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**OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

JMI-Edison,

Appellant.

Docket No. OPA-PA-13-010

**COMMENTS ON
AGENCY REPORT**

I. INTRODUCTION

Pursuant to 2 GAR §§ 12104(c)(4) and 12108(a), Appellant JMI-Edison (JMI/Appellant) submits its Comments on the Agency Report submitted by the Guam Department of Education (GDOE) to the Office of Public Accountability on August 16, 2013. These comments are submitted to address the inadequacies of that report.

II. ARGUMENT

GDOE continues to hold to a singular ground justifying the casting aside of JMI's bid for IFB008-2013. GDOE tells us that JMI's submission was non-responsive since it violated the bid edict contained in IFB Clarification No. 1 which states "[b]idders shall offer (1) price per item and shall submit one (1) bid." GDOE Exhibit 7. This GDOE edict states in its entirety that:

“Bidders shall offer one (1) price per item and shall submit one (1) bid. Section 2.2.6 on page 8 titled, “ALTERNATE BIDS NOT ACCEPTED”, states an alternate bid will not be accepted. If a bidder submits two bids, GDOE may determine both bids as alternate bids and deem both bids non-responsive.” GDOE Exhibit 7.

GDOE discarded JMI’s bid since GDOE’S Procurement staff determined that JMI submitted an alternate bid. DOE puts forward as evidence of an “alternate bid” the fact that “In its bid, JMI listed two prices that distinguished a number of units as replacement units and new installation units for items 5 and 7 of the bid form.” Agency Statement, 3 *citing* GDOE Exhibit 5. GDOE also finds an alternate bid based upon items 6,7,8,10, and 12 of the bid form where, according to GDOE, JMI “listed two prices that distinguished a number of units.” Agency Statement, 3 *citing* GDOE exhibit 5.

Merriam-Webster defines “Alternate” as constituting an “alternative.” <http://www.merriam-webster.com/dictionary/alternate>. “Alternative is defined as “offering or expressing a choice.” <http://www.merriam-webster.com/dictionary/alternative?show=0&t=1377224866>. JMI’s submission did not offer a choice to GDOE regarding the procurement, but instead simply provided clarity regarding the single offer being made to the Agency. JMI provided specific pricing based on actual known specifications and scope of work for the bid items where it was possible to do so. No alternative price or product was offered.

Bid item 5 of JMI’s submission lists unit prices for three hundred forty (340) replacement units and unit prices for nine (9) complete new installations. Though this price and unit detail was provided to GDOE to provide clarity on exactly which units would be replaced as opposed to which units would need completely new installations, a single total amount of three hundred forty nine (349) units was provided. The same is true for Bid item 6, which lists a total of thirty one thirty one (31) units as a total breakdown of thirty (30) 460v units and one (1) 208-230 v

unit. Bid item 7 similarly lists a single total of two hundred thirty six (236) units encompassing two hundred eight (208), eighteen (18) and ten (10) units. Bid item 8 lists a single total of nine (9) units, comprised of one (1) 208 v units and eight (8) 460 v units. Item 10 lists ten (10) total units comprising two (2) of one type and eight (8) of another. Item 12 similarly provides just a single total of six (6) units. Further demonstrating that no “alternative” was provided to GDOE is the fact that GDOE was provided with a single total lump sum price of Nine Million Fifty-Five Thousand Four Hundred and Seventy-Four Dollars (\$9,055,474.00). JMI did not submit a price for air-conditioning units coupled with an alternate price for another group of air-conditioning units. A single total price for the units was provided. It cannot be more plain that no alternate bid was submitted.

GDOE explains that “the bid forms do not allow a bidder to breakdown the price for replacement air conditioner units and new installation air conditioner units...” Agency Statement, 3. This assertion does not support GDOE’s failure here. GDOE can point to no bid instruction in the procurement record that would have barred an offeror like JMI from providing detail and clarity to its bid package. To the contrary, GDOE itself invited this clarity by issuing Amendment 3 to the IFB which mandated a site visit to two schools where offerors were shown the locations of possible new air conditioning installation sites. Amendment three (3), attached as exhibit D to Travis Declaration filed on August 2, 2013. This site visit illuminated for the offerors the variety of installation work involved in the IFB, and necessitated the submission of bid detail regarding the types of installation that would occur.

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III. CONCLUSION

Based on the foregoing, JMI requests that its protest be sustained, and the Agency be ordered to award it GDOE IFB 008-2013.

Submitted this 26th day of August, 2013.

CIVILLE & TANG, PLLC

By: 

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