Seth Forman DOOLEY ROBERTS & FOWLER LLP Suite 201, Orlean Pacific Plaza 865 South Marine Drive Tamuning, Guam 96913 Telephone No. (671) 646-1222 Facsimile No. (671) 646-1223 E-mail Forman@guamlawoffice.com

Attorneys for Appellant Phil-gets (Guam) International Trading Corp. dba J&B Modern Tech

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OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEALS

DATE: 5/10/13

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OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

In the Appeal of)	Docket No. OPA-PA-13-002
PHIL-GETS (GUAM) INTERNATIONAL)	Docket No. OPA-PA-13-003
TRADING CORP. dba J&B MODERN TECH,)	APPELLANT'S EXHIBIT LIST
Appellant.	_)	

Appellant J&B hereby submits its exhibit list as follows. Insofar as many large documents are already in the record and are already referenced in the Statement of Agreed Facts, this list is limited to (1) documents not already in the record; and (2) short excerpts, from larger documents already in the record, that may be specifically discussed during the testimony of J&B's witnesses.

Exhibit A 8/27/12 letter from J&B to GDOE (Warranty)

Exhibit B Excerpt from GDOE IFB 008-2013 (sections concerning Preventive

Maintenance Schedule)

Exhibit C Preventive Maintenance Schedule from J&B's bid on GDOE IFB 008-2013

Exhibit D Abstract of Bids, GDOE IFB 008-2013

Exhibit E Summary of Abstract of Bids

ORIGINAL

In the Appeal of J&B Modern Tech Appellant's Witness List OPA-PA-13-002 and OPA-PA-13-003

Exhibit F	E-mails to and from Alex Salazar
Exhibit G	Service Order, Southern High, 11/19/12
Exhibit H	Service Order, Benavente Middle School, Nov. 2012, Unit 7931F481102539
Exhibit I	Service Order, Benavente Middle School, Nov. 2012, Unit 7931F471103048
Exhibit J	Service Order, Southern High, December 2012
Exhibit K	Pictures, Southern High
Exhibit L	Service Order, Agueda Johnson Middle School, 2/8/13
Exhibit M	Pictures, Agueda Johnson Middle School
Exhibit N	Service Order, H.S. Price Elementary, 2/8/13
Exhibit O	Pictures, Price Elementary
Exhibit P	Pictures, F.B. Leon Guerrero School
Exhibit Q	Feb. 22, 2013 letter from GSA concerning 17 GCA §7119(c)

Appellant J&B reserves the right to offer additional exhibits for rebuttal purposes.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: My 10, 201)

By:

SETH FORMAN

Attorneys for Appellant Phil-Gets (Guam) International Trading Corp. dba J&B Modern Tech

EXHBIT A



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

AUGUST 27, 2012

BILLY P. CRUZ CIP, FACILITIES AND MAINTENANCE MANAGER

RE: IFB NO. 050-2011 A/C UNIT SUPPLY AND INSTALLATION.

Dear Mr. Cruz,

In reference on the above subject matter which had been completed the installation since July 5, 2012. We are hereby provide the excel lists to serve as your reference on your Inventory lists and completely summarize the entire A/C unit installed per school.

WARRANTY: The equipment shall be guaranteed to be free from defects in materials and workmanship. The "Warranty Period" is five (5) years for Compressor only from initial start up date or when first DOE School used. Under no circumstances shall supplier and dealer, J & B Modern Tech be liable for incidental or consequential damages resulting without the Preventive Maintenance that should prevent further deterioration, breakdown and inefficient operation and cooling condition of the A/C units. Consumable related to accessories are not covered. And further more, the warranty is NULL & VOID if damages is caused by Mother Nature or Force Majeure, Thunder & Lightning, Power Fluctuation, Disturbed, Tampered, Adjusted and/or Repaired by other Entities Technicians,

Thank you.

CC: MR. MARCUS Y. PIDO

SUPPLY MANAGEMENT ADMINISTRATOR

8/27/12 Recipal by Marchanez-10150 in.

EXHIBIT B

related work not covered in the original Scope of Work and Guam Department of Education reserves the right to solicit other price quotation/cost proposal from other vendors should Guam Department of Education deems that Contractor's proposal is excessive/high.

- 12. After installation, HVAC units must be completed and ready for operation-ready to use. All electrical requirements shall meet the National Electrical Code (NEC) Article 440 Air Conditioning and Refrigeration Equipment.
- 13. The Contractor must provide both a hard copy and an electronic copy of a list to Facilities and Maintenance Division Manager indicating where the units are installed and the date the units were installed, including date(s) of anticipated preventative maintenance.
- Contractor shall provide an installation plan for all new HVAC units that are to be installed.
 - A. Contractor must work with Facilities and Maintenance Division in conjunction with Inventory Management Office for an approved plan.
 - B. If a delay occurs for any HVAC unit to be installed at GDOE, any changes in the installation plan must be approved by Facilities and Maintenance.
- 15. Transition duct must be included with all new Centralized HVAC unit installations. Contractor must submit separate cost proposal on any request for replacement of supply and return ducts and other related work not covered in the original Scope of Work and Guam Department of Education reserves the right to solicit other price quotation/cost proposal from other vendors should Guam Department of Education deems that Contractor's proposal is excessive/high.
- 16. After the installation of each HVAC unit, the Facilities and Maintenance Division will inspect the each newly installed HVAC unit and determined if the Contractor conformed to the installation requirements of 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. Installation of a HVAC unit will be deemed acceptable upon the GDOE's acceptance of the Five (5) year warranty document for each installed HVAC unit.
- 17. The Contractor shall provide for all newly installed HVAC units, a five (5) year warranty (Title 17 Guam Code Annotated (GCA) Education; Chapter 7 Physical Plant. 7119).

The Five (5) Year warranty for each HVAC unit will come into upon GDOE's acceptance of the Five (5) year warranty document for each installed HVAC unit.

The Contractor will guarantee the five (5) year warranty, so long as, the preventative maintenance is performed according to the Preventative Maintenance Schedule supplied by the Contractor.

The Contractor in submitting their bid acknowledges and agrees that in the event that preventative maintenance is performed on the installed HVAC units by a person(s) other than the Contractor, the Contractor will continue to honor the five (5) year warranty, so

long as, Preventative Maintenance is performed according to the Preventative Maintenance Schedule.

The Contractor in submitting their bid acknowledges and agrees that any communications concerning the interpretation of the Five (5) year warranty is to be directed to GDOE's Supply Management Administrator.

NOTE: Title 17 Guam Code Annotated (GCA) Education; Chapter 7 Physical Plant. 7119. Standards for air conditioning systems funded herein.

- 18. Any HVAC units (Systems) purchased and used by the Guam Department of Education (GDOE) shall:
 - A. Meet the comfort and air quality standards set forth for heating, ventilation and air conditioning (HVAC) equipment provide in Chapter 5 of the Federal GSA's facilities Standards for Public Buildings Services (Revised November 2000 or Later – PBS-100);
 - B. Repair and replacement parts are readily available within five (5) days, and on Saturdays, Sundays and Government of Guam holidays; and
 - C. Be the subject of a warranty and maintenance agreement that guarantees the system's working life for not less than five (5) years.
- 19. All new AC Units (with the exception of 9,000 & 12,000 BTU units) are required to have Fresh Air Intakes/Make-Up-Air Units installed as a function and feature of the AC unit or be provided as an external accessory.
- 20. Contractor shall follow AIR CONDITION TECHNICAL SPECIFICATIONS section here in.

2.1.3 - PURCHASE DESCRIPTION

This Invitation for Bid (IFB) contains detailed specifications for the purchase of Air Conditioning Equipment for Guam Department of Education (GDOE) Public Schools and Support Facilities.

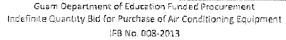
PACKAGE UNITS, SPLIT TYPE UNITS, SPLIT DUCTED TYPE UNITS & CHILL WATER TYPE UNITS:

MINI SPLIT TYPE UNIT:	PACKAGE UNITS	SPLIT	DUCTED	TYPE	CHILLED	WATER	TYPE
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For all new HVAC units, installation must include all electrical requirements from main panel box to disconnect switch and to the new HVAC units i.e. junction boxes, conduits, panels and etc. HVAC units shall conform to the National Electrical Code (NEC) 2008. HVAC units shall be complete and ready for operation-ready to use. All electrical requirements shall meet the National Electrical Code (NEC) Article 440 Air Conditioning and Refrigeration Equipment.

2.1.4 - TERM OF WORK

The initial award under this IFB shall be for a term of approximately one year, or through September 30, 2014. The initial award will be for the purchase and installation of the HVAC units, and will include Preventative Maintenance for the initial term. GDOE, at its discretion, may renew the Contract strictly for Preventative Maintenance services for four (4) additional one year terms. Bidders should submit separate bid prices for air conditioning units, inclusive of installation, and preventative maintenance for the initial award term. In the event GDOE opts to renew the Contract for Preventative Maintenance services



EXERBIT



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

J & B PREVENTIVE MAINTENANCE SCHEDULE

ITEM#	SCOPE OF WORK	MONTHLY	QUARTERLY	BI-ANNUAL	ANNUAL
1.	Check Voltage Reading		X.		
2.	Check Refrigerant and Record Tag		Ж		
3.	Check Compressor Amperage Reading		Х		
4.	Flush Evaporator Coils			X	
5.	Clean Drain Line (Flush)		Х		
<u></u>	Clean Blower Wheel		X		
7.	Check for Vibration Noise & Adjust	·	X		
8.	Check Thermostat Setting and Record		X		
9.	Check Electrical Conductors & Electrical System		Х		
10.	Clean Blower Assembly		X		
11.	Flush Air Filters		Х		
12.	Check V-Belts		X		
13.	Flush Condenser Coils			X	
14.	Lubricate Motors and Bearings		Х		
1.5.	Check Duct System		X		
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EXHIBIT L



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

SUMMA	RY		IFB	3-008-2013			3/28/2013
ITEM		J&B		JMI	JO	HNSON CONTROL	DCK
	·						
1	\$	213,480.00	\$	162,576.00	\$	351,047.00	\$ 322,810.56
2	\$	22,126.00	\$	17,914.00	\$	38,939.00	\$ 35,199.97
3	\$	977,317.00	\$	694,991.00	\$	1,375,851.00	\$ 1,284,687.03
4	\$	2,361,880.00	\$	2,025,700.00	\$	3,229,718.00	\$ 3,004,268.26
5	\$	1,005,818.00	\$	838,100.00	\$	1,324,522.00	\$ 1,300,248.36
	<u> </u>		\$	159,885.00			
6	\$	159,619.00	\$	10,367.00	\$	330,662.00	\$ 291,236.01
			\$	315,660.00			
7	\$	1,224,132.00	\$	1,491,776.00	\$	2,268,447.00	\$ 2,168,856.52
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8	\$	65,592.00	\$	10,971.00	\$	114,717.00	\$ 115,379.01
		***************************************	\$	88,840.00			
9	\$	14,422.00	\$	20,058.00	\$	29,432.00	\$ 26,664.00
10	\$	93,760.00	\$	27,238.00	\$	152,564.00	\$ 140,296.00
			\$ \$	110,024.00			
11	\$	138,061.00	\$	226,127.00	\$	265,011.00	\$ 249,445.02
12	\$	78,396.00	\$	18,872.00	\$	129,002.00	\$ 128,941.02
			\$	94,620.00			
13	\$	123,858.00	\$ \$	169,701.00	\$	215,330.00	\$ 170,303.98
14	\$	83 <i>,</i> 925.00	\$	114,920.00	\$	129,125.00	\$ 127,197.00
15	\$	274,959.00	\$	315,347.00	\$	246,400.00	\$ 254,752.02
16	\$	52,310.00	\$ \$	83,747.00	\$	67,926.00	\$ 102,340.00
17	\$	160,610.00	\$	284,854.00	\$	208,876.00	\$ 347,175.00
18	\$	125,373.00	\$	176,360.00	\$	122,857.00	\$ 240,941.00
19	\$	308,676.00	\$	341,172.00	\$	292,723.00	\$ 600,954.00
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TOTAL	\$	7,484,314.00	\$	8,175,428.00	\$	10,893,149.00	\$ 10,911,694.76
TOTAL DIFF.	***************************************		\$	691,114.00	\$	3,408,835.00	\$ 3,427,380.76

EXHIBIT

Recie Camposano

From:

John V. Leon Guerrero (Facilties & Maintenance) [jvleonguerrero@gdoe.net]

Sent:

Monday, January 07, 2013 9:13 AM

To:

Alex Salazar

Cc:

Recie Camposano; Andrew S. Leon Guerrero; Billy P. Cruz; Eunice Aflague; Jacinto R. "Jay-

R" Estella

Subject:

Re: Southern High School

On Wed, Dec 26, 2012 at 11:25 AM, John V. Leon Guerrero (Facilties & Maintenance) < <u>jvleonguerrero@gdoe.net</u>> wrote:

Good Morning Alex, This is regarding your findings at Southern High School. Our Technicians made there assessment and found that the disconnect switches at bldg. 3000 are non-fusable. Also, according to your first Tech. (Johnny) He informed me that there is a freon leak on the conduser coil, but in order for him to locate leak, we would need to flush coils so that detection would be more visable. He also mentioned that the type of coil is an aluminum coil, and are really hard and almost impossible to repair. So please help us in resolving this issue. Please also give us the findings of what the second Tech. discoverd.

----- Forwarded message -----

From: John V. Leon Guerrero (Facilties & Maintenance) < jvleonguerrero@gdoe.net >

Date: Wed, Dec 26, 2012 at 8:26 AM Subject: Fwd: Southern High School

To: "Andrew S. Leon Guerrero" <aleonguerrero@gdoe.net>

----- Forwarded message -----

From: Alex Salazar < ASalazar@jbmoderntech.com>

Date: Thu, Dec 20, 2012 at 5:17 PM Subject: RE: Southern High School

To: Recie Camposano < RCamposano@jbmoderntech.com>, "John V. Leon Guerrero (Facilties &

Maintenance)" < ivleonguerrero@gdoe.net>

Cc: "Billy P. Cruz" < bpcruz@gdoe.net>, Gene Bangayan < GeneBangayan@jbmoderntech.com>

Greetings John

This is in response to your call for the A/C unit at bldg. 3000 Southern High.

As we got your first service call dated November 29,2012, we sent our technician to verify the problem of the unit if it was a warranty issue. J & B technician found the condenser coils was dirty and made notation on his report of suspicious system leak, left the site not doing any type of repair.

On December 10 we sent another technician to verify if the unit really have a leak, no leak was found. This technician requested our office to perform cleaning of the unit in order to identify the real problem, he was prohibited due to J & B Modern Tech do not have maintenance contract with DOE on this unit. In lieu, he was sent back the next day to do the best he can to make the unit run, that he did.

It was noticed during the December 11 visit that the fuse at disconnect switch were missing and somebody, not from J & B Modern Tech, installed wire jumpers, which is a clear indication somebody, other than J & B personnel were performing work on this particular A/C unit, which is in violation to the warranty clause.

Please to inform you that J & B Modern tech voided the warranty of this A/C unit at bldg. 3000, Southern High due to unauthorized repair by other personnel.

Very Truly

Alexander Salazar

From: Recie Camposano

Sent: Thursday, December 20, 2012 1:33 PM

To: Alex Salazar

Subject: FW: Southern High School

Following up on the warranty.

From: John V. Leon Guerrero (Facilties & Maintenance) [jvleonguerrero@gdoe.net]

Sent: Thursday, December 20, 2012 10:53 AM

To: Recie Camposano **Cc:** Andrew S. Leon Guerrero

Subject: Southern High School

Hi Resi,I am just following up on the warranty issue with the A/C unit in bldg.3000. Your Technicians came out last week to do repairs, but until now, the unit is not working properly. Please get back with me on this issue so that i can give the school a progress report.

John V. Leon Guerrero Tel. 475-0616 E-Mail: jvleonguerrero@gdoe.net

Building Maintenance Supervisor

162 North Marine Corps Drive Piti, Guam 96915

John V. Leon Guerrero Tel. 475-0616 E-Mail: jvleonguerrero@gdoe.net Building Maintenance Supervisor 162 North Marine Corps Drive Piti, Guam 96915

John V. Leon Guerrero Tel. 475-0616 E-Mail: jvleonguerrero@gdoe.net Building Maintenance Supervisor 162 North Marine Corps Drive Piti, Guam 96915

John V. Leon Guerrero Tel. 475-0616 E-Mail: jvleonguerrero@gdoe.net Building Maintenance Supervisor
162 North Marine Corps Drive Piti, Guam 96915

EXHIBIT G



JEB MODERN TECH ACR EQUIPMENT AND SUPPLIES P.O. BOX 9788 TAMUNING, GUAM, U.S.A. 96931 TELEPHONE: (671) 646-0588 / 646-4435 / 646-3346 FAX: (671) 646-0589

SERVICE ORDER

020575

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EXHIBIT L



JEB MODERN TECH ACR EQUIPMENT AND SUPPLIES

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

SERVICE ORDER

020581

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EXHIBIT 1



JEB MODERN TECH ACR EQUIPMENT AND SUPPLIES

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

SERVICE ORDER

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JEB MODERN TECH ACR EQUIPMENT AND SUPPLIES

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

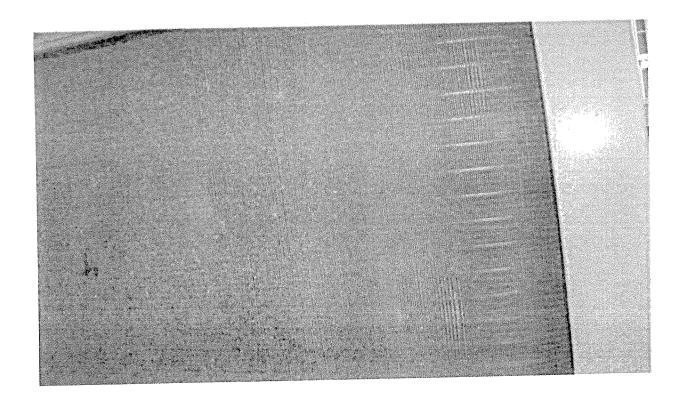
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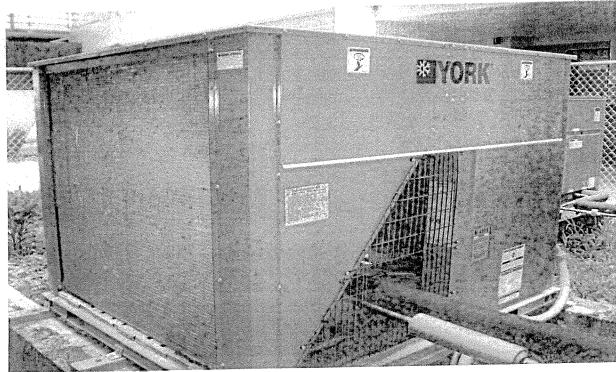
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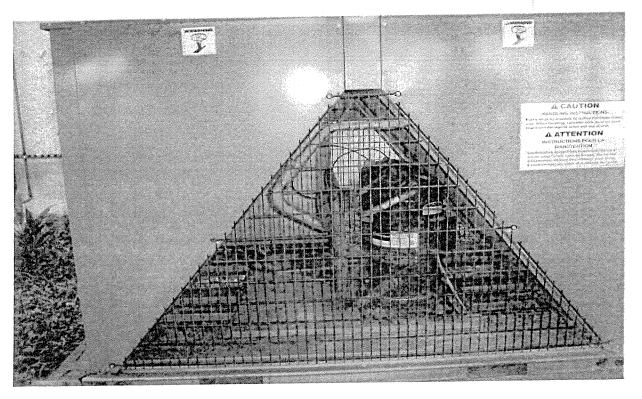


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EXHIBIT



JEB MODERN TECH

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

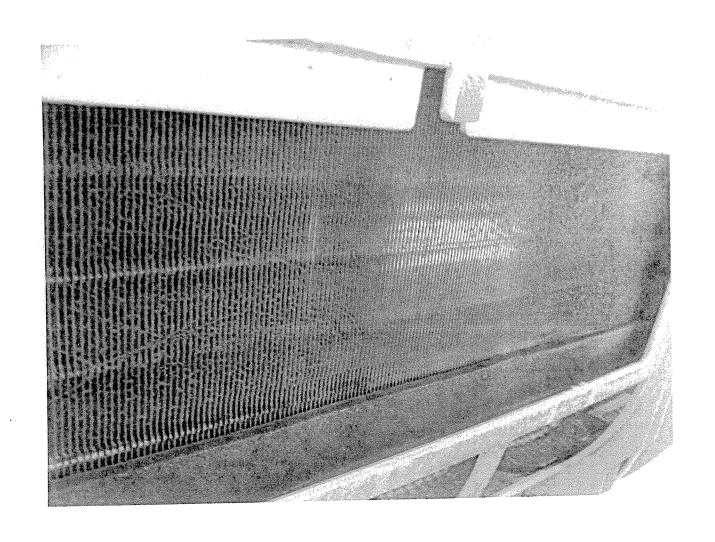
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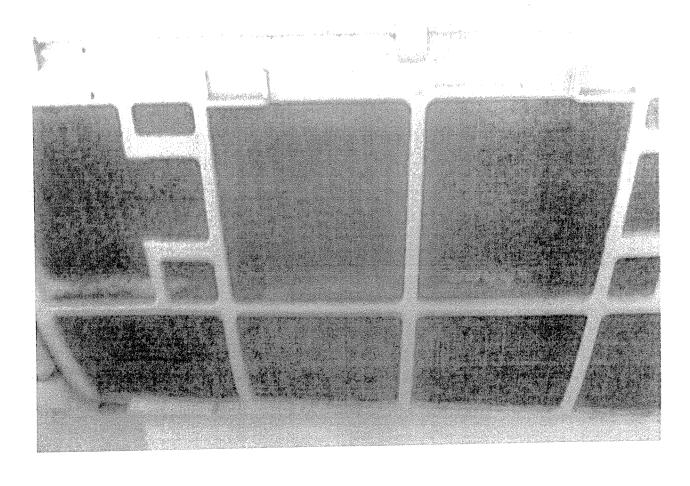
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EXHIBIT M



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ROOM — MAIN OFFICE

36000 BTU

AHU-FILTER

EXHIBIT N



JEB MODERN TECH ACR EQUIPMENT AND SUPPLIES

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

SERVICE ORDER

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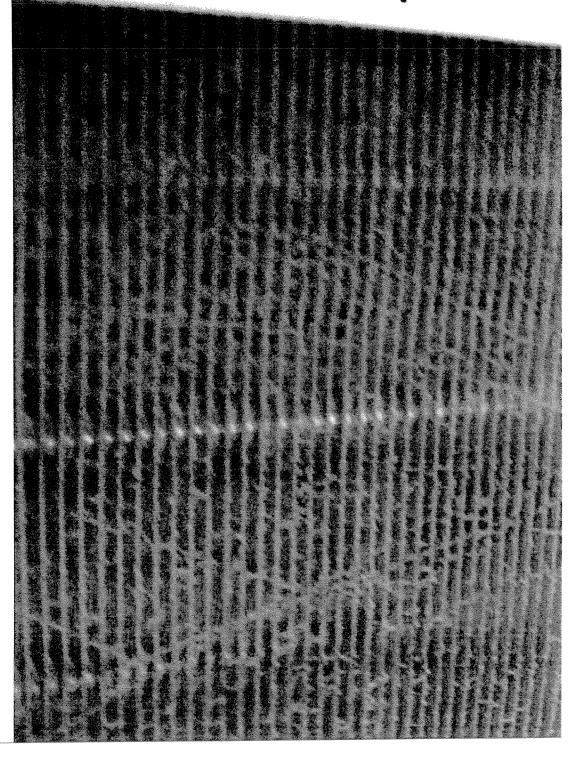
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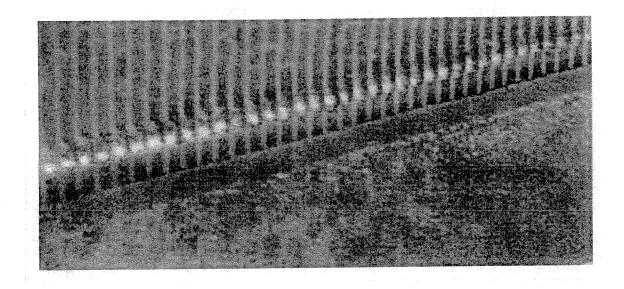
AUTHORIZED REPRESENTATIVE

EXHIBIT O

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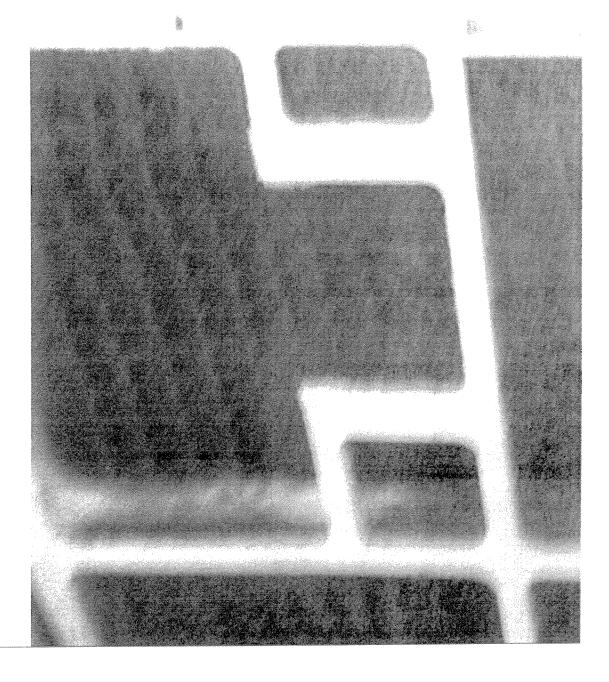
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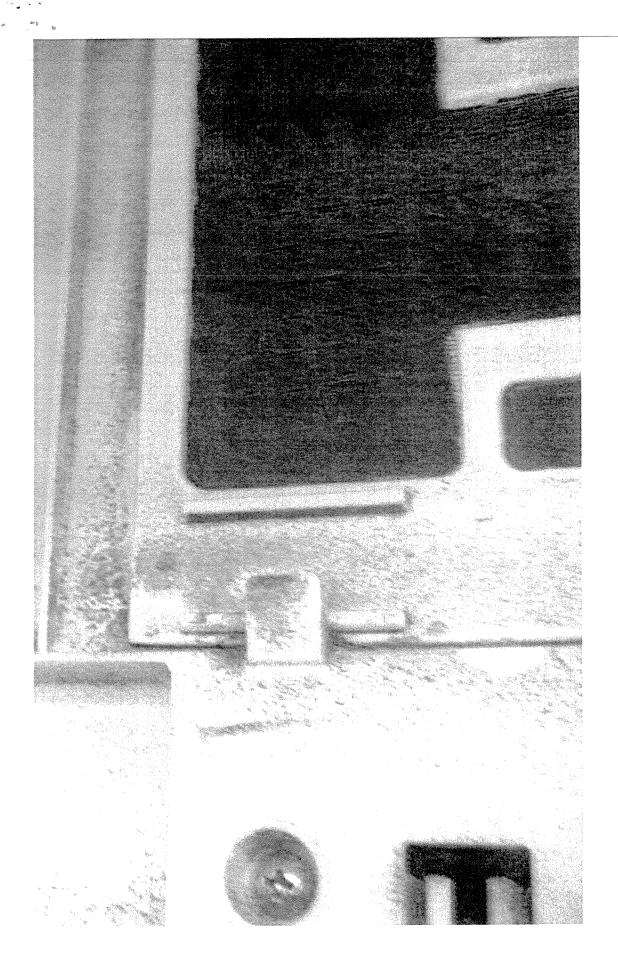




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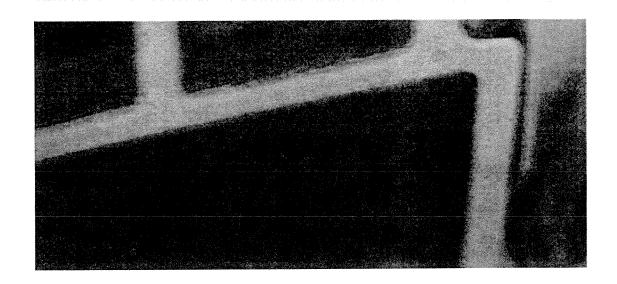
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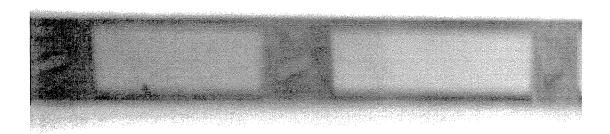
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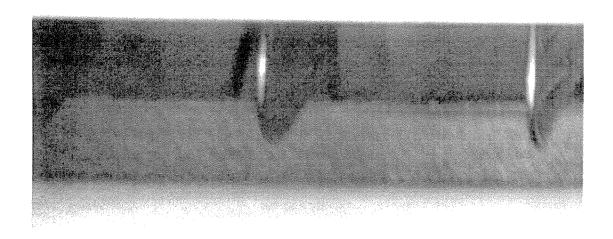
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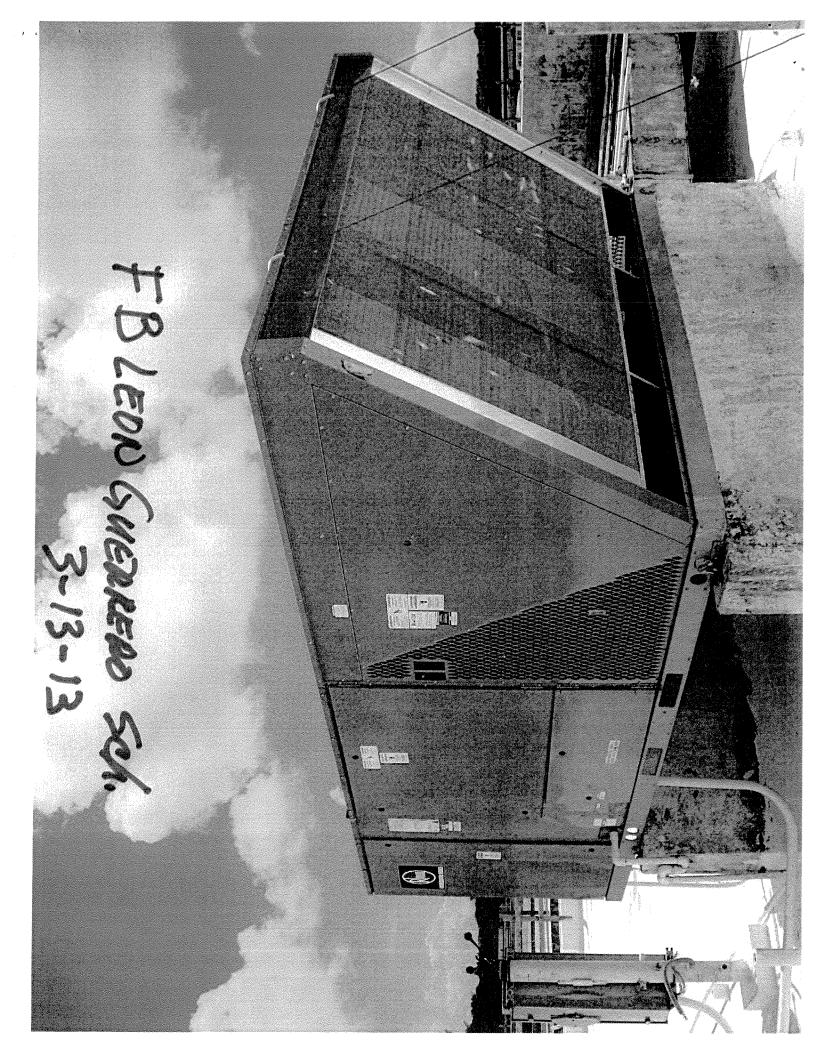




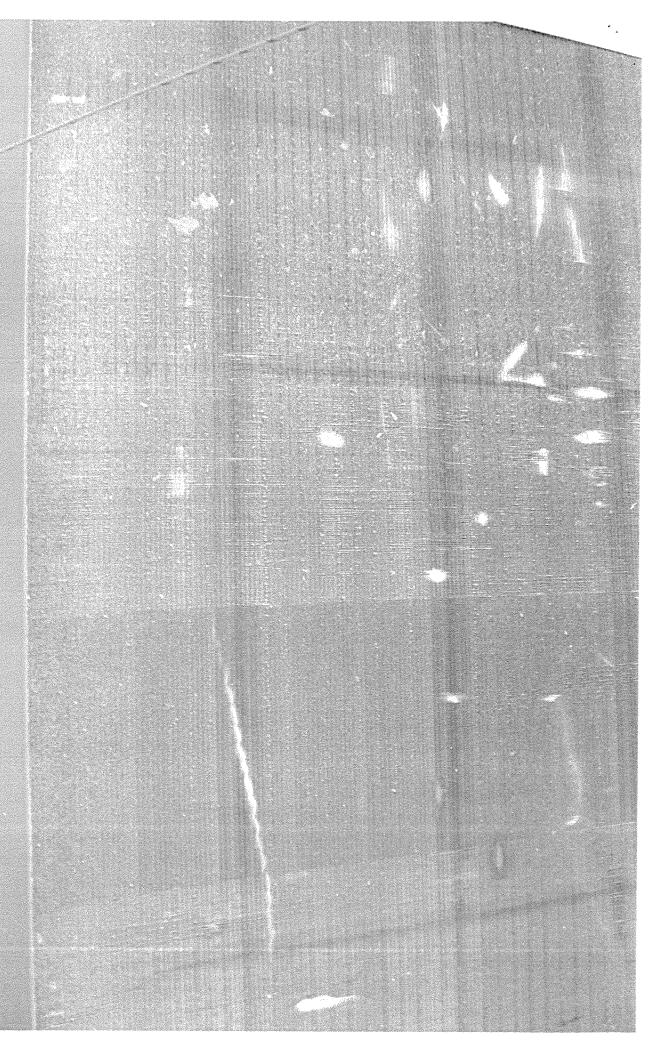


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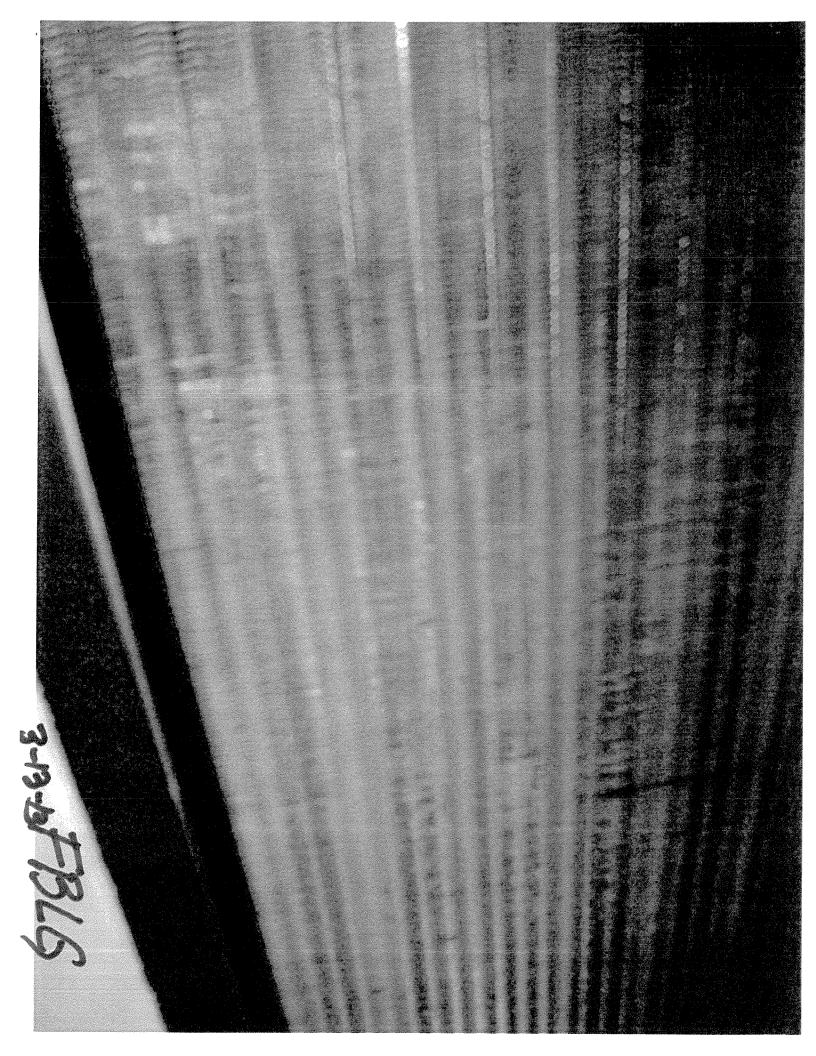
EXHIBIT P

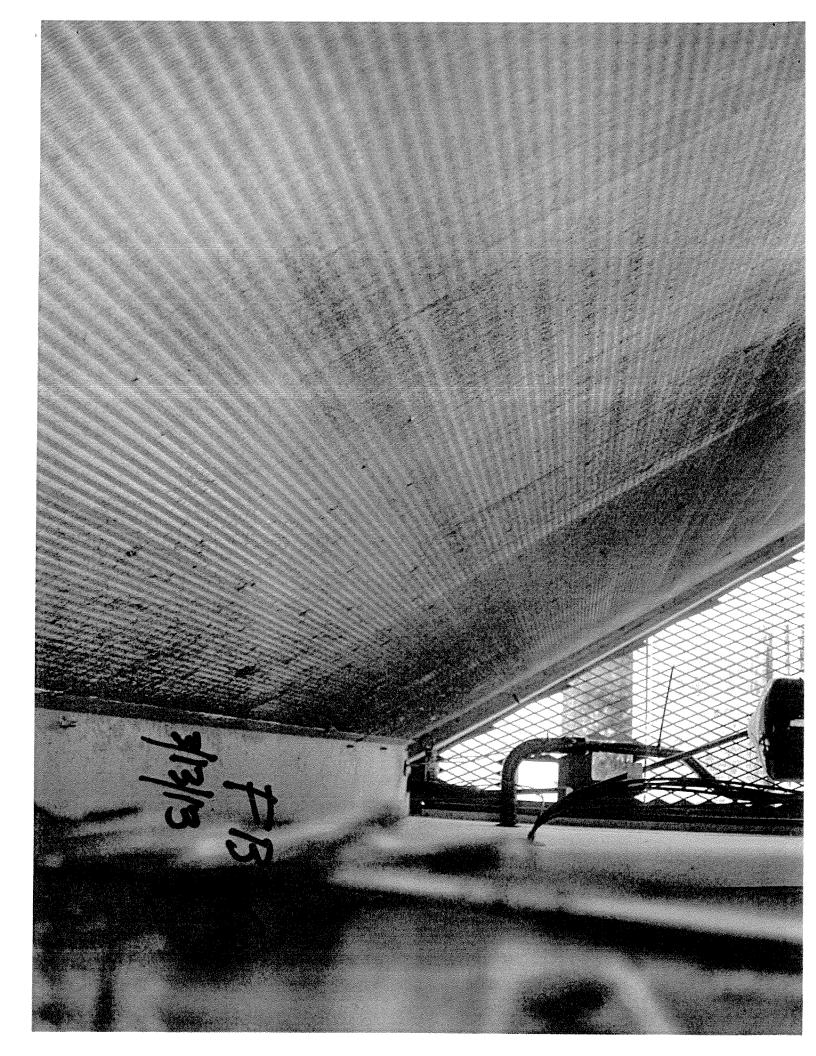


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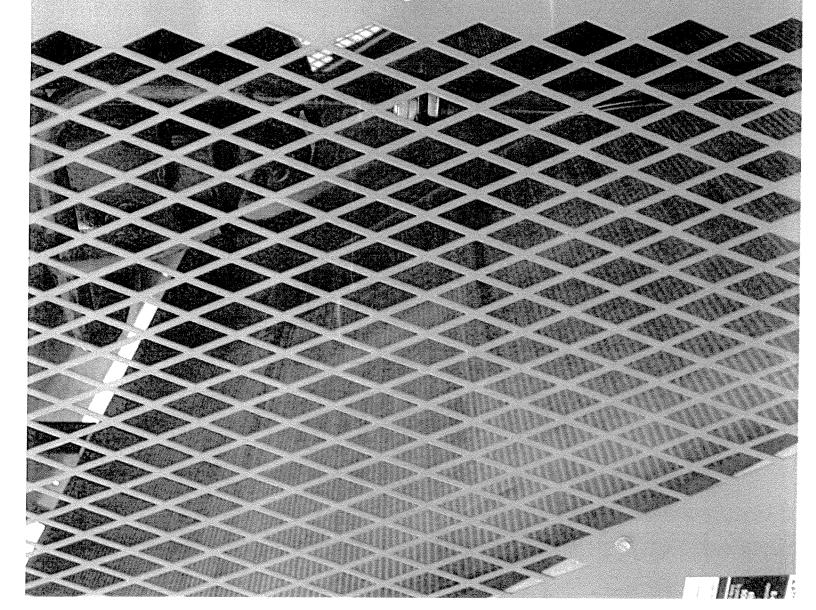








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EXHIBIT Q

Eddie Baza Calvo Governor

Benita A. Manglona

Director

GSA

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915 Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 475-1716 Ray Tenorio
Lieutenant Governor

Anthony C. Blaz Deputy Director

February 22, 2013

Memorandum

Speaker Judy WonPat 32nd Guam Legislature 155 Hesler Place Hagatna, Guam 96910

Re: Memorandum from Superintendent of GDOE dated February 19, 2013

Dear Speaker:

I am in receipt of the memorandum from the Superintendent of Guam Department of Education dated February 19, 2013, in which he attempts to explain the Department's reasoning for issuing out an invitation for bid for air conditioning maintenance for the Southern High School. This is my thoughts regarding this memorandum.

This memorandum points out the history of the bid. While J&B Modern Tech did win the bid, and that they were requested to honor the warranty, there was no indication submitted or stated that J&B did not honor the warranty or did not provide the services required when requested. Further, there was no indication provided that in the initial bid, that there would be a possible different vendor that would provide prevention and maintenance services. As previously indicated to you, J & B's attorney has indicated that any other person attempting to provide maintenance other than J& B, would void the warranty. The fact that GDOE;s attorney is looking into this matter, does not change that fact. It is very similar to buying a car with a warranty. Any other person touching the car, other than the authorized buyer, voids the warranty. A simple concept that GDOE does not seem to understand or ignore.

GDOE also stated that the OPA issued a decision on November 2012, resulting in the award of the bid to JRN Air Conditioning. A review of the decision does not go into the issue of whether it was appropriate for a bid to be given for prevention and maintenance if there was a warranty also involved.

GDOE attempts to state that the prevention and maintenance bid, excludes those air conditioning units under warranty. If you review the attached listing of air conditioning units listed in the attachment, you will note that Southern High air conditioning is listed, there is nothing indicating that it is not a part of the bid requirement.

COMMITED TO EXCELLENCE

Further, as indicated by the letter, GDOE acknowledges the requirement of 17 GCA Section 7119(c), it states that it does not practice that requirement. It states quite clearly that they recognize that under this law, the prevention and maintenance would go to the vendor that wins the award of providing the equipment.

I would suggest that GDOE follows the requirement of 17 GCA Section 7119(c), rather than suggest that the Guam Legislature revisit it. Further, I would strongly suggest that based upon comments made by J&B, that the Speaker call both J&B and GDOE into a meeting to ask the following questions: 1) Can J&B do preventive maintenance on its units, or, is it being prevented from doing so by GDOE? 2) Has GDOE done work or authorize another to work on the J&B air conditioning units without J&B's authorization, thereby voiding the warranty?

Finally, we note that GDOE has six (6) refrigeration specialists who respond to the air conditioning repair requests. If they have so many specialists, why are do they need a bid for this type of service?

We have attached further documentation regarding GDOE's position on this matter.

Thank you for allowing us to provide input to their memorandum

CLAUDIA S. ACFALLE