

Felix P. Camacho
Governor

Lourdes M. Perez
Director
Department of Administration



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671)475-1707 thru 1729/Fax Nos: (671)472-4217/475-1716

Michael W. Cruz,
Lt. Governor

Joseph C. Manibusan
Deputy Director
Department of Administration

January 22, 2008

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

Re: **PROCUREMENT APPEAL NO. OPA-PA-08-001**
PROCUREMENT RECORD



Dear Ms. Brooks:

Buenas Yan Hafa Adai! Pursuant to 2GAR §12104(c)(3) the procurement record is hereby submitted as required.

Should you have any questions, please contact me at 475-1713.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

JAN 22 2008

TIME: 4:45 PM
BY: Anne Camacho
FILE No. OPA-PA 08-001

Only need One set

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1. Protest Letter.
2. Far East Equipment Company, LLC – Bid Offer.
3. Copy of Bid Solicitation & Announcement.
4. Copy of Bid Abstract/Bidders Register.
5. Minute Pre-Bid Conference/Question & Answer/Amendments.

1. Protest Letter



at
Pamela
12/21/07
@ 4:04pm

The Law Offices of John S. Unpingco & Associates, LLC

777 Route 4

Suite 12B

Sinajana, Guam 96910

Telephone: (671) 475-8545

Facsimile: (671) 475-8550

www.ualawguam.com

December 21, 2007

Sent via hand delivery

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
148 Route 1 Marine Corps Drive
Piti, Guam 96915
Via Facsimile Transmission: 472-4217

Kenneth T. Tagawa
General Manager,
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Via Facsimile Transmission: 477-2689

RE: Bid Invitation PAG 07-007 (New Dockside Container Handling Gantry Crane)

Dear Ms. Acfalle and Mr. Togawa,

This is a protest letter on the above-referenced solicitation. We received notification from GSA on November 29, 2007 that our bid had been rejected due to non-conformance with the specification/requirements, high price and "vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations". On the same day we sent a Sunshine Act request seeking "details as to what specifications we did not meet, the basis of high price as we were the only bidder that submitted a price, and the details of commercial deviations and commercial contract terms that are not in compliance with the Guam Procurement Rules and Regulations". As of this date, we still have not received a response to our Sunshine Act request.

Pursuant to 2 GAR § 9101, we provide the following:

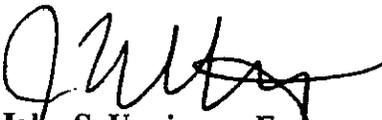
- a) Name and address of protestor:
Far East Equipment Company, LLC
PO Box 10838
Tamuning, Guam 96931
Telephone: 473-4375
Cellular: 888-6270
- b) Appropriate Identification of the Procurement:
Bid Invitation PAG 07-007 (New Dockside Container Handling Gantry Crane);
- c) Statement of Reasons for the Protest: Normally, a protest is filed within 14 days after the protestor knows or should have known of the facts giving rise thereto. In this case, while we were given notice of the status of our bid no details were provided. Accordingly, the 14-day protest period is inapplicable and this protest should be timely as under 2 GAR § 9101 (c) (1) the "or should have known of the facts" giving rise to a protest is still unfulfilled. Despite the lack of response to our Sunshine Act request, we must and do protest the rejection of our bid and contend that our bid met all the specifications of the bid, our bid price was reasonable, and our contract terms were in compliance with the Guam Procurement Rules and Regulations. Thus, the contract for the gantry crane should have been awarded to us. We are unable to respond with particularity to the Port Authority's reasons for rejecting our bid as despite our best efforts to ascertain specific information from the Port, we have received no response whatsoever. The Port's bid status correspondence to us was very cryptic and we have not received anything further that would shed light on the rejection of our bid.
- d) Attached as Exhibit A is the Bid Status notification we received from the Port Authority. Attached as Exhibit B is our Sunshine Act Request.

As the attorneys for Far East Equipment we have been duly authorized to file this protest on behalf of the Company.

Your kind attention and prompt action and response will be greatly appreciated.

Sincerely,

THE LAW OFFICES OF JOHN S. UNPINGCO
& ASSOCIATES, LLC


John S. Unpingco, Esq.

The Law Offices of John S. Unpingco & Associates, LLC

777 Route 4

Suite 12B

Sinajana, Guam 96910

Telephone: (671) 475-8545

Facsimile: (671) 475-8550

www.ualawguam.com

December 26, 2007

Sent via facsimile transmission

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Government of Guam
148 Route 1 Marine Corps Drive
Piti, Guam 96915
Via Facsimile Transmission: 472-4217

Kenneth T. Tagawa
General Manager,
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Via Facsimile Transmission: 477-2689

RE: Bid Invitation PAG 07-007 (New Dockside Container Handling Gantry Crane)

Dear Ms. Acfalle and Mr. Togawa,

On December 21, 2007 we sent you our protest letter on the above-referenced Bid Invitation. Our protest letter referenced an Exhibit A & B as being attached. Unfortunately, these two exhibits were not attached. Accordingly, enclosed are Exhibits A & B to our protest letter.

We apologize for any inconvenience this may have caused you.

Thank you for your kind attention and understanding.

Sincerely,

THE LAW OFFICES OF JOHN S. UNPINGCO
& ASSOCIATES, LLC


John S. Unpingco, Esq.

FAR EAST EQUIPMENT COMPANY LLC
 P. O. BOX 10838, TAMUNING GUAM 96931
 TEL: 671-473-4374 FAX: 671-473-4370

FACSIMILE TRANSMITTAL SHEET

TO: Anita T. Cruz / Kenneth T. Tagawa	FROM: John Limtiaco
COMPANY: General Services Agency Assistant Chief Procurement Officer Port Authority of Guam General Manager	DATE: 11/29/2007
FAX NUMBER: 472-4217	TOTAL NO. OF PAGES INCLUDING COVER: 1
PHONE NUMBER: 477-5933-35	SENDER'S REFERENCE NUMBER:
RE: PAG07-007 Rejection Letter & Sunshine Request	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

Dear Mrs. Cruz,

We are in receipt of the bid rejection regarding Bid No. PAG 07-007 in which the rejection states that we are in non-conformance with the bid specifications/ requirements, High price, and vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations.

Please provide details as to what specifications we did not meet, the basis of high price as we were the only bidder that submitted a price, and the details of commercial deviations and commercial contract terms that are not in compliance with the Guam Procurement Rules and Regulations. When responding regarding compliance with the Guam Procurement Regulation, I would like to request you site the specific section of the regulations that we are not in compliance with.

We are also requesting copy's of all communications between GSA and PAG, and PAG and its consultants as it relates to this solicitation.

Sincerely,

John A. Limtiaco
 VP Managing Director

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY

(Ahensian Seabision Hinirak)
Department of Administration
Government of Guam

Michael W. Cruz,
Lt. Governor

Joseph C. Manibusan
Deputy Director

148 Route 1 Marine Drive, Piti, Guam 96914

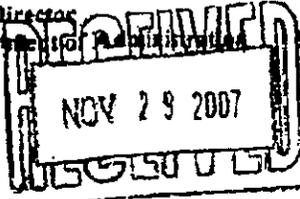
Tel: (671)475-1707 thru 1729 Fax Nos: (671)472-4217/475-1716

Department of Administration

Lourdes M. Perez

Director

Department of Administration



November 28, 2007

473-4370 E
Attention Mr. John Limtiaco

BID STATUS

Please Acknowledge Receipt and
Fax to 475-1716/475-1727 and to
472-1439

Print/Sign/Date

Mr. John Limtiaco
Vice President
Far East Equipment Company LLC
P.O. Box 10838
Tamuning, Guam 96931

BID INVITATION: PAG 07-007 Opened October 8, 2007
DESCRIPTION: New Dockside Container Handling Gantry Crane

The following is the result of the above-mentioned bid. Refer to the items checked below:

- / / - Canceled (in its entirety); or partially canceled due to:
 - () Insufficient funds;
 - () Change of specifications; or
 - () Insufficient number of bidders
- / X / 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 requirement as stated in the IFB;
 - (x) Non-conformance with the specification/requirements;
 - () Inability to provide future maintenance and service to the equipment;
 - (x) High price; or
 - (x) Others: Vendor's recommended Commercial Deviations and Commercial Contract Terms are not in compliance with the Guam Procurement Rules and Regulations.

// Bid is recommended for award to:

REMARKS: Thank you for participating in this bid. Please have your authorized representative come by our office to pick up the original Bid Status and Bid Security Deposit.

CONCURRED BY:

KENNETH T. TAGAWA
General Manager, PAG

APPROVED BY:

ANITA T. CRUZ
Assistant Chief Procurement Officer

COMMITTED TO EXCELLENCE

THE LAW OFFICES OF JOHN S. UNPINGCO & ASSOCIATES, LLC

777 Route 4

Suite 12B

Sinajana, Guam 96910

FACSIMILE TRANSMITTAL SHEET

TO: Claudia S. Acfalle	FROM: John S. Unpingco, Esq.
COMPANY: General Services Agency	DATE: DECEMBER 26, 2007
FAX NUMBER: 472-4217	TOTAL NO. OF PAGES INCLUDING COVER: 04
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: Bid Invitation PAG 07-007 (New Docksider Container Handling Gantry Crane)	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please see letter dated December 26, 2007 with attachments.

GENERAL SERVICES AGENCY

118 Route 1
Marine Drive
Fiti, Guam 96922

[Handwritten signature]
[Handwritten date: 12/26/07]

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS MESSAGE TO THE RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE DESTROY THIS MESSAGE AND NOTIFY US IMMEDIATELY AT (671) 475-8545. THANK YOU.

TELEPHONE: (671) 475-8545

FACSIMILE: (671) 475-8550

WWW.UALAWGUAM.COM

**Email from John Limtiaco (Far East Equipment
Company, LLC November 12, 16, & 28, 2007)**

Anita Cruz

From: John Limtiaco [jlimtiaco@fleetservicesguam.cis.m]
Sent: Monday, November 12, 2007 8:33 PM
To: 'Kenneth T. Tagawa'
Cc: 'Pedro F. San Nicolas'; 'Jim Moir Jr.'; 'Jim Moir Jr'
Subject: PAG07-007 Gantry Crane

Dear Mr. Tagawa and Mr. San Nicolas,

The President of Far East Equipment Company LLC, Mr. Jim Moir, who resides in Sacramento, Ca. will be in Guam from September 12 till September 16, 2007. Mr. Moir has indicated he will be available to meet with PAG/GSA and its consultant's to clarify or discuss any portion of Far East Equipments bid offer for the supply of Gantry cranes to the Port Authority of Guam if the PAG/GSA and its consultant's should require such clarification or negotiations. I may be reached on my mobile phone at 888-6270 if such a meeting would be beneficial to all parties.

Sincerely,
John A. Limtiaco
VP Far East Equipment Company LLC

Anita Cruz

From: John Limtiaco [jlimtiaco@fleetservicesguam.com]
Sent: Friday, November 16, 2007 4:03 PM
To: 'Anita T. Cruz'
Cc: 'Kenneth T. Tagawa'; 'Pedro F. San Nicolas'
Subject: GSA/PAGProcurement Question
Attachments: Competitive Sealed Bid Restrictions.pdf; Limitation on Delegation.pdf; PAG07-007 Gantry Crane (3.57 KB)

Dear Asst. Chief Cruz,

I sent in a request to meet with Mr. Tagawa at the PAG, see attached e mail, to see if they require any clarification or would like to negotiate on our bid for PAG gantry cranes. I also copied in Mr. Pedro San Nicolas as indicated in the bid instructions.

I have attached sections of the procurement law as it relates to competitive sealed bidding and restrictions. Although there are restrictions to negotiate on competitive sealed bidding the restrictions do have an exemption for construction contracts. The exemption allow the Chief Procurement Officer to delegate the negotiation of construction contract bid prices as it relates to §3109 Competitive Sealed Bidding, Award. The bid specifications requiring progress payments based on construction milestones and the requirements for a Performance Bond indicate that this bid is a construction contract and should be subject to the negotiation exemption.

Therefore as the only bidder we look forward to meeting with GSA/PAG to negotiate and finalize this construction contract for the betterment of our island economy.

Sincerely,
John A. Limtiaco
VP Far East Equipment Company LLC

11/26/2007

2 GAR - Administration
Div. 4 - Procurement Regulations
2-4 GAR

(c) whether the authority may be further delegated;
and

(d) the duration of the delegation.

§2107. Exceptions to Delegation. The authority conferred on the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency in the following sections of the Guam Procurement Regulations shall not be delegated:

(a) Section 5104 (Contract Performance and Payment Bonds, Reduction of Bond Amounts);

(b) Section 5106 (Contract Clauses and Their Administration, Modification of Required Clauses);

(c) Section 6101 (Contract Clauses and Their Administration, Modification of Clauses);

(d) Section 9101 (Authority to Resolve Protested Solicitations and Awards, Stay of Procurement During Protests); and

(e) Section 9102 (Authority to Debar or Suspend, Authority).

§2108. Limitations on Delegation. (a) Under Section 3109 (Competitive Sealed Bidding, Award) of the Guam Procurement Regulations, the Director of Public Works, or the head of a Purchasing Agency may delegate the authority to negotiate an adjustment of the bid price for a construction project, provided that no contract may be awarded pursuant to such negotiations without the approval of the Director of Public Works, or the head of a Purchasing Agency.

(b) Under Section 9102 (Authority to Debar or Suspend, Authority) of the Guam Procurement Regulations, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency may appoint a hearing officer to receive evidence and make a written report containing findings of fact and conclusions of the case. Thereafter, oral argument may be heard before the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, who shall issue a written decision pursuant to Section 9102, (Authority to Debar or Suspend, Decision), of the Guam Procurement Regulations.

§2109. Revolving Fund. The *Inventory Revolving Fund* is created and shall be maintained separate and apart from other government funds. The Chief Procurement Officer shall be the certifying officer of the Inventory Revolving Fund. The Fund shall be used for the purchase and replenishment of items to be carried in the supplies inventory to be maintained in the warehouse operated by the General Services Agency.

2 GAR - ADMINISTRATION
DIV. 4 - PROCUREMENT REGULATIONS

actual future costs, but to the extent possible such evaluation factors shall:

(a) be reasonable estimates based upon information the territory has available concerning future use; and

(b) treat all bids equitably.

(5) **Restrictions.** Nothing in this Section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder as determined in Subsection 3109(m)(4) of this Section. Further, this Section does not permit negotiations with any bidder except as authorized on Section 2108 of these Regulations with regard to a construction project.

(o) **Low Tie Bids.**

(1) **Definition.** Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

(2) **Award.** Award shall not be made by drawing lots, except as set forth below or by dividing business among identical bidders. In the discretion of the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, award shall be made in any permissible manner that will discourage tie bids. If no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) **Record.** Records shall be made of all Invitation for Bids on which tie bids are received showing at least the following information:

(a) the identification number of the Invitation for Bids.

Anita Cruz

From: John Limtiaco [jlimtiaco@fleetservicesguam.com]
Sent: Wednesday, November 28, 2007 7:18 PM
To: 'Anita Cruz'
Cc: 'Vivian Leon -Human Resource'; 'Kenneth T. Tagawa'; 'James Moir, Jr.'; 'Jim Moir Jr'
Subject: RE: PAG07-007 Request for negotiations
Attachments: image001.png

Dear Mrs. Cruz,

Buenas yan Hafa Adai. I would like to thank you and acknowledge receipt of your initial response to my request for negotiations of this bid. After reviewing your response I would like to request that you perform a thorough review of the procurement regulations as your response does not reflect what is contained in the procurement regulations as it relates to the available methods of procurement. Your response seems to either indicate that an IFB can not be used for a construction solicitation, that there is a special method of procurement for construction, or that an IFB and construction are two separate methods of procurement.

§ 3108. Method of Source Selection provides for only 8 ways for procurement to be performed, and unless authorized by law, the preferred method of procurement is the Competitive Sealed Bidding process. There is no reference in this section that provides for a special method of procurement for construction solicitations. The Competitive Sealed Bidding process consist of either a single step bid (IFB) or a Multi-Step Bid. The PAG07-007 bid for gantry cranes as you stated in your comments below is an IFB and this method of procurement falls under the regulations of § 3109 Competitive Sealed Bidding. The ability to negotiate a bid price of a construction award in the Competitive Sealed Bid process (IFB or Multi-Step bid) is contained in §2108 of the procurement regulations. A construction contract may be either a single step bid (IFB), or a Multi-Step Bid. Your response below to my initial request did not cite any section of the procurement regulations that supports your comments. I would like to request that you cite the section in the procurement regulations that support your comment below where you seem to refer that an IFB can not be utilized for the procurement of a construction solicitation or that a construction solicitation has a special Method of procurement not contained in § 3108 of the procurement regulations. Your thorough review of the procurement regulations and guidance to the procuring agency may determine their ability to move forward with the award of this solicitation.

For your reference this information can be found under § 3109 Competitive Sealed Bidding, (n) Bid Evaluation and Award, (5) Restrictions. For easier reference it is located in Ch.3 Source Selection & Contract Formation-1977-P.24. This section also refers to an exemption contained in § 2108 regarding construction contracts and the ability to negotiate the bid price.

It is clear that this is a construction contract based on the progress payment and construction milestones outlined in the bid documents. There is no reference in the procurement regulations that indicates a construction solicitation can not be procured by Competitive Sealed Bidding Method which is inclusive of an IFB (single step bid) or a Multi-step bid. There is an exemption provided in §2108 that allows the head of the Purchasing Agency (GSA) to delegate the authority to negotiate an adjustment of a bid price for a construction project as it relates to Competitive Sealed Bidding, Award. We look forward to negotiating this construction solicitation to the benefit of Guam. Anything less than an attempt to negotiate this solicitation with the sole bidder for the past two solicitations is a disservice to PAG, the people of Guam, and the business community.

Sincerely,

John A. Limtiaco
Vice President
Far East Equipment Company LLC

From: Anita Cruz [mailto:atcruz@mail.gov.gu]

1/21/2008

Sent: Monday, November 26, 2007 5:06 PM
To: jlimtiaco@fleetservicesguam.com
Cc: 'Vivian Leon -Human Resource'
Subject: EMAIL FROM J LIMTIACO CRANE PAG07 007

Response to email 11/16/07

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY
(Ahensian Setbision Hinirat)
Government of Guam
P.O. Box FG, Agana, Guam 96910

Michael W. C
Lt. Govern

Lourdes M. Perez
Director, Dept. of Administration

Joseph C. Mani
Deputy Direc

November 26, 2007

To: Mr. John A. Limtiaco
VP Far East Equipment Company, Inc.
From: Assist. Chief Procurement Officer, GSA
Subject: Email Memo sent on 11/16/07 (PAG07-007 Gantry Crane)

Dear Mr. Limtiaco,

Buenas and Hafa Adai! Received your email memo 11/16/07 regarding the above subject matter.

The process that was used for acquisition of the crane was a invitation for bid (IFB) and not for construction. Therefore, your comments regarding the negotiation in the competitive seal bid process is inappropriate.

Thank you for your comments and concerns.

ANITA T. CRUZ

Cc PAG, General Manager
Vivian Leon
Marilyn Pecinas, SMA

Sunshine Act Request

FAR EAST EQUIPMENT COMPANY LLC

P.O. BOX 10838, TAMUNING GUAM 96931

TEL: 671-473-4374 FAX: 671-473-4370

FACSIMILE TRANSMITTAL SHEET

TO:	Anita T. Cruz / Kenneth T. Tagawa	FROM:	John Limtiaco
COMPANY:	General Services Agency Assistant Chief Procurement Officer Port Authority of Guam General Manager	DATE:	11/29/2007
FAX NUMBER:	472-4217	TOTAL NO. OF PAGES INCLUDING COVER:	1
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	PAG07-007 Rejection Letter & Sunshine Request	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

Dear Mrs. Cruz,

We are in receipt of the bid rejection regarding Bid No. PAG 07-007 in which the rejection states that we are in non-conformance with the bid specifications/ requirements, High price, and vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations.

Please provide details as to what specifications we did not meet, the basis of high price as we were the only bidder that submitted a price, and the details of commercial deviations and commercial contract terms that are not in compliance with the Guam Procurement Rules and Regulations. When responding regarding compliance with the Guam Procurement Regulation, I would like to request you site the specific section of the regulations that we are not in compliance with.

We are also requesting copy's of all communications between GSA and PAG, and PAG and its consultants as it relates to this solicitation.

Sincerely,

John A. Limtiaco
VP Managing Director

FAR EAST EQUIPMENT COMPANY LLC

P.O. BOX 10838, TAMUNING GUAM 96931

TEL: 671-473-4374 FAX: 671-473-4370

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Anita T. Cruz / Kenneth T. Tagawa	John Limtiaco
COMPANY:	DATE:
General Services Agency	12/1/2007
Assistant Chief Procurement Officer	
Port Authority of Guam	
General Manager	
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
472-4217	1
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
PAG07-007 Rejection Letter & Sunshine Request	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

Dear Mrs. Cruz,

We are in receipt of the bid rejection regarding Bid No. PAG 07-007 in which the rejection states that we are in non-conformance with the bid specifications/ requirements, High price, and vendors recommended commercial deviations and commercial contract terms are not in compliance with the Guam Procurement Rules and Regulations.

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We are also requesting copy's of all communications between GSA and PAG, and PAG and its consultants as it relates to this solicitation.

Sincerely,

John A. Limtiaco
VP Managing Director

Felix P Camacho
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Lourdes M. Perez
Director
Department of Administration



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

148 Route 1 Marine Drive, Piti, Guam 96915

Tel: (671)475-1707 thru 1729 Fax Nos: (671)472-4217/475-1716

Michael W. Cruz,
Lt. Governor

Joseph C. Manibusan
Deputy Director

Department of Administration

November 28, 2007

BID STATUS

Mr. John Limtiaco
Vice President
Far East Equipment Company LLC
P.O. Box 10838
Tamuning, Guam 96931

BID INVITATION: PAG 07-007 Opened October 8, 2007
DESCRIPTION: New Dockside Container Handling Gantry Crane

The following is the result of the above-mentioned bid. Refer to the items checked below:

- / / Canceled (in its entirety); or partially canceled due to:
- Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders
- / X / 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 requirement as stated in the IFB;
 - Non-conformance with the specification/requirements;
 - Inability to provide future maintenance and service to the equipment;
 - High price; or
 - Others: Vendor's recommended Commercial Deviations and Commercial Contract Terms are not in compliance with the Guam Procurement Rules and Regulations.

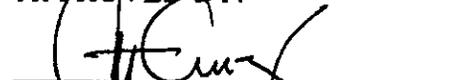
// Bid is recommended for award to:

REMARKS: Thank you for participating in this bid. Please have your authorized representative come by our office to pick up the original Bid Status and Bid Security Deposit.

CONCURRED BY:


KENNETH T. TAGAWA
General Manager, PAG

APPROVED BY:


ANITA T. CRUZ
Assistant Chief Procurement Officer

COMMITTED TO EXCELLENCE

Anita Cruz

From: John Limtiaco [jlimtiaco@fleetservicesguam.com]
Sent: Thursday, November 29, 2007 1:35 PM
To: 'Anita Cruz'
Cc: 'Kenneth T. Tagawa'; 'James Moir, Jr.'; 'Jim Moir Jr'
Subject: PAG 07-007 Bid Rejection and Sunshine Request
Attachments: PAG 07-007 bid rejection 11-29-2007.doc

Dar Mr. Cruz and Mr. Tagawa,

Please see attached request for details regarding bid rejection and a sunshine request for documentation regarding the subject solicitation.

Sincerely,
John Limtiaco

The information transmitted is intended solely for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of or taking action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you have received this e-mail in error please contact the sender and delete the material from any computer.

Felix P. Camacho
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

Michael W. Cruz
Lt. Governor

Lourdes M. Perez
Director
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 thru 1729 • Fax Nos: (671) 472-4217/475-1727/475-1716

Joseph C. Manib
Deputy Director
Department of Adminis

December 28, 2007

John S. Unpingco, Esq.
The Law Offices of John S. Unpingco
& Associates, LLC
777 Route 4 Suite 12B
Sinajana, Guam 96910

Re: **Sunshine Request – Bid Invitation GSA/PAG 07-007 (One (1) New Dockside Container Handling Gantry Crane)**

Dear Mr. Unpingco:

Buenas Yan Hafa Adai! This is in response to an email dated 29 November 2007, submitted by Far East Equipment Company, LLC, requesting under the Sunshine Act for copies of all communications between GSA and PAG, and PAG and its consultants as it relates to this solicitation.

Please be advised prior to issuance of the attached documents a copying fee in the total amount of \$1.70 is required.

If you have any further questions, please do not hesitate to contact me at 475-1713.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

ACKNOWLEDGEMENT COPY
RECEIVE BY Charlene Medel
DATE 12/31/07

RECEIVED
ACKNO...EDGEMENT COPY
RECEIVED DEC 31 2007 4:35pm
DATE: 12/31/07
John S. Unpingco & Associates, LLC



PORT AUTHORITY OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
GOVERNMENT OF GUAM

1026 Cabras Highway, Suite 201
 Piti, Guam 96925



Telephone: (671) 477-5931/3

(671) 477-2683/8

Facsimile: (671) 477-2689/444

Webpage: www.portofguam.com

FELIX P. CAMACHO
 Governor of Guam

MICHAEL W. CRUZ
 Lieutenant Governor

November 27, 2007

MEMORANDUM

TO: Acting Assistant Chief Procurement Officer, General Services Agency

FROM: General Manager

SUBJECT: Rejection of Bid Submission for IFB GSA/PAG 07-007, One (1) New Dockside Container Handling Gantry Crane

Pursuant to Sections 3115(d)2.A. and/or 3115(e)(3) of 2 GAR – Administration, Division 4 – Procurement Regulations, the Port Authority of Guam is requesting that the bid submission by Far East Equipment Company LLC for IFB GSA/PAG 07-007, One (1) New Dockside Container Handling Gantry Crane be rejected for the following reasons:

1. Technical Specifications: The Port's consultants and evaluation committee members reviewed the technical specifications submitted by Far East Equipment Company LLC for the dockside container handling crane and found that it did not meet specifications as outlined in the IFB. Based on their analysis and review of the bidder's technical deviations, out of:
 - a. 41 technical deviations for electrical parts, 17 were not acceptable;
 - b. 10 technical deviations for mechanical parts, 3 were not acceptable;
 - c. 7 technical deviations for diesel generator set, 1 was not acceptable; and
 - d. 39 technical deviations for electrical control system, 5 were not acceptable.

On the bidders' technical clarifications, out of:

- a. 35 technical clarifications for electrical parts, 4 were not acceptable; and
- b. 15 technical clarifications for mechanical parts, 2 were not acceptable.

SUBJECT: Rejection of Bid Submission for IFB GSA/PAG 07-007, One (1) New
Dockside Container Handling Gantry Crane

Page 2

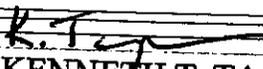
The Port's consultant further validated their findings by listing some of the unacceptable deviations by Far East and providing detailed summary of their comments on the above listed deviations in their analysis.

2. Price: The price provided by Far East Equipment LLC for a new dockside container handling crane exceeds the Port's budgeted allocation for such equipment acquisition. Although the pricing of the crane provided by Far East Equipment Company LLC was \$9,698,250, the other costs associated with the acquisition of such crane, e.g., spare parts, training and maintenance support, construction management consultant services, would be over \$12 million for only one (1) gantry crane.
3. Procurement Requirements: Although Far East Equipment Company LLC complied with the mandatory required documents, included in their package was a list of recommended "Commercial Deviations" and "Commercial Contract Terms" which their subcontractor, ZPMC, had provided to be negotiated with the Port. A review of the deviations and terms and conditions would result in a drastic change of the bid's general terms and conditions as originally issued. In addition, the proposed contractual terms the bidder is proposing may be in violation of the Guam's Procurement Act.

We are providing you with copies of the Port's analysis and evaluation comments by the committee and staff for your review and disposition.

In light of the above, it is recommended that a bid status be issued by General Services Agency advising Far East Equipment Company LLC that their bid submission for the IFB GSA/PAG 07-007 is rejected.

Should you require additional information, please feel free to contact this office. We thank you in advance for assisting us on this matter.


KENNETH T. TAGAWA

Attachments

Cc: Board of Directors
Corporate Services Manager
Supply Management Administrator
Port Evaluation Committee

A California Corporation 344 - 20th Street, Suite 360, Oakland, CA 94612-3593 1-510-832-5606 Fax 1-510-832-2436 www.liftech.net

Date: November 6, 2007

Job Number: B1604D

To: Port Authority of Guam

From: Arun Bhimani
President, Structural Engineer

Subject: FAR EAST BID, COMMENTS AND RECOMMENDATIONS

This will summarize our findings of the bid documents submitted by Far East Equipment Company LLC (Far East), dated October 8, 2007.

BID COMMENTS

Prior bids by Far East have been unresponsive in several areas. The recent bid is responsive to the specifications.

Although the proposed Far East crane bid generally conforms to the specification requirements, they have taken many deviations and present clarifications. Many of the deviations are acceptable, but some are not. In every instance, ZPMC would likely agree to meet the specifications if negotiations were allowed. The following are some examples of unacceptable deviations. Refer also to our "Technical Clarification Oct 07 law_pwm.doc," which we sent to PAG, October 29, 2007.

1. ZPMC has stated that the Caterpillar diesel will not be the latest EPA certified, which is specified in section 5.8.5.5. [See *Technical Deviation from Caterpillar*, item 1.]
2. ZPMC will not provide the control logic, specifications sections 1.5.3 and 1.5.4. ZPMC has provided this in the past. The control logic is required to understand the crane functions. [See *Technical Deviation-Electrical*, items 1-2.]
3. ZPMC proposes a cabling insulation rating of only 600 V instead of 2000 V as required; specifications section 5.6.25. [See *Technical Deviation-Electrical*, item 22.]
4. ZPMC proposed higher noise levels in the electric room and machinery house, specifications sections 6.6.10 and 6.4.9. These changes may trigger OSHA-mandated hearing conservation program and may require ear protection in the electric room and machinery house, depending on exposure time. [See *Technical Deviation-Electrical*, item 36 and *Technical Deviation-Mechanical*, item 8.]
5. ZPMC proposed to reduce the stowed wind load factor for wheel loads or increase the overall gantry out-to-out distance. We have stated in previous correspondence that PAG intends to reinforce the wharf structure at the stowage location and that ZPMC is only required to submit calculated wheel loads for the specified loading. [See *Technical Deviation-Mechanical*, item 1.]

6. ZPMC proposed to increase the allowable stress for the stowed wind load condition. This item is a misunderstanding on ZPMC's part. [See *Technical Deviation-Mechanical*, item 2.]
7. ZPMC proposed to reduce the lighting requirements for emergency egress lighting. [See *Technical Clarifications-Electrical*, item 24.]
8. ZPMC detailed their proposed training, which differs from what is specified in Section 8.5. Their proposed training may be acceptable, but this is up to PAG to decide. [See *Technical Clarifications-Electrical*, item 35.]
9. ZPMC proposed to use both GRF and GUA series conduit fittings. Only GUA fittings are acceptable. [See *Technical Clarifications-Electrical*, item 11.]
10. ZPMC proposed to use vendor's standard for AC motors, which may vary from the specifications section 5.9.3 requirement of being totally enclosed. [See *Technical Clarifications-Electrical*, item 17.]
11. ZPMC proposed a floodlight that is not a "rapid start" type. [See *Technical Clarifications-Electrical*, item 23.]
12. ZPMC proposed an earthquake attenuation device (base isolation system) to meet the seismic wheel load requirements. We have replied to this previously, stating that this is not recommended due to the high wind loads and is not needed for the wheel load combinations. [See *Technical Clarifications-Mechanical*, item 2.]
13. ZPMC proposes to use ZPMC brand trolley rail clips and pads instead of the specified Gantrex. [See *Technical Clarifications-Mechanical*, item 6.]
14. ZPMC proposes to use drip-proof, blower-ventilated motors for the main hoist, trolley drive, and boom hoist instead of totally enclosed motors with external cooling. [See *Technical Deviations-TGME*, item 21.]

RECOMMENDATIONS

Based on the above items, strictly speaking, the bid does not comply with the specifications. However, as mentioned, we expect that all items would be resolved if communications were allowed. We recommend that PAG negotiate with Far East/ZPMC, if possible, to work out the remaining issues. PAG's lawyers should investigate possible means for solving this problem.

We also recommend we discuss the deviations with PAG engineers.

We are concerned that PAG will not receive any bids if this process continues.

Vivian Leon -Human Resource

From: Tor Gudmundsen [torg@tg-engr.com]
Sent: Tuesday, October 30, 2007 12:33
To: Ken T Tagawa; 'Vivian C. Leon'; Simeon Delos Santos; Dora Cruz
Cc: 'Arun Bhimani'; 'Patrick McCarthy'
Subject: Crane Bid Review

Ken,

Attached is the bid review from Liftech, following are comments from them for consideration.

Our comments to the latest technical deviations and clarifications submitted by FEEC/ZPMC are shown in the right hand column of the attached document. We have noted where the bidder is non-compliant and where we can accept the suggested change with or without further discussion.

Please have PAG review our comments. PAG needs to address the following items.

Electrical Deviations - Items 38, 40, 41

Electrical Clarifications - Item 35

Mechanical Clarification - Item 15

Please note that it is essential that we discuss the ZPMC bid comments with their engineers before PAG either rejects their bid or awards them a contract. It is impractical to resolve the technical issues without a dialog with the bidder. If PAG rejects this round and asks for a rebid without providing an opportunity to discuss the issues, we believe the next submittal would have no additional information.

I would like to propose that we schedule a conference call with Liftech to hear directly from them about the need to have dialogue with ZPMC, please let me know what time is available.

I will call you this afternoon to discuss this further.

Si Yu'os Ma'ase,

Tor

**2. Far East Equipment Company,
LLC – Bid Offer**



COPY

**FAR EAST EQUIPMENT COMPANY LLC
P. O. BOX 10838
TAMUNING, GUAM 96931**

**GENERAL MANAGER OF PORT AUTHORITY
OF GUAM
C/O GENERAL SERVICES AGENCY
148 ROUTE 1 MARINE CORPS DRIVE
PITI, GUAM 96915
“NEW DOCKSIDE, CONTAINER HANDLING,
GANTRY CRANE(S)
INVITATION FOR BID NO. GSA/PAG 07-007
DATE: OCTOBER 08, 2007
TIME: 10:00 AM**

GSA/PAG07-007

**THE FABRICATION OF
ONE (1) NEW DOCKSIDE
CONTAINER HANDLING
CRANE**

Far East Equipment Company LLC

P.O. Box 10838, Tamuning Guam 96931
Tel: 671-473-4374 Fax: 671-473-4370

September 24, 2007

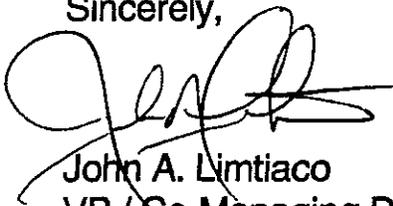
Mr. Kenneth T. Tagawa
General Manager
Port Authority of Guam
Aturidat I Puetton Guahan
Jose D. Leon Guerrero Commercial Port.
Government of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

RE: GSA/PAG07-007 Invitation for Bid

Dear Mr. Tagawa:

Thank you very much for your invitation to participate in the bid for the purchase of one (1) or two (2) new Gantry Quay Crane (QC) for the Port Authority of Guam (PAG) at Jose D. Leon Guerrero Commercial Port. Please find attached our Bid Offer for your review. The proposed Bid Offer will be valid for 90 days from the date of bid opening.

Sincerely,



John A. Lintiaco
VP / Co-Managing Director



Far East Equipment Company LLC

GSA/PAG07-007

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Invitation for Bid

for

New Dockside, Container Handling, Gantry Crane

Note: Placing an "X" by each of the following would indicate compliance with requirement(s):

Original + 5 copies	✓	
IFBid Signed by Authorize Person	✓	
Bid Bond (15%)	✓	
Major Shareholders Disclosure Affidavit	✓	
Form of Non-Collusion Affidavit	✓	
Non-Gratuity Affidavit	✓	
Ethical Standards Affidavit	✓	
Good Standing Affidavit	✓	
Certification regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion	✓	
Bidder's statement on previous Contracts subject to EEO Clause	✓	
Special Provisions: Wage Determination & Restriction against Sex Offenders	✓	
Business License	✓	
Statement of Qualifications	✓	
Bid Data Sheet Checklist	✓	
Bid Cost	✓	
Amendments:	✓	1, 2, 3, 4, 5, 6, 7, 8
Statement in Agreement to all Terms and Conditions	✓	

GENERAL: These specifications describe as stipulated for the Fabrication and Installation of One New Dockside Container Handling Crane with the option to purchase a Secondd Gantry Crane. This bid will be as stipulated on all requirements and will be awarded to the lowest responsive bidder.

The Jose D. Leon Guerrero Commercial Port reserves the right to accept and/or reject any and all bids, to waive any defects irregularities, or specification discrepancies and to award the bid as council deems to be in the best interest of the Authority.

DISCREPANCY LIST: Should any bidder have deviations from these specifications in this bid and cannot meet every requirement of the specifications, he/she shall submit a letter and attach it to the bid, explaining the deviations. Failure to do so will cause the bid to be rejected as being non responsive.

SIGNATURE OF AUTHORIZE PERSON

John A. Lintiacco

PRINT/SEEN

9-24-2007

DATE

INVITATION FOR BID

ISSUING OFFICE:

GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
P.O. BOX FG
AGANA, GUAM 96910

PEDRO F. SAN NICOLAS
Assistant Chief Procurement Officer

DATE ISSUED: 8/13/07 BID INVITATION NO: IFB GSA/PAG 07-007

BID FOR: New Dockside Container Handling Gantry Crane

SPECIFICATION: Please refer to Pages 1 - E2.6 of E2.6

DESTINATION: Jose D. Leon Guerrero Commercial Port of Guam

REQUIRED DELIVERY DATE: 540 Calendar Days

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: Guam

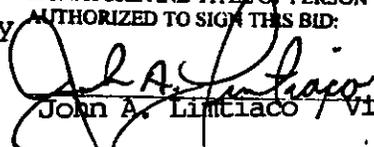
This Bid shall be submitted with one original and five copies and sealed to the issuing office above no later than (Time) 10:00 a.m. (Date) 9/24/07 and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within 90 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

Far East Equipment Company
LLC
P.O. Box 10838
Tamuning, Guam 96931


John A. Lintiac Vice President

AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM	NO(S).	AWARDED:

CONTRACTING OFFICER:

PEDRO F. SAN NICOLAS
Assistant Chief Procurement Officer

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS CONTRACT:

GSA GENERAL SERVICES AGENCY
(Ahensian Setbision Hinirat)
Government of Guam
P.O. Box FG, Agana, Guam 96910
Tel: 477-8836 * Telefax: 475-1716

Accountability * Impartiality * Competence * Openness * Value

INVITATION FOR BID (IFB) NO. : IFB GSA/PAG 07-007

DESCRIPTION: New Dockside Container Handling Gantry Crane

SPECIFICATION REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid enveloped, in duplicate, at the date and time for bid opening.

- (X) **BID GUARANTEE (15% of Bid Amount) May be in the form of;**
Reference #11 on the General Terms and Conditions
- a. Cashier's Check or Certified Check
 - b. Letter of Credit
 - c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- (~~X~~) **STATEMENT OF QUALIFICATIONS;**
- () **SAMPLES;**
- (~~X~~) **BROCHURES/DESCRIPTIVE LITERATURE;**
- (~~X~~) **AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS - Must comply with the following requirements:**
- a. The affidavit must be notarized and dated on the same month as the bid opening;
 - b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- () **LOCAL PROCUREMENT PREFERENCE APPLICATION (See attached)**
(Non Completion of this application form is not a basis for rejection)
- (~~X~~) **OTHER REQUIREMENTS:**
Non-Collusion Affidate, Wage Determination PL 26-111, Special Provision Sex Offenders
~~Certification regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion~~
~~Bidder's Statement on Previous Contracts Subject to EEO Clause~~

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid.

On this 24th day of September, 2007, I, John A. Limtiaco,
authorized representative of Far East Equipment Company LLC acknowledge receipt of this special
reminder to prospective bidders with the above referenced IFB.


Bidder Representative's Signature