

Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mr. Peter John Camacho</b> Chief Executive Officer Guam Memorial Hospital Authority (GMHA) 850 Gov Carlos G. Camacho Rd Tamuning , Guam 96913	<b>From:</b>	<b>Doris Flores Brooks</b> Guam Public Auditor Office of Public Accountability
<b>Phone:</b>	(671) 647-2555	<b>Pages:</b>	7 (including cover page)
<b>Fax:</b>	(671) 649-15508, 0145/647-2214	<b>Date:</b>	March 21, 2017
		<b>Phone:</b>	(671) 475-0390 x. 208
		<b>Fax:</b>	(671) 472-7951
<b>CC:</b>	<b>Mr. Joshua Walsh, Esq.</b> Civille & Tang PLLC (Attorney for Appellant JMI Edison)		
<b>Phone:</b>	(671) 472-8868/9		
<b>Fax:</b>	(671) 477-2511		

**Re:** OPA-PA-17-004 Notice of Receipt of Appeal

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Jerrick Hernandez

Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)

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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

March 21, 2017

Mr. Peter John Camacho  
Chief Executive Officer  
Guam Memorial Hospital Authority  
850 Gov. Carlos G. Camacho Road  
Oka, Tamuning, Guam 96913

**VIA FACSIMILE: 649-0145**

Re: Notice of Receipt of Appeal – OPA-PA-17-004

Dear Mr. Camacho,

Please be advised that JMI-Edison (JMI) filed an appeal with the Office of Public Accountability (OPA) on March 20, 2017 regarding the Guam Memorial Hospital Authority's (GMHA) decision on contract or breach of contract controversy related to the total amount of interest on past due invoices (Purchase Orders: 0414FC 00G10, 1011FC, 0114FC, 0115FC O1-G10, 0115FC 00-G10, 0414FC 01G10, 0512FC, 0513FC 00-G10, 0513FC 01-G10, 05114FC, 0514FC 00G10, 0514FC 01G10, and 0612FC). OPA has assigned this appeal case number OPA-PA-17-004.

Immediate action is required of GMHA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at [www.guamopa.org](http://www.guamopa.org). The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Tuesday, March 28, 2017**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, April 4, 2017**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to JMI. In addition, OPA respectfully asks that GMHA provide one original and two copies of the procurement record and agency report as the Guam Procurement

Law and Regulations require only one copy. The three copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 208, or [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com), should you have any questions regarding this notice.

Sincerely,



Rodalyn Gerardo  
Audit Supervisor

Enclosure: First Six Pages of Notice of Appeal – OPA-PA-17-004

Cc: Mr. Joshua D. Walsh, Esq., Civile & Tang PLLC, Attorneys for JMI Edison

JOSEPH C. RAZZANO  
JOSHUA D. WALSH  
**CIVILLE & TANG PLLC**  
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**PROCUREMENT APPEAL OF DECISION ON CONTRACT CONTROVERSY  
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PART I.**

In the Appeal of

JMI-Edison,

Appellant.

DOCKET NO. OPA-PA- 17-004

**NOTICE OF APPEAL**

ORIGINAL

## **PART II: APPELLANT INFORMATION**

Name: JMI-Edison  
Mailing Address: 125 N. Marine Drive  
Tamuning, Guam 96913  
Business Address: *same address indicated above*

For purposes of this appeal, please direct correspondence to JMI-Edison's counsels, Joseph C. Razzano and Joshua D. Walsh, Civile & Tang, PLLC, 330 Hernan Corrtex Avenue Suite 200, Hagatna, Guam 96910. Telephone: 671/472-8868; Facsimile: 671/477-2511.

## **PART III: APPEAL INFORMATION**

- A. Purchasing Agency: Guam Memorial Hospital Authority
- B. Purchase Orders: 0414FC 00G10, 1011FC, 0114FC, 0115FC 01-G10, 0115FC 00-G10, 0414FC 01G10, 0512FC, 0513FC 00-G10, 0513FC 01-G10, 05114FC, 0514FC 00G10, 0514FC 01G10, and 0612FC.
- C. This appeal is made from a constructive denial of JMI-Edison's request for a final written decision from the Purchasing Agency that should have been issued on or before January 22, 2017. No final written decision was issued.
- D. Appeal is made from a Decision on Contract or Breach of contract Controversy excluding claims of money owed by the Government.
- E. There are no other competing bidders, offerors, or contractors known to Appellant.

## **PART IV: STATEMENT OF GROUNDS FOR APPEAL**

### **A. This dispute is properly before the OPA.**

JMI-Edison ("JMI" or "Appellant") and the Guam Memorial Hospital Authority ("GMHA") have, for a period of months, worked to resolve all controversies between them

flowing from unpaid interest on amounts due to JMI. No mutual agreement settling the controversy was reached.

Both the Guam procurement code and GMHA procurement regulations require that the contracting agency, through its procurement officer, provide a written decision on the contract controversy as requested by contractor within 60 days of such a request. GMH Regulation 26 GAR §16903 (d)(2); 5 GCA §5706(b).

On November 23, 2016, JMI wrote to GMHA asking for resolution of the dispute with the hospital regarding the total amount of interest due to JMI on past due invoices. In the event a satisfactory resolution was not possible, JMI requested a final written decision. Correspondence from JMI to GMHA, attached as **Exhibit A**.

GMH regulations provide that “If the Procurement Officer does not issue a written decision within sixty (60) days after written request by the contractor for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.” 2 GAR 1§16903(d)(3) (emphasis added). Guam law provides that the decision— a constructive denial in this case— is final “...unless fraudulent, or the contractor appeals administratively to the Public Auditor in accordance with § 5706 of this Chapter.” 5 GCA §5427(e). That provision explains that “[t]he aggrieved contractor shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter.” 5 GCA §5706(e).

GMHA’s written decision on JMI’s November 23, 2016 request was due on January 22, 2017. No written decision from GMH was provided. Instead, on or about January 20, 2017 GMH delivered a check to JMI for the total amount of \$209,191.26. This check reflected unpaid

interest of 3%, as opposed to the 6% that is due pursuant to law. Photocopy of Check from GMHA, attached as **Exhibit B**.

This Appeal before the OPA of the constructive denial of January 22, 2017 is filed by Appellant- JMI before the OPA on prior to the lapse of sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter.” 5 GCA §5706(e).

The issue being appealed to the OPA is direct; “what interest rate must GMHA pay to JMI for late payments made to JMI for previously contracted work?”

**B. The Guam Memorial Hospital is wrong in calculating interest due to JMI at 3%.**

GMHA owes JMI, as of August 31, 2016, \$173,302.46 in unpaid interest on past due amounts. Table Calculating interest charges, attached as **Exhibit C**. This amount is calculated using a 6% interest rate. Unfortunately, GMH has taken the position that interest need not be paid at this rate, and instead, GMH has taken the position that interest due to JMI is only 3% on the amounts due. *See* GMH Table calculating interest charges created by Edward Birn, Asst. CFO, GMHA, attached as **Exhibit D**. GMHA is incorrect.<sup>1</sup>

Section 16903 (f) of the GMHA’s procurement regulations explains that, as called for by §5475 of the Guam Procurement law, interest on amounts due to a contractor shall be payable at the statutory rate applicable to judgments from the date the claim arose during the date of decision or judgment, whichever is later. 5 GCA §5475; 2 GAR§ 16903(f); 2 GAR §16907.

The statutory rate applicable to judgments is 6% per annum. *See* 18 GCA§ 47106; *see also Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12, fn6; *Tanaguchi-Ruth +*

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<sup>1</sup> To be certain, GMHA does not contest the amount of principal due to JMI, but merely the interest owed on the principal. As such, a sum certain exists between the parties about the amount, not counting interest, that is owed to JMI by GMHA.

*Assocs. v. MDI Guam Corp.*, 2005 Guam 7; *Yoshida v. Guam Transp. And Warehouse, Inc.*, 2013 Guam 5. Simply put, GMH has no basis to refuse to pay the interest rate to JMI mandated by law.

In apparent response to JMI's November 23, 2016 correspondence, on January 20, 2017, GMH delivered a check to JMI for the total amount of \$209,191.26, of which \$85,529.86 was for interests due. This reflects unpaid interest of 3%, as opposed to the 6% that would statutorily be applied to judgments. The deficiency of \$85,529.86 must be corrected.

**C. RULING REQUESTED**

JMI requests a determination from the OPA that the Guam Memorial Hospital shall pay to JMI interest on amounts due to JMI-Edison at the rate equal to that of judgments in Guam.

**D. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- (1) November 23, 2016, correspondence from JMI to GMHA, attached as **Exhibit A**.
- (2) January 20, 2017 photocopy of Check from GMHA to JMI, attached as **Exhibit B**.
- (3) JMI Table Calculating total interest charges due to JMI from GMHA as of August 31, 2016, attached as **Exhibit C**.
- (4) GMH Table calculating interest charges created by Edward Birn, Asst. CFO, GMHA, reflecting interest owed to JMI as calculated by GMHA, attached as **Exhibit D**.

JMI also anticipates providing further documentation to substantiate its claims when GMHA submits the full contracting record to the OPA.




**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 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.

**Respectfully Submitted** this 20<sup>th</sup> day of March, 2017.

**CIVILLE & TANG, PLLC**

By:   
**JOSEPH C. RAZZANO**  
**JOSHUA D. WALSH**  
*Attorneys for Appellant*  
*JMI Edison*

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