



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

BEFORE THE PUBLIC AUDITOR

PROCUREMENT APPEAL

In the Appeal of

JMI Edison,

Appellant

Docket No. OPA-PA 13-010

DECISION

INTRODUCTION

A hearing on this appeal was held on September 25, 2013 before Public Auditor Doris Flores Brooks, CPA, CGFM, and Hearing Officer Peter C. Perez, Esq. Joshua D. Walsh, Esq. and Joseph C. Razzano, Esq. appeared on behalf of and with appellant JMI Edison (“JMI”) and JMI’s President, Edward Ilao, and Vice President, John Ilao. Andrew T. Perez, Esq., Legal Counsel, appeared on behalf of the Guam Department of Education (“GDOE”) with GDOE Supply Management Administrator Marcus Pido. Seth Forman, Esq. appeared on behalf of and with Interested Party Phil-Gets (Guam) International Trading Corp dba J&B Modern Tech (“J&B”) along with J&B representative Generoso Bangayan. This appeal arises from GDOE’s determination that JMI submitted an unresponsive bid to GDOE IFB 008-2013, which sought bids to provide GDOE an Indefinite Quantity Purchase of Air Conditioning Equipment.

Prior to the Hearing, on August 20, 2013, the Hearing Officer issued an Order Granting Motion RE Automatic Stay. GDOE and J&B have requested reconsideration of that Order. That request is DENIED.

1 At the commencement of the Hearing, the Public Auditor and the Hearing Officer
2 admonished GDOE for its failure to advise the Public Auditor in a timely manner that the funds
3 for the IFB under the Adequate Education Trust Act under P.L. 31-234 were set to expire by
4 September 30, 2013 if these funds are not obligated by then. Had GDOE advised the Public
5 Auditor that the funding source for the IFB was in peril, the Public Auditor would have expedited
6 the appeal.
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8 Based upon the urgency of the appeal, the Parties waived their right to an evidentiary
9 hearing, stipulated to the consideration of the entire procurement record, stipulated to the
10 admission and consideration of the Parties' respective exhibits, and agreed to submit the appeal
11 based upon oral arguments at the Hearing.
12

13 GDOE and JMI agreed there is one issue on appeal: whether GDOE's determination that
14 JMI's bid was non-responsive as an alternate bid was in error. J&B asserts that JMI's bid was
15 non-responsive on other grounds not part of the GDOE's determination of JMI's purported non-
16 responsiveness, JMI's protest, and JMI's appeal. This appeal and Decision are limited to the
17 singular issue raised and presented by JMI and GDOE. With respect to this singular appellate
18 issue, J&B has joined in GDOE's arguments in opposition to the appeal.
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20

21 **FINDINGS OF FACT**

22 The Public Auditor issues this Decision based upon the procurement record, the documents
23 and exhibits submitted by the parties, the oral arguments presented by the parties, and the
24 stipulations of fact made at the Hearing, and makes the following Findings of Fact:

- 25 1. JMI is an offeror which submitted a bid pursuant to an Invitation for Bid ("IFB") issued
26 by GDOE and opened publicly on March 28, 2013.
27

- 1 2. The IFB pertained to GDOE IFB 008-2013 which sought bids to provide GDOE an
2 Indefinite Quantity Purchase of Air Conditioning Equipment.
- 3 3. The IFB states that the bid award would be based upon the “Total Lump Sum Bid Price
4 for the Extension” (IFB Section 2.4.1(b); GDOE Procurement Record Exhibit 7).
- 5 4. On June 22, 2013, GDOE issued a Bid Status and Intent to Award. It recommended
6 awarding the IFB to J&B. In addition, it determined that JMI’s bid was considered non-
7 responsive for the following reason: “Clarification 1 was issued on February 6, 2013 in
8 response to written questions submitted by potential bidders. On page 2, in response to
9 question F from J&B Modern Tech, GDOE instructed that ‘Bidders shall offer one (1)
10 price per item and shall submit one (1) bid’”. (GDOE Procurement Record Exhibit 9)
- 11 5. Clarification 1, page 2, section F stated, “Bidders shall offer one (1) price per item and
12 shall submit one (1) bid. Section 2.2.6 on page 8 titled, “ALTERNATE BIDS NOT
13 ACCEPTED”, states an alternate bid will not be accepted. If a bidder submits two bids,
14 GDOE may determine both bids as alternate bids and deem both bids non-responsive.”
15 (GDOE Procurement Record Exhibit 7)
- 16 6. GDOE stipulated that there were no specific instances where JMI submitted alternate bids
17 in its offer.
- 18 7. GDOE stipulated that JMI submitted a total lump sum bid price.
- 19 8. GDOE stipulated that if JMI’s bid were deemed responsive, JMI would be the lowest
20 bidder to the IFB.
- 21 9. GDOE’S determination that JMI submitted an alternate bid was in error.
- 22 10. GDOE should have considered JMI’s bid.
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1 **CONCLUSIONS OF LAW**

- 2 1. A “responsive bidder” is a person who submitted a bid which conforms in all material
3 respects to the Invitation for Bids. 5 G.C.A. § 5201(g).
4
5 2. GDOE’s determination that JMI’s bid was non-responsive due to an alternate bid was in
6 error.
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8 3. GDOE did not assert that JMI’s bid was non-responsive on any other basis.
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10 4. GDOE shall consider JMI’s bid to IFB 008-2103.

11 **DECISION**

- 12 1. GDOE shall expeditiously evaluate JMI’s bid, along with the other bidders, for IFB 008-
13 2103.
14
15 2. GDOE and J&B’s Motion for Reconsideration of the Order Granting Motion RE
16 Automatic Stay is DENIED.
17
18 3. The Parties shall bear their respective costs and fees associated with this appeal.

19 This is a Final Administrative Decision. The Parties are hereby informed of their right to
20 appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with
21 Part D of Article 9 of 5 G.C.A. § 5481(a) within fourteen (14) days after receipt of a Final
22 Administrative Decision. A copy of this Decision shall be provided to the Parties and their
23 respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for review
24 on the OPA website at www.guamopa.org.

25 **DATED**, this 25th day of September, 2013.

26 
27 **DORIS FLORES BROOKS, CPA, CGFM**
Public Auditor of Guam

28 Page 4 of 4