



UNIVERSITY of GUAM
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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO. OPA-PA: 11-013

Office of the President
Legal Counsel

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)
)
Phil-Gets (Guam) International Trading Corp.,)
dba J&B Modern Tech,)
)
Appellant.)
)

CASE NO: OPA-PA-11-013
AGENCY REPORT

Appellee University of Guam, by and through its counsel of record, Victorina M.Y. Renacia, submits its Agency Report in the form required under 2 G.A.R. § 12105:

- (a) A copy of the protest: **Submitted previously by the University to the Office of Public Accountability (OPA) on July 15, 2011 as part of its Procurement Record, Exhibit 11.**
- (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: **Submitted previously by the University to the OPA on July 15, 2011 as part of its Procurement Record, Exhibits 7 (1) and (2).** Because this bid is at the pre-award stage, a copy of the bid that is being considered for award is confidential.

COPY

- (c) A copy of the solicitation, including the specifications or portions thereof relevant to the protest: **Submitted previously by the University to the OPA on July 15, 2011 as part of its Procurement Record, Exhibit 3.**
- (d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: **Submitted previously by the University to the OPA on July 15, 2011 as part of its Procurement Record, Exhibits 8 and 9.** Because this bid is at the pre-award stage, this information is confidential.
- (e) Any other documents which are relevant to the protest; including the contract, if one has been awarded, pertinent amendments, and plans and drawings: **Submitted previously by the University to the OPA on July 15, 2011 as part of its Procurement Record, Exhibit 9. Pertinent documents from the Procurement Record have also been included in this Agency Report, labeled sequentially under the designation AR-1 et seq.**
- (f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: **Submitted previously by the University to the Office of Public Accountability (OPA) on July 15, 2011 as part of its Procurement Record, Exhibit 14. This exhibit is included in this Agency Report and labeled as AR-3.**
- (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: **Please see statement below.**

- (h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. § 9101(e): **No award was made after receipt of the protest.**
- (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. **Please see statement below.**

EXHIBIT LISTING

- | | |
|---|-----------------|
| 1. AM Orient Engineering Evaluation Letter dated April 26, 2011 | Exhibit AR-1 |
| 2. Isla Paint & Supply Letter dated June 14, 2011 | Exhibit AR-2 |
| 3. Protest Determination letter from President dated June 20, 2011 | Exhibit AR-3 |
| 4. Email from Isla Paint dated July 19, 2011 | Exhibit AR-4 |
| 5. Reissue Request for Clarification of Qualifications and
New Submission Date | Exhibit AR-5 |
| 6. J&B Response letter dated March 22, 2011 | Exhibit AR-6 |
| 7. Bid Status letter to J&B dated June 7, 2011 | Exhibit AR-7(a) |
| Bid Status letter to J&B dated June 24, 2011 | Exhibit AR-7(b) |
| 8. Questions and Concerns for UOG Bid No. P13-11 | Exhibit AR-8 |

STATEMENT ANSWERING ALLEGATION OF APPEAL

(As required by 2 G.A.R. § 12105(g))

RELEVANT BACKGROUND

A. UNIVERSITY SOLICITS BIDS FOR INVITATION FOR BID NO. P13-2011 Recovery CIP: Roof Repairs & New Roof Coating at Various Facilities

The University advertised Bid No. P13-2011 in the Pacific Daily News on January 22 and 29, 2011. The Office of the Attorney General Procurement Review Checklist for Invitations to Bid for Procurements over \$500,000 was received by the University on January 6, 2011. A mandatory pre-bid conference was held on February 4, 2011 at the University's Leon Guerrero Building, Room 150. Amendment 1 was issued on January 26, 2011; Amendment 2 was issued on February 9, 2011; Amendment 3 was issued on February 17, 2011; a Request for Clarification was issued on March 14, 2011; a Reissue of Request for Clarification of Qualifications and New Submission Date was issued on March 16, 2011; and an Additional Information was issued on March 17, 2011. The bid was administratively handled and coordinated by the University's Procurement Office.

B. BID OPENING, DECISION, AND PROTEST

The bid opening was held on March 7, 2011. The University received sixteen (16) sealed bids. The Procurement Office, Plant management Staff and AM Orient Engineering (an independent engineering firm contracted by the University) reviewed the 16 sealed bid submissions. Modern Konstrak was recommended for the award. Bid status letters were issued to the bidders on June 7, 2011. All the other bidders were rejected on the basis of "high price".

On June 10, 2011, J&B filed a Protest with the University, alleging that they were the lowest responsive and responsible bidder. On June 20, 2011, the President of the University responded to J&B denying the Protest, with an explanation as to why J&B, although the lowest bidder, was not the lowest responsible and responsive bidder. A Corrected Bid Status was also issued to J&B dated June 24, 2011, showing that the bid was rejected due to "Non-conformance with the specifications" rather than the original bid status rejection letter of "high price." This administrative error in the initial bid status letter to J&B was explained in the President's Protest Denial letter of June 20, 2011. (Exhibit AR-3).

DISCUSSION

Appellant alleges that it was the lowest responsible and responsive bidder and should be awarded the bid. The University counters by stating that although Appellant was the lowest bidder, it was not the lowest responsible and responsive bidder.

Appellant's submits the following statements: 1) Isla Paint, who assisted in preparing the project specifications, is the sole vendor of at least two of the three products identified as acceptable by the University for use in the project specifications; 2) Appellant was denied certification by Isla Paint as an applicator of Roof Mate; 3) the University claimed that Roof Mate was the only acceptable product of the three products proposed by Appellant; 4) the University rejected J&B's subsequent proposal of using a subcontractor who was certified as an applicator of Roof Mate; 5) the University erroneously rejected J&B's bid due to "high price", and thereafter issued a corrected bid status showing rejection due to "Non-conformance with the specifications".

1. Isla Paint

Isla Paint prepared the project specifications for the fluid applied elastomeric roofing (acrylic) for concrete, as modified by the University and Sodexo. Appellant makes an unconfirmed statement that Isla Paint is the sole vendor on Guam for United Coatings and Hydro-Stop products, two of the products listed as acceptable by the University in the specifications. In fact, at least one other vendor on Guam sells these products. Notwithstanding, the University considers this issue irrelevant to the bid, because the three products listed as acceptable by the University; i.e., Global Shield, Inc., United Coating, Hydro-Stop products, are clearly prefaced by the words “**may be** incorporated in the Work”, such that the use of any of these three products is not a mandatory requirement. The specifications also include the words “or Equivalent Equal”, meaning that these three products are not the only products that may be used. (See Exhibit 3 of the Procurement Record, p. 91). The specifications (Exhibit 3, Procurement Record, p. 88), Exhibit B, include a section entitled “Notes-Comparable Products”, which states that comparable products may be used by any interested bidder who meets the requirements of the specifications. Bidders were not limited to the three qualifying products listed by the University, so long as they were equivalent equals.

2. J&B’s Lack of Certification as an Applicator of Roof Mate

Appellant asserts Isla Paint would not certify J&B to apply Roof Mate and would not sell Roof Mate to J&B unless J&B utilized a Roof Mate applicator approved by Isla Paint. While the latter part of that sentence is true, according to information provided by Isla Paint (see Exhibit AR-4), Appellant never applied for certification, nor did they request to perform roofing work to achieve certified applicator status. Because Appellant was not able to provide the certification documents as an applicator of Roof Mate

required at the time of bid closing, Appellant was not in compliance with the bid specifications in this area.

3. University's Claim that Roof Mate was the only qualifying product of the three products proposed by Appellant

The University hired an independent engineering firm, AM Orient Engineering, to provide expert advice and recommendations based on the material specifications (roofing materials) submitted from all the interested bidders. See Exhibit AR-1. These products included: 1) Urethane Polymers International, Inc.; 2) Aldocoat Roof Systems; 3) United Coatings – Roof Mate Concrete Roofing System; and 4) Polycoat Products – Polydeck 150G60. After inspection of all affected University buildings and product analyses, AM Orient concluded that of the four products submitted by the bidders, that United Coatings was the only one suited for the University's needs. The University relied on its expert's advice and recommendations in determining that United Coatings products were best suited for Bid No. P13-11. None of the other products submitted by the bidders met the University's standards for roof coatings and repair.

4. Subcontractor Issue

Appellant misconstrues the University's position on the use of subcontractors. The intent and language of the bid was for all bidders to be certified as applicators for their proposed products. This was clarified in the Reissue of a Request for Clarification of Qualifications and New Submission Date of UOG Bid No. P13-11 issued by the University on March 16, 2011, Exhibit AR-5, which states in pertinent part: "1.5.2 Applicator Company approved as an authorized applicator in writing by manufacturer (Note: The Company, not an individual working for the Company)". The clear intent of this language was that the bidder was required to be certified as an applicator of the

qualifying product. The University contends that Appellant understood this because it approached Isla Paint asking about certification for Appellant before the bid closing date. (See Exhibit AR-2). If subcontractors were to be used, the University's position was that these subcontractors would also need to be certified applicators of the qualifying product. But in the first instance, the prime contractor/bidder must be certified as an applicator. Appellant's proposal to use certified subcontractors for two additional products in response to the University's Reissue of a Request for Clarification of Qualifications (Exh. AR-5) was additional information that was late in being submitted the University, and information which was not requested in the University's Reissue of a Request for Clarification of Qualifications. See Exhibit AR-8, #3, Question regarding Comparable Product Specification Review and UOG Response. Comparable products and other companies were to have been identified at the time of bid submission. This additional information came after bid closing and could thus not be considered part of the original bid submission. See Exhibit AR-6. And since Appellant itself was not certified as an applicator of a qualifying product, the University, pursuant to the language of its bid, rejected Appellant's proposal to use certified subcontractors.

5. Incorrect Initial Bid Status Letter of June 7, 2011 showing rejection due to "high price" and Correct Bid Status letter of June 24, 2011 showing rejection due to "Non-conformance with the specifications".

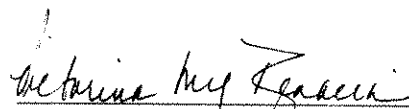
On June 7, 2011, the University issued an incorrect, unsigned bid status letter to Appellant stating Appellant was rejected due to "high price". Exhibit AR-7(a). A corrected bid status letter, explained in the Protest Denial letter from the President of the University in Exhibit AR-3 was thereafter issued dated June 24, 2011, showing Appellant was rejected due to "Non-conformance with the specifications". Exhibit AR-7(b).

Appellant was in non-conformance with the specifications because it did not identify a product compliant with the bid specifications at the time of bid closing. Further, Appellant's response to the University's Reissue of a Request for Clarification of Qualifications proposed the use of alternate roofing products and certified contractors. This information was late and should have been submitted to the University before bid closing. (See Exh. AR-8.)

CONCLUSION

The University asserts that although Appellant was the lowest bidder, it was not the lowest responsible and responsive bidder, based on the arguments above. The University respectfully requests that the Public Auditor find that the University acted within its authority under the Guam Procurement Law and rules and regulations in denying Appellant's protest. Because this is an American Recovery and Reinvestment Act of 2009 (ARRA)-funded bid and time is of the essence, the University respectfully requests that the Public Auditor expedite this matter to the extent possible, so that the University may continue to award the bid within the statutory timeframes of the ARRA funding.

Respectfully submitted,



Victorina M.Y. Renacia
University Legal Counsel

Dated: July 25, 2011

PROCUREMENT APPEAL

IN THE OFFICE OF PUBLIC ACCOUNTABILITY


In the Appeal of)
)
Phil-Gets (Guam) International Trading Corp.,) CASE NO: OPA-PA-11-013
dba J&B Modern Tech,)
)
Appellant.)
_____)

DECLARATION RE COURT ACTION

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

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 25th day of July, 2011.

By: 

Victorina M.Y. Renacia
University Legal Counsel

Exhibit

AR-1

26 April 2011

Sonny P Perez PE – Project Manager
Chief Plant & Facilities Officer
University of Guam
UOG Station
Mangilao, Guam 96923

Subject: **Roof Material Review for UOG BID P13-11**
Recovery CIP: Roof Repairs and New Roof Coating at Various Facilities

Dear Mr. Perez:

Per your request we have reviewed the Bid Proposals received, on March 22, 2011, with emphasis on the Roofing Materials selected along with any proposed alternates. We were not provided any bid results and were asked to make recommendations based on the material specifications submitted as part of the Bid process from all interested Bidders.

BACKGROUND

The University Of Guam (UOG) is seeking a qualified contractor to perform roof repairs and install new roof coating systems. The repairs are located at numerous building locations within UOG's Main Mangilao Campus. The following Buildings are proposed to have Roof Repairs and New Roof Coating Systems installations. The following roof observations were conducted by the UOG Facilities Department during the first quarter of 2010.

Fine Arts Building

- The roof has been coated with a urethane resin elastomeric type coating that currently has 60 % of coating remaining, evidence of ponding, surface cracks, chalking and Mold/Mildew are evident. The concrete roof slab should be evaluated prior to application of any new roofing systems

Dean Circle House 9

- The roof is flat with no evidence of an existing roof coating. Numerous cracks exist as well as pitting of the concrete surface. The abundance of cracks indicates that the roof structure may be compromised and should be further evaluated prior to new roof coating installations. The roof area shows evidence of spalled concrete along with exposed rebar and water ponding. It is recommended that a full fabric reinforced roofing system be installed at this location

College of Natural & Applied Sciences

- The existing roof has been coated with a urethane resin elastomeric type coating. 60% of the roof coating remains although some sections show evidence of water trapped beneath the coating. There were no significant cracks or concrete spalls observed in the roof surface. The roof area does contain algae, ponding and chalking surfaces.

Science Building

- More than 80 % of the roof area is covered with a heavy growth of algae in combination with sprouted plants. Ponding exists along with a large number of cracks that show evidence of previous repairs. The concrete roof slab should be evaluated prior to application of any new roofing system

Computer Center Building & MARC

- The existing roof has a good coating (90%) of urethane resin elastomeric coating. The substrate does show signs of ponding, algae growth and chalking. There are small areas of coating delamination

Dean Circle House 6

- The roof is a combination concrete slab roof with a wood A –frame corrugated metal roof extension. Only 50% of the elastomeric resin exists on the concrete portion of the roof with no coating on the metal roof extension. There is Algae growth, chalking and ponding on the flat roof surfaces

Dormitory I

- The roof surface is coated with a Polyurethane Foam Substance that only has a minimal surface remaining (approx. 30%). Surface cracks and repairs are evident with ponding water, large areas of algae and vegetation.

Dormitory II

- The roof surface is coated with a polymer concrete coating that is only 40% effective. Black organic growth covers approximately 65% of the flat roof surface. Ponding is a problem along with cracked and spalled surfaces. It is recommended that EPS or ISO crickets be installed to correct the ponding issues

Dormitory III

- This roof is a common flat area with only a residue remaining of the previous acrylic roof coating. Surface cracking is visible along with chalking and sprouted plants.

Health-Science Building

- Less than 10% remains of an acrylic roof coating system. UOG is concerned with this roof due to the unevenness and pitting in the concrete surfaces. There are surface cracks, algae deposits and vegetative growth at clogged downspouts.

WERI Building, Marine Lab

- All Roof areas have been coated with an acrylic resin elastomeric type coating. However only 40% of the installation remains. Numerous surface cracks are evident and have been patched with a fibered asphaltic coating. It is recommended that a structural roof survey be conducted prior to application of

any roofing systems. Spalling, mold, ponding and sprouted plants were also observed on the roof surface.

RFK Library

- All roof areas have been covered with a urethane resin elastomeric type coating. Approximately 10% of the coating is severely deteriorated with checks, cracking and /or blistering. Few surface cracks were observed along with organic growth in many areas. Coating delamination was observed along with evidence of ponding and sprouted plants.

School of Education

- All roof areas have been coated with a urethane resin elastomeric type coating. Much of this urethane coating is breaking down creating bubbles and pockets of emulsified coating. The coating system is severely weathered.

PRODUCT ANALYSIS

The following Roof System products have been submitted for review and comparison with the intent of selecting a suitable roofing system that will provide UOG with a product that can be utilized in repair and new application situations and shall have a minimum of 5 years successful performance in a high temperature and high humidity environment similar to Guam. The manufacturer's warranty period for the fluid-applied roofing system shall not be less than 10 years from the date of acceptance of work.

1. **Urethane Polymers International, Inc. (UPI)**
2. **ALDOCOAT Roof Systems**
3. **UNITED COATINGS – Roof Mate Concrete Roofing System**
4. **POLYCOAT PRODUCTS – POLYDECK 150G60**

1. Urethane Polymer International (UPI) – This product is a liquid applied aliphatic urethane roofing system suitable for sloped or unusual shaped concrete roofs. Most aliphatic compounds are flammable and are sometimes used as fuels. The performance requirement for UOG indicates that the Roofing System shall have a Class A fire rating, as tested and certified by UL 790 and Factory Mutual FM4470. The UPI product specifications do not indicate the use of Reinforcement (stitch bonded polyester fabric) material in the total roofing system. This is a UOG product requirement that will be required to be used to reinforce large roof areas and reinforcement in detail areas.

The UPI Guarantee/Warranty does not indicate a 10 year warranty period which will be required by the Manufacturer. The UPI product does not satisfy the comparable Product requirements used to justify its use as an equivalent equal product.

2. ALDOCOAT Roof Systems - This is a Fluid-Applied Waterproofing that has been used on concrete roofs in Guam with substandard performance. The observations were made recently at numerous new school buildings that were coated using this product. The ALDOCOAT product did not perform under the extreme high humidity, heat and wet conditions that exist here in Guam. ALDOCOAT does have a product (FM4470 System) that does have a ten year standard warranty. The Product Specifications indicate that high humidity may retard cure time for the product. Application should be suspended if climatic conditions prevent complete cure before rain or dew. This is a common climatic condition in Guam and product requirements may be difficult to achieve. The ALDOCOAT 400 Premium Acrylic top coat is recommended as the ideal choice for metal roofs and single ply roof restorations. It is also ideal for use over spray polyurethane foam roofs. As a side, it also states that this product has excellent adhesion to a variety of other substrates including concrete. The viscosity of this Top Coat Product (10,000 +- 3000cps) does not satisfy the performance requirement minimum of 12,000cps. As established by UOG. However, the tensile strength of 400psi and the elongation property of 239% does satisfy the UOG performance requirements. This product does not satisfy the comparable product requirement due to deficiencies in performance.

3. UNITED COATINGS Roof Mate Concrete Roofing System - This product is a seamless, fluid-applied acrylic membrane system designed for application over concrete roof substrates. Subject to compliance with project requirements, this Product may be incorporated in the Work as identified in the bid proposal. This product has the required Class A fire rating and is plasticized to provide a permanently flexible, weather-resistant topcoat. The Total minimum dry film thickness required at any location will be 33 mils without Full Fabric and 45 mils with Full Fabric. This will satisfy the 10 year warranty requirements for the installation. The other Products that have been Pre-Selected for use by UOG are the Rubbershield AC Roofing System manufactured by Global Shield, Inc. and the Hydro Stop Premium Coat Roofing System manufactured by Hydro Stop Inc.

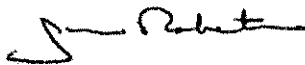
4. POLYCOAT PRODUCTS - The Polydeck 150G60 decking system is for heavy duty foot traffic and is a liquid applied, moisture cured, urethane waterproof system. The system utilizes an epoxy primer, one coat of an aromatic urethane basecoat, one intermediate coat of an aromatic urethane with aggregate and then one aliphatic urethane topcoat. This Roof System does not utilize the required reinforcement fabric that is required for repair and installation at the UOG Campus. This is not a comparable product that can be utilized for this Work effort.

CONCLUSION

Based on the product evaluations it is clear that the products selected by the UOG are superior to the recommended substitutions that were submitted as part of the bid packages. The existing buildings use similar concrete roof decking that requires waterproofing to ensure that the buildings are dry during periods of inclement weather. However, the buildings are in different states of disrepair resulting in different types of repairs that will be required in order to provide a 10 year leak/tight roof assembly. In many cases the existing membrane roofing material must be removed by water blasting, scraping and/or grinding. Proper preparation and Quality Control throughout the installation process will ensure a proper installation. The United Coatings variety of roof coating systems seems suited for this type of varied project. We concur with the United Coatings material that was selected by the UOG. It is very important to install the correct roofing product that will provide a good waterproof membrane for the facilities. The initial installation costs may be higher for a better roofing system. However, the UOG will benefit with a product that will require less maintenance for a longer warranty period. Proper installation by a qualified installer with associated Quality Control management with manufacturer's recommendations will result in a roofing system that should satisfy the UOG bid requirements.

We trust this review of the selected Roofing Systems is acceptable to you. Please advise should you have any questions, concerns or need any additional information to assist you with the decision making process.

Senseramente,
AmOrient Engineering



John M. Robertson, PE
Principal Engineer

Exhibit

AR-2



Isla Paint and Supply
250 Guerrero Drive Tamuning, Guam 96931
Ph/Fax: (671) 647-7870 Fax: (671) 647-4285
Email: IslaPaint@Islanders.guam.net

June 14, 2011

RE: J and B ModernTech

To whom it may concern:

Please allow this letter to document that Isla Paint and Roofing Supply was approached by J and B Modern Tech at some time prior to the BID due date of 2/18/11 for Recovery C I P : Roof Repairs and New Roof Coatings at Various Facilities on UOG's Mangilao Campus. J and B ModernTech was interested in obtaining Certification as an installer for the Roofmate Roof Preservation System. As they had not met the prerequisites to qualify for the certification, Isla Paint and Roofing Supply was unable to certify this company.

Sincerely,

Jaylene Kent, President
Isla Paint and Roofing Supply
671 647-7870

Exhibit

AR-3



UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN
OFFICE OF THE PRESIDENT

UOG Station, Mangilao, Guam 96923
Telephone: (671) 735-2990 • Fax: (671) 734-2296

June 20, 2011

Generoso M. Bangayan, President
J&B Modern Tech
P.O. Box 9788
Tamuning, Guam 96931

**SUBJECT: Protest Determination to ARRA CIP Project UOG Bid P13-11
Roof Repairs & New Roof Coating System at Various Facilities**

Hafa Adai Mr. Bangayan,

This acknowledges receipt of your Protest letter dated June 10, 2011. After review of the procurement files and discussion with the relevant parties, my determination to your Protest is as follows:

On March 7, 2011 at 2:00pm, the University of Guam received bid packages from sixteen (16) contractors in response to the subject bid. The bidder providing the lowest price was J&B Modern Tech (J&B). Due to an inadvertent administrative error on the University's part, the Bid Status notice dated June 7, 2011 to J&B indicated that the J&B bid was rejected due to "High price". An Amended Bid Status is included with this letter to accurately reflect the reason for the bid rejection.

The bid analysis and determination is shown below to determine the bidder's responsiveness and responsibility to UOG's subject bid:

1. J&B is certified to apply ALDOCOAT of ALDO Products Company (Ref: Letter to UOG Consolidated Procurement office dated March 22, 2011; SYSTEM B)
 - a. ALDOCOAT is not included in any of the acceptable specified materials as found in the bid specification P13-11: (Exhibit B; Project Specification or Equivalent Equal, Part 2 Products, p91)
 - i. Global Shield, Inc., Rubbershield AC Roofing System
 - ii. United Coatings, Inc., Roof Mate Concrete Roofing System
 - iii. Hydro Stop, Inc., Hydro Stop Premium Coat Roofing System
 - b. ALDOCOAT does not meet the material performance standard as found in the bid specification P13-11: (Exhibit B; Project Specification or Equivalent Equal, Part 2 Products, p91)

ALDOCOAT Roof Systems: This is a fluid-applied Waterproofing that has been used on concrete roofs in Guam with substandard performance. The observations were made recently at numerous new school buildings that were coated using this product. The ALDOCOAT product did not perform under the extreme high humidity, heat and wet conditions that exist here in Guam. ALDOCOAT does have a product (FM4470 System) that does have a ten year standard warranty. The Product Specifications

indicate that high humidity may retard cure time for the product. Application should be suspended if climactic conditions prevent complete cure before rain or dew. This is a common climactic condition on Guam and product requirements may be difficult to achieve. The ALDOCOAT 400 Premium Acrylic topcoat is recommended as the ideal choice for metal roofs and single ply roof restorations. It is also ideal for use over spray polyurethane foam roofs. As a side, it also states that this product has excellent adhesion to a variety of other substrates including concrete. The viscosity of this Top Coat Product (10000 +/- 3000 cps) does not satisfy the performance requirement minimum of 12000 cps, as established by UOG. However, the tensile strength of 400psi and the elongation property of 239% does satisfy the UOG performance requirements. This product does not satisfy the comparable product requirements due to deficiencies in performance. (Ref: Report from AM Orient Engineering, Dated 26, April 2011; Subject Roof Material Review for UOG Bid P13-11)

2. J&B presented an alternate arrangement to subcontract a certified applicator for the subject bid. (Ref: Letter to UOG Consolidated Procurement office dated March 22, 2011; SYSTEM A and SYSTEM C):
 - a. You are directed to the UOG document P13-11, as found in Attachment A: General Terms and Conditions of the Invitation for Bids, Section 13 Independent Contractor, states: (In response to SYSTEM A and SYSTEM C), which states:

"Contractor shall operate its business as an independent contractor and shall discharge all of its duties as such. No act performed or representation made, whether oral or written by Contractor with respect to third parties shall be binding to UOG."

This section requires you to "discharge all of its duties" as a certified roof applicator to perform all of the work. You introduced this third party subcontractor arrangement after the fact; what appears to be after bid closing. In your letter to UOG, you explicitly state "Should UOG select and approve to use Roof Mate on this project, J&B will hire the services of URW Roofing or other company on Isla Paint list..." This statement implies your inability to discharge your duties under their existing business organization and resources. The practice of third party subcontracting anticipates awarding only a small portion or percentage of the work, not a majority or all of 100%. UOG would consider it acceptable if you were a roof repair company, currently certified to the products or to its equivalents, as specified in P13-11, and sought additional certified resources, which are also currently certified to the products or to its equivalents to augment your labor force to satisfy customer schedule requirements. In addition, UOG did NOT request in its clarification how you would satisfy the bid requirements (as shown in your proposed multiple SYSTEMS A, B, or, C) but clarifications and document requests for company certifications, product submittals, and specifications.

Secondly, UOG can only enter into contractual agreements with the prime or main contractor. In this case, the third party subcontractor becomes the warrantor, whose name does not appear in any of the required Government of Guam, UOG, and ARRA affidavits. This will be a potential obstacle during warranty issues since it does not explicitly demonstrate responsibility from the third party to cover warranty matters.

- b. UOG contends you understood the certified applicator requirement where the bidder and certified applicator are one in the same company, because you had approached Isla Paint and Supply seeking certification. Isla Paints determined that you failed to meet certification prerequisites. (Letter from Isla Paint and Supply dated June 14, 2011.) UOG restates its position that the aforementioned section requires you to "discharge all of its

duties" as a certified roof applicator to perform all of the work and not to subcontract to a certified roofing company because you failed to obtain the necessary certifications at the time of bid closing.

- c. In response to SYSTEM C: you are directed to UOG's response as found in part 2(a) above and the engineering report results as stated in the following:

MC Thane, 456-48 of Urethane Polymers International, Inc., (UPI) does not meet the material performance standard as found in the bid specification P13-11: (Exhibit B; Project Specification or Equivalent Equal, Part 2 Products, p91) **Urethane Polymer International** – This product is a liquid applied aliphatic urethane roofing system suitable for sloped or unusual shaped concrete roofs. Most aliphatic compounds are flammable and are sometimes used as fuels. The performance requirement for UOG indicates that the Roofing System shall have a Class A fire rating, as tested and certified by UL790 and Factory Mutual FM4470. The UPI product specifications do not indicate the use of Reinforcement (stitch bonded polyester fabric) material in the total roofing system. This is a UOG product requirement that will be required to be used to reinforce large roof areas and reinforcement in detail areas. The UPI/Guarantee/Warranty does not indicate a 10-year warranty period which will be required by the Manufacturer. The UPI product does not satisfy the comparable product requirements used to justify its use as an equivalent product. (Ref: Report from AM Orient Engineering, Dated 26, April 2011; Subject Roof Material Review for UOG Bid P13-11)

Notwithstanding that J&B Modern Tech is the lowest bidder; it is not the most responsive and most responsible bidder because J&B is not in full compliance with all the terms and conditions as stipulated in UOG Bid P13-11. Therefore, based on all the factual evidence, your Protest is denied. Pursuant to Guam law, you have a right to administrative and judicial review.

The University complies with the Guam Procurement Law and the University of Guam Procurement Manual, and is committed to the fair and equitable treatment of all qualified bidders. The University encourages J&B to participate in any future University bids for which it is qualified.

Should you have any further inquiries or concerns, please direct them to Vicente (Ben) Borja, Supply Management Administrator, UOG Procurement Office.

Thank you for your attention to this matter.

Sincerely,



Robert A. Underwood, Ed.D.
President

Copy: Legal Counsel
SMA Ben Borja

Exhibit

AR-4

Victoria Renacia

From: Uncle Bob [rjmtosh@uguam.uog.edu]
Sent: Wednesday, July 20, 2011 2:15 PM
To: Vicki Renacia, UOG Legal Counsel
Cc: Sonny P. Perez, PE, CPFO; David O'Brien, VPAF
Subject: FW: Certification

Hi Vicki

I requested information from ISLA Paint on the issue of certification. See response below.

Regards, Uncle Bob

From: Brian Kent [mailto:islapaint@islanders.guam.net]
Sent: Tuesday, July 19, 2011 3:24 PM
To: 'Uncle Bob'
Cc: Jaylene Kent, Ph.D.
Subject: RE: Certification

Hi Uncle Bob;

To be clear and to the best of my knowledge, J & B Modern Tech was never "denied" certification. They never applied for certification nor had they ever requested to perform roofing works to achieve certified applicator status.

Brian

From: Uncle Bob [mailto:rjmtosh@uguam.uog.edu]
Sent: Tuesday, July 19, 2011 3:00 PM
To: Brian Kent
Subject: Certification

Hi Brian

Our legal counsel is requesting information as to why J & B Modern Tech was denied certification and what your policy is for certification. Please forward to me as soon as possible.

Regards, Uncle Bob

Exhibit

AR-5



UNIVERSITY OF GUAM
UNIBETSEDĀT GUAHAN

Administration and Finance
Consolidated Procurement Office

RE-ISSUE
REQUEST FOR CLARIFICATION OF QUALIFICATIONS
AND
NEW SUBMISSION DATE
UOG BID NO. P13-II
RECOVERY CIP: ROOF REPAIR & NEW ROOF AT VARIOUS FACILITIES
Date Issued: March 16, 2011

This is notifying all prospective bidders of the following clarification and submission:
Exhibit B Project Specification or Equivalent Equal, Section 1.5 Qualifications Page 89:
1.5.1 Fluid-Applied Roofing Material Manufacturer Company document of experience.
1.5.2 Applicator Company approved as an authorized applicator in writing by manufacturer
(Note: The Company, not an individual working for the Company)
1.5.3 Applicator approved and certified by manufacturer (Note: The approval and certification
has to be current, signed and dated by manufacturers authorized representative). This will apply
for all applicators the company intends to use for this project.

A complete and up to date set of Manufacturer Roofing System Specifications for the proposed
Roofing System the bidding company is approved and certified to install.

1.1 Deadline for submission of the above information will on **Tuesday, March 22, 2011.**

All other terms and conditions remain the same.

Regards,

Carlos L.G. Iriarte
Buyer II

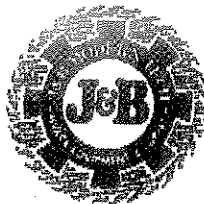
Please acknowledge receipt and fax to 734 -3118:

Name of company: J & B MODERN TECH

ALEXANDER SALAZAR 3/16/11
Print Name/Signature/Date

Exhibit

AR-6



J&B MODERN TECH
HVAC&R EQUIPMENTS AND SUPPLIES

P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931
 TELEPHONE: (671) 646-0588 / 646-3346 / 646-4435
 FAX: (671) 646-0589

March 22, 2011

Consolidated Procurement Office
 Administrative and Finance
 University of Guam
 Mangilao, Guam 96923

Attention: Carlos L.G. Iriarte

Subject: **UOG Bid NO. P13-11**
Recovery CIP; Roof Repair & New Roof at Various Facilities
Request for Clarification of Qualification
SUBMITTAL

Dear Sir,

In reference to request for clarification of qualification issued dated March 14, 2011 and re-issued March 16, 2011, J&B Modern Tech hereby submit three (3) products that meets technical specifications, intend to be used for UOG selection for the above mentioned project as follows:

SYSTEM A:

Product Name : Roof Mate
 Manufacturer : United Coatings, 19011 E. Cataldo Ave., Greenacres, WA 99016
 Supplier : Isla Paint & Roofing Supply, 250 Guarrero Drive, Tamuning, Guam 96931
 Applicator : URW Roofing, Dededo, Guam 96929

Roof Mate of United coatings was been in use in Guam for more than ten (10) years on Federal, Government of Guam, Commercial, Industrial and Residential facilities, proven the product itself resist Guam weather conditions.

Should UOG select and approve to use Roof Mate on this project, J&B Modern Tech will hire the services of URW Roofing as sub-contractor in application of elastomeric roof system. URW Roofing is a certified applicator of United Coatings in Guam with reputable extensive experience and was in roofing system business since 2000.

SYSTEM B:

Product Name : ALDOCOAT
 Manufacturer : ALDO Products Company Inc., 1604 N. Main St. Kannapolis, NC 28081
 Supplier : Checkpoint International, Tamuning, Guam 96913
 Applicator : J&B Modern Tech, Harmon, Guam

ALDOCOAT of ALDO Products Company Inc. was been in use in Guam for over five (5) years on Federal, Government of Guam, Commercial and residential facilities, proven the product itself resist Guam weather conditions.

Should UOG select and approve to use ALDOCOAT on this project, J&B Modern Tech will utilize own personnel in application of elastomeric roof system. J&B Modern Tech is a certified applicator of ALDOCOAT in Guam with more than five (5) years experience in roofing system in Guam

SYSTEM C:

Product Name : Polyurethane Coatings
Manufacturer : Urethane Polymers International, Inc, 10880 Poplar Ave. Fontana, CA 92337
Supplier : AMC Painting & Construction, Tamuning, Guam 96913
Applicator : AMC Painting & Construction, Tamuning, Guam 96913

Polycoat of Urethane Polymers International, Inc. was been in use in Guam for over five (5) years on Government of Guam, Commercial, Industrial and Residential facilities, proven the product itself resist Guam weather conditions.

Should UOG select and approve to use UPI on this project, J&B Modern Tech will hire the services of AMC Painting and Construction Company as sub-contractor in application of elastomeric roof system. AMC Construction Company Inc. is a certified applicator of Urethane Polymers International, Inc. in Guam with more than five (10) years experience in roofing system in Guam

Should you have concerns, comments or questions regarding this matter, please contact the undersign at phone: (671) 646-0588/3346/4435; fax: (671) 646-0589; mobile: (671) 898-5336 and e-mail: asalazar@jbmoderntech.com

Sincerely,

Alexander Salazar
Project Manager
J&B modern Tech



UNIVERSITY OF GUAM
UNIBETSEDAT GUAMAN

Administration and Finance
Consolidated Procurement Office

BID STATUS

June 7, 2011

Mr. Generoso M. Bangayan
President
P.O. Box 9788
Tamuning, GU. 96931
Telephone: 646-4435
Fax No: 646-0589

Subject: INVITATION FOR BID NO. P13-11, Roof Repairs and New Roof Coating at Various Facilities
Opened: March 7, 2011

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; (Moving group 6 through 12 is hereby cancelled)
 - 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 General Terms and Conditions;
 - Not meeting the delivery requirement as stated in the IFB
 - Non-conformance with the specifications;
 - Inability to provide future maintenance and services to the equipment;
 - High price; or
 - Others: _____

/X / Bid is recommended for award to: Modern Konstrak .

V. T. BORJA
Supply Management Administrator

Please Acknowledged Receipt and fax back to 734-3118.

ACKNOWLEDGED WITH PROTEST.

Generoso M. Bangayan
GENEROSO M. BANGAYAN

Phil-Gets (Guam) Intl. Trading Corp. dba: Modern Tech.

UOG Station, Mangilao, Guam 96923 Tel. (671) 735.2925 Fax. (671) 734.3118
A U.S. Land Grant Institution accredited by the Western Association of Schools and Colleges
The University of Guam is an equal opportunity provider and employer.

Exhibit

AR-7



UNIVERSITY OF GUAM
UNIPETSEDAT GUANAK

Administration and Finance
Consolidated Procurement Office

BID STATUS (Corrected)

June 24, 2011

Mr. Generoso M. Bangayan
President
J & B Modern Tech
P.O. Box 9788
Tamuning, GU 96913
Fax: 646-0589

Subject: Invitation for UOG Bid No. P13-11, Roof Repairs & New Roof Coating System at various facilities

Date/Time Opened: March 7, 2011 2:00 p.m.

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

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB
- Non-conformance with the specifications
- Inability to provide future maintenance and services to the equipment;
- High price; or
- Others:

Bid is recommended for award to: Modern Konstrak


V. T. BORJA
Supply Management Administrator

Please Acknowledge Receipt and fax back to (671) 734-3118.

ALEXANDER SALAZAR
J & B Modern Tech (print name & signature)

Exhibit

AR-8

QUESTIONS AND CONCERNS FOR UOG BID NO. P13-11

RECOVERY CIP: ROOF REPAIRS & NEW ROOF COATING AT VARIOUS FACILITIES ON UOG'S MANGILAO CAMPUS

1. Question: Additional Site Visit

UOG Response: All contractors interested in participating must contact Nestor Mercado (rmercado@ugvam.uog.edu) no later than 5:00 P.M., Feb. 17, 2011. Email Nestor Mercado to identify specific building locations they would like to see. Plant Management will make the time and date on final site visit. This final site visit is set for Friday, Feb. 18, 2011 from 2:00 pm to 5:00 pm. Date of site visit will start to meet at UOG Plant Management and will be escorted.

2. Question: Pre Bid Conference

UOG Response: No other Pre-Bid Conference.

3. Question: Comparable Product Specification Review

UOG Response: This is due date is when bid proposal submitted on the submission date.