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FILE NO OPA-PA: 13-009

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8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **GOVERNMENT OF GUAM**

10 IN THE APPEAL OF :

11 JMI,

12 Appellant.

CASE NO: OPA-PA 13-009

**GMHA'S OPPOSITION TO
JMI'S BRIEF REGARDING
TIMELINESS OF PROTEST,
STATUTORY STAY, AND FUNDING
SOURCES**

13 **COMES NOW** the Guam Memorial Hospital Authority ("GMHA"), by and through counsel of
14 record Fisher & Associates, and submits its Opposition to JMI's Brief Regarding Timeliness of Protest,
15 Statutory Stay, and Funding Sources.

16 **I. JMI'S PROTEST WAS NOT TIMELY.**

17 JMI attempts to split hairs regarding the timeliness of its protest by arguing that because the
18 June 6, 2013 bid status notice from the GMHA did not state that the bid would be awarded to
19 MedPharm, JMI did not know it was aggrieved until receipt of the June 7, 2013 bid status notice. In
20 fact, the only difference between the June 6 and 7 bid status notices is the inclusion of the phrase
21 "namely MedPharm." Otherwise, both the June 6 and 7 bid status notices addressed to JMI (for which
22 JMI acknowledges receipt) are practically identical. Both clearly mark the box which states: "The bid
23 has been rejected in the best interest of the Guam Memorial Hospital for the reasons including, but not
24 limited to:...(X) Nonconformance with specifications. Option 1...(X) High Price. Option 2" Further,
25 on the second page of both notices, another marked box details: "...JMI-Edison Option 1 was not as
26 specified on bid requirements and Option 2 bid was not the lowest." *See Decl. of John Ilaio, Exhibits B*
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1 *and C, filed October 7, 2013.*

2 The right to protest lies with “[a]ny actual or prospective bidder, offeror, or contractor who
3 *may be aggrieved* in connection with the method of source selection, solicitation or award of a
4 contract.” 5 GCA § 5425(a) (Emphasis added.) The record is clear that JMI had notice of GMHA’s
5 intent to award the procurement to another bidder on June 6, 2013. Counting from the date of said
6 notice, JMI had 14 days to file its protest – by June 20, 2013. In this case, JMI did not file its protest
7 until June 21, 2013 and was therefore untimely.

8 JMI’s alternate argument that its protest would have been timely filed 14 days after receiving
9 response to its Sunshine Act request from GMHA is without merit. Under Guam law, protests shall be
10 submitted within 14 days after a party “knows or should know of the facts giving rise thereto.” 5 GCA §
11 5425(a); *see also* 26 GAR §§ 16901(c)(1); *Guam Imaging Consultants, Inc. v. GMHA*, 2004 Guam 15.
12 Pursuant to 2 GAR § 3109(1)(2), opened bids are available for public inspection. JMI’s contention that
13 it needed “confirming factual basis” before filing its protest fails because JMI made its Sunshine Act
14 request on the same document in which it filed its June 21, 2013 protest. *See Agency Procurement*
15 *Record at Tab I(a)*. JMI was obviously able to file its protest regarding the contents of MedPharm’s
16 submission before the GMHA responded to JMI’s Sunshine Act request.

17 **II. AN AUTOMATIC STAY WAS NOT TRIGGERED.**

18 JMI’s protest was not timely and did trigger an automatic stay pursuant to 5 GCA § 5425(g).
19 Even if JMI’s protest was timely, the GMHA did not award the contract to MedPharm until after JMI’s
20 protest was rejected. JMI contends it first became aware the award was contracted at hearing held on
21 September 27, 2013. However, a copy of the purchase order was provided to JMI on August 14, 2013,
22 as part of GMHA’s Agency Report. *See Agency Report at Tab V*.

23 As analyzed in GMHA’s Brief filed October 7, 2013, there was no automatic stay triggered as a
24 result of JMI’s appeal to the OPA because the GMHA completed its award between its rejection of
25 JMI’s protest on July 17, 2013 and JMI’s appeal to the OPA on August 7, 2013. *See In the Appeal of*
26 *Guam Publications, Inc.*, OPA-PA-08-007.
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