

**Office of the Attorney General**  
**Leonard M. Rapadas**  
 Attorney General of Guam  
 Civil Division  
 287 West O'Brien Drive  
 Hagåtña, Guam 96910 • USA  
 (671) 475-3324 • (671) 472-2493 (Fax)  
 www.guamattorneygeneral.com

OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS

SEP 16 2011

TIME: 2:40pm BY: JH  
 FILE NO. OPA-PA: 11-001

Attorneys for the Government of Guam

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEAL**

IN THE APPEAL OF JMI-EDISON  
 APPELLANT,

) APPEAL No. OPA-PA-11-001  
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**AGENCY REPORT TO PUBLIC  
 AUDITOR ON CERTIFICATION OF  
 RADIOLOGY IMAGING SYSTEMS**

In its Decision of April 21, 2011, the Office of Public Accountability required the General Services Agency and the Department of Public Health and Social Services to provide as follows:

"5. GSA and DPHSS should conduct an independent analysis of what specific laws, codes and regulations apply to the Radiology Imaging System equipment and its installation to determine whether the equipment and its installation GSA and DPHSS received pursuant to

**COPY**

Purchase Order No. P106A06027 complied with Federal Regulations, Title 10, Title 49, and all changes and amendments thereto, NRC Regulatory Compliance Tests, ALARA, NCRP, MOSA, and other guidelines and applicable Guam Regulations, Ordinances and Codes A.S.M.E., NEC, HFPA Standards, Life Safety Code, and Uniform Building Codes, as required by said purchase order. Such independent analysis is necessary because the IFB's and the Purchase Order's mere citation of a broad spectrum of laws, regulations, and codes, are not sufficient to protect the health and safety of the DPHSS staff and patients who will use the Radiology Imaging System."

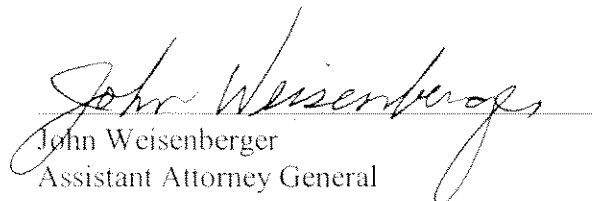
The General Services Agency and the Department of Public Health and Social Services are making good faith efforts to comply with this requirement of the Invitation For Bid and the Decision in this matter. Arrangements have been made for a physicist contracted with the Guam Memorial Hospital Authority to inspect the installation of the radiology imaging system that has been installed by Medpharm pursuant to this acquisition. This inspection is expected to take place in the very near future. See Exhibit A and B, attached.

In furtherance of assuring that all required steps are taken in this regard, the Office of the Attorney General has written to the Director of the Department of Public Health and Social Services, advising him of the requirements of the Invitation For Bid, and seeking his compliance with the Decision in this matter. See Exhibit C, attached.

Respectfully submitted this 16<sup>th</sup> day of September, 2011.

OFFICE OF THE ATTORNEY GENERAL  
Leonard M. Rapadas, Attorney General

By:

  
John Weisenberger  
Assistant Attorney General

# EXHIBIT A

**John Weisenberger, AG**

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**From:** Patrick Lujan [patrick.lujan@dphss.guam.gov]  
**Sent:** Thursday, September 15, 2011 10:26 AM  
**To:** John Weisenberger, AG  
**Subject:** Fwd: Physicist

----- Forwarded Message -----

**From:** "Tamara Cruz" <tamara.cruz@dphss.guam.gov>  
**To:** "Patrick Lujan" <patrick.lujan@dphss.guam.gov>  
**Cc:** "Cecilia Arciaga" <cecilia.arciaga@dphss.guam.gov>, "tamara cruz" <tamara.cruz@dphss.guam.gov>  
**Sent:** Thursday, September 15, 2011 10:07:32 AM  
**Subject:** Fwd: Physicist

Buenas Patrick,

Here's the status so far on the request for support from GMHA's visiting Physicist. So far no other feedback yet.

Tammy

----- Forwarded Message -----

**From:** "Cecilia Arciaga" <cecilia.arciaga@dphss.guam.gov>  
**To:** "rey vega" <rey.vega@gmha.org>  
**Cc:** "Josephine Omallan" <josephine.omallan@dphss.guam.gov>, "Tamara Cruz" <tamara.cruz@dphss.guam.gov>, "BCDC" <jessica.cate@dphss.guam.gov>  
**Sent:** Wednesday, September 14, 2011 9:01:49 AM  
**Subject:** Physicist

Dear Rey,

Buenas yan Hafa Adai! Hope all is well with you. This letter is to document our conversation regarding our request for assistance to enable us able to comply with a Decision by the Public Auditor to the Superior of Guam that GSA and DPHSS should conduct an independent analysis of the new DPHSS Digital X-ray Machine. Such an independent analysis is necessary to ensure the health and safety of the DPHSS staff and patients.

I understand that there is a Physicist who will be on Guam anytime soon to review GMHA's Digital X-ray Machine. Would it be possible for us to piggy back on the Physicist that you have contracted? What would it take for us to be able to avail his services on such a very short notice?

**EXHIBIT A**

**1.**

Your immediate and favorable response to this request is greatly appreciated

Thank you so much.

Cecile

Cecilia Teresa T. Arciaga

TB/HD Program Manager

Bureau of Communicable Disease Control

Department of Public Health & Social Services

123 Chalan Kareta, Mangilao, Guam 96913-6304

Phone: 671.735.3602/ 7157. 7131

Fax: 671.735.7318

Email: [cecilia.arciaga@dphss.guam.gov](mailto:cecilia.arciaga@dphss.guam.gov) ; [cttarciaga@yahoo.com](mailto:cttarciaga@yahoo.com)

nicable Disease Control

Department of Public Health & Social Services

123 Chalan Kareta, Mangilao, Guam 96913-6304

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Phone: 671.735.3602/ 7157/ 7131

Cellular: 671.988.5234

Fax: 671.735.7318

Email: [cecilia.arciaga@dphss.guam.gov](mailto:cecilia.arciaga@dphss.guam.gov); [cttarciaga@yahoo.com](mailto:cttarciaga@yahoo.com)

**EXHIBIT A**

**2.**

# EXHIBIT B

**John Weisenberger, AG**

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**From:** Patrick Lujan [patrick.lujan@dphss.guam.gov]  
**Sent:** Thursday, September 15, 2011 11:32 AM  
**To:** John Weisenberger, AG  
**Cc:** bobkono@yahoo.com  
**Subject:** Re: Reminder: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

No report has been generated at this time. We have been in communication with Ms. Anne Camacho from the OPA, notifying her the delays of the report is due to the delayed installation and now the needed review of the x-ray room from a physicist.

I just received information that GMHA's physicist has made contact with us and is currently reviewing the feasibility of the x-ray room. Once we receive that report, we will provide an official report from DPHSS.

Thank you for your understanding.

patrick

----- Original Message -----

**From:** "John Weisenberger, AG" <j.weisenberger.ag@guamattorneygeneral.com>  
**To:** "Patrick Lujan" <patrick.lujan@dphss.guam.gov>  
**Cc:** bobkono@yahoo.com  
**Sent:** Thursday, September 15, 2011 10:44:50 AM  
**Subject:** FW: Reminder: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

Hi Patrick,

Please see the email below wherein it was anticipated that a written analysis of the new xray machine would be produced. Has this been accomplished. May I have a copy of this report or any other documentation that would support the premise that this machine complies with applicable federal or local requirements sometime in June or July. Thank You. John.

-----Original Message-----

**From:** Ben Abrams  
**Sent:** Wednesday, June 08, 2011 10:27 AM  
**To:** Patrick Lujan  
**Cc:** John Weisenberger, AG  
**Subject:** RE: Reminder: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

Noted with thanks, Benjamin Abrams

-----Original Message-----

**From:** Patrick Lujan [mailto:patrick.lujan@dphss.guam.gov]  
**Sent:** Wednesday, June 08, 2011 9:52 AM  
**To:** Anne Camacho  
**Cc:** Ben Abrams; Claudia Acfalle  
**Subject:** Re: Reminder: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

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**EXHIBIT D**

Hafa adai Anne,

DPHSS is awaiting the arrival and trial period of the digital x-ray within the next 30 days.

We anticipate a written analysis upon approval of the product after the trial period.

v/r,

patrick

----- Original Message -----

From: "Anne Camacho" <acamacho@guamopa.org>

To: "Ben Abrams" <babrams@guamattorneygeneral.com>, "Claudia Acfalle" <claudia.acfalle@gsa.guam.gov>, "Patrick Lujan" <patrick.lujan@dphss.guam.gov>

Sent: Saturday, June 4, 2011 1:25:09 PM

Subject: Reminder: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

Mr. Abrams, Chief Acfalle, and Mr. Lujan,

Please allow me to remind you that OPA has not received a response to our request as noted below. Please reply by Friday, June 10, 2011, 5:00 PM.

Thank you,

Anne

From: Anne Camacho [mailto:acamacho@guamopa.org]

Sent: Wednesday, June 01, 2011 3:46 PM

To: 'Ben Abrams'; 'Claudia Acfalle'; 'Patrick Lujan'

Cc: 'anthony camacho'; 'Doris Flores Brooks'

Subject: OPA Copy of Requested Analysis re: Decision on Appeal No. OPA-PA-11-001 (JMI Edison / GSA-DPHSS)

Good afternoon Mr. Abrams,

Please see attachment for reference: OPA Decision (Page 15, Item No. 5, Lines 14 - 23).

<sup>2</sup>  
**EXHIBIT B**



If referenced analysis has been completed, please provide OPA with one copy. If not, please identify the anticipated completion date.

Thank you,

Anne Camacho

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PATRICK Q. LUJAN  
PHEP Manager/Planner IV  
(671)735-7307 (w)  
(671) 898-7307 (c)  
[patrick.lujan@dphss.guam.gov](mailto:patrick.lujan@dphss.guam.gov)

**EXHIBIT<sup>3</sup> B**

# EXHIBIT C

Leonardo M. Rapadas  
*Attorney General*



Phillip J. Tydingco  
*Chief Deputy Attorney General*

**OFFICE OF THE ATTORNEY GENERAL**

September 15, 2011

James Gillan, Director  
Department of Public Health and Social Services  
Mangilao, Guam

VIA: Email and Hand Delivery

Subject: Acquisition of Radiology Imaging System; Invitation For Bid No. GSA 105-10.  
*In the Appeal of JMI-Edison; Appeal No. OPA-PA-11-001.*

Dear Mr. Gillan,

I am an Assistant Attorney General contacting you on behalf of this office, and on behalf of the General Services Agency. I take this opportunity to apprise you of the status of the acquisition of a radiology imaging system, and an appeal of this acquisition, both referenced above. It is my understanding that the radiology imaging system has been installed at the Department of Public Health and Social Services in Mangilao by Medpharm on or about June, 2011. The status of its completion and certification for operation are not clear. The appeal filed in the acquisition by JMI-Edison has been denied, and the contract to Medpharm upheld.

The decision of the Public Auditor stated that the Department of Public Health and Social Services and the General Services Agency had responsibilities going forward to assure that the radiology imaging system installed by Medpharm met the requirements of the Invitation For Bid ("IFB"). The decision states:

"5. GSA and DPHSS should conduct an independent analysis of what specific laws, codes and regulations apply to the Radiology Imaging System equipment and its installation to determine whether the equipment and its installation GSA and DPHSS received pursuant to Purchase Order No. P106A06027 complied with Federal Regulations, Title 10, Title 49, and all changes and amendments thereto, NRC Regulatory Compliance Tests, ALARA, NCRP, MOSA, and other guidelines and applicable Guam Regulations, Ordinances and Codes A.S.M.E., NEC, HPPA Standards, Life Safety Code, and Uniform Building Codes, as required by said purchase order. Such independent analysis is necessary because the IFB's and the Purchase Order's mere citation of a broad

Letter to James Gillan

Re: Acquisition of Radiology Imaging System; Invitation For Bid No. GSA 105-10.

*In the Appeal of JMI-Edison*; Appeal No. OPA-PA-11-001

September 15, 2011

Page 2

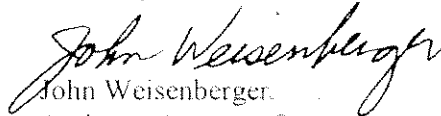
spectrum of laws, regulations, and codes, are not sufficient to protect the health and safety of the DPHSS staff and patients who will use the Radiology Imaging System."<sup>1</sup>

I wish to emphasize that we have received much cooperation from your department and your staff. This is not an attempt to suggest that the department has failed to meet its obligations. Having said that, I nonetheless need to advise you that the Office of Public Accountability has on more than one occasion contacted the General Services Agency seeking clarification that paragraph #5 quoted above is being complied with at this time. The General Services Agency is expected to respond appropriately to the Office of Public Accountability in the very near future. For this reason, and to assure that you are cognizant of this obligation, I bring this directly to your attention.

It is my understanding that arrangements are being made to have a physicist engaged by Guam Memorial Hospital inspect the radiology imaging system installed by Medpharm pursuant to this IFB. I would request that you assure that all necessary certifications are provided as required by the IFB and by the decision of the Public Auditor as expediently as possible.

Please do not hesitate to contact me if there is anything my office can do to assist you in meeting these responsibilities. Thank you for your attention to this matter.

Sincerely,

  
John Weisenberger  
Assistant Attorney General

cc: Doris Flores Brooks, Public Auditor  
Claudia Acfalle, Chief Procurement Officer  
Ben Abrams, Assistant Attorney General

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<sup>1</sup> Quoting the requirements set out in the Invitation For Bid.

**EXHIBIT C**