



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,)
PETER ALEXIS ADA, dba APM: GUAM)
MEDICAL REFFERRAL SERVICES)
Appellant)

APPEAL NO: OPA-PA-11-016
DECISION

I. INTRODUCTION

This is the Decision of the Public Auditor for an appeal filed on August 19, 2011, by PAA INTERNATIONAL, INC., dba APM: GUAM MEDICAL REFERRAL SERVICES (Hereafter referred to as "APM") regarding the GENERAL SERVICES AGENCY, GOVERNMENT OF GUAM's (Hereafter referred to as "GSA") August 4, 2011 denial of APM's Protest dated August 3, 2011, protesting GSA's finding that APM's technical offer for Multi-Step Bid No.. GSA-063-11 (Medical Referral Services for the Office of the Governor) (Hereafter referred to as "IFB") was unacceptable, protesting the opening of APM's Sealed Price Proposal, and protesting the absence of the Guam Attorney General's approval of the contract. The Public Auditor holds that GSA correctly found APM's bid unacceptable, that the opening of APM's Sealed Price Proposal was an inadvertent mistake having no effect on the procurement process, and that GSA was seeking the Guam Attorney's General's approval of the contract. Accordingly, APM's appeal is hereby DENIED.

II. FINDINGS OF FACT

The Public Auditor in reaching this Decision has considered and incorporates herein the procurement record and all documents submitted by the parties pursuant to APM's October 3, 2011 Hearing Waiver. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

Decision- 1

Suite 401, DNA Building
258 Archbishop Flores Street, Hagåtña, Guam 96910
Tel (671) 475-0390 • Fax (671) 472-7951
www.guamopa.org • Hotline: 47AUDIT (472-8348)

1 1. On or about June 17, 2011, GSA issued the IFB which solicited bids to operate
2 medical referral facilities for the Office of the Governor of Guam.¹

3 2. The IFB was a Multi-Step Sealed Bidding process and required the bidders to submit a
4 Technical Bid and a Bid Cost in separate envelopes marked "Technical Bid" and "Bid Cost"
5 each containing one (1) original and five (5) copies to GSA no later than 10:00 a.m. on July 5,
6 2011.²

7 3. The IFB stated, in relevant part, that:

8 a. The unpriced technical offers shall not be opened in public, but shall be opened
9 in front of two (2) or more procurement officials, and that such offers shall not be disclosed to
10 unauthorized persons.³

11 b. When the Procurement Officer determines a bidder's unpriced technical offer
12 to be unacceptable, such bidder shall not be afforded an additional opportunity to supplement its
13 technical bid.⁴

14 c. The Purchasing Agency or designee shall determine based on the evaluation of
15 each of the unpriced technical offers in Phase I, whose offers were deemed acceptable, and were
16 invited to submit a bid price in Phase II, and that the government would award Option 1 or
17 Option 2, whichever is in the best interest of the Government of Guam, to the lowest responsive
18 and responsible bidder.⁵

19 d. The unpriced technical offers submitted by bidders shall be evaluated solely in
20 accordance with the criteria set forth in the IFB and categorized as either: (a) Acceptable; (80-
21 100 points); (b) Potentially Acceptable, that is reasonably susceptible of being made
22 acceptable(60-79 points); or (c) Unacceptable (below 60 points) and that the Procurement
23 Officer shall record in writing the basis for finding an offer unacceptable and make it part of the
24 procurement file.⁶

25 _____
26 ¹ Bid Invitation (Multi-Step), Tab 17, Procurement Record filed on August 26,
2011.

27 ² Paragraph I.D.2., page 4, General Information, IFB, Tab 5, Id.

28 ³ Paragraph II.B., page 5, General Procedures, Id.

⁴ Paragraph II.E., Id.

⁵ Paragraph II.I., page 6, Id.

⁶ Paragraph V., page 10, Id.

1 e. The bids were to be evaluated based on the following criteria: (1) The Plan
2 for performing the required services (25 points); (2) Ability to perform the services as reflected
3 by training and education, general experience, and the qualifications and abilities of personnel
4 proposed to be assigned to perform the services (15 points); (3) The personnel, equipment, and
5 facilities to perform services currently available or demonstrated to be made available at the time
6 of contracting (25 points); (4) The individual or firm's reputation for personal and professional
7 integrity and competence (25 points); (5) Understanding of relevant statutes, rules, and
8 regulations used in the industry (10 points).⁷

9 f. The bids and modifications shall be opened in public in the presence of one or
10 more witnesses, at the time, date, and place designated in the IFB and that the opened bids shall
11 be available for public inspection except to the extent the bidders designates trade secrets or
12 other proprietary data to be confidential.⁸

13 4. On June 30, 2011, GSA issued IFB Amendment No. 2 which amended the IFB, in
14 relevant part, as follows:

15 a. The Special Reminder to Prospective Bidders was amended to include the
16 following language:

17 NOTE: Technical and Bid Cost shall be submitted in separate envelopes
18 labeled "Technical Bid" and "Bid Cost." All required forms and affidavits
19 shall be submitted in the envelope labeled "Technical Bid." **The required
20 bid bond shall be submitted in the envelope labeled "Bid Cost."** (Bold
21 Emphasis Added). Do not include bid cost with technical bid package.
*Note: If bid cost is included with the technical proposal it would be
deemed automatic disqualification or rejection.⁹

22 b. Paragraph 11, on page 52 of the IFB, which, as stated in paragraph 3.f. above,
23 required that the bids and modifications shall be opened in public in the presence of one or more
24 witnesses, at the time, date, and place designated in the IFB and that the opened bids shall be
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27 ⁷ Paragraph V.A., Id.

28 ⁸ Paragraph 11, page 52, IFB, Tab 5, Id.

⁹ Paragraph 1, IFB Amendment No. 2, Tab 8, Procurement Record Filed on August
26, 2011.

1 available for public inspection except to the extent the bidders designates trade secrets or other
2 proprietary data to be confidential was deleted in its entirety.¹⁰

3 c. The time to submit bids in response to the IFB was extended from 10:00 a.m.
4 on July 5, 2011 to 10:00 a.m. on July 13, 2011.¹¹

5 5. APM received IFB Amendment No. 2 on July 1, 2011.¹²

6 6. On July 12, 2011, GSA issued IFB Amendment No. 5 which changed the bid
7 submission time on July 13, 2011 from 10:00 a.m. to 3:00 p.m.¹³

8 7. On July 13, 2011, GSA received five (5) bids in response to the IFB from CARIDAD,
9 LLC., PHILS-GETS, THOMAS J. FISHER dba GUAM MEDICAL REFERRAL SERVICES
10 (Hereafter referred to as "GMRS"), APM, and INTER-ISLAND COORDINATING AND
11 PROMOTIONAL SERVICES.¹⁴

12 8. On July 19, 2011, the IFB Evaluation Committee, which consisted of Rose Ramsey,
13 Deputy Chief of Staff, Office of the Governor, Jesse Alig, Medical Referral Office, Office of the
14 Governor, and Vince Leon Guerrero, Governor's Education Advisor, Office of the Governor,
15 evaluated the Technical Bids submitted in response to the IFB.¹⁵

16 9. APM, which was evaluated in accordance with the evaluation criteria described in
17 Paragraph 3.e above, received forty-eight (48) points from Vince Leon Guerrero, forty-three (43)
18 points from Rose Ramsey, and forty-eight (48) points from Jesse Alig for a total average score of
19 forty-six-point-thirty-three (46.33) points.¹⁶

20 10. On July 20, 2011, GSA's Chief Procurement Officer (Hereafter referred to as
21 "CPO"), Claudia S. Acfalle, informed APM that GSA completed the technical evaluation of the
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25 ¹⁰ Paragraph 5, Id.

26 ¹¹ Paragraph 6, Id.

27 ¹² APM Stamped Acknowledgement Copy, IFB Amendment No. 2, Id.

28 ¹³ Paragraph 1, IFB Amendment No. 5, Tag 8, Id.

¹⁴ Abstract of Bids, Tab 6, Id., NOTE: GSA actually received GMRS' Bid on
July 12, 2011 at 3:44 p.m.

¹⁵ Evaluation Committee Report dated July 22, 2011, Tab 10, Id.

¹⁶ Id., NOTE: $48 + 43 + 48 = 139/3 = 46.33$

1 Phase I process of the Multi-Step Bid and that based on APM's overall score of forty-six-point-
2 thirty-three (46.33), APM's bid was deemed unacceptable.¹⁷

3 11. That day, APM acknowledged receiving the notice that GSA deemed their bid
4 unacceptable and requested that GSA's CPO advise APM how the evaluation committee reached
5 that conclusion.¹⁸

6 12. On July 22, 2011, GSA advised APM that APM's score was the result of the
7 Evaluation Committee evaluating APM's bid using the evaluation criteria set forth in the IFB.¹⁹

8 13. On July 22, 2011, APM requested whether and when GSA would return APM's Bid
9 Bond.²⁰ That same day, GSA's CPO instructed GSA Administrative Assistant Marissa Leon
10 Guerrero (Hereafter referred to as "Leon Guerrero") to return APM's Phase II envelope and to
11 contact APM and return the envelope no later than July 25, 2011.²¹ Leon Guerrero received this
12 instruction on July 22, 2011 and she also reviewed APM's request for its bid bond and she began
13 searching for it.²² In her search, Leon Guerrero inadvertently opened the sealed envelope that
14 contained APM's two page Bid Offer. She immediately informed the CPO and then prepared an
15 incident report documenting how and why Leon Guerrero opened Bid Cost envelope containing
16 APM's two page Bid Offer. She opened the Bid Cost envelope because the IFB's Amendment
17 No. 2 required the Bid Bond to be submitted in the envelope labeled Bid Cost.²³

18 14. On July 26, 2011, Leon Guerrero notified APM that its bid bond was available for
19 pick-up.²⁴

22 ¹⁷ Letter from Claudia S. Acfalle, GSA CPO to Peter A. Ada, APM President,
dated July 20, 2011, Tab 10, Id.

23 ¹⁸ E-Mail from Peter A. Ada, APM President, to Claudia S. Acfalle, GSA CPO,
dated July 20, 2011, Tab 10, Id.

24 ¹⁹ Reply E-Mail from Claudia S. Acfalle, GSA CPO, to Peter A. Ada, APM
President, dated July 22, 2011, Id.

25 ²⁰ E-mail from Peter A. Ada, APM President, to Claudia S. Acfalle, GSA CPO,
dated July 22, 2011, Tab 14, Id.

26 ²¹ Id.

27 ²² July 22, 2011 Memo to File by GSA Administrative Assistant Marissa D. Leon
Guerrero dated July 22, 2011, attached to GSA's August 4, 2011 Denial of
Protest, Tab 2, Id.

28 ²³ Id.

²⁴ Email dated August 3, 2011 from Peter A. Ada, APM President, to Claudia S.
Acfalle, GSA CPO, Tab 1, Id.

1 15. On August 2, 2011, APM President, Peter A. Ada, went to GSA to pick-up APM's
2 bid bond from Leon Guerrero.²⁵ Ada received APM's bid bond and the opened Bid Cost
3 Envelope in which APM's bid bond was found in, as required by IFB Amendment No. 2. APM
4 acknowledged receipt of Amendment No. 2 on July 1, 2011.²⁶

5 16. On August 3, 2011, APM delivered a protest to GSA's CPO in which APM: (1)
6 Questioned GSA's determination that APM's Technical Offer was unacceptable because it
7 scored only 46.33 points; (2) Alleged that APM's Bid Cost was tampered with because it was
8 opened; and (3) Questioning whether the Attorney General of Guam was required to approve the
9 contract for the solicitation because the contract price was more than \$500,000.²⁷

10 17. On August 4, 2011, GSA informed APM that: (1) GSA followed the Multi-Step
11 Sealed Bidding process; (2) APM's Bid Cost was opened on July 22, 2011 by mistake by Leon
12 Guerrero; and (3) GSA denied APM's "protest."²⁸

13 18. On August 5, 2011, APM received GSA's denial of APM's "protest."²⁹

14 19. On August 19, 2011, fourteen (14) days after receiving GSA's decision denying
15 APM's "protest," APM filed this appeal.

16 **III. ANALYSIS**

17 Pursuant to 5 G.C.A. 5703, the Public Auditor shall review GSA's August 4, 2011

18 *Decision de novo.*

19 **A. GSA's Motion to Exclude Appellant's Comments on the Agency Report is Granted.**

20 As a second preliminary matter, the Public Auditor must decide whether GSA's
21 September 19, 2011 Motion to Exclude Appellant's Comments on the Agency Report has merit.
22 The Appellant filed its response to the Agency report on September 12, 2011, and a letter to the
23 Public Auditor from the Appellant, dated September 5, 2011, was attached to the Appellant's
24 Comments, wherein the Appellant alleged: (1) Page 2 of IFB is not consistent with how the
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26 ²⁵ Id.

27 ²⁶ GSA Bid Guarantee Deposit Return dated July 22, 2011, Tab 14, Id.

28 ²⁷ Email dated August 3, 2011 from Peter A. Ada, APM President, to Claudia S. Acfalle, GSA CPO, Tab 1, Id.

29 ²⁸ GSA Decision Denying Protest dated August 3, 2011, Tab 2, Id.

²⁹ Email from Peter A. Ada, APM President, to Claudia S. Acfalle, GSA CPO, dated August 5, 2011, Tab 2, Id.

1 Medical Referral Program Actually Works; (2) The IFB does not require the bidders to describe
2 how they would treat a patient requiring oxygen; (3) Most of the Technical Bids from the other
3 bidders merely offered hotels; (4) The patients served by the program do not require
4 Recreational Facilities; (5) The IFB required that the Technical Bids would not be opened in
5 public; (6) Various IFB provisions were ambiguous; (7) IFB Sections III - B, C and D, were
6 not clear; (8) The Governor and Attorney General of Guam did not sign the contract included in
7 the IFB; (9) Tab 7 of the Procurement Record filed on August 26, 2011 does not include a
8 Purchase Order for Manila; (10) Tab 10 of the Procurement Record filed on August 26, 2011
9 does not include Vincent Leon Guerrero's signature; (11) A Mariana's Variety Article dated
10 August 3, 2011 appeared to contain information from a tip; (12) Some of the other bidders
11 would violate federal laws governing the management of patient information held by medical
12 care providers; (13) IFB Amendment 2 is deceiving; (14) The date the final contract was
13 signed was not clear.³⁰ These new allegations were not raised by APM in the form of a protest
14 and appear for the first time in this appeal. The Public Auditor's jurisdiction is limited to
15 reviewing GSA's August 4, 2011 Decision denying APM's August 3, 2011 Protest. 5 G.C.A.
16 §5425(e). APM did not protest the issues identified herein and they were not reviewed by GSA
17 nor are they part of GSA's August 4, 2011 Decision. Thus, the Public Auditor does not have
18 jurisdiction to hear these issues because they are not properly before her and GSA's Motion to
19 Exclude Appellant's Comments on the Agency Report is hereby GRANTED.

20 **B. GMRS' Motion to Dismiss Has No Merit.**

21 On September 19, 2011, Interested Party GMRS filed its Motion to Dismiss alleging that
22 APM's protest does not raise issues concerning irregularity in the process but instead voices a
23 generalized dissatisfaction.³¹ Generally, in the absence of an operative presumption, the
24 petitioning party has the burden of going forward as well as the burden of persuasion in an
25 administrative hearing. *Permits to Drain Related Stone Creek Channe Improvements, et.al. v.*

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27 ³⁰ Letter from Peter A. Ada, APM President, to Doris Flores Brooks, Public
28 Auditor, dated September 5, 2011, attached to Appellant's Response to the
Agency's Statement filed on September 12, 2011.

³¹ Line 2, Page 2, GMRS Motion to Dismiss filed on September 19, 2011.

1 *North Dakota Wildlife Society*, 424 N.W.2d 894, 898 (N. D., 1988). This means that APM has
2 the burden to produce evidence and persuade the Public Auditor that it is entitled to the relief it
3 seeks. Here, APM makes allegations concerning the solicitation process. Specifically, as
4 previously stated, APM's August 3, 2011 Protest: (1) Questioned GSA's determination that
5 APM's Technical Offer was unacceptable because it scored only 46.33 points; (2) Alleged that
6 its Bid Cost was tampered with because it was opened; and (3) Questioned whether the
7 Attorney General of Guam was required to approve the contract for the solicitation because the
8 contract price was more than \$500,000.³² GMRS seeks dismissal of this matter merely because
9 APM does not contest the award of the IFB and because APM's bid tampering allegations are of
10 no consequence.³³ However, if APM succeeds in showing its allegations have merit and that
11 Guam's Procurement Law and Regulations were violated as a result, the available remedies
12 include, generally, revising the solicitation to comply with the law or contract termination. 5
13 G.C.A. §5451 and §5452, and 2 G.A.R. Div. 4, Chap. 9, §9104 and §9105. Thus, the Public
14 Auditor finds that APM's allegations are of consequence if APM shows that Guam Procurement
15 Law or Regulations were violated and GMRS' Motion to Dismiss is hereby DENIED.

16 **C. APM's Motion Has No Merit.**

17 APM filed a document that it titled "Motion from the Appellant," on September 19, 2011.
18 However, APM merely states its opposition to GSA's Motion to Exclude APM's Comments on
19 the Agency Report without providing any legal authority in support of said opposition. The
20 Public Auditor will treat these arguments as an opposition to GSA's Motion to Exclude and not
21 as a separate motion. Further, APM argues GSA's August 30, 2011 Request for Quotations was
22 improper and a possible violation of assignment and sub-contracting clause of the IFB's contract.
23 However, these arguments are raised for the first time on appeal and therefore, the Public
24 Auditor does not have the jurisdiction to hear them as previously stated. 5 G.C.A. §5425(e).
25 APM also argues that GSA violated rules, policies or procedures by opening bids outside the
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28 ³² Email dated August 3, 2011 from Peter A. Ada, APM President, to Claudia S. Acfalle, GSA CPO, Tab 1, Id.

³³ Line 13, page 3, GMRS' Motion to Dismiss filed on September 19, 2011.

1 presence of the bidders.³⁴ However, this argument is not supported by Guam Procurement Law
2 and Regulations. As previously stated, the solicitation at issue in this matter was a Multi-Step
3 Sealed Bidding process. Multi-Step Sealed Bidding two-phase process consisting of a technical
4 first phase in which bidders submit unpriced technical offers and a second phase in which those
5 bidders whose technical offers are determined to be acceptable during the first phase have their
6 priced bids considered. 5 G.C.A. §5211(h) and 2 G.A.R., Div. 4, Chap. 3, §3109(r)(1). As
7 previously stated, APM's unpriced technical offer was not opened in public during Phase I of the
8 solicitation. This is consistent with Guam Procurement Regulations because unpriced technical
9 offers are not supposed to be opened in public but shall be opened in front of two or more
10 procurement officials and such offers shall not be disclosed to unauthorized persons. 2 G.A.R.,
11 Div. 4, Chap. 3, §3109(t)(3). It appears that APM confuses the opening of its unpriced technical
12 offer with the opening of priced bids in Phase II of the Multi-Step Sealed Bidding process in
13 which the priced bids are opened in public and in the presence of one or more witnesses. 5
14 G.C.A. §5211(d) and 2 G.A.R., Div. 4, Chap. 3, §3109(l)(2) and (v)(2). Finally, APM argues
15 that the evaluation of his unpriced technical offer was not located in the procurement file.³⁵
16 However, the Public Auditor notes that GSA's Evaluation Committee Report, which includes the
17 scoring of APM's unpriced technical offer, is located in Tab 10 of the Procurement Record filed
18 on August 26, 2011 and GSA's summary of said evaluation and approval of the scores, to
19 include APM's score, is located in Tab 13 of said record. Based on the foregoing, the Motion
20 from the Appellant is hereby DENIED.

21 **D. APM's Protest has no Merit.**

22 APM's appeal must fail because APM can show no violation of Guam Procurement Law
23 and Regulations occurring as a result of its unpriced technical offer being found unacceptable
24 and GSA's opening of APM's priced bid to return APM's bid bond.

25 APM alleges that its unpriced technical offer should not have been deemed unacceptable
26 due to APM's Medical Referral Program experience and lower price.³⁶ Unpriced Technical

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28 ³⁴ Page 4-5, Motion from the Appellant filed on September 19, 2011.

³⁵ Page 5, Id.

³⁶ Page 4, Id.

1 Offers submitted in a Multi-Step Sealed Bidding process shall be evaluated solely in accordance
2 with the criteria set forth in the invitation for bids and shall be characterized as acceptable,
3 potentially acceptable, or unacceptable. 2 G.A.R. Div. 4, Chap. 3, §3109(t)(4). Here, as
4 previously stated, APM's unpriced technical offer was evaluated in accordance with the
5 evaluation criteria described in the IFB and APM received a total score of forty-six-point-thirty-
6 three (46.33) points.³⁷ As previously stated, the IFB deemed scores of 80-100 points as
7 acceptable; scores of 60-79 points as potentially acceptable; and scores below 60 points as
8 unacceptable.³⁸ Here, in accordance with the IFB, APM's unpriced technical offer was deemed
9 unacceptable because its total score of forty-six-point-thirty-three (46.33) was below sixty (60)
10 points. Only a maximum of fifteen (15) points could have been awarded for a bidder's general
11 experience.³⁹ APM in fact received an average of eight (8) points in this category.⁴⁰ Thus, even
12 if APM received the maximum score in this category by obtaining six (6) extra points its total
13 score would only be increased to fifty-two-point-thirty-three (52.33) and still be deemed
14 unacceptable. Further, whether APM's price was lower than another bidder's priced bid is
15 irrelevant as only bidders whose unpriced technical offers that are deemed acceptable by the
16 purchasing agency in Phase I of the Multi-Step Sealed Bidding process are allowed to have their
17 priced bids considered in Phase II of said process. 2 G.A.R., Div. 4, Chap. 3, §3109(v)(1). Here,
18 as a result of its unpriced technical offer being rated as unacceptable, APM is not entitled to have
19 its priced offer considered in Phase II of the Multi-Step Sealed Bidding process. The Public
20 Auditor finds that GSA evaluated and scored APM's bid in accordance with the IFB and Guam
21 Procurement Law and Regulations.

22 There is no evidence that APM's bid cost was tampered with. APM's only evidence of
23 tampering was that APM received its original bid cost envelope opened from GSA on August 2,
24 2011. However, as previously stated, APM specifically requested that GSA return its bid bond
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26 ³⁷ Id., NOTE: $48 + 43 + 48 = 139/3 = 46.33$

27 ³⁸ Paragraph V., page 10, Id.

28 ³⁹ Paragraph V.A., Id.

⁴⁰ GSA Evaluation Committee Report dated July 22, 2011, Tab 10, Procurement Record filed on August 26, 2011. NOTE: $10 + 8 + 5 = 23/3 = 7.67 \approx 8$ (rounded)

1 after GSA deemed APM's bid unacceptable. Further, as previously stated, the IFB specifically
2 required that the bidders place their bid bonds in the Bid Cost envelope.⁴¹ Thus, APM knew or
3 should have known that GSA would have to open its Bid Cost envelope to comply with APM's
4 request that GSA retrieve and return APM's bid bond. Thus, the Public Auditor finds that
5 APM's bid was not "tampered" with.

6 Finally, the issue of whether the Attorney General of Guam served as GSA's legal
7 advisor for this solicitation is moot. Whenever GSA's CPO conducts any solicitation or
8 procurement which is estimated to result in an award of five-hundred-thousand-dollars
9 (\$500,000) or more, the Attorney General of Guam shall act as legal advisor during all phases of
10 the solicitation or procurement process. 5 G.C.A. §5150. However, the Attorney General, the
11 Deputy Attorney General, or such Assistant Attorneys General as the Attorney General may
12 designate, shall serve as legal counsel and provide necessary legal services to GSA. Id. Thus,
13 the Attorney General's Office is already GSA's legal counsel. Here, APM only asks whether the
14 Attorney General of Guam is participating in all facets of the process.⁴² However, the Attorney
15 General must provide only the necessary legal services for this solicitation and APM does not
16 allege how they failed to provide such services. In fact, the GSA CPO had the Attorney
17 General's Office review the prior Medical Referral Services Contract to determine what
18 solicitation method was proper for soliciting the new contract and GSA was advised that they
19 must use competitive sealed bidding.⁴³ Further, GSA states that the Attorney General's office
20 began an investigation concerning APM's August 3, 2011 allegations but stopped once APM
21 filed this appeal.⁴⁴ Finally, the Public Auditor notes that neither the Attorney General nor the
22 Governor of Guam have approved the contract in this matter. However, it appears, based on the
23 record in this matter, that they were prevented from doing so on August 3, 2011 as a result of
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25 ⁴¹ Paragraph 1, IFB Amendment No. 2, Tab 8, Procurement Record filed on August
26 26, 2011.

27 ⁴² Paragraph 2, Statement of Grounds for Appeal, Notice of Appeal filed on
28 August 19, 2011.

⁴³ Memorandum dated June 9, 2011 from J. Patrick Mason, Deputy Attorney
General to Claudia S. Acfalle, GSA CPO, re Contract for Medical Referral
Services, Tab 18, Agency Report filed on September 2, 2011.

⁴⁴ Page 2, Tab 1, Agency Report, filed on September 2, 2011, Id.

1 APM's Protest and the automatic stay of further acts concerning the solicitation or award of the
2 contract until the protest and this appeal were resolved. Thus, the Public Auditor finds that the
3 Attorney General of Guam is serving as GSA legal counsel and has provided the necessary legal
4 services requested by GSA.

5 IV. CONCLUSION

6 Based on the foregoing the Public Auditor hereby determines the following:

7 1. GSA's Motion to Exclude Appellant's Comments on the Agency Report is hereby
8 GRANTED.

9 2. GMRS' Motion to Dismiss is hereby DENIED.

10 3. The Motion from the Appellant is hereby DENIED.

11 4. APM's appeal must fail because APM can show no violation of Guam Procurement
12 Law and Regulations occurring as a result of its unpriced technical offer being found
13 unacceptable, GSA's opening of APM's priced bid to return APM's bid bond, and the Attorney
14 General of Guam serving as GSA's Legal Counsel.

15 5. APM's Appeal is hereby DENIED.

16 This is a Final Administrative Decision. The Parties are hereby informed of their right to
17 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
18 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative
19 Decision. 5 G.C.A. §5481(a).

20 A copy of this Decision shall be provided to the parties and their respective attorneys, in
21 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA website
22 www.guamopa.org.

23
24 **DATED** this 6th day of January, 2012.

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28 DORIS FLORES BROOKS, CPA, CGFM
PUBLIC AUDITOR

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FAX

To: Mr. Peter Alexis Ada
 President
 APM: Guam Medical Referral Services
 (Appellant)

 Mr. Robert Kono, Esq.
 Legal Counsel, GSA

 Ms. Claudia S. Achille
 Chief Procurement Officer, GSA

From: Doris Flores Brooks, CPA, CGFM
 Public Auditor
 OPA Procurement Appeals
 Suite 401 DNA Bldg.
 238 Archbishop Flores St.
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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct