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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **PROCUREMENT APPEAL**

10 IN THE APPEAL OF

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

14 Appellant.

15 APPEAL NO. OPA-PA-13-002

16 **DEPARTMENT OF EDUCATION'S**
17 **REPLY TO J&B'S COMMENTS ON**
18 **AGENCY REPORT**

19 Guam Department of Education ("GDOE") responds as follows to Phil-Gets (Guam)
20 International Trading Corp. dba J&B Modern Tech's ("J&B") Comments on Agency Report.

21 In its comments to GDOE's Agency Report, J&B attempts to frame this matter as a
22 contract dispute. Though the circumstances herein may also give rise to a contract dispute. This
23 is an issue of unsatisfactory behavior and failure to stand by a product that broke less than one
24 year after installation. These issues give rise to an administrative remedy to unsatisfactory
25 actions by a vendor; that is, a suspension and potential debarment.

26 The Guam Procurement Law states the causes that justify a contractor's suspension. One
27 of the causes for suspension is a deliberate failure without good cause to perform in accordance
28 with the specifications provided in the contract. 5 G.C.A. 5426(b)(4)(A). Additional bases for
suspension are unsatisfactory performance caused in accordance with the terms of the contract, or
any other cause the head of a purchasing agency determines to be so serious and compelling as to
affect responsibility as a territorial contractor. 5 G.C.A. § 5426(b)(4)(B); 5 G.C.A. § 5426(b)(5).

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The purpose of suspension is to ensure that government funds are spent on products and services that are provided by responsible contractors who will provide quality products. J&B’s continuous failure to make repairs was the basis for GDOE to issue the Notice of Suspension. Therefore, the only issue before the Office of Public Accountability (“OPA”) is whether GDOE was justified in issuing the Notice of Suspension to J&B, not whether there may or may not be another method to address the breach of contract that occurred by J&B’s actions.

The appropriate venue for appealing the suspension is the OPA. Pursuant to 2 G.A.R. Div. 4 § 9102(1), GDOE consulted with the Attorney General, put the contractor on notice that suspension was a possibility, issued a written determination that probable cause exists for debarment, and issued the Notice of Suspension. 2 G.A.R. Div. 4 § 12401 allows J&B to appeal the suspension to the OPA, which it did. Therefore, this matter is properly before the OPA.

Finally, J&B also asserts that GDOE was in violation of 17 G.C.A. § 7119 when it procured a separate preventative maintenance and minor repair contract. Section 7119(c) requires that GDOE obtain a warranty and maintenance agreement that insures an air conditioner unit’s working life for not less than five (5) years. Nowhere in 17 G.C.A. § 7119 does it state that GDOE is prevented from procuring air conditioner units with a five (5) year warranty separately from an air conditioner preventative maintenance and minor repair contract. GDOE procured both purchases with warranty and a maintenance agreement. Therefore, GDOE was not in violation of 17 G.C.A. § 7119.

GDOE has shown that it was justified in issuing a Notice of Suspension to J&B. Therefore, the OPA must uphold the suspension.

Dated this 29th day of April, 2013.

Respectfully submitted,
GUAM DEPARTMENT OF EDUCATION

By: 
ANDREW T. PEREZ, ESQ.
Legal Counsel