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OPA-PA-20-004 Appellant's Status Conference Brief

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Mon, Jun 29, 2020 at 12:28 PM

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Good afternoon:

Please find attached Appellant's Status Conference Brief in advance of Wednesday's Zoom conference. Please acknowledge electronic receipt of both this message and the attached document.

Thank you for your time,

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PROCUREMENT APPEALS

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9
10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

11 In the Appeal of

12 JRN AIR CONDITIONING &
13 REFRIGERATION, INC.,

14 Appellant

Docket No. OPA-PA-20-004

**APPELLANT'S STATUS CONFERENCE
BRIEF**

Status Conference: July 1, 2020, 10:00 AM (via
Zoom)

15
16 **SUBSTANTIVE ISSUES ON APPEAL**

- 17 1. Whether the Guam Memorial Hospital Authority (GMHA), in procuring IFB 002-2020
18 for the removal and replacement of one (1) boiler unit and piping system, conducted an
19 arbitrary bid evaluation/selection process not in compliance with the general procurement
20 law (pursuant to 5 GCA § 5001 et seq.)
- 21 2. Whether GMHA, in procuring IFB 002-2020, (a) possessed any official or intelligible
22 criteria for the items in the Special Reminder to Prospective Bidders included in the bid
23 documents, specifically with regard to qualification and performance data, (b) uniformly
24 evaluated the three bids submitted in response to IFB 002-2020 in accordance with that
25 criteria, (c) subsequently provided any specific or active guidance to bidders regarding
26 said criteria, and (d) uniformly enforced said criteria throughout communications with
27 bidders
3. Whether GMHA, in procuring IFB 002-2020, lacked or failed to administer the
procurement process with any such official or intelligible criteria and acted capriciously

1 in the intended use of public funds without justifiable basis to make an award to a second
2 lowest bidder

- 3 4. Whether GMHA's conduct warrants any of the rulings requested by Appellant, including
4 a substantiated finding that GMHA should have acted differently in the procurement of
5 IFB 002-2020, that GMHA should immediately implement policies to avoid such
6 misconduct in the future (specifically with regard to verified statements, signed
7 declarations, and notarized affidavits), and that Appellant was the lowest responsive
8 bidder to IFB 002-2020
- 9 5. All other rulings requested in Appellant's Statement filed on June 2, 2020 are
10 incorporated herein by reference. Appellant also reserves the right to request that the
11 Office of Public Accountability (OPA) make other rulings and provide other relief within
12 its authority to grant that are justified by its findings.

12 **PROCEDURAL ISSUES ON APPEAL**

- 13 6. Whether the procurement records made available to Appellant on or about May 19, 2020
14 by GMHA is identical to the Procurement Record submitted to the OPA on June 23, 2020
- 15 7. Whether the Agency Report was submitted by GMHA on or before the June 30, 2020
16 deadline
- 17 8. Whether a hearing may be calendared, provided that it may be continued in light of OPA
18 or a party's need and/or the ongoing health pandemic

19 **APPELLANT'S EXHIBITS AND INTENDED WITNESSES**

- 20 9. Appellant's Exhibits filed on June 2, 2020 are incorporated herein, but Appellant reserves
21 the right to add to its Exhibits any relevant document obtained from GMHA but not
22 initially included with or referenced in Appellant's Statement filed on June 2, 2020 or
23 submitted by GMHA as part of the Procurement Record.
- 24 10. Appellant is willing to stipulate as to exhibits to be admitted into the record prior to the
25 hearing and to meet and confer with GMHA as to documents or records to which either
26 party objects without waiver as to the admission of said documents or records. Appellant
27 requests that the OPA's hearing officer make the final determination as to a document or
record's admissibility.
11. At this time, Appellant's witnesses consist of Julisis R. Nucum, Teddy Glen Roman

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Garcia, Mauro R. Navarte, Lillian Perez-Posadas, Dolores Pangelinan, and Zaldy Tugade. Appellant’s witness list may still change hereafter. Appellant will timely issue notices demanding the attendance of any intended witness. Acknowledging that several persons named above are GMHA personnel, Appellant may be willing to agree as to the appearance of just the Person Most Knowledgeable as determined by GMHA.

PROPOSED BRIEFING SCHEDULE

- 12. Appellant requests that any oppositions to any pre-hearing motions filed by the July 6, 2020 deadline be filed and served on all parties no later than ten (10) days after service of the moving papers. Any replies may then be filed and served on all parties no later than five (5) days after service of the opposing papers.
- 13. Appellant requests all parties submit their finalized witness lists no later than five (5) days prior to the hearing.

Respectfully submitted June 29, 2020

By



JULIENNE NUCUM, ESQ.
Attorney for Appellant