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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 11/5/12

TIME: 4:15  AM  PM BY: AGH

FILE NO OPA-PA: 12-019

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

8 IN THE PROTEST OF

9 J & B MODERN TECH,

10 Protestor.

APPEAL NO.: OPA-PA-12-019

**DEPARTMENT OF EDUCATION'S  
ANSWER**

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12  
13 This matter comes before the Office of Public Accountability ("OPA") pursuant to the  
14 expedited protest procedures contained in Public Law 31-196, Section 8(a). The subject of the  
15 protest is Guam Department of Education ("GDOE") Invitation for Bid ("IFB") 026-2012 for  
16 procurement of Preventative Maintenance and Minor Repairs Split and Central A/C Equipment  
17 for Thirty-five (35) Public Schools and All Support Facilities.

18 **BACKGROUND**

19 GDOE IFB 026-2012 was issued on September 21, 2012. Bids were due on October 9,  
20 2012, but the due date was amended to October 19, 2012. See Amendment 5 of IFB at GDOE  
21 Procurement Record, Exhibit 5, Bates Stamp No. GDOE00112. The following companies  
22 submitted bids: JRN Air Conditioning & Refrigeration, Inc. ("JRN"), J & B Modern Tech ("J &  
23 B"), Global Food Services LLC dba GFS Group ("Global"), Agbayani Construction Corp. dba  
24 ACC-Air ("ACC") and Golden Bay, Inc. ("Golden Bay"). As part of the bid, GDOE required  
25 bidders to submit C13 and C51 Certificates from the Guam Contractor's Licensing Board with  
26 their bid. See Section 2.4.1 of the IFB 026-2012 at GDOE Procurement Record, Exhibit 8, Bates  
27  
28

1 Stamp No. GDOE0028. A failure to submit these documents would result in a nonresponsive bid  
2 and disqualification from consideration for award. *Id.*

3 After bid opening, each bid was evaluated to determine compliance with GDOE IFB 26-  
4 2012. All bidders, with the exception of one, were determined to be compliant with GDOE IFB  
5 026-2012. Golden Bay's bid was rejected due to non-compliance with Section 2.2.8 titled  
6 Acknowledgement of Amendments to IFB. The remaining bids were evaluated and JRN was  
7 determined to be the lowest responsive and responsible bidder.

8 On November 6, 2012, J & B filed a protest with the OPA regarding GDOE's  
9 procurement actions related to GDOE IFB 026-2012 pursuant to Public Law 31-196, Section 8.  
10 On November 7, 2012, the OPA sent GDOE a Notice of Receipt of Protest-OPA-PA-12-019.

### 11 ARGUMENT

12 J & B argues that JRN failed to comply with Section 2.4.1 of GDOE IFB 026-2012.  
13 Although not clearly stated, the protest appears to be based on JRN's failure to include a  
14 Verification of License, which J & B argues would make JRN's bid nonresponsive and  
15 disqualified from consideration. J & B is incorrect in its assertion. Section 2.4.1 of the IFB states  
16 as follows: "Bidders must submit C13 and C51 Certificates from the Guam Contractor's  
17 Licensing Board WITH THEIR BID. Failure to submit these documents will result in a  
18 nonresponsive bid and disqualification from consideration." *See* IFB, Exhibit 5, Bates Stamp No.  
19 GDOE0028.

20 Section 2.4.1 of GDOE IFB 026-2012 requires C13 and C51 Certificates. *Id.* JRN  
21 complied with Section 2.4.1 of the IFB by submitting a valid Contractor's License certifying that  
22 JRN is a qualified contractor to perform C13 and C51 classifications. *See* JRN's Contractor's  
23 License containing C13 and C51 classifications, Exhibit 4, Bates Stamp No. GDOE0017.

24 Both J & B and JRN submitted Contractor's Licenses indicating they are qualified to  
25 perform C13 and C51 classifications. *See* J & B's Contractor's License containing C13 and C51  
26 classifications, Exhibit 3, Bates Stamp No. GDOE0011; *see* Exhibit 4, Bates Stamp No.  
27 GDOE0017. The only difference between J & B's and JRN's submissions pursuant to Section  
28

1 2.4.1 of GDOE IFB 026-2012 was that J & B also included a Verification of License. *See* J &  
2 B's Verification of License, Exhibit 3, Bates Stamp No. GDOE0012. Although J & B submitted  
3 this extra document, GDOE IFB 026-2012 does not require a bidder to submit a Verification of  
4 License.

5 Given that JRN's bid conformed to Section 2.4.1. of GDOE IFB 026-2012, GDOE  
6 determined that JRN was a responsive bidder. *See* 5 G.C.A. § 5201(g); *see* Ranking  
7 Memorandum, Exhibit 8. Once it was established that JRN and the other bidders were  
8 determined to be in compliance with the GDOE IFB 026-2012, the only remaining basis for  
9 comparison is price. As evidenced from the bid forms, JRN was determined to be the lowest  
10 responsive bidder. *See* JRN's Bid Forms, Exhibit 4, Bates Stamp No. GDOE0018-0021; *see* J &  
11 B's Bid Forms, Exhibit 3, Bates Stamp No. GDOE0013-0016. Therefore, GDOE correctly  
12 awarded JRN the contract.

13 For the reasons above, J & B's protest should be found to be without merit and dismissed  
14 in its entirety.

15 Dated this 9<sup>th</sup> day of November, 2012.

16 Respectfully submitted,

17 **GUAM DEPARTMENT OF EDUCATION**

18  
19 By   
20 **ANDREW T. PEREZ, ESQ.**  
21 *Legal Counsel*