



Jerrick Hernandez <jhernandez@guamopa.com>

Fwd: OPA-21-010; In the Appeal of Johndel International, Inc. dba. JMI-Edison

Tracy Cantimbuhan <tcantimbuhan@arriolafirm.com>
To: jhernandez@guamopa.com

Mon, Oct 25, 2021 at 9:27 AM

----- Forwarded message -----

From: **Tracy Cantimbuhan** <tcantimbuhan@arriolafirm.com>
Date: Fri, Oct 22, 2021 at 5:05 PM
Subject: OPA-21-010; In the Appeal of Johndel International, Inc. dba. JMI-Edison
To: <jhernandez@guamopa.org>
Cc: <jdwalsh@rwtguam.com>, William Brennan <wbrennan@arriolafirm.com>

Hafa Adai Mr. Hernandez,

Please see the attached documents for e-filing in the above matter:

- Agency Statement
- Agency Report

Thank you.

Regards,

Tracy A. Cantimbuhan
Legal Assistant to William B. Brennan, Esq.
ARRIOLA LAW FIRM
259 Martyr Street, Suite 201
Calvo-Arriola Building
Hagåtña, Guam 96910
Tel: 671.477.9730/33
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2 attachments **OPA-21-010 JMI v. GIAA OPA Appeal Draft Agency Statement jma edits (Final ALF 10.22.21).pdf**
414K **OPA-21-010 JMI v. GIAA OPA Appeal Draft Agency Report_10.22.21.pdf**
737K

ANITA P. ARRIOLA, ESQ.
WILLIAM B. BRENNAN, ESQ.
ARRIOLA LAW FIRM
 259 MARTYR STREET, SUITE 201
 HAGÁTÑA, GUAM 96910
 TEL: (671) 477-9730/33
 FAX: (671) 477-9734
attorneys@arriolafirm.com

Counsel for Agency
Guam International Airport Authority

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

In the Appeal of)	APPEAL CASE NO.: OPA-21-010
)	
)	
Johndel International, Inc. dba. JMI-Edison,)	AGENCY REPORT
)	
Appellant.)	
)	

COMES NOW, the A.B. Won Pat Guam International Airport Authority (GIAA) which Pursuant to 2 GAR Div. 4 §12105, and in response to the appeal of Johndel International, Inc. dba JMI-Edison (“JMI”), files this Agency Report.

- a. Copy of the Protest – attached hereto as Exhibit 2, see also, Notice of Appeal Ex G (Oct. 8, 2021).
- b. Proposals – Procurement Record (“PR”) at pp. 296-637.
- c. Request for Proposals (GIAA RFP 05-FY2021) – PR at pp. 194-287.
- d. Abstract of Proposals – PR at pp. 638-640.
- e. Other documents relevant to the protest – See Exhibit 1 attached hereto, GIAA BOD Meeting Virtual Attendance Record (Aug. 26, 2021).
- f. Decision from which the Appeal is taken, if different than the decision submitted by Appellant – No different decision at issue. See Notice of Appeal, Ex H (Oct. 8, 2021).

- g. Statement answering the allegations of Appeal and setting forth findings, actions and recommendations in the matter taken together with any additional evidence or information deemed necessary in determining the validity of the Appeal (e) – See Agency Statement (Oct. 22, 2021)
- h. If the award was made after the receipt of the protest, the report will include the determination required under 2 GAR § 9101(e) – not applicable.
- i. A statement indicating whether the matter is subject to a court proceeding. See Decl. re Court Action (Oct. 15, 2021).

Dated: October 22, 2021, at Hagatna, Guam¹

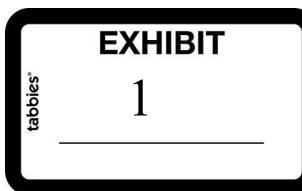
Respectfully submitted,
ARRIOLA LAW FIRM

By: 
WILLIAM B. BRENNAN

¹ Caption corrected pursuant to Errata filed on October 25, 2021.

Meeting ID	Start Time	End Time	User Email	Duration (Minutes)	Participants
86118846332	8/26/2021 14:47	8/26/2021 17:44	jeanarriola5@gmail.com	178	30

Name (Original Name)	Join Time	Leave Time	Duration (Minutes)	Guest	Recording Consent
GIAA (Jean Arriola)	8/26/2021 14:47	8/26/2021 17:44	178	No	
Amanda Rios	8/26/2021 14:48	8/26/2021 14:50	2	Yes	
Connie Garrido-SSFM	8/26/2021 14:50	8/26/2021 15:09	19	Yes	
William Brennan	8/26/2021 14:55	8/26/2021 15:09	14	Yes	
PNC Digital	8/26/2021 14:56	8/26/2021 15:09	13	Yes	
ED ILAO	8/26/2021 14:56	8/26/2021 15:09	13	Yes	
Morgan Legel	8/26/2021 14:56	8/26/2021 15:09	13	Yes	
Rolenda Lujan Faasuamalie	8/26/2021 14:58	8/26/2021 15:09	11	Yes	
Arriola Law Firm	8/26/2021 14:59	8/26/2021 15:09	10	Yes	
ttaitano	8/26/2021 15:01	8/26/2021 15:01	1	Yes	
ttaitano	8/26/2021 15:01	8/26/2021 15:09	8	Yes	
Lucy's iPhone	8/26/2021 15:02	8/26/2021 15:07	5	Yes	
Joe J.	8/26/2021 15:06	8/26/2021 15:09	3	Yes	
Morgan Legel	8/26/2021 15:07	8/26/2021 15:09	2	Yes	
Lucy's iPhone	8/26/2021 15:07	8/26/2021 15:08	1	Yes	
oyaol	8/26/2021 15:08	8/26/2021 15:09	1	Yes	
Director Alcorn (Lucy's iPhone)	8/26/2021 15:08	8/26/2021 17:44	156	Yes	Y
ED ILAO	8/26/2021 15:09	8/26/2021 16:14	66	Yes	Y
Connie Garrido-SSFM	8/26/2021 15:09	8/26/2021 16:18	69	Yes	
Oyaol N. Guam Daily Post (oyaol)	8/26/2021 15:09	8/26/2021 17:00	112	Yes	Y
Joe J.	8/26/2021 15:09	8/26/2021 17:00	112	Yes	Y
ttaitano	8/26/2021 15:09	8/26/2021 16:39	91	Yes	Y
Rolenda Lujan Faasuamalie	8/26/2021 15:09	8/26/2021 16:53	104	Yes	
William Brennan	8/26/2021 15:09	8/26/2021 17:41	153	Yes	Y
Arriola Law Firm	8/26/2021 15:09	8/26/2021 17:41	153	Yes	Y
Morgan Legel	8/26/2021 15:09	8/26/2021 15:47	38	Yes	Y
Morgan Legel	8/26/2021 15:09	8/26/2021 15:11	3	Yes	
PNC Digital	8/26/2021 15:09	8/26/2021 17:41	153	Yes	Y
Elfrieda Koshiba	8/26/2021 15:11	8/26/2021 15:11	1	Yes	
Elfrieda Koshiba	8/26/2021 15:11	8/26/2021 17:05	115	Yes	Y
PNC Digital	8/26/2021 15:16	8/26/2021 15:17	1	Yes	
Steve Limtiaco	8/26/2021 15:16	8/26/2021 15:17	1	Yes	
Steve Limtiaco	8/26/2021 15:17	8/26/2021 17:03	107	Yes	Y
PNC Digital	8/26/2021 15:17	8/26/2021 17:41	145	Yes	Y
iPhone	8/26/2021 15:29	8/26/2021 15:29	1	Yes	
iPhone	8/26/2021 15:29	8/26/2021 15:29	1	Yes	Y
Morgan Legel	8/26/2021 15:47	8/26/2021 15:48	1	Yes	
Morgan Legel	8/26/2021 15:49	8/26/2021 16:07	19	Yes	
Janalynn Damian	8/26/2021 15:50	8/26/2021 15:50	1	Yes	
Janalynn Damian	8/26/2021 15:50	8/26/2021 15:56	6	Yes	
iPhone	8/26/2021 15:53	8/26/2021 15:53	1	Yes	
iPhone	8/26/2021 15:53	8/26/2021 15:58	5	Yes	
George Castro	8/26/2021 16:01	8/26/2021 16:01	1	Yes	
George Castro	8/26/2021 16:01	8/26/2021 17:41	101	Yes	



Danny Cepeda (GIAA-MIS)	8/26/2021 16:03	8/26/2021 16:03	1 Yes	
Danny Cepeda (GIAA-MIS)	8/26/2021 16:03	8/26/2021 17:00	58 Yes	Y
Morgan Legel	8/26/2021 16:09	8/26/2021 16:14	6 Yes	
Morgan Legel	8/26/2021 16:14	8/26/2021 16:56	43 Yes	Y
Artemio "Ricky" Hernandez	8/26/2021 16:27	8/26/2021 16:27	1 Yes	
Artemio "Ricky" Hernandez	8/26/2021 16:27	8/26/2021 16:29	2 Yes	Y
Janalynn Damian	8/26/2021 16:34	8/26/2021 16:34	1 Yes	
Janalynn Damian	8/26/2021 16:34	8/26/2021 17:44	70 Yes	
Eduardo Calvo	8/26/2021 16:46	8/26/2021 16:47	1 Yes	
Eduardo Calvo	8/26/2021 16:47	8/26/2021 17:41	55 Yes	Y
William Brennan	8/26/2021 17:41	8/26/2021 17:44	3 Yes	
Arriola Law Firm	8/26/2021 17:41	8/26/2021 17:44	3 Yes	
PNC Digital	8/26/2021 17:41	8/26/2021 17:43	2 Yes	
PNC Digital	8/26/2021 17:41	8/26/2021 17:44	3 Yes	
Morgan Legel	8/26/2021 15:48	8/26/2021 15:49	1 Yes	
Morgan Legel	8/26/2021 16:08	8/26/2021 16:46	38 Yes	
Morgan Legel	8/26/2021 16:46	8/26/2021 16:56	11 Yes	



PROCUREMENT PROTEST
GIAA RFP NO. RFP-005-FY21
Management & Infrastructure Support Services
to GIAA's Baggage Conveyance Systems



A.B. WON PAT
INTERNATIONAL AIRPORT AUTHORITY GUAM

9/22

4:37pm

TIME: _____

REC'D BY: _____

September 21, 2021

Mr. John M. Quinata
Executive Manager
A.B. Won Pat International Airport Authority
Guam Administration Office, 3rd Floor
355 Chalan Pasaheru, Tamuning, GU 96913

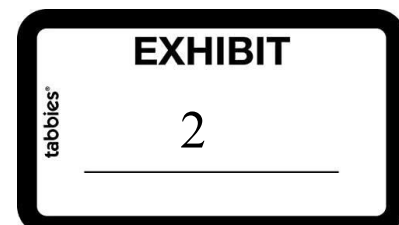
Dear Mr. Quinata:

On September 17, 2021, the Guam International Airport Authority ("GIAA") provided our attorneys with the procurement record generated in Request for Proposals GIAA RFP 005-FY21 ("RFP"). That RFP was seeking proposals from firms "...to provide professional management and infrastructure support services for GIAA's baggage conveyance systems." JMI Edison, as a sub-contractor to Siemens, provided comprehensive electrical and mechanical installation and repair works for that same system, which was completed in June 2017, and was an offeror on the current RFP.

On August 31, 2021 GIAA provided notice that another offeror, Aircraft Service International, Inc. DBA: ASIG ("ASIG"), was ranked as the best qualified offeror, and will therefore be given the opportunity to negotiate with GIAA, and subsequently be awarded the contract. We directed our attorneys to obtain the records regarding that selection, however GIAA asked for an extension up to September 17th to provide the documents asked for. Without an ASIG record to review, JMI contacted the Contractor's Licensing Board ("CLB") on September 13th, and learned on September 17th. that ASIG does not hold a valid Contractor's License. Also, the procurement record provided by GIAA was incomplete and contained no substantive documents regarding ASIG's proposal.

More, it appears that ASIG has never held a Guam contractor's license despite providing technical expertise and contractor services to GIAA for over 5 years. It appears from the CLB records that ASIG is non-responsive to the RFP since ASIG does not have the valid licenses to perform the RFP as specified. Furthermore, ASIG is a non-responsible offeror since it cannot legally perform what the RFP seeks, and has inappropriately accepted fees from GIAA despite not having the proper licenses needed to earn those fees in the first place. The CLB is aware of ASIG's unlicensed operations, and will be initiating an investigation into the matter in the near future.

These facts, the impending award to ASIG, and the requirement that JMI bring these reasons for its aggrievement under the procurement law to GIAA's attention in a timely manner leave us no choice but to lodge this protest with your agency.





To be certain, the grounds for our protest are summarized here:

1. Intended Awardee ASIG was non-responsive to the RFP, as the RFP requires a Specialty Contractor License with the Guam Contractors License Board;
2. Intended Awardee ASIG is a non-responsible offeror, as ASIG is unlicensed on Guam to perform the work it has offered to do for GIAA, and has impermissibly taken payments for work previously done for GIAA despite not having the necessary licenses; and
3. Because GIAA was delayed in preparing the procurement record to provide our attorneys and has not provided JMI with a either full copy of the proposals submitted by ASIG or the entire record of this procurement kept by GIAA, JMI is compelled to protest what it views as an incomplete and improperly kept record of procurement.

JMI has had a mutually respectful and beneficial relationship with GIAA for many years, and this protest is being lodged as part of a sincere effort to call the airport's attention to a failing in its evaluation and of its intended award to ASIG. GIAA is about to enter into a contract with a contractor that, under the terms of the RFP specifically, and Guam law generally, cannot legally perform. More, that contractor, as an improperly licensed entity, would be receiving funds from the airport that it could not legally invoice for.

As a reputable local 43 year-old company, we believe GIAA should only enter into contracts with responsible and responsive companies. JMI's Guam connections run deep, and our history and familiarity with the airport's systems makes us uniquely suited to perform the services the airport needs under the RFP. We respectfully ask that you review the matter of our protest, and once you confirm that ASIG is indeed unlicensed, issue the award of the RFP to JMI-Edison as the next responsible and responsive offeror.

As this is a pre-award procurement protest of GIAA RFP-005- FY21, this protest serves as a statutory trigger for an Automatic Stay regarding the continued procurement of the IFB. As you know, Guam law mandates that GIAA freeze this procurement in place, and shall not proceed further with the solicitation or with the award of the contract until this protest and all potential appeals are resolved.

Sincerely yours,

Ed Ilao, P.E.
President
JMI-EDISON

Cc: Henry M. Cruz
Supply Management Administrator

From: "Ed R. IlaO (ed_ilaO@jmiguam.com)" <ed_ilaO@jmiguam.com>
To: "john.quinata@guamairport.net" <john.quinata@guamairport.net>
Cc: "hmc@guamairport.net" <hmc@guamairport.net>
Date: 09/21/2021 04:28 PM
Subject: PROTEST (GIAA RFP-005-FY21)

Dear Mr. Quinata,

See attached Procurement Protest.

Kindly let me know if we should have the original letter delivered to you.

Please also acknowledge receipt of this email and the attached protest letter.

Best regards,

ED ILAO, P.E.
President

JMI-EDISON

Cell #: (671)688-7601

eMail: ed_ilaO@jmiguam.com



September 30, 2021

TRANSMITTED VIA EMAIL: ed ilao@jmiguam.com

Mr. Ed Ilao, *President*
Johndel International, Inc. d/b/a JMI-Edison
130 Siket Street
Harmon Industrial Park
Tamuning Guam, 96913



RECEIPT ACKNOWLEDGED
BY: CANDICE M. MONILLAS
SIGNATURE
CANDICE M. MONILLAS
PRINT NAME
JMI EDISON / ISD
COMPANY / DEPARTMENT
9/30/2021 1514

RE: Denial of Procurement Protest
JMI-Edison Sept. 21, 2021 Protest Letter – GIAA RFP 005-FY21
JMI-Edison Sept. 27, 2021 Protest Supplement Letter – GIAA RFP 005-FY21

Hafa Adai Mr. Ilao,

The A.B. Won Pat Guam International Airport Authority (“GIAA”) is in receipt of Johndel International, Inc.’s (“JMI-Edison”) September 21, 2021 letter protesting the ranking of another firm above your firm related to GIAA RFP 005-FY21. GIAA is also in receipt of a letter dated September 27, 2021, titled “procurement protest supplement.” I have reviewed the Letter and the supplement, the three bases you outline in support of your protest, and the record of the procurement to date. Based on that review, JMI-Edison’s protest of procurement GIAA RFP 005-FY21 is hereby **denied** for the reasons set forth below.

1. The highest ranked offeror was deemed qualified based on the criteria set forth in the RFP.

The first two grounds allege that the offeror ranked highest by the GIAA evaluation committee submitted a proposal that was non-responsive to the RFP, and further that the offeror was not a responsible offeror. JMI-Edison alleges that the RFP “requires a Specialty Contractor License with the Guam Contractors License Board” and based on JMI-Edison’s research, JMI-Edison alleges the Offeror lacks such license.

a. JMI-Edison’s license-related protest is untimely.

The individual who executed the JMI-Edison proposal in response to the RFP, the letter of protest dated September 21, 2021, and the supplement dated September 27, 2021 was virtually present at the GIAA Board Meeting on August 26, 2021 where the best qualified offeror was publicly announced. Additionally, GIAA delivered to JMI-Edison a notice that it was not the highest ranked offeror on August 30, 2021. Despite this, JMI-Edison and its attorneys, by its own admission, waited until September 13, 2021 to investigate the highest ranked offeror’s compliance with what JMI-Edison viewed as a license “required” of the RFP.

Under Guam law, an aggrieved individual must submit a protest within fourteen (14) days after such aggrieved individual knows or should know the facts giving rise thereto. Therefore, JMI-



EXHIBIT
3
tabbies®

Edison had until September 10, 2021, fourteen days after the highest ranked offeror was publicly announced in a public meeting, where JMI-Edison's representative was in attendance, to raise the issue of the highest ranked offeror's lack of a license JMI-Edison believes is required for the RFP. Therefore, JMI-Edison's protest on this basis is untimely, and for that reason is denied.

b. JMI-Edison is not entitled to determine the substantive requirements of a GIAA RFP.

Alternatively, JMI-Edison's protest on this basis is also denied because the responsiveness of an offeror who submits a proposal is based on the offeror's satisfaction of the requirements in the RFP, not on JMI-Edison's allegation that a specific license related to the services the RFP seeks, is required. Here, the Evaluation Committee reviewed the proposal submitted by the highest ranked offeror and determined that the proposal satisfied the requirements of the RFP. Therefore, your protest that the highest ranked offeror's proposal was non-responsive is denied.

GIAA also determined that the best qualified offeror and JMI-Edison were qualified to provide the Services sought in the RFP, based on each firm's proposal. Responsiveness and responsibility determinations in the RFP context refer to the qualification of an offeror to offer professional services. Given that both JMI-Edison and the highest ranked offeror were deemed qualified, GIAA was at the time of the FOIA in negotiations with the highest ranked offeror in accordance with applicable law and regulations. JMI-Edison is not entitled to amend the RFP based on its interpretation of the services to be offered, and the licensure JMI-Edison believes is required of the same. The actual requirements of the RFP, and not JMI-Edison's interpretation, control. The highest ranked offeror was deemed qualified due to their capacity, based on their proposal, to provide the services sought. This renders the highest ranked offeror a responsible offeror. Your protest that the offeror was not a responsible offeror is therefore denied.

For the reasons set out herein, JMI-Edison's protest on the basis that the highest ranked offeror lacks a certain license JMI-Edison believes is necessary for the services sought in the RFP, is hereby denied.

2. JMI-Edison is not allowed to obtain other Offerors' proposals and records prohibited by the Sunshine Act.

JMI-Edison next alleges that in its view the procurement record related to GIAA RFP 005 FY21 is "incomplete and improperly kept." However, JMI-Edison admits it has not had the opportunity to review certain documents related to this procurement.

GIAA denies any and all allegations related to the proper and complete keeping of the procurement record in this matter. On September 17, 2021, GIAA responded to a request by JMI-Edison's attorneys Joshua Walsh and Joseph Razzano for documents under the Sunshine Reform Act of 1999. GIAA provided digital copies of 252 pages of documents that fell within the items specifically enumerated in 5 G.C.A. Section 5249.

However, JMI-Edison's attorneys also requested copies of "the proposals submitted by all bidders to the RFP, and the evaluation sheets from all GIAA Evaluators, and questions and answers submitted for the RFP." Notably, Section 5249 does not list proposals of offerors among the items


that are public. Instead, Guam Procurement regulations specify that “[p]roposals shall not be opened publicly nor disclosed to unauthorized persons . . .” 2 GARR § 3114(h) (further mandating that “[a] Register of Proposals shall be established [which] shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection”). These regulatory provisions governing the handling of proposals are supported by statutory provisions in the Guam Procurement law. See 5 G.C.A. § 5216(d) (stating while the head of a purchasing agency may have discussions with any offeror who submitted a proposal, such “[d]iscussions shall not disclose any information derived from proposals submitted by other offerors”) 5 G.C.A. § 5216(d); see also, 5 G.C.A. § 5230(b) (mandating that certain information related to responsibility determinations “shall not be disclosed” outside of the purchasing agency without the offeror’s consent);

Additionally, GIAA informed JMI-Edison’s attorneys that because the procurement was ongoing, (1) documents related to the price negotiations with the highest ranked offeror and (2) documents protected by certain privileges and/or exemptions under the Sunshine Reform Act were withheld from GIAA’s response. See e.g., 5 G.C.A. §§ 10108(i), 10109. GIAA also made clear that the disclosure was made as of September 16, 2021 and was subject to change because the procurement process was ongoing.

JMI-Edison now alleges the procurement record in this matter is incomplete or was improperly maintained. To the contrary, GIAA has maintained the record in accordance with law and regulations and on September 17, 2021 disclosed portions of the record which authorized by law and withheld documents specifically mandated by law. JMI-Edison’s assumptions supporting its allegations otherwise are baseless. Also, noticeably absent from JMI-Edison’s “protest” in this regard is an allegation that any specific defect JMI-Edison alleges related to the procurement record, was somehow material to the ranking of the offerors who submitted proposals related to the subject RFP. When the procurement is completed, the procurement record in this matter will be reviewed in accordance with applicable law and regulation.

Based on the foregoing, JMI-Edison’s protest dated September 21, 2021, as supplemented on September 28, 2021, is hereby denied in its entirety. Pursuant to 5 G.C.A. Section 5425, JMI-Edison is hereby informed of the right to appeal this decision to the Office of Public Accountability, and the right to judicial review. Nothing herein is construed as a waiver of any such right, remedy, claim for relief or defense available to GIAA. The same are hereby reserved.

Respectfully,


JOHN M. QUINATA
EXECUTIVE MANAGER, GIAA