

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:

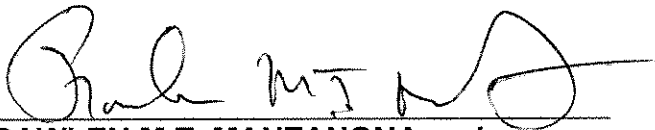
1. A concise, logically arranged, and direct statement of the grounds of appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected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

Please see Attachment "1".

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 the Public Auditor 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 its 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 the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 4th day of January, 2011.

By: 

**RAWLEN M.T. MANTANONA and
SARAH A. STROCK**, Appellant's duly
authorized representatives.
Edge Building, Second Floor
929 S. Marine Corps Drive
Tamuning, Guam 96913
(671) 646-2001

RMTM:scc

ATTACHMENT "1"

On July 23, 2010 the General Service Agency on behalf of the Department of Public Health and Social Services received bids for the procurement of radiology imaging systems marked for DPSS as contained and solicitation GSA-105-10. There were two bidders on the procurement to include MedPharm and the Appellant in this matter. Chief Procurement Officer in this matter awarded the contract to MEDPHARM on July 28, 2010.

On August 6, 2010 the Appellant JMI-Edison filed a Bid Protest to GSA-105-10. The Appellant in its protest listed six basis for its protest. On December 16, 2010, GSA by and through the Chief Procurement Officer, Ms. Claudia S. Acfalle denied and ruled that the Appellant protest was without merit on all six basis and advised that it has the right to seek administrative or judicial review in this matter.

The Appellant hereby files its timely appeal to the decision on the denial of its protest by the Chief Procurement Officer. The basis on the appeal are as follows:

1. The first basis of appeal, Appellant renews its protest/appeal issue no. 1. MEDPHARM's offer is non responsive as it does not meet the specifications and solicitation requires of "optional stretcher" section A (Systems Configuration). The Appellant submitted a Freedom of Information Act Request to the Chief Procurement Officer in regards to this bid and from the documents provided found no evidence of an "optional stretcher" in either the bid documents provided by the Chief Procurement Officer.

2. The second basis of appeal, Appellant renews its protest/appeal issue no. 5. MEDPHARM's offer is non-responsive as it does not meet the specifications and solicitation requires "Two LCD Monitor" Section F. (Acquisition work station) Again, there is evidence of this item in either the bid documents.
3. The Third basis for appeal, Appellant reviews protest issue 6. MEDPHARM's bid provides that no documents which shows compliance with the necessary federal and local regulatory agencies as per required in the Bid. GSA's position is through that the invitation of Bid required that bidders must submit documents to show compliance but the bid did not specify what regulatory agencies. Thus, the documents submitted by MEDPHARM's Bid were compliant. Appellant asserts that the documentation provided by MEDPHARM are merely manufacturer statements. What is required are documents showing "compliance with regulatory agencies." The only document provided by MEDPHARM aside from manufacturer's representatives was a document from International Organization for Standardization otherwise known as "ISO". This is not a government regulatory body but just indicates the standards that should be applied. Further, the only federal and local regulatory agency for this equipment and technology is a United States Food and Drug Administration otherwise known as "FDA". Appellants assert that the submission by MEDPHARM is in regards to two items. First the x-ray machine and secondly, a digital system. The digital system does have an FDA approval which is only provided after the protest raised by Appellant. The x-ray machine was manufactured abroad

by Shimaduzu, a Japanese company which has no FDA approved or accreditation in MEDPHARM's bid or on the FDA internet. Further, Appellant believes the use of such machine would be illegal, more importantly, a waste of government money.

In conclusion, Appellant asserts that MEDPHARM's bid is non-responsive for three reasons and the proper remedy would be for MEDPHARM to be declared non-responsive or compliant and the contract be awarded to JMI-Edison or the matter be.

**CABOT
MANTANONA LLP**
Edge Bldg., Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913

Attorneys-at-Law
Cesar C. Cabot, Esq.
Rawlen M.T. Mantanona, Esq.
David P. Ledger, Esq.
Helkei S. Hemminger, Esq.
Sarah A. Strock, Esq.

FACSIMILE TRANSMITTAL SHEET

TO: OFFICE OF THE PUBLIC AUDITOR

FACSIMILE #: 671-472-~~7538~~⁷⁹⁹

FROM: RAWLEN M.T. MANTANONA

DATE: January 4, 2011

**CLIENT/
MATTER:** IN THE APPEAL OF JMI-EDISON
OPA-PA 11-001

NO. OF PAGES INCLUDING THIS TRANSMITTAL SHEET: Page(s) 8

COMMENTS:

Please see the attached documents regarding the above matter.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Stacy Cuasito
Legal Secretary

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

Please contact Stacy at 646-2001 if this transmission is incomplete or illegible.

Si Yu'os Ma'ase



OFFICE OF THE PUBLIC AUDITOR

**Appendix C: Notice of Hearing Form
PROCUREMENT APPEAL**

In the Appeal of)	
)	
)	NOTICE OF HEARING
)	
JMI-EDISON)	Docket No. OPA-PA <u>11-001</u>
)	
_____)	

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of the Public Auditor on the _____ day of _____, 20__, at the hour of _____, relative to the above referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

Please acknowledge receipt of this Notice and return to the Office of the Public Auditor immediately.

Acknowledged receipt:


Receiver's Signature

RAWLON MAUTAMANA
Print Name

1/4/11
Date

Felix P. Carmacho
Governor



GENERAL SERVICES AGENCY

(Aghensian Setbision Hinim)
Department of Administration
Government of Guam

Michael W. Cruz, M.D.
Lt. Governor

Lourdes M. Perez
Director
Department of Administration

148 Route I Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 thru 1729 • Fax Nos: (671) 472-4217/475-1727/475-1716

Joseph C. Manibusan
Deputy Director
Department of Administration

Fax

To: Rey M. Vega
General Manager - JMI Edison

From: Claudia S. Acfalle
Chief Procurement Officer

Fax: 671-649-4835

Pages: 4

Phone: 671-475-1710 (Frasia Lujan)

Date: December 21, 2010

Re: Bid Protest GSA-105-10 Response

- Urgent For Review Please Comment Please Reply Please Recycle

● Comments:

Please see the Protest Bid Response letter on GSA-105-10. Kindly fax back the acknowledgement of receipt of this fax document as well as the letter.

Best Regards,

Frasia

Acknowledgement Copy (Please Print)

Received By: JULIUS MACALINA

Date: 12/21/10

Felix P. Carnacho
Governor



GENERAL SERVICES AGENCY

(Abeseian Setebion Hinds)
Department of Administration
Government of Guam
148 Route 1 Marine Drive, Piti, Guam 96915
Tel: 477-8836-8 • Fax Nos.: 472-4217/4207

Michael W. Cruz
Lt. Governor

December 16, 2010

Rey M. Vega
General Manager
JMI - Edison
125 North Marine Drive
Tamuning, Guam 96913

Re: **BID PROTEST - INVITATION FOR BID NO.: GSA-105-10
(Radiology Imaging System Marked for DPHSS)**

Dear Mr. Vega:

Buenas Yan Hafa Adai! This is to acknowledge receipt of your protest letter dated 06 August 2010 that was lodged reference to Bid No.: GSA-105-10 (Radiology Imaging System Marked for DPHSS).

Based on factual evaluation, the basis of your protest is without merit, as per the following:

Issue #1:

You stated: Medpharm's offer does not meet the specification on Section A. No optional stretcher (Section A. System Configuration).

Response:

The brochure provided by Medpharm indicates that it does meet optional stretcher requirement.

Issue #2:

You stated: No automated vertical & longitudinal tracking maintains source to image distance (SID) & tube detector alignment with the table receptor under (Section B. System and Positioner).

Response:

The brochure provided by Medpharm indicates that it does meet the automated vertical & longitudinal tracking maintains source to image distance (SID) & tube detector alignment with the table receptor.

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JMI - Protest Response
12/16/2010

Issue #3:

You stated: No automated vertical tracking of the digital wall stand (Section B. System and Positioner).

Response:

The brochure provided by Medpharm indicates that it does meet the automated vertical tracking of the digital wall stand.

Issue #4

You stated: No System Access & Authorization Control that support Healthcare Organizations HIPAA compliance efforts.

Response:

The Invitation for Bid (IFB) indicated that bidders must submit documents outlining compliance with the regulatory agencies. The IFB did not specifically indicate a specific regulatory agency or agencies. Therefore, Medpharm did submit documentation indicating that they complied with regulatory agencies as required.

Issue #5

You stated: Does not have 2 LCD Monitor (Section F. Acquisition Workstation).

Response:

The brochure provided by Medpharm indicates that it does meet the LCD Monitor and Medpharm confirms in their bid package that they will provide 2 LCD Monitors.

Issue #6

No documents outlining compliance with the regulatory agencies as per requirement in the bid instructions. Medpharm personnel verbally responded they only provided ISO documents in the bid package not from FDA or any regulatory agency.

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JMI - Protest Response
12/16/2010

Response:

The Invitation for Bid (IFB) indicated that bidders must submit documents outlining compliance with the regulatory agencies. The IFB did not specifically indicate a specific regulatory agency or agencies. Therefore, Medpharm did submit documentation indicating that they complied with regulatory agencies as required.

According to the bid package submitted by Medpharm they provided documents that indicated that the equipment offered has been certified by TUV Rheinland as a manufacturer of medical equipment and systems in compliance with ISO9001:2000; 2008; 14001:2004; JIS Q 14001:2004; JIS Q 9001:2008 Quality Management Systems and EN ISO13485: 2003 Medical Equipment Quality Management Systems.

Therefore, upon receipt of this notice you are notified of our final determination that your protest is without merit and that you have the right to seek administrative or judicial review within the confines of the law.

Sincerely,


CLAUDIA S. ACFALLE

cc: Attorney General, Office of the Attorney General

ACKNOWLEDGEMENT COPY

RECEIVED BY: JUDUS MACHINA

DATE: 12/



JMI-EDISON

A Division of Johndel International, Inc.

125 North Marine Drive, Tamuning Guam 96913

Tel: (671) 649-5444 / 646-1256 • Fax: (671) 649- 5687 • E-Mail: sales@jmiguam.com

August 6, 2010

VIA: HAND-DELIVERED:

**Ms. Claudia S. Acfalle
Chief Procurement Officer
General Service Agency Government of Guam
P.O. Box FG
Hagatna, Guam 96910**

**Subject: Bid Protest: GSA-105-10
Radiology Imaging System Marked for DPHSS**

Dear Ms Acfalle,

Hafa Adai! This is to protest Medpharm's offer of the RadSpeed DR Auto Radiology system due to non-compliance with the General Terms and Conditions Section 6 Compliance with Specification and Other Solicitation Requirements.

We would also like to formally request a copy of the Bid Proposal submitted by Medpharm in response to **GSA-105-10 for Radiology Imaging System with the most current State-of-the-Art hardware, software, and clinical application to include installation.**

We have made an extensive review and consulted experts in this field and have come to the conclusion and belief that Medpharm's offer does not meet the specification and other solicitation requirements namely:

1. No optional stretcher (Section A. System Configuration).
2. No automated vertical & longitudinal tracking maintains source to image distance (SID) & tube detector alignment with the table receptor under (Section B. System and Positioner).
3. No automated vertical tracking of the digital wall stand (Section B. System and Positioner).
4. No System Access & Authorization Control that support Healthcare Organizations HIPAA compliance efforts.

Attachment 2
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5. Does not have 2 LCD Monitor (Section F, Acquisition Workstation).

6. No documents outlining compliance with the regulatory agencies as per requirement in the bid instructions. Medpharm personnel verbally responded they only provided ISO documents in the bid package not form FDA or any regulatory agency.

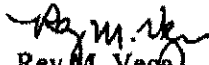
Based on the above observation, it is our belief that Medpharm's bid should be considered as Non-responsive.

Information requested will determine the company's option(s) and alternatives in the above-referenced matter.

Please let me know when documents can be picked up or ready for examination.

Thank you and we look forward to your most favorable prompt reply.

Very truly yours,


Rey M. Vega
General Manager

Cc: Mr. J. Peter Roberto
Director, Department of Public Health and Social Services

Ms. Doris Flores Brooks CPA, CGFM
Office of Public Accountability