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PROCUREMENT APPEALS

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)	Docket No. OPA-PA-13-002
)	Docket No. OPA-PA-13-003
PHIL-GETS (GUAM) INTERNATIONAL)	
TRADING CORP. dba J&B MODERN TECH,)	STATEMENT OF AGREED
)	FACTS
Appellant.)	
_____)	

Appellant J&B Modern Tech (“J&B”) and Appellee Guam Department of Education (“GDOE”) submit the following statement of agreed facts. Insofar as the parties have authenticated certain documents by agreement below, the parties nonetheless reserve the right to contest statements of fact made in the documents. All documents referenced below have already been placed in the record in one or both appeals. Documents are identified by their Bates Stamp numbers

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Statement of Agreed Facts
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in the Submission of Procurement Record filed April 12, 2013 in OPA-PA-13-003 (cited as “13-003 SPR”) and in the Submission of Agency Report filed April 19, 2013 in OPA-PA-13-003 (cited as “13-003 SAR”).

1. Pursuant to IFB 050-2011, GDOE awarded J&B a contract for the purchase of air conditioner units. 13-003 SAR 546-550.

2. The contract for IFB 050-2011 provided for a five year warranty to be provided. 13-003 SAR 544.

3. Pursuant to the contract, 500 air conditioner units were installed at GDOE schools and offices as of July 5, 2012. A true and accurate list of these units is found at 13-003 SAR 553-591.

4. On August 27, 2012, J&B provided a warranty to GDOE. 13-003 SAR 552. A true and accurate copy of J&B’s letter of that date to GDOE and the enclosure with that letter is found at 13-003 SAR 552-591.

5. The contract for IFB 050-11 did not provide for a maintenance contract the units. In September of 2012, GDOE issued a separate IFB for the maintenance contract. The maintenance contract was awarded to a company other than J&B.

6. This dispute arose as a result of GDOE contacting J&B to request that repairs be done on three of the units pursuant to the warranty. The units were (1) a 25 Ton HVAC unit at Southern High located in Building 3000 installed on May 23, 2012; (2) a 36,000 BTU HVAC unit at Agueda I. Johnston Middle School located in the Main Office installed on May 3, 2012; and a

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30,000 BTU HVAC unit located in G-8 A at Price Elementary School installed on April 25, 2012. The parties reserve the right to present evidence that GDOE contacted J&B to request repairs on other units.

7. The following documents in the record are true and accurate copies of correspondence between GDOE and J&B concerning this matter.

13-003 SAR 593-595: November 10, 2012 letter for J&B to GDOE

13-003 SAR 597-614: November 23, 2012 letter from J&B to GDOE

13-003 SAR 616-617: November 30, 2012 letter from GDOE to J&B

13-003 SAR 619-620: December 6, 2012 letter from J&B's counsel to GDOE

13-003 SAR 622-629: February 6, 2013 letter from GDOE to J&B

13-003 SAR 631-671: Undated letter, received February 11, 2013, from J&B to GDOE

13-003 SAR 673-674: February 13, 2013 letter from GDOE to J&B

13-003 SAR 676-681: February 14, 2013 letter from J&B's attorney to GDOE

8. On March 21, 2013, GDOE issued a "Determination and Notice of Suspension".
13-003 SAR 540-542 (citation does not include exhibits to Determination and Notice).

9. A bid opening was scheduled for March 28, 2013 for GDOE IFB 008-2013, Indefinite Quantity Bid for Purchase of Air Conditioning Equipment.

10. On March 27, 2013, J&B filed a Notice of Appeal of the suspension with the Office of Public Accountability.

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11. Also on March 27, 2013, J&B served a protest directed towards GDOE IFB 008-2013 on the office of the Superintendent of GDOE. 13-003 SAR 536-538 (citation does not include exhibits to protest). J&B protested GDOE's determination, via the notice of suspension and suspension, that J&B is not a responsible bidder and that a bid for J&B on IFB 008-2013 would not be considered. *Id.*

12. On the morning of March 28, 2013, the bid opening for GDOE IFB 008-2013 took place. Bids were submitted by J&B and three other contractors: Johnson Control; JMI Edison; and Dck Pacific.

13. A true and accurate copy of the Abstract of Bids prepared by GDOE after the bid opening for IFB 008-2013 is in the record at 13-003 SPR 351-364.

14. On the afternoon of March 28, 2013, GDOE transmitted a "Notice of Non-Consideration, GDOE IFB 008-2013" to J&B, stating that "J&B's bid for the IFB will not be considered for award." 13-003 SAR 686.

15. On April 1, 2013, J&B served a Second Protest in connection with GDOE IFB 008-2013 on GDOE. 13-003 SAR 682-686. In this second protest, J&B protested (a) the conduct of the bid award in violation of the 5 GCA §5415(g) procurement stay; (b) the Notice of Non-Consideration, GDOE IFB 008-2013; and (c) any potential award to another bidder because such award would entail both a violation of the statutory stay and because J&B was the low bidder. *Id.*

16. On April 3, 2013, the Supply Management Administrator of GDOE denied the protests. 13-003 SAR 834-835.

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17. On April 5, 2013, J&B filed a Notice of Appeal of the denial of the two protests.

Respectfully submitted,

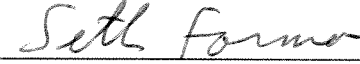
GUAM DEPARTMENT OF EDUCATION

Date: 5/10/13

By: 
ANDREW T. PEREZ, ESQ.
Legal Counsel

DOOLEY ROBERTS & FOWLER LLP

Date: 5/10/13

By: 
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