



Office of the Attorney General
Leonardo M. Rapadas
 Attorney General of Guam
Civil Division
 287 West O'Brien Drive
 Hagåtña, Guam 96910 • USA
 (671) 475-3324 • (671) 472-2493 (Fax)
 www.guamattorneygeneral.com

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

JAN 20 2011

TIME: 9:16 BY: mhv
 FILE NO. OPA-PA: 11-001

Attorneys for the Government of Guam

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

IN THE APPEAL OF)	DOCKET NO. OPA-PA-11-001
)	
JMI – EDISON,)	
)	
Appellant.)	AGENCY REPORT
)	
)	
)	

Comes now the Office of the Attorney General, attorneys for the General Services Agency, submits this agency report as required by Guam law and the procurement regulation duly enacted by the Office of the Public Auditor.

Matters Required by 2 GAR, Div. 4, §12105

- (a) A copy of the bid protest may be found at Tab 1 of the Procurement Record.
- (b) A copy of the protest response is found at Tab 2 of the Procurement Record.
- (c) A copy of the bid submitted by JMI – Edison, is found at Tab 3 of the Procurement Record.
- (d) A copy of the bid submitted by Medpharm, is found at Tab 4 of the Procurement Record.

- (e) A copy of the original bid solicitation is found at Tab 5 of the Procurement Record.
- (f) A copy of the abstract of bids and register is found at Tab 6 of the Procurement Record.
- (g) A copy of the Freedom of Information Request is found at Tab 7 of the Procurement Record.
- (h) A copy of the Response to DPHSS request for clarification on specification offered is found at Tab 8 of the Procurement Record.
- (i) A copy of the Notice of Stay of Procurement is found at Tab 9 of the Procurement Record.
- (j) A copy of the purchase order is found at Tab 10 of the Procurement Record.
- (k) A copy of the Bid Status issued to JMI-Edison is found at Tab 11 of the Procurement Record.
- (l) A copy of the bid analysis is found at Tab 12 of the Procurement Record.
- (m) A copy of the approval of Response to Bid Specification is found at Tab 13 of the Procurement Record.
- (n) A copy of the Amendments Issued is found at Tab 14 of the Procurement Record.
- (o) A copy of the Questions and Responses is found at Tab 15 of the Procurement Record.
- (p) A copy of the Newspaper advertisement is found at Tab 16 of the Procurement Record.
- (q) A copy of the Approval of Specification is found at Tab 17 of the Procurement Record.

Record.

(s) A copy of the Requisition is found at Tab 18 of the Procurement Record.

On 6 July 2010, the General Services Agency (GSA) approved Invitation for Bid No. GSA-105-10 for a Radiology Imaging System. On 9 July 2010 GSA published Bid No. GSA-105-10. As part of this publication, the bid announcement appeared in the *Marianas Variety*, newspaper, Guam Edition. See Procurement Record, tab 16.

Six (6) vendors picked up the bid package, to wit: JMI-Edison, G4S, Medpharm, DNA, Megabyte and MD Wholesale.

On 23 July 2010, at 10:00 a.m., the bids were opened. Two (2) bidders submitted bids, namely: JMI-Edison and Medpharm. See Procurement Record, tabs 3 and 4. The same day, GSA sent a memorandum to the Department of Public Health and Social Services requesting review and evaluation of the specifications provided by JMI-Edison and Medpharm in their bid packages. Then on 26 July 2010 Public Health and Social Services responded, stating that both bid packages met the specifications published in the Invitation to Bid. See Procurement Record tab 13. An analysis by GSA ensued, resulting in a recommendation on 28 July 2010 to go with Medpharm as the lowest bidder; each bidder having met specs. See Procurement Record tab 12. Also on 28 July 2010, the Chief Procurement Officer issued purchase order no. P106A06027 to Medpharm accepting their bid and a contract was signed by GSA and Medpharm on the same date for the Radiology Imaging System needed by Public Health and Social Services. JMI-Edison was notified by GSA that the bid was awarded to Medpharm also 28 July on 2010. See Procurement Record tab 11.

On 6 August 2010, JMI-Edison filed a protest basically alleging that the System Medpharm was providing failed to conform to the bid specifications. See Procurement Record, tab 1. On

16 December 2010, GSA responded to JMI-Edison's protest by a denial thereof. See Procurement Record, tab 2.

Even though an award had been made by the time of the Protest, a stay was entered by GSA on 14 September, 2010. See Procurement Record, tab 9. (See Guam Imaging Consultants, Inc. v. Guam Memorial Hospital Authority, 2004 Guam 15, ¶34.

Guam procurement law provides that bids will be unconditionally accepted and then evaluated based upon the requirements set forth in the Invitation for Bids. 5 GCA §5211(e). GSA exercised due diligence in confirming with the Department of Health and Social Services that the bid received from Medpharm was responsive to, and in conformity with, the Bid Specifications.

Nonetheless, there exists a difference of opinion here as to the satisfaction of the Bid Specifications by the bid from Medpharm. Yet the agency responsible for utilization of the MRI equipment being procured (Department of Health and Social Services) has conclusively determined that the MRI equipment meets the Invitation for Bid Specifications. In this regard, Guam procurement law provides that "All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory's needs and shall not be unduly restrictive". 5 GCA §5265.

Conclusion

The Territory's needs have been met by Medpharm, competition has been encouraged, overall economy and cost savings have been achieved by the action taken on this procurement by GSA and the Department of Health and Social Services. The denial of the protest of JMI-Edison by the Chief Procurement Officer should be upheld by the Public Auditor in this matter.

The award was made prior to the protest.

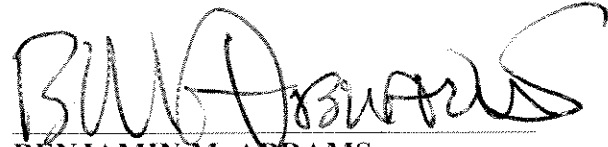
The undersigned party does hereby confirm that to the best of his knowledge, no case or action

concerning the subject of this Appeal has been commenced in court. All parties are required, and the undersigned party agrees, to notify the Office of the Public Auditor within 24 hours if it comes to its attention that court action has commenced in connection with this Appeal and/or the underlying procurement process.

Respectfully submitted, this 19th day of January 2011.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By:

A handwritten signature in black ink, appearing to read "B.M. Abrams", written over a horizontal line.

BENJAMIN M. ABRAMS
Assistant Attorney General