



OFFICE OF THE PUBLIC AUDITOR

**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT & CONTRACTS

DEC 12 2007

TIME: 9:15 AM
BY: T. Cumatao
FILE No. OPA-PA 07-011

PART I- To be completed by OPA

In the Appeal of)

JMI Systems INC.)

(Name of Company), APPELLANT)

NOTICE OF APPEAL

Docket No. OPA-PA -07-011

PART II- Appellant Information

Name: JMI MEDICAL SYSTEMS, INC.
Mailing Address: P.O. BOX 6577
TAMUNING, GUAM 96931
Business Address: 125 N. MARINE CORPS DRIVE
TAMUNING, GUAM 96931
Daytime Contact No: (671) 649-5444

PART III- Appeal Information

- A) Purchasing Agency: JMI MEDICAL SYSTEMS INC.
- B) Identification/Number of Procurement, Solicitation, or Contract: G.M.H.A Bid 024-2007
- C) Decision being appealed was made on 11-27-07 (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)

ORIGINAL

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

<u>Medpharm</u>	_____
<u>JC Marketing</u>	_____
_____	_____
_____	_____
_____	_____

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 exhibits, 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.

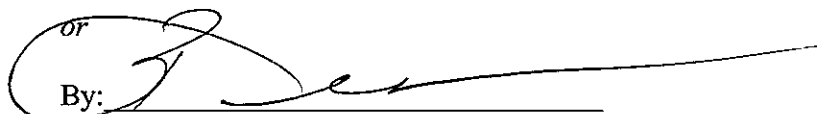
PART V- Declaration Re Court Action

Pursuant to 5 GCA 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 ___ day of _____, 20___.

By: _____
APPELLANT

or 

By: _____
 Appellant's Duly Authorized Representative, Ben C. Sison
 (Address) 777 Route 4 Suite 10 B MVP Business Center Sinajana Guam 96910
 (Phone No.) (671) 477-0000

APPENDIX A

ORIGINAL



OFFICE OF THE PUBLIC AUDITOR

**Appendix B: Declaration Form
PROCUREMENT APPEAL**

In the Appeal of)	
)	
JMI MEDICAL SYSTEMS INC.)	
(Name of Company), APPELLANT)	Docket No. OPA-PA _____
_____)	

DECLARATION RE COURT ACTION
(To be signed by the Government Purchasing Agency.)

Pursuant to 5 GCA 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 ___ day of _____, 20__.

By: _____
DECLARANT

Print Declarant's Name



OFFICE OF THE PUBLIC AUDITOR

**Appendix C: Notice of Hearing Form
PROCUREMENT APPEAL**

In the Appeal of)	
)	
)	NOTICE OF HEARING
JMI MEDICAL SYSTEMS INC.)	
(Name of Company), APPELLANT)	Docket No. OPA-PA _____
)	
_____)	

You are hereby notified that a hearing will be held before the Public Auditor or the Hearings Officer for Procurement Appeals at the Office of the Public Auditor on the _____ day of _____, 20__, at the hour of _____, relative to the above referenced Procurement Appeal. You may be present at the hearing; may be, but need not be, represented by counsel; may present any relevant evidence; and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

Please acknowledge receipt of this Notice and return to the Office of the Public Auditor immediately.

Acknowledged receipt:

Receiver's Signature

Print Name

Date



OFFICE OF THE PUBLIC AUDITOR

**Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL**

In the Appeal of)	
)	
)	HEARING
)	REQUEST/WAIVER
JMI MEDICAL SYSTEMS INC.)	
(Name of Company), APPELLANT)	Docket No. OPA-PA _____
_____)	

Please select one:

- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.
- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this 11 th day of Dec., 2007.

By: (Please select one)

- APPELLANT
- Chief Procurement Officer
- Director of Public Works
- Head of Purchasing Agency

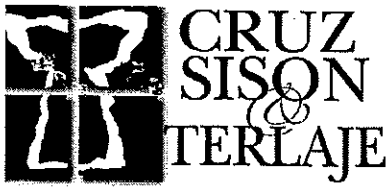


 Signature



 Print Name

ORIGINAL



LAW OFFICES
 777 Route 4, Ste 10B • MVP Business Center
 Sinajana, Guam 96910
 Tel: 671- 477-0000
 Fax: 671-477-0001 866-610-1966 (Toll Free)
 Email: guamlaw@ite.net

Donna M. Cruz, Esq.
 Benjamin C. Sison, Jr., Esq.
 Dominic S. Terlaje, Esq.

PROFESSIONAL LIMITED LIABILITY COMPANY

December 11, 2007

VIA HAND DELIVERY

Doris Flores-Brooks
 CPA, CGFM
 Public Auditor of Guam
 OFFICE OF THE PUBLIC
 AUDITOR OF GUAM
 Suite 401 Pacific News Building
 238 Archbishop Flores Street
 Hagatna, GU 96910

RECEIVED
 OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT AFFAIRS

DEC 12 2007
 TIME: 9:15 AM
 BY: T. Cruzatao
 FILE No. OPA-PA -07-011

Re: Appeal of GMHA Notice of Decision Against JMI Medical Systems Inc. Regarding Procurement for Microbiology Analyzer RFB 024-2007;

Dear Mrs. Flores-Brooks:

Our office has been retained by JMI Medical Systems Inc. (“JMI” or “Protestant”). This letter is an appeal of the Guam Memorial Hospital Authority’s (“GMHA”) Notice of Decision dated November 27, 2007 denying JMI’s Protest of the award of the contract for a Microbiology Analyzer to Medpharm pursuant to Bid Invitation and Award GMHA 024-2007 (the “RFB”). This appeal is made pursuant to 5 GCA Article 9 §5425(e).¹

I. FACTUAL STATEMENT

On June 22, 2007, GMHA issued a Bid Invitation and Award GMHA 024-2007 (the “RFB”) for the purchase of an Automated Microbiology Analyzer with the newest technology on hardware, software and clinical application (the “Equipment Component”) and reagent and supplies for a minimum 3000 tests per year for use with the Microbiology Analyzer (the “Supplies Component”). A copy of the RFB is attached hereto as Exhibit “A” and specifically incorporated herein by its reference. In response to

¹ 5 Guam Code Annotated (GCA) Article 9 §5425(e) in pertinent part provides as follows:

e. **Appeal.** A decision under Subsection (c) of this Section..., may be appealed by the Protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

the RFB, GMHA apparently received sealed bids from three (3) prospective bidders, namely the Protestant, JMI, JC Marketing, and Medpharm. Prior to the opening of the sealed bids, JC Marketing submitted a request for clarification with respect to the Supplies Component of the RFB. In response to said request, GMHA issued Amendment No. 3 to the RPF. Said Amendment is attached hereto as Exhibit "B" and specifically incorporated herein by its reference.

Upon the opening of the submitted bids, JC Marketing's bid was apparently rejected by the GMHA as unresponsive for its failure to submit along with its bid, a Non-Collusion Affidavit as required under the RFB. JMI submitted a bid which complied in all material respects to the RFB including but not limited to i) a provision for a Supplies Component as required under "Scope of Services Section 1" of the RFB, and ii) proposals for a basic and/or alternate microbiology analyzer including a necessary software component under "Scope of Services Section II". Medpharm submitted its bid which failed to include a Supplies Component and failed to include a software component for a basic microbiology analyzer. Consequently, the only responsive aspect of Medpharm's bid was a proposal for an alternate microbiology analyzer. Medpharm's bid violated Section 7 of the "General Terms and Conditions" provisions of the RFB which provided for an "All or None" Bid requiring all prospective bidders to include all items requested in the RFB. Despite Medpharm's failure to comply with the RFB in all material respects and failure to comply with the "All or None" Bid Clause under the RFB, GMHA nevertheless made a determination that Medpharm was the lowest responsible bidder and awarded the contract under the RFB to Medpharm. On August 31, 2007, JMI timely served GMHA with a Protest Letter protesting the award of the contract to Medpharm and a Request for Reconsideration on September 13, 2007. On November 27, 2007 GMHA issued a written Notice of Decision denying JMI's protest and affirming the award of the contract to Medpharm. A copy of the Notice of Decision is attached hereto as Exhibit "C" and specifically incorporated herein by its reference.

II ERRORS OF FACT AND/OR LAW-GROUNDS FOR APPEAL

Protestant, JMI, submits that GMHA has committed the following errors of law and/or facts in rendering its Notice of Decision and the award of the contract under the RFB to Medpharm.

1. GMHA's determination that Medpharm was the lowest responsible bidder.
2. GMHA's reliance on 26 GAR §16316(d)(2)(A) justifying GMHA's decision to dismiss any requirements concerning the "Supplies Component" and disregard of the "All or None" Bid Clause of the RPF.

III. LEGAL ARGUMENT

A. Medpharm's Bid Should Have Been Rejected As Non-Responsive.

Under the RFB, prospective bidders were specifically required to provide for i) an "Equipment Component" for a basic and/or alternate automated microbiology analyzer

package including the newest technology on hardware, software and clinical application software and ii) a “Supplies Component” for reagent and supplies for a minimum 3000 tests per year for use with the Microbiology Analyzer. “General Terms and Conditions Section 7” of the RFB contained an “All or None” bid provision requiring all prospective bidders to include both the “Equipment Component” and “Supplies Component” in their bids.² Nevertheless, by GMHA’s own admission, Medpharm failed to provide a Supplies Component in its bid. In addition, Medpharm’s proposal for a basic microbiology analyzer was deficient in that it failed to provide for a software component. Despite these defects in the Medpharm’s bid, violation of the “All or None Bid Clause” and the fact that JMI complied with all material aspects of the RFB, GMHA nevertheless made a determination that Medpharm was the most responsible bidder and was awarded the contract under the RPF. This is erroneous as a matter of law.

GMHA admits in its Notice of Decision that Medpharm’s bid was not in compliance with the “All or None” Bid Clause. Consequently under 26 GAR §16316(f), Medpharm’s bid should have been rejected as non-responsive. 26 GAR §16316(f) provides as follows:

f. **“All or None” Bids or Proposals.** Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be non-responsive. If the bid or proposal is properly so limited, the hospital shall not reject part of such bid or proposal and award on the remainder. (emphasis added)

Because Medpharm failed to comply with the “All or None Clause” under the RFB, its bid must be deemed “Non-Responsive” and should have been rejected outright. GMHA’s acceptance of Medpharm’s defective bid is clearly erroneous as a matter of law.

B. GMHA’s Reliance on 26 GAR §16316(d)(2)(A) is Misplaced.

In rendering its Notice of Decision, GMHA relies heavily on 26 GAR §16316(d)(2)(A) to summarily disregard the Supplies Component of the RFB and/or to disregard the “All or None” Bids Clause under the RFB. Doing so was clearly erroneous as a matter of law in that said provision of law is inapplicable to the case at bar.

Section 26 GAR §16316(d)(2)(A) provides as follows:

(2) After Opening.

² 7. “ALL OR NONE” BIDS; By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis. Note: By checking this item, the GMHA and the Government is requesting all the bid items to be bid or none at all. The Government will not award on an itemized basis (GPR/GMHA Procurement Rules and Regulations §3-301.06.)

(A) After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the Hospital Administrator determines writing that such action is in the hospital's best interest for reasons including but not limited to:

1. the supplies, services or construction being procured are no longer required;
2. ambiguous or otherwise inadequate specifications were part of the solicitation;
3. the solicitation did not provide for consideration of all factors of significance to the hospital;
4. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
5. all otherwise acceptable bids or proposals are at clearly unreasonable prices; or
6. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

1. 26 GAR §16316(d)(2)(A) does not permit an acceptance of an otherwise non-responsive bid.

26 GAR §16316(d)(2)(A) applies to GMHA's limited ability to totally or partially reject a responsive bid and is not meant to bolster an otherwise non-responsive bid or permit GMHA to otherwise selectively modify the requirements of the original RFB after the opening of bids. Certainly, GMHA attempts to utilize this provision of law to selectively modify its requirements under the RFB and justify the acceptance of an otherwise non-responsive bid by Medpharm. This it cannot do. In the first instance, Medpharm's bid is not at all being wholly or partially rejected as is contemplated in this provision of law. Indeed, GMHA's argument that it applies to a partial acceptance of a bid fails in that Medpharm's bid is being completely accepted despite its material deficiencies. Rather, GMHA is attempting to use this provision of law to somehow "reject" those responsive components of protestant's bid which would otherwise justify protestant's selection as the lowest responsible bidder under Guam Procurement Laws. Clearly, 26 GAR §16316(d)(2)(A) is meant to apply only to those bidders which were initially deemed responsive and circumstances justify the rejection of a portion or all of those bids. Such a provision was not meant to reduce the responsive bids to the level of that of a non-responsive bid which could then result in the selection of an initially unresponsive bid over initially responsive bids.

2. Even if 26 GAR §16316(d)(2)(A) does apply, GMHA fails to justify its application or in doing so, is in GMHA's best interest.

GMHA painstakingly attempts to fit the provisions of 26 GAR §16316(d)(2)(A) to justify its action to award a contract to one particular Non-Responsive bidder, Medpharm. This fact is highlighted by the fact that GMHA's consideration of non-

responsive bids was limited solely to Medpharm.³ In addition, GMHA attempts to fit the application of 26 GAR §16316(d)(2)(A) by claiming that i) the Supply Component under the RFB was ambiguous and ii) an award to Medpharm was necessary because failure to immediately award the contract to Medpharm would jeopardize GMHA's ability to use certain government funds it was allotted.

The only plausible circumstance justifying application of 26 GAR §16316(d)(2)(A) was a determination by GMHA that certain portions of the RFB should be rejected as "ambiguous". Because GMHA wanted to accept Medpharm's bid (since its bid lacked a Supplies Component), GMHA made the "necessary" determination that the Supplies Component provisions under the RFB was "ambiguous". In support of its determination, GMHA summarily states in its Notice of Decision that Amendment No. 3 was ambiguous in that it did not state what reagents and supplies were to be obtained in that different test cards can be utilized, and in any event JMI's prices on reagents and supplies did not meet GMHA's needs.

Protestant submits that GMHA's "determination" was made in bad faith. GMHA was requested to clarify the Supplies provision of the RFB. Indeed GMHA contemplated the need for clarification concerning the Supplies Component of the RFB and issued Amendment No. 3 to the RFB. In addition, on August 10, 2007, GMHA sent prospective bidders a "Request for Information" wherein each bidder was asked to provide price quotations for specific Test Cards to be utilized with the Microbiology Analyzer and JMI submitted the requested information. A copy of the letter dated August 10, 2007 is attached hereto as Exhibit "D" and specifically incorporated herein by its reference. It is therefore surprising that in its Notice of Decision, GMHA complains that the Supplies Component of the RFP is "ambiguous". It is inconceivable how the Supplies provision in the RFP can be more specific and clear. Furthermore GMHA summarily states without sufficient explanation why JMI's bid for the Supplies Component was "different" from what was needed by GMHA. JMI's proposal complied exactly with what was requested. If for some reason the Supplies provisions were "ambiguous", to protect the integrity of Government of Guam Procurement processes, GMHA should have rejected all bids and reissued the RFB with the additional requirements. Consequently, JMI submits that GMHA's determination that the Supplies Component provisions under the RFB were ambiguous is without basis and made in bad faith and was done to simply permit an otherwise non-responsive bid to be considered.

As to GMHA's determination that government funds are at stake and therefore is in the Hospital's best interest to award the contract to a non-responsive bidder, this would not have been the case if GMHA awarded the contract to JMI, who clearly was the lowest successful bidder under Guam Law. Moreover, GMHA should not now be able to claim a public necessity concerning the use of funds because of its own delay in the expenditure of the funds and/or its inability to comply with Guam Procurement Laws. Otherwise,

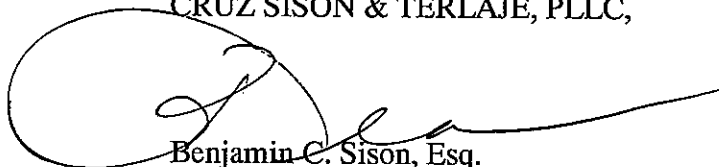
³ JC Marketing bid was rejected as being non-responsive for its failure to include a non-collusion statement in its bid.

whenever government funds are at issue, a government agency would be free to ignore Guam Procurement laws at its behest and this clearly is not in Guam's best interest.

For the above-stated reasons, we request that GMHA's Notice of Decision be overturned. We thank you for your utmost consideration in this matter.

Sincerely yours,

CRUZ SISON & TERLAJE, PLLC,

A handwritten signature in black ink, appearing to read 'Benjamin C. Sison', with a large, stylized initial 'B' and a long horizontal flourish extending to the right.

Benjamin C. Sison, Esq.
A Duly Licensed Employee

Cc: JMI Edison Inc.
C/O Rey Vega

Peter John D. Camacho
Hospital Administrator/CEO

Attachments.

**GUAM MEMORIAL HOSPITAL AUTHORITY
GOVERNMENT OF GUAM**

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Guam Memorial Hospital Authority.

2. **PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the Solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packaging unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - d) Bids for supplies or services other than those specified will not be considered.
 - e) Bids must state an estimated time for delivery of supplies or for the performance of services requested by the Solicitation.
 - f) Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday, or Government of Guam legal holiday will end at the close of the next business day.

3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., shall be submitted in writing with sufficient time to allow a written reply to reach all bidders before the submission of their bids. Oral explanation or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information is necessary for bidders in submitting bids on the Solicitation or if the lack of such information would be prejudicial to uninformed bidders.

4. **ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgment of receipt of the amendment. Such acknowledgment must be received prior to the hour and date specified for receipt of bids.

5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 7 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on the Solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.

6. **FAILURE TO SUBMIT BID:** Businesses that fail to respond to Invitation for Bids or Notice of Availability on three (3) consecutive procurements of similar items may be removed from the applicable bidders' list after notice to the bidder. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated

3

GUAM MEMORIAL HOSPITAL AUTHORITY
GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS
SEALED BID SOLICITATION AND AWARD

Only those items checked below are applicable to this Bid.

- (X) 1. **AUTHORITY:** This solicitation is issued subject to all the provisions of the Guam Procurement Act (PL. 16-124) and the Guam Procurement Regulations/Guam Memorial Hospital Authority Procurement Rules and Regulations (copies of both are available at the Office of the Compiler of Laws, Department of Law, copies available for inspection at Guam Memorial Hospital Authority. It requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.
- (X) 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready to use.
- (X) 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- (X) 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- (X) 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with Section 6950.7 of the Guam Procurement Act (PL. 16-124) and Section 1-104 of the Guam Procurement Regulations (GPR)/Guam Memorial Hospital Authority Procurement Rules and Regulations (GMHA PR&R).
- (X) 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the solicitation.
- (X) 7. **"ALL OR NONE" BIDS:** By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis. *Note: By checking this item, the GMHA and the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis (GPR/GMHA Procurement Rules & Regulations § 3-301.06).*
- () 8. If the Government does not require all or none bids (Paragraph 7 of these General Terms and Conditions is not checked off), but the bidder indicates on the bid that it is an all or none bid, then the Government will deem the bid submitted to be not responsive.
- (X) 9. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices submitted on the bid were derived at without collusion, and acknowledges that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 6981 of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 6981 of the Government Code.
- (X) 10. **BIDDER'S PRICES:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the product's origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- (X) 11. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, bid number, time, date and place of bid opening.

- (X) 12. **BID BOND REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Guam Memorial Hospital Authority in the amount of **fifteen percent (15%)** of the bidder's highest total bid, whenever the final bid award is less than the bidder's highest total bid the bidder has the option to substitute the original bid bond with a bid bond for the lesser amount. Bid guarantee will be a Bid Bond on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the Bid or fails to enter into contract within the prescribed time, such Bond will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's Check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid (GPR/GMHA PR&R § 3-202.03.3).
- (X) 13. The bid security required above under any applicable Invitation for Bid shall not be release upon award of the bid, but instead shall continue in full force and effect until delivery of the supplies or services required by the contract under the associated Invitation for Bid is completed. The bid security shall be held and deemed satisfactory to adequately protect the best interest of the Government of Guam from default and thus no separate performance bond shall be required on a contract for supplies or services. (GUAM GCA 5212 ADDED Art 5 Chap 5 Part B).
- (X) 14. **PERFORMANCE BOND REQUIREMENT:** The bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to Guam Memorial Hospital Authority issued by any of the local Banks or Bonding Institution in the amount equal to **Zero%** of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Hospital Administrator shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Hospital Administrator shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR/GMHA PR&R § 3-202.03.4).
- (X) 15. **PERFORMANCE GUARANTEE:** Bidders awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with GMHA and the Government and to enforce Paragraph 12 and 13 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Paragraph 44 of these General Terms and Conditions.
- (X) 16. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The Surety must be Insurance Company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- (X) 17. **COMPETENCY OF BIDDERS:** Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- (X) 18. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Hospital Administrator reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 19 of these General Terms and Conditions (GPR/GMHA PR&R § 3-401).
- (X) 19. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the

lowest responsible offer, the Hospital Administrator shall be guided by the following:

- a) Price of items offered.
- b) The ability, capacity, and skill of the Bidder to perform.
- c) Whether the Bidder can perform promptly or within the specified time.
- d) The quality of performance of the Bidder with regards to awards previously made to him.
- e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
- f) The sufficiency of the financial resources and ability of the Bidder to perform.
- g) The ability of the bidder to provide future maintenance and services for the subject of the award.
- h) The compliance with all of the conditions to the Solicitation.

(X) 20. TIE BIDS: If the bids are for the same unit price or total amount in the whole or in part, the Hospital Administrator has the authority to award the bid to any one of the bidders by drawing lots in public, or to reject all such bids (GPR § 3-202.15.2).

(X) 21. BRAND NAMES: Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such reference is intended to be descriptive, but not restrictive and for the sole purpose of indicating to prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.

(X) 22. DESCRIPTIVE LITERATURE: Descriptive literature(s) of proposed item(s) that are not as specified in this solicitation must be furnished as part of the bid and must be received at the date and time set for Bid opening. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the Bid.

() 23. SAMPLES: If proposed Bid item is not as specified in this solicitation, sample(s) must be furnished as a part of the bid and must be received at the date and time set for Bid opening. The sample(s) should represent exactly what the Bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.

() 24. LABORATORY TEST: Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association (if applicable).

(X) 25. AWARD, CANCELLATION & REJECTION: Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to GMHA and the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may be required to waive any minor irregularity in bids received. The Hospital Administrator shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a binding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. The Government will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional award for the same type of items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from GMHA or the Government (GPR/GMHA PR&R § 3-202.14.1).

(X) 26. MARKING: Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.

- 3
- (X) 27. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the Guam Memorial Hospital Authority, Telephone Nos. 647-2160/2131/2165, at least twenty-four (24) hours before delivery of any item under this solicitation.
- (X) 28. **BILL OF SALE:** Successful Bidder shall render Bills of Sale for each item(s) delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with the billing instructions as indicated on the Purchase Order.
- (X) 29. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item(s) under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this requirement will result in rejection of delivery (if applicable).
- (X) 30. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by GMHA or the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, GMHA or the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by GMHA or the Government.
- () 31. **MOTOR VEHICLE SAFETY REQUIREMENTS:** GMHA or the Government will only consider Bids on motor vehicles which comply with requirements of the National Traffic and Motor Vehicle Safety Act of 1966 (P.L. 89-563) and Clean Air Act as amended (P.L. 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- () 32. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- () 33. **GUARANTEE:**
- a) **Guarantee of Vehicular Type of Equipment:** The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune-ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from GMHA or the Government and without cost to GMHA or the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
- b) **Guarantee of Other Type of Equipment:** The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 33a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to GMHA or the Government. Repairs, adjustments or replacements of defective parts shall be completed by the Contractor within six (6) working days after notice from GMHA or the Government.
- c) Compliance with this Section is a condition of this Bid.
- (X) 34. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations/GMHA Procurement Rules and Regulations.
- (X) 35. **REPRESENTATION REGARDING CONTINGENT FEES:** The Bidder or Contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).

- (X) 36. **EQUAL EMPLOYMENT OPPORTUNITY:** Bidders or Contractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- (X) 37. **RESTRICTION AGAINST SEX OFFENDERS:** If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on Government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the government of the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the government, and the service provider shall notify the government when action has been taken. If the service provider fails to take corrective steps within the twenty-four hours of notice from the government, then the government in its sole discretion may suspend temporarily any contract for services until corrective actions has been taken .
- (X) 38. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standards, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- (X) 39. **CHANGE ORDER:** Any change order issued relative to awards made under this solicitation will be subject to and in accordance with the provision of Section 6-101.03.1 of the Guam Procurement Regulations.
- (X) 40. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.04.3 of the Guam Procurement Regulations.
- (X) 41. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Guam Procurement Regulations.
- (X) 42. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101.08 of the Guam Procurement Regulations.
- (X) 43. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Hospital Administrator of such delay. Notification shall be in writing and shall be received by the Hospital Administrator at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Hospital Administrator, such justification is not adequate.
- (X) 44. **LIQUIDATED DAMAGES:** When the Bidder or Contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of two percent (2%) of outstanding order per calendar day from date set for cure until either the Hospital reasonably obtains similar supplies or services, if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 43 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the Hospital. The

contractor remains liable for damages caused other than by delay (GMHA PR&R Section 6-101.09.1).

(X) 45. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protection against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reason of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the contractor or his employees and agents of the services covered by the Contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.

(X) 46. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this solicitation, please designate a person whom we may contact for prompt administration.

Name: _____

Title: _____

Address: _____

Telephone: _____

SPECIAL PROVISIONS, TERMS & CONDITIONS
GMHA BID NO. 024-2007
SEALED BID SOLICITATION AND AWARD

This is a "Definite Quantity Bid" pursuant to Section 3-501.09.1 of the Guam Memorial Hospital Authority Procurement and Regulations. This definite Quantity contract is a fixed-price contract that provides for delivery of a specific quantity of supplies or services.

1. **QUANTITIES.** Quantities are furnished to aid in determining minimum bonding requirement applicable to the bid and awarded bidder's immediate stock level to meet the Hospital's immediate demand
 - a) Bidders, Contractors or Vendors must be able to accept and exchange damaged products upon delivery inspection with and to provide replacement products at no cost to the Hospital.
 - b) Quantities in the bid are tentative and are subject to amendment based upon actual utilization experience and patient census.
 - c) Subject to a 10% adjustment in the quantities reflected in additions to the initial requirements. However, the requested quantity shall be subject to the availability of funds.
2. **BID PRICE.** Costs for all supplies, equipment, labor and other incidental costs approved by the Hospital prior to awarding the contract must be factored in the bid price.
3. **DELIVERY.** Delivery shall be requested by Materials Management Department, commencing thirty (30) days after acceptance of the purchase order. See General Terms and Conditions, Paragraph 42.
4. **HOSPITAL'S OBLIGATION.**
 - a) The Hospital is obligated to order the actual requirements of the designated using departments, as approved by the Hospital Administrator during the contract period.
 - b) The Hospital's obligation to order the Hospital's actual requirements is limited by the provisions stated in GMHA Procurement Rules and Regulations § 3-103.01.1.
5. **BID BOND.** Contractor must post a Bid Bond equal to fifteen percent (15%) of the total bid amount. The Bid Bond will be held in lieu of a performance bond, until delivery of the supplies or services as agreed to in this contract is completed. (GCA section 5212).
6. **PERFORMANCE BOND.** Not required for this bid solicitation.
7. **EXEMPTIONS.**
 - a. The Hospital reserves the right to take bids separately if a particular quantity requirement arises which exceeds the Hospital's normal requirements or an amount specified in the contract.
 - b. Two exemptions from ordering under the contract:
 - (1) When the Hospital Administrator approves a finding that the supply or services available under the contract will not meet a nonrecurring, special need of the Hospital; or
 - (2) When supplies are produced or services are performed incidental to the Hospital's own programs as may be available that can satisfy the need.
8. **PRODUCT IDENTIFICATION.** Specifications are given only as a guide for description of solicited item(s).
9. **CONTRACT TERM.** As per General Terms & Conditions and Special Provisions, Terms & Conditions, Special Reminder to Bidders and Product Identification sheets of this Solicitation.

NOTE: Item Numbers 8, 23, 24, 31, 32 and 33 of the General Terms and Conditions are not applicable to this bid.

SPECIAL PROVISIONS

AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS

All bidders are required to submit a current affidavit as required below, failure to do so will mean disqualification and rejection of the bid.

Excerpt from Public Law 1844, Section 44. A new Section 6961.3 is added to the Government Code to read:

"Section 6961.3. Disclosure of major shareholders. As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying."

NOTE: Each affidavit is only good for the month within which it was prepared and notarized.

EXAMPLE:

1. A bidder intends to participate in bids scheduled for October 5, 15, and 25, 200X. He must submit a **NEW AFFIDAVIT ON OCTOBER 5** bid and may submit **COPIES** for October 15 and 25 bids.
2. A bidder intends to participate in bid scheduled for October 20 and November 5, 200X. He must submit a **NEW NOTARIZED AFFIDAVIT** for **EACH BID**.

The date of signature by the bidder must be the same date of signature endorsed by the Notary Public Official.

INSTRUCTIONS TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to Guam Memorial Hospital Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major Officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and bids will be rejected.

LOCAL PROCUREMENT PREFERENCE APPLICATION

Based on the law stipulated below, please place a checkmark or an "X" on the block indicating the local procurement preference status that applies to your business:

5GCA, Chapter 5, Section 5008, Policy in Favor of Local Procurement, of the Guam Procurement Law states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

a. A licensed bonafide manufacturing business that adds at least twenty-five percent (25%) of the value of the item, not to include administrative overhead, using workers who are U.S. citizens or lawfully admitted permanent residents or national of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Government of the Pacific Islands; or

b. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or

c. A business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one-half (1/2) of the value of the bid, or One-hundred fifty thousand (\$150,000.00) U.S. dollars, whichever is less, of supplies and items of a similar nature to those being sought; or

d.* A service business actually in business, doing a substantial business on Guam, and hiring at least ninety-five percent (95%) U.S. citizens, lawfully admitted permanent residents or national of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Government of the Pacific Islands.

*** Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference only if the Government's requirement is for service. Service is defined pursuant to 5GCA Government Operations Subparagraph 5030 entitled DEFINITIONS under Chapter 5 of the Guam Procurement Law.**

1. I _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the Local Procurement Preference for Bid No. GMHA _____. By filling in this information and placing my signature below, I understand that Guam Memorial Hospital Authority will review this application and provide me with a determination whether or not the fifteen percent (15%) preference will be applied to this bid.

2. I _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No. GMHA _____.

BIDDER REPRESENTATIVE'S SIGNATURE
DATE: _____

NOTE: Prospective bidders will not automatically be considered for Local Procurement Preference. Bidders must submit this application for consideration. Non-completion of this form is not a basis for rejection of the bid.

GUAM MEMORIAL HOSPITAL AUTHORITY
850 Gov. Carlos Camacho Rd., Oka Tamuning, Guam 96913

SPECIAL REMINDER TO PROSPECTIVE BIDDERS:

Bidders are reminded to read the Sealed Bid Solicitation Instructions and the General Terms and Conditions attached to a Bid Invitation to ascertain that all the following requirements of the bid are submitted in the bid envelope at the date and time for bid opening. Only those boxes checked below are applicable to this Solicitation.

- (X) 1. **BID BOND.** Bid bond in the form cashier's check, letter of credit or Surety Bond. Surety Bond, to be valid, must be accompanied by:
 - a. Current certificate of authority issued by the Insurance Commissioner.
 - b. Power of Attorney issued by the Surety to the Resident General Agent
 - c. Power of Attorney issued by two (2) major officers of the surety to whoever is signing on their behalf.

- (X) 2. **BROCHURES/ DESCRIPTIVE LITERATURES.** (Paragraph 22, General Terms & Conditions)

- () 3. **SAMPLES.** Samples on equivalent products must be received for evaluation and is required for submission with bid packet. (Paragraph 23, General Terms & Conditions); Note: If the offered product is not listed on the "Reference Product or Equivalent" section of the Specification sheet of this solicitation a sample must be submitted.

- (X) 4. **AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS.** Bidders must comply with the following requirements:
 - a. Current The affidavit must be notarized and dated on the same month as the bid opening; and
 - b. Date of signature of the person authorized to sign the bid and the notary date must be the same.

- (X) 5. **NON-COLLUSION AFFIDAVIT.** See attached application form.

- (X) 6. **LOCAL PROCUREMENT PREFERENCE.** See attached application form; **Non-completion of the application form is not a basis for rejection of the bid.**

- (X) 7. **UNIT COST** must be provided in the unit of measures as indicated for each product on the specification sheet of this solicitation.

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the requirements will mean disqualification and rejection of the bid.

I _____, an authorize representative of _____ acknowledge receipt of this special reminder to prospective bidders together with GMHA Bid Invitation Number _____ this ____ day of _____, 20____ and that I have read and understand its intent and implications.

BIDDER REPRESENTATIVE'S SIGNATURE

**GUAM MEMORIAL HOSPITAL AUTHORITY
 BID SPECIFICATIONS**

Description

		Quantity	Unit	Unit Price	Extension
1.	Automated Microbiology Analyzer	1	each	_____	_____

Specs:

* See bid specifications attached

Comments:

APPROVED EQUAL BIDDING ON:

MFG: _____

+ Reference Products or Equivalent:

MAKE: _____

Manufacturer

BRAND: _____

Model

PLACE OR ORIGIN: _____

DATE OF DELIVERY: _____

(GUAM) AFTER RECEIPT OF PURCHASE ORDER.

GUAM MEMORIAL HOSPITAL AUTHORITY MICROBIOLOGY ANALYZER

Guam Memorial Hospital Authority is hereby soliciting proposals from qualified vendors to provide an Automated Microbiology System to provide Laboratory-Microbial Identification and Susceptibility Analysis to both inpatients and outpatients of the facility.

Project Description

The hospital is looking to secure a source for one new automated microbiology analyzer to replace its current equipment. Analyzer must be FDA approved and meet compliance with regulatory agencies and NEC and UL standards.

The Microbiology Department of Guam Memorial Hospital Authority currently processes an average of 3000 microbial identification and susceptibilities of microorganisms per year.

Scope of Services

I. SUPPLIES

1. Provide reagent and supplies for a minimum of 3000 tests per year for use with the Microbiology Analyzer
2. Vendor must be able to meet the delivery schedules for supplies as specified by Laboratory Administrator upon award of contract
3. Vendor must ensure that supplies delivered are those of the latest release from manufacturer with sufficient outdates for the needs of the laboratory

II. EQUIPMENT- MINIMUM REQUIREMENTS

1. Provide proposal for one Automated Microbiology Analyzer with the newest technology on hardware, software and clinical application.
2. Microbiology Analyzer **must not** exceed the following dimensions: Height 24 inches, Length 50 inches and Width 30 inches.
3. Analyzer must have a minimum capacity to run 60 panels at one time.
4. The proposed Microbiology Analyzer must meet or exceed the following specifications:

- **Test Parameters**
Microbial identification and susceptibility of both aerobic and anaerobic organisms (including *Neisseriae* and *Haemophilus*)
- **Sampling**
Bar-code readability of test samples
- **Software**
Customized Quality Control Reports (E.g. Cumulative QC Reports)
Includes analysis, data management and patient reports
Ability to generate automatic antibiogram reports
Customization of Reports
- **Interoperability with LIS**
Vendor is responsible for configuration and activation of LIS interface to include additional hardware as needed.
Instrument must be capable of TCP bi-directional transport via external control device (i.e. computer or other) or internal Ethernet to serial conversion unit.
- **Power**
100-120 Volts
60 Hz
- **CAP Proficiency Data**
Vendor must provide documented evidence of good performance ratings on CAP (College of American Pathologists) proficiency surveys from existing instrument users.

III. INSTALLATION/VALIDATION

1. Vendor will be responsible for on-site installation of analyzers.
2. Vendor must perform satisfactory verification of functions and validation of accuracy after installation. Documentation of validation studies must be submitted to Laboratory Director post-installation.

IV. TECHNICAL SUPPORT

1. Vendor must include one (1) year of maintenance support base on the manufacturer's recommendations as part of this bid.
2. Vendor personnel to perform repairs and maintenance must be trained and certified by the manufacturer.
3. Vendor must provide a 24-hour service hotline.

4. If instrument repair is not locally possible, vendor must provide parts and authorized service personnel within a reasonable time period or replace instrument as needed.

V. TRAINING

1. Vendor must provide in-service training to all laboratory users on the instrument function, operation and clinical application.
2. Vendor will provide training for two (2) laboratory technicians at the manufacturer's clinical training center on the instrument's theory, operations, maintenance and troubleshooting. The vendor will assume travel and hotel accommodations.
3. Vendor will provide in-service training for one- (1) Biomedical personnel on theory and function of the equipment, maintenance, repairs and troubleshooting at the manufacturer's training facilities. The vendor will assume travel and hotel accommodations.
4. Need for minimal training preferred. Compatibility with existing Microbiology policy and procedure is desirable to minimize technician downtime.

VI. PROPOSAL REQUIREMENT

Proposals must be submitted in duplicate to the Materials Management Department at Guam Memorial Hospital Authority. Each proposal must be sealed in a package and submitted with the following:

1. Documents detailing requirements as outlined in Scope of Services.
2. List of user references (similar in scope and size to GMHA Lab) for which the vendor substantially performed as the prime vendor (complete with addresses and telephone contact numbers).
3. Vendor organization chart showing principles and key personnel assigned to perform the required services (complete with addresses and contact numbers).
4. The total number of installations in the last 3 years by the year of installation and the total number of current users for the proposed system.
5. An executed major shareholders disclosure affidavit (form enclosed).
6. Copy of current Business license.
7. Documentation attesting to the experience, reliability, qualifications and performance data of the company.

VII. PROPOSAL EVALUATION AND AWARD OF CONTRACT

A selection committee will convene after the dateline for submission to evaluate the received proposals. Evaluation factors and relative importance of each factor are as follows:

1. Adherence to Section II and I for proposed Microbiology Analyzer (30 points)
2. Qualifications and Performance Data of the Company (20 points).
3. Maintenance and service experience/history (20 points).
4. Provide a superior level of customer service and technical support, both pre-installation and post-installation, to clients as evidenced by references. (15 points)
5. Ability to demonstrate expertise and functionality as evidenced by client references and resources of organization. (15 points).

The selection committee will evaluate all proposals and select the top three companies. The top three company proposals will be forwarded to the Hospital administrator for final selection of the most qualified company. Interviews with the company may be conducted during the evaluation period.

Guam Memorial Hospital Authority will negotiate a contract with the selected company for the required services if compensation, contract requirements and contract documents can be agreed upon with the selected company.

Guam Memorial Hospital authority reserves the unqualified right, in its sole and absolute discretion, to reject any and all proposals, or to accept the proposal or group of proposals, which in its sole and absolute judgment will best serve the Government of Guam's interest.

BID OFFER

TOTAL BID AMOUNT: \$ _____

BID BOND AMOUNT: \$ _____
(15% of Total Bid Amount)



Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan

850 GOV. CARLOS CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL: 647-2444 or 647-2330
FAX: (671) 649-0145

July 12, 2007

AMENDMENT #3 FOR GMHA Bid 024-2007

Automated Microbiology Analyzer

This amendment is being issued in regards to JC Marketings clarifications:

1. Prices for supplies (panels) are also to be provided at time of bid opening or it will be incorporated to the cost of the equipment with consideration of the estimated 3,000 tests per annum.

The reagent and supplies cost will be separate from the instrument itself.

2. Is the Microbiology Analyzer to be linked with the existing equipments to facilitate the laboratory's work flow or it will be stand alone. Should it be compatible and be linked, is cost of computer software to be provided at time of bid.

The one thing that is an absolute requirement in terms of interoperability is with the lab's information system. This part is stated on page 2 of the specs "Interoperability with LIS". Vendor will have to ensure that their product can link up to our LIS computer. The specs do say that they do cover the costs for the LIS interface with their equipment.

The current Lab's LIS vendor is CERNER which most major equipment vendors are able to link to the system.

Exhibit "B"



Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan

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November 27, 2007

Mr. Rey M. Vega
General Manager
JMI Medical Systems, Inc.
125 North Marine Drive
Tamuning, Guam 96913

RE: JMI Protest Letter dated August 31, 2007 and its Request to Reconsider dated September 13, 2007 on GMHA Bid No. 024-2007

Dear Mr. Vega,

The Guam Memorial Hospital Authority (GMHA) has carefully reconsidered its decision regarding your protest letter dated August 31, 2007. In your protest letter, you alleged that Medpharm's proposal did not comply with the solicitation as Medpharm was nonresponsive as it did not submit a price for reagent supplies in its bid. Whereas, your company did.

The solicitation's project description indicated that GMHA was seeking to procure an Automated Microbiology Analyzer. Indeed, both Medpharm and JMI correctly submitted bids or prices for the analyzer. The problem was with the bids or prices for the reagent and supplies. Amendment No. 3 sought to address this issue, but, Amendment No. 3 was ambiguous in that it did not state what reagents and supplies were to be obtained. This was critical as the respective analyzers proposed by Medpharm and JMI could utilize a number of different test cards. Thus, GMHA had a situation where Medpharm did not propose a bid or price on the reagents and supplies, but, JMI proposed a bid on prices on reagents and supplies different from what was needed by GMHA. Neither of these fulfills GMHA's needs.

Yet, GMHA's need for the analyzer itself is critical and its ability to procure one in the future is very dubious due to funding constraints. Therefore, pursuant to GMHA 9-101.05, I have determined that the award of the contract without delay is necessary to protect the substantial interests of the hospital. Furthermore, under paragraph 25 of the solicitation's General Terms and Conditions, I have decided that it is in the best interest of GMHA and the public to cancel the portion of the solicitation concerning the reagent and supplies and to reaffirm the Hospital's previous award to Medpharm for the microbiology analyzer.

Exhibit "C"

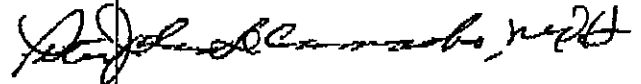
2 GAR § 3115 (d)(2)(a) also gives legal authority for the rejection of part of the bids submitted. It states that "after opening but prior to award, all bids or proposals may be rejected in whole or in part when ... the head of a Purchasing Agency determines in writing that such action is in the territory's best interest for reasons including, but not limited to, ... ii) ambiguous or otherwise inadequate specifications were part of the solicitation". See 26 GAR § 16316(d)(2)(a).

While the solicitation contains an "all or none" provision in paragraph 7 of the General Terms and Conditions, this is not dispositive in this case. Paragraph 25 of the General Terms and Conditions which allows partial acceptance or rejection comes after that paragraph. "Where a repugnancy is found between clauses, the one which essentially requires something to be done to effect the general purpose of the contract is entitled to greater consideration than the other." 17A Am. Jur.2d Contracts § 384 citing International Union of Operating Engineers v. J.A. Jones Const. Co., 240 S.W.2d 39 (Ky. 1951). As the primary purpose of the solicitation was to procure the analyzer and paragraph 25 essentially carries out this purpose, paragraph 25 is therefore entitled to greater deference. 5 GCA § 5002 states that "the principles of law and equity, including the Uniform Commercial Code, the law merchant ... shall supplement" the Guam Procurement Law.

In sum, the award of a contract for the procurement of an automated microbiology analyzer is made to Medpharm. The bids for reagent supplies are all rejected.

Please note that you have the right to administrative and judicial review of this decision pursuant to Chapter 9 - 103.07.

Sincerely,



Peter John D. Camacho, M.P.H.
Hospital Administrator / CEO



Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan

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FAX: (671) 649-0145

August 10, 2007

REQUEST FOR INFORMATION

Ms. Jean O. Grape
Sales Executive
JMI Medical Systems, Inc.
125 North Marine Drive
Tamuning, Guam 96913

Ref: GMHA Bid 024-2007; Automated Microbiology Analyzers

Dear Ms. Grape,

In order to complete our evaluation on GMHA Bid 024-2007 for the Automated Microbiology Analyzers, we are requesting for price quotations for the following reagent cards:

1. Gram Positive Susceptibility Test Cards

AST-GP63 (22101) -----	\$ 259.20	1 BX
AST-GP66 (22175) -----	\$ 259.20	1 BX

2. Gram Negative Susceptibility Test Cards

AST-GN20 (22184) -----	\$ 259.20	1 BX
AST-GN07 (22006) -----	\$ 259.20	1 BX

3. Streptococcus Pneumoniae Susceptibility Test Cards

AST-GP65 (22149) -----	\$ 259.20	1 BX
------------------------	-----------	------

} 20 CARDS / BOX

Your prompt response would be greatly appreciated.

DANIEL C. MATANANE
Supply Management Administrator

ORIENTAL

Exhibit "D"