



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

**BEFORE THE PUBLIC AUDITOR**  
**PROCUREMENT APPEAL**

In the Appeal of  
JMI Edison,

Appellant

Docket No. OPA-PA-13-009

ORDER RE: JMI-EDISON'S MOTION FOR  
ISSUANCE OF A STAY

On October 29, 2013, the Hearing Officer Perez C. Perez, Esq. for the Office of Public Accountability issued an Order directing the parties to brief whether the Public Auditor has the authority to grant JMI-Edison's ("JMI") October 29, 2013 oral motion for a stay. Both JMI and the Guam Memorial Hospital Authority ("GMHA") briefed the issue. The Public Auditor has determined that JMI's motion for issuance of a stay is moot because the automatic stay triggered when JMI filed a timely Protest on June 21, 2013 and the stay remains in effect. GMHA violated that stay when it simultaneously rejected JMI's Protest and awarded the contract to MedPharm, prior to the expiration of JMI's appeal period. Pursuant to the automatic stay, GMHA is enjoined from taking any further action on its award to MedPharm until final resolution of JMI's Protest or until the automatic stay is lifted.

On June 6, 2013, GMHA transmitted to JMI a Bid Status advising JMI that JMI's bid was rejected for nonconformance with specifications and high price. [Agency Procurement Record ("APR"), Exhibit H]. On June 7, 2013, GMHA transmitted to JMI another Bid Status, this time advising JMI that its bid was rejected and that the contract was being awarded to MedPharm. [APR, Exhibit H]. Guam law allows an aggrieved party to submit a protest to the head of the

1 purchasing agency within fourteen days after such aggrieved person knows or should know the  
2 facts giving rise thereto. 5 G.C.A. § 5425.

3 On June 21, 2013, within fourteen days of the June 7, 2013 GMHA's Bid Status  
4 transmittal advising that the contract was being awarded to MedPharm, JMI filed a Protest.  
5 [APR, Exhibit I(a)]. The Protest grounds were not based upon GMHA's rejection of JMI's bid,  
6 which GMHA advised on June 6, 2013, but instead were based upon GMHA's award to  
7 MedPharm, which GMHA advised on June 7, 2013. JMI's Protest asserted: (a) the awardee's  
8 submission did not provide certification of MedPharm employed technicians who completed  
9 certification and were assigned to this project; (b) the awardee's submission was completely  
10 dependent upon the technical expertise and experience of the manufacturer, rather than the  
11 offeror itself; (c) the awardee's failure to provide specific information regarding the required  
12 docking station precluded it from obtaining an award; and, (d) the award to MedPharm calls into  
13 question the fairness of the procurement process. JMI's Protest was based upon GMHA's notice  
14 that the award would be made to MedPharm. GMHA advised JMI of the award on June 7, 2013.  
15 JMI filed its Protest of this award within fourteen days, on June 21, 2013. Consequently, JMI  
16 filed a timely Protest.

17 By doing so, the automatic stay was triggered and remains in effect until final resolution  
18 of JMI's protest; the timely filing of a Notice of Appeal to the Public Auditor; and the timely  
19 filing of an appeal to the Superior Court of Guam; or, until the stay is lifted. "In the event of a  
20 timely protest...the Territory shall not proceed further with the solicitation or with the award of  
21 the contract prior to its final resolution." 5 G.C.A. § 5425(g). Final resolution of a protest  
22 includes the time period of an appeal after protest. In the Appeal of IBSS, OPA-PA\_08-012,  
23 pp.9-10. The status quo is preserved by operation of law, and under 5 G.C.A. § 5425(g), further  
24 action on the procurement under appeal is stayed until resolution of the appeal. Teleguam  
25 Holdings, LLC and its Wholly Owned Subsidiaries v. Territory of Guam et al., Superior Court of  
26 Guam, CV0334-13 (Decision and Order, April 29, 2013, 2:9-3:3).

27 On July 17, 2013, GMHA rejected JMI's Protest as untimely and simultaneously awarded  
28 the contract to MedPharm. [APR, Exhibit I]. JMI had the right to appeal GMHA's rejection of its

1 Protest by filing a Notice of Appeal to the Public Auditor within fifteen days of the agency  
2 Protest decision. 5 G.C.A. § 5425(e). GMHA violated the automatic stay when it simultaneously  
3 rejected JMI's Protest and awarded the contract to MedPharm prior to the expiration of the  
4 fifteen day appeal period.

5 An automatic stay has been in effect since the timely filing of JMI's procurement Protest  
6 on June 21, 2013, continuing through JMI's timely Notice of Appeal to the Public Auditor on  
7 August 1, 2013, until final resolution.

8 Pursuant to the automatic stay, GMHA is prohibited from proceeding further with the  
9 solicitation or with the award of the contract until final resolution of JMI's appeals to the Public  
10 Auditor and if subsequently timely filed, to the Superior Court of Guam. Because an automatic  
11 stay is presently in effect, JMI's oral motion for a stay is moot. Accordingly, GMHA is ordered  
12 not to proceed further with the solicitation or award of the contract until final resolution of JMI's  
13 protest. Additionally, GMHA is enjoined from taking any further action on the contracts  
14 purportedly awarded to MedPharm until final resolution of JMI's Protest or until the stay is  
15 lifted. The Public Auditor reserves further rulings on other pending issues raised in this appeal  
16 including whether or not the contracts awarded by GMHA to MedPharm are void.

17  
18 **DATED**, this 4th day of November, 2013.

19  
20   
21 **DORIS FLORES BROOKS, CPA, CGFM**  
22 **PUBLIC AUDITOR**

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**Re:** OPA-PA-13-009 Order Re: JMI Edison's Motion for Issuance of a Stay

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HS: Host send  
HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
CP: Completed  
FA: Fail

TU: Terminated by user  
TS: Terminated by system  
RP: Report

G3: Group 3  
EC: Error Correct