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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
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8 *Attorney for Appellant JJ Global Services*

9 **BEFORE THE PUBLIC AUDITOR**

10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF:

DOCKET NO. OPA-PA-19-001

12 JJ GLOBAL SERVICES,

13 Appellant,

14 and

15 GUAM VISITORS BUREAU,

Purchasing Agency.

**APPELLANT JJ GLOBAL SERVICES'
BRIEF RE: REMEDIES**

16 **I. INTRODUCTION**

17 On January 2, 2019, JJ Global Services ("JJ Global") submitted this appeal to the Office
18 of the Public Accountability (OPA). The hearing on the merits is scheduled for March 27, 2019.
19 The OPA ordered the parties to file additional briefs on the issues of remedies no later than March
20 18, 2019. This brief regarding the remedies is being timely submitted on March 18, 2019.

21 **II. STATEMENT OF REMEDIES**

22 **A. THE NON-RESPONSIBILITY DETERMINATION SHOULD BE VOIDED.**

23 The Hearing Officer should find the non-responsibility determination to be null and void
24 because it is clearly erroneous, arbitrary, capricious, or contrary to law. *See* 2 G.A.R. § 3125 (A
25 determination of non-responsibility is final and conclusive unless it is clearly erroneous, arbitrary,
26 capricious, or contrary to law) ; *see also* 5 G.C.A. § 5245. GVB's determination of non-
27 responsibility was clearly erroneous, arbitrary and capricious. There is no information in the
28

1 procurement record to support GVB's conclusions that JJ Global is nonresponsible. *See* 2 G.A.R.
2 § 3116. Further, any alleged communication or information upon which GVB purportedly relied
3 upon were not included in the procurement record as required by 5 G.C.A. § 5249. These omitted
4 communications from the procurement record are material because without them we cannot know
5 what information, if any, GVB based their determination of non-responsibility. Because the
6 materially incomplete procurement record thwarts review by the Office of Public Accountability,
7 the determination of non-responsibility must be found clearly erroneous, arbitrary, capricious and
8 contrary to law, and therefore void.

9
10 **B. JJ GLOBAL SHOULD AWARDED GVB IFB NO. 2018-001 AS THE LOWEST
RESPONSIBLE AND RESPONSIVE BIDDER.**

11 Guam procurement law allows post-award procurements to be terminated if the
12 solicitation or award of a contract is in violation of law. *See* 5 G.C.A. § 5452. The award of GVB
13 IFB No. 2018-001 was in violation of 5 G.C.A. § 5249 and § 5250 because it was based on a
14 materially incomplete procurement record. Since the procurement records is materially
15 incomplete, the OPA has the authority to cancel the award. *See, Teleguam Holdings, LLC v.*
16 *Guam*, 2018 Guam 5 ¶¶ 40- 41. Therefore, the contract with LMS should be terminated and JJ
17 Global, as the lowest responsive and responsible bidder, made the awardee of GVB IFB No. 2018-
18 001.

19 The remedy of award to JJ Global is appropriate. In *Guam Publications*, the OPA
20 terminated the improperly awarded contract and awarded the contract to the only remaining
21 offeror. *See In the Appeal of Guam Publications, Inc.*, OPA-PA-08-007. The award to JJ Global
22 is also in keeping with both 2 G.A.R. § 9106(1)(c)(1), which allows an award to be made where
23 there is no prejudice to other bidders, and 5 G.C.A. § 5212(d), which contemplates government
24 procurement through award to the next lowest bidder in the event of contract default and
25 termination. When the bid submission was closed, JJ Global was the lowest bidder, and would
26 have been awarded the contract but for GVB's sham determination of non-responsibility. Since
27 this determination may and should be void, JJ Global is the lowest responsive and responsible
28 bidder. Awarding the contract to JJ Global is in keeping with the policy of Guam's procurement

1 law to save the taxpayer money and provide increased economy in territorial activities. *See* 5
2 G.C.A. § 5265.

3
4 **C. AS A SUCCESSFUL APPELLANT, JJ GLOBAL IS ENTITLED TO ITS COSTS.**

5 Pursuant to 5 GCA §5425(h), "...when a protest is sustained, the protestant shall be
6 entitled to the reasonable costs incurred in connection with the solicitation and protest, including
7 bid preparation costs." The OPA can therefore properly award JJ Global its reasonable costs
8 incurred in preparing the solicitation and mounting the instant protest.

9
10 **III. CONCLUSION**

11 GVB's failure to maintain a complete procurement record conclusively establishes that
12 the GVB's non-responsibility determination is unsupported by the procurement record, and that
13 the award to LMS was based on an incomplete procurement record and in violation of law. For
14 the foregoing reasons, the Hearing Officer should find that the non-responsibility determination
15 is void, the resulting contract to LMS should be terminated, that JJ Global should be awarded
16 GVB IFB No. 18-001 as the lowest responsible and responsive bidder, and that JJ Global is
17 entitled to its reasonable costs incurred in connection with the solicitation, protest and appeal.

18 Respectfully submitted this 18th day of March, 2019.

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