

1 **FISHER & ASSOCIATES**
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5 Telephone: (671) 472-1131
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7
8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **GOVERNMENT OF GUAM**

10 IN THE APPEAL OF :

CASE NO: OPA-PA 13-009

11 JMI EDISON,

12 Appellant.

13 **GUAM MEMORIAL HOSPITAL AUTHORITY**

14 **AGENCY REPORT**

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16
17
18 **RECEIVED**


19 OFFICE OF PUBLIC ACCOUNTABILITY
20 PROCUREMENT APPEALS

21 DATE: 8/15/2013

22 TIME: 3:10 AM PM BY: R. Feld

23 FILE NO OPA-PA: 13-009

24 **FISHER & ASSOCIATES**

25 
26 Minakshi V. Hemlani, Esq.
27 Counsel for GMHA
28

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **GOVERNMENT OF GUAM**

10 IN THE APPEAL OF :

CASE NO: OPA-PA 13-009

11 JMI EDISON,

AGENCY SUBMISSION OF REPORT

12 Appellant.

INDEX

13 **COMES NOW** the Guam Memorial Hospital Authority, by and through counsel of record
14 Fisher & Associates, and submits its agency procurement record. This record is submitted pursuant to 2
15 Guam Admin. R. & Regs. 12105.

16 **INDEX**

- 17
- 18 I. A copy of the protest
- 19
- 20 II. A copy of the bid or offer submitted by the Appellant;
21 A copy of the bid or offer that has been awarded;
22 A copy of all other bids or offers
- 23 III. A copy of the solicitation
- 24 IV. A copy of the abstract of bids or offers
- 25 V. Any other documents which are relevant to the protest
26 including the contract if one has been awarded
- 27 VI. The decision from which the Appeal is taken
- 28 VII. A statement answering the allegation of the Appeal

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VIII. If the award was made after receipt of the protest,
the report will include the determination required under
2 GAR §9101(e)

IX. A statement indicating whether the matter is the subject of
a court proceeding.

I.

A Copy of the Protest

Please see Agency Procurement Record filed August 8, 2013, at Tab I(a)

II.

- A Copy of the Bid or Offer submitted by the Appellant;
- A Copy of the Bid or Offer that has been awarded

Please see this Agency Supplemental Procurement Record filed August 15, 2013.

III.
A Copy of the Solicitation

Please see Agency Procurement Record filed August 8, 2013, at Tab F.

IV.

A Copy of the Abstract of Bids or Offers

Please see Agency Procurement Record filed August 8, 2013, at Tab G.

V.

Any Other Documents which are Relevant to the Protest

Attached herewith, and see Agency Procurement Record filed August 8, 2013 and Agency Supplemental Procurement Record filed August 15, 2013.



Guam Memorial Hospital Authority Aturidāt Espitāt Mimuriāt Guāhān



**850 Gov. Carlos G. Camacho Road
Oka, Tamuning, Guam 96913-3128
Tel: (671) 647-2555 thru 9
Fax: (671) 649-3640**

Vendor: MEDPHARM CORPORATION
P.O. BOX 11864

TAMUNING GU 96931
Ph 671-632-6000 Fax 671-632-9000

Ship To: GUAM MEMORIAL HOSPITAL
850 GOV CARLOS G. CAMACHO ROAD
TAMUNING, GUAM 96913

PURCHASE ORDER Number: 20132831-000
Purchase Order Date: 6/04/2013

Vendor Number: 7753

Page 1 OF 1

ASSETS	JOB ORDER # / OBJ CLASS	INVITATION #/CONTRACT #	Ship Via	FOB	Terms	
1000		GMHA IFB 020-2012	LOCAL TRANSPORT	DESTINATION	NET 60	
Buyer	EXPIRATION DATE	AUTHORITY/REMARKS		DUE DATE	TAX	
RL	9/30/2013	3-202/3-501.09.2/R13-8791-668		8/15/2013		
LINE	QTY ORDERED	UNIT OF MEASURE	YOUR ITEM NUMBER	OUR ITEM NUMBER	UNIT PRICE	EXTENDED PRICE
	QTY RECEIVED	QTY OPEN	ITEM DESCRIPTION		DATE REQUIRED	
001	15	EA	X36	202012	23,795.0000	356,925.00
		15	MACHINE DIALYSIS PHOENIX 36			
			- THIS IS FOR 15 EACH PORTABLE KIDNEY MACHINES WITH REVERSE OSMOSIS WATER PURIFICATION SYSTEMS. EACH MACHINE COMBINATION IS MOUNTED ON ONE TRANSPORT CART FOR EASY ACCESS DURING TREATMENTS.			
002	1	EA		4400064	5,000.0000	5,000.00
		1	TRAINING - ON SITE CLINICAL			
			- THIS IS FOR ONE ON-SITE CLINICAL TRAINER TO PROVIDE CLINICAL TRAINING FOR CLINICAL PERSONNAL HERE AT GUAM MEMORIAL HOSPITAL.			
003	1	EA		4400066	19,000.0000	19,000.00
		1	TRAINING - BIO-MED			
			- THIS IS TRAINING FOR BIO-MEDICAL PERSONNAL TO BE CONDUCTED AT THE MANUFACTURES TRAINING FACILITY.			
			- FUNDING SOURCE : FY 11 DOI AND FY 11 HPP			
			- DELIVER MACHINES 45 DAYS AFTER RECEIPT OF PURCHASE ORDER.			
REMARKS:						DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THE TOTAL BELOW
Send certified ORIGINAL and three (3) copies of Invoice to Materials Mgmt. Dept. 850 Gov Carlos Camacho Rd., Tamuning, Guam 96913 Payment upon receipt of merchandise in Guam in good condition. This order is subject to conditions on reverse side. This order is subject to special provisions, and Bid Conditions specified on this Bid. On all air shipments have air freight company call this number upon arrival of goods in Guam.						Subtotal 380,925.00
Contractors: Please supply promptly the above articles or services. All correspondence pertaining to this order including invoices, shipping documents and packages must bear the purchase order number shown above.						Discount .00
SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.						Freight .00
						Grand Total 380,925.00

Melvin Pangelinan 7/17/13
ACKNOWLEDGEMENT SIGNATURE AND DATE

ACKNOWLEDGEMENT COPY

Joseph P. Verga
Joseph P. Verga
HOSPITAL ADMINISTRATOR / CEO

VI.

The Decision from which the Appeal is Taken

Please see Agency Procurement Record filed August 8, 2013, at Tab I(a).

VII.

A Statement Answering the Allegation of the Appeal

Attached herewith.

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **GOVERNMENT OF GUAM**

10 IN THE APPEAL OF :

CASE NO: OPA-PA 13-009

11 JMI EDISON,

AGENCY STATEMENT

12 Appellant.

13 **COMES NOW** the Guam Memorial Hospital Authority (“GMHA”), by and through counsel of
14 record Fisher & Associates, and submits its Agency Statement in response to Appellant JMI Edison’s
15 procurement appeal filed August 1, 2013. This Statement is submitted pursuant to 2 Guam Admin. R.
16 & Regs. 12105(g).

17 **STATEMENT OF FACT**

18 On September 21, 2012, the GMHA issued an invitation for interested parties to submit bids for
19 portable kidney machines with reverse osmosis water purification machines. *See Agency Procurement*
20 *Record at Tab F*. Three offerors, JMI Edison, MedPharm, and JC Marketing, submitted bids that were
21 opened on October 19, 2012. *See Agency Procurement Record at Tab F*. Representatives from the
22 offering companies were present at bid opening. *See Agency Procurement Record at Tab A at Bid*
23 *Opening Sign in Sheet, and Tab C – Sound Recording of Bid Opening*¹.

24 On October 31, 2012, MedPharm timely submitted a bid protest alleging noncompliance by JMI
25 Edison and JC Marketing. *See Agency Procurement Record at Tab I(b)*. In its protest, MedPharm
26

27
28 ¹ Counsel for Appellant is creating a copy of the sound recording provided to it by the GMHA in response to Appellant’s
FOIA request. The GMHA will remit a copy of the sound recording to the Office of the Public Auditor upon receipt.

1 Therefore, JMI's perceived deficiencies were known or should have been known to JMI at bid
2 opening on October 19, 2012.

3 JMI Edison cites to *Tumon Corporation v. GMHA*, CV 1420-01 as supporting its contention
4 that it did not become an "aggrieved" party until the GMHA selected an offeror for contract award.
5 However, that analysis is misguided. In the *Tumon* case, Plaintiff protested the GMHA's decision to
6 reject all bids and re-solicit the bid after Plaintiff received a notice of intent to award the contract.
7 Plaintiff sought judicial review and an order that the GMHA award the contract to Plaintiff. The
8 Superior Court of Guam examined the issue of whether a winning bidder could be an "aggrieved"
9 party under 5 GCA § 5425(a) or (g). The Court did not, as JMI Edison suggests, define an aggrieved
10 bidder as a losing bidder; it determined that because Tumon Corporation received a notice of intent
11 to award the contract, it could not be considered aggrieved. The distinction is significant.

12 Moreover, 5 GCA § 5425(a) clearly states that the right to protest lies with "[a]ny *actual or*
13 *prospective bidder, offeror, or contractor who may be aggrieved* in connection with the method of
14 source selection, solicitation or award of a contract." *Id.* (Emphasis added). The statute does not
15 require that an actual or prospective bidder be aggrieved in order to have a right to protest. Indeed,
16 bid protests can be, and are, filed before the award of a contract and at other times during the
17 procurement process.

18
19 In this case, MedPharm submitted its timely protest after bid opening on October 31, 2012,
20 alleging similar deficiencies to those that JMI Edison did not raise until June 21, 2013. Therefore,
21 JMI Edison cannot contend that their protest – filed almost 8 months after bid opening - was timely.

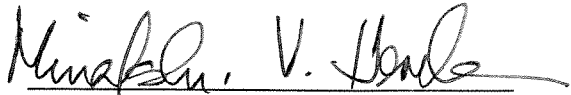
22 Accepting for purposes of this appeal that the deficiencies alleged by JMI Edison exist, they
23 are best characterized as items of nonconformance and not nonresponse. MedPharm's bid
24 conformed in all material respects to the invitation for bid; that is it offered to supply a portable
25

26 ///

27 ///

1 kidney machine with reverse osmosis water purification machine in conformity with all *material*
2 terms and conditions of the solicitation. Therefore Appellant JMI Edison's protest is both untimely
3 and without merit.
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FISHER & ASSOCIATES



Minakshi V. Hemlani, Esq.
Counsel for GMHA

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VIII.

A Determination Required under 2 GAR §9101(e)

Not applicable.

IX.

A Statement Indicating whether the Matter is the Subject of a Court Proceeding

Attached herewith.

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10 IN THE APPEAL OF :

11 JMI EDISON,

12 Appellant.

CASE NO: OPA-PA 13-009


**AGENCY DECLARATION
RE COURT ACTION**

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

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

20 Submitted this 15th day of August, 2013.

21
22 By: _____


23 Joseph P. Verga, MS, FACHE
24 Hospital Administrator/CEO
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