



OFFICE OF THE PUBLIC AUDITOR

Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

APR 13 2012

TIME: 2:45pm BY: [Signature]
FILE NO OPA-PA: 12-010

PART I- To be completed by OPA

In the Appeal of)	NOTICE OF APPEAL
)	
)	
_____)	
(Name of Company), APPELLANT)	
_____)	Docket No. OPA-PA _____

PART II- Appellant Information

Name: ALLIED PACIFIC BUILDERS, INC.

Mailing Address: P.O. Box 21988
Barrigada, Guam 96921

Business Address: 17-3120 Mariner Avenue
Tiyan Barrigada Guam

Daytime Contact No: 671-475-7408

PART III- Appeal Information

Guam Department of Education

A) Purchasing Agency: Office of Supply Management

B) Identification/Number of Procurement, Solicitation, or Contract: IFB 035-2011 & IFB 036-2011

C) Decision being appealed was made on April 3, 2012 (date) by: Marcus Y. Pido
____ 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)

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

Mega United	
Phil-Gets Int'l dba J&B Modern Tech	

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 13th day of April, 2012.

By: Allied Pacific Builders, Inc.
APPELLANT

or 
By: Genaro Danila

Appellant's Duly Authorized Representative
(Address) P.O. Box 21988 Barrigada Guam 96921
(Phone No.) 671-483-2692



OFFICE OF THE PUBLIC AUDITOR

**Appendix B: Declaration Form
PROCUREMENT APPEAL**

In the Appeal of)
)
)
(Name of Company), APPELLANT) Docket No. OPA-PA_____
)
)
_____)

DECLARATION RE COURT ACTION
(To be signed by the Government Purchasing Agency.)

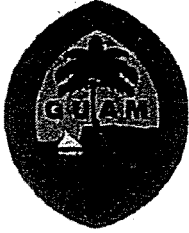
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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 ___ day of _____, 20__.

By: _____
DECLARANT

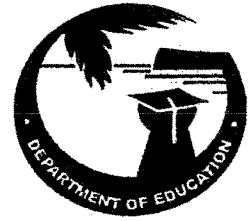
Print Declarant's Name



Taling M. Taitano
Interim Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
Manuel F.L. Guerrero/Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96932
Telephone: (671) 475-0438 Fax: (671) 472-5001
Email: procurement@gdoe.net



Marcus Y. Pido
Supply Management Administrator

April 3, 2012

Genaro Q. Danila
General Manager
Allied Pacific Builders, Inc.
P.O. Box 21988
GMF, Guam 96921
Fax: 475-7409

**RE: Response to Letter of Protest dated January 5, 2012
IFB 035-2011 and IFB 036-2011
Structural Repairs and Roof Coating – Northern A and Northern B**

Dear Mr. Danila:

This letter is written in response to your letter of January 5, 2012 regarding Guam Department of Education (“GDOE”) Invitations for Bids (“IFBs”) Numbers 035-2011 and 036-2011 for Structural Repairs and Roof Coating. GDOE has reviewed your protest and rejects it in its entirety. Each of the allegations contained in your protest, and GDOE’s responses, are as follows:

1. *Bidders qualifications and classifications (See Annex A, 2 pages), stating that they are not qualified to do the job as per the following notable issues:*
 - a. *Mega United is only classified as A & B.*
 - b. *Phil-Gets (Guam) International Trading Corp. dba J & B Modern Tech is classified with C68, Epoxy only and not Epoxy Injection which is the scope of work for this project.*

GDOE Response: The IFBs did not require bidders to have any special licensing or classifications in order to bid, only that certain work under the IFB is performed by a certified contractor. Bidders would be allowed to engage the services of certified subcontractors to perform such work. Therefore, the qualifications and classifications of a bidder, taken alone, would not necessarily disqualify a bidder as non-responsive or not responsible to the IFB. The qualifications of Mega United and Phil-Gets (Guam) International Trading Corp. dba J&B Modern Tech as described in your protest are not sufficient in and of themselves to disqualify either bidder. This portion of your protest is therefore denied.

2. *Section 2.5 – General Information, Sub-section 2.5.1 –Competency of Bidders, pages 7 & 8, third paragraph of the Bid Package (See Annexes B.1 & B.2, Part of Invitation for Bid, 8 out of 39 pages). It is noted that during the bid opening, the qualifications of the bidders were not read out and no proof that our competitors*

Response to Allied Pacific Builders Protest dated January 5, 2012
GDOE IFB 035 and 036-2011
April 3, 2012
Page 2 of 2

submitted the stated requirements. Allied Pacific Builders Inc. had the special qualifications as per your request stated on the Bid Package. Quoting Section 2.2.1 – General Disclaimer Regarding Instruction, “All instructions contained herein should be carefully followed and complied therewith. Bids and bidders who fail to follow the instructions set forth in this section and any preceding or succeeding sections of this document may be deemed nonresponsive and disqualified from participating in this bid opportunity.”

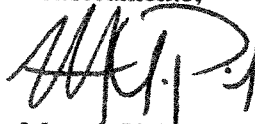
GDOE performed a public opening of the bids submitted in response to the IFBs 035 and 036-2011 on October 3 and October 4, 2011, respectively. In accordance with procurement law and regulation, prices and certain other information were revealed at the opening. This information was recorded in GDOE's bid abstracts for the IFBs. Bids were then reviewed by GDOE or their consultants to determine if the bids complied with the requirements of the IFB. GDOE has determined that the bids submitted (including the bid from Allied Pacific) complied with the requirements of the IFB. This portion of your protest is therefore denied.

3. *Bid Price Basis. The submitted lowest bid is questionable. Section 2.1.3 of the Bid Package specified that the area should be based on project site and plans. The square footage of the cost they submitted for the roof coating alone does not conform to the required area to be coated. (See Annex C, 2 pages, Tabulation of Bidders' Cost & Analysis). While we based our estimates on plans, if our estimated area for roof coating is applied on their unit cost, their bid should be way up by 208% and 136% of their bid applying the roof coating for concrete only.*

The issues of variances in bid prices and the ability of prospective bidders to develop a competitive bid were raised in an appeal involving the nearly identical GDOE IFBs 037-2011, 038-2011, and 039-2011. The appeal was before the Office of Public Accountability under the caption In the matter of Infratech International, LLC, OPA Appeal Nos: OPA-PA-11-019 through 11-021. The OPA determined that the project scope, specifications, and drawings contained in the IFBs are precise enough to allow prospective contractors to submit a competitive sealed bid. (See Decision from the Office of Public Accountability, dated March 29, 2012, OPA-PA-11-019, OPA-PA-11-020, OPA-PA-11-021, page 12.) The allegation that the submitted lowest bids in IFBs 035- and 036-2011 are questionable because of a difference in Allied Pacific estimated area is therefore without merit and this portion of your protest is therefore denied.

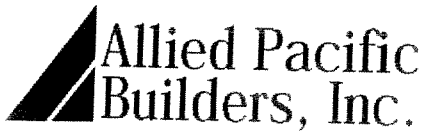
For the reasons discussed above, your protest is denied in its entirety. Pursuant to 5 GCA §5425(e), you may appeal this decision to the Office of Public Accountability within fifteen days.

Senseramente,



Marcus Y. Bido
Supply Management Administrator

cc: Procurement File: IFB 035-2011
IFB 036-2011



Contractor License # CLB06-0010
RME # 5242
www.alliedpacificbuilders.com

P.O. Box 21988
GMF, GU 96921
Ph. (671) 475-7408
Fax. (671) 475-7409

January 5, 2012

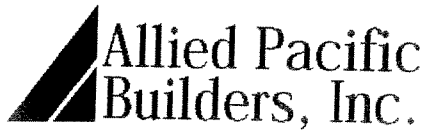
Mr. Marcus Y. Pido, Supply Management Administrator
Guam Department of Education
Manuel F.L Guerrero / Administration Building 2nd Floor
Suite B-202 Hagatna, Guam 96932
Telephone: 671-475-0438
Fax: 671-472-5001
E-mail:www.gdoe.net

Subject: Letter of Protest, Structural Repairs and Roof Coating - Northern A Solicitation No. IFB035-2011 & Northern B Solicitation No. IFB036-2011

Dear Mr. Pido,

Allied Pacific Builders Inc. is protesting on the bases as followed:

- 1) Bidders qualifications and classifications (See Annex A, 2 pages), stating that they are not qualified to do the job as per the following notable issues:
 - a. Mega United is only classified as A & B.
 - b. Phil-Gets (Guam) International Trading Corp. dba: J & B Modern Tech is classified with C68, Epoxy only and not Epoxy Injection which is the scope of work for this project.
- 2) Section 2.5-General Information, Sub-section 2.5.1-Competency of Bidders, pages 7 & 8, third paragraph of the Bid Package (See Annexes B.1 & B.2, Part of Invitation for Bid, 8 out of 39 pages). It is noted that during the bid opening, the qualifications of the bidders were not read out and no proof that our competitors submitted the stated requirements. Allied Pacific Builders Inc. had the special qualifications as per your request stated on the Bid Package. Quoting Section 2.2.1-General Disclaimer Regarding Instruction, "*All instructions contained herein should be carefully followed and complied therewith. Bids and bidders who fail to follow the instructions set forth in this section and any preceding or succeeding sections of this document may be deemed nonresponsive and disqualified from participating in this bid opportunity.*"
- 3) Bid Price Basis. The submitted lowest bid is questionable. Section 2.1.3 of the Bid Package specified that the area should be based on project site and plans. The square footage of the cost they submitted for the roof coating alone does not conform to the required area to be coated. (See Annex C, 2 pages, Tabulation of Bidders' Costs & Analysis). While we based our estimates on plans, if our estimated area for roof coating is applied on their unit cost,



Contractor License # CLBO6-0010
RME # 5242
www.alliedpacificbuilders.com

P.O. Box 21988
GMF, GU 96921
Ph. (671) 475-7408
Fax. (671) 475-7409

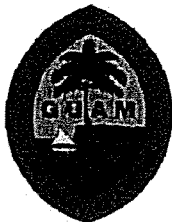
their bid should be way up by 208% and 136% of their bid applying the roof coating for concrete only.

With the pointers stated above by our company, we would like to seek for the basis of the award. Was it based on Section 2.4-Award or was it based solely on price? We hope that we get your attention and have a considerable action for this Letter of Protest.

Very Truly Yours,
Allied Pacific Builders Inc.

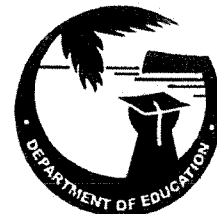
A handwritten signature in black ink, appearing to read "Genaro Q. Danila", is written over the typed name below.

GENARO Q. DANILA
General Manager



**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

Manuel F.L. Guerrero / Administration Building
2nd Floor, Suite B-202
Hagatña, Guam 96910
Telephone: (671) 300-1581 • Fax: (671) 472-5001
Email: mypido@gdoe.net



Taling M. Taitano
Interim Superintendent of Education

Marcus Y. Pido
Supply Management Administrator

January 6, 2012

TO ALL PROSPECTIVE BIDDERS

Subject: **NOTICE OF STAY OF PROCUREMENT**

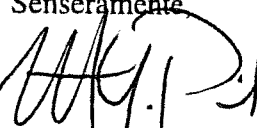
Reference: **IFB 035-2011 Structural Repairs and Roof Coating – Northern A**

Dear Sir/Madam:

Hafa Adai! This letter is to advise you that the Department has received a Letter of Protest regarding the referenced said Invitation for Bid (IFB 035-2011). Therefore, pursuant to 2 GAR, Section 9101 (e), a "STAY OF PROCUREMENT" is hereby issued and shall remain in effect until the protest is resolved.


Once resolution of this matter is achieved, the Department will advise you.

Should you have any question(s) regarding this matter, please do not hesitate to call me at 300-1581.

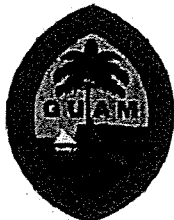
Senseramente

MARCUS Y. PIDO

Cc: Procurement File

Acknowledgement Receipt:

 NOEL TOLENTINO
Signature

1/9/12 8:05 AM
Date Time



Taling M. Taitano
Interim Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

Manuel F.L. Guerrero / Administration Building
2nd Floor, Suite B-202
Hagatña, Guam 96910
Telephone: (671) 300-1581 • Fax: (671) 472-5001
Email: mypido@gdoe.net



Marcus Y. Pido
Supply Management Administrator

January 6, 2012

TO ALL PROSPECTIVE BIDDERS

Subject: **NOTICE OF STAY OF PROCUREMENT**

Reference: **IFB 036-2011 Structural Repairs and Roof Coating – Northern B**

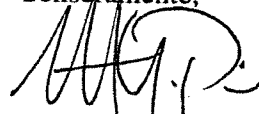
Dear Sir/Madam:

Hafa Adai! This letter is to advise you that the Department has received a Letter of Protest regarding the referenced said Invitation for Bid (IFB 036-2011). Therefore, pursuant to 2 GAR, Section 9101 (e), a "STAY OF PROCUREMENT" is hereby issued and shall remain in effect until the protest is resolved.

Once resolution of this matter is achieved, the Department will advise you.

Should you have any question(s) regarding this matter, please do not hesitate to call me at 300-1581.


Senseramente,



MARCUS Y. PIDO

Cc: Procurement File

Acknowledgement Receipt:

 NOEL TOLENTINO
Signature

1/9/12 8:05 AM
Date Time



Nerissa Bretania-Underwood, Ph.D.
Superintendent of Education

**OFFICE OF SUPPLY MANAGEMENT
DEPARTMENT OF EDUCATION**

Manuel F.L. Guerrero / Administration Building

2nd. Floor, Suite B-202

Hagåtña, Guam 96932

Telephone: (671) 475-0438

Fax: (671) 472-5001



Marcus Y. Pido
Supply Management Administrator

fax

To: <u>Genaro Dowla</u>	From: <u>M. Pido</u>
Firm: <u>Applied Pacific Builders</u>	Section: <u>Procurement</u>
Fax: <u>475.7409</u>	Pages: <u>(including cover letter)</u>
Phone: _____	Date: <u>1-4-12</u>
Re: <u>IFB 035-2011</u>	cc: _____

Urgent For Review Please Comment Please Reply

● Comments:

Hafa Adai.
Kindly complete the accompanying
document & return by fax.

Thank you

GUAM DEPARTMENT OF EDUCATION
 MANUEL F.L. GUERRERO/ADMINISTRATION BUILDING
 GOVERNMENT OF GUAM
 P.O. BOX DE
 HAGÁTÑA, GUAM 96932
 TEL: 671-300-1581/1582 | FAX: 671-475-5001



PROPRIETARY DATA DESIGNATION FORM

INVITATION FOR BID (IFB): IFB 035-2011 (PLEASE INSERT IFB NUMBER)

Bidders submitting bids in response to this IFB shall be aware that pursuant to 2 GAR 1309(l)(2),

Bids and modifications shall be opened publicly in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids.

The opened bids shall be available for public inspection *except to the extent the bidder designates trade secrets or other proprietary data to be confidential.*

Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.

Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

See 2 GAR 1309(l)(2)(emphasis added).

ACKNOWLEDGEMENT

By receipt and acknowledgement of this form, Bidder hereby agrees to *clearly designate and separate from the bid* any and all material that the Bidder considers to be trade secrets or other proprietary data to be confidential. An omission or failure to *clearly designate and separate from the bid* any and all material that the Bidder considers to be trade secrets or other proprietary data will result in the Bidder's entire bid being made publicly available. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

Trade secrets or other proprietary data should be clearly marked and separated from other bid materials. If inseparable from other bid materials, then each page of trade secrets and proprietary data should be clearly marked and the corresponding page numbers recorded on the lines below.

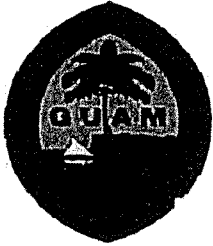
DESIGNATED PAGES OF TRADE SECRETS OR OTHER PROPRIETARY DATA:

Bidders must sign, date, and return this form with their bid response documents. Failure to return this form may result in the submitted response being deemed non-responsive.

 Signature

 Date

*****THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH THE FORMAL BID DOCUMENTS*****



OFFICE OF SUPPLY MANAGEMENT

Guam Department of Education
 Manuel F.L. Guerrero / Administration Building
 2nd Floor, Suite B-202
 Hagåtña, Guam 96932
 Telephone: (671) 475-0438
 Fax: (671) 472-5001
 Email: www.gdoe.net



Taling M. Taitano, Iterim,
 Superintendent of Education

Marcus Y. Pido
 Administrator, Supply Management

BID STATUS

December 27, 2011

To: Allied Pacific Builders, Inc.
 Fax: 475-7409

Bid no.: IFB-035-2011 OPENED: Monday, October 3, 2011

Description: Structural Repairs and Roof Coating – Northern A

The following is the evaluation results of subject bid: Refer to items checked below.

// Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

// Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the Invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- Not selected due to high price
- Others

/X/ Bid is recommended for award to:

PHIL-GETS (GUAM) INT'L. TRADING CORP. dba: J&B MODERN TECH

Sincerely,

Marcus Y. Pido
 Supply Management Administrator

ACKNOWLEDGMENT RECEIPT

 Signature

Date: _____ Time: _____



Nerissa Bretania-Underwood, Ph.D.
Superintendent of Education

OFFICE OF SUPPLY MANAGEMENT DEPARTMENT OF EDUCATION

Manuel F.L. Guerrero / Administration Building
2nd. Floor, Suite B-202
Hagåtña, Guam 96932
Telephone: (671) 475-0438
Fax: (671) 472-5001



Marcus Y. Pido
Supply Management Administrator

fax

To: Genaro Danilo From: E. Pimbo

Firm: Ated Pacific Builders Section: Procurement

Fax: 473. 1206 Pages: (including cover letter)

Phone: _____ Date: 1.4.12

Re: IPB 0320.2011 cc: _____

- Urgent For Review Please Comment Please Reply

● Comments:

Hafa Adei,

Kindly complete the accompanying document & return by fax.

Thank you

GUAM DEPARTMENT OF EDUCATION
 MANUEL F.L. GUERRERO/ADMINISTRATION BUILDING
 GOVERNMENT OF GUAM
 P.O. BOX DE
 HAGÁTÑA, GUAM 96932
 TEL: 671-300-1581/1582 | FAX: 671-475-5001



PROPRIETARY DATA DESIGNATION FORM

INVITATION FOR BID (IFB): IFB 0310-2011 (PLEASE INSERT IFB NUMBER)

Bidders submitting bids in response to this IFB shall be aware that pursuant to 2 GAR 1309(I)(2),

Bids and modifications shall be opened publicly in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids.

The opened bids shall be available for public inspection *except to the extent the bidder designates trade secrets or other proprietary data to be confidential.*

Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.

Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

See 2 GAR 1309(I)(2)(emphasis added).

ACKNOWLEDGEMENT

By receipt and acknowledgement of this form, Bidder hereby agrees to *clearly designate and separate from the bid* any and all material that the Bidder considers to be trade secrets or other proprietary data to be confidential. An omission or failure to *clearly designate and separate from the bid* any and all material that the Bidder considers to be trade secrets or other proprietary data will result in the Bidder's entire bid being made publicly available. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

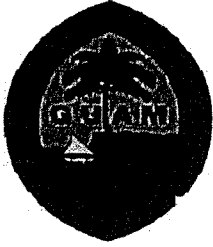
Trade secrets or other proprietary data should be clearly marked and separated from other bid materials. If inseparable from other bid materials, then each page of trade secrets and proprietary data should be clearly marked and the corresponding page numbers recorded on the lines below.

DESIGNATED PAGES OF TRADE SECRETS OR OTHER PROPRIETARY DATA:

Bidders must sign, date, and return this form with their bid response documents. Failure to return this form may result in the submitted response being deemed non-responsive.

 Signature Date

THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH THE FORMAL BID DOCUMENTS



OFFICE OF SUPPLY MANAGEMENT

Guam Department of Education
Manuel F.L. Guerrero / Administration Building
2nd Floor, Suite B-202
Hagåtña, Guam 96932
Telephone: (671) 475-0438
Fax: (671) 472-5001
Email: www.gdoe.net



Tuling M. Taitano, Iterim,
Superintendent of Education

Marcus Y. Pido
Administrator, Supply Management

BID STATUS

December 29, 2011

To: Allied Pacific Builders, Inc.
Fax: 473-7206

Bid no.: IFB 036-2011 OPENED: Tuesday, October 4, 2011

Description: Structural Repairs and Roof Coating – Northern B

The following is the evaluation results of subject bid: Refer to items checked below.

/ / Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

/ / Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the Invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- Not selected due to high price
- Others

/ X / Bid is recommended for award to: _____

Mega United Corp.

Sincerely,

Marcus Y. Pido
Supply Management Administrator

ACKNOWLEDGMENT RECEIPT

Signature

Date: _____ Time: _____