

1 **GUAM DEPARTMENT OF EDUCATION**
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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 4/29/14

TIME: 3:30 AM PM BY: CL

FILE NO OPA-PA: 14-002

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

10 FUKUDA ENTERPRISES, LLC,

11 Appellant.

12 APPEAL NO.: OPA-PA-14-002

13 **SUBMISSION OF AGENCY REPORT**

14 Pursuant to 2 GAR Div 4 §12105, the Guam Department of Education (“GDOE”) hereby
15 submits its Agency Report relevant to this appeal. Appellant has limited the scope of its appeal to
16 the change in specifications in GDOE Invitation to Bid 004-2014 (the “IFB”). Because there is
17 no dispute regarding the content of bid submissions, in the interest of efficiency and prudent use
18 of publicly-funded resources, the procurement record herein is limited to those documents
19 relevant to the change in IFB specifications and administration of the IFB relating thereto.
20 Specifically, the bid packages of Appellant Fukuda Enterprises and of Triple J Enterprises are not
21 included here. GDOE respectfully requests the Office of Public Accountability (“OPA”) or
22 Appellant to notify GDOE if the bid submissions or other portions of the procurement record are
23 required. As noted below, other documents relevant to the protest and appeal herein were
24 included in GDOE’s Procurement Record that was filed on April 22, 2014.

- 25 a) **Copy of Protest**
26 *Previously filed at Exhibits 3, 4, and 5 of the Procurement*
27 *Record*
- 28 b) **Copy of the bid or offer submitted by the Appellant and a**
copy of the bid that is being considered for award
As noted above, the bids of Appellant Fukuda Enterprises
and of Triple J Enterprises are not included here.

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c) **Copy of GDOE IFB 004-2014 and Amendments**
Previously filed at Exhibit 1 of the Procurement Record

d) **Copy of Abstract or Bids**
Previously filed at Exhibit 8 of the Procurement Record

e) **Other documents relevant to the protest:**

Log of communication between GDOE and the public or potential vendors.
Bates Stamp Numbers GDOE 0099-0101 **Exhibit 14**

Notice of Stay of Procurement dated December 20, 2013
Bates Stamp Numbers GDOE 0102 **Exhibit 15**

Notice to Lift Stay of Procurement dated January 30, 2014
Bates Stamp Numbers GDOE 0103 **Exhibit 16**

f) **Statement answering allegations of Appeal Answer of Purchasing Agency**
Bates Stamp Numbers GDOE 0104-0107 **Exhibit 17**

g) **Declaration Regarding Court Action**
Bates Stamp Numbers GDOE 0108 **Exhibit 18**

Dated this 29th day of April, 2014.

Respectfully submitted,

GUAM DEPARTMENT OF EDUCATION


By: 
REBECCA M. PEREZ, ESQ.
Legal Counsel

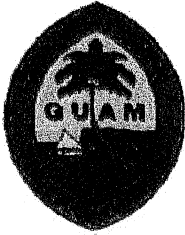
Exhibit 14

PROCUREMENT RECORD AND COMMUNICATION LOG						
DATE:	TO:	FROM:	REASON:	SUBJECT/DESCRIPTION:	REMARKS:	
11/20/13	All prospective Bidders	DOE Procurement	Public Announcement	IFB Issuance	Via PDN & MV	
12/4/2013	All prospective Bidders	DOE Procurement	Sent Amendment 1	Changes to said IFB	Via Email	
12/6/13	DOE Procurement All prospective Bidders	Fukuda Enterprise/Jason Fukuda	Questioning Amendment	Why dates for submission was changed and demanding why hasn't his questions been answered	Via Email	
		DOE Procurement	Sent Amendment 2	Amending Amendment 1 on the bid submission and answering Fukuda's questions	Via Email	
	DOE Procurement	Triple J Fleet Service/Charlie Reynolds	Request	Bidder is requesting for an Extension for bid submission	Via Email	
12/8/13	DOE Procurement	Fukuda Enterprise/Jason Fukuda	Rec: Amend 2	Acknowledged	Via Email	
12/13/13	All prospective Bidders	DOE Procurement	Sent Amendment 3	Changes to said IFB	Via Email	
	DOE Procurement	Fukuda Enterprise/Jason Fukuda	Rec: Amend 3	Acknowledged	Via Email	
12/19/13	DOE Procurement	Triple J Fleet Service/Charlie Reynolds	Protest	Bidder lodged a protest against DOE	Via Email	
12/20/13	All prospective Bidders	DOE Procurement	Sent: Stay of Procurement	Stay of Procurement was issued due to a Protest lodged against DOE	Via Email	
	DOE Procurement	Fukuda Enterprise/Jason Fukuda	Rec: Stay	Acknowledged	Via Email	
	DOE Procurement	Triple J Fleet Service/Charlie Reynolds	Rec: Stay	Acknowledged	Via Email	
12/14	DPW/Paul Cepeda	DOE Procurement	Review Protest	Requesting for review of protest regarding wheelchair lift	Via Email	

1/3/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DPW/Todd Gillan	Response	DPW reviewed protestors concerns and found that it was a valid concern and to issue an amendment regarding this matter	Via Email
1/13/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Request	SMA requesting Bidder to rescind protest lodged against DOE	Via Email
1/14/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	Triple J Fleet Service/Charlie Reynolds	Response	Bidder will review and respond later	Via Email
1/16/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Request	Following up with bidder regarding protest	Via Email
1/30/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	Triple J Fleet Service/Charlie Reynolds	Response	Bidder agreeing to rescind protest against DOE	Via Email
1/31/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Response	Thanking Bidder for rescinding there protest	Via Email
2/7/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Response	DOE Lifts the Stay of Procurement	Via Email
2/11/14	DOE Procurement Triple J Fleet Services/Charlie Reynolds	Fukuda Enterprise/Jason Fukuda	Rec: Notice to Lift	Acknowledged	Via Email
	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Signature Needed	A revised Bid Form was sent to DPW for signature due to the changes brought on by a protest.	Via Email
	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DPW/Todd Gillan	Signed	Notifying DOE that revised bid form has been signed and given to SPED	Via Email
	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement Morisco Equipment/Jennifer Cabuhat	Sent: Amendment 4	Changes to said IFB	Via Email
	DOE Procurement Triple J Fleet Services/Charlie Reynolds	DOE Procurement	Rec: Amend 4	Acknowledged	Via Email
	DOE Procurement Triple J Fleet Services/Charlie Reynolds	Fukuda Enterprise/Jason Fukuda	Rec: Amend 4	Acknowledged	Via Email

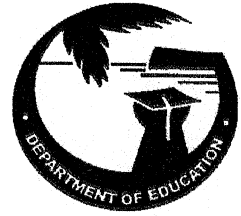
2/14/14	DOE Procurement	DOE Procurement	Letter	Sent a Letter of Concern to SMA, no indication it was a protest	Via Email
2/19/14	DOE Procurement	All prospective Bidders	Bid Opening	Received Bids from the following bidders: Fukuda Enterprise Triple J Fleet Services	Submission
2/28/14	DOE Procurement	Fukuda Enterprise/Jason Fukuda	FOIA	Bidder requesting for documentation regarding the protest and Notice of the Stay of procurement	Via Email
3/5/14	DOE Procurement	Law Office Cunliffe & Cook/Jeffery Cook	Protest	Attorney filing a protest on behalf of his client against DOE	Via Hand delivery
3/25/14	DOE Procurement	DOE Procurement	Sent: Stay of Procurement	Stay of Procurement was issued due to a Protest lodged against DOE	Via Email
	DOE Procurement	Fukuda Enterprise/Jason Fukuda	Rec. Stay	Acknowledged	Via Email
	DOE Procurement	Triple J Fleet Services/Charlie Reynolds	FOIA	Requesting a copy of the protest	Via Email
3/27/14	Jeffery Cook Triple J Fleet	DOE Procurement	Response to Protest	DOE denies protest	Via Email/US Postal Services
3/31/14	Services/Charlie Reynolds	DOE Procurement	FOIA	Responding to bidders FOIA request	Via Email
4/1/14	DOE Procurement	Jeffery Cook	FOIA	Requesting for documents pertaining said IFB	Via Email
4/11/14	DOE Procurement	OPA	Appeal	An appeal was filed against DOE	Via Hand delivery

Exhibit 15



**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
Manuel F.L. Guerrero Administration Building
2nd Floor, Suite B-220
Hagatna, Guam 96910
Telephone: (671) 475-0438 / Fax: (671) 472-5001



Jon J. P. Fernandez
Superintendent of Education

Marcus Y. Pido
Supply Management Administrator

December 20, 2013

NOTICE OF STAY OF PROCUREMENT

To: All Participating Bidders
FROM: GDOE Office of Supply Management
Reference: Indefinite Quantity Bid for the Purchase of SPED Mini Buses (22 Passenger)
Formal Bid: GDOE IFB 004-2014

This notice is to advise you that the Department has received a letter of protest regarding the referenced Invitation for Bid. Pursuant to 5 GCA §5425(g), 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 all participating Bidders.

Should you have any questions regarding this matter, please do not hesitate to call our office at (671) 300-1585.

Please acknowledge receipt of this **NOTICE OF STAY OF PROCUREMENT** for **IFB 004-2014** by signing below and returning the signed document via fax at (671) 472-5001 or e-mail to cttaitano@gdoe.net.

MARCUS Y. PIDO
Supply Management Administrator

Acknowledge Receipt:

Print Name

Signature

Business Name

Date _____ **Time** _____ **AM/PM**

Exhibit 16



Jon J. P. Fernandez
Superintendent of Education

**DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT**

www.gdoe.net
Manuel F.L. Guerrero Administration Building
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Hagatna, Guam 96910
Telephone: (671) 475-0438 / Fax: (671) 472-5001



Marcus Y. Pido
Supply Management Administrator

January 30, 2014

NOTICE TO LIFT THE STAY OF PROCUREMENT
GDOE Invitation For Bid 004-2014

To: All Participating Bidders

Reference: Indefinite Quantity Bid for the Purchase of SPED Mini Buses (22 Passenger)
GDOE IFB 004-2014

This communication serves to notify that the Guam Department of Education ("GDOE") hereby lifts the Stay of Procurement that was put into place on December 20, 2013 due to a protest that was received by GDOE the same day. GDOE has responded to the protest and will proceed with the procurement of IFB 004-2014 Indefinite Quantity Bid for the Purchase of SPED Mini Buses (22 Passenger).

Should you have any questions regarding this matter, please do not hesitate to call our office at (671) 475-0438.

Please acknowledge receipt of this **NOTICE TO LIFT THE STAY OF PROCUREMENT** for **IFB 004-2014** by signing below and returning the signed document via fax at (671) 472-5001 or e-mail to Carmen Taitano at cttaitano@gdoe.net.

MARCUS Y. PIDO
Supply Management Administrator

Acknowledge Receipt:

Print Name

Signature

Business Name

_____ **Date** _____ **Time** _____ **AM/PM**

Exhibit 17

1 **GUAM DEPARTMENT OF EDUCATION**
Rebecca M. Perez, Legal Counsel
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5 *Attorney for Guam Department of Education*

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 IN THE APPEAL OF

APPEAL NO.: OPA-PA-14-002

8 FUKUDA ENTERPRISES, LLC,

ANSWER OF PURCHASING AGENCY

9 Appellant.
10

11
12 Comes now the Guam Department of Education (“GDOE”) and pursuant to 2 GAR Div 4
13 §12105(g) answers the allegations made by Appellant Fukuda Enterprises, LLC (“Appellant” or
14 “Fukuda”) as follows:

15 **FACTS**

16 GDOE Invitation For Bid 004-2014 (the “IFB”) was issued on November 20, 2013
17 soliciting the Indefinite Quantity Bid for the Purchase of Special Education Mini Buses. The
18 original deadline to submit bids in response to the IFB was December 11, 2013; it was later
19 changed to December 20, 2013.

20 On December 20, 2013, shortly before the scheduled opening of bids for the IFB, Triple J
21 Motors (“Triple J”), a potential bidder, submitted a protest to GDOE. The protest alleged that a
22 specific portion of the bid specifications limited competition for the IFB. The bid opening did not
23 occur on December 20th; instead, GDOE cancelled the opening and issued a Notice of Stay of
24 Procurement because of the protest lodged by Triple J. No bids were opened on December 20th.

25 As noted in Section 2.1.2 of the IFB, Mr. Paul Cepeda, an employee of the Guam
26 Department of Public Works, took part in the preparation of the specifications in the IFB. After
27

1 receipt of Triple J's protest, GDOE Supply Management Administrator Marcus Pido engaged in
2 discussions with Mr. Cepeda in an effort to determine the merit of and resolve Triple J's protest.

3 On January 16, 2014, Triple J agreed to rescind its protest subject to GDOE's agreement
4 to amend the IFB specifications relating to a wheelchair lift. (See Email and Letter of January 16,
5 2014 from Charlie Reynolds, Exhibit 13 of the Procurement Record, Bates Stamp No. GDOE
6 0093 -0095). As part of the protest resolution, the IFB specifications relating to a wheelchair lift
7 were revised. On February 11, 2014, GDOE issued Amendment No. 4 to the IFB changing one
8 of approximately 56 components of the IFB technical specifications. Amendment 4 also changed
9 the deadline for bid submission to February 19, 2014. Each potential bidder was advised of the
10 changes in the specifications and date by which to submit bids.

11 On February 14, 2014, Fukuda submitted a letter to GDOE stating it disagreed with
12 Amendment No. 4, and containing two questions about the change in specifications. In its letter,
13 Fukuda requested a response by the end of the business day. Nowhere in its letter did Fukuda
14 indicate it was protesting the IFB. At no time between February 14, 2014 and the February 19,
15 2014 bid deadline did Fukuda communicate an intent to file a protest to GDOE.

16 On February 19, 2014, both Fukuda and Triple J submitted bids in response to the IFB.
17

18 ARGUMENT

19 1. GDOE lawfully considered and resolved Triple J's protest of December 19, 2013.

20 In its appeal, Fukuda alleges that "Triple J's protest was not timely and should have been
21 rejected by GDOE". (Statement of Grounds for Appeal filed April 11, 2014 at p.3.) As noted
22 above, the IFB was issued on November 20, 2013. Triple J's protest was received on December
23 19, 2013, more than fifteen days after the issuance of the IFB.

24 Although 5 GCA §5425(a) provides that a protest shall be submitted within fourteen days
25 after the protestor knows or should know of the facts giving rise to a protest, neither law nor
26 regulation mandates the rejection of a protest based on timeliness. Instead, Guam law encourages
27 resolution of protests when possible as 5 GCA §5425(b) provides that the purchasing agency has
28

1 the "authority ... to settle and resolve a protest." Open, fair, and maximum competition is a tenet
2 of Guam's procurement system. If a protest is received that makes a specific allegation regarding
3 restricted competition, absent a prohibition on doing so, an agency should investigate such
4 allegation to ensure the agency is encouraging maximum competition for the government's
5 dollars.

6 There having been no determination that Triple J's protest was untimely, and there being
7 an allegation of restricted competition, GDOE acted within the confines and according to the
8 spirit of Guam's procurement law by investigating the allegations in the protest. Such
9 investigation led to the determination that a change in the specifications would improve
10 competition. Appellant's allegations that GDOE should have rejected Triple J's protest are
11 unfounded, and contradict the basic concepts of fair and competitive government procurement.

12
13 **2. GDOE provided significant time for bidders to consider the change in the specifications regarding a wheelchair lift.**

14 Fukuda further alleges that if GDOE "is going to amend specification, it should minimally
15 allow a 15 day period to schedule a new time for submitting and opening bids." Fukuda also
16 states that "GDOE should have cancelled the IFB and reissued it allowing the vendors adequate
17 time to assess the change in the IFB and how it affected their bids." (Appellant's Grounds for
18 Appeal, at p.4 and p.5.) Appellant offers no law or regulation directly in support of this
19 proposition; instead it attempts to apply a different set of regulations to the IFB by citing to 2
20 GAR §(3109)(t)(2), which addresses multi-step sealed bidding. Appellant also refers to 2 GAR
21 §3109(i), which requires that bidders be given reasonable time to consider amendments to an IFB.
22 In this case, Amendment No. 4 changed one of approximately 56 technical specifications listed in
23 the IFB. The change was contained in one section of one page in twelve pages of specifications.
24 After the change was made, each bidder was allowed eight days to reconsider its bid before
25 submitting it. The change in the lift specification was not a change to the entirety of the bid, and
26 eight days was sufficient time for bidders to revise their bids as needed to accommodate the

1 change. Fukuda's allegations that there was insufficient time to consider the amendment to the
2 specifications, and that the IFB should have been cancelled, are without merit.

3 **CONCLUSION**

4 As discussed above, Appellant's claims are unjustified and without merit. The Appeal
5 herein should be dismissed.

6 Dated this 29th day of April, 2014.

7 Respectfully submitted,

8 **GUAM DEPARTMENT OF EDUCATION**

9
10 By: _____

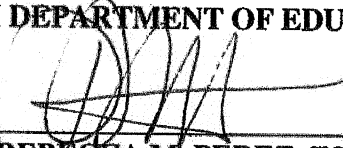

REBECCA M. PEREZ, ESQ.
Legal Counsel

Exhibit 18

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2 Rebecca M. Perez, Legal Counsel
3 P.O. Box DE
4 Hagåtña, Guam 96910
5 Telephone (671) 300-1537
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7 *Attorney for Guam Department of Education*

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 **IN THE APPEAL OF**

10 **APPEAL NO.: OPA-PA-14-002**

11 **FUKUDA ENTERPRISES, LLC,**

12 **DECLARATION REGARDING COURT
13 ACTION**

14 **Appellant.**

15 The undersigned confirms that to the best of her knowledge, no case or other action
16 concerning the subject of this Appeal has been commenced in any court of Guam and agrees to
17 notify the Office of Public Accountability within twenty-four (24) hours of being informed of the
18 commencement of a court action regarding this Appeal or its underlying procurement.

19 Dated this 29th day of April, 2014.

20 Respectfully submitted,

21 **GUAM DEPARTMENT OF EDUCATION**

22 By: _____

23 **REBECCA M. PEREZ, ESQ.**
24 *Legal Counsel*