



J&B MODERN TECH
ACR EQUIPMENT AND SUPPLIES

P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931
TELEPHONE : (671) 646-0588 / 646-3346 / 646-4435
FAX: (671) 646-0589

Doris Flores Brooks
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 11/6/12
TIME: 345 AM PM BY: MIT
FILE NO OPA-PA: 12-019

November 6, 2012

**Re: Bid invitation GDOE IFB 026-2012
J&B Modern Tech Protest**

Dear Ms. Brooks:

This protest is being submitted to the Public Auditor pursuant to Section 8 of Public Law 31-196, which provides that protests related to funds allotted to the Guam Department of Education for Capital Improvement Projects and air conditioning repair and maintenance shall be submitted to the Public Auditor. This protects concerns Guam Department of Education (“GDOE”) IFB 026-2012, a copy of which is attached hereto as “Exhibit 1”.

Phil-Gets (Guam) International Trading Corporation dba J&B Modern Tech (“J&B”) protests (a) the Guam Department of Education’s (“GDOE”) decision not to award the contract for GDOE IFB 026-2012, Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty-Five (35) Schools and All Support Facilities due to alleged “higher bid price offered”, and (b) the recommendation to award the contract to JRN Air Conditioning & Refrigeration, Inc. (“JRN”). The decision not to award the contract to J&B and the recommendation of an award to JRN were stated in the document entitled “Bid Status” dated October 24, 2012 but faxed to J&B on November 1, 2012. A copy of this Bid Status is attached hereto as “Exhibit 2”.

In Section 2.4.1 on page 7 of the Invitation for Bid it is expressly stated:

Bidders must submit **C13 and C51** Certificates from the Guam Contractor’s Licensing Board WITH THEIR BID. Failure to submit these documents will result in a nonresponsive bid and disqualification from consideration for award.

The boldface, underlining and capitalization above are all found in the original Invitation for Bid from GDOE. A bidder such as JRN could not have missed this explicit

Doris Flores Brooks
Public Auditor
November 6, 2012
Page 2

instruction. Nonetheless, JRN did not submit the required certification with its bid. Thus there can be no doubt that based on the terms of the IFB, JRN's omission resulted "in a nonresponsive bid and disqualification from consideration for award." The same result is reached under general principles of Guam procurement law. *See* 5 GCA §5201(g) (responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids); 5 GCA §5211(g) (contract to be awarded to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bid).

Since JRN must be disqualified from consideration due to a nonresponsive bid, it cannot be recommended that the contract be awarded to JRN. As is shown in the Abstract of Bidders, attached hereto as "Exhibit 3", once JRN is disqualified, J&B is the lowest bidder. As J&B had a lower bid than any other responsive bidder, the decision to not select J&B due to "higher price" is erroneous.

Thank you for your attention to this matter.

Sincerely,



GENEROSO M. BANGAYAN
President, Phil-Gets (Guam) International Trading
Corporation dba J&B Modern Tech

xc: Marcus Y. Pido, Supply Management Administrator
Guam Department of Education

John J.P. Fernandez, Superintendent of Education
Guam Department 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) 475-0436/0440
Fax: (671) 472-5001



JON J.P. FERNANDEZ
Superintendent of Education

MARCUS Y. PIDO
Supply Management Administrator

BID STATUS

October 24, 2012

J & B Modern Tech
P.O. Box 9788
Tamuning, Guam 96931
Tel: (671) 646-4435
Fax: (671) 646-0589
E-Mail: gmbangayan@guam.net

Attn: Gene Bangayan

Bid no.: GDOE IFB 026-2012 OPENED: Friday, October 19, 2012 @ 10:00 A.M.

Description: PREVENTIVE MAINTENANCE AND MINOR REPAIRS FOR SPLIT AND CENTRAL A/C EQUIPMENT FOR THIRTY FIVE (35) PUBLIC SCHOOLS AND ALL SUPPORT FACILITIES

The following is the evaluation results of subject bid: Refer to items checked below.

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

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

// Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 2.17 titled Bid Bond
- Bid received after the hour established by the Invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with Specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

/X / Not Selected due to:

- Higher Price Bid Offered

/X / Bid is recommended for award to: JRN Air Conditioning & Refrigeration, Inc
P.O. Box 27070
GMF, Barrigada, Guam 96921
Tel: (671) 649-8120/31
Fax: (671) 649-5737
E-Mail: jrnac@guam.net

// Remarks: _____

Sincerely,

MARCUS Y. PIDO
Supply Management Administrator

ACKNOWLEDGE, PROTEST WILL FOLLOW

ACKNOWLEDGMENT RECEIPT

Signature

Date: 11/1/12 Time: 4:00 P.M.

Blanket designations of confidentiality placed on the front cover of a bid will not be accepted as a valid designation of proprietary information. Every item, page, section or subsection that the Bidder wishes to designate as a trade secret or proprietary data should be listed on GDOE Procurement Form OO4 and also clearly marked and separable from the remainder of the bid.

Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

2.2.8 – ACKNOWLEDGEMENT OF AMENDMENTS TO IFB

Bidders must acknowledge in writing the receipt of any Amendments or Clarifications to this IFB. Acknowledgement forms will be included with IFB Amendments or Clarifications and these forms must be submitted to GDOE. *Bids that do not contain properly executed acknowledgement forms will be deemed nonresponsive and disqualified from consideration for award.*

2.3 – EVENTS, CONFERENCES and/or MEETINGS PERTINENT TO THIS IFB

2.3.1 – PRE-BID CONFERENCE.

GDOE may, at its option, conduct a pre-bid conference in accordance with 2 GAR Div 4 §3109(g)(4). In the event a pre bid conference is scheduled, GDOE will announce the time and place of the conference to all prospective bidders known to have received an IFB.

2.3.2 – PRE-BID WRITTEN QUESTIONS

Potential bidders may submit written questions concerning this IFB before the time and date listed below. Questions must be submitted in writing according to the instructions contained in Section 2.2.1 herein. All questions and responses will be made available in writing to every potential bidder. Questions submitted after the time and date below will not be considered or answered.

Questions regarding this IFB must be received in writing by GDOE by:

TIME: 2:00 PM Chamorro Standard Time (ChST)
DATE: Thursday, October 04, 2012

2.4 – AWARD

2.4.1 – EVALUATION FACTORS FOR AWARD

Determination of an award pursuant to this IFB will be made based on the *lowest responsive and responsible bidder*. GDOE reserves the right to disqualify bids that are deemed to be nonresponsive, regardless of whether the bid is determined to contain the lowest price.

In determining the lowest responsive bidder, GDOE will be guided by the following evaluation factors:

- Bid price for the purpose of award will be determined by taking the Total Lump Sum Bid Price for the FIRST YEAR ONLY. The Total Lump Bid Price will be determined by adding the Total Annual Price for Preventive Maintenance (BID FORM 1, Item 1) and the Total Flat Rate Annual Price for Minor Repairs (BID FORM 1, Item 2).
- Bidders must submit C13 and C51 Certificates from the Guam Contractor's Licensing Board WITH THEIR BID. Failure to submit these documents will result in a nonresponsive bid and disqualification from consideration for award.

Number of Solicitation: **7**
 Number of Bids Received: **5**

Guam Department of Education
 Office of Supply Management
 Government of Guam

Bid Number: GDOE IFB 026-2012
 Closing Date: 19-Oct-12
 Time: 10:00 A.M.

ABSTRACT OF BIDDERS

Description of Supplies or Services; Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty-Five (35) Schools and All Spt. Fac.	Acceptance Time						Delivery Acceptance						Delivery Specified in Bids (Days)					
	A	B	C	D	E	F	A	B	C	D	E	F	A	B	C	D	E	F
BIDDER(S) GODWIN DAY, INC.																		
BID GUARANTEE (15%) (✓)																		
SEX OFFENDERS COMPLIANCE AFFIDAVIT (✓)																		
PROPRIETARY DATA YES																		
AMENDMENTS: 1 (✓) 2 (✓) 3 (✓) 4 (✓) 5 ()																		
CLARIFICATION: 1 ()																		
REJECTED FOR NOT SUBMITTING AMENDMENT # 5																		
BID GUARANTEE (15%) ()																		
SEX OFFENDERS COMPLIANCE AFFIDAVIT ()																		
PROPRIETARY DATA																		
AMENDMENTS: 1 () 2 () 3 () 4 () 5 ()																		
CLARIFICATION: 1 ()																		

I hereby certify that all BIDS received in response to this BID were opened under my personal supervision and that the same as of all bidders have been entered hereon

TABULATED BY: *[Signature]* DATE: 10/19/12
 (Signature)

LEGEND(S)
 (A) Affidavit Disclosing Ownership and Commissions
 (B) Affidavit re Non-Collusion
 (C) Affidavit re No Gratuities or Kickbacks
 (D) Affidavit re Ethical Standards
 (E) Declaration re Compliance with U.S. DOL Wage Determination
 (F) Affidavit re Contingent Fees

Number of Solicitation	7	Guam Department of Education Office of Supply Management Government of Guam										Bid Number	GDOE IFB 026-2012
Number of Bids Received:	5	ABSTRACT OF BIDDERS										Closing Date:	19-Oct-12
Description of Supplies or Services: Preventive Maintenance and Minor Repairs		Thirty-Five (35) Schools and All Spt. Fac.										Time:	10:00 A.M.
for Split and Central A/C Equipment for		Delivery Acceptance										Item No.	(E) Minor Repairs TOTAL
BIDDER(S)		Delivery Specified in Bids (Days)										Qty No.	Lump Sum
S & B WIDBURN TRAIL		Acceptance Time											
BID GUARANTEE (15%) (✓) \$300,000		9:45 AM											\$26,800.00
SEX OFFENDERS COMPLIANCE AFFIDAVIT (✓)		NO SERVICE LICENSES OF VEHICLE DRIVER											\$1,590.00
PROPRIETARY DATA (✓) 1/5		1/5											
AMENDMENTS: 1 (✓) 2 (✓) 3 (✓) 4 (✓) 5 (✓)		1/5											
CLARIFICATION: 1 (✓)		1/5											
JUN DL		9:50 AM											
BID GUARANTEE (15%) (✓)		NO SUBMITTAL TABLE											\$519,600.00
SEX OFFENDERS COMPLIANCE AFFIDAVIT (✓)		1/5											
PROPRIETARY DATA (✓) 1/5		1/5											
AMENDMENTS: 1 (✓) 2 (✓) 3 (✓) 4 (✓) 5 (✓)		1/5											
CLARIFICATION: 1 (✓)		1/5											
I hereby certify that all BIDS received in response to this BID were opened under my personal supervision and that the same as of all bidders have been entered hereon												LEGEND(S)	
(A) Affidavit Disclosing Ownership and Commissions (B) Affidavit re Non-Collusion (C) Affidavit re No Gratuities or Kickbacks (D) Affidavit re Ethical Standards (E) Declaration re Compliance with U.S. DOL Wage Determination (F) Affidavit re Contingent Fees													
TABULATED BY: <i>[Signature]</i>										(Signature)		DATE: 10/19/12	

Number of Solicitation: 7
 Number of Bids Received: 5

Bid Number: GDOE IFB 026-2012
 Closing Date: 19-Oct-12
 Time: 10:00 A.M.

Guam Department of Education
 Office of Supply Management
 Government of Guam
ABSTRACT OF BIDDERS

Description of Supplies or Services: Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty-Five (35) Schools and All Spt. Fac.	Acceptance Time	Delivery Acceptance	Delivery Specified in Bids (Days)	A B C D E F						Item No.	(D) Preventive Maint. TOTAL	(E) Minor Repairs TOTAL	Lump Sum
				A	B	C	D	E	F				
BIDDER(S) GAS FOOD GROUP	9:54 AM			✓	✓	✓	✓	✓	✓		\$ 943,554.30	\$ 1314.11	\$ 944,868.41
BID GUARANTEE (15%) (✓)				✓									
SEX OFFENDERS COMPLIANCE AFFIDAVIT (✓)				✓									
PROPRIETARY DATA YES													
AMENDMENTS: 1 (✓) 2 (✓) 3 (✓) 4 (✓) 5 (✓)													
CLARIFICATION: 1 (✓)													
STANDARD BY ORDER #190-000-00													
ALL AIR CONDITIONING	9:54 AM			✓	✓	✓	✓	✓	✓		\$ 129,480.21	\$ 751,312.79	\$ 980,800.00
BID GUARANTEE (15%) (✓)				✓									
SEX OFFENDERS COMPLIANCE AFFIDAVIT (✓)				✓									
PROPRIETARY DATA YES													
AMENDMENTS: 1 (✓) 2 (✓) 3 (✓) 4 (✓) 5 (✓)													
CLARIFICATION: 1 (✓)													

I hereby certify that all BIDS received in response to this BID were opened under my personal supervision and that the same as of all bidders have been entered hereon

TABULATED BY: Albert DATE: 10/19/12
 (Signature)

LEGEND(S)
 (A) Affidavit Disclosing Ownership and Commissions
 (B) Affidavit re Non-Collusion
 (C) Affidavit re No Gratuities or Kickbacks
 (D) Affidavit re Ethical Standards
 (E) Declaration re Compliance with U.S. DOL Wage Determination
 (F) Affidavit re Contingent Fees