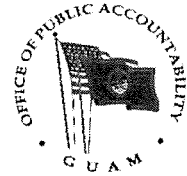


Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# 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> <b>Fax:</b>	(671) 647-2555 (671) 649-0145/ 647-2214	<b>Pages:</b>	10 (including cover page)
<b>CC:</b>		<b>Date:</b>	January 17, 2018
<b>Phone:</b> <b>Fax:</b>		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 208 (671) 472-7951
<b>CC:</b>	<b>Mr. Joshua Walsh, Esq.</b> Civille & Tang PLLC (Attorney for Appellant JMI Edison)		
<b>Phone:</b> <b>Fax:</b>	(671) 472-8868/9 (671) 477-2511		

**Re:** OPA-PA-18-001 Notice of Receipt of Appeal

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

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

January 17, 2018

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-18-001

Dear Mr. Camacho,

Please be advised that JMI-Edison (JMI) filed an appeal with the Office of Public Accountability (OPA) on January 16, 2018 regarding the Guam Memorial Hospital Authority's (GMHA) decision on JMI's protest relative to Invitation for Bid No.: IFB 013-2017; a procurement solicitation for Purchase, Installation, and Training of New CT Scanners. OPA has assigned this appeal case number OPA-PA-18-001.

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 **Wednesday, January 24, 2018**, 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 **Wednesday, January 31, 2018**, 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 Seven Pages of Notice of Appeal – OPA-PA-18-001

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

1 JOSEPH C. RAZZANO  
2 JOSHUA D. WALSH  
3 CIVILLE & TANG PLLC  
330 HERNAN CORTEZ AVENUE STE. 200  
4 HAGATNA, GUAM 96910  
TEL: (671) 472-8868/9  
5 FAX: (671) 477-2511

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7 **PROCUREMENT APPEAL**

8 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

10 **PART I.**

11 In the Appeal of

13 JMI-Edison,

15 Appellant.

DOCKET NO. OPA-PA- 18-001

NOTICE OF APPEAL

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**PART II: APPELLANT INFORMATION**

Name: JMI-Edison (“JMI”)  
Mailing Address: 125 N. Marine Corps Drive  
Tamuning, Guam 96913  
Business Address: 125 N. Marine Corps Drive  
Tamuning, Guam 96913

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; Email for Mr. Razzano: jrazzano@civilletang.com; Email for Mr. Walsh: jdwalsh@civilletang.com.

**PART III: APPEAL INFORMATION**

- A. **PURCHASING AGENCY:** Guam Memorial Hospital Authority (“GMHA”)
- B. **PROCUREMENT IDENTIFICATION:** IFB 013-2017- Purchase, Installation, and Training of New CT Scanners.
- C. **DECISION DATE:** Decision being appealed was made on December 28, 2017, by Hospital Administrator Peter John Camacho, MPH, who is the head of the purchasing agency. That Decision was received by JMI’s counsel on January 2, 2018.
- D. **APPEAL ORIGIN:** Appeal is made from a Decision on Protest of Award. The Decision is attached to this Notice of Appeal as **Exhibit A**.
- E. **NAMES OF COMPETING BIDDERS, OFFERORS, OR CONTRACTORS KNOWN TO APPELLANT:**
  - 1. Oka Pacific;
  - 2. MedPharm; and
  - 3. Siemens Healthcare.

1  
2 **PART IV: ADDITIONAL INFORMATION SUBMITTED BY APPELLANT**

3  
4 **A. STATEMENT OF GROUNDS FOR APPEAL**

5 GMHA is in need of new Computed Tomography (CT) imaging Machines, and JMI  
6 submitted a bid to provide those machines that was \$125,000.00 dollars less than the nearest other  
7 bidder. Despite this, GMHA rejected JMI's bid.

8 This protest has been brought because of GMHA's flawed rejection of JMI's bid submitted in  
9 response to GMHA IFB 013-2017 issued for the Purchase, Installation, and Training of New CT  
10 Scanners (the "IFB"). A copy of the IFB is attached to this Notice of Appeal as **Exhibit B**. A Bid  
11 Status notification was received by JMI on December 20, 2017, informing JMI that its bid submission  
12 was being rejected because of "nonconformance with specifications." The Bid Status Notification is  
13 attached to this Notice of Appeal as **Exhibit C**. Specifically, JMI was told that "Bid rejected due to  
14 bid proposal did not meet bid specifications. Bid specification requested 64 slice acquisitions; bid  
15 submission identifies 32 slice acquisition." **Exhibit C**.<sup>1</sup> This was wrong.

16  
17 GMHA's rejection of JMI's bid followed a period where GMHA may have at one time been  
18 confused about the slice acquisition and reconstruction of the JMI offered machines. That confusion  
19 was corrected in October 2017 when, in response to two separate requests for clarification, JMI  
20 pointed out how both CT systems being offered to GMHA at the quoted price indeed consisted of 64  
21 detector rows, 54,272 Detector Elements and 64 slices/Rotation— specifications that mean each of  
22 the CT systems offered by JMI were indeed 64 acquired and 64 reconstructed slice machines sought

23  
24  
25 <sup>1</sup> Computed Tomography (CT) imaging provides a different form of imaging known as cross-  
26 sectional imaging. A CT Imaging system produces cross sectional images or "slices" of anatomy,  
27 like the slices in a loaf of bread. CT systems capable of imaging more slices simultaneously allow  
28 relatively larger volumes of anatomy to be imaged in relatively less time. More information is  
available at the FDA's website, <https://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/MedicalX-Rays/ucm115318.htm>.

1 by GMHA. JMI's clarifications provided to GMHA are attached to this Notice of Appeal as **Exhibit**  
2 **D.**

3  
4 Amendment #6 to the IFB states that "...the award will be made to the lowest responsive and  
5 responsible bidder." **Exhibit E, pg. 5-6.** As established during the bid opening that occurred at  
6 9:00a.m. on October 6, 2017, JMI submitted the lowest priced bid. *See* JMI Bid opening notes,  
7 attached to this Notice of Appeal as **Exhibit F.** JMI's bid was 1,244,040.00. The next lowest offer  
8 received by GMHA on that day quoted a price of 1,350,000.00. Despite this, GMHA chose to reject  
9 JMI's submission, and that rejection necessitated an agency level protest. That protest was denied by  
10 the agency on December 28, 2017. **Exhibit A.**

11  
12 The sole reason cited for JMI's bid rejection — the claimed failure to offer a 64 slice CT  
13 machine to GMHA— is completely incorrect. This failure was repeated in the Denial of JMI's  
14 protest. GMHA, in claiming that the rejection of JMI's bid was proper, rests upon a single  
15 manufacturer data sheet page contained with JMI's bid documents that shows a basic machine—not  
16 the machine that JMI was offering— that has 32 detector channels. *See Exhibit A, p. 2.* GMHA, in  
17 focusing upon this data sheet from a standard 32 slice machine, simultaneously ignores the upgrade  
18 information submitted by JMI showing that, instead of the baseline 32 slice machine, JMI would in  
19 fact be providing GMHA a 64 slice machine. Simply put, GMHA chose to erroneously claim that  
20 JMI was providing a 32 slice CT machine because the manufacturer engaged by JMI carries 32 slice  
21 machine as an option for end users. GMHA, in claiming that a 32 slice machine was being offered by  
22 JMI, needed to ignore the numerous portions of JMI's submission that made repeated and specific  
23 reference to a 64 slice machine. Those submissions references ignored by GMHA are summarized  
24 here and are attached to this Notice of Appeal as **Exhibit G:**  
25  
26  
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1	Table of Contents	Referencing Tab 1.2 of JMI's submission —the Section for Imaging Performance Images and Specifications— that lists 64 slice machines being offered by JMI
2		
3		
4	Table of Contents	Referencing Tab 1.3 of JMI's submission —the Section for System Detail Description— that lists 64 slice machines being offered by JMI
5		
6	Tab 1.2 Imaging Performance and Specifications, No. 4	Details that machines offered have 64 Detector Rows, 54272 Detector Elements, and 64 Slices/Rotation
7		
8		
9	Tab 1.3 Section 1 System Detail Description Page 9	Details that machines offered have B78B0CE 64 Channel Detector Upgrade
10	Tab 1.3 Section 2 System Detail Description Page 7	Details that machines offered have B78B0CE 64 Channel Detector Upgrade
11		
12	Tab 4.2 Clinical and Technical Training	Details that JMI will provide training on Work safety in the 64 Slice CTs environment
13		
14	5.1 Appendix CT Data Sheet – Image Thickness 0.625mm	Details that all 5 beat Cardiac options sought by GMHA require 64 Channel acquisition
15	Tab 2 Statement of Qualification P. 4	Details that JMI's past experience includes providing to GMHA in 2006 a GE 64 Slice CT, and to the U.S. Naval Hospital in 2014 a GE 64 Slice CT
16		
17		
18		

19

20 More, in order to reject JMI's bid submission, GMHA also had to ignore the very explicit

21 clarification JMI provided to GMHA on October 11, 2017, that "Both CT systems are 64 acquired

22 and 64 reconstructed." See clarification correspondence between GMHA and JMI, attached to this

23 Notice of Appeal as **Exhibit D**.

24

25 The grounds supporting JMI's instant appeal are sound and without reasonable contradiction.

26 GMHA was seeking bids to provide it with 64 slice CT machines. JMI submitted a bid offering those

27 64 slice machines at a price \$125,000 cheaper than the nearest competitor. GMHA cast aside JMI's

28 bid on the false assertion that JMI was offering 32 slice machines. The bid submission of JMI and the



1 clarification provided to the agency show that the rejection of JMI was in error. The law requires that  
2 GMHA be ordered to correct its error and award the bid to JMI.

3 **B. RULING REQUESTED**

4  
5 JMI requests that, as the lowest priced offeror responsive offeror, JMI should be made the  
6 awardee under GMHA IFB 013-2017.

7  
8 **C. SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS**

9 Submitted with this appeal at attached Exhibits are the following supporting exhibits,  
10 evidence, and documents:

11 (1) Attached as **Exhibit A** is the appeal made from a Decision on Protest of Award, dated  
12 December 28, 2017.

13 (2) Attached as **Exhibit B** is

14 (3) Attached as **Exhibit C** is a Bid Status Notification received from JMI, dated December 20,  
15 2017.

16 (4) Attached as **Exhibit D** is clarification correspondence between GMHA and JMI, dated  
17 October 16, 2017.

18 (5) Attached as **Exhibit E** is IFB Amendment #6 pages 5-6, dated August 11, 2017.

19 (6) Attached as **Exhibit F** is JMI's bid opening notes, dated October 6, 2017.

20 (7) Attached as **Exhibit G** is dated October 6, 2017.

21 JMI also anticipates providing further documentation to substantiate its claims when GMHA  
22 submits the full procurement record to the OPA as part of its response to this appeal.  
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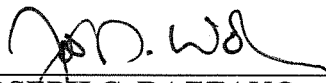
1 **V. DECLARATION RE: COURT ACTION**

2  
3 Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses  
4 interest in a decision by the Public Auditor, the Office of Public Accountability will not take action  
5 on any appeal where action concerning the protest or appeal has commenced in any court.

6 The undersigned party does hereby confirm that to the best of his knowledge, no case or  
7 action concerning the subject of this Appeal has been commenced in court. All parties are required to  
8 and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if  
9 court action commences regarding this Appeal or the underlying procurement action.  
10

11  
12 **Respectfully Submitted** this 16<sup>th</sup> day of January, 2018.

13 **CIVILLE & TANG, PLLC**

14  
15 By:   
16 **JOSEPH C. RAZZANO**  
17 **JOSHUA D. WALSH**  
*Attorneys for Appellant*  
*JMI Edison*

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<b>CC:</b>		<b>Phone:</b>	(671) 475-0390 x. 208
<b>Phone:</b>		<b>Fax:</b>	(671) 472-7951
<b>Fax:</b>			
<b>CC:</b>	Mr. Joshua Walsh, Esq. Civille & Tang PLLC (Attorney for Appellant JMI Edison)		
<b>Phone:</b>	(671) 472-8868/9		
<b>Fax:</b>	(671) 477-2511		

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