



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-24-005, In the Matter of the Appeal of Pacific Federal Management, Inc.,

Kualany Taitague <kualany@camachotaitano.law>
To: jhernandez@guamopa.com
Cc: Camarine Hopkins <camarine@camachotaitano.law>

Wed, Jan 15, 2025 at 3:59 PM

Hafa Adai Jerrick,

Camacho & Taitano LLP through Shannon Taitano, Esq., counsel for Green Community Development dba Surface Solutions hereby submits this email filing regarding the above subject procurement appeal. This email consists of one (1) document, as follows:

- Green Community Development dba Surface Solutions Hearing Brief (7 **pages**)

Please let me know if you have any questions or issues with viewing or downloading the attachment. Have a great afternoon.

--
Kualany Taitague
Receptionist



204 Hesler Place
Suite 203B
Hagåtña, Guam 96910
Phone: (671) 989-2023
www.camachotaitano.law

Confidentiality Notice: This communication may contain privileged and confidential information and is intended only for the use of the recipient(s) named above. If you are not the intended recipient, any review, disclosure, distribution, or duplication of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately, delete the message and destroy any reproductions.

Hearing Brief.pdf
131K

1 **SHANNON TAITANO, ESQ.**
2 **CAMACHO & TAITANO LLP**
3 204 Hesler Place, Suite 203B
4 Hagåtña, Guam 96910
5 Telephone: (671) 989-2023

6 Attorneys for Interested Party *Green Community Development dba Surface Solutions*

7 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
8 **PROCUREMENT APPEAL**

9 IN THE MATTER OF THE APPEAL OF)	Docket No. OPA-PA-24-005
10)	
11 PACIFIC FEDERAL MANAGEMENT,)	GREEN COMMUNITY
12 INC.,)	DEVELOPMENT DBA SURFACE
)	SOLUTIONS'
)	HEARING BRIEF
13)	
14 Appellant.)	

15 Interested Party Green Community dba Surface Solutions (“Surface Solutions”)
16 was deemed to be the lowest bidder by the A.B. Won Pat Guam International Airport
17 Authority (“GIAA”) in Invitation for Bid No. GIAA-C07-FY24 (“IFB”) but was
18 disqualified for not submitting a C-13, C-37 and C-51 specialty licenses at the time of
19 bid submission. Procurement Record (“PR”) at pp. 1851-1853. Like Pacific Federal
20 Management (“PFM”), Surface Solutions submits that requiring all licenses at the
21 time the bid is due is unduly restrictive and disputes GIAA’s determination that both
22 bidders did not meet the licensing requirements.
23
24
25
26

1 **BACKGROUND**

2 GIAA issued an IFB to procure construction services for removing and installing
3 a roofing system and foundation for the future installation of solar panels. Three bids
4 were submitted:

- 5 • Surface Solutions : \$7,898,800.00 (lowest bidder)
- 6 • PFM: \$15,922,865.41
- 7 • Core Tech: \$20,068,296.00 (highest bidder)

8 Both Surface Solutions and PFM were disqualified from consideration because
9 they did not submit all of the specialty licenses by the bid deadline. As a result, Core
10 Tech, despite being the highest-priced bidder, was awarded the contract
11

12 **ISSUES PRESENTED**

- 13 1. Whether Surface Solutions met the licensing requirements of the IFB.
- 14 2. Whether requiring a bidder to submit all licenses at the time the bid is
15 due is unduly restrictive.

16 **STANDARD OF REVIEW**

17 The Public Auditor has jurisdiction to review and determine de novo any matter
18 properly submitted to him. 5 GCA § 5703(a).
19

20 **ARGUMENT**

- 21 I. GIAA erred when it determined that Surface Solution did not meet the
22 licensing requirements of the IFB.

23 According to Guam law, a licensee may apply for and be classified in more than
24 one classification if they meet the qualifications prescribed by the Contractors License
25

1 Board (“CLB”) for such additional classifications. 21 GCA § 70107(b). CLB’s
2 regulations clearly state that any person who qualifies by written examination after
3 the effective date of these rules for a contractor's license in the general engineering
4 contractor classification shall automatically be deemed to hold or be qualified for a
5 license in the specialties listed under 12106(a). 25 GAR § 12107(4). Title 25 GAR §
6 12106(a) lists the specialty licenses to include C-13, C-37 and C-51 which are the ones
7 that led GIAA to disqualify Surface Solutions from being awarded the IFB.
8

9 The regulations also provide that a general engineering contractor shall not act,
10 assume to act, or advertise as a specialty contractor except in specialties for which
11 they are licensed. 25 GAR § 12107(b). Should this require a general engineering
12 contractor, although automatically deemed to hold a specialty license, to still obtain
13 the appropriate specialty license to act as a specialty contractor, the requirement to
14 submit these specialty licenses when the bid is due unduly restricts competition.
15

16 The specification at issue here is the following:

17 **Other Requirements.** Copy of Valid Contractor’s License - Classification
18 A, B, C-8, C-13, C-33, C-37, C-41, C-42, C-48, C-51, C-55, and C-56.

19 PR at p. 0040. Surface Solutions submitted the following licenses: A, B, C8, C33,
20 C41, C41, C55, and C56. As a matter of text, the requirement itself is not entirely
21 unambiguous as to what the IFB requires. First, the IFB asks for a singular “Valid
22 Contractor’s License.” Furthermore, the IFB does not take into account that, as set
23 forth above, a general engineering contractor license automatically qualifies the
24
25
26

1 holder as a specialty contractor. Based on the text of the IFB, law and regulations
2 governing contractor licensing, Surface Solutions met all IFB requirements.

3 II. Requiring a bidder to submit all potential licenses at the bid deadline
4 regardless of when those licenses would be needed for the project was
5 unduly restrictive and unsupported by the record.

6 The requirement to submit all licenses at bid deadline must be supported by a
7 rational or reasonable basis and not unnecessarily limit the pool of potential bidders.
8 Government procurement should foster competitive bidding and maximize the value
9 of public funds. 5 GCA § 5001. Specifications should seek to promote overall
10 economy, encourage competition, and not be unduly restrictive. 5 GCA § 5265. The
11 policy and purpose of nonrestrictiveness applies to all specifications including those
12 prepared by architects and engineers. 5 GCA § 5266.

13 Surface Solutions does not dispute that the responsible bidder must possess all
14 licenses necessary to complete the scope of work in the IFB. However, Surface
15 Solutions questions the timing of when a bidder must hold a specialty license.
16 Requiring all licenses on bid submission precludes fair competition or unnecessarily
17 limits the pool of qualified bidders. It is clear from this appeal that this requirement
18 has functioned to eliminate rather than encourage competition. GIAA's decision to
19 make all licenses due at the time of bid submission has resulted in a \$12,000,000
20 increase in the project price.
21
22

23 In federal procurement, if a requirement, such as a specialty license, is found to
24 exceed the minimum needs of an agency, it may be deemed unduly restrictive, and the
25 agency's decision to include it in the solicitation could be considered arbitrary,
26

1 capricious, or an abuse of discretion *Piedmont Propulsion Sys., LLC v. United States*,
2 167 Fed. Cl. 72. Furthermore, the court in *Savantage Fin. Servs. v. United States*, 150
3 Fed. Cl. 307 emphasized that a solicitation term may be unduly restrictive if it is “so
4 plainly unjustified as to lack a rational basis.” This standard requires the contracting
5 agency to provide a coherent and reasonable explanation for its exercise of discretion.
6 *Id.* If the agency fails to justify the necessity of the restrictive requirement, it may be
7 considered unduly restrictive. *Id.*

9 Here, the procurement record is devoid of such justification. Guam law requires
10 that the specifications identify the person responsible for drafting it and any resource
11 relied on to draft it. 5 GCA § 5267. It also requires that it be included in the
12 procurement record. 5 GCA § 5249(d). GIAA has failed to produce any record of the
13 development of the specifications to justify the need for bidders to submit all licenses
14 at the time of bid.

16 If the requirement to submit all specialty licenses does not serve a legitimate
17 purpose or is not necessary at that stage of the procurement process, it could be
18 deemed unduly restrictive. Even assuming that a general contractors license does not
19 authorize a contractor to perform all the work identified in the IFB, requiring bidders
20 to submit all nine specialty licenses at bid deadline for a project that does not
21 immediately require such work limits the pool of bidders and restricts competition.

23 The three bidders met the general licensing requirements. Surface Solutions
24 submitted licenses with the understanding that the general engineering license
25 automatically qualifies as a specialty license. It was only made known after bids were
26

1 rejected that GIAA did not agree with bidders' position on the CLB license
2 requirements. According to GIAA, Surface Solutions did not provide 3 out of 10
3 specialty licenses namely C-13 (Electrical), C-37 (Plumbing), and C-51 (warm air
4 heating, ventilating and air conditioning) in response to an IFB for roof replacement
5 and constructing the foundation for a renewable energy system. Typically, electrical,
6 plumbing, and ventilation are toward the end of the construction project. In this
7 instance, the scope of work is performed in phases within 730 calendar days or a 2-
8 year time frame PR at p 0035 starting with the removal of the existing roof,
9 examination and repair of roof cracks in the cement, and then installation which is
10 also performed in phases for each building. PR at pp. 0047- 0052. There is no
11 justification for restricting competition by requiring specialty licenses in a phased
12 project at bid deadline.
13
14

15 Furthermore obtaining specialty licenses is not a simple process. The applicant
16 has to pay a \$50 fee per license, pass an interview, and pass a written examination. It
17 is unclear whether this process could be easily completed in the period between the
18 IFB issuance date of May 22, 2024, and the deadline date of June 21, 2024. If not,
19 this would favor larger contractors already performing similar work. It would
20 therefore be less restrictive to allow a bidder after award to either obtain the required
21 licenses or subcontract with a contractor or several contractors. In fact, upon
22 information and belief, the government of Guam has allowed this in other
23 procurements.
24
25
26

