



April 15, 2008

RECEIVED
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PROCUREMENT APPEALS

APR 15 2008

TIME: 4:20PM
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FILE No. GPA-PA 08-025

Honorable Doris Flores Brooks
Public Auditor
Office of the Public Auditor
Suite 401 Pacific News Building
238 Archbishop Flores Street
Hagåtña, Guam

Subject: Procurement Appeal

Dear Public Auditor:

Please find the attached Procurement Appeal (Form Appendix A) submitted this date on behalf of Guam Cleaning Masters ("GCM") pertaining to the cancellation of University of Guam's ("UOG's") Bid Number P11-08 (for "Student Housing Custodial Services") on February 29, 2008 for "Insufficient Funds." Bids for this procurement were received by UOG and opened on February 7, 2008.

On March 12, 2008 GCM submitted its bid protest letter. On March 31, 2008 UOG issued its letter rejecting the bid protest and indicating that the bid would be re-bid. On April 2, 2008 GCM sent a request for reconsideration based upon erroneous information contained in UOG's bid protest rejection letter. No response was received.

Please also find the attached completed Hearing Request (Form Appendix D) submitted on behalf of our client, GCM.

Your kind attention to this procurement appeal is appreciated. Thank you.

Respectfully,

Douglas B. Moylan

Enclosures

Suite 201 Skinner Plaza Building • 138 West Seaton Boulevard • Hagåtña
Mailing Address: Law Offices of Douglas B. Moylan • P.O. Box 7822 • Tamuning, Guam 96931 • USA
(671) 475-9292 • (671) 483-9292 (cellular) • (671) 475-9293 (fax) • dbmoylan@gmail.com

1st Elected Attorney General of Guam • 3 term Legislative Counsel

COPY

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

ITI - Power Savers

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

(See Attachment)

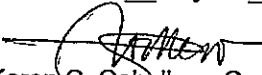
Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- Declaration Re Court Action


Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 15th day of April, 2008.

By: 
 Karen C. Caballero, Operations & Finance Manager

 APPELLANT

or 
 By: Douglas B. Moylan, Attorney for Appellant
 Appellant's Duly Authorized Representative
 (Address) Law Offices of Douglas B. Moylan, P.O. Box 7822, Tamuning, GU 96931
 (Phone No.) 475-9292 / fax 475-9293 / dbmoylan@gmail.com

Procurement Appeal Grounds Part IV

Appellant Guam Cleaning Masters (“GCM”) submits its Procurement Appeal of the University of Guam’s decision to cancel Bid Number P11-08 for “Student Housing Custodial Services” based upon the following grounds:

1. GCM was the lowest and most qualified bidder.

2. UOG’s purported reason for cancellation of “*Insufficient Funds*” was in fact either (i) not the reason or (ii) not a valid reason, or both, for the cancellation of the aforementioned UOG bid. UOG has acknowledged:

(a) that UOG has in the past bid out the services substantially identical to those services sought out in Bid P11-08 and was in fact aware of the estimated costs for bidding out Bid P11-08 (reasonably aware of the cost of this type bid);

(b) that UOG had the authority to transfer monies to provide for any budgetary shortfall for its Bid No. P11-08 to award the bid to GCM (**Exhibit A**);

(c) that UOG now intends to re-bid “Student Housing Custodial Services,” which is identical to Bid No. P11-08 for which GCM was the lowest qualified bidder, and which UOG cancelled for Insufficient Funds (**Exhibit A**);

UOG’s purported reason for insufficient funds in light of UOG’s foregoing admissions warrant the immediate award of its Bid No. P11-08 to GCM.

2. GCM has been substantially prejudiced by UOG's action in canceling the bid for the reasons set forth in its February 29, 2008 letter to GCM (**Exhibit B**) because:

(a) GCM's bid price and other offerings have been publicly disclosed as of the bid opening on February 7, 2008 & and subsequent vendors responding to UOG's intended re-bids (as UOG has indicated it will do in its March 31, 2008 letter (**Exhibit A**)) will use GCM's price and offerings as a reference point to undercut any bids GCM might submit.

(b) GCM was the lowest and most qualified bidder in response to Bid No. P11-08 and should not have to re-bid given UOG's admissions made in its March 31, 2008 letter rejecting GCM's bid protest.

(c) GCM has expended costs and resources in bidding for Bid No. P11-08, which additional monies should not have to be spent in responding to a re-bid by UOG since it properly bid and should have been awarded the bid out services based upon the foregoing facts.

3. Procurement Irregularities Supporting Corruption in the Procurement Award. Attached are copies of:

- (a) GCM's March 12, 2008 Bid Protest Letter (**Exhibit C**);
- (b) UOG's March 31, 2008 Response (**Exhibit A**); and
- (c) GCM Request for Reconsideration (**Exhibit D**).

The letters reveal that procurement officials present at the opening, who were actually knowledgeable of the UOG Procurement Laws and regulations, were attempting to extend the bid opening in order to permit another vendor to submit

a bid. In addition, UOG's Mr. Borja requested a meeting and on Wednesday, April 9, 2008 personally spoke with GCM's President about how GCM could not be awarded the bid or prevail in any appeal. Another GCM official was present who witnessed the conversation. GCM's President and other officials are prepared to swear under oath to the statements made in the attached letters and as to what transpired at the meeting.

Attached and labeled as "**Exhibit E**" are documents produced by UOG in response to a Sunshine Act of 1999 request which support the contention that UOG procurement officials were reasonably aware of the price which their Bid No. P11-08 would have cost, and undermine their purported reason that "Insufficient Funds" was actually the reason for the cancellation. At a minimum, the documents reflect that UOG procurement officials bid the project (Bid No. P11-08) with the awareness that GCM's price was reasonably foreseeable and should not be permitted to decline GCM's award for the stated reasons.

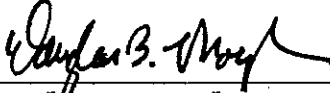
GCM believes that any 1 of the foregoing reasons alone or jointly support the relief requested herein.

GCM requests a hearing on this matter and is concurrently filing a Hearing Request Form (Form Appendix D).

The relief which Guam Cleaning Masters respectfully requests from the Office of the Public Auditor is that it order UOG to award Bid Number P11-08 to Guam Cleaning Masters as the lowest responsible bidder, and to pay the expenses and costs of having to file a protest and this appeal.

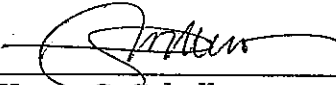
Respectfully submitted this 15th day of April, 2008.

Douglas B. Moylan
Attorney at Law



Douglas B. Moylan

Acknowledged:



Karen C. Caballero
Operations & Finance Manager
Guam Cleaning Masters

Exhibit A



**UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN**

OFFICE OF THE PRESIDENT

UOG Station, Mangilao, Guam 96923
Telephone: (671) 735-2990 • Fax: (671) 734-2296

March 31, 2008

Karen C. Caballero, Operations/Finance Manager
Guam Cleaning Masters
PO Box 9500
Dededo, Guam 96929
FAX: (671) 646-4707

Re: UOG Bid No. P11-08 Protest

Dear Ms. Caballero:

This is to acknowledge receipt of your response letter dated March 25, 2008. In my letter of March 17, 2008, in order to evaluate your protest and make a determination, I asked that you provide relevant documentation or information regarding the allegations of your Protest of the University Of Guam (UOG or University) Bid No. P11-08.

With respect to your allegation that the "Basis for cancellation unsupported by factual and legal authority for UOG to award bid", your response was that UOG's basis for cancellation was unavailability of funds, and that UOG has transfer authority to support this bid. You further state that previous bids have provided UOG with a reasonable basis to plan its actual bid amount.

The document from the UOG Consolidated Procurement Office provided to GCM legal counsel dated February 29, 2008 indicates that UOG Bid No. P11-08 was cancelled on the basis of "insufficient funds", which is different from your stated allegation of "unavailability of funds". Funding was available to support the issuance of UOG Bid No. P11-08. The record also shows that UOG had an estimated funding of \$40,000 budgeted for this purpose. UOG has the discretion to transfer funding as it deems necessary, but did not exercise that authority in this case, as the University determined it would not be appropriate to adjust quantities to come within available funds. UOG Procurement Regulation 3.15.4.2 gives the University the authority to reject bids in whole or in part when prices exceed available funds, which is the situation in this case. The University had an estimated \$40,000 in available funds, but it was insufficient to meet GCM's bid of over \$66,000, in spite of the fact that GCM was considered the lowest responsible bidder. The \$52,990 figure that is indicated in the documents you received was the total amount budgeted for FY'08. This amount was reduced by approximately \$10,000 already spent prior to the solicitation of the bid. In reality, UOG had \$42,519 that was not committed in that budget category, as shown on the Student Housing Budget and Actual Summary provided to GCM legal counsel previously.

With respect to your allegation of discriminatory treatment in an attempt to extend the bid opening for two other companies by UOG officials presiding at the opening, and the cancellation of the bid, my investigation shows that two other companies were late for the bid opening and were thus deemed as late submissions and not accepted by the UOG Procurement Office. The only two bid

submissions were GCM and ITI-Power Savers. The bid was cancelled because both bidders' prices exceeded available funds for the bid. There was no evidence of an attempt to delay the bid opening or extend the timelines.

Further, there is no information to believe that the bid was "rigged" or that the services were being provided by a private vendor without a bid during the bid protest. While there was some discussion after cancellation of the bid that the services could be contracted with Asmuyao, a non-profit corporation that employs sheltered or disabled workers, as allowed by law, no contract has been awarded to any vendor at this time for these services.

In response to my request for the production of information and documents to support your allegations, your response was that those documents are in UOG's possession and in GCM's counsel's possession, and will be subpoenaed at the appropriate time, should this protest be denied. Please be advised that my decision regarding this protest is based on receipt of all relevant and requested information from the protesting entity. Because you have not submitted any requested supporting documentation, and based on my inquiry regarding the information you provided of discriminatory treatment, it is my decision that UOG followed all applicable laws and regulations and acted in its best interests in canceling the bid, given that both bidders' prices exceeded the available amount, as allowed by UOG regulations. Any subsequent proposed options to UOG which were received after cancellation of the bid are not allowed by law.

Therefore, your Protest of UOG Bid No. P11-08 has been evaluated, based on documentation you provided and a review of the committee's actions and is therefore denied. You have the right to further administrative and judicial review. However, I also believe it is in the best interest of the University and to potential bidders, including GCM, that the bid be re-solicited to further ensure the continuing fair and equitable treatment of all persons who deal with procurement and to foster effective broad-based competition within the free enterprise system. In order to ensure that is so, I will direct the Procurement Office to re-issue the bid, and I would encourage GCM to use this opportunity to compete on the re-solicitation, to include the proposed options as was mentioned above.

The University is committed to fair and equitable treatment during all procurement transactions. Thank you for your attention to this matter.

Sincerely,



Helen J.D. Whippy, Ph.D.
Interim President

Exhibit B



UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN

Administration and Finance
Consolidated Procurement Office

February 29, 2008

Mr. Alex Thomas
Owner/President
Guam Cleaning Master
P.O. Box 9500
Dededo, Guam 969129
Fax: 646-4707

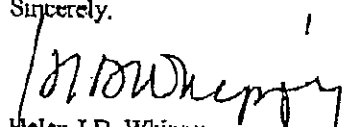
Subject: Bid Status re UOG Bid No. R11-08, Student Housing Custodial Services (Bid Opened Thursday, February 7, 2008 at 2:00 p.m.)

The following is the result of the above mentioned bid. Refer to the items checked below.

- Cancelled (in its entirety), or partially cancelled due to:
- Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders
- Rejected due to:
- Late submission of bid;
 - No bid security or insufficient bid security amount submitted; as required by General Terms and Conditions;
 - Not meeting the delivery requirement as stated in the IFB
 - Non-conformance with the specifications;
 - Inability to provide future maintenance and services to the equipment,
 - High price; or
 - Others: _____
- Bid is recommended for award to: _____

You can stop by Procurement Office between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday to pick up your **CITASIER'S CHECK**. Please contact Mr. Ben Borja at 735-2925 for any questions or concerns.

Sincerely,


Helen J.D. Whippy
Interim President

Acknowledgement Receipt: Please fax back to 734-3118


Guam Cleaning Masters

UOG Station, Mangilao, Guam 96923 Tel. (671) 735.2925 Fax. (671) 734.3118
A U.S. Land Grant Institution accredited by the Western Association of Schools and Colleges
The University of Guam is an equal opportunity provider and employer.

Exhibit C



GUAM CLEANING MASTERS

Tel: (671) 646-2002 Fax: (671) 646-4707
PO Box 9500 Dededo, Guam 96929
guamcleaningmasters@yahoo.com
www.guamcleaningmasters.com



March 12, 2008

Dr. Helen J.D. Whippy
Interim President
University of Guam
UOG Station
Mangilao, Guam 96923

Subject: Bid Protest re: UOG Bid No. P11-08

Dear Interim President:

Guam Cleaning Masters ("GCM") hereby submits this bid protest pursuant to the Guam Procurement Law (5 G.C.A. § 5425(a)) for the cancellation of UOG Bid No. P11-08 for Student Housing Custodial Services. The bases for this bid protest include:

1. sufficient funds existing to award bid to GCM;
2. GCM lowest and most qualified bidder;
3. basis for cancellation unsupported by factual and legal authority for UOG to award bid;
4. failure to initially fund procurement given past UOG bid history and experience;
5. discriminatory treatment in attempt to extend bid opening for 2 other companies by UOG officials presiding at the opening, and cancellation of bid when GCM only responsive & qualified lowest bidder; *and*
6. on information & belief bid is being conducted by private vendor without a bid during bid protest period.

We request that the University of Guam resolve this matter under your authority to resolve disputes by awarding this bid to GCM. (5 G.C.A. § 5425(b)).

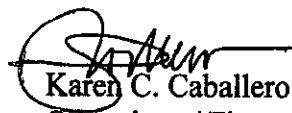
In order to resolve this situation under the aforementioned authority of the chief procurement officer, the fact GCM was the only qualified and lowest bidder, and under the authority of 5 G.C.A. § 5350(b) (*Price Adjustments*), GCM provides 2 options. The first option proposes that GCM will perform the work at the (purported) UOG budgeted price of \$52,990.00 *provided* that UOG supplies the materials.

The second proposes that if GCM does not have to provide a performance bond, then it can provide the services and materials at the budgeted price of \$52,990.00. Attachments are provided of the 2 options to resolve this matter.

GCM further requests its costs be reimbursed in the amount identified in the attachment herein pursuant to 5 G.C.A. § 5425(h)(1).

Please do not hesitate to call upon us if it might assist in resolving this bid protest. Thank you.

Sincerely,


Karen C. Caballero
Operations / Finance Manager

Attachments

cc: Douglas B. Moylan, Esq.
Counsel, Guam Cleaning Masters



GUAM CLEANING MASTERS

Tel: (671) 646-2002 Fax: (671) 646-4707
PO Box 9500 Dededo, Guam 96929
guamcleaningmasters@yahoo.com
www.guamcleaningmasters.com



UOG Price Breakdown base on the \$52,990.00 Budget OPTION 2

****This option is with no Bid Bond required**

Work Schedule 7 Days a week

7:00am - 11:00am

4 hours

2:00pm - 5:00pm

3 hours

7 hours a day

Labor Calculation

7 hours a day X 7 days a week = 49 hours man hours a week

49 hours a week

X 52 weeks for 1 year

2,548 man hours a year

2,548 man hours a year

X \$11.28 per hour base on the wage determination law

\$28,741.44 Labor cost for 1 year

\$28,741.44 Labor cost a year

/ 12 months

\$2,395.12 Labor cost per month

From the \$52,990.00 UOG Budget minus the labor cost for a year of \$28,741.44 we still have \$24,248.56

The following expenses are still needed to be deducted

Other cost

Holiday Pay which is double pay

Taxes

Supervisor Salary

Administrative cost

Lawyers Fee

Strip and Waxing cost every quarter and supplies to be used

****NOTE** UOG can provide GCM P.O for the first 5 months and provide an ammednment until contract finished it's 1 year contract. By waiving othe Bid Bond GCM can provide all labor, chemical and supplies needed excluding all paper products.**



GUAM CLEANING MASTERS

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PO Box 9500 Dededo, Guam 96929
guamcleaningmasters@yahoo.com
www.guamcleaningmasters.com



UOG BID Cost

Labor Cost	\$425.00
Bid Package Cost	\$25.00
Notary Cost	\$30.00
Cashiers Check Fee	\$8.00
Other Misc. Fee	\$125.00
	\$613.00

Exhibit D



GUAM CLEANING MASTERS

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PO Box 9500 Dededo, Guam 96929
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*Rec'd
4/3/08
1:10pm
Yor*
FILE COPY

April 2, 2008

Dr. Helen J.D. Whippy
Interim President
University of Guam
UOG Station
Mangilao, Guam 96923

**Subject: Reconsideration UOG Bid No. P11-08 Protest Denial
Sunshine Reform Act of 1999**

Dear Interim President:

Thank you for your March 31, 2008 letter replying to our bid protest pertaining to the above UOG procurement.

We request you please reconsider your decision based upon the following factors arising from our review of your letter:

1. Guam Cleaning Masters (1) has now been prejudiced because our bid prices were publicly released at no fault of GCM, (2) that you acknowledge that UOG has the authority to transfer funds for the student housing bid, and (3) that you acknowledge that you intend to rebid the services. Others now are privy to GCM's pricing and will unfairly outbid GCM in your intended rebid.
2. On a factual basis, contrary to the sources you inquired with, I personally attended the bid opening and heard and observed the following:
 - a. At 2p.m. I was at the UOG bid opening at the Procurement Office. Mr. Borja stated to me that BJ Janitorial just phoned him and that they were on the way & we should just wait. I then spoke with Mr. Carlos and I advised him that according to law UOG should open the bid. Mr. Carlos then informed Mr. Borja to open the bids.

I personally observed Advance Management Inc. (Anthony Guerrero) came into the room about 2:10 p.m. after the 2 UOG officials had opened the bids. Mr. Carlos told the AMI employee that although they were accepting it, AMI would be disqualified for coming in late.

Also present was an ITI - Power Savers male employee who observed the above events. These factors alone warrant your further investigating the incorrect information provided to you and as set forth in your March 31, 2008 letter.

In addition, in your recent response to our bid protest, you did not address the reimbursement of GCM's costs. We ask that you please respond to that issue, though we are asking for your reconsideration of your denial due to apparent incorrect information provided to you.

Finally, as we do not have access to records in your possession, and you are using that as a basis to deny our protest, pursuant to the Sunshine Reform Act of 1999, we request the following documents within 4 working days,

1. All bids submitted in response to the University of Guam's solicitation for "*Student Housing Custodial Services*"; similar to or the same as what was bid out in UOG Bid No. P11-08 for the past 3 years;
2. All contracts entered into for the past 3 years for "*Student Housing Custodial Services*"; similar to or the same as what was bid out in UOG Bid No. P11-08.

We ask that pending the production of the above requested information, that you withdraw your bid protest rejection in the hopes that you might further investigate the facts, and review and produce documents reflecting that UOG was aware of the fair market value of the services it bid out, and should have properly transferred funds to meet GCM's bid as the lowest qualified offeror. An "unavailability of funds" or "insufficiency" basis should not have been the reason for canceling this bid based upon the information contained in your letter.

Respectfully,



Alex Thomas
General Manager

cc: Douglas B. Moylan, Esq.
Counsel, Guam Cleaning Masters