

1 **GUAM DEPARTMENT OF EDUCATION**

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**RECEIVED**

OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 10-01-18

TIME: 3:20  AM  PM BY: JMY

FILE NO OPA-PA: 18-006

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF

10 Guam Cleaning Masters,

12 Appellant.

APPEAL NO.: OPA-PA-18-006

11 **AGENCY STATEMENT**

14 Comes now the Guam Department of Education (GDOE), by and through its Legal  
15 Counsel James L.G. Stake and files its Agency Statement pursuant to Title 2 of the Guam  
16 Administrative Rules and Regulations (GAR) Division 4 Section 12105(g) in response to the  
17 appeal of Guam Cleaning Masters (Appellant) of GDOE Invitation for Bid (IFB) 013-2018.

18 **I. BACKGROUND INFORMATION**

19 On June 28, 2018, GDOE published IFB 013-2018 for Custodial Services for thirty-six  
20 (36) Public Schools. IFB 013-2018 is a multi-part bid, dividing the work into three (3)  
21 districts; Northern, Central, and Southern. See GDOE Procurement Record (hereafter referred  
22 to as "GDOE") p. 10. As a multi-part bid, GDOE had the authority to select the lowest, most  
23 responsive, and responsible bid for each individual district. IFB 013-2018 was intended to

1 replace the custodial services of IFB 030-2013, set to expire in September 2018. The Appellant  
2 is the custodial service vendor for IFB 030-2013.

3         Within IFB 013-2018, GDOE outlined the project description, scope of work,  
4 requirements of winning bidder, evaluation factors for award, and the basis for the  
5 determination of responsibility. GDOE pp. 0001-0064. On August 02, 2018, GDOE  
6 conducted the bid opening at which point all prices submitted by bidders were open to the  
7 public. GDOE pp. 0665-0667. Appellant was present at bid opening and aware they were one  
8 of the higher priced bids submitted for all three (3) districts. *Id.* Based on the bids submitted,  
9 Lucky Kids Lawn Care & Janitorial Services (hereafter "Lucky") was the lowest bid for all  
three (3) districts. GDOE pp. 0668-0669.

10         On August 06, 2018, Appellant wrote a Letter of Concern to GDOE stating potential  
11 bidders "may not be responsible bidders for an award," according to Appellant's standards.  
12 GDOE p. 122.

13         On August 06, 2018, pursuant to 2 GAR Div. 4 §3116, GDOE requested additional  
14 documentation in order to confirm, lowest bidder, Lucky's responsibility. GDOE p. 0157. On  
15 August 07, 2018, Lucky responded and provided the requested information. GDOE pp. 0646-  
16 0664.

17         On August 17, 2018, GDOE issued a written determination that evaluated the additional  
18 documents, and confirmed Lucky to be the lowest, most responsive and responsible bidder.  
19 GDOE p. 0644. Following its determination, and on the same day, GDOE issued its Letter of  
Intent to award Lucky for IFB 013-2018. GDOE p. 0678.

20         On August 20, 2018, Appellant filed their protest raising the question "is GDOE  
21 decision to award without determining factors of responsibility in part of evaluation practices?"  
22 and that "GCM met all requirements to qualify in responsiveness and responsibility base in  
23

1 financial creditability, personnel, and readily available janitorial equipment and immediate  
2 supplies to perform all school district.” GDOE pp. 0686-0687.

3 On August 22, 2018, GDOE denied Appellant’s protest stating, “Upon thorough review  
4 of the documents submitted by Lucky Kids Lawn Care & Janitorial Services and in accordance  
5 with the IFB posted requirements and Guam Procurement Regulation, GDOE has determined  
6 that the aforementioned Bidder has met the Standards of Responsibility.” GDOE pp. 0683-  
7 0684.

8 On September 6, 2018, Appellant filed their Notice of Appeal to the Office of Public  
9 Accountability (OPA), for IFB 013-2018. GDOE’s response and statement is as follows.

10 **II. GDOE ISSUED A PROPER INVITATION FOR BID IN ACCORDANCE**  
11 **WITH GUAM PROCUREMENT LAWS, RULES AND REGULATIONS.**

12 Title 5 of the Guam Code Annotated Section 5211(b), states an IFB shall be issued and  
13 shall include a purchase description<sup>1</sup>, a recitation of the Wage and Determination<sup>2</sup>, and all  
14 contractual terms and conditions applicable to the procurement including a demonstration of  
15 compliance with §§ 5801 & 5802. <sup>3</sup> Title 2 GAR Div. 4 Section 3109(c)(2), expands that an  
IFB shall include:

16 (A) Instructions and information to bidders concerning the  
17 bid submission requirements, including the time and date  
18 set for receipt of bids, the address of the office to which  
bids are to be delivered, the maximum time for bid  
acceptance by the territory, and any other special  
information;<sup>4</sup>

19 (B) The purchase description<sup>5</sup>, evaluation factors<sup>6</sup>, delivery  
or performance schedule<sup>7</sup>, and such inspection and

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21 <sup>1</sup> See Section 2.3 Project Description of IFB, GDOE pp. 0004-0009.

<sup>2</sup> See Declaration RE Compliance with U.S. DOL Wage Determination, GDOE p. 0031-0041.

<sup>3</sup> *Id.* See also Section 4 Terms and Conditions of IFB and Sample Contract, GDOE pp. 0016-0018 and 0051-0064.

<sup>4</sup> See Section 3.1 General Instructions of IFB, GDOE pp. 0010-0012.

<sup>5</sup> See Section 2.3 Project Description of IFB, GDOE pp. 0004-0009.

<sup>6</sup> See Section 3.2 General Information of IFB, GDOE pp. 0012-0019

<sup>7</sup> See Section 3.1 and 3.2.9 Delivery of Goods of IFB, GDOE pp. 0004-0009 and 0013.

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acceptance requirements as are not included in the purchase description<sup>8</sup>; and  
(C) The contract terms and conditions<sup>9</sup>, including warranty and bonding or other security requirements<sup>10</sup>, as applicable.

Title 2 GAR Div. 4 Section 3109(i), Amendments to an IFB, dictates the form, distribution, and timeliness for purchasing agencies and their amendments.<sup>11</sup> According to the relevant laws, rules and regulations for the issuance and content of an IFB, GDOE included and complied with every requirement. In addition, IFB 013-2018 properly followed the required form, distribution, and timeliness with its amendments.

IFB 013-2018's amendments include all applicable questions from bidders and GDOE's response, this information was openly distributed and shared with all bidders. GDOE pp. 0068-0078. As required by the Procurement rules and regulations as well as the IFB, all bidders were required to acknowledge the amendments issued. 2 GAR Div. 4 §3109(c)(6). *See also* 3.1.12 Acknowledgement of Amendments to IFB, GDOE p. 0011. GDOE's inclusion of all relevant questions and answers was its good faith effort towards procurement openness and transparency, to increase public confidence in the procedures followed in public procurement, to ensure fair and equitable treatment of all persons who deal with the procurement system, to foster effective broad-based competition, and to provide public access to all aspects of procurement consistent with the sealed bid procedure and integrity of the procurement process. 5 GCA §§ 5001(b)(3-4), (6), & (8). Based on the above information, IFB 013-2018, as a whole and including its amendments, complied with all Guam Procurement Laws, Rules, and Regulations.

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<sup>8</sup> See Section 3.2.11 Inspection and Acceptance of Goods of IFB, GDOE p. 0013.  
<sup>9</sup> See Section 4 Terms and Conditions of IFB and Sample Contract, GDOE pp. 0016-0018 and 0051-0064.  
<sup>10</sup> See Section 3.1.16 Bond Requirements, Performance, and Payment Guarantees, GDOE p. 0012.  
<sup>11</sup> See Amendments to IFB, GDOE pp. 0068-0078. *See also* Section 3.1.12 Acknowledgment of Amendments to IFB, GDOE p. 11.

1           The Appellant claimed in their appeal that the, “interpretations and responses from  
2 GDOE to inquiries and questions from bidders should have been included as amendments.”  
3 *See* Appellant’s Notice of Appeal p. 5. Specifically, Appellant points out Exhibits F<sup>12</sup> and G<sup>13</sup>  
4 of their Notice of Appeal, stating they should have been amendments, but were not included as  
5 amendments to the IFB. *Id.* Appellant claims, “by permitting a bidder to inquire and then  
6 responding to that bidder without disclosing the responses to the other bidders, provides that  
7 bidder an unfair advantage over others,” and that because of this the bidder will have inside  
8 knowledge to incorporate into its bid, while others do not have the benefit of such information  
9 in submitting their bid to GDOE. *Id.*

10           To be clear, Appellant is blatantly wrong. Exhibit F and G were included as  
11 amendments and Appellant acknowledged receipt of both. GDOE pp. 0339-0348. Exhibit  
12 F is a communication from prospective bidder Advance Management Inc., requesting a site  
13 visit and GDOE responded. This information was incorporated and included in the second  
14 paragraph of Amendment 1, acknowledged as received by Appellant on July 05, 2018. GDOE  
15 pp. 0076-77 & 0339-0342. Exhibit G included two (2) questions from prospective bidder  
16 Maids to Order. The first was an error in which Maids to Order misread requirements on the  
17 wrong IFB, and the second asked a question regarding pre-bid conferences. GDOE pp. 0242-  
18 0243. Again, GDOE included the pertinent question about pre-bid conferences and its response  
19 in Amendment 3, and this was acknowledged as received by Appellant as well on July 23,  
20 2018. GDOE pp. 0069-0072 & 0345-0348. Thus, the Appellant’s accusations that the IFB is  
21 flawed and that GDOE’s amendments withheld information is clearly wrong and without merit.

22           Therefore, GDOE’s IFB 013-2018 and its amendments were fully compliant with Guam  
23 Procurement Law, Rules and Regulations,

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<sup>12</sup> *See also* GDOE pp. 0239-0241.

<sup>13</sup> *Id.* pp. 0242-0244.

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III. GDOE PROPERLY DETERMINED LUCKY AS THE LOWEST, MOST RESPONSIVE AND RESPONSIBLE BIDDER PURSUANT TO GUAM PROCUREMENT LAW, RULES AND REGULATIONS AND IN ACCORDANCE WITH THE SPECIFICATIONS IN IFB 013-2018.

Guam Procurement Law, Rules and Regulations provide that the evaluation and award shall be based on the lowest, responsible bidder whose bid meets the requirements set forth in the IFB. 5 GCA §§ 5211(e) & (g). In addition, no criteria may be used in bid evaluation that are not set forth in the Invitation for Bids. 5 GCA §5211(e). *See also* 2 GAR Div. 4 §3109(n)(1) (no bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids).

Section 3.2.1 Evaluation Factors for Award, states that in determining the lowest bidder, GDOE will be guided by (a) price of overall performance and delivery for each district and (b) responsiveness to the requirements of this IFB. GDOE pp. 0012-0013. Section 3.2.2 Determination of Responsibility, states in relevant part that bidders should be prepared to promptly provide to GDOE information relating to the bidder's responsibility. GDOE p. 0013. Therefore, in accordance with Procurement Laws, Rules and Regulations and the IFB, GDOE's order to determine the winning bid are: (a) price, (b) responsiveness, and finally (c) responsibility.

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1 (a) Lucky had the lowest price of overall performance and delivery for each  
2 district.

3 The prices submitted by all bidders for the IFB is as follows:

4 Northern District: 1. Lucky: \$749,160.00  
5 2. Maids to Order: \$809,244.00  
6 3. Guam Cleaning Masters (Appellant): \$833,880.00  
7 4. JJ Global Services: \$1,085,041.80  
8 5. Advance Management, Inc.: \$1,342,896.00

9 Central District: 1. Lucky: \$1,102,680.00  
10 2. JJ Global Services: \$1,195,647.24  
11 3. Maids to Order: \$1,123,524.00  
12 4. Guam Cleaning Masters (Appellant): \$1,131,480.00  
13 5. Advance Management, Inc.: \$1,505,712.00

14 Southern District: 1. Lucky: \$656,712.00  
15 2. Maids to Order: \$681,132.00  
16 3. Guam Cleaning Masters (Appellant): \$698,184.00  
17 4. JJ Global Service: \$776,136.84  
18 5. Advance Management, Inc.: \$1,495,848.00

19 See Evaluations of Proposals, GDOE pp. 0639-0640.

20 Lucky is unquestionably the lowest bidder for the Northern, Central, and Southern  
21 districts. Based on the bids submitted, Lucky satisfies the first requirement of (a) price for the  
22 IFB and in accordance with Guam Procurement Law, Rules and Regulations.<sup>14</sup> GDOE pp.  
23 0639-0640. Because Lucky is the winner for (a) price, the next step is for GDOE to confirm  
24 Lucky's responsiveness.

(b) Lucky was responsive to all requirements of the IFB.

The next element in the Evaluation Factors for Award, (b) responsiveness to IFB 013-  
2018, tracks the law which requires each bidder conforms in all material respects to the IFB.  
See also 5 GCA §5201(g). In order to conform in all material respects to the IFB, bidders were

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<sup>14</sup> See Evaluations of Proposals, GDOE pp. 0639-0640.

1 required to submit numerous forms and affidavits. GDOE pp. 0256-0638. One requirement  
2 worth noting is the bid bond. See Section 3.1.16 of IFB, GDOE p. 0012. The bid bond  
3 provides GDOE with sufficient surety of a vendor or contractor's faithful performance of the  
4 duties included in IFB 013-2018, and in the event of the failure of the Principal (or Contractor  
5 here) to enter such contract and give such bond, the Principal shall pay to GDOE the difference  
6 not to exceed the penalty hereof between the amounts specified in said bid and such larger  
7 amount for which GDOE may in good faith contract with another party to perform work  
8 covered by said bid. GDOE p. 20. The bid bond addresses the possibility, if in the unlikely  
9 event a bidder were unable to perform, GDOE has the authority to utilize the bid bond in order  
10 to cover and ensure the performance of the work of said contract. All bidders were required to  
submit this bid bond. See Appellant's and Lucky's Bid Bond, GDOE pp. 0292 & 0570.

11 In regards to (b) responsibility, all bidders' submissions were responsive because all  
12 necessary forms and affidavits were included.<sup>15</sup> See Inter-Officer Memorandum from GDOE  
13 Facilities Maintenance Manager, GDOE p. 0641. Therefore, because Lucky conformed in all  
14 material respects, Lucky was responsive in accordance with Guam Procurement Law, Rules  
15 and Regulations and the IFB. Based on the confirmation of (a) and (b) for award, GDOE's  
16 final step in order to issue the intent to award is to confirm (c) Lucky's responsibility.

17 **(c) Lucky is fully responsible in accordance with Guam Procurement Law,  
18 Rules and Regulations, and the IFB, because Lucky established capability in all  
respects to perform fully the contract requirements, and GDOE properly  
confirmed responsibility prior to its intent to award.**

19 A Responsible Bidder or Offeror means a person who has the capability in all respects  
20 to perform fully the contract requirements, and the integrity and reliability which will assure  
21 good faith performance. 5 GCA §5201(f). See also 2 GAR Div. 4 §1106(27). Section

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23 <sup>15</sup> Acknowledgement of Amendments to IFB was also required from all bidders for responsiveness. See Section  
3.1.12 of IFB, GDOE p. 0011



1 3116(b)(2)(A) of the GAR, provides the Standards of Responsibility, which include whether a  
2 prospective contractor has: (i) available the appropriate financial, material, equipment, facility,  
3 and personnel resources and expertise, or the ability to obtain them, necessary to indicate its  
4 capability to meet all contractual requirements; (ii) a satisfactory record of performance; (iii) a  
5 satisfactory record of integrity; (iv) qualified legally to contract with the territory; and (v)  
6 supplied all necessary information in connection with the inquiry concerning responsibility. 2  
7 GAR Div. 4 3116(b)(2)(A).

8 Based on Guam Procurement Law, Rules and Regulations, a bidder is responsible if  
9 they have the available appropriate financial, material, equipment, facility, and personnel  
10 resources and expertise “...or the ability to obtain them, necessary to indicate its  
11 capability.” 2 GAR Div. 4 §3116(b)(2)(A)(i). Capability as used in Section 1106(27)  
12 (Definitions, Responsible Bidder or Offeror) of the regulations, means capability at the time  
13 of award of the contract. 2 GAR Div. 4 §3101(1) (also citing 2 GAR Div. 4 §1106(27).  
14 Therefore, pursuant to Guam Procurement Laws, Rules and Regulations, GDOE has authority  
15 to confirm responsibility of Lucky’s financial, material, equipment, facility, and personnel  
16 resources and expertise through their ability to obtain them, necessary to indicate capability. 5  
17 GCA §§ 5201(f) & 2 GAR Div. 4 3116(b)(2)(A)(i). GDOE is also authorized to confirm  
18 Lucky’s responsibility at the time of the award. 2 GAR Div. 4 §3101(1).

18 The Office of Administrative Hearings for the State of Hawaii decided on an identical  
19 issue providing persuasive authority on the matter. In *Browning Ferris Inc. v. State of Hawaii,*  
20 *Department of Transportation,* the protestor complained that the purchasing agency was  
21 required to determine bidder responsibility upon receipt of the notices of intention to bid and  
22 before the bids were opened. See PCH-2000-4 p. 6. Specifically, protestor argued that the  
23 winning bid was not responsible because they did not have the materials, equipment, or proper  
24 permits ready and established by the opening of the bids. *Id.* p. 3. Applicable to the case at

1 hand, the Hearing Officer ruled against the protestor and concluded that responsibility was  
2 defined as a, “bidder’s apparent ability and capacity to perform the contract requirements  
3 and is determined not at bid opening but at any time prior to award based on any  
4 information received by the agency up to that time.” *Id.* p. 7. “Based on the authorities and  
5 mindful of the Procurement Code’s purpose to foster broad-based competition, the Hearing  
6 Officer Concludes that a bidder’s responsibility may be established by a sufficient showing  
7 that it possesses the ability to obtain the resources necessary to perform its contractual  
8 obligations. In this regard, the procuring agency’s determination will be given wide  
9 discretion and will not be interfered with unless the determination is unreasonable  
10 arbitrary or capricious.” *Id.* p. 11. *Also citing King Cold Storage Warehouse, Inc. v. New*  
*Orleans, 522 So.2d 169 (La Ct. App. 1988).*

11 Therefore, Guam Procurement law, rules and regulations are in line with the ruling in  
12 *Browning*, in that (1) responsibility can be determined by a bidder’s apparent ability and  
13 capacity to perform the contract requirements and (2) responsibility and capability to  
14 perform work are determined at any time up to the award. 2 GAR §§ 3101(1) and  
15 3116(b)(2)(A)(i). *See also Browning Ferris Inc. v. State of Hawaii, Department of*  
16 *Transportation, PCH-2000-4 p. 7.*

17 As previously stated, pursuant to 2 GAR Div. 4 §3116, GDOE requested additional  
18 documents in order to confirm, lowest bidder, Lucky’s responsibility. GDOE p. 0157. In  
19 summary and with respect to the protections afforded by Title 2 GAR, Sections 3116(b) and  
20 9101(f), Lucky provided sufficient confirmation that demonstrated their contract commitment  
21 and qualifications, a record of their performance, a list of past and current ongoing contracts  
22 indicating integrity, evidence of their ability to contract with the territory, a list of their key  
23 managerial and technical/supervisory personnel, their specific business implementation plan for  
IFB 013-2018, their financial status, recent balance sheets, the availability or ability to obtain

1 the equipment, supplies, and personnel capacity necessary, and recent approval and line of  
2 credit, in compliance with Guam Procurement Law. GDOE pp. 0646-0664.

3 Procedurally, GDOE requested the information for responsibility on August 06, 2018.  
4 GDOE p. 0157. On August 17, 2018, GDOE issued its written determination based on a  
5 thorough review of the documents that Lucky was responsible, and thereafter on the same day,  
6 GDOE issued its intent to award to Lucky. GDOE p. 0644 & 0678.

7 Therefore, GDOE properly determined Lucky's responsibility and their capability in  
8 all respects to perform fully the contract requirements, and the integrity and reliability which  
9 will assure good faith performance, and did so in a timely fashion prior to award, in  
10 accordance with Guam Procurement Laws, Rules, and Regulations, and the IFB. 5 GCA  
11 §5201(f). *See also* 2 GAR Div. 4 §§ 1106(27), 3101(1), and 3116(b)(2)(A)(i). *See also*  
12 *Browning Ferris Inc. v. State of Hawaii, Department of Transportation*, PCH-2000-4 p. 7.  
13 Because GDOE has properly issued its IFB and intent to award, GDOE strongly contests all of  
14 Appellant's false allegations and arguments.

15 **IV. GDOE CONTESTS ALL OF APPELLANT'S ARGUMENTS BECAUSE  
16 THEY ARE UNSUPPORTED BY GUAM LAW AND WITHOUT MERIT.**

17 To be clear, Appellant failed to provide any legal authority to support their  
18 erroneous position. Appellant falsely alleges "GDOE only used the lowest bid as the sole  
19 criteria in awarding the IFB while GCM met the requirements of lowest and responsible  
20 bidder," and that GDOE's award was inconsistent with the IFB. *See* Appellant's Notice of  
21 Appeal p. 3 & 5. As previously explained, GDOE properly considered all the relevant factors  
22 for the IFB in accordance with Guam Procurement Laws, Rules and Regulation. Based on the  
23 facts, Appellant is clearly wrong in claiming to be the lowest responsible bidder because

1 Appellant ranked third lowest in price in the Northern and Southern District, and fourth  
2 lowest for the Central District. GDOE pp. 0639-0640. Based on the requirements of Title 5  
3 Section 5211(g), Appellant would be barred from award.

4 Appellant also argues an IFB of this size, needs to have pre-qualifying factors or proof  
5 from each bidder in order to qualify in the IFB and GDOE's failure to require pre-qualifying  
6 factors will result in the bid and award being flawed. *See* Appellant's Notice of Appeal p. 6.  
7 Again, GDOE complied in all respects with Guam Procurement Laws, Rules and Regulations  
8 with its IFB and intent to award. Also, Title 5 GCA Section 5211(e), states no criteria may be  
9 used in bid evaluation that are not set forth in the Invitation for Bids, and because the IFB did  
10 not include pre-qualifying factors in order to qualify to be in contention, that criteria is barred.  
11 Appellant has failed to identify any legal authority for their prerequisite "pre-qualifying"  
12 factors in order to qualify to be in the IFB. *Id.*

13 Appellant explains in depth, several pages of numbers and "computations" of their  
14 salary expenses for employees, materials and equipment, facilities, and that Lucky cannot be  
15 responsible because they do not have the necessary means for IFB 013-2018. *Id.* pp. 6-9.  
16 However, Appellant contradicts themselves and concedes they do not know Lucky's financial  
17 resources. *Id.* p. 6. As discussed above, GDOE properly determined Lucky's responsibility and  
18 capability in accordance with Guam Procurement Law, Rules and Regulations, and the IFB.  
19 GDOE also vehemently contests the accuracy and relevance of the numbers explained at length  
20 by Appellant.

21 Appellant declares, "GDOE did not make a complete determination of who is the most  
22 responsive and responsible bidder. The IFB determination by GDOE used was the lowest bid.  
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1 GDOE did not look into the capabilities of Lucky Kids.” *Id.* p. 9. As previously explained,  
2 GDOE properly issued its intent to award based on Lucky’s (a) lowest price, (b)  
3 responsiveness, and (c) responsibility, in accordance with Guam Procurement Law, Rules and  
4 Regulations, and the IFB. GDOE thoroughly explored the responsibility and capability of  
5 Lucky, and properly awarded based on this determination.

6 Appellant contends in their appeal that Lucky is withholding salaries from its  
7 employees and that they have not paid their taxes. *Id.* p. 10. Again, GDOE objects to  
8 Appellant’s attempt to drag Lucky’s reputation down, and strongly contests the accuracy and  
9 relevance of this allegation.

10 Appellant argues that Lucky’s price bid is based on Appellant’s 2013 price bid, and  
11 therefore it would be “**difficult**” for Lucky to perform under the IFB.” *Id.* Appellant attempts to  
12 bolster this claim based on several number projections and expenses. *Id.* p. 9-11. Appellant  
13 contends that the total price of the lowest bidder would not be enough to cover all the overhead  
14 expenses, other necessary expenses including increase in costs and supplies, “Thus the IFB is  
15 not the lowest, most responsive, and responsible bidder.” *Id.* p. 11. As stated above, Appellant  
16 admitted that they do not know Lucky’s financial resources. *Id.* p. 6. Again, in terms of  
17 applicable law, rules and regulations, IFB 013-2018 was properly awarded to the lowest, most  
18 responsive, and responsible bidder specific to the IFB. Appellant failed to reference any  
19 authority where performance being “difficult” therein diminishes Lucky’s responsibility<sup>16</sup> or  
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21 <sup>16</sup> Based on total bid value; **Lucky’s** total is **\$2,508,552.00** vs. **Appellant’s: \$2,663,544.00**. A total difference of  
22 **\$154,992.00**. Appellant argues Lucky could not sustain contract performance because of increasing expenses,  
23 however the two competing bids are relatively close, and the total difference in bids is a value less than 6% of  
24 Appellant’s total bid. See Evaluations of Proposals, GDOE pp. 0639-0640.

1 any laws, rules or regulations that were violated based on the alleged claim that Lucky copied  
2 Appellant's old price bid. GDOE also strongly objects to the accuracy and relevance of  
3 Appellant's list of projected expenses.

4 Appellant's argues they should be awarded because they have readily available  
5 janitorial equipment and immediate supplies to perform for all school districts, and Lucky  
6 does not. GDOE pp. 0686-0687. *See also* Appellant's Notice of Appeal p. 6. Again,  
7 Appellant failed to identify any laws, rules or regulations, that support their position that  
8 GDOE shall determine responsibility, and capability, of bidders in order to qualify to be in an  
9 IFB and that bidders must have all items for the IFB readily available and immediately.  
10 GDOE pp. 0686-0687.

11 Appellant's ill-advised position heavily favors incumbent and established contractors.  
12 This erroneous position in procurement would severely hinder competition and potentially  
13 allow bigger companies to strong arm smaller bidders out.<sup>17</sup>

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15 To be clear, Guam Procurement laws, rules and regulations do not support  
16 Appellant's position on responsibility. 5 GCA §5201(f). *See also* 2 GAR Div. 4 §§ 3101(1)  
17 & 3116(b)(2). In addition, as stated above, the requirement of having all aspects ready and in  
18 place prior to the bid opening was not included in any place in the IFB, and therefore it is

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19 <sup>17</sup> *See* Lucky's Notice to Withdraw from Bid Award Consideration Re IFB 013-2018, GDOE pp. 0084-0085. On  
20 September 4, 2018, Lucky wrote a letter to GDOE attempting to withdraw its bid from IFB 013-2018, because  
21 of the recent protests. Lucky stated, "it is not uncommon for protesting bidders to drag a bid protest to a  
22 prolonged and difficult timeline..." GDOE p. 0084. Lucky stated that while bid protestors continue their  
23 battle to sustain a relief, the final result will evidently bring chaos to GDOE and the various public schools  
24 throughout the island, and the student's learning environment will suffer the most. *Id.* However, pursuant to  
the mandatory stay of Title 5 of the Guam Code Annotated (GCA) Section 5425(g), GDOE is bound from  
taking any further action regarding Lucky's letter and IFB 013-2018. *See* GDOE August 20, 2018, Notice of  
Stay of Procurement, GDOE p.0685.

1 barred from use in the bid evaluation. 5 GCA §5211(e). *See also* 2 GAR Div. 4 §3109(n)(1).  
2 In summary, the bottom line is that GDOE abided by and complied with Guam Procurement  
3 Laws, Rules and Regulations with its IFB and intent to award, and Appellant's arguments are a  
4 failed attempt to shift the focus away from the real requirements in the law into that of a  
5 laundry list of unfounded excuses without merit.

6 In conclusion, GDOE issued a proper IFB with a correct intent to award to Lucky.  
7 Based on the arguments herein, GDOE respectfully requests that the Office of the Public  
8 Auditor affirm GDOE's decision and deny Appellant's appeal and protest.

9 Dated this 1<sup>st</sup> day of October, 2018.

10 Respectfully submitted,

11 **GUAM DEPARTMENT OF EDUCATION**

12  
13 By:   
14 **JAMES L.G. STAKE**  
15 *Legal Counsel*