

ORIGINAL

PROCUREMENT APPEAL

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PROCUREMENT AFFAIRS

In the Appeal of )  
)  
)  
JONES & GUERRERO CO., INC., dba )  
J&G CONSTRUCTION, )  
)  
APPELLANT )  
\_\_\_\_\_ )

NOTICE OF APPEAL JUN 21 2007  
TIME: 4:17 PM  
BY: Anne Camacho  
DOCKET NO. OPA-PA 07-005

APPELLANT INFORMATION

Name: Jones & Guerrero Co., Inc., dba J&G Construction (herein "J&G")  
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Business Address: 545 Chalan Machaute (Route 8 @ Biang St), Maite, Guam 96910  
Daytime Contact No.: Emmanuel R. Cunanan, General Manager, J&G Construction,  
(+1-671) 472-6037/4210 or  
Noli C. Cadag, Executive Vice President, Jones & Guerrero Co., Inc.  
477-7293/7295

APPEAL INFORMATION

Purchasing Agency: Guam Memorial Hospital Authority  
Number of Procurement: GMHA No. 005-2007

Decision being appealed was made by letter dated and delivered June 11, 2007 under signature of Mr. Peterjohn D. Camacho, M.P.H., Hospital Administrator/CEO, whom Appellant believes to be the Chief Procurement Officer of the Purchasing Agency.

Appeal is made from decision on protest of method, solicitation or award.

Names of competing bidders, offerors, or contractors known to Appellant:

- On information and belief, there were four bidders:  
1. Appellant, J&G

2. J. & B. Modern Tech.
3. Rex International
4. Aons Enterprises

## STATEMENT OF GROUNDS FOR APPEAL

### A. FACTUAL CONTEXT and CHRONOLOGY:

The IFB was issued on February 1, 2007, for the construction of a Warehouse Expansion Project for Guam Memorial Hospital Authority (herein, the "Authority"). The solicitation was for a competitive sealed bid.

The bids were opened about seven weeks later on March 21, 2007. At the opening, Appellant recorded that the bid amounts were as follows:

<u>Bidder</u>	<u>Bid Amount</u>	<u>\$ Amt Difference over low bid</u>
1. Appellant J&G	\$ 842,828	\$ 0
2. J. & B. Modern Tech.	896,512	53,684
3. Rex International	938,200	95,372
4. Aons Enterprises	978,009	135,181

Almost six weeks later, by "Bid Status" notice dated May 1, 2007, Appellant was notified that its bid has "been rejected in the best interest of Guam Memorial Hospital Authority for reasons including, but not limited to: ... **Non-Responsive**".

That notice further specified that "the lowest responsible and responsive bidder for the bid has been evaluated to be Phil-Gets (Guam) International Trading Corp.", which is *not* one of the bidders that Appellant recalled from the bid opening.

By letter dated and delivered 4 May 2007, J&G's General Counsel wrote to the GMHA Chief Procurement Officer a letter entitled:

REQUEST FOR EXPLANATION  
NOTICE OF PROTEST PENDING REASONABLE EXPLANATION

By its terms and under the authority of 2 GAR § 3115(e)(4), that letter sought a reasonable explanation why its bid was rejected as "non-responsive" and, pending the explanation, to "please consider this letter to constitute a protest of the award to the next highest bidder."

By letter dated and delivered June 11, 2007, the GMHA Hospital Administrator/CEO responded to J&G's Counsel's letter of 4 May, by letter entitled "Bid Protest of Invitation for Bid No. GMHA No. 005-2007".

That letter, while citing various reasons for its rejection of J&G's bid, repeatedly characterised and treated the Request for Explanation as a "protest", and concluded:

"... GMHA is justified in rejecting J&G's bid as **non-responsive**.  
(Emphasis added)

"... J&G's protest is determined to be without merit and is hereby rejected. As provided under the Guam Procurement Law, 5 G.C.A. § 5425, please be advised that you have a right of administrative and judicial review of GMHA's decision."

Notwithstanding that Appellant's bid and its protest was rejected as "non-responsive", not one of the reasons cited touched on the "**responsiveness**" of J&G's bid. All of the matters cited dealt with the "*responsibility*" of the bidder, such as failure to identify the Secretary and Treasurer, the failure to list specifically all the equipment at its disposal for the project, and the identities of the various skilled workmen and supervisory staff who would carry out the contract satisfactorily.

Appellant has no knowledge whether an award has been made.

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B. RELEVANT LAW (5 GCA) AND REGULATIONS (2 GAR) [any emphasis added unless noted otherwise]:

GCA § 5425(c) Decision. If the protest is not resolved by mutual agreement, the Chief Procurement Officer ... shall promptly issue a decision in writing. The decision shall:

- (1) state the reasons for the action taken; and
- (2) inform the protestant of its right to administrative and judicial review.

(e) Appeal. A decision under Subsection (c) of this Section ... may be appealed by the protestant, to the Public Auditor ....

GCA § 5001 (a) Interpretation. This Chapter shall be construed and applied to promote its underlying purposes and policies.

- (b) Purposes and Policies. The underlying purposes and policies of this Chapter are:
  - (5) to provide increased economy in territorial activities and to **maximize to the fullest extent practicable the purchasing value of public funds** of the Territory;....

GCA § 5201 (f). *Responsible bidder or Officer* [italics in original] means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

GCA § 5201 (g). *Responsive Bidder* [italics in original] means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

It should be noted that the Regulations provide almost identical definitions: 2 GAR §§ 1106 26 and 27.

GCA § 5230. Responsibility of Bidders and Offerors.

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Policy Office. The unreasonable failure of a bidder or offeror to promptly supply information **in connection with an inquiry with respect to responsibility** may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

GAR § 3109. Competitive Sealed Bidding.

(n) Bid Evaluation and Award

(1) General. The contract is to be awarded “to the lowest responsible and responsive bidder” whose bid meets **the requirements and criteria** set forth in the Invitation for Bids.... The Invitation for Bids shall set forth *the requirements and criteria which will be used to determine the lowest responsive bidder*. No bid shall be evaluated for any requirements or criteria that is not disclosed in the Invitation for Bids.

(4) Determination of Lowest Bidder. Following determination of product acceptability ... bids will be evaluated to determine which bidder offers the lowest cost to the territory in accordance with the evaluation criteria....

GAR § 3115 (e) Rejection of Individual Bids or Proposals

(3) Reason for Rejection.

(A) (i) the **business that submitted the bid is nonresponsive<sup>1</sup> [sic] as determined under § 3116** (Written Determination of Nonresponsibility Required) of the Chapter;

(ii) the **bid is *not responsive***, that is, it does not conform in all material respects to the Invitation for Bids....

(iii) the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications....

GAR § 3116. *Responsibility* of Bidders and Offerors.

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<sup>1</sup> This is an apparent transcription error in the Guam regulations because the ABA Model Procurement Code Regulations states, 3-301.03.3 "(i) the business that submitted the bid is **nonresponsive**... (emphasis added)." Neither does it make sense to have a second “not responsive” bid reason in (A)(ii) and leave out any reference to responsibility while itemizing the reasons for rejecting bids under this subsection, given that “responsive *and* responsible” are the two central criteria for competitive bidding. Finally, the reference to the requirement of a § 3116 written determination of “Nonresponsibility” can only mean that the reason provided for in this subsection is that the business is nonresponsive, not, as printed, nonresponsive.

(a) Determination of Nonresponsibility. A written determination of Nonresponsibility of a bidder or offeror shall be made in accordance with this Section. The unreasonable failure of a bidder or offeror to promptly supply information *in connection with an inquiry with respect to responsibility* may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(b)(2) Standards of Responsibility

(A) Standards. **Factors to be considered in determining whether the standard of responsibility has been met include** whether a prospective contractor has:

(i) **available** the appropriate financial, material, **equipment**, facility, and **personnel resources** and expertise, or the ability to obtain the, necessary to indicate its capability to meet all contractual requirements;

(ii) a satisfactory record of performance;

(iii) a satisfactory record of integrity;

(iv) qualified legally to contract with the territory; and

(v) supplied all necessary information **in connection with the inquiry** concerning responsibility.

(B) Information Pertaining to Responsibility. The **prospective contractor** shall supply information *requested by the Procurement Officer* concerning the responsibility of the contractor. If such contractor fails to supply the *requested* information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

(3) Ability to Meet Standards. **The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:**

(A) evidence that such contractor possesses such necessary items;

(B) acceptable plans to subcontract for such necessary items; or

(C) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(5) Written Determination of Nonresponsibility Required. *If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Chief Procurement Officer....* A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

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Jurisdiction: Appellant brings this appeal to the OPA based on the unequivocal rejection of Appellant's letter of May 4, 2007 by the Authority's CPO. While Appellant styled its letter as a request for explanation, reserving protest, the Authority only referred to it as a protest, it did not

invite a reconsideration, and it rendered what can only be considered in substance and form as the final decision contemplated by 5 GCA § 5425(c).

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## C. ARGUMENT:

### CONCISE STATEMENT OF ARGUMENT.

The Authority's rejection of Appellant's bid, as evidenced by its letter of June 11, 2007, was wrongly based, hopelessly confusing two very distinct standards by which competitive sealed bids are to be awarded<sup>2</sup>, "responsible"<sup>3</sup> and "responsive"<sup>4</sup>. Not only are these terms substantively distinct, the determination of each of them is to be accorded very different standards<sup>5</sup> and processes<sup>6</sup>. The Authority, both at the bid award level and at the protest level, rejected the bid *solely* because it was said to be "non-responsive". It based its conclusion on reasons related solely to *responsibility*, *not responsiveness*, therefor its conclusion is not supported by relevant facts. Moreover, it denied Appellant fundamental due process rights that prevented Appellant from curing any deficiency related to the Authority's consideration of such reasons as matters of responsibility.

### DISCUSSION

The Authority failed to make the critical distinctions required between responsiveness and responsibility, and its rejection of Appellant's bid was therefore without basis, and should be set aside, leaving J&G the lowest bidder, entitled to the award.

"Responsible" and "responsive" are not interchangeable terms, nor are they two sides of the same coin. The Authority's error is that they determined Appellant's bid was not responsive based entirely on criteria used to assess responsibility. That is the legal equivalent of charging someone

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<sup>2</sup> 2 GAR § 3109 (n)(1). The contract is to be awarded "to the lowest responsible and responsive bidder"....

<sup>3</sup> 5 GCA § 5201 (f). See above.

<sup>4</sup> 5 GCA § 5201 (g). See above.

<sup>5</sup> 2 GAR § 3115 (e)(3)(A) (i) and (ii); see footnote 1, *supra*, and accompanying text.

<sup>6</sup> 2 GAR § 3116. See above and discussion below.

allegedly engaged in assault and battery only with assault but pleading only facts which make up battery. And the same result should lie in both cases; the charges do not fit the infringement and should be dismissed.

Specifically, the Authority concluded that Appellant's bid was non-responsive for the following stated reasons:

The Contractor's Qualification Statement ... is **the** [emphasis added] document by which GMHA evaluated such competency [of the bidder]. J&G failed to complete portions of the Statement and also failed to submit listing of **availability of personnel and technical equipment...**

J&G, in its bid, failed to detail the **machinery and equipment available....** Also, **J&G failed to identify skilled workmen and supervisory staff.**

**J&G failed to submit resumes** for its local office representative, the proposed project manager and field superintendent.

#### DISCUSSION OF RESPONSIVENESS

Appellant argues that none of those specifically itemized reasons go to the issue of responsiveness, and therefore are not adequate grounds for rejecting the bid as "non-responsive".

2 GAR § 3115(e)(3) provides reasons for rejecting bids. § 3115(e)(3)(A)(ii) speaks of the *bid* being judged "**not responsive**", which is distinguished in (A)(i) from the *bidder* ("the business that submitted the bid"), which is to be judged by reference to §3116's standards of "**nonresponsibility**" (and should be described as "nonresponsible" as posited in footnote 1, *supra*). This sets up the distinction that it is the bid which is judged to be responsive and the bidder which is to be responsible.

The definitions in the Authority's Instructions to Bidders defines the bid as "a complete and properly signed proposal to do the Work for the sums stipulated...", and the IFB contained a specific "Bid Form", apart from all the other required documents, which Appellant filled out, without objection from the Authority. The Authority raised no quarrels with the form or substance of J&G's Bid Form.

Going back to the statutory definition of "responsive bidder" (5 GCA § 5201(g)), it refers to a person, but describes that person as *one who submits* a bid, and it is the bid, not the person, "which" must conform "in all material respects to the Invitation for Bids". It is the *bid which* must conform to be responsive, not the bidder. Contrast that with the definition of "responsible bidder" (§ 5201 (f), *supra*) where it is the "*person who*" must have capability, integrity and reliability. It is the bidder which must be responsible, not the bid.

All of the faults in Appellant's bid submission complained of by the Authority go to the nature of

the bidder, not the bid, and therefore do not support the finding of the Authority that the bid was non-responsive. In the strict parlance of the procurement code and regulations, standards of *responsiveness* must be applied to issues of the *bid*, not the bidder. It is *the bidder*, not the bid, which is to be judged by the standards of *responsibility*.

It was manifest error for the Authority to reject the bid on the grounds of responsiveness and not cite one complaint about the responsiveness of J&G's bid, only citing numerous shortcomings in filling out the details of the forms going to the capability, integrity and reliability of the bidder, all characteristics which the regulations identify as standards of responsibility, not responsiveness. This difference will be more fully explored in the discussion of responsibility below.

### IMPORTANCE OF PROPERLY DISTINGUISHING RESPONSIVENESS FROM RESPONSIBILITY

This is not just sophomoric semantics, because the ramifications of characterizing award criteria as either responsive or responsible are substantially and materially different, and more importantly, have procedural implications of major significance to the bidders.

By pigeon-holing the shortfalls in J&G's bid (and Appellant does not claim to have dotted every "i" nor crossed every "t"), as being "non-responsive" rather than non-responsible, the Authority also denied J&G certain essential due process rights of the procurement process, as will be developed more fully below.

### DISCUSSION OF RESPONSIBILITY

There is no doubt that a bid might be rejected if the bidder is found to be nonresponsive; the award is based on the lowest responsible *and* responsive bidder (2 GAR § 3109( n)(1)). But J&G's bid was not rejected as "nonresponsive", even though it was judged solely by those standards.

The Regulations provide guides to what are the standards for *responsibility* (2 GAR § 3116 (b)(2), *supra*). Factors to be considered in reference to responsibility include specifically **availability of personnel resources and equipment** (§ 316 (b)(2)A(i)), among other matters.

As summarized above and evident from a full reading of the Authority's notice of rejection of protest letter of June 11, 2007, *substantially all* of the reasons the Authority gave for concluding J&G's bid was "non-responsive" related to the **availability of personnel resources and equipment**.<sup>7</sup> However, these are factors to address to determine responsibility, not

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<sup>7</sup> "failed to submit listing of availability of personnel and technical equipment....", "failed to detail the machinery and equipment available....", "failed to identify skilled workmen and supervisory staff", "failed to submit resumes". See Bid Protest Rejection letter June 11, 2007.



responsiveness.

Assuming solely for the purposes of argument that Appellant's bid submission failed, in all material respects, to provide the information related to the availability of personnel resources and equipment and other issues complained of, that does not justify any formal determination that the bid is "non-responsive". Any such shortcoming would go to establishing only that J&G was nonresponsive. It is plain legal error to define and judge one criteria necessary for an award by the definitions and standards of a separate and distinct criteria.

The Authority did not at any time determine that J&G was non-responsive, and should not be allowed to reject the lowest bid, by a magnitude of over \$50,000.00, based on inapplicable criteria for assessing Appellant's bid to be non-responsive.

That should be enough reason for the rejection to be overturned and the award made to Appellant. But there are more fundamental reasons why the Authority's determination to reject Appellant's bid should not be allowed to stand.

#### DUE PROCESS REQUIRED TO DETERMINE RESPONSIBILITY

Matters of bid responsiveness are judged by a standard of conforming "in all material respects" (see, 2 GAR § 3115 (e)(3)(A)(ii), *supra*). Although bid mistakes may be corrected after the opening of bids and before award where the bids contain "minor informalities" of form, "that is, [where] the effect on price, quantity, quality, delivery, or contractual conditions is negligible" (2 GAR § 3109(m)(4)(B)), the bidder is generally allowed only one shot at getting the bid right (see, 2 GAR § 3109(m)(1)).

But that does not mean just everything in a bid package must be exactly as called for in the IFB upon submission of the bid. It does not justify the Authority's reliance on its statement in the bid package that "Failure to comply with the requirements will mean disqualification and rejection of the bid", nor does it underwrite the Authority's conclusion that "J&G simply failed to submit documents and or provide information which was mandated in the Bid Package. As such, GMHA is justified in rejecting J&G's bid ...."

Because, matters of responsibility are treated more flexibly than matter or responsiveness. A bidder cannot be determined to be nonresponsive without a opportunity given to cure, and supplement, the bid submission (see footnote 1 and text accompanying).

Any failure on the part of a bidder to provide all information mandated in the IFB, as argued by the Authority, is **not** fatal to the bidder, and much of the information routinely requested in IFB's can be supplemented after the submission of bids to cure shortcomings in the bid submissions (2 GAR § 3116(b)(3)).

2 GAR § 3116 is to the effect that a separate inquiry with respect to responsibility must be conducted by the Procurement Officer. This inquiry is not made in respect of every bidder, but

only in respect of the “prospective contractor”, i.e., the lowest bid being considered for award. (§ 3116 (b)(2)(B).)

Factors to be considered include whether a prospective contractor has available equipment and personnel resources, and “whether the prospective contractor has supplied all necessary information *in connection with the inquiry concerning responsibility.*” (2 GAR § 3116 (b)(2)(A)(v).)

§ 3116 (b)(2)(B): “The **prospective contractor** shall supply information requested by the Procurement Officer concerning the responsibility of the contractor. **If** such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

A “prospective contractor”, such as the lowest bidder, cannot be found to be nonresponsible solely on the face of the bid submissions without such an opportunity.

§ 3116 (b)(3) Ability to Meet Standards. **The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel** by submitting upon request:

- (A) evidence that such contractor possesses such necessary items;
- (B) acceptable plans to subcontract for such necessary items; or
- (C) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

J&G was the lowest bidder, and on the face of that a “prospective contractor”, yet the Authority did not once request that any information be submitted by J&G to demonstrate that it had the available equipment and personnel, or anything else. The Authority never conducted the inquiry into the responsibility of Appellant, nor issued any written determination required by 3 GAR § 3116. The rejection of Appellant’s protest can not be considered such a determination because, first, its conclusion spoke only of responsiveness, not responsibility, and, second, there was no inquiry made with opportunity to cure.

With the Authority couching its rejection under the guise and pretext of responsiveness, Appellant was denied the opportunity to buttress its bid submission and cure any defects attributable to or substantiating matters pertaining to responsibility. This is a fundamental denial of due process and an egregious misuse of the procurement procedures.

## DISCUSSION OF APPELLANT’S RESPONSIBILITY

Now let’s turn to the record to see what material Appellant did provide and what matters the Authority could have considered in determining if Appellant was responsible.

J&G did not rock up empty-handed. Its Bid Form detailed all the required criteria and was duly signed. Its bid submission included the shareholder's affidavit disclosing that Mr. Kenneth T. Jones, Jr. is the super-majority owner. It contained the required non-collusion affidavit.

The Contractor's Qualification Statement, on which the Authority expressed so much importance It named its former incarnations as entities associated with Appellant, and included a copy of J&G's Incorporation Certificate showing it was incorporated on Guam over 50 years ago. It identified its President, Kenneth T. Jones, Jr., and Vice-President, though it omitted, as the Authority pointed out, the names of the Secretary and Treasurer.

It did provide one resume, that of Mr. Samuel Cunanan, who was J&G's Project Supervisor and previously worked together with the Authority in that capacity under a prior construction contract with the Authority, GMHA Project No. 024-2005, together with a Certificate of Training, showing him to have satisfactorily completed, in 2002, the course of CONSTRUCTION QUALITY MANAGEMENT for CONTRACTORS. (Contrast this with the Authority's characterisation of the submission in its letter rejecting Appellants protest: "Only document referenced an individual named Samuel Cunanan and only lists his experience as an estimator".)

J&G listed its Guam Contractor's License number, and included a copy of its license, which lists its various qualified construction classifications. It responded favorably to many of the questions regarding its experience. It listed trade and bank references and provided the required financial statement. It attached a list of 4 subcontractors, with their respective license numbers.

By another attachment, J&G included a list of fourteen (14) separate construction contracts it had *recently* completed and had still in process, including the above-mentioned contract with the Authority, contracts with DPW, Dept. of Administration, GPA, and the Judiciary of Guam, as well as a separate document entitled "Statement of Experience of Bidders" which gave references to jobs completed by Appellant and the parties to whom it contracted.

Notwithstanding admitted shortfalls, there was more than enough information submitted with the bid to present a prima facie standard of responsibility.

Under the mandate of 5 GAR § 3116, the Authority should have requested from Appellant any information that would have buttressed its submissions if there was *any* question of responsibility, such as having available necessary equipment and personnel. Then, and only then, "[i]f such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information ..." And, even in that circumstance, what information might that have included?

First, it would have included all the information and experience associated with Appellant's contract with the Authority for the contract completed about a year before the instant bid.

The Authority could have looked outside its hospital window and noticed the significant civil work that had been done by Appellant on its own cliff line project located immediately adjacent

to the hospital.

It could have considered the reputation of Mr. Kenneth T. Jones, Jr., who is widely known as the owner and principal of J&G which constructed and developed Jonestown, through which the employees of the Authority travel to work every day. It could have considered the widely known fact that, just north of its hospital lies the Hilton Hotel, originally built by J&G.

It could have taken notice of widely known community knowledge that Appellant, and its President, has been a longstanding and outstanding pioneer of the development of post-WWII Guam, and constructed much of its shopping, centers, buildings and other works, and repeatedly and successfully marshalled finance, personnel and equipment for any number of diverse business efforts, including construction.

In short, the information at hand, and the information it might have taken notice of, could easily have been adequate in the circumstances to overlook the minor informalities and concluded that J&G is a “person who has the capability in all respects to perform fully the contractual requirements, and the integrity and reliability which will assure good faith performance”.

And that is *all* that is required to be considered a “responsible bidder”.

#### CONCLUSION:

At the award level, and again at the protest level, the Authority made only one conclusion about Appellant’s bid: it was “non-responsive”. No “material respects” were identified in the reasons given for the Authority’s conclusion of “non-responsive”, just a blanket statement to the effect that failure to comply with *all* of the mandated by the Bid Package was material. More to the point, all of the reasons given to support this conclusion relate only to issues of responsibility. No substantive issue of responsiveness was raised.

This conclusion was wrong: wrong in its application of the relevant facts, wrong on the law and regulation regarding what is meant by and how to assess “responsive”, and wrong for any alternative conclusion that the Authority *could* have made - but pointedly **did not** - of non-responsibility, based on the reasons it gave for its conclusion, in light of available information submitted with the bid and information that could have, and would have, been made available had the appropriate due processes been followed to even consider such a matter.

Appellant’s bid, the lowest bid, was over \$50,000.00 lower than the next bidder. It took the Authority close to two months to consider the bid and conclude it was “non-responsive”. Given that all the reasons it gave for its conclusion related to standards of responsibility, it had plenty of time in that interim to conduct the inquiry and make the determination that the law and regulations require to consider such matters. But it failed to do so and denied Appellant

significant fundamental due process rights which could have easily allowed Appellant to dot its “i’s” and crossed its “t’s”.

Appellant’s bid was over \$50,000.00 lower than the next bidder. That money would go a long way to support staff, provide equipment and otherwise be directed to patient care at Guam Memorial Hospital. It is not in the best interests of the Authority, and it will not “maximize to the fullest extent practicable the purchasing value of public funds” if the Authority is allowed to reject Appellant’s bid and pay over \$50,000.00 more to the next highest bidder, whose bid submission may or may not have been picked over for inadequacies the way Appellant’s bid was.

J&G was the lowest bidder. No pertinent, relevant facts were cited to suggest that its bid was non-responsive. No conclusion was made, and no inquiry conducted, and no written determination given, to conclude that it was non-responsive. J&G offered the lowest responsive and responsible bid.

J&G is entitled to the award.

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#### STATEMENT SPECIFYING RULING REQUESTED

Appellant respectfully requests that the Public Auditor consider the available information and award the bid to the lowest bidder, J&G Construction. Alternatively, though Appellant believes the Public Auditor has sufficient data before it to award the bid to Appellant, the Public Auditor could require the Authority to rescind its finding that the bid was not responsive and conduct an inquiry, as required by 5 GCA § 5230(a) and 2 GAR § 3116, into whether J&G is a “person who has the capability in all respects to perform fully the contractual requirements, and the integrity and reliability which will assure good faith performance”.

#### SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS

Reserving the right to provide further written material as it may be considered relevant or come to hand, there are attached hereto the following supporting materials:

1. Copy of “Bid Status” notice to J&G, dated May 1, 2007, advising J&G’s bid rejection and the party determined to be the lowest responsible and responsive bidder.
2. Copy of letter from J&G’s General Counsel, dated May 4, 2007, requesting explanation and reserving notice of protest.

3. Copy of letter from the Authority, dated May 7, 2007, notifying J&G of bid protest, advising “the awarding of the subject solicitation is hereby stayed until GMHA completes its review and issues a formal response.”
4. Copy of letter from the Authority, dated June 11, 2007, addressed to J&G’s Counsel, rejecting J&G’s bid protest.
5. Copy of “Project Manual” Project No. GMHA 005-2007, containing Bid Invitation and other documents relevant to the Invitation for Bids, excluding however, the bid specifications prepared by Taniguchi Ruth Makio Architects, which are bulky and comprehensive and not pertinent to the within Appeal as of this time; copies can be made available if requested.
6. Copy of J&G’s copy of its Bid Form and submissions made together therewith, generally identified in the discussion above.

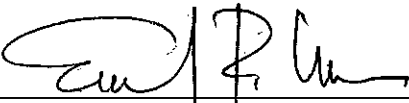
///

VERIFICATION AND DECLARATION RE COURT ACTION

The undersigned party does hereby verify, to the best of information and belief, the facts stated and confirms that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

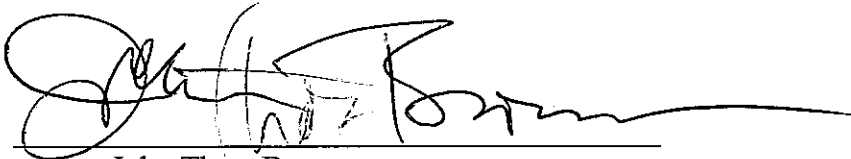
Submitted this 21<sup>st</sup> day of June, 2007.

APPELLANT, Jones & Guerrero Co., Inc., dba J&G Construction

By: 

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