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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
5/23/2012
10:27 AM Rgm
FILE NO. OPA-PA-12-010

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

7
8 IN THE APPEAL OF
9 ALLIED PACIFIC BUILDERS, INC.,
10
11 Appellant.

APPEAL NO. OPA-PA-12-010
REPLY TO MOTION TO DISMISS

12 Comes now the Guam Department of Education (“GDOE”) by and through its counsel
13 and files this Reply to Allied Pacific Builders, Inc.’s (“Appellant”) Letter of Response and
14 Comments on GDOE Motion to Dismiss dated April 27, 2012 for the Appeal OPA-PA-12-010
15 (hereinafter referred to as “Opposition”).

16 Appellant’s Opposition first quotes the three (3) areas of protest stated in Appellant’s
17 initial protest letter sent to GDOE on January 5, 2012 (hereinafter referred to as “Protest Letter”),
18 then quotes GDOE’s April 3, 2012 denial of Appellant’s protest (hereinafter referred to as
19 “GDOE’s Response”), and then provides comments or additional basis for appeal in the sections
20 in the Opposition titled “APB’s Appeal.” GDOE continues to argue that the sections in the
21 Opposition titled “APB’s Appeal” are untimely because they were not filed by the May 10, 2012
22 deadline for comments to the Agency Report. Further, few statements in the Opposition
23 specifically address GDOE’s Motion to Dismiss filed on April 27, 2012. Nonetheless, for
24 purposes of thoroughness, GDOE submits this Reply to the Opposition for those statements
25 which do not exceed the Office of Public Accountability’s (“OPA”) jurisdiction.
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1 **ANALYSIS**

2 GDOE and their consultants reviewed the entire submittal of every bidder and found all
3 submittals to be acceptable and in compliance with the requirements of the IFB 035-2011 and IFB
4 036-2011 (collectively referred to as "Protested IFBs"). The selected bidder for both of the
5 Protested IFBS was based on the lowest most responsive and responsible bid. GDOE maintains
6 that Appellant's allegations that Mega United and Phil-Gets (Guam) dba J&B Modern Tech's
7 bids are non-responsive to the Protested IFBs are without merit.

8 1. APB's Protest Regarding Bidders Qualifications.

9 The Opposition selectively quotes Section 3.2 of the Protested IFBs. Section 3.2 of the
10 Protested IFBs states that a bidder is "subject to licensure requirements as well as the Guam Local
11 Preference Policy in accordance with 5 GCA § 5008." Title 5 GCA § 5008 relates to businesses
12 licensed to do business on Guam by Guam Department of Revenue and Taxation and does not
13 relate to bidders having any special licensing or classifications by the Guam Contractors License
14 Board ("CLB") in order to submit a responsive bid. Appellant does not cite to a section in the
15 Protested IFBs that requires a certain type of specialty licensing be held by the bidding contractor.
16 Further, Appellant does not contradict GDOE's statement that any work that potentially required
17 specialty licensing could be done by specialty licensed subcontractor.

18 Appellant quotes 21 GCA § 70108 and CLB Rules and Regulations and implies that Mega
19 United and Phil-Gets (Guam) dba J&B Modern Tech must have specialty contractor's license to
20 bid on the Protested IFBs. GDOE again asserts that the qualifications and classifications of a
21 bidder, taken alone, would not necessarily disqualify a bidder as non-responsive to the Protested
22 IFBs. For all of the above stated reasons, GDOE respectfully requests that the OPA determine
23 that this part of the Appeal is without merit.

24 2. APB's Protest Regarding Bid Opening.

25 It is not standard industry practice to read an entire bid submittal package during a bid
26 opening. As certain portions of the required information of Section 2.5.1 of the Protested IFBs
27 may be designated as trade secrets or proprietary data it would be inappropriate to disclose or
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1 “read out” the entire bid during the bid opening. The determination of whether a bid contains all
2 of the listing requirements of Section 2.5.1 of the Protested IFBs is made by GDOE and their
3 consultants upon a thorough review of the entire submittal. GDOE followed procurement law and
4 regulations when revealing information from the bids at the opening.

5 Lastly, the Opposition raises issues that were not addressed in the Protest Letter or
6 GDOE’s Response, therefore, GDOE respectfully submits that the OPA does not have
7 jurisdiction to determination that the winning bidder does not satisfy the requirements under
8 Section 2.5.1-a. For all of the foregoing reasons, GDOE respectfully requests that the OPA
9 determine that this part of the Appeal is without merit.

10 3. APB’s Protest Regarding Bid Price Basis.

11 GDOE continues to assert that the OPA does not have jurisdiction to determine
12 Appellant’s claims contained in this part of the Opposition. *See* GDOE’s Motion to Dismiss in
13 Part filed on May 21, 2012.

14 Even if the OPA denies GDOE’s Motion to Dismiss in Part, GDOE respectfully requests
15 that the OPA find that the comprehensive plans and specifications are precise enough for
16 prospective contractors to submit a competitive sealed bid. *See In re: Infratech International,*
17 *LLC*, Decision, Office of Public Accountability, OPA-PA-11-019, OPA-PA-11-020, OPA-PA-
18 11-021, p. 12 (Mar. 29, 2012). Appellant’s estimated area was calculated as part of their
19 competitive bid, but is not binding on GDOE in evaluating the bids. The award for each of the
20 Protested IFBs is based on a lump sum bid to complete all work shown and described in the plans
21 and specifications, regardless of the bidder’s quantity take-off or per unit price. The contractor
22 awarded the contract for each of the Protested IFBs will be warranting and representing that the
23 contract can and will be performed under the terms and conditions contained in its bid, including
24 the bid price. *Id.* at p. 13. GDOE respectfully requests that the OPA determine that this part of
25 the Appeal is without merit.

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CONCLUSION

In the event that the OPA determines not to dismiss this case on the basis in GDOE's Motion to Dismiss filed on April 27, 2012, GDOE respectfully requests that the OPA determine that this entire Appeal is without merit.

Dated this 23rd day of May, 2012.

Respectfully submitted,

GUAM DEPARTMENT OF EDUCATION

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