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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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

IN THE APPEAL OF)	APPEAL NO. OPA-PA-17-011
)	
J&B Modern Tech,)	
Appellant,)	PURCHASING AGENCY'S
)	MOTION TO STRIKE APPELLANT'S
and)	AMENDED OPPOSITION
)	
Guam Community College)	
)	
Purchasing Agency.)	
)	

Purchasing Agency Guam Community College ("GCC") objects to and requests that the Hearing Officer strike the unauthorized Amended Opposition to Motion to Dismiss for Lack of Jurisdiction ("Amended Opposition") that Appellant J&B Modern Tech ("J&B") filed on December 6, 2017. For the reasons below, J&B's Amended Opposition is improper and therefore should be stricken.

PERTINENT BACKGROUND

J&B filed its Appeal on October 30, 2017, reiterating its protest allegations that Propacific Builder Corporation's bid packet contained four errors and complaining that GCC incorrectly denied its Protest as untimely. (See Appeal at 3-5.) On November 16, GCC filed its Agency Report and its Motion to Dismiss for Lack of Jurisdiction or, Alternatively,

for Expeditious Disposition of the Appeal (“Motion”). J&B filed its Opposition to Motion on December 1.

On the morning of December 4, 2017, the Hearing Officer held a Pre-Hearing Conference and, that afternoon, issued a Scheduling Order, which “ORDERED:”

1. Regarding Purchasing Agency’s Motion to Dismiss for Lack of Jurisdiction or, Alternatively, for Expeditious Disposition, J&B has filed an opposition to the motion and the deadline for GCC to file any reply to J&B’s opposition is December 11, 2017.

(Sched’g Order (Dec. 4, 2017) at 1.) Although the Hearing Officer clearly ordered that the only brief that could be filed regarding the Motion was GCC’s Reply, J&B — without seeking leave to do so — filed an Amended Opposition on December 6. For the reasons explained below, J&B’s unauthorized Amended Opposition should be stricken.

LEGAL STANDARD

Under 2 GAR § 12109(d), the Hearing Officer is empowered to “[r]ule on motions, and other procedural items on matters pending before such officer.” Thus, the Hearing Officer’s powers are akin to a court’s inherent authority to strike improperly filed documents. *Cf. Ready Transp., Inc. v. AAR Mfg.*, 627 F.3d 402, 404 (9th Cir. 2010) (observing that courts’ “inherent powers” include granting a motion to strike an improperly filed document because such “inherent powers are mechanisms for ‘control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases’”) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991))).

ARGUMENT

J&B's Amended Opposition should be stricken. The Hearing Officer's Scheduling Order was very clear that the only brief that could be filed regarding GCC's Motion is GCC's "reply to J&B's opposition." (Sched'g Order at 1.) In other words, the Hearing Officer never granted the parties permission to submit "amended" briefs, nor did J&B request leave to submit one. Therefore, J&B's Amended Opposition is in violation of the Scheduling Order that governs the instant case.

Moreover, J&B proffers nothing to justify its belated submission of what it labels as "supplemental authority." (Am. Opp'n at 1.) Nor could J&B justify its belated submission. All of this so-called "supplemental authority" was undoubtedly available to J&B when it filed its Opposition because the decisions cited by J&B range from the years 1990 to 2013. (See Am. Opp'n at 1-2.) What is more, as explained in GCC's contemporaneously filed Reply regarding its Motion, none of J&B's long-available so-called "supplemental authority" bestows jurisdiction over J&B's Appeal.

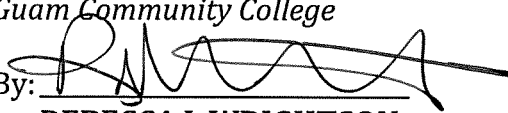
Accordingly, J&B improperly filed its Amended Opposition and the Hearing Officer should strike this improper and unauthorized filing. See 2 GAR § 12109(d); *Ready Transp.*, 627 F.3d at 404; *Chambers*, 501 U.S. at 43.

CONCLUSION

For the foregoing reasons, GCC respectfully requests that the Hearing Officer strike J&B's Amended Opposition.

Respectfully submitted this 11th day of December 2017.

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By: 
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