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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
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FILE NO OPA-PA: 13-010

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
9 **PROCUREMENT APPEAL**

10 IN THE APPEAL OF

11 JMI EDISON,

Appellant.

APPEAL NO. OPA-PA-13-010

**OPPOSITION TO MOTION FOR  
EXPEDITED RELIEF TO DECLARE  
AUTOMATIC STAY IN EFFECT**

12  
13 Comes now Guam Department of Education (“GDOE”) and files this Opposition to JMI  
14 Edison’s (“JMI”) Motion for Expedited Relief to Declare Automatic Stay in Effect in OPA-PA-  
15 13-010.

16 **BACKGROUND**

17 On February 25, 2013, GDOE issued GDOE Invitation for Bid 008-2013 (“IFB”) for the  
18 Indefinite Quantity Bid for Purchase of Air Conditioning Equipment. GDOE Procurement  
19 Record, Exhibit 7, Bates Stamp No. GDOE00249-00350. The IFB was to replace air conditioner  
20 units that are beyond their life expectancy. On March 28, 2013, bids were accepted and a bid  
21 opening was conducted. JMI submitted a bid. GDOE Procurement Record, Exhibit 5, Bates  
22 Stamp No. GDOE0017-00364. All bids collected were opened and logged onto an Abstract of  
23 Bids. GDOE Procurement Record, Exhibit 8, Bates Stamp No. GDOE001234-001247.  
24

25 GDOE issued a Bid Status and Intent to Award on June 22, 2013, indicating that GDOE  
26 intended to enter into a contract with Phil-Gets (Guam) International Trading Corp. dba J&B  
27

1 Modern Tech (“J&B”). GDOE Procurement Record, Exhibit 9, Bates Stamp No. GDOE001248-  
2 001253. The Bid Status and Intent to Award indicated that JMI was considered non-responsive  
3 because JMI failed to offer one (1) price per item. *Id.* GDOE issued an Analysis and  
4 Recommendation which indicated that J&B was the lowest responsible bidder. GDOE  
5 Procurement Record, Exhibit 10, Bates Stamp No. GDOE001258-001259.

7 On June 22, 2013, a contract was sent to J&B for signature. J&B signed the contract on  
8 June 24, 2013. GDOE Agency Report, Exhibit 16, Bates Stamp No. GDOE001873. The contract  
9 was then circulated for the necessary GDOE signatures, which culminated in the Superintendent  
10 of Education signing the Contract on June 26, 2013. GDOE Agency Report, Exhibit 16, Bates  
11 Stamp No. GDOE001873-001874. As required by Guam law, the contract was sent for the  
12 Attorney General of Guam’s approval as to form and legality and the Attorney General signed the  
13 contract on July 2, 2013. GDOE Agency Report, Exhibit 16, Bates Stamp No. GDOE001874. On  
14 July 2, 2013, the contract was sent to the Office of the Governor of Guam for approval as  
15 required by Guam law.  
16

17 On July 3, 2013, JMI’s Attorney, Joshua Walsh, filed a protest with the Superintendent of  
18 Education. GDOE Agency Report, Exhibit 13, Bates Stamp No. GDOE001854-001856. Upon  
19 receipt of the JMI’s protest, GDOE issued a Notice of Stay of Procurement on July 3, 2013.  
20 GDOE Agency Report, Exhibit 14, Bates Stamp No. GDOE001857. As a result of the stay,  
21 GDOE requested and received the contract back from the Governor’s Office.  
22

23 On July 25, 2013, GDOE issued a written response denying JMI’s protest in its entirety on  
24 the basis that JMI failed to comply with the requirements of the IFB when it failed to submit one  
25 price per item. GDOE Agency Report, Exhibit 17, Bates Stamp No. GDOE0018882-001925.  
26 GDOE sent its denial of the protest to JMI’s Attorney via email on July 25, 2013. GDOE  
27

1 Procurement Record, Exhibit 11, Bates Stamp No. GDOE001677-01678. Following its denial of  
2 JMI's protest, GDOE issued a Notice to Lift the Stay of the Procurement on July 25, 2013.  
3 GDOE Exhibit 15, Bates Stamp No. GDOE001858. After the Notice to Lift the Stay was issued,  
4 GDOE forwarded the contract to Governor's office for his signature, and on July 25, 2013,  
5 Lieutenant Governor Raymond Tenorio executed the contract. GDOE Agency Report, Exhibit  
6 16, Bates Stamp No. GDOE001859-001881.  
7

### 8 DISCUSSION

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10 Under Guam law, in the event a timely protest is made, the Territory shall not proceed  
11 further with the solicitation or with the award of the contract prior to final resolution of such  
12 protest. 5 G.C.A. § 5425(g); 2 G.A.R. Div. 4 9101(e). The automatic stay provision is triggered  
13 when a timely protest is made and that the protest was filed before an award was made. *Guam*  
14 *Imaging Consultants, Inc. GMHA*, 2004 Guam 15 ¶24. There is no disputing that an automatic  
15 stay of the IFB was triggered when JMI submitted its protest to the Superintendent of Education.  
16 What is disputed is whether a stay was in place after GDOE issued its written response denying  
17 JMI's protest. It is clear that the stay was lifted as a result of GDOE's issuance of a written denial  
18 of JMI's protest; no stay was in place when the contract was fully executed, and JMI's appeal was  
19 filed after an award was made pursuant to the IFB. Therefore, the automatic stay provisions of 5  
20 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 § 9101(e) were not triggered.  
21

22  
23 In *In the Appeal of Guam Publications, Inc.*, Appeal No. OPA-PA-08-007, the OPA  
24 determined that an award occurring between the denial of a protest and the filing of an appeal did  
25 not trigger the automatic stay provision contained in 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 §  
26 9101(e). *Id.* at 18. In *Guam Publications*, the Pacific Daily News ("PDN") filed a timely protest  
27

1 in April 7, 2008. *Id.* On May 1, 2008, the General Supply Agency (“GSA”) denied PDN’s  
2 protest. After denying PDN’s protest, GSA awarded the contract to Marianas Variety on May 9,  
3 2008. *Id.* On May 14, 2008, PDN filed an appeal with the OPA. *Id.* The OPA determined that  
4 because GSA awarded the contract to Marianas Variety after the denial of PDN’s protest, but  
5 before PDN’s appeal, the automatic stay provisions of 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 §  
6 9101(e) were not triggered by PDN’s filing of its appeal. *Id.*

8 The scenario contemplated in *Guam Publications* is on point with what occurred in the  
9 award of the contract of the IFB. On July 3, 2013, JMI filed a protest of the IFB with the  
10 Superintendent of Education. GDOE Agency Report, Exhibit 13, Bates Stamp No.  
11 GDOE001854-001856. GDOE issued a denial of JMI’s protest of the IFB on July 25, 2013.  
12 GDOE Agency Report, Exhibit 17, Bates Stamp No. GDOE0018882-001925. On July 25, 2013,  
13 GDOE issued a Notice to Lift the Stay of the Procurement. Before this appeal was filed, GDOE  
14 and J&B fully executed a contract for the IFB. GDOE Agency Report, Exhibit 16, Bates Stamp  
15 No. GDOE001859-001881. GDOE awarded the contract for the IFB to J&B before this appeal  
16 was filed, and therefore, the automatic provisions of 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 §  
17 9101(e) are not applicable in this case.

19 Furthermore, JMI incorrectly argues that GDOE, in order to proceed in awarding the  
20 contract, needed to obtain a written concurrence from the Attorney General that the award of the  
21 contract without delay is necessary to protect the substantial interest of the Territory. 5 G.C.A. §  
22 5425(g)(1). As discussed above, no stay was in place after GDOE issued its denial of JMI’s  
23 protest, and the need for a determination under 5 G.C.A. § 5425(g)(1)-(3) was not required. It  
24 might be further stated that by virtue of GDOE issuing its denial of JMI’s protest, the stay was  
25 automatically lifted. *See Guam Publications*, Appeal No. OPA-PA-08-007 at 18. Therefore,  
26  
27

1 since no stay was in place GDOE was free to move forward with the award of the IFB to J&B.  
2 Furthermore, since an award of the IFB has been made to J&B, JMI is limited to the remedies  
3 contained in 5 G.C.A. § 5452.

4 JMI has made the allegation that it didn't receive GDOE's denial until after the Notice to  
5 Lift the Stay of the Procurement. On July 25, 2013 at 11:39 a.m., GDOE sent its denial of JMI's  
6 protest to Joshua Walsh, JMI's attorney, via email. GDOE Procurement Record, Exhibit 11,  
7 Bates Stamp No. GDOE001677-01678. GDOE sent Mr. Walsh its denial because it was JMI's  
8 attorney that filed the protest with GDOE. The Notice to Lift the Stay of the Procurement was  
9 shortly thereafter issued to all the bidders. GDOE Procurement Record, Exhibit 11, Bates Stamp  
10 No. GDOE001727. Therefore, GDOE properly sent its denial of JMI's protest to its attorney.

11  
12 **CONCLUSION**

13  
14 For the foregoing reasons, GDOE respectfully requests that the Office of Public  
15 Accountability deny JMI's Motion for Expedited Relief to Declare Automatic Stay in Effect.

16  
17 Dated this 23<sup>rd</sup> day of August, 2013.

18 Respectfully submitted,

19 **GUAM DEPARTMENT OF EDUCATION**

20  
21 By: 

22 **ANDREW T. PEREZ, ESQ.**  
23 *Legal Counsel*