

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mary A.Y. Okada, Ed.D President Guam Community College P.O. Box 23069 GMF, Guam 96921 Email: mary.okada@guamcc.edu	From:	Benjamin J.F. Cruz Guam Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Vanessa L. Williams, Esq. Attorney for Appellant JJ Global Services Law Office of Vanessa L. Williams, P.C. GCIC Bldg., Suite 500 Hagatna, Guam 96910 Phone: (671) 477-1389 Email: vlw@vlwilliamslaw.com	Date:	October 28, 2021
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-013 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

October 28, 2021

Dr. Mary A. Y. Okada
President
Guam Community College
P.O. Box 23069
Barrigada, Guam 96921

VIA FACSIMILE: (671)734-5238

Re: Notice of Receipt of Appeal – OPA-PA-21-013

Dear Dr. Okada,

Please be advised that JJ Global Services (hereinafter referred to as “JJ Global”) filed an appeal with the Office of Public Accountability (OPA) on October 27, 2021, regarding GCC’s denial of JJ Global’s protest related to the procurement contract for Replacement of Building 900 Metal Awning Structure (GCC-FB-21-009). OPA has assigned this appeal case number OPA-PA-21-013.

Immediate action is required of GCC pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first three pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Friday, November 5, 2021**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Division 4, Chapter 12, §12105, by **Wednesday, November 17, 2021**, twenty calendar days (for appeals on a Contract Dispute) following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to JJ Global. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA

respectfully asks that GCC provide one original and one electronic file of the said record, which will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-21-013

Cc: Vanessa L. Williams, Esq., Attorney for Appellant JJ Global

1 **PART III. APPEAL INFORMATION**

2 **A) Purchasing Agency:** Guam Community College

3 **B) Identification of Contract:** IFB # GCC-FB-21-009

4 **C) Decision Date:** The Decision being appealed was made on October 12, 2021 by the Head
5 of Purchasing Agency, Mary A.Y. Okada, Ed.D., GCC President.

6 **D) Appeal Origin:** Appeal is made from: *(Please select one and attach a copy of the Decision*
7 *to this form)*

8 Decision on Protest of Method, Solicitation or Award. See Exhibit 11.

9 Decision on Debarment or Suspension

10 Decision on Contract or Breach of Contract Controversy (Excluding claims of money
11 owed to or by the government)

12 Determination on Award not Stayed Pending Protest or Appeal (Agency decision that
13 award pending protest or appeal was necessary to protect the substantial interests of
14 the government of Guam)

15 **E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:**

16 ClayArch Inc.

17 **PART IV. FORM AND FILING**

18 **1. Statement of Grounds for Appeal**

19 a. On May 13, 2021, GCC issued an Invitation for Bid (IFB No. GCC-FB-21-009)
20 for the replacement of GCC’s Building 900 metal awning structure. The authority cited by
21 GCC’s IFB (page 6) stated that the IFB shall be governed by Guam’s Procurement Laws in 5
22 Guam Code Annotated (“GCA”) Chapter 5, and 2 Guam Administrative Rules and Regulations
23 (“GAR”) Division 4. See Exhibit 1.

24 b. On July 2, 2021, GCC provided JJ Global with a Notice of Intent to Award letter
25 for the IFB. The letter provided in pertinent part: “Prior to providing you with the contract, JJ
26 Global Services will need to submit the following documents: ... 7. Updated CPM Chart....” See
27 Exhibit 2.

1 c. On July 6, 2021, JJ Global responded to the GCC’s Notice of Intent to Award,
2 consistent with the June 25, 2021 clarification letter, that the completion timeline of 90-days did
3 not include delays due to weather or delay in materials if not on island, and that JJ Global should
4 receive at least 36-hours notice before the Notice to Proceed Date to allow for mobilization. See
5 Exhibit 3.

6 d. On July 27, 2021, GCC provided a July 26, 2021 Notice of Bid Award letter and
7 a proposed contract to JJ Global for the IFB. The Bid Award letter also stated the Notice to
8 Proceed date was July 27, 2021 and that based on the 90 days calendar days “upon the issuance
9 of the purchase order/contract, the deadline to complete this project is October 24, 2021.” See
10 Exhibit 4.

11 e. On July 28, 2021, a Purchase Order was signed off by the President of GCC on
12 July 28, 2021 and issued to JJ Global. See attached Exhibit 5.

13 f. On August 6, 2021, JJ Global submitted a request to GCC seeking an extension of
14 the project completion timeline. The request was submitted following an email from GCC stating,
15 “JJ Global may submit a request in writing asking for an extension because of the time it took to
16 obtain a permit.” See Exhibit 6.

17 g. On August 9, 2021, JJ Global followed up with GCC, asking for the status of their
18 request for an extension. See Exhibit 7.

19 h. On August 26, 2021, JJ Global sent a letter to GCC stating the proposed contract
20 did not reflect JJ Global’s bid term regarding unanticipated delays outside its control, specifically:
21 “Completion Date may be extended forward in allotment to the number of days needed for any/all
22 the following: delay of permits(s); delay due to weather conditions, i.e. natural disasters, storms,
23 etc.; or delay due to the COVID-19 pandemic, including, but not limited to, materials not on
24 island.” See Exhibit 8.

25 i. On September 22, 2021, GCC canceled the award and purchase order for IFB No.
26 GCC-FB-21-009. See Exhibit 9.

1 j. On October 5, 2021, JJ Global protested the cancellation of the award and purchase
2 order for IFB No. GCC-FB-21-009. See Exhibit 10. Paragraph 29 of the Instructions of GCC-
3 BF-21-009 states in pertinent part:

4 Award shall be made to the lowest responsible and responsive bidder, whose bid is
5 determined to be the most advantageous to the Government, taking into consideration
6 the evaluation factors set forth in this solicitation. No other factors or criteria shall be
7 used in the evaluation. Award issued to the lowest responsible bidder within the
8 specified time for acceptance as indicated in the solicitation, result in a binding
9 contract without further action by either party. The right is reserved as the interest of
10 the Government and may require to waive any minor irregularity in the bid received
11 pursuant to 2 GAR, Div. 4 §3109(m)(4)(B).

12 See Exhibit 1.

13 k. On October 12, 2021, GCC denied JJ Global’s protest. See Exhibit 11.

14 l. Under Guam Procurement Law, the Office of Public Accountability has
15 jurisdiction over appeals of decisions rendered by the Chief Procurement Officer on protests of
16 method of source selection, solicitation or award of contract. 5 GCA § 5425 (e).

17 m. The cancellation of the procurement and award of contract is in violation of the
18 terms of the IFB and Guam procurement law.

19 n. There were no cogent and compelling reasons to believe that the cancellation of
20 the solicitation was in the territory's best interest. See 5 GCA § 5225 and 2 GAR Div. 4 § 3115(b).

21 o. The cancellation of the award was not supported by a written determination made
22 the head of the purchasing agency. 5 GCA § 5211(f).

23 p. To the extent a determination was made pursuant to 5 GCA § 5211(f), such
24 determination was clearly erroneous, arbitrary, capricious, and contrary to law.

25 **2. Ruling Requested:**

- 26 a. The cancellation of the award of IFB No. GCC-FB-21-009 be rescinded;
- 27 b. The contract to JJ Global be ratified and affirmed;
- 28 c. That JJ Global be compensated for the actual expenses reasonably incurred under the
 contract, plus a reasonable profit; and
- d. All other legal and equitable remedies available to JJ Global.

1 **3. Supporting Exhibits, Evidence, and Documents:**

2 a. See the attached Exhibit 1, a copy of GCC’s Invitation for Bid No. GCC-FB-21-
3 009, dated May 13, 2021.

4 b. See the attached Exhibit 2, a copy of GCC’s Notice of Intent to Award to JJ Global,
5 dated July 2, 2021.

6 c. See the attached Exhibit 3, a copy of JJ Global’s letter responding to GCC’s Notice
7 of Intent to Award, dated July 6, 2021.

8 d. See the attached Exhibit 4, a copy of GCC’s Notice of Bid Award letter and
9 proposed contract to JJ Global for IFB No. GCC-FB-21-009, sent July 27, 2021.

10 e. See the attached Exhibit 5, a copy of GCC’s Purchase Order for IFB No. GCC-
11 FB-21-009 signed off by the President of GCC, dated July 28, 2021.

12 f. See the attached Exhibit 6, a copy of JJ Global’s extension request and e-mail,
13 dated August 6, 2021.

14 g. See attached Exhibit 7, a copy of JJ Global’s email to GCC regarding a status
15 update, dated August 9, 2021.

16 h. See the attached Exhibit 8, a copy of JJ Global’s letter to GCC regarding the
17 contract, dated August 26, 2021.

18 i. See the attached Exhibit 9, a copy of GCC’s letter to JJ Global cancelling the
19 contract, dated September 22, 2021.

20 j. See the attached Exhibit 10, a copy of JJ Global’s letter of Protest dated October
21 5, 2021.

22 k. See the attached Exhibit 11, a copy of GCC’s letter to JJ Global denying the
23 Protest, dated October 12, 2021.

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Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-013 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Thu, Oct 28, 2021 at 10:50 AM

To: Mary Okada <mary.okada@guamcc.edu>, joleen.evangelista@guamcc.edu

Cc: Vanessa Williams <vlw@vlwilliamsllaw.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-21-013. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
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Fax (671) 472-7951

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**21-013 Notice of Receipt of Appeal.pdf**

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