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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO. OPA-PA 18-WF

5 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**  
6 **PROCUREMENT APPEAL**

7 In the Appeal of ) **APPEAL NO. OPA-PA 10-008**  
8 )  
8 JRN AIR CONDITIONING ) **PURCHASING AGENT**  
9 ) **DEPARTMENT OF EDUCATION'S**  
9 & REFRIGERATION, INC. ) **HEARING BRIEF**  
10 )  
10 Appellant. )  
11 )

12 Purchasing Agency, Department of Education, "DOE" (PL 30-050:2, July 14, 2009, changed  
13 the agency's name to Department of Education. DOE is a line agency of the Government of  
Guam, as defined by 5 GCA 6103(c), and in addition to DOE also references itself in its  
14 procurements as "GDOE", to distinguish itself from the United States Department of Education  
(which also uses "DOE").

15 DOE is a public school system and issued GDOE IFB 008-2010, July 19, 2010 for the  
16 Preventative Maintenance and Repairs of Central Air-Conditioning Equipment. Air-Conditioners  
are required in the public schools to maintain the appropriate room temperatures. The  
17 maintenance and repair of air-condition equipment is of critical importance to DOE. A purchase  
order was issued on October 15, 2010 to J & B Modern Tech. The appeal in this matter was filed  
18 by unsuccessful bidder, JRN Air Conditioning & Refrigeration on October 28, 2010. There is no  
automatic stay in effect since this appeal is post-award. J & B Modern Tech from October 15,  
19 2010 to present has been performing under the contract. JRN Air Conditioning & Refrigeration  
has raised issues as to J & B Modern Tech's compliance with Guam's prevailing wage laws set  
20 forth in 5 GCA Sections 5801 and 5802. GDOE IFB 008-2010 contained a copy of the AG  
Procurement Form 006, (Feb. 16, 2010) with the appropriate U.S. D.O.L. Register of Wage  
21 Determinations Under the Service Contract Act. Included with J & B Modern Tech's bid  
proposal was a signed form with the Revision 14, Date of Revision 8-19-10. Additionally J & B  
22 Modern Tech pre-award, but post bid opening in response to DOE inquiries, submitted  
correspondence dated September 27, 2010 (Tab #5 of Procurement Record) as to their DOL  
23 Wage Determination signed and attached to their bid, which states in part as follows:

24 "First, all our employees who will be assigned to our either local or federal projects have been  
25 given the DOL WAGE DETERMINATION RATES and fully covered under the J & B Health  
Insurance Group Life Insurance, 401 K Retirement Plan and 2 weeks paid vacation plus

1 Christmas Bonus. With this employee wage rate (see attachment) plus their incentive benefits is  
2 more than enough to meet and satisfy the DOL WAGE DETERMINATION requirements.

3 Second, the bid abstract clearly shows that we are the lowest most responsive and responsible  
4 offeror and did not deviate or violate the provisions of 5 GCA Sections 5801 and 5802, unlike  
5 JRN Air Conditioning & Refrigeration who submitted a bid of \$15.75 which was a clear  
6 violation on this provision of 5 GCA Sections 5801 and 5802 that governed the DOL WAGE  
7 DETERMINATION. Based on our inquiry and information from the Wage and Hour Division,  
8 Department of Labor of Guam, said that any fraction of cent less than the stated wage rate on the  
9 DOL WAGE DETERMINATION Occupational Listing is a violation of the provisions of 5  
10 GCA Sections 5801 and 5802.

11 Third, we concluded that JRN Air Conditioning & Refrigeration's assertions are solely based on  
12 subjective belief and opinion and fails to meet its burden of proof and convincing evidence."

13 (See Tab #5 of Procurement Record for September 27, 2010 Correspondence and Attachments)

14 DOE made a determination in keeping with the procurement guidelines as to J&B Modern Tech  
15 being a responsible bidder, and also that the total bid amount was sufficient for compliance with  
16 5 GCA Sections 5801 and 5802.

17 The standard of review applicable to these matters is that absent any breach of procurement law,  
18 the determinations made by the Purchasing Agency should stand. Fleet Services, Inc. v.  
19 Department of Administration and Kloppenburg Enterprises, Inc. 2006 Guam 6. DOE's  
20 determinations made and its processes followed are fair and reasonable and should be upheld.


21 The Wage and Hour Division, Department of Labor of Guam has jurisdiction of any post-bid  
22 award compliance issues with prevailing wages, 22 GCA Section 3103 and the law provides due  
23 process rights to the Contractor. Wage and Hour Division makes its determinations and then the  
24 Purchasing Agency proceeds.

25 Although JRN Air Conditioning & Refrigeration in its appeal has asserted a multitude of  
different items related to DOE's procurement process with regard to the minimum bid  
requirements and prevailing wages, they are assertions and not matters of proof.

DOE has not violated any procurement regulations or law with regard to this matter and the  
appeal should be dismissed.

Dated this 6th day of January, 2011.

**PURCHASING AGENT  
DEPARTMENT OF EDUCATION**

  
By: **LAURA J. MOONEY**  
Counsel for Department of Education