



OFFICE OF THE PUBLIC AUDITOR

**Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL**

OFFICE OF THE PUBLIC AUDITOR  
GUAM

NOV 14 2011

440P

Ac

11-017

**PART I- To be completed by OPA**

In the Appeal of	)	<b>NOTICE OF APPEAL</b>
	)	
<u>KIM BROS. CONSTRUCTION CORP.</u>	)	
(Name of Company), APPELLANT	)	
	)	
	)	Docket No. OPA-PA <u>11-017</u>

**PART II- Appellant Information**

Name: Kim Bros. Construction Corp.

Mailing Address: c/o Thomas M. Tarpley Law Firm  
GCIC Bldg, Suite 904

Business Address: 414 W. Soledad Ave.  
Hagatna, Guam 96910

Daytime Contact No: (671) 472-1539  
(671) 472-4526 (Fax)

**PART III- Appeal Information**

- A) Purchasing Agency: Department of Education
- B) Identification/Number of Procurement, Solicitation, or Contract: DOE IFB 24-2011
- C) Decision being appealed was <sup>received</sup> made on Oct. 30, 2011 (date) by:  
 Chief Procurement Officer     Director of Public Works     Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

- D) Appeal is made from:  
*(Please select one and attach a copy of the Decision to this form)*
- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy  
 (Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal  
 (Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

ADICIA

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

Unknown	

**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*

**PART V- 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 any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case 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 14 day of NOV., 20 11.

By: \_\_\_\_\_  
APPELLANT

or  
By:   
Thomas M. Tarpley, Jr.  
Appellant's Duly Authorized Representative

(Address) Thomas M. Tarpley Law Firm, Suite 904, GCIC Bldg., 414 W. Soledad Ave.  
(Phone No.) (671) 472-1539 Hagatna, Guam 96910

**STATEMENT OF BASIS  
OF APPEAL**

After Appellant's bid price was opened, the purchaser (DOE) decided to cancel the solicitation. Notice was given to other bidders but not to Appellant. Appellant filed its protest in detail/attached hereto) which was denied without explanation. Appellant received the denial on Oct. 30, 2011.



**KIM BROS. CONSTRUCTION CORP.**

GENERAL CONTRACTOR

P.O. Box 20729 Barrigada, Guam 96921

License (A&B)

26 September 2011

**Mr. Marcus Y. Pido**  
Administrator  
Office of Supply Management  
Department of Education  
Manuel F.L. Guerrero/ Administration Building  
2<sup>nd</sup> Floor, Suite B-220  
Hagatna, Guam 96932

PROCUREMENT SECTION  
**RECEIVED**

SEP 27 2011

DEPARTMENT OF EDUCATION

TIME: 11:41 INITIAL: JP

**Subject: Southern High School Gymnasium Repair  
GDOE IFB 024-2011**

Dear Mr. Pido,

This letter is to inform you that we are complaining on the way your office responded to the inquiries of our company with regards to the above subject project. Our company Kim Bros Construction Corp (KBCC) is one of the bidders that submitted proposal for the said project issued last March 2011. Even though we received responses through our e-mails, we found out later that the Department of Education sent out a Cancellation of Solicitation Letter dated September 13, 2011 but our company was not a recipient of that letter. Unfortunately, we only knew about the said letter from one of our co-bidders.

To refresh you on the events that unfold this past three weeks, below is the chronology of events for your perusal:

<u>Date</u>	<u>Event</u>
June 10, 2011	Bid proposal submitted to GDOE (Guam Dept of Education)
August 30, 2011(1:44PM)	KBCC sent an email to Kathrina Bayson, Special Projects Coordinator/ICC Administrative Support, GDOE, inquiring on the status of the bid.
August 30, 2011(2:11PM)	Albert Garcia, GDOE responded that the Southern High bids are to be <u>rebidded</u> again.
August 30, 2011(4:36PM)	KBCC sent another email to Albert Garcia, informing him that it is illegal to do a rebid when the bid packages were opened and the bidders were not notified.
August 31, 2011	Albert Garcia, GDOE responded that he was retracting his previous statement as mentioned in his email to KBCC dated August 30, 2011.
September 2, 2011	KBCC responded back saying that apology was accepted but again, reminded Mr. Garcia that once the bids are opened, it must be awarded and not to go through another bid. KBCC also mentioned

September 16, 2011 that their bid bond was tied up to this bid for three months and they can't use for other projects up for bid.  
September 17, 2011 KBCC received an email from Trinidad Bucao with attachments concerning an Amendment 6,  
September 19, 2011 KBCC responded to the email from Trinidad Bucao informing her that KBCC is not bidding for roof coatings and what he wanted to know is the result of the Southern High School Gymnasium bid.  
KBCC received a response from Trinidad Bucao that the said bid was cancelled September 13, 2011 and will be re-bid at a later date.

As you can see from the events mentioned above, GDOE had mentioned cancellation of bids and a retraction of statement and again another cancellation of bids from a period of August 30, 2011 to September 19, 2011 from two different personnel within GDOE.

We understand how an IFB (Invitation For Bid) works most particular on closed bids like this. The process how GDOE disseminates information to bidder like us sent through email or letter is unacceptable if not difficult to comprehend.

For example, the Cancellation of Solicitation dated September 13, 2011 was most likely, sent to all bidders but not to KBCC. Why we were left out of this is something we cannot understand. We were not officially notified of the cancellation and up to this point we are still waiting from GDOE to provide us with the explanation why we were not notified officially and the reason for the cancellation of bids. GDOE should be transparent enough to provide us with the explanation that will be acceptable to us.

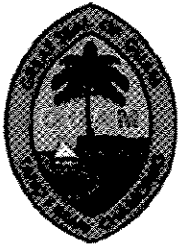
Should GDOE ignore this letter, we will have no other recourse but to seek legal assistance and claim expenses incurred to include, among others, cost of estimating, bid bond fee, attorney's fee and other miscellaneous cost.

Sincerely,  
Kim Bros Construction Corp.



**Won Sik Kim**  
President/KBCC  
Cell: 482 0080  
E-mail: wonkim.kbc@gmail.com

Attachments:



**DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

[www.gdoe.net](http://www.gdoe.net)

Manuel F.L. Guerrero / Administration Building

2<sup>nd</sup> Floor, Suite B-220

Hagatna, Guam 96932

Telephone: (671) 300-1581 Fax: (671) 472-5001

E-mail: [procurement@gdoe.net](mailto:procurement@gdoe.net)



Marcus Y. Pido

Supply Management, Administration

Taling M. Taitano, Interim  
Superintendent of Education

October 27, 2011

Kim Bros. Construction Corp.  
P.O. Box 20729  
Barrigada, Guam 96921  
Tel: (671) 734-0080  
Fax: (671) 734-0082

Attention: Mr. Won Sik Kim  
President

Reference: **Southern High School Gymnasium Repair**  
**Formal Bid: GDOE IFB 024-2011**

Dear Mr. Kim,

**Buenas yan Hafa Adai!** This letter is to confirm receipt of your letter of complaint dated September 26, 2011. I must apologize for the miscommunication to Kim Bros Construction Company while I was off-island.

You are correct to say that the Department of Education (DOE) did send out a cancellation of solicitation/rejection of all bids on September 13, 2011. Our records show that two e-mail addresses registered to Kim Bros CC were included on the e-mail transmission; specifically, [vic\\_scblls@yahoo.com](mailto:vic_scblls@yahoo.com) and [wonkim.kbc@gmail.com](mailto:wonkim.kbc@gmail.com). If you desire, we will re-send the message with the notice of cancellation attached.

We appreciate your concerns and Kim Bros' interest in bidding on DOE projects. If DOE decides to re-issue the solicitation, we would certainly welcome your participation.

Please acknowledge receipt of this document by signing below and return via fax to our office at (671) 472-5001.

ACKNOWLEDGE RECEIPT

*Won Sik Kim*  
\_\_\_\_\_  
Print Name

*[Signature]* 10/30/11  
\_\_\_\_\_  
Signature

Kind regards,

*[Signature]*  
\_\_\_\_\_  
MARCUS Y. PIDO

cc: Bid File: GDOE IFB 024-2011



OFFICE OF THE PUBLIC AUDITOR

**Appendix B: Declaration Form  
PROCUREMENT APPEAL**

OFFICE OF PUBLIC PROCUREMENT  
PROCUREMENTS - APPEALS

NOV 15 2011

TIME: 11:15am OF 72  
FILE NO. 11-017

In the Appeal of )  
)  
)

KIM BROS. CONSTRUCTION CORP.  
(Name of Company), APPELLANT )  
)  
)  
\_\_\_\_\_ )

Docket No. OPA-PA-11-017

**DECLARATION RE COURT ACTION**

(To be signed by the Government Purchasing Agency.)

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 any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case 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 14 day of Nov, 20 11.

By: [Signature]  
DECLARANT

T.M. Tarpley  
Print Declarant's Name



OFFICE OF THE PUBLIC AUDITOR

**Appendix D: Hearing Request/Waiver Form  
PROCUREMENT APPEAL**

OFFICE OF THE PUBLIC AUDITOR  
1000 GARDEN AVENUE, SUITE 200  
HAGATNA, GUAM 96910

NOV 14 2011

4:00 PM AC

11-017

In the Appeal of )  
)  
)  
)  
)  
KIM BROS. CONSTRUCTION CORP. )  
(Name of Company), APPELLANT )  
)  
\_\_\_\_\_ )

**HEARING  
REQUEST/WAIVER**

Docket No. OPA-PA 11-017

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)

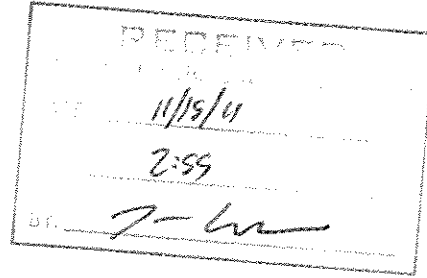
- APPELLANT
- \_\_\_ Chief Procurement Officer
- \_\_\_ Director of Public Works
- \_\_\_ Head of Purchasing Agency

\_\_\_\_\_  
Signature

  
Thomas M. Tarpley, Jr.,  
Print Name  
Duly Authorized Representative  
of Kim Bros. Construction Corp.



1 THOMAS McKEE TARPLEY  
2 A Professional Corporation  
3 GCIC building  
4 414 West Soledad Avenue, Suite 904  
5 Hagatña, Guam 96910  
6 Telephone: (671) 472-1539  
7 Facsimile: (671) 472-4526  
8 Email: [ttarpley@attorneyquam.com](mailto:ttarpley@attorneyquam.com)



6 *Attorney for Appellant*  
7 *Kim Bros Construction Corp.*

8 **OFFICE OF THE PUBLIC AUDITOR**

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9 IN THE APPEAL OF

Docket No. OPA-PA-11-017

10  
11 KIM BROS. CONSTRUCTION CORP.,

**DECLARATION OF SERVICE**

12 Appellant.

13  
14 I, Sheila D. Edwin, hereby declare that I am above the age of 18. I  
15 cause to be served on November 15, 2011 a true and correct copy of the  
16 Notice of Appeal on the following:

17 Mr. Marcus Y. Pido  
18 Supply Management Administrator  
19 Department of Education  
20 Office of Supply Management  
21 Manuel F.L. Guerrero Administration Bldg.  
22 2<sup>nd</sup> Floor, Suite B-220  
23 312 Aspinall Avenue  
24 Hagatna, Guam 96910

25 I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15<sup>th</sup> day of November, 2011 in Hagatna, Guam.

  
\_\_\_\_\_  
Sheila D. Edwin