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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 3/28/17

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FILE NO OPA-PA: 17-004

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
7 **HAGÁTÑA, GUAM**

8 IN RE THE APPEAL OF)
9 JMI-EDISON)

OPA-PA-17-004

10) **MOTION TO DISMISS**
11)
12)
13)
14)

15
16 ***** Motion *****

17 **COMES NOW** the Guam Memorial Hospital Authority and moves to dismiss the
18 instant appeal for want of jurisdiction in the Office of Public Accountability.

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20 ***** Statement of Fact *****

- 21 1. On 20 March 2017 Appellant JMI Edison (JMI) filed the instant Appeal.
22 2. In that Appeal, JMI alleged the Appeal is made “from a decision on
23 Contract or Breach of Contract Controversy excluding claims of money owed by
24 the Government.” *See Notice of Appeal (hereinafter “Appeal”), OPA-PA-17-004,*
25 *at p.2.*
3. In that Appeal, JMI stated “[o]n November 23, 2016, JMI wrote to GMHA

1 asking for resolution of the dispute with the hospital regarding the total amount of
2 the interest due to JMI on past due invoices. In the event a satisfactory resolution
3 was not possible, JMI requested a final written decision. Correspondence from
4 JMI to GMHA, attached as **Exhibit A.**” *Id at p. 3, emphasis in original.*

5 4. In Exhibit A, JMI states,

6 “I write because of a dispute that has emerged regarding the interest
7 payments due to JMI-Edison (JMI) for equipment, supplies, & services provided
8 to the Guam Memorial Hospital. I am seeking your assistance in resolving this
9 dispute by mutual agreement. The Guam Memorial Hospital Authority owes JMI,
10 as of October 31, 2016, \$175,434.55 in unpaid interest on past due amounts.” *Id*
11 *at Exhibit A, p. 1, emphasis added.*

12 5. In its Appeal, JMI seeks “a determination from the OPA that the Guam
13 Memorial Hospital shall pay to JMI interest on amounts due to JMI-Edison at the
14 rate equal to that of judgements.” *Id at p.5, emphasis added.*

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16 ***** Memorandum of Points and Authority *****

17 The jurisdiction of the Office of Public Accountability extends to
18 procurement appeals but “[t]he Public Auditor shall not have jurisdiction over
19 disputes having to do with money owed to or by the government of Guam.” 5
20 *Guam Code Ann. §5703, see also 2 Guam Admin. R. & Reg. 12103*, “The Public
21 Auditor shall not have jurisdiction over disputes having to do with money owed
22 to or by the government of Guam” *and 12113*, “Disputes having to do with
23 money owed to or by the government of Guam shall not be submitted.”

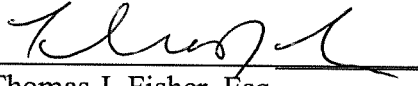
24 Here, JMI contends that it is owed more money because the GMHA used
25 a lower rate in calculating interest than (so it says) the law requires. To argue

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this is not a dispute having to do with money owed is sophism. This is not to say JMI is without recourse though; it may have a claim under the Government Claims Act and might wish to proceed under that statute. *See 5 Guam Code Ann. §6101 et seq.*

WHEREFORE the Guam Memorial Hospital Authority prays this Office Dismiss the Appeal for want of jurisdiction.

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For Guam Memorial Hospital Authority.