



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

In the Appeal of  
J&B Modern Tech,

Appellant

Docket No. OPA-PA 14-001

DECISION

**INTRODUCTION**

A hearing on this appeal was held on June 2, 2014 before Public Auditor Doris Flores Brooks, CPA, CGFM, and Hearing Officer Peter C. Perez. John Terlaje Esq. appeared on behalf of appellant J&B Modern Tech (“J&B”) along with J&B’s representative, Generoso M. Bangayan. Andrew T. Perez, Esq., Legal Counsel, Guam Department of Education (“GDOE”) appeared on behalf of GDOE along with GDOE Acting Supply Administrator Carmen Taitano. Julienne Nucum, Esq. appeared telephonically on behalf of Interested Party, JRN Air Conditioning & Refrigeration, Inc. (“JRN”), along with JRN representatives Julisis R. Nucum and Danilo Gomez. This appeal arises from GDOE’s March 7, 2014 denial of J&B’s Protest in GDOE IFB 005-2014 (Air Conditioning Systems Exterior Duct Restoration Project).

The parties mutually agreed to present oral arguments in support of their positions at the June 2, 2014 hearing, stipulated to the consideration of the entire procurement record, and stipulated to the admission and consideration of the parties’ respective briefs and exhibits.

1 J&B asserts in this appeal that JRN's failure to attend a December 10, 2013 site inspection  
2 of Southern High School rendered JRN a nonresponsive bidder who should have been  
3 disqualified from consideration of the IFB award. J&B asserts that it should be awarded the bid.  
4 [J&B Notice of Appeal].  
5

### 6 FINDINGS OF FACT

7 The Public Auditor issues this Decision based upon the procurement record, the documents  
8 and exhibits submitted by the parties, the oral arguments presented by the parties, and makes the  
9 following Findings of Fact:

- 10 1. On or about September 20, 2013, John Leon Guerrero of GDOE Facilities and  
11 Maintenance requested a cost proposal from JRN for duct work to be performed at Simon  
12 Sanchez High School, Southern High School, and Upi Elementary School. [JRN Exhibit  
13 A].  
14
- 15 2. To prepare the requested cost proposal, JRN personnel conducted site inspections at Upi  
16 Elementary School on September 20, 2013, Simon Sanchez High School on September  
17 23, 2013, and Southern High School on September 24, 2013. [JRN Exhibits B, C, D].  
18
- 19 3. Upon completing the site inspections at the three schools, JRN's Project Engineer  
20 informed Mr. Leon Guerrero that the scope of work for which the cost proposal was  
21 requested amounted to more than \$100,000.00 and should be opened for bids.  
22
- 23 4. JRN did not provide GDOE with any specific cost estimate proposal.  
24
- 25 5. On November 25, 2013, GDOE issued GDOE IFB 005-2014. The IFB sought proposals  
26 for the furnishing and installation of Air Conditioning Exterior Duct System for Simon  
27 Sanchez High School, Southern High School, Upi Elementary School, and C.L. Taitano  
28 Elementary School.[GDOE0228, GDOE0229, GDOE0230]

- 1 6. The IFB states that “The Contractor must conduct pre site inspections to determine  
2 existing conditions and any special needs/requirements for execution of the project. **Site**  
3 **inspection and field verification of existing layout is mandatory.** The Contractor is  
4 fully responsible to ensure that all proposed equipment meet or exceed existing quality  
5 and specifications, i.e., material specifications, dimensions, configuration, mechanical  
6 requirements, mounting and installation requirements etc.” [IFB Section 2.1.2;  
7 GDOE0230].
- 8
- 9 7. On December 5, 2013, GDOE Supply Management Administrator Marcus Pido issued  
10 Amendment No. 1 advising bidders that a pre-bid conference and site inspection of the  
11 four schools in the IFB was to take place on December 6, 2013. [GDOE0294 to  
12 GDOE0295]
- 13
- 14 8. On December 6, 2013, site inspections took place for three of the four schools. Senior  
15 Technician Elmer Santos appeared at the site inspections on behalf of JRN. [GDOE0380]
- 16 9. Due to time constraints, GDOE rescheduled the site inspection of Southern High School  
17 to December 10, 2013. [GDOE0380]
- 18
- 19 10. JRN did not attend the December 10, 2013 site inspection of Southern High School.  
20 [GDOE0324]
- 21 11. On December 17, 2013, the amended deadline of submission of bids, J&B and JRN  
22 submitted bids for GDOE’s consideration. [GDOE0316;GDOE0109 to GDOE0227;  
23 GDOE0014 to GDOE0108]
- 24 12. J&B’s bid cost proposal was \$350,000.00. [GDOE0316]
- 25 13. JRN’s bid cost proposal was \$254,501.91. [GDOE0316]
- 26
- 27

- 1 14. On January 16, 2014, GDOE confirmed (via email) with Dan Gomez of JRN that JRN  
2 conducted a site inspection of Southern High School prior to December 6, 2013, that JRN  
3 understood the scope of work at Southern High School, and that JRN confirmed its bid  
4 price. [GDOE0333].
- 5 15. On February 5, 2014, GDOE issued a Bid Status notification to JRN stating that the bid is  
6 recommended for award to JRN. [GDOE0317]
- 7 16. On February 5, 2014, GDOE issued a Bid Status notification to J&B stating that J&B was  
8 not selected due to higher price offered. [GDOE0318]
- 9 17. On that same day, GDOE issued Purchase Order No. 20140367-00 to JRN, reflecting  
10 GDOE's award to JRN. [GDOE0381 to GDOE0382]
- 11 18. The next day, on February 6, 2014, J&B filed its Protest to GDOE asserting that JRN's  
12 failure to attend the mandatory site inspection of Southern High School on December 10,  
13 2013 rendered JRN's bid nonresponsive and disqualified from consideration for award.  
14 [GDOE0376 to GDOE0377]
- 15 19. On February 7, 2014, GDOE issued a Notice of Stay of Procurement pursuant to 5 G.C.A.  
16 § 5425(g). The stay advised participating bidders that the stay "shall remain in effect until  
17 the Protest is resolved." [GDOE0383]
- 18 20. On March 7, 2014, GDOE denied J&B's Protest in its entirety and issued a Notice to Lift  
19 Stay of Procurement. [GDOE0384 to GDOE0386]
- 20 21. On or about March 8, 2014, JRN commenced work.
- 21 22. On March 13, 2014, J&B filed the instant appeal with the Public Auditor asserting that  
22 JRN's failure to attend a December 10, 2013 site inspection of Southern High School  
23  
24  
25  
26  
27

1 rendered JRN a nonresponsive bidder who should have been disqualified from  
2 consideration of the IFB award. J&B asserts that it should be awarded the bid.

3 23. As of the date of the appeal hearing (June 2, 2014), JRN had nearly completed 75% the  
4 work and estimated that all work would be completed within three weeks thereafter.

5 24. JRN conducted a site inspection of Southern High School on September 24, 2013, before  
6 the issuance of the IFB. This was not in technical compliance with the IFB.

7 25. However, this did not cause JRN to be a “nonresponsive” bidder nor did it disqualify JRN  
8 from consideration for award.

9 26. JRN’s bid was the lowest responsive bid.

10 27. GDOE’s award of the bid to JRN and issuance of the purchase order to JRN pursuant to  
11 the IFB was not in error.  
12

13  
14 **CONCLUSIONS OF LAW**

15 The IFB states that “the Contractor must conduct pre site inspections to determine existing  
16 conditions and any special needs/requirements for execution of the project. **Site inspection and**  
17 **field verification of existing layout is mandatory.** The Contractor is fully responsible to ensure  
18 that all proposed equipment meet or exceed existing quality and specifications, i.e., material  
19 specifications, dimensions, configuration, mechanical requirements, mounting and installation  
20 requirements etc.”

21  
22 While JRN did not conduct a site inspection of Southern High School on the scheduled site  
23 inspection date of December 10, 2013 nor did JRN conduct a site inspection of Southern High  
24 School at any time after the issuance of the IFB, JRN did conduct a site inspection of Southern  
25 High School on September 24, 2013, prior to the November 25, 2013 issuance of the IFB.  
26

1           Consequently, JRN did conduct a pre site inspection of Southern High School to determine  
2 existing conditions and any special needs/requirements for execution of the project. Consistent  
3 with the IFB requirements, JRN assumed full responsibility to ensure that all proposed equipment  
4 meet or exceed existing quality and specifications, i.e., material specifications, dimensions,  
5 configuration, mechanical requirements, mounting and installation requirements, etc.  
6

7           Prior to award, GDOE confirmed with Dan Gomez of JRN that JRN conducted a site visit of  
8 Southern High School prior to December 6, 2013, that JRN understood the scope of work at  
9 Southern High School, and that JRN confirmed its bid price.

10           The manner and timing in which JRN conducted its site inspection of Southern High School  
11 did not prejudice J&B and is a minor informality which GDOE could and apparently did waive.  
12 Pursuant to GDOE's Procurement Regulations, Chapter III, Section 3.9.13.4, minor informalities  
13 are mistakes found in bids after opening but prior to award and are matters of form rather than  
14 substance that can be waived or corrected without prejudice to other bidders; that is, the effect on  
15 price, quantity, quality, delivery, or contractual conditions is negligible. *In the Appeal of G4S*  
16 *Security Systems (Guam), Inc.* OPA-PA-13-013 (Decision, 11:3-12:13).  
17

18           Irrespective of whether or not GDOE determined that JRN's pre-IFB issuance site inspection  
19 of Southern High School was a minor informality which was waived or not, the Public Auditor  
20 concludes that GDOE's determination, that the site inspections while deemed "mandatory" were  
21 not deemed conditions precedent for "responsiveness" of bids, was not in error.  
22

23           The Public Auditor concludes that GDOE's determination that JRN was the lowest responsive  
24 and responsible bidder was not in error and its issuance of the purchase order to JRN was not in  
25 error. A "responsive bidder" is a person who submitted a bid which conforms in all material  
26 respects to the Invitation for Bids. 5 G.C.A. § 5201(g); 2 GAR § 3109(n)(2). IFB § 2.4.1  
27


1 provided, "In determining the lowest responsive bidder, GDOE will be guided by the following  
2 evaluation factors: (a) Price of overall performance and delivery, and (b) responsiveness to the  
3 requirements of the IFB." JRN's bid was responsive to the requirements of the IFB. JRN was  
4 lowest responsive bidder.  
5

6  
7 **DECISION**

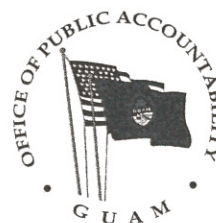
- 8 1. J&B's appeal is DENIED.  
9 2. JRN's bid was the lowest responsive and responsible bidder to the IFB.

10 This is a Final Administrative Decision. The Parties are hereby informed of their right to  
11 appeal from a Decision of the Public Auditor to the Superior Court of Guam in accordance with  
12 Part D of Article 9 of 5 G.C.A. § 5481(a) within fourteen (14) days after receipt of a Final  
13 Administrative Decision. A copy of this Decision shall be provided to the Parties and their  
14 respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for review  
15 on the OPA website at [www.guamopa.org](http://www.guamopa.org).  
16

17 **DATED**, this 1<sup>st</sup> day of July, 2014.  
18  
19

20  
21   
22 **DORIS FLORES BROOKS, CPA, CGFM**  
23 **Public Auditor of Guam**  
24  
25  
26

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



# FAX

<b>To:</b>	Mr. Marcus Pido Supply Management Administrator Guam Department of Education	<b>From:</b>	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	GDOE Phone: 475-0436 Fax: 472-5001	<b>Pages:</b>	8 (including cover page)
<b>CC:</b>	John Terlaje Attorney for J&B Modern Tech Phone: 477-8894 Fax: 472-8896  Julisis R. Nucum JRN Air Conditioning & Refrigeration, Inc. Phone: 649-8120 Fax: 649-5737	<b>Date:</b>	July 1, 2014
		<b>Phone:</b> <b>Fax:</b>	475-0390 x. 203 472-7951

**Re:** OPA-PA-14-001 Decision

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Jerrick Hernandez

[jhernandez@guamopa.org](mailto:jhernandez@guamopa.org)

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