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Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL FILE NO OPA-PA: 13-004

PART I- To be completed by OPA

In the Appeal of)	
)	NOTICE OF APPEAL
<u>K Cleaning Services</u>)	
(Name of Company), APPELLANT)	Docket No. OPA-PA <u>13-004</u>
)	
)	

PART II- Appellant Information

Name: K Cleaning Services

Mailing Address: c/o Law Offices Cunliffe & Cook
Suite 200, 210 Archbishop Flores St., Hagatna, Guam 96910

Business Address: Post Office Box 7271
Tamuning, Guam 96931

Daytime Contact No: (671) 472-1824 Jeffrey A. Cook, Esq.

PART III- Appeal Information

- A) Purchasing Agency: Antonio B. Wonpat International Airport Authority (GIAA)
- B) Identification/Number of Procurement, Solicitation, or Contract: IFB No. GIAA-001-FY13
- C) Decision being appealed was made on April 18, 2013(date) by:
 Chief Procurement Officer Director of Public Works Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

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

GCM	Service Masters
Able Industries	USG
PWS	
MTO	
JJ	

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.

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

PART V- Declaration Re Court Action

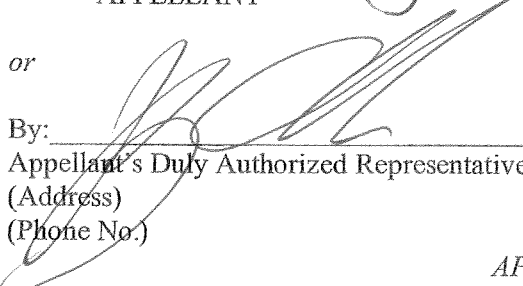
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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 8 day of May, 2013.

By: 
APPELLANT

or

By: 
Appellant's Duly Authorized Representative
(Address)
(Phone No.)

APPENDIX A

On March 29, 2013, GIAA received bids for custodial services as contained in Invitation for Bid IFB No. GIAA-001-FY13. On information and belief there were nine (9) bidders whose bids were accepted by GIAA and there were two (2) bidders whose bids were not accepted by GIAA because they were determined to be late by GIAA. One of those bidders is Appellant.

The basis for GIAA not accepting Appellant's and others bid package was that GIAA stated the Invitation for Bid required that the bid package be received at the office of the GIAA Executive Manager. However, the Invitation for Bid did not state this requirement. The Invitation for Bid, stated in pertinent part, "Deadline for submission is 2:00 p.m. Friday, February 15, 2013 at which time and place all bids will be publicly opened and read aloud at the GIAA Conference Room. All bids received after deadline of submission specified above, will not be considered." A copy of which is attached as Exhibit "A". The February 15, 2013 date had been continued to the March 29, 2013 date. On March 29, 2013 at 1:30 p.m. a representative of Appellant, K Cleaning Services, along with representatives of at least one other bidder were at the GIAA Conference Room to submit their bid packets for opening as directed in the Invitation for Bid. A little after 2:00 p.m. a GIAA representative came to the GIAA Conference Room and informed Appellant's representative that Appellant's bid was late and would not be accepted. Later, while the rest of the bidders bid proposals were being read, GIAA decided to accept the bid package from Appellant but did not publicly open it.

The Information for bid General Information also included language regarding the time and place for receiving the bids. It stated, "As described in the bid documents until 2:00 p.m., Friday, February 15, 2013, at GIAA, at which time and place, 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." A copy of the General Information page containing this information is attached as Exhibit "B".

In the Instruction to Bidders section of the Invitation for Bid it stated, "Sealed bids in triplicate will be received at the office of the GIAA Executive Manager as indicated in the INVITATION FOR BID at which time and place, all bids will be publicly opened and read aloud." (Emphasis in original). A copy of the Instruction to Bidders is attached as Exhibit "C".

Based on this confusing language in the Invitation for Bid, Appellant's representative was at the GIAA Conference Room as noted in the Invitation for Bid to have the bids opened and read aloud. On April 4, 2013, Appellant filed a protest with GIAA pointing out the ambiguity of the Invitation for Bid as the explanation for why their representative was at the Conference Room and not at the Executive Office. A copy of the Protest letter of April 4, 2013 is attached as Exhibit "D". On April 22, 2013, Appellant received a rejection letter from GIAA dated April 18, 2013 stating that the bid was not ambiguous and therefore the protest was rejected. A copy of the rejection letter is attached as Exhibit "E".

Based on this rejection, Appellant files this appeal with the OPA.

Appellant notes that the April 18, 2013 rejection letter, which is GIAA's decision as required by 5 GCA §5425(c) states the reasons for the action taken by GIAA, but fails to inform the Appellant of its right to administrative and judicial review. Based on this insufficiency in the April 18, 2013 decision letter, GIAA has not yet complied with the statutory requirements for a decision and therefore the time for Appellant to file its appeal continues to be open. Appellant cites the Decision and Order of Judge Michael J. Bordallo in *Sumitomo Construction vs. Government of Guam, Department of Public Works, SP0274-98*, in which the Court states, "This Court finds that the DPW's August 27th letter denying Sumitomo's protest failed to comport with the statute mandating the DPW to inform a protestant that it has a "right to administrative and judicial review." 5 GCA §5425(c)(2). The Court finds that in such cases, where the Respondent is remiss in its obligations, a Petitioner should be allowed a reasonable amount of time to file a

protest. The 9th Circuit has upheld that the time for an appeal does not begin to run until the judgment is actually docketed, even where the appeal is filed several years after judgment was rendered but not docketed. Likewise, time in the instant case does not begin to run until the DPW complies with the statutory requirements. Therefore, under the facts of this case, the Court finds that the Petitioner's filing of its protest on September 28 was reasonable and that Sumitomo filed its Petition in a prompt and timely manner."

Upon reviewing the Invitation for Bid sections cited in this appeal OPA will agree that the Invitation for Bid is ambiguous and confusing. The section GIAA relies on to state that the bids were supposed to be received at the GIAA Executive Manager's office is ambiguous in and of itself as it states, "As indicated in the INVITATION FOR BID" since the Invitation for Bid and the General Information both state that the bids will be opened at the GIAA Conference Room and state nothing about submitting the bids to the GIAA Executive office.

Therefore, Appellant respectfully requests that the OPA review this matter and determine that GIAA improperly conducted this procurement and violated Appellant's rights, as well as other bidders, by refusing to accept their bids at the date, time and place the Invitation for Bid instructed they do so. Based on this determination by OPA, GIAA should be ordered to open all bids that were timely presented at the GIAA Conference Room including Appellant's bid and award the contract based on the lowest bid of all bidder's submissions.

Dated this 8th day of May, 2013.

Sincerely,

CUNLIFFE & COOK



JEFFREY A. COOK

VERIFICATION

Hagåtña, Guam.

I, Dubidato SM Conlu, Jr., being first duly sworn, depose and state that I have read the foregoing Notice of Appeal and know the contents thereof; that the same is true of my knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.



DUBIDATO SM CONLU, JR.

Hagåtña, Guam.

SUBSCRIBED and SWORN to before me this 8th day of May, 2013, by **Dubidato SM Conlu, Jr.**

ROWENA S. JOHNSON
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **NOV. 05, 2016**
210 Archbishop Flores St., Ste 200 Hagatna, Guam 96910



NOTARY PUBLIC

ATTACHMENT "1"



P.O. Box 8770
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INVITATION FOR BID IFB No. GIAA-001-FY13

CUSTODIAL SERVICES

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 at the Won Pat International Airport facilities.

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 **Wednesday, February 6, 2013 at 10:00 a.m.** to discuss bid requirements and to consider any questions potential bidders may have regarding the bid documents. A **mandatory tour/inspection** of the project site will follow thereafter. All prospective bidders are **required** to attend.

Deadline for submission is 2:00 p.m. Friday, February 15, 2013 at which time and place 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

Attachment 3



INVITATION FOR BID

**CUSTODIAL SERVICES
(Bid No. GIAA-001-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 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., Friday, February 15, 2013, at GIAA, at which time and place, 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 AND SITE INSPECTION:

- A. A pre-bid conference will be held in the GIAA at 10:00 a.m., on February 6, 2013. A tour/inspection of the project site will follow thereafter. All prospective bidders are required to attend.

INSTRUCTION TO BIDDERS

1. **RECEIPT AND OPENING OF BIDS:**

- A. Sealed bids in triplicate will be received at the office of the GIAA Executive Manager as indicated in the INVITATION FOR BID at which time and place, all bids will be publicly opened and read aloud.
- B. Bids shall be made on forms furnished by the GIAA and shall be enclosed in a sealed envelope addressed to the GIAA, and endorsed on the outside with the name and address of the bidder, the bid number and project title.
- C. Attention is called to the fact that bidders not only offer to assume the obligations and liabilities imposed upon this bid, but bidders shall expressly make certain of the representation and warrants made therein. No effort is made to emphasize any particular provision of the contract, but bidders must familiarize themselves with every provision and its effect.

2. **MODIFICATION PRIOR TO DATE SET FOR OPENING BIDS:**

- A. The right is reserved for the Authority to revise or amend the specifications prior to the date set for opening bids. If the revisions and amendments are of a nature which requires material changes in quantities or prices to be bid or both, the date set for opening bids may be postponed by such manner of days as in the opinion of the Authority to amend to extend date for opening bids.

3. **EXPLANATION TO BIDDERS:**

- A. No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the GIAA for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a bidder will be in the form of an addendum to the contract documents which, if issued, will be sent as promptly as practicable to all persons to whom the drawings and specifications have been issued. All such



K Cleaning Services

P O Box 7271 Tamuning, Guam 96931 Tel: 653 2537/Fax: 649 2535

SBA 8(a) & HUBZone Certified
kcleaningservices.com

April 4, 2013

Mr. Charles H. Ada II
GIAA Executive Manager
Ref: IFB No. GIAA-001-FY13

APR 04 2013
TIME 2:26 PM
REC'D 8:11

Dear Mr. Ada,

We wish to launch a complaint regarding the bid receiving and opening on IFB No. GIAA-001-FY13. K Cleaning Services and two other bidders were told that bid receiving was closed and we were turning in our bids to the wrong location when we presented our bid packages to your staff in the conference room on March 29th, 2013. We believed that the GIAA Conference Room was the turn in location for the bid packages for the following reasons:

1. While the IFB stated in its original form (under Instruction to Bidders: 1. Receipt and Opening of Bids A.) **"Sealed bids in triplicate will be received at the office of the GIAA Executive Manager as indicated in the INVITATION FOR BID at which time and place, all bids will be publicly opened and read aloud."**
2. IFB General Information 2. A. Time and Place for Receiving Bids: **"As described in the bid documents until 2:00 p.m., Friday, February 15, 2013, (date for opening was changed by Addendum "D" to March 29, 2013) at which time and place, 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."**

We believe that the confusion regarding the bid turn in location was caused by the conflicting statements making reference to time and place for all 3 bidders that were present to turn in their bids at the GIAA Conference Room. We were all present at the GIAA Conference Room by 1:30pm which was witnessed by all other bidders present.

When the 3 bidders presented their bid packages to your staff at the conference room we were told that the bids were closed because we had not turned in our bids to the Executive Manager's office. Mr. Frank Taitano offered his apologies to us for the confusion and stated that he would receive our bid packages but they would not be opened read aloud, and a letter would be sent to our respective companies. We were allowed to sign in and remain for the opening.

For the reasons stated above we are requesting that our bid (which has already be received and is in the custody of your staff) be opened, reviewed and reconsidered for IFB No. 001-GIAA13.

We pray that our request be given consideration.

Most sincerely,

A handwritten signature in cursive script, appearing to read "Dubidato SM Conlu, Jr.", written over a horizontal line.

Dubidato SM Conlu, Jr.
Owner, K Cleaning Services



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April 18, 2013

Mr. Dubidato SM Conlu, Jr.
K Cleaning Services
PO Box 7271
Tamuning, Guam 96931

Hafa Adai Mr. Conlu:

On 04 April 2013 you delivered to the A.B. Won Pat International Airport Authority (GIAA) a letter concerning procurement IFB GIAA-001-FY13. Although not denominated as such, without waiving any right to which the GIAA may now or hereafter be entitled, the GIAA will treat your letter as a protest under 5 Guam Code Ann. §5425 and respond accordingly.

In your letter, you state that on 29 March 2013, you attempted to submit your bid package at the GIAA conference room. When doing so, you were informed that you had not submitted your bid to the proper location and that the time for submission had passed. Despite this, GIAA received your bid package but did not open and read your bid amount.

In protest, K Cleaning Services states that the procurement was ambiguous as to the proper place of submission and, therefore, the GIAA ought to open, review and consider its bid in this procurement. As you know, IFB GIAA-001-FY13 explicitly states that “[s]ealed bids in triplicate will be received at the office of the GIAA Executive Manager . . .” *Id at Instructions to Bidders, ¶1.A.* You believe however that another paragraph makes this instruction unclear. Paragraph 1.A., General Information, states “[a]s described in the bid documents until 2:00 p.m., Friday, February 15 (later changed by addendum) at GIAA, at which time and place, all bids will be publicly opened and read aloud at the GIAA Conference Room”. *Id.* This paragraph further provides that “[b]ids received after indicated time and date, will not be considered.” *Id.*

GIAA believes that the instruction as to the place of submission was sufficiently clear to place all bidders on notice as to the proper place of submission. The truth of this is that other bidders did, in fact, follow the instructions and submit their offers in accordance with the solicitation. What you sight as a paragraph causing ambiguity does no more than inform potential bidders of the place of opening of the bids. Finally, we note that your letter, as a protest, is itself untimely. We reject therefore your protest, find it to be without merit, and will not consider your bid. Thank you for your attention in this matter.

Si Yu'us Ma'ase,


CHARLES H. ADA
Executive Manager

cc: SMA

Attachment 2



EXHIBIT "E"

THE INTERNATIONAL AIR CARGO ASSOCIATION