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State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Engineering Division  
Honolulu, Hawaii 96813

September 12, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**Approval for Award of Construction Contracts –  
Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements and  
Job No. B45DM73A, Maalaea Small Boat Harbor Sewage Pump-out Facilities, Electrical  
and Other Harbor Improvements  
Maalaea, Maui, Hawaii**

Bids for Job No. B45XM82B Maalaea Small Boat Harbor Ferry System Improvements and Job No. B45DM73A Maalaea Small Boat Harbor Sewage Pump-Out Facilities, Electrical and Other Harbor Improvements Maalaea, Maui, Hawaii, as one project, were received and opened on June 27, 2008. The results and recommendations following the requirements of Chapter 103D Hawaii Revised Statutes (HRS) Procurement Code process, are as follows:

<u>Bidder</u>	<u>Total Bid</u>
Maui Master Builders, Inc.	\$20,219,073.00
Goodfellow Bros, Inc.	\$20,993,100.00
<b>Parsons RCI Inc.</b>	<b>\$23,363,428.54</b>
Kiewit Pacific Co.	\$25,367,000.00

The Projects generally consists of support facilities for the inter-island commuter ferry, including existing building renovation/replacement, water system improvements, sanitary facilities, wastewater treatment plant, electrical and lighting improvements, and supporting infrastructure. Funding for Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements is available through Act 160, SLH 2006, Item H14.05 and Act 213, SLH 2007, Item H15. Funding for Job No. B45DM73A, Maalaea Small Boat Harbor Sewage Pump-out Facilities, Electrical and Other Harbor Improvements is available through Act 160, SLH 2006, Item H14.01; Act 213, SLH 2007, Item H23; Act 213, SLH 2007, Item H16, and Federal Clean Vessel Act Grant funds.

**Rejection of Bids:**

Job No. B45XM82B Maalaea Small Boat Harbor Ferry System Improvements is funded by the Federal Transit Administration (FTA) at an 80:20 Federal to State match, and is subject to Federal and State requirements. The FTA has confirmed the DLNR's evaluation of nonresponsive bid proposals.

The bid proposal of the lowest bidder, Maui Master Builders, Inc., is recommended for rejection as nonresponsive to the following:

1. The Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification was not completed because a box was not checked to indicate whether the contractor "certifies,

2. to the best of its knowledge and belief, that it and any of its principals, as defined in 49 CFR Part 29.105(p). Are  are not  presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. and The undersigned certifies, that it will not enter into any subcontract greater than \$100,000 with a contractor that has been debarred, suspended or proposed for debarment.” Section 9. Debarment, Suspension, Ineligibility and Voluntary Suspension of the Federal Transit Authority (FTA) Contract Provisions in the Federal Provisions section of the contract specifications states “Bids that are not accompanied by a completed Debarment, Suspension, Ineligibility & Voluntary Exclusion certification must be rejected as nonresponsive.” Page FP-1 of the Federal Provisions states the need to execute the Certification. The General Information section of the Addendum No. 2 for the projects states that the “bidder is also required to submit . . . executed Federal Provisions consisting of . . . Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification”.
3. The Buy America Certification was not completed. Section 3. Buy America Requirements 49 U.S.C. 5323(j), 49 CFR part 661 of the Federal Transit Authority (FTA) Contract Provisions in the Federal Provisions section of the contract specifications states “Bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.” Page FP-1 of the Federal Provisions states the need to execute the Certification. The General Information section of the Addendum No. 2 for the projects states that the “bidder is also required to submit . . . executed Federal Provisions consisting of . . . Buy America Certification”. In Question 27 of the General Information section of the Addendum No. 2 for the projects regarding the Buy America Certification, the “Contractor must certify compliance or non-compliance by completing the Certification”.

The bid proposal of the second lowest bidder, Goodfellow Bros, Inc., is recommended for rejection as nonresponsive to the following:

1. No Federal Provisions were submitted with the bid. Page FP-1 of the Federal Provisions states the need to execute the Lobbying Certification, Disclosure of Lobbying Activities, Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification, Disadvantaged Business Enterprise (DBE) Certification, Disadvantaged Business Enterprise (DBE) Prompt Payment Certification and Buy America Certification. The General Information section of the Addendum No. 2 for the projects states that the “bidder is also required to submit 6 executed Federal Provisions consisting of: 1) the Lobbying Certification, 2) Disclosure of Lobbying Activities, 3) Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification, 4) Disadvantaged Business Enterprise Certification, 5) Disadvantaged Business Enterprise Prompt Payment Certification, and Buy America Certification.
2. The Debarment, Suspension, Ineligibility & Voluntary Exclusion Certification was not submitted with the bid. Section 9. Debarment, Suspension, Ineligibility and Voluntary Suspension of the Federal Transit Authority (FTA) Contract Provisions in the Federal Provisions section of the contract specifications states “The Bidder shall submit with their Proposal the Debarment, Suspension, Ineligibility & Voluntary Exclusion certification. Bids that are not accompanied by a completed Debarment, Suspension, Ineligibility & Voluntary Exclusion certification must be rejected as nonresponsive.”
3. The Buy America Certification was not submitted with the bid. Section 3. Buy America Requirements 49 U.S.C. 5323(j), 49 CFR part 661 of the Federal Transit Authority (FTA) Contract Provisions in the Federal Provisions section of the contract specifications states

“The Bidder must submit with their Proposal the appropriate Buy America certification, . . . Bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.”

4. The Disadvantaged Business Enterprise (DBE) Certification was not submitted with the bid. Section 20. Disadvantaged Business Enterprise (DBE) 49 CFR Part 26 of the Federal Transit Authority (FTA) Contract Provisions in the Federal Provisions section of the contract specifications states “The Bidder shall submit with their Proposal the DBE certification. Bids that are not accompanied by a completed DBE certification must be rejected as nonresponsive.”

**Bid Protests:**

Maui Master Builders, Inc. submitted bid protests on July 1, 2008 and July 15, 2008. In consultation with the Attorney General’s office and pursuant to Chapter 103D HRS, both protests were denied on August 21, 2008. Copies of the protests and denial letters are attached for information (see Attachments A and B). Pursuant to Chapter 103D HRS, the time for requesting a hearing regarding the protest denials has passed and the DLNR is proceeding to request award of the contract.

**RECOMMENDATION:**

That the Board reject Maui Master Builders, Inc.’s and Goodfellow Bros, Inc.’s bid proposals, and, pursuant to Chapter 103D HRS, award DLNR Job No. B45XM82B Maalaea Small Boat Harbor Ferry System Improvements and Job No. B45DM73A Maalaea Small Boat Harbor Sewage Pump-Out Facilities, Electrical and Other Harbor Improvements Maalaea, Maui, Hawaii to the Contractor, Parsons RCI Inc., for the proposal amount of \$23,363,428.54. Also, recommend that the Board authorize the Chairperson to enter into contracts and sign the necessary documents to implement the projects, subject to review and approval by the Attorney General’s office.

Respectfully submitted,



ERIC T. HIRANO  
Chief Engineer

Attachments

REQUESTED BY:

EDWARD R. UNDERWOOD, Administrator  
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



DAURA H. THELEN, Chairperson

**ITEM L-5**

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**AUG 21 2008**

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Mr. Duane P. Ting, President  
Maui Master Builders, Inc.  
72 Ting's Drive  
Wailuku, Hawaii 96793

Dear Mr. Ting:

**July 1, 2008 Protest of**  
**Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements and**  
**Job No. B45DM73A, Maalaea Small Boat Harbor Sewage Pump-out Facilities,**  
**Electrical and Other Harbor Improvements**  
**Maalaea, Maui, Hawaii**

This is a final decision in response to your July 1, 2008 protest letter.

Pursuant to section 103D-701(a), Hawaii Revised Statutes ("HRS"), a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for the bid opening. The bid opening for the subject projects was June 27, 2008. Therefore, your protest letter received by the Engineering Division on July 1, 2008 is not a timely protest and cannot be considered.

Furthermore, we note that there was no confusion in Addendum 2. The reference to "Items 1 to 52" was made in Addendum 2 under the disclosure of the notes taken at the voluntary prebid meeting held on June 9, 2008. At the June 9, 2008 meeting, this reference was correct. However, Addendum 2 amended the proposal form in the specifications by deleting it in its entirety and replacing this proposal form with a revised proposal form. The revised proposal form contained items 1 through 53. All bidders used the correct proposal form. There was no confusion.

In conclusion, your protest is denied. Pursuant to HRS section 103D-709 and section 103D-712, and Hawaii Administrative Rules, section 3-126-7 and chapter 3-126, subchapter 5, you have the right to an administrative hearing for which you are required to submit a request directly to the

**Attachment "A"**

AUG 21 2008

Office of Administrative Hearings, Department of Commerce and Consumer Affairs, King Kalakaua Building, 335 Merchant Street, Suite 100, Honolulu, Hawaii 96813, phone (808) 586-2828, within seven (7) calendar days of the issuance of this decision. In addition, you are required to inform Eric Hirano, Chief Engineer of the Engineering Division at (808) 587-0230 of your administrative appeal within seven (7) calendar days of the issuance of this decision.

Should you have any questions, please contact Mr. Eric Hirano or Ms. Nami Wong at (808) 587-0253.

Sincerely,



LAURA H. THIELEN  
Chairperson

c: Maui Land Board Member

**Maui Master Builders, Inc.  
72 Ting's Drive  
Wailuku, HI 96793**

July 1, 2008

DLNR Engineering  
Eric Hirano

Via Fax at 808-587-0283

Subject: Bid Proposal for Maalaea SBH Ferry Improvements, B45XM82B  
Bid Proposal for Maalaea Sewage Pump-Out Facilities, B45DM73A

Aloha Eric:

We wish to inform you that there is an error in the bid documents. Addendum No. 2 received by us on June 23, 2008 under General Information instructs that ...."Award of the contract will be made on the basis of the lowest responsible Total Sum Base Bid, items 1 to 52."

However the proposal form on the same Addendum No. 2 contains Items 1 to 53. This error is significant as it relates to the correctness of the General Information given to all bidders.

Although we were the apparent low bidder, it is our responsibility to bring this error to your attention in hopes that this may in fact save the State and/or Federal Government a large sum of money. We did not catch this error until 12 minutes of the due time of the bid on

Please advise us on your actions concerning the above. It is our opinion that the project should be rebid due to the significant error above.

Ahale,



Duane P. Ting, President

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

AUG 21 2008

Mr. Duane P. Ting, President  
Maui Master Builders, Inc.  
72 Ting's Drive  
Wailuku, Hawaii 96793

Dear Mr. Ting:

**July 15, 2008 Protest of  
Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements and  
Job No. B45DM73A, Maalaea Small Boat Harbor Sewage Pump-out Facilities,  
Electrical and Other Harbor Improvements  
Maalaea, Maui, Hawaii**

This is a final decision in response to your July 15, 2008 protest letter regarding the bid of Parsons RCI Construction ("Parsons").

You pointed out that on page P-14 of the bid proposal, the following is stated: "Bidders shall list only one Joint Contractor or Subcontractor per required specialty contractor's license." You pointed out that Parsons had listed three subcontractors with a C-31 specialty contractor's license.

Under the Department of Land and Natural Resources Interim General Conditions dated October 1994, which are a part of the contract specifications for the above-referenced jobs, irregular proposals are addressed in section 3.2 of the Interim General Conditions. The section starts off with the following statement: "Proposals will be considered irregular and may be rejected for the following reasons:" and then sets forth reasons in subsections a through g. Subsection (g) starts out by stating, "Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected." But subsection (g) also provides, in the last sentence, an exception to this statement as follows:

Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

**Attachment "B"**

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Parsons was able to confirm in writing within five working days that all subcontractors in question will actually be engaged on the project. Because Parsons' response fell under this exception, the proposal is not irregular based on the multiple listing of subcontractors.

Furthermore, Parsons responded within five working days that the three subcontractors listed under the C-31 license will perform three separate and distinct scopes of work as described below:

- 1) Sea Engineering, Inc. will repair spalled concrete associated with the existing harbor pier;
- 2) Shoreline Concrete will place Portland Cement concrete pavement for the parking lot;
- and 3) SF Masonry will place concrete for curbs, gutters and sidewalks.

Sea Engineering, Inc. has an "A" license and is therefore qualified to perform the repair of spalled concrete. Per Hawaii Administrative Rules ("HAR"), section 16-77-32, holders of "A" licenses automatically hold the specialty classification of C-31a, which is required to repair spalled concrete. Shoreline Concrete and SF Masonry both have a C-31a license and are therefore qualified to perform concrete placement. Although these subcontractors were erroneously listed as holding C-31 licenses, they in fact hold the appropriate license, which is C-31a, to do the work described by Parsons. The mistake is a minor informality that does not affect the proposal in any substantive way.

In HAR section 3-122-31, subsections (c)(1)(B) and (c)(1)(C), provide in relevant part as follows:

(c) A mistake in a bid discovered after the deadline for receipt of bids but prior to award may be:

(1) Corrected or waived under the following conditions:

\* \* \*

- (B) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the procurement officer may waive the informalities or allow the bidder to request correction by submitting documentation that demonstrates a mistake was made. Examples of mistakes shall include:
- (i) Typographical errors;
  - (ii) Transposition errors;
  - (iii) Failure of a bidder to sign the bid or provide an original signature, but only if the unsigned bid or photocopy is accompanied by other material indicating the bidder's intent to be bound;
- (C) The procurement officer may correct or waive the mistake if it is not allowable under subparagraphs (A) and (B), but is an obvious mistake that if allowed to be corrected or waived is in the best interest of the purchasing agency and is fair to other bidders;

Parsons' error may be corrected or waived under subsection (c)(1)(B). Such a correction or waiver would not affect price, quantity, quality, delivery, or contractual conditions. Moreover, for the sake of argument, even if the error could not be corrected or waived under subsection (c)(1)(B), it would be an obvious mistake that may be corrected or waived under subsection

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(c)(1)(C) in the best interests of our department. Because such correction or waiver would not substantively affect the proposal, such correction or waiver would be fair. We therefore determine that it is in the best interest of the public and the department to waive the mistake or allow Parsons to correct it.

You also noted that Dugied Construction, Inc. is listed as having a B license and doing general building and that Dugied Construction, Inc. will need numerous sub-trades requiring a specialty license, but no subcontractors for these sub-trades are listed.

Parsons intends to subcontract all of the general building construction to Dugied Construction, Inc. Dugied Construction, Inc. will contract with specialty subcontractors to execute the work. Dugied Construction, Inc. falls within the first tier of subcontractors. Dugied Construction, Inc.'s subcontractors would fall within a second tier of subcontractors. The Office of Administrative Hearings of the Department of Commerce and Consumer Affairs has determined that there is no requirement that bidders list subcontractors below the first tier (*see Frank Coluccio Construction Company v. City and County of Honolulu, et al.*, PCH 2002-7). For the sake of argument, even if second tier subcontractors did have to be listed, Parsons received quotes for all specialty work covered by various licenses and none exceeded one percent of the total bid amount. Therefore, under Hawaii Revised Statutes ("HRS"), section 103D-302(b), these subcontractors likely did not have to be listed on the proposal in order for the proposal to be accepted.

In conclusion, your protest is denied. Pursuant to HRS section 103D-709 and section 103D-712, and Hawaii Administrative Rules, section 3-126-7 and chapter 3-126, subchapter 5, you have the right to an administrative hearing for which you are required to submit a request directly to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, Office of Administrative Hearings, Department of Commerce and Consumer Affairs, King Kalakaua Building, 335 Merchant Street, Suite 100, Honolulu, Hawaii 96813, phone (808) 586-2828, within seven (7) calendar days of the issuance of this decision. In addition, you are required to inform Eric Hirano, Chief Engineer of the Engineering Division at (808)587-0230 of your administrative appeal within seven (7) calendar days of the issuance of this decision.

Should you have any questions, please contact Mr. Eric Hirano or Ms. Nami Wong at (808) 587-0253.

Sincerely,



LAURA H. THIELEN  
Chairperson

c: Maui Land Board Member  
Parsons RCI Inc.



2 Ting's Drive • Wailuku, Maui, HI 96793 • ABC 16784 • Phone: (808) 242-8180 • Fax: (808) 242-5708

July 15, 2008

DLNR Engineering  
Mr. Eric Hirano

Via Fax to 808-587-0283 and Email

Subject: Bid Proposal for Maalaea SBH Ferry Improvements, B45XM82B  
Bid Proposal for Maalaea Sewage Pump-Out Facilities, B45DM73A  
Protest of Bids made by Parson RCI Construction

Aloha Eric:

I have just received information on Parson's subcontractor list. I noted that the instructions on P-14 of the bid proposal states that....."Bidders shall list only one Joint Contractor or Subcontractor per required specialty contractor's license." Parson has listed three subcontractors with a C-31 specialty contractor's license.

I noted that Sea Engineering, Inc is listed as having a C-31 and doing spall repairs, but in fact Sea Engineering has an "A" license and does not have a C-31 license.

I noted that SF Masonry and Shoreline Concrete are both listed as having a C-31 license and both are listed a doing masonry work, but in fact none possess a C-31 license. Both listed subcontractor in fact have a C-31A license.

I also noted that Dugied Construction is listed as having a B license and doing general building and that there are numerous sub-trades requiring a specialty license, but there are no such subcontractors listed. Examples would be C-42, C-21, C-51, C22, C-37, C-52, and C-44. This clearly violates HRS Section 103D-302, as Parsons and/or Dugied have not listed the proper subcontractors that hold the necessary licenses to complete the work.

For all of the reasons above we believe that Parson's bid proposal is non-responsive. Please advise.

Mahalo  
  
Duane P. Ting, President