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Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
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PROCUREMENT APPEAL

March 17, 2017

VIA HAND DELIVERY

The Office of Public Accountability
Suite 401
238 Archbishop Flores Street
Hagåtña, Guam 96910

Re: Transmittal Letter

Dear Madam Public Auditor:

Pursuant to 2 GAR §12104((b), please find the appeal of appellant Phil-Gets (Guam) International Trading Corp. dba of the denial of its protest in connection with Guam Community College Invitation for Bid No. GCC-FB-17-001 transmitted with this letter.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Seth Forman

Encl.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 03-20-17
TIME: 10:28 AM PM BY: Jrd
FILE NO OPA-PA: 17-009

Seth Forman
DOOLEY ROBERTS FOWLER & VISOSKY LLP
865 South Marine Corps Drive, Suite 201
Tamuning, Guam 96913
Telephone No. (671) 646-1222
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E-mail: Forman@guamlawoffice.com

Attorneys for Appellant
Phil-Gets (Guam) International Trading Corp.
dba J & B Modern Tech

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 03 . 20 . 17
TIME: 10:28 AM PM BY: JMY
FILE NO OPA-PA: 17-003

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

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

NOTICE OF APPEAL

Docket No. OPA-PA 17.003

Appellant Information:

For purposes of this appeal, appellant can be contracted through counsel, whose contact information is set forth above. Appellant's address, telephone number, facsimile number, and e-mail address are as follows:

Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech
153 Unit B
East Harmon Industrial Park
Harmon, Guam 96931

Telephone No. (671) 646-0588/3346
Facsimile No. (671) 646-0589
E-mail GeneBangayan@jbmoderntech.com

Appeal Information:

A) Purchasing Agency: Guam Community College ("GCC")

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

B) Invitation for Bid No.: GCC-FB-17-001, Construction of a Generator Building and Installation of a Back-up Generator System to Service GCC Allied Health Center and Building A.

C) The denial of protest being appealed was made on March 9, 2017, by the Procurement and Inventory Administrator of GCC and the President of GCC.

D) Appeal is made from a denial of a protest. This appeal is brought pursuant to 5 GCA §5425(e).

E) Name of competing bidders known to appellant: Talion Construction; Propacific Builder Corporation.

Form and Filing:

1. Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech (“J&B”) is appealing the denial of a protest it made regarding GCC-FB-17-001.

This procurement, GCC-FB-17-001, was for construction of a generator building and installation of a back-up generator system to service the GCC Allied Health Center and Building A.

There were three bidders for this project: J&B; Talion Construction (“Talion”); and Propacific Builder Corporation (“Propacific”). J&B was the low bidder. The bids were as follows:

J&B \$426,850.00

Talion \$705,390.00

Propacific \$444,000.00

See Bid Abstract (attached as “Exhibit A”).

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

In a Notice of Cancellation dated January 27, 2017 (attached as “Exhibit B”), GCC stated that it was cancelling the bid in whole and not making an award because “[a]ll bidders failed to provide GCC with shop drawings and submittals”. The cancellation notice did not state any other reason for rejecting J&B’s bid or any other contractor’s bid.

On February 7, 2017, J&B, through its attorney, submitted a timely protest, attached as “Exhibit C” (attachments to protest omitted as not relevant to this appeal now that GCC has explained its position). J&B contended:

The cancellation notice states that the bid was cancelled because “[a]ll bidders failed to provide GCC with shop drawings and submittals.” However, shop drawings were not included in the requirements for bids on this project. . . As a practical matter, shop drawings usually are not and cannot be prepared until after a bid has been awarded.

Because the bid was improperly cancelled, and because J&B had the lowest bid, J&B should be awarded the contract for this matter.

In a letter (attached as “Exhibit D”) dated March 9, 2017 and delivered on March 10, 2017, GCC denied J&B’s protest. GCC contended “shop drawings were required and stated *in the Scope of Work*.” (Emphasis added.) The first three pages from the Scope of Work are attached as “Exhibit E”. GCC referred to two sub-subsections of the Scope of Work, 1.2.A. and 1.4.C, and quoted or paraphrased very limited portions of each out of context as justification for its position.

A more complete reading of the relevant pages of the Scope of Work makes it clear that the Scope of Work is not a list of things to be included in a bid. Rather it is a list of work that must be

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

done as part of the project after a contract is awarded, the cost of which must be included in the contractor's cost proposal.

This is consistent with the standard and apparently universal use of a "scope of work" in bid solicitations. To date, J&B' counsel has been unable to find any precedent where an agency has taken the position, now taken by GCC, that items is a "Scope of Work" in a bid solicitation must be completed as part of a bid rather than after an award. A "scope of work" defines the project and states the government's requirements. 2 Ann. Fed. Acquisition Reg. Desk Ref. §36.02 (WestLaw 2016). A "scope of work" is a document prepared by the agency to provide bidders with the information upon which they may base their bid. See 54 Ohio Jur. 3d Highways, Streets, and Bridges §§197, 357 (WestLaw 2017). The scope of work is distinct from any instructions that list items bidders must include in their bids.

On page 1 of the Scope of Work for this project, under the heading of "General Requirements & Scope of Work", the first section is "1. Cost Proposal". Subsection 1.1 of this "cost proposal" section states the following:

CONTRACTOR shall provide their lump-sum, firm-fixed-price, *cost proposal* for the construction of a design-build generator building and for the comprehensive assessment, installation, proper testing, operation and commissioning of a turn-key, 600 kilowatt Generator Set/System to provide back-up emergency power for the Allied Health Center and Building A:

...

Contractor's cost proposal shall include (and not be limited to) ...

(Italics added, boldface and underlining in original deleted.)

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
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In other words, items listed in subsequent subsections of section 1 of the Scope of Work are items that are to be priced into the cost proposal, not items that are to be completed as part of the bid submittal process. This becomes obvious once one reads the entirety of subsection 1.2. Subsection 1.2 was cited, but not quoted in full, by GCC in its denial of the protest. Subsection 1.2 lists items to be included in the cost proposal, and reads as follows:

1.2 DESCRIPTION

Construct a design-build generator building and provide diesel electric generating unit with accessories, auxiliary equipment, and associated work as specified.

A. Provide GCC with shop drawings and submittals for the construction of design-build generator building to enclose the generator/set system.

1. Ensure drawings, shop drawings, and submittals provided are certified by master electricians and electrical contractors and subcontractors.

2. Ensure civil and structural engineers certify drawings, shop drawings, and submittals.

3. Submit certified drawings, shop drawings, and submittals to GCC for review and acceptance.

4. Ensure shop drawings and submittals are provided for feeder cables to the Allied Health Building and Building A.

B. Construct design-build building.

C. Install generator set/system sanctioned under the Buy America Act.

D. Connect generator set/system to buildings A and Allied Health Center.

E. Test to ensure a functionality of system.

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
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The other subsection of the Scope of Work referenced in GCC's denial of the protest is subsection 1.4. Subsection 1.4 has the heading "1.4. SUBMITTALS (refer to 1.2.A)". Thus subsection 1.4 merely sets out the details of the submittals that must be priced, not completed, pursuant to subsections 1.1 and 1.2.

All three contractors who submitted bids understood that the items listed in subsection 1.2, including shop drawings and submittals, were to be included in their cost proposals, rather than be completed and included in their bid submissions. GCC's position in its denial of the protest that items listed in Section 1.2 of the Scope of Work actually had to be done and physically submitted with a bid, would not only mean that bidders have to include shop drawings and submittals with their bids. Bidders would also have to complete and submit the following with their bids: a fully constructed building (1.2.B.); an installed generator/set system (1.2.C.), and connections for the generator set/system to the two designated buildings (1.2.D.) If all three bidders had actually submitted bids in accordance with GCC's strange interpretation, it is not known if there is room on the GCC site for three generator buildings. Perhaps the three buildings from three bidders would have to be stacked one on top of the other. Then once the three contractors had each spent hundreds of thousands of dollars to complete the project as part of their respective bids, GCC would award the contract to the low bidder. The other two bidders' completed buildings and installed generators would have to be demolished. It clearly makes no sense to require a contractor to complete some or

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

all of the Scope of Work as part of its bid submission. J&B and the other two bidders construed the Scope of Work and Sections 1.1 through 1.4 correctly; GCC did not.

Even if one looks only at Subsection 1.2.A., if bidders had to complete that work as part of their bids, they would have to hire all of their electrical contractors and sub-contractors and civil and structural engineers before a bid was awarded. This is not the practice in construction and government projects, and again it makes no sense. The cost of submitting a bid would be prohibitive. However, Subsection 1.2.A. does not exist in a vacuum. Section 1.2.A. is part of a Scope of Work that could only (1) be correctly interpreted as requiring that all of the listed work be priced but not done for a bid submission, or (2) incorrectly interpreted as requiring that all of the listed work be somehow submitted as part of a bid. Once the Scope of Work is correctly interpreted, the reasons given for GCC's denial of J&B's protest are plainly erroneous.

2. J&B requests that the Office of Public Accountability (1) overrule GCC's denial of J&B's protest, (2) rule that J&B was not required to submit shop drawings and submittals with its bid, and (3) rule that J&B shall be awarded this procurement in the amount of \$426,850.00.

3. Supporting documents are attached hereto as exhibits which correspond with the Exhibit letters A through E as set forth above.

Declaration regarding court action:

J&B does hereby confirm that to the best of its knowledge, and the undersigned counsel does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court.

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

Dated this 17 day of March, 2017.

DOOLEY ROBERTS FOWLER & VISOSKY LLP

By: Seth Forman
SETH FORMAN
Attorneys for Appellant Phil-Gets (Guam)
International Trading Corp. dba J&B Modern
Tech

VERIFICATION

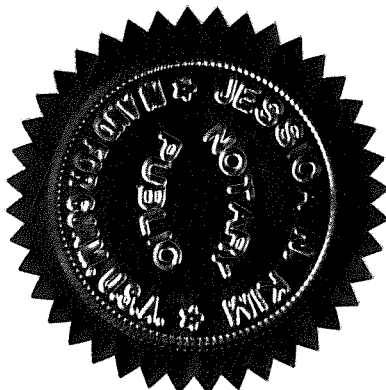
Tamuning, Guam) ss:

I, Generoso M. Bangayan, being first duly sworn, do hereby depose and state that I am the President of Appellant Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech. and that I have read the foregoing Notice of Appeal and it is true of my own knowledge except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 17th day of March, 2017.

[Signature]
GENEROSO M. BANGAYAN

SUBSCRIBED AND SWORN to before me this 17th day of March, 2017.



[Signature]
Notary Public
JESSICA N. KIM
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JAN. 11, 2020**
865 S. Marine Corps Dr. Ste. 201, Tamuning, GU 96913

EXHIBIT A

BID ABSTRACT

Bid No.: GCC-FB-17-001

Bid Desc: CONST. OF A GENERATOR BLDG INSTALLATION OF A BACK-UP GENERATOR SYS. TO SVC GCC ALLIED HEALTH CTR BLDG A

10:00 A.M., Tuesday, October 25, 2016

November 8, 2016

Vendor Name	Bid Grand Total Amount:	Bid Guarantees:	Certificate of Authority	Power of Attorney	Major Shareholder Disclosure Affidavit	Local Procurement Preference Affidavit	Non-Collusion Affidavit	Affidavit Re: No Gratuities or Kickbacks	Affidavit re Ethical Standards	Affidavit re Contingent Fees	Contractor's or Business License	Project Narrative	GPM Chart	Declaration Re: Compliance with U.S. DOL Wage	Brochures/Descriptive Literature	Amendments Acknowledgements	REMARKS
1 Talon Construction	15% \$705,390.00	Fidelity of Dep. Co. of Maryland Signy Stecher 10/19/16	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0 Orig + 2 copies Carpa. Signed Warranty, etc. GPA JTB
2 JTB Modern Tech	\$426,850.00	Starbly Gr. of Credit BDCum dtd. 11/7/16 Credit # 01-58-1267 Credit # 01-050-03	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0 Orig + 2 copies
3 Proprietary Builder Corp.	15% \$444,000.00	Endurance Performance Corp. of Insurance Signy + Stecher 11/7/16	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	0 Orig + 2 copies Technical Proposal
4																	
5																	
6																	
7																	

OPEN BY: Spencer Wangfish 11/8/16

WITNESS BY: [Signature] 11/8/16

EXHIBIT B



Office of the President
Mary A.Y. Okada, Ed.D

January 27, 2017

To: Talion Construction
J & B Modern Tech
Propacific Builder Corporation

Via: Carmen K. Santos *OKS*
Vice President, Finance & Administration

Joleen M. Evangelista *JME*
Procurement & Inventory Administrator

From: Mary A.Y. Okada, Ed.D. *MO*
President

Subject: Cancellation of Bid for Construction of a Generator Building and Installation of a back-Up Generator System to service GCC Allied Health Center and Building A

Bid No: GCC-FB-17-001

This letter is to inform all the Bidders that the bid issued for the above bid will be cancelled in whole and re-issued at a later date.

Three bids were received at the Bid Opening and no awards will be made.

It is in the best interest of the college to cancel the above bid due to the following:

- All bidders failed to provide GCC with shop drawings and submittals

After reviewing the submission and all other documents submitted, GCC wants to ensure that all issues and requirements are addressed and taken into consideration. In view of the above, the GCC Planning & Development office will review the Scope of Work and requirements of this project and a new bid will be issued. All bidders above will be advised when a new bid is issued so that you may have another opportunity to participate.

Please contact our office to pick up your bid guarantee.

Please acknowledge receipt of this Notice of Cancellation ASAP or no later than **5:00 p.m., Monday, January 30, 2017** by responding via email: materialsmanagement@guamcc.edu or fax (671)734-5238.

Please include your company name, address, date acknowledged and your name upon acknowledgement.

If you have any questions, please call 735-5540 or 5542 or email: materialsmanagement@guamcc.edu. Thank you for understanding and participation in this bid.

P.O. Box 23069, Barrigada, Guam 96921 Phone: (671) 735-5700/5638 Fax: (671) 734-1003
Website: www.guamcc.edu

D-2

EXHIBIT C

DOOLEY ROBERTS & FOWLER LLP
ATTORNEYS AT LAW

DAVID W. DOOLEY
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www.GuamLawOffice.com

Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
Forman@GuamLawOffice.com

February 6, 2017

VIA HAND DELIVERY

Mary A. Y. Okada, Ed.D.
President
Guam Community College
P.O. Box 23069
Barrigada, Guam 96921

VIA HAND DELIVERY

Carmen K. Santos
Vice President, Finance & Administration
Guam Community College
P.O. Box 23069
Barrigada, Guam 96921

VIA HAND DELIVERY

Joleen M. Evangelista
Procurement & Inventory Administrator
Guam Community College
P.O. Box 23069
Barrigada, Guam 96921

**Re: Bid invitation GCC-FB-17-001
Generator Building
J&B Modern Tech Protest**

Dear President Okada, Vice President Santos, and Administrator Evangelista:

Please be advised that Phil-Gets (Guam) International Trading Corporation dba J&B Modern Tech ("J&B") protests the Guam Community College's cancellation of Bid No. GCC-FB-17-001 for Construction of a Generator Building and Installation of a Back-Up Generator System to Service GCC Allied Health Center and Building A. A copy of the notice of cancellation dated January 27, 2017 is attached hereto as "Exhibit 1".

The cancellation notice states that the bid was cancelled because "[a]ll bidders failed to provide GCC with shop drawings and submittals." However, shop drawings were not

Mary A.Y. Okada, Ed.D., President
Carmen K. Santos, Vice President, Finance & Administration
Joleen M. Evangelista, Procurement & Inventory Administrator
Guam Community College
February 6, 2017
Page 2

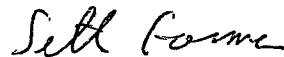
included in the requirements for bids on this project. This can be seen from the Bid Abstract, a copy of which is attached hereto as "Exhibit 2", where shop drawings are not included on that checklist. As shown on the checklist, J&B submitted all required items with its bid, including a Project Narrative. A copy of J&B's Project Narrative is attached as "Exhibit 3". As a practical matter, shop drawings usually are not and cannot be prepared until after a bid has been awarded.

Because the bid was improperly cancelled, and because J&B had the lowest bid, J&B should be awarded the contract for this matter.

Thank you for your attention to this matter. I look forward to receiving GCC's response to J&B's protest in the near future.

Sincerely,

DOOLEY ROBERTS FOWLER & VISOSKY LLP



Seth Forman

cc: Gene M. Bangayan, President, J & B Modern Tech
genebangayan@jbmmoderntech.com

EXHIBIT D



March 9, 2017

VIA HAND DELIVERY

DOOLEY ROBERTS FOWLER & VISOSKY LLP
Suite 201, Orlean Pacific Plaza
865 South Marine Corps Drive
Tamuning, Guam 96913

Dooley Roberts Fowler & Visosky LLP

MAR 10 2017

1230 Ally

Attention: Attorney Seth Forman
Subject: Response to Letter of Protest
Bid Number: GCC-FB-17-001
Bid Description: GCC Construction of a Generator Building & Installation of a Backup Generator System to Service Allied Health Center & Building A

Dear Attorney Seth Forman,

GCC received your letter of protest dated February 6, 2017 on February 7, 2017 and has provided responses to the points addressed in the protest.

J&B Modern Tech Protest Point

The cancellation notice states that the bid was cancelled because "all bidders failed to provide GCC with shop drawings and submittals." However, shop drawings were not included in the requirements for bids on this project. This can be seen from the from Bid Abstract, a copy of which is attached hereto as "Exhibit 2", where shop drawings are not included in the checklist. As shown on the checklist, J&B submitted all required items with its bid, including a Project Narrative. A copy of J&B's Project narrative is attached as "Exhibit 3". As a practical matter, shop drawings usually are not and cannot be prepared until after a bid has been awarded.

GCC Response :

Please be advised that shop drawings were required and stated in the Scope of Work. Please note the following references on the shop drawing requirements set forth in the bid as follows:

- a. Page 2 Special Reminder to Prospective Bidders: Bidders are reminded to read the **Sealed Bid Solicitation and Instructions, and General Terms and Conditions** attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, in duplicate, at the date and time for bid opening.
- b. Page 6 General Terms and Conditions Sealed Bid Solicitation and Award (X)6. **Compliance with specifications and other solicitation requirements:** Bidders shall comply with all specifications and other requirements of this Solicitation.

- c. Page 8 General Terms and Conditions Sealed Bid Solicitation and Award (X)17.
Standard for Determination of Lowest Responsible Bidder: i) The compliance with all of the conditions to the Solicitation
- d. SCOPE OF WORK Page 2 of 14 Contractor's cost proposal shall include (and not be limited to)... and 1.2. DESCRIPTION A. Provide GCC with shop drawings and submittals for the construction of design-build generator building to enclose the generator set/system.
- f. SCOPE OF WORK Page 3 of 14 C. Shop Drawings and Calculations: Submit for diesel generating unit and auxiliary equipment, including the following: (see items 1-7 detailed in SOW)

GCC has the right to reject all bids and cancel a solicitation when none of the bids meet all the material specifications. See 5GCA §5225; 2GARR§3115; Bid Form, General Terms and Conditions Item 23.

GCC has examined J&B Modern Tech's protest and found that it is without merit. Based on the references identified in the bid packet, GCC remains firm in its cancellation of this bid.

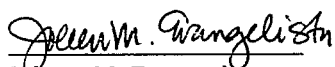
An opportunity will be given to complete on any solicitation or any future procurement of similar services.

You have the right to administrative and judicial review of this decision and an appeal must be filed within fifteen (15) days after your receipt of this decision.

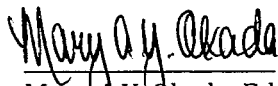
Thank you for your participation and interest in this bid. Should you have any questions, please contact the Materials Management Office at 735-5540 or 735-5542 or email: materialsmanagement@guamcc.edu.

Please acknowledge receipt of this letter via email ASAP or no later than Monday, March 10, 2017.

If you would like to meet to further discuss, please let us know.



Joleen M. Evangelista
Procurement & Inventory Administrator



Mary A. Y. Okada, Ed.D.
President

Attachments: Shop Drawing References set forth in the bid (5 pages)

ec: Gene M. Bangayan, President, J & B Modern Tech
genebangayan@jbmoderntech.com

Carmen K. Santos, VP Finance & Administration, GCC
carmen.kweksantos@guamcc.edu

ATTACHMENTS

INVITATION FOR BID (IFB) NO.: GCC-FB-17-001

BID DESCRIPTION: CONSTRUCTION OF A GENERATOR BUILDING AND INSTALLATION OF A BACK-UP GENERATOR SYSTEM TO SERVICE GCC ALLIED HEALTH CENTER AND BUILDING A

SPECIAL REMINDER TO PROSPECTIVE BIDDERS

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

- BID GUARANTEE (15% OF BID AMOUNT) – May be in the form of;**
 - a. **Cashier's Check or Certified Check**
 - b. **Letter of Credit** (must not expire no earlier than ninety (90) days from the date of submittal)
 - c. **Surety Bond – Valid only if accompanied by:**
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- PROJECT NARRATIVE: Describe how you will complete this project from beginning to end.**
- DESCRIPTIVE LITERATURE/PRODUCT BROCHURE**
- CPM CHART: Timeline of Project**
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS**
- LOCAL PROCUREMENT PREFERENCE APPLICATION**
- NON-COLLUSION AFFIDAVIT, AFFIDAVIT re GRATUITIES AND KICKBACKS, AFFIDAVIT re ETHICAL STANDARDS AND AFFIDAVIT re CONTINGENT CITY FEES (must be notarized)**
- Declaration Re Compliance with U.S. DOL Wage Determination: Upon award the successful bidder must provide the most recently issued wage determination by the US Dept. of Labor**
- Acknowledgement receipts of pre-bid minutes and or addendums upon issuance from Materials Management Office**
- Insurance requirements (upon issuance of award)**
- Copy of current Business/Contractor's License expiring 6/30/2017 (required upon notice of intent to award)**
- Failure to comply with the requirements in the special reminder will be a basis for disqualification and rejection and rejection of the bid. This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid. On this ____ day of _____, 2016, _____ acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.**

**GENERAL TERMS AND CONDITIONS
SEALED BID SOLICITATION AND AWARD**

Only items marked "X" are applicable to this bid.

(X) 1. AUTHORITY:

This solicitation is issued subject to all the provisions of Guam Procurement Laws in 5GCA Chapter 5, and 2 GAR, div 4 (both are available online at <http://www.guamcourts.org/CompilerofLaws/index.html>). Guam Procurement Law requires that all parties involved act in good faith.

(X) 2. GENERAL INTENTION:

It is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide Guam Community College with specified services or with materials, supplies or equipment completely assembled and ready for use.

(X) 3. TAXES:

Bidders are cautioned that they are subject to Guam Income Taxes as well as other taxes on Guam Transactions. Specified information on taxes may be obtained from the Director of Revenue and Taxation.

(X) 4. LICENSING:

Bidders are cautioned that the College will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

(X) 5. LOCAL PROCUREMENT PREFERENCE:

All procurement of supplies, services, and construction will be made from among businesses licensed to do business in Guam in accordance with Guam Procurement Law.

(X) 6. COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:

Bidders shall comply with all specifications and other requirements of the Solicitation.

(X) 7. "ALL OR NONE" BIDS:

Unless otherwise allowed under this solicitation, "all or none" bids shall be deemed to be non-responsive. If the bid is so limited, the College shall not reject part of such proposal and award on the remainder. The whole bid must be rejected.

(X) 8. INDEPENDENT PRICE DETERMINATION:

The bidder, upon signing the Invitation to Bid, certifies that the prices in the bid were derived at without collusion, and acknowledge that collusion and anticompetitive practices are prohibited by law. Violations will be subject to Guam Procurement laws. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Guam Procurement laws.

(X) 13. PERFORMANCE GUARANTEE:

Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 12 of these General Terms and Conditions. In addition, the College will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.

(X) 14. SURETY BONDS:

Bid and Performance Bonds coverage must be signed or countersigned in Guam by the surety's resident general agent. The Surety must be an insurance company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.

(X) 15. COMPETENCY OF BIDDERS:

Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.

(X) 16. DETERMINATION OF RESPONSIBILITY OF BIDDERS:

The College reserves the right to secure from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 17 of these General Terms and Conditions.

(X) 17. STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:

In determining the lowest responsible offer, the College shall be guided by the following:

- a) Price of Items offered.
- b) The ability, capacity, and skill of the Bidder to perform.
- c) Whether the Bidder can perform promptly or within the specified time.
- d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- e) The quality of performance of the Bidder with regards to award previously made to him.
- f) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
- g) The sufficiency of the financial resources and ability of the Bidder to perform.
- h) The ability of the bidder to provide future maintenance and services for the subject award.
- i) The compliance with all of the conditions to the Solicitation

(X) 18. TIE BIDS:

If the bids are for the same unit price or total amount in whole or in part, the College has the authority to award the bid to any one of the bidders by drawing lots in public, or to reject all such bids.

GCC-FB-17-001: Construction of a Generator Building and Installation of a Back-Up Generator System to Service GCC Allied Health Center and Building A

September 16, 2016

Contractor's cost proposal shall include (and not be limited to) ...

1.2. DESCRIPTION:

Construct a design-build generator building and provide diesel electric generating unit with accessories, auxiliary equipment, and associated work as specified.

- A. *Provide GCC with shop drawings and submittals for the construction of design-build generator building to enclose the generator set/system.*
 - 1. *Ensure drawings, shop drawings and submittals provided are certified by master electricians and electrical contractors and sub-contractors.*
 - 2. *Ensure civil and structural engineers certify drawings, shop drawings and submittals.*
 - 3. *Submit certified drawings, shop drawings, and submittals to GCC for review and acceptance.*
 - 4. *Ensure shop drawings and submittals are provided for feeder cables to the Allied Health Building and Building A.*
- B. *Construct design-build building.*
- C. *Install generator set/system sanctioned under the Buy American Act.*
- D. *Connect generator set/system to buildings A and Allied Health Center.*
- E. *Test to ensure functionality of system.*

1.3. QUALITY ASSURANCE:

- A. *Operating Experience Requirements: Engines installed shall meet all of the operating experience requirements listed below:*
 - 1. *Generator and engines shall be Buy American*
 - 2. *Only electric generation service is considered as equivalent experience. Engines driving pumps or compressors, or those in marine propulsion or railroad service, are not acceptable.*
 - 3. *Only experience on the same engine model is acceptable. Engine model is considered to be a given series or class of identical bore and stroke and of the same type of engine, such as in-line or Vee. In-line and Vee engines with identical bore and stroke are considered as two separate models of engines.*
 - 4. *Only experience at the identical rotative speed as that which is offered is acceptable.*
 - 5. *Only experience at the identical or higher brake mean effective pressure as that which is offered is acceptable.*
 - 6. *Only experience with fuel oil is acceptable.*

1.4. SUBMITTALS (refer to 1.2.A)

- A. *Furnish certificate(s) within 30 days after award certifying that not less than two engines of identical number of cylinders and cylinder size, identical rotative speed, and identical or higher BMEP, and of the same basic configuration (in-line or Vee) as the engine to be furnished shall have*

GCC-FB-17-001: Construction of a Generator Building and Installation of a Back-Up Generator System to Service GCC Allied Health Center and Building A

September 16, 2016

driven generators which have satisfactorily operated not less than 3-years. Certificate(s) shall include:


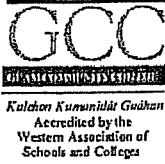
1. A list of at least two engine installations meeting the experience requirements set forth in paragraph entitled "Operating Experience Requirements".
 2. Owner and location of each such installation.
 3. Date of initial operation of each such installation.
 4. Number of KW hours produced at each installation.
 5. Horsepower rating, KW rating, and rotative speed of each unit.
 6. Design characteristics of each unit, such as bore and stroke, number of cylinders, and configuration (in-line or Vee).
- B. **Manufacturer's Data:**
1. Diesel engine driven electric generator set.
 2. Valves.
 3. Fuel oil day tank (specified under Division 15). 
 4. Fuel line strainers.
 5. Engine muffler.
- C. **Shop Drawings and Calculations:** Submit for diesel generating unit and auxiliary equipment, including the following:
1. Certified outline, general arrangement (setting plan), and anchor bolt details. Drawings shall show the total weight and center of gravity of the assembled equipment on the mounting skid.
 2. General arrangement drawings showing location of all auxiliary equipment in relation to the diesel generating unit.
 3. Piping schematics for fuel oil, lubricating oil, jacket water, and cooling water integral with diesel engine.
 4. Battery sizes and cranking time calculations.
 5. Critical speed calculations.
 6. Drawings for the transfer switch, including certified outline, electrical ratings, general arrangement, and detail drawings.
 7. Electrical elements, schematics and wiring diagrams, including details of the safety shutdown systems and main generator circuit breaker trip system.
- D. **Certified Test Reports:**
1. Diesel engine shop tests.
 2. Generator shop test.
 3. Diesel engine driven electric generator set shop tests.
 4. Automatic transfer switches.
 5. Radio-interference suppression.
- E. **Manuals:** Provide two sets of operation and maintenance manuals for equipment. Identification symbols for all replaceable parts and assemblies shall be included. Information in manuals shall be comprehensive and specific.

EXHIBIT E



GCC-FB-17-001: Construction of a Generator Building and Installation of a Back-Up Generator System to Service GCC Allied Health Center and Building A

September 16, 2016

The Guam Community College (GCC) is soliciting the services of qualified Contractors to construct a generator building and to integrate a High Efficiency, Back-up Generator Set/System to support the emergency energy needs of the Allied Health Center (Building 3000) and Building A.

Background:

In order for the Guam Community College to provide services that is committed to 100% student centered success, the Institution realizes the need to construct a design-build generator building and to integrate a turn-key, state of the art, highly efficient Generator Set/System – to provide emergency back-up power to the Allied Health Center and Building A due power outages and other factors that may interrupt the building’s energy needs.

The GCC understands that interruptions of this nature can cause unwanted outcomes to the Institution’s mission to be a leader in career and technical workforce development, providing the highest quality, student centered education and job training in Micronesia. Having reliable power for our students so that they can receive uninterrupted and quality education is key to achieving the GCC’s mission.

As such, it is the GCC’s intention to source SMEs for the construction of a design-build generator building and for the holistic assessment, installation, proper testing and commissioning of a 600 kilowatt, state of the art, high-efficiency Generator Set/System (system is to include Automatic transfer switches, wiring, connection to GPA power, protective shelter for the GENSET, etc.) for back-up emergency power for the Allied Health Center (Bldg. 3000) and Bldg. A; and for a Code-compliant, 1-year warrantied installation.

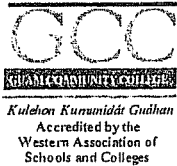
General Requirements & Scopes of Work:

1. COST PROPOSAL:

PART 1 PROJECT

1.1. CONTRACTOR shall provide their lump-sum, firm-fixed-price, cost proposal for the construction of a design-build generator building and for the comprehensive assessment, installation, proper testing, operation and commissioning of a turn-key, 600 kilowatt Generator Set/System to provide back-up emergency power for the Allied Health Center and Building A;

Buildings to Benefit	COLUMN A	COLUMN B
	Design-Build Generator Building	Generator Set/System
Building A and Allied Health Center	\$ 129,050.00	\$ 297,800.00
TOTAL PROJECT COST (Column A + Column B)	\$ 426,850.00	



GCC-FB-17-001: Construction of a Generator Building and Installation of a Back-Up Generator System to Service GCC Allied Health Center and Building A

September 16, 2016

Contractor's cost proposal shall include (and not be limited to) ...

1.2. DESCRIPTION:

Construct a design-build generator building and provide diesel electric generating unit with accessories, auxiliary equipment, and associated work as specified.

- A. Provide GCC with shop drawings and submittals for the construction of design-build generator building to enclose the generator set/system.
 - 1. Ensure drawings, shop drawings and submittals provided are certified by master electricians and electrical contractors and sub-contractors.
 - 2. Ensure civil and structural engineers certify drawings, shop drawings and submittals.
 - 3. Submit certified drawings, shop drawings, and submittals to GCC for review and acceptance.
 - 4. Ensure shop drawings and submittals are provided for feeder cables to the Allied Health Building and Building A.
- B. Construct design-build building.
- C. Install generator set/system sanctioned under the **Buy American Act**.
- D. Connect generator set/system to buildings A and Allied Health Center.
- E. Test to ensure functionality of system.

1.3. QUALITY ASSURANCE:

- A. Operating Experience Requirements: Engines installed shall meet all of the operating experience requirements listed below:
 - 1. Generator and engines shall be Buy American
 - 2. Only electric generation service is considered as equivalent experience. Engines driving pumps or compressors, or those in marine propulsion or railroad service, are not acceptable.
 - 3. Only experience on the same engine model is acceptable. Engine model is considered to be a given series or class of identical bore and stroke and of the same type of engine, such as in-line or Vee. In-line and Vee engines with identical bore and stroke are considered as two separate models of engines.
 - 4. Only experience at the identical rotative speed as that which is offered is acceptable.
 - 5. Only experience at the identical or higher brake mean effective pressure as that which is offered is acceptable.
 - 6. Only experience with fuel oil is acceptable.

1.4. SUBMITTALS (refer to 1.2.A)

- A. Furnish certificate(s) within 30 days after award certifying that not less than two engines of identical number of cylinders and cylinder size, identical rotative speed, and identical or higher BMEP, and of the same basic configuration (in-line or Vee) as the engine to be furnished shall have

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September 16, 2016

driven generators which have satisfactory operated not less than 3-years. Certificate(s) shall include:

1. A list of at least two engine installations meeting the experience requirements set forth in paragraph entitled "Operating Experience Requirements".
2. Owner and location of each such installation.
3. Date of initial operation of each such installation.
4. Number of KW hours produced at each installation.
5. Horsepower rating, KW rating, and rotative speed of each unit.
6. Design characteristics of each unit, such as bore and stroke, number of cylinders, and configuration (in-line or Vee).

B. Manufacturer's Data:

1. Diesel engine driven electric generator set.
2. Valves.
3. Fuel oil day tank (specified under Division 15).
4. Fuel line strainers.
5. Engine muffler.

C. Shop Drawings and Calculations: Submit for diesel generating unit and auxiliary equipment, including the following:

1. Certified outline, general arrangement (setting plan), and anchor bolt details. Drawings shall show the total weight and center of gravity of the assembled equipment on the mounting skid.
2. General arrangement drawings showing location of all auxiliary equipment in relation to the diesel generating unit.
3. Piping schematics for fuel oil, lubricating oil, jacket water, and cooling water integral with diesel engine.
4. Battery sizes and cranking time calculations.
5. Critical speed calculations.
6. Drawings for the transfer switch, including certified outline, electrical ratings, general arrangement, and detail drawings.
7. Electrical elements, schematics and wiring diagrams, including details of the safety shutdown systems and main generator circuit breaker trip system.

D. Certified Test Reports:

1. Diesel engine shop tests.
2. Generator shop test.
3. Diesel engine driven electric generator set shop tests.
4. Automatic transfer switches.
5. Radio-interference suppression.

E. Manuals: Provide two sets of operation and maintenance manuals for equipment. Identification symbols for all replaceable parts and assemblies shall be included. Information in manuals shall be comprehensive and specific.