder or Interested Party**

12 InfraTech has attended the mandatory pre-bid meeting (See
13 Attachment # 2) and site visits as required. Therefore, InfraTech is indeed a
14 prospective bidder, who is aggrieved in connection with the method of source
15 selection. GDOE failed to identify that the protest was submitted prior to the bid
16 due to date and time. Instead of ceasing the process as per § 5425 (g) until the
17 final resolution, GDOE continued the process and not only accepted the bids, but
18 also, opened them. Therefore, InfraTech is indeed a prospective bidder, who is
19 aggrieved in connection with the process of source selection.

20 In addition, GDOE also failed to submit the complete set of Abstract.
21 The missing part of the Abstract is a critical fact to our protest. Also, it is very
22 crucial to find out the GDOE Estimate of quantities and cost for the project.
23 InfraTech is very confident that this information will support its claims to submit
24 the protest and subsequently an appeal to OPA.

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1 **III. Award of cost and Attorney's Fees**

2 GDOE failed to substantiate its claim that InfraTech's appeal is frivolous
3 and filed intentionally to disrupt its procurement process because its claim is
4 simply based on that InfraTech did not submit the bid. At this point InfraTech is
5 quoting the definition of ***PROSPECTIVE*** from online dictionary
6 "dictionary.reference.com" for your convenience below:

7 ***"pro-spec-tive [pruh-spek-tiv] Show IPA***

8 ***adjective***

9 ***1. of or in the future: prospective earnings.***

10 ***2. potential, likely, or expected: a prospective partner."***

11 As InfraTech not only attended the mandatory pre-bid and site visits,
12 but also, communicated with GDOE on several occasions pertaining to the bid, it
13 meets the prospective bidder definition. GDOE is withholding information such
14 as but not limited to bid schedule of the bidders, which is very critical in
15 determining whether InfraTech's protest is frivolous or not.

16 Since, InfraTech has attended both *mandatory pre-bid and site visits as*
17 *required per specifications* InfraTech definitely meets the definition of
18 "***PROSPECTIVE***". Also, InfraTech's protest falls under § 5425 (a) as a
19 prospective bidder. Therefore, InfraTech hereby denies the GDOE's claim that
20 InfraTech's appeal is frivolous and filed intentionally to disrupt its procurement
21 process.

22 For the argument sake, if InfraTech submits the bid responding to IFB
23 039-2011 contradicting to its own protest, then our protest will become mute
24 and/or void and will require a new protest as an actual bidder as defined in §
25 5425 (a), if it sees the bids as an unbalanced and/or unfair playing field.

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IV. Request for findings and Orders by the OPA

Based on the above comments, InfraTech is cordially requesting OPA to order GDOE to submit the following information to examine the facts:

1. Submit complete Bid Abstract including the bid schedule of all the participants.
2. Submit GDOE's cost estimate including the quantities of each work item.

It is very important that OPA reviews the total quantities and compare the 'lump sum and unit prices' submitted by the bidders to determine that the bids are unbalance and the unit prices submitted by the bidders are contradicting to their lump sum bids, which is the basis to determine the lowest responsive and responsible bidders.

Upon reviewing and as per the documents, InfraTech sincerely requesting OPA to declare the following findings and orders:

1. That GDOE failed to defend its claim that InfraTech failed to state grounds for its appeal and not a prospective bidder.
2. That GDOE failed to follow the procurement regulations section § 5425 (g), its procurement method and/or process are erroneous. Therefore, GDOE shall re-bid after correcting all the errors to give equal opportunity and fair playing field to all the prospective bidders.
3. InfraTech's appeal is not frivolous and has not filed the appeal to disrupt GDOE's procurement process.

1 Dated this 5th day of January, 2012.

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Sincerely,

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InfraTech International, LLC

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By: *Ravindra B. Gogineni*
Ravindra B. Gogineni
Vice President & General Manager

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

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

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

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

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

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

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

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



NERISSA BRETANIA UNDERWOOD, Ph.D.
Superintendent of Education

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

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



Marcus Y. Pido
Supply Management Administrator

IFB: 035-2011, 036-2011, 037-2011, 038-2011 & 039-2011
STRUCTURAL REPAIRS & ROOF COATING
MANDATORY PRE-BID CONFERENCE
MONDAY, JULY 18, 2011 AT 2:00 PM

| Attendees Sign-In Sheet | | | |
|-------------------------------------|--------------------------|---|---|
| PRINT NAME | SIGNATURE | COMPANY | TEL. & E-MAIL |
| 1. MATTHEW MURPHY Wilco/Sancimex | <i>Math Murphy</i> | Wilco & SANCIMEX | 787-8076 mattmurphy59@hotmail.com |
| 2. SUMINSHANG | <i>Suminshang</i> | Mega United Corp. | 6875293 nmh@netpc.com |
| 3. BRIAN KENT | <i>Brian Kent</i> | UNITED COATINGS | 647 7870 ISLAPRINT@SLANDERS.GUM NET |
| 4. JOHN ROSARIO | <i>John Rosario</i> | JS Global | 632-1179 jrosario73@gmail.com |
| 5. Roman G. Guerrero | <i>Roman G. Guerrero</i> | TEK CORPORATION | 734-3939-888-5535 roman.guerrero@tekcorp.com |
| 6. RAVINDRA GOSWAMI | <i>Ravindra Goswami</i> | PRASATHI INFOTECH INT'L ENERTECH INT'L LLC | 888-5670 ravie@infotechint.com |
| 7. SUK JIN LEE | <i>Suk Jin Lee</i> | VIVAD CORPORATION | 483-6686 sujin888@hotmail.net |
| 8. FRANCIS A. Floriz | <i>Francis A. Floriz</i> | 3m Company | 687-6940 FFloriz@mum.com |
| 9. RICHARD LABADNY | <i>Richard Labadny</i> | ISLA PAINT & ROOFING SUPPLY | 647-9871 islasales 689-7473 telegum.net |
| 10. HONG YUN SUN | <i>Hong Yun Sun</i> | Asia-Pacific Int'l Inc | 888-8868/632-8889 apiusa@guam.net |
| 11. TERRY DEBOLD | <i>Terry Debold</i> | ARMOR COATINGS MIEUNESIA | 647-2650/888-8251 tdebold.guam@gmail.com |
| 12. DMAP P. HAZA | <i>Dmap P. Haza</i> | " " | 482438 dmapp@haza.com |
| 13. RIC MERCADO | <i>Ric Mercado</i> | EVM CONST. GUAM ISLAND ROOFING | 684 17752 evmconst-guam@gmail.com |
| 14. DIEGO ESPUZ | <i>Diego Espuz</i> | " " | 632-5335 GARDAS@GUAM.NET |
| 15. ALFRED GARTE | <i>Alfred Garthe</i> | ISLAND ROOFING | 648-2987 |
| 16. FRANK TERPIS | <i>Frank Terpis</i> | NEW MW Corp. | 898-4505 Frank 647-7664 |
| 17. ROZANO SANTAN | <i>Rozano Santan</i> | MODERN KONSTRUK | 898-3602 modernkonstruksi@gmail.com |
| 18. REYNOLD LOUNG | <i>Reynold Loung</i> | CHECKPOINT INT'L | 8981741 REYNLOUNG@GMAIL.COM |