

1 **GUAM DEPARTMENT OF EDUCATION**

2 Andrew T. Perez, Legal Counsel

3 P.O. Box DE

4 Hagåtña, Guam 96910

5 Telephone (671) 300-1537

6 Email: legal-admin@gdoe.net

7 *Attorney for Guam Department of Education*

RECEIVED

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 03/27/14

TIME: 3:50 AM PM BY: CBV

FILE NO OPA-PA: 14-001

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

10 J&B MODERN TECH,

11 Appellant.

OPA-PA-14-001

SUBMISSION OF AGENCY REPORT

12 The Guam Department of Education ("GDOE"), the purchasing agency in this matter,
13 hereby submits the following exhibits as the Agency Report required by 2 GAR §12105:

- 14 a. A copy of the protest(s):

15 *J&B Modern Tech's Protest*
Bates Stamp No. GDOE 0376-0377

Exhibit 12

- 16 b. A copy of the bid submitted by the Appellant.

17 *A copy of the Appellant's bid is included in the Procurement*
18 *Record as Exhibit 4, Bates Stamp Nos. GDOE 0014-0108.*

- 19 c. A copy of the solicitation, including the specifications or portions thereof relevant
20 to the Appeal:

21 *A copy of IFB005-2014, Amendments and Clarifications are*
22 *included in the Procurement Record as Exhibit 6, Bates Stamp*
23 *Nos. GDOE 0228-0315.*

- 24 d. A copy of the abstract of bids or offers or relevant or portions thereof relevant to
25 the Appeal:

26 *A copy of Abstract of Bids is included in the Procurement*
27 *Record as Exhibit 7, Bates Stamp Nos. GDOE 0316.*

1
2 e. Any other documents which are relevant to the Appeal; including the contract, if
3 one has been awarded, pertinent amendments, and plans and drawings:

4 *Memorandum from Jacinto Estella* **Exhibit 13**
5 *Bates Stamp No. GDOE 0378*

6 *February 5, 2014 Memorandum from Marcus Y. Pido* **Exhibit 14**
7 *Bates Stamp No. GDOE 0379-0380*

8 *Purchase Order 20140367-00* **Exhibit 15**
9 *Bates Stamp No. GDOE 0381-0382*

10 *February 7, 2014 Notice of Stay of Procurement* **Exhibit 16**
11 *Bates Stamp No. GDOE 0383*

12 *March 7, 2014 Notice to Lift Stay of Procurement* **Exhibit 17**
13 *Bates Stamp No. GDOE 0384*

14 f. The decision from which the Appeal is taken, if different than the decision
15 submitted by Appellant:

16 *GDOE's March 7, 2014 Written Response to J&B Modern*
17 *Tech's Protest* **Exhibit 18**
18 *Bates Stamp No. GDOE 0385-0386*

19 g. A statement answering the allegation of the Appeal and setting forth findings,
20 actions, and recommendations in the matter together with any additional evidence or information
21 deemed necessary in determining the validity of the Appeal. The statement shall be fully
22 responsive to the allegations of the Appeal:

23 *GDOE's Agency Statement* **Exhibit 19**
24 *Bates Stamp No. GDOE 0387-0391*

1 h. If the award was made after receipt of the Appeal, the report will include the
2 determination required under 2 GAR §9101(e):

3 *Not applicable.*

4
5 i. A statement in substantially the same format as Appendix B to this Chapter,
6 indicating whether the matter is the subject of a court proceeding:

7 *Declaration Regarding Court Action*
8 **Bates Stamp No. GDOE 0392**

Exhibit 20

9
10 Dated this 27th day of March, 2014.

11 Respectfully submitted,

12 **GUAM DEPARTMENT OF EDUCATION**

13 By: 
14 **ANDREW T. PEREZ, ESQ.**
15 *Legal Counsel*

Exhibit 12



J&B MODERN TECH

P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931

TEL: (671) 646-0588 / 646-3346 / 646-4435

FAX: (671) 646-0589

February 6, 2014

PROCUREMENT SECTION
RECEIVED

FEB 06 2014

DEPARTMENT OF EDUCATION

TIME: 1:53 pm INITIAL:

VIA HAND DELIVERY

John J.P. Fernandez
Superintendent of Education
Guam Department of Education
Manuel F.L. Guerrero Administration Building
312 Aspinall Avenue
Hagåtña, Guam 96910

VIA HAND DELIVERY

Marcus Y. Pido
Supply Management Administrator
Guam Department of Education
Supply Management Office
Manuel F.L. Guerrero Administration Building
2nd Floor, Ste. B-202
312 Aspinall Avenue
Hagåtña, Guam 96910

Re: **Bid invitation GDOE IFB 005-2014
J&B Modern Tech Protest**

Dear Mr. Fernandez and Mr. Pido:

Please be advised that Phil-Gets (Guam) International Trading Corporation dba J&B Modern Tech ("J&B") protests (a) the Guam Department of Education's ("GDOE") decision not to award the contract for GDOE IFB 005-2014, Air Conditioning Systems Exterior Duct Restoration Project due to alleged "higher bid price offered", and (b) the intention to award the contract to JRN Air Conditioning & Refrigeration, Inc. ("JRN"). The decision not to award the contract to J&B and the recommendation of an award to JRN were stated in the document entitled "Bid Status" dated February 5, 2014. A copy of this Bid Status is attached hereto as "Exhibit 1".

Section 2.1.2 in Section 2-General Information, General Instructions & Project Scope of the Invitation for Bid states in pertinent part:

The Contractor must conduct pre site inspections to determine existing conditions and any special needs/requirements for execution of project.
Site inspection and field verification of existing layout and conditions is mandatory.

AIR-CONDITIONING & REFRIGERATION EQUIPMENT, PARTS, SUPPLIES, SERVICES & GENERAL CONTRACTOR

GDOE 0376

John J.P. Fernandez, Superintendent of Education
Marcus Y. Pido, Supply Management Administrator
Guam Department of Education
February 6, 2014
Page 2

The boldface and underlining above are all found in the original Invitation for Bid from GDOE.

In addition, in Amendment No. 1 to this IFB, issued on December 5, 2013, GDOE responded to JRN's question, "Who will be scheduling the mandatory site inspection?"

GDOE responded, "Site inspection will kick off immediately following pre-bid conference commencing with Simon Sanchez High School followed by Upi Elementary, CL Taitano and finally Southern High School.

The site inspections were not completed at all four schools on the date of the pre-bid conference. The remaining site inspection was scheduled for Southern High School on December 10, 2013. As can be seen from the sign-in sheet, a copy of which is attached as "Exhibit 2", J&B attended these later site inspections but JRN did not.

JRN did not attend the mandatory site inspection. Thus there can be no doubt that based on the terms of the IFB, JRN's failure to complete this requirement resulted in a nonresponsive bid and disqualification from consideration for award. See 5 GCA §5201(g) (responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids); 5 GCA §5211(g) (contract to be awarded to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bid).

Since JRN has been disqualified from consideration due to a nonresponsive bid, it cannot be recommended that the contract be awarded to JRN. As J&B had a lower bid than any other responsive bidder, the decision to not select J&B due to "higher price" is erroneous.

Thank you for your attention to this matter. I look forward to receiving GDOE's response to J&B's protest in the near future.

Sincerely,



GENEROSO M. BANGAYAN
President, Phil-Gets (Guam) International Trading
Corporation dba J&B Modern Tech

Exhibit 13

12.20.13

General Statement

**Re: GDOE IFB IFB 005-2014
Air Conditioning Systems Exterior Duct Restoration Project**

On December 6, 2013 a site inspection was scheduled reference the subject project. This site inspection was conducted by GDOE F&M Refrigeration Supervisor and bidders were J&B Modern Tech; JRN Air Conditioning and Dylan Mechanical representatives.

Site inspection commenced at Simon Sanchez High School immediately following pre-bid conference at approximately 1340 hours. Following Simon Sanchez, the group moved on to Upi Elementary in Yigo, then CL Taitano in Sinajana.

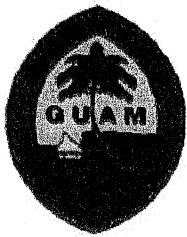
Upon completing CL Taitano the group realized it was well past 1600 hours and that Southern High School may be closed and accessibility may be delayed as the school is located in the southern part of the island. In light of this, a decision was made by all parties to resume site inspection following the Holiday which was agreed to continue on Tuesday, December 10, 2013. I personally left my contact number with all parties and asked that they contact me so that I could coordinate continuation of this site inspection at Southern High School Building 5000.

On Tuesday, 12/10/13 J&B Modern Tech contacted me and resumed site inspection at Southern High School. No other contractors present at the pre-bid conference contacted me so I have no knowledge on whether they conducted a site visit or not.

Jacinto Estrella


Refrigeration Mechanic Supervisor

Exhibit 14



Jon J.P. Fernandez
Superintendent of Education

DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT

www.gdoe.net
Manuel F.L. Guerrero Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96910
Telephone: (671) 300-1581 Fax: (671) 472-5001
Email: procurement@gdoe.net




Marcus Y. Pido
Supply Management Administrator

MEMORANDUM

February 5, 2014

To: Procurement File

From: Supply Management Administrator 

Re: **IFB 005-2014 Air Conditioning Systems Exterior Duct Restoration Project
A Mandatory Site Visit was not Positively Specified in Writing by GDOE;
therefore, attendance not required.**

This memo serves to determine attendance at the Pre-Bid conference for this IFB was not specifically stated in writing by GDOE as being Mandatory. Subsequently, attendance at the Pre-Bid conference is not a prerequisite in order for a bid to be responsive to this IFB.

On Monday, 25 November 2013, GDOE issued IFB 005-2014. The original IFB did not call for a scheduled pre-bid conference/site visit. Section 2.1.2 of the IFB required, "Site inspection and field verification of existing layout and conditions is mandatory."

On Thursday, 5 December 2013, GDOE issued Amendment No. 1 to the IFB, stating in part, "...Pre-Bid/Site Inspection: Friday, December 06, 2013, 1:00p.m., Simon Sanchez Teacher's Lounge. All Prospective Bidder's [sic] must report to the School Administrator's (Principal's Office) to sign in."

As part of Amendment No. 1, GDOE answered questions submitted in writing by prospective bidders. "Questions submitted by JRN Air Conditioning & Refrigeration: 1. Will there be a pre-bid conference?" GDOE responded, "Yes, Pre-bid Conference scheduled December 6, 2013 @ 1300 hours, venue Simon Sanchez High School Teachers Lounge."
"2. Who will be scheduling the mandatory site inspection?" GDOE responded, "Site Inspection will kick off immediately following pre-bid conference commencing with Simon Sanchez High School followed by Upi Elementary, CL Taitano and finally Southern High School."

Also, "Question submitted by J & B Modern Tech: ... 5. When is the Pre-bid conference and site visit?" GDOE responded, "Pre-bid Conference scheduled December 6, 2013 @ 1300 hours, venue Simon Sanchez High School Teachers Lounge. Site Inspection will kick off immediately following pre-bid conference commencing with Simon Sanchez High School followed by Upi Elementary, CL Taitano and finally Southern High School."

As the designated Buyer was not present for the duration of the pre-bid conference and pre-bid site visits, notes are relied upon from GDOE F&M Refrigeration Mechanic Supervisor Jacinto R. Estella
GDOE 0379

Determination to Procurement File

February 5, 2014

IFB 005-2014 Air Conditioning Systems Exterior Duct Restoration Project

Page 2 of 2

Jr. His notes state, "On December 6, 2013 a site inspection was scheduled reference the subject project. This site inspection was conducted by GDOE F&M Refrigeration Supervisor and bidders were J&B Modern Tech; JRN Air Conditioning and Dylan Mechanical representatives."

"Site inspection commenced at Simon Sanchez High School immediately following pre-bid conference at approximately 1340 hours. Following Simon Sanchez, the group moved on to Upi Elementary in Yigo, then CL Taitano in Sinajana."

"Upon completing CL Taitano the group realized it was well past 1600 hours and that Southern High School may be closed and accessibility may be delayed as the school is located in the southern part of the island. In light of this, a decision was made by all parties to resume site inspection following the Holiday which was agreed to continue on Tuesday, December 10, 2013. I personally left my contact number with all parties and asked that they contact me so that I could coordinate continuation of this site inspection at Southern High School Building 5000."

"On Tuesday, 12/10/13 J&B Modern Tech contacted me and resumed site inspection at Southern High School. No other contractors present at the pre-bid conference contacted me so I have no knowledge on whether they conducted a site visit or not."

The only instance of the word "mandatory" occurs in JRN's question asking who will be scheduling the mandatory site inspection. GDOE never explicitly stated the Pre-Bid conference/site visit was mandatory. Amendment No. 1 scheduled a Pre-Bid/Site Inspection for December 6, 2013 but did not make attendance mandatory. It only required prospective bidders to sign-in at the Principal's Office.

Therefore, GDOE determines attendance to the Pre-Bid Conference/Site Visit was optional and not mandatory to the responsiveness of this IFB.

cc:

Procurement File: IFB 005-2014 Air Conditioning Systems Exterior Duct Restoration Project

GDOE 0380

Exhibit 15



Purchase Order

Fiscal Year 2014 Page 1 of 2

IMPORTANT
PURCHASE ORDER NUMBER MUST APPEAR ON ALL
INVOICES, PACKAGES, AND CORRESPONDENT.

Purchase Order # **20140367-00**

**Delivery must be made within
doors of specified destination.**

B I L L T O

**BUSINESS OFFICE
DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM
P.O BOX DE
HAGÁTÑA, GUAM 96932**

V E N D O R

**JRN AIR CONDITIONING &
P.O. BOX 27070
GMF GU 96921**

S H I P T O

See Shipping Information Below

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
671-649-8120		671-649-5737		20140077		See Shipping Information Below	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms			Department/Location	
02/05/2014	10578					FACILITIES & MAINTENANCE	
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
	IFB 005-2014 AIR CONDITIONING The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading INSTRUCTION TO VENDOR: 1. DO NOT OVERSHIP OR SUBSTITUTE WITHOUT PRIOR PURCHASING DEPT. APPROVAL. 2. SEND ALL INVOICES, CERTIFIED ORIGINAL, AND ONE (1) COPY ONLY, TO BUSINESS OFFICE, GUAM DEPT. OF EDUCATION P.O. BOX DE HAGATNA						
1	REPLACEMENT OF AC DUCTS SIMON SANCHEZ HIGH SCHOOL; UPI ELEMENTARY; C.L. TAITANO ELEMENTARY; SOUTHERN HIGH SCHOOL			1.0	LOT	\$254,501.910	\$254,501.91
	<i>Ship To:</i> PROSPECTIVE BIDDER FACILITIES & MAINTENANCE, RT 1 162 N MARINE CORPS DRIVE, PITI GU 96915 Phone: 671 475-0629 Fax: 671 472-7040						
	DOE-10 DOEPR 3.9 COMPETITIVE SEALED BIDDING, "ALL LATE DELIVERIES AND ACCEPTANCE ARE SUBJECT TO LIQUIDATED DAMAGES" BLANKET PURCHASE ORDER ISSUED TO COVER THE COST TO ENCUMBER FUNDS PER THE AGREEMENT BETWEEN THE 'CONTRACTOR' AND THE GUAM DEPARTMENT OF EDUCATION 'GDOE' FOR THE AMOUNT STATED HEREIN.						
	THIS PURCHASE ORDER SHALL BE IN ACCORDANCE TO THE SCOPE OF WORK, GENERAL TERMS AND CONDITIONS AND SPECIAL PROVISIONS AS STIPULATED IN THE ORIGINAL BID DOCUMENTS.						
	NOTE: THE GOV'T WILL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED SERVICES MADE UNDER THIS OPEN PURCHASE.						
	EXPENDITURES IN EXCESS OF THE PURCHASE ORDER AMOUNT OR CHARGES MADE AFTER THE EXPIRATION DATE WILL NOT BE HONORED WITHOUT PRIOR APPROVAL AND AUTHORIZED						

GDOE 0381

PO Total **\$254,501.91**



Purchase Order

Fiscal Year 2014 Page 2 of 2

IMPORTANT
PURCHASE ORDER NUMBER MUST APPEAR ON ALL
INVOICES, PACKAGES, AND CORRESPONDENCE.
Purchase Order # **20140367-00**

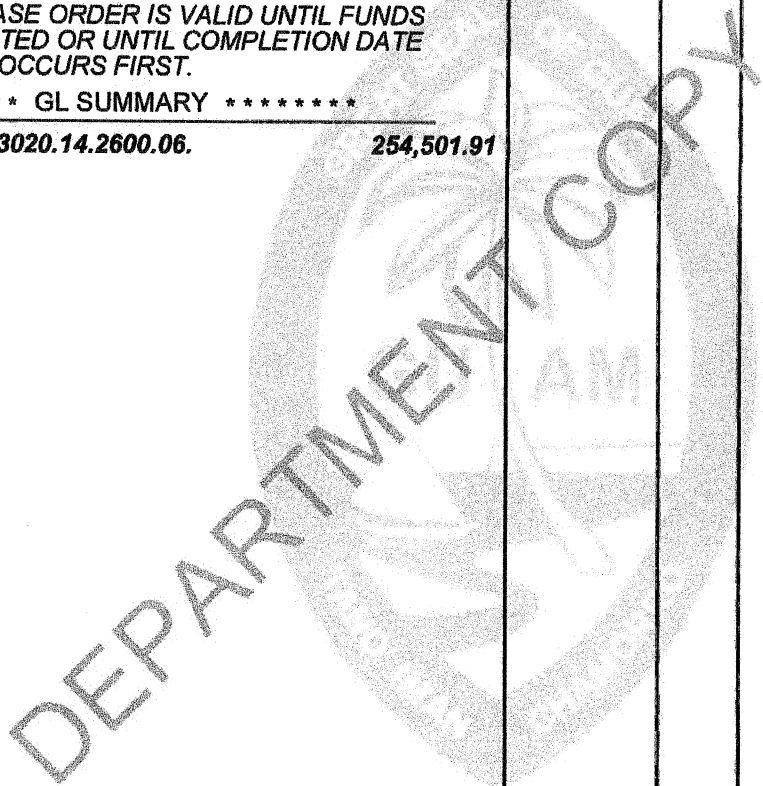
Delivery must be made within
doors of specified destination.

BUSINESS OFFICE
DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM
P.O. BOX DE
HAGÁTÑA, GUAM 96932

JRN AIR CONDITIONING &
P.O. BOX 27070
GMF GU 96921

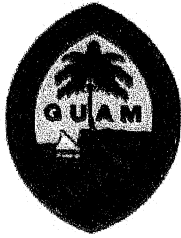
See Shipping Information Below

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
671-649-8120		671-649-5737		20140077		See Shipping Information Below	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms			Department/Location	
02/05/2014	10578					FACILITIES & MAINTENANCE	
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
	CHANGE ORDER - THIS PURCHASE ORDER IS VALID UNTIL FUNDS ARE EXHAUSTED OR UNTIL COMPLETION DATE WHICHEVER OCCURS FIRST. ***** GL SUMMARY *****						
	110.24.000.023020.14.2600.06.						254,501.91



PO Total **\$254,501.91**
GDOE 0382

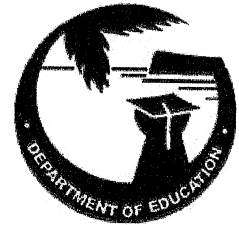
Exhibit 16



Jon J. P. Fernandez
Superintendent of Education

**OFFICE OF SUPPLY MANAGEMENT
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero Administration Building
2nd. Floor, Suite B-202
Hagåtña, Guam 96910
Telephone: (671) 300-1581
Fax: (671) 472-5001*



Marcus Y. Pido
Supply Management Administrator

February 7, 2014

NOTICE OF STAY OF PROCUREMENT

To: All Participating Bidders
From: GDOE Office of Supply Management
Reference: **AIR CONDITIONING SYSTEMS EXTERIOR DUCT RESTORATION PROJECT**
Formal Bid: GDOE IFB 005-2014

This notice is to advise you that the Department has received a Letter of Protest regarding the referenced Invitation for Bid (IFB). Therefore, pursuant to 5 GCA §5425(g), a "STAY OF PROCUREMENT" is hereby issued and shall remain in effect until the protest is resolved. All work associated with this IFB shall cease immediately.

Once resolution of this matter is achieved, the Department will advise all participating bidders.

Should you have any questions regarding this matter, please do not hesitate to call our office at (671) 300-1581.

Please acknowledge receipt of this **NOTICE OF STAY OF PROCUREMENT** for **GDOE IFB 005-2014** by signing below and returning the signed document via fax at (671) 472-5001 or email to aggarcia@gdoe.net.

MARCUS Y. PIDO
Supply Management Administrator

Acknowledge Receipt:

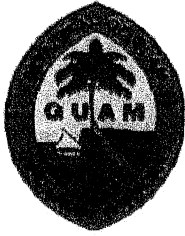
Print Name

Signature

Company Name

_____ AM/PM
Date Time

Exhibit 17



Jon J. P. Fernandez
Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
Manuel F.L. Guerrero Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96910
Telephone: (671) 475-0438 / Fax: (671) 472-5001



Marcus Y. Pido
Supply Management Administrator

March 7, 2014

NOTICE TO LIFT THE STAY OF PROCUREMENT
GDOE Invitation For Bid 005-2014

To: All Participating Bidders

Reference: Air Conditioning Systems Exterior Duct Restoration Project
GDOE IFB 005-2014

The Guam Department of Education ("GDOE") hereby lifts the Stay of Procurement that was put into place on February 7, 2014. On February 5, a bid status was issued to the two bidders of this IFB, JRN Air Conditioning & Refrigeration ("JRN") and J&B Modern Tech ("J&B"). JRN was awarded the bid and issued a purchase order the same day. J&B submitted its letter of protest on February 6, 2014.

Procurement regulation 2 GAR §9101(e), Stay of Procurement During Protest, states: "When a protest has been filed within 14 days and before an award has been made, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall make no award of the contract prior to final resolution of such protest, and any such further action is void,..." The Protest, in this instance, came after the award and a Stay should not have been issued. Therefore, pursuant to 2 GAR §9101(e), the issued Stay is hereby lifted.

Please acknowledge receipt of this **NOTICE TO LIFT THE STAY OF PROCUREMENT** for **IFB 005-2014** by signing below and returning the signed document via fax at (671) 472-5001 or e-mail to Albert Garcia at aggarcia@gdoe.net. Should you have any questions regarding this matter, please do not hesitate to call our office at (671) 475-0438.


MARCUS Y. PIDO
Supply Management Administrator

Acknowledge Receipt:

Print Name

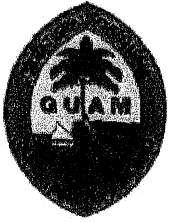
Signature

Business Name

Date _____ **Time** _____ **AM/PM**

GDOE 0384

Exhibit 18



**DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT**

www.gdoe.net
P.O. Box D.E., Hagatña, Guam 96932
Telephone: (671)475-0457 or 300-1547/1536 • Fax: (671)472-5001
Email: jonfernandez@gdoe.net



JON J.P. FERNANDEZ
Superintendent of Education

March 7, 2014

Generoso M. Bangayan
Phil-Gets (Guam) International Trading
Corporation dba J&B Modern Tech
P.O. Box 9788
Tamuning, Guam 96931

Via email: genebangayan@jbmodernotech.com

**RE: Protest of GDOE IFB 005-2014:
Air Conditioning Systems Exterior Duct Restoration Project**

Dear Mr. Bangayan:

The Guam Department of Education ("GDOE") has had an opportunity to review your protest dated February 6, 2014 regarding GDOE Invitation for Bid 005-2014 ("IFB"), for which J&B Modern Tech ("J&B") and JRN Air Conditioning and Refrigeration, Inc. ("JRN") were the only bidders. GDOE finds your two grounds of protest, (a) and (b), to be without merit and therefore denies it in its entirety for the reasons discussed below:

J&B protest reason (a): "...the Guam Department of Education's ("GDOE") decision not to award the contract for GDOE IFB 005-2014, Air Conditioning Systems Exterior Duct Restoration Project due to alleged "higher bid price offered..." On February 5, 2014 GDOE issued a Bid Status to J&B stating J&B was Not Selected due to Higher Price Bid Offered. In the Remarks, GDOE further states "J&B Modern Tech's Bid Exceeds Gov't Certification." GDOE's certified amount for this IFB is \$300,000.00. JRN submitted a bid of \$254,501.91. J&B submitted a bid of \$350,000.00. J&B's bid price is above the amount certified for this project, and therefore cannot be considered for award.

J&B protest reason (b): "...the intention to award the contract to JRN Air Conditioning & Refrigeration, Inc. ("JRN")." You further state, "JRN did not attend the mandatory site inspection. Thus there can be no doubt that based on the terms of the IFB, JRN's failure to complete this requirement resulted in a nonresponsive bid and disqualification from consideration for award."

GDOE never explicitly stated in writing that the Site Inspection was Mandatory. In the IFB, GDOE did not originally call for a scheduled pre-bid conference/site inspection. Rather, Section 2.1.2 of the IFB required, "Site inspection and field verification of existing layout and conditions is mandatory."

GDOE 0385

On December 5, 2013 GDOE issued Amendment No. 1 to the IFB, stating in part, "...Pre-Bid/Site Inspection: Friday, December 06, 2013, 1:00p.m., Simon Sanchez Teacher's Lounge. All Prospective Bidder's [sic] must report to the School Administrator's (Principal's Office) to sign in."

As part of Amendment No. 1, GDOE answered questions submitted in writing by prospective bidders. "Questions submitted by JRN Air Conditioning & Refrigeration: 1. Will there be a pre-bid conference?" To which GDOE responded, "Yes, Pre-Bid Conference scheduled December 6, 2013 @ 1300 hours, venue Simon Sanchez High School Teachers Lounge." "2. Who will be scheduling the mandatory site inspection?" GDOE responded, "Site Inspection will kick off immediately following pre-bid conference commencing with Simon Sanchez High School followed by Upi Elementary, CL Taitano and finally Southern High School."

Also in Amendment No. 1, "Question submitted by J & B Modern Tech: ...5. When is the Pre-Bid conference and site visit?" GDOE responded, "Pre-Bid Conference scheduled December 6, 2013 @ 1300 hours, venue Simon Sanchez High School Teachers Lounge. Site Inspection will kick off immediately following pre-bid conference commencing with Simon Sanchez High School followed by Upi Elementary, CL Taitano and finally Southern High School."

The IFB did not originally schedule a pre-bid conference/site inspection. But Section 2.1.2 required bidders to verify the existing layout and conditions. In response to bidders' requests, GDOE subsequently scheduled a pre-bid conference/site inspection, but did not positively state attendance was mandatory. As originally intended, potential bidders were welcome to inspect the layout and conditions by their own schedule.

Given the facts and reasons stated, GDOE here by denies your protest in its entirety.

Pursuant to 5 GCA 5425 you are hereby advised that you have a right to administrative and judicial review as allowed by Guam Procurement law. You may appeal this decision to the Guam Office of Public Accountability with fifteen days.

Sincerely,



MARCUS Y. PIDO
Supply Management Administrator

Exhibit 19

1 **GUAM DEPARTMENT OF EDUCATION**
2 Andrew T. Perez, Legal Counsel
3 P.O. Box DE
4 Hagåtña, Guam 96910
5 Telephone (671) 300-1537
6 Email: legal-admin@gdoe.net

7 *Attorney for Guam Department of Education*

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

OPA-PA-14-001

10 J&B MODERN TECH,

AGENCY STATEMENT

11 Appellant.

12 Comes now the Guam Department of Education (“GDOE”) by and through its counsel and
13 files its Agency Statement pursuant to 2 G.A.R. § 12105(g).

14 **BACKGROUND**

15 GDOE issued GDOE Invitation for Bid 005-2014 (“IFB”) on November 25, 2013, for the
16 Air Conditioning Systems Exterior Duct Restoration Project. GDOE Exhibit 7, Bates Stamp No.
17 GDOE 0249-0350.

18 On December 5, 2013, GDOE issued Amendment 1. Amendment 1 changed the submission
19 date from December 10, 2013 to December 17, 2013. GDOE Exhibit 6, Bates Stamp No. GDOE
20 0294. GDOE also scheduled a pre-bid conference for December 6, 2013 at 1:00 pm at Simon
21 Sanchez High School to be immediately followed by a site visits to Sanchez High School, Upi
22 Elementary, CL Taitano and Southern High School. GDOE Exhibit 6, Bates Stamp No. GDOE
23 0294

24 A pre-bid conference was held and the site visits were conducted with the exception of
25 Southern High School On December 6, 2013. It was agreed by the parties present that site visit to
26 Southern High School be rescheduled. GDOE Exhibit 13, Bates Stamp No. GDOE 0379. The
27

1 Southern High School site visit was rescheduled for December 10, 2013. Representatives of J&B
2 attended the December 10, 2013, site visit; however, no one from JRN attended. *Id.*

3 On December 17, 2013, bid submissions for the IFB were due at 10:00 a.m., and a bid
4 opening was conducted at that time. J&B Modern Tech ("J&B") and JRN Air Conditioning &
5 Refrigeration ("JRN") were the only bidders to submit bids. GDOE Exhibit 4, Bates Stamp No.
6 GDOE0014-0108; GDOE Exhibit 5, Bates Stamp No. GDOE0109-0227. All bids submitted were
7 opened and logged onto an Abstract of Bids. GDOE Exhibit 7, Bates Stamp No. GDOE0316.

8 Marcus Pido, the Supply Management Administrator, spoke with Mr. Gomez, a
9 representative of JRN on January 16, 2014. GDOE Exhibit 10, Bates Stamp No. GDOE 0333. Mr.
10 Gomez confirmed the price submitted in response to the IFB, and confirmed that JRN conducted a
11 site visit of Southern High School prior to the December 6, 2013, site visit. *Id.*

12 On February 5, 2014, Mr. Pido issued a determination that the December 6, 2013, pre-bid
13 conference and site visits, and the December 10, 2013 Southern High School site visit were not
14 mandatory. GDOE Exhibit 14, Bates Stamp No. GDOE0379-0380. As a result of the
15 determination, GDOE issued a Bid Status and Intent to Award indicating that GDOE intended to
16 award the contract to JRN. GDOE Exhibit 8, Bates Stamp No. GDOE0317-0318. An Analysis
17 and Recommendation was issued indicating that JRN was the lowest responsible bidder. GDOE
18 Exhibit 9, Bates Stamp No. GDOE00319. On February 5, 2014, GDOE awarded JRN the contract
19 by issuing a purchase order in the amount of \$254,501.91. GDOE Exhibit 15, Bates Stamp No.
20 GDOE0381-0382

21 J&B subsequently submitted a protest to the Superintendent of Education and Supply
22 Management Administrator on February 6, 2014. GDOE Exhibit 12, Bates Stamp No. GDOE0376-
23 0377. In its protest, J&B argued that JRN should have been disqualified because they failed to
24 attend the December 10, 2013, site inspection for Southern High School. *Id.* On February 7, 2014,
25 A Notice of Stay of the Procurement was issued after the receipt of the Protest. GDOE Exhibit 16,
26 Bates Stamp No. GDOE0382.

1 On March 7, 2014, a Notice to Lift the Stay of Procurement was issued. GDOE Exhibit 17,
2 Bates Stamp No. GDOE0384. Although a stay was issued, upon further review it was it was
3 determined that the stay provision contained in 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 9101(e)
4 did not apply because J&B filed its protest after JRN was issued a purchase order. Therefore, no
5 automatic stay was in place at the time J&B filed its protest.
6

7 On March 7, 2014, GDOE issued a Written Response to J&B's protest. GDOE Exhibit 18,
8 Bates Stamp No. GDOE0385-0386. GDOE denied the protest in its entirety on the basis that J&B'
9 bid was the higher and that GDOE never intended the pre-bid conference nor the site visits to be
10 mandatory, and were only held in response to bidders' requests. In addition, the IFB originally
11 welcomed bidders to conduct their own inspections of the layouts and conditions of the school sites
12 at their own schedules. *Id.* On March 13, 2014, J&B filed an appeal of GDOE's denial of its protest
13 with the Office of Public Accountability.

14 ARGUMENT

15 Guam Law defines a responsive bidder as a "person who submitted a bid which conforms
16 in all material respects to the Invitation for Bids." 5 G.C.A. § 5102(g); 2 GAR Div. 4 § 3109(n)(2).
17 In addition, Section 2.1.2 requires that "[t]he Contractor must conduct pre site inspections to
18 determine existing conditions and any special needs/requirements for execution of project. **Site**
19 **inspection and field verification of existing layout is mandatory.**" GDOE Exhibit 6, Bates
20 Stamp No. GDOE0230. At issue is whether JRN was responsive to the requirements of the IFB
21 when it did not attend the site visit to Southern High School on December 10, 2013.

22 In Section 2.3.1, the IFB clearly states that any potential bidder may request for a pre-bid
23 conference in writing. Section 2.3.1 further states that if GDOE determines to hold a pre-bid
24 conference, all bidders will be notified of the date, time, location and requirements of the pre-bid
25 conference. The Section 3.3.1 of the IFB is substantially similar to the language contained in 2
26 GAR Div. 4 §3109(g)(4) of Guam Procurement Regulations that discuss pre-bid conferences and
27 the requirements needed to conduct a pre-bid conference. Nowhere in either Section 2.3.1 of the
28

1 IFB or §3109(g)(4) of the procurement regulations state that the effect of holding a pre-bid
2 conference or site visit makes attendance a mandatory condition for bidders to be deemed a
3 responsive bidder.

4 In response to JRN and J&B's request for a pre-bid conference and site visit, GDOE
5 exercised its discretion under Section 2.3.1 of the IFB and §3109(g)(4) of the procurement
6 regulations when it issued Amendment 1 wherein it scheduled the date, time, location and
7 requirements of the pre-bid conference and site visits. GDOE Exhibit 6, Bates Stamp No.
8 GDOE0294-0295. However, GDOE did not make the attendance of either the pre-bid conference
9 or the site visit mandatory. Nowhere in Amendment 1 did GDOE state that a failure to attend the
10 pre-bid conference or site visits would result in a bidder being determined non-responsive. *Id.*
11 Therefore, GDOE correctly deemed JRN as a responsive bidder.

12 Although GDOE did not require attendance at the pre-bid conference or the site visits,
13 GDOE, Section 2.1.2 of the IFB, required that all bidders should conduct a site visit of the project
14 sites. GDOE Exhibit 6, Bates Stamp No. GDOE0230. Section 2.1.2 required the bidders to conduct
15 their own site inspection in order to determine the existing conditions and any special needs for the
16 execution of the scope of work contained in the IFB. Attendance of the December 6 and 10, 2013,
17 site visits may be evidence that a bidder conducted the site visits. However, a bidder may inform
18 GDOE in writing that they conducting their own site visit may also serve as evidence of a bidder's
19 compliance of Section 2.1.2 of the IFB.

20 On January 16, 2014, Mr. Pido spoke with Mr. Gomez, a representative of JRN regarding
21 whether JRN conducted a site visit at Southern High School, and confirmed the conversation by
22 email. Mr. Gomez confirmed the JRN's bid price and confirmed that JRN conducted a site visit of
23 Southern High School prior to the December 6, 2013 site visit. JRN complied with the requirement
24 of Section 2.1.2 of the IFB. Therefore, GDOE was correct in treating JRN's bid a responsive.

25 Assuming arguendo that the December 10, 2013, site visit was mandatory, JRN's absence
26 is a minor informality that has no material effect on price, quality, quantity, delivery, or contractual
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conditions. As stated above, JRN conducted its own site visit, assessed the Southern High project site and submitted a bid of \$254,501.91 – \$95,498.09 less than the J&B’s bid. GDOE Exhibit 5, Bates Stamp No. GDOE0150; GDOE Exhibit 4, Bates Stamp No. GDOE0048. Mr. Gomez confirmed that JRN’s site visit of Southern High School was used to develop its bid in response to the IFB. Therefore, GDOE was still correct in deeming JRN’s bid as responsive.

In conclusion, GDOE has correctly deemed JRN as a responsive bidder, JRN’s bid was the lowest responsive bid and JRN was correctly awarded the contract in GDOE IFB 005-2014. There is no merit in J&B’s appeal, and therefore, GDOE asks the OPA to dismiss J&B’s Appeal in its entirety.

Dated this 27th day of March, 2014.

Respectfully submitted,
GUAM DEPARTMENT OF EDUCATION

By: 
ANDREW T. PEREZ, ESQ.
Legal Counsel

Exhibit 20

1 **GUAM DEPARTMENT OF EDUCATION**

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5
6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 IN THE APPEAL OF

OPA-PA-14-001

8 J&B MODERN TECH,

**DECLARATION REGARDING COURT
ACTION**

9 Appellant.

10
11 The undersigned party does hereby confirm that to the best of his knowledge, no case or
12 other action concerning the subject of this Appeal has been commenced in any court of Guam.
13 All parties are required to and the undersigned party agrees to notify the Office of the Public
14 Auditor within twenty-four (24) hours of being informed of the commencement of a court action
15 regarding this Appeal or the underlying procurement action.

16 Dated this 27th day of March, 2014.

17 Respectfully submitted,

18 **GUAM DEPARTMENT OF EDUCATION**

19
20 By: 

ANDREW T. PEREZ, ESQ.

Legal Counsel