



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2009 JUL -6 P 3: 58

OFFICE OF ADMINISTRATIVE HEARINGS HEARINGS OFFICE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of	)	PCH-2009-14
	)	
TED'S WIRING SERVICE, LTD.,	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
Petitioner,	)	CONCLUSIONS OF LAW,
	)	AND DECISION
vs.	)	
	)	
HAWAII PUBLIC HOUSING	)	
AUTHORITY, STATE OF HAWAII,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On May 22, 2009, Ted's Wiring Service, Ltd. ("Petitioner"), filed a request for administrative review of the Hawaii Public Housing Authority, State of Hawaii's ("Respondent") denial of Petitioner's protest in connection with Respondent's Invitation for Bids for a project designated as the Emergency Call System Repair at Hoolulu and Kamalu, HPHA Job No. 07-011-403-S ("IFB"). The matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

The parties subsequently waived their right to an evidentiary hearing and agreed to submit this matter to the Hearings Officer for final disposition on the basis of legal briefs.

Accordingly, on June 9, 2009, Petitioner submitted its opening brief. Respondent filed its answering brief on June 16, 2009 and, on June 19, 2009, Petitioner filed a reply brief. Additionally, on June 26, 2009, the parties filed proposed findings of fact and conclusions of law.

Having reviewed and considered the evidence and arguments presented by the respective parties, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law, and decision.

## II. FINDINGS OF FACT

Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Petitioner's Proposed Findings of Fact Nos. 3, 6 - 8, and 12, together with Respondent's Proposed Findings of Fact Nos. 1 - 7, 10 - 12, and 15 - 17, filed herein on June 26, 2009, as the Hearings Officer's Findings of Fact, and renders the following additional Findings of Fact:

1. The IFB provides in relevant part:

1. The undersigned Bidder, having visited the site of work and being familiar with the conditions under which the work is to be performed and having read the specifications and other contract documents relating to Job. No. 07-011-403-S, Emergency Call System Repair at Hoolulu and Kamalu, hereby proposes to furnish all labor, materials, equipment, tools, transportation, permits, incidentals and supplies required to complete the project in full accordance with the contract documents for the following price(s).

BASE BID: Repair and upgrade the emergency call system at Hoolulu and Kamalu according to the plans and specifications. A lump sum bid of:

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

GENERAL EXCISE TAX: the Hawaii General Excise Tax of \_\_\_\_\_ % (indicate GET percentage):

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

TOTAL BASE BID: (*the sum of Base Bid and General Excise Tax*):

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

2. *In submitting this bid, it is understood that the award of contract will be made to the lowest responsible bidder for the TOTAL BASE BID, subject to the availability of funding (see paragraph 9 below).*

\* \* \* \*

4. Failure to complete the bid proposal in its entirety may cause a bid to be considered non-responsive.

\* \* \* \*

(Emphasis added).

2. According to the IFB, the contract would be awarded to the lowest responsible bidder for the Total Base Bid.

3. Petitioner was the apparent low bidder. Standard Electric, Inc. submitted the second lowest bid with a lump sum bid amount of \$579,000.00.

### III. CONCLUSIONS OF LAW

Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Petitioner's Proposed Conclusions of Law Nos. 1 - 2 and 5, together with Respondent's Proposed Conclusions of Law Nos. 2 - 5, filed herein on June 26, 2009, as the Hearings Officer's Conclusions of Law, and renders the following additional Conclusions of Law:

1. The Total Base Bid is defined in the IFB as "the sum of Base Bid and General Excise Tax". A literal application of this definition leads to only one reasonable

conclusion - that Petitioner's Total Base Bid consists of its Base Bid (\$539,874.00) plus and additional 4.712%, for a Total Base Bid of \$565,312.86.

2. Respondent's contention that "Petitioner's failure to provide the dollar amount of the GET as well as its failure to provide a Total Base Bid rendered the total price of the bid an unknown", is contrary to the express terms of the IFB and not supported by the evidence.

3. Hawaii Administrative Rule ("HAR") §3-122-31(c)(1)(B) provides that a mistake in a bid may be corrected or waived if the mistake "is a minor informality which shall not affect price . . ."

4. The Hearings Officer concludes that Petitioner's failure to specify the dollar amounts of the General Excise Tax and the Total Base Bid in its bid were minor informalities, rather than material nonconformities, which did not affect price or any other material term of the IFB. Therefore, Respondent should have waived these informalities or allowed Petitioner to request correction pursuant to HAR §3-122-31(c)(1)(B).

5. The Hearings Officer further concludes that (a) Petitioner's failure to specify the dollar amounts of the General Excise Tax and the Total Base Bid in its bid were mistakes that were obvious and evident from the face of the IFB; (b) correction or waiver of those mistakes would allow Respondent to award the contract to the lowest bidder and would therefore be in Respondent's best interest; and (c) because correction or waiver of those mistakes would not affect price or any other material term of Petitioner's bid, such measures would not provide Petitioner with an unfair advantage over the other bidders. For these reasons, Respondent should have waived these obvious mistakes or allowed those mistakes to be corrected pursuant to HAR §3-122-31(c)(1)(C).

#### IV. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer orders as follows:

1. Respondent's May 19, 2009 denial of Petitioner's protest is hereby vacated;

2. This matter is remanded to Respondent for further evaluation of Petitioner's bid consistent with this decision. Respondent shall thereafter award the contract pursuant to HRS §103D-302; and

3. Each party shall bear its own attorney's fees and costs.

Dated at Honolulu, Hawaii:                     Jul - 6 2009                    

**/s/ CRAIG H. UYEHARA**

CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs