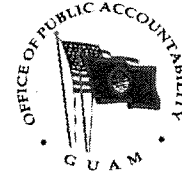


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Mary A.Y. Okada, Ed.D President Guam Community College P.O. Box 23069 GMF, Guam 96921	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 735-5542 / 5540 (671) 734-5238	Pages:	9 (including cover page)
CC:		Date:	October 31, 2017
Phone: Fax:		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951
CC:	Generoso M. Bangayan President J & B Modern Tech. P.O. Box 9788 Hagatna, Guam 96931 (Appellant)		
Phone: Fax:	(671) 646-0588/3346 (671) 646-0589		

Re: OPA-PA-17-011 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

Jerrick Hernandez

Auditor

jhernandez@guamopa.com

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OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

October 31, 2017

Mary A.Y. Okada, Ed.D.
President
Guam Community College
P.O. Box 23069
GMF, Guam 96921

VIA FACSIMILE: (671) 734-1004

Re: Notice of Receipt of Appeal – OPA-PA-17-011

Dear Dr. Okada,

Please be advised that Phil-Gets (Guam) International trading Corp. dba J & B Modern Tech (J & B) filed an appeal with the Office of Public Accountability (OPA) on October 30, 2017 regarding the Guam Community College's (GCC) response to J & B's protest relative to Invitation for Bid No.: GCC-FB-17-015; a procurement solicitation for GCC Forensic DNA Lab Construction. OPA has assigned this appeal case number OPA-PA-17-011.

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 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 appeals. 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), please submit 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, to OPA by **Wednesday, November 8, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, November 16, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to J & B. In addition, OPA respectfully asks that GCC provide one original and two copies of the procurement record and agency report as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or jhernandez@guamopa.com, should you have any questions regarding this notice.

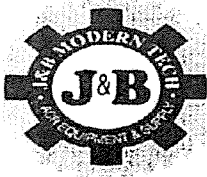
Sincerely,



Yuka Hechanova
Deputy Public Auditor

Enclosure: First Six Pages of Notice of Appeal – OPA-PA-17-011

Cc: Generoso M. Bangayan, President for J & B Modern Tech.



J&B MODERN TECH
ACR EQUIPMENT AND SUPPLIES

P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931
TELEPHONE : (671) 646-0588 / 646-3346 / 646-4435
FAX: (671) 646-0589

Generoso M. Bangayan, President
Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech
P.O. Box 9788
Harmon, Guam 96931
Telephone No. (671) 646-0588/3346
Facsimile No. (671) 646-0589
E-mail GeneBangayan@jbmmoderntech.com

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)
)
Phil-Gets (Guam) International Trading Corp.)
dba J & B Modern Tech,)
)
Appellant.)
)
_____)

NOTICE OF APPEAL

Docket No. OPA-PA 17-011

Appellant Information:

Appellant's address, telephone number, facsimile number, and e-mail address are as follows:

Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech
Mailing address: P.O. Box 9788
Tamuning Guam 96931
Physical address: 153 East Harmon Industrial Park Rd.
Unit B
Harmon, Guam 96931

Telephone No. (671) 646-0588/3346
Facsimile No. (671) 646-0589
E-mail GeneBangayan@jbmmoderntech.com

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 10-30-17
TIME: 11:05 AM EPM BY: JY
FILE NO OPA-PA: 17-011

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

Appeal Information:

- A) Purchasing Agency: Guam Community College (“GCC”)
- B) Invitation for Bid No.: GCC-FB-17-015, GCC Forensic DNA Lab Construction.
- C) The denial of protest being appealed was made on October 17, 2017, by the President of GCC.
- D) Appeal is made from a denial of a protest. This appeal is brought pursuant to 5 GCA §5425(e).
- E) Name of competing bidders known to appellant: ProPacific Builder Corporation.

Form and Filing:

1. Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech (“J&B”) is appealing the denial of a protest it made regarding GCC-FB-17-015.

This procurement, GCC-FB-17-015, was for construction of a Forensic DNA Lab.

There were two bidders for this project: J&B; and ProPacific Builder Corporation (“Propacific”). After the bid opening, J&B submitted a Sunshine Act request to GCC for a copy of PBC’s bid documents. J&B received a copy of those documents on July 27, 2017.

On September 7, 2017, J&B received a Notice of Non-Award for Guam Community College’s Bid Invitation No. GCC-FB-17-015 for the GCC Forensic Lab Construction. A copy of the Notice is attached as “Exhibit A”.

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

The Notice of Non-Award stated that a Notice of Intent to Award was issued to PBC. The PBC bid was not the low bid and also was not responsive for reasons set forth below. Thus PBC's bid should have been rejected, and the contract should have been awarded to J&B.

An annotated copy of PBC's bid form is attached as "Exhibit B". As can be seen from the annotations, PBC made several errors when adding up the figures in the material and labor columns in order to reach the amounts in the "total" column for various items included in the bid. PBC represented that it's the sum of the figures in the "total" column was \$3,863,714.00. However, once PBC's numerous mathematical errors are corrected, the actual amount of the sum of items 1 through 16 in PBC's bid as shown on page 5 of this exhibit is \$3,903,744.00.

An annotated copy of J&B's bid form is attached as "Exhibit C". As shown on that form, the sum of items 1 through 16 in J&B's bid is \$3,889,850.00. Thus once PBC's mathematical errors are corrected, J&B's bid for items 1 to 16 is \$13,894 lower than PBC's bid. This calculation excludes the "Alternate Bid Items". If those items are included, the gap in favor of J&B is even larger, as J&B's total for the alternate bid items was \$513,600 compared to \$690,000 for PBC.

Also, the Special Reminder to Prospective Bidders (attached as "Exhibit D") required "outstanding issues with the GCLB and OSHA." PBC only submitted a one-sentence statement (attached as "Exhibit E) on its own letterhead stating, "ProPacific Builder Corporation has no outstanding issues with the Guam Contractor License Board and/or the Occupational Safety and Health Administration." This is insufficient. To confirm the status of outstanding issues or lack thereof, PBC should have submitted a "Verification of License" from the GCLB indicating

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

“Complaints on File” and an Inspection Detail print-out from OSHA, as was done by J&B (J&B’s verification and print-out attached as “Exhibit F”). As noted in the Special Reminder, “[f]ailure to comply with the requirements in the special reminder will be a basis for disqualification and rejection of the bid.”

The Insurance Requirement (attached as “Exhibit G”) stated that bidders shall provide a Certificate of Insurance showing that the bidder maintained liability insurance including, Commercial General Liability, Commercial Umbrella Liability, Commercial Automobile Liability, and Commercial Crime Insurance. This requirement further stated that if the insurance was not currently maintained, the bidder had to provide a statement from an insurance company, licensed to do business on Guam, stating the bidder is qualified to obtain the required insurance. The Insurance Requirement further provided, “Failure to provide these documents will result in rejection of the bid.” Unlike J&B (J&B’s certificates and statement attached as “Exhibit H”), PBC did not provide the required certificates or statement.

There was also a requirement for a Certificate of Owner’s Attorney (attached as “Exhibit I”). The form for this Certificate stated that the phrase “performance and payment bonds” should be deleted when not applicable. J&B’s counsel deleted that phrase, inserted the applicable information for J&B’s bid bond, and signed the Certificate (copy attached as “Exhibit J”). PBC did not submit a Certificate of Owner’s Attorney. Instead, PBC submitted a statement, not signed by an attorney, stating that the Certificate would be signed only when the project was awarded to PBC (copy attached as “Exhibit K”).

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

Item 23 of the General Terms and Conditions for this bid (attached as “Exhibit L”) required an award to the lowest responsible and responsive bidder. PBC was neither the lowest bidder nor a responsive bidder. J&B should have been awarded this project because it was actually the low bidder. PBC’s bid should have been rejected as unresponsive due to omissions noted above.

On September 20, 2017, J&B submitted a timely protest. A copy of the protest is attached as “Exhibit M”. Exhibits A through K to the protest are not included in the current “Exhibit M”, as they correspond to the same-lettered exhibits to this Notice.

On October 18, 2017, J&B received a letter from the President of GCC, dated a day earlier, which denied J&B’s protest as “late”. The letter is attached as “Exhibit N”. GCC took the position that J&B’s protest was incorrect because, according to GCC, J&B should have filed a protest within 14 days after receiving a copy of PBC’s bid documents on July 27, 2017. This is incorrect. Guam law makes no provision for bidders to protest each others’ bids. Under 5 GCA §5425(a), a bidder can only protest “the method of source selection, solicitation, or award of a contract”, all of which require action by the procuring agency.

Although GCC denied the protest as “untimely”, it also commented upon the grounds set forth by J&B. J&B disagrees with GCC’s position and these matters and will respond accordingly at such time as the OPA directs.

2. J&B requests that the Office of Public Accountability (1) overrule GCC’s denial of J&B’s protest, (2) remand the matter to GCC for further action in accordance with the OPA’s ruling.

In re Appeal of Phil-Gets (Guam) Int'l Trading Corp.
Notice of Appeal

3. Supporting documents are attached hereto as exhibits which correspond with the Exhibit letters A through N as set forth above.

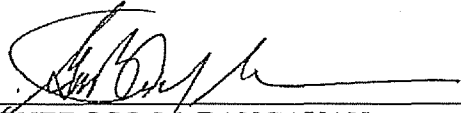
Declaration regarding court action:

J&B does hereby confirm that to the best of its knowledge no case or action concerning the subject of this Appeal has been commenced in court.

Dated this 20th day of October, 2017.

PHIL-GETS (GUAM) INTERNATIONAL
TRADING CORP. dba J & B MODERN TECH

By:



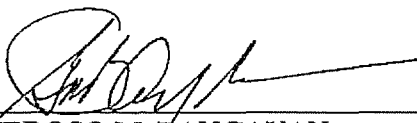
GENEROSO M. BANGAYAN
President

VERIFICATION

Tamuning, Guam) ss:

I, Generoso M. Bangayan, being first duly sworn, do hereby depose and state that I am the President of Appellant Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech. and that I have read the foregoing Notice of Appeal and it is true of my own knowledge except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 20th day of October, 2017.



GENEROSO M. BANGAYAN

Broadcast Report

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Suite 401 DNA Building
 238 Archbishop Flores St.
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FAX

To:	Mary A.Y. Okada, Ed.D President Guam Community College P.O. Box 23069 GMF, Guam 96921	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 735-5542 / 5540 (671) 734-5238	Pages:	9 (including cover page)
CC:		Date:	October 31, 2017
Phone: Fax:		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951
CC:	Generoso M. Bangayan President J & B Modern Tech. P.O. Box 9788 Hagatna, Guam 96931 (Appellant)		
Phone: Fax:	(671) 646-0588/3346 (671) 646-0589		

Re: OPA-PA-17-003 Order

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

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Thank you,
 Jerrick Hernandez
 Auditor
jherandez@guampoa.com

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct