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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS



DATE: 02/11/2020

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FILE NO OPA-PA: 20-002

**Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL**

**PART I- To be completed by OPA**

In the Appeal of \_\_\_\_\_ )  
 ) **NOTICE OF APPEAL**  
 )  
 )  
(Name of Company), APPELLANT )  
 ) Docket No. OPA-PA 20-002  
 )  
 )

**PART II- Appellant Information**

Name: Thomas J. Fisher  
Mailing Address: 46a Guam Medical Referral Services  
Business Address: Suite 101 De la Corte Bldg  
167 E. Marine Corps Dr.  
Email Address: Hignitna.guam@gmail.com  
Daytime Contact No: 1671-477-4676  
Fax No.: 1671-472-2886

**PART III- Appeal Information**

- A) Purchasing Agency: General Services Agency
- B) Identification/Number of Procurement, Solicitation, or Contract: GSA/REF 20-0240 001
- C) Decision being appealed was made on 08 FEB 2020 (date) by:  
 Chief Procurement Officer     Director of Public Works     Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

- D) Appeal is made from:  
(Please select one and attach a copy of the Decision to this form)  
 Decision on Protest of Method, Solicitation or Award  
 Decision on Debarment or Suspension  
 Decision on Contract or Breach of Contract Controversy  
(Excluding claims of money owed to or by the government)  
 Determination on Award not Stayed Pending Protest or Appeal  
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

**ORIGINAL**

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

Unknown  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*

**PART V- Declaration Re Court Action**

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

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

Submitted this \_\_\_ day of \_\_\_\_, 20\_\_

By: Thomas J. Fisher  
APPELLANT

or

By: N/A  
Appellant's Duly Authorized Representative  
(Address)  
(Phone No.)

This is an appeal of an agency determination of Appellant's third protest in regard to GSA Bid No. GSA/ RFP-20-0240-001, a solicitation for Medical Referral Assistance in Manila, Republic of the Philippines, Los Angeles, California and Honolulu, Hawaii. Appellant Guam Medical Referral Service is a potential offeror in this procurement.

On 29 January 2020 Appellee General Services Agency (GSA) amended the referenced Request for Proposal at page 5 to change the evaluation criteria as contained within the original Request. This was done for an improper purpose and serves to favor one offeror over another.

As a result of the change, a wholly new category was included "To demonstrate 'Voucher System' to manage, approve, and verify record services will be performed." See *Amendment 6, GSA/ RFP-20-0240-001, 29 January 2020*. 5 Guam Code Ann. §11.102(e)(1) however places the responsibility for developing the voucher system squarely within the purview of the MRAO, that is the Medical Referral Assistance Office within the Office of I Maga'låhen Guåhan and not the contracted assistance provider. Accordingly, addition of this criterion is superfluous, inappropriately weighs offeror qualification, is not contained within required "Contents of Proposal", see *id at p.4*, contrary to law, and is included for an improper purpose.

GSA's amendment has re-weighted the evaluation criteria for no apparent reason and most probably to disadvantage one potential offeror and favor another. It should be noted that appellant is aware of no prior protest concerning the weight assigned to the categories and concludes that this change may well have been the result of improper influence or ex parte communication between the GSA and a potential offeror.

As an example of the re-weight bias, where an entity has performed similar services, the weighted value of that prior performance is now diminished though this is by any measure a cardinal, relevant requirement. As a further example of the bias, where an entity has specific experience performing the service, the value of that experience is diminished though this too is an obvious, necessary, relevant requirement. As another example of the re-weight bias, where an entity has a record of past performance of similar work, the value of that work is diminished though this is, like the preceding criteria, a cardinal, relevant requirement. Yet another example of this weight bias is found in the importance assigned an offeror's demonstrated ability to meet schedules or deadlines. Here the GSA has reassigned a lesser value to that demonstrated ability though it too is of central importance to determining qualification.

When taken as a whole, it appears that the GSA has accomplished all this in order to assist an inexperienced offeror to the detriment of any offeror who has the necessary experience. This is all the more apparent by the inclusion of a new, unnecessary criterion that is given the same value as demonstrated skill and experience necessary to perform the contract. This re-weight is improper and contrary to law. Accordingly, and as a potential offeror, Guam Medical Referral Service protested the specifications included and as amended and now appeals the GSA's determination of that protest.

Your Appellant now asks that the Agency be directed to reform the criterion to their original weight.



Thomas J. Fisher  
Appellant Guam Medical Referral Service



EDWARD M. BIRN  
Director (Direktot)

EDITH C. PANGELINAN  
Deputy Director (Sigundo Direktot)

# DEPARTMENT OF ADMINISTRATION

DIPATTAMENTON ATMENESTRASION

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Telephone (Telifon): (671) 475-1707/1729 • Fax (Faks): (671) 472-4217/1727



LOURDES A. LEON GUERRERO  
Governor (Maga'håga)

JOSHUA F. TENORIO  
Lt. Governor (Sigundo Maga'låhi)

February 8, 2020

Memorandum

Guam Medical Referral Service  
Mr. Thomas Fisher  
Suite 102, Dela Corte Building  
167 Marine Corps Drive  
Hagatna, Guam 96910

Re: Protest of January 30, 2020

We are in receipt of your protest dated January 30, 2020, in which you are protesting GSA/RFP 20-240-001, a solicitation for Medical Referral Assistance for Los Angeles, California, and Honolulu, Hawaii. The basis for your protest is that the inclusion of the Voucher System in the evaluation criteria was "superfluous, inappropriately weighs offeror qualification, not contained within required "Contents of Proposal".

You further alleged that the amendment has re-weighted the evaluation criteria for no apparent reason and most probably to disadvantage one potential offeror and favor another. You believe that this re-weight is contrary to law, and this protest is to exclude the specifications included and as amended.

### GSA Response:

GSA reviewed the evaluation criteria based upon your protest letter of December 26, 2019, in which you inquired " ...whether GSA deems a "voucher type system" to be a part of the proposal and subsequent contract, what does the GSA deem a "voucher type system to be?"

In reviewing the law that establishes the criteria for the medical referral assistance program, a voucher system was a required item. See 5 GCA Chapter 1, Section 11.2(e)(1). As such, inclusion of this system in the evaluation criteria was appropriate to ensure that it met the requirement of law. The establishment of this system should not be difficult for a current contractor to capture the costs for running the program.

Based upon the above, your protest is deemed to be without merit and is **DENIED**. You may seek any administrative or judicial review authorized by law.

Please Print	
ACKNOWLEDGEMENT COPY (Re-fax to GSA)	
Received By:	_____
Date:	_____
Company Name:	_____
Fax to: 475-1727 or 472-4217	
E-mail to: gsaprourement@gsadoa.guam.gov	

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer



EDWARD M. BIRN  
Director (Direktot)

EDITH C. PANGELINAN  
Deputy Director (Sigundo Direktot)

**DEPARTMENT OF  
ADMINISTRATION**  
DIPATTAMENTON ATMENESTRASION

GENERAL SERVICES AGENCY  
(Ahensian Setbision Hinirat)

Telephone (Telifon): (671) 475-1707/1729 • Fax (Faks): (671) 472-4217/1727



LOURDES A. LEON GUERRERO  
Governor (Maga'hága)

JOSHUA F. TENORIO  
Lt. Governor (Sigundo Maga'láhi)

January 29, 2020

Request for Proposal: GOV/RFP-20-0240-01  
GUAM MEDICAL REFERRAL ASSISTANCE

AMENDMENT #6

1. Amend to replace "Page 5 of 58" with the "Revised 01/29/20" page 5 of 58" (Attached)
2. Amend page 16 of 58 under "I Satellite Operation Requirements" to the following:

**From:**

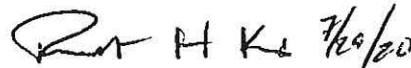
- A. Establish a central coordination site (virtual or physical) within the seven (7) mile radius of the Los Angeles, California area.

**To Now Read:**

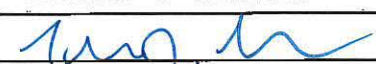
- A. Establish a central coordination site (virtual or physical) surrounding the following hospitals:

The University of California, Los Angeles  
Children's Hospital, Los Angeles  
University of Southern California  
Good Samaritan Hospital  
Cedar Sinai Medical Center

All others remain unchanged.



CLAUDIA S. ACFALLE  
Chief Procurement Officer

Please Print	
ACKNOWLEDGEMENT COPY (Re-fax to GSA)	
Received By:	THOMAS J FISHER
Date:	
Company Name:	GMR'S
Fax to: 475-1727 or 472-4217	
E-mail to: gsaprourement@gsadoa.guam.gov	

The following factors and their relative importance that will be used in the evaluation of the proposals are:

1. The project proposal vision and plan for performing the required services; and (15 points)
2. The ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and qualifications and abilities of key personnel proposed to be assigned to perform the services; and (15 points)
3. The personnel, equipment and facilities to perform the services currently available or demonstrated to be available at the time of contacting; and (10 points)
4. The firm's reputation for proposal and professional integrity and competence; and (10 points)
5. The record of past performance of similar work; and (15 points)
6. Demonstrated ability to meet schedules or deadlines. (15 points)
7. To Demonstrate "Voucher System" to manage, approve and verify record services will be performed. (20 points)

(-5)

(-5)

5

5

(-5)

(-5)

+20

The MRAO Director or Designee will review the recommendations of the Evaluation Committee and shall, in concert with appropriate technical staff representatives, make a final selection.

**XIII. SELECTION OF BEST QUALIFIED PROPOSER AND PROPOSAL**

**A. Evaluation and Ranking**

After receipt of all proposals, the evaluation committee will conduct an independent evaluation of all proposals received under this solicitation. Each proposal shall be evaluated according to the criteria as reflected herein and shall be ranked accordingly. The ranking of the proposals will be based on the averaging of the rankings awarded to the proposals by each evaluation committee member. Each proposal shall be evaluated on the following evaluation factors using a scale of one (1) to one hundred (100).

**Offeror(s) may be required to be interviewed or hold discussions by the Evaluation Committee to clarify certain items from the submitted proposal. These discussions, if any, will be in accordance with Guam Procurement Laws.**

**B. Selection**

The selection of the best qualified responsible, responsive Offeror will be based on the ranking of the Offerors. A "Short Listing" will be established based on the ranking results of the evaluation process. The MRAO reserves the right to short-list to a maximum of three (3) qualified Offerors.

The best qualified (highest ranked) Offeror will be selected to enter into negotiations with the MRAO. If an agreement can be reached as to reasonable fees, an Agreement will then be prepared for signatures by both parties. The signature of the Chief Procurement Officer is the only signature that will bind the MRAO through the instrumentality of a purchase order.

If the MRAO is unable to negotiate a contract with the best qualified (highest ranked) Offeror, the MRAO Director or Designee, may re-solicit for offers or enter into negotiations with the next (highest ranked) offeror based on the established short list.



**Appendix B: Declaration Form  
PROCUREMENT APPEAL**

In the Appeal of \_\_\_\_\_ )  
 )  
 )  
(Name of Company), APPELLANT ) Docket No. OPA-PA \_\_\_\_\_ )  
 )  
\_\_\_\_\_ )

**DECLARATION RE COURT ACTION**  
(To be signed by the Government Purchasing Agency.)

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

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

Submitted this \_\_\_ day of \_\_\_\_, 2020

By: [Signature]  
DECLARANT

Thomas J. Fisher  
Print Declarant's Name

