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PROCUREMENT APPEAL

In the Appeal of	
) REPLY MEMORANDUM IN
	SUPPORT OF MOTION TO
J&B Modern Tech,	DECLARE STAY EFFECT
)
Appellant.	Docket No. OPA-PA 14-001
)

Appellant J&B Modern Tech ("J&B") has moved for an order determining that the statutory stay mandated by 5 G.C.A. § 5425 (g) has remained in place since the initiation of J&B's protest of the Guam Department of Education's ("GDOE") decision to reject J&B's bid on GDOE Invitation for Bid IFB 005-2014. J&B has further moved the Office of the Public Auditor ("OPA") for an order compelling GDOE to refrain from taking any further action with regard to IFB 005-2014 until final resolution of J&B's protest. This motion does not go to the underlying merits of this procurement dispute; but rather only to the procedural issue of whether or not a stay is in effect as a matter of law

In its opening memorandum in support of this motion, J&B relied primarily upon the OPA's recent decision on a very similar motion. *See* In re Appeal of JMI Edison, OPA-PA-13-010, Order Granting Motion re Automatic Stay (Sept. 20, 2013). GDOE might not like that decision, but it remains the OPA's most recent statement of the controlling and applicable law.

The <u>JMI Edison</u> decision is also good public policy. Guam law gives a bidder whose protest has been a right of appeal to the OPA within 15 days of notice of the purchasing agency's decision, 5 G.C.A. § 5425 (e). That right to appeal is meaningless if pre-award remedies can be cut off by a purchasing agency simply awarding an contract simmediately JOHN C. TERLAJE

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denial of a protest before the 15 days—or in some cases, even a single day—have run. Purchasing agencies should not be allowed to flaunt the law and ignore the statutory right to appeal in this manner. Competing bidders who know or should know that the time for appeal could not have run should not be able to take advantage of such premature and incorrect notices that a stay has been lifted. As the OPA note in <u>JMI Edison</u>, the automatic stay under 5 G.C.A. § 5415 (g) remains in effect from the timely filing of a procurement protest through the timely filing of a notice of appeal to the OPA until a final resolution. <u>JMI Edison</u>, OPA-PA-13-010, *supra* at p. 1 (Sept. 20, 2013). "Final resolution" of a protest includes the time period of an appeal after a protest. *Id.* Action on a procurement is stayed until resolution of the appeal. *Id.* The stay should remain in effect here.

CONCLUSION

GDOE's disregard of the statutory stay poses immediate and irreparable harm to J&B and threatens the integrity of Guam's procurement system. For the foregoing reasons, J&B's motion should be granted.

Dated this 21 day of April, 2014.

Respectfully submitted, Law Office of John C. Terlaje, P.C.

JOHN C. TERLAJE
Attorney for Appellant
J&B MODERN TECH