

DEC 13, 2011

TIME 3:50 pm BY JB  
FILE NO. OPA-PA-11-018

**CABOT  
MANTANONA LLP**  
Edge Building, Second Floor  
929 South Marine Corps Drive  
Tamuning, Guam 96913  
Telephone: (671) 646-2001  
Facsimile: (671) 646-0777

**THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Matter of Appeal of )  
 )  
J & B Modern Tech, )  
 )  
Appellant ) **NOTICE OF APPEAL**  
 ) **Docket No. OPA-PA-11-018**  
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Name: J & B Modern Tech

Mailing Address: C/O CABOT MANTANONA LLP  
EDGE BUILDING, SECOND FLOOR  
929 S. MARINE CORPS DRIVE  
TAMUNING, GUAM 96913

Business Address: J & B Modern Tech  
158B East Harmon Industrial Park  
Dededo, Guam 96912

Daytime Contact No.: (671) 646-2001 - Contact Person:  
Rawlen Mantanona, Esq.  
Catrina Campana, Esq.

(A) Purchasing Agency: Guam Department of Education

(B) Identification/Number of Procurement, Solicitation, or Contract: **IFB 044-2011 for Preventative Maintenance and Minor Repairs for Split and Central A/C Equipment.**

(C) Decision being appealed was made on November 29, 2011 by Marcus Y. Pido, Supply Management Administrator, GDOE, and received to J & B on November 29, 2011.

(D) Appeal is made from: Decision on Protest of Method, Solicitation or Award.

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

(i) JRN Air Conditioning and Refrigeration, Inc.

(ii) Global Food Services, LLC

#### **A. STATEMENT OF GROUNDS FOR APPEAL**

1. This Appeal arises out of the Guam Department of Education's ("GDOE") decision on J&B's Protest of the Method, Solicitation and Award of IF044-2011 to a non responsive and non responsible bidder, JRN Air Conditioning and Refrigeration ("JRN"). Specifically, J&B protests the recommended award to JRN on the basis that JRN is a non responsive and non responsible bidder who failed to provide a cost breakdown for Preventative Maintenance and Repair Works consistent with their bid amount and as specified in section 2.5.5 of the IFB, which requires a total utilization of twenty-four (24) manpower for Preventative Maintenance and sixteen (16) manpower for repair works, an excerpt of which is attached as Exhibit "1" .

2. On October 14, 2011 J&B lodged its protest (hereinafter "Protest"), attached as Exhibit "2".

3. On October 21, 2011 GDOE issued a Bid Status notification stating that J&B's bid was rejected due to high price and that the bid is recommended for award to JRN, attached as Exhibit "3"

4. On November 8, 2011, J&B submitted a Request for Decision on Bid Protest dated October 14, 2011 to GDOE, attached as Exhibit "4".

5. By letter dated November 29, 2011, GDOE issued a determination and response to the Protest, attached hereto as Exhibit "5", denying the Protest (hereinafter "Determination").

6. By letter dated December 5, 2011, GDOE issued a Bid Amended Status to J&B, attached hereto as Exhibit "6".

7. J&B appeals the GDOE Determination pursuant to Title 5 Guam Code Annotated § 5425(a).

8. J&B is an actual bidder, aggrieved by the Determination of the award of IFB 044-2011 relating to the recommendation of the award to a non responsive and non responsible bidder.

9. JRN's Bid is nonresponsive and failed to meet the technical requirements of the bid. J&B protests the recommendation of award of the IFB to JRN on the grounds that JRN is a nonresponsive bidder.

10. Upon information and belief, JRN failed to submit with their bid a cost breakdown for Preventative Maintenance and Repair Works consistent with their bid amount and consistent with the bid requirement called for in section 2.5.5 of the IFB.

11. JRN is a non responsive bidder who failed to submit two (2) references for contracts performed of similar size and scope to this bid package as required by section 2.5.5 of the IFB. JRN's references for contracts performed of similar size and scope submission only lists *one* reference for a contract performed for *one* IFB: GDOE IFB number 006-2007. See JRN references for Contracts Performed of Similar Size and Scope, attached hereto as Exhibit "7".

12. JRN is a non responsible bidder. The GDOE Supply Management Administrator's decision to award the bid to the lowest responsible bidder is premised upon a determination of the financial resources and ability of the bidder to perform. Upon information and belief, JRN failed to submit a financial report to indicate the sufficiency and ability of JRN to perform the specifications of the bid.

13. JRN's bid was nonresponsive and failed to provide for a total prescribed field staff of a minimum of 40 employees. On October 06, 2011, GDOE issued amendment #4 in response to question #3 lodged by GFS Group and responded that the total prescribed field staff equates to a minimum of 40 employees: 16 A/C technicians and 24 General Helpers. A copy of Amendment No. 4 is attached hereto as Exhibit "8".

14. JRN's bid only indicated 26 field staff instead of 40 staff, which does not meet the minimum requirement of 40 employees for the project. JRN's technical

approach submission states that "JRN will have six personnel per district, which will consist of 2 AC Technicians and 4 General Helpers for Districts I, II, III and IV". JRN's technical approach sheet is attached hereto as Exhibit "9".

15. JRN's bid failed to complete the Attachment "B" for U.S. Wage Determination rates. JRN's Attachment "B" only described the required information for a head count of 2 positions: (1) A/C Tech and (1) Helper. A copy of JRN's Attachment B for US Wage Determination Rates is attached hereto as Exhibit "10".

16. GDOE's post bid request for clarification from JRN is invalid. GDOE's Determination on the Protest states that GDOE requested a "clarification" after bid opening of the JRN bid and that this clarification allowed GDOE to determine that JRN met the minimum requirements of the bid. 2 GAR § 3109(m)(4) sets forth the procedure for the remedy of mistakes in bids which are discovered after the time and date set for bid opening but before award and allows the procurement officer to waive or correct in certain situation. 2 GAR § 3109(3) allows the procurement officer to request the bidder to confirm the bid and 2 GAR §3109(m)(4) provides for the remedy of minor informalities. However, the number of field staff is crucial to a bid of this size and scope, and failure to indicate the correct number of staff is in no way a minor informality or insignificant mistake that can be corrected without prejudice to the other bidders.

17. J&B is the lowest responsible and responsive bidder. J&B is the only bidder who submitted a bid that conformed with the technical specifications of the bid.

18. GDOE violated the automatic stay provision of 5 GCA § 5425(g). In response to J&B's protest dated October 14, 2011, GDOE proceeded with the award of the bid and issued a bid status which notified bidders of their recommendation of award to JRN. J&B's November 8, 2011 Request for Decision on Bid Protest notes that this award is invalid and that GDOE had not yet responded or acknowledged J&B's protest. On November 29, 2011 GDOE issued a decision on the Protest and then on December 5, 2011 issued an Amended Bid Status which indicated that GDOE was moving forward with the award of the bid, despite J&B's protest. GDOE's action to continue with action to award the bid violates 5 GCA 5425(g) which bans the agency from taking action to award the bid and is an indication of bad faith on behalf of GDOE.

**B. PRAYER FOR RELIEF**

Appellant seeks a cancellation of GDOE's intent to award the bid to JRN on the basis that JRN is a nonresponsive and non responsible bidder who failed to meet the bid specifications of IFB-044-2011. In addition to other remedies that the OPA may deem are warranted, we also request that OPA order the following actions of GDOE:

1. That GDOE award this bid to J&B, the lowest responsive and responsible bidder.
2. That OPA issue a determination that GDOE violated the procedure for the confirmation of a bid by requesting clarification of JRN's bid after the date of the bid opening, which was prejudicial to the other bidders.
  2. That GDOE disqualify the bids of JRN and GFS.
  3. That OPA award to J&B its costs involved in its protest and appeal.
  4. That OPA issue a determination GDOE's November 21, 2011 Bid Status and December 5, 2011 Amended Bid Status are void and a violation of the automatic stay provision of the 5 GCA § 5425(g) which bans GDOE from proceeding with the bid award following the protest.

**C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

Exhibit "1"		Excerpt, Section 2.5.5 of IFB 044-2011
Exhibit "2"	October 14, 2011	J&B Protest
Exhibit "3"	October 21, 2011	GDOE Bid Status Notification
Exhibit "4"	November 8, 2011	J&B Request for Decision on Protest
Exhibit "5"	November 29, 2011	GDOE Response to Protest
Exhibit "6"	December 5, 2011	GDOE Amended Bid Status Notification
Exhibit "7"		JRN Bid References
Exhibit "8"	October 6, 2011	Amendment No. 4 to IFB 044-2011

Exhibit "9"

JRN's Technical Approach Submission

Exhibit "10"

JRN's Attachment "B" for Wage Rate  
Determinations

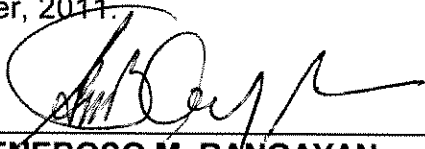
**D. DECLARATION RE COURT ACTION**

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

The undersigned does hereby confirm that to the best of its knowledge, no cases or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

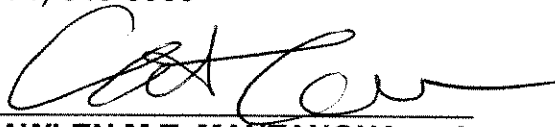
Submitted this 12 day of December, 2011.

By:

  
**GENEROSO M. BANGAYAN**  
Appellant's Duly Authorized Representative  
P.O. Box 9788 Tamuning, Guam  
(671) 646-0588

12-13-11

By:

  
**RAWLEN M.T. MANTANONA and  
CATRINA M. CAMPANA**  
Attorneys for the Appellant  
Edge Building, Second Floor  
929 S. Marine Corps Drive  
Tamuning, Guam 96913  
(671) 646-2001

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#### 2.5.4 – BID BOND REQUIREMENTS FOR CONTRACT AMOUNTS IN EXCESS OF \$15,000.00

Bidders submitting bids in response to a procurement that will result in a contract amount that is in excess of \$15,000.00 must meet the bid guarantee requirements stipulated in Section 4 – Contract Terms and Conditions and “GDOE Procurement Form 002” provided in Section 5 of this IFB. Bidders are required to complete the Bid Bond Form in Section 5 labeled as “GDOE Procurement Form 001” if providing a surety bond for security. Bidders choosing to provide a cashier’s check, certified check, or letter of credit are not required to submit “GDOE Procurement Form 001” but should provide the cashier’s check, certified check, or letter of credit and a copy of same attached to its bid submission in lieu of “GDOE Procurement Form 001”.

#### INSTRUCTION TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) Major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to GUAM DEPARTMENT OF EDUCATION, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) Major Officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and bids will be rejected.

#### 2.5.5 – CONTRACT TERMS AND CONDITIONS

Bidders submitting bids in response to this IFB should refer to the Contract Terms and Conditions included in Section 4 of this IFB. Other applicable terms and conditions, above and beyond those contained in Section 4 of this IFB, are:

#### CONTRACTOR QUALIFICATIONS:

- The Bidder shall be a qualified contractor licensed to do business on Guam and be able to perform the type of work under this contract.
- The Bidder shall submit two (2) references for contracts performed of similar size and scope to this bid package.
- The Bidder shall have adequate facilities, labor, equipment and parts to perform the required maintenance and repair work under this contract on an on-call and/or scheduled basis.
- The Bidder shall have adequate number of employees on payroll with minimum experience of not less than five (5) years per employee or any combination of equivalence of the above deemed acceptable to the GDOE.
- The Bidder shall have adequate number of employees with the required EPA certifications
- The Bidder shall be capable to respond to work request made by the GDOE and shall have adequate communication capability to be contacted between the hours of 7:00 a.m. to 5:00 p.m. daily, seven (7) days a week.
- The Bidder shall have a twenty-four (24) hour on-call emergency service.
- The Bidder shall have two crews for trouble shooting which consist of 2 A/C Technicians and 2 General Helpers for Districts I, II, III and IV.
- The Bidder shall have six personnel per district which consist of 2 A/C Technicians and 4 General Helpers. The Bidder shall have all required personnel on board upon the execution of this contract.
- The Bidder shall provide bi-weekly progress reports to GDOE.



## Section 3 – REQUIREMENTS FOR ALL SOLICITATIONS

### 3.1 – REQUIREMENTS FOR ALL SOLICITATIONS

Bids submitted in response to this IFB must fulfill the requirements for all solicitations identified in this IFB. Each of the forms identified in this section and its subsections must be completed and returned in the envelope containing responses to this IFB. The term "GCA" refers to the Guam Code Annotated. The term "GAR" refers to the Guam Administrative Regulations, Division 4, Procurement Regulations.

### 3.2 – LICENSE TO CONDUCT BUSINESS ON GUAM

Bidders providing supplies or services pursuant to or in support of this IFB are subject to licensure requirements in accordance with 5 GCA § 5008. Information about a Guam business license may be obtained from the Guam Department of Revenue and Taxation.

### 3.3 – LIST OF FORMS REQUIRED FOR ALL SOLICITATIONS

All bidders submitting bids in response to this IFB must complete the "Response to Invitation to Bid", which is attached to this IFB. Furthermore, Bids submitted in response to this IFB must contain completed originals of the additional forms identified throughout this IFB and collectively listed in Section 5.

### 3.4 – DISCLOSURE OF OWNERSHIP AND COMMISSIONS

Bidders submitting bids in response to this IFB must expressly identify all major shareholders in accordance with 5 GCA § 5233.

**\*\*\*AG Procurement Form 002 (Rev. Nov. 17, 2005) must be completed and included in all responses to this IFB.\*\*\***

### 3.5 – BIDDERS CERTIFY THAT PRICE OR OFFER WAS INDEPENDENTLY ARRIVED AT WITHOUT COLLUSION

By submitting a bid in response to this IFB, a bidder certifies that the indicated price or offer was independently arrived at without collusion in accordance with 2 GAR Div. 4 § 3126(b).

**\*\*\*AG Procurement Form 003 (Jul. 12, 2010) must be completed and included in all responses to this IFB.\*\*\***

### 3.6 – PROHIBITION AGAINST GRATUITIES AND KICKBACKS

By submitting a bid in response to this IFB must certify to the best of their knowledge that neither they, nor any of their officers, representatives, agents, subcontractors, or employees, have violated or are violating the prohibition against gratuities and kickbacks set forth in 5 GCA § 5630.

Bidders submitting bids in response to this IFB must certify to the best of their knowledge that neither they, nor any of their officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the bidders response to this IFB. 5 GCA § 5630(c); 2 GAR Div. 4 § 11107(3) and 11107(4)(e).

**\*\*\*AG Procurement Form 004 (Jul. 12, 2010) must be completed and included in all responses to this IFB.\*\*\***

### 3.7 – REPRESENTATION REGARDING ETHICAL STANDARDS

By submitting a bid in response to this IFB, bidder represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

**\*\*\*AG Procurement Form 005 (Jul. 12, 2010) must be completed and included in all responses to this IFB.\*\*\***

### 3.8 – REPRESENTATION REGARDING CONTINGENT FEES

By submitting a bid in response to this IFB, bidder represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business, in accordance with 5 GCA § 5631.

**\*\*\*AG Procurement Form 007 (Jul. 12, 2010) must be completed and included in all responses to this IFB.\*\*\***

### 2.3.4 – SUMMARY OF MINUTES OF PRE-BID CONFERENCE

Bidders submitting bids in response to this IFB should be aware that a summary or minutes of the pre-bid conference will be prepared and posted to the GDOE's website or delivered via fax or e-mail to prospective bidders within five (5) business days from the date that the pre-bid conference was held. The GDOE's website can be accessed at <http://www.gdoe.net>.

## 2.4 – AWARD

### 2.4.1 – EVALUATION FACTORS FOR AWARD

Bidders submitting bids in response to this IFB will be selected for award of contract based on **lowest most responsive and responsible bidder**. GDOE reserves the right to disqualify bidders and bids that are deemed to be nonresponsive, regardless of whether the respective bidder or bid is determined to contain the lowest price.

In determining the lowest responsive bidder, GDOE may be guided by the following evaluation factors:

- Competency of bidder and bidder's proposed subcontractors as identified in **Sections 2.1.2 and 2.5.1**.
- Price of overall performance and delivery of the construction services proposed in response to this IFB.
- Ability, capacity, and skill of the bidder to perform as called for in this IFB.
- Ability, capacity, and skill of the bidder to perform within the specified time outlined in this IFB.
- Character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- Quality of bidder's performance on previous projects of similar size and scope to those outlined in this IFB.
- Sufficiency of the financial resources available to the bidder to perform or provide the goods and/or services outlined in this IFB.

### 2.4.2 – NOTICE OF AWARD

Bidders submitting bids in response to this IFB will be notified in writing should their bid be determined to be the lowest most responsive and responsible bidder. For solicitations over \$15,000 all bidders submitting bids will be notified in writing of the successfulness or unsuccessfulness of their response to this IFB. Written notice of award will be public information and made a part of the procurement file.

## 2.5 – GENERAL INFORMATION

### 2.5.1 – DELIVERY AND PERFORMANCE SCHEDULE

The selected contractor shall commence work on or before the date specified in the notice to proceed. **The Project shall be completed within Ten (10) calendar days, complete and ready for use and On-Call thereafter.** In the event the Contractor does not complete the Project within the time specified, liquidated damages will be assessed as stated in **Section 4** Contract Terms and Conditions.

### 2.5.2 – NOTICE OF PAYMENT BY INSTALLMENTS

Bidders submitting bids in response to this IFB should be aware that, where applicable, payments for goods and/or services procured through this IFB will be made by installment as the work progresses:

The term "satisfactory completion" shall be according to the terms specified in the contract documents. If the percentage of completion is not specified in the contract documents GDOE and the contractor shall mutually agree upon specified payment terms and conditions. **See Section 4.1.B, titled "Invoices"**.

### 2.5.3 – INSPECTION AND ACCEPTANCE OF GOODS

Bidders submitting bids in response to this IFB should be aware that GDOE will inspect and test all goods, supplies, materials or equipment delivered in response to this IFB. GDOE reserves the right to reject and, at its discretion, require replacement of those items that are determined to be defective in material, construction, workmanship, manufacturing, or performance and/or that do not conform to the specifications described in this IFB at no additional cost to GDOE.

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**J&B MODERN TECH**  
**HVAC & R EQUIPMENTS AND SUPPLIES**

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

October 14, 2011

Guam Department of Education  
Manuel F.L. Guerrero Administration Bldg.  
2<sup>nd</sup> Floor, Room B-202  
312 Aspinal Avenue  
Hagatna, Guam 96910

ATTN: Ms. Taling Taitano – Interim Superintendent  
Mr. Marcus Y. Pido – Supply Management Admin.

RE : IFB No. 044-2011  
Preventive Maintenance and Minor Repairs For Split and Central A/C  
Equipment for Thirty (36) Public Schools and Support Facilities  
**BID PACKAGES**

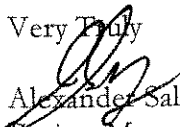
This is in reference to bid packages submitted by JRN Air Conditioning and Refrigeration Inc. and Global Food Services, LLC for the above mentioned project as follows:

**JRN Air Conditioning and Refrigeration Inc.** fails to submit with their Bid the cost breakdown for Preventive Maintenance and Repair Works consistent to their bid amount to reflect utilization of twenty four (24) manpower for Preventive Maintenance and sixteen (16) manpower for Repair Works as called for on section 2.5.5 of this IFB.

**Global Food Services, LLC** has the highest bid amount of all the three (3) bidders and offered total of four (4) manpower for all the four (4) districts for the performance of Repair Works, which is non-compliant to the requirements of sixteen (16) manpower as called for on section 2.5.5 of this IFB.

In view of this, we expect GDOE to disqualify for possible award of IFB 044-2011 for JRN Air Conditioning and Refrigeration Inc. and Global Food Services, LLC due to non-compliant to the bid submission requirements.

Very Truly

  
Alexander Salazar  
Project Manager  
J&B Modern Tech

cc.

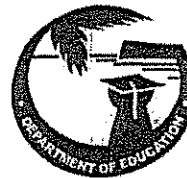
Albert Garcia  
J & B Corporate Attorney

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

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0116/0440  
Fax: (671) 472-5001*



**TALING M. TAITANO**  
Interim Superintendent of Education

**MARCUS Y. PIDO**  
Supply Management Administrator

**BID STATUS**

October 21, 2011

J & B Modern Tech.  
P.O. Box 9788  
Tamuning, Guam 96931  
Tel: (671) 646-0588  
Fax: (671) 646-0589  
E-Mail: jbmotech@guam.net

Bid no.: GDOE IFB 044-2011 OPENED: Friday, October 14, 2011 @ 10:00 A.M.

Description: Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty Six (36) Public Schools and All Support Facilities

The following is the evaluation results of subject bid: Refer to items checked below.

/ / Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

/X/ Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the Invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

/X/ Bid is recommended for award to:

JRN Air Conditioning & Refrigeration, Inc.  
P.O. Box 27070  
GMF, Guam 96921  
Tel: (671) 649-8120  
Fax: (671) 649-5737  
E-Mail: jrnac@guam.net

/ / Remarks:

ACKNOWLEDGE WITH  
PROTEST, LETTER WILL FOLLOW

Sincerely,  
  
MARCUS Y. PIDO  
Supply Management Administrator

ACKNOWLEDGMENT RECEIPT

Signature

Date: 10/27/11 Time: 5:00 PM

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**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

November 8, 2011

**VIA HAND DELIVERY**

Guam Department of Education  
Manuel F.L. Guerrero Administration Bldg.  
2nd Floor, Room B-202  
312 Aspinall Avenue  
Hagatna, Guam 96910

PROCUREMENT SECTION  
RECEIVED

NOV 8 2011 4:22 PM

DEPARTMENT OF EDUCATION  
TIME: 1:22 PM INITIAL: B. Kohn

Attn: Ms. Taling Taitano- Interim Superintendent  
Mr. Marcus Y. Pido- Supply Management Admin.

Re: Request for Decision on Bid Protest dated October 14, 2011/IFB No. 044-2011

Dear Mr. Pido and Ms. Taling Taitano:

On October 14, 2011 J&B Modern Tech protested the bids of JRN Air Conditioning and Refrigeration Inc. and Global Food Services, LLC for IFB 044-2011. See attached letter of protest dated October 14, 2011, marked and attached as Exhibit "A".

J&B protested the bid of JRN Air Conditioning on the grounds that they failed to submit with their Bid the cost breakdown for Preventative Maintenance and Repair Works consistent with their bid amount to reflect utilization of twenty four (24) manpower for all the four (4) districts for the performance of Repair works, which is non-compliant to the requirements of sixteen (16) manpower as called for in section 2.5.5 of this IFB.

J & B protested the bid of Global Food Services, LLC on the grounds that Global Food Services, LLC has the highest bid amount of all the three (3) bidders and offered total of four (4) manpower for all the four (4) districts for the performance of Repair Works, which is non-compliant to the requirements of sixteen (16) manpower as called for on section 2.5.5 of this IFB.

JRN has not received a written decision from your agency on this protest. However, on October 27, 2011 we received a Bid Status Rejected notice pertaining to

11/8/11  
RECEIVED  
Marian



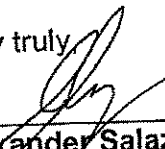
this RFP. This "Bid Status" notice indicated that JRN Air Conditioning is recommended for the award of this bid. It is and has been our position that JRN Air Conditioning and Refrigeration is non-compliant with the invitation to bid. The bid submitted did not do a proper breakdown of the manpower hours that were a mandatory minimum requirement to service the air-conditioners for the two subcategories, troubleshooting and preventive maintenance. This requirement was set forth in Amendment No. 4, dated October 6, 2011. Thus, JRN's bid was nonresponsive. Further, the "supposed breakdown" does not meet or accurately reflect the bid amounts as stated in their bid. It is our position that JRN is a nonresponsive bidder. We request that the Department of Education take steps to award the procurement to us as the next lowest qualified bidder.

As noted above, on October 27, 2011 we received the document titled "Bid Status" from the Department of Education. This Bid Status document stated that J & B's bid was rejected due to high price. J & B acknowledged the receipt of this Bid Status notice "with protest", which references the October 14, 2011 protest and additionally acknowledged that a letter will follow. I have attached a copy of the "Bid Status" to this letter, marked and attached as Exhibit "B". The acknowledgement with protest was in reference to the protest lodged on October 14, 2011 and this letter memorializes and reiterates that J & B's protest of October 14, 2011 has not yet been responded to by the Department of Education.

Please recall that 5 GCA § 5425(c) requires that the purchasing agency promptly issue a decision on a protest. *In the Appeal of Townhouse Department Stores*, Appeal No. OPA-PA-10-006, the Public Auditor found that she had the authority to compel DOE to produce a Decision on a Protest because DOE's delay in issuing the decision was an act of bad faith that threatened the integrity of the procurement process and that the Public Auditor has the authority to promote the integrity of the procurement process and purposes of 5 G.C.A. Chapter 5.

It is my desire to avoid the escalation of this matter to the appeal level, therefore I respectfully request that you promptly and expeditiously issue a decision on the October 14, 2011 protest in writing. Further, we request that all action and the awarding of the bid cease until our Bid Protest has been officially addressed in writing, as required by 5 GCA § 5425(g).

Very truly

  
\_\_\_\_\_  
**Alexander Salazar**  
Project Manager  
J&B Modern Tech



**J&B Modern Tech**  
**HVAC&R EQUIPMENTS AND SUPPLIES**

P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931  
TELEPHONE: (671) 646-0588 / 646-3348 / 646-4435  
FAX: (671) 646-0589

October 14,2011

Guam Department of Education  
Manuel F.L. Guerrero Administration Bldg.  
2<sup>nd</sup> Floor, Room B-202  
312 Aspinal Avenue  
Hagatna, Guam 96910

ATTN: Ms. Taling Taitano – Interim Superintendent  
Mr. Marcus Y. Pido – Supply Management Admin.

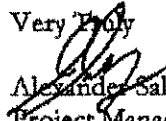
RE : IFB No. 044-2011  
Preventive Maintenance and Minor Repairs For Split and Central A/C  
Equipment for Thirty (36) Public Schools and Support Facilities  
**BID PACKAGES**

This is in reference to bid packages submitted by JRN Air Conditioning and Refrigeration Inc. and Global Food Services, LLC for the above mentioned project as follows:

**JRN Air Conditioning and Refrigeration Inc.** fails to submit with their Bid the cost breakdown for Preventive Maintenance and Repair Works consistent to their bid amount to reflect utilization of twenty four (24) manpower for Preventive Maintenance and sixteen (16) manpower for Repair Works as called for on section 2.5.5 of this IFB.

**Global Food Services, LLC** has the highest bid amount of all the three (3) bidders and offered total of four (4) manpower for all the four (4) districts for the performance of Repair Works, which is non-compliant to the requirements of sixteen (16) manpower as called for on section 2.5.5 of this IFB.

In view of this, we expect GDOE to disqualify for possible award of IFB 044-2011 for JRN Air Conditioning and Refrigeration Inc. and Global Food Services, LLC due to non-compliant to the bid submission requirements.

Very Truly  
  
Alexander Salazar  
Project Manager  
J&B Modern Tech

cc.

Albert Garcia  
J & B Corporate Attorney

**EXHIBIT "A"**



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

*Manuel F.L. Guerrero / Administration Building  
3rd Floor, Suite 3-301  
Hagåtña, Guam 96922  
Telephone: (671) 473-6434/6446  
Fax: (671) 472-5001*



**TALING M. TAITANKI**  
Interim Superintendent of Education

**MARCUS Y. PIDO**  
Supply Management Administrator

**BID STATUS**

October 21, 2011

J & B Modern Tech.  
P.O. Box 9788  
Tamuning, Guam 96931  
Tel: (671) 646-0588  
Fax: (671) 646-0589  
E-Mail: jbmotech@guam.net

Bid no.: GDOE IFB 044-2011 OPENED: Friday, October 14, 2011 @ 10:00 A.M.

Description: Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty Six (36) Public Schools and All Support Facilities.

The following is the evaluation results of subject bid: Refer to items checked below.

*/ /* Canceled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

*/X /* Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

*/X /* Bid is recommended for award to:

JRN Air Conditioning & Refrigeration, Inc.  
P.O. Box 27070  
BMF, Guam 96921  
Tel: (671) 648-8120  
Fax: (671) 648-5737  
E-Mail: jmac@guam.net

*/ /* Remarks:

ACKNOWLEDGE WITH  
PROTEST, LETTER WILL FOLLOW

ACKNOWLEDGMENT RECEIPT

Signature

Date: 10/27/11 Time: 5:00 PM

*[Signature]*  
MARCUS Y. PIDO  
Supply Management Administrator

5



Taling M. Taitano  
Interim Superintendent of Education

## DEPARTMENT OF EDUCATION OFFICE OF SUPPLY MANAGEMENT

Manuel F.L. Guerrero / Administration Building  
2<sup>nd</sup> Floor, Suite B-202  
Hagatña, Guam 96910  
Telephone: (671) 300-1581 • Fax: (671) 472-5001  
Email: mypido@gdoe.net



Marcus Y. Pido  
Supply Management Administrator

November 29, 2011

Mr. Alexander Salazar  
Project Manager  
I&B Modern Tech  
P.O. Box 9788  
Tamuning, Guam 96931

This letter is written in response to your letter of October 14, 2011 regarding Guam Department of Education ("GDOE") Invitation for Bids ("IFB") Number 044-2011 for Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment. Your correspondence does not meet the requirements for filing a protest as contained in 2 GAR §9101(c)(3). Specifically, you failed to label your correspondence a "protest". Despite this error, GDOE has accepted your correspondence as a protest and has considered the information therein. For the reasons below, GDOE hereby rejects your protest in its entirety. Each of the assertions in your letter of October 14, 2011 is listed below, with GDOE's response following:

- JRN Air Conditioning and Refrigeration Inc. fails to submit with their Bid the cost breakdown for Preventive Maintenance and Repair Works consistent to their bid amount to reflect utilization of twenty-four (24) manpower for Preventive Maintenance and sixteen (16) manpower for Repair Works as called for on Section 2.5.5 of this IFB.

As allowed by 2 GAR §3109(m)(4), after bid opening the GDOE procurement department contacted JRN representatives to clarify the content of the JRN bid. It was determined that the total cost submitted by JRN met the minimum requirements of the bid, and that the cost accurately took into account the use of twenty-four employees for maintenance purposes and sixteen employees for repair purposes. JRN's bid was determined to be responsive. For this reason, your assertion that JRN failed to meet the requirements of the IFB is denied.

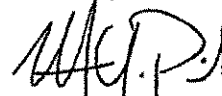
- Global Food Services, LLC has the highest bid amount of all three (3) bidders and offered total of four (4) manpower for all the four districts for the performance of Repair Works, which is non-compliant to the requirements of sixteen (16) manpower as called for on section 2.5.5 of this IFB.

Letter to J & B Modern Tech.  
Page 2  
11/29/11

It is correct that Global Food Services submitted the bid with the highest cost. Additionally, Global Food Services' bid offered four employees each for four districts, for a total of sixteen employees for repair services. This amount of employees met the minimum requirements of the IFB. Global Food Services' bid was determined to be responsive. For this reason, your assertion that Global Food services failed to meet the requirements of the IFB is denied.

For the reasons above, your protest is denied in its entirety. Pursuant to 5 GCA §5425, you have the right to appeal this decision to the Office of Public Accountability within fifteen days.

Sincerely,



Marcus Y. Pido  
Supply Management Administrator

6



TALING M. TAITANO  
Interim Superintendent of Education

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

*Mannel F.L. Guerrero / Administration Building  
2nd Floor, Suite R-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0436/0-440  
Fax: (671) 472-3001*



MARCUS Y. PIDO  
Supply Management Administrator

**BID STATUS  
AMENDED**

December 5, 2011

J & B Modern Tech.  
P.O. Box 9788  
Tamuning, Guam 96931  
Tel: (671) 646-0588  
Fax: (671) 646-0589  
E-Mail: jbmotech@guam.net

Bid no.: GOE IFB 044-2011 OPENED: Friday, October 14, 2011 @ 10:00 A.M.

Description: Preventive Maintenance and Minor Repairs for Split and Central A/C Equipment for Thirty Six (36) Public Schools and All Support Facilities

The following is the evaluation results of subject bid: Refer to items checked below.

/ / Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders


/ / Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

/X / Bid is recommended for award to: **JRN Air Conditioning & Refrigeration, Inc.**  
P.O. Box 27070  
GMF, Guam 96921  
Tel: (671) 649-8120  
Fax: (671) 649-5737  
E-Mail: jmac@guam.net

/X / Remarks: J & B MODERN TECH NOT SELECTED DUE TO HIGH PRICE

Sincerely,

  
MARCUS Y. PIDO  
Supply Management Administrator

**ACKNOWLEDGMENT RECEIPT**

Signature \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

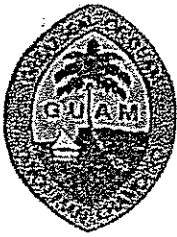


7

REFERENCES FOR CONTRACTS PERFORMED OF SIMILAR SIZE AND SCOPE

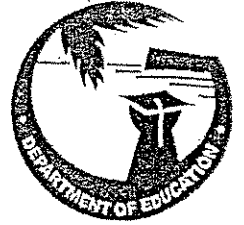
ITEM	DESCRIPTION	IFB NUMBER	P.O NUMBER
1	GDOE Preventive Maintenance and Repair of Split Type and Central AC units DISTRICT I	006-2007	200801532
2	GDOE Preventive Maintenance and Repair of Split Type and Central AC units DISTRICT II	006-2007	200801533
3	GDOE Preventive Maintenance and Repair of Split Type and Central AC units DISTRICT III	006-2007	200801534
4	GDOE Preventive Maintenance and Repair of Split Type and Central AC units DISTRICT IV	006-2007	200801535
5	GDOE Preventive Maintenance and Repair of Split Type and Central AC units FOR VARIOUS SCHOOLS	006-2007	2008021169





OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION

Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-220  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001



TALING M. TAITANO  
Interim Superintendent of Education

MARCUS Y. PIDO  
Supply Management Administrator

AMENDMENT NO. 4

Prospective Bidders:

October 06, 2011

Please refer to our Invitation for Bid No. GDOE IFB 044-2011, PREVENTIVE MAINTENANCE AND MINOR REPAIRS FOR SPLIT AND CENTRAL A/C EQUIPMENT FOR THIRTY SIX (36) PUBLIC SCHOOLS AND ALL SUPPORT FACILITIES a copy of which was issued to your company for consideration.

Please make necessary change (s) specified below:

Amend Bid Deadline Submission:

**FROM:** Friday, October 07, 2011 @ 10:00 a.m.

**TO:** Friday, October 14, 2011 @ 10:00 a.m.

Amend Due Submission for questions:

**FROM:** Monday, October 03, 2011 @ 1:00 p.m.

**TO:** Tuesday, October 11, 2011 @ 12:00 p.m.

Questions submitted by GFS Group via fax on October 03, 2011:

1. On GFS question 31 you provided clarification that compressors and coils are not included in Minor Repairs. Does the same apply to Main unit fuse or circuit breaker type disconnect switches that serve the units?

**Response: No.**

2. In your response to GFS question #4 you indicated that GDOE will consider alternative numbers and classifications that either increase or decrease the total number of employees assigned per district. Yet in response to question # 5 submitted by J & B Modern Tech you indicated that the six personnel per district was a **minimum requirement**. Please provide clarification as to which answer is correct?

**Response: The minimal requirement will be six personnel per district.**

3. Typically on contracts of this nature, the client provides the performance standards it wants accomplished in the solicitation and the contractor is left to determine how it will accomplish the work to meet the performance standards and submit a corresponding bid price. This will generally provide for the most competitive pricing in favor of the client (GDOE). Because the numbers and types of workers is so prescriptive, the number of units to be serviced so large and the wage

determination rates is used as the basis for labor rates, it is conceivable that GDOE will get exactly the same pricing from all bidders with no potential for cost savings through contractor generated work plans. Presently, the solicitation calls for 24 staff for Preventive Maintenance (2-A/C Technicians and 4 general helpers per district). However, each district has different unit types and different number of units. Having the same number of technicians prescribed per district would not be very cost effective.

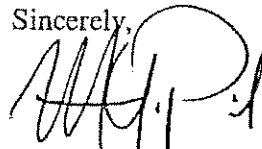
The same concern would apply to the very prescriptive delineation for trouble shooting crews listed in Section 2.5.5. this line item would equate to a total of 16 additional staff (8 - A/C Technicians and 8 - General Helpers). There is no indication that the trouble-shooting teams can be the same staff doing the preventive maintenance. Therefore it is assumed that these are entirely separate crews per district. Again, this may not be the most efficient approach particularly considering that once the units are brought up to proper operational condition and are regularly maintained, the number of minor repairs will decrease significantly. **The total prescribed field staff for this project as indicated in the solicitation currently equates to a minimum of 40 employees - 16 A/C Technicians and 24 General Helpers. Please confirm that this is correct.**

**Response: Yes.**


Will GDOE reconsider its position and allow for the contractor to determine its most competitive work plan in accordance with the performance standards listed in the solicitation?

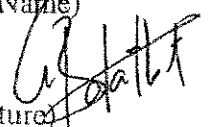
**Response: Yes, provided contractor meets the general quarterly PM and minor repair requirements for all Districts. However, the minimum requirement of PM manpower per district must be in place.**

All else remains same.

Sincerely,  
  
MARCUS Y. PIDO  
Supply Management Administrator

Acknowledge Receipt:

  
LYNNE BALATBAT  
(Print Name)

  
(Signature)

10/6/11  
(Date)

3:50  
(Time) AM/PM

9

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## 2. TECHNICAL APPROACH

If JRN will get this contract, JRN have adequate number of employees on payroll with minimum experience of not less than five (5) years per employee. JRN's AC Technicians are EPA Certified and are capable to respond to work request made by the GDOE.

JRN have adequate facilities, labor, equipment and parts to perform the required maintenance and repair work under this contract on an on-call and or/scheduled basis.

JRN's employees will work from 7:30 a.m to 4:30 p.m during School days, and week ends if necessary. JRN's employees can be contacted between 7:00 a.m to 5:00 p.m daily, seven days a week. We will also provide a twenty four hour on-call emergency service. That way we can service any AC unit if needed.

When trouble shooting, JRN will have two crews which will consist of 2 AC Technicians and 2 General helpers for Districts I, II, III and IV. JRN will have six personnel per district which will consist of 2 AC Technicians and 4 General Helpers for Districts I, II, III, and IV.

Progress reports will be submitted bi-weekly to GDOE, for reference of the completed works.

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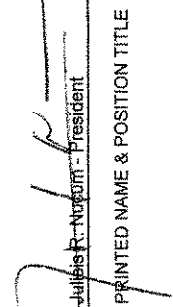


JRN AIR CONDITIONING & REFRIGERATION, INC.  
 COMPUTATIONS FOR BIDDING PURPOSES  
 DOE MAJOR / MINOR REPAIRS & MAINTENANCE AC UNITS  
 Sep-11

ATTACHMENT B

POSITION TITLE	GUAM-DOL	H B2	HEAD COUNT	HRS. PER WK	PROD. HRS.	HRLY RATE	LABOR COSTS	FRINGE BENEFITS	HEALTH & WELF	OTHERS	PROD & FRINGE	FICA	WC	TOTAL LABOR & FRINGE BNF	COST PER HR
								VACATION 10 DAYS	HOLIDAY 10 DAYS			0.0765	1.87 PER		
AC TECHNICIAN	23410	NO	1	40	40	\$ 15.76	\$ 630.40	\$ 38.77	10	\$ 3.59	\$ 600.00	\$ 108.08	\$ 14.90	\$ 1,535.75	
NO. OF DAYS									10				14,127.7		
NO. OF HRS.									80				\$ 1.87		
VL COST YR							\$ 1,260.80	\$ 1,260.80					\$ 26.42		
NO. OF WEEKS									52						
per week							\$ 24.25	\$ 24.25							
ALLOCATION							0.0615								
per hr							\$ 0.97								
weekly his							40							40 HRS	\$ 38.39
per week							\$ 38.77							38,393,661.86	
HELPER							\$ 37.54								
NO. OF DAYS							\$ 396.80	\$ 37.54					\$ 22.03	\$ 1,290.09	
NO. OF HRS.									10				11,779.43		
VL COST YR							\$ 793.60	\$ 793.60	80				\$ 1.87		
NO. OF WEEKS									52				\$ 22.03		
ALLOCATION							\$ 15.26	\$ 15.26							
per hr							0.0615								
weekly his							\$ 0.94							40 HRS	\$ 32.25
per week							\$ 37.54							32,252,151.34	
TOTAL HRLY COST															\$ 70.65

DECLARATION OF BIDDER: I declare under penalty of perjury that the above information is true and correct.

9/29/2011  
 Signature:   
 DATE: 9/29/2011  
 SIGNATURE: Julius R. Nuydam - President  
 PRINTED NAME & POSITION TITLE: Julius R. Nuydam - President

DEC 13 2011

TIME: 3:50 PM BY: JB  
FILE NO: OPA-PA 11-018

**CABOT  
MANTANONA LLP**  
Edge Building, Second Floor  
929 South Marine Corps Drive  
Tamuning, Guam 96913  
Telephone: (671) 646-2001  
Facsimile: (671) 646-0777

**THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Matter of Appeal of )  
)  
J & B Modern Tech, )  
)  
Appellant )  
)  
)  
)  
)  
)  
\_\_\_\_\_ )

**NOTICE OF APPEAL**

**Docket No. OPA-PA-11-018**

Please select one:

- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.
- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this \_\_\_ day of \_\_\_\_\_, 20\_\_.

By: (Please select one)  
  X   APPELLANT  
\_\_\_ Chief Procurement Officer  
\_\_\_ Director of Public Works  
\_\_\_ Head of Purchasing Agency

  
Signature

Catrina M. Campana  
Print Name