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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
HAGATNA, GUAM**

IN THE MATTER OF	)	OPA-PA-13-004
	)	
<b>K CLEANING SERVICES,</b>	)	<b>APPELLANT'S COMMENTS TO</b>
	)	<b>AGENCY REPORT</b>
Appellant.	)	
	)	
_____	)	

Appellant K CLEANING SERVICES (K CLEANING) files these comments on Guam International Airport Authority's (GIAA) Agency Report filed May 23, 2013. These comments are filed pursuant to §12104(c)(4), Division 4, Title 2 of the Guam Administrative Rules and Regulations. These comments are directed at the Agency Statement portion of the Agency Report.

**(A) COMMENTS ON STATEMENT OF FACT**

On March 29, 2013, the rescheduled date for receipt and opening of the bid for IFB001-FY13, K CLEANING brought its bid to the conference room as required by the IFB (Tab F, Agency Procurement Records) as well as the General Information page in the IFB. Both of these pages are attachments to K CLEANING's Notice of Appeal. Since K CLEANING brought its bid to the place directed by the IFB, it was not late.

**ORIGINAL**

GIAA relies on the page of the packet entitled "Instruction to Bidders" to claim there was no ambiguity of where bidders were to deliver their bids. But, these instructions read along with the invitation for bid and the general information clearly create an ambiguity in the whole bidding process that took place March 29, 2013.

At the time and place the bids were to be submitted and opened, K CLEANING did not believe there was any ambiguity and that the process was to take place at the conference room. If K CLEANING had believed the instructions were unclear, it would have raised the issue prior to the date the bids were to be submitted and opened. It was only when K CLEANING and another bidder were told shortly after 2:00 pm on March 29, 2013, that they were supposed to submit their bid to the Office of the GIAA Executive Manager that any confusion and ambiguity regarding the bid submission and opening became apparent to K CLEANING and the other bidder.

Based on GIAA taking the position that the bid process was not misleading or ambiguous, it refused to open the bids of K CLEANING and the other bidder who at the time directed in the IFB were at the conference room and not at the Office of the GIAA Executive Manager. While taking the position in K CLEANING's appeal that there was no ambiguity or confusion created by the IFB001-FY13 directions, in a recent invitation for bid by GIAA for custodial services for TSA offices, IFB003-FY13, GIAA made it clear in the invitation for bid that the bids should be submitted at the Office of the Executive Manager and then opened at the GIAA conference room. As the invitation for bid in IFB#GIAA003-FY13 states: "Deadline for submission is 2:00 pm Friday, May 23, 2013 at the Office of the Executive Manager, GIAA Main Terminal, Third Floor, 355 Chalan Pasahero, Tamuning, Guam, 96913. At 2:15 pm, the same day, all bids will be publicly opened and read aloud at the GIAA Conference Room." This language is also

repeated on the General Information page of the Invitation for Bid. A copy of this Invitation for Bid and the General Page is attached as Addendum 1. If GIAA truly believed its bid process in IFB001-FY13 was clear and unambiguous, there would have been no reason for GIAA to rewrite IFB 003-FY13 to clarify the submitting and opening process that is the basis of K CLEANING's appeal.

GIAA further states that the bid instructions to submit the bids at the Office of the Executive Manager are clear. But, the same instructions say "... bids ... will be received ... as indicated in the INVITATION FOR BID ... ." A reading of the invitation for bid reveals no mention of the Office of the Executive Manager in regards to the submission of bid and/or opening of bid.

The fact there is so much discussion in this appeal about the process in the IFB for submission of the bids makes it obviously clear that the IFB instructions were not clear. Moreover, the fact that more than one bidder read the instructions the same way and were at the GIAA Conference Room to submit their bids at the date and time directed supports the fact that the bid language was confusing. Finally, the fact that GIAA has modified its instructions in IFB003-FY13 is overwhelming evidence that GIAA found the instructions in 001FY13 could have been clearer, even though it continues to argue in this appeal that there was no ambiguity.

**(B) K CLEANING's ARGUMENT IS TIMELY**

GIAA's Motion to Dismiss is already before the OPA. As noted in the arguments presented regarding said motion, K CLEANING was not aware of any problem in the IFB solicitation until its representative along with another bidder's representative waited at the conference room to submit bids and attend the bid opening as the invitation for

bid instructed. When GIAA personnel came to these bidders after the 2:00 pm deadline, and said they should have submitted bids at the Office of the Executive Manager, it was the first time that K CLEANING was aware there was any issue with the bid language. There was no reason to challenge the bid prior to the date of the submittal and opening because K CLEANING had no reason to know there was a problem until that date. As noted above, if K CLEANING had realized that the GIAA instructions were ambiguous before the bid submission date, it would have asked for clarification or made sure on the date of the bid submissions that it asked the Executive Manager for clarification. But as already made painfully clear, the language of the IFB said nothing about the Office of the Executive Manager. It only mentioned the conference room. Thus, K CLEANING's appeal was not late when the problem only arose at the submitting and opening of the bids based on GIAA's interpretation of its IFB on that date.

**(C) K CLEANING HAS NOT WAIVED ITS ARGUMENT REGARDING AMBIGUITY.**

As noted herein, K CLEANING was not aware there was a question of the place of submitting and opening of bids until the date of the event. The IFB should control. The IFB talks about the conference room. It says nothing about the Office of the Executive Manager. The instruction page relied on by GIAA does mention the Office of the Executive Manager, but it also states that the bids will be received as indicated in the IFB. GIAA's contention that K CLEANING did not timely file its protest over when and where the bid solicitation should be submitted has no merit. It is a red herring argument used by GIAA to try to get around the obvious fact GIAA's IFB was made

unclear and ambiguous by its interpretation of the IFB on the date the bids were submitted. More importantly, GIAA failed to accept responsibility that its bid instructions were unclear and accept all the bidders' bids presented at the time directed, whether they were at the Office of the Executive Manager or the conference room.

K CLEANING would further note that based on GIAA's procurement record, all the bids were submitted at the conference room. There is no document provided in the record that shows bids were submitted at the Office of the Executive Manager. The agency procurement record has attendance sheets for the March 29, 2013 bid opening. Those identify the location as the GIAA board conference room. (See, Attachment A, Agency Procurement Record). There is no sign-up sheet in the record for any activity, i.e., submitting bids at the Office of the Executive Manager on March 29, 2013.

**(D) THE IFB IS AMBIGUOUS**

GIAA contends the instruction page makes clear the bids are to be submitted at the Office of the Executive Manager. But, as already noted herein, that instruction in and of itself is unclear. It directs the bidder to submit its bids "as indicated in the IFB". As previously argued, nowhere on the IFB is the Office of the Executive Manager mentioned regarding submission and/or opening of bids. The only thing the IFB mentions regarding the Office of the Executive Manager is the location to pick up the bid package. Only the conference room is mentioned regarding the date for the submission and opening of bids. On the date of the submission and opening of bids, all of the agency records support that the submission and opening were at the conference room.

Arguably, GIAA is correct in that the record supports that there was no ambiguity. The record supports that the bids were submitted and opened at the conference room

as the IFB directs. But, GIAA refused to accept K CLEANING's and other bidders' bids because it read its own instructions differently. Clearly, this demonstrates the ambiguity in the IFB.

**(D) THE OPA CAN COMPLETE THE AWARD TO THE WINNING BIDDER.**

K CLEANING's proposed remedy is for the OPA to determine that the bid was in violation of law. As a result, any contract awarded should be nullified because it is not in the best interest of the territory. This is an appeal of a bid pertaining to janitorial services at GIAA. The whole purpose for the procurement process for such a service contract is to get the services for the best price for the Government. Clearly, the best interest of the territory is to get the lowest price for the services that are the subject of the bid. There is no basis for either GIAA or the OPA to make a finding that it is in the best interest of the territory to continue a wrongfully awarded service contract such as involved here at a higher price.

GIAA suggests that even if the bid process was improper, the contract should be ratified. GIAA cannot point to a good reason for such a result. GIAA can terminate the contract and pay the current contractor for its services rendered as of the date of its termination of the contract. It can then enter into a contract with K CLEANING based on K CLEANING's having submitted the lowest bid for the services sought. As a result, GIAA will save money.

In Guam publications, OPA-PA-08-007, the OPA terminated a contract and awarded it to the next (and only other) bidder. The OPA has authority to make a similar order in this case. Janitorial services are the type of services that should result in the lowest bidder winning the bid. K CLEANING was the lowest bidder on certain portions

of the IFB. Due to GIAA's actions regarding the bid opening, K CLEANING's bid was not considered. Once the OPA determines that K CLEANING's appeal is appropriate and that GIAA acted unlawfully regarding the bid process, the OPA should review the bids and determine that K CLEANING was the winning bidder if its bid had been accepted. Based on the criteria on what is best for the territory, primarily considering the cost to the territory, K CLEANING should be awarded the contract that it should have won, if it had been treated fairly and equitably.

5 GCA §5001 sets forth the purposes of the Guam procurement law. Section 5001(b)(4) provides that the underlying purposes are "to ensure the fair and equitable treatment of all persons who deal with the procurement system of this territory" and subsection (5) "to provide increased economy in territorial activities and to maximize to the fullest extent practicable the purchasing value of public funds of the territory". If GIAA had properly followed the purposes of the procurement law on March 29, 2013, it would have accepted the bids of K CLEANING and any other bidder who was at the conference room as the IFB directed. GIAA's narrow reading of its IFB and instructions gave more weight to the instruction page than to the invitation for bid page. There is no good reason for this except that GIAA was unwilling to accept responsibility that it had not made clear directions to the bidders. This fact is underscored by the solicitation for IFB03-FY13 where the ambiguity and confusion in IFB001-FY13 have been removed.

The only fair result in this appeal is for the OPA to determine who was the winning bidder of various portions of the bid after considering K CLEANING's bid. As all of the bidder's bids have become public, any other result would be unfair to any of the winning bidders because their bids would now be known by their competitors. This

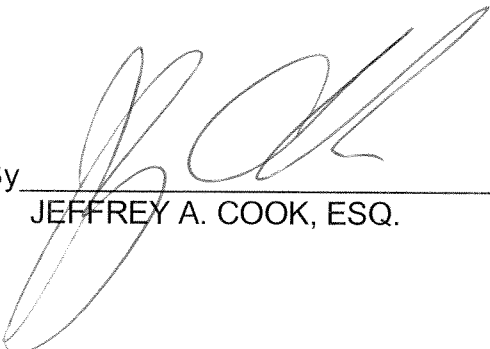
would not be a fair and equitable treatment of K CLEANING and other bidders in the process.

Therefore, in conclusion K CLEANING respectfully asks that the OPA uphold its appeal and find that GIAA bid was ambiguous. The OPA should find that K CLEANING's bids should have been accepted as submitted and considered in the various areas the bid covered. Finally, if K CLEANING's bid was the lowest bid, it should be determined that the contract should be awarded to K CLEANING pursuant to the procurement law. As to any other bidder that may have been awarded the contract, because it had the lowest bid based on GIAA's error in handling the bid process, that contract should be terminated and that contractor should receive payment for all services rendered to date, including reasonable profits for the time it performed the services as required by 5 GCA §5452(a)(1)(ii). But, based on equity as required by the procurement law and the best interest of the territory in getting the least expensive services, the bid should be awarded to K CLEANING on any bids it won once its bid is compared with the other bidders.

Respectfully submitted this 3 day of June, 2013.

**CUNLIFFE & COOK**  
A Professional Corporation  
Attorneys for Appellant

By

  
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JEFFREY A. COOK, ESQ.





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**INVITATION FOR BID  
IFB No. GIAA-003-FY13**

**CUSTODIAL SERVICES FOR TSA OFFICES AND FACILITIES**

The Antonio B. Won Pat International Airport Authority (GIAA), a public corporation and an autonomous instrumentality of the Government of Guam seeks interested and qualified individuals/firms to participate in a bid award process to furnish all labor, materials, supplies and equipment necessary for the Custodial Services for TSA offices and facilities at the Antonio B. Won Pat International Airport Authority, Guam.

Bid documents describing the sealed bid process, scope of work, terms and conditions of the required bid, may be reviewed or obtained at the GIAA Executive Office between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Such documents may be obtained for a non-refundable sum of Twenty Five Dollars (\$25.00) for each printed package or Ten Dollars (\$10.00) for electronic file (in pdf format) in compact disc, payable in cash or certified/cashier's check made to GIAA.

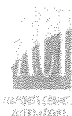
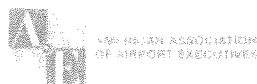
A **mandatory pre-bid conference** will be held at the GIAA Conference Room, on **Friday, May 17, 2013 at 10:00 a.m.** to discuss bid requirements and to consider any questions potential bidders may have regarding the bid documents. A tour/inspection of the project site will follow thereafter. All prospective bidders are encouraged to attend.

Deadline for submission is 2:00 p.m. Friday, May 23, 2013 at the office of the Executive Manager, GIAA Main Terminal, 3<sup>rd</sup> Floor, 355 Chalan Pasaheru, Tamuning, Guam, 96913. At 2:15 P.M. the same day, all bids will be publicly opened and read aloud at the GIAA Conference Room. All bids received after the deadline of submission specified above, will not be considered.

Bid documents are subject to revision and all parties who have signed for the receipt of such documents will be notified of any such revisions. The GIAA, in its best interest, reserves the right to reject any and all bids and to waive any and all informalities, and to disregard all non-conforming or conditional bids.

For more information, please contact our Mr. Franklin P. Taitano, Supply Management Administrator at 646-0300 thru 02.

CHARLES H. ADA II  
Executive Manager



**INVITATION FOR BID**

**CUSTODIAL SERVICES FOR  
TSA OFFICES AND FACILITIES  
(Bid No. GIAA-003-FY13)**

**GENERAL INFORMATION**

**1. INVITATION:**

- A. Bidders are hereby invited to submit a bid for furnishing all labor, materials, supplies and equipment necessary for the Custodial Services for TSA Offices and Facilities at the A. B. Won Pat International Airport, as shown on the Specifications incorporated herein.

**2. TIME AND PLACE FOR RECEIVING BIDS:**

- A. As described in the bid documents until 2:00 p.m., Thursday, May 23, 2013, at the office of the Executive Manager, GIAA Main Terminal, 3<sup>rd</sup> Floor, 355 Chalan Pasaheru, Tamuning, Guam, 96913. At 2:15 P.M. the same day, all bids will be publicly opened and read aloud at the GIAA Conference Room. Bids received after indicated time and date, will not be considered.

**3. DESCRIPTION OF WORK:**

- A. The Specifications in this package describe the necessary requirements, Scope of work, and Terms and Conditions required for Bid.

**4. AVAILABILITY OF CONTRACT DOCUMENTS:**

- A. Bid documents are available for inspection at GIAA Executive Office. Bidder may obtain a complete copy of the Specifications at GIAA between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

**5. MANDATORY ATTENDANCE TO PRE-BID CONFERENCE:**

- A. A pre-bid conference will be held in the GIAA at 10:00 a.m., on May 17, 2013. A tour/inspection of the project site will follow thereafter. All prospective bidders are encouraged to attend.