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HEARINGS OFFICE



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

In the Matter of	)	PDH-2020-008
)	
INTERNATIONAL ROOFING &	)	HEARINGS OFFICER'S
BUILDING CONSTRUCTION, INC.,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL ORDER
	)	DENYING RESPONDENT'S
	)	MOTION TO DISMISS;
	)	AND GRANTING
	)	PETITIONER'S MOTION
	)	FOR SUMMARY JUDGMENT
Petitioner,)	
	)	Hearings Officer: Richard A. Young
vs.)	
)	
DEPARTMENT OF ACCOUNTING	)	Motions Hearing Date:
AND GENERAL SERVICES, STATE	)	January 7, 2021
OF HAWAII,)	
)	
Respondent.)	
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER
DENYING RESPONDENT'S MOTION TO DISMISS;
And

GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION:

On December 10, 2020, the Office of Administrative Hearings received International Roofing & Building Construction, Inc.'s ("Petitioner") December 9, 2020 request for administrative hearing to contest the Department of Accounting and General Services, State of Hawaii's ("Respondent" or "DAGS") denial of Petitioner's May 27,

2020 protest regarding the invitation for bids for the Wahiawa Public Library – Miscellaneous Repairs and Improvements, DAGS Job # 12-36-6587.

On December 3, 2020, Respondent had denied Petitioner's Protest.

The matter was thereafter set for a December 22, 2020 Pre-Hearing Conference. At the December 22, 2020 Pre-Hearing Conference, a motions deadline, a response to motions deadline, and hearing on motion and hearing dates were scheduled.

On December 29, 2020, Petitioner filed its Motion for Summary Judgment, Memorandum in Support of Motion, Declaration of Pablo Soriano, Exhibits "A" – "C". Also, on December 29, 2020, Respondent filed its Motion to Dismiss Petitioner's Request for Administrative Hearing, Memorandum in Support of Motion, Declaration of Jolie Lee, Exhibits "A" – "B". On January 5, 2021, both parties filed their memorandums in opposition to the motions for summary judgment and dismissal.

The motions for summary judgment and dismissal were heard before the undersigned Hearings Officer on January 7, 2021, in accordance with the provisions of Hawaii Revised Statutes ("HRS") Chapter 103D. Both parties chose to appear by telephone conferencing call. Petitioner was represented by Neil Aoki, Esq. Respondent was represented by Patricia Ohara, Esq.

Having reviewed and considered the motions and memoranda, exhibits and declarations attached thereto, the arguments of counsel, together with the entire record of this proceeding, the Hearings Officer renders the following findings of fact, conclusions of law and decision.

II. FINDINGS OF FACT:

1. Prior to May 21, 2020, Respondent had posted a Solicitation for the Wahiawa Public Library, Miscellaneous Repairs and Improvements, DAGS Job # 12-36-6587 project ("Project").
2. The low bidder on the Project was All Maintenance and Repair, LLC. ("AMR"), with a bid of \$767,000.00
3. Petitioner was the next lowest bidder, with a bid of \$814,000.00.
4. On May 27, 2020, Petitioner submitted a protest letter to

Respondent as AMR had listed Belmonte's Roofing and Waterproofing, LLC ("Belmonte") as its subcontractor for the flashing and sheet metal work. Petitioner noted that Belmonte has no C-44 specialty license to do the flashing and sheet metal work.

5. The specifications on the Project called for the subcontractor to provide both materials and labor, and install the flashing and sheet metal.

6. Specifically, the sheet metal work for the Project was detailed in Section 07600 – Flashing and Sheet Metal. Descriptions of some of the flashing and sheet metal work to be done were as follows:

1.01 Summary

Provide flashing and sheet metal work complete, as indicated on the drawings and/or specified herein.

1.03 Submittals:

A. Shop Drawings: Submit six (6) sets of shop drawings to the Contracting Office for approval prior to fabrication. Indicate on the shop drawings thickness, dimensions, fastenings and anchoring methods, expansion joints and other provisions necessary to provide for thermal expansion and contraction.

1.04 Quality Assurance:

Workmanship shall conform to the quality, procedures and methods recommended by the National Association of Sheet Metal Contractors and/or Sheet Metal and Air Conditioning Contractors National Association, Inc.

1.05 Guarantee:

A. The Contractor shall issue a written guarantee to the State that all work executed under this Section shall be free from defects of materials and workmanship for a period of two (2) years from final acceptance of the building. The following types of failure will be adjudged as defective work:

1. Leaking, failure to stay in place, undue expansion, lifting, deformation, loosening, splitting of seams.

2. The guarantee shall provide the following at no additional cost to the State:
 - a. Repair of flashing as necessary to seal leaks which are attributable to faulty materials and/or workmanship.
 - b. Repair and replacement of damage to the building and/or its finishes, equipment and/or furniture when occasioned by such leaks, and
 - c. Inspection of the flashings together with the Engineer or his designated representative, on or about the 1st and 2nd anniversaries of the Project.
- B. The guarantee shall be signed jointly by the Sheet Metal Subcontractor and the General Contractor.

Part 3 – Execution

3.01 Installation and Workmanship

C. Except as otherwise indicated on the drawings or specified, the workmanship of sheet metal work, method of forming joints, anchoring, cleating, provisions for expansion, etc. shall conform to the standard details and recommendations of the Sheet Metal and Air Conditioning Contractors National Association's "Architectural Sheet Metal Manual", and shall be subject to the approval of the Contracting Officer.

7. Belmonte did not have a C-44, flashing and sheet metal specialty license.

8. On September 30, 2020, Respondent sent a letter to Petitioner stating that it would be rejecting AMR's bid, so it considered Petitioner's protest against AMR moot. Respondent requested that Petitioner withdraw its protest.

9. However, on December 3, 2020, Respondent sent another letter to Petitioner, rescinding the rejection of AMR's bid and denying Petitioner's protest. In this letter, DAGS asserted that under HRS Section 103D-302(b) the State is allowed to accept AMR's bid if the sheet metal work is less than 1% of the bid amount and if doing so is in the best interests of the State.

10. Respondent's December 3, 2020 letter also states that it believes the sheet metal work is less than .1% of the bid.

11. In its Petition for hearing relief, Petitioner lists 4 reasons why the protest is being made. The 4 reasons listed are:

- (1) It is unfair for DAGS to rescind the rejection of AMR's bid (in its December 3, 2020 letter) as Petitioner was precluded from providing DAGS with further information;
- (2) DAGS estimate that the sheet metal work is .1% of the cost of the bid is unrealistic as the specifications call for both providing materials and labor in installing the flashing and sheet metal work;
- (3) The reasonable value of the flashing and sheet metal work is about \$24,000.00, which is the estimate Petitioner received from Taketa Sheet Metal when it submitted its bid. This is substantially more than 1% of AMR's total bid (\$7,670.00); and
- (4) AMR's bid was non-responsive as Belmonte's is not a licensed C-44, sheet metal subcontractor.

12. Petitioner requests that AMR's bid be deemed non-responsive.

13. On December 9, 2020, Petitioner filed a Petition for Request for Administrative Hearing, which the Office of Administrative Hearings received on December 10, 2020.

14. Petitioner submitted a \$2,000.00 Procurement Protest Bond, along with a \$200.00 filing fee.

15. On December 22, 2020, Respondent filed the DAG's Response to Petitioner's Request for Administrative Hearing. In this response, the DAGS states:

- (1) that the flashing and sheet metal work falls within the 1% exemption provided in under Hawaii Revised Statutes ("HRS") Section 103D-302(b); and
- (2) that under HRS Section 103D-709(d)(1), the Office of Administrative Hearings does not have jurisdiction over this matter as the protest concerns a matter that is less than \$10,000.00.

16. On December 29, 2020, Respondent filed its Motion to Dismiss Petitioner's Request for Administrative Hearing, Memorandum in Support of Motion, Declaration of Jolie Yee, Exhibits "A" – "B".

17. Jolie Yee is the contracts engineer employed by DAGS. The Declaration of Jolie Yee states, in part, that she obtained information from DAGS' consultant who had estimated the value of Project at \$931,337.00. Ms. Yee's Declaration further states that the sheet metal work is limited to the extension of 2 exhaust fans and is estimated to cost approximately \$500.00. *See, Declaration of Jolie Yee, #s 4 and 5.*

18. However, Ms. Yee's Declaration also states that the consultant's estimate for the flashing and sheet metal work described in Section 07600 of the specifications is \$18,001.00.

19. On December 29, 2020, Petitioner filed its Motion for Summary Judgment, Declaration of Pablo Soriano, Exhibits "A" – "C".

20. The Declaration of Pablo Soriano, Petitioner's project manager, states, in part:

"Based on the written specifications in Section 07600 for the Flashing and Sheet Metal work of the Project, International Roofing, as a B General Building contractor and C-42 Roofing contractor, understood that a licensed C-44 Sheet Metal contractor would be required to complete and guarantee all of the Section 07600 Flashing and Sheet Metal work, including the preparation of shop drawings, and the fabrication and installation of flashing and sheet metal materials.

- a. Section 07600 also requires the licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship. International Roofing would be unable to provide this written warranty to the State of Hawaii under either its B or C-42 licenses...It would be unreasonable to expect a licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship, unless it completed all of the Section 07600 Flashing and Sheet Metal work itself, using its own men and under its supervision."

21. The HAR provide that a C-44 Sheet Metal Contractor can perform the following work:

“To fabricate, assemble and install cornices, flashings, gutters, downspouts, kitchen and laboratory equipment, duct work, metal flues, and free standing fireplaces and chimneys; and to install pre-manufactured sheet metal products such as metal chutes, shelving, louvers nonbearing metal partitions, metal siding, and roofing and other sheet metal items common to the trade, and facsimile items such as plastic skylights, fiberglass ducts and fittings, including installation of metal awnings, canopies, patio covers, and seamless metal gutters.”

22. On January 5, 2021, both parties filed Memorandum in Opposition to the filed Motion for Summary Judgment, and Motion to Dismiss.

23. In its Memorandum in Opposition, Petitioner argues that “The essential issue in this case is the extent to which a licensed C-44 Sheet Metal contractor is required to perform the Flashing and Sheet Metal work set forth in Section 07600 of the Specifications...DAGS position is that the licensed C-44 Sheet Metal contractor’s work may be limited to the “extension of two exhaust fans and is estimated to cost approximately \$500,” and that a “C-42 roofing specialty contractor can perform the rest of the roofing and flashing work in section 07600.” Petitioner asserts that this position of DAGS is nonsensical and untenable. *Petitioner’s Memorandum in Opposition at page 2.*

24. In its Memorandum in Opposition, Respondent argues that “DAGS’ 1% estimate is the matter of controversy, in dispute, and for jurisdictional purposes, the matter of concern in this Request for Administrative Review....What matters is DAGS’s estimate that the sheet metal work is less than 1% of AMR’s total bid amount, and not what the sheet metal work is costing Petitioner.” *Respondent’s Memorandum in Opposition at pages 3 and 4.*

III. CONCLUSIONS OF LAW:

A. Respondent’s Motion to Dismiss

In its Motion to Dismiss, Respondent asserts 2 bases for dismissal:

1. That the Office of Administrative Hearings lacks jurisdiction in this matter under HRS Section 103D-709(d)(1), as the Protest is in regards to a subcontractor's work, but does not concern a matter greater than \$10,000.00; and
2. That the flashing and sheet metal work falls within the 1% exemption provided under Hawaii Revised Statutes ("HRS") Section 103D-302(b).

A. WHETHER THE OFFICE OF ADMINISTRATIVE HEARINGS HAS JURISDICTION IN THIS MATTER

Respondent asserts that the Office of Administrative Hearings lacks jurisdiction in this matter as the Protest is in regards to a subcontractor's work, but does not concern a matter greater than \$10,000.00.

Respondent points out that under the Hawaii Public Procurement Code there is a minimum amount that must be in controversy before a party may submit a request for administrative hearing. Under HRS Section 103D-709(d)(1) a bidder protesting an award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding provided that for contracts with an estimated value of \$1,000,000.00 or less, the protest concerns a matter that is greater than \$10,000.00.

As noted above, Respondent argues that "DAGS' 1% estimate is the matter of controversy, in dispute, and for jurisdictional purposes, the matter of concern in this Request for Administrative Review." Respondent asserts that the amount of the sheet metal work is actually less than .1% of AMR's bid of \$767,000.00. Point one per cent of AMR's bid computes to \$767.00. Because the statute requires that the protest concerns a matter that is greater than \$10,000.00, Respondent asserts that Petitioner may not initiate a proceeding with the Office of Administrative Hearings.

Respondent argues that it is not disputed that the specifications under Section 07600 require the contractor (AMR) to provide flashing and sheet metal and install these materials. However, Respondent asserts that the contract terms do not state

how or who is to do the sheet metal work. It is up to AMR to compose its bidder's team to complete the work.

In its motion, Respondent argues that Section 07600 does not require that there must be a single subcontractor to provide and install both the flashing and sheet metal materials.

While this may be true, Section 07600 does require that the contractor and the subcontractor perform the flashing and sheet metal work to industry standards, and that certain guarantees regarding workmanship are made. As noted in the Declaration of Pablo Soriano, Petitioner's project manager, "Based on the written specifications in Section 07600 for the Flashing and Sheet Metal work of the Project, International Roofing, as a B General Building contractor and C-42 Roofing contractor, understood that a licensed C-44 Sheet Metal contractor would be required to complete and guarantee all of the Section 07600 Flashing and Sheet Metal work, including the preparation of shop drawings, and the fabrication and installation of flashing and sheet metal materials.

- b. Section 07600 also requires the licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship. International Roofing (and Belmonte) would be unable to provide this written warranty to the State of Hawaii under either its B or C-42 licenses...It would be unreasonable to expect a licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship, unless it completed all of the Section 07600 Flashing and Sheet Metal work itself, using its own men and under its supervision."

Further, as noted above, the specifications under Section 07600 concerning the flashing and sheet metal work including the following:

Summary

Provide flashing and sheet metal work complete, as indicated on the drawings and/or specified herein.

1.03 Submittals:

- B. Shop Drawings: Submit six (6) sets of shop drawings to the Contracting Office for approval prior to fabrication. Indicate on the shop drawings thickness, dimensions, fastenings and anchoring methods, expansion joints and other provisions necessary to provide for thermal expansion and contraction.

1.04 Quality Assurance:

Workmanship shall conform to the quality, procedures and methods recommended by the National Association of Sheet Metal Contractors and/or Sheet Metal and Air Conditioning Contractors National Association, Inc.

1.05 Guarantee:

- A. The Contractor shall issue a written guarantee to the State that all work executed under this Section shall be free from defects of materials and workmanship for a period of two (2) years from final acceptance of the building. The following types of failure will be adjudged as defective work:
1. Leaking, failure to stay in place, undue expansion, lifting, deformation, loosening, splitting of seams.
 2. The guarantee shall provide the following at no additional cost to the State:
 - a. Repair of flashing as necessary to seal leaks which are attributable to faulty materials and/or workmanship.
 - b. Repair and replacement of damage to the building and/or its finishes, equipment and/or furniture when occasioned by such leaks, and
 - c. Inspection of the flashings together with the Engineer or his designated representative, on or about the 1st and 2nd anniversaries of the Project.
- B. The guarantee shall be signed jointly by the Sheet Metal Subcontractor

and the General Contractor.

Part 3 – Execution

3.01 Installation and Workmanship

C. Except as otherwise indicated on the drawings or specified, the workmanship of sheet metal work, method of forming joints, anchoring, cleating, provisions for expansion, etc. shall conform to the standard details and recommendations of the Sheet Metal and Air Conditioning Contractors National Association's "Architectural Sheet Metal Manual", and shall be subject to the approval of the Contracting Officer.

The scope of the flashing and sheet metal work required not only materials and workmanship consistent with industry standards, but also the detailed drafting of plans and specifications, and the guarantees of proper workmanship. The Hearings Officer agrees with the Declaration of Petitioner's project manager, Pablo Soriano, that a C-44 flashing and sheet metal specialty contractor is needed for this work.

Petitioner's estimate of \$23,675.00 from his subcontractor, T. Taketa Sheet Metal, Inc., for the flashing and sheet metal work supports its argument that the protest concerns a matter that is greater than \$10,000.00.

Jolie Yee is the contracts engineer employed by DAGS. The Declaration of Jolie Yee states that she obtained information from DAGS' consultant who had estimated the value of Project at \$931,337.00. Ms. Yee's Declaration states that the sheet metal work is limited to the extension of 2 exhaust fans and is estimated to cost approximately \$500.00. *See, Declaration of Jolie Yee, #s 4 and 5.*

However, Ms. Yee's Declaration also states that the consultant's estimate for the flashing and sheet metal work described in Section 07600 of the specifications is \$18,001.00. This is more than the \$10,000.00 threshold jurisdictional amount.

The Hearings Officer concludes that the protest concerns a matter that is greater than \$10,000.00; and therefore, that the Office of Administrative Hearings has jurisdiction in this matter.

B. WHETHER THE FLASHING AND SHEET METAL WORK IS EXEMPTED
UNDER HRS SECTION 103D-302(b)

HRS Section 103D-302(b), provides, in relevant part,

“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 acceptance is in the best interests 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 per cent of the total bid amount.”

In its motion, Respondent argues that in this case, that the value of the subcontracting work for the flashing and sheet metal is less than one per cent of the total bid amount.

However, the specifications under Section 07600 concerning the flashing and sheet metal work include the following:

1.02 Summary

Provide flashing and sheet metal work complete, as indicated on the drawings and/or specified herein.

1.03 Submittals:

B. Shop Drawings: Submit six (6) sets of shop drawings to the Contracting Office for approval prior to fabrication. Indicate on the shop drawings thickness, dimensions, fastenings and anchoring methods, expansion joints and other provisions necessary to provide for thermal expansion and contraction.

1.04 Quality Assurance:

Workmanship shall conform to the quality, procedures and methods recommended by the National Association of Sheet Metal Contractors and/or Sheet Metal and Air Conditioning Contractors National Association, Inc.

1.05 Guarantee:

- A. The Contractor shall issue a written guarantee to the State that all work executed under this Section shall be free from defects of materials and workmanship for a period of two (2) years from final acceptance of the building. The following types of failure will be adjudged as defective work:
1. Leaking, failure to stay in place, undue expansion, lifting, deformation, loosening, splitting of seams.
 2. The guarantee shall provide the following at no additional cost to the State:
 - a. Repair of flashing as necessary to seal leaks which are attributable to faulty materials and/or workmanship.
 - b. Repair and replacement of damage to the building and/or finishes, equipment and/or furniture when occasioned by such leaks, and
 - c. Inspection of the flashings together with the Engineer or his designated representative, on or about the 1st and 2nd anniversaries of the Project.
- B. The guarantee shall be signed jointly by the Sheet Metal Subcontractor and the General Contractor.

Part 3 – Execution

3.01 Installation and Workmanship

- C. Except as otherwise indicated on the drawings or specified, the workmanship of sheet metal work, method of forming joints, anchoring, cleating, provisions for expansion, etc. shall conform to the standard details and recommendations of the Sheet Metal and Air Conditioning Contractors National Association's "Architectural Sheet Metal Manual", and shall be subject to the approval of the Contracting Officer.

Clearly, the value of the flashing and sheet metal work is greater, not less, than one per cent of the total bid amount. The specifications call not only for materials and installation for the flashing and sheet metal work, but also for guarantees regarding

workmanship. The workmanship has to be done according to the standards of the industry, and provisions for repair and replacement are also a part of the specifications. It is noted that both the general and specialty contractors are responsible for the installation and workmanship, and the warranty and guarantee of proper workmanship.

Although Respondent argues that, “What matters is DAGS’s estimate that the sheet metal work is less than 1% of AMR’s total bid amount, and not what the sheet metal work is costing Petitioner”; considering the scope of the flashing and sheet metal work in the specifications, it is apparent that DAGS’ estimate is unrealistic.

Petitioner’s estimate of \$23,675.00 from his subcontractor, T. Taketa Sheet Metal, Inc., for the flashing and sheet metal work supports its argument that the value of the flashing and sheet metal work is greater, not less, than one per cent of the total bid amount.

Ms. Yee’s Declaration states that there is a \$47,000.00 difference between AMR’s and Petitioner’s bid, and that it is in the best interests of the State to accept the lower bid, and that the sheet metal work is less than 1% of the Project.

However, as noted above, Section 07600 of the specifications concerns both materials and labor for both the flashing and sheet metal work. Ms. Yee’s Declaration only states that the sheet metal work is less than 1% of the Project. Although Respondent argues that a C-42 roofing specialty licensed contractor can perform the rest of the roofing and flashing work in section 07600, this work would not be done by a C-44 flashing and sheet metal contractor - the type of specialty contractor needed to perform the work to the specifications required.

The Hearings Officer concludes that value of the flashing and sheet metal work is greater, not less, than one per cent of the total bid amount. Therefore, the exemption to listing a subcontractor under HRS Section 103D-302(b) does not apply.

B. Petitioner’s Motion for Summary Judgment

Petitioner’s Motion for Summary Judgment notes that Section 07600 of the specifications for the Project and the related drawings provide that the Flashing and Sheet Metal work is to be performed by a licensed sheet metal contractor. It is not contested

that AMR's listed subcontractor, Belmonte's, is not a licensed sheet metal contractor. Petitioner asserts that AMR's bid on the Project was non-responsive.

In its motion, Petitioner correctly cites the standard for summary judgment - that there are no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law; and that all reasonable inferences from the evidence are viewed in light most favorable to the non-moving party.

As Petitioner argues, Section 07600 of the Project's specifications requires that the contractor and the subcontractor perform the flashing and sheet metal work to industry standards, and that certain guarantees regarding workmanship are made.

Specifically, as noted in the Declaration of Pablo Soriano, Petitioner's project manager, "Based on the written specifications in Section 07600 for the Flashing and Sheet Metal work of the Project, International Roofing, as a B General Building contractor and C-42 Roofing contractor, understood that a licensed C-44 Sheet Metal contractor would be required to complete and guarantee all of the Section 07600 Flashing and Sheet Metal work, including the preparation of shop drawings, and the fabrication and installation of flashing and sheet metal materials.

- a. Section 07600 also requires the licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship. International Roofing would be unable to provide this written warranty to the State of Hawaii under either its B or C-42 licenses...It would be unreasonable to expect a licensed C-44 Sheet Metal contractor to sign a guarantee or warranty that "all of the work under this Section" shall be free from defects of materials and workmanship, unless it completed all of the Section 07600 Flashing and Sheet Metal work itself, using its own men and under its supervision."

As Petitioner argues, pursuant to the statutes and rules governing contractors, HRS Section 444-9 and HAR Section 16-77-18, only a licensed C-44 sheet metal contractor would have the authority and experience to perform the scope of the flashing and sheet metal work in Section 07600.

The scope of the flashing and sheet metal work required not only materials and workmanship consistent with industry standards, but also the detailed drafting of plans and specifications, and the guarantees of proper workmanship. This indicates that a C-44 flashing and sheet metal specialty contractor is needed for this work.

The Rules provide that a C-44 Sheet Metal Contractor can perform the following work:

“To fabricate, assemble and install cornices, flashings, gutters, downspouts, kitchen and laboratory equipment, duct work, metal flues, and free standing fireplaces and chimneys; and to install pre-manufactured sheet metal products such as metal chutes, shelving, louvers nonbearing metal partitions, metal siding, and roofing and other sheet metal items common to the trade, and facsimile items such as plastic skylights, fiberglass ducts and fittings, including installation of metal awnings, canopies, patio covers, and seamless metal gutters.”

Further, as Petitioner argues, the plans and drawings call for a sheet metal cap to be fabricated and installed, which only a licensed C-44 subcontractor can perform.

The Hearings Officer agrees with Petitioner that because AMR listed its flashing and sheet metal subcontractor as Belmonte, who is not a licensed C-44 sheet metal specialty contractor, AMR’s bid was non-responsive. As Petitioner argues, to protect the public from poor workmanship the Section 07600 Flashing and Sheet Metal work must be completed and guaranteed by a licensed C-44 sheet metal contractor. AMR’s bid is rejected as non-responsive.

IV. FINAL ORDER

Based upon the foregoing findings and conclusions, the Hearings Officer denies Respondent’s Motion to Dismiss, both because:

- A. The Office of Administrative Hearings has jurisdiction in this matter as the Protest is in regards to a subcontractor’s work, and concerns a matter greater than \$10,000.00; and
- B. The value of the flashing and sheet metal work is greater, not less, than one per cent of the total bid amount. Therefore, the exemption to listing a C-44

subcontractor under HRS Section 103D-302(b) does not apply.

Based upon the foregoing findings and conclusions, the Hearings Officer grants Petitioner's Motion for Summary Judgment. Because AMR listed its flashing and sheet metal subcontractor as Belmonte, who is not a licensed C-44 sheet metal specialty contractor, AMR's bid is rejected as non-responsive.

Accordingly, the Hearings Officer orders as follows:

- Respondent's December 29, 2020 Motion to Dismiss is denied; and
- Petitioner's December 29, 2020 Motion for Summary Judgment is granted.

The parties will bear their own attorney's fees and costs incurred in pursuing this matter. Pursuant to HRS §103D-709(e), the \$2,000.00 Procurement Protest Bond shall be returned to Petitioner.

DATED: Honolulu, Hawaii, January 20, 2021.



RICHARD A. YOUNG
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs