

**PART I- To be completed by OPA**

In the Appeal of

**NOTICE OF APPEAL**

Pacific Security Alliance, Inc.  
(Name of Company), APPELLANT

Docket No. OPA-PA 07-009

**PART II- Appellant Information**

Name:

Pacific Security Alliance, Inc.

Mailing Address:

1851A Admiral Drake  
HARPER, GUAM 96932

Business Address:

Same

Daytime Contact No:

466-2307

**PART III- Appeal Information**

A) Purchasing Agency: CG 111 11 A

B) Identification/Number of Procurement, Solicitation, or Contract: Contract 023 2107

C) Decision being appealed was made on 11/1/07 (date) by:  
 Chief Procurement Officer     Director of Public Works     Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

- Decision on Protest of Method, Solicitation or Award
- Decision on Debarment or Suspension
- Decision on Contract or Breach of Contract Controversy  
(Excluding claims of money owed to or by the government)
- Determination on Award not Stayed Pending Protest or Appeal  
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

NOV 16 2007

TIME: 4:57 PM  
BY: via facsimile  
FILE No. OPA-PA 07-009

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:


**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including **BUT NOT LIMITED TO:**

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibit, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.*

**PART V- Declaration Re Court Action**

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

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and 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 16 day of Nov, 2007.

By: Virginia Security Alliance, Inc  
APPELLANT

or

By: [Signature] Paes  
Appellant's Duly Authorized Representative  
(Address)  
(Phone No.)

# Pacific Security Alarm, Inc.

1851A Army Drive  
Harmon, Guam 96913  
Tel : (671) 646 - 2307  
Fax : (671) 649 - 7245

PPP -152 Box 10000  
Saipan, M.P. 96950  
Tel : (670) 234-5626  
Fax : (670) 234-5026

November 16, 2007

Office of the Public Auditor  
Public Auditor Doris Flores Brooks, CPA  
Suite 401 PDN Building  
238 Archbishop Flores Street,  
Hagatna, Guam 96910..

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

NOV 16 2007  
TIME: 3:45 PM  
BY: A. Camacho  
FILE No. OPA-PA 07-009

Att; Public Auditor Doris Flores Brooks, CPA

Dear Ms. Brooks,

Subject: Procurement Appeal of decision to reject Bid protest of Invitation For Bid # GMHA 023-2007

This letter is our appeal of the GMHA decision of November 1, 2007 to reject our bid protest detailed in our letter of August 23, 2007 of the above described Invitation to Bid ( copy of protest and GMHA rejection attached). Our appeal is based on the following reasons.

1. GMHA has failed to address the major concern we raised in our protest regarding the “inherent unfairness of the bidding process” when a project is re-bid utilizing a nearly identical scope of work, shortly following the public opening of initial bids.

We outlined a remedy for this “inherent unfairness”, and we recognize there may be other, equally effective remedies that mitigate this problem. However, the central issue seems to be for GMHA ( or OPA) to find a remedy for this problem, since that issue so completely undermines the fairness that is intended and critical in the procurement process. Unless there is significant damage to GMHA ,and there seems to be none, (neither has GMHA referenced any), GMHA should be obligated to utilize the flexibility provided by the clause “ when the Hospital Administrator determines in writing that such action is in the Hospital’s best interest...”, for preventing the unfairness identified, while moving forward with the project.

2. GMHA has used the “best interest of the Hospital” clause to justify the unavailability of funds. The GMHA Rules and Regulations specifically require that GMHA ensure the availability of funding for any project at the time the solicitation is issued, (our emphasis added). Since this is the reason noted to disallow our protest, it appears GMHA released the Invitation for Bid prematurely, and against GMHA’s own regulations. To rescind the bid, only to be followed by another bid of nearly identical scope, is to follow one procurement error, with a second procurement error, resulting in the “inherent unfairness” we have identified.

In summary, we believe the remedy we have outlined in our protest would be permitted under GMHA Procurement Rules and Regulations using the authority in the "best interest of the Hospital" clause.

The other key factor would seem to be the expectation of sufficient funding for the project in the near term. We are led to believe that funding is eminent, and that this project is a priority as it is one of the matters requiring correction prior to JACO certification.

Your assistance in this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Lee Palmer", with a long horizontal flourish extending to the right.

G. Lee Palmer  
President

Attachment: PSA letter dated August 23, 2007  
GMHA letter dated November 1, 2007

# Pacific Security Alarm, Inc.

1851A Army Drive  
Harmon, Guam 96913  
Tel : (671) 646 - 2307  
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PPP -152 Box 10000  
Saipan, M.P. 96950  
Tel : (670) 234-5626  
Fax : (670) 234-5026

August 23, 2007



Mr. Peter John D. Camacho, M.P.H.  
Hospital Administrator/CEO  
Guam Memorial Hospital Authority  
850 A. Gov. Carlos Camacho Road  
Tamuning Guam 96911

*[Signature]*  
RECEIVED BY:  
*Lorraine Solang*  
PRINT NAME  
08.22.07 @ 2:25p  
DATE + TIME

Subject: GMHA Bid 023-2007, Removal and Replacement of Fire Alarm System Project

Dear Mr. Camacho,

This letter is our official protest of the GMHA decision included in your letter dated August 7<sup>th</sup>, 2007 (faxed and received by PSA on August 9, 2007) indicating a decision to cancel the above referenced bid for "Insufficient Funds".

We understand that the replacement of the existing, aging fire alarm system is an integral and priority component of GMHA's efforts to obtain accreditation and, therefore, the funding deficiency is likely to be a temporary condition. GMHA would, in all probability, be in the position of needing to implement the replacement of the fire alarm system within the ensuing months.

The requirements for the replacement will not change during this short period, and the necessity for a re-bid of the same project will result in an inherent unfairness of the bidding process. The bid submissions for the project were followed by a public opening. Thereafter, it is not possible to return to an equal, fair footing for prospective bidders. In addition to current bidders having access to competitor's bid amount, presumably other prospective future bidders are able to obtain the same information. Even if the future scope of work on a re-bid was altered somewhat, the basic replacement remains constant, and any reasonable bidder could separate estimated costs of any alternation and arrive at an amended bid amount. There is simply no way to regain the fairness that is intended in the GMHA procurement process.

We believe the appropriate remedy for this is to rescind the "cancellation", and issue a "Notice of Intent to Award to the Lowest Bidder", but advising there will be a delay pending funding, before a contract is executed and a Notice to Proceed is issued. If this delay extends beyond 30 days, the fairness to the contractor is accomplished by his agreement to maintain pricing included in the bid, at the time of signing the contract. Should the delay extend beyond the contractors ability to maintain his pricing, and a negotiated agreement could not be reached with GMHA, the bid could then be cancelled and re-bid.

As a practical matter, this seems to be in the best interest of GMHA also, as it determines exact funding requirements, and eliminates the additional cost, delays, and administrative expenses associated with a re-bid of the replacement

We also believe that GMHA has the procurement authority to structure a contract that would allow the work to be performed in phases. Under this approach, if partial funding is available ( say 60%), a Notice to Proceed could be given on "Phase 1", which would not exceed the funding available. "Phase 2" could be started, if and when funding is available for the second portion. The physical structure of the Hospital appears to be conducive to this approach.

We appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Palmer", with a long horizontal flourish extending to the right.

Lee Palmer  
President

cc: Daniel L. Webb,  
Chairman of the GMHA Board of Trustees



# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



850 GOV. CARLOS CAMACHO ROAD  
OKA, TAMUNING, GUAM 96913  
TEL: (671) 647-2444 or 647-2330  
FAX: (671) 649-0145

November 1, 2007

**VIA HAND DELIVERY  
AND U.S. MAIL**

Mr. Lee Palmer  
President  
Pacific Security Alarm, Inc.  
11851A Army Drive  
Harmon, Guam 96913

**RE: Bid Protest of Invitation For Bid No. GMHA 023-2007**  
Removal and Replacement of Fire Alarm System Project

Dear Mr. Palmer:

This letter acknowledges the receipt of your bid protest dated August 23, 2007 (the "Protest"), which was received by the Guam Memorial Hospital Authority ("GMHA") on the same date. The Protest concerns Invitation For Bid No. 023-2007 (the "IFB"). After careful review of the claims set forth in your Protest, GMHA hereby rejects your Protest for the reasons stated herein.

Your Protest concerns the cancellation of the IFB due to Insufficient Funds (See Letter dated August 7, 2007 from GMHA to PSA, acknowledged received by PSA on August 9, 2007). The basis of your protest is that GMHA should not cancel the solicitation, but instead "issue a 'Notice of Intent to Award to the Lowest Bidder,' but advising that there will be a delay pending funding, before a contract is executed and a Notice to Proceed is issued. If this delay extends beyond 30 days, the fairness to the contractor is accomplished by his agreement to maintain pricing included in the bid, at the time of signing the contract. Should the delay extend beyond the contractors ability to maintain his pricing, and a negotiated agreement could not be reached with GMHA, the bid could then be cancelled and re-bid." (Protest Letter dated August 23, 2007). While probably a practical solution, this procedure is not permitted under GMHA's strict Procurement Rules and Regulations.

Instead, the GMHA Rules and Regulations specifically require that GMHA ensure the availability of funding for any project at the time the solicitation is issued. (Section 3-201.2 of the GMHA Procurement Rules and Regulations); *however*, the GMHA Procurement Rules and Regulations also permit the cancellation of the solicitation after

Mr. Lee Palmer  
November 1, 2007  
Page 2

bids have been opened but prior to the award of a contract "when the Hospital Administrator determines in writing that such action is in the Hospital's best interest for reasons including, but not limited to: ... (b) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds." (Section 3-301.04.2. 1.(b) GMHA Procurement Rules and Regulations).

In this instance, sufficient funding was not available for the Project. Consequently, the solicitation was cancelled prior to the award of contract, as clearly permitted under the GMHA Procurement Rules and Regulations. PSA's proposal that the award be made conditionally is not permitted under the procurement regulations or law. Indeed, the suggestion that additional negotiation on pricing be had between PSA and GMHA if the delay exceeds the time in which the contractor may continue to offer the same pricing, is contrary to awarding the contract based on the lowest bid. It is, of course, possible that another bidder whose bid was not lower than PSA's at the time the bids were made could have a lower price 60 days later, or at the time that GMHA has available funding. In that event, the competitive bidding process would be contravened.

### CONCLUSION

Under the circumstances, in canceling the IFB, GMHA properly determined that it had Insufficient Funding, which is a permitted basis for the cancellation of a Solicitation under Section 3-301 of the GMHA Procurement Rules and Regulations. Based on the facts and legal authorities cited herein, GMHA has determined that there is no evidence to support the claims presented in your Protest. As such, PSA's Protest is 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.

I apologize for our delay in responding to your protest. We had forwarded your protest letter to our Legal Counsel on September 5, 2007 for their review and we just now received their response.

Sincerely,



PETERJOHN D. CAMACHO, M.P.H.  
Hospital Administrator/CEO

cc: Procurement Office  
Legal Counsel





# PACIFIC SECURITY ALARM, INC.

Main Office: 1406 N. Marine Drive, Suite 201 Tumon, Guam 96911  
 TEL: (671) 646-2307 thru 10 FAX: (671) 649-7245 E-Mail: [psa@psa.com.gu](mailto:psa@psa.com.gu)  
 Guard/Monitoring: 590 S. Marine Drive ITC Building Sta. 405 Tumuning, Guam 96911  
 TEL: (671) 649-9273/5 646-5731 FAX: (671) 646-4119 E-Mail: [psaite@psa.com.gu](mailto:psaite@psa.com.gu)  
 Saipan Office: PPP Suite 152, Box 10000, Saipan, MP 96950-9504  
 TEL: (670) 234-5626 FAX: (670) 234-5026  
 Website: <http://www.psa.com.gu>

## Facsimile Sheet

To : Office of the Public Auditor

Fax # : 472-7951

Attn : Therese Gumataotao

From : Kathleen Brown, Financial Controller

RE: OPA-PA07-009

Date: Nov 20, 2007
No. of Pages (including cover) : 3
Ref. No.:

Tel#: (671) 646-2307

Fax#: (671) 649-7245

Warning: This message may contain information that is privileged or confidential. It is intended for the use of the recipient named above. Any other distribution, copying or disclosure is prohibited. If you have received this transmission in error, please notify us by telephone immediately so arrangements can be made to retrieve it. If pages are not as noted, please give our office a call immediately.  
 This message is unrestricted.

Dear Therese

As requested, attached is the typed copy of Appendix A for the file. Please advise if you need anything further.

Kathleen Brown  
 Financial Controller

Guam and Saipan are under US jurisdiction. Domestic mail rates and banking regulations apply. Guam and Saipan are West of the International Date Line; When it is 12:00 Noon Jan 01 in Los Angeles, it is 6:00 A.M. Jan. 2 on Guam and Saipan. Long distance dialing to Guam and Saipan is 1+ area code + telephone number



OFFICE OF THE PUBLIC AUDITOR

Appendix A: Notice of Appeal Form  
PROCUREMENT APPEAL

**PART I- To be completed by OPA**

In the Appeal of	)	<b>NOTICE OF APPEAL</b>
	)	
<u>Pacific Security Alarm, Inc</u>	)	
(Name of Company), APPELLANT	)	Docket No. OPA-PA <u>07-009</u>
	)	
	)	

**PART II- Appellant Information**

Name: Pacific Security Alarm, Inc.

Mailing Address: 1851 A Army Drive  
Harmon, Guam 96913

Business Address: Same as above

Daytime Contact No: 646-2307

**PART III- Appeal Information**

- A) Purchasing Agency: G.M.H.A
- B) Identification/Number of Procurement, Solicitation, or Contract: GMHA 023-2007
- C) Decision being appealed was made on 11/01/07 (date) by:  
 Chief Procurement Officer     Director of Public Works     Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

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_____	_____
_____	_____
_____	_____
_____	_____

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Submitted this 16 day of Nov, 2007.

By: Pacific Security Alarm, Inc.  
APPELLANT

or

By:   
 Appellant's Duly Authorized Representative  
 (Address)  
 (Phone No.)

APPENDIX A