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PROCUREMENT APPEALS
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6 *Attorneys for Appellant JMI-EDISON*

7 BEFORE THE PUBLIC AUDITOR
8 PROCUREMENT APPEAL

9
10 IN THE APPEAL OF) DOCKET NO. OPA-PA-11-001
11)
12 JMI - EDISON,)
13) Appellant.) **APPELLANT'S BRIEF REGARDING
14) REMEDIES;
15) CERTIFICATE OF SERVICE**

16 **I. INTRODUCTION**

17 On January 4, 2011 Appellant, JMI Edison, submitted its appeal to the Office of Public
18 Accountability(OPA). On January 31, 2011, Appellant submitted its comments on the Agency
19 Report, and amended comments, as allowed by OPA, followed on February 23, 2011. Following
20 Appellant's waiver of its formal hearing rights, the OPA ordered that the parties may submit
21 additional briefing regarding remedies that should be implemented should the OPA find in
22 Appellant's favor. This brief is timely submitted on Tuesday, March 8, 2011.

23 **II. STATEMENT OF REMEDIES**

24 **A. AS THE ONLY RESPONSIVE BIDDER, JMI EDISON SHOULD BE MADE THE AWARDEE
25 OF REQUEST FOR PROPOSALS GSA-105-10(RFP).**

26 When the bid submission window for RFP GSA-105-10 was closed on July 23, 2010, only
27 two companies— JMI Edison and Medpharm— submitted proposals. Guam Procurement law and
28 the precedent from the OPA are clear: bid responsiveness must be determined from what is inside
the bid envelope at the time of bid opening. See In the Appeal of J&G Construction, OPA-PA-07-
005; See also ABA Contract Deskbook, pg. 65 ("Bid responsiveness concerns whether a bidder has

1 offered unequivocally in its bid documents to provide supplies in conformity with all material terms
2 and conditions of a solicitation for sealed bids, and is determined as of the time of bid opening.”)

3 Since Medpharm’s envelope did not contain responsive information regarding FDA
4 compliance, Medpharm’s bid was unresponsive. Medpharm’s violation was not *de minimis* and
5 cannot be waived, since such a ratification cannot be made without prejudice to the other bidder—
6 in this case JMI Edison. See 2 GAR 9106(1)(c)(1). The award of contract to Medpharm must be
7 terminated as called for in 5 GCA 5425(a)(1), and JMI Edison, as the only responsive bidder, must
8 be made the awardee of RFP GSA-105-10.

9 The remedy of award to JMI Edison, while not explicitly contained in statute, is appropriate
10 given the fact that only two offerors responded to the solicitation, and only one offeror was
11 responsive. Such a result is well supported by precedent from the OPA. In Guam Publications, the
12 OPA terminated the improperly awarded contract and awarded the contract to the only remaining
13 offeror. See In the Appeal of Guam Publications, Inc., OPA-PA-08-007. The award to the only
14 remaining offeror is in keeping with both 2 GAR 9106(1)(c)(1), which allows award to be made
15 when there is no prejudice to other bidders, and 5 GCA 5212(d), which contemplates government
16 procurement through award to the next lowest bidder in the event of contract default. Further, award
17 to the only other bidder is in keeping with Guam Procurement law’s general edict to save the
18 taxpayer money and provide increased economy in territorial activities. See 5 GCA 5265.

19 **B. AS A SUCCESSFUL APPELLANT, JMI EDISON WOULD BE ENTITLED TO ITS COSTS.**

20 The Guam code provides that “When a protest is sustained, the protestant shall be entitled
21 to the reasonable costs incurred in connection with the solicitation and protest, including bid
22 preparation costs....”5 GCA 5425(h). The OPA can therefore properly award JMI Edison its
23 reasonable costs incurred in mounting the instant protest.

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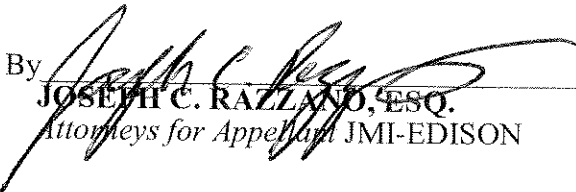
1 **III. CONCLUSION**

2 JMI Edison, as the only responsive bidder in a procurement competition that involved two
3 offerors, should be made the awardee under RFP GSA-105-10. This result complies with both Guam
4 law and the precedent from the OPA. JMI Edison, as a successful protestant, is also entitled to its
5 reasonable costs incurred in the bringing of the instant protest.

6 Respectfully submitted this 8th day of March 2011 at Hagatna, Guam.

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By 
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CERTIFICATE OF SERVICE

I, JOSEPH C. RAZZANO, do hereby certify that on the 8th day of March 2011, I will cause to be served a true and correct copy of the **APPELLANT'S BRIEF REGARDING REMEDIES; CERTIFICATE OF SERVICE** via hand delivery upon the following Counsels of record:

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Executed at Hagatna, Guam, on March 8, 2011.

TEKER TORRES & TEKER, P.C.

By 
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