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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM

IN RE AN APPEAL FILED) OPA-PA-12-015
27 SEPTEMBER 2012)
OPA-PA-12-015)
)
) **AGENCY REBUTTAL**
) **TO APPELLANT'S**
) **COMMENTS**
)
)
)

COMES NOW the Guam Visitors Bureau, by and through counsel Fisher & Associates, and submits a Rebuttal to Appellant's Comment's on an agency report. This Rebuttal is submitted pursuant to 2 Guam Admin. R. & Regs. 12104(c)(4).

REBUTTAL

In a procurement issued as an invitation for bids (IFB), the award is to be made to the lowest responsible, responsive bidder. Such was the requirement of this procurement. *See GVB IFB 2012-001 at ¶13, Agency Procurement Record Tab E.* Non-responsibility and non-responsiveness may be found where the bidder submits an unbalanced bid. *See Academy Facilities Management v. U.S., 87 Fed.Cl. 441, 464 (Fed.Cl., 2009) quoting J & D Maintenance and Services v. United States, 45 Fed.Cl. 532 (1999);* "There is a fundamental difference between unbalanced bids in sealed bid RFPs, and those in best value RFPs. In advertised or sealed bid procurements, the lowest priced responsive bidder receives the award. In such procurements, a mathematically unbalanced bid creates doubt as to price, which

1 makes the bid non-responsive.”

2 That is the circumstance here. G-Crew wishes to stand on its total bid amount and its
3 bid amount as to line item 7.0. In other words, it will undertake the sweeping and cleaning of
4 all intersections, turning lanes, curbs, gutters, bus stops, and seating areas in Tumon for
5 \$24.00 per day. This is unrealistic. Pale San Vitores road alone consists of miles of curbing,
6 many intersections, many turning lanes and tens of bus stops and seating areas. No one, not
7 even G-Crew, would maintain that \$24.00 per day is full compensation for this task. In fact,
8 G-Crew admits that it is unrealistic when it says “As owner of G-Crew Maintenance I
9 physically work on the job site along with my Project Manager who is my brother eliminates
10 overhead for this scope of services as our cost is built into the yearly total cost of this bid.”

11 *Appeal at 4.* In other words, the bid item does not reflect the true cost. The true cost is
12 shifted to items throughout the bid schedule. But the GVB asked for the true price of each
13 item. G-Crew did not provide this as to item 7.0 and, because of its cost shifting, to any other
14 item. G-Crew is non-responsive and for this reason (and others) not the lowest responsive,
15 responsible bidder.
16

17 G-Crew now states that there was no mistake on its part. *See Appellant’s Comments,*
18 *p. 1.* This IFB asked a bidder to provide a price for providing the sweeping service 312 times
19 in a calendar year (6 times per week for one year). Similar calls were correctly calculated by
20 G-Crew for items 9.0 and 10.0. G-Crew committed an error as to item 7.0 and read the call to
21 be 52. That this was error is manifest is supported by G-Crew’s appeal. In that appeal, G-
22 Crew states “In the BID SCHEDULE, Section 7.0, the language was unclear, ambiguous, and
23 open for interpretation.” *Appeal at p. 2.* If G-Crew truly meant to bid \$24.03 per item, it
24 would not then say the bid schedule was “unclear, ambiguous, and open for interpretation”.
25

1 The GVB rejected G-Crew's bid because of a patent error in its bid schedule. This error
2 could not be addressed after bid opening since it would prejudice other bidders. Because it is
3 evident from the bid what G-Crew's correct number is (they made an arithmetical mistake),
4 Rule 3109(m)(4)(C) applies. This subsection states;

5 If the mistake and the intended correct bid is (sic) clearly evident on the face of the bid
6 document, the bid shall be corrected to the intended correct bid and may not be
7 withdrawn. Examples of mistakes that may be clearly evident on the face of the bid
8 document are typographical errors, errors in extending unit prices, transportation
9 errors, and arithmetical errors.

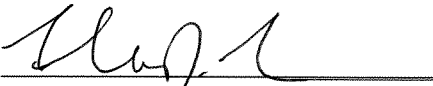
10 *Id.*

11 Following this regulation, the GVB corrects G-Crew's bid. With this corrected number, G-
12 Crew was no longer low bidder.

13 CONCLUSION

14 G-Crew either made an uncorrectable mistake or intentionally submitted an unbalanced bid.
15 In either event the GVB must reject their bid. If it is a mistake, they are not lowest bid; if it
16 was not, they are neither responsive nor responsible.

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19 **FISHER & ASSOCIATES**

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21 
22 **Thomas J. Fisher, Esq.**
23 **For Guam Visitors Bureau**