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 238 Archbishop Flores St.
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FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727 Email: Claudia.Acfalle@gsadoa.guam.gov	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Ms. 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:	November 8, 2021
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-014 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

November 8, 2021

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 475-1727

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

Dear Ms. Acfalle,

Please be advised that JJ Global Services (hereinafter referred to as “JJ Global”) filed an appeal with the Office of Public Accountability (OPA) on November 5, 2021, regarding GSA’s denial of JJ Global’s protest related to the procurement for Repair and Maintenance of Northern Regional Recreational Swimming Pool, Dededo Sports Complex. OPA has assigned this appeal case number OPA-PA-21-014.

Immediate action is required of GSA 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 **Tuesday, November 16, 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 **Tuesday, November 23, 2021**, ten work days 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 GSA 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-21-014

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

1 **PART III. APPEAL INFORMATION**

2 **A) Purchasing Agency:** General Services Agency (“GSA”)

3 **B) Identification of Contract:** IFB No. GSA-023-21

4 **C) Decision Date:** The Decision being appealed was made on October 21, 2021, by the
5 Acting Chief Procurement Officer, Anita Cruz.

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 1.*

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 Total Chemical Resources, Inc.

17 Guahan Clean Master 1

18 R&E Builders

19 D.B. P. Construction

20 **PART IV. FORM AND FILING**

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

22 a. On April 1, 2021, GSA issued an Invitation for Bid (IFB No. GSA-023-21) for the
23 repair and maintenance of the Northern Regional Recreational Swimming Pool in the Dededo
24 Sports Complex. *See Exhibit 1.*

25 b. On Page 1 of GSA’s IFB’s Special Reminder to Prospective Bidders, it states
26 prospective bidders are reminded to comply with the “CURRENT BUSINESS
27 LICENSE/CONTRACTOR’S LICENSE/SPECIALITY LICENSE IN REFERENCE TO
28

1 SUPPLIES OR SERVICES FOR THIS BID” or face “disqualification and rejection of the bid.”
2 See Exhibit 1, p. 1.

3 c. On Paragraph 4, Page 23 of GSA’s IFB General Terms and Conditions, it states:
4 “Bidders are cautioned that the Government will not consider for award any offer submitted by a
5 bidder who has not complied with the Guam Licensing Law. Specific information on licenses
6 may be obtained from the Director of Revenue and Taxation.” See Exhibit 1, p. 23 ¶ 4.

7 d. On Paragraph 6, Page 23 of GSA’s IFB’s General Terms and Conditions, it states:
8 “Bidders shall comply with all specifications and other requirements of the Solicitation.” See
9 Exhibit 1, p. 23 ¶ 6.

10 e. On Paragraph 14, Page 23 of GSA’s IFB’s General Terms and Conditions, it states:
11 “Bids will be considered only from the such bidders who, in the opinion of the Government, can
12 show evidence of their ability, experience, equipment, and facilities to render satisfactory
13 service.” See Exhibit 1, p. 23 ¶ 14.

14 f. On Paragraph 16, Page 24 of GSA’s IFB’s General Terms and Conditions, the
15 Standard for Determination of Lowest Responsible Bidders” is guided by the following, inter alia:
16 “b) The ability, capacity, and skill of the Bidder to perform[,] ...e) The previous and existing
17 compliance by the Bidder with laws and regulations relative to procurement[,] ... [and] h) The
18 compliance with all of the conditions of the Solicitation.” See Exhibit 1, p. 24 ¶ 16.

19 g. On the General Requirements Section of Page 34 of GSA’s IFB, it states: “By
20 submitting a proposal/[q]uote, each bidder agrees that [Department of Parks and Recreation], in
21 determining the successful bidder and its eligibility for the award, may consider the bidder’s
22 experience and facilities, conduct and performance under other contracts and financial
23 performance.” See Exhibit 1, p. 34.

24 h. On June 8, 2021, JJ Global, Guahan Cleaning Masters 1, and Total Chemical
25 Resources, Inc. submitted bids in response to IFB No. GSA-023-21. See Exhibit 2.

26 i. On April 5, 2021, JJ Global submitted their Bid Submission for IFB No. GSA-
27 023-21. See Exhibit 3.

1 j. On April 29, 2021, Total Chemical Resources, Inc. submitted their Bid Submission
2 for IFB No. GSA-023-21. *See Exhibit 4.*

3 k. On September 29, 2021, JJ Global received GSA’s Bid Status rejecting JJ Global’s
4 Bid Submission due to “high price”. *See Exhibit 5.*

5 l. On October 6, 2021, JJ Global protested the award of IFB No. GSA-023-21 to
6 Total Chemical Resources, Inc. on the grounds that Total Chemical Resources, Inc. was not the
7 lowest responsive and responsible bidder when it lacks the proper licensing necessary to comply
8 with the licensing requirements of Guam law and the IFB. *See Exhibit 6.*

9 m. On October 21, 2021, GSA denied JJ Global’s protest, which was received by JJ
10 Global the next day, October 22, 2021. *See Exhibit 7.*

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

15 o. Pursuant to 5 GCA § 5703, the Public Auditor reviews GSA’s denial of JJ
16 Global’s Protest *de novo*.

17 p. GSA’s denial of JJ Global’s protest is in error.

18 q. The award of IFB No. GSA-023-21 to Total Chemical Resources, Inc. is in
19 violation of the terms of the IFB and Guam Procurement Law.

20 r. Under Guam Procurement Law, contracts shall be awarded to “the lowest
21 responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for
22 Bids....” 5 GCA § 5211(g).

23 s. Total Chemical Resources, Inc. was not the lowest responsive and responsible
24 bidder to IFB No. GSA-023-21 because it did not meet the requirements and criteria set forth in
25 IFB No. GSA-023-21.

26 t. The requirements and criteria set forth in the IFB specify that bidders must have
27 current business licenses, contractor’s licenses and specialty licenses necessary to provide the
28 services in the Bid. *See Exhibit 1, p. 1.*

1 u. The services solicited in IFB No. GSA-023-21 are for plumbing, swimming pool,
2 and electrical repair and maintenance. *See* Exhibit 1, pp. 32-34.

3 v. Guam law requires specialty contractor's licenses for plumbing, swimming pool,
4 and electrical repair and maintenance.

5 w. JJ Global has the specialty licenses required to provide the services solicited in
6 IFB No. GSA-023-21. *See* Exhibit 3, p. 50.

7 x. Total Chemical Resources, Inc. does not have the specialty licenses required to
8 provide the services solicited in IFB No. GSA-023-21. *See* Exhibit 1 at pp. 1, 23 ¶ 4 and Exhibit
9 4.

10
11 **2. Ruling Requested:**

12 a. That the award and contract of IFB No. GSA-023-21 to Total Chemical Resources,
13 Inc. be declared null and void;

14 b. That JJ Global be awarded IFB No. GSA-023-21 as the lowest responsive and
15 responsible bidder;

16 c. All other legal and equitable remedies available to JJ Global.

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

18 a. *See* the attached Exhibit 1, a copy of GSA's Invitation for Bid No. GSA-023-21,
19 dated April 1, 2021.

20 b. *See* the attached Exhibit 2, a copy of the Abstract for IFB No. GSA-023-21.

21 c. *See* the attached Exhibit 3, a copy of JJ Global's Bid Submission for IFB No. GSA-
22 023-21, dated April 5, 2021.

23 d. *See* the attached Exhibit 4, a copy of Total Chemical Resources, Inc.'s Bid
24 Submission for IFB No. GSA-023-21, dated April 29, 2021.

25 e. *See* the attached Exhibit 5, a copy of the Bid Status rejecting JJ Global's Bid
26 Submission, received by JJ Global on September 29, 2021.

27 f. *See* the attached Exhibit 6, a copy of JJ Global's letter of Protest, dated October 6,
28 2021.

1 g. See the attached Exhibit 7, a copy of GSA's letter to JJ Global denying the Protest,
2 received by JJ Global on October 22, 2021.

3
4 **PART V. DECLARATION RE COURT ACTION**

5 Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses
6 interest in a decision by the Public Auditor, the Office of Public Accountability will not take
7 action on any appeal where action concerning the protest or appeal has commenced in any court.

8 The undersigned party does hereby confirm that to the best of his or her knowledge, no
9 case or action concerning the subject of this Appeal has been commenced in court. All parties are
10 required to, and the undersigned party agrees to notify the Office of Public Accountability within
11 24 hours if court action commences regarding this Appeal or the underlying procurement action.

12 Respectfully submitted this 5th day of November 2021.

13
14
15 By:



16 **VANESSA L. WILLIAMS, ESQ.**
17 *Attorney for Appellant JJ Global Services*



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-014 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Nov 8, 2021 at 2:35 PM

To: Claudia Acfalle <Claudia.Acfalle@gsadoa.guam.gov>, Robert Kono <robert.kono@gsa.guam.gov>, Vanessa Williams <vlw@vlwilliamsllaw.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-21-014. 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
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