

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 JUN 19 A 8:54

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

HEARINGS OFFICE

In the Matter of)	PCH-2009-10
)	
JAMES S. HUANG, dba ALL)	HEARINGS OFFICER'S
MAINTENANCE AND REPAIR,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND DECISION
)	
vs.)	
)	
UNIVERSITY OF HAWAII, OFFICE OF)	
PROCUREMENT AND REAL PROPERTY)	
MANAGEMENT,)	
)	
Respondent.)	
)	
and)	
)	
BRIAN'S CONTRACTING, INC.,)	
)	
Intervenor.)	
)	

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

I. INTRODUCTION

On May 6, 2009, James S. Huang, dba All Maintenance and Repair ("Petitioner"), filed a request for administrative review of the University of Hawaii, Office of Procurement and Real Property Management's ("Respondent") denial of Petitioner's protest in connection with Respondent's Invitation for Bids for the project

designated as, IFB No. 09-0264, College Hill, General Repairs, University of Hawaii at Manoa, Honolulu, Hawaii, Project No. UHM 08-002. The matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On May 11, 2009, Brian's Contracting, Inc. ("Intervenor") was granted leave to intervene in this proceeding.

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 stipulated facts, legal briefs, and oral arguments.

Accordingly, on May 18, 2009, the parties submitted their Stipulated Facts for the Hearings Officer's consideration. On the same date, Petitioner filed its opening brief and, on May 22, 2009, Respondent and Intervenor filed their responsive briefs.

On May 26, 2009, Petitioner filed a reply brief. On the same date, this matter came before the undersigned Hearings Officer for oral argument. Petitioner was represented by its attorney, Daniel T. Kim, Esq.; Respondent was represented by its attorney, Charles W. Gall, Esq.; and Intervenor was represented by its attorney, Eric S. Yamagata, Esq.

Following the presentation of oral arguments, the Hearings Officer directed the parties to submit proposed conclusions of law. Additionally, Intervenor requested and was granted leave to file a supplemental brief. Intervenor filed its brief on May 27, 2009.

After reviewing Intervenor's brief, the Hearings Officer granted Petitioner and Respondent leave to file responsive briefs. On June 5, 2009, the parties filed their proposed conclusions of law and supplemental briefs.

Having reviewed and considered the evidence and arguments presented by the respective parties at the hearing, 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 the Stipulated Facts (and attached Exhibits “A” – “D”), filed herein on May 18, 2009, as the Hearings Officer’s Findings of Fact.

III. CONCLUSIONS OF LAW

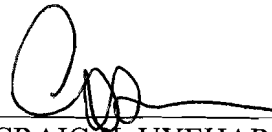
Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Respondent’s Proposed Conclusions of Law Nos. 1 – 16 filed herein on June 5, 2009, as the Hearings Officer’s Conclusions of Law.

IV. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer orders that Petitioner’s request for administrative review be and is hereby dismissed and that each party shall bear its own attorney’s fees and costs.

JUN 19 2009

Dated at Honolulu, Hawaii: _____



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

ORIGINAL

Of Counsel:
WONG, FELDMAN & KIM

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

JASON G.F. WONG #2097-0
DANIEL T. KIM #4542-0
American Savings Bank Tower
1001 Bishop Street, Suite 1028
Honolulu, Hawaii 96813
Telephone: (808) 523-1788
Facsimile: (808) 523-1583
E-Mail: wfk28law@aol.com

2009 MAY 18 P 4: 16

HEARINGS OFFICE

Attorneys for Petitioner
JAMES S. HUANG, dba
ALL MAINTENANCE AND REPAIR

OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of)	PCH-2009-10
)	
JAMES S. HUANG, dba)	STIPULATED FACTS AND ORDER;
ALL MAINTENANCE AND REPAIR,)	EXHIBITS "A" - "D"
)	
Petitioner,)	
)	
vs.)	
)	
UNIVERSITY OF HAWAII, OFFICE OF)	
PROCUREMENT AND REAL PROPERTY)	
MANAGEMENT,)	
)	
Respondent,)	
)	
and)	
)	
BRIAN'S CONTRACTING, INC.,)	Admin. Hearings Officer: Craig H. Uyehara
)	
Intervenor.)	
)	
)	
)	

STIPULATED FACTS

IT IS HEREBY STIPULATED, by and between the parties above named through their respective counsel of record, pursuant to Hawai'i Administrative Rules §3-126-69, that this matter proceed based on the following agreed upon facts, which are stipulated into evidence:

1. On January 30, 2009, Respondent UNIVERSITY OF HAWAII, OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT ("Respondent") issued a Notice to Bidders soliciting bids for the construction of a project entitled IFB No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002 ("Project").

2. Petitioner JAMES S. HUANG, dba ALL MAINTENANCE AND REPAIR ("Petitioner") submitted a base bid of \$272,900.00 and aggregate bid of \$274,796.80 for the Project for purposes of the bid opening. Petitioner possesses "B" (general building) contractor, effective as of May 15, 1992, and C-32 and C-33 specialty contractor licenses in the State of Hawai'i, effective as of November 28, 2008.

3. Intervenor BRIAN'S CONTRACTING, INC. ("Intervenor") submitted a base bid of \$273,000.00 and aggregate bid of \$276,200.00 for the Project for purposes of the bid opening. Intervenor possesses "A" (general engineering) contractor, "B" (general building) contractor, and C-31, C-33 and C-51 specialty contractor licenses in the State of Hawai'i, effective July 25, 2007.

4. The bid opening for the Project took place on March 11, 2009 at 2:30 p.m.

5. Petitioner was the low bidder at bid opening.

6. Intervenor was the second low bidder at bid opening.

7. Intervenor filed a protest dated March 16, 2009 with Respondent, which was received on March 17, 2009, on the basis that Petitioner did not list a C-48 specialty contractor as a subcontractor to perform the requirements in Technical Specifications Section 05120-Structural Steel (“Section 05120”).

8. Petitioner subsequently learned of Intervenor’s protest.

9. On March 18, 2009, Petitioner informed Respondent, among other things, that KWL Services, Inc. (“KWL”) is to be engaged by Petitioner to fabricate the two galvanized steel channels and one steel bracket called out in Section 05120 offsite on a furnish only basis.

10. On April 6, 2009, KWL informed Respondent via electronic mail that the price to furnish the two galvanized steel channels and one steel bracket for Petitioner on the Project is \$4,178.00.

11. By letter dated April 15, 2009, Respondent notified Petitioner that its bid was rejected on the following grounds:

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel “C” channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

A copy of the Respondent’s April 15, 2009 letter is attached hereto as Exhibit “A” and incorporated herein by reference, and received into evidence in its entirety.

12. On April 21, 2009, Petitioner served Respondent with its timely protest of the rejection of its bid. A copy of Petitioner’s protest, including all enclosures, is attached hereto as Exhibit “B” and incorporated herein by reference, and received into evidence in its entirety.

13. On April 29, 2009, the Respondent issued its decision denying Petitioner's protest. Respondent concluded that KWL should have been listed as a subcontractor in Petitioner's bid pursuant to HRS §103D-302(b). A true and correct copy of Respondent's April 29, 2009 letter denying Petitioner's protest, including all enclosures, is attached hereto as Exhibit "C" and incorporated herein by reference, and received into evidence in its entirety.

14. On May 6, 2009, Petitioner filed his Request for Hearing from the April 29, 2009 denial of his protest with the Department of Commerce and Consumer Affairs, Office of Administrative Hearings. A true and correct copy of the May 6, 2009 Request for Hearing, including all enclosures, is attached hereto as Exhibit "D" and incorporated herein by reference, and received into evidence in its entirety.

15. The Project plans, comprised of 19 sheets (A-01, S-0.1, S-0.2, S-1.1, S-1.2, S-1.3, S-1.4, S-2.1, S-2.2, AD-1.1, AD-1.2, A-1.1, A-1.2, A-1.3, A-1.4, A-1.5, A-2.1, A-2.2 and A-5.1) and the Project Invitation for Bids, which includes Addendum Nos. 1 and 2 and the Project Technical Specifications, are received into evidence in their entirety. Any party may attach portions of the Project plans or Project Invitation for Bids to its written submission(s).

16. This Stipulation may be executed in any number of counterparts by the parties hereto, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * *

DATED: Honolulu, Hawaii, May 18, 2009.



JASON G.F. WONG
DANIEL T. KIM
Attorneys for Petitioner
JAMES S. HUANG, dba
ALL MAINTENANCE AND REPAIR

CHARLES W. GALL
LEX R. SMITH
Attorneys for Respondent
UNIVERSITY OF HAWAII,
OFFICE OF PROCUREMENT AND
REAL PROPERTY MANAGEMENT

ERIC S. YAMAGATA
Attorney for Intervenor
BRIAN'S CONTRACTING, INC.

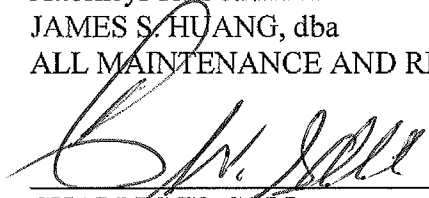
APPROVED AND SO ORDERED:

ADMINISTRATIVE HEARINGS OFFICER

STIPULATED FACTS: *James S. Huang, dba All Maintenance and Repair vs. University of Hawaii`i, Office of Procurement and Real Property Management, et al.*, PCH-2009-10

DATED: Honolulu, Hawaii, May 18, 2009.

JASON G.F. WONG
DANIEL T. KIM
Attorneys for Petitioner
JAMES S. HUANG, dba
ALL MAINTENANCE AND REPAIR



CHARLES W. GALL
LEX R. SMITH
Attorneys for Respondent
UNIVERSITY OF HAWAII,
OFFICE OF PROCUREMENT AND
REAL PROPERTY MANAGEMENT

ERIC S. YAMAGATA
Attorney for Intervenor
BRIAN'S CONTRACTING, INC.

APPROVED AND SO ORDERED:

ADMINISTRATIVE HEARINGS OFFICER

STIPULATED FACTS: *James S. Huang, dba All Maintenance and Repair vs. University of Hawaii, Office of Procurement and Real Property Management, et al., PCH-2009-10*

DATED: Honolulu, Hawaii, May 18, 2009.

JASON G.F. WONG
DANIEL T. KIM
Attorneys for Petitioner
JAMES S. HUANG, dba
ALL MAINTENANCE AND REPAIR

CHARLES W. GALL
LEX R. SMITH
Attorneys for Respondent
UNIVERSITY OF HAWAII,
OFFICE OF PROCUREMENT AND
REAL PROPERTY MANAGEMENT



ERIC S. YAMAGATA
Attorney for Intervenor
BRIAN'S CONTRACTING, INC.

APPROVED AND SO ORDERED:

ADMINISTRATIVE HEARINGS OFFICER

STIPULATED FACTS: *James S. Huang, dba All Maintenance and Repair vs. University of Hawaii, Office of Procurement and Real Property Management, et al., PCH-2009-10*



**UNIVERSITY
of HAWAII***
SYSTEM

Office of Procurement and Real Property Management

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawaii 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000001

EXHIBIT "A"

Mr. James S. Huang
April 15, 2009
Page 2 of 2

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

We appreciate your interest in the University.

Very truly yours,



Kurt Minato
Procurement Specialist

c: Brian Minaai, Associate Vice President for Capital Improvements
David Hafner, Assistant Vice Chancellor for Campus Services

000002

WONG, FELDMAN & KIM

Attorneys At Law

Jason G. F. Wong
Kale Feldman*
Daniel T. Kim

*A Law Corporation

American Savings Bank Tower
1001 Bishop Street, Suite 1028 ♦ Honolulu, Hawaii 96813

Telephone (808) 523-1788
Facsimile (808) 523-1583
E-mail wfk28law@aol.com

April 21, 2009

***HAND DELIVERY AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED (2 Sets)***

David McClain, Ph.D., President
Chief Procurement Officer
University of Hawai'i
2444 Dole Street, Bachman 202
Honolulu, HI 96822

Mr. Kurt Minato
Office of Procurement and Real Property Management
University of Hawai'i
1400 Lower Campus Road, Room 15
Honolulu, HI 96822

RE: **PROTEST of JAMES S. HUANG dba ALL MAINTENANCE AND REPAIR**
Department/Agency: University of Hawai'i
Project: IFB No. 09-0264, College Hill, General Repairs, University of
Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Dear President McClain and Mr. Minato:

We represent James S. Huang, dba All Maintenance and Repair ("All Maintenance and Repair"). Pursuant to Hawai'i Revised Statutes ("HRS") §§103D-203, 103D-701(a), Hawai'i Administrative Rules ("HAR") §3-126-3, and OPRPM Admin. Proc. No. A8.220(10), All Maintenance and Repair hereby PROTESTS the rejection of its bid on the above-referenced project.

All Maintenance and Repair's protest is based on Mr. Minato's April 15, 2009 letter, wherein he incorrectly concluded as follows:

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the

EXHIBIT "0"

000001

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 2

total bid amount, the University regrets to inform you that your bid could not be considered for award.

A copy of Mr. Minato's April 15, 2009 letter is attached hereto as Exhibit "A". Please be advised that All Maintenance and Repair hereby denies any and all allegations and assertions contained in the April 15, 2009 letter which are not specifically admitted or conceded in this protest letter.

All Maintenance and Repair is to engage KWL Services as a supplier of materials and not as a subcontractor on this project. Moreover, a C-48 structural steel specialty contractor license is not required to install the channel supports and brackets into wood. The subcontractor listing statute, HRS §103D-302(b), has no application to KWL Services or to its furnishing of materials to All Maintenance and Repair. Consequently, the University of Hawai'i's rejection of All Maintenance and Repair's bid should be reconsidered, All Maintenance and Repair's bid should be reinstated and the project should be awarded to All Maintenance and Repair as the lowest responsive and responsible bidder.

I. FACTUAL BACKGROUND

On January 30, 2009, the University of Hawaii issued its Notice to Bidders for the subject project. All Maintenance and Repair reviewed the Invitations for Bid and all documents within the IFB, including the Technical Specifications, Special Provisions, and General Provisions, and all such documents are incorporated herein by reference. The Notice to Bidders provided, in pertinent part:

To be eligible to bid, bidders must possess a valid State of Hawaii contractor's license B. **BID FROM CONTRACTORS NOT LICENSED IN THE STATE OF HAWAII WILL NOT BE CONSIDERED.**

All Maintenance and Repair holds the proper "B" license issued by the State of Hawaii Department of Commerce and Consumer Affairs and has held a Hawaii Contractor's "B" license since May 15, 1992.

In addition to reviewing the IFB, All Maintenance and Repair also reviewed the plans for the Subject Project. The plans set forth in Sheet A-1.1 the First Floor Plan, which depicted the Porte Cochere. In that portion of the plan, Sheet A-1.1 states: PORTE COCHERE REPAIR/UPGRADE PORTE COCHERE FRAMING PER STRUCT. DWGS. AND DET A4/5.1"

Detail 1 on Sheet S-2.1 of the Structural Drawings depicted a section view of the C10 channels, which was to serve as a horizontal backing. Detail 2 on Sheet S-2.1 showed that the C10 channels would be connected to 2-inch x 12-inch beams. The beams were made of wood.

000002

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 3

Detail A4 on Sheet A-5.1, entitled "Porte Cochere Soffit" depicted the attachment of the C10 channels to wood (following standard practice, wood items are shown in cross-hatch). Detail A4 states as follows: "NEW STEEL CHANNEL & FASTENERS PER STRUCT." Detail 2 on Structural Sheet S-2.1.

The project plans issued by the University of Hawai'i, through its project architect, Mason Architects, Inc., show that the C10 Channel is to be fastened onto wood members. The plans do not call for welding of the channel in place or any other structural steel type of work.

Based on its review of the contract documents, All Maintenance and Repair submitted a base bid of \$272,900.00 and aggregate bid of \$274,796.80 for the subject project. All Maintenance and Repair submitted its bid on the Subject Project before the bid submittal deadline of 2:30 p.m. on March 11, 2009. All Maintenance and Repair's bid has been determined to be the lowest bid received by the University of Hawai'i.

II. BASIC INFORMATION

This Protest is made pursuant to the Invitations for Bid, all documents within the IFB and HRS Chapter 103D, and the following information is provided in support of this Protest.

A. Name, Address and Contractor's License Number of Protestor

James S. Huang
dba All Maintenance and Repair
P.O. Box 893577
Mililani, Hawaii 96789
Telephone No. 808-623-7757
Facsimile No. 808-625-3538

Hawaii Contractors License No. BC-14609 (See Exhibit "B" attached hereto).

B. Procurement Which is the Subject of This Protest

College Hill Repairs, University of Hawai'i at Manoa, Invitations of Bids
(IFB) No. 09-0264, Project No. UHM 08-002

C. Statutory Basis for This Protest

This Protest is made pursuant to HRS chapter 103D, and the following information is provided in support of this Protest.

000003

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 4

D. Statement of Reasons for Protest

Mr. Minato's April 15, 2009 letter set forth the reason for the rejection of All Maintenance and Repair's bid. Mr. Minato stated: "Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel 'C' channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award."

The decision made by the University of Hawai'i, as reflected in Mr. Minato's April 15, 2009, is simply wrong. Mr. Minato's conclusion is based on the erroneous assumption that the work involved in installing the C10 channels constitutes structural steel work and requires a subcontractor with a C-48 specialty license. The plans clearly contemplate that the C10 channels are to be installed onto wood, which constitutes carpentry work within All Maintenance and Repair's "B" contractor license. Furthermore, All Maintenance and Repair holds a C-32 specialty classification to perform railing and handrail work. There is no need for a structural steel contractor to perform any work. While KWL Services holds a C-48 license, that is of no consequence herein because KWL Services is to be engaged as a supplier of materials that it will manufacture offsite in its own facility. It is not to be engaged to perform any work, i.e., labor, on the project site. A copy of a KWL Services' April 20, 2009 letter which confirms the arrangement is attached hereto as Exhibit "C". The finished product is to be installed by All Maintenance and Repair. Hence, the University of Hawai'i's analysis, as set forth in Mr. Minato's April 15th letter, is wholly flawed and necessarily fails.

In summary, All Maintenance and Repair was the lowest responsive and responsible bidder, and it should be awarded the contract for the subject project for the following reasons:

1. The installation of the C10 channels to 2" x 12" wood beams does not require the performance of work by a structural steel subcontractor.

In this case, the fabrication or manufacture of the C10 channels results in merely the supply of materials. KWL or any other supplier that would have provided that part was simply a supplier of materials—nothing more. There was no necessity that it perform welding or any specialized structural steel work to install the C10 channels at the project site.

2. Under the Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Hawai'i 450, 40 P.3d 73 (2002) decision, a "B" licensed contractor is authorized to bid on and act as the "prime" contractor on a project where it holds all of the appropriate license classifications to perform the scope of work at issue. By virtue of holding a "B" contractor license, All Maintenance and Repair

000004


David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 5

automatically holds a number of specialty classifications including C-6 carpentry framing. HAR §16-77-32(c).

Ms. Barbara Shideler, who is a project architect with the architectural firm engaged by the University of Hawai'i on the subject project, Mason Architects, Inc., has stated that the fastening of a C10 channels to wood beams constitutes carpentry work within Hawai'i's contractors license regulatory scheme. There is thus no need for a structural steel contractor to perform any work on the subject project. As a "B" licensee (and therefore, the holder of a C-6 specialty license), All Maintenance and Repair is properly licensed to fasten the C10 channels in the Porte Cochere area of the President's home at College Hill.

For these reasons, All Maintenance and Repair respectfully requests that the decision to reject its bid be reconsidered, that its bid be reinstated, and that the contract be awarded to it as lowest responsive and responsible bidder.

Very truly yours,



JASON G.F. WONG

DANIEL T. KIM

For

WONG, FELDMAN & KIM

Encl.: (A) Kurt Minato letter dated April 15, 2009
(B) Contractor license information re. James S. Huang
(C) KWL Services, Inc. letter dated April 20, 2009

cc: Mr. James S. Huang (w/encl.)

000005



**UNIVERSITY
of HAWAII**
SYSTEM

Office of Procurement and Real Property Management

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawai'i 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000006

EXHIBIT "A"

Mr. James S. Huang
April 15, 2009
Page 2 of 2

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

We appreciate your interest in the University.

Very truly yours,



Kurt Minato
Procurement Specialist

c: Brian Minaai, Associate Vice President for Capital Improvements
David Hafner, Assistant Vice Chancellor for Campus Services

000007

Professional and Vocational Licensing (PVL) Search - General Licensee

GENERAL LICENSEE	
LIC ID: CT-14609	Active/Inactive: ACTIVE
NAME: JAMES S S HUANG	
TRADE NAME: ALL MAINTENANCE AND REPAIR	
STATUS: CURRENT, VALID & IN GOOD STANDING	
ENTITY: INDIVIDUAL	BUSINESS CODE: SOLE OWNER
ORIG LIC DATE: 04/21/1988	EXPIRE DATE: 09/30/2010
CLASS PREFIX: BC	SPECIAL PRIVILEGE:
RESTRICTION:	EDUCATION CODE:
CONDITIONS AND LIMITATIONS:	
BUSINESS ADDR: 94-1388 MOANIANI ST #415 WAIPAHU HI 96797	
MAILING ADDR: P O BOX 893577 MILILANI HI 96789	

OTHER TRADE NAMES AND DBA'S	NAME EFFECTIVE DATE	NAME END DATE
AMR CONSTRUCTION	03/10/2008	

Click here to enter search criteria for prior complaints history ->
 For prior complaints and disciplinary history, contact licensing and business information center at (808) 587-3295.

License information on this site reflects information in the Professional and Vocational Licensing Division as of April 20, 2009; however, applications and forms are subject to standard processing time, and the information here does not reflect pending changes which are being reviewed. The site is updated daily, Monday through Friday, except holidays. The State of Hawaii makes no guarantees as to the accuracy of the information accessed, the timeliness of the delivery of transactions, delivery to the correct party, preservation of the privacy and security of users and makes no warranty including warranty of merchantability and fitness for a particular purpose. User is advised that if the information obtained herein is to be reasonably relied upon, user should confirm the accuracy of such information with the provider thereof.

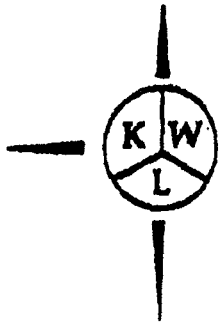
EXHIBIT "B"

000008

Professional and Vocational Licensing (PVL) Search - License Class

LIC: CT-14609 JAMES S S HUANG				
CLASS CODE	CLASS TYPE	EFFECTIVE	RESTRICTED	STATUS
C05	CABINET MILLWORK & CARPENTRY REMODELING & REPAIRS	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
C06	CARPENTRY FRAMING	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
B	GENERAL BUILDING	05/15/1992		
C32	ORNAMENTAL GUARDRAIL & FENCING	11/28/2008		
C33	PAINTING & DECORATING	11/28/2008		

000009



KWL Services, Inc.

WELDING CONTRACTOR • LIC. NO. C-12677

94-092 Leokane Street • Waipahu, HI 96797 • (808) 676-1808

All Maintenance and Repair

P.O. Box 893577

Millilani, Hawaii 96789

Attn: James Huang

Date: April 20, 2009

COLLEGE HILL GENERAL REPAIRS

UH AT MANOA, HAWAII

James,

Per our discussion regarding the two (2) channel brackets for the lanal beam support. This would be a "Furnish Only" item and we would require a Purchase Order in lieu of giving us a Contract since we would not have any personnel on site. This is our standard procedure for any Bid Proposal that is for a "Furnish Only" product. Our approach to this issue and insistence on receiving a P.O. is similar to buying a Simpson Bracket and having to list Simpson or Home Depot as a "Sub" just because we bought the item from them. It wouldn't make any sense. Also, we don't want the complications of documentation associated with a contract. We'll just make the product and you can come pick it up when we're finished and cut us a check..

Any time we propose to furnish only, we don't accept a contract. We want a purchase order. We would consider ourselves as a "supplier" not a sub.

Respectfully,

Edward S. K. Kaeka

Estimator / Supervisor

KWL Services, Inc.

EXHIBIT "C"

000010



UNIVERSITY
of HAWAII®
SYSTEM

RECEIVED APR 30 2009
Office of Procurement and Real Property Management

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 29, 2009

Daniel T. Kim
Attorney at Law
Wong, Feldman & Kim
American Savings Bank Tower
1001 Bishop Street, Suite 1028
Honolulu, HI 96813

Dear Mr. Kim:

SUBJECT: Protest of James S. Huang dba All Maintenance and Repair regarding IFB No. 09-0264, College Hill, General Repairs, University of Hawaii at Manoa, Honolulu, Hawaii, Project No. UHM 08-002 ("Project")

James S. Huang dba All Maintenance and Repair ("AMR") has protested the rejection of its bid on the above-referenced Project. As you informed us in AMR's protest letter dated April 21, 2009, you and your law firm are representing AMR in this matter. For the reasons described in this letter, the University denies AMR's protest.

I. BACKGROUND

Pursuant to Invitation for Bids (IFB) No. 09-0264 for the Project issued in January 2009, the University solicited bids to perform general repairs to the College Hill residence, which is part of the University of Hawaii at Mānoa campus. At the bid opening conducted on March 11, 2009, bids from thirteen vendors were opened, with AMR submitting the apparent low bid.

By letter dated March 16, 2009 (Exhibit A), Brian's Contracting, Inc. (Brian's), the apparent second low bidder, maintained that the bid submitted by AMR should be rejected from consideration of award on the grounds that the "Listing of Joint Contractor and/or Subcontractors" submitted with the bid failed to include a licensed C-48 Structural Steel subcontractor to perform work required under Section 05120 of the technical specifications in the IFB. Moreover, Brian's claimed that the value of the work to be performed by the C-48 subcontractor was greater than one percent of AMR's total bid, and therefore AMR's failure to list such a subcontractor was not subject to waiver by the University under section 103D-302(b), Hawaii Revised Statutes (HRS).

By letter dated March 18, 2009 (Exhibit B), AMR stated that the reason it did not list a C-48 specialty subcontractor in its bid was that the work involved in the installation of the steel "C" channel supports and the steel bracket described in the IFB technical specifications could be performed as carpentry work. AMR pointed out that such carpentry work would be permitted under AMR's B General Building Contractor's License. Moreover, AMR advised that KWL Services, Inc. (KWL), a C-48 Structural Steel Specialty Contractor, provided it with a quote to

000001

EXHIBIT "C"

1400 Lower Campus Road, Room 15 Honolulu, Hawai'i 96822
Telephone: (808) 956-8687 Fax: (808) 956-2093
An Equal Opportunity/Affirmative Action Institution

"furnish only" the "C" channel supports and the steel bracket; AMR also forwarded to the University a copy of the KWL quote (Exhibit C).

Since the KWL quote included both the furnishing of the steel channel supports and the steel bracket as well as the furnishing and installation of a bronze handrail called for under another section of the IFB technical specifications, the University procurement officer for the Project requested KWL to provide a cost breakdown of its quotation and was advised by KWL that the cost to furnish the channel supports and the steel bracket totaled \$4,178.00 (KWL breakdown) (Exhibit D).

Based upon the information provided by AMR (including the KWL quote) and KWL (the KWL breakdown), and the IFB requirements, the University's procurement officer, by letter dated April 15, 2009 (Exhibit E), advised AMR that (1) AMR's bid could not be considered for award due to AMR's failure to list KWL in the joint contractor and subcontractor listing which accompanied the bid for the furnishing of the steel "C" channel supports and the steel bracket; and (2) this omission in AMR's joint contractor and subcontractor listing could not be waived under HRS section 103D-302(b) since the value of this unlisted subcontractor work exceeded one percent of AMR's total bid amount.

In its protest letter dated April 21, 2009, AMR has contended that: (1) it was not required to include KWL on the listing because KWL is not to be engaged to perform any work on the Project site, (2) there was no need for a subcontractor holding a C-48 structural steel specialty license to perform any work on the subject Project; and (3) the rejection of AMR's bid should be rescinded and AMR awarded the Project contract as the lowest responsive and responsible bidder.

II. ANALYSIS OF ISSUES PRESENTED

A. Failure to Identify KWL as a Subcontractor in the Bid

The requirement for the listing of subcontractors in bids for construction projects is addressed in HRS section 103D-302(b), which provides as follows:

An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of work to be performed by each. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount. (Emphasis added)

In the IFB for the subject Project, pages BID – 7 and BID - 8 provided a form entitled "Listing of Joint Contractor and/or Subcontractors" which advised that "[e]ach bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or

subcontractor(s) for performance of this contract" and that "[t]he bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s)." The form provided in the IFB included spaces and columns for such information and further advised that "[a]ll bids which do not comply with this requirement may be rejected." A copy of the listing form which accompanied the bid submitted by AMR is attached (Exhibit F).

Section 05120-Structural Steel of the IFB technical specifications addresses the technical requirements for both the fabrication and the erection of structural steel channel supports and the steel bracket as shown on the drawings which accompanied the IFB. In its March 18, 2009 letter, and as reiterated in its protest letter, AMR contends that it was not required to list a subcontractor with a C-48 structural steel specialty license because AMR itself could install the steel C-supports and the steel bracket as carpentry work under AMR's B General Building Contractor's license. However, this contention ignores the fact that in both AMR's letter and its protest, AMR acknowledges that it obtained a quote from and intended to engage KWL Services, Inc., a C-48 licensed contractor, to fabricate the steel supports and the steel bracket in accordance with the structural steel fabrication requirements set forth in the IFB technical specifications.

In its protest, AMR presents two additional arguments in support of its contention that it was not required to identify KWL as a subcontractor in AMR's bid for the Project. First, AMR argues that KWL should be considered a supplier of materials rather than a subcontractor. In support of this argument, AMR has provided an April 20, 2009 letter from KWL wherein KWL maintains that it will be furnishing the steel channel supports and the steel bracket under a purchase order rather than a contract with AMR (KWL letter). In addition to the University rejecting the notion that a purchase order is not a form of contract, we would point out that in the KWL letter, the KWL quote, and the KWL breakdown, KWL acknowledges that it will be "making" or fabricating the steel channel supports and the steel bracket, and that this work will be required to conform with the IFB technical specifications for structural steel fabrication.

Secondly, AMR argues that it was not required to list KWL as a subcontractor because it will not be performing any work on the Project site. We can find no language or provision in HRS section 103D-302(b) that limits the bidder's obligation to identify, in the bid, only those subcontractors who will be performing work on or within the Project site. On the contrary, HRS section 103D-302(b) requires the listing of all subcontractors to be engaged by the bidder and the nature and scope of the work to be performed by each in the performance of the contract. Since the IFB technical specifications and drawings are to be incorporated by reference in the Project construction contract awarded pursuant to the IFB and KWL will be performing fabrication work set forth in the IFB technical specifications and drawings, AMR should have identified KWL as a subcontractor in its bid as required under HRS section 103D-302(b).

B. The Failure to Identify KWL as a Subcontractor Cannot be Waived

Having determined that KWL should have been listed by AMR in the joint contractor and subcontractor listing which was submitted with AMR's bid, the University also notes that HRS section 103D-302(b) further provides that "[c]onstruction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount."

In reviewing the KWL quote, as prepared by KWL and provided by AMR to the University, the University's procurement officer for the Project requested that KWL provide a cost breakdown of its quote to identify that portion of the cost attributable to furnishing the steel channel supports and the steel bracket. In response to this request, KWL advised the University's procurement officer that the cost of such work was \$4,178.00 (Exhibit D).

When compared to either AMR's basic bid of \$272,900, or AMR's total aggregate bid of \$274,796.80 (which includes unit pricing for possible additional work), all as set forth in AMR's Project bid, the value of the work to be performed by KWL for the Project exceeds one percent (1%) of AMR's total bid amount. Accordingly, under HRS section 103D-302(b), the University is not authorized to waive AMR's failure to identify KWL as a subcontractor in AMR's bid for the Project.

III. CONCLUSION

Based on the above findings that AMR did not comply with the subcontractor listing requirements in the subject IFB, it is determined that the University acted properly in concluding that the bid submitted by AMR was non-responsive and could not be considered for award under the IFB. Accordingly, the protest submitted by AMR with respect to this Project is hereby denied. This determination is final and conclusive on behalf of the University. Pursuant to section 3-126-7, Hawaii Administrative Rules (HAR), this is to advise you of a protestor's right to an administrative proceeding for review of this determination as provided in HAR subchapter 5. This can be accomplished by submitting the required notice to the State Department of Commerce and Consumer Affairs requesting a hearing within seven (7) calendar days of the issuance of this determination in accordance with HRS section 103D-712.

Respectfully submitted,



Duff Zwald
Director

Attachments

cc: David McClain, President

000004

BRIAN'S CONTRACTING, INC.

P.O. BOX 17790, HONOLULU, HAWAII 96817
LICENSE NO. ABC-28123

Date: March 16, 2009

To: University of Hawaii
Office of Procurement and Real Property Management (OPRPM)
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

Attention: Contracting Officer

Subject: College Hill, General Repairs
University of Hawaii at Manoa, Honolulu, Hawaii
Project No. UHM 08-002
Bid Date: March 11, 2009, 2:30 p.m.

Dear Contracting Officer,

In reference to the above subject bid, we would like to inform you that the bid submitted by the apparent low bidder, All Maintenance and Repair contractor's license no. BC-14609 does not comply with State Procurement Law and Contract Bid Requirements and therefore should be rejected from consideration of award for the following reasons:

1. The bid submitted by All Maintenance and Repair, does not comply with state law: Part III. SOURCE SELECTION AND CONTRACT FORMATION (HRS 103D-302), please see attached copy, for the following reason:

The bid submitted by All Maintenance and Repair, did not list in their bid proposal page BID-7 under "LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS" a licensed specialty subcontractor with the specialties, 'C-48' "Structural Steel" to perform the work per bid specification sections: 05120 Structural Steel and work per details 3/S-1.4, 1/S-2.1, and 3/S2.1 per bid plans.

The value of the structural steel work is substantial and not incidental (please see attached proposal by K&S Welding for \$5,850.00 dated April 8, 2008: the lowest of two subcontractor's proposals for subject project) and is greater than one percent: (2.14%) of All Maintenance and Repair's total bid amount of \$273,345.15: $\$5,850.00 / \$273,345.15 = 2.14\%$ of the total bid amount.

2. The bid submitted by All Maintenance and Repair also does not comply with contract bid documents as follows:

Bid proposal page Bid-7 third paragraph, specifically requires that

"...as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general contractor) must have the appropriate 'C' specialty Contractor's license either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs."

All bids which do not comply with this requirement may be rejected.

000005

Page 1 of 2

EXHIBIT A

RECEIVED
UNIVERSITY OF HAWAII
OPRPM
2009 MAR 17 P 12:38

According to the State of Hawaii Professional and Vocational Licensing (PVL) Search – License Class web site, All Maintenance and Repair does not possess the “C-48” specialty license for the Structural Steel work required in the project in addition they did not list any sub contractor with the “C-48” specialty license.

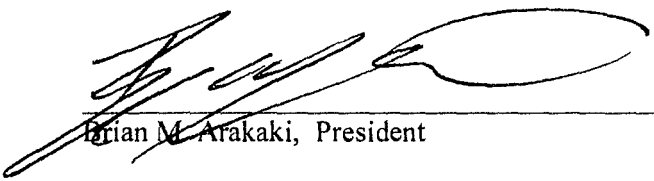
Based on the Hawaii Supreme Court’s January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Hawaii 450 (2002) the bidder as a general Contractor (‘A’ or ‘B’ license) is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder (‘A’ or ‘B’ General Contractor) to act as a specialty (‘C’ license) Contractor in any area in which the bidder (‘A’ or ‘B’ General Contractor) has no specialty Contractor’s and in this case the bidder does not possess the specialty ‘C-19’ and ‘C-36’ licenses.

For these reasons above, we believe that the bid submitted by All Maintenance and Repair does not comply with State Law and Contract Bid Document Requirements and therefore should be rejected from consideration of award.

Thank you, for your attention. Please feel free to call our office at once for any questions.

Yours truly,

Brian’s Contracting, Inc.



Brian M. Arakaki, President

proves a department's expenditures; provided that the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed as a grand jury counsel, the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian home lands trust individual claims review panel, shall become a deputy attorney general. [L Sp 1993, c 8, pt of §2; am L 1994, c 92, §3 and c 188, §2]

§103D-210 REPEALED. L 1994, c 186, §25.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

[§103D-302] **Competitive sealed bidding.** (a) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 103D-301. Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.

(b) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids that do not comply with this requirement may be accepted if the chief procurement officer or rules of the policy office conclude that acceptance is in the best interest of the public and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy office shall adopt rules which specify:

- (1) The form that the notice is to take;
- (2) What constitutes a reasonable interim between publication and bid opening; and
- (3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by rules adopted by the policy office.

(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptabil

TECHNICAL SPECIFICATIONS

TABLE OF CONTENTS

COLLEGE HILL

GENERAL REPAIRS

AT

UNIVERSITY OF HAWAII AT MANOA
HONOLULU, HAWAII

PROJECT NO. UHM 08-002

SECTION NO.	TITLE	PAGES
	TABLE OF CONTENTS	1 - 2
DIVISION 1	GENERAL REQUIREMENTS	
SECTION 01001	GENERAL REQUIREMENTS	1 - 4
SECTION 01010	SUMMARY OF WORK	1 - 7
SECTION 01040	COORDINATION	1 - 5
SECTION 01100	HISTORIC STRUCTRES PRECAUTIONS	1 - 3
SECTION 01300	SUBMITTALS	1 - 6
SECTION 01400	QUALITY CONTROL	1 - 4
SECTION 01500	CONSTRUCTION FACILITIES	1 - 2
SECTION 01567	POLLUTION CONTROL	1 - 3
SECTION 01700	CONTRACT CLOSEOUT	1 - 3
SECTION 01715	EXISTING CONDITIONS - ASBESTOS/LEAD/ HAZARDOUS MATERIAL SURVEY	1 - 2
Attachment:	Asbestos and Lead Report	1 - 84
DIVISION 2	SITE CONSTRUCTION	
SECTION 02070	SELECTIVE DEMOLITION	1 - 7
DIVISION 3	CONCRETE	
SECTION 03100	CONCRETE FORMWORK	1 - 5
SECTION 03200	CONCRETE REINFORCEMENT	1 - 4
SECTION 03300	CAST-IN-PLACE CONCRETE	1 - 12
SECTION 03730	CONCRETE REPAIRS	1 - 4
DIVISION 4	MASONRY (NOT USED)	
DIVISION 5	METALS	
SECTION 05120	STRUCTURAL STEEL	1 - 8
SECTION 05720	RAILINGS AND HANDRAILS	1 - 3

K&S WELDING, INC.

fabrication & erection • structural steel & miscellaneous metal

(808) 486-8988 • Fax (808) 487-2259

99-056 Koaha Way • Aiea, HI 96701



March 10, 2009

Subject: GENERAL REPAIRS - COLLEGE HILL
UNIVERSITY OF HAWAII AT MANOA

Gentlemen:

The following is our quotation for the subject project:
Section 05120: Structural Steel
Addendum 1 Noted

C-13639

Furnish and Install:

1. Steel channels as per 1,2/S-2.1.

Furnish Only, F.O.B. Jobsite:

1. Angle bracket as per 3/S-1.4.

The above for the sum of FIVE THOUSAND EIGHT HUNDRED FIFTY
AND NO/100 DOLLARS (\$5,850.00), tax included.

Note:

1. Steel with one shop coat primer except on galvanized items.

Exceptions:

1. Aluminum, cast iron, bronze, and stainless steel items.
2. Removal and demolition
3. Grout
4. Sheetmetal
5. Finish painting
6. Modification of bronze handrails
7. Simpson brackets
8. Metal stud framing
9. Mechanical hangers and supports
10. Pipe hangers and supports
11. Anchors, hangers, brackets, bolts, etc. for other trades.

Respectfully submitted,
K & S WELDING, INC.

Stanley George
President

000009

MUTUAL WELDING COMPANY, LTD. 2846 UALENA ST. SUITE 5, HONOLULU, HAWAII 96819

TELEPHONE: (808) 839-5111 / FACSIMILE: (808) 833-9534



March 11, 2009

Subject: College Hill, General Repairs – University of Hawaii at Manoa

Gentlemen:

The following is our quotation for the subject project:

Section 05120 – Structural Steel

Addendum # 1, 2 & 3

FURNISH & INSTALL:

1. Steel channel at Porte Cochere as per details 1 & 2/S-2.1. (Shoring of work area by others.)

FURNISH ONLY:

1. Custom steel bracket as per detail 3A-S1.4.

EXCEPTIONS:

1. Aluminum, cast iron, brass, bronze, and stainless steel items
2. Steel items not specifically mentioned above.
3. Bonds, permits and engineering.
4. Cost for special inspection.
5. Metal stud framing.
6. Painting over galvanized items.
7. Demolition, removal and replacement work.
8. Safety barriers and barricades.
9. Sheet metal work.
10. Bolts, straps, anchors, sleeves, hangers, etc., for other trades.

NOTES:

1. Steel to be galvanized only.
2. Shoring if required shall be by others.
3. Quote firm for 30 days.

The above for the sum of \$11,062.00 tax included.

Respectfully submitted,

MUTUAL WELDING COMPANY LTD.


Thomas K. Chun, Executive Vice President

000010

Professional and Vocational Licensing (PVL) Search - License Class

LIC: CT-14609 JAMES S S HUANG				
CLASS CODE	CLASS TYPE	EFFECTIVE	RESTRICTED	STATUS
C05	CABINET MILLWORK & CARPENTRY REMODELING & REPAIRS	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
C06	CARPENTRY FRAMING	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
B	GENERAL BUILDING	05/15/1992		
C32	ORNAMENTAL GUARDRAIL & FENCING	11/28/2008		
C33	PAINTING & DECORATING	11/28/2008		

000011

LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 1 of 2)

The following information shall be submitted, on this form, by each bidder as a bid requirement.

It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project.

Each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance of this contract. Failure to provide correct names and active license numbers as registered with the Contractor's License Board may be grounds for rejection of the bid submitted. The bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s).

The bidder acknowledges that as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs.

All bids which do not comply with this requirement may be rejected.

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work
RHM Painting LLC	C-26643 (C-33)	Painting
Paradise Reinforcing, INC.	C-22291 (C-41)	Rebar
TileCraft	C-17712 (C-51)	Hard Tile
ALCAL HAWAII	C-24089 (C-42)	Roofing
BENDCO	C-22320 (C-19)	Asbestos DEMO
JAYCO	C-12831 (C-32)	Railings
Structural Systems	AC-13555 C-34	Soil Stabilization
KES Welding, INC.	C-13639 (C-48)	Structural Steel
T. TAKEITA SHEETMETAL	C-5343 (C-44)	Sheetmetal
Paul's Electrical Contracting	C-26840 (C-13)	Electrical
Reliable Plumbing INC.	C-6595 (C-37)	Plumbing

RECEIVED
UNIVERSITY OF HAWAII
OPRPM

2009 MAR 18

General Contractor's Lic. No. BC-14609

James S. Huang

Db a All Maintenance and Repair

P.O. Box 893577

Mililani, HI 96789

Ph.: (808)623-7757

Fax: (808)625-3538

March 18, 2009

Re: College Hill, General Repairs, IFB No. 09-0264

Dear Procurement Officer,

In response to the protest on our Low Bid for College Hill General Repairs, we would like to take this opportunity to explain the reason for not listing a structural steel subcontractor with a C-48 classification.

Per the drawings, galvanized steel "C" channel for the porte cochere and steel bracket for the guest house laundry beam are required to be installed. These items are to be fabricated, drilled and galvanized offsite by a certified structural steel fabrication company. Once the steel channel and bracket are onsite, according to the drawings at S-2.1, A-5.1, and S-1.4, the method of installation requires wood drilling and then bolting the "C" channel and bracket to wood (no welding is required per drawings), and this is carpentry work and is under the scope of a "B" license.

Mr. Edward Kaeka of KWL Services, Inc. (a C-48 Structural Steel Contractor) provided a quote to us to "furnish only" the "C" channel and steel bracket. He stated that the "C" channel is basically a reinforcement bracket for a wood member and the installation should be done by a carpenter, only when the steel reinforcement is bolted or connected to steel would it require a C-48 contractor. Please feel free to call him at 676-1808.

Thank you for your attention to this matter and we hope that this matter can be resolved soon since we are as eager as you are to get the project started.

Sincerely,



James S. Huang, Owner
All Maintenance and Repair

EXHIBIT B

000013



ALL MAINTENANCE AND REPAIR

P.O. Box 893577
Mililani, HI 96789

Ph: (808)623-7767
Fax: (808)625-3538

FAX TRANSMITTAL FORM

Company: UH Facilities Management

From: Theresa Huang

Attention: Dean Uehara

Date Sent: 3/19/09

Phone:

Number of Pages: 3

Fax: 956-5385

Message: Here is the Proposal from KWL Services, Inc. as you requested.

000014

Proposal KWL SERVICES, INC.

Lic. #C-12577

94-092 Leokane St. • Waipahu • Hawaii • 96797 • PH (808)676-1808 • FAX (808)677-4081 • kwl.services@hawaiiantel.net

PROPOSAL SUBMITTED TO: General Contractor Bidders.		PHONE:	Page No. 1 of 1 pages	
ADDRESS:		DATE: March 11, 2009		
		JOB NAME: College Hill General Repairs		
		JOB LOCATION: Job No. 09-0264		
DATE OF PLANS:	Addendum 1-2 Acknowledged	KWL NO: 20	JOB PHONE:	

We hereby submit specifications and estimates for:

SECTION 05120: STRUCTURAL STEEL
SECTION 05720: RAILINGS AND HANDRAILS

FURNISH ONLY: (FOB JOBSITE)

- 1.) Two (2) each channel iron supports as per drawings. (2/A-2.1)
- 2.) One (1) each brackets at laundry room. (3A/S-1.4)

FURNISH AND INSTALL:

- 1.) Modify one (1) existing bronze handrail as required. (A1/A-5.1)

NOTE: Price is good for thirty (30) days.

EXCLUSIONS:

- 1.) Galvanizing, etching, priming, painting other than touch-up of welds.
- 2.) Concrete work, grouting, patching, chipping, demolition and removal work, etc.
- 3.) Fasteners, connection bolts, embeds, connection holes for other trades, stair nosings, etc.
- 4.) Special inspections, weld testing, calculations, etc.
- 5.) Any item not specifically listed above.

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Sixteen Thousand Eight Hundred Sixty-Three and 00/100 Dollars. (**\$16,863.00**)

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra coats will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's Compensation insurance.

Authorized Signature:

Edward S. K. Kaaka
Edward S. K. Kaaka, Estimator

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal - The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____
Signature _____

Date of Acceptance: _____

000015

Re: College Hill.General Repairs

Subject: Re: College Hill General Repairs
From: Eddie Kaeka <ekaeka.kwl@hawaiiantel.net>
Date: Mon, 06 Apr 2009 12:47:35 -1000
To: Kurt Minato <minato@hawaii.edu>

Kurt,

Normally, I don't do this kind of cost-break when I'm not listed as a sub. However, It seems that there may be a conflicting opinion and point of view. Therefore, I'll make an exception in this case.

Section 05120 - Structural Steel \$4,178.00

Section 05720 - Railings and Handrails \$12,686.00

The vendor we selected for the bronze handrail modification is from Seattle. We needed to pay his way here, room and board, use of KWL welding equipment, parts and labor. It seems that no one in Hawaii knows how to work with bronze... or can produce the parts necessary to modify the handrail.

-----Original Message-----

From: Kurt Minato
Date: 4/2/2009 4:06:03 PM
To: Eddie Kaeka
Subject: Re: College Hill General Repairs

Eddie

Thank you and I look forward to your response.

000016

EXHIBIT D



UNIVERSITY
of HAWAII®
SYSTEM

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawai'i 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000017

EXHIBIT E

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

We appreciate your interest in the University.

Very truly yours,



Kurt Minato
Procurement Specialist

c: Brian Minaai, Associate Vice President for Capital Improvements
David Hafner, Assistant Vice Chancellor for Campus Services

000018

LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 1 of 2)

The following information shall be submitted, on this form, by each bidder as a bid requirement.

It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project.

Each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance of this contract. Failure to provide correct names and active license numbers as registered with the Contractor's License Board may be grounds for rejection of the bid submitted. The bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s).

The bidder acknowledges that as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs.

All bids which do not comply with this requirement may be rejected.

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work
Hawaii Hardwood Flooring	C-19430 Class Code C-21	Flooring
Stonemasters	C-28397 Class Code C-51	Tile
Structural Systems, Inc.	AC-13555 Class Codes A, C-34	Soil stabilization and concrete
Bendco	C-22320 Class Code C19	Lead and Asbestos
Reliable Plumbing, Inc.	C-6595 Class Code C-37	Plumbing
T. Taketa Sheet Metal, Inc.	C-5343 Class Code C-44	Sheet Metal
HH Electric Inc.	C-13528 Class Code C-13	Electrical

CERTIFICATION REQUIRED ON PAGE 2 OF OPRPM FORM 54

000019

BID - 7

LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 2 of 2)

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work

The PRIME CONTRACTOR shall indicate its principal contractor's license number and classification code(s) it possesses.

BC-14609 General Building
*License Number Classification Code(s)

The contractor hereby certifies that the information provided is accurate and that itself and the joint contractor/subcontractor(s) listed meet all license or permit requirements for the State of Hawaii for this contract.

By [Signature] 3/11/09
Title: Sole Proprietor Date

*License number in compliance with Chapter 444-9, HRS and the Rules and Regulations of the Contractors License Board, Department of Commerce and Consumer Affairs.

WONG, FELDMAN & KIM

Attorneys At Law

Jason G. F. Wong
Kale Feldman*
Daniel T. Kim

*A Law Corporation

American Savings Bank Tower
1001 Bishop Street, Suite 1028 ♦ Honolulu, Hawaii 96813

Telephone (808) 523-1788
Facsimile (808) 523-1583
E-mail wfk28law@aol.com

May 6, 2009

VIA HAND DELIVERY

Office of Administrative Hearings
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 100
Honolulu, Hawaii 96813

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
2009 MAY -6 P 2:03
HEARINGS OFFICE

RE: **REQUEST FOR HEARING FROM APRIL 29, 2009 DENIAL OF
PROTEST BY JAMES S. HUANG dba ALL MAINTENANCE AND REPAIR**
Department/Agency: University of Hawai'i
Project: IFB No. 09-0264, College Hill, General Repairs, University of
Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Dear Office of Administrative Hearings:

This law firm represents James S. Huang, dba All Maintenance and Repair ("All Maintenance and Repair"), whose address is P.O. Box 893577, Mililani, Hawaii 96789, and whose telephone number is (808) 623-7757. Pursuant to Hawaii Revised Statutes ("HRS") §103D-709 and Hawaii Administrative Rules ("HAR") §§3-126-7(c), 3-126-42 and 3-126-59, All Maintenance and Repair requests a hearing to contest the University of Hawai'i's ("University") denial of its protest on the above-referenced project.

I. FACTS AND CIRCUMSTANCES OF GRIEVANCE

On January 30, 2009, the University issued its Notice to Bidders for the subject project. All Maintenance and Repair reviewed the Invitations for Bid ("IFB") and all documents within the IFB, including the Technical Specifications, Special Provisions, General Provisions and plans (collectively "bid documents") and all such bid documents are incorporated herein by reference. Based on its review of the bid documents, All Maintenance and Repair submitted a base bid of \$272,900.00 and aggregate bid of \$274,796.80. All Maintenance and Repair's bid is incorporated herein by reference. Bid opening took place at 2:30 p.m. on March 11, 2009. All Maintenance and Repair submitted the low bid on the subject project.

By letter dated April 15, 2009, the University notified All Maintenance and Repair that its bid was rejected on the following grounds:

EXHIBIT "D"

000001

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

A copy of the University's April 15, 2009 letter is attached hereto as Exhibit "1".

On April 21, 2009, All Maintenance and Repair served the University with its timely protest of the rejection of its bid. All Maintenance and Repair asserted, among other things, that it intends to engage KWL Services as a supplier of materials and not as a subcontractor. Consequently, the subcontractor listing statute, HRS §103D-302(b), has no application to KWL Services or to its furnishing of materials to All Maintenance and Repair. All Maintenance and Repair requested that the University's rejection of All Maintenance and Repair's bid be reconsidered, that All Maintenance and Repair's bid be reinstated and that the project be awarded to All Maintenance and Repair as the lowest responsive and responsible bidder. A copy of All Maintenance and Repair's protest, including attachments, is attached hereto as Exhibit "2" and incorporated herein by reference.

By letter dated April 29, 2009, the University notified All Maintenance and Repair that its protest was denied. In its April 29, 2009 letter, the University indicated that KWL Services should have been listed as a subcontractor because it was making or fabricating two channel supports and a bracket pursuant to the IFB Technical Specifications, despite the fact that the channel supports and bracket would be made or fabricated away from the project site and furnished to All Maintenance and Repair to install.

All Maintenance and Repair seeks review of the University's April 29, 2009 denial of protest. All Maintenance and Repair hereby denies any and all allegations and assertions contained in the University's April 29, 2009 protest denial letter which are not specifically admitted or conceded in this request for hearing.

II. LAWS AND RULES INVOLVED

At issue in this matter is whether All Maintenance and Repair was required to list its material supplier, KWL Services, who was contacted to fabricate and deliver materials to a project for installation by others, as a "subcontractor" in its bid under the Hawaii subcontractor listing law, HRS §103D-302(b). Based on Office of Administrative Hearings decisions and relevant HRS provisions, All Maintenance and Repair clearly was not required to do so.

The case of Maui Master Builders, Inc. vs. Department of Transportation, PCH-2007-8 (Feb. 25, 2008) is instructive. In Maui Master Builders, the protestor protested the low bidder's listing of an unlicensed structural steel fabricator to perform the structural steel scope of work on the project.

The procuring agency denied the protest on the grounds that the unlicensed structural steel fabricator was merely engaged to serve as a material supplier and mistakenly listed, and that the structural steel erection would be performed by an appropriately licensed C-48 contractor whose labor only proposal was less than 1% of the amount of the low bidder's bid. On appeal, the Hearings Officer, citing Ted's Wiring Service, Ltd. v. Department of Transportation, PCH-2007-5 (Dec. 12, 2007), interpreted the term "work" in HRS §103D-302(b) to be synonymous with "labor" to apply to an unlisted structural steel erector and not to the structural steel fabricator. Maui Master Builders at 6. The Hearings Officer concluded that the procuring agency was permitted to waive the low bidder's mistaken listing of the unlicensed structural steel fabricator and failure to list its licensed structural steel erector because the "value of the work to be performed" for subcontractor listing purposes under HRS §103D-302(b) related to the work to be performed by the structural steel fabricator only. Id. Therefore, under Maui Master Builders, a structural steel fabricator is merely a material supplier and need not hold a C-48 license.

Moreover, the Hearings Officer's decision in Maui Master Builders with respect to a structural steel fabricator is consistent with the Hawaii contractor licensing law, which is codified at HRS Chapter 444. Under HRS §444-1, "contractor" is defined as follows:

"Contractor" means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

"Contractor", to the extent allowed under federal law includes a subcontractor, a specialty contractor, and any person, general engineering, general building, or specialty contractor who performs any of the activities listed in the previous paragraph directly or indirectly for the federal government.

KWL, as a steel fabricator, will not be undertaking "to alter, add to, subtract from, improve, enhance, or beautify any realty[.]" In addition, KWL will not be undertaking to "construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement[.]" KWL's role, if the project is awarded to All Maintenance and Repair, will be limited to fabricating materials offsite. The actual work to install KWL's product to the "realty" or "building" will be performed by All Maintenance and Repair. KWL will not be undertaking any work at the project site.

Office of Administrative Hearings
May 6, 2009
Page 4


Accordingly, a steel fabricator is not a "contractor" under Hawaii law. KWL's role on the subject project will be limited to serving as a steel fabricator and not as a subcontractor. As such, All Maintenance and Repair was not required to be list KWL as a subcontractor on it bid, and its bid was responsive.

III. RELIEF REQUESTED

All Maintenance and Repair prays for the following relief: (1) That the April 29, 2009 denial of its protest be vacated/reversed/set aside; (2) That its bid protest be sustained; (3) That its bid be reinstated; (4) That it be declared the low bidder on the subject project and awarded the contract; and/or (4) That All Maintenance and Repair recover its attorneys' fees, costs, and other relief allowed under HAR §3-126-7(d) that is deemed just and proper.

Respectfully submitted,

Of Counsel:
WONG, FELDMAN & KIM



JASON G.F. WONG
DANIEL T. KIM
Attorneys for Petitioner
JAMES S. HUANG dba
ALL MAINTENANCE AND REPAIR

Encl.: (1) University's April 15, 2009 letter
(2) All Maintenance and Repair's April 21, 2009 protest
(3) University's April 29, 2009 protest denial letter

cc: (1) David McClain, Ph.D., President (w/encl.)
(2) Duff Zwald, Esq., Director of OPRPM (w/encl.)
(3) Client (w/encl.)

Huang\RequestForHearing.wpd

000004



**UNIVERSITY
of HAWAII**
SYSTEM

Office of Procurement and Real Property Management

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawai'i 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000005

EXHIBIT "1"

Mr. James S. Huang
April 15, 2009
Page 2 of 2

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

We appreciate your interest in the University.

Very truly yours,



Kurt Minato
Procurement Specialist

c: Brian Minaai, Associate Vice President for Capital Improvements
David Hafner, Assistant Vice Chancellor for Campus Services

000006

WONG, FELDMAN & KIM

Attorneys At Law

Jason G. F. Wong
Kale Feldman*
Daniel T. Kim

*A Law Corporation

American Savings Bank Tower
1001 Bishop Street, Suite 1028 ♦ Honolulu, Hawaii 96813

Telephone (808) 523-1788
Facsimile (808) 523-1583
E-mail wfk28law@aol.com

April 21, 2009

***HAND DELIVERY AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED (2 Sets)***

David McClain, Ph.D., President
Chief Procurement Officer
University of Hawai'i
2444 Dole Street, Bachman 202
Honolulu, HI 96822

Mr. Kurt Minato
Office of Procurement and Real Property Management
University of Hawai'i
1400 Lower Campus Road, Room 15
Honolulu, HI 96822

RE: **PROTEST of JAMES S. HUANG dba ALL MAINTENANCE AND REPAIR**
Department/Agency: University of Hawai'i
Project: IFB No. 09-0264, College Hill, General Repairs, University of
Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Dear President McClain and Mr. Minato:

We represent James S. Huang, dba All Maintenance and Repair ("All Maintenance and Repair"). Pursuant to Hawai'i Revised Statutes ("HRS") §§103D-203, 103D-701(a), Hawai'i Administrative Rules ("HAR") §3-126-3, and OPRPM Admin. Proc. No. A8.220(10), All Maintenance and Repair hereby PROTESTS the rejection of its bid on the above-referenced project.

All Maintenance and Repair's protest is based on Mr. Minato's April 15, 2009 letter, wherein he incorrectly concluded as follows:

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the

EXHIBIT "2"

000007

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 2

total bid amount, the University regrets to inform you that your bid could not be considered for award.

A copy of Mr. Minato's April 15, 2009 letter is attached hereto as Exhibit "A". Please be advised that All Maintenance and Repair hereby denies any and all allegations and assertions contained in the April 15, 2009 letter which are not specifically admitted or conceded in this protest letter.

All Maintenance and Repair is to engage KWL Services as a supplier of materials and not as a subcontractor on this project. Moreover, a C-48 structural steel specialty contractor license is not required to install the channel supports and brackets into wood. The subcontractor listing statute, HRS §103D-302(b), has no application to KWL Services or to its furnishing of materials to All Maintenance and Repair. Consequently, the University of Hawai'i's rejection of All Maintenance and Repair's bid should be reconsidered, All Maintenance and Repair's bid should be reinstated and the project should be awarded to All Maintenance and Repair as the lowest responsive and responsible bidder.

I. FACTUAL BACKGROUND

On January 30, 2009, the University of Hawaii issued its Notice to Bidders for the subject project. All Maintenance and Repair reviewed the Invitations for Bid and all documents within the IFB, including the Technical Specifications, Special Provisions, and General Provisions, and all such documents are incorporated herein by reference. The Notice to Bidders provided, in pertinent part:

To be eligible to bid, bidders must possess a valid State of Hawaii contractor's license B. **BID FROM CONTRACTORS NOT LICENSED IN THE STATE OF HAWAII WILL NOT BE CONSIDERED.**

All Maintenance and Repair holds the proper "B" license issued by the State of Hawaii Department of Commerce and Consumer Affairs and has held a Hawaii Contractor's "B" license since May 15, 1992.

In addition to reviewing the IFB, All Maintenance and Repair also reviewed the plans for the Subject Project. The plans set forth in Sheet A-1.1 the First Floor Plan, which depicted the Porte Cochere. In that portion of the plan, Sheet A-1.1 states: PORTE COCHERE REPAIR/UPGRADE PORTE COCHERE FRAMING PER STRUCT. DWGS. AND DET A4/5.1"

Detail 1 on Sheet S-2.1 of the Structural Drawings depicted a section view of the C10 channels, which was to serve as a horizontal backing. Detail 2 on Sheet S-2.1 showed that the C10 channels would be connected to 2-inch x 12-inch beams. The beams were made of wood.

000008

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 3

Detail A4 on Sheet A-5.1, entitled "Porte Cochere Soffit" depicted the attachment of the C10 channels to wood (following standard practice, wood items are shown in cross-hatch). Detail A4 states as follows: "NEW STEEL CHANNEL & FASTENERS PER STRUCT." Detail 2 on Structural Sheet S-2.1.

The project plans issued by the University of Hawai'i, through its project architect, Mason Architects, Inc., show that the C10 Channel is to be fastened onto wood members. The plans do not call for welding of the channel in place or any other structural steel type of work.

Based on its review of the contract documents, All Maintenance and Repair submitted a base bid of \$272,900.00 and aggregate bid of \$274,796.80 for the subject project. All Maintenance and Repair submitted its bid on the Subject Project before the bid submittal deadline of 2:30 p.m. on March 11, 2009. All Maintenance and Repair's bid has been determined to be the lowest bid received by the University of Hawai'i.

II. BASIC INFORMATION

This Protest is made pursuant to the Invitations for Bid, all documents within the IFB and HRS Chapter 103D, and the following information is provided in support of this Protest.

A. Name, Address and Contractor's License Number of Protestor

James S. Huang
dba All Maintenance and Repair
P.O. Box 893577
Mililani, Hawaii 96789
Telephone No. 808-623-7757
Facsimile No. 808-625-3538

Hawaii Contractors License No. BC-14609 (See Exhibit "B" attached hereto).

B. Procurement Which is the Subject of This Protest

College Hill Repairs, University of Hawai'i at Manoa, Invitations of Bids
(IFB) No. 09-0264, Project No. UHM 08-002

C. Statutory Basis for This Protest

This Protest is made pursuant to HRS chapter 103D, and the following information is provided in support of this Protest.

000009

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 4

D. Statement of Reasons for Protest

Mr. Minato's April 15, 2009 letter set forth the reason for the rejection of All Maintenance and Repair's bid. Mr. Minato stated: "Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel 'C' channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award."

The decision made by the University of Hawai'i, as reflected in Mr. Minato's April 15, 2009, is simply wrong. Mr. Minato's conclusion is based on the erroneous assumption that the work involved in installing the C10 channels constitutes structural steel work and requires a subcontractor with a C-48 specialty license. The plans clearly contemplate that the C10 channels are to be installed onto wood, which constitutes carpentry work within All Maintenance and Repair's "B" contractor license. Furthermore, All Maintenance and Repair holds a C-32 specialty classification to perform railing and handrail work. There is no need for a structural steel contractor to perform any work. While KWL Services holds a C-48 license, that is of no consequence herein because KWL Services is to be engaged as a supplier of materials that it will manufacture offsite in its own facility. It is not to be engaged to perform any work, i.e., labor, on the project site. A copy of a KWL Services' April 20, 2009 letter which confirms the arrangement is attached hereto as Exhibit "C". The finished product is to be installed by All Maintenance and Repair. Hence, the University of Hawai'i's analysis, as set forth in Mr. Minato's April 15th letter, is wholly flawed and necessarily fails.

In summary, All Maintenance and Repair was the lowest responsive and responsible bidder, and it should be awarded the contract for the subject project for the following reasons:

1. The installation of the C10 channels to 2" x 12" wood beams does not require the performance of work by a structural steel subcontractor.

In this case, the fabrication or manufacture of the C10 channels results in merely the supply of materials. KWL or any other supplier that would have provided that part was simply a supplier of materials—nothing more. There was no necessity that it perform welding or any specialized structural steel work to install the C10 channels at the project site.

2. Under the Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Hawai'i 450, 40 P.3d 73 (2002) decision, a "B" licensed contractor is authorized to bid on and act as the "prime" contractor on a project where it holds all of the appropriate license classifications to perform the scope of work at issue. By virtue of holding a "B" contractor license, All Maintenance and Repair

000010

David McClain, Ph.D., President
Mr. Kurt Minato
April 21, 2009
Page 5

automatically holds a number of specialty classifications including C-6 carpentry framing. HAR §16-77-32(c).

Ms. Barbara Shideler, who is a project architect with the architectural firm engaged by the University of Hawai'i on the subject project, Mason Architects, Inc., has stated that the fastening of a C10 channels to wood beams constitutes carpentry work within Hawai'i's contractors license regulatory scheme. There is thus no need for a structural steel contractor to perform any work on the subject project. As a "B" licensee (and therefore, the holder of a C-6 specialty license), All Maintenance and Repair is properly licensed to fasten the C10 channels in the Porte Cochere area of the President's home at College Hill.

For these reasons, All Maintenance and Repair respectfully requests that the decision to reject its bid be reconsidered, that its bid be reinstated, and that the contract be awarded to it as lowest responsive and responsible bidder.

Very truly yours,



JASON G.F. WONG

DANIEL T. KIM

For

WONG, FELDMAN & KIM

Encl.: (A) Kurt Minato letter dated April 15, 2009
(B) Contractor license information re. James S. Huang
(C) KWL Services, Inc. letter dated April 20, 2009

cc: Mr. James S. Huang (w/encl.)

000011



UNIVERSITY
of HAWAII
SYSTEM

Office of Procurement and Real Property Management

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawai'i 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawai'i at Manoa, Honolulu, Hawai'i, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000012

Mr. James S. Huang
April 15, 2009
Page 2 of 2

Since All Maintenance and Repair failed to list KWL Services as a subcontractor to furnish the steel "C" channel supports and brackets as specified under Section 05120, Structural Steel, and drawings included with the subject IFB, and the value of the work exceeded one percent of the total bid amount, the University regrets to inform you that your bid could not be considered for award.

We appreciate your interest in the University.

Very truly yours,



Kurt Minato
Procurement Specialist

c: Brian Minaai, Associate Vice President for Capital Improvements
David Hafner, Assistant Vice Chancellor for Campus Services

000013

Professional and Vocational Licensing (PVL) Search - General Licensee

GENERAL LICENSEE

LIC ID: CT-14609		Active/Inactive: ACTIVE	
NAME: JAMES S S HUANG			
TRADE NAME: ALL MAINTENANCE AND REPAIR			
STATUS: CURRENT, VALID & IN GOOD STANDING			
ENTITY: INDIVIDUAL		BUSINESS CODE: SOLE OWNER	
ORIG LIC DATE: 04/21/1988		EXPIRE DATE: 09/30/2010	
CLASS PREFIX: BC		SPECIAL PRIVILEGE:	
RESTRICTION:		EDUCATION CODE:	
CONDITIONS AND LIMITATIONS:			
BUSINESS ADDR: 94-1388 MOANIANI ST #415 WAIPAHU HI 96797			
MAILING ADDR: P O BOX 893577 MILILANI HI 96789			

OTHER TRADE NAMES AND DBA'S	NAME EFFECTIVE DATE	NAME END DATE
AMR CONSTRUCTION	03/10/2008	

Click here to enter search criteria for prior complaints history ->
For prior complaints and disciplinary history, contact licensing and business information center at (808) 587-3295.

License information on this site reflects information in the Professional and Vocational Licensing Division as of April 20, 2009; however, applications and forms are subject to standard processing time, and the information here does not reflect pending changes which are being reviewed. The site is updated daily, Monday through Friday, except holidays. The State of Hawaii makes no guarantees as to the accuracy of the information accessed, the timeliness of the delivery of transactions, delivery to the correct party, preservation of the privacy and security of users and makes no warranty, including warranty of merchantability and fitness for a particular purpose. User is advised that if the information obtained herein is to be reasonably relied upon, user should confirm the accuracy of such information with the provider thereof.

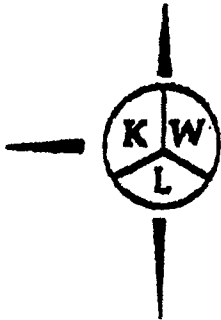
000014

EXHIBIT "B"

Professional and Vocational Licensing (PVL) Search - License Class

LIC: CT-14609 JAMES S S HUANG				
CLASS CODE	CLASS TYPE	EFFECTIVE	RESTRICTED	STATUS
C05	CABINET MILLWORK & CARPENTRY REMODELING & REPAIRS	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
C06	CARPENTRY FRAMING	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
B	GENERAL BUILDING	05/15/1992		
C32	ORNAMENTAL GUARDRAIL & FENCING	11/28/2008		
C33	PAINTING & DECORATING	11/28/2008		

000015



KWL Services, Inc.

WELDING CONTRACTOR • LIC. NO. C-12677

94-092 Leokune Street • Waipahu, HI 96797 • (808) 676-1808

All Maintenance and Repair

P.O. Box 893577

Milliani, Hawaii 96789

Attn: James Huang

Date: April 20, 2009

COLLEGE HILL GENERAL REPAIRS

UH AT MANOA, HAWAII

James,

Per our discussion regarding the two (2) channel brackets for the lanai beam support. This would be a "Furnish Only" item and we would require a Purchase Order in lieu of giving us a Contract since we would not have any personnel on site. This is our standard procedure for any Bid Proposal that is for a "Furnish Only" product. Our approach to this issue and insistence on receiving a P.O. is similar to buying a Simpson Bracket and having to list Simpson or Home Depot as a "Sub" just because we bought the item from them. It wouldn't make any sense. Also, we don't want the complications of documentation associated with a contract. We'll just make the product and you can come pick it up when we're finished and cut us a check..

Any time we propose to furnish only, we don't accept a contract. We want a purchase order. We would consider ourselves as a "supplier" not a sub.

Respectfully,

A handwritten signature in black ink that reads "Edward S. K. Kaeka". The signature is written over a horizontal line.

Edward S. K. Kaeka

Estimator / Supervisor

KWL Services, Inc.

000016

EXHIBIT "C"

RECEIVED APR 30 2009

Office of Procurement and Real Property Management



UNIVERSITY
of HAWAII®
SYSTEM

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 29, 2009

Daniel T. Kim
Attorney at Law
Wong, Feldman & Kim
American Savings Bank Tower
1001 Bishop Street, Suite 1028
Honolulu, HI 96813

Dear Mr. Kim:

SUBJECT: Protest of James S. Huang dba All Maintenance and Repair regarding IFB No. 09-0264, College Hill, General Repairs, University of Hawaii at Manoa, Honolulu, Hawaii, Project No. UHM 08-002 ("Project")

James S. Huang dba All Maintenance and Repair ("AMR") has protested the rejection of its bid on the above-referenced Project. As you informed us in AMR's protest letter dated April 21, 2009, you and your law firm are representing AMR in this matter. For the reasons described in this letter, the University denies AMR's protest.

I. BACKGROUND

Pursuant to Invitation for Bids (IFB) No. 09-0264 for the Project issued in January 2009, the University solicited bids to perform general repairs to the College Hill residence, which is part of the University of Hawaii at Mānoa campus. At the bid opening conducted on March 11, 2009, bids from thirteen vendors were opened, with AMR submitting the apparent low bid.

By letter dated March 16, 2009 (Exhibit A), Brian's Contracting, Inc. (Brian's), the apparent second low bidder, maintained that the bid submitted by AMR should be rejected from consideration of award on the grounds that the "Listing of Joint Contractor and/or Subcontractors" submitted with the bid failed to include a licensed C-48 Structural Steel subcontractor to perform work required under Section 05120 of the technical specifications in the IFB. Moreover, Brian's claimed that the value of the work to be performed by the C-48 subcontractor was greater than one percent of AMR's total bid, and therefore AMR's failure to list such a subcontractor was not subject to waiver by the University under section 103D-302(b), Hawaii Revised Statutes (HRS).

By letter dated March 18, 2009 (Exhibit B), AMR stated that the reason it did not list a C-48 specialty subcontractor in its bid was that the work involved in the installation of the steel "C" channel supports and the steel bracket described in the IFB technical specifications could be performed as carpentry work. AMR pointed out that such carpentry work would be permitted under AMR's B General Building Contractor's License. Moreover, AMR advised that KWL Services, Inc. (KWL), a C-48 Structural Steel Specialty Contractor, provided it with a quote to

000017

EXHIBIT "3"

1400 Lower Campus Road, Room 15 Honolulu, Hawai'i 96822
Telephone: (808) 956-8687 Fax: (808) 956-2093
An Equal Opportunity/Affirmative Action Institution

"furnish only" the "C" channel supports and the steel bracket; AMR also forwarded to the University a copy of the KWL quote (Exhibit C).

Since the KWL quote included both the furnishing of the steel channel supports and the steel bracket as well as the furnishing and installation of a bronze handrail called for under another section of the IFB technical specifications, the University procurement officer for the Project requested KWL to provide a cost breakdown of its quotation and was advised by KWL that the cost to furnish the channel supports and the steel bracket totaled \$4,178.00 (KWL breakdown) (Exhibit D).

Based upon the information provided by AMR (including the KWL quote) and KWL (the KWL breakdown), and the IFB requirements, the University's procurement officer, by letter dated April 15, 2009 (Exhibit E), advised AMR that (1) AMR's bid could not be considered for award due to AMR's failure to list KWL in the joint contractor and subcontractor listing which accompanied the bid for the furnishing of the steel "C" channel supports and the steel bracket; and (2) this omission in AMR's joint contractor and subcontractor listing could not be waived under HRS section 103D-302(b) since the value of this unlisted subcontractor work exceeded one percent of AMR's total bid amount.

In its protest letter dated April 21, 2009, AMR has contended that: (1) it was not required to include KWL on the listing because KWL is not to be engaged to perform any work on the Project site, (2) there was no need for a subcontractor holding a C-48 structural steel specialty license to perform any work on the subject Project; and (3) the rejection of AMR's bid should be rescinded and AMR awarded the Project contract as the lowest responsive and responsible bidder.

II. ANALYSIS OF ISSUES PRESENTED

A. Failure to Identify KWL as a Subcontractor in the Bid

The requirement for the listing of subcontractors in bids for construction projects is addressed in HRS section 103D-302(b), which provides as follows:

An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of work to be performed by each. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount. (Emphasis added)

In the IFB for the subject Project, pages BID – 7 and BID - 8 provided a form entitled "Listing of Joint Contractor and/or Subcontractors" which advised that "[e]ach bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or

subcontractor(s) for performance of this contract" and that "[t]he bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s)." The form provided in the IFB included spaces and columns for such information and further advised that "[a]ll bids which do not comply with this requirement may be rejected." A copy of the listing form which accompanied the bid submitted by AMR is attached (Exhibit F).

Section 05120-Structural Steel of the IFB technical specifications addresses the technical requirements for both the fabrication and the erection of structural steel channel supports and the steel bracket as shown on the drawings which accompanied the IFB. In its March 18, 2009 letter, and as reiterated in its protest letter, AMR contends that it was not required to list a subcontractor with a C-48 structural steel specialty license because AMR itself could install the steel C-supports and the steel bracket as carpentry work under AMR's B General Building Contractor's license. However, this contention ignores the fact that in both AMR's letter and its protest, AMR acknowledges that it obtained a quote from and intended to engage KWL Services, Inc., a C-48 licensed contractor, to fabricate the steel supports and the steel bracket in accordance with the structural steel fabrication requirements set forth in the IFB technical specifications.

In its protest, AMR presents two additional arguments in support of its contention that it was not required to identify KWL as a subcontractor in AMR's bid for the Project. First, AMR argues that KWL should be considered a supplier of materials rather than a subcontractor. In support of this argument, AMR has provided an April 20, 2009 letter from KWL wherein KWL maintains that it will be furnishing the steel channel supports and the steel bracket under a purchase order rather than a contract with AMR (KWL letter). In addition to the University rejecting the notion that a purchase order is not a form of contract, we would point out that in the KWL letter, the KWL quote, and the KWL breakdown, KWL acknowledges that it will be "making" or fabricating the steel channel supports and the steel bracket, and that this work will be required to conform with the IFB technical specifications for structural steel fabrication.

Secondly, AMR argues that it was not required to list KWL as a subcontractor because it will not be performing any work on the Project site. We can find no language or provision in HRS section 103D-302(b) that limits the bidder's obligation to identify, in the bid, only those subcontractors who will be performing work on or within the Project site. On the contrary, HRS section 103D-302(b) requires the listing of all subcontractors to be engaged by the bidder and the nature and scope of the work to be performed by each in the performance of the contract. Since the IFB technical specifications and drawings are to be incorporated by reference in the Project construction contract awarded pursuant to the IFB and KWL will be performing fabrication work set forth in the IFB technical specifications and drawings, AMR should have identified KWL as a subcontractor in its bid as required under HRS section 103D-302(b).

000019

B. The Failure to Identify KWL as a Subcontractor Cannot be Waived

Having determined that KWL should have been listed by AMR in the joint contractor and subcontractor listing which was submitted with AMR's bid, the University also notes that HRS section 103D-302(b) further provides that "[c]onstruction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount."

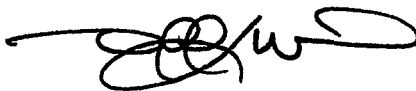
In reviewing the KWL quote, as prepared by KWL and provided by AMR to the University, the University's procurement officer for the Project requested that KWL provide a cost breakdown of its quote to identify that portion of the cost attributable to furnishing the steel channel supports and the steel bracket. In response to this request, KWL advised the University's procurement officer that the cost of such work was \$4,178.00 (Exhibit D).

When compared to either AMR's basic bid of \$272,900, or AMR's total aggregate bid of \$274,796.80 (which includes unit pricing for possible additional work), all as set forth in AMR's Project bid, the value of the work to be performed by KWL for the Project exceeds one percent (1%) of AMR's total bid amount. Accordingly, under HRS section 103D-302(b), the University is not authorized to waive AMR's failure to identify KWL as a subcontractor in AMR's bid for the Project.

III. CONCLUSION

Based on the above findings that AMR did not comply with the subcontractor listing requirements in the subject IFB, it is determined that the University acted properly in concluding that the bid submitted by AMR was non-responsive and could not be considered for award under the IFB. Accordingly, the protest submitted by AMR with respect to this Project is hereby denied. This determination is final and conclusive on behalf of the University. Pursuant to section 3-126-7, Hawaii Administrative Rules (HAR), this is to advise you of a protestor's right to an administrative proceeding for review of this determination as provided in HAR subchapter 5. This can be accomplished by submitting the required notice to the State Department of Commerce and Consumer Affairs requesting a hearing within seven (7) calendar days of the issuance of this determination in accordance with HRS section 103D-712.

Respectfully submitted,



Duff Zwald
Director

Attachments

cc: David McClain, President

BRIAN'S CONTRACTING, INC.

P.O. BOX 17790, HONOLULU, HAWAII 96817
LICENSE NO. ABC-28123

Date: March 16, 2009

To: University of Hawaii
Office of Procurement and Real Property Management (OPRPM)
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

Attention: Contracting Officer

Subject: College Hill, General Repairs
University of Hawaii at Manoa, Honolulu, Hawaii
Project No. UHM 08-002
Bid Date: March 11, 2009, 2:30 p.m.

RECEIVED
UNIVERSITY OF HAWAII
OPRPM
2009 MAR 17 P 12:38

Dear Contracting Officer,

In reference to the above subject bid, we would like to inform you that the bid submitted by the apparent low bidder, All Maintenance and Repair contractor's license no. BC-14609 does not comply with State Procurement Law and Contract Bid Requirements and therefore should be rejected from consideration of award for the following reasons:

1. The bid submitted by All Maintenance and Repair, does not comply with state law: Part III. SOURCE SELECTION AND CONTRACT FORMATION (HRS 103D-302), please see attached copy, for the following reason:

The bid submitted by All Maintenance and Repair, did not list in their bid proposal page BID-7 under "LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS" a licensed specialty subcontractor with the specialties, 'C-48' "Structural Steel" to perform the work per bid specification sections: 05120 Structural Steel and work per details 3/S-1.4, 1/S-2.1, and 3/S2.1 per bid plans.

The value of the structural steel work is substantial and not incidental (please see attached proposal by K&S Welding for \$5,850.00 dated April 8, 2008: the lowest of two subcontractor's proposals for subject project) and is greater than one percent: (2.14%) of All Maintenance and Repair's total bid amount of \$273,345.15: $\$5,850.00 / \$273,345.15 = 2.14\%$ of the total bid amount.

2. The bid submitted by All Maintenance and Repair also does not comply with contract bid documents as follows:

Bid proposal page Bid-7 third paragraph, specifically requires that

"...as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general contractor) must have the appropriate 'C' specialty Contractor's license either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs."

All bids which do not comply with this requirement may be rejected.

According to the State of Hawaii Professional and Vocational Licensing (PVL) Search – License Class web site, All Maintenance and Repair does not possess the “C-48” specialty license for the Structural Steel work required in the project in addition they did not list any sub contractor with the “C-48” specialty license.

Based on the Hawaii Supreme Court’s January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Hawaii 450 (2002) the bidder as a general Contractor (‘A’ or ‘B’ license) is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder (‘A’ or ‘B’ General Contractor) to act as a specialty (‘C’ license) Contractor in any area in which the bidder (‘A’ or ‘B’ General Contractor) has no specialty Contractor’s and in this case the bidder does not possess the specialty ‘C-19’ and ‘C-36’ licenses.

For these reasons above, we believe that the bid submitted by All Maintenance and Repair does not comply with State Law and Contract Bid Document Requirements and therefore should be rejected from consideration of award.

Thank you, for your attention. Please feel free to call our office at once for any questions.

Yours truly,

Brian’s Contracting, Inc.



Brian M. Arakaki, President

proves a department's expenditures; provided that the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed as a grand jury counsel, the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian home lands trust individual claims review panel, shall become a deputy attorney general. [L Sp 1993, c 8, pt of §2; am L 1994, c 92, §3 and c 188, §2]

§103D-210 REPEALED. L 1994, c 186, §25.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

[§103D-302] **Competitive sealed bidding.** (a) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 103D-301. Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.

(b) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids that do not comply with this requirement may be accepted if the chief procurement officer or rules of the policy office conclude that acceptance is in the best interest of the public and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy office shall adopt rules which specify:

- (1) The form that the notice is to take;
- (2) What constitutes a reasonable interim between publication and bid opening; and
- (3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by rules adopted by the policy office.

(f) Bids shall be evaluated based on the requirements set forth in the

TECHNICAL SPECIFICATIONS

TABLE OF CONTENTS

COLLEGE HILL

GENERAL REPAIRS

AT

UNIVERSITY OF HAWAII AT MANOA
HONOLULU, HAWAII

PROJECT NO. UHM 08-002

SECTION NO.	TITLE	PAGES
	TABLE OF CONTENTS	1 - 2
DIVISION 1	GENERAL REQUIREMENTS	
SECTION 01001	GENERAL REQUIREMENTS.....	1 - 4
SECTION 01010	SUMMARY OF WORK.....	1 - 7
SECTION 01040	COORDINATION	1 - 5
SECTION 01100	HISTORIC STRUCTRES PRECAUTIONS.....	1 - 3
SECTION 01300	SUBMITTALS.....	1 - 6
SECTION 01400	QUALITY CONTROL	1 - 4
SECTION 01500	CONSTRUCTION FACILITIES	1 - 2
SECTION 01567	POLLUTION CONTROL	1 - 3
SECTION 01700	CONTRACT CLOSEOUT.....	1 - 3
SECTION 01715	EXISTING CONDITIONS - ASBESTOS/LEAD/ HAZARDOUS MATERIAL SURVEY.....	1 - 2
Attachment:	Asbestos and Lead Report.....	1 - 84
DIVISION 2	SITE CONSTRUCTION	
SECTION 02070	SELECTIVE DEMOLITION	1 - 7
DIVISION 3	CONCRETE	
SECTION 03100	CONCRETE FORMWORK	1 - 5
SECTION 03200	CONCRETE REINFORCEMENT	1 - 4
SECTION 03300	CAST-IN-PLACE CONCRETE	1 - 12
SECTION 03730	CONCRETE REPAIRS.....	1 - 4
DIVISION 4	MASONRY (NOT USED)	
DIVISION 5	METALS	
SECTION 05120	STRUCTURAL STEEL''.....	1 - 8
SECTION 05720	RAILINGS AND HANDRAILS.....	1 - 3

K&S WELDING, INC.

(808) 486-8988 • Fax (808) 487-2259

fabrication & erection • structural steel & miscellaneous metal

99-056 Koaha Way • Aiea, HI 96701



March 10, 2009

Subject: GENERAL REPAIRS - COLLEGE HILL
UNIVERSITY OF HAWAII AT MANOA

Gentlemen:

The following is our quotation for the subject project:
Section 05120: Structural Steel
Addendum 1 Noted

C-13639

Furnish and Install:

- 1. Steel channels as per 1,2/S-2.1.

Furnish Only, F.O.B. Jobsite:

- 1. Angle bracket as per 3/S-1.4.

The above for the sum of FIVE THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$5,850.00), tax included.

Note:

- 1. Steel with one shop coat primer except on galvanized items.

Exceptions:

- 1. Aluminum, cast iron, bronze, and stainless steel items.
- 2. Removal and demolition
- 3. Grout
- 4. Sheetmetal
- 5. Finish painting
- 6. Modification of bronze handrails
- 7. Simpson brackets
- 8. Metal stud framing
- 9. Mechanical hangers and supports
- 10. Pipe hangers and supports
- 11. Anchors, hangers, brackets, bolts, etc. for other trades.

Respectfully submitted,
K & S WELDING, INC.

Stanley George
President

000025

MUTUAL WELDING COMPANY, LTD. 2846 UALENA ST. SUITE 5, HONOLULU, HAWAII 96819
TELEPHONE: (808) 839-5111 / FACSIMILE: (808) 833-9534



March 11, 2009

Subject: College Hill, General Repairs – University of Hawaii at Manoa

Gentlemen:

The following is our quotation for the subject project:
Section 05120 – Structural Steel
Addendum # 1, 2 & 3

FURNISH & INSTALL:

1. Steel channel at Porte Cochere as per details 1 & 2/S-2.1. (Shoring of work area by others.)

FURNISH ONLY:

1. Custom steel bracket as per detail 3A-S1.4.

EXCEPTIONS:

1. Aluminum, cast iron, brass, bronze, and stainless steel items
2. Steel items not specifically mentioned above.
3. Bonds, permits and engineering.
4. Cost for special inspection.
5. Metal stud framing.
6. Painting over galvanized items.
7. Demolition, removal and replacement work.
8. Safety barriers and barricades.
9. Sheet metal work.
10. Bolts, straps, anchors, sleeves, hangers, etc., for other trades.

NOTES:

1. Steel to be galvanized only.
2. Shoring if required shall be by others.
3. Quote firm for 30 days.

The above for the sum of \$11,062.00 tax included.

Respectfully submitted,

MUTUAL WELDING COMPANY LTD.


Thomas K. Chun, Executive Vice President

000026

Professional and Vocational Licensing (PVL) Search - License Class

LIC: CT-14609 JAMES S S HUANG				
CLASS CODE	CLASS TYPE	EFFECTIVE	RESTRICTED	STATUS
C05	CABINET MILLWORK & CARPENTRY REMODELING & REPAIRS	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
C06	CARPENTRY FRAMING	04/21/1988		CLASS NO LONGER NEEDED DUE TO UPGRADE TO HIGHER CLASS
B	GENERAL BUILDING	05/15/1992		
C32	ORNAMENTAL GUARDRAIL & FENCING	11/28/2008		
C33	PAINTING & DECORATING	11/28/2008		

000027

LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 1 of 2)

The following information shall be submitted, on this form, by each bidder as a bid requirement.

It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project.

Each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance of this contract. Failure to provide correct names and active license numbers as registered with the Contractor's License Board may be grounds for rejection of the bid submitted. The bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s).

The bidder acknowledges that as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs.

All bids which do not comply with this requirement may be rejected.

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work
RHM Painting LLC	C-26643 (C-33)	Painting
Paradise Reinforcing, INC.	C-22291 CC-41)	Rebar
TileCraft	C-17712 (C-51)	Hard Tile
ALCAL HAWAII	C-24089 (C-42)	Roofing
BENDCO	C-22320 (C-19)	Asbestos DEMO
JAYCO	C-12831 (C-32)	Railings
Structural Systems	AC-13555 C-34	Soil Stabilization
KFS Welding, INC.	C-13639 (C-48)	Structural Steel
T. TAKEITA SHEETMETAL	C-5343 (C-44)	Sheetmetal
Paul's Electrical Contracting	C-26840 (C-13)	Electric
Reliable Plumbing INC.	C-6595 (C-37)	Plumbing

RECEIVED
UNIVERSITY OF HAWAII
OPRPM

2009 MAR 18

General Contractor's Lic. No. BC-14609

James S. Huang
Db a All Maintenance and Repair

P.O. Box 893577
Mililani, HI 96789
Ph.: (808)623-7757
Fax: (808)625-3538

March 18, 2009

Re: College Hill, General Repairs, IFB No. 09-0264

Dear Procurement Officer,

In response to the protest on our Low Bid for College Hill General Repairs, we would like to take this opportunity to explain the reason for not listing a structural steel subcontractor with a C-48 classification.

Per the drawings, galvanized steel "C" channel for the porte cochere and steel bracket for the guest house laundry beam are required to be installed. These items are to be fabricated, drilled and galvanized offsite by a certified structural steel fabrication company. Once the steel channel and bracket are onsite, according to the drawings at S-2.1, A-5.1, and S-1.4, the method of installation requires wood drilling and then bolting the "C" channel and bracket to wood (no welding is required per drawings), and this is carpentry work and is under the scope of a "B" license.

Mr. Edward Kaeka of KWL Services, Inc. (a C-48 Structural Steel Contractor) provided a quote to us to "furnish only" the "C" channel and steel bracket. He stated that the "C" channel is basically a reinforcement bracket for a wood member and the installation should be done by a carpenter, only when the steel reinforcement is bolted or connected to steel would it require a C-48 contractor. Please feel free to call him at 676-1808.

Thank you for your attention to this matter and we hope that this matter can be resolved soon since we are as eager as you are to get the project started.

Sincerely,



James S. Huang, Owner
All Maintenance and Repair

EXHIBIT B

000029



ALL MAINTENANCE AND REPAIR

P.O. Box 893577
Mililani, HI 96789

Ph: (808)623-7757
Fax: (808)625-3538

FAX TRANSMITTAL FORM

Company: UH Facilities Management

From: Theresa Huang

Attention: Dean Uehara

Date Sent: 3/19/09

Phone:

Number of Pages: 3

Fax: 956-5385

Message: Here is the Proposal from KWL Services, Inc. as you requested.

000030

Proposal KWL SERVICES, INC.

Lic. #C-12677

94-092 Leokane St. • Waipahu • Hawaii • 96797 • PH (808)676-1808 • FAX (808)677-4081 • kwl.services@hawaiiantel.net

PROPOSAL SUBMITTED TO: General Contractor Bidders.		PHONE:	Page No. 1 of 1 pages	
ADDRESS:		DATE: March 11, 2009		
JOB NAME: College Hill General Repairs		JOB LOCATION: Job No. 09-0264		
DATE OF PLANS:	Addendum 1-2 Acknowledged	KWL NO: 20	JOB PHONE:	

We hereby submit specifications and estimates for:

SECTION 05120: STRUCTURAL STEEL SECTION 05720: RAILINGS AND HANDRAILS

FURNISH ONLY: (FOB JOBSITE)

- 1.) Two (2) each channel iron supports as per drawings. (2/A-2.1)
- 2.) One (1) each brackets at laundry room. (3/A/S-1.4)

FURNISH AND INSTALL:

- 1.) Modify one (1) existing bronze handrail as required. (A1/A-5.1)

NOTE: Price is good for thirty (30) days.

EXCLUSIONS:

- 1.) Galvanizing, etching, priming, painting other than touch-up of welds.
- 2.) Concrete work, grouting, patching, chipping, demolition and removal work, etc.
- 3.) Fasteners, connection bolts, embeds, connection holes for other trades, stair nosings, etc.
- 4.) Special inspections, weld testing, calculations, etc.
- 5.) Any item not specifically listed above.

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

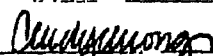
Sixteen Thousand Eight Hundred Sixty-Three and 00/100

Dollars. (**\$16,863.00**)

Payment to be made as follows.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's Compensation insurance.

Authorized
Signature:


Edward S. K. Kaaka, Estimator

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal - The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____
Signature _____

Date of Acceptance: _____

000031

Re: College Hill General Repairs

Subject: Re: College Hill General Repairs
From: Eddie Kaeka <ekaeka.kwl@hawaiiantel.net>
Date: Mon, 06 Apr 2009 12:47:35 -1000
To: Kurt Minato <minato@hawaii.edu>

Kurt,

Normally, I don't do this kind of cost-break when I'm not listed as a sub. However, it seems that there may be a conflicting opinion and point of view. Therefore, I'll make an exception in this case.

Section 05120 - Structural Steel \$4,178.00

Section 05720 - Railings and Handrails \$12,686.00

The vendor we selected for the bronze handrail modification is from Seattle. We needed to pay his way here, room and board, use of KWL welding equipment, parts and labor. It seems that no one in Hawaii knows how to work with bronze... or can produce the parts necessary to modify the handrail.

-----Original Message-----

From: Kurt Minato
Date: 4/2/2009 4:06:03 PM
To: Eddie Kaeka
Subject: Re: College Hill General Repairs

Eddie

Thank you and I look forward to your response.

000032

EXHIBIT D



**UNIVERSITY
of HAWAII**
SYSTEM

Office of Procurement and Real Property Management

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 15, 2009

Mr. James S. Huang
Owner
All Maintenance and Repair
P.O. Box 893577
Mililani, Hawaii 96789

Dear Mr. Huang:

Subject: Invitation of Bids (IFB) No. 09-0264, College Hill, General Repairs, University of Hawaii at Manoa, Honolulu, Hawaii, Project No. UHM 08-002

Reference is made to your bid in the amount of \$272,900.00 for the subject IFB which was opened by our office on March 11, 2009.

In your letter dated March 18, 2009, you attempted to explain why you did not list a structural steel subcontractor with a C-48 license in the subcontractor listing which was submitted with your bid. While you maintained that you could install the "C" channel supports and steel brackets under the scope of your "B" General Builders license, you indicated that KWL Services, Inc., a C-48 Structural Steel Contractor, provided your company, All Maintenance and Repair, with a quotation to furnish the "C" channel supports and steel brackets as specified under Section 05120, Structural Steel, of the Technical Specifications and drawings within the subject IFB. You later submitted a copy of the quotation which you received from KWL Services in the amount of \$16,863.00 for materials and services to be performed under Section 05120, Structural Steel, and Section 05720, Railing and Handrails. Based on your statement that KWL Services would only be utilized to furnish materials under Section 05120, the University contacted KWL Services to obtain a cost breakdown of its quotation. KWL Services advised our office that the cost to furnish the "C" channel supports and steel brackets as specified in the drawings and technical specifications under Section 05120 is \$4,178.00.

Your attention is directed to page BID - 7 which states that "each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance under this contract." As noted above, you did not list KWL Services, Inc., a C-48 Contractor, on the subcontractor listing which accompanied your bid.

The provisions of Hawaii Revised Statutes §103D-302(b) allow an agency to waive an omission in the listing of a joint contractor or subcontractor(s) provided that the value of the unlisted work is equal or less than one percent of the total bid amount. However, based on the information provided to us by KWL Services the value of the work to furnish the "C" channel supports and steel brackets represented approximately 1.5% of your total bid amount.

000033

LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 1 of 2)

The following information shall be submitted, on this form, by each bidder as a bid requirement.

It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project.

Each bidder shall include the name, license number and classification code of each person or firm to be engaged by the bidder as a joint contractor or subcontractor(s) for performance of this contract. Failure to provide correct names and active license numbers as registered with the Contractor's License Board may be grounds for rejection of the bid submitted. The bid shall also indicate the nature and scope of work to be performed by such joint contractor or subcontractor(s).

The bidder acknowledges that as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under the rules and regulations of the Contractor's License Board, Department of Commerce and Consumer Affairs.

All bids which do not comply with this requirement may be rejected.

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work
Hawaii Hardwood Flooring	C-19430 Class Code C-21	Flooring
Stonemasters	C-28397 Class Code C-51	Tile
Structural Systems, Inc.	AC-13555 Class Codes A, C-34	Soil Stabilization and Concrete
Bendco	C-22320 Class Code C19	Lead and Asbestos
Reliable Plumbing, Inc.	C-6595 Class Code C-37	Plumbing
T. Taketa Sheet Metal, Inc.	C-5343 Class Code C-44	Sheet Metal
HH Electric Inc.	C-13528 Class Code C-13	Electrical

CERTIFICATION REQUIRED ON PAGE 2 OF OPRPM FORM 54

000034

BID - 7

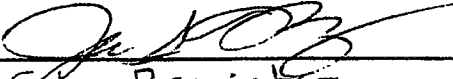
LISTING OF JOINT CONTRACTOR AND/OR SUBCONTRACTORS
(Page 2 of 2)

Name of Joint Contractor and/or Subcontractor(s) (specify which)	*License Number and Classification Code	Nature and Scope of Work

The PRIME CONTRACTOR shall indicate its principal contractor's license number and classification code(s) it possesses.

BC-14609 General Building
 *License Number Classification Code(s)

The contractor hereby certifies that the information provided is accurate and that itself and the joint contractor/subcontractor(s) listed meet all license or permit requirements for the State of Hawaii for this contract.

By  3/11/09
 Title: Sole Proprietor Date

*License number in compliance with Chapter 444-9, HRS and the Rules and Regulations of the Contractors License Board, Department of Commerce and Consumer Affairs.