

MAIR, MAIR, SPADE & THOMPSON
 A Professional Corporation
 Attorneys at Law
 238 A.F.C. Flores Street
 Suite 801, Pacific News Building
 Hagåtña, Guam 96910
 Telephone: (671) 472-2089/2090
 Facsimile: (671) 477-5206

Attorneys for Appellee
 Antonio B. Won Pat International Airport Authority, Guam

RECEIVED
 OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT APPEALS

AUG 16 2007

TIME: 4:40pm
 BY: [Signature]
 FILE No. OPA-PA 07-007

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of)	APPEAL NO. OPA-PA-07-007
)	
DICK PACIFIC CONSTRUCTION)	
COMPANY, LTD.)	
)	AGENCY REPORT OF
Appellant.)	ANTONIO B. WON PAT
)	INTERNATIONAL AIRPORT
)	AUTHORITY, GUAM

Appellee Antonio B. Won Pat International Airport Authority, Guam, by and through its counsel of record, Maria T. Cenzone-Duenas, Esq. of Mair, Mair, Spade & Thompson, hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

- (a) A copy of the protest (*Tab 1*);
- (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest (*See Tab 11 for Dick Pacific Corporation and Tab 12 for Rex International, Inc. to Procurement Record filed with the OPA on August 09, 2007*);
- (c) A copy of the solicitation, including the specifications or portions thereof relevant to the protest (*See Tab 1, 5 and 8 to Procurement Record filed with the OPA on August 09, 2007*);
- (d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest. (*Tab 2*);

ORIGINAL

(e) Any other documents which are relevant to the protest; including the contract, if one has been awarded, pertinent amendments, and plans and drawings (*Tab 3*);

(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant (*See Tab 22 to Procurement Record filed with OPA on August 09, 2007*);

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal (*Tab 4*);

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 GAR § 9101(e) (*Tab 5*); and

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding (*Tab 6*).

Dated this 16th day of August, 2007.

MAIR, MAIR, SPADE & THOMPSON
A Professional Corporation
Attorneys for Appellee Antonio B. Won Pat
International Airport Authority, Guam

By: 

MARIA T. CENZON-DUENAS



PRELIMINARY
JUN 29 2007
RECEIVED

Guam International Airport Authority
Post Office Box 8770
Tamuning, Guam 96931
CARLSMITH BALL LLP

FILE COPY

A LIMITED LIABILITY LAW PARTNERSHIP

BANK OF HAWAII BLDG., SUITE 401
134 WEST SOLEDAD AVENUE, P.O. BOX BF
HAGATNA, GUAM 96932-5027
TELEPHONE 671.472.6813 FAX 671.477.4375
WWW.CARLSMITH.COM

CAUSTIN@CARLSMITH.COM

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

DATE: 6-29-07

TIME: 10:40 am

BY: Jr

GENERAL SERVICES AGENCY
148 Route 1
Marine Drive
Piti, Guam 93925

JUN 29 2007

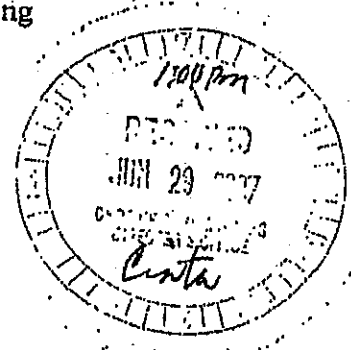
June 29, 2007

Jesse Q. Torres
Executive Manager
Guam International Airport Authority
P.O. Box 8770
Tamuning, Guam 96931

Doris Flores Brooks
Public Auditor
Office of the Public Auditor
238 Archbishop Flores Street
Suite 401, Pacific News Building
Hagatna, Guam 96910

Pete San Nicolas
Acting Chief Procurement Officer
General Services Administration
Government of Guam
148 Route 1 Marine Corps Drive
Piti, Guam 96915

Lawrence Perez
Director
Department of Public Works
Government of Guam
542 North Marine Corps Drive
Upper Tumon, Guam 96913



Re: Bid Rejection Protest Regarding Invitation to Bid (IFB) No. GIAA-C09-FY07
"Improve Airport Utilities Infrastructure (Water System), Phase 2 Reservoir &
Support Building and GAC Water Treatment System AIP No. 3-66-0001-
37/40/43/50, Project No. GIAA-FY03-06-05."

Dear Gentlemen and Ms. Brooks:

I. Introduction.

Pursuant to 5 GCA §5425(a) and 2 GAR § 9101, our client, Dick Pacific Construction Co., Ltd., ("DPC") protests the rejection of its bid submission related to IFB No. GIAA-C09-FY07 "Improve Airport Utilities Infrastructure (Water System), Phase 2 Reservoir & Support Building and GAC Water Treatment System AIP No. 3-66-0001-37/40/43/50, Project No. GIAA-FY03-06-05" (IFB No. GIAA-C09-FY07) by the Executive Manager of the Guam International Airport Authority ("GIAA") for nonconformance with Nos. 7 & 13 of the Special

Reminder to Prospective Bidders, which requests submission of résumés and a C41 specialty license, respectively. For reasons explained below, DPC's bid was rejected on improper and insufficient grounds and the contract should be awarded to DPC.

II. Background.

IFB No. GIAA-C09-FY07 was issued by GIAA calling for bids to be submitted by no later than 2:00pm Guam Standard Time on June 12, 2007. On June 12, 2007, DPC timely submitted its bid in response to the IFB No. GIAA-C09-FY07. On June 19, 2007, GIAA informed DPC via a Bid Status Notice of the same date from Jesse Q. Torres, Executive Manager of GIAA, that DPC was not awarded the bid despite it being the lowest bidder because DPC's response was not in conformance with the requirements of IFB No. GIAA-C09-FY07. The reasons stated for the rejection are "[n]on-Conformance with the specifications/bid requirements" and "[f]ailed to comply with license requirements (C41 Classification) and failed to submit RESUMES of key personnel; as identified on the Special Reminder to Prospective Bidders, item 7 and 13." [sic] (emphasis in original). The Executive Manager's decision rejecting DPC's bid submission is attached as Enclosure 1.

On June 20, 2007, DPC, sent a letter to Jesse Q. Torres notifying GIAA that its A & B Licenses preclude the need for a C41 reinforcing steel classification and providing GIAA with all pertinent résumés. The June 20, 2007 letter is attached hereto as Enclosure 2. DPC's General Engineering License (A License) and the General Building License (B License) were submitted timely with the bid. These Licenses specifically authorize the type and volume of work contemplated by IFB No. GIAA-C09-FY07, including installation of reinforcing steel. DPC

requested review of these matters prior to the bid being awarded to anyone other than DPC. This letter was followed by a meeting with GIAA officials who took the matter under consideration but refused to reconsider and award the project to DPC.

On June 26, 2007 Mr. Salas, Deputy Executive Manager, responded in writing that GIAA was unable to consider the reasons DPC stated in its letter as the basis for GIAA to award DPC the contract instead of Rex International due to the fact that Rex International had complied with and met all conditions as called for in the bid requirements. GIAA indicated the dollar difference between DPC's bid amount versus Rex International's but stated it was still bound by the bid requirements and all applicable regulations. The June 26, 2007 letter from Mr. Salas is attached hereto as Enclosure 3.

As discussed in further detail below, GIAA's rejection of DPC's bid is contrary to the solicitation terms, Guam Procurement Law and implementing regulations; further, under Section 8.2 of the Instructions to Bidders, rejection of the bid is contrary to the public purpose of completing the project using the lowest responsible bid.

III. Protest.

DPC submits this protest to obtain corrective action on GIAA's erroneous decision to reject DPC's bid submission for IFB No. GIAA-C09-FY07. The following discussion provides DPC's request for specific corrective action, and the legal and factual grounds supporting DPC's protest.

(A) **Timeliness.** Pursuant to 5 GCA § 5425(a) and 2 GAR § 9101 (c)(1), a protestor may file a protest on any phase of solicitation within fourteen (14) days after

the protestor knows or should have known of the facts giving rise to its protest. Because DPC has submitted this protest within fourteen (14) days of its first notice that its bid submission was rejected (i.e., June 19, 2007), this protest is timely filed.

(B) Corrective Action Requested. DPC requests that the reviewing authority rescind GIAA's rejection of DPC's bid submission for IFB No. GIAA-C09-FY07.

(C) Statement of Factual and Legal Grounds to Support Corrective Action.

Protest Reason No. 1: The Scope of IFB No. GIAA-C09-FY07 Does Not Require a C41 Specialty Contractor's License.

(a) GIAA Erroneously Rejected DPC's Bid Submission on the Basis That it Did Not Submit a C41 Reinforcing Steel Classification and Résumés Regarding Key Personnel. Item 13 of the Special Reminder to Prospective Bidders requires a "[c]opy of valid Contractor's license, including C41 (Reinforcing Steel) classification. If scope of work for reinforcing steel is to be sub-contracted, submit copy of sub-contractor's license for C41." DPC provided with its bid a copy of its A & B License, as well as its specialty classifications. Although DPC does not hold a C41 reinforcing steel classification, such classification is not required of DPC because its A and B License permits DPC to perform reinforcing steel work so long as that work does not exceed 35% of the total project, which is the situation in this instance. 29 GAR §1422 (d) & (e) state that one who holds an A & B License "shall automatically be deemed to hold, or be qualified for a contractor's license in specialty classification listed under §1421". As set forth in 29 GAR § 1421, reinforcing steel is on the list for the A & B License.

(b) DPC Has the Necessary Licenses for the Requirements of this Project. Under its A & B License, DPC is qualified to do a number of heavy construction and building trades or crafts enumerated under 29 GAR §1421(1) & (2), specifically including, installation of "Reinforcing Steel". In fact, the definition of a General Engineering Contractor and a General Building Contractor contemplate that the Contractor's business includes a broad range of trades and activities as follows:

A General Engineering Contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill including the following divisions and subjects: irrigation, drainage, water power, water supply ... pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances...

A General Building Contractor is a contractor whose principal contracting business is in connection with any structure built or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

29 GAR §1422 (a) and (b).

In Guam, almost every structure is made of concrete reinforced with steel. It is therefore difficult to imagine a situation where a successful General Engineering Contractor or General Building Contractor such as DPC will not be qualified to install, and in fact install, the steel reinforcing in the structures listed in the definitions above.¹

¹ As an example, DPC is the prime contractor on the DoD high school project at Naval Hospital and is installing all of the reinforcing steel.

A specialty contractor, on the other hand, focuses on a specialized area. The C41 License, for example, is a specialty license for a Reinforcing Steel Contractor whose primary business is to "fabricate, place and tie steel reinforcing bars (rods) ... to reinforce concrete buildings and structures." 29 GAR § 1421(4).

While a specialty subcontractor may need a C41 License to complete the portion of the project involving reinforcing steel because it would be the sole focus of his work, such a specialty license is not required under 29 GAR § 1421(3) where the work is "less than thirty-five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed."

In this instance the percentage of work involving the installation of reinforcing steel is well below the thirty-five percent (35%) limit where a specialty license would be required. In particular, DPC calculates the percentage of the work involving reinforcing steel to be 4.49%; as indicated in the table attached hereto as Enclosure 4.

In this instance, DPC's A & B License is sufficient to qualify DPC to install the reinforcing steel as that work does not equal or exceed the 35% limit. Furthermore, DPC does not intend to use a sub-contractor to perform the steel reinforcement necessary for the project, as is clear from its bid submission. Rather, the reinforcing steel portion of this project is only 4.49% of the total project as noted above. Such installation of reinforcing steel in reinforced concrete structures, especially on Guam, is routine for DPC and would be routine in connection with the work contemplated under IFB No. GIAA-C09-FY07.

(c) GIAA is Not Justified in Requiring a C41 Specialty

License When Other Specialty Areas Constitute a Greater Percentage of the Project, But No Other Specialty License Is Required. As noted above, reinforcing steel is a very minor part of the scope of work contemplated under IFB No. GIAA-C09-FY07. Other trade and skill areas such as asphalt paving and surfacing; concrete placement; demolition; electrical placement; excavation, grading, and trenching; fencing; fire protection; painting and decorating; plumbing; sewer, sewage disposal drain, and cement pipe laying; and water chlorination all comprise a part of this project. There are specialty "C" licenses for each of these areas, yet GIAA did not request specialty licenses in the IFB for these disciplines. There is no need for these other specialty licenses for the same reason none should be needed for reinforcing steel: where the specialty work is not 35% or more of the project, by law, only an A & B License is necessary in order to perform the work. The C41 Specialty License is redundant in the case of a Contractor with an A & B License, and therefore, is not required. Requiring a specific specialty license arbitrarily and without cause is contrary to both Guam's licensing and procurement laws.

GIAA has produced no evidence that the steel reinforcement work required under the IFB will constitute thirty-five percent (35%) or more of the work contemplated thereunder. The request under Item 13 of the Special Reminder to Prospective Bidders for a C41 classification can, therefore, only make sense where a sub-contractor will be utilized or where one does not hold an A & B License. The only reasonable interpretation of Item 13 requires the exemption of contractors holding an A & B License due to the very nature of the license and the composition of the project (i.e., where the steel reinforcement work is less than 35% of the project). In this

case, DPC did meet the IFB requirements by submitting its A & B License, which was sufficient to prove DPC's qualifications to complete the reinforcing steel work for which the C41 Specialty License was requested.

Protest Reason No. 2: The Bid Solicitation Material and the Procurement Law Contemplate Material Conformity to the Solicitation and Waiver of Mere Informalities When Waiver is in the Best Interest of the Owner.

The integrity of the procurement system rests greatly in the secret and confidential nature of bids, as well as requiring responsiveness and responsibility among bidders. Even so, the process also contemplates that minor omissions or informalities may occur. In fact, this IFB contains a notice that GIAA may "waive any and all informalities", when doing so could be in GIAA's best interest. A similar statement appears again on page 11 of the Notice to Bidders and in Section 8.2 of the Instructions to Bidders.

The fact that Section 8.2 explicitly reserves this right "when such waiver is in the interest of the Owner", and Section 8.1 states the intent to award the contract to the "lowest responsible, responsive bidder" creates the expectation that a minor inadvertent flaw in the bid, that does not affect the bid price or the ability of the bidder to perform, will be waived where, as here, doing so would significantly benefit GIAA. Here, the significant benefit is self-evident: saving the hardly insignificant sum of \$376,646.40 to GIAA and the taxpayers of Guam. GIAA's statement that it is "bound by the bid requirements" is not true where the requirement is of a minor nature and where waiving it would be in the best interest of GIAA.

The only missing item in the bid, the résumés, was promptly (i.e., within 24 hours) submitted when DPC was notified of its omission. Even so, the omission in no way affected the

price of the bid or the ability of DPC to complete the project per GIAA's specifications. When the statutes allow for required specifications, the criteria enumerated include items like inspection, testing, quality, and workmanship. See 5 GCA §5211(e). Award of the contract shall be to the lowest responsible bidder who meets the criteria of the IFB. 5 GCA § 5211(g). In this case, DPC was the lowest responsible bidder and did meet the criteria of the IFB. Furthermore, one can only be labeled as a "non-responsible bidder" under Guam law if he/she unreasonably fails to promptly supply information regarding an inquiry. DPC has promptly and fully responded to all inquiries and those responses have shown DPC's knowledge, skill ability, and qualification to be awarded this contract.

Protest Reason No. 3: Rejection of DPC's Bid, Which Was Significantly Lower Than the Next Lowest Bidder, Is Contrary to the Best Interests of GIAA and is Not in Accordance with the Procurement Laws and Regulations.

The IFB, related material and the purpose of the Guam Procurement Law all contemplate a system of integrity that encourages competition and allows the Territory to maximize its purchasing power by accepting work, services and products from the lowest responsive and responsible bidder. Indeed, 5 GCA §5001(b) specifically lists increasing public confidence in the public procurement process and maximizing the purchase value of public funds as stated purposes of the procurement law. Finally, 5 GCA § 5003 requires the agency requesting bids to act in good faith.

The IFB specifically states that the lowest responsible bidder will be awarded the contract. It also represents that informalities can be waived when doing so is in the best interest of GIAA. Good faith requires that GIAA demonstrate how saving \$376,646.40 and using a well-qualified

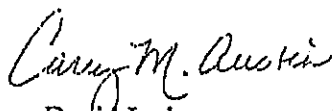
construction team would not be in its best interest, for this is the only way rejection of DPC's bid is justified. This is especially pertinent in light of the current financial crisis in which the government of Guam finds itself. It seems imperative that agencies be especially cost conscious where savings can be realized without sacrificing the quality of the work or product purchased. The alleged nonconformance cited by the GIAA is a blatant case of following form over substance to the detriment of Guam's taxpayers.

IV. Summary.

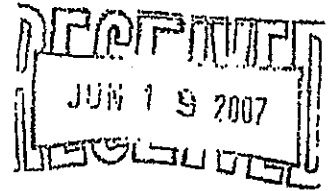
DPC's protest is meritorious. GIAA's rejection of DPC's bid submission is contrary to law and the best interests of GIAA and to applicable procurement regulations and bids. DPC's bid submission should be reinstated and GIAA's rejection of DPC's bid submission should be rescinded. Accordingly, DPC asks that the reviewing authority grant the corrective action requested above.

If you have any questions concerning this matter, please call the undersigned at (671) 472-6813.

Sincerely,



David Ledger
Donald V. Calvo
Carey McAlister Austin



Artonio B. Won Pat
International Airport Authority, Guam
P.O. Box 8770, Tamuning, Guam 96931
Tel: (671) 846-0300 Fax: (671) 646-8823 or (671) 646-2048

BID STATUS

Date: 06/19/07

DICK PACIFIC CONSTRUCTION CO., LTD
P.O. BOX 23088 GMF
BARRIGADA, GUAM 96921
Tel: 647-5500 Fax: 647-5501

BID INVITATION NO.: GIAA-C09-FY07 OPENED: June 12, 2007
DESCRIPTION: IMPROVE AIRPORT UTILITIES INFRASTRUCTURE (WATER SYSTEM), PHASE 2
RESERVOIR & SUPPORT-BUILDING AND GAC WATER TREATMENT SYSTEM
AIP NO. 3-55-0001-37/40/43/50; PROJECT NO. GIAA-FY03-05-05

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;
 - () Best Interest of the Government
 - () Others;

- Rejected due to:
 - () Late Submission of bid;
 - () No bid security or insufficient bid security amount submitted; as required by Section 11 of the General Terms and Conditions;
 - () Not meeting the delivery requirements as stated in the IFB;
 - (X) Non-conformance with the specifications/bid requirements
 - () Inability to provide future maintenance and services to the equipment;
 - () High price; or
 - (X) Others:

Failed to comply with license requirements (C41 classification) and failed to submit RESUMES of key personnel; as identified on the Special Reminder to Prospective Bidders, Item 7 and 13 (copy attached).

Bid is recommended for award to:
REX INTERNATIONAL, INC. for \$5,768,588.40

REMARKS:

GIAA appreciates your participation in this process and look forward to your interest in our future bids.
Please send your authorized representative to GIAA Procurement to pick-up your Bid Guarantee.
Kindly acknowledge receipt below and fax back at GIAA Procurement, 646-2048.

JESS Q. TORRES
Executive Manager

cc: Admin/Proc

Acknowledge Receipt

Sign Here: _____
Print Name: _____
Date: _____

DICK PACIFIC

June 20, 2007

Mr. Jessie Q. Torres
Executive Officer
Guam International Airport Authority
P.O. Box 8770
Tamuning, Guam 96931

Re: Protest of Award: Improve Airport Utilities Infrastructure, AIP 3-66-001-37/40/43/50, GIAA-FY03-06-05 Project

Dear Mr. Torres:

This letter will serve as an official notice that Dick Pacific Construction Co., Ltd. (Guam) intends to protest the award of the Improve Airport Utilities Infrastructure, AIP 3-66-001-37/40/43/50 project to Rex International.

As per your letter dated June 19, 2007, it is our understanding that the project has been awarded to Rex International, despite Dick Pacific's bid, which was \$376,646.40 lower, because Dick Pacific did not provide a C-41 license and did not provide three resumes. This proffered justification for awarding the contract to the second lowest bidder ignores Dick Pacific's General Engineering and General Contracting licenses, which specifically allow for construction of just the type of work scope included in GIAA-FY03-06-05. The definition in accordance with the Guam Contractors License Board and relevant law state the following:

General Engineering (A License):

"A General Engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized knowledge and skill including but not limited to the following: irrigation, drainage, water power, water supply, flood control, harbors, docks and wharves, airports, sewers and sewage disposal plants and systems, bridges, highways. Pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, recreational works, refineries, chemical plants and similar industrial plants, paving and surfacing work and other like construction."

General Building (B License):

"A General Building contractor is a contractor whose principal contracting business is in connection with any structure built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind requiring in its construction the use of unrelated building trades or crafts or to do or superintend the whole or any part thereof."

Dick Pacific's A & B Licenses are sufficient to permit Dick Pacific to install steel reinforcing in concrete structures such as the structure covered GIAA-FY03-06-05. Please refer to Guam Administration Regulations 29 GAR - Public Works, pages 11 & 12, which specifically include reinforcing steel under the A & B licenses. In contrast, the Specialty Contractor

Dick Pacific Construction Co., Ltd. (Guam)

P.O. Box 23068-GMF

Barrigada, Guam 96921

671 647 5300

671 647 5600 Fax

ENCLOSURE 2



licenses address specialties where a subcontractor focuses on that specific business or is required where 35% of the total project is focused on that individual type of specialty work. Because this project would not require Dick Pacific to devote 35% of its focus to the installation of the reinforcing steel, the C 41 specialty license is redundant.

Related to the missing resumes: Dick Pacific was contacted by Mrs. Alma Javier on June 15, 2007 for clarification of our Individual Shareholder details. At that time the missing resumes could have been discussed and easily provided. In any case, the resumes, which are a minor issue, are included with this letter.

It is difficult for Dick Pacific and its employees to understand that we are not a responsible bidder when we have installed hundreds of millions of dollars in structural facilities on Guam over the last 22 years. Those facilities include the Alupang Beach Towers, the Reef Hotel, PIC tower one, the FENA water treatment plant upgrades, three schools and a medical facility for the US Military and numerous other major structures. You literally cannot drive for more than ten minutes in any direction on this island without viewing a building that was built by Dick Pacific; all of which was built under the General Contracting licenses A & B.

We are concerned about the willingness of the GIAA to spend an additional \$376,646.40 over minor documentation issues. Please be advised that Section 8.2 of the Instruction to Bidders (page 3) states the following:


"The owner reserves the right to waive any informality in bids received when such waiver is in the interests of the Owner..."

The issues noted in your "Bid Status" as justification for disqualification most certainly fall under this clause.

If indeed the 'lowest responsible bidder' is the contract award method used by GIAA, then Dick Pacific deserves this contract. We request a review of the issues noted above before a contract is awarded to any bidder other than Dick Pacific. If the issues cannot be resolved favorably and timely, a formal bid protest will be filed in accordance with the appropriate laws of Guam.

Sincerely,

DICK PACIFIC CONSTRUCTION CO., LTD. (GUAM)


Louis C. DeMaria
Vice President Micronesia

Attachments (3 resumes)

cc: Ms. Alma Javier, GIAA
Mr. Victor Cruz, GIAA
David Ledger, Carlsmith Law Offices
Erik Eike, Honolulu

Julia L. Hunt

From: Carey McAlister Austin
Sent: Friday, June 29, 2007 9:07 AM
To: Julia L. Hunt
Subject: FW: Dick Pacific

From: Carlos Salas [mailto:carloss@guamaairport.net]
Sent: Tuesday, June 26, 2007 9:40 AM
To: DeMarla, Louis C.
CC: Jess Torres
Subject: Intent to Protest

Good morning Mr. Demaria:

We appreciate the time you took to discuss with us your June 20th letter to GIAA regarding Dick Pacific's intent to protest the award on our Improve Airport Utilities Infrastructure Project. Unfortunately we regret to inform you that we are unable to consider the reasons you stated in your letter as the basis for GIAA to award Dick Pacific instead of Rex International due to the fact that Rex International has complied with and met all conditions as called for in the bid requirements. We recognize the dollar difference between your bid amount versus Rex International's but we are still bound by the bid requirements and all applicable regulations.

Please do not hesitate to contact us if have any questions or comments.

Carlos H Salas
Deputy Executive Manager

ENCLOSURE 3

6/29/07

GLAA Water Tank - with Force Account

Section	Description	Labor Amount	% wt.	Material Amount	% wt.	Sub Amount	% wt.	Equip. Amount	% wt.	Total Amount	% wt.
2.000	Site Work	22,823	0.42%	34,691	0.64%	888,565	16.48%	8,278	0.15%	954,357	17.70%
3.100	Formworks	289,374	5.37%	121,948	2.26%		0.00%	23,511	0.44%	434,833	8.06%
3.200	Rebar	242,105	4.49%	393,823	7.30%		0.00%	6,856	0.13%	642,784	11.92%
3.300	Concrete	118,713	2.20%	274,845	5.10%		0.00%	24,640	0.46%	418,198	7.76%
4.000	Masonry	19,944	0.37%	17,637	0.33%	1,699	0.03%			39,280	0.73%
5.000	Metals	5,133	0.10%	105,024	1.95%		0.00%			110,157	2.04%
7.000	Thermal & Moisture Protection	24,424	0.45%	27,888	0.52%	119,327	2.21%			171,639	3.18%
8.000	Doors & Windows	3,000	0.06%	21,005	0.39%	10,562	0.20%			34,567	0.64%
9.000	Finishes	29,930	0.56%	3,663	0.07%	30,017	0.56%	391	0.01%	64,001	1.19%
10.000	Specialties	246	0.00%	2,109	0.04%		0.00%			2,355	0.04%
14.000	Conveying System	6,743	0.13%	39,535	0.73%		0.00%			46,278	0.86%
15.000	Mechanical		0.00%		0.00%	1,377,074	25.54%			1,377,074	25.54%
16.000	Electrical		0.00%		0.00%	197,762	3.67%			197,762	3.67%
20.000	Force Account		0.00%		0.00%		0.00%			898,657	16.67%
	Total=	762,435		1,042,168		2,625,006		63,676		5,391,943	
	% wt.=	14.14%	14.14%	19.33%	19.33%	48.68%	48.68%	1.18%	1.18%		
		Installation		Procurement		Subcontract		DPC Equipment			

ENCLOSURE 4



DATE OF SCORE OF WORK: 12/19/07
 Opening Time: 2:00 P.M.

12/19/07
 No. of Bids Received: 4

ADDITIONAL COMMENTS:
 A/B

TOTAL BID PRICE

6,420,000.00
 5,351,942.00
 8,388,550.00
 5,718,588.40

TYPE OF SCOPE OF WORK	BID GUARANTEE (Cash Letter or Cash Bid)	Number of Major Subcontractors	New California Affidavit	Statement of Previous Contractors Subject to Bid	Completion of New Subcontractors	Statement of Subcontractors with Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	Completion of Bidder's Bid	
MAREDA PACIFIC CORP.	✓ 15%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ACK PACIFIC	✓ 15%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EAGLETON CONTRACTORS	✓ 15%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DEX INTL INC.	✓ 15%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

NOTES: GOL # 5049 TO YOUNEX FOR A, B & C. GOL # 5416 TO KINDEN FOR A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z.

BASES FOR AWARDS:
 1. LOWEST RESPONSIVE & PROFESSIONAL BIDDING
 2. HIGHEST RESPONSIVE & PROFESSIONAL BIDDING
 3. OTHER AWARD

DATE: 6/12/07

SIGNATURE

SIGNATURE

SIGNATURE

SIGNATURE

Opening Date: 12-14-07
 Opening Time: 2:00 P.M.

ADDENDUMS: A / B

TOTAL BID PRICE
 \$6,420,000.00

\$5,391,942.00
 \$8,388,550.00
 \$5,768,588.40

STATUS FOR AWARD:
 1 LOWEST RESPONSIVE & RESPONSIBLE BIDDER
 2 HIGHEST RESPONSIVE & RESPONSIBLE BIDDER
 3 OTHER AWARD

Antonio B. Won Pat
 Guam International Airport Authority
 BID ABSTRACT

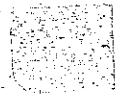


INVITATION NUMBER: G1AA-C09-FY07	PROJECT NUMBER: G1AA-F103-06-05 - AIF NO. 3-66-0001-274063189	SPECIAL RUMBLE TO PROSPECTIVE BIDDERS	RID GUARANTEE (Cash or Letter of Credit)	DISCLOSURE OF MAJOR SHAREHOLDERS	NON-COLLUSION AFFIDAVIT	STATEMENT ON PREVIOUS CONTRACTS TO BIDDERS	CERTIFICATION OF NEW/SEPARATED FACILITIES	DESIGNATION OF SUB-CONTRACTORS	STATEMENT OF EXPERIENCE OF BIDDERS WITH RESPONSE	CERTIFICATE CONCERNING FOREIGN INTEREST	CFR 49 PART 29 REG FOR SOLICITATION	CERTIFICATION OF BIDDERS REGARDING BEO	BUY AMERICAN CERTIFICATES	STANDARD CHARGE FOR DBE	RELIEF OF CONTRACTORS	TOTAL BID PRICE
1	MARDA PACIFIC CORP.	✓	15%	✓	✓	✓	✓	(A) *	✓	✓	✓	✓	✓	✓	(B) *	\$6,420,000.00
2	DICK PACIFIC	✓	15%	✓	✓	✓	✓	(A) *	✓	✓	✓	✓	✓	✓	(C) *	\$5,391,942.00
3	LEIGHTON CONTRACTORS	✓	15%	✓	✓	✓	✓	(A) *	✓	✓	✓	✓	✓	✓	(D) *	\$8,388,550.00
4	REX INT'L INC.	✓	15%	✓	✓	✓	✓	(A) *	✓	✓	✓	✓	✓	✓	(B) *	\$5,768,588.40
<p>* NOTES:</p> <p>V# (B) GOL # 1009 TO MAREDA FOR ATB. GOL # 5249 TO YOUNG FOR ATB & CAI. GOL # 5416 TO KINDEN FOR A10, B10, B1A, 20, 37, 40, 43, 44, 51, 50, 54 & 56.</p> <p>(A) DESIGNATES "KINDEN" FOR ELEC. MECH. WORK, "YOUNG BUILDING" FOR REINFORCING STEEL.</p> <p>(C) GOL # 6821 TO DBA: BISHARA FOR B13, C13A, C14, C17, C19, C20, C25, C44, C44.1, C44.2, C51. (NO CAI CLASS.)</p> <p>(A) DESIGNATES "EMERKA" FOR CIVIL WORK, "COZUM" FOR PRINTING, "URGENT SERVICES" FOR WATERWORKS, (B) LISTED 2 PRETENDERS (MULTIPLE) FOR 100 200 4-2007.</p> <p>(B) GOL # 07-0160 TO LEIGHTON FOR A, B & C. GOL # 5135 TO BURN POSITION FOR A10, B10, C10, C11, C12, C13, C14, C15, C16, C17, C18, C19, C20, C21, C22, C23, C24, C25, C26, C27, C28, C29, C30, C31, C32, C33, C34, C35, C36, C37, C38, C39, C40, C41, C42, C43, C44, C45, C46, C47, C48, C49, C50, C51, C52, C53, C54, C55, C56, C57, C58, C59, C60, C61, C62, C63, C64, C65, C66, C67, C68, C69, C70, C71, C72, C73, C74, C75, C76, C77, C78, C79, C80, C81, C82, C83, C84, C85, C86, C87, C88, C89, C90, C91, C92, C93, C94, C95, C96, C97, C98, C99, C100.</p> <p>(A) DESIGNATES "SKINTEK" FOR P151-152 & 153 WORKS, "REACTON" FOR WATERWORKS, JMS FOR MECHANICAL, BURN POSITION FOR REINFORCING, GMS FOR ELECTRICAL.</p> <p>(B) GOL # 1347 TO REX INTL FOR A10, B10, C10, C11, C12, C13, C14, C15, C16, C17, C18, C19, C20, C21, C22, C23, C24, C25, C26, C27, C28, C29, C30, C31, C32, C33, C34, C35, C36, C37, C38, C39, C40, C41, C42, C43, C44, C45, C46, C47, C48, C49, C50, C51, C52, C53, C54, C55, C56, C57, C58, C59, C60, C61, C62, C63, C64, C65, C66, C67, C68, C69, C70, C71, C72, C73, C74, C75, C76, C77, C78, C79, C80, C81, C82, C83, C84, C85, C86, C87, C88, C89, C90, C91, C92, C93, C94, C95, C96, C97, C98, C99, C100.</p> <p>(A) DESIGNATES WOOD CORP. FOR CIVIL WORKS, "POLYPHASE" FOR ELECTRICAL WORKS.</p>																

I hereby certify that all bids received in response to this invitation were opened under my personal supervision, and that the names of all bidders have been entered herein.

TABULATED BY: _____ SIGNATURE

DATE: 6/12/07



Maria Cenon Duenas

From: Alma B. Javier [almaj@guamairport.net]
Sent: Saturday, July 21, 2007 2:17 PM
To: Maria Cenon Duenas
Cc: Frank Santos; Carlos Salas; Jess Torres; Jean M. Arriola
Subject: Fw: Re: Fw: Contractor's License Requirement Confirmation

Rea:

For your info!

Alma

-----Original Message-----

From: Thomas A Morrison
Date: 7/19/2007 5:29:05 PM
To: almaj@guamairport.net
Subject: Re: Fw: Contractor's License Requirement Confirmation

Dear Alma B. Javier,

I am pleased to respond to your request regarding the following question.

1. Can a Contractor having an "A" or "B" license perform Reinforcing Steel (C41 specialty trade work)?

Ans: A contractor with an "A" or "B" license is permitted to perform "Reinforcing Steel (C41) services only if the performance of work is less than thirty-five percent (35%) and supplemental to performance of work.

However I would like to note that if the GIAA specified clearly that "Reinforcing Steel" (C41) is part of the bid requirements, then it is prudent to state that all prospective participants must need to be in compliance with this requirement.

Should you have any further questions, please feel free to contact me via email or at 649-2211.

Best regards,

Thomas Morrison
Executive Registrar, Contractors License Board

> -----Original Message-----
>
> From: Alma B. Javier

8/16/2007

> Date: 7/16/2007 6:11:00 PM
> To: [morrison@guam.net](mailto:morrisson@guam.net)
> Subject: Contractor's License Requirement Confirmation
>
>
> Mr. Morrison:
>
> Thank you for taking some time to talk to me regarding the issue that GIAA
> is currently faced with at this time. As I have mentioned, GIAA would
> like
> to get a confirmation from your office of the following:
>
> 1. Can a Contractor having a A or B license to perform Reinforcing Steel
> (C41 specialty trade work)?
>
> As mentioned, during the design phase of the bid specifications, the A/E
> firm contracted by GIAA to design the scope of work, has identified that
> the specialty license is required. Therefore, the bid documents
> specified
> such requirement.
>
> A copy of the letter issued by your office dated July 22, 2005 is attached
> for your reference. Also, I have included a copy of GIAA's Special
> Reminder
> to Prospective Bidders form which identifies the license requirement for
> this project.
>
> Should you require additional information or clarification, please feel
> free
> to contact me at 642-5145/47-49 or my cell 888-2058.
>
> Regards,
>
> Alma Javier
>
> CONFIDENTIALITY NOTICE:
>
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>

8/16/2007

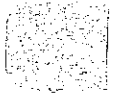
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STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I.

RELEVANT BACKGROUND.

A. GIAA SOLICITS BIDS FOR INVITATION FOR BID NO. GIAA-C09-FY07.

Pursuant to Invitation For Bid No. GIAA-C09-FY07 (the "IFB"), GIAA solicited bids from contractors to Improve Airport Utilities Infrastructure (Water System) Phase 2 -- Reservoir & Support Building and Granular Activated Carbon (GAC) Water Treatment System (the "Project"). A Pre-Bid Conference was held on May 17, 2007, at 10:00 a.m., at the Airport's Conference Room 2. Included among the items on the Agenda and which was discussed at length by Alma Javier, GIAA's Supply Management Administrator, was the bid submittal documents, and, specifically, the form marked "Special Reminder to Prospective Bidders," which serves as a checklist for bidders to ensure submission of certain documents together with their bids.

1. The Pre-Bid Conference.

During the pre-bid conference, Ms. Javier explained the Special Reminder as follows:

I'm just going to go over the required documents that the bidders must submit when they submit their bid proposal. In the package you have a form called Reminder ... Special Reminder to Prospective Bidders. Basically, what it is, it is a checklist of all items that you must submit with your bid. I strongly caution all the bidders that failure to comply with the requirements indicated on the Special Reminder to Prospective Bidders is subject for disqualification and rejection of your bid. So please make sure your package is complete.

What you need to submit with your bid package includes: . . .

"The Statement of Experience of Bidders." I wanted to elaborate a little bit more on this requirement. This Statement requires you to name your key personnel and I believe the position titles are indicated on the form. It is not only that you need to name your key personnel, you need to submit their resumes. So, if you're identifying your project manager as "Mr. Smith" then Mr. Smith's resume has to be included in your bid submittal."

...

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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Another requirement that we wanted to emphasize is the contractor's licenses required for this [Project]. The... um... prime contractor is required to have ... um... C41, which is a classification for Reinforcing Steel. Now, if you are not... if you are subcontracting this type of work, then you need to submit your sub's contractor's license for C41. ... Is that clear for everybody? Does anybody have any questions for that requirement?¹

No inquiries were made regarding whether a bidder with an A&B license was also required to provide a C41 classification. In attendance during the pre-bid conference from Dick Pacific Construction Co., Ltd. ("DPC") were Willie Griva and Dads L. Pineda, but they did not ask any questions about the licensing or resume requirements.

2. **The Special Reminder to Prospective Bidders Emphasizes that Non-Conforming Bids Shall Be Rejected as Non-Responsive.**

The Special Reminder to Prospective Bidders (a copy of which is attached for your easy reference) provides as follows:

SPECIAL REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Invitation to Bid and Notice to Bidders to ascertain that all the following requirements of the bid are submitted in the bid envelope at the date and time of bid opening.

...

7. *Statement of Experience of Bidders.* This statement must be completed, signed, and submitted in the Bid envelope with the Bid along **with Resumes** of identified personnel.

...

13. *Others:* Copy of valid Contractor's license, including C41 (Reinforcing Steel) classification. If scope of work for reinforcing steel is to be sub-contracted, submit copy of sub-contractor's license for C41.

...

This Special Reminder to Prospective Bidders must be signed and returned in the envelope containing the Bid. **Failure to comply**

¹ Pre-Bid Conference held May 17, 2007, quoting Alma Javier (5/17/07).

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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with the above requirements will mean disqualification and rejection of the Bid.²

During the Pre-Bid Conference, Ms. Javier also reminded the potential bidders that the deadline to submit bid inquiries was **May 21, 2007**. This deadline is also clearly set forth in Paragraph 3 of the Instruction to Bidders ("Explanation to Bidders") which provides bidders with an opportunity to seek clarification from the Airport of "[d]iscrepancies, omissions, or doubts as to the meaning of drawing and specifications shall be communicated in writing to the Contracting Officer for interpretation." Several potential bidders submitted inquiries relating to the specifications. Indeed, Dick Pacific submitted two separate written requests for clarification regarding certain items on Package B and D as well as a request to extend the date of submission (presumably on or before the May 21 deadline). A subsequent inquiry was also made by Dick Pacific to Ms. Javier on May 25, 2007, *after* the deadline for inquiries. None of the inquiries made by DPC were related to the licensing or resume requirements, however.

2. Bids Are Submitted and Evaluated.

In response to the solicitation, GIAA received bids from each of the following: Rex International, Inc., Maeda Pacific Corporation, Leighton Contractors, Inc. and DPC. As part of their respective bids, the bidders submitted additional documents as follows:

a. Rex International, Inc., licensed as an A & B contractor, also provided a copy of its license showing a C41 classification. Rex also submitted a Verification of License from the Guam Contractors License Board indicating that, in addition to holding class A, B and C41 licenses, Rex also has the following classes of licenses: C3, 11, 13, 13A, 15, 17, 19, 20, 37, 40, 53 and 68. Rex also identified and submitted the required resumes of its key personnel.

b. Leighton Contractors, Inc. submitted a copy of its Contractor's License (A, B, C17) and its subcontractor's license (Guam Yooshin Corporation (A, B, C 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 13A, 17, 18, 19, 20, 21, 23, 26, 27, 30, 31, 33, 36, 37, 41, 42, 43, 45, 48, 49, 50, 51, 55, 56 & C68 (Epoxy Coating & Telecommunications))). Leighton also identified and submitted the required resumes of its key personnel.

c. Maeda Pacific Corporation submitted a copy of its Contractor's License (A & B), as well as a copy of its subcontractors' licenses for C41 Reinforcing Steel. Notably, Maeda's subcontractor for reinforcing steel, Younex Builder Corp., also

² Tab 5 (*Addendum A* to IFB, Special Reminder to Prospective Bidders, ¶¶ 7, 13, p. 2 (Emphasis in original)).

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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has Class A & B licenses. In addition to providing copies of the licenses, Maeda also identified and submitted the required resumes of its key personnel.³

d. **Dick Pacific Construction** submitted a copy of its Class A & B licenses as well as a copy of its license indicating that it may act as a contractor in the following specialty classes as well: C13, 13A, C14, C17, C19, C20, C25, C40, C44 & C51. DPC did not provide evidence that it is licensed in C41 classification. DPC also failed to identify or provide resumes of key personnel, despite the fact that it certified and executed the Statement of Bidder's Experience which clearly stated verbatim, in relevant part:

Bidders shall also furnish names and resumes of key personnel, particularly the Project Manager, Project Engineer and Superintendents whose assignment to this Project is anticipated.

(Emphasis in original).

On June 12, 2007, the Bids were publicly opened and subsequently evaluated. During the evaluation process, it was determined that DPC's bid was non-responsive and DPC was also determined to be a non-responsible bidder. In a memorandum dated June 18, 2007, from Alma Javier, Supply Management Administrator, to Executive Manager Jess Q. Torres, the bid analysis and evaluation of DPC's bid states as follows:

Dick Pacific Construction Co. Ltd. Dba: Bishman Continental Services: The firm's bid of **\$5,391,942.00** is 22% more than the government estimate. The Bidder submitted a list of projects consisting of two projects in the period of 2004 and 2007 and failed to provide the names and resumes of their key personnel. The firm indicated "Eureka Construction" as its sub-contractor for the civil works, "Gozum Construction " for painting and "Urethane Services" for water proofing. Submitted copies of the bidder's C17, C19, C20, C25, C40, C44, and C51 classifications. Hence, the bidder does not possess the required contractor's license for C41 (Reinforcing Steel) classification and there was no indication in their bid that this scope of work will be subcontracted. Therefore, the firm is not licensed to perform Reinforcing Steel work which is required for this project.

³ It is noteworthy to mention that Maeda Pacific Corporation protested a solicitation issued by GIAA (Invitation for Bids No. GIAA-C07-FY07) on the grounds that GIAA improperly rejected its bid when it failed to submit a copy of its Classification C11, its subcontractor's C36 license and resumes of its key personnel. GIAA rejected its protest and Maeda appealed to the Office of the Public Auditor (File No. OPA-PA No. 07-003). The appeal has since been dismissed with prejudice by Maeda.

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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These requirements were made part of the bid package and was clarified and emphasized during the pre-bid meeting. Also, the "Special Reminder to Prospective Bidders" form referenced such requirements and indicated that failure to submit such requirements will mean disqualification and rejection of the bid. As a result of the bidder's non-submittal of the required documents, **Dick Pacific Construction Co. Ltd. is deemed to be non-responsive and non-responsible bidder. Therefore, the bid is rejected.**

On June 19, 2007, GIAA sent a Bid Status to DPC informing it that its bid had been rejected due to non-conformance with the specification/bid requirements and specified the failure to comply with the license requirements and failed to submit resumes of key personnel, as required on the Special Reminder to Prospective Bidders, Items 7 and 13. On June 21, 2007, the Department of Transportation, Federal Aviation Administration ("FAA"), concurred in the Airport's determination to award the project to Rex International, Inc. because DPC's bid was unresponsive. Award of the contract was tentatively made to Rex International, conditioned upon receipt of Performance and Payment Bonds; however, on June 29, 2007, DPC filed the instant bid protest. The Project is stayed pending resolution of this bid protest or approval of any determination by GIAA to proceed with the award notwithstanding the protest, as permitted by the Guam Procurement Laws.

II.
DISCUSSION

A. DPC'S BID WAS APPROPRIATELY REJECTED AS NON-RESPONSIVE.

1. DPC has the burden of establishing that it need not comply with the requirements of the bid specifications.

The very first page of the Invitation for Bid ("IFB") for the Project warns all potential bidders that "GIAA reserves the right to reject any and all bids and to waive any and all informalities, and to disregard all nonconforming or conditional bids or counter proposals when in GIAA's opinion, such rejection or waiver will be in the Authority's best interest."⁴ In fact, throughout the bid documents, as set forth below, GIAA warns potential bidders of its "unqualified right" to reject any and all bids for failure to conform to the requirements of the IFB:

⁴ Tab 1 to Procurement Record (INVITATION FOR BID (Cover to Invitation for Bid No. GIAA-C09-FY07 Improve Airport Utilities Infrastructure (Water System) Phase 2 -- Reservoir & Support Building and Granular Activated Carbon (GAC) Water Treatment System Project No. GIAA-FY03-06-05; AIP No. 3-66-0001-37/40/43/50)).

From "Instruction to Bidders":

7. RIGHT TO ACCEPT AND REJECT BIDS. The Won Pat International Airport Authority, Guam reserves the **unqualified right**, in its **sole and absolute discretion, to reject any and all bids**, or to accept that bid or combination of bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Authority's interests, or to reject the bid of a bidder who is not in a position to perform the contract.

...

8. AWARD OF CONTRACT

8.1. The contract will be awarded, if it is to be awarded, as soon as possible to the lowest responsible, **responsive** bidder.

8.2. The Owner **reserves the right** to waive any informality in bids received when such waiver is in the interest of the Owner. The Owner also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by the Owner or the bidder.

...

13. PREPARATION AND SUBMISSION OF BIDS

13.1 The bidder must submit his bid on the forms furnished by the Won Pat International Airport Authority, Guam. All blank spaces on the bid form must be correctly filled in, and the bidder must state the total lump sum cost for each bid item based on the unit price and corresponding estimated quantities, (written in ink, both in words and numerals) which he proposes for the work contemplated as well as all the materials required.

In case of conflict between words and numerals, the words, unless obviously incorrect, will govern. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the bid form or irregularities of any kind may be rejected by the Owner. **The bidder must supply all the information required by the proposal forms and specifications.**

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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1. Guam Contractors Licensing Board requires purchasing agencies such as GIAA to ensure bidders are complying with specialty classifications.

As discussed above, the Special Reminder to Prospective Bidders *mandated* that bidders submit a copy of their C41 classification contractors license and the identities of their key personnel along with the individuals' resumes. DPC claims that it is not required to have a C41 classification because it already holds an A (General Engineering) and B (General Building Contractor) license and cites to 29 GAR §1422(d) & (e) which provide that one who qualifies for a contractor's license in the General Engineering Contractor and General Building Contractor classifications "shall automatically be deemed to hold, or be qualified for a contractor's license in specialty classifications listed under §1421." Section 1421 includes C41, Reinforcing Steel. As for the resumes, it DPC admits that it did not submit the resumes, but that it "promptly (i.e., within 24 hours) submitted [them] when DPC was notified of its omission."⁵

It is noteworthy that the provisions cited to by DPC are enforced by the Guam Contractors License Board ("GCLB").⁶ Indeed, it is the GCLB itself that required GIAA to ensure that "[a] contractor who is going to be performing specialty trades on a job must have the specialty classification for that trade."⁷ Further, GCLB has stated, "It is illegal for a contractor that has a (B) license, General Building, to contract a Roofing project or Epoxy Injection, because those would require a (C-42) Roofing Contractor and a (C-68) Epoxy Injection (crack repair)."⁸

In an e-mail to Alma Javier, GIAA Supply Administrator, dated July 21, 2007, GCLB Executive Registrar Thomas Morrison confirmed that if GIAA required a specialty license from a contractor as part of its solicitation, the bidder *must* be in compliance with this requirement regardless of whether it had an "A" or "B" license. In this regard, Morrison stated as follows: "A contractor with an "A" or "B" license is permitted to perform 'Reinforcing Steel' (C41) services only if the performance of work is less than thirty-five percent (35%) and supplemental to performance of work. However, I would like to note that **if the GIAA specified clearly that "Reinforcing Steel" (C41) is part of the bid requirements, then it is prudent to state that all prospective participants must need to be in compliance with this requirement.**" (See Tab 3 to Agency Report)(Emphasis added).

DPC asserts that, pursuant to 29 G.A.R. § 1422(d) and (e), simply because it holds Class A & B licenses, they need not also obtain the C41 classification. Obviously,

⁵ DPC's Protest letter dated June 29, 2007 at p. 8. (Tab 19 to Procurement Record).

⁶ 29 G.A.R. §1405.

⁷ Letter from Guam Contractors Licensing Board to GIAA dated July 22, 2005 (*See*, Tab 22 to Procurement Record).

⁸ Id.

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

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based on the letter from the GCLB, the agency charged with the enforcement of the licensing provisions has interpreted this provision to mean only that an entity who is qualified to be a General Engineering or General Building Contractor is also qualified to be licensed in a specialty classification. Indeed, Section 1425 provides a relatively easy means of obtaining additional classifications and states, "A licensee may obtain additional classifications by filing an application and meeting the requirements regarding experience in the classification requested." Based on DPC's assertions that it is "deemed to hold" a specialty license, it should have been very easy to obtain a C41 classification license to submit to GIAA in response to the IFB.

GIAA has consistently applied this requirement in all of its procurement of construction services since mandated by GCLB in 2005.⁹ As such, GIAA takes issue with DPC's accusation in its appellate statement that GIAA's reliance on this mandate is "contrived in order to support an award made in contradiction to the laws governing contractors and the procurement laws of Guam." Indeed, DPC's statement does not identify with any specificity which procurement laws have been violated by virtue of GIAA's requirement that bidders submit a C41 specialty license.

DPC engages in a rather protracted and irrelevant discussion about how GIAA has failed to produce "evidence that the steel reinforcement work required under the IFB will constitute thirty-five percent (35%) or more of the work contemplated thereunder." (DPC's Appellate Statement at p. 9). It is not GIAA's burden to establish that the requirements of the IFB are, as DPC argues, "without legal cause or justification"; rather, as the bidder, DPC had the opportunity, if not the obligation, during pre-bid conferences and the written inquiry period, to establish that the requirement to provide a C41 specialty license was illegal/in violation of the Guam Procurement laws and/or contractor licensing laws or to seek a waiver from such a requirement. DPC did not do so and only now complains that, despite the fact that the requirements were clearly set forth in the Special Instructions to Bidders and emphasized during the pre-bid conference, the specialty license requirement did not apply to them.

Several other contractors who submitted bids or who were identified as sub-contractors have many of the specialty classifications listed on Section 1421 *in addition* to their Class A and B licenses. For example, Rex International submitted a copy of its license indicating licensure in all of A, B and C41 classifications. Subcontractor to bidder Leighton Contractors, Inc., Guam Yooshin Corporation holds all of an A, B and C41 license. Finally, Maeda's subcontractor Younex Builder Corp. also holds an A, B and C41 license. Thus, despite any contention by DPC that no such additional license

⁹ Most recently, this issue came before the OPA's office in the appeal of Maeda Corporation, Appeal No. OPA-PA-07-003, where GIAA rejected Maeda's bid in a solicitation when it failed to produce the required contractor's licenses.

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was necessary, the GCLB clearly believes otherwise -- at least in the instance of contractors responding to government solicitations.

GIAA, as the purchasing agency, required bidders to provide evidence of their qualifications to engage in Reinforcing Steel work and relied on a license issued by the regulatory agency responsible for making these determinations -- the Guam Contractors Licensing Board. If DPC did not have a C41 license because it believed it was not necessary for this project, DPC should have sought an exemption from the requirement.

Interestingly, the licenses that DPC submitted with its bid belie any good faith belief that DPC may have about not needing a separate classification for classes enumerated in Section 1421. In addition to a copy of its Class A & B contractor's license, DPC submitted a copy of its "specialty classifications," namely: C13, 13A, C14, C17, C19, C20, C25, C40, C44 & C51, all of which are listed in Section 1421 and none of which are relevant for the Project. If DPC believed in *good faith* at the time it submitted its bid that it did not need to be separately licensed for specialty classes including C41, then why does it have a separate license for the very classes it now argues it need not be licensed for?

Clearly, under the circumstances, it was not erroneous for GIAA to have required its bidders to submit evidence that it was licensed to perform Reinforcing Steel work. All of the other bidders were able to comply with the requirement without problem. If DPC believed in good faith that it did not have to submit evidence it was licensed to perform C41 work, it had more than ample opportunity to seek clarification at both the pre-bid conference and in writing through the bid inquiry process, yet it failed to do so. Moreover, the fact that DPC holds a separate license for specialty classifications wholly contradicts its position that they are exempt from obtaining a specialty classification because they are General Engineering and General Building Contractors.

2. DPC's failure to provide resumes further justifies rejection of its bid.

GIAA also properly rejected DPC's bid because DPC failed to both (1) identify its key personnel and (2) provide resumes of such key personnel, as required under Paragraph 13 of the Special Reminder to Prospective Bidders, and as Ms. Javier stressed during the pre-bid conference. Indeed, DPC does not dispute that it did not submit the resumes with the bid package; rather, DPC *admits* in its Appellate Statement that "all pertinent resumes ... had indeed been inadvertently not put in the bid submission." (DPC's Appellate Statement at p. 3). DPC also places the blame on GIAA by claiming that Ms. Javier should have asked for the resumes when she sought clarification of information that *was* provided in the bid documents on June 15, 2007. Additionally, DPC claims that its failure is a "minor issue" and that GIAA should waive such failure as

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an "informality" because anyone can see DPC's work across the island.¹⁰ Finally, DPC asserts that a policy consideration -- savings for the taxpayers of Guam of \$376,646.40, the difference between DPC's bid and the second lowest bid -- should be the primary consideration.

As discussed above, during the pre-bid conference on May 17, 2007, Ms. Javier stressed the importance of including in the bid package the bidders' contractors licenses including the C41 license and the names and resumes of the key personnel. Ms. Javier warned potential bidders that failure to provide this information will subject their bid to rejection for nonresponsiveness. DPC admits it did not include the resumes in the bid package, but counters that Ms. Javier should have asked about the resumes on June 15, 2007, when she inquired about information contained in DPC's Shareholder's Information form. However, the bids were opened on June 12, 2007, before Ms. Javier's call seeking clarification of shareholder information. Thus, it was too late even then for DPC to submit the names and resumes of the key personnel.

Surely, to allow DPC to submit documents after the bid deadline contravenes not only the specific provisions of the subject Solicitation, but also the purpose of the Guam Procurement Laws and Regulations, which includes providing for the "fair and equitable treatment of all persons who deal with the procurement system" as well as "safeguards for the maintenance of a procurement system of quality and integrity." 2 G.A.R. §1102. If GIAA were to waive the failure to submit the documents, it would only be opening itself up to additional protests by those bidders who satisfied all of the requirements under the solicitation, which would be every other bidder that submitted bids for the Project.

DPC also asserts that GIAA should waive its failure to provide the resumes as a "minor informality" and contends that Section 8.2 of the IFB which explains that GIAA may waive minor informalities "creates the expectation that a minor inadvertent flaw in the bid, that does not affect the bid price or the ability of the bidder to perform will be waived." (Appellate Statement at p. 10). Such an expectation is seriously misplaced. The Guam Procurement Regulations defines "minor informalities" as "matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders..."¹¹ As evidenced by the language of the Special Instructions as well as the special emphasis placed on this requirement during the pre-bid conference, GIAA does not consider the failure to identify key personnel and provide their resumes a "minor informality." Rather, the information forms the basis of GIAA's determination of whether the bidder is both "responsible" and "responsive." Without this information, GIAA is without objective information on which to determine a bidder's responsibility. Thus, DPC's failure to provide the resumes and

¹⁰ Tab 19 to Procurement Record (Protest Letter at pp. 8, 9 and Enclosure 2 to Protest Letter at p. 2.)

¹¹ 2 G.A.R. §3109(m)(4)(B)(Emphasis added).

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names of the key personnel was substantive, rather than merely a matter of form. More importantly, perhaps, is that, because other bidders fully complied with the licensing and resume requirements, GIAA cannot waive DPC's failure as a minor informality without prejudicing the other bidders.

DPC also seems to imply that GIAA is not acting in "good faith" in this instance.¹² Ironically, DPC posits that "good faith" requires GIAA to ignore the substantive failure of DPC's bid and award it the contract. This argument clearly perverts the intent of the Guam Procurement Laws and Regulations. Good faith in the procurement process mandates that GIAA comply with the provisions of its own bid specifications and instructions, even if the bid rejected is lower than the next lowest bid, because this is consistent with the policy behind the procurement laws which is "fair and equitable treatment of all persons."

Finally, DPC's attempt to argue matters of policy -- that award of the contract to the next lowest bidder Rex International will be "to the detriment of Guam's taxpayers" -- also fails to provide support for a waiver because this project is funded through a grant from the FAA -- not from the General Fund or other fund paid by taxpayer money. Indeed, the FAA was advised of GIAA's determination to reject DPC's bid as non-responsive and has concurred with this determination.¹³ Thus, the funding source for this Project has approved the award to the next lowest bidder despite the price difference, because DPC simply did not comply with all applicable requirements under the IFB and the FAA appreciates the fact that GIAA has been consistent in its evaluation of bids.

B. DICK PACIFIC'S PROTEST ENDANGERS FEDERAL GRANT FOR THE PROJECT.

DPC is quick to point out that GIAA's rejection of its bid will result in an increase in the contract price (as compared to DPC's bid) of \$376,646.40 and expresses its incredulity at GIAA's decision to proceed notwithstanding the variance. However, DPC's own failure to comply with the simple, straightforward and very clear requirements of the bid specifications is to blame for the resulting variance. There is absolutely no rationale for DPC not to have complied with the requirements when none of the other bidders (including some who are licensed as A&B classification contractors) fully complied with the licensing and resume requirements.

More importantly, the FAA has instructed GIAA to close out several grants by August 15, 2007. DPC's instant protest is resulting in a serious delay in the progress of the procurement and will likely cause the loss of the funding under AIP No. 3-66-0001-

¹² Tab 19 to Procurement Record (Protest Letter at p. 9 ("Finally, 5 G.C.A. § 5003 requires the agency requesting bids to act in good faith."))

¹³ See Letter from Carissa Unpingco, Project Manager, FAA to Jess Q. Torres dated June 21, 2007 (attached to Tab 22 to the Procurement Record filed with the OPA on 8/9/07).

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37/40 which is specifically earmarked for this Project. It is appalling to GIAA that DPC would suffer the potential loss of millions of FAA grant money on the basis that GIAA should excuse a material failure of DPC to comply with requirements of the bid that were (1) easily complied with or (2) for which they could have sought clarification or perhaps even a waiver if brought to GIAA's attention during either of the pre-bid conference or the written inquiry deadline of May 21, 2007. Now, despite the fact that DPC is the only one to blame for its failure to submit the requisite documents, GIAA and the territory of Guam will lose a valuable opportunity to improve the infrastructure of the Airport and which is but one part of a larger Water System Project at the Airport.

Indeed, as of the filing of this Agency Report, the August 15, 2007 deadline has passed. GIAA is no longer entitled to draw down from the FAA grant which was earmarked for this Project.

IV.
CONCLUSION

It is undisputed that DPC failed to submit documents and or provide information which was mandated in the IFB. Pursuant to the clearly stated provisions of the IFB and the caveat given to potential bidders during the pre-bid conference for this IFB, such failure justified GIAA's rejection of DPC's bid. Paragraph 8.1 of the Instruction To Bidders provides that the award of the solicitation "will be awarded, if it is to be awarded, as soon as possible to the lowest **responsible, responsive** bidder." Because DPC did not submit key documents identified in the IFB, GIAA properly rejected its bid.

Based on the facts and legal authorities cited herein, GIAA submits that there is no evidence to support the claims presented in Maeda's protest. As such, GIAA respectfully requests that Maeda Pacific's Protest be dismissed as being without merit. GIAA requests further that the Public Auditor award GIAA all legal and equitable remedies that GIAA may be entitled to as a result of a denial of Maeda's appeal, to include, but not be limited to, GIAA's reasonable costs and attorney's fees, if permissible.

****** END OF AGENCY STATEMENT ******



ADDITIONAL INFORMATION FOR WRITTEN DETERMINATION

GIAA's inability to drawdown on the contract for Reservoirs, Support Building and GAC System would result in a loss of approximately \$450,000 from the FAA grant expiring on August 15, 2007. Equally important, the FAA is withholding a FY'07 grant under the Military Airport Program (MAP) in the amount of \$6,000,000 for this project. FY'07 is GIAA's final year of eligibility under the MAP program. The project needs to be under contract for the grant to be released and, if not, GIAA will lose the \$6M grant. When you consider the direct, indirect and induced impacts of new money into the economy in the amount of \$6,450,000, it is a socio-economic loss to the entire community. That's \$258,000 in GRT alone.

The project is one of five projects that constitute an upgrade to the water system infrastructure on airport property. Equipment has been ordered and the projects for well development and pipe installation are in progress. Without the reservoirs to store and contain the water and the GAC system for environmental mitigation, the entire system would be inoperable. This would result in delays to the other contractors with cost implications and, moreover, delays may be indefinite if funds are unavailable.

Although, the water system upgrade is on airport property, it does the serve the public interest in two ways. As part of the NAS base transfer, it was determined that the groundwater in the aquifer below the airport and neighboring properties contained contaminants. The GAC system would serve to clean or mitigate these contaminants and over time, the groundwater will be free of these contaminants. Secondly, the GIAA project will have three production water wells which will then be mitigated with the GAC system and stored in the 1.5 million gallon reservoir for transmission and distribution to users. Since the water supply will be well over the airport's needs, it could be provided as a water source to the surrounding communities. One such community is Barrigada that has experience constant water outages and heavy dependence on the Navy's Fena Reservoir source. In these regards, the timely completion of all our water system upgrade projects has tremendous socio-economic benefits to our island community.



MAIR, MAIR, SPADE & THOMPSON
 A Professional Corporation
 Attorneys at Law
 238 A.F.C. Flores Street
 Suite 801, Pacific News Building
 Hagåtña, Guam 96910
 Telephone: (671) 472-2089/2090
 Facsimile: (671) 477-5206

Attorneys for Appellee
 Antonio B. Won Pat International Airport Authority, Guam

OFFICE OF THE PUBLIC AUDITOR

In the Appeal of)	APPEAL NO. OPA-PA-07-007
)	
DICK PACIFIC CONSTRUCTION)	
COMPANY, LTD.)	DECLARATION REGARDING
)	COURT ACTION
Appellant.)	
_____)	

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 16th day of August, 2007.

ANTONIO B. WON PAT
 INTERNATIONAL AIRPORT
 AUTHORITY, GUAM

By: _____

JESS Q. TORRES