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Attorneys for Interested Party  
Phil-Gets (Guam) International Trading Corp.  
dba J&B Modern Tech

**OFFICE OF PUBLIC ACCOUNTABILITY**  
**PROCUREMENT APPEAL**

In the Appeal of )  
JMI EDISON, )  
Appellant. )  
\_\_\_\_\_ )

Docket No. OPA-PA-13-010  
**INTERESTED PARTY J&B'S  
HEARING BRIEF**

**I. INTRODUCTION**

Interested party Phil-Gets (Guam) International Trading Corp. dba J&B Modern Tech ("J&B") submits the following hearing brief in support the position of the Guam Department of Education ("GDOE") in this appeal by JMI Edison ("JMI").

**II. JMI'S BID WAS NON-RESPONSIVE.**

Appellant JMI's bid was non-responsive for multiple reasons. It is understandable that once GDOE found one reason to disqualify JMI's bid as non-responsive, that finding mooted the need for GDOE to search through all the details of JMI's bid to find other defects. At the same time, as the

ORIGINAL

winning bidder, J&B could not protest that JMI's bid was non-responsive for additional reasons. Only an "aggrieved" bidder may protest. 5 GCA §5425(a). A winning bidder is not aggrieved.

GDOE correctly found that JMI's bid was non-responsive because of failure to comply with the clarification issued on February 6, 2013 concerning submission of only one price per item and only one bid. J&B will defer to GDOE to present this issue. If for any reason the OPA determines that GDOE was incorrect on that limited issue, GDOE's ultimate determination that JMI's bid was non-responsive should nonetheless be affirmed because of the additional deficiencies noted below.

With regard to the Lennox product submittal by JMI, J&B notes that the submittal does not comply with the warranty requirements of the IFB. The IFB requires a five-year warranty. Submission of Procurement Record ("Procurement Record") at GDOE 0021 – GDOE 0022. The warranty on the Lennox units in JMI's bid is at most five years for the compressor, three years for the controller, and only one year for all other components. *See* Procurement Record at GDOE 00251 (compressor five years, controller three years, other components one year for 5 Tons Package Air Conditioner); GDOE 00260 (limited warranty certificate included with unit, other components one year for 5 Tons Split Ducted Air Conditioner); GDOE 00269 (compressor five years, other components one year for 7.5 Tons Package Air Conditioner); GDOE 00278 (compressor five years, all covered components one year for 7.5 Tons Split Ducted Air Conditioner); GDOE 00282 (compressor five years, all other components one year for 10 Tons Package Air Conditioner); GDOE 00291 (compressor five years, all other components one year for 15 Tons Package Air Conditioner); GDOE 00296 (compressor five years, all covered components one year for 15 Tons Split Ducted Air Conditioner); GDOE 00303 (compressor five years, all other components one year

on 20 Tons Package Air Conditioner); GDOE 00308 (compressor five years, all other components one year on 20 Tons Split Ducted Air Conditioner); GDOE 00312 (compressor five years, controller three years, other components one year on 50 Tons Package Air Conditioner).

The IFB included a 170 ton unit. GDOE 0021. JMI listed a 170 ton unit manufactured by Carrier in its bid, but completely failed to provide any specifications for this unit. *See* GDOE 0079 (bid sheet for 170 ton unit); GDOE 00317 – GDOE 00364 (Carrier product submittal including 25, 70 and 100 ton units, but not 170 ton unit).

If the OPA were to rule in favor of JMI on the issue raised by GDOE concerning the February 6, 2013 clarification, but the OPA did not reach these additional defects, the result could be the following: (1) JMI's protest would be upheld; (2) GDOE would issue a notice of intent to award the contract to JMI; (3) J&B would protest because JMI's bid was non-responsive for the reasons noted above; and (4) given that the above-noted defects are obvious from the face of JMI's bid, J&B would prevail on this hypothetical subsequent protest. The end result would be a re-award of the contract to J&B, albeit with weeks or months of unnecessary delay. "The law neither does nor requires idle acts." 20 GCA §15124. If this matter cannot be conclusively resolved in favor of GDOE based on the February 6, 2013 clarification, the denial of JMI's protest should nonetheless be affirmed because the JMI bid was in fact plainly nonresponsive for other reasons.

## **V. CONCLUSION**

JMI's bid was nonresponsive. Not only did JMI fail to comply with the clarification issued on February 6, 2013, but JMI also (a) did not provide a sufficient warranty for several units, and (b)

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did not provide required information concerning the 170 ton unit. For the foregoing reasons, JMI's appeal should be denied.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: September 14, 2011

By: Seth Forman

**SETH FORMAN**

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