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IN RE APPEAL OF MARIANA PACIFIC INC.
Represented by its Vice President, Mr. Owen G. Walker

DPW96-RFP-015
DECISION ON APPEAL
NO. BP-A007

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This is an appeal by Mariana Pacific Inc. (MPI), represented by its Vice President, Mr. Owen G. Walker, from the failure of the Director of Procurement and Supply (P&S) to decide on its protest pertaining to the Department of Public Works (DPW) Request for Proposals (RFP) No. DPW96-RFP-015. The Office of the Public Auditor (OPA) has jurisdiction to hear this appeal as provided in Section 5-102 of the CNMI Procurement Regulations (PR). MPI filed its timely appeal with OPA on January 15, 1997.

The Department of Public Works, in conjunction with the Public School System (PSS), solicited sealed proposals from qualified joint ventures of Architectural and Engineering (A&E)/Construction firms to provide professional design services and construction of 90 classrooms at various public schools in the Commonwealth of the Northern Mariana Islands (CNMI) consisting of 60 classrooms for Saipan and 15 each for Rota and Tinian (the project). RFP No. DPW96-RFP-015 was advertised on June 7 and 14, 1996 in the Marianas Variety and Saipan Tribune. The deadline for submission of proposals was originally set for June 28, 1996. However, addendum no. 1 extended the deadline to July 12, 1996. The requirements of the RFP were specified in the solicitation announcement, the scope of work issued by DPW, and an addendum consisting of the minutes of the pre-proposal conference, the attendance sheet, and the various sites of the proposed classrooms on Saipan.

The pre-proposal conference was held on June 20, 1996 at 2:00 p.m. in the DPW Conference Room. A number of questions were asked by the prospective proposers present in the meeting. During the pre-proposal conference, the Architectural Consultant for DPW stated that there were a number of unanswered questions, and that the contract was subject to negotiation. He further stated that the government needed to receive and evaluate the proposals before negotiating the terms of the contract. Among the items clarified during the meeting were the following:

- The procurement method was by Competitive Sealed Proposals.

- The government was looking for “innovative design concepts” to include design techniques, construction techniques, construction time, etc. The proposers would determine their own design. The design was not limited to prefabricated structures. Choice of materials to be used was the proposer’s option. However, if wood was used, it should be termite treated.
- If the project was to be federally funded, a waiver of the “Buy American Act” would be sought.
- The project could be distributed among several proposers. There needed to be a price breakdown for each school site in case the project were to be distributed to more than one proposer, and a separate cost proposal for each campus should be submitted.
- Some of the existing school buildings were designed to have a second story. The classrooms would be either concrete slab on grade (one story) or second story additions to existing buildings, or a combination of both.
- The project was to provide classrooms only. Toilet facilities were not included in this project. Handwash sinks were required for each classroom, with connection to existing septic tanks or provision for seepage pit. Regarding air conditioning, there were no restrictions on the manufacturer or type of units, except that wall or ceiling mounted split type units were preferred.
- The classroom size of 30 feet by 30 feet was only an approximate size which was not meant to cause a pre-engineered system to break its standard sizes.
- The locations specified for the Saipan classrooms were only approximate locations. Since there were no specific locations for Rota and Tinian classrooms, the proposers were to assume the most stringent design requirement.
- Sealed and signed drawings were not required for submission of the proposals, and would be required only after a contract had been awarded. However, for architect-engineer certifications, only CNMI registrations were acceptable.
- Regarding construction time frame, PSS wanted to have the classrooms on Saipan, Tinian, and Rota ready for use by the end of 1996.

As stated in the RFP, the proposals were to be evaluated using the following criteria: (1) time frame for design and construction, (2) price, (3) innovative design concepts, (4) warranty of products supplied, and (5) financial and manpower capabilities of the contractor. The record of P&S on the opening of the sealed proposals on July 12, 1996 showed that twelve companies responded to the solicitation. They were: (1) Black Micro Corporation, (2) GTS/Royal Building Systems (Guam), Inc., (3) Core Construction, Inc., (4) Demapan Engineering and Construction

Co./Quantum International, (5) AIC Marianas, Inc., (6) Herman B. Cabrera & Associates, (7) Western Equipment Incorporated, (8) Island Steel Systems, (9) Mariana Pacific Inc., (10) Pacific Corporation Ltd., (11) North Pacific Builders, Inc., and (12) Solid Builders.

For the evaluation of the proposals, a five-member Evaluation Committee (Committee) was formed composed of the Special Assistant to the DPW Secretary, the Director of the DPW Technical Services Division (TSD), a TSD engineer, an official of the Building Safety Office, and a PSS employee. The Committee reviewed the proposals and on August 9, 1996 completed its evaluation of the 12 proposals. Based on the evaluation, three proposers were placed on a short-list of firms for consideration for a contract with the CNMI Government under the subject RFP. The short-listed proposers, in order of ranking were: (1) Mariana Pacific Inc. (MPI), (2) GTS/Royal Building Systems (Guam), Inc. (GTS), and (3) Demapan Engineering and Construction Co./Quantum International (Demapan). The three proposers were invited to make an oral presentation of their respective products and capabilities to the Committee from September 3 to 5, 1996 at the DPW Conference Room.

By memorandum dated September 11, 1996, the Committee completed its evaluation of the three short-listed proposers, and recommended to the Secretary of Public Works that the contract be awarded to Demapan. By letter dated September 24, 1996, the Secretary of Public Works informed Demapan that it had been *tentatively selected* for possible award of the contract, and that another meeting was scheduled with the Governor, members of the Board of Education, and DPW technical staff to clarify a number of questions regarding the product it had proposed. On October 15, 1996, DPW formally informed Demapan that it has been selected for a contract under RFP No. DPW96-RFP-015. Also, on the same date, DPW notified the other short-listed proposers about the rejection of their proposals.

After receiving the notice of rejection on October 18, 1996, MPI filed a formal protest with the P&S Director on October 25, 1996. On November 5, 1996, the P&S Director acknowledged receipt of MPI's protest of the proposed award to Demapan under RFP No. DPW96-RFP-015. On November 12, 1996, MPI sent a letter to the P&S Director requesting certain information and clarification on the status of the award. MPI sent P&S two follow-up letters on the protest dated November 20 and 29, 1996. Finally, on December 6, 1996, the P&S Director responded to MPI's letters by setting December 23, 1996 as the date for making a decision on the protest.

While a decision on MPI's protest was still pending, negotiations with Demapan were ongoing which included the finalization of the scope of work for the project. During negotiations with Demapan, many revisions were made in the scope of work, including a change in the number of total classrooms to be designed and constructed from 90 to 60, a change in the distribution of the remaining 60 classrooms to different public schools, and changes as well as additions to the technical specifications, among other revisions. The significant decrease in the total number of classrooms represents the 30 classrooms for Rota and Tinian which were dropped from the scope of work. According to PSS and DPW staff who were closely involved in the project, the deletion of the Rota and Tinian classrooms from the scope of work was the result of their exclusion in the Capital Improvement Project (CIP) Appropriations Act of 1996, Public

Law 10-38, which was signed into law on November 22, 1996. Public Law 10-38 provided for the appropriation of CIP funds from the Grant Pledge Agreement (Covenant funding) and local Commonwealth funds on a 60:40 sharing ratio. The law specifically appropriated a total of \$3.8 million for the design and construction of at least 60 classrooms in various public schools on Saipan, among other CIP projects for Saipan, Tinian, and Rota.

While negotiations with Demapan were continuing, the Director notified MPI on December 6, 1996 that it would proceed with the award of the contract to Demapan during the pendency of MPI's protest because the materials and services to be contracted for were urgently required. By letters dated December 9 and 11, 1996 to the P&S Director, MPI protested the use of the urgency provision in the Procurement Regulations to justify the award. After this additional ground for the protest was filed by MPI, the P&S Director sent a notice to MPI on December 20, 1996 that he was extending his decision date on MPI's protest from December 23, 1996 to December 30, 1996 because of the complexity of the protest. However, on December 30, 1996, the Director failed to make a decision on the protest, and ten working days thereafter, MPI filed an appeal with OPA. When the appeal was filed with OPA on January 15, 1997, there had been no written advice from P&S about any additional time extension for its decision on MPI's protest.

As required in the CNMI Procurement Regulations, the following actions were taken -- Within one day after receiving the appeal on January 15, 1997, our office informed P&S both orally and in writing about the appeal filed by MPI and requested that a written report on the appeal be submitted to us as soon as possible. On February 18, 1997, the P&S Director responded to OPA's request for a written report on MPI's appeal, copies of which were also to be provided to affected parties. In a letter dated February 24, 1997 and received by OPA on February 26, 1997, MPI submitted its written comments on the P&S report. By March 4, 1997, the deadline for the submission of comments from affected parties, there were no rebuttals to MPI's comments from the affected parties. Our review of the distribution list in MPI's comments showed, however, that copies of MPI's comments were not provided to two affected parties: Demapan and GTS. Accordingly, by letter dated March 5, 1997, OPA furnished the two affected proposers a copy of MPI's comments and informed them that they had five working days from receipt of the comments in which to make a rebuttal. Demapan confirmed receipt of MPI's comments only on March 12, 1997 and, accordingly, Demapan's rebuttal on March 14, 1997 was accepted by our office.

On February 24, 1997, DPW submitted information on the project to the Office of Insular Affairs (OIA). The OIA, however, informed DPW that it would not approve expenditures for the project until the appeal was resolved. Recently, on March 21, 1997, the Acting DPW Secretary asked OIA to reexamine its position on withholding funds until the protest was completely resolved. OIA subsequently granted DPW's request by approving the release of federal funding for the project. As at the date of this decision, however, our inquiry from the Division of Procurement and Supply showed that the CNMI Government has not yet granted a contract for Demapan on this project.

ANALYSIS

This appeal was brought about by the failure of the P&S Director to decide on MPI's protest by the date P&S had specified. The appeal presented the arguments previously raised in the protest. We now discuss the Committee's basis for the selection of Demapan's proposal, followed by the arguments of MPI, Demapan, and P&S as they were presented in the protest and appeal process, as well as OPA's comments on the merits of those arguments.

Evaluation of the Proposals

Twelve companies submitted their proposals for the design-build of the 90 classrooms for various public schools in the CNMI. The Committee made its evaluation of the twelve proposals based on the six criteria stated in the RFP. Each of the five members of the Committee evaluated the proposals using a numeric scoring system in which maximum points for each criteria were assigned, as follows:

<u>Criteria</u>	<u>Maximum Points</u>
Time frame for design and construction	20
Price	20
Innovative design concepts	20
Warranty	20
Financial capability	10
Manpower	<u>10</u>
Total	<u>100</u>

Based on the above rating system, a proposer could receive a maximum total score of 500 points, *i. e.*, if the maximum 100 points were given by all five evaluators. On August 9, 1996, the Committee compiled the individual evaluators' scoring sheets in a proposal evaluation summary signed by the Committee's Team Captain and approved by the DPW Secretary. The evaluation summary showed the following top three proposers, in order of ranking: (1) Mariana Pacific Inc. (360 points), (2) Demapan Engineering and Construction Co./Quantum International (324 points), and (3) GTS/Royal Building Systems (Guam), Inc. (320 points). Our review of the remaining nine proposers showed an error in the total points calculated in the evaluation summary for the fifth, sixth, and eighth ranked proposer. After making the necessary corrections, the fifth ranked proposer overtook the fourth ranked proposer and the seventh ranked proposer tied with the sixth ranked proposer. The corrected ranking for the nine proposers is shown below:

<u>Rank</u>	<u>Proposer</u>	<u>Total Points</u>
4	AIC Marianas, Inc.	317
5	Western Equipment Incorporated	313
6	Core Construction, Inc.	289

7	Solid Builders	289
8	Black Micro Corporation	281
9	Island Steel Systems	271
10	North Pacific Builders, Inc.	267
11	Herman B. Cabrera & Associates	251
12	Pacific Corporation Ltd.	246

The score sheet for the top three proposers showed the breakdown of their total points from five evaluators, including their points on each of the evaluation criteria stated in the RFP:

Criteria	MPI						Demapan						GTS					
	E1	E2	E3	E4	E5	Ttl	E1	E2	E3	E4	E5	Ttl	E1	E2	E3	E4	E5	Ttl
Time Frame ¹	12	12	18	12	12	66	20	20	20	14	20	94	12	12	14	16	12	66
Price ²	7	7	20	10	7	51	20	14	20	16	14	84	6	7	10	8	7	38
Innovative Design	20	18	20	15	20	93	12	14	12	4	12	54	20	18	18	15	19	90
Warranty	10	10	15	18	10	63	10	10	10	10	10	50	10	10	10	18	10	58
Financial Capability	10	8	5	8	10	41	3	3	5	2	0	13	10	3	5	4	5	27
Manpower	10	9	10	7	10	46	10	5	6	2	6	29	10	9	8	7	7	41
Total	69	64	88	70	69	360	75	66	73	48	62	324	68	59	65	68	60	320

- E1 Evaluator No. 1 (Team Captain) - Stephen P. Lemieux, Special Asst. to the DPW Secretary
- E2 Evaluator No. 2 - Juan R. Sablan, TSD Director (No longer with DPW)
- E3 Evaluator No. 3 - Andrew W. Smith, Building Safety Official (Presently TSD Director)
- E4 Evaluator No. 4 - Oscar R. Babauta, PSS Employee
- E5 Evaluator No. 5 - Sammy L. Palenzuela, TSD Engineer (No longer with DPW)

In determining prospective contractors for the subject RFP, the Committee short-listed the number of proposals to the top three proposers and scheduled them for interview and presentation of their proposals from September 3 to 5, 1996 at the DPW Conference Room. On September 11, 1996, the Committee reported the results of its interview with the three short-listed proposers and presented its recommendation to the DPW Secretary. The Committee's report focused on the proposers' cost, time frame to construct, energy efficiency, and product quality, and recommended that Demapan be awarded the contract for this RFP. In justifying

¹ The number of days for the project completion proposed by these contractors were: (1) MPI - 160 days, (2) Demapan/Quantum International - 90 days, and (3) GTS/Royal Building Systems (Guam), Inc. - 160 days.

² The prices proposed by these contractors were: (1) MPI - \$ 4,516,575 for 90 classrooms, Demapan/Quantum International - \$ 3,650,000 for 90 classrooms, and (3) GTS/Royal Building Systems (Guam), Inc. - \$ 6,188,185 for 78 classrooms. Of the three contractors MPI and GTS/Royal Building Systems (Guam), Inc. submitted a breakdown of the price of the construction per school.

the award, the Committee stated that “their (Demapan’s) oral presentation and discussion has convinced the Committee that this firm will provide the CNMI Government a high quality product at a reasonable cost in an acceptable time frame.” The report placed MPI second, followed by GTS. The Committee made the following comments on each of the three short-listed proposals:

MPI. The presentation of MPI was well done, utilizing one large poster hung up on the wall showing the various items and details of the “Force 10” building system which MPI proposes to use for the project. This system has been used successfully throughout the Pacific and Micronesia including a project recently completed at Tanapag Elementary School in Saipan. Wall and roof insulation in the “Force 10” is very good. Proposed construction schedule is 160 days to complete all classrooms, with an average cost per square foot of \$56.

GTS. The presentation was technically strong with the chief engineer explaining the design and construction detail. The building system consists primarily of high-tech plastic panel forms which are filled with concrete and contain certain reinforcing steel. This building system is new to Guam and the CNMI but has been tested in Canada and the Virgin Islands. Construction schedule seems very tight at 160 days, with an average cost per square foot of \$88.

Demapan. The oral presentation was very strong when compared to the other two firms. The product is not new and has been successfully tested in a variety of climates. Completed structures exceed regional typhoon and earthquake requirements. Proposed time frame for construction is 90 days, with an average cost per square foot of \$45.

Negotiation with Demapan and Revisions of the Scope of Work

Negotiation for the contract on this RFP began after the selection of Demapan by the Committee. Details of the Scope of Work were made clearer and matters which were not yet decided during the pre-proposal meeting were finalized. Among the items revised were the number and location of classrooms:

- Reduction in the number of classrooms to be designed and built from 90 to 60. The 30 classrooms supposedly to be built in Rota and Tinian were deleted. The distribution of the remaining 60 classrooms to various public schools on Saipan was also changed. A new school site on Saipan not previously mentioned in the RFP was identified as a location for some of the 60 classrooms on Saipan.
- All classrooms were to be constructed on one-story slab on grade. Classrooms supposedly to be built on the second floor of existing buildings were deleted.

Also, there were changes made in the technical specifications for the classrooms, and additional specifications defining the general requirements for the project were added. Exhibit A shows the revisions made on the general, architectural, electrical, and civil requirements for the project. After the above revisions were made, Demapan was asked to revise its proposal,

including a change in the proposed price from \$3,650,000 for the original 90 classrooms to \$3,332,000 for the 60 classrooms. The revised price purportedly covered changes in the scope of work that necessitated an adjustment in price. Price was adjusted downward because 30 classrooms were deleted.

MPI's Arguments in its Protest to the P&S Director

Based on information received from the Secretary of Public Works on October 18, 1996, and on knowledge gained from the RFP, MPI lodged a formal protest dated October 25, 1996 against the pending award under RFP No. DPW96-RFP-015 to Demapan. MPI alleged that Demapan was selected contrary to the evaluation factors as set forth in the RFP, scope of work, pre-proposal conference, and by the rules established in the CNMI Procurement Regulations. The appellant specifically cited the following arguments vis-a-vis the related PR provisions.

1. PR Section 3-301(1)(c). The selected contractor has never constructed its proposed building system in the CNMI or anywhere in the world. MPI claimed that the building components have never been assembled collectively as a system and tested for CNMI typhoon and seismic conditions, and therefore a performance record does not exist.
2. PR Sections 3-301(1)(g) and 3-102(7)(a). The selected contractor does not have a qualified A&E Joint Venture association as required under the Scope of Work. The requirement of the Scope of Work clearly states that proposals would come from a qualified joint venture of a CNMI Registered A&E design firm and a construction company. A team of Mechanical and Naval Architect/Marine Engineering does not necessarily qualify a CNMI Registered A&E firm to certify structures.
3. PR Section 3-102(8)(c)(iii). The selection of Demapan's proposal was an unconscionable award based on an unusually low offer, in the vicinity of 30% below the offer of MPI, which warrants an investigation into the pricing and viability of full performance.
4. On the Government's intention to proceed with the award of the contract during the pendency of the protest, MPI claimed that such action was based on an incorrect interpretation of the Procurement Regulations and that there was no provision or justification to relate PR Section 3-106 (Competitive Sealed Proposals Procuredures) to matters involving urgency/emergency.

Demapan's Comments to MPI's Protest

By letter dated November 20, 1996, Demapan submitted the following comments on MPI's protest:

- Demapan states that MPI's allegation that it has no satisfactory performance record is without merit. Demapan claims that all requirements specified within the RFP, as well as the notes of the pre-proposal conference, were fully discussed to the complete satisfaction

of the selection committee. Matters involving pricing, schedules, construction techniques and methodology, and design factors, among other concerns, were purportedly covered to the extent that the Committee unanimously recommended Demapan for award.

- With regard to its qualification as an A&E joint venture, Demapan claims that it is a common practice within the industry to utilize associates in which a related discipline is involved. According to Demapan, any structure under three stories may be signed and sealed by a CNMI registered professional within the discipline of structural, civil or architectural qualifications. Demapan further states that all drawings and calculations must be signed and sealed by a CNMI registered professional within the appropriate discipline and submitted to the rigorous and demanding review process of the Building Safety Code.
- On the allegation of unusually low price, Demapan contends that its proposal was based upon a reasonable profit margin utilizing proper construction management and methodology.

On January 15, 1997, the Director sent a letter to MPI again informing the latter that due to the complexity of the matter, the Director required an additional extension of time until January 30, 1997 to render a decision on the protest. However, in its letter to the Director dated January 17, 1997, MPI stated that it has not been notified by him of such extension before the deadline date of December 30, 1996. Accordingly, it had already filed an appeal with OPA on the morning of January 15, 1997.

MPI's Arguments in its Appeal to the Public Auditor

The P&S Director's failure to decide on MPI's protest by the specified deadline of December 30, 1996 prompted the filing of an appeal with OPA on January 15, 1997. In its appeal, MPI presented the original grounds for protesting the pending award as contained in its October 25, 1996 protest. MPI specifically requested the Office of the Public Auditor to stay any action of award under RFP No. DPW96-RFP-015 to Demapan, and to research the facts relating to the processing of this particular RFP. MPI further requested OPA to make applicable rulings under the CNMI Procurement Regulations.

The P&S Director's Comments in His Report to the Public Auditor

The P&S Director's report provided the following comments on the appeal:

- On the selected proposer's past performance, the P&S Director stated that the limited information that P&S has concerning the technical capabilities of the designated contractor indicates that Demapan and Quantum International have a satisfactory performance record. According to the P&S Director, testing for CNMI typhoon and seismic conditions was not a condition cited in the Scope of Work and there was no indication from the Building Safety Office that the proposed buildings would be unsafe.

The P&S Director also stated that the appellant attended the pre-proposal conference and never asked questions in order to clarify the company's understanding concerning the requirements of the buildings as to typhoon and seismic conditions.

- Regarding questions on the qualification of Demapan as a qualified A&E joint venture, the P&S Director provided a legal definition of a joint venture; however, a direct comment on the allegation was not provided. The P&S Director went further by generally stating that the tentative indication from DPW was that the selected proposer had met the requirements of the CNMI and the federal government.
- As for the alleged unusually low price of Demapan, the P&S Director claimed that price was only one of the evaluation factors. The selected proposer ranked first on other evaluation factors, including but not limited to the time requirements of the project. The selected proposer's proposal purportedly should save the government money and meet the objective of the project.
- With regard to the Government's intention to proceed with the award to Demapan, the P&S Director stated that the appellant erroneously confused a letter sent on December 6, 1996 justifying the making of an award under PR Section 5-101(2)(c)(i) with an emergency procurement under PR Section 3-105. The P&S Director claimed that the letter conformed to the requirements of the Procurement Regulations that the materials and services to be contracted are urgently required.

MPI's Comments on the P&S Report on the Appeal

MPI provided the following comments on the P&S Director's report:

- MPI claimed that Demapan enjoys a good reputation in its own field of Mechanical and Naval Engineering but has virtually no experience in building or systems construction. With regard to the performance of Quantum International, MPI presented a letter from a certain Mr. Gary Dean to the DPW Secretary detailing the following information related to Quantum International: (a) Quantum was allegedly first licensed on September 25, 1996 according to the Washington State Department of Labor and Industry, (b) Quantum International listed its corporate headquarters as Reno, Nevada, but its corporate status purportedly had been revoked by the Nevada Secretary of State on July 1, 1993, (c) Quantum's profile as provided to the general public at the CNMI Home Expo of 1996 allegedly did not list any pertinent job experience or qualifications, and (d) according to the letter, no system like the one proposed by Demapan and Quantum International had ever been built in the Marianas or exposed to the typhoons, climate and termites of the region.
- MPI contended that a team of a Mechanical and Naval Architect/Marine Engineer does not necessarily qualify as a CNMI Registered A&E firm for the purpose of certifying structures, and therefore Demapan's proposal would constitute a non-conforming bid.

- MPI stated that it had received information indicating that Demapan failed to include allowance for overhead and profit in its proposal. According to MPI, the rate conveyed was approximately 30% below market figures.
- MPI felt that the P&S Director took the liberty of proceeding with the award to Demapan by using urgency as a justification.

Demapan's Rebuttal to MPI's Comments

Demapan provided the following rebuttals to MPI's comments:

- Demapan stated that, in three formal presentations, every fact of the RFP and the official addendum was fully discussed on a point by point basis to the full satisfaction of the evaluation committee.
- Demapan rebutted MPI's allegation that it has virtually no experience in building construction. Demapan claimed that it has been involved with several construction projects both in Guam and the CNMI as a general contractor, construction manager, and subcontractor for over ten years.
- Demapan rebutted MPI's comments on Quantum's performance by stating that Quantum (a) had never claimed to have its corporate headquarters in Reno, Nevada, (b) has been a licensed general contractor in the state of Washington for the past eight years, and (c) has factory-certified technical supervisors for structural insulated panels (SIP).
- Demapan rebutted MPI's allegation that its price was unusually low by stating that its pricing was fully researched, with provision for contingency, overhead and profit margin.
- With regard to wind ratings and seismic conditions, Demapan said that SIPs have been successfully used since the 1930's, and they have been subject to rigorous testing and have secured approval from recognized authorities.

OPA's Comments

PR Section 5-102(1) provides, in pertinent part, that a written appeal to the Public Auditor from a decision by the Chief may be taken provided that the party taking the appeal *has first submitted a written protest to the Chief*, and the Chief has denied the protest or *has failed to act on the protest* [Emphasis added]. OPA has jurisdiction to hear this appeal as the appellant has complied with the requirements of PR Section 5-102(1) and has filed the appeal within ten working days as required in PR Section 5-102(3). The P&S Director's letter dated December 20, 1996 showed that he certified the need for additional time in deciding MPI's protest because of complexity, and accordingly reset December 30, 1996 as the date for his decision. A decision

on MPI's protest was not made by the P&S Director by the December 30, 1996 due date. We received MPI's timely appeal at 12:00 p.m. on January 15, 1997, the tenth working day from December 30, 1996. After the appeal had already been filed, we received a copy of the P&S Director's letter extending the date for his decision on MPI's protest to January 30, 1997. This extension became moot as jurisdiction on the matter already rested with the Public Auditor.

In its January 15, 1997 appeal, MPI referred to the arguments presented in its protest with the P&S Director dated October 25, 1996. MPI's protest mainly alleged that the selection of Demapan as a contractor for the subject RFP was made contrary to the evaluation factors set forth in the RFP, scope of work, and the pre-proposal conference, as well as the rules provided in the CNMI Procurement Regulations. Also, in its subsequent comments on the appeal, MPI claimed that it had been disadvantaged to the benefit of the winning proposer in the selection of contractors. Accordingly, we reviewed related files maintained at P&S and DPW to determine whether MPI's allegations have merit. Our review showed that (1) there were questionable scores given to the proposers in the evaluation of the proposals, (2) there was no evidence that the selection of the winning proposer was made in accordance with the criteria stated in the RFP, (3) the scope of work was significantly revised after the selection of Demapan, resulting in a significant increase in the price of the classrooms per square foot, and (4) there were violations of specific provisions of the CNMI Procurement Regulations pertaining to Competitive Sealed Proposals.

Evaluation of the Proposals

Our review of the documents pertaining to the evaluation of the proposals, particularly the evaluators' rating sheets, showed questionable scores given to the proposers. Specifically, of the six evaluation criteria, we found that: (1) on three criteria -- the manpower, financial capability, and warranty criteria -- some of the points given by the evaluators had no valid basis since the required data for the evaluation were not provided in the proposals, (2) on three criteria -- the innovative design concepts, manpower, and financial capability criteria -- the evaluators had no clear-cut guidelines for the points that should be given to each proposal, resulting in inconsistent points among the evaluators, and (3) on two criteria -- time frame for design and construction and price -- four of the five evaluators had not correctly used the evaluation guidelines, resulting in erroneous points given to certain proposers. Following are our comments on the scores given to the three short-listed proposers:

1. No valid basis. On manpower capability, Demapan received the maximum score of 10 points from one evaluator, 6 points each from two evaluators, and 2 and 5 points each from the two other evaluators even though no information regarding manpower resources was provided in Demapan's proposal. Unlike the other two short-listed proposers whose proposals provided data related to manpower resources, Demapan did not mention any information about the A/E firm, supervisor, foreman, and labor force which, according to the rating sheet, were to be considered in the evaluation of manpower capability.

Regarding financial capability, the rating sheet specified working capital ratio (ratio of current assets over current liabilities) as relevant information for the evaluation. However, the three short-listed proposers did not furnish any information on their working capital ratio or financial statements that might be used for the evaluation of financial capability. Without the relevant information for the evaluation, a question remains about the validity of the proposers' points for this criterion. On financial capability, the evaluators' rating sheets showed that Demapan received scores ranging from 0 to 5 points, MPI from 5 to 10 points, and GTS from 3 to 10 points.

As for warranty, the rating sheet specified the number of points to be given depending on the number of years of warranty provided in the proposal. Our review of the proposers' points on this criterion showed that one evaluator gave points to MPI and GTS that corresponded to a ten-year warranty; however, the two proposals did not specifically mention the number of years of their warranty. The other four evaluators gave points corresponding to a one-year warranty if there was no mention of the specific number of years of their warranty. In this instance, it appears that those four evaluators assumed that the proposers would be providing the standard one-year warranty on the whole building structure. Specifically for Demapan, one evaluator explained that the proposer was given the same points as those that did not provide specific years of warranty even though a panel component it had proposed carries a 50-year limited warranty, because such warranty does not cover the whole building structure or system.

In cases where relevant data for the evaluation were not provided in the proposals, it would have been prudent to assign a uniform and fair rating similar to warranty where a standard point was given when the needed data was not in the proposal. However, such rating system was not used in the evaluation of financial and manpower capabilities. As shown in the evaluators' rating sheets, although no relevant data was provided on financial and manpower capabilities, the evaluators gave varying points to the proposers (in some cases a "zero" score was given). The evaluators differed not only on which proposer had the edge but also differed significantly on the points given to the proposers. In fairness to all the proposers, the evaluators should have given consistent points in cases where no relevant information was provided. Although one evaluator was objective enough by giving half of the maximum points in case no relevant information was provided, other evaluators did not follow this approach.

Additionally, we believe that a proper evaluation of financial and manpower capabilities should consider the proposers' existing workload and the requirements of the subject project vis-a-vis the financial and manpower resources of the proposers. This evaluation approach would help ensure that the proposers have the financial and manpower capability to accomplish the project given their ongoing other obligations. However, one of the evaluators confirmed that this approach was not used in the evaluation of the proposers' capabilities.

2. No clear-cut guideline. We believe that a uniform evaluation of the proposals on the innovative design concepts, manpower, and financial capability criteria, representing 40 percent of the total available points, was not done because of the absence of a clear-cut guideline for the points that should be given to each proposal. Unlike the other evaluation factors -- time frame for design and construction, price, and warranty -- in which a clear and specific basis was provided, the innovative design concepts criteria was to be based on a generally stated subcriteria called “cost avoidance, minimum maintenance, energy efficiency, and life expectancy”, with no further guidelines. As for financial capability, the rating sheet provided only that it be based on the working capital ratio. Regarding manpower, the rating sheet provided only that the scores be based on the A/E firm, supervisor, foreman, and labor force provided in the proposals.

Since there was no clear-cut basis for scoring under the three criteria (innovative design concepts, manpower, and financial capability), documentation of the basis for the scores on these three criteria should have been provided to assure that an objective evaluation had been made. However, the basis of the points under these three criteria was not documented and, accordingly, a question remains on whether an objective evaluation was made. On the innovative design concepts, one evaluator explained only that he gave higher points to new, quicker-to-build designs with a strong resistance to termites and lower points to standard concrete designs.

3. Failure to follow the evaluation guidelines. The evaluation of (1) time frame for design and construction and (2) price was supposed to be a straightforward procedure in which the number of points was determined by simply referring to a table, as follows:

Time Frame for Design and Construction		Price	
Number of Days	Score	Price Per Sq. Ft.	Score
90 to 105	20 pts.	\$38 to 39	20 pts.
106 to 120	18 pts.	\$40 to 41	18 pts.
121 to 135	16 pts.	\$42 to 43	16 pts.
136 to 150	14 pts.	\$44 to 45	14 pts.
151 to 165	12 pts.	\$46 to 47	12 pts.
166 to 180	10 pts.	\$48 to 49	10 pts.
181 to 195	8 pts.	\$50 to 51	8 pts.

However, four of the five evaluators gave points to certain proposers contrary to the table shown above. On price per square foot, MPI proposed a per sq. ft. price of \$55.76 which should correspond to less than 8 points based on the given table; however, two evaluators gave instead a score of 20 and 10 points to MPI. For Demapan, the proposer had a per sq. ft. price of \$39.60 which should be equivalent to 20 points; however, three evaluators gave Demapan a score of 14, 14, and 16 points. With regard to GTS, the proposer’s per sq. ft. price was more than \$51 and therefore, the corresponding score should have been less than 8 points; however, two evaluators gave the proposer a score of 10 and 8 points, respectively.

In the evaluation of the time frame for design and construction, one evaluator gave 18 points to MPI while each of the other four evaluators gave it 12 points. MPI's time frame was 160 days and therefore, based on the given table, the 18 points given by one of the evaluators should have only been 12 points. For Demapan, the proposer received 14 points from one evaluator and 20 points each from the other four evaluators. Demapan's time frame was specified at 90 days and based on the given table, the 14 points from one of the evaluators should have been 20 points. As for GTS, 12 points each were given by three evaluators while the other two evaluators gave 14 and 16 points, respectively. The time frame of GTS was 160 days and the given table provided a score of 12 points; therefore, 14 and 16 points, respectively, from two evaluators should have only been 12 points.

It is important to point out that in this instance, proper evaluation by the Committee of all the proposals was crucial to the proposers, considering the narrow differences of the total scores. A slight error or mistake in scoring could definitely cause a significant change in the ranking of the proposers, especially those in the upper half of the list. For instance, our review of the summary of the evaluators' score sheets showed an error in the total points awarded for the fifth, sixth, and eighth ranked proposers. After making the necessary corrections, the fifth ranked proposer overtook the fourth ranked proposer and the seventh ranked proposer tied with the sixth ranked proposer. The urgency and importance of this project warrants a careful evaluation of the proposals in order to lessen the likelihood of protests from aggrieved parties. As shown in this procurement, considerable time were spent in resolving the protest from MPI, an aggrieved party, not to mention the delay in the construction of the classrooms while resolution of the protest was pending. Such delay was further heightened by the failure of P&S to decide on the protest when the protest was under its jurisdiction for almost three months.

OPA cannot provide a complete list of instances where the proposals may have been improperly evaluated, primarily because the reasons for the points given to the proposers were not documented by the evaluators. The rating sheets used in the evaluation of the 12 proposals set forth the points given to the proposers opposite each evaluation criteria; however, in most instances, there were no remarks from the evaluators as to their basis for the points given to each proposer. Although the CNMI Procurement Regulations do not specifically require such documentation, writing down the basis for the points given to each proposal would certainly help ensure objectivity in the evaluation as well as facilitate subsequent review of the evaluation.

Selection of the Winning Proposer

Our review of the related files maintained at P&S and DPW also reflected no evidence that the selection of the winning proposer was made in accordance with the criteria stated in the RFP. The scope of work and related addendum for RFP No. DPW96-RFP-015 specifically stated that the selection committee would convene immediately after the deadline for the submission of proposals and would review and *select the best qualified contractor for the project*. The Committee did convene after the proposal deadline and evaluated all 12 proposals. This evaluation showed

that MPI was the best qualified proposer based on the evaluation factors stated in the RFP as it received the most points among all proposers. However, the selection process did not stop at this point because the Committee short-listed the top three proposers.

We believe that the rules for Competitive Sealed Proposals, under which this solicitation was processed, do not contemplate a short-listing of the proposals similar to this RFP. It may be argued that the short-listing was the same as conducting discussions with proposers determined to be reasonably eligible of award under the rules for Competitive Sealed Proposals; however, in this case, we do not agree that the three highest-ranked proposers were the only ones eligible of award because the total score of the third-ranked proposer was very close to the total score of the next-ranked proposers. Normally, to determine proposers reasonably eligible for award, a minimum score would be stated in the RFP. In this instance, there was no statement of the minimum points required for a proposer to be considered for award, nor was there any mention in the RFP that a short-listing of the top-three proposers would be used.

Nevertheless, we are more inclined to believe that the short-listing of the top three proposers was confused with the procedures used for procurement of Architect and Engineer (A&E) services under PR Section 4-102 since the project involves the services of an A/E firm. In an interview, one evaluator initially justified the short-listing by commenting that this is a common practice for procuring A&E services pursuant to PR Section 4-102 in which discussion with at least three proposers is required and selection is made of the firm determined to be most highly qualified to perform the services. However, when we informed the evaluator that the subject RFP was processed under Competitive Sealed Proposals, he agreed that the rules under PR Section 3-106, Competitive Sealed Proposals, should have been used.

Furthermore, after short-listing the proposers, the Committee conducted discussions with the short-listed proposers and thereafter recommended Demapan for contract award. Our review of the September 11, 1996 memorandum that summarized the result of the discussions with the short-listed proposers showed, however, that there was no evidence to demonstrate that the selection of Demapan was based on the six evaluation factors stated in the RFP. The criteria used in the post-evaluation selection process focused on cost, time frame to construct, energy efficiency, and product quality. In this selection process, of the six criteria stated in the RFP, only cost and time frame to construct were specifically considered although the “innovative design concepts” may have been partly considered through the aspect of energy efficiency and product quality. It is evident from the Committee’s September 11, 1996 memorandum that the reason for the selection of Demapan was its presentation of a *high quality product at a reasonable cost in an acceptable time frame*.

Subsequent Revisions in the Scope of Work

After the selection of Demapan as the winning proposer, changes and revisions to the original scope of work were made which we believe to be significant. A major revision was the one-third reduction in the number of classrooms from the original 90 classrooms for Saipan, Tinian, and Rota to 60 classrooms for Saipan. Other significant revisions include the change in the

distribution of the 60 classrooms among the different public schools on Saipan including the designation of 16 classrooms -- about 27 percent of the 60 Saipan classrooms -- to a new school site in Dandan which was not previously identified in the original scope of work. Additionally, there were many changes or additions made to the technical specifications for the 60 classrooms, including certain civil, architectural, structural, mechanical and electrical requirements for the classrooms. The attached Exhibit A shows our comparison of the February 22, 1997 revised scope of work that was submitted to OIA with the original scope of work given to the proposers during the RFP solicitation in June 1996. As shown in Exhibit A, the following revisions were noted in the civil, architectural, and electrical requirements in the scope of work:

- On the civil requirements, five items in the revised scope of work were not previously provided in the original scope of work. These additional requirements were finalized by DPW as shown in a status report dated January 27, 1997 which was prepared by the DPW Architectural Consultant and a copy provided to Demapan.
- For the architectural requirements, there were 12 additions to the revised scope of work which were not previously provided in the original scope of work. Included in the 13 additions were five items specifically identified in Demapan's proposal which were subsequently added to the revised scope of work.
- Regarding the electrical requirements, the original scope of work provided that each classroom shall be air-conditioned. The type of number of units of air conditioners for each classroom was not identified in the original scope. As stated in the January 27, 1997 status report, one split-type air conditioner per classroom will be provided.

Our review showed that after Demapan had been selected, negotiations for the contract began and thereafter the original original scope of work was significantly revised. After informing Demapan by letter dated October 15, 1996 about its selection for contract award, various meetings were conducted from October 18, 1996 until late February 1997 to discuss and finalize the details of the scope of work. As changes were made to the scope of work, negotiations were conducted only with Demapan as the selected proposer, and accordingly only Demapan submitted a revised proposal. Our review of the documents in this RFP as well as interviews with knowledgeable DPW and PSS employees showed that similar negotiations were not conducted with the other two short-listed proposers or with any of the 12 proposers on this RFP.

Finally, on February 24, 1997, the DPW Secretary submitted to OIA the information package for the design and construction of the classrooms for various public schools in the CNMI in compliance with the OIA grant conditions. Among the documents submitted to OIA were the February 22, 1997 revised scope of work and the corresponding revised price proposal of Demapan submitted on February 19, 1997. Our review of the revision to Demapan's price proposal showed a significant increase in the proposed price of the 60 classrooms, as follows:

Original Price Per Sq. Ft.: \$3,650,000 divided by (32 ft. x 32 ft. x 90 classrooms)	\$39.60
Revised Price Per Sq. Ft.: \$3,332,000 divided by (32 ft. x 32 ft. x 60 classrooms)	<u>54.23</u>
Increase in Per Sq. Ft. Price	<u>\$14.63</u>

Total Increase in Price: \$14.63 multiplied by (32 ft. x 32 ft. x 60 classrooms) \$898,867

For discussion purposes, we compared Demapan’s revised price of \$3,332,000 with the price proposal of the second-ranked proposer, MPI, on the 60 classrooms. MPI’s original price proposal showed a total of \$2,919,900 for the 60 classrooms on Saipan, which is lower than Demapan’s revised price by \$412,100. However, we recognize the fact that the two prices were not completely comparable since the revisions to the scope of work were not reflected in MPI’s proposal. Nevertheless, we believe that a fairer result and a price on the revised scope that was more beneficial to the government would have resulted had the other proposers been allowed to also revise their proposals, since competition generally drives prices down.

In its submission to OIA, DPW also provided the details of its design and construction time frame, consisting of 60 days design phase and 90 days construction phase. Contrary to the documents on the evaluation of proposals and selection of Demapan, however, the evaluators had consistently interpreted that the original proposal of 90 days covered both the design and construction phase. In an interview, one of the evaluators agreed that Demapan’s 90-day time frame covered only the construction phase. The evaluator suggested, however that, in this case, the design phase (normally from issuance of notice to proceed, to submission of detailed drawings to DPW, to the issuance of a building permit) could be processed on a per school basis, which means that construction for some schools could start while waiting for the issuance of building permits for the other schools. The evaluator said that, under normal circumstances, the number of days involved from issuance of notice to proceed until issuance of a building permit is about 30 days. For comparison purposes, the evaluator suggested that we add 30 days to Demapan’s construction time frame of 90 days to get a rough estimate of the total number of days for both design and construction. Therefore, using this approach, Demapan’s performance time frame should have been considered to be 120 days and not 90 days in the selection of the winning proposer. Regarding MPI’s time frame, the same evaluator believes that its proposal of 160 days covered both the design and construction phase. If we were to compare the design and construction time frame proposed by both Demapan and MPI, the comparison would be difference of only 40 days in favor of Demapan.

Based on the foregoing discussion, a question appears on whether the reason for selecting Demapan based on its price and time frame would still be applicable given the subsequent changes made on its proposal and other information subsequently provided.

Violations of the CNMI Procurement Regulations

The CNMI Procurement Regulations, under “Competitive Sealed Proposals”, provide certain rules in cases where revision of proposals is necessary to ensure fair and equal treatment of the

proposers, and on behalf of the government, to obtain the best and final offer. Specifically, PR Section 3-106 (6), provides, in pertinent part, that:

Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and *prior to award* for the purpose of obtaining the best and final offer. [Emphasis added.]

Our review of documents on this RFP and discussions with knowledgeable P&S officers showed that there had been no award yet on this RFP when the revisions to the scope of work were made, and even prior to the issuance of this decision, there has been no final award to Demapan. It is clear, therefore, that the significant revisions to the scope of work, as they were made prior to award, should have prompted the responsible government agencies to provide opportunity to the other proposers for discussion and revision of their proposals. We have determined that, on this RFP, there was a violation of PR Section 3-106(6) quoted above. As previously noted, changes were made to the scope of work; however, negotiations were conducted only with Demapan and only Demapan was given the opportunity to revise its proposal, in violation of PR Section 3-106 (6). This action unfairly treated the other proposers on this RFP.

Additionally, we have determined that the selection of Demapan on this RFP was made in violation of the intent of PR Section 3-106(7) which states that:

Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the government taking into consideration price and the evaluation factors set forth in the request for proposal. No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

As previously stated, there was no evidence that the selection of Demapan was based on the six evaluation factors stated in the RFP. The criteria used in the post-evaluation selection process focused on cost, time frame to construct, energy efficiency, and product quality. In this selection process, of the six criteria stated in the RFP, only cost and time frame to construct were specifically considered although the “innovative design concepts” may have been partly considered with respect to energy efficiency and product quality. The other three criteria (warranty, manpower, and financial capability), were never stated in the Committee’s memorandum as factors in selecting Demapan.

Remedy Under the CNMI Procurement Regulations

PR Section 5-103(1) provides the following remedy prior to award:

If *prior to award* the Chief (P&S Director) or the *Public Auditor* determines that a solicitation or proposed award of a contract is in *violation of law or regulation*, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with law or regulation. [Emphasis added.]

We believe that the above remedy applies in this case since (1) there has been no final award yet on this RFP, and (2) we have determined that this solicitation and the proposed award to Demapan violated the CNMI Procurement Regulations. The remaining issue left is which remedy -- revision of the solicitation and proposed award to comply with the CNMI Procurement Regulations (first option), or cancellation and readvertisement of the RFP (second option) -- would be more advisable under the circumstances. In view of the urgency of this project, we recommend the first option, under which all the proposers on this RFP would be allowed to resubmit proposals according to the revised scope of work, and the revised proposals would be reevaluated to determine the best one. We believe that this remedial action would involve less time compared to a readvertisement of the RFP under the second option.

In its appeal, MPI also presented specific arguments in which it raised certain issues pertaining to: (1) the performance record of the selected proposer, (2) the qualification of the selected proposer as an A&E firm, (3) the proposed price of the selected proposer being unusually low, and (4) the proposed award of the contract while a protest is still pending. Following is our discussion of the merits of each of the four arguments in the order they were presented in the appeal:

1. Performance Record. MPI claims that the selected proposer's building components have never been assembled collectively as a system and tested for CNMI typhoon and seismic conditions, and therefore a performance record does not exist. It appears that the appellant implies that the absence of a performance record in the CNMI would not qualify one as a responsible proposer. We do not agree. Absence of a performance record in the CNMI does not automatically make a proposer nonresponsible. A satisfactory performance record can be established by researching the projects or work performance by the proposer in other jurisdictions. In this RFP, however, one of the evaluators confirmed that there was no verification of the information provided by the proposers from outside parties and that the information provided by the proposers in their proposals and presentations were the only ones available to the Committee. Since the remedy for this solicitation is either cancellation of the RFP and re-advertising, or allowing all proposers to submit revised proposals, the next evaluation of proposals should consider researching and verifying the performance record of proposers through independent sources, particularly with respect to off-island firms and projects.
2. A&E Qualifications. MPI claims that the selected contractor does not have a qualified A&E Joint Venture association as required under the Scope of Work because a team of Mechanical and Naval Architect/Marine Engineering does not necessarily qualify as a CNMI Registered A&E firm for the purpose of certifying structures. The original scope of work stated that DPW, in conjunction with PSS, was soliciting proposals from "qualified joint venture A&E/Construction firms." In an interview, the DPW Architectural Consultant who was closely involved in the solicitation stated that specifying "joint venture" of A&E firms in the RFP was not necessarily intended to mean a joint venture in a strictly legal and formal sense. According to the Architectural Consultant, the idea behind the requirement for an A&E/Construction firm was that the

drawings would be stamped by CNMI licensed architects and engineers who may or may not be directly connected with the company responding to the RFP. Nevertheless, since we have determined that as a remedy this RFP needs to be either canceled and re-advertised, or revised to allow all proposers to submit revised proposals, this requirement should be made clear to all the proposers in either case.

3. Unusually Low Price. MPI claims that the selection of Demapan's proposal was an unconscionable award based on an unusually low offer. As mentioned in the previous discussion, the revision on Demapan's price proposal showed a significant increase of \$14.63 per square foot in its proposed price for the 60 classrooms on Saipan. Because of the subsequent increase in Demapan's price, the appellant's allegation of unusually low price may no longer apply. In this case, an unreasonable price can only be determined by a detailed analysis of relevant cost and pricing data. However, such analysis is no longer necessary as we have already determined that as a remedy this RFP needs to be either canceled and re-advertised, or revised to allow all proposers to submit revised proposals based on the current scope of work.
4. Award Pending Resolution of a Protest. MPI claims that the Government's intention to proceed with the award of the contract during the pendency of the protest was based on an incorrect interpretation of the Procurement Regulations in that there was no provision or justification to relate Competitive Sealed Proposals Procureures to matters involving urgency/emergency. We do not agree. The Procurement Regulations allow an award to continue pending resolution of a protest under certain circumstances as provided in PR Section 5-101(2)(c).

DECISION

The Office of the Public Auditor **grants** the appeal **in part**. P&S and DPW are hereby directed to undertake either of two remedies: (1) cancel and re-advertise this RFP, or (2) allow *all* the proposers on this RFP to revise their proposals based on the revised scope of work. In view of the urgency of the classrooms project, we recommend that *all* the proposers on this RFP be given the opportunity to revise their proposals. If this remedy is objectionable, P&S and DPW should cancel and re-advertise this RFP. Under either remedy, however, we recommend that the scope of work be reviewed for adequacy and those items in the revised scope of work that pertain specifically to Demapan's proposal, such as those identified in Exhibit A, should be changed to ensure equal treatment of the proposers as well as proper competition among them. Additionally, the evaluation of the proposals and selection of the winning proposer, under either remedy, should be made in strict compliance with the CNMI Procurement Regulations, and the comments we made on this decision should be considered to ensure that the evaluation and selection process is properly conducted.

On the appellant's request that we stay the award under this RFP to Demapan, we can not grant the request as our most recent inquiry from the Division of Procurement and Supply showed

that Demapan has not yet been awarded a contract on this RFP. However, in the event a contract is still awarded to Demapan on the current RFP (DPW96-RFP-015), we order that such contract be terminated and the contractor be compensated for actual expenses reasonably incurred under the contract prior to termination. Such a situation should not, in any manner, affect the remedy stated in this decision.

PR Section 5-102(9) provides that the appellant, any interested party who submitted comments during consideration of the protest, the Chief (P&S Director), and any agency involved in the protest, may request reconsideration of a decision by the Public Auditor. The request must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. Such a request must be received by the Public Auditor not later than ten **(10) days** after the basis for reconsideration is known or should have been known, whichever is earlier.

ORIGINAL SIGNED

Leo L. LaMotte
Public Auditor, CNMI

April 4, 1997

DPW96-RFP-015
Design-Build of Classrooms in Various Public Schools
Comparison of Revised and Original Scope of Work

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
GENERAL	1 Prepare architectural design for review and approval by the Government.	Section 3.1	Same	
	2 Provide complete construction documents including: architectural, structural, mechanical and electrical drawings in compliance with "Classroom Requirements".	Section 3.2	Same	
	3 Provide technical specifications.	Section 3.3	Same	
	4 Provide structural, mechanical and electrical calculations.	Section 3.4	Same	
	5 Drawings, specifications and calculations shall be prepared, sealed and signed in compliance with P.L. 4-53 and regulations of the CNMI Board of Professional Licensing.	Section 3.5	Same	
	6 Secure all required Government permits.	Section 3.6	Same	
	7 Provide cost proposals with each progress submittal.	Section 3.7	Same	
	8 The total number of classrooms to be constructed is 60. Distribution of classrooms is as follows:	Section 2	Classroom requirements per school site.	(1)
	San Roque 4 Tanapag 0 Garapan 5 Oleai 5 San Vicente 2 San Antonio 3 Koblerville 5 Hopwood Jr. Hi. 10 Marianas H. S. 10 Dandan 16 Tinian - Rota - Total 60	San Roque 4 Tanapag 0 Garapan 10 Oleai 7 San Vicente 5 San Antonio 2 Koblerville 5 Hopwood Jr. Hi. 12 Marianas H. S. 15 Dandan - Tinian 15 Rota 15 Total 90		

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
GENERAL (Continued)	9 Contractor must pay all excise taxes. No waiver will be granted.		In the June 20, 1996 pre-proposal conference.	
	10 Performance and Labor & Materials Payment Bonds are required in the amount of 100% of the contract sum.		In the June 20, 1996 pre-proposal conference.	
	11 Building construction must comply with requirements of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, and Uniform Electrical Code.		In the June 20, 1996 pre-proposal conference.	
	12 Contractor must comply with Federal and CNMI Laws and Regulation.	Section 4.13	Same	
	13 Contractor must comply with OSHA requirements during construction.		In the June 20, 1996 pre-proposal conference.	
	14 Compliance with Wage Rate Determination will be required. Contractor must comply with the established wage rates in effect at the time a contract is executed.		In the June 20, 1996 pre-proposal conference.	
	15 Liquidated Damages will be applicable. The amount to be determined in negotiations before a contract is executed.		In the June 20, 1996 pre-proposal conference.	
	16 Progress payments will be subject to 10% retainage.		In the June 20, 1996 pre-proposal conference.	
	17 The Building Permit Fee will be waived. Building Safety Code plan review and Building Permit is required.		In the June 20, 1996 pre-proposal conference.	
18 Contractor must provide and pay for: A. Temporary construction fence. B. Temporary sanitary facilities. C. Cost of construction electrical power and water.		In the June 20, 1996 pre-proposal conference.		

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
CIVIL	1 Provide seepage pit for each building or connection to existing septic tank where tank is reasonably in close proximity to the building. Seepage pits shall comply with DEQ requirements. Contractor is to assume a connections length of 100 feet for each building block.	Section 4.14	Same. Also in the June 20, 1996 pre-proposal conference.	
	2 Connecting walkways will be 5 feet wide. Contractor is to assume a connecting walkway length of 50 feet for each building block, not including frontage.		Not stated	(2)
	3 Connecting walkways will not be covered.		Not stated	(2)
	4 Frontage walkways will be provided along one side of classrooms only. Concrete stoops will be provided at secondary exit doors.		Not stated	(2)
	5 Parallel walkways will be constructed away from the exterior wall of classrooms by 3 feet. The walkway at classroom entrances may be ramped for handicap access.		Not stated	(2)
	6 Contractor is to assume an average finished floor elevation of 12" above average existing grade. San Vicente will require additional backfill. Contractor to confirm by site visit.		Not stated	(2)
ARCHITECTURAL	1 Classrooms to be constructed on reinforced concrete slab on grade.	Section 4.1	Same	
	2 Classrooms must be handicap accessible and comply with ADA requirements, and CNMI and Federal Laws and Regulations.	Section 4.13	Same	
	3 Minimum classroom size shall be approximately 30' x 30' with 9'-0" ceiling height.	Section 4.2	Same	
	4 Roof assembly must have a minimum R value of 19. Exterior wall assemblies shall have a minimum R value of 11.	Section 4.5	Same	

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
ARCHITECTURAL (Continued)	5 Polystyrene insulation inside wall and roof panels shall be treated for termite protection.		Not stated	(2) (4)
	6 Roof eaves will be 36". Gables will be 24".		Not stated	(2)
	7 Roof fascia trim will be building manufacturer's standard "simple" design.		Not stated	(2)
	8 Gutters and downspouts will be installed on the entrance side of classrooms only.		Not stated	(2)
	9 The roofing material will be modified bitumen with light colored aggregate finish.		Not stated	(2)
	10 Single, termite treated wood sills inside wall panels shall be provided.		Not stated	(2) (4)
	11 The exterior wall finish will be paintable, wood grain "Hardiboard" applied directly to rigid insulation.		Not stated	(2) (4)
	12 Classrooms will have two entrance/exit doors.		Not stated	(2)
	13 Primary entrance/exit doors to classrooms will be set in an alcove and placed perpendicular to the exterior wall. Secondary Exit Doors will be located at the same end of the classrooms as the primary doors.		Not stated	(2)
	14 All doors shall be solid core or foam core hollow metal.	Section 4.9	Same	
	15 Locksets shall be heavy duty stainless steel or brass with lever handles. Door closers shall be heavy duty. Door stops shall be hook and eye type.	Section 4.10	Same	
	16 Operable windows shall be sliding, manually operated.	Section 4.11	Operable windows shall be lever handle, manually operated. Jalousie windows are not acceptable.	(1)

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
ARCHITECTURAL (Continued)	17 Each classroom shall have a storage closet and base cabinet with sink. Closets shall be furnished with a map rack and adjustable shelves for storage.	Section 4.3	Same	
	18 All shelving and cabinetry shall be fabricated with 3/4" exterior, marine plywood or other moisture resistant material. Particleboard is not acceptable.	Section 4.12	Same	
	19 The interior walls will be smooth finished, paintable, "Hardiboard".		Not stated	(2) (4)
	20 Finished floors will be vinyl composition tile.	Section 4.15	Same	
	21 Wall base material will be 4" rubber, cove.		Not stated	(2)
	22 The interior ceilings will be smooth finish, paintable, "Hardiboard".		Not stated	(2) (4)
	23 All exposed to view surfaces not factory finished shall be painted.		Not stated	
	24 Each classroom shall be furnished with the following: A. 1 each 4' x 20' chalkboard. B. 2 each 4' x 4' and 1 each 4' x 20' tackboards. C. 1 each 20' long map rail with hooks at 24" o.c.. D. 1 each fire extinguisher cabinet with 6 lbs. minimum dry chemical fire extinguisher. E. 1 each 12" diameter surface mounted wall clock.	Section 4.6	Same	
	25 All construction and furnishing shall be free of sharp edges and other potentially harmful conditions.	Section 4.16	Same	
STRUCTURAL	1 Buildings shall meet CNMI structural requirements for 155 MPH wind load and Seismic Zone 3.		In the June 20, 1996 pre-proposal conference.	
MECHANICAL	1 Each classroom shall be air-conditioned.	Section 4.7	Same	

REQUIREMENTS	2/22/97 REVISED SCOPE OF WORK	ORIGINAL SCOPE OF WORK		Remarks
		Ref.	Particular	
	2 Provide 4 ceiling fans in each classroom.	Section 4.7	Same	
ELECTRICAL	1 Fire alarm system connected to the existing school alarm system.	Section 4.8	Same	
	2 School bell system connected to the existing bell system.	Section 4.8	Same	
	3 Three rows of fluorescent lighting fixtures with diffusers, each row controlled by a separate switch. Fixtures shall have T8 lamps and electronic ballasts.	Section 4.8	Same	
	4 Air conditioners shall be remote controlled or thermostat controlled if packaged units. (Note: Status report dated January 27, 1997 specified that one split-type aircon per classroom will be provided.	Section 4.7	Each classroom shall be air-conditioned.	(3)
	5 Ceiling fans shall be rheostat controlled.	Section 4.8	Same	

Remarks

- (1) The original scope of work was subsequently modified. Included is a reduction in the number of classrooms from 90 to 60. The distribution of the classrooms was also revised. Classrooms supposedly to be constructed in Rota and Tinian were deleted from the RFP.
- (2) No provision in the original scope of work. Additional provisions incorporated into the revised scope of work were finalized per status report dated January 27, 1997 prepared by the DPW Architectural Consultant (a copy furnished to Demapan).
- (3) Original scope of work very general; revised scope of work more specific.
- (4) Specific items were found in Demapan's proposal and incorporated into the revised scope of work.