



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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)	APPEAL NO. BP-Ao77
)	
Appeal of Resources Management)	ITB13-DPW/ED-101
Int'l Corp. (RMIC))	"Wood Chippers"
)	
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July 8, 2013

CHRONOLOGY

April 5, 2013: Prior to this date, the Department of Public Works ("DPW") had issued five solicitations for wood chippers that DPW canceled.

April 5, 2013: ITB13-DPW/ED-101, the sixth solicitation for wood chippers, was approved by the Director, Procurement & Supply.

April 10, 2013: Addendum No. 1 to ITB13-DPW/ED-101 was issued.

April 18, 2013: Notice of Intent to Bid was received from Pacific Cooperation, Ltd. and RMIC.¹

April 19, 2013: Notice of Intent to Bid was received from RNV Construction.

May 6, 2013: Bid opening occurred at Procurement & Supply.

May 15, 2013: Procurement & Supply received DPW's award recommendation analysis which indicated that the contract should be awarded to Pacific Cooperation, Ltd.

May 16, 2013: The Director, Procurement & Supply approved DPW's award recommendation.

May 21, 2013: Notice of Intent to Award was issued to Pacific Cooperation, Ltd.

¹ Bidders were required to submit a Notice of Intent to Bid on or prior to April 19, 2013 in order to be able to submit a bid. No pre-bid conference was held by Procurement & Supply due to this requirement.

May 21, 2013: RMIC, USA Fanter and CM Marketing Solutions were notified that their bids were rejected for various reasons.

June 3, 2013: RMIC protested regarding its bid being rejected.

June 6, 2013: The Director, Procurement & Supply issued Director's Decision 13-006 denying RMIC's protest.

June 17, 2013: RMIC appealed the Director's Decision 13-006 to the Office of the Public Auditor ("OPA").

June 21, 2013: CM Marketing Solutions filed an appeal with OPA.

June 26 - 27 - 28, 2013: DPW, the Office of the Attorney General and the Director, Procurement & Supply considered awarding the contract to Pacific Cooperation, Ltd. while a decision was still pending on the RMIC appeal.

June 28, 2013: The Office of Procurement & Supply notified OPA that a contract would be awarded pending an appeal decision.

June 28, 2013: OPA advised against making an award pending an appeal on financial risk grounds and no contract was awarded.

APPEAL OF CM MARKETING SOLUTIONS

CM Marketing Solutions filed an appeal with OPA on June 21, 2013 but failed to file a protest with the Office of Procurement & Supply prior to appealing. The CNMI Procurement Regulations state

"A written appeal to the Public Auditor from a decision of the P&S Director may be taken provided that the party taking the appeal has first submitted a written protest to the P&S Director .."

NMIAC 70-30.3-505(a).

OPA has no jurisdiction to consider CM Marketing Solution's appeal because no protest was filed, as is required by the above regulation. Therefore, CM Marketing Solution's appeal is DISMISSED for lack of jurisdiction.

APPEAL OF RMIC

RMIC was not selected for award of the contract resulting from ITB13-DPW/ED-101 because its bid indicated that the equipment it bid did not meet the ITB requirements of a 19-inch drum. RMIC explains in its appeal letter that in evaluating its bid, DPW and the Director, Procurement & Supply erred by not understanding that the chipper it bid could handle up to 20-inch diameter products.

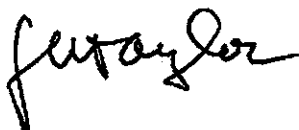
When an Invitation for Bid (“IFB”), also known as Competitive Sealed Bidding in the CNMI, is used as the procurement method, bids must exactly match what the ITB requests. NMIAC 70-30.3-205(i). The CNMI looks at the decisions issued by the General Accountability Office (“GAO”) on behalf of the Comptroller General of the United States as non-authoritative procurement decisions. Where CNMI law or regulation does not exist in procurement appeals, OPA uses GAO decisions for guidance. That is the case here regarding IFB procurements.

To be responsive, a bid, as submitted, must comply in all material aspects with the terms of the IFB. §NMIAC 70-30.3-205(j). The GAO supports the CNMI rule. *See Northwest Pesticide Enterprises, Inc.*, B-235982, Sept. 28, 1989, 89-2 CPD ¶ 284 at 2. A bid must be rejected if it modifies material requirements of the IFB. §NMIAC 70-30.3-205(k). *See Red John’s Stone, Inc.*, B-280974, Dec. 14, 1998, 98-2 CPD ¶ 135 at 4. The ITB contained a material provision stipulating that the drum of the chipper equipment had to be at least 19 inches in diameter. The equipment bid by RMIC had a drum opening of 18 inches that could be expanded to 20 inches. The ITB did not call for a drum size of 20 inches and the manufacturer’s representative indicated that it did not “recommend a steady flow of full capacity size brush, 20 [inch] material ...” January 16, 2013 Letter from Morbark, Inc. (supplier of the equipment).

Additionally, RMIC admits in its appeal to OPA that “a steady flow of one size, that is 20-inches, is not recommended.” Appeal letter from RMIC, June 11, 2013. This letter makes it clear that the chipper bid by RMIC could not be used constantly with 20-inch material. The ITB wanted equipment that could handle, in a steady state, 19-inch

material; the RMIC equipment has an 18-inch opening that can be opened wider but which cannot be used constantly at the wider opening. The equipment bid by RMIC was not compliant with the IFB requirement for a 19-inch opening. Thus, the Director's Decision 13-006 was correct in denying RMIC's protest.

RMIC's appeal is DENIED.



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CONCUR



MICHAEL PAI, CPA
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ITB13-DPW/ED-101 – Wood Chippers Equipment

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