



OFFICE OF THE PUBLIC AUDITOR

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

AUG 19 2011

TOP: P/TA BY: MAV
FILE NO: OPA-PA 11-016

PART I- To be completed by OPA

In the Appeal of)	NOTICE OF APPEAL
<u>Peter Alexxis ADA</u>)	
(Name of Company), APPELLANT)	
_____)	
_____)	
)	Docket No. OPA-PA _____

PART II- Appellant Information

Name: Peter Alexxis ADA

Mailing Address: 147 AS PENGAO Rd.
BARRIGADA, GUAM 96913

Business Address: 576 ROY T. DAMIAN ST.
MONGMONG, GUAM 96910

Daytime Contact No: 734-7777 Cell: 482-7776

PART III- Appeal Information

- A) Purchasing Agency: Govenor's Office/GSA
- B) Identification/Number of Procurement, Solicitation, or Contract: Multi-Step:GSA:063-11
- C) Decision being appealed was made on _____ (date) by:
 Chief Procurement Officer
 Director of Public Works
 Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

ORIGINAL

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

PETER ALEXIS ADA

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- 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 19 day of Aug, 2011.

By: 

APPELLANT

or

By: _____
Appellant's Duly Authorized Representative
(Address)
(Phone No.)

APPENDIX A



OFFICE OF THE PUBLIC AUDITOR

**Appendix B: Declaration Form
PROCUREMENT APPEAL**

In the Appeal of)
)

PETER ALECYIS ADA)
)

(Name of Company), APPELLANT)
)
)
)

Docket No. OPA-PA_____

DECLARATION RE COURT ACTION

(To be signed by the Government Purchasing Agency.)

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 19 day of Aug, 2011.

By: *[Signature]*

DECLARANT

PETER ALECYIS ADA
Print Declarant's Name

APPENDIX B



OFFICE OF THE PUBLIC AUDITOR

**Appendix C: Notice of Hearing Form
PROCUREMENT APPEAL**

In the Appeal of)
)

PETER ALEXIS ADA)
(Name of Company), APPELLANT)
)
)
_____)

NOTICE OF HEARING

Docket No. OPA-PA_____

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of the Public Auditor on the _____ day of _____, 20__, at the hour of _____, relative to the above referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

Please acknowledge receipt of this Notice and return to the Office of the Public Auditor immediately.

Acknowledged receipt:

Peter Alexis ADA
Receiver's Signature

PETER ALEXIS ADA
Print Name

AUG 19, 2011
Date



OFFICE OF THE PUBLIC AUDITOR

Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL

In the Appeal of)
)
)

PETER ALEXIS ADA)

(Name of Company), APPELLANT)
)
)
_____)

HEARING
REQUEST/WAIVER

Docket No. OPA-PA _____

Please select one:

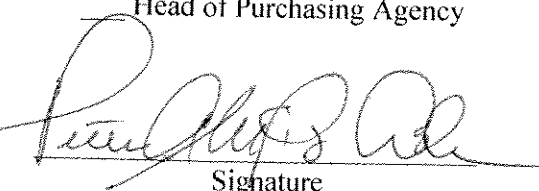
Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.

Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this 19 day of Aug, 2011.

By: (Please select one)

- APPELLANT
- Chief Procurement Officer
- Director of Public Works
- Head of Purchasing Agency


Signature
APM: Guam Medical
Referral Services

PETER ALEXIS ADA
Print Name

Completed this
9th day of Sept,
2011

August 19, 2001

Ms. Doris Flores-Books
Officer of the Public Accountability
Government of Guam
Hagatna, Guam

Ref: Appeal to Multi-Step GSA:063-11

Greetings yan Hafa Adai

On Friday, August 5, 2011, I received an e mail responding to my protest of August 3, 2011. The response confirmed my allegation of having my sealed/taped bid price envelope to be opened, yet the same letter informs me that my protest is without merit.

As a result of that correspondence, couple by articles appearing in the local paper compelled me to further this case in order to be addressed by your appropriate office to prevent any further inconsistency and doubts during the process.

Pertinent and related justifications are hereby attached for your review.

I stand ready to answer any and all questions relative to this appeal and I may be reached at 734-7777 or my cell phone at 482-7776.

Kon Respetu,



Peter Alecxis Ada

President, APM: Guam Medical Referral Services

A concise and logically arranged and direct statement of the grounds for appeal.

Non compliance of agency's directions in Invitational Bid

1. Why were the bidders not allowed nor informed to be present during the opening, review and deliberation of the technical portion of Phase 1 of the process? Why is this a well kept secret as to when the review of the Technical Bid would be reviewed?

2. Because of the amount of this contract being over \$500K, is the Attorney General's Office or its designee suppose to be participating in all facets of the process? If so, was it adhered to? (ref: Title V, Chapter 5, Regulation Title 2).

3. In section D of the Bid Solicitation and Instructional sheet page 7 states "no part or parts of this contract shall be assigned or subcontracted WITHOUT the prior written approval of the office. I am assuming of the office refers to the Governor. Does this same instruction apply to Purchase Order since it could also be implied as a "contract"? If so, then who signed it and when?

4. Page 5 part D under DISCUSSION OF UNPRICED TECHNICAL OFFER reads "once discussion are begun, any bidder who has not been notified that its offer has been finally found "unacceptable " may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer."

Then my question to page 5 part D is, is there something wrong with this language?

MAIN FOCUS IS OPENING OF BID PRICE ENVELOPE

1. On Wednesday, July 20th, I received an e mail informing me that my bid submission is deemed "unacceptable". (see attachment).

2. On Friday, July 22, 2011, I sent another e mail to the Procurement Officer, "now that the award has been determined, when would I be able to have my bid bond returned? I was not thinking of Bid Price at the time. I wanted to know about Bid Bond since I had to clear my name with the insurance company.

During this same period of time (after the award has been determined), I sent Ms. Claudia S. Acfalle the Procurement Officer, asking on what grounds was used to determined my rating? I was not asking for anyone else's. I was asking for this information under the Freedom of Information Act.

I received an e mail response to this question and referred me to the Instructional Bid Invitation of what the rating would be based on. (see A Evaluation Criteria page 10. Her response did not answer my question.

On Tuesday, July 26th, I received a telephone call from a Ms. Marissa Leon Guerrero informing me that my bid bond papers was ready for pick up. I did ask, and if I do decide to protest, would I be disqualified because I picked up my bid bond? Her response was "please put that in writing to the Chief". I further asked what about the other questions which I sent her? Some were answered, some were not? Again, she responded, did you put those in writing? I said I did and I would resend it again.

3. On Monday, August 1, 2011, a newspaper reporter called me at home to inquire if it was true that I submitted a bid for the Guam Medical Referral Office contract. I confirmed it, but also told her the reporter that I received official word that my bid was "deemed unacceptable". Therefore, I would not be proceeding on to Phase 2. The reporter asked me, "if I plan to protest." At that time, I wasn't planning to protest because I felt it was a DONE DEAL and there would be no value for me to pursue this any further.

As the reporter continued our conversation, it became rather apparent that this reporter seem to know too much information about what could have happened during the process and I felt that this could only come from someone from inside who knew something wrong was being done during the process.

The reporter did say the information was coming from a "tip".

On Tuesday, August 2, 2011, I decided to go down to GSA and pick up my Bid Bond. I arrived there at 11:45 and signed in as required. A lady by the name of Carmen asked if she could help me. I told her that I was there to pick up my bid bond. She asked me if I remembered who called me and I said, "name the people working in that section." She said the first name of Marissa and I immediately said "yes, that's the one." "One moment please let me get her."

Ms. Leon Guerrero came out to meet with me holding a bunch of papers which were my bid bond and a piece of paper for me to sign for its release. Before signing, something prompted me to inquire "since my bid was already deemed "unacceptable" what about my Bid Price." Ms. Leon Guerrero said, "your bid price, let me check with the chief."

Three minutes later, Ms. Leon Guerrero came back with the envelope and holding it in her hands, I immediately noticed that the envelope which is supposed to be sealed since it was deemed "unacceptable" is now opened. I immediately asked her "why is this envelope opened? She (Ms. Leon Guerrero said, "I can explain that Mr. Ada. I said "okay". Ms. Leon Guerrero said she was looking for my bid bond (8 pages legal size) and when she couldn't find it, she opened up the beige envelope which contained five (5) copies of the bid price to see if my bid bond was in there. This envelope was marked in big print "Bid Price Phase II". I asked her to open the envelope herself because there was another regular legal size white envelope which contained two (2) original sheets of the bid price. This envelope is sealed, taped across and marked XXX across the tape. She opened it and there again, the envelope in her hands was the small legal size mailing envelope was opened. That began my questioning the process

with so many doubts which prompted me to think could this be the reason why my technical bid was deemed "unacceptable"?

On Wednesday, August 3rd upon receiving notification confirming that the envelope was opened, but that my protest is without merit. I sent her immediately an e mail that her explanation is "unacceptable" and that I would be pursuing my case.

In Ms. Acfalle's letter dated August 4th but not received until the 5th of August including the Incident Report and that the letter says that the envelope was opened on the 22nd of July. When Ms. Leon Guerrero contacted me on the 26th of July, she made no mention to the opening of my bid price envelope. It was not until I asked for it, that this was discovered. Was it the intention of GSA to withhold the information since I was only asking for the Bid Bond and maybe that would be the only document I wanted. One wonders.

A STATEMENT SPECIFYING THE RULING OR REMEDY REQUESTED

Because of the inconsistency in the communiqué and instructions from within GSA and what is implemented during the process remains less than desirable and objective. It became rather apparent that interpretation would be in place given the convenience at that moment. This was rather evident.

I want to make this perfectly clear. It is not my intention to disrupt the services provided to the patients because of this process. I am rather requesting to resolve the inconsistencies of and within their own rules, regulations and procedures and that they be followed for future bidders.

In the coming weeks and month, my wife and I plan to lobby the 31st Guam Legislature to revisit the procurement laws, policies and procedures for conducting bid process to restore conformaty, accountability, integrity and transparency.

Kon Respetu,



Peter Alexis Ada

President, APM: Guam Medical Referral Services

**OFFICE OF THE GOVERNOR
GOVERNMENT OF GUAM**

**MULTI-STEP
INVITATION FOR BID (IFB)**

for

MEDICAL ASSISTANCE SERVICES

In the capacity as

**GUAM MEDICAL REFERRAL FOR
HONOLULU, HAWAII,
LOS ANGELES, CALIFORNIA, and
MANILA**

I. **GENERAL INFORMATION**

A. **Introduction**

The Guam Medical Referral Office, Office of the Governor, ("Office") through the General Services Agency (GSA "Purchasing Agency"), is soliciting Multi-Step Invitation for Bids from qualified Firm(s)/Individual(s) whose principal focus will be to provide Medical Assistance Services for and on behalf of the Office, as Guam Medical Referral Office, Honolulu, Hawaii, Los Angeles, California, Manila as described in the Scope of Work herein.

B. **General Authority**

The selection procedures for the procurement of multi-step invitation for bid are governed by the Guam Procurement Law codified at Title 5, Chapter 5 of the Guam Code Annotated ("GCA"), as amended; the Guam Procurement Regulations promulgated in Title 2, Division 4 of the Guam Administrative Rules and Regulations ("GAR"), as amended; and the Administrative Adjudication Act codified at Title 5, Chapter 9 of the Guam Code Annotated, as amended.

C. **Purchasing Agency**

This Multi-Step Invitation for Bid (IFB) is issued by the GSA as the Purchasing Agency for the Guam Medical Referral Office, Office of the Governor of Guam.

D. **Due Date for Submission of Questions.**

1. **Mandatory Pre-Bid Conference and Submission of Questions.**

Prospective Bidders who received the IFB package may submit written questions during the mandatory pre-bid conference to the Purchasing Agency either through email or fax to GSA, Attention: Ms. Claudia S. Acfalle, Chief Procurement Officer. The deadline to submit questions or request for clarifications is no later than Tuesday June 28, 2011.

2. **Submission of Bids.**

No later than 10:00 a.m. Tuesday July 05, 2011 local Guam time. Technical Bids and Bid cost shall be submitted in separate envelopes labeled "Technical Bid" and "Bid Cost" each containing one (1) original and five (5) copies to the Purchasing Agency to the following address:

Attn: Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
148 Marine Drive
Piti, Guam 96915
Telephone: 671-475-1707
Facsimile: 671-475-1727

II. **GENERAL PROCEDURES**

A. **Receipt, Opening, and Recording of Bids.**

In accordance with 2 GAR 3109(1)(1), Upon its receipt, each bid and modification shall be time-stamped, but not opened and shall be stored in a secure place until the established due date.

B. Receipt and Handling of Unpriced Technical Offers.

In accordance with 2 GAR 3109 (t)(3), Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

C. Nondisclosure of Data.

Bidders must identify trade secrets and other proprietary data contained in their proposal if they do not want that information to be disclosed. If the Bidder selected for award has requested, in writing, the nondisclosure of trade secrets and other proprietary data so identified, the Purchasing agency conducting the procurement or designee shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Purchasing Agency conducting the procurement or his designee shall inform the Bidder in writing what portion of the proposal or protests pursuant to 5 GCA Chapter 5, Article 9 (Legal and Contractual Remedies), will be so disclosed.

D. Discussions of Unpriced Technical Offers.

The procurement Officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. [Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer.] Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

E. Notice of Unacceptable Unpriced Technical offer.

When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable; such bidder shall not be afforded an additional opportunity to supplement its technical bid.

F. Mistakes during Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during Phase One at any time. During Phase Two, mistakes may be corrected or withdrawal permitted in accordance with §3109(m) (Mistakes in Bids).

G. Pre-Opening Modification or Withdrawal of Bids.

Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the due date. A telegraphic modification or withdrawal received by telephone from the receiving telegraph company office prior to the time and date set for submission will be effective if the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the due date.

H. Late Bids, Late Withdrawals, and Late Modifications.

Any bids received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for submission at the place designated for submission is late.

I. Evaluation and Award of Contract.

The Purchasing Agency or designee shall determine based on the evaluation of each of the unpriced technical offer on Phase 1 whose offer was deemed acceptable, and were invited to submit a bid price on Phase 2, that the government reserves the rights to award Option 1 or Option 2 whichever is in the best interest of the territory to the lowest responsive and responsible bidder.

II. A. Cancellation or Revision of Bid.

This IFB may be canceled, or any and all bids may be rejected in whole or in part as may be pursuant to GAR § 3115, when it is in the best interests of the Office. Additionally, in accordance with GAR § 9105, if prior to award it is determined that a solicitation or proposed award of a contract is in violation of the law, then the solicitation or proposed award shall be canceled or revised to comply with the law. The reasons therefore shall be made part of the contract file.

B. Rejection of Bids.

Any Bidder submitted in response to this IFB may be rejected in whole or in part when it is in the best interests of the Office, in accordance with GAR § 3115(e). Reasons for rejecting bids include but are not limited to: (1) the business that submitted the bids is non-responsive as determined under GAR §3116; (2) the bid ultimately fails to meet the announced requirements of the Office in some material respect; or (3) the bid price is clearly unreasonable. Upon request, unsuccessful Bidders shall be advised of the reasons for rejection.

When bids are rejected, or a solicitation canceled after bids are received, the bids which have been opened shall be retained in the procurement file, or if unopened, returned to the Bidders upon request, or otherwise disposed of pursuant to GAR § 3115(g).

C. Notice of Prohibition against Gratuities (5 GCA § 5630(a) and 2 GAR §111 07(a)).

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or bid therefore.

D. Notice of Prohibition against Kickbacks (5 GCA § 5630(b) and GAR §111 07(b)).

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement of the award of a subcontractor or order.

III. Contract Term.

A. The term of this Contract shall commence upon the execution hereof and continue for one (1) year with annual options to renew for four (4) additional years, not to exceed a total contract period of five (5) years with the Office's approval, based upon availability of funds. Any reference to year in this Agreement shall mean a twelve (12) month

period. This Agreement may be terminated by either party upon thirty (30) day's written notice.

B. Type and Duration of Contract.

The services procured hereunder may be a multi-term contract in accordance with 2 GAR § 3121 et. seq. The Office has determined that the use of a one (1) year contract with yearly options to renew for an additional four years is required because the furnishing of long-term services is required to meet the needs of the Office. A multi-term contract will serve the best interests of the Office by encouraging effective competition or otherwise promoting economies in the Office. Bidders are directed to the provisions of 2 GAR §3121(e)(1), the terms of which are incorporated herein by reference. The contract shall take effect upon the signing of the contract by all required parties. The contract shall be deemed binding upon the signature of the Governor.

C. Responsibilities of Awarded Bidder.

The awarded Bidder shall be responsible for all work done under the contract. The awarded Bidder shall agree to devote his, her or its best efforts to the duties and responsibilities under the contract. The awarded Bidder shall perform the duties and responsibilities under the contract in a professional and competent manner in accord with acceptable standards for the Bidder's profession.

D. Assignment and Subcontracting.

The contract may not be assigned without the prior written approval of the Office. Because of the nature of the work, the awarded Bidder may not subcontract any part of the services required under the contract without the prior written approval of the Office.

E. Independent Contractor Status

The Bidder understands that if an award is made, the Bidder's relationship with the Office and the government is as an independent consultant or contractor, and not as an employee of the Office of the government.

E. Scope of Contract.

The resulting contract between the successful Bidder and the Office shall supersede any and all other prior agreements, either oral or written, between the parties and shall contain all the covenants and agreements between the parties with respect to the employment of the Bidder as an independent consultant.

F. Termination of Contract.

1. Termination for Convenience pursuant to GAR § 6101(10).

a. Termination. The Office, when the interest of the Office so requires, may terminate this contract in whole or in part, for the convenience of the Office. the Purchasing Agency shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

b. Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified.

c. Condition of Termination. Notwithstanding the foregoing, the cessation of services for people requiring services shall be contingent upon the Office obtaining a substitute provider for the services and the contractor shall cooperate by taking all reasonable and necessary steps to ensure that services are not interrupted and transferred to the succeeding provider. The contractor shall

issue a written memorandum detailing the status of the contractor's ongoing services in each matter assigned to it just prior to the termination of the contract regardless of the party initiating termination or any fault of either party.

G. Contract Disputes

5 GCA § 5427 is applicable to controversies between the Office and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification, reformation, or rescission. The word *controversy* is meant to be broad and all-encompassing. It includes the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

All controversies between the Office and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Office in writing, within 60 days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Office does not issue a written decision, within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received. The Office shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, including (1) a description of the controversy; (2) a reference to pertinent contract provisions; (3) a statement of the factual areas of agreement or disagreement; (4) a statement of the Office's decision, with supporting rationale; and a paragraph substantially as follows:

This is the final decision of the Office. You may obtain judicial review of this decision by bringing an action in the Superior Court of Guam.

Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the Superior Court of Guam. The contractor shall comply with any decision of the Office and proceed diligently with performance of the contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the contract; provided however, that in any event the contractor shall proceed diligently with the performance of the contract where the Office has made a written determination that continuation of work under the contract is essential to the public health and safety.

H. Contract Remedies:

Remedies pursuant to 2 GAR § 9101. Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of Guam Procurement Regulations (GAR chapter 9).

IV. BID REQUIREMENTS.

A. Information Required in Bids.

A cover letter, which shall be an integral part of the bid, shall be signed by the individual who is authorized to bind the Bidder contractually. The cover letter shall include the following statements or information:

1. The signer (whose title or position is indicated) is authorized to bind the Bidder contractually.
2. The firm's name, address, and telephone and facsimile numbers.
3. Location of the firm's principal place of business, and, if different, the place of performance of the proposed contract.

4. The individual or firm's federal employer identification number (EIN) or tax identification number (TIN).
5. The abilities, qualifications, and experience of all persons who would be assigned to provide the required services.
6. A statement of Qualification in providing the particular services required and described in the IFB.

B. Format of Bids.

All Bidders shall provide a detailed plan for providing the required services described in the Scope of Work, which plan shall be incorporated into, and made a part of, the contract for the required services. The lowest responsive and responsible Bidder will be awarded the IFB based on the Option selected by the government.

C. Disclosures Required by Procurement Statute and Regulations.

In accordance with Guam Procurement Law, the following representations and disclosures shall be conspicuously set forth in all bids and contracts:

1. Disclosure of Major Shareholders (5 GCA § 5233).

As a condition of submitting a bid, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the proposal for the Bidder and shall also contain amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

2. Representation regarding Gratuities and Kickbacks (GAR § 11107(e))

The Bidder, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in GAR § 11107 (Gratuities and Kickbacks).

3. Prospective Representation regarding Contingent Fees (GAR § 11108(f))

The Contractor represents as a part of such contractor's bid that such contractor has/has not (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract pursuant to 5 GCA § 5631 and GAR § 11108(f).

4. Certification of Independent Price Determination (GAR § 3126)

The undersigned Bidder certifies that the bid price submitted was independently arrived at without collusion.

5. Representation regarding Ethical Standards for Government Employees and Former Government Employees (GAR § 11103(b))

The Bidder represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the

ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics and Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

D. Licensing or Certificate(s) of Exemptions.

Bidders are cautioned that the Office will not consider for award any offer submitted by a Bidder who cannot comply with the Guam Licensing Law. Specific information on licenses or exemptions may be obtained from the Director of Revenue and Taxation.

E. Equal Employment Opportunity.

Bidders shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.

V. EVALUATION OF UNPRICED TECHNICAL OFFERS.

The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- (a) Acceptable; (80 to 100 points)
- (b) Potentially acceptable, that is, reasonably susceptible of being made acceptable; (60 to 79) or
- (c) Unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. (Below 60)

A. Evaluation Criteria.

All bids found to be in compliance with the mandatory and material requirements of this solicitation shall be evaluated based on the following criteria:

- 1. The plan for performing the required services; (25)
- 2. Ability to perform the services as reflected by training and education, general experience, and the qualifications and abilities of personnel proposed to be assigned to perform the services; (15)
- 3. The personnel, equipment, and facilities to perform services currently available or demonstrated to be made available at the time of contracting; (25)
- 4. The individual or firm's reputation for personal and professional integrity and competence; (25)
- 5. Understanding of relevant statutes, rules and regulations used in the industry; (10)

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahenslan Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Acting Director

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

George A. Santos
Deputy Director

July 20, 2011

Peter Alexis Ada
President
AMP
107 Aspengao Rd.
Barrigada, Guam 96913

RE: INVITATION FOR BID NO.: GSA-063-11
(Medical Referral Services for the Office of the Governor)

Dear Mr. Ada:

Buenas Yan Hafa Adai! This is to officially inform you that the technical evaluation of the Phase I process of the Multi-Step Bid is completed. Based on the rating of the evaluation committee the overall score was 46.33 for AMP which was deemed "unacceptable."

I would like to take this opportunity to thank you for your participation. We look forward to your continued interest in participating on future bids issued by our agency.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

ACKNOWLEDGEMENT COPY

RECEIVE BY

DATE

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

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Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

George A. Santos
Deputy Director

August 4, 2011

Peter Ada
APM, President
APM: Guam Medical Referral Services
147 Aspengao Rd.
Barrigada, Guam 96913

Re: **Protest on Invitation For: Multi-Step Bid No. GSA-063-11
(Medical Referral Services for the Office of the Governor)**

Dear Mr. Ada:

Hafa Adai! This is in reference to your protest letter dated 03 August, 2011 that was lodged regarding the bid for Medical Referral Services for the Office of the Governor.

Upon review of your protest it is determined that your protest is without merit based on the following factual evaluations:

Issue No. 1

You indicated that you are protesting the process.

Response:

Although you did not indicate what part of the process you are protesting we are providing the following process relative to Multi-Step Bidding procedure for your understanding:

1. When the technical/cost proposals are received by the General Services Agency (GSA) at the scheduled time and date for submission GSA reviews the technical bids to ensure that the mandatory form requirements are submitted before forwarding the technical proposals to the evaluation committee for rating.
2. If GSA determines that the bidders complied with the submission of the required affidavit and other forms the GSA will then schedule the evaluation committee to convene. The GSA will brief the committee members by explaining that two procurement officials from GSA will observe the evaluation process to maintain the integrity of the procurement process.

3. Each committee member is presented with a folder containing the evaluation sheet and a copy of each of the bidder(s) technical bid during the Phase I process. The committee members are instructed to rate the technical bid(s) to determine whether the bidder(s) meet the criteria of: acceptable; potentially acceptable or unacceptable. The committee members rate the technical bids independently throughout the process.
4. Upon completion of the rating by the evaluation committee the purchasing staff will tabulate the points to determine whether the bidder rates acceptable, potentially acceptable, or unacceptable.
5. The bidders that are rated acceptable will be notified that their technical bid was deemed acceptable and will be invited to attend the Phase II process that is opening of the price bid. The award will be made to the lowest responsive and responsible bidder.
6. If the bidder is rated unacceptable GSA, will notify the bidder that their technical bid was deemed unacceptable. The unacceptable bidder will not be invited to participate on the Phase II process.
7. Upon completion of the analysis, GSA will prepare the award document to be released to the successful bidder.
8. A bid status will be presented to all the unsuccessful bidders on the Phase II process.

Issue No. 2

You stated that you are protesting the tampering of your documents.

Response:

On 22 July 2011 you sent me an email requesting for the release of your bid bond. I forwarded your request to the administrative assistant, Ms. Marissa Leon Guerrero. Ms. Leon Guerrero did not realize that the Multi-Step Bid Method was used to solicit for such service. Ms. Leon Guerrero immediately informed me that she believed she made an error on the process by opening the Phase II envelope. I instructed Ms. Leon Guerrero to prepare an incident report (See attached copy) for the file, on what transpired with the opening of the Phase II envelope of a bidder that was deemed unacceptable.


On 02 August 2011 you came by GSA to pick up your bid bond. According to Ms. Leon Guerrero she did inform you that she opened your Phase II envelope by mistake. Ms. Leon Guerrero explained to you of the situation. Ms. Leon Guerrero is use to returning bid bonds and she locates the bid bonds inside the bidders' envelope. Ms. Leon Guerrero admitted to management that it was clearly an honest mistake on her part.

Page 2 of 2
Protest – GSA-063-11
Medical Referral Services, OOG
8/04/11

Please be advised that it was not until July 22, 2011 that your Phase II envelope was opened. The time of the incident happened after you requested for the return of the bid bond which was the same day.

Based on the above, it is our determination that your protest is without merit. Upon receipt of this letter, you are, therefore, notified of our determination and that you have the right to seek administrative and judicial review.

Sincerely,


CLAUDIA S. ACFALLE
Chief Procurement Officer

cc: Office of the Attorney General
Office of the Governor

July 22, 2011

MEMO TO FILE

FROM: Administrative Assistant

SUBJECT: Incident Report – Inadvertent Opening of Sealed Phase 2 Price Bid
Ref: GSA IFB# GSA-063-11 “Medical Referral Services for Ofc of the Gov”
Vendor: Peter Alecxis Ada dba: APM: Guam Medical Referral Services

On or about 6:50 p.m. of July 22, 2011; I received an emessage from the Chief Procurement Officer (CPO), Claudia S. Acfalle (7/22/11 6:47 PM) forwarding Mr. Peter Alecxis Ada’s message of 7/22/11 4:36 AM.

The CPO’s message read: “Marissa pls. process accordingly! Please return the Phase II envelope. It is unopened since their technical bids were deemed unacceptable. Pls contact Mr. Ada and return no later than Monday July 25, 2011.”

Mr. Peter Alecxis Ada’s message of 7/22/11 4:36 AM read: “For those that did not pass Phase I of the bid, when and would the Cashier’s check, Certified check, bid bond which ever one submitted be returned.”

I went to the CPO asking if she had the Bid Bond Guarantee Deposit that is to be returned. She looked through the bid documents on her conference room table and said: No, this looks like a copy only. So, I went back to my desk and opened the sealed 9”x12” manila envelope looking for an “Original” Bid Bond Guarantee Deposit. There was no Bid Bond Guarantee there, so I proceeded to open the other sealed legal sized envelope looking for it. I was confused that there was no Bid Guarantee Deposit inside for me to return; but then horrified when I saw that inside the sealed legal sized envelope was a two page Bid Offer. I didn’t see anything specific because the only thing I was looking for was a Bid Guarantee Deposit. I shoved the papers back into the beige legal sized envelope and put that envelope back into the 9”x12” manila envelope; and went immediately to the CPO to tell her what I had just done – in search of the Bid Bond Guarantee Deposit that was to be returned.

The CPO was dismayed to hear that I had inadvertently unsealed the envelope given to me. She explained that she had wanted me to return the envelope to the vendor in its entirety, in its sealed state. I apologized and offered to submit an incident report explaining how I came to unseal the 9”x12” manila envelope marked: “Phase 2 Price Bid IFB #GSA-063-11 APM: Guam Medical Referral Srvcs.”; and also how I came to unseal the beige legal sized envelope marked: “Phase 2 Price Bid IFB#GSA-063-11 APM: Guam Medical Referral Srvcs.”

Further search of the Bid Documents on her conference room table, led to the discovery of the “Original” Bid Bond Deposit and the five duplicates of the Bid Bond Deposit as required, for return to Mr. Peter Alecxis Ada.

This concludes my incident report.


MARISSA D. LEON GUERRERO

Mausa
Leon Guerrero
8/2/11 11:50 AM

PHASE 2

~~Bid Price~~

PRICE BID

IFB # GSA-063-11

APM: GUAM Medical
Referral Svcs.

**PHASE 2
PRICE BID**

4 2011 012-11

**APM: Guan Medical Referral
SRVCS.**



Print - Close Window

Subject: Re: Questions requesting a response
From: Claudia Acfalle (claudia.acfalle@gsa.guam.gov)
To: un_chamorro@yahoo.com;
Date: Mon, 25 Jul 2011 18:32:51

The award was based on Option 1 the aggregate amount or All three in one.

Have a great day!

Claudia

On Mon, Jul 25, 2011 at 12:21 PM, peter ada <un_chamorro@yahoo.com> wrote:

Thank you for your response. Was the award given to the same person as in ALL THREE IN ONE or was it issued based on Bid Two which is separate.

Requesting this under the Freedom of Information Act.

Peter Alecxis Ada

From: Claudia Acfalle <claudia.acfalle@gsa.guam.gov>
To: peter ada <un_chamorro@yahoo.com>
Sent: Monday, July 25, 2011 12:15 PM
Subject: Re: Questions requesting a response

Good morning Mr. Ada:

There are two types of contract. One is the standard purchase order form contract that does not require the signature of the Governor and the long form contract that does require the signature of the Governor. If GSA issues the award through the standard purchase order form then yes the bid immediately is effectuated once the purchase order is acknowledged by the successful bidder.

Have a great day!

Claudia

On Mon, Jul 25, 2011 at 11:39 AM, peter ada <un_chamorro@yahoo.com> wrote:

Attn: Ms. Claudia S. Acfalle
Ref: Multi-Step GSA: -063-11

Does the winner of the bid immediately effectuate the process of the award OR would it be until the Governor signs off in the award?

Peter Alecxis Ada