



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE PROTEST OF,

J & B MODERN TECH

Protestor

) **APPEAL NO: OPA-PA-12-019**
)
) **DECISION**
)
)

I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-12-019 regarding J & B MODERN TECH’s (Hereafter Referred to as “J&B”) Protest, made to the Public Auditor pursuant to Section 8(a), P.L. 31-96 (Effective March 28, 2012) concerning the DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM’s (Hereafter Referred to as “DOE”) October 24, 2012 Bid Status for GDOE-IFB-026-2012 (Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty-Five (35) Public Schools and All Support Activities) (Hereafter Referred to as “IFB”) which stated J&B’s bid for the IFB was rejected due to higher price bid offered and which stated the IFB award is recommended to JRN AIR CONDITIONING AND REGRIGERATION, INC., (Hereafter Referred to as “JRN”). The Public Auditor holds that DOE correctly recommended the award of the IFB to JRN because JRN was the lowest responsive bidder. Accordingly, J&B’s Protest is hereby DENIED.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties, and all arguments made during the November 14, 2012 hearing for J&B’s Protest. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

1 1. On or about September 21, 2012, DOE issued the IFB which solicited bids for a single
2 entity to perform maintenance and minor repairs on air conditioners in DOE's Public Schools
3 and Offices.¹

4 2. The IFB stated in relevant part that:

5 a. Determination of an award will be made based on the lowest responsive and
6 responsible bidder, and that DOE reserves the right to disqualify bids that are deemed to be non-
7 responsive regardless of whether the bid is determined to contain the lowest price.²

8 b. Bidders must submit C13 and C51 Certificates from the Guam Contractor's
9 Licensing Board with their bid. Failure to submit these documents will result in a non-
10 responsive bid and disqualification from consideration for award.³

11 c. The deadline for submitting bids was 10:00 a.m. on October 9, 2012.⁴

12 3. On September 25, 2012, DOE issued IFB Amendment No. 1 which cancelled the pre-
13 bid conference scheduled and added attachments to the IFB concerning the IFB's purpose, and a
14 sample IFB contract.⁵

15 4. On October 1, 2012, DOE issued IFB Amendment No. 2, which confirmed that the
16 October 2, 2012 Mandatory Pre-Bid Conference and Site Visit was cancelled, which clarified the
17 IFB's Bid and Performance Bond requirements, and which stated that no extensions to the
18 October 9, 2012 bid opening date would be granted.⁶

19 5. On October 3, 2012, GDOE issued IFB Amendment No. 3 moving the bid opening
20 date from October 9, 2012 to October 15, 2012 at 10:00 a.m.⁷

21 6. On October 10, 2012, DOE issued IFB Amendment No. 4 clarifying its requirements
22 for preventive maintenance.⁸

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24 ¹ Paragraph 1.1 IFB Timeline, and Paragraph 2.1.1 Purpose of IFB, pages 2 and
25 3, respectively, IFB, Exhibit 5, Procurement Record filed on November 9,
2012.

26 ² Paragraph 2.4.1 Evaluation Factors for Award, page 7, Id.

27 ³ Id.

28 ⁴ Paragraph 1.1, IFB timeline, page 2, Id.

⁵ IFB Amendment No. 1 dated September 25, 2012, page GDOE0078, Id.

⁶ IFB Amendment No. 2 dated October 1, 2012, page GDOE0098, Id.

⁷ IFB Amendment No. 3 dated October 3, 2012, page GDOE00101, Id.

⁸ IFB Amendment No. 4 dated October 10, 2012, page GDOE00103, Id.

1 7. On October 11, 2012, DOE issued Clarification No. 1 which changed various
2 quantities required by the IFB, clarified the IFB's Wage Determination standards, and informed
3 the potential bidders that the IFB was one-hundred-percent (100%) locally funded.⁹

4 8. On October 11, 2012, DOE issued IFB Amendment No. 5 which changed the bid
5 opening date from October 15, 2012 to October 19, 2012 at 10:00 a.m.¹⁰

6 9. On October 19, 2012, DOE held the bid opening, which was conducted by DOE
7 Buyer Supervisor II, ALBERT GARCIA, and DOE Buyer I, BARBARA QUINTANILLA.
8 DOE received five (5) bids in response to the IFB, the first was from GOLDEN BAY, INC.,
9 whose bid was rejected as non-responsive, the second was from J&B, whose total bid price was
10 eight-hundred-thirty-one-thousand, three-hundred-ninety-dollars (\$831,390), the third was from
11 JRN whose total bid price was five-hundred-thirty-four-nine-hundred-twenty-dollars (\$534,920),
12 the fourth was from GLOBAL FOOD SERVICES, LLC, whose total bid price was nine-
13 hundred-ninety-four-thousand-eight-hundred-sixty-eight-dollars-and-forty-seven-cents
14 (\$994,868.47), and the fifth was from AGBAYANI CONSTRUCTION CORP., whose total bid
15 price was one-million-eight-hundred-eighty-thousand-eight-hundred-dollars (\$1,880,800).¹¹

16 10. JRN submitted its Contractor's License for classifications A, B, C13, C40 & C51
17 from the Guam Contractor's Licensing Board, bearing Certificate No. C-06120855 with its bid.¹²

18 11. J&B submitted its Contractor's License for classifications A, B, C3, C13, C13A,
19 C16, C17, C18, C20, C33, C37, C40, C42, and C44 from the Guam Contractor's Licensing
20 Board, bearing Certificate No. C-0712-0775 with its bid. J&B also submitted a Verification of
21 License from the Guam Contractor's Licensing Board which stated that J&B was licensed to
22 perform classifications, A, B, C3, C4, C13, C13A, C16, C17, C18, C20, C37, C40, C42, C44,
23 C51, C55, and C68, with its bid.¹³

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26 ⁹ IFB Clarification No. 1 dated October 11, 2012, page GDOE00110, Id.

¹⁰ IFB Amendment No. 5 dated October 11, 2012, page GDOE00112, Id.

¹¹ Abstract of Bidders dated October 19, 2012, Exhibit 6, Id.

¹² JRN Contractor's License, Exhibit 4, page GDOE0017, Id., and Testimony of
27 Albert Garcia, November 14, 2012 Hearing Re Protest.

¹³ J&B's Contractor's License and Verification of License, Exhibit 3, pages
28 GDOE0011 and GDOE0012, respectively, and Testimony of Albert Garcia, November
14, 2012 Hearing Re Protest.

1 12. After the bid opening, J&B's President, GENEROSO M. BANGAYAN, requested
2 that DOE Buyer Supervisor II, ALBERT GARCIA make note of the fact that JRN did not submit
3 a Verification of License from the Guam Contractor's Licensing Board with JRN's bid, and
4 GARCIA complied with this request by making a hand-written notation on BANGAYAN's copy
5 of the Abstract of Bids only.¹⁴

6 14. On October 22, 2012, DOE Buyer Supervisor II ALBERT GARCIA contacted the
7 Guam Contractor's Licensing Board and asked whether a Contractor's License with its
8 Certificate Number was acceptable as a Verification of License. Guam Contractor's Licensing
9 Board WPS II, MARGARET A.O. GUERRERO, responded to this inquiry by stating that it was
10 up to DOE to determine whether the Contractor's License was acceptable and she stated that the
11 difference between the Contractor's License and the Verification of License was that the
12 Contractor's License does not state whether the contractor has any complaint on file like the
13 Verification of License does.¹⁵

14 14. On October 23, 2012, DOE Buyer Supervisor II ALBERT GARCIA recommended
15 that the IFB be awarded to JRN and found that the although J&B and AGBAYANI
16 CONSTRUCTION CORP., had submitted their Contractor's Licenses and Verification of
17 Licenses from the Guam Contractor's Licensing Board with their respective bids, and that JRN
18 and GLOBAL FOOD SERVICES, LLC., submitted their Contractor's Licenses and did not
19 submit a Verification of License with their respective bids, the submittal of the Contractor's
20 License meets the IFB's requirements because the only other information the Verification of
21 License has is whether there is a complaint on file against the contractor. The recommendation
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26 ¹⁴ Abstract of Bids dated October 19, 2012, attached to J&B's protest filed on
27 November 6, 2012, and Testimony of Albert Garcia, November 14, 2012 Hearing
Re Protest.

28 ¹⁵ E-Mail from Albert Garcia to Margaret A.O. Guerrero, and E-mail from
Margaret A.O. Guerrero to Albert Garcia dated October 22, 2012, Exhibit 9,
page GDOE00128, Procurement Record filed on November 9, 2012, and Testimony
of Albert Garcia, November 14, 2012 Hearing Re Protest.

1 to award the IFB to JRN and the aforementioned finding were approved by DOE Supply
2 Management Administrator, MARCUS Y. PIDO.¹⁶

3 15. On October 24, 2012, DOE issued a Bid Status notifying J&B that its bid was not
4 selected due to higher price bid offered and that the IFB was recommended for award to JRN.
5 JRN received the Bid status on or about November 1, 2012.¹⁷

6 16. On November 6, 2012, five (5) days after receiving the aforementioned bid status,
7 J&B filed its protest with the OPA alleging that JRN's bid was non-responsive because JRN
8 failed to comply with Paragraph 2.4.1 of the IFB by not submitting the required C13 and C51
9 certifications with its bid, and J&B requested that once JRN is disqualified, that J&B be awarded
10 the contract because it is the next lowest bidder.¹⁸

11 12 III. ANALYSIS

13 A. J&B Properly filed its Protest with the OPA.

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15 The OPA has the jurisdiction to decide J&B's Protest. Generally, a protest must be
16 submitted in writing within fourteen (14) days after an aggrieved person knows or should know
17 of the facts giving rise thereto. 5 G.C.A. §5425(a) and Chapter IX, §9.2.3.1., DOE Procurement
18 Regulations. Protests concerning DOE procurement are generally filed with DOE's
19 Superintendent. Chapter IX, §9.2.3.1, DOE Procurement Regulations. However, the protest
20 procedure is different if an actual or non-selected vendor, contractor, or service provider is
21 aggrieved by an award or a contract funded, in whole or in part, by funds allotted to DOE for
22 capital improvement projects and air conditioning repair and maintenance. Section 8(a), P.L. 31-
23 196 (Effective March 28, 2012). Such Protests shall be submitted to the Public Auditor. Id.
24 Here, as stated above, the IFB solicited air conditioning maintenance and repair services for
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27 ¹⁶ Memorandum from Albert Garcia to Marcus Pido dated October 23, 2012,
28 Exhibit 8, page GDOE00122, Id., and Testimony of Albert Garcia and Marcus
Pido, November 14, 2012 Hearing Re Protest.

¹⁷ Bid Status dated October 24, 2012 attached to J&B Protest filed on November
6, 2012.

¹⁸ J&B Protest filed on November 6, 2012.

1 DOE's Public Schools and Offices. The Public Auditor finds that pursuant to Section 8(a), P.L.
2 31-196, J&B properly filed its protest with the OPA.

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4 **B. JRN's bid was responsive.**

5 JRN's Contractor's License satisfied the IFB requirements. The key issue is whether
6 JRN's Contractor's License was responsive. Generally, the contract is to be awarded to the
7 lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth
8 in the IFB. 5 G.C.A. §5211(g) and Chapter III, §3.9.14.1, DOE Procurement Regulations. The
9 term "responsive bidder" as used in the aforementioned statute and regulation means a person
10 who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5
11 G.C.A. §5201(g) and Chapter I, §1.9.43, DOE Procurement Regulations. As stated above, the
12 IFB required the bidders to submit C13 and C51 Certificates from the Guam Contractor's
13 Licensing Board with their bid.¹⁹ This was a material requirement because the IFB stated that
14 the failure to submit these documents would result in a non-responsive bid and disqualification
15 from consideration for award.²⁰ JRN's Contractor's License fulfills this requirement because it
16 is a Certificate from the Guam Contractor's Licensing Board which bears a Certificate Number,
17 and because it indicates that JRN has the C13 and C51 classifications required by the IFB. Thus,
18 the Public Auditor finds that JRN's bid was responsive.

19 J&B's main argument is that JRN did not submit a Verification of License, and therefore
20 was non-responsive. J&B believes that the IFB required the submission of the Contractor's
21 License **and** the Verification of License from the Guam Contractor's Licensing Board (Bold
22 Emphasis Added). However, this is not supported by the aforementioned language of the IFB
23 which requires a C13 and C51 Certificate from the Guam Contractor's Licensing Board. The
24 Public Auditor notes that the Contractor's License JRN submitted with its bid bears a Certificate
25 Number issued by the Guam Contractor's Licensing Board. Further, the Verification of License
26 submitted with the bids from J&B and AGBAYANI CONSTRUCTION CORP., are not

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28 ¹⁹ Paragraph 2.4.1, Page 7, IFB, Exhibit 5, Procurement Record filed on
November 9, 2012.

²⁰ Id.

1 certificates because, although they were issued by the Guam Contractor's Licensing Board and
2 indicate the classifications these bidders were licensed for, to include their C13 and C51
3 classifications, the Verification of License does not bear a Certificate Number. Thus, the Public
4 Auditor finds that the IFB required the submission of the Contractor's License with its
5 Certificate Number, and that the IFB did not require bidders to submit a Verification of License
6 or both a Contractor's License and a Verification of License with their bids.

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8 **C. DOE's recommended award of the IFB to JRN is hereby affirmed.**

9 DOE's recommended award of the IFB to JRN as set forth in DOE's October 24, 2012
10 bid status is affirmed. Generally, the Public Auditor may resolve a protest concerning an award
11 or a contract funded, in whole or in part, by funds allotted to DOE for capital improvement
12 projects and air conditioning repair and maintenance by amending or canceling the solicitation,
13 by terminating the contract that was awarded, by declaring the contract null and void from the
14 time of its award, or by affirming the contract award decision. Section 8(a), P.L. 31-196
15 (Effective March 28, 2012). Here, as stated above, there is no merit to J&B's protest as JRN's
16 bid was responsive. Therefore, the Pubic Auditor hereby affirms DOE's recommended award of
17 the IFB to JRN as set forth in DOE's October 24, 2012 bid status.

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19 **IV. CONCLUSION**

20 Based on the foregoing the Public Auditor hereby determines the following:

- 21 1. J&B properly filed its protest with the OPA pursuant to Section 8(a), P.L. 31-196
22 (Effective March 28, 2012).
- 23 2. JRN's bid complied with Paragraph 2.4.1 of the IFB because it included JRN's
24 Contractor's License, issued by the Guam Contractor's Licensing Board as Certificate No. C-
25 06120855, which indicates that JRN retains the C13 and C51 classifications required by the IFB.
- 26 3. Paragraph 2.4.1 of the IFB did not require bidders to submit a Verification of License
27 or their Contractor's License and a Verification of License with their bids.
- 28 4. J&B's Protest is hereby DENIED.

1 5. The Public Auditor hereby affirms DOE's recommended award of the IFB to JRN as
2 set forth in DOE's October 24, 2012 bid status pursuant to Section 8(a), P.L. 31-196 (Effective
3 March 28, 2012).

4 This is a Final Administrative Decision. The Parties are hereby notified that pursuant to
5 Section 8(b), P.L. 31-196 (Effective March 28, 2012), this Decision and its determination of the
6 facts is FINAL and CONCLUSIVE with NO right of appeal or Judicial Review. However,
7 pursuant to Section 8(b), P.L. 31-196 (Effective March 28, 2012), the Parties may file a Request
8 for Reconsideration with the OPA, however, such request for reconsideration shall not stay the
9 award of any contract, whether in whole or in part, unless so ordered by the Public Auditor.
10 Such Requests for Reconsideration shall be filed no later than 5:00 p.m. on November 28, 2012.

11 A copy of this Decision shall be provided to the parties and their respective attorneys, in
12 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
13 www.guamopa.org.

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15 **DATED** this 21st day of November, 2012.

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21 DORIS FLORES BROOKS, CPA, CGFM
22 PUBLIC AUDITOR