



Contractor License # CLBO6-0010
 RME # 5242
 www.alliedpacificbuilders.com

P.O. Box 21988
 GMF, GU 96921
 Ph. (671) 475-7408
 Fax. (671) 475-7409

May 18, 2012

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 MAY 18 2012
 TIME 3:00 PM BY: [Signature]
 FILE NO C72-PA-12-070

Guam Public Auditor
 Office of Public Accountability
 Suite 401 DNA Building
 238 Archbishop Flores St
 Hagatna Guam 96910

RE: Letter of Response and Comments on GDOE Motion to Dismiss dated April 27, 2012 for the Appeal OPA-PA-12-010

Dear Ms. Brooks,

This is in reply and comments to the Motion to Dismiss filed by GDOE dated April 27, 2012. We submit hereto our opposition to the motion and the response is as follows:

Allied Pacific Builders, Inc. filed an appeal before the OPA with the same protest letter and GDOE's response with our appeal with goal to clarify their denial of the protest where it failed to provide more concise answers on our protest as follows:

APB's Protest:

- 1) Bidders qualifications and classifications (See Annex A, 2 pages), stating that they are not qualified to do the job as per the following notable issues:
 - 1) Mega United is only classified as A & B.
 - 2) Phil-Gets (Guam) International Trading Corp. dba: J & B Modern Tech is classified with C68, Epoxy only and not Epoxy Injection which is the scope of work for this project.

GDOE's Response:

The IFBs did not require bidders to have any special licensing or classifications in order to bid, only that certain work under the IFB is performed by the certified contractor. Bidders would be allowed to engage the services of certified subcontractors to perform such work. Therefore, qualifications and classifications of a bidder, taken alone would necessarily disqualify a bidder as non-responsive or not responsible to the IFB. The qualifications of Mega United and Phil-Gets (Guam) International Trading Corp. dba J&B Modern tech as described in your protest are not sufficient in and of themselves to disqualify either bidder. This portion of your protest is therefore denied.

APB's Appeal:

Allied Pacific Builders Inc. disagree because GDOE failed to provide on their response that per IFB bid package, Section 3.2, clearly stipulates that a bidder is "subject to licensure requirements as well as the Guam Local Preference Policy." In which under 21



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GCA Chapter 70, Subsection 70108 reads: *No person within the purview of this Chapter shall act, or assume to act, or advertise, as general engineering contractor, general building contractor or specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractors License Board.*

Under CLB Rules and Regulations, C-68 Classified Specialist: *A specialty contractor whose operations as such is in the performance or construction work requiring special skills and whose contracting business involves the use of specialized building trades in crafts not listed above and who meets the standards set by the board for such classification.*

With the response of GDOE, does this mean GDOE has an exemption to the law and they are not bound by the law as stated above? We submitted again the same protest letter because we again assert that Mega United does not have the certification to engage in this type of work. Further, Phil-Gets (Guam) dba J&B Modern Tech has certification for Epoxy only as stated in their Contractor's License, but it does not indicate Epoxy Injection, which again is part of the scope of work for this project.

APB's Protest:

2) Section 2.5-General Information, Sub-section 2.5.1-Competency of Bidders, pages 7 & 8, third paragraph of the Bid Package (See Annexes B.1 & B.2, Part of Invitation for Bid, 8 out of 39 pages). It is noted that during the bid opening, the qualifications of the bidders were not read out and no proof that our competitors submitted the stated requirements. Allied Pacific Builders Inc. had the special qualifications as per your request stated on the Bid Package. Quoting Section 2.2.1-General Disclaimer Regarding Instruction, *"All instructions contained herein should be carefully followed and complied therewith. Bids and bidders who fail to follow the instructions set forth in this section and any preceding or succeeding sections of this document may be deemed nonresponsive and disqualified from participating in this bid opportunity."*

GDOE's Response:

GDOE performed a public opening of the bids submitted in response to the IFB's 035 and 036 2011 on October 3 and October 4, 2011, respectively. In accordance with the procurement law and regulation, prices and certain other information were revealed at the opening. This information was recorded in GDOE's bid abstract for the IFB's. Bids were then reviewed by GDOE or their consultants to determine if the bids complied with the requirements of the IFB. GDOE has determined that the bids submitted (including the bid from Allied Pacific) complied with the requirements of the IFB. This portion of your protest is therefore denied.



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APB's Appeal:

We further assert that the *Abstract of IFB* check-off list used at the public opening of the bids on October 3 and October 4, 2011 is not consistent with the listing requirements, items "a" through "j," under your IFB Bid Package, Section 2.5.1, Competency of Bidders. Again, falling short of the proof of competency per GDOE's bid package. Furtherance, although the public opening of bids was recorded, a copy was not given to OPA to show our question on why the bid opening is not reading the requirements under Section 2.5.1. Also based on the submitted Agency Report winning bidder did not satisfy the requirements under Section 2.5.1-a Bidders experience on similar projects with similar scope of work.

APB's Protest:

3) Bid Price Basis. The submitted lowest bid is questionable. Section 2.1.3 of the Bid Package specified that the area should be based on project site and plans. The square footage of the cost they submitted for the roof coating alone does not conform to the required area to be coated. (See Annex C, 2 pages, Tabulation of Bidders' Costs & Analysis). While we based our estimates on plans, if our estimated area for roof coating is applied on their unit cost, their bid should be way up by 208% and 136% of their bid applying the roof coating for concrete only.

GDOE's Response:

The issues variances in bid prices and the ability of the prospective bidders to develop competitive bid were raised in an appeal involving the nearly identical GDOE IFB's 037-2011, 038-2011 and 039-2011. The appeal was before the office of the Public Accountability under caption in the matter of Infratech International, LLC, OPA Appeal No's OPA-PA-11-019 through 11-021. The OPA determined that the project scope, specifications, and drawings contained in the IFBs are precise enough to allow prospective contractors to submit a competitive sealed bid. (See decision fro the Office of the Public Accountability, dated March 29, 2012, OPA-PA-11-019, OPA-PA-11-020, OPA-PA-11-021, page 12.) The allegation that the submitted lowest bids in IFBs 035 and 036-2011 are questionable because of the difference in Allied Pacific estimated area is therefore without merit and this portion of your protest is therefore denied.

APB's Appeal:

We submitted the same protest because GDOE again failed to satisfy the issues on the variances whereby they have compared it to an appeal or protest made by another company that was not even part of the bidders and was denied. How GDOE did determines if the winning bidders are responsible enough on their bid price? Does GDOE have an estimated amount of construction? If they do, what is the estimated amount based on the plans, specifications? If there is a estimated amount, what was the area computed to? Further on this we would like to provide an example computation based on the results of the for 035 and 036-2011 to explain the protest and appeal so that the winning bidder will complete the project without any change order or additional cost and burden for GDOE.



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Builders, Inc.**

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Example:

J & B is the lowest bidder for Bid No. 035-2011

Bid Amount: \$ 1,329,530.00

Bid Unit Cost/SF: \$ 3.78

A:

Based on the above, below is the sample computation:

Bid Amount - \$ 1,329,530.00 divided by the Bid Unit Cost/SF - \$ 3.78

Equivalent to: 351,727.51 SF. Area for Northern A IFB-035-2011 per J & B estimates

B:

Based on the Square Footage Estimated by APB at 733,087 SF.

Bid Amount - \$ 1,329,530.00 divided by the APB Estimated SF – 733,087

Equivalent to: \$ 1.81 Unit Cost per square feet.

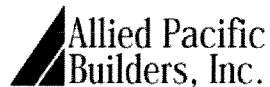
Based on the Example B above, if APB is correct on its estimated area, will the winning bidder complete the project in its entirety? Will the winning bidder complete the project without additional cost to GDOE? This is why we are questioning, how did GDOE determine if the estimates were correct? Was it based on GDOE's estimates? Or is GDOE basing it only on what the winning bidder has given?

With the pointers stated above by our company, we would like to seek for the basis of the award. Was it based on Section 2.4-Award or was it based solely on price? We hope that we get your attention and have a considerable action for this Letter of Appeal.

Very Truly Yours,
Allied Pacific Builders Inc.

A handwritten signature in black ink, appearing to read 'Genaro Q. Danila', written over a horizontal line.

GENARO Q. DANILA
General Manager



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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

MAY 18 2012
 300 pm
 12-010

LETTER OF TRANSMITTAL

Date:	Request No.	Transmittal No.
18-May-12	IFB NO. 035-2011	APB-GDOE-TF-10
& IFB NO. 036-2011		
LETTER OF RESPONSE & COMMENTS		
STRUCTURAL REPAIRS AND ROOF COATING		
NORTHERN A & B		
Various Locations, Guam		

TO: THE OFFICE OF PUBLIC ACCOUNTABILITY
 Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagatna, Guam 96910

ATTN: DORIS FLORES BROOKS

WE ARE SENDING YOU ATTACHED Under separate cover via _____ the following items:

- Subcontracts
- Plans
- Proposal
- Submittals
- Copy of Letter
- Invoice
- Shop Drawings
- Tender Documents

ITEM	DATE	COPIES	DESCRIPTION
1	5/18/2012	1	Letter of Response and Comments on GDOE Motion to Dismiss dated April 27, 2012 for the Appeal OPA-PA-12-010

- For Approval
- Approved as submitted
- Resubmit _____ copies for approval
- For your use
- Approved as noted
- Submit _____ copies for distribution
- As requested
- Return for Corrections
- Return _____ corrected prints
- For review and Comment
- FOR BIDS DUE
- Other _____

REMARKS:

Received by: _____

Signed By: 
 Noel Tolentino / Senior Project Manager