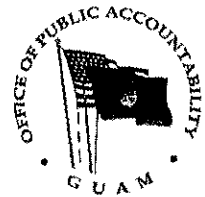


Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Claudia S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	6 (including cover page)
CC:	Thomas J. Fisher Guam Medical Referral Services Suite 101, Dela Corte Building 167 Marine Corps Dive Hagatna, Guam 96910 Phone: (671) 477-4676 Fax: (671) 472-2886	Date:	February 12, 2020
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-20-002 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

February 12, 2020

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
Department of Administration
148 Route 1 Marine Drive
Piti, Guam 96915

VIA FACSIMILE: (671) 475-1727

Re: Notice of Receipt of Appeal – OPA-PA-20-002

Dear Ms. Acfalle,

Please be advised that Guam Medical Referral Service (hereinafter referred to as “GMRS” filed an appeal with the Office of Public Accountability (OPA) on February 11, 2020, regarding the General Services Agency’s response to GMRS’ protest of the procurement for Medical Referral Assistance in Manila, Republic of the Philippines, Los Angeles, California, and Honolulu, Hawaii. (GSA Invitation for Bid No. GSA/RFP-20-0240-001). OPA has assigned this appeal case number OPA-PA-20-002.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first six pages of the notice of appeal filed with OPA is enclosed for your reference.

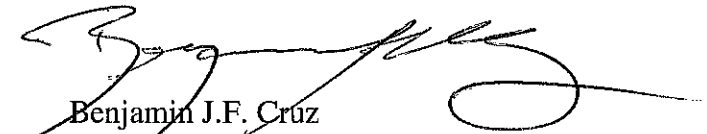
Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Wednesday, February 19, 2020**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Wednesday, February 26, 2020**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to GMRS. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that GSA provide one original and two copies of the said record, which will be distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,



Benjamin J.F. Cruz
Public Auditor

Enclosure: First Three Pages of the Notice of Appeal -- OPA-PA-20-002

Cc: Thomas J. Fisher, GMRS Representative



DATE: 02/11/2020

TIME: 8:35 AM CIPM BY: AO

FILE NO OPA-PA: 20-002

**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

PART I- To be completed by OPA

In the Appeal of)	NOTICE OF APPEAL
)	
)	
<u>(Name of Company), APPELLANT</u>)	
)	
)	Docket No. OPA-PA <u>20-002</u>

PART II- Appellant Information

Name: Thomas J. Fisher
Mailing Address: 46a Guam Medical Referral Services
Business Address: Suite 101 De la Corte Bldg
167 E. Marine Corps Dr.
Email Address: Hagatna, Guam 96910
Daytime Contact No: 1671 477-4676
Fax No.: 1671-472-2886

PART III- Appeal Information

- A) Purchasing Agency: General Services Agency
- B) Identification/Number of Procurement, Solicitation, or Contract: GSA/RFP 20-0240-001
- C) Decision being appealed was made on 08 Feb 2020 (date) by:
 Chief Procurement Officer ___ Director of Public Works ___ Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

- D) Appeal is made from:
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award
 - ___ Decision on Debarment or Suspension
 - ___ Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
 - ___ Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

ORIGINAL

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

Unknown _____

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- Declaration Re Court Action

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this ___ day of ___, 2020

Thomas J. Fisher
By: Thomas J. Fisher
APPELLANT

or

By: N/A
Appellant's Duly Authorized Representative
(Address)
(Phone No.)

This is an appeal of an agency determination of Appellant's third protest in regard to GSA Bid No. GSA/ RFP-20-0240-001, a solicitation for Medical Referral Assistance in Manila, Republic of the Philippines, Los Angeles, California and Honolulu, Hawaii. Appellant Guam Medical Referral Service is a potential offeror in this procurement.

On 29 January 2020 Appellee General Services Agency (GSA) amended the referenced Request for Proposal at page 5 to change the evaluation criteria as contained within the original Request. This was done for an improper purpose and serves to favor one offeror over another.

As a result of the change, a wholly new category was included "To demonstrate 'Voucher System' to manage, approve, and verify record services will be performed." See *Amendment 6, GSA/ RFP-20-0240-001, 29 January 2020*. 5 Guam Code Ann. §11.102(e)(1) however places the responsibility for developing the voucher system squarely within the purview of the MRAO, that is the Medical Referral Assistance Office within the Office of I Maga'låhen Guåhan and not the contracted assistance provider. Accordingly, addition of this criterion is superfluous, inappropriately weighs offeror qualification, is not contained within required "Contents of Proposal", see *id at p.4*, contrary to law, and is included for an improper purpose.

GSA's amendment has re-weighted the evaluation criteria for no apparent reason and most probably to disadvantage one potential offeror and favor another. It should be noted that appellant is aware of no prior protest concerning the weight assigned to the categories and concludes that this change may well have been the result of improper influence or ex parte communication between the GSA and a potential offeror.

As an example of the re-weight bias, where an entity has performed similar services, the weighted value of that prior performance is now diminished though this is by any measure a cardinal, relevant requirement. As a further example of the bias, where an entity has specific experience performing the service, the value of that experience is diminished though this too is an obvious, necessary, relevant requirement. As another example of the re-weight bias, where an entity has a record of past performance of similar work, the value of that work is diminished though this is, like the preceding criteria, a cardinal, relevant requirement. Yet another example of this weight bias is found in the importance assigned an offeror's demonstrated ability to meet schedules or deadlines. Here the GSA has reassigned a lesser value to that demonstrated ability though it too is of central importance to determining qualification.

When taken as a whole, it appears that the GSA has accomplished all this in order to assist an inexperienced offeror to the detriment of any offeror who has the necessary experience. This is all the more apparent by the inclusion of a new, unnecessary criterion that is given the same value as demonstrated skill and experience necessary to perform the contract. This re-weight is improper and contrary to law. Accordingly, and as a potential offeror, Guam Medical Referral Service protested the specifications included and as amended and now appeals the GSA's determination of that protest.

Your Appellant now asks that the Agency be directed to reform the criterion to their original weight.



Thomas J. Fisher
Appellant Guam Medical Referral Service

TRANSACTION REPORT

FEB/12/2020/WED 10:50 AM

BROADCAST

DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
FEB/12	10:42AM	4751727			MEMORY BUSY	0235001
	10:43AM	4724217			MEMORY BUSY	0235002
	10:43AM	4722886	0:01:23	6	MEMORY OK	SG3 0235003
TOTAL			0:01:23	6		

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FAX

To:	Ms. Claudis S. Acfalle Chief Procurement Officer General Services Agency Department of Administration 148 Route 1 Marine Drive Piti, Guam 96915 Phone: (671) 475-1707 Fax: (671) 475-1727/472-4217	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	6 (including cover page)
CC:	Thomas J. Fisher Guam Medical Referral Services Suite 101, Dela Corte Building 167 Marine Corps Drive Hagatna, Guam 96910 Phone: (671) 477-4676 Fax: (671) 472-2886	Date:	February 12, 2020
		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

Re: OPA-PA-20-002 Notice of Receipt of Appeal

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jhernandez@guamopa.com

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FEB/12/2020/WED 12:22 PM

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		Phone: Fax:	(671) 475-0390 x. 208 (671) 472-7951

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jhernandez@guamopa.com

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BROADCAST

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jhernandez@guamopa.com

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FAX (TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	FEB/12	01:16PM	4724217			MEMORY BUSY	0241

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Jerrick Hernandez, Auditor

jhernandez@guamopa.com



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-20-002 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>
To: Robert Kono <robert.kono@gsa.guam.gov>

Wed, Feb 12, 2020 at 3:00 PM

Hafa Adai Mr. Kono,

We attempted to fax the OPA-PA-20-002 Notice of Receipt of Appeal to 475-1727 and 472-4217, but it kept failing after several attempts today. Please confirm if these two fax numbers are still in operation.

In lieu of the fax, please find the notice attached. Please confirm receipt of this email and the attached document.

Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 208
Fax (671) 472-7951

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